

# **LEGAL AND INSTITUTIONAL ARRANGEMENTS FOR DAMAGE CAUSED BY WILDLIFE IN KENYA AND BOTSWANA**

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A Thesis Submitted in the School of Law (Faculty of Commerce, Law and Management)  
University of the Witwatersrand, Johannesburg, in fulfillment of the requirements for the  
Degree of Doctor of Philosophy in Law

Johannesburg, 2009

## ABSTRACT

In both Kenya and Botswana, wildlife is a valuable natural resource in terms of its economic value, nutritional value, ecological value, medicinal value, educational and scientific value, as well as recreational and socio-cultural value. Despite this beneficial value, however, wild animals in both countries also cause damage and impose heavy losses on society. They also disrupt peaceful existence in local communities living in close proximity to wildlife areas. The damage they cause includes attacks on people and livestock, destruction of crops and other property as well as infrastructure. This has resulted in a human-wildlife conflict, with people having negative attitudes towards wildlife. Initially people seem to be the victims when wild animals attack them or destroy their property. Later, the animals are the real victims when people in retaliation start attacking, ensnaring or poisoning them. Contrary to the belief that it contributes to poverty alleviation, many people in the local communities in wildlife areas strongly believe wildlife has contributed to their poverty. Unless the governments of both Kenya and Botswana maintain efficient legal and institutional arrangements for wildlife damage, the future of wildlife conservation in both countries is bleak. These arrangements, if effectively enforced, have the potential to: reduce retaliatory killing of wildlife; ensure incidents of wildlife damage are reported; alleviate the losses and suffering associated with wildlife damage; and bolster public support for conservation programmes. It is encouraging that both countries recognize wildlife damage as a major problem and have put in place legal and institutional arrangements to address this problem.

This study evaluated the legal and institutional arrangements in Kenya and Botswana on wildlife damage, assessing their suitability, adequacy as well as their effectiveness. While several studies have been conducted on wildlife damage, most of them mainly focus on institutional arrangements and the actual abatement measures adopted, few of them approach the subject from a legal standpoint, in the way this study does. Those studies do not, for instance, discuss the legal basis of the need for legal arrangements for wildlife damage alleviation and the various approaches and actual forms of legal intervention. This author through the use of semi-structured interviews, self-administered questionnaires, focus group discussions, and literature survey investigated the problem of

wildlife damage in Kenya and Botswana. A central part of this investigation was on the types of damage, the animals involved, whether and how this problem has influenced public attitudes towards wildlife conservation, and suggestions for solution. Research for this study was conducted in the Laikipia region of Kenya and the Okavango delta region of Botswana between January and December 2006. This researcher interviewed 44 respondents from each country, comprising households from the local communities within wildlife areas, senior ranking government officials, leaders of NGOs that actually work on wildlife issues, experts in natural resource management as well as eminent scholars in environmental and natural resources law and policy.

Research for this study established that while the governments of both Kenya and Botswana have established certain legal and institutional frameworks on wildlife damage, there are factors that hamper their efficient operation. These factors include the relevance and suitability of the existing laws, as well as their acceptability to stakeholders; lack of appropriate policy frameworks and dispute resolution mechanisms to support the regulatory regime; institutional problems such as overlapping responsibilities, lack of adequate resources and lack of motivation among staff. These factors together with others have continued to be a major challenge to the quest for appropriate and effective legal and institutional response to the problem of wildlife damage in both countries. The study found that in both countries the law vests in the state the power to manage wildlife wherever it occurs within the national boundaries. Botswana's community-based wildlife management model, however, offers more incentives for conservation to local communities than Kenya's state-centered system which largely disregards the role of local communities in wildlife matters.

This author has argued that local communities are critical stakeholders and the success of any conservation programmes will depend on their goodwill. Besides, while the state has a duty to protect wildlife from harm by humans, it also has a corresponding duty to protect humans and their property from damage by wild animals and to ensure that wildlife does not undermine the people's livelihoods and development. This is, however, not usually the case as in practice the state in both countries, and especially in Kenya,

seems to favour wild animals at the expense of the people. The study has recommended certain reforms which need to be undertaken if Kenya and Botswana have to maintain appropriate and efficient legal and institutional arrangements on wildlife damage.

## DECLARATIONS

I declare that this thesis is my original work and has not been presented before for a degree in this or any other university.

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Nixon Wanyama Sifuna

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Date

This thesis has been submitted for examination with my approval as university supervisor

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Prof. Vincent O. Nmehielle  
School of Law  
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Johannesburg

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Date

## **DEDICATION**

This work is dedicated firstly to the peasants who toil in the villages of Africa, endeavouring to tend their dear crops to maturity or pasture their livestock, while constantly threatened by wildlife ravage, in circumstances of inappropriate or insufficient policy, legal and institutional frameworks. It is also dedicated to the wild animals that have been maimed or killed while in search of water and pasture, apparently in the quest of reclaiming their habitat lost to human encroachment.

## ACKNOWLEDGEMENTS

My unreserved thanks are firstly due to my God, the one and only; who has always been by my side in this academic sojourn that begun in a remote village of Bungoma District in Western Kenya many years ago. Secondly and very important, to my very able supervisor Prof Vincent Nmehielle of the University of the Witwatersrand School of Law, without whose patience, firmness, guidance and vast knowledge this work would not have been possible. He is worthy of praise in all aspects of this work. Thirdly, to the University of the Witwatersrand for affording me a Ph.D admission and later granting me a prestigious scholarship award (the University Council Merit Scholarship) as well as a research grant for this study.

Many thanks are also due to the following scholars from whom I had useful comments on my research: Prof Iain Currie and Dr Pamela Andanda of Wits Law School; Dr Noah Sitati, Dr Paul Omondi and Prof F.X Njenga of Moi University; Prof Francis Situma of the University of Nairobi; Carl Bruch and Bruce Myres of the Environmental Law Institute, Washington DC; and Peter Veit of the World Resources Institute, Washington DC. I cannot forget Prof Charles Okidi my first environmental professor who midwived my environmental law career, Prof John Bonine, Ms Jennifer Gleason and the entire fraternity of the Environmental Law Alliance Worldwide (ELAW) for responding to my research queries on the network.

Lastly, my special thanks to my family for their steadfast support and patience as I read for this degree; and to my research assistants, the wildlife authorities of Kenya and Botswana as well as all the respondents in these countries, who either responded to my questionnaires or attended my interviews and focus group discussions.

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**LIST OF WILDLIFE RESERVES IN KENYA**

Aberdare National Park  
Amboseli National Park  
Arewale National Reserve  
Bisanadi National Reserve  
Boni National Reserve  
Buffalo Springs National Reserve  
Central Island National Park  
Chyulu Hills National Park  
Diani/Chale Marine National Park  
Dodori National Reserve  
Hell's Gate National Park  
Kerio Valley National Reserve  
Kisite Marine National Park  
Kisumu Impala Sanctuary  
Kiunga Marine National Reserve  
Kora National Reserve  
Laikipia Game Sanctuary  
Lake Bogoria National Reserve  
Lake Kamnarok National Reserve  
Lake Nakuru National Park  
Losai National Reserve  
Malkamari National Park  
Maralal Game Sanctuary  
Marsabit National Reserve  
Masai Mara National Reserve  
Meru National Park  
Mombasa National Park  
Mpunguti Marine National Park  
Mt Elgon National Park

Mt Kenya National Park  
Mt Longonot National Park  
Mwalughanje Elephant Sanctuary  
Mwea National Reserve  
Mwingi National Reserve  
Nairobi National Park  
Nasalot National Reserve  
Ndere Island National Park  
Ol Donyo Sabuk National Park  
Rahole National Reserve  
Ruma National Park  
Saiwa Swamp National Park  
Samburu National Reserve  
Shaba National Reserve  
Shimba Hills National Reserve  
Sibiloi National Park  
South Island National Park  
South Kitui National Reserve  
South Turkana National Reserve  
Sweetwaters Rhino Sanctuary  
Tana River Primate Reserve  
Tsavo East National Park  
Tsavo West National Park  
Watamu Marine Park

**LIST OF WILDLIFE RESERVES IN BOTSWANA**

Central Kalahari Game Reserve

Chobe National Park

Gaborone Game Reserve

Kgalagadi National Park

Khama Rhino Sanctuary

Khutse Game Reserve

Makgadikgadi Pans-Nxai Pans National Park

Manyelanong Game Reserve

Mashatu Game Reserve

Maun Game Sanctuary

Moremi Game Reserve

**LIST OF WILD ANIMALS MENTIONED IN THIS STUDY AND THEIR  
ENGLISH, SCIENTIFIC AS WELL AS COMMON NAMES IN KENYA'S AND  
BOTSWANA'S NATIONAL LANGUAGES**

<b>English</b>	<b>Scientific name</b>	<b>Tseswana*</b>	<b>Swahili**</b>
<b>Name</b>		<b>Name</b>	<b>Name</b>
Antelope	<i>Hippotragus equinus</i>	Kwalata	Swara
Baboon	<i>Papio anubis</i>	Tshwene	Tumbili
Buffalo	<i>Syncerus caffer</i>	Nare	Nyati
Cheetah	<i>Acinonyx jubatus</i>	Lengau	Duma
Crocodile	<i>Crocodilus niloticus</i>	Kwena	Mamba
Duiker	<i>Sylvicapra grimmia</i>	Phuti	Nsya
Eland	<i>Taurotragus oryx</i>	Phofu	Pofu
Elephant	<i>Loxodonta africana</i>	Tlou	Ndovu
Gemsbok	<i>Oryx gazella</i>	Kukama	Choroa
Giraffe	<i>Giraffa Camelopardalis</i>	Thutlwa	Twiga
Hartebeest	<i>Alcephalus buselaphus</i>	kgama	Kongoni
Hippopotamus	<i>Hippopotamus amphibious</i>	Kubu	Kiboko
Hirola	<i>Beatragus hunteri</i>	Hirola	Hirola
Hyena	<i>Hyaena brunnea</i>	Phiri	Fisi
	(Brown Hyena)		
	<i>Crocuta crocuta</i>	Phiri	Fisi
	(Spotted Hyena)		
Impala	<i>Aepyceros melampus</i>	Phala	Swalapala
Leopard	<i>Panthera pardus</i>	Nkwe	Chui
Lion	<i>Panthera leo</i>	Tau	Simba
Monkey	<i>Cercopithecus mitis</i>	moHwele	Tumbili
Rhinoceros	<i>Ceratotherium simum</i>	moGohu	Kifaru
	(White Rhino)		
	<i>Diceros bicornis</i>	Tshukudu	Kifaru
	(Black Rhino)		

Sitatunga	<i>Tragelaphu spekei</i>	Naakong	Nzoe
Springbok	<i>Antidorcas masupialis</i>	Tshephe	Paa
Warthog	<i>Phacochoerus aethiopicus</i>	Mathinthinyane	Ngiri
Wild dog	<i>Lycaon pictus</i>	leKanyane	Mbwa mwitu
Wildebeest	<i>Onnochaetes taurius</i>	Kgogong	Nyumbu
Zebra	<i>Equus burchelli</i>	Pitse yanaga	Punda milia

\* Botswana's national language

\*\*Kenya's national language

N/B English is the official language in both countries



## LIST OF ACRONYMS & ABBREVIATIONS

ACTS-	African Center for Technological Studies
AFESG-	African Elephant Specialist Group
Art-	Article
Biodiversity-	Biological Diversity
BP-	Botswana Pula (Botswana's currency)
Cap-	Chapter (Under Laws of Kenya)
CBNRM-	Community Based Natural Resources Management
CBO-	Community Based Organization
Ch-	Chapter (Under Laws of Botswana)
CHAs-	Controlled Hunting Areas
CITES-	Convention on Trade in Endangered Species
CWS-	Community Wildlife Service
DWCC-	District Wildlife Compensation Committee
DWNP-	Department of Wildlife and National Parks
EIA-	Environmental Impact Assessment
EMCA-	Environmental Management and Co-ordination Act
FAO-	Food and Agriculture Organization
GDP-	Gross Domestic Product
GEF-	Global Environment Facility
GOK-	Government of Kenya
GOB-	Government of Botswana
IPAR-	Institute of Policy Analysis and Research
IUCN-	International Union for the Conservation of Nature and Natural Resources (Now the World Conservation Union)
KNPO-	Kenya National Parks Organization
KWS-	Kenya Wildlife Service
KSH-	Kenya Shilling (Kenya currency)
MENR-	Ministry of Environment and Natural Resources
MERC-	Maasai Environmental Resource Coalition

MEWT-	Ministry of Environment, Wildlife and Tourism
NCS-	National Conservation Strategy
NEAP-	National Environment Action Plan
NGO-	Non Governmental Organization
OECD-	Organization for Economic Co-operation and Development
PAs-	Protected Areas
PAC-	Problem Animal Control
Par-	Paragraph
Res-	Resolution
UN-	United Nations
UNDP-	United Nations Development Programme
UNEP-	United Nations Environment Programme
US-	United States
Vol-	Volume
WCED-	World Commission on Environment and Development
WCMA-	Wildlife (Conservation and Management) Act
WCMD-	Wildlife Conservation and Management Department
WCNPA-	Wildlife Conservation and National Parks Act
WMAs-	Wildlife Management Areas
WWF-	World Wildlife Fund (Now World Wide Fund For Nature)

**LIST OF CASES CITED**

*Abdikadir Sheikh Hassan v. Kenya Wildlife Service* (2004) KLR 214.

*Anyama Mogona Soundo v. The Accounting Officer Ministry of Tourism and Wildlife*  
High Court Misc Civ Appl No. 63 of 1990 (Mombasa) (Unreported).

*Francis Kemai & Others v. Attorney General & 3 Others* High Court Civil Case No. 238  
of 1999 (OS) (Nairobi) (Unreported).

*Ngera & Another v. Kenya Wildlife Service* (2004) KLR 1.

*Sickman & Others v. United States* 184 F.2d 616 (7<sup>th</sup> Circuit 1950).

*Roy Sesana & Others v. Government of Botswana* High Court Misc Civil Application No.  
52 of 2000 (Lobatse) (Unreported).

## LIST OF LEGISLATION AND LAWS CITED

### **Kenya**

Anti-Corruption and Economic Crimes Act of 2003, Act No. 3 of 2003

Environmental Management and Co-ordination Act, No. 8 of 1999

Forests Act of 2005, Act No. 9 of 2005

Forests Act of 1962, Cap 385 Laws of Kenya (repealed)

Game Ordinance of 1898, Act No. 4 of 1898 (repealed)

Legal Notice No. 120 of 1977 The Wildlife (Conservation and Management) (Prohibition on Hunting of Game Animals) Regulations (1977).

Legal Notice No. 101 of 1983 National Parks of Kenya Act of 1962, Cap 377 (repealed)

National Parks of Kenya Ordinance of 1945, Act No. 9 of 1945 (repealed)

Physical Planning Act of 1996, Act No. 6 of 1996

Public Officers Ethics Act of 2003, Act No. 4 of 2003

Water Act of 2002, Act No. 8 of 2002

Wild Animals Protection Act of 1962, Cap 376 (repealed)

Wild Animals Protection Ordinance of 1951 (repealed)

Wildlife (Conservation and Management) Act, Cap 376

Wildlife (Conservation and Management) (Amendment) Bill of 2007.

### **Botswana**

Environmental Impact Assessment Act of 2005, Act No. 6 of 2005

Fauna Conservation Act of 1961 (Act 21 of 1961) (repealed)

Forest Act of 1976, Cap 38: 04

National Parks Act of 1968 (Act 48 of 1967) (repealed)

Town and Country Planning Act of 1980, Cap 32: 02

Wildlife Conservation and National Parks Act, No. 28 of 1992, 38:01)

**National Constitutions**

Constitution of Kenya

Constitution of Botswana

Constitution of Uganda

Constitution of Malawi

Constitution of China

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## CHAPTER ONE

### INTRODUCTION AND BACKGROUND TO WILDLIFE DAMAGE IN KENYA AND BOTSWANA

#### 1.1 INTRODUCTION

The term “wildlife” in common parlance is taken to mean both wild animals and wild birds generally. In the context of this study, however, it is restricted to wild animals only. Wildlife therefore means undomesticated animals found in the natural habitats. The present and future survival of wildlife in many parts of the world and especially in African countries depends in a large measure on the favour of the people, particularly local communities, in their everyday contact with it. This is because while wildlife is an important resource for economic and social development, some wild animals do cause damage to people and property such as livestock and infrastructure.<sup>1</sup> The resultant losses often arouse negative passions against wildlife, such that the people are unlikely to support conservation. These negative passions sometimes lead to retaliatory attacks on the animals, some of which are protected by international instruments.

It is important therefore that there are appropriate and efficient policy, legal and institutional frameworks that address wildlife damage. The absence of such frameworks, or their inefficiency, is likely to increase tension between wildlife authorities and local communities when people adopt measures that the authorities do not approve of. The

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<sup>1</sup> In the context of this study, “wildlife damage” is construed to mean any activity of an individual or group of wild animals that during their foraging activities outside wildlife protected areas causes crop loss, livestock injury or death, human injury or death, or destruction of physical structures such buildings and water pipes. The term therefore does not include incidents that occur within the boundaries of wildlife protected areas.

trend is that initially, incidents of wildlife depredation result in heavy losses to people, who appear to be the victims, but later wild animals become the real victims and suffer greatly when people in turn retaliate by poisoning, attacking them or ensnaring them using traps or manholes.<sup>2</sup> Such retaliatory responses from local communities usually attract adverse reactions from state and governmental agencies such as arrests and prosecution of the locals. These direct harmful interactions between humans and wildlife are referred to as the human-wildlife conflicts.<sup>3</sup>

Wildlife damage is therefore a major source of human-wildlife conflict as well as a delicate and potentially explosive issue for policy makers and legislators that ought to be addressed urgently and meticulously.<sup>4</sup> It is indeed one of the major challenges facing wildlife conservation in Africa today and one which cannot just be wished away. With widespread damage to society by wildlife, people increasingly view wildlife as a curse and obstacle to development. This is because humans are a very important source of development capital in society and comprise the electorate, which is an inevitable component of government. Positive attitudes of people towards wildlife damage and conservation are therefore an integral part of any meaningful conservation strategy.

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<sup>2</sup> See N Sifuna 'Providing Compensation for Damage Caused by Wildlife: A Case Study of Kenya with Particular Reference to Elephants' 20/1 *J of Social Development in Africa* (2005) 7, 11. Some of these animals on the other hand are magnificent and attract a lot of tourists who bring in millions in foreign exchange to the exchequer hence the need to protect and conserve wildlife while at the same time addressing human needs and concerns.

<sup>3</sup> The term 'human-wildlife conflict' refers to direct harmful interactions between humans and wildlife. The Kenya Wildlife Service (KWS) in one of its reports define a human-wildlife conflict as including 'any and all disagreements or contentions relating to destruction, loss of life or property, and interference with rights of individuals or groups that are attributable directly or indirectly to wild animals.' See KWS, *Report of the Five-person Review Committee on 'Human-Wildlife Conflict'* (1995) 8.

<sup>4</sup> L Emerton 'The Nature of Benefits and the Benefits of Nature: Why Wildlife Conservation has not Economically Benefited Communities in Africa' D Hulme & M Murphree (eds) *African Livelihoods: The Promise and Performance of Community Conservation* (2001) 207, 208.

Commenting on the effect of the wildlife menace on the people's conservation attitudes, Omondi says 'Experiences of wildlife problems cause a very permanent feeling, especially where it involves loss of human life or an entire source of livelihood. In communities with subsistence economies even small losses can be of great economic importance and can generate negative attitudes towards wildlife and conservation in general.'<sup>5</sup> Graham et al observe that wildlife damage is a particularly controversial issue since 'the resources involved are of economic value and the predators involved are often legally protected.'<sup>6</sup> This, he further notes, attracts retaliatory responses from the people through persecution of wild animals and opposition to wildlife conservation programmes.<sup>7</sup> The problem of wildlife damage is compounded by the fact that while wildlife is in many countries treated as state property, it is a fugitive resource that does not recognize tenurial and property boundaries and whose movement cannot be restricted to national parks and reserves.

The damage occasioned can be classified into two categories, namely, direct damage and indirect damage. Direct damage comprises damage which wild animals actually commit, while indirect damage is that which is incidental and results not through direct causative action on the part of the animal but follows from the victim's perception. While both types are worthy discussing, this study focuses on direct damage. The damage may be classified into four categories namely: crop damage, livestock predation, human injury

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<sup>5</sup> P Omondi *Wildlife-Human Conflict in Kenya: Integrating Wildlife Conservation with Human Needs in the Maasai Mara Region* (Unpublished D.Phil Thesis McGill University 1994) 70.

<sup>6</sup> K Graham, AP Beckerman & S Thirgood 'Human-predator Conflicts: Ecological Correlates, Prey Losses and patterns in Management' (2005) 122 *Biological Conservation* 159.

<sup>7</sup> Ibid 160.

and death; and damage to other property.<sup>8</sup> The most common incidents include:<sup>9</sup> Killing and wounding people; killing and wounding livestock and other domestic animals as well as fowl; destruction and eating of crops; destruction of property such as houses, food stores and granaries; and destruction of infrastructure.

Indirect damage is mainly in terms of psychological stress<sup>10</sup> and disruption of social life. This comprises the time spent by the people guarding property; resources expended on such guarding such as firewood, kerosene and torch batteries; and restrictions on movement. Others include foregone activities as a result of animal terror, for instance children missing school<sup>11</sup> or spouses abandoning their conjugal obligations to stand guard in the field. While wild animals are known to kill humans, such incidents are rare. There are two major reasons why human deaths by wildlife are rare: (i) Humans unlike domestic animals are careful and can easily avoid harm; and (ii) humans have co-existed with wildlife for a long time hence they know how to avoid being harmed by wild animals. The most common forms of wildlife damage therefore are injury and death of domestic stock as well as crop damage. While wildlife damage critically undermines economic productivity, livelihoods<sup>12</sup> and peaceful existence of humans, the fear of

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<sup>8</sup> EE Esikuri *Spatio-Temporal Effects of Land Use Changes in a Savanna Wildlife Area of Kenya* (Unpublished PhD Thesis Virginia State University 1998) 100.

<sup>9</sup> J Waithaka 'The Elephant Menace' (1993) 96/2 *Wildlife Conservation* 62. See also Emerton (note 5 above).

<sup>10</sup> A Nelson, P Bidwell & C Sillero-Zubiri 'A Review of Human-Elephant Conflict Management Strategies: People & Wildlife Initiative' (2003) Wildlife Conservation Research Unit, Oxford University, <<http://www.peopleandwildlife.org.uk/crmanuals/HumanElephantConflictP&WManual>> Last accessed on 22 December 2007.

<sup>11</sup> Children miss school for of attacks or to stay home and help their parents in guarding. Indeed areas of rampant wildlife terror have recorded reduced school attendance; See Nelson (note 11 above).

<sup>12</sup> Kamugisha et al define the term 'livelihoods' as a means of earning a living, implying availability of and access to production resources; JR Kamugisha, ZA Ogutu & M Stahl *Parks and People: Conservation and Livelihoods at Crossroads - Four Case Histories* (1997)190.

attacks also disrupts normal life when people stay indoors and children keep away from school for fear of being attacked.<sup>13</sup>

Conservationists have blamed the cause of damage on humans, whom they accuse of encroaching and carrying out human activities on what is wildlife's natural habitat.<sup>14</sup>

They argue that such people ought not to be surprised when elephants trample their crops or destroy their property, or even attack them.<sup>15</sup> The people on the other hand accuse wild animals of trespassing into areas of human habitation and the government for failing to reign in rogue animals. The problem of wildlife damage is compounded by the fact that many areas meant for human settlement and farming have been alienated for wildlife conservation often without the participation or consent of the local communities, and sometimes involving the forcible ejection of people.<sup>16</sup> Some of these areas are places of high potential for development activities or having well-established traditional land use practices. This has given rise to a raging human-wildlife conflict.

The practical solution lies not in blaming the people or the animals but in establishing appropriate legal and institutional arrangements on wildlife damage, while at the same time adopting benign abatement measures. Admittedly the human-wildlife conflict cannot be resolved; what can be solved is the rage the people have towards the animals. While humans have responsibility for animal welfare, human welfare is paramount and should

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<sup>13</sup> From interviews by this author in Kenya between January and June 2006.

<sup>14</sup> Sifuna (note 2 above) 8.

<sup>15</sup> But see GM Norton 'Wildlife Losses in Kenya: An Analysis of Conservation Policy' (1994) 13/1 *Natural Resource Modeling* 13, 19; who observes that there is a general acceptance among conservationists the world over that it is possible to reconcile the needs of the local people with those of wildlife.

<sup>16</sup> E Barrow & M Murphree 'Community Conservation: From Concept to Practice' D Hulme & M Murphree (eds) *African Wildlife and Livelihoods: The Promise and Performance of Community Conservation* (2001) 24.

be given priority. Notably, while states have, pursuant to the doctrine of permanent sovereignty over natural resources, the duty to safeguard wildlife within their territories, they also have a corresponding duty to ensure that these animals do not undermine social life, economic productivity and human livelihoods.

One way they can do this is by establishing measures to arrest the adverse consequences of conservation such as damage by wildlife. In many jurisdictions including Kenya and Botswana, the state has by law vested in itself the control of the wildlife sector. This power entails the right to protect the animals as well as a duty to adopt measures to address the negative costs of conservation, for instance wildlife damage. This can be done by establishing mechanisms on wildlife damage. It is encouraging that both Kenya and Botswana have programmes as well as legal and institutional frameworks in this regard. Indeed wildlife damage control is one of the major initiatives that both governments do undertake in their efforts at reducing human-wildlife conflict.

In almost every jurisdiction where there is wildlife there is a legal framework on wildlife. Wildlife conservation is therefore not just an ecological activity but also a legal and socio-economic activity as well hence having its own legal and social ramifications. Similarly, the problem of wildlife damage is both a policy concern as well as a legal issue requiring legal response. Besides, wildlife damage being one of the major problems facing wildlife, there is no reason why the law should not address such a crucial problem. Given the social function of laws, it is imperative for conservation law to incorporate into conservation, immediate human welfare concerns such as security, food and development

activities. While the law should protect wildlife from harm by people, it should at the same time give priority to human needs and concerns. This is what this study is about. Strict protection, while providing limited opportunity for redress and even self-defence, creates an asymmetrical relationship between people and wildlife. Blaikie & Jeanrenaud identify three approaches that have so far been adopted in conservation efforts particularly in developing countries, namely: the classic approach; the “neo-populist” approach and the “neo-liberal economic” approach.<sup>17</sup>

The “classic” approach focuses on environmental rather than social solutions. It completely ignores human welfare; seemingly due to it being fashioned on western ideas of aesthetics.<sup>18</sup> In many developing countries it is of colonial origin, having been introduced by the colonialists. An example is Kenya’s conservation policy that is state-centered and permits only non-consumptive utilization of wildlife while outlawing all forms of consumptive utilization. Its central policy tool is the protected area system of conservation through the establishment of parks and other protected areas for recreational uses. The “neo-populist” approach is people-oriented, having emerged from the realization of the failures of the “classic” approach with regard to human values.<sup>19</sup> An example is the community conservation systems such as Botswana’s community-based wildlife management policy which allows communities to utilize wildlife on their land and in the Wildlife Management Areas (WMAs), and recognizes traditional user rights. The “neo-liberal economic” approach for its part focuses on the economic benefits and

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<sup>17</sup> See P Blaikie & S Jeanrenaud ‘Biodiversity and Human Welfare’ KB Ghimire & MP Pimbert (eds) *Social Change and Conservation* (1997) 46, 60- 64.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

costs of biodiversity and natural resources.<sup>20</sup> Again the philosophy of Botswana's community-based wildlife management policy is illustrative of this because, unlike Kenya's "non-consumptive" approach, it provides for sustainable consumptive utilization of wildlife resources.

In developing countries, especially in the rural African context such as Kenya's and Botswana's, wildlife conservation should be understood in terms of alleviating poverty and helping the people to meet their basic needs. In developed countries it is usually perceived in terms of wildlife's aesthetic value. This is because while developed countries due to their comparatively higher incomes per capita and associated affluence require wildlife for its natural beauty and recreation and not for their survival as it is the case in developing countries. Akama observes that developing countries are preoccupied with alleviating social-economic problems arising from underdevelopment and poverty 'as manifested in increasing poverty levels among the rural populations, landlessness, famine, starvation and malnutrition, and lack of clean water for domestic use.'<sup>21</sup>

He identifies four fundamental issues that wildlife authorities in developing countries are confronted with in trying to win the support of the local people for wildlife conservation, namely: (a) How to address the increasing negative costs that wildlife imposes on the local communities in terms of depredation, predation and competition for resources; (b) How to conserve wildlife in an environment where the lives of the local people are increasingly threatened by landlessness, poverty, famine, starvation and malnutrition; (c)

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<sup>20</sup> Ibid.

<sup>21</sup> JS Akama 'Wildlife Conservation in Kenya: A Political-Ecological Analysis of Nairobi and Tsavo Regions.' African Development Foundation Research Series (1995) 24.



How to conserve wildlife in the context of increasing inequality in the distribution of the costs and benefits of wildlife conservation among different classes and groups of people;

(d) How to conserve wildlife in an environment where there has been a long history of resentments, suspicions and hostilities among the local people towards state wildlife policies and programmes.<sup>22</sup>

This study evaluates the adequacy as well as effectiveness of the existing legal and institutional arrangements for wildlife damage in Kenya and Botswana. It is divided into eight chapters. Chapter one is an introductory chapter, introducing the subject of this research and providing a background on which the discussion in the subsequent chapters is based. It addresses the key concepts, principles, arguments and issues that intersect the theme of the study; defining the problem of wildlife damage, describing its nature as well as its implications for conservation and development generally. It also sets out a general background to the problem of wildlife damage in Kenya and Botswana. Chapter two gives the history of wildlife management in the two study countries as well as a description of the geographical conditions of these countries with regard to wildlife conservation, highlighting the historical and geographical peculiarities of both countries in this regard. It discusses the history of wildlife management in these countries as well as the history of the agencies responsible for managing their respective wildlife sectors. It then discusses how Kenya's and Botswana's environmental geography fosters the conservation of wildlife. This is because the distribution of wildlife in both countries is largely dependent on geographical conditions such as the physical environment, natural vegetation and climate.

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<sup>22</sup> Ibid.

Chapter three discusses the value of wildlife in Kenya and Botswana in terms of economic, ecological, nutritional, medicinal, educational, scientific, recreational, as well as socio-cultural uses. Chapter four examines the actual nature and extent of the problem of wildlife damage in Kenya and Botswana based on field work conducted by this author for this work during the research period as well as the available secondary data on the issue. It discusses the common types of damage caused by wildlife in these countries; the animals commonly responsible for the damage; and the incidence of such damage as well as its effect on the public attitudes towards conservation. It analyses the findings relative to the theme of the study as well as the research problem and research questions developed for this study, as a way of setting the stage for discussing the need for legal and institutional arrangements in both countries on wildlife damage.

Chapter five flows from the preceding chapters. It discusses the need for legal arrangements on wildlife damage in Kenya and Botswana. It presupposes that the nature of wildlife damage in both countries is critically serious that there needs to be legal arrangements and mechanisms to address it. It first lays a legal basis for addressing the problem of wildlife damage; it then highlights the role of law in addressing this problem and sets out the various forms of legal provisions; and finally examines the general effectiveness of legal intervention as a method of addressing wildlife damage. Chapter six surveys the policy initiatives and measures adopted by state and governmental authorities as well as local communities in Kenya and Botswana to alleviate wildlife damage. It also appraises the commitment of governmental authorities and local

communities on wildlife damage control and alleviation. Chapter seven evaluates the actual legal and institutional arrangements on the ground in both countries on wildlife damage. It first examines the legal status of wildlife in these countries. It then evaluates the forms, adequacy, suitability and effectiveness of the existing legal and institutional frameworks, in these countries, on wildlife damage.

Chapter eight deals with the conclusion and recommendations made in this study. It concludes that while Kenya and Botswana have legal and institutional arrangements on wildlife damage, these arrangements are in both cases neither adequate nor efficient in addressing damage. It also makes 14 recommendations on how these two countries can improve their respective legal and institutional arrangements on wildlife damage to make them more suitable, adequate and efficient in addressing the problem.

## 1.2 BACKGROUND TO WILDLIFE DAMAGE IN KENYA AND BOTSWANA

Kenya and Botswana have some of the most abundant and diverse wildlife endowment in the world, with rather robust wildlife sectors that rake in billions in foreign exchange through wildlife tourism. The people of these two countries are indeed privileged to inhabit countries with such richly endowed and diverse wildlife estates, surpassing many parts of the world. The commitment of the governments of these two countries to wildlife conservation is commendable. This commitment is demonstrated by their having set aside large tracts of land as wildlife reserves as well as the existence of an impressive array of policies, legislation, and institutions on wildlife conservation.

Despite the importance of wildlife to these countries, wild animals do impose serious negative costs on the people of these countries in terms of the damage they cause to people and their property. In some villages people spend nights watching over their crops and livestock, lighting fires and hitting drums and tins the whole night instead of sleeping or attending to their conjugal obligations.<sup>23</sup> This research established that the population growth rates are lower in areas of high incidence of wildlife damage as compared to other areas, a fact that can be reasonably attributed to wildlife terror.<sup>24</sup>

Unfortunately also, wildlife conservation in these countries, especially in Kenya, is more often thought of in terms of wildlife welfare; hardly in terms of human welfare. Whereas all nations have a right to safeguard species in their territories as part of their permanent

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<sup>23</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>24</sup> From research conducted for this work in Kenya and Botswana between January and December 2006.

sovereignty over natural resources found within their territories, they should also provide incentives for conservation so that conservation does not inhibit social and economic development. While Botswana has endeavoured to provide such incentives through the community-based wildlife conservation system, the Kenya government by the adoption of a state-centered wildlife conservation system hardly provides any conservation incentives to the local communities despite the fact that they are the ones who bear the brunt of wildlife damage.

Apart from interviews and discussions with state and governmental authorities, research for this study was carried out mainly in the Laikipia region of Kenya and the Okavango Delta region in Botswana. The Laikipia region is situated in the Rift Valley province of Kenya, north-west of Mt Kenya (covering Laikipia District and Samburu District). The Okavango Delta region is situated in Ngamiland district in northern Botswana, on the edge of the Kalahari Desert. The delta is on River Okavango, which is one of the longest rivers in Southern Africa and one of the only three perennial rivers in Botswana, others are the Chobe and the Linyanti.<sup>25</sup>

Both Laikipia and the Okavango region have similar characteristics with regard to wildlife conservation and are each of notable significance in wildlife conservation and management in their respective countries. Firstly, both have geographical and ecological characteristics that make them unique and worthy of attention. Laikipia straddles the equator at the heart of Kenya's Rift Valley and has one of the highest diversity of large

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<sup>25</sup> From interviews with wildlife staff at the Moremi Game Reserve on 21 July 2006.

mammals in the world.<sup>26</sup> The Okavango is one of the largest wetlands in the world,<sup>27</sup> with a unique ecosystem of rivers, islands and marshes, surrounded by the Kalahari Desert as well as a large diverse population of wildlife comparable to Laikipia's. Because of these unique characteristics the Okavango ecosystem has been described as 'the jewel of the Kalahari'.<sup>28</sup>

Secondly, both regions have almost all the wildlife species found in their respective countries and in which damage by wild animals is a common occurrence hence being a fair representation of the wildlife scenario of both countries.<sup>29</sup> The wild animals found in them include the lion, cheetah, buffalo, elephant, leopard, rhino, zebra, antelope, eland, kudu, wildebeest, warthog, wild pig, wild dog, hyena, and baboon. Both Laikipia and the Okavango Delta region are some of the world's leading wildlife range.

Thirdly, both regions suffer from scarcity of perennial rivers. The former has only one perennial river, the Okavango river while the latter has two, the Ewaso Nyiro river and the Ewaso Narok river.<sup>30</sup> These two regions are semi-arid areas. Fourthly, both Laikipia and the Okavango are areas in which many sectors operate at the same time, thereby interacting and interfacing. These sectors include agriculture, livestock keeping, wildlife, tourism, as well as indigenous cultural practices. Both regions are home to several

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<sup>26</sup> Laikipia Wildlife Forum website <<http://www.laikipia.org/laikipia.htm>> Last accessed on 22 December 2007.

<sup>27</sup> Having been listed as a wetland of international importance under the 1971 Convention on Wetlands of International Importance (the Ramsar Convention).

<sup>28</sup> See also generally, K Ross *Okavango: Jewel of the Kalahari* (1987). Also from an interview with Lucky Khumalo a tour guide at Shakawe in Northern Botswana on 22 July 2006.

<sup>29</sup> These facts were confirmed in the interviews that this author had with local communities and wildlife officials in the areas between January and December 2006.

<sup>30</sup> From observation and also interviews this author as well as maps of the two regions.

indigenous communities with strong but presently endangered traditional cultures. For Laikipia there are the Mukogodo Maasai, Samburu, Turkana and Pokot.<sup>31</sup> The Okavango is home to five indigenous peoples, namely, the Hambukushu (Bukusu), Dixeriku, Yeyi, Bugakawe and Xanekwe.<sup>32</sup>

Lastly, both regions are a good example of the interface between local communities and wildlife refuges. Laikipia is adjacent to two of Kenya's major national parks, the Mt Kenya and Aberdare National Parks. These two parks are some of the few wildlife protected areas in which electric fencing has been applied.<sup>33</sup> It was important to know what the local communities in the areas adjacent to these two parks think about fencing; whether the fencing is worth it, whether the presence of the fence has changed the people's attitudes towards wildlife and whether it has reduced incidents of wildlife raids. As for the Okavango region, approximately one third of the delta is covered by the Moremi Game Reserve, which is one of Botswana's major wildlife reserves.<sup>34</sup> Interviews that this author had with local communities in the Laikipia and the Okavango regions during the research for this study established that raids by wild animals from these reserves do occur.

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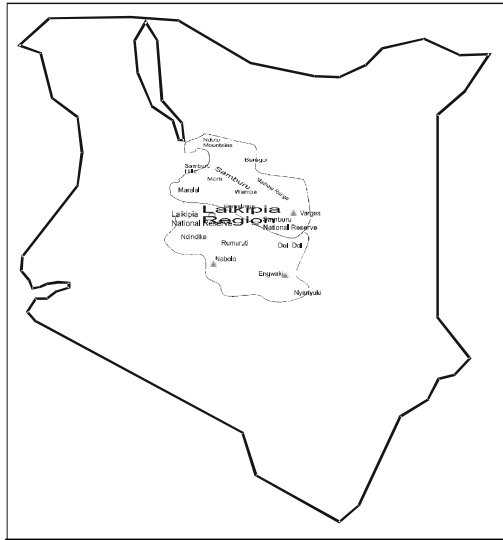
<sup>31</sup> Laikipia Wildlife Forum website <<http://www.laikipia.org/laikipia.htm>> Last accessed on 22 December 2007.

<sup>32</sup> From the interviews conducted by this researcher in Botswana between July and December 2006.

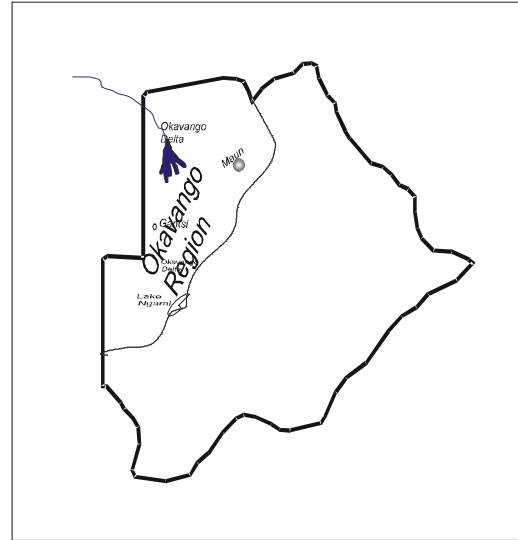
<sup>33</sup> Interviews by this author with officials of the Kenya Wildlife Service (KWS) in Nairobi on 15 February 2006.

<sup>34</sup> From an interview held with staff of the Game reserve on 21 July 2006.

**Map 1: Laikipia Region in Kenya**



**Map 2: The Okavango Delta Region in Botswana**





## CHAPTER TWO

### HISTORY AND GEOGRAPHY OF WILDLIFE MANAGEMENT IN KENYA AND BOTSWANA

#### 2.1 HISTORY OF WILDLIFE MANAGEMENT IN KENYA AND BOTSWANA

##### 2.1.1 KENYA

Wildlife conservation in Kenya is perhaps as old as humanity because even in early times there were traditional customs, rules, taboos, beliefs and practices of the various ethnic groups relating to wildlife.<sup>35</sup> However, formal wildlife management began with the arrival of the British colonialists around 1895. When the imperialists arrived in the country, they found wild animals roaming freely and people utilizing them as they needed, and in accordance only with African customary practices and values.<sup>36</sup> Takirambudde has observed that colonialism in Africa created 'a new legal order to replace the traditional structures and ideology.'<sup>37</sup>

Kenya has since the pre-colonial period been a multi-ethnic society with not less than 42 ethnic groups and each ethnic group had its own traditional practices and values. People in these ethnic groups co-existed with wildlife and hunted wild animals for food and other uses such as clothing, bedding and cultural purposes. Many ethnic groups, however, had totem animals- animals believed to be sacred and which were therefore left unharmed

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<sup>35</sup> Overseas Development Administration (ODA) 1996 *Africa Wildlife Policy Consultation- Final Report of the Consultation* (London: ODA) 77.

<sup>36</sup> JN Muriuki 'Cooperation or Conflict: Managing Scarce Resources of Africa: A Case for Community Wildlife Conservation in Kenya' Mimeo (1996) 8.

<sup>37</sup> PN Takirambudde 'The Role of Law in Commercial and Industrial Expansion: The Case of Botswana, Lesotho and Swaziland' JB Ojwang & JW Kabeberi (eds) *Law and the Public Interest*. Occasional Paper No. 52. Institute of Development Studies (IDS), University of Nairobi (1988) 15.

or which could only be utilized for prayers or medicinal purposes. With the advent of imperialism, things changed dramatically as all of a sudden the colonial governments imposed stiff laws on wildlife utilization, mainly on hunting and wildlife products. These regulations, it was contended, were meant to protect wildlife from the adversities of African hunters, who the Europeans claimed were cruel and wasteful, while nomads over-grazed the land and out-competed the wild animals.<sup>38</sup> The country became a British Protectorate in 1897. A year later, the British introduced the Game Ordinance of 1898 which was the first legislation on wildlife.<sup>39</sup> This ordinance provided for Game Reserves and introduced controls on hunting which had greatly increased due to easier access to firearms.<sup>40</sup> It also led to the establishment of the Game Department in 1908 whose task was to manage the country's wildlife generally and also enforce the hunting regulations.<sup>41</sup> It was also charged with the task of protecting the settler farmer communities' property, crops and livestock from wildlife, its main approach being the killing of problem animals.<sup>42</sup> This was the beginning of wildlife damage control programmes in Kenya. It, for instance, employed honorary wardens, including hunters, to assist in the destruction of problem wildlife.<sup>43</sup> On wildlife damage, the Ordinance provided:

Notwithstanding anything contained in this Ordinance, when members of any native tribe or the native inhabitants of any village appear to be dependent on the flesh of wild animals for their subsistence or when it is shown that any wild animals are causing damage to the lands or property of any natives, the district commissioner of the district may by order addressed to the chief of the

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<sup>38</sup>See G Monbiot 'Keepers of the Artificial Wilderness' *BBC Wildlife Magazine* July (1994), <<http://www.monbiot.com/archives/1994/07/01/keepers-of-the-artificial-wilderness/>> Last accessed on 22 December 2007.

<sup>39</sup> Act No 4 of 1898.

<sup>40</sup> P Wass (ed) *Kenya's Indigenous Forests: Status, Management and Conservation* (1995) Appendix 1.3.

<sup>41</sup> Ibid. See also J Mugabe et al 'Biodiversity Management in Kenya' J Mugabe & N Clark (eds) *Managing Biodiversity: National systems of Conservation and Innovation in Africa* (1998) 91, 109.

<sup>42</sup> Mugabe (note 41 above) 108.

<sup>43</sup> F Pertet 'Depredation and Predation Problems' S. Macmillan 'Wildlife/Livestock Interfaces on Rangelands: Proceedings of a Conference held at Taita Hills Lodge, Kenya, on 22-25 April 1985 (1986) 41.

tribe or the headman of the village authorize the tribesmen to kill animals subject to conditions on the mode of hunting....'<sup>44</sup>

From the early twentieth century more Europeans arrived in the country and created settlements in high potential areas that also happened to have high numbers of wildlife. These European settlements greatly reduced wildlife habitat, leading to conflicts between wild animals and white farmers.<sup>45</sup> This conflict seriously undermined the survival of wildlife as the white farmers increasingly eliminated wild animals that threatened their livestock and farming activities. It was later felt by the colonial government that there was need to give wildlife stronger legal protection and that this could be achieved through the adoption of the national parks system of wildlife conservation.<sup>46</sup>

In 1938 a committee, the Game Policy Committee was established to make recommendations on the establishment of National Parks. Following the committee's recommendations the government in 1945 passed the National Parks Ordinance of 1945.<sup>47</sup> The ordinance formally introduced the national parks system of wildlife management in the country and led to the establishment of Nairobi National Park in 1946, Tsavo National Park in 1948 and others subsequently.<sup>48</sup> It also led to the establishment of the Kenya National Parks Organization (KNPO) as an autonomous

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<sup>44</sup> Sect 34.

<sup>45</sup> Pertet (note 43 above).

<sup>46</sup> Under the game reserves regime 'the preservation of wildlife was only possible as long as it did not interfere with the needs and rights of the local people.

<sup>47</sup> Act No 9 of 1945.

<sup>48</sup> UNEP/UNDP/DUTCH Joint Project on Environmental Law and Institutions in Africa, East African Sub-Regional Project Development and Harmonization of Environmental Laws. Volume 6. Report on the Development and Harmonization of the Laws Relating to Wildlife Management (1999) 11. National parks were established for propagation, protection and preservation of wild animals and natural vegetation.

parastatal whose functions were the protection of wildlife from poaching; management of national parks; and conducting scientific research on wildlife management.<sup>49</sup> Following the creation of this Organization, the Game Department was only responsible for managing wildlife in areas outside national parks, such as those on game ranches, communal land and private land.

The National Parks Ordinance was followed by the Wild Animals Protection Ordinance of 1951.<sup>50</sup> These two pieces of legislation were later renamed the National Parks of Kenya Act of 1962 and the Wild Animals Protection Act of 1962, respectively.<sup>51</sup> In 1975 the post-independence government came up with its first wildlife policy that would guide future wildlife programmes and law-making in the country. This policy was incorporated into Sessional Paper No. 3 of 1975, entitled 'A Statement on Future Wildlife Management Policy in Kenya,' published by the government.<sup>52</sup> This Sessional Paper merged the functions of the Game Department and the National Parks Authority into a single department, the Wildlife Conservation and Management Department.

With regard to wildlife damage, this document stated that in areas of high density arable agriculture, efforts were to be made to minimize damage to crops by wild animals.<sup>53</sup> In this document, the government further undertook a general responsibility to 'assist landowners with control of behaviour of wildlife that is adverse to human activities or to

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<sup>49</sup> Mugabe (note 41 above).

<sup>50</sup> No. 18 of 1951. This piece of legislation imposed regulations to control certain human activities regarding wild animals for instance hunting.

<sup>51</sup> Cap 376 and Cap 377 Laws of Kenya, respectively.

<sup>52</sup> See Republic of Kenya, Sessional No. 3 of 1975 *Statement on Future Wildlife Policy in Kenya (1975)*.

<sup>53</sup> Ibid.

human life; by using, among other wildlife damage control techniques, deterrents (such as thunder flashes, night fires, and dogs), erection of game proof barriers, translocation, shooting of problem animals and extermination.<sup>54</sup> This policy was a radical departure from the previous approach to wildlife conservation, which emphasized protected areas and preservation of as many animals as possible through prohibition on off-take.<sup>55</sup> Among the key elements of the policy was that apart from emphasizing sustainable wildlife management, it also identified wildlife damage as one of the major causes of human-wildlife conflict and placed responsibility on the government to adopt measures aimed at controlling damage.

In 1976, parliament enacted the Wildlife (Conservation and Management) Act of 1976.<sup>56</sup> The Act was enacted to give effect to the policy embodied in the said Sessional Paper No. 3 by establishing legal provisions for the implementation of the policy.<sup>57</sup> With regard to wildlife damage, the Act also made provision for compensation for persons who suffer bodily injury or death or whose crops, livestock or property are destroyed by wild animals.<sup>58</sup> It also repealed the Wild Animals Protection Act of 1962 and the National Parks of Kenya Act of 1962 and consolidated all matters concerning wildlife hence becoming the sole law on wildlife in the country.<sup>59</sup> Its enactment was followed in the

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<sup>54</sup> Ibid, paras 77-80.

<sup>55</sup> Ibid, 9.

<sup>56</sup> Cap 376 (of 1976) Laws of Kenya.

<sup>57</sup> Note 52 above, para 13.

<sup>58</sup> See sect 62 (1) which states 'where...any person suffers any bodily injury from or is killed by, any animal or suffers any damage to or loss of crops or property or, in the case of a deceased person, any other person who was dependent on him at the time of his death, may make application to a District Committee established by this section, for the award of compensation for such injury or death or damage or loss....'

<sup>59</sup> Note 51 above. See sect 68 (1) which states 'The Wild Animals Protection Act of 1962 and the National Parks of Kenya Act are hereby repealed'. Apart from repealing these two pieces of legislation and effectively becoming Kenya's principal legislation on wildlife, the Act amalgamated the legal regime

same year by the merging of the Game Department and the National Parks Authority into one institutional outfit, the Wildlife Conservation and Management Department (WCMD), to manage the country's wildlife.<sup>60</sup> The WCMD was established as a department in the Ministry of Tourism and Wildlife, its function being to manage the country's wildlife.<sup>61</sup> The amalgamation of the two departments into one was intended to eliminate duplication of efforts.<sup>62</sup>

Not so long after its establishment the WCMD started encountering a number of problems and challenges in its operations. Firstly, as a department in a government ministry it lacked institutional autonomy. Secondly, it relied on the parent ministry's budgetary allocations from the government's recurrent expenditure which as a result of budgetary deficits were inadequate. Due to the department's weak financial base and lack of autonomy, it was unable to effectively carry out its mandate hence leading to deterioration of the wildlife sector in the country.<sup>63</sup> Wass enumerates some of these setbacks as: deterioration of infrastructure, overstaffing, low salaries, and lack of morale in staff, corruption and increased poaching.<sup>64</sup> As a result of these problems, poaching continued to increase, sometimes with the complicity and even active participation of the wildlife officials.

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contained in them and adopted the principles and goals of Kenya's wildlife conservation and management as articulated in Sessional Paper No.3 of 1975, note 64 above.

<sup>60</sup> Note 41 above.

<sup>61</sup> It inherited staff from its predecessors- the Game Department and the National Parks Service.

<sup>62</sup> Note 43 above.

<sup>63</sup> Note 41 above.

<sup>64</sup> Note 40 above, Appendix 1.4.

As a result of the poor state of the country's tourism and wildlife sectors resulting from the factors above, the Kenya government in 1987 embarked on efforts aimed at resuscitating these sectors, among them institutional and legal reforms. These efforts culminated in the amendment, in 1989, of the Wildlife (Conservation and Management) Act.<sup>65</sup> The amendment established the Kenya Wildlife Service (KWS) as a state corporation responsible for managing Kenya's wildlife. Its principal goals being: (a) to conserve Kenya's natural environments as well as their fauna and flora, for the benefit of present and future generations; (b) to use Kenya's wildlife resources sustainably for the nation's economic development and for the benefit of people living in wildlife areas; and (c) to protect people and property from injury or damage caused by wildlife.<sup>66</sup> The performance of KWS in superintending Kenya's wildlife is discussed later on in this work. It is worth noting, however, that wildlife management has over the years remained a state affair, where wildlife is treated as state property and managed exclusively by it. The history or chronology of wildlife management in Kenya discussed above is summarized in **Table 1a** below.

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<sup>65</sup> See the Wildlife (Conservation and Management) (Amendment) Act of 1989 (Act No. 16 of 1989).

<sup>66</sup> See generally the KWS website <<http://www.kws.org/paks.html>> Last accessed on 22 December 2007.





### 2.1.2 BOTSWANA

Kenya and Botswana have a similar historical background with regard to wildlife management. First of all, like in Kenya, wildlife conservation in Botswana is as old as humanity because even before the coming of the Europeans the indigenous inhabitants of the country also had their own traditional customs, rules, taboos, beliefs and practices relating to wildlife.<sup>67</sup> What is today called Botswana was originally known as Bechuanaland which was a British Protectorate from 1885 to 1966 when it got independence. Bechuanaland was initially inhabited by the San or the Basarwa, a hunter-gatherer aboriginal people who were later joined by the Tswana of South Africa who were escaping the Zulu wars in their country.<sup>68</sup> Before being colonized by the British the country, just like Kenya, was under tribal chiefs and was governed by traditional customs and taboos; regulating the entire life of society.

With regard to wildlife, the people were free to use wild animals as they desired for food, clothing and rituals subject only to those traditional customs and taboos. Like in Kenya, in Botswana, formal policies and regulations on wildlife began with the entry of the British in the country otherwise before then, there existed no formal policy and regulations on wildlife. Before then, indigenous people in Botswana like in many other African countries such as Kenya, co-existed with wildlife and hunted wild animals for food and other uses such as clothing, bedding and cultural purposes. Many tribes, however, had totem animals- animals believed to be sacred and which were therefore left

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<sup>67</sup> Note 35 above, 77.

<sup>68</sup> Government of Botswana, BAJANALA: A Tourist Guide to Botswana Vol 5 (2006) 2.

unharmful or which could only be utilized for prayers or medicinal purposes. To this day tribes such as the BaKwena, the BaFurushe, the BaRolong and the Bakgatla have totem animals.<sup>69</sup>

Pre-colonial systems in Botswana like in Kenya were based on customary allocation and management of resources in accordance with traditional customs, practices and taboos. With the advent of colonialism in the country the colonialists began controlling these resources through orders and ordinances and later, by Acts of Parliament. Whereas the first game law was introduced in the country in 1891, the first substantive wildlife law in the country was the Fauna Conservation Act of 1961 (amended in 1979).<sup>70</sup> The Act provided for the protection of wildlife through the establishment of game reserves, wildlife sanctuaries, private game reserves and controlled hunting areas. This piece of legislation was the sole law governing wildlife in Botswana until two years after independence when the new post-independence government enacted the National Parks Act of 1968. This Act introduced the concept of National Parks and had provisions for their establishment, control and management.<sup>71</sup> The Act also established the Department of Wildlife and National Parks (DWNP) with the role of managing national parks and game reserves, regulating hunting, implementing environmental educational programmes, research, as well as the monitoring of wildlife and their habitats.<sup>72</sup>

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<sup>69</sup> Interviews with local communities in Botswana between July and December 2006. This point is discussed later in this work.

<sup>70</sup> Was later amended in 1979.

<sup>71</sup> In the pre-1968 legal regime the only wildlife protected areas were reserves, sanctuaries and controlled hunting areas.

<sup>72</sup> As in the case of Kenya, national parks in Botswana were established for propagation, protection and preservation of wild animals and natural vegetation.

These two Acts, the Fauna Conservation Act and the National Parks Act, continued operating in the country side by side until 1992, when the government in an effort to consolidate the existing wildlife laws enacted the Wildlife Conservation and National Parks Act of 1992 (WCNPA) which amalgamated them.<sup>73</sup> It repealed the two pieces of legislation and effectively became Botswana's principal legislation on wildlife.<sup>74</sup> Apart from amalgamating the regime in those two pieces of legislation which dwelled mainly on the protected area wildlife estate, the new legislation sought to embrace contemporary trends in wildlife conservation and management. It, however, retained the Department of Wildlife and National Parks (DWNP) as the organ in charge of managing the wildlife sector in the country. The history or chronology of wildlife management in Botswana discussed above is summarized in **Table 1b** below.

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<sup>73</sup> Cap 38:01 Laws of Botswana.

<sup>74</sup> See sect 94 which states 'The Fauna Conservation Act and the National Parks Act are hereby repealed'.

**Table 1b: Chronology of Wildlife Management in Botswana**

PERIODS/APPROX DATE	CONDITIONS, KEY ACTIONS, HUMAN-WILDLIFE RELATIONSHIPS
<b>Pre-Colonial Era (Before 1895)</b>	<ul style="list-style-type: none"> <li>• Relatively harmonious human-wildlife co-existence, small human population, communal land ownership, less intensive land use, less antagonistic human attitudes towards wildlife, no protected areas, no formal game control.</li> <li>• Reliance by humans on wildlife for food, clothing, medicine, tools, ornaments, ceremonial regalia and other socio-cultural uses.</li> </ul>
<b>Colonial Era (1895-1966)</b>	<ul style="list-style-type: none"> <li>• Colonialism and introduction of western ideology on wildlife including state –centered wildlife management.</li> <li>• Introduction of formal game control laws and policies.</li> <li>• Hunting and shooting of wildlife for sport and culling to give way for settler agriculture.</li> <li>• Introduction of the protected area system of wildlife management</li> <li>• Anti-poaching efforts against poachers and unlicensed hunters.</li> <li>• Establishment of formal institutions for the protection of wildlife</li> </ul>
<p><b>Post-Colonial Era (1966 to date)</b></p> <p><b>First Phase (1966- 1991)</b></p> <p><b>Second Phase (1992- to date)</b></p>	<ul style="list-style-type: none"> <li>• Continuation of the protected area system of wildlife management.</li> <li>• Continuation of state-centered wildlife management.</li> <li>• Continuation of strict control on poaching and unlicensed hunting.</li> <li>• Introduction of compensation for wildlife damage covering all forms of wildlife damage including human injury, loss of human life, predation on domestic stock, crop damage as well as other material damage.</li> </ul> <ul style="list-style-type: none"> <li>• Introduction of community-based wildlife management as part of the Community-Based Natural Resource Management (CBNRM).</li> <li>• Revision of wildlife conservation and management policies, institutions and laws in accordance with contemporary trends.</li> <li>• Continuation of strict control of poaching with recognition of traditional hunting rights for subsistence.</li> <li>• Continuation of compensation for wildlife damage covering all forms of wildlife damage including human injury, loss of human life, predation on domestic stock, crop damage as well as other material damage.</li> </ul>

Source: From literature survey and interviews conducted by this author in Botswana between July and December 2006.

## 2.2 GEOGRAPHY OF WILDLIFE CONSERVATION IN KENYA AND BOTSWANA

### 2.2.1 KENYA

#### **(a) Geographical Location and Physical Features**

The Republic of Kenya has a total land area of approximately 582,600 km<sup>2</sup>,<sup>75</sup> with a population of approximately 30 million people. It is located on the Eastern side of the African continent,<sup>76</sup> and lies astride the equator, being almost bisected by it. It is bounded by the following countries: Uganda in the West, Sudan in the North-west, Ethiopia in the north, Somalia in the east, and Tanzania in the South.<sup>77</sup> Lying to the east of the country is the Indian Ocean.<sup>78</sup> Kenya is also a riparian of two of Africa's big lakes, namely, Lake Victoria and Lake Turkana.<sup>79</sup> Her altitude varies from sea level to over 5000 meters, with temperature and rainfall being significantly affected by the altitude.

Another notable aspect of Kenya's physical characteristics is her three main drainage systems, namely: the coastal lowlands system, where rivers drain into the Indian Ocean; the Rift Valley system, where streams feed into a chain of lakes within the Rift Valley; and the Lake Victoria system, where a group of rivers to the west flow into Lake Victoria.<sup>80</sup> There also exists in Kenya a considerable variability in soil types, evaporation and seasonal water balance.<sup>81</sup>

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<sup>75</sup> Note 40 above, 7.

<sup>76</sup> RB Ogendo *Industrial Geographical of Kenya* (1972) 4.

<sup>77</sup> GM Ruigu *Seed Industry in Kenya: Evolution, Current Status and Prospects* (1988) 3.

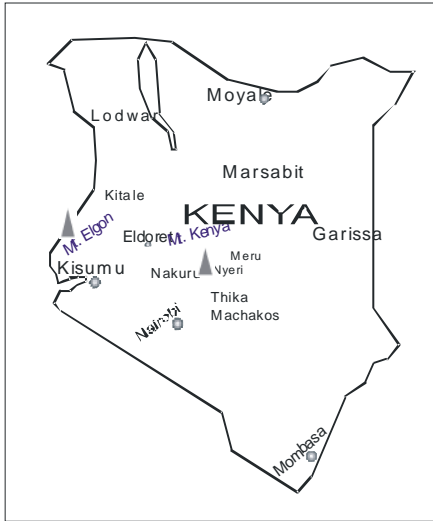
<sup>78</sup> Ogendo (note 76 above).

<sup>79</sup> *Ibid*, 15.

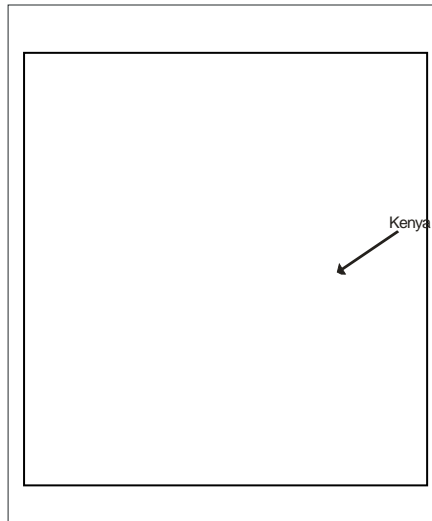
<sup>80</sup> J Reuben *Kenya in Pictures* (1973) 14.

<sup>81</sup> SN Muturi 'Resources Allocation in Agricultural Research in Kenya: Part 1 Findings and Recommendations' (1982) 4.

**Map 3: Map of Kenya**



**Map 4: Kenya's Location in Africa**



### **(b) Climate and Vegetation Relative to Wildlife**

Kenya has various climatic zones, her climate being largely governed by altitude, with high altitude areas receiving relatively good rainfall compared with the other parts. These high altitude areas, also known as the highlands, comprise approximately one quarter of the country. They have a higher population concentration than other areas due to good rainfall as well as the soil fertility that make the land arable.<sup>82</sup> Since Kenya is located right on the Equator, the country has no marked seasonal changes and seasons are differentiated only by the amount of rainfall. Rainfall in Kenya is highly variable, ranging from less than 250 millimeters in the arid and semi-arid areas to over 2000 millimeters in the wetter areas of the country.<sup>83</sup> Esikuri reports that 80 percent of Kenya receives less than 760 mm of rainfall annually, with one quarter receiving less than 300 mm.<sup>84</sup> Apart from the Highlands, other high rainfall belts are found in the western part just east of Lake Victoria and at the coast.

Kenya's climatic patterns do in turn influence vegetation patterns hence dividing the country into various vegetation zones. Kenya's natural vegetation can be divided into three categories, namely, closed canopy forest vegetation; savanna vegetation; and arid as well as semi-arid vegetation. A forest can be defined as 'a continuous stand of trees at least 10 meters tall, with their crowns inter-locking.'<sup>85</sup> Closed canopy forests in Kenya

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<sup>82</sup> GM Hickman & WHG Dickins *The Lands and Peoples of East Africa* (1973) 34.

<sup>83</sup> Ogendo, note 76 above.

<sup>84</sup> EE Esikuri 'Group Ranches, National Parks and Agriculture: Resource Use Conflicts and Opportunities for Pastoral and Wildlife Development in Kenya, A Case Study From Amboseli Basin.' Unpublished M.Sc Thesis, Agricultural University of Norway (1991) 40.

<sup>85</sup> Note 40 above, 8.

are found in areas of high rainfall, predominantly within the Central Highlands and the Nyanza Plateau, as well as at the coast.<sup>86</sup>

The Savanna vegetation is the typical plant formation of tropical regions and perhaps the most dynamic natural vegetation in terms of description, distribution and functions. The savanna vegeto-climatic zones are a major world biome and the dominant land cover in Africa, where it has existed for over 30 million years.<sup>87</sup> In Kenya, it is the predominant natural vegetation covering parts of the western, central, eastern, coastal, as well as the Rift Valley regions of the country. There are two major types of savanna biomes, namely, grassland savanna and woodland savanna. Grassland savanna comprises a continuous stratum of grasses and sedges, while woodland savanna comprises grasses as well as a fairly large concentration of trees and shrubs especially the acacia species. Savannas are, however, mainly a grassland biome.<sup>88</sup> Regions in which the savanna vegetation occurs are called the savannas. Scholes and Walker have defined savannas as ‘tropical [eco] systems in which the primary production is contributed to by both woody plants and grasses.’<sup>89</sup> Savannas have climatic conditions that can be described as “savanna climate”. They do not have marked climatic variations, except for rainfall which has systematic variability patterns, a factor that makes the savanna climate to remain almost the same from month to month throughout the year.

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<sup>86</sup> Ibid.

<sup>87</sup> RJ Scholes & BH Walker *An African Savanna: Synthesis of the Nylsvley Study* (1993) 16.

<sup>88</sup> < <http://www.ess.co.at/GAIA/CASES/Zim/vegetation.html> > Last accessed on 22 December 2007.

<sup>89</sup> Ibid.



The third vegetation zone is the desert and semi-desert vegetation. This vegetation is sparsely distributed and mainly consists of thorn bushes, particularly the cacti family. The vegetation is found in the northern and north-eastern areas of the country which are predominantly dry and characterized by desert and semi-desert climatic conditions of very low rainfall and high temperatures throughout the year.

Both Kenya's geographical location and her physical features combine to create a physical environment exhibiting considerable climatic diversity, ranging from equatorial climate in the coastal areas and the Lake Victoria region, to arid and semi-arid conditions in the north, and to temperate climate in the highlands.<sup>90</sup> These physical characteristics combine with the prevailing climatic conditions to create various ecological zones, with each zone having its own distinct vegetation cover and wildlife. The distribution of wildlife species is such that certain species are adapted to specific ecological zones.<sup>91</sup>

Waters and Odero note that 'wildlife in any area depends upon its environment (climate, soil, relief and drainage), its environmental history (what the environment was like before present times), and the influences of human interferences.'<sup>92</sup>

Notably, the distribution of wildlife in Kenya is adapted to the distribution of the natural vegetation.<sup>93</sup> Closed canopy forests, for instance, are mainly inhabited by primates such as monkeys, chimpanzees and gorillas.<sup>94</sup> This vegetation type is suitable for primates as opposed to herbivores and carnivores for two reasons. First, the closed canopy of the

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<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> G Waters & J Odero *Geography of Kenya and the East African Region* (1990) 223.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid, 245.

trees in a forest prevents sunshine from reaching the ground, thereby denying ground vegetation the sunlight necessary for photosynthesis. This results in scarcity of green vegetation near the ground which in consequence denies herbivores pasture. Secondly, the closeness of trees making up a forest makes that ecosystem unfavourable for carnivores who depend on hunting for food. Such animals cannot easily run through the forest.

The savanna is the ecological zone with the highest concentration and diversity of wildlife species in Kenya; with an estimated 75 percent of the country's wildlife.<sup>95</sup> It is indeed the natural habitat for almost all herbivorous ungulates (hooved grass-eating mammals) and carnivores.<sup>96</sup> Grassland savannas with their abundance of grasses are dominated mainly by grazers such as gazelles, antelopes, and zebras. Bushland savannas are dominated by browsers such as giraffe as well as large ungulates (wooved mammals) such as elephant, and buffalo. Predators such as lions, leopards, hyenas and cheetahs although carnivores, prefer the savannas because these regions are inhabited by browsers most of which are prey. Incidentally, it is also these savannas that have the highest proportion of Kenya's human population, which also makes them regions of high economic activities such as agriculture, livestock keeping, cattle ranching, game ranching, tourism and manufacturing. This makes it the zone where so many sectors interact at the same time hence having a high incidence of human-wildlife conflict.

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<sup>95</sup> Note 8 above, 19.

<sup>96</sup> Note 92 above, 225.

Desert and semi-arid zone for its part, is characterized by arid conditions that are not favourable to vegetation growth. As a result, its vegetation comprises sparsely distributed dryland vegetation such as euphorbia and cacti. With its scanty vegetational cover this area has little food for wildlife hence attracts very few wild animals. Such adverse climate and vegetation do not favour the survival of most wildlife species hence this zone has far less wild animals than other vegeto-climatic zones. That could be the reason why most of Kenya's wild animals are found in the savannas and closed canopy forests.

The Laikipia region our study area has both semi-arid and typical savanna vegeto-climatic characteristics, dominated by acacia, dry bushland and grasses. It also has cacti and euphorbia vegetation. The area has notably high economic activity ranging from commercial ranching to subsistence pastoralism as well as tourism and small scale crop farming.<sup>97</sup> It is also an area with a high wildlife density and diversity. The major reason for its rich wildlife endowment is its climate and vegetation, which together combine to give the area an environment favourable to wildlife conservation. It is, for instance, estimated that the Laikipia ecosystem has approximately 36,000 zebras, 3000 elephants, and 2000 buffaloes.<sup>98</sup> These are very high numbers hence making it one of the country's major wildlife areas.

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<sup>97</sup> R Woodroffe & LG Frank 'Lethal Control African Lions (*Pantera leo*): Local and Regional Population Impacts' (2005) 8 *Animal Conservation* 1-2.

<sup>98</sup> Ibid.

### (c) Kenya's Wildlife Estate

Kenya has one of the most abundant and most diverse wildlife endowments in the world.<sup>99</sup> The Kenya government in its Draft Wildlife Policy of 2007 states 'Kenya's wildlife is one of the richest and most diversified in Africa with several of its protected areas and wetlands being internationally recognized and protected as World Heritage Sites, Ramsar sites and Man and Biosphere Reserves.'<sup>100</sup> Its wildlife ranges from small animals to large charismatic mammals, from herbivores to carnivores. This wide range of animals include baboon, caracal, monkey, jackal, wild dog, warthog, hyena, antelope, gazelle, zebra, giraffe, crocodile, hippopotamus, cheetah, leopard, rhino, buffalo, lion, and the elephant. Although most of these animals are within the protected areas (PAs), a good number of them are outside such areas. It is estimated that of over 70 per cent of Kenya's terrestrial wildlife spends most of its time outside the protected areas, roaming on trust land and private farms.<sup>101</sup> Presently, the protected area estate constitutes about seven per cent of the country's total land area;<sup>102</sup> comprising several National Parks, National Reserves, Game Sanctuaries and Forest Nature Reserves.<sup>103</sup> All these categories of wildlife refuges are discussed in detail later in this work. The major wildlife reserves are shown in the map below.

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<sup>99</sup> Ruigu (note 77 above)

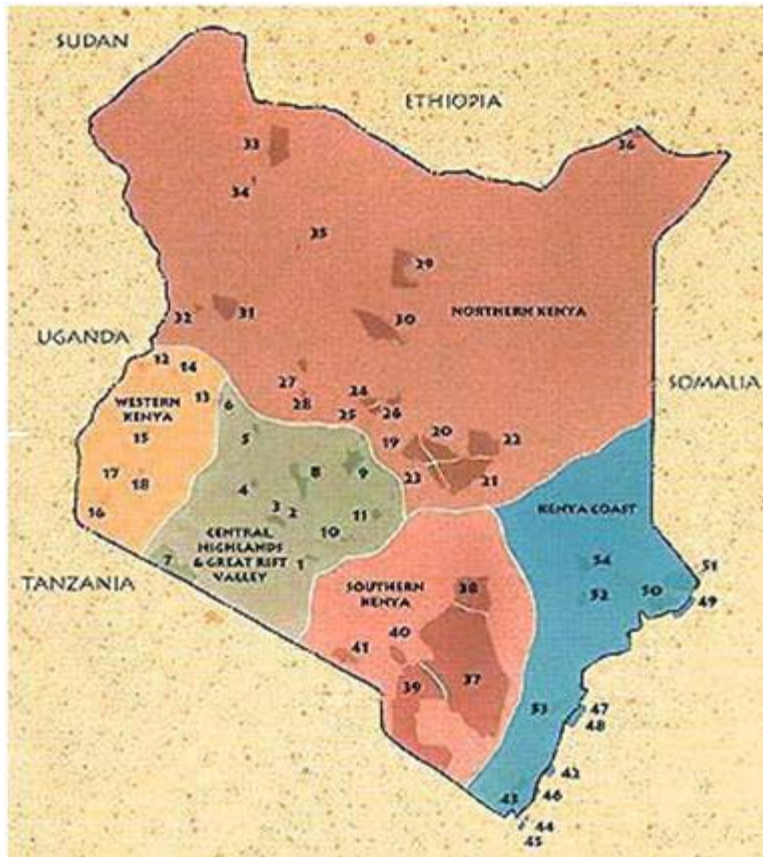
<sup>100</sup> Republic of Kenya, Draft Wildlife Policy of 2007.

<sup>101</sup> Republic of Kenya *National Development Plan 2002-2008: Effective Environmental Management for Sustainable Economic Growth and Poverty Reduction* (2002) 125.

<sup>102</sup> Ibid.

<sup>103</sup> KWS, Wildlife-Human Conflicts Executive Summary, <<http://www.safariweb.com/kwild/summery.htm>> Last accessed on 22 December 2007. See also Barrow & Murphree (note 16 above) 24.

Map 5: Kenya's Wildlife Reserves



Source: <<http://www.kilimanjaro.com/kenya/parkke.htm>>

- |                                      |  |
|--------------------------------------|--|
| 1. Nairobi National Park             | 29. Chyulu Hills National Park                   |
| 2. Hell's Gate National Park         | 30. Amboseli National Park                       |
| 3. Mt Longonot National Park         | 31. Mombasa National Park and Reserve            |
| 4. Lake Nakuru National Park         | 32. Shimba Hills National Reserve                |
| 5. Lake Bogoria National Reserve     | 33. Kisite Marine National Park                  |
| 6. Lake Kamnarok National Reserve    | 34. Mpunguti Marine National Park and Reserve    |
| 7. Masai Mara National Reserve       | 35. Diani/Chale Marine National Park and Reserve |
| 8. Aberdare National Park            | 36. Malindi Marine Park and Reserve              |
| 9. Mt Kenya National Park            | 37. Watamu Marine Park and Reserve               |
| 10. Ol Donyo Sabuk National Park     | 38. Kiunga Marine National Reserve               |
| 11. Mea National Reserve             | 39. Dodori National Reserve                      |
| 12. Mt Elgon National Park           | 40. Boni National Reserve                        |
| 13. Kerio Valley National Reserve    | 41. Tana River Primate Reserve                   |
| 14. Saiwa Swamp National Park        | 42. Arabuko Sokoke Forest Reserve                |
| 15. Kakamega Forest National Reserve | 43. Arewale National Reserve                     |
| 16. Ruma National Park               | 44. Marsabit National Reserve                    |
| 17. Ndere Island National Park       | 45. Losai National Reserve                       |
| 18. Kisumu Impala Sanctuary          | 46. South Turkana National Reserve               |
| 19. Meru National Park               | 47. Nasalot National Reserve                     |
| 20. Bisanadi National Reserve        | 48. Sibiloi National Park                        |
| 21. Kora National Reserve            | 49. Central Island National Park                 |
| 22. Rahole National Reserve          | 50. South Island National Park                   |
| 23. Mwingi National Reserve          | 51. Malkamari National Park                      |
| 24. Samburu National Reserve         | 52. Tsavo East National Park                     |
| 25. Buffalo Springs National Reserve | 53. South Kitui National Reserve                 |
| 26. Shaba National Reserve           | 54. Tsavo West National Park                     |
| 27. Maralal Game Sanctuary           |  |
| 28. Laikipia Game Sanctuary          |  |

## 2.2.2 BOTSWANA

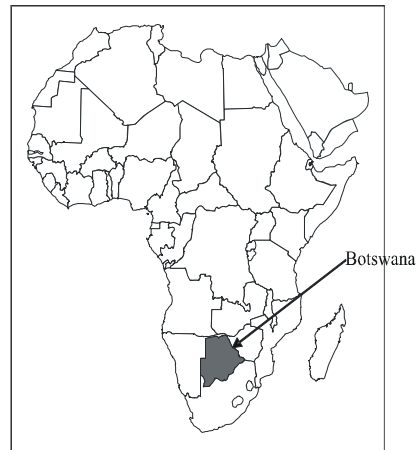
### (a) Geographical Location and Physical Features

The Republic of Botswana is a landlocked, semi-arid country measuring approximately 582, 000 square kilometers, about the same size as Kenya.<sup>104</sup> It straddles the Tropic of Capricorn in the centre of the southern Africa Plateau.<sup>105</sup> It is bounded by Zambia in the north; Zimbabwe in the north-east; South Africa in the South; Namibia in the west; and Angola in the North-west.

**Map 6: Map of Botswana**



**Map 7: Botswana's Location in Africa**



<sup>104</sup> See Government of Botswana National Development Plan 9; 2003/04-2008/09 (2003) 2.

<sup>105</sup> GOB, National Report on Measures Taken to Implement the Convention on Biological Diversity (1998), <<http://www.biodiv.org/doc/world/bw-nr-01-en.pdf>> Last accessed on 22 December 2007.

Botswana has a relatively flat generally undulating landscape of approximately 1000 meters above sea level and occasional rocky outcrops.<sup>106</sup> Approximately 84 percent of the country comprises a flat undulating plain and the Kalahari Desert.<sup>107</sup> The soils in the country are in most cases rather infertile to support arable farming as only about six percent of the country is arable, most of which is located in the north and east of the country. Botswana has a population of approximately two million people, most of which is concentrated in the south eastern parts of the country where the land is arable.<sup>108</sup> The country is irrigated mainly by seasonal rivers and streams except for Okavango and Chobe, which are perennial and have their sources outside the country.<sup>109</sup>

#### **(b) Climate and Vegetation Relative to Wildlife**

Botswana's climate is characterized by low rainfall and high temperatures which contribute to long and frequent droughts. These climatic conditions, frequent droughts, as well as sparse vegetation adversely affect agricultural activity and seriously undermine the rural economy and socio-cultural activities. Notably, almost two thirds of the country is covered by the Kalahari Desert. Most of the vegetation is found around River Chobe and in the Okavango Delta in the North West, but as one moves away from the delta the vegetation becomes scanty due to long dry spells and recurring droughts.<sup>110</sup> There are various types of vegetation in the country, whose variability is dependent on climate. The Chobe District in the north has belts of indigenous forests and dense bushes because it

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<sup>106</sup> Ibid.

<sup>107</sup> IUCN 'Protected Areas of the World: A Review of Natural Systems' (1997) 14.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Note 104, 5.

receives high rainfall.<sup>111</sup> The Okavango delta being a wetland supports scrub and tree savanna vegetation as well as belts of dense forests.<sup>112</sup> Further south, there is the Makgadikgadi and Nxai pans which are covered predominantly by grassland savanna again due ample rainfall and close proximity to the Okavango wetland. The other parts of the country are covered by scrub savanna and semi-desert vegetation due to poor soils, low amounts of rainfall and proximity to the Kalahari desert.<sup>113</sup> The Kalahari desert is one of the driest and hottest areas of the world, with hardly any vegetation worthy of mention.<sup>114</sup>

### **(c) Botswana's Wildlife Estate**

The country has an abundant and richly varied wildlife endowment with many species of wild animals. The key species however, include the hare, otter, mongoose, aardvark, ratel, caracal, wild dog, wild pig, hyena, warthog, antelope, zebra, hippo, rhino, wildebeest, giraffe, buffalo, elephant, and the lion. Although at independence Botswana was one of the poorest economies in the world, now it is one of the richest economies in Africa with its currency (the Pula) being one of the strongest. The main reasons for her strong currency and economy are wildlife tourism<sup>115</sup> and diamond mining. Notably, 37 per cent of country's total land area is devoted to wildlife, 17 per cent as wildlife

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid. Also from observation by this author during fieldwork in the area between July and December 2006.

<sup>113</sup> Note 104, 5.

<sup>114</sup> Interview with government officials at the Environment Ministry in Gabarone on 14 May 2006. Also from observation by this author during a trip to the desert between 17 and 19 May 2006.

<sup>115</sup> It is estimated that between 1998 and 2000 the total number of visitors who visited the parks was about 278 000 people, earning the wildlife sector approximately 43 million Pula. Ninth National Development Plan, 240.



protected areas and 20 per cent as wildlife management areas (WMAs).<sup>116</sup> Botswana's wildlife protected areas comprise several National Parks and Game Reserves as well as WMAs and Nature Reserves. These are discussed in detail in chapter six of this work. See also the map below.

**Map 8: Botswana's Wildlife Reserves**



Source: < [http://www.sa-venues.com/accommodation/bw\\_game\\_lodges.htm](http://www.sa-venues.com/accommodation/bw_game_lodges.htm)>

<sup>116</sup> Note 104 above, 246. See also Botswana Ministry of Tourism's Website See also <[http://www.botswana-tourism.gov.bw/tourism\\_s/tourism\\_s.html](http://www.botswana-tourism.gov.bw/tourism_s/tourism_s.html)> Last accessed on 22 December 2007.

The Botswana Government in the Ninth National Development Plan notes that wildlife, minerals and rangelands are the three main valuable natural resources.<sup>117</sup> It further lists the benefits derived from wildlife as cultural, socio-economic and biological integrity; creation of employment opportunities; enhancing environmental stability; providing aesthetic, scientific, nutritional and educational value; and promoting tourism.<sup>118</sup> The government in fact reports that 'Botswana's tourism industry is currently overwhelmingly dependent on wildlife.'<sup>119</sup>

From this chapter it is noteworthy that while Kenya and Botswana have similar historical backgrounds with regard to wildlife management, the geographical factors in both countries are favourable to wildlife conservation. This geographical suitability is demonstrated by the fact that the countries have some of the most abundant and diverse wildlife estates in the world. They have some animals that are rare and not found in many places in the world, for example, the hirola antelope. In both countries also, wild animals have for a long time been known to cause damage to society in terms of attacks on humans and livestock as well as destruction of crops and other property. Despite this negative aspect, wildlife still remains a valuable resource to the people of the two countries and one that should therefore be preserved for the present and future generations.

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<sup>117</sup> Note 104 above, 236.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid, 249.

## CHAPTER THREE

### THE VALUE OF WILDLIFE IN KENYA AND BOTSWANA

As already noted in the preceding chapter, both Kenya and Botswana have an abundant and richly varied wildlife endowment. This endowment is a natural heritage for the present and future generations of these countries, with several benefits and costs. The role that wildlife plays in both countries can either be positive, beneficial and enhancing human life and welfare or negative, in terms of undermining human life and welfare.<sup>120</sup>

This study calls the former positive value and the latter, “negative value”. Positive value comprises beneficial uses of the wildlife resources. Notably, however, the term ‘wildlife value’ is commonly used to refer to beneficial uses as opposed to detriments of wildlife. Even in this sense the term is not limited to economic value alone but includes other benefits that are derived from wildlife. In the context of this study the term is used to refer to both positive value and negative consequences of the presence of wildlife (“negative value”).

#### 3.1 POSITIVE VALUE

With regard to positive value, wildlife in both countries is a valuable natural resource that has several benefits to society. It is this positive value that in natural resource economics, is referred to as the “total economic value” (TEV) which is represented by the equation:

$$\text{TEV} = \text{Direct Use Value} + \text{Indirect Use Value} + \text{Option Value} + \text{Bequest Value} +$$

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<sup>120</sup> See RF Dasman *Wildlife Biology* (1964) 6.

Existence Value.<sup>121</sup> Use value arises from the use of wildlife, both direct and indirect use. Wildlife's option value is the potential for it to be available in the future, while its bequest value comprises the benefits from preserving it for future generations. The existence value comprises benefits from simply knowing that wildlife exists. Apart from the use value, these others constitute the intrinsic value. Wildlife's TEV therefore is the sum of benefits deriving from its use, both direct and indirect, as well as non-use intrinsic benefits deriving from its mere existence. Indeed wildlife does not exist only with reference to its uses to humankind, as it has a right to exist in itself without such reference. The components of its TEV comprise its economic value; ecological value; nutritional value; medicinal value; educational and scientific value; recreational value; and socio-cultural value. These are examined below.

### 3.1.1 ECONOMIC VALUE

While wildlife has a wide array of benefits, economic benefits in many cases are perhaps the most emphasized. Wildlife plays a major role in the economy in more than one way. Principally, wildlife is an economic sector in its own right in terms of providing employment and contributing to the national income. It is difficult, however, to evaluate with precision the monetary worth of wildlife and its resources.<sup>122</sup> This is because some of these benefits are more ethical or emotional than monetary. Wildlife's worth is hard to compute in monetary terms because in both countries wildlife is a public sector resource that is not in the market place.<sup>123</sup> Helliwell, however, argues that 'while it is difficult to

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<sup>121</sup> See AM Freeman *The Measurement of Environmental and Resource Values* (1993) 15.

<sup>122</sup> ED Mungatana *Recreational Value of Wildlife Viewing: A Case Study of Lake Nakuru National Park Kenya* (Unpublished M.Sc Thesis Agricultural University of Norway 1992) 15.

<sup>123</sup> Ibid.

accurately define the value of wildlife, it is possible to estimate its economic worth by comparing it with other things and other forms of land use.’<sup>124</sup> In advancing the need to identify wildlife with economics, Babich<sup>125</sup> observes, and rightly so, that the bulk of the supporters of wildlife conservation are sentimentalists who by over-protecting wildlife do more harm than good for their cause. He then quotes Lyndon Johnson, a former US President, who in a Presidential address to Congress on 8<sup>th</sup> February 1965 said about the difficulty of estimating the economic worth of wildlife:

Wildlife’s monetary worth is not an easy thing to measure. It does not show up in the Gross National Product, in the weekly pay cheque or in the Profit and Loss statement. But these things are not ends in themselves; they are a road to satisfaction and pleasure and good life. Wildlife makes its own direct contribution to those final ends. Therefore, it is one of the most important components of our true national income, not to be left out simply because statisticians cannot calculate its worth.<sup>126</sup>

In terms of employment, the wildlife sector in Kenya and Botswana provides employment to many who are employed either in state and governmental agencies or in other wildlife support agencies such as hotels, tour companies and beach resorts associated with the sector. In Kenya, the tourist sector accounts for about 400,000 jobs in the formal sector and over nine percent of the country’s total wage bill.<sup>127</sup> In Botswana it accounts for at least 10,000 jobs.<sup>128</sup> Notably, in both countries, the most notable economic benefit of wildlife is its contribution to the economy in terms of earnings from wildlife tourism. Indeed if wildlife was to be eliminated from these countries, they would receive far less tourists.<sup>129</sup>

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<sup>124</sup> DR Helliwell *Planning for Nature Conservation* (1985) 8.

<sup>125</sup> K Babich ‘The Financial Implications of Wildlife Utilization’. Technical Session Paper No. 37, Southern African Wildlife Management Association (1973) 1.

<sup>126</sup> Ibid, 11.

<sup>127</sup> See the official website of the Ministry of Wildlife and Tourism <[http://www.tourism.go.ke/ministry.nsf/pages/facts\\_figures](http://www.tourism.go.ke/ministry.nsf/pages/facts_figures)> Last accessed on 22 December 2007.

<sup>128</sup> [http://www.botswana-tourism.gov.bw/tourism\\_s/tourism\\_s.html](http://www.botswana-tourism.gov.bw/tourism_s/tourism_s.html) Last accessed on 22 December 2007.

<sup>129</sup> Wildlife is one of the major tourist attractions in Kenya; most tourists come to Kenya to view her abundant and varied wildlife endowment.

Dasman observes that wildlife tourism can be a major source of income for a country's economy.<sup>130</sup> Wildlife also directly supports the tourism industry, as most of the tourists visit Kenya and Botswana to view wildlife and even take wildlife trophies. The existence of government ministries of Wildlife and Tourism in these two countries is proof of the unity between wildlife and tourism.<sup>131</sup> An appreciable part of tourism earnings in these countries are attributable directly or indirectly to wildlife.<sup>132</sup> Earnings from tourism usually run into billions in direct income and foreign exchange, thereby contributing a large share of the national income. This takes the form of taxes, subsistence, transport, park fees, purchase of gifts and curios, as well as salaries for employees in the industry. Afolayan describes these as 'the hidden benefits of tourism.'<sup>133</sup> In Kenya for instance, wildlife tourism is the second largest foreign exchange earner after agriculture, estimated to contribute direct income of about 10 percent of the country's Gross Domestic Product.<sup>134</sup>

Tourism earned Kenya 56.2 and 65.4 billion Kenya shillings in 2006 and 2007, respectively.<sup>135</sup> It is estimated that approximately 70 percent of the total tourism earnings

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<sup>130</sup> Dasman (note 120 above) 7.

<sup>131</sup> Ministry of Wildlife and Tourism for Kenya and Ministry of Environment Wildlife and Tourism for Botswana.

<sup>132</sup> Interestingly however, as will be discussed later in this study, contrary to the belief that it is 'the goose that lays golden eggs', tourism is cited as one of the major causes of wild animals leaving the parks to wander on privately owned land outside the protected areas.

<sup>133</sup> TA Afolayan 'Wildlife Management' A Youdeowei, F Ezedinma & O Onazi (eds) *Introduction to Tropical Agriculture* (1986).

<sup>134</sup> See the official website of the Ministry of Wildlife and Tourism <[http://www.tourism.go.ke/ministry.nsf/pages/facts\\_figures](http://www.tourism.go.ke/ministry.nsf/pages/facts_figures)> Last accessed on 22 December 2007. But see Emerton (note 4 above) 210 who estimates the sector's contribution at five percent.

<sup>135</sup> See the official website of the Ministry of Wildlife and Tourism <[http://www.tourism.go.ke/ministry.nsf/pages/facts\\_figures](http://www.tourism.go.ke/ministry.nsf/pages/facts_figures)>.

can be attributed directly to wildlife.<sup>136</sup> Tourism is also Botswana's second largest foreign exchange earner after diamonds, estimated to contribute about BP 495 million which is approximately 4.5 per cent of the country's Gross Domestic Product.<sup>137</sup> The Government of Botswana in the ninth National Development Plan notes that 'Botswana's tourism industry is currently overwhelmingly dependent on wildlife.'<sup>138</sup> This is also true for Kenya and as Bolen and Robinson rightly observe 'without wildlife, Kenya would attract far fewer tourists.'<sup>139</sup> The same holds for Botswana whose tourism sector is highly dependent upon wildlife. It is unfortunate, however, that the contribution of wildlife-based tourism to the GDPs of both countries is not reported separately from that of the rest of the tourism industry (for example hotels and tour operators) in the national accounts. Notably, the economic value of wildlife is so crucial that it would ordinarily influence people's attitudes towards wild animals, in that economic benefits ought to generate positive attitudes and vice versa.<sup>140</sup>

### 3.1.2 ECOLOGICAL VALUE

The ecological value of wildlife is in terms of its contribution to the ecosystem.<sup>141</sup> Wildlife forms an integral part of Kenya's and Botswana's ecosystems since every natural ecosystem consists of all the living organisms as well as non-living things in a select area. An ecosystem works in a way that each part of it is important and if any part

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<sup>136</sup> Note 101 above. See also S Eriksen et al 'Land Tenure and Wildlife Management' C Juma & JB Ojwang *In Land We Trust* (1996) 199, 200 estimate the contribution at 27 percent.

<sup>137</sup> <[http://www.botswana-tourism.gov.bw/tourism\\_s/tourism\\_s.html](http://www.botswana-tourism.gov.bw/tourism_s/tourism_s.html)>.

<sup>138</sup> Note 104 above, 249.

<sup>139</sup> EG Bolen & WL Robinson *Wildlife Ecology and Management* (1995) 435.

<sup>140</sup> N Sitati & M Walpole 'Assessing Farm-Based Measures for Mitigating Human-Elephant Conflict in Transmara District, Kenya (2006) mimeo, 10.

<sup>141</sup> RH Giles Jr *Wildlife Management* (1978) 17.

of it is removed or adversely affected, the entire ecosystem suffers.<sup>142</sup> Wildlife is important for ecological balance as part of the biota because the removal of any member of the biota can allow others to increase to unmanageable levels.<sup>143</sup> This is because no living thing can exist by itself as each of the components of the ecosystem is interrelated to and interconnected to all others and is important for the efficient and continuous functioning of the entire ecosystem.<sup>144</sup> Each component of the ecosystem, from primary producers to herbivores to carnivores and so on, forms a distinct level of energy conversion.<sup>145</sup> The energy and nutrients that organisms in an ecosystem need in order to survive are constantly flowing among the different components of the ecosystem in a cyclically structured manner that creates patterns of interdependence between the components.<sup>146</sup>

As a component of the ecosystem, wildlife is of notable ecological significance and plays a crucial ecological function in the ecosystems of both countries. All forms of wildlife are members of a biotic community in which there is a symbiotic relationship between the respective members. They are, for instance, an integral part of the food chains comprising plants as well as wild animals which may either be herbivores such as zebras or carnivores such as lions.<sup>147</sup> The removal of one of the members of the biota can allow others to increase to unmanageable levels of the gene pool potential and increased loss is likely to lead to extinction of this gene pool. As Giles notes 'wildlife can provide the

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<sup>142</sup> RF Dasmann 'Wildlife and Ecosystem' H.P Brokaw (ed) *Wildlife and America* (1978) 18.

<sup>143</sup> Dasman (note 120 above) 8.

<sup>144</sup> Dasmann (note 142 above).

<sup>145</sup> Ibid.

<sup>146</sup> EP Odum *Ecology* (1975) 21-7.

<sup>147</sup> Ibid, 59-60.



genetic resource, the gene pool, for studying and developing useful hybrid forms.’<sup>148</sup> Besides this ecosystem value, wild animals have also a biological value in that some of them are important in the biological control of certain insects, rodents and pests. Without such animals, harmful things will dominate the world and make life unbearable. Those that are scavengers, like hyenas, are instrumental in public health by cleaning the environment. In sum, all forms of life have a right to exist on earth. Lastly, wild animals also play an important role in seed dispersal. Some wild animals, for instance elephants and monkeys, carry seeds in their digestive tract and disperse them in the course of defecation.<sup>149</sup> In the process of foraging and digestion they translocate seeds, hence play an important role in propagation of certain species of flora.

### 3.1.3 NUTRITIONAL VALUE

Wild animals have for long been an important source of food in many societies in the world, including Kenya and Botswana where, traditionally, many local communities in both countries have from time immemorial relied on wild animals for food. During the ‘hunting and gathering’ phase of human life, for instance, wildlife was a principal component of human diet as communities relied exclusively on game meat and wild plants for their nutritional requirements.<sup>150</sup> Such communities were classified as ‘hunter-gatherer’ and they obtained their food by hunting wild animals and game birds as well as collecting the honey of wild bees, wild fruits and edible roots. In many countries around

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<sup>148</sup> Giles Jr (note 141 above).

<sup>149</sup> P Chardonnet, B des Clers, J Fischer, R Gierhold, F Jori & F Lamarque ‘The Value of Wildlife’ (2002) 21/1 Rev. Sci. tech. Off. Int.Epiz 15, 16  
<<http://www.oie.int/eng/publication/rt/2101/ph.%CHARDONNET.pdf>> Last accessed on 22 December 2007.

<sup>150</sup> Dasman (note 120 above) 4. The word ‘game meat’ is used to refer to meat from wild animals. It is also sometimes referred to as ‘wild meat’ or ‘bush meat.’

the world, including Kenya and Botswana, there are pockets of traditional communities that depend primarily on game meat and wild plants for foods.<sup>151</sup> These communities are considered remnants of those classified as ‘hunter-gatherers’ who rely on hunting for meat and gathering fruits for survival. These twentieth century hunter-gatherers are not only remnants of prehistoric ages but pursue this form of life as an adaptation to be able to exploit their rather hostile habitats.

Notably, their diet is basically determined by their habitats. Examples of these peoples are the Ogiek (Ndorobo or Dorobo) of Mau Forest in Kenya and the San (Basarwa) of the Kalahari Desert in Botswana. Coincidentally, both the names ‘Ogiek’ and ‘Basarwa’ in the local dialects mean ‘those who do not have cattle or those who do not farm. The names ‘Ndorobo’ and ‘Dorobo’ for instance, are a corruption of a Maasai term ‘Torobo’ meaning the poor folk who do not have cattