



WILDLIFE TRADE AND THE IMPLEMENTATION OF CITES IN KENYA

Prepared for Uganda Wildlife Society by

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Research Reports Series #3

June 2000

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- ❑ Forests Act, Cap 385, Laws of Kenya
- ❑ Maritime Zones Act, Cap 371, Laws of Kenya
- ❑ Plant Protection Act, Cap 324, Laws of Kenya
- ❑ Wildlife (Conservation and Management) Act, Cap 376, Laws of Kenya

LIST OF ABBREVIATIONS

ACTS	African Centre for Technology Studies
CITES	Convention on International Trade in Endangered Species
IUCN	World Conservation Union
KARI	Kenya Agricultural Research Institute
KEMFRI	Kenya Marine and Fisheries Research Institute
KShs	Kenyan Shillings
KWS	Kenya Wildlife Service
NMK	National Museums of Kenya
TRAFFIC	Trade Records Analysis of Flora and Fauna in Commerce
UWS	Uganda Wildlife Society
WCMD	Wildlife Conservation and Management Department
WWF	World Wide Fund for Nature

EXECUTIVE SUMMARY

Kenya has made several efforts to meet her obligations under CITES. The current wildlife legislation prohibits hunting and consumptive use of wildlife resources. It prohibits trade in trophies and especially trade in ivory and rhino horn. Trade in other CITES-listed species such as hardwoods and medicinal plants, namely; *Prunus africana*, *Ocotea usambarensis*, *Podocarpus milanjianus*, *Juniperus procera* and *Aloe secundiflora* is restricted but thrives to a large extent despite restrictions through legislation. Trade in other wildlife products and species such as bush meat, sharks fins, lobsters, sea shells and the holothurian fishery are also regulated though there is proof that such trade continues to thrive.

Trade in wildlife species and their products is big business – worth up to \$20 billion a year globally. A quarter of this is thought to be illegal. Much of the trade is from developing countries, which contain most of the world's biodiversity, to developed ones, which provide the demand. Wildlife trade is driving many species towards extinction. But it need not do so. The world now recognises that regulated trade, keeping the exploitation of species within sustainable levels, can bring much-needed income, especially to developing countries and their peoples. Through CITES, the world community has worked to bring wildlife trade under control. Trade in species threatened with extinction is banned, and it is controlled where it might endanger species if left unrestricted. More and more countries have acceded to CITES and it has done much to curb the ill effects of the trade.

The tourism industry in Kenya is the number one foreign exchange earner. The industry thrives and depends entirely on the diversity and abundance of wildlife resources. The tourism sector contributes an average of 375 million dollars with every 250,000 to 300,000 visitors that arrive in Kenya. It is clearly to Kenya's benefit that we conserve her wildlife heritage for continued income generation both for individual landowners, proprietors of small cottage industries selling curios and to the nation as a whole.

Kenya has supported the ban on trade in ivory for several decades. The earliest legislation and wildlife management policies attempted to control hunting and prohibit ivory trade which went hand in hand with slave trade for many centuries before colonisation. Kenyan wildlife management institutions have had mixed success in regulating wildlife trade. The earliest institution banned hunting but was under increasing pressure from settler communities who perceived of wildlife as an unnecessary pest causing damage to their crops. With independence, the next institution ran into serious management and financial problems. This coincided with a time when ivory prices in the international market were increasing. There was thus a rapid increase in poaching which reached a peak in 1988. In 1989 Kenya's president led the world in condemning ivory trade and torched 12 tonnes of ivory worth some KShs 60 million. Later that year at the CITES conference the international ban in ivory trade was instituted. Kenya put in place mechanisms to curb the rampant poaching and has brought it under control, to a large extent. In 1997, there was a one-off sale in ivory from Southern African countries to Japan. This has recently brought on a new wave of poaching. Reports from KWS indicate that the institution has it in check despite increasing reports of elephant carcasses. Kenya's position is that this wave of poaching is in anticipated future sales and eventual increase in prices that have since fallen since the trade ban. This year's CITES conference re-instituted the ban in ivory trade and anti-poaching efforts are once again in full swing in the field.

The following report begins by giving a historical overview of regulatory institutions that have managed wildlife resources in Kenya and some of the policy's that were instituted to conserve and to some extent preserve the wildlife resource. The extent to which Kenyan wildlife legislation has promoted wildlife conservation and regulated and prohibited wildlife trade is examined. Wildlife management institutions and how they have evolved over time, from the colonial Game Department to the present day Kenya Wildlife Service, is considered. Kenya's efforts towards implementation of its obligations under the Convention are presented in detail. Trade in wildlife, both legal and illegal, is documented. A comparative survey of Tanzanian legislative and institutional aspects of wildlife trade management and how Kenya could benefit from Tanzanian experiences is presented. The report ends with conclusions on wildlife trade in Kenya over the last several decades and makes recommendations on how institutional linkages and enforcement of various legislation and policies could be enhanced in order for Kenya to better meet its obligations under CITES.

SECTION ONE

Background

1.1 Kenya's Wildlife Diversity

The diversity of species, of animal and plant life within Kenya's national parks is remarkable. Each park has its own uniqueness, with different animals and habitats. Tsavo East and West are two adjacent national parks that cover a vast 8,000-square mile (20,720-square-kilometre) tract. Tsavo West contains the fabled Mzima Springs, where crystal-clear water bubbles from below a lava ridge. Large numbers of hippo and shoals of barbel fish, viewed through the plate-glass windows of a submerged observation chamber, provide a dramatic spectacle. Elephant and other animals come to this oasis amid harsh, dry country to drink and bathe.

Tsavo East is dry and rough – hard living even for wild animals. A favoured viewing spot is the mighty Mudanda Rock, 1.5 square kilometres of water catchment with a natural dam at its base. In the dry season, elephant come in large numbers to drink. The Lugard Falls on the Galana River channel the flow into a narrow, rocky gorge, where it is possible to straddle the cleft as the water rushes through the falls below.

Compare the vastness of Tsavo with Saiwa Swamp in Trans Nzoia, a mere 2 square kilometres – precious because here, with patience, the last few remaining sitatunga antelope may be seen fairly easily. Always very uncommon and indigenous in Kenya, the sitatunga is found only in papyrus swamps, which are retreating in the face of agricultural expansion.

Mount Kenya is rich in bird life, which ranges from massive eagles to tiny, delicate sunbirds. Elephant, Lion, Leopard and many smaller animals inhabit the forest below the moorlands. A numerous number of alpine plant species are found within Mount Kenya National Park, which is mostly dominated by the twin peaks of Batian (17,058 feet or 5,199 metres) and Nelion (17,022 feet or 5,188 metres). Professional climbers may tackle these two peaks, while others find the climb to the crest of Point Lenana (16,300 feet or 4,970 metres) a sufficiently satisfying experience.

Aberdare National Park is the home of the elusive and beautiful forest antelope, the bongo. With an increasing rhino population (a direct result of the Rhino Rescue Programme), elephant, bushbuck and giant forest hog, the park is well endowed with a variety of wildlife. Melancholistic black leopard and several cats are not uncommon and seem to occur more frequently at high altitude.

Kenya's arid north is remote and populated by colourful nomadic peoples who exert charismatic charm and intrigue. In the North are found elegant gerenuk, beisa, oryx and reticulated giraffe, characterised by their liver-red colour broken by a network of white lines, quite different from the jagged, blotchy colouring of the southern giraffe.

Nairobi National Park, located some ten kilometres south west of Nairobi is always a source of amazement to the visitor that such a variety of wildlife can be viewed within sight of skyscrapers and Nairobi's international airport. Over 100 species of mammals and 400 species of birds have been recorded in the park. Four of the "Big Five" are found here: leopard, lion, buffalo and rhino. Many grazers are also found here including wildebeest, Coke's hartebeest, zebra, Maasai giraffe, black rhino, eland, impala, Grant's and Thompson's gazelle, common and Defassa water buck, bush duiker, steinbok, Kirk's dik dik, Bohor reedbuck, hippo, warthog, olive baboon, monkeys and a variety of carnivores, lion, spotted hyena, cheetah, leopard, jackals, bat-eared fox and many smaller carnivores.

The Rift Valley Lakes are world famous bird sanctuaries. They provide homes for the lesser flamingo, pelicans and another 340 water bird species. The lakes are Turkana, Baringo, Bogoria, Nakuru, Elementaita, Naivasha and Magadi.

Kenya has come a long way since the early colonial days when the first national park came into being. The twenty-nine parks and thirty national reserves form an array of wildlife sanctuaries, the majority still unfenced, that are the envy of the rest of Africa.

1.2 The Value of Kenya's Wildlife

The Kenyan government takes the existence of wildlife as a very important aspect of land use, especially since tourism is the largest earner of foreign exchange for the country. Although most protected areas are situated in low-potential dry areas, these areas contain important animals and plants as well as landforms, unique geographic and environmental phenomena, and a range of different habitats. As well as economic value for tourism, wildlife conservation areas have important ecological values and harbour the last vestiges of unique habitats that have not been seriously affected by human interference.

The tourism sector benefits the most from the conservation of Kenya's biodiversity. The top two tourist attractions are the terrestrial game parks and the Indian Ocean coast. Tourism is the single leading foreign exchange earner for Kenya. Since 1987, foreign exchange earnings from the sector have been slightly more than the combined earnings of traditional foreign exchange earners like coffee and tea. Total tourist arrivals have gradually increased from 65,400 in 1963 to about 814,400 in 1990. The figure dropped to 698,600 in 1992 but rose in consecutive years to stand at 832,000 in 1994. The number of visitors to national parks and game reserves grew from 1,095,800 in 1988 to 1,427,800 in 1993 (Juma, 1996).

In recognition of the importance of its biological resources, a number of national parks and reserves have been gazetted. Of the total area of Kenya of 582,646 sq. km national parks and reserves cover 44,562 sq. km, which is 7.65% of the country. Of this, national parks account for 5% and national reserves and sanctuaries for 2.65%. These protected areas were established with the aim of preserving a natural heritage of great ecological and economic importance. Although estimates vary, there is agreement that the majority of wildlife resources in the form of animals and plants are contained outside protected areas. Therefore in planning for the management of the national parks and reserves this should be taken into account.

The reason for Kenya's particularly rich biodiversity is the varying nature of the country's climate and ecology resulting in many unique ecosystems. Protected areas help to ensure that fragile and endangered ecosystems are safeguarded. Hence conservation of this biodiversity contributes indirectly to the protection of water catchment areas and of genetic resources that could be utilised for future development. The most well known parks and reserves are located in the arid and semi-arid areas, and include Tsavo, Amboseli, Maasai Mara and Samburu. However, wetland ecosystems have recently become an attraction in Kenya and elsewhere.

1.3 What Does Implementing CITES Obligations Entail?

The preamble to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) states the following of the contracting states:

- ❑ Recognising that 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 generations to come;
- ❑ Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;
- ❑ Recognising that peoples and states are and should be the best protectors of their wild fauna and flora;
- ❑ Recognising, in addition, that international cooperation is essential for the protection of certain species of wild fauna and flora against over exploitation through international trade;
- ❑ Convince of the urgency of taking appropriate measures to this end.

CITES is a convention whose aim is to prevent international trade from threatening the survival of wild fauna and flora. CITES tries to achieve this aim by establishing the international legal framework and procedural mechanisms for the prevention of international trade in endangered species, and for the effective regulation of international trade in others. The way CITES works to regulate international trade in wildlife is on the basis of a system of permits and certificates which are issued when certain conditions are met and which have to be presented when consignments of wildlife species leave or enter a country. Conditions for the insurance of these permits and certificates primarily concerns the question of whether or not trade in the species will be detrimental to its survival. CITES makes use of three lists of species affected by the convention called appendices.

- ❑ Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.
- ❑ Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid their becoming threatened with extinction.
- ❑ Appendix III contains species that are protected in at least one country, and where that country has asked other CITES parties for assistance in controlling the trade.

It is important to note that CITES does not prevent the international trade in some charismatic endangered species such as Elephants and Rhinos, but importantly provides the mechanisms for controlling, regulating and monitoring the continuing trade in other less endangered species of wild animals and plants to ensure that this trade will not be detrimental to the continued viability of the species. CITES is not a law imposed by some unseen hand. The Convention cannot by itself be implemented in a country and it is not itself legally binding. Each country that is a party to CITES must adopt national laws, which can implement the provisions of the Convention on its territory. Anything that CITES 'does' is done by the government authorities empowered to apply the provisions of the Convention, which can include management and scientific authorities, Customs, Police and other bodies in accordance with their legal systems.

The international commercial wildlife trade is worth billions of dollars annually, but it has also been one of the factors responsible for the decline of wild populations of plants and animals. The Convention on the International Trade in Endangered Species (CITES) establishes the international legal framework for the prevention of trade in endangered species and for effective regulation of trade in others. The convention came into force on 1st July 1975, to protect these species through commercial trade. To date, 150 nations have signed the CITES treaty. Kenya signed the treaty in 1978 and ratified it in March 1979. The regulatory measures it aims to implement directly impact the status of many endemic plant and animal species in African countries.

The importance of these species in Kenya, for example, is manifested through revenue from tourism, the value of medicinal plants, and the aesthetic, cultural, and other non-consumptive uses of

these plants and animals in natural systems that provide similar or greater benefits than profits from trade.

CITES is principally concerned with the regulation of international trade in the specimen 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 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. The term trade refers to import, export, re-export and introduction of specimens from the sea.

Of crucial importance in this report is Article XIV of CITES, which deals with the relationship between the convention and national legislation and between the convention and other international agreements. As regards national legislation, the article provides that contracting parties:

- ❑ 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;
- ❑ May adopt domestic measures restricting or prohibiting trade, taking possession, or transport of species not included in Appendices I, II or III.

The Convention provides that national legislation seeking to implement CITES should contain provisions dealing with the following matters:

- ❑ Regulation of international trade in specimens of species of wild fauna and flora i.e. export and import of live and dead animals and plants and of parts and derivatives thereof
- ❑ The institution and administration of a permit system 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 to or into a country
- ❑ The designation of competent national management authorities responsible for issuing the relevant permits and certificates, subject to advise from a scientific authority designated for that purpose
- ❑ 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 in the collection of scientists bred in captivity and scientific institutions, and specimens for travelling exhibitions.

CITES also requires that the national legislation of parties should also contain the following criteria for purposes of classifying the various species:

- ❑ Species that are threatened with extinction and for which trade must be subject to either prohibition or strict regulation and only authorised in exceptional circumstances;
- ❑ Species that are not now or presently threatened with extinction but which may become so unless trade is strictly regulated or look-alike species, which are controlled because of their similarity in appearance to other regulated species, thereby facilitating a more effective control;
- ❑ 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

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

- ❑ Confiscation of illegal specimens
- ❑ Obligation to reimburse expenses incurred as a result of confiscation of specimen traded in violation of the convention
- ❑ Imprisonment
- ❑ Confiscation of items used in facilitating the illegal acquisition and trade in the specimen concerned
- ❑ Confiscation of the proceeds of illegal acquisition and trade in specimen.

1.4 The Purpose and Structure of this Report

The East African countries are endowed with some of the most spectacular and diverse wealth in flora and fauna. The region plays host to some of the highest concentrations of wildlife anywhere in the world. East Africa provides refuge for elephants and some of the remaining wild populations of black rhinos in Africa.

The East African wildlife has long sustained the economies of the peoples, communities and countries of East Africa and beyond. For centuries before the imposition of colonial rule, ivory and rhino horns were the single most valuable exports from the East African hinterland to Arabia, the Indian sub-continent and the Far East. For decades after introduction of colonial rule, colonial treasuries and administrators were dependent on revenue from sport hunting to the extent that towards the end of the 1930s it had assumed such proportions that the British colonial administration became concerned about the future of African wildlife.

Wildlife hunting and trade in wildlife products, whether legal or illegal, continued to have a huge toll of East African wildlife even with the London convention and the various statutes that came into force in its wake. In 1973 CITES came into force. All three East African countries are signatories to this convention.

The Uganda Wildlife Society (UWS) has commissioned work that examines efforts in all the three East Africa countries in complying with their individual obligations under CITES. The following report is in fulfilment of an assignment given to ACTS to write a comprehensive report on the implementation of the international wildlife conservation treaties with emphasis on national laws, policies, programs and action plans in the context of CITES specific to the Kenya case.

The study examines various efforts that Kenya has taken to comply with her obligations under CITES. The study examines statutory laws, national policies and plans that have been put in place to protect the wildlife resources of Kenya and their relationship with CITES. It also examines institutional structures created under national legislation giving effect to the CITES provisions on regulation of international trade in wildlife resources. It looks at key trends in the international trade of CITES-listed species with the aim of showing strengths and weaknesses or deficiencies of legal and institutional structures in place. A comparison is made through examination of another African country's (Tanzania) management regime and regulation of international trade in wildlife. As the report draws to a close, effectiveness of control of legal and illegal trade in wildlife in Kenya in the past thirty years is highlighted. Concluding remarks recommend measures that help reform the regime of international trade in endangered species so as to protect Kenyan wildlife resources from the threat of extinction.

SECTION TWO

Historical Overview of Wildlife Legislation and Management Issues in Kenya

The following section comprises a brief overview tracing evolution and development of wildlife legislation in Kenya that predates colonisation when wildlife legislation came into being in Britain and America and its coming to East Africa through the missionaries and administrators during the early colonial period. The study proceeds through the period immediately after independence, a quiet period when not many changes were made in wildlife legislation, through to a more active period in the late 1980s and early 1990s with radical changes in policy direction prompted by developments in the international trade scenario as relates to conservation and preservation of wildlife, the most famous of which is the CITES African elephant debate.

2.1 Evolution and Developments in Wildlife Legislation

Wildlife legislation in Kenya has predominantly focused on animals. Legislation development has consistently ignored flora, endangered, threatened or otherwise. The wildlife legislation touches on flora only in so far as it (the flora) is located in protected areas like National Parks and Game Reserves. Legislation relating to medicinal plants and hard wood forest wildlife is also not traced for purposes of this overview on legislation development. Following developments in the international arena on the fragile nature of birds and their habitat, legislation on birds was put in place as early as 1877. Marine wildlife is protected under the Fisheries Act whose development is not discussed in this paper.

The earliest wildlife laws were inherited from Britain, where wild animals were regarded as common property until captured or controlled, and where the landed gentry held all rights to access. By contrast, America demanded equal access as a democratic right. In the late colonial period in America, a few laws limiting wildlife were instituted, but the thriving commercial trade and independence nullified all of them. Wildlife was still regarded for sport and profit.

Meanwhile, the British Empire was establishing itself in East Africa. Colonialists and missionaries, many of who were sportsmen and naturalists were well aware of the wildlife slaughter that had accompanied colonisation in America, India and South Africa. They were aware, too, of the close association between the slave and ivory trades (Western, undated).

In 1886, following the formal declaration of the East African Protectorate, the British Foreign Secretary wrote to the commissioners asking for a report on wildlife, urging tighter protective measures. In adjacent German East Africa (now Tanzania), two game reserves solely to protect wildlife were created with the argument that sportsmen owed their sense of duty to science and to future generations.

In 1897, the Foreign Secretary called for an International agreement on ivory trading and wildlife protection in Africa. At the same time, Sir John Kirk asked for a large defined wildlife sanctuary in British East Africa sufficient to encompass a number of habitats. This led to the establishment of the 13,000-square mile Southern Game Reserve in 1899 and to the 13,800-square mile Northern Game Reserve in 1900 (Western, undated). Both reserves were intended to protect wildlife and the rights of indigenous people who, the colonial government thought, would preserve wild animals. Scenery was not the reason for establishing the reserves, which, over extensive areas, were covered by monotonous bush land, much of it unexplored.

In 1899, the Queen's Regulations under the African Order in Council refused commercial animal trade (except crocodile) explicitly to protect the interests of indigenous tribes and wildlife in East Africa. In 1900, the Foreign Secretary's plea of three years earlier resulted in the first ever International Convention on Wildlife Conservation held at Lancaster House in London. Here, eight European nations with territories or protectorates in Africa discussed 'how to prevent the destruction which had overtaken wild animals in southern Africa and in other parts of the globe', and ratified various articles covering trade, hunting and wildlife reserves (Western, undated).

2.2 The Colonial Era

The earliest colonial legislation on wildlife was enacted in 1898 by Regulations in the Gazette for the East African Protectorate establishing Game Reserves and introducing controls on hunting. Kenya (and East Africa in general) was considered a hunter's haven, especially by its resident settler community and thus most of the early legislation passed by the colonial government placed limits on hunting. Some of the earlier legislation included the East African Game Birds Regulations of 1900, amended in 1904, 1905, and 1906. The Game Department was established in 1907 to manage wildlife and hunting throughout the country. Later the Game Ordinance of 1909, a very comprehensive document, became law. Under this Ordinance the government proclaimed the Southern Game Reserve in Maasailand and the Northern Game Reserve in the Northern Frontier Province. The following decade brought no new legislation, but the 1920s and 1930s saw further advancement in reforms: For example the authorities declared a ban on hunting certain species of animals during certain seasons; the Southern Game Reserve was expanded to include part of Tsavo West National Park; the Game Birds Protection Ordinance of 1926 greatly improved the East African Wild Bird Protection Ordinance of 1903.

The second International Conference on Wildlife Conservation was held in London in late 1933. The participants generally agreed in principle on establishing and maintaining national parks or permanent wildlife sanctuaries in East Africa. Subsequently, an Ordinance was passed in 1937 to strengthen and improve the laws relating to the protection of game animals and birds in Kenya. On the basis of this, the government appointed the Game Policy Committee in 1938 to recommend where and how to establish a system of national parks. World War Two delayed their work but the committee produced a report based on which Ordinance 9 of 1945 was established.

According to the Ordinance (9 of 1945) a Board of Trustees was established to administer land set aside as National Parks, and to do so largely independent of government. Nairobi National Park was established as one of the first wildlife parks in East Africa in 1946. In the following years, the Kenya National Park Trustees set up several other National Parks (Tsavo National Park in 1948) and advised County Councils on the creation of reserves. In creating the National Parks the role of the Game Department had to be redefined. It remained within the government and retained responsibility for the control of hunting, for licensing of all kinds, and for dealing with all wildlife problems outside of parks.

The Ordinance was changed to the Royal National Parks of Kenya Ordinance (later to be known as the National Parks of Kenya Act). Under the ordinance, Mt. Kenya National Park was established in 1949, Aberdares National Park in 1950, Marsabit National Reserve in 1962, Mt. Elgon National Park in 1968, Lake Nakuru National Park in 1967, Meru National Park in 1966, Shimba Hills National Reserve in 1968, Malindi/Watamu Marine National Park in 1968, Sibiloi National Park in 1973 and Amboseli National Park in 1974. Other National Parks were established later, giving Kenya a total of 26 National Parks, 31 National Reserves and 2 Game Sanctuaries by the end of 1996¹. This brings the total protected wildlife conservation area to 44,720 square kilometres or 7.7% of the total land area of Kenya.

2.3 Wildlife Legislation in Post Independence Kenya

In 1975, the government prepared a comprehensive policy on sustainable wildlife conservation and utilisation in Kenya². The Wildlife Conservation and Management Act³ followed this wildlife policy in 1976. After re-examination of wildlife management policy in 1976, the Kenya Government decided to amalgamate the functions and responsibilities of the Game Department and the Kenya National Parks Organisation under a single new government department, the Wildlife Conservation and Management Department (WCMD) under the Ministry of Tourism and Wildlife.

In 1977, in an attempt to control poaching, the government banned all hunting of wild animals⁴. The following year an Act of Parliament was passed that revoked all trophy and curio-dealers licenses,

¹ See Annex I: a full list of national parks and reserves in Kenya along with dates of establishment

² Statement on Future Wildlife Management Policy in Kenya, Sessional Paper No. 3 of 1975

³ Chapter 376 of the Laws of Kenya

⁴ Legal Notice No. 120 of 1977

and compensation for current stocks was duly paid⁵. This ban on trade in game trophies caused the closure of the professional hunting companies and curio shops, which dealt in game trophies but did not solve the poaching problem, which continued unchecked. The poaching problem got so persistent that towards the end of 1987 a change in conservation and management policy was essential if Kenya was to save the remaining stock of her valuable wild animals. The government first made changes to the leadership of the department and approved the retirement of a large number of the senior staff in the public interest. It subsequently replaced WCMD by a parastatal body, the Kenya Wildlife Service (KWS).

The government of Kenya passed the Wildlife Conservation and Management (Amendment) Act⁶ as a result of which the KWS came into being.

⁵ Legal Notice No. 5 of 1979

⁶ The Wildlife Conservation and Management Amendment Act, 1989 (Legal Notice No. 16 of 1989).

SECTION THREE

Review of Kenyan Wildlife Legislation and Policies

Trade in wildlife in Kenya has been regulated predominantly by legislation on wild animals implemented by KWS. However other aspects of wildlife trade such as trade in birds, in wild medicinal plants, in hard wood and timber and in marine wildlife like sharks, seashells, sea cucumbers, lobsters and other crustacean are covered in other legislation such as the Forest Act⁷, the Fisheries Act⁸, the Plant Protection Act⁹ and to some extent in the Agriculture Act¹⁰. The following section is a review of the present wildlife legislation including legislation relating to utilisation and to some extent trade in hardwood forests and marine wildlife.

3.1 The Wildlife Policy of 1975¹¹

The spirit of this policy was one of management of wildlife through a system of protected areas - a preservationist's perspective (see Map I). Provisions in the policy framework provided for establishment of national parks, game reserves and sanctuaries. Consumptive utilisation of wildlife was somewhat encouraged through hunting safaris, for bush meat and for trophies. The policy framework failed to capture the fact that a huge part of wildlife was found outside the protected areas. No provision was made for the role of communities in wildlife management. The policy also fails to capture the fact that consumptive utilisation needs control and systematic management to guard against over-exploitation.

This policy made a clear call for public education activities on the basis of future economic value of wildlife so as to ensure that the potentially large and secure export market, for the products of consumptive wildlife utilisation (sports, hunting, sale of meat, skins and other trophies), are not foreclosed through ignorant 'preservationist' pressure on overseas governments and firms. The policy called for ensuring prices for wildlife products remained high so that wildlife could 'pay its way'. According to the policy, individuals engaging in any aspect of commercial utilisation were required to be in possession of a licence or permit issued by the Director of the Service. Powers to pass regulations on capture, hunting, processing, selling or purchasing or other receipts of wild animals or products made from them, were vested with the Minister and the service. There was a move towards inducing the private sector to engage in commercial wildlife utilisation activities under the service's supervision. The policy also gave the service the leeway to carry out auctions of game trophies and other commercial activities such as organising bookings for sport hunters on behalf of private landowners, direct hunting/capture, processing, storage and marketing of game animals and their products.

On consumptive forms of wildlife utilisation, the 1975 Wildlife Policy (Section V) states the government's willingness to explore possibilities for, induce the establishment of and regulate consumptive forms of wildlife utilisation, wherever these uses would make a net contribution to the country's economic and social development. Such consumptive forms of wildlife utilisation were to include sport hunting, live animal capture for export or for restocking of other areas within Kenya, cropping for meat and trophies, game ranching – both ranching of wildlife herds and of domestic herds of scheduled species, and the associated processing storage and marketing of products. Hunting was at that time one of the most profitable forms of large-scale consumptive wildlife utilisation on a per animal basis. The policy thus sets out an objective to ensure that particular lands and species were not 'over-hunted'. The Wildlife Service was to take steps to eliminate illegal killings or sale of wild animals and products made from them.

⁷ Chapter 385, Laws of Kenya (revised in 1992).

⁸ Chapter 378, Laws of Kenya (revised in 1991).

⁹ Chapter 324, Laws of Kenya

¹⁰ Chapter 318, Laws of Kenya

¹¹ Statement on Future Wildlife Management Policy in Kenya, Sessional Paper No.3 of 1975.

3.2 The Wildlife (Conservation and Management) Act of 1976¹² and the Wildlife (Conservation and Management) (Amendment) Act of 1989¹³

The first comprehensive legislation on wildlife in Kenya was the Wildlife (Conservation and Management) Act of 1976. This act merged the two existing wildlife conservation organisations, the Kenya National Parks Service and the Game Department into one government department, the Wildlife Conservation and Management Department (WCMD). Due to numerous problems experienced by this department (both managerial and financial) the resultant increase in poaching reached peak in 1988 necessitating a review of the 1976 Wildlife (Conservation and Management) Act. An amendment was passed that brought about the creation of the present wildlife management institution, the Kenya Wildlife Service (KWS).

The Wildlife (Conservation and Management) Act of 1976 (hereafter referred to as the parent act) provides legal guidelines for the protection, conservation and management of wildlife in Kenya. It covers all matters relating to Kenya's wildlife, focusing mainly on protected areas, activities within protected areas, control of hunting, import and export of wildlife, enforcement and administrative functions of wildlife authorities. The Act is the most recent wildlife legislation and is currently in use.

The Act provides for establishment of national parks, national reserves and local sanctuaries (the last two categories being under local authorities), as well as game sanctuaries on private land. It empowers the minister in charge of wildlife in Kenya to alter park boundaries, and to de-gazette national parks through a stipulated procedure. Importantly, this procedure requires explicit approval by the National Assembly following 60-day notification period. Arbitrary or whimsical de-gazettement of national parks is thus unusual.

Under the Act (as amended), national parks are managed by KWS through regulations that prohibit various activities within them. Regulations for specific national reserves and local sanctuaries are drawn up in consultation with local authorities. The parent Act provides for the partial or complete protection of particular scheduled animals¹⁴. The list of protected animals was expanded to include several species of reptiles (notably marine turtles), amphibians (frogs) and invertebrates (butterflies). The parent Act does not make mention any protected plant species, though plants (and particularly forests) that occur within national parks are protected. The remainder of Kenya's plants and animal species are mostly ignored. Other regulations covered in the Act include control on hunting through licensing, control and administration of sale and ownership of trophies and game meat acquired through hunting. The Act includes law enforcement regulations and spells out penalties for wildlife related offences committed within national parks such as doing any act for which a licence or permit is required under provisions of the Act and fails to produce proof of such a licence or permit.

Birds are well covered by wildlife law in Kenya. All species are given full legal protection, except for those explicitly classified as either game birds or pests. Pests comprise species of qulea *Quelea* and mousebird *Colius*. Game bird hunting stopped when sport hunting of all wildlife species was banned in 1977. It was re-introduced in 1984 by legal notice. Properly managed, this activity can be of direct economic benefit to rural communities, and provide them with an incentive to conserve game birds' demography (Simiyu & Bennun, in press). Game birds include all *Anatidae* (geese and ducks), *Phasiandidae* (quail, francolins and spur fowl), *Numididae* (guinea fowl), *Turnicidae* (bottom quail), *Gallinaginae* (snipe), *Pteroclididae* (and goose), and *Columbidae* (pigeons and doves). Small bustards (genus *Eupodotis*) are also listed. In practice, bustards and other regionally threatened birds (such as Maccoa and White-backed Duck) are not presently hunted. Although birds and mammals are given equal protected status in Kenya, mammals have formed the near-exclusive concern of the KWS and its predecessors.

¹² Chapter 376, Laws of Kenya.

¹³ Legal Notice No. 16 of 1989

¹⁴ Examples are given of elephants and rhinos. The most endangered animal in Kenya is the black rhino with only 350 left by 1984 (Rhino sanctuary conservation efforts have increased the numbers to 450 today). The elephant is heading towards extinction too due to poaching for ivory. The international ivory ban coupled with stepped-up security by KWS has seen numbers climbing to over 1000 a year. Other endangered animals include the hirola, an antelope endemic to Kenya whose numbers are now down to 300 and the roan antelope which number 28 and are only found in Ruma National Park near Lake Victoria.

As regards trophies and live animals, they are deemed government property if they are found without an owner, or are products from an animal killed by accident or in self-defence. Importation of any trophies, or unmanufactured ivory or rhinoceroses horn is banned unless it is through a customs port of entry and in accordance with customs requirements. In the case of import, upon satisfactory documentation, a certificate of ownership is issued according to law to the new owner. Attempt to import or actual imports in contravention to the set out procedure is deemed an offence in law and is punishable by paying a fine or imprisonment or both as the case may be. The Act requires that all in possession of trophies seek certificates of ownership unlike was the case before 1977. Dealership in trophies requires a valid dealer's license issued by the licensing officer in KWS. Transfer of ownership of trophies to other persons by way of gift or sale also requires possession of an owner's certificate showing an endorsed transfer.

Export of any live protected animals, game animal or game bird without proper authorisation from a customs port of entry is deemed criminal and is punishable in law. Export of trophies is also prohibited except through a customs port of entry upon presentation of proper certificate of ownership and a dealership license relating to that trophy to a customs officer.

The Act contains a declaration of prohibited exports. These include export of trophies of the protected animals as specified in the Third Schedule of the Act¹⁵, elephant tusks, hippopotamus teeth, rhinoceros horns, crocodile, leopard, lion and zebra skins. The above items may be exported by agents for foreign principals only where they are purchased from the government, the items were held prior to the export in a government bonded warehouse, were handled and loaded by authorised servants or agents of the government and paid for in foreign currency. Nothing in the legislation prevents the export of any trophy lawfully acquired by any person where the trophy is part of the personal or household effects of that person and is not intended to be resold, or otherwise dealt with for gain, and that person otherwise complies with all relevant provisions of the Act. According to the Wildlife (Conservation and Management) (Control of Raw Ivory) Regulations¹⁶, raw ivory is declared a prohibited import and export and shall not be exported or imported by any person other than the government. This however does not apply to ivory obtained in accordance with the provision of the Act.

3.3 The Draft Wildlife (Conservation and Management) Bill of 1997

In an attempt to replace the 1975 wildlife policy, a draft policy was prepared in 1990. The spirit of the draft policy was one of managing wildlife outside protected areas as it was realised that a huge part of Kenya wildlife was found in areas outside of national parks, and in wildlife corridors. The spirit of the draft policy was one of management of wildlife through a community-based wildlife management approach. It took into account the crucial importance of biodiversity for sustaining human life, as well as the increasing conflicts between animals and people. The draft policy supported a conservation approach based on the integration of biological diversity and human activity. It recognises that the principal guardians of wildlife and those who decide its fate should be the primary beneficiaries of conservation. The benefits associated with biodiversity are set out as economic, cultural, aesthetic, scientific and environmental.

The Draft Bill was proposed to implement the draft wildlife policy. (The draft policy was never approved and thus remains in draft form). The Draft Bill contains an entire section (section iv) on trade in endangered or threatened species. The Draft Bill clearly spells out that no person shall trade in import, export, re-export or introduce from the sea or otherwise any specimen of an endangered or threatened species into or from Kenya except pursuant to the appropriate permit being granted under the section. No person is allowed to possess, control, sell, offer or expose for sale any endangered or threatened species, which has been imported or introduced from the sea into Kenya. The Draft Bill proposes that

¹⁵ Animals are categorised into schedules one, two and three. Schedule one includes most common game animals while schedule two included game birds. Of interest is schedule three which consists of protected animals such as immature game animals, female animals which seem pregnant, or are in a condition indicating that it is suckling young, or is accompanied by immature young whether dependent or not. Albino and melanic animals are also protected. Also protected are all birds other than game birds or queelas and mouse-birds. The full lists of the scheduled animals are given in annex II.

¹⁶ Legal Notice No. 57 of 1976

applications be made for permits to do any of the above and permission to be granted at the Director's discretion and through the licensing officer. These include permits for export, import, re-export and introduction from the sea of both endangered and threatened species. Exemptions are given to non-commercial loans, donations, or exchange between scientists or scientific institutions both in Kenya and in other states registered by relevant authorities such as herbaria. These include preserved, dried, or embedded plants, live plants, preserved animals, skins and other parts of animals, live animals that are specimens of an endangered or threatened species and which carry a label issued or approved by the Director. The Director may waive the requirement of holding a permit of an endangered or threatened species that form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition. The provisions shall not apply to trade in any marine specimen of a threatened species that is taken by a ship registered in Kenya or licensed by the Maritime Zones Act¹⁷ or the Fisheries Act¹⁸. The provisions do not also apply to any endangered or threatened species where they are in transit through Kenya and all documentation indicating that the transportation of such specimen is in conformity with the requirements of CITES and other related conventions have been satisfied. The provisions also do not apply to any endangered or threatened species where such a species is a personal or household effect.

Any person who trades in a specimen of an endangered species without an appropriate permit granted in accordance to the provisions of the Draft Bill or trades in any specimen of a threatened species without the appropriate permit commits an offence, and is liable for imprisonment for up to one year and penalties ranging up to one million shillings or both the fine and imprisonment as the case may be. Possession of specimens of endangered or threatened species that have been imported or introduced from the sea into Kenya or is intended for re-export or for export is an offence. The Director may make rules prescribing the recording of trade in endangered or threatened species and prohibiting the intentional or accidental introduction of alien or new species that may cause significant or harmful changes in Kenya.

3.4 Legislation Relating to Endangered Flora Species

In relation to plants, the Wildlife (Conservation and Management) Act¹⁹ of 1976 provides protection for those only within National Parks and Reserves. The Act provides significant protection to animal species, not only in terms of protection within the parks and reserves, but also with regard to trade and by requiring licenses and permits. The Forest Act²⁰ addressed the protection, management, enforcement and use of forest resources on government land. The Act specifically prohibits certain activities within Forest Reserves, such as removal of forest produce, except with a license from the Minister for Forestry.

Other legislation pertaining to plants includes the Plant Protection Act²¹. This Act addresses the control of pests and diseases, and is the chief plant quarantine instrument in Kenya. Under this Act, import or export of any plants or soil may be restricted or prohibited by the Minister of Agriculture. This Act further requires that phytosanitary documentation accompany all plant imports and exports from Kenya.

The main legal instrument controlling the exploitation of Kenya's forest is the Forest Act originally drafted under the colonial regime in 1942 and revised in 1992. The Forest Act's jurisdiction only covers forests on government land. Most of its provisions concern forest reserves. Under the Act, the President has the power to declare Public Lands or Special areas (subject to the provision of the Trust Land Act²²) to be Forest areas, and subject to three months public notice to be a demarcated (gazetted) forest. The Forest Act has no jurisdiction over forests or timber resources on private land.

For extraction of timber within Forest Reserves, licenses are issued by the National Licensing Committee, which comprises the Permanent Secretary, all Provincial Forest Officers, as well as representatives from KWS, the Ministry of Agriculture, the Ministry of Water, and the Office of the

¹⁷ Chapter 371, Laws of Kenya.

¹⁸ Chapter 378, Laws of Kenya.

¹⁹ Chapter 376, Laws of Kenya.

²⁰ Chapter 385, Laws of Kenya.

²¹ Chapter 324, Laws of Kenya

²² Chapter 288, Laws of Kenya

President. The Director of Forests also has authority to approve licenses, a situation that has caused confusion, owing to difficulties in record keeping. Licenses are issued for the “felling, cutting, taking, burning, injuring or removal of any forest produce” and may be subject to payments of fees or royalties.

One of the most problematic regulations controlling the use of indigenous timber is a Presidential Decree (of an uncertain date, although usually dated 1986) banning the felling of indigenous tree species. Since no separate legislation exists to enforce this ban its implementation has to be taken under existing legislation. The Minister may withhold or cancel licenses for logging, or close all or some indigenous forest areas. Those contravening these rulings may then be fined or imprisoned under the provisions of the Forest Act. Outside Forest Reserves, implementation of the Presidential Ban falls under the Chief's Authority Act²³, the Trust Land Act and the Local Authority Government Act²⁴. In all cases, implementation of the ban is dependent on interpretation under different acts.

3.5 Legislation Relating to Marine Wildlife

As per the Fisheries Act²⁵, all dealers of crustaceans are required to possess a license. In addition, this Act prohibits fishing or processing any lobster, crab or crayfish in a gravid state. Apart from this restriction there are no other regulations pertaining to crustaceans. In addition, fishermen are required to have a fishing license and if they have a vessel, they must have a local fishing vessel license.

Under the Fisheries Act, fishermen and boats are required to have licenses. Specific references to seashells are made under the subsidiary legislation. Part III of the Fisheries (General) Regulations, which states that licenses are required for any individuals collecting or dealing in shells. Furthermore, an export license is required for an individual exporting “shell cowries or corals” as per the Imports, Exports and Essential Supplies (Export)(Amendment) Order, 1991. According to the Kenya Fisheries Department, individuals are allowed to take up to five kilograms of shells out of the country, but an export license is required, and shells must be purchased from a licensed dealer. CITES export permits are required for any shell species listed in the CITES appendices (e.g. Giant Clams, *Tridacna* spp.).

Apart from license requirements, there are no regulations in Kenya that are specific to sea cucumbers. Licenses are required to collect or trade in *beche de mer*²⁶, as per the Fisheries (General) Regulations contained in the Fisheries Act.

Kenya has no legislation that specifically pertains to sharks. However, the Fisheries Act, provides regulations for licensing of local and foreign fishing vessels, methods of fishing including use of fishing gear, importing and exporting of fish and fish products, and specific license permit and registration requirements for exploitation and trade in Kenya's varied marine resources. The export fee for fish is set at 0.5% of the market price, as specified in the Second Schedule of the Fisheries (General) Regulations. In addition, the Fisheries (Foreign Fishing Craft) Regulations state that fishing plans be submitted to the Director of Fisheries by the diplomatic representative of the country that has been apportioned an allowable catch. These plans must include information on where within the EEZ the craft will be fishing, the number of crafts that will be fishing, their movements within the EEZ, their schedule for calling at port, as well as a proposal for taking the country's apportionment from Kenyan waters. The Director of Fisheries has the powers to approve, revise or suspend the fishing plan as well as the power to cancel the approval.

²³ Chapter 128, Laws of Kenya

²⁴ Chapter 265, Laws of Kenya

²⁵ Chapter 378, Laws of Kenya.

²⁶ *Beche de mer* entails an eight stage preparation of holothurians (these are generally cylindrical and elongated in shape with variable dorsal-ventral flattening, colouring and overall size e.g. sea cucumbers). The most important factors are cleanliness and dryness. Once dried and packed, *beche de mer* may be kept in storage for several months. The eight stages include; (i) handling on board, (ii) cleaning, (iii) piercing and gutting, (iv) 1st boil, (v) cooling and 2nd boil, (vi) smoking, (vii) sun drying and (viii) storage in polythene bags.

SECTION FOUR

Review of Kenyan Institutions Responsible for Wildlife Trade

4.1 Kenyan Institutions Managing Wildlife

The pioneer wildlife management institutions were local communities who lived side by side with wildlife and had traditional customary laws and practices such as taboos that governed the management of and interaction with wildlife. Every community has such customs and thus a wildlife management policy. They had in place a management scheme that ensured sustainable harvesting of game animals for game meat as well as for trophies used extensively in dressing for the rulers and for customary functions. Rightly so, the very first Kenyan institutions to manage wildlife were really the individual tribal communities who interacted with wildlife in their day-to-day activities and used wildlife products in various ways.

The example of the Maasai community is often cited as clearly depicting management of wildlife through everyday experiences. The long history of pastoralism in East Africa reflected in the archaeological record suggests there were people raising cattle for milk in Maasailand about 3,000 years ago. Species of wild fauna found in prehistoric sites were still occurring in Maasailand at the time of European contact, after more than 2,500 years of pastoralism. This suggests that pastoralism might have been an important element in shaping ecosystems that favour a combination of wild and domesticated ungulates (Berger, 1993). In the past and to some extent today, the Maasai are educated through the experience of living in their surroundings to become good observers of natural processes such as seasonal change, weather and wildlife habits. Survival strategies require an intimate knowledge of their environment. They are natural ecologists. Many aspects of their culture are connected with the wild world around them. This experience is reflected in their ideology and legitimised by participation in their ceremonies, rituals and social institutions. The recognition of the interdependence between humans and other forms of life is expressed through cultural practices and beliefs. Many animal species have special significance. The lion hunt, '*olamyi*', is associated with honour and bravery; the hedgehog, antbear and mole are considered good luck; the duiker, jackal and cape hare are bringers of bad fortune. Ostrich feathers are worn at the '*Eunoto*' ceremony (Western et al, 1979).

The Maasai do not normally kill wildlife, although there are reports of hunts and taming of wildebeest for milk for human consumption and calf rearing to survive famine. Though they use many of the products of wildlife, they acquire them by collection or purchase from neighbours. It has been suggested that the Maasai coexisted peacefully with wildlife because most of the species were not a threat to their livelihood. However, since their history has been one of important grazing land and water sources, it is not surprising that they increasingly view wildlife as a competitor (Berger, 1993).

Amongst the very first (formal) government institutions to manage wildlife was the Game Department, established in 1907. Its mandate was to manage wildlife and hunting throughout the country. The Game Department was very much a colonial institution established to prevent the repeat of wildlife slaughter that had taken place in South Africa and North America, which was predicted with a wave of white settlers who arrived at the turn of the century. The settlers argued that wildlife was the vermin that destroyed crops and livestock and that reserves should be dismantled in favour of settlement. It was only the limited agricultural potential of the reserve land and the combined forces of the Game Department and the British Government, which still honoured many of the tribal reserves, that prevented a large-scale annexation of the reserves and confined wildlife slaughter to the arable highlands and the coastal belt of East Africa.

A Game Policy Committee was established in 1938 to recommend where and how a system of national parks would be established. In 1945 a Board of Trustees was established to administer land set aside as National Parks, and to do so largely independent of government. In creating the National Parks the role of the Game Department had to be redefined. Though it remained within the government it retained responsibility for control of hunting, for licensing of all kinds and for dealing with all wildlife problems outside of parks.

After the 1945 National Parks Ordinance, there were two institutions were established to management of wildlife in Kenya. The first, the Kenya National Parks Service, administered the national

parks and game reserves. It was responsible both for the protection of these areas, as well as for their development for tourism purposes. The second institution, the Game Department was responsible for managing of all wild animals outside the authority of the national parks, including those on private land. The Game Department had responsibility of advising and aiding local county councils in the management of the reserves under their trusteeship. The wildlife areas under the various county councils were officially declared hunting blocks where licensed hunting was allowed under the control of the department.

After 1976 the government decided to amalgamate the functions and responsibilities of the Game Department and the Kenya National Parks Organisation under a single new government department, the Wildlife Conservation and Management Department (WCMD) established under the Ministry of Tourism and Wildlife. It was responsible for conserving and managing all wildlife in the country and to ensure that the resource gave back the best possible returns to individuals and the nation in terms of cultural, aesthetic and economic gains.

The record for WCMD in controlling poaching and trafficking of trophies is noted as disappointing for several reasons. The shortage of funds contributed to poor management standards. Without funds, most of WCMD staff became accustomed to inactivity and to the deterioration of facilities and equipment. Low salaries and failures to pay due allowances caused further demoralisation and contributed to the growth of corruption. In the late 1970s corruption increased in the wildlife sector, because of the high values of ivory and rhino horn and the difficulty of accounting for park gate revenues. Poaching seriously reduced the population of certain animal species, especially the elephant and rhino. In the 15 years of its existence, the WCMD presided over the reduction of Kenya's elephant population by some 85% and its rhino population by 97% (Nyeki, 1993).

In 1989 a government initiative to tackle the unprecedented wave of poaching which had swept the country brought a radical shake-up of the WCMD. Steps were taken to replace WCMD with a comprehensive parastatal body to be concerned with all aspects of wildlife. In 1990, the Kenya Wildlife Service was formed and today is the organisation charged with the protection and conservation of Kenya's wildlife. This unified service has replaced the divided control once exercised by the Kenya National Parks and the Game Department, later brought together under the WCMD, but with many loose ends unaccounted for. The KWS is charged with conservation of wildlife and preservation of its economic, educational, scientific and cultural benefits for the country and its people.

As wildlife numbers continue to decline beyond park boundaries, the resolution of conflict between people and animals is a major priority. Recognising that Kenya's parks are not big enough to sustain all the country's wildlife, KWS has replaced its Community Wildlife Service with a new Partnership Department to focus on the impact wildlife has on local communities and work with all interested parties to find (often economic) solutions to conflicts that will turn wild animals into an asset for those currently threatened by its proximity. Those who fifty years ago pioneered the formation of Kenya's national parks would see little to resemble the infant body they nurtured with such care. The parks, certainly, have seen great changes: a network of roads, viewing points, water-holes; a flow of visitors from a multitude of countries; well-appointed accommodation equal to the better hotels in the world's capitals; and turnover and budgets to match those of a large corporation. Though in some areas there is noticeable decline in vegetation cover, fewer trees and thus more open country, animals are abundant on most parks and are entirely accustomed to vehicles and the bustling presence of engines, generators and machinery, and live as they have done for generations.

The KWS has a Scientific Services Department that has recently been merged with the Planning Unit to make up the Biodiversity Department. The latter department is responsible for biodiversity inventory and monitoring, environmental impact assessment and the preparation of management plans for protected areas. The department is particularly concerned with habitat management including the use of controlled burning. KWS has a Veterinary Services Unit that counters disease, takes charge of orphan rescues and translocation exercises, and is involved with community issues through encouraging vaccination programmes and advising on livestock management. Recently, the Veterinary Services reacted quickly and effectively to an outbreak of rinderpest, a usually fatal disease in domestic cattle and wildlife grazers.

KWS has a huge portfolio of interests and responsibilities including the marine parks and reserves; the terrestrial national parks; special rhino, elephant, wetlands, forest, education and youth programmes; technical services; biodiversity research and other scientific activities; security, human resources and commercial concerns; and by no means least – a large financial department.

With close to 4,000 staff at all level (KWS, 2000), KWS recognises that the key to the success of the national parks and reserves, to community involvement and the problem of animals outside protected areas remains the man and woman on the ground, the field staff. They are in daily contact with the people, and the safety and well being of the animals and their habitats depend upon them. They are the ones whose commitment and competence needs to be complete if KWS is to fulfil its mission.

4.2 KWS Policy on Consumptive Use Rights

The 1975 Wildlife Management Policy in Kenya set out a new, integrated approach to wildlife conservation based on local participation in all forms of wildlife utilisation. The policy defined the returns from conservation of habitats and their wildlife on a broad scale, as aesthetic, cultural and scientific as well as economic. It also recognised that wildlife needs space outside protected areas if it is to flourish without intensive management or loss of biodiversity. The space is available on private or communal land adjacent to the protected areas where some landowners are willing to accommodate wildlife as a form of land use.

Implementation of the 1975 policy did not succeed mainly as a result of escalating wildlife poaching and overall poor management. Since 1989, strong donor support has helped to bring about substantial improvements in park management, anti-poaching, tourist security and staff morale. However, KWS itself has faced a number of institutional and policy problems. In particular, the extent of its role outside protected areas has been controversial. New commitments beyond parks and staff re-structuring proved expensive. When combined with a slump in tourism (and hence park gate revenues) in 1997/98, this brought the institution to the brink of insolvency and compromised many operations. It remains to be seen whether KWS can solve its internal financial and management problems and resume effective management of the country's wildlife.

KWS controls and manages wildlife on behalf of the government through the Ministry of Tourism. Trade in wildlife is essentially prohibited and controlled using legal instruments such as enforcement and permits. KWS imposes constraints and conditions on consumptive use rights, initially granted on a pilot project basis. The consumptive use rights are granted to applicants who can demonstrate that they are adequately prepared to be able to manage the wildlife properly, according to an approved plan. KWS reserves the right to specify the methods of utilisation. Although in principle landowners have reasonable freedom of choice in the form of utilisation, KWS exercises the right to restrict the range of forms of utilisation in the pilot projects. Use rights often do not imply the right to exterminate wildlife and rights to consumptive use are granted only in respect of selected species. In dispersal areas, the parks and reserves and other major wildlife tourism areas, KWS actively promotes tourism development and will permit consumptive use only in areas remote from tourism activities.

Why the caution on consumptive utilisation? Many Kenyans, especially in the tourism industry, are concerned that allowing consumptive use would open markets for wildlife products and stimulate increased poaching, especially on the open group ranching and trust lands. They point to the failure to control hunting in the 1970s and are anxious that, unless controlled, the hunting ban will be undone. Even properly controlled, consumptive use may damage the tourism industry, by changing the country's tourism image, reducing predator populations reducing the approachability of wildlife and upsetting tourists.

These concerns cannot be dismissed lightly. Comparisons with southern Africa, where consumptive use is common, are certainly useful but far from straight forward, as Kenya's wildlife populations and tourism industry are different in many ways. KWS puts constraints on wildlife use rights, taking a cautious, step-by step approach to consumptive use, starting with a limited number of pilot projects, during which management capacity would be gained to enable gauging the effects of consumptive use on landowners' attitudes, local economies and tourism

Bird shooting is permitted in several regions of the country since 1984, when the ban on game bird shooting was lifted. The fee, which is modest, is set by KWS (who also collect). Game cropping is restricted to pilot projects and emphasis is on cropping wildlife that is common and causing harm to other economic interests. Trade, in trophies and skins, is restricted in Kenya but export is permitted. Sport hunting was a major activity in Kenya until the mid 1970s, when it was stopped because of poaching and illegal trade in skins and other trophies were out of control. Hunting for home consumption is permitted for specified 'plains game' and within the context of a general wildlife management plan. Kenya formerly

exported a variety of mammals, birds, reptiles, insects, fish and plants. Currently export of live animals is restricted to primates for research and marine creatures.

4.3 Kenya's Efforts to Implement CITES

Kenya ratified the convention on 13th March 1979. Though Kenya's legislation does not have a section specifically addressing the obligations spelt out under CITES, the existing wildlife legislation and regulations on trade in wildlife meet and to a large extent exceed the requirements stipulated under CITES.

Article VI of the convention requires that permits and certificates be used to regulate trade. The permits bear the name of the convention and also bear a stamp of identity of the Management Authority. Permits issued in Kenya for trade in stipulated species are in accordance with this requirement. The licensing office within KWS handles applications for such permits and certificates in Kenya.

Article IX of the convention requires parties to the convention to designate one or more management authorities competent to grant permits or certificates on behalf of the party and one or more scientific authorities. The existing Wildlife (Conservation and Management) Act in practice puts the Convention's obligations into effect, though with a slight variation. KWS fulfils both these functions of being the competent national management authority responsible for the issuing of relevant permits and certificates as well as being the competent scientific authority designated for purposes of advising on permits and certificates. The latter task is often done in collaboration with other national institutions such as the National Museums of Kenya, the Forest Department and Kenya Marine and Fisheries Research Institute amongst others through an existing framework of memorandums of understanding between each institution and KWS.

As seen in the previous section (refer to 3.1 Review of Kenya wildlife legislation developed to regulate trade) the current legislation²⁷ has provisions for regulations and prohibitions in hunting and trading in wildlife products unless where provided for through permits, ownership licenses as well as dealership licenses. The current legislation has succeeded in putting in place stricter domestic measures regarding the conditions of trade, taking possession or transport of specimens of species as stipulated in article XIV of the convention. Kenya's legislation in fact discouraged all forms of consumptive utilisation such as sport hunting, and regulates hunting for bush meat. Prohibitions on hunting and possession of trophies provide a much more firm basis of regulating trade in wildlife products. To a large extent the spirit of Kenya's legislation is one of conservation and minimal and regulated utilisation. Provision is made for utilisation through pilot projects phases and KWS provides the technical input and evaluation. Trade in or transport of specimens is permitted in accordance with permits granted by KWS who also monitor and keep records of any such trade or movement. The legislation thus covers trade in wildlife effectively.

The wildlife management authority, KWS has put in place numerous efforts towards enforcement of the provisions in the convention. Implementation of wildlife policies and enforcement of the provisions contained in the Wildlife (Conservation and Management) Act is through the following team:

- ❑ Director KWS
- ❑ Licensing officer KWS
- ❑ Intelligence officers KWS in cities, towns and stations in parks and other remote areas with wildlife
- ❑ TRAFFIC network
- ❑ Customs Offices, and the
- ❑ Kenya Police

Networking within the above team has proved successful in that poaching has to a large extent been brought under control since the huge upsurge in the late 1970s.

Concerning enforcement, KWS has acquired a large amount of equipment and finance, and now maintains a strong anti-poaching unit equipped with modern weapons, vehicles, radios and

²⁷ The Draft Wildlife Bill of 1997 came close to the ideal legislation with a whole section (Part VI) on CITES obligations but it is noted that the Draft Bill has since been withdrawn from the parliamentary approval process.

communications equipment for quick, efficient operations in the bush. The anti-poaching unit has seven base stations in important wildlife areas with mobile sections and sub-sections. These sections monitor the movement and welfare of all animals, particularly the elephant and rhino, two species most hunted by commercial poachers. The KWS Air wing at present has fifteen fixed-wing aircraft and a helicopter. Missions flown are often far from routine. Security and anti-poaching operations play a part, but so do species counts and surveys. Regular park patrols, supply and transport mountain rescue and emergency evacuations frequent demand for the use of aircraft.

An efficient investigation team operates in cities, towns and rural areas to trap poachers, would be poachers or businessmen involved in the illegal trading on game trophies. It has now become almost impossible for poachers to operate in the bush or towns without being noticed by KWS agents. Other efforts in place to implement obligations under CITES include the KWS Community Based Management programme²⁸ inaugurated in 1992. As a department in KWS, it ensured the participation of the communities living adjacent to the conservation areas, involving them in the day-to-day running of the conservation areas. The programme gives back some financial benefits accruing from the wildlife conservation to the local communities. This was given directly or through the construction of community utilities such as schools, dispensaries, cattle dips and water supplies as a way of revenue sharing. KWS hoped to minimise wildlife human conflicts and mobilise participation in sustainable wildlife conservation and utilisation programmes for their own economic gain. This move has proved successful in conservation and poaching control both within Kenya (Wildlife Extension Programme, WEP)²⁹ and outside e.g. Zimbabwe's CAMPFIRE programme, Administrative Management Design (ADMAD) in Zambia and Living on a Finite Environment (LIFE) in Namibia. KWS cannot maintain community wildlife services in the long run (and it is not meant to). Its role is to provide the climate and build the capacity for local communities to run their own wildlife programmes. Many are already successfully in progress.

KWS can claim several achievements since its inception:

- ❑ The reduction of elephant and rhino poaching and trade to negligible levels and these endangered species are now on the rebound.
- ❑ Safety and security within national parks so that tourists are sufficiently safe in Kenyan national parks (insecurity is often caused by poachers and poaching activities within parks).
- ❑ KWS has built an institution widely respected for its integrity and efficiency.
- ❑ KWS has raised considerable donor funds and rehabilitated the facilities and services within national parks after years of neglect.
- ❑ KWS is now making real strides in tackling human and wildlife conflict in Kenya and pioneering new approaches to conservation through community participation.

A number of activities have recently been undertaken in Kenya to improve CITES law enforcement, involving collaboration between government agencies and TRAFFIC. These include intelligence gathering, co-ordinated enforcement action, action training, cross border trade intelligence and circulation of a newsletter to keep enforcers up to date on developments. Proactive and assisted intelligence gathering and investigations resulted within weeks in the seizure of rhino horns. There were significant results in the two months that followed a CITES training workshop, with seven seizures, including a large ivory seizure.

Kenya has supported the ban in international ivory trade even before it was officially imposed back in 1989. On 18th July 1989, Kenya's President was watched by the world as he torched and burnt to ashes a pile (12 tons) of raw ivory, worth KShs 60 million. This resulted in a complete change in attitude

²⁸ Looked at historically, from the time when all resources were owned and used by local communities, modern governments tend to assume rights over wildlife and deny use by local communities. Inevitably, what has happened is that the person on the ground regards wildlife as government cattle, worthless to the person on the land. Community-based conservation is attempting to empower the person on the ground to benefit from wildlife and therefore take the initiative on conserving it, as he does his own cattle.

²⁹ If park neighbours maintain the herds and open their land to tourism and other forms of wildlife use, they will earn good money and think twice about converting their land to other uses. And if that happens, the tourist industry will also continue to grow and diversify for a long time to come, rather than face the nightmare of dozens of minibuses around every lion. Once the Maasai around Amboseli began to see benefits from wildlife, they kept out poachers. Elephants almost doubled in number over the next fifteen years, while in Tsavo East National Park, 40 miles away, poachers slaughtered half the herds. Landowners will protect wildlife and keep out poachers, given good reason to.

in the western world towards the ivory trade and the wearing of ivory jewellery. At the CITES Lausanne Conference in October 1989, Kenya led the campaign to stop the international trade in ivory. At the end of the debate, Kenya and her supporters were victorious and the international ivory trade was banned throughout the world. The worldwide campaign to ban the trade in ivory has helped to ensure survival of the elephant.

Kenya has consistently followed developments on CITES over the years with keen interest. At the 10th meeting of COP to CITES in Harare in Zimbabwe in 1997, it was decided that a limited down-listing of certain elephants to Appendix II could take place on an experimental one-off trade in ivory to Japan from Zimbabwe, Namibia and Botswana. Certain conditions had to be met however before this decision could be implemented: (i) an international system for reporting and monitoring illegal international trade through an international database in the CITES secretariat and TRAFFIC International and (ii) an international system for reporting and monitoring illegal trade and illegal hunting within or between elephant range states through an international database in the CITES secretariat, with support from TRAFFIC International and institutions such as the IUCN/SSC African Elephant Specialist Group and the Lusaka Agreement.

The system created to address the first conditions is known as the Elephant Trade Information System (ETIS). More than two years after Harare, although ETIS is in place and reports have been submitted by range states to the CITES secretariat, no analysis of data collected has been published. The system created by IUCN to address the second criterion is known as MIKE, which is only now being implemented in a pilot programme in a few Central African countries like Congo, Cameroon and the Central African Republic. Serious questions have been raised about the purpose, rationale and costs of MIKE. Kenya, along with India and seven other African range states, raised specific concerns at the 41st meeting of the CITES standing committee and again at the 42nd meeting in Lisbon this year. Kenya's position is that MIKE is an inappropriate tool for monitoring elephant trends to determine the causal relationship between poaching and illegal trade – one of the key concerns of the sync with the experimental re-opening of the ivory trade. It was felt that the monitoring system was supposed to be in place to provide baseline data before any ivory sales were approved. Although Kenya does not doubt the need for a continental monitoring of elephants, it will be extremely expensive and unlikely to achieve the key goal of established causality. Kenya also maintains the reason for increase poaching is higher prices and anticipation for further ivory sales (Swara, 1999).

Since April 1999, seven of the biggest ivory seizures have been made since the imposition of the ivory ban in January 1990. Ivory has been found in the luggage of diplomats in such diverse airports as Roissy in Paris and Jomo Kenyatta in Nairobi. Ivory of varying but sufficiently large amounts to provoke unease has been seized in northwestern Kenya, southern China, Moscow and Lisbon. In emphasis, the Environmental Investigation Agency (EIA), a steadfast supporter of the ban, disclosed earlier this year, that there had been an upsurge in poaching in Kenya and in Zimbabwe following the April 1999 one-off sale. In Tsavo National Park thirty elephants had been poached for their ivory in 1999, five times the average since the 1989 ban. The seizures add weight to what anti-trade conservationists in East Africa and in the West have emphasised since the Harare conference and before: that any relaxation in the ban on ivory trade would lead to a new onslaught on elephant populations. Despite plans to set up a system for monitoring the illegal killing of elephants, approved by the parties at the last CITES conference, a system is not yet in place. Without such a system it would be folly to allow any further expansion of the ivory trade, and the southern African proposals to be allowed further ivory export quotas in Kenya's opinion should all be rejected. On the precautionary principle, the safest way of guaranteeing the safety of African elephant populations would be in support the Kenyan (and Indian) proposal to put all elephants back on Appendix I of the convention (Swara, 2000).

SECTION FIVE

Documentation of Legal and Illegal Trade of CITES-Listed Species in Kenya

5.1 Trade in Wildlife

International trade in wildlife in Kenya is relatively small, with various aspects of wildlife being traded for various reasons. Trade (legal) in wildlife targets a fairly small number of species namely, tortoises (various species), monkeys, various species of gazelle, zebras, wildebeests, hartebeests, ostriches, impalas, water bucks, hyrax, baboons, hyenas, lions, guinea fowls, deer, Lesser kudu, antelopes, duikers, crocodiles, parrots, beetles, scorpions, vipers, hippos and various plant species. Most of these are items made from parts of the animals like the hides, tails, eggs, skeletons, fractions of jaws and occasional juvenile young. According to records the quantities trade are almost minimal (KWS Report, 1998). However a large extent of the trade in wildlife is through the black market. According to an Interpol report in 1995, the total value of legal wildlife trade globally amounts to approximately \$20 billion annually. Total illegal trade amounts to \$5 billion per year. The major animal trading routes are as follows:

Table 1 Major Trading Routes

EXPORT ZONES	IMPORT ZONES	IMPORT AND EXPORT ZONES
South and Central America	North America	Canada
Africa	Europe	Australia
Asia	Middle-East	South Africa
Eastern Europe	Far East	

Live animals most frequently traded include mammals like monkeys; birds such as geese and ducks, birds of prey, parrots and parakeets, humming birds and passerines; reptiles like snakes, lizards, ground and freshwater tortoises; tropical fishes; and invertebrates such as trapdoor spiders.

Animal and plant parts and derivatives most frequently traded and some of the uses of these parts are given below:

Table 2 Uses of Animal and Plant Parts and Derivatives

ANIMALS	PARTS AND DERIVATIVES
mammals	Leather and skin Fur Ivory Musk
birds	Stuffed Ostrich meat and eggs Feathers and objects made from feathers
reptiles	Scales, shells and soups from marine turtles Crocodilian skins Monitor and other lizard skins Snake skins
amphibians	Frog's legs
invertebrates	Butterflies Corals
Plants types	Purposes for trade and/or Uses
snowdrops	Bulbs
orchids	Cut flowers Plants Flasked seedlings Species for collectors
Cacti	Small plants for the window sill Large plants for landscaping Species for collectors
Cycads	Landscaping Office decoration Species for collectors
Carnivorous plants	Venus fly trap (plants) Pitcher plants (leaves and flowers for decoration)
American Ginseng	Roots for ginseng extracts and medicines
Timber	Floors, roofs and furniture

5.2 Trade in Elephant Products

There are two species of African elephant, bush or savannah elephant, *Loxodonta africana*, *africana*, and the forest elephant *Loxodonta africana cyclotis*. The African situation has now reached a point where for all African elephants, the poorly managed international trade in ivory, and the illegal hunting serving this trade, are the most significant factors in the decline of the elephant population. The population of elephants in Africa has halved in less than a decade (1990s) from 1.2 million to just over 600,000. Kenya's elephant population alone has declined by two-thirds from its 1981 population of 65,000 to 16,000 in 1989. There is evidence that the way in which elephants are harvested is further precipitating their population decline. The main cash value of elephants is its tusks, although the hide is also demanded both internationally and locally, and meat is often consumed locally. Studies in Amboseli National Park show that for every adult female elephant killed at least one immature elephant will die. A calf younger than two years old stands no chance of surviving the death of its mother, while a calf orphaned between the ages of two and five years old has a thirty per cent chance of survival, and one aged between six and ten years old has a 48 per cent chance of survival (Poole, 1989).

Ivory trade is a highly lucrative activity (Source: London Environmental Economics Centre). The sum of total ivory exported between 1979 and 1988 amounts to between 7,624,882 and 7,954,544 kg. As a very approximated guide it can be taken that an average pair of tusks weigh 9 – 10 kg and from this

between 700,000 and 800,000 elephants were exploited for their ivory during this period. The decline in tonnage since 1979 looks encouraging, but the statistics hide the real impact of ivory trade on the elephant population. In 1979 one tonne of ivory represented approximately 54 dead elephants. These were mainly bull elephants, valued for their bigger tusks, with an average tusk weight per elephant of 9.3kg. By 1987 most of the mature bull elephants had been shot, leaving cows and calves to support the demand for ivory. They have a much lower average tusk size of 4.7kg, such that one tonne of ivory now directly represents about 113 dead elephants.

Table 3 Volume and Value of Kenyan Raw Ivory Exports

YEAR	VOLUME (kgs)	VALUE (US\$)
1979	45,703	3,025,539
1980	30,198	1,814,900
1981	5,642	334,006
1982	12,399	825,773
1983	4,012	224,271
1984	12,833	789,728
1985	18,733	1,176,432
1986	1,787	144,568
1987	143	17,575
1988	0	0
Total	131,500	8,352,792

Source: Barbier, 1990

Where has all this ivory been consumed? There is the movement of ivory to the carving centres of the trade – these are the nations that are the “manufacturers of worked ivory and the “consumers of raw ivory”. Then there is the movement of ivory in international trade to the final holders of ivory – these are the nations that are the “final consumers of worked ivory”. The carving centres in the international trade have traditionally been Hong Kong and Japan, with an average consumption of 40 per cent and 30 per cent respectively. Europe once had a viable carving industry, which is no longer of significance. Africa internal carving is the next most significant consumer of raw ivory. After carving, ivory is most often re-exported to the final consuming states. The only exception is Japan, which is both a substantial carver and consumer of ivory. Ivory is a precious primary commodity that commands an international price in hard currency. In addition, quality handcrafting of this fine material also generates hard currency.

The flow of ivory in international trade has generally been towards the hard currency consumers – the USA, Europe and Japan. These three consumers have acquired about 75% of all ivory worked in Hong Kong and Japan during the 1990s. The remainder of the ivory in international trade has been utilised in the carving industries within various developing countries – India, China – and then re-exported, or sold to tourists for hard currency. The same is true for much of African worked ivory. Therefore, it is very likely that nearly all the ivory in the international trade has ultimately found its way to one of the three hard currency consumers: the USA, Europe and Japan.

Other direct uses, such as providing meat, may be important locally but not for international trade. Other values of the African elephant, such as its importance for tourism in some countries, may be considerable more significant in terms of foreign exchange earnings. With an estimated 250,000 to 300,000 foreign tourists visiting Kenya annually and the non-transportation cost of the safaris averaging US\$ 1,400, this represents potential expenditure of around US\$ 375 million, of which about US\$ 200 million is spent in Kenya. The results (of applied travel cost and contingent valuation techniques) show that viewing elephants in Kenya is about US\$ 25 million per year. This may be as much as ten times the value of its poached ivory exports (G. Barnes and W. Henry country survey).

Over the 25 – 28 years ivory poaching reduced the country’s elephant population from some 130,000 individuals in 1973 to an estimated 16,000 by 1989. The primary cause of decline through the 1970s and 1980s can be attributed to the illegal trade in ivory. The incentive for ivory poaching was fuelled by a steady increase in the price of ivory on the international market that rose from less than US\$10 per kg in 1970 to nearly US\$300 per kg by 1989. Lack of appreciation for the value of wildlife in

government spending priorities left Kenya's wildlife department ill-equipped to cope with the increasing levels of poaching and unable to contain the situation.

The Tsavo elephant population, after increasing in the 1960s to over 40,000 elephants, crashed in two phases: in 1971 drought and starvation killed about 7,000 elephants and in 1975 and 1976 poaching for ivory killed large additional numbers. The population declined through the 1980s due to another upsurge of poaching which intensified during 1988. By mid 1989 groups of Somali poachers, armed with automatic rifles, had reduced the population to less than 6,000 elephants.

The historical trend in the international ivory trade has been one of sustained growth from 1945 through the mid 1980s – from 204 tonnes of raw elephant ivory in 1950 to 412 tonnes in 1960, 564 tonnes in 1970 and around 1,000 tonnes in 1980. This represents a greater than 400 per cent increase in the trade in ivory over 40 years, or over 10 per cent per annum each year for the past four decades. Best estimates of the records indicate that between 700 and 1,000 tonnes of raw ivory were traded internationally each year. The price of ivory has been increasing dramatically: between 1979 and 1985 the current price of one kilogram of ivory was around US\$ 60, in 1987 it reached over US\$ 120 and in early 1989 it rose towards US\$ 300 per kilogram.

In mid 1989 the rate of killings of elephants in Kenya began to decline sharply. The dramatic change in events can be attributed to several factors including: (i) the establishment of Kenya Wildlife Service; (ii) increased effectiveness of anti-poaching operations and intelligence gathering; (iii) global awareness of the plight of the elephant; and (iv) the international ban on the ivory trade. The results of the successful campaign against poaching can already be seen in the field: fresh carcasses are rarely found and elephants are being sighted in places they have avoided for many years. According to trade records for example, between March and April 1998, the volume of trade amounted to only five items consisting of curved ivory, an ash ray, head carvings and two sets of chess statues. Licensed trade in ivory products is minimal.

Table 4 KWS Elephant Mortality Database

YEAR	LIKELY POACHED	TROPHY POACHED	TOTAL
1992	0	41	41
1993	0	75	75
1994	0	66	66
1995	0	34	34
1996	0	44	44
1997	0	45	45
1998	0	40	49
*1999	2	57	59

* eight months only; total 1999 figures = 67

In October 1989, the parties to CITES voted to up-list the African elephant from Appendix II to Appendix I, thus banning international commercial trade in ivory between parties. The move has had profound effect on the survival prospects for elephants throughout the region. Ivory prices around the world have fallen by 40 to 75% since the ban, and due to public awareness campaigns, demand simply no longer exists in many parts of the world. Prices, in Kenya paid to the poacher have declined from US\$20 – 30 per kg in 1989 to US\$2 – 3 per kg by 1990. Increased effectiveness of anti-poaching efforts has reduced the appeal of illegal take as a means of income. The current surplus of unsold tusks in Africa and the depressed international market should continue to reduce prices and demand for illegal ivory.

Over the last three decades, poaching and loss of habitat have caused the decline, extermination and compression of elephant populations throughout eastern Africa. A number of factors have contributed to the reduction of elephant populations in the region including a large illegal ivory trade, widespread poverty, civilian disruption, lack of arms control, lawlessness and land-use conflicts between humans and elephants.

According to a survey conducted in late 1990, twenty-nine of Kenya's parks and reserves still contain elephants. In many of these areas, particularly those in the North Eastern portion of the country, populations have been reduced by poachers to only a few isolated groups and may no longer be viable. However, several parks and reserves and their surrounding ecosystems still contain viable populations

that survived the poaching years through protection provided by forest cover (e.g. Aberdares, Mt. Kenya), tourism (e.g. Mara, Amboseli) or cooperation from local people (e.g. Shimba Hills). Some forest populations are known to have fared less-well due to the geographical position that allowed easy access by sophisticated gangs of poachers (e.g. Marsabit and Mt. Elgon).

In addition, there are still many areas in the country where elephants exist outside the park and reserve system. The largest populations are in Laikipia district and forests of Aberdare, Mt. Kenya, the Mau, the Mathews Range, Mt. Elgon, Maralal and Nguruman. Estimates of elephant populations in the entire country in 1990 are given as 20,000 individuals.

5.3 Trade in Rhino Products

Since the turn of the century, the black rhinoceros has declined dramatically in both the extent of its range and its numbers in sub-Saharan Africa. In recent years the black rhino has become extinct, or is nearing extinction, in 12 African countries, and its numbers have dropped 90% across the continent in the last 27 years. The black rhino is now only found in small numbers in Zimbabwe (2,000), South Africa (600), Namibia (390), Kenya (400) and Zambia (100).

Poaching for the horn has been, and continues to be the major cause of the decline of the black rhino. Despite sustained efforts to control the trade in rhino products, particularly horn, there has been little reduction in the poaching pressure on the black rhino populations remaining in Africa. The substantial black rhino populations remaining in Zimbabwe have been under intense pressure from Zambian poachers since 1985. In general, the diminishing returns from fewer poachable rhinos have not stopped the trade, reduced the price of the rhino horn on world markets, nor the incentive to poach. A poacher can sell a pair of rhino horns for more than a year's salary at the set minimum wage from his country; this will be on average less than five per cent of the retail price of those same horns in Far East markets (ca. US\$4,000/kg).

Rhino sanctuaries have been established within Nairobi, Nakuru, Tsavo West and Aberdares National Parks and private rhino sanctuaries exist in the Laikipia District. Threatened rhinos are captured and transferred to the sanctuaries where they are given twenty-four hour protection. Rhinos are also translocated to facilitate the exchange of genetic material (inherited characteristics) and to prevent inbreeding. The rhino population is today reported to be growing at an average of 5% a year.

5.4 Trade in Timber and Hardwood

Natural forests provide many benefits to Kenyans, including fuel-wood and non-timber forest products such as food, medicines and household materials, while both natural and plantation forest resources are essential to a large number of timber-based industries in the country. Timber is of crucial importance on both subsistence and commercial levels. While plantation softwoods account for approximately 80 – 90% of the industry's needs, indigenous hardwood timbers from Kenya and hardwood imports are preferred in the furniture, flooring, joinery and carving sectors and to some extent construction.

Plantation-grown pine *Pinus* spp and cypress *Cupressus lusitanica* are most widely used species in the timber industry. Other species appearing in trade include East African Camphor *Ocotea usambarensis*, of which between 10,000m³ and 18,000m³ are used per year: mahogany *Khaya* spp. (in African context) imported from Zaire and Uganda of which an estimated 3,500 to 4,700m³ are used per year: Mvule *Milicia excelsa*, primarily imported with an annual use around 800 to 1,100m³: Elgon Teak *Olea welwitschii*, with use estimated at 700 – 950m³ per year and Meru Oak *Vitex keniensis*, largely from plantation stock with annual use estimated at between 350 – 450m³. Mukui *Newtonia buchananii*, East African Pencil Cedar *Juniperus procera*, Mbambakofi *Azelia quanzensis*, and a wide variety of other indigenous hardwoods also appear in trade in lesser quantities.

Legally acquired indigenous timber is extracted from private land and selected Forest Reserves where harvest of live trees is permitted on a minor scale, but the vast majority of legal indigenous timber appearing in trade is extracted under license as dead or fallen timber. Regulation of timber extraction suffers however, from poor enforcement, and as such the proportion of illegally extracted timber on the market is substantial.

Kenya imports hardwood timber from numerous countries, the most important of which is Tanzania, Uganda, Zaire and Australia. Total imports of mahogany in 1992 were estimated at 1,869m³, hardwood other than mahogany 428m³ and other wood at 3,378m³. The total volume of timber exported to Kenya has declined in the last five years from 7,062m³ and 7,128m³ respectively in 1989 and 1990 to 3,926m³ in 1991 and 2,297m³ in 1992 and at least 3,400m³ in 1993.

The timber industry is generally not export oriented. Considerable quantities of small carvings are exported wholesale in addition to the enormous number taken out of the country as personal effects by tourists. Kenyan exports of unworked indigenous hardwood timber have been banned since 1983. Export of mangrove products and charcoal has reportedly been prohibited since 1982. Licensed exports are therefore almost entirely of *Pinus* spp and *Cupressus* spp. Most exports are to nearby countries; Ethiopia, Somalia, Rwanda, Seychelles, Sudan, Tanzania and Uganda, with a few further afield like Israel, Japan, Saudi Arabia and Sri Lanka.

5.5 Trade in Game Meat

Although prohibition of the use of bush meat is well defined in current legislation and policy. Increasing poverty levels and unemployment rates within the country, and a lack of law enforcement capacity especially outside of protected areas, has resulted in bush meat being increasingly utilised illegally for protein supply through subsistence consumption, and also for generating cash incomes through domestic trade. The legal game meat production sector primarily consists of game ranching and is not promoted on a national basis as an integral part of policy. Since 1977, wildlife utilisation in Kenya has focused predominantly on non-consumptive tourism, which contributes significantly to the national economy, whilst the consumptive utilisation of game meat has remained restricted.

In national economic terms, the legal game meat industry barely exists in Kenya. In 1995, the annual legal trade in wildlife products (meat, skin) amounted to a total of US\$ 650,000 in value, made up of US\$ 340,000 from ranching for meat production, US\$ 100,000 for crocodile farming, US\$ 170,000 for ostrich farming, US\$ 15,000 for butterfly farming and US\$ 25,000 for bird shooting (KWS, 1995). In comparison to the estimated value of the tourism market at US\$ 304 million during 1996 (TTC, 1998), game meat production revenues are almost non-existent. During the period 1987 – 1997, the total annual game meat production was estimated at 696.2 million tonnes with a value of US\$ 590,043, of which game ranching is by far the largest contributor (ninety-four per cent).

Zebra, Kongoni and Wildebeest are most abundantly marketed into low-value markets as animal feed and sometimes used for staff rations. Giraffe seems to have a broad scale appeal to most high and low value markets. The most sought after species by the high value markets are generally animals having tender and good tasting meat such as Thompson's gazelle, Grant's gazelle and Impala, Eland and Oryx.

5.6 Trade in Wildlife for Medicinal Purposes

Kenya has access to contemporary medical services in its urban centres and to a limited extent in the rural areas. In some parts of Kenya, especially in the arid north, Western medical services are scarce and limited to vaccination programmes and use of anti-malarials (Fratkin, 1996). Reliance on the services of Traditional Medical Practitioners (TMPs) in rural areas is high and is attributed not only to the high prices of imported Western medicines and inaccessibility of clinics, but also to the fact that traditional medicine is regarded as effective, and is the preferred system for many illnesses (Fratkin, 1996; Ichikawa, 1987; Munugti, 1997).

Trade in medicinal plants in Kenya occurs on both local and international levels. In urban centres, street herbalists are a common feature, while in rural areas the norm is for Traditional Medical Practitioners to travel from town to town coinciding with each town's market day (Simiyu et al., 1996). The number of medicinal plants species used in Kenya is very large, and the species used vary considerably between regions. Twenty-seven plant species are commonly traded. A total of 33 animals were reported as used for medicine. Species identified include: buffalo (*Synacerus caffer*), Nile crocodile, African elephant, hippopotamus (*Hippopotamus amphibious*), leopard, lion (*Panthera leo*), ostrich, porcupine (South African Crested porcupine – *Hystrix africae-australis*), tortoise (Leopard tortoise – *Geochelone pardalis*) and zebra (Burchell's Zebra – *Equus burchell*). Illegal trade in Black Rhinoceros horn is widely

reported. There is documented medicinal use of Nile Monitor Lizard fat in northern Kenya, hair and stomach contents of Tree Hyrax (*Dendrohyrax arboreus* in South Mau forest area, Maned rat (*Lophiomys imhausi*, Olive Baboon (*Aardvark Orycteropus afer* and unidentified species of Duiker and Guenon in Kakamega forest (Emerton, 1991). Gubelman and Kavu(1996) have recorded use of Green Turtle oil believed to cure over 40 ailments including scabies, whooping cough, tuberculosis and gonorrhoea. Dugongs are also reported to have medicinal value.

Recorded international trade in medicinal plants has been dominated by *Prunus africana* exports to France. Phytosanitary certificates issued by the National Agricultural Research Laboratory (NARL) indicate some 800 tonnes in the period 1990 – 1995 while CITES certificates indicate a further 300 tonnes in 1996 (the species was included in CITES Appendix II in 1994).

Some 100 tonnes of *Centella asiatica* leaves, a naturalised species and pantropical weed was recorded by NARL as exported between 1992 and 1995, 36 tonnes to France. Other species recorded as exported are in smaller quantities including: American *Jatropha multifida* (50 kg to Kuwait in 1990) and *J. podagrica* (21 tonnes to Netherlands in 1990 and 1991 and 50kg to Kuwait in 1990); the native vine *Cissus rotundifolia* (15kg dry root/leaf to France in 1994); the native orchid *Ansellia africana* (20 plants to UK in 1993); and the native tree *Dracaena fragrans* (200g undated). Although undocumented in recent export records, there is known to have been recent trade in Aloe extract (*Aloe secundiflora* and *A. turkanensis*) from Kenya despite the existence of a 1986 presidential decree banning commercial harvest and export of aloes. In 1992, 1500kg of Kenyan aloe extract was confiscated in the USA as it was without accompanying documentation. Significant exports of *Catha edulis* are reported from Kenya, a species used to treat malaria, coughs and general body ailments. It is an important cash crop with exports going to Somali on a daily basis and is primarily grown in Nyambane region in central Kenya.

5.7 Trade in Marine Products

5.7.1 Trade in Sharks

Shark fishing has taken place along East African coast for centuries, as dried, salted meat is nutritious and inexpensive. Shark fins have also been traded for centuries, with the value of shark fins in the far east well known to East African traders.

The Kenyan trade in shark products consists primarily of fins and meat. Jaws and teeth are sold infrequently to tourists, and the market for cartilage is largely unknown. Liver oil is traded locally. There is a relatively new and growing interest in marketing of cartilage by Kenyan shark dealers (only one known dealer exporting cartilage). Several traders have received import requests from American companies but there is no information available on the volume of trade in shark cartilage. Shark fins are both imported to and exported from Kenya.

Data available greatly under-reflects the trade in shark fin. Figures from importing companies for the period 1986 and 1990 show that Kenya exported a total of at least 138.9 million tonnes of shark fin, equating to an average of 28 million tonnes per year (Dockerty, 1992). The reported imports of shark fins for Singapore alone during 1992 – 94 totalled 55 million tonnes (Singapore Customs Statistics, 1995). Some Kenyan traders estimate the volume of shark fin exports to be in the areas of three to four million tonnes per year in the peak season and 1- 1.5 million tonnes in the off season (a total of 26 – 36 million tonnes per year). Only about twenty-five per cent of the shark fins traded in Kenya actually are landed in Kenyan waters, with a steady trade from Zanzibar to Mombasa. It should therefore be noted that a significant quantity of the shark fins exports are actually re-exports. Prices of shark fin vary depending on the grade of fin. The lowest grade is valued at US\$ 10 while the highest at US\$ 60 – 70.

Dried shark meat has been important source of protein in East Africa for thousands of years. Kenya imports dried, salted shark meat from Somalia and Yemen and occasionally Djibouti. In 1993 Kenya recorded imports of 30 million tonnes. Meat shipments are reported to comprise of about 75 per cent shark meat and 25 per cent ray meat. All shark meat produced in Kenya is consumed locally. Shark liver oil is produced for maintenance of dhows (also consumed locally). Shark jaws are infrequently marketed as a tourist curio product.

5.7.2 Trade in Lobsters

It is likely that East Africa was a source for mother of pearl especially from the Black-lipped Pearl Oyster *Pinctada margaritifera*, used in button manufacture. The lobster fishery in Kenya is relatively small, having commenced in the 1940s. During the period 1960 to 1970, lobster production increased by about 18 per cent per year. For the period 1972 to 1991, the spiny lobster catch was relatively stable at about 70 million tonnes per year (Okechi, 1995). Kenya consumes a significant portion of its spiny lobster catch, however exports are also evident (the main importer being the EU). It is reported that there is a new and growing trade in frozen lobster tails from Kenya with evidence that this trade has been in existence for several years. The EU commenced recording imports of lobster tails in 1995 (with an average of 1,400 kg per year). Kenya's deep-water lobster exports are recorded as exclusively exported to Italy.

5.7.3 Trade in Seashells

Kenya has a large artisanal shellfishery and is mainly directed at the tourist industry. Reports of imports from Somalia and Tanzania are extremely frequent, although there are no official trade data to verify this claim. Species reported to originate from Somalia include *Lambis chiragra*, *L. crocata* and *L. truncata*. Species originating from Tanzania include *Cassis cornuta*, *Charonia tritonis*, *Conus marmoreus*, *Crpraea mappa*, *C. spp*, *Cypraeacassis rufa*, *Drupella rugosa*, *Isognomon ephippium* and *Lambis* spp. Although Giant Clam *Tridacna squamosa* is recorded in local trade, no international trade in this CITES-listed species is recorded.

5.7.4 Trade in Holothurian Fishery

The sea cucumber industry in Kenya has roots in large-scale collection, preparation and export initially carried out by Chinese settlers in the 1960s. Reduction of sizes and quantities of sea cucumbers resulted in a decline in trade around the 1990s with no official exports recorded between 1994 and 1997. The industry received an additional blow in 1997 with the economic crisis in the Asian market thus reducing demand.

The holothurian fishery (sea cucumber) is primarily artisanary and considered one of the most lucrative. Records show that up to 14 different species are collected. Kenyan fishers prepare the *beche de mer* themselves and then sell to middlemen for further export. A large proportion of the *beche de mer* in Kenya is actually imported from Tanzania though the records do not exist. Kenya's total exports were reported as 314 million tonnes for the 1988 to 1997 period, while imports were recorded as 630.3 million tonnes. *Beche de mer* exports from Kenya increased steadily from 1988 to a peak in 1992 at over 200 million tonnes but have since declined to less than 50 million tonnes per annum. This is mainly explained by the Asian economic crisis thus the lack of buyers.

SECTION SIX

A Comparative Perspective of Legal and Institutional Wildlife Trade Concepts in Tanzania

6.1 Successful Legal and Institutional Concepts in Tanzania

A brief glance of the Tanzanian Wildlife Conservation Act No. 12 of 1974 reveals that the legislation in Tanzania is much more relaxed in as far as utilisation of wildlife and trade in wildlife products is concerned. Hunting is allowed and encouraged as a source of national income. One is however required to possess a valid hunting license obtained from the game authority of the time. Trophies obtained from hunting activities require to be registered within a stipulated time (and non-registration is an offence). Dealing in trophies is restricted to dealing with only registered trophies and also required a trophy dealer's license. Transfer of trophies requires transfer permits. Export of trophies must be through a valid export license, with the trophies in question being lawfully registered. Import of trophies into Tanzania requires that written authority be sought from the Director in charge of Fauna Conservation. Regulations concerning imports and exports of trophies are confined to unmanufactured trophies only. Trophies (obtained in National Parks or Ngorongoro Conservation Area) belong expressly to the Trustees of National Parks. Those obtained outside of national parks belong to the Government of Tanzania.

Safari hunting is a legitimate form of wildlife utilisation. It is Government policy to encourage the development of the industry by providing long-term leases for the hunting concessions and creating a situation, which is conducive to long-term investments. Where wildlife areas are managed by village communities, the Tanzanian government encourages safari operators to set up joint ventures with the village authorities. Wildlife tourism and safari hunting are the main stay of the wildlife industry in Tanzania, generating approximately US\$ 100 million annually. Wildlife management contributes to Tanzania's development by: (i) providing employment, income and revenue (ii) producing game meat and other wildlife products and (iii) generating foreign exchange.

The sale of wildlife products such as ivory, skins, leathers and horns is an important aspect of wildlife utilisation. The policy here is to adhere to those national and international regulations governing the trade in wildlife products and to monitor trade closely. The large numbers of trophies obtained from the safari hunting activities can pose a huge trade problem is not well handled.

However, Tanzanian wildlife authorities have succeeded by and large in controlling illegal hunting and illegal dealing in wildlife products. Though poaching is still an underlying issue in Tanzania and still threatens certain species, it also has the potential of jeopardising development in the entire wildlife sector. It is still government policy to combat poaching, punishing offenders with stiff fines and prison sentences, which are sufficiently high to act as a deterrent. The successful outcome of anti-poaching operations depends, however on manpower, equipment and staff morale. The Tanzanian government strives to ensure that more and more funds are made available for anti-poaching operations and for improving the working conditions of wildlife personnel. The wildlife authorities place great hope in containing poaching with the introduction of the village wildlife schemes whereby the local communities patrol and protect their own wildlife resources. This has proven highly successful in countries such as Zambia where poaching has declined by 70% in some rural areas managed by village wildlife committees.

To a large extent, consumptive wildlife utilisation that accommodates residents as well as investors, can work as a conservation tool. Access to wildlife resources by various stakeholders is vital especially in countries where poaching and illegal trade is very much poverty driven. Enforcement and control measures have to be put in place however to stop over-utilisation. The capture and sale of live animals is mainly export oriented in Tanzania. Past experience has shown the export trade in live animals and birds needs careful monitoring and control with stringent controls and a close record kept on numbers and key species exported. The Government ensures that sufficient revenue is generated from the trade by reviewing dealers' licenses in line with the value of the trade. The trade is also carried out strictly within CITES regulations.

The surveying and monitoring of wildlife resources are an important part of wildlife management. Systematic monitoring is essential to keep the planning unit abreast with changes in wildlife populations, habitats, and poaching and human encroachment. Information collected from regular surveys also

provides the base line data by which the effectiveness of management can be gauged. The Tanzanian government policy is to strengthen the capabilities of the monitoring unit by allocating sufficient funds, staff and equipment to conduct ecological surveys and wildlife censuses. Research priorities need to be established which include economic, land-use and sociological studies as well as research into aspects of wildlife utilisation.

Tanzania's guiding policy on wildlife conservation matters was generally ad hoc and uncoordinated until their comprehensive wildlife policy of 1998. The wildlife policy sets out a strategy that encourages direct utilisation of wildlife. This policy introduces the ranching concept, defining ranching as 'rearing in a controlled environment of specimens, usually of young, taken from the wild with the intention of engaging in wildlife trade.' The wildlife policy implicitly advocates for compliance with the CITES provisions in the following strategies:

- ❑ Regulating trade in wildlife products derived from various types of utilisation, natural mortality and confiscation
- ❑ Retaining the mandate of international trade in products produced under the jurisdiction of other sectors, such as forestry and fisheries.
- ❑ Regulating international trade in wildlife and its products in accordance with the appropriate Tanzania laws and international regulations, and
- ❑ Instituting the appropriate measures to ensure the export of CITES-listed species or parts derived from the forestry and fisheries sectors meet the requirements of CITES regulation.

The wildlife policy allows Tanzania's participation in regional and international efforts towards conservation with neighbouring countries. Tanzania clearly recognises the need for conservation and management of transboundary species and ecosystems. Neither the Wildlife Policy nor the Wildlife Conservation Act explicitly designates a scientific or a management authority as required in CITES obligations for parties. Implementation of CITES in Tanzania is coordinated by the Directorate of Wildlife in the Ministry of Natural Resources and Tourism. The Director of Wildlife acts as the management authority. Below is a table that shows the network of institutions involved in various ways in implementing obligations under CITES.

Table 5 Wildlife Management and Scientific Authorities in Tanzania

INSTITUTION	ITS SET UP	ITS FUNCTION
Management Institutions		
Directorate of Wildlife	Vested in the Wildlife Conservation (Dealings in Trophies) Act of 1974	Overall management authority for wildlife matters
CITES desk	Within the wildlife department	Licensing, permits and reports on trade in wildlife
Wildlife Protection Unit (WPU)	Under the Director of wildlife	Deals with hunting and capture and securing trophies
Tanzania Wildlife Protection Fund (TWPF)	Within the wildlife department	A retention fund for proceeds from sale of trophy permits and handling fees
Tanzania Wildlife Corporation (TWC)	A privatised institution	Deals with revenue collection from hunting, capture and the export of wild animals
Tanzania National Parks Authority (TANAPA)	Created under the National Parks Ordinance	Looks into the sale or exchange of any specimen of animal or vegetation or purchase of specimen of animal or vegetation or purchase of specimen introduced into parks. It also ensures trade is conducted on a sustainable basis
Pasiansi Wildlife Training Institute		Combats illegal hunting through training wildlife scouts and rangers
Scientific Authorities		
Chief Research Officer of the Game Division	Wildlife Conservation (Dealings in Trophies) Act of 1974	Under the Director of Wildlife
College of African Wildlife Management in Mweka		Conducts research and consultancies on wildlife related issues
Serengeti Wildlife Research Institute (SWRI)	Serengeti Wildlife Research Institute Act	Research on wild species threatened with extinction and is the overall wildlife research institute in Tanzania
Gombe Wildlife Research Centre, Kingupira Wildlife Research Centre, the Mahale Mountain Wildlife Research Centre and Njiro Wildlife Research Centre	Listed in 7 th schedule of Act	Placed under SWRI
Tanzania Wildlife Research Institute (TAWIRI), Sokoine University of Agriculture (SUA) and the Zoology Department of the University of Dar-es-Salaam		Conducting research on wildlife related issues
Tanzania Wildlife Conservation Monitoring (TWCM, an affiliate to GTZ), Ngorongoro Area Authority, Frankfurt Zoological Society (FZS)		Collects and keeps records and data on animal census and advises on animal numbers

Informal implementation relating to statistics on 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.

6.2 Lessons for Kenya

Kenya has a significantly different wildlife management set up from the one described above. However, there are many valuable lessons for Kenya. Wildlife policy in Kenya is by and large one of conservation as opposed to the wildlife utilisation policy approach in Tanzania. Consumptive use of wildlife in Kenya could be encouraged and managed as a significant source of national income and more importantly for local communities living adjacent to the wildlife resources. Presently in Kenya consumptive use is not encouraged. There are attempts but only at pilot phase levels in scattered parts of the country.

Ranching in Kenya is to a large extent discouraged by the current wildlife management policies in place. The returns from sale of game meat, cropped from ranches, are so low that the whole ranching activity is economically non-viable. This has discouraged many potentially successful ranching initiatives by community-based organisations and private developers and investors. The country has great potential for ranching given that a large part of the country has arid and semi-arid climate and rather poor soils. The only viable land use activity is thus wildlife through protected areas or ranching.

Hunting as an economic activity is not encouraged in Kenya whereas in Tanzania it is a very profitable venture. When regulated safari or block hunting could provide much needed income for local communities who live adjacent to wildlife areas.

Responsibilities of the management and scientific authorities in Tanzania are divided amongst various players. Numerous research institutes feed into scientific advice provided by the Chief of Research in the Wildlife Department in Tanzania. This ensures that there is objectivity in research carried out on potentially controversial issues such as human-wildlife conflicts. The actual management responsibility is divided up into different departments within the Wildlife Directorate. In the Kenyan case both scientific and management responsibilities are vested in the same institution. This has had its various set backs as discussed in previous session. The National Museums of Kenya and other research institutions occasional feed into scientific tasks alongside the Kenya Wildlife Service (which is the scientific authority). Kenya certainly stands to gain from Tanzania's rich experience of coordination and networking amongst various actors involved as scientific and management authorities.

SECTION SEVEN

Conclusions and Recommendations

The biggest question on one's mind at this point would probably be whether or not in my opinion the institutions set up in Kenya to manage Kenyan wildlife resources have succeeded in conserving them and sparing them from destruction through over-exploitation, poaching and illegal trade. Kenyan institutions have evolved through the last thirty years or so. There has been a repeated attempt to build a new institution by first of all learning from the mistakes of the previous one.

The very first institution was the Game department, which looked specifically at licensing sport hunting activities and controlling wildlife in agricultural areas. The Game Department did well in managing hunting activities, which were quickly going out of control in East Africa. They drew from lessons learnt of wildlife slaughter in Europe and America and rapidly in South Africa. Then the idea of establishing national parks started in America at the time and was imposed in Kenya as well. With it came the requirement for a new institution specifically looking into issues of establishing, managing and possibly promoting tourism in protected areas such as national parks. This new institution was the National Parks Service whose mandate was wildlife protection through anti-poaching activities and national park management. The two departments did well given the circumstances they were operating under. Establishment of national parks was slowed down by the Second World War and only got to work after the war. The first Kenyan national park – Nairobi was established in 1946.

The two institutions were merged to form a third one – the WCMD. This also coincided with independent Kenya and the need to set up new government departments, different from those that had existed during colonial times. WCMD's mandate was very broad. They lacked the resources to maintain the activities in the most efficient form possible. Elements of corruption came in and without motivation for the staff on the ground poaching and illegal trade grew rampantly. It got to a point where something drastic had to be done.

The Kenyan authorities in order to rid themselves of the WCMD legacy created a fourth institution, KWS, whose very first mandate was to clean out poaching which had become widespread at the time. This is the current institution. It has the autonomy to generate and solicit for its own funds and manages wildlife issues almost autonomously from the government ministry to which it is attached. To a large extent, KWS has succeeded in stamping out the once rampant poaching activities and the associated illegal trade in wildlife products. These activities were brought under control especially in the early 1990s. Now there are indications that poaching of especially elephants is on the resurgence. Sources from KWS are quoted as saying that the fear is real and it is mainly attributed to the one-off sale of ivory to Japan in April 1999. Opinions differ as to whether this is the cause for renewed poaching or is another excuse by the institution. WWF experts are quoted as saying that caution needs to be exercised since it would be foolhardy to talk about increased poaching until all the facts are in. Questions of whether the number of rangers in certain parks where poaching is reported may have increased or decreased during this time. According to TRAFFIC's East and Southern Africa Director, "in order to establish a clear trend – to be able to say definitively whether or not number of elephants being killed is increased, stable or decreased – there is a requirement that the data on the number of poached elephants be considered alongside other information and data. The most variables in this regard are measures of law enforcement effort – budgets, personnel, man-hours in the field, operational vehicles etc over time. It could well be that more people in the field results in more carcasses being discovered, hence it only appears that the numbers of poached elephants are going up. Unfortunately, without assessing the law enforcement effort, it is not possible to establish any kind of statistically valid trend at this time. Most of the reports currently received about increased poaching are based on simple numbers of carcasses and do not result from more sophisticated analyses".

More recent wildlife management policies have focused on community-based management approaches. This is in recognition of the fact that a huge amount of wildlife is found outside protected areas. The only proven way of managing such wildlife resources is through involving communities living adjacent to such resources. These have proved expensive though certainly in the right path and efforts continue to this effect.

Some of the limitations faced by KWS as the institution charged with management of wildlife resources in Kenya include legislation that is somewhat divided along sectoral line. Wildlife resources with as flora fall outside KWS jurisdiction unless they are found in protected wildlife areas. As such these resources have been protected through other legislation as is the case for marine and fisheries resources and forestry resources. The major limitation is experiences when enforcement of international obligations such as those under CITES is required. With some institutions vested with the authority to issue CITES permits and certificates, there is clearly a need to enable their enforcement through legislation. A recent issue has been one of KWS moving in to management wildlife resources (included the hardwood timber and other flora) in the Mount Kenya region. This area has previously been under the jurisdiction of the Forest Department. Difficulties in enforcement have resulted in massive destruction of especially hardwood resources found in the alpine terrain.

Linkages with other institutions such as the National Museums of Kenya (NMK), Forest Department (FD), Kenya Marine and Fisheries Research Institute (KMFRI) as well as the Fisheries Department exist through a series of Memorandums of Understanding (MOUs). Such linkages are vital in enforcement of international convention obligations such as CITES. Illegal trade monitoring cannot be done adequately by a single institution and requires exploitation of such linkages between institutions working with biodiversity such as these above. Strengthening of linkages further to enhance illegal and legal trade monitoring and enforcement of bans of sale of various species is clearly required in Kenya to keep its obligations under CITES. Other institutions dealing with Plant protection also need to be brought into the picture of CITES obligations enforcement. Such institutions such as the National Agriculture Research system (NARS) need to have a bigger role in issuing CITES permits for trade in CITES-listed plants. This area has been particularly weak and will require strengthening.

Dissemination of material on work previously carried out is an area that needs looking into if the research work is to have an impact. Access to work done on trade in wildlife whether legal or illegal was a major handicap during the course of writing this report. Numerous numbers of reports have been generate on various aspects of wildlife management in general and it is with deep regret that such material is unavailable to researchers within the country.

The current legislation on wildlife is a little outdated and requires updating. An attempt was made in 1997 (the Draft Wildlife Bill discussed in this report) but this has since been thrown out of the approval process. New efforts need to be instituted to reactivate the process of drafting a new draft bill that reflects Kenya's engagements in international agreements and conventions such as CITES. This process requires independence from organisational reforms that are ongoing in KWS.

KWS experiences a number of problems in the implementation of CITES. Apart from the lack of or insufficient national legislation particularly regarding penalties, there is noted increase in issuance of irregular documents, lack of insufficient border control, extensive fraud, lack of sufficient co-ordination with enforcement agencies (including customs and the police), insufficient communication with the secretariat and lack of insufficient control of internal wildlife trade. Some of the reasons behind these problems are sighted as lack of sufficient political will (particularly at high level), lack of resources (be they financial, technical and staff) and a general lack of information for the public (including environmental NGOs and other wildlife users).

Table 6 Types of Fraud in Kenya

Without CITES Documents	
Smuggling	<ul style="list-style-type: none"> <input type="checkbox"/> Through a border post without customs or by a point without control <input type="checkbox"/> Through a border post, hiding the specimens <input type="checkbox"/> luggage of travellers <input type="checkbox"/> under clothes of travellers <input type="checkbox"/> inside vehicles <input type="checkbox"/> using boats or planes <input type="checkbox"/> inside containers <input type="checkbox"/> in crates containing dangerous animals (allegedly or not) <input type="checkbox"/> By post <input type="checkbox"/> Eggs (parrots, birds of prey, etc) <input type="checkbox"/> Dead specimens (skins or stuffed animals) <input type="checkbox"/> Live reptiles <input type="checkbox"/> Ivory <input type="checkbox"/> Medicines (rhino horn, tiger bone, ginseng) <input type="checkbox"/> Live plants
With Falsified CITES Documents	
Non-valid CITES documents	Documents issued by a competent management authority but not containing all the required information or including irregularities
No correspondence between shipment and the CITES document	<ul style="list-style-type: none"> <input type="checkbox"/> Modification of external appearance of specimen <input type="checkbox"/> False declaration <input type="checkbox"/> Pay-off of officials
Re-export of specimens different from those imported	Non-CITES documents including copies, photocopies, veterinary certificates, attestations etc.
Other types of fraud	<ul style="list-style-type: none"> <input type="checkbox"/> The purpose of the import is commercial (appendix I specimens) <input type="checkbox"/> False declaration of breeding in captivity or artificial propagation <input type="checkbox"/> Pre-convention <input type="checkbox"/> False scientific activities <input type="checkbox"/> Origin of the specimens <input type="checkbox"/> Internal trade <input type="checkbox"/> Fraud on marks (tags, rings, etc) <input type="checkbox"/> Use of non-party states <input type="checkbox"/> Substitution of specimens

Great successes of investigations, seizures and prosecutions have occurred in the realm of CITES law enforcement. A result in detecting and prosecuting CITES crime is a great success when one considers all the other issues that are priorities for enforcement agencies, such as countering the drug trade and being cost effective. With limited resources, prioritisation is critical and therefore establishing methods to focus resources more effectively has shown to deliver results, in terms of successful investigation and prosecution.

Control of fraud is possible to a large extent through border control, control of internal trade, investigations, registration of specimens and control of breeding operations and nurseries. Training personnel manning border points and points of entry has proved successful in Kenya. The East African Enforcement Capacity Building programme is one such activity that focuses on activities and encouragement at a basic level that can produce significant results. A number of activities have recently been undertaken in Kenya to improve CITES law enforcement, involving collaboration between several government agencies and TRAFFIC. These included intelligence gathering, co-ordinated enforcement action, training, cross-border trade intelligence and circulation of a newsletter to keep enforcers up to date on developments. Proactive and assisted intelligence gathering and investigations resulted within weeks

in the seizure of rhino horns. There were significant results in the two months that followed a CITES training workshop, with seven seizures, including a large ivory seizure.

Regulation of trade in wildlife and wildlife products has been fairly successful in Kenya. It has also been subject to changes in international focus, in domestic and national policy as well as subject to many institutional changes. These have sometimes had an impact – negative or positive on the status of the wildlife conservation in Kenya. But on the whole, despite the lack of explicit mention of CITES provisions in the current wildlife legislation, policy measures in place have so far been able to address concerns on trade in endangered species, sustainable utilisation and conservation of wildlife resources.

Kenya is yet to enact legislation implementing the Lusaka Agreement; an agreement on cooperative enforcement operations directed at illegal trade in wild fauna and flora. A permanent task force is entrusted with the task of eliminating illegal trade in wild fauna and flora. It would prove highly beneficial for Kenya to invoke the Lusaka agreements provisions to its advantage especially in areas where the wildlife resource is trans-boundary as all three East African countries are a party to this agreement.

By and large, KWS has succeeded in managing Kenya's wildlife resources. It has succeeded in keeping trade at a minimum as is evident from KWS trade records as well as other trade records and reports e.g. TRAFFIC Network reports, IUCN reports and others. Numerous efforts have been put in place as is evident in Kenya's stand on the CITES elephant debate and though there are some teething problems the situation is one of hope for conservationists that Kenyan species are not quickly headed for extinction.

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ANNEX I

National Parks, National Reserves, and Marine Parks and Reserves in Kenya

National Park	Size (sq. km)	District	Year Gazetted
Aberdares	715	Nyeri	1950
Amboseli	392	Kajiado	1974
Arabuko Sokoke	6	Kilifi	1991
Central Island	5	Turkana / Marsabit	1983
Chyulu	471	Machakos	1983
Hell's Gate	68	Nakuru	1984
Kora	1,787	Tana River	1989
Lake Nakuru	188	Nakuru	1967
Longonot	52	Nakuru	1983
Malka Mari	876	Mandera	1989
Meru	870	Meru	1966
Mount Elgon	169	Trans-Nzoia	1968
Mount Kenya	715	Nyeri / Meru	1949
Nairobi	117	Nairobi	1946
Ndere Island	4	Kisumu	1986
Ol Donyo Sabuk	18	Machakos	1967
Ruma	120	South Nyanza	1983
Saiwa Swamp	2	Trans-Nzoia	1974
Sibilo	1,570	Marsabit	1973
South Island	39	Marsabit	1983
Tsavo East	11,747	Taita Taveta / Kitui	1948
Tsavo West	9,065	Taita Taveta	1948

National Reserve	Size (sq. km)	District	Year Gazetted
Arawale	553	Garissa	1974
Bisanadi	606	Isiolo	1978
Boni	1,339	Garissa	1976
Buffalo Springs	131	Isiolo	1963
Dodori	877	Lamu	1976
Kakamega	45	Kakamega	1985
Kamnrock	88	Baringo	1970
Kitui North	745	Kitui	1979
Kitui South	1,833	Kitui	1979
Laikipia	165	Laikipia	1991
Lake Bogoria	107	Baringo	1970
Losai	1,806	Marsabit	1976
Marsabit	1,558	Marsabit	1962
Maasai Mara	1,672	Narok	1974
Mwea	68	Embu	1976
Nasolot	92	West Pokot	1979
Ngai Ndethya	212	Machakos	1976
Rahole	1,270	Garissa	1976
Rimoi	66	Elgeyo Marakwet	1983
Samburu	165	Samburu	1963
Shaba	239	Isiolo	1974
Shimba Hills	192	Kwale	1968

S. Turkana	1,092	Turkana	1979
Tana River Primate	169	Tana River	1976

Marine Parks & Reserves	Size (sq. km)	District	Year Gazetted
Malindi National Park	6	Malindi	1968
Malindi National Reserve	213	Malindi	1968
Mombasa National Park	10	Mombasa	1986
Mombasa National Reserve	200	Mombasa	1968
Kisite / Mpunguti NP	28	Kwale	1978
Mpunguti NR	11	Kwale	1978
Watamu National Park	10	Kilifi	1968
Watamu National Reserve	32	Kilifi	1968
Kiunga Marine NR	250	Lamu	1979

Sanctuary	Size (sq. km)	District	Year Gazetted
Maralal	6	Samburu	1968

ANNEX II

Game Schedules

First Schedule

Game Animals

Part I

- | | |
|-------------------------------------|---------------------------------|
| <input type="checkbox"/> Elephant | Loxodonta africana (Blumenbach) |
| <input type="checkbox"/> Leopard | Panthera pardus (L.) |
| <input type="checkbox"/> Lion | All races of Panthera leo (L.) |
| <input type="checkbox"/> Rhinoceros | Diceros bicornis (L.) |

Part II

- | | |
|--|--|
| <input type="checkbox"/> Bongo | Boocerus euryceros (Ogilby) |
| <input type="checkbox"/> Giraffe, Reticulated | Giraffa Camelopardalis reticula (De Winton) |
| <input type="checkbox"/> Giraffe, Rothschild | Giraffa Camelopardalis Rothschild Krumbiegel |
| <input type="checkbox"/> Hartebeeste, Kenya | Alcelaphus buselaphus Kenyae (Günther) |
| <input type="checkbox"/> Kudu, Greater | |
| <input type="checkbox"/> Monkey, Black & White Colobus | |
| <input type="checkbox"/> Oryx, Beisa | |
| <input type="checkbox"/> Oryx, Fringe-ear | |
| <input type="checkbox"/> Zebra, Grevy | |

Part III

- | | |
|---|--|
| <input type="checkbox"/> African wild cat | <input type="checkbox"/> Impala |
| <input type="checkbox"/> Buffalo | <input type="checkbox"/> Jackal |
| <input type="checkbox"/> Bushbuck | <input type="checkbox"/> Klipspringer |
| <input type="checkbox"/> Civet | <input type="checkbox"/> Kudu, Lesser |
| <input type="checkbox"/> Crocodile | <input type="checkbox"/> Zebra, Common |
| <input type="checkbox"/> Dikdik | <input type="checkbox"/> Monkey Blue or Syke's |
| <input type="checkbox"/> Duiker, Red or Harvey's | <input type="checkbox"/> Monkey, Putty-nosed |
| <input type="checkbox"/> Duiker, Blue | <input type="checkbox"/> Monkey, Vervet |
| <input type="checkbox"/> Duiker, Foster's or Hooks, Black-fronted | <input type="checkbox"/> Oribi, Cotton's and Haggard's and Kenya |
| <input type="checkbox"/> Duiker, Grey | <input type="checkbox"/> Ostrich |
| <input type="checkbox"/> Eland | <input type="checkbox"/> Otter, River and Clawless |
| <input type="checkbox"/> Gazelle, Grant's | <input type="checkbox"/> Reedbuck, Bohor |
| <input type="checkbox"/> Gazelle, Thompson | <input type="checkbox"/> Reedbuck, Chanler's |
| <input type="checkbox"/> Genet | <input type="checkbox"/> Steenbok |
| <input type="checkbox"/> Gerenuk | <input type="checkbox"/> Suni |
| <input type="checkbox"/> Giant Forest Hog | <input type="checkbox"/> Topi |
| <input type="checkbox"/> Giraffe, Common | <input type="checkbox"/> Warthog |
| <input type="checkbox"/> Hartebeest, Coke's | <input type="checkbox"/> Waterbuck, Common |
| <input type="checkbox"/> Hippopotamus | <input type="checkbox"/> Waterbuck, Defassa |
| <input type="checkbox"/> Honey-badger (Ratel) | <input type="checkbox"/> Wild Dog |
| <input type="checkbox"/> Hyrax, Rock | <input type="checkbox"/> Wildebeeste |
| <input type="checkbox"/> Hyrax, Tree | |

Second Schedule

Game Birds

- Geese and ducks
- Francolins, Partridges, Quail, Guinea Fowls and Spurfowls
- Lesser Bustards
- Snipe
- Sandgrouse
- Pigeons and Doves

Third Schedule

Protected Animals

- Any game animal which is obviously immature, i.e. not fully grown
- Any female game animal when it is either:
 - (a) clearly or seemingly pregnant,
 - (b) in a condition indicating that it is suckling young, whether or not the young are apparent, or
 - (c) accompanied by immature young, whether dependent or not.
- Albino and melanic animals of whatever species
- All birds other than Game Birds, or queleas (genus *Quelea*) and Mouse birds (genus *Colinus*)
- Any animal of any of the following species, sub-species or groups:
 - Aardvark
 - Aardwolf
 - Bat-eared Fox
 - Caracal or Lynx
 - Cheetah
 - Dugong
 - Duiker, Abbott's
 - Duiker, Yellow-backed
 - Golden cat
 - Hartebeeste, var Jackson's Lelwel or Neumann's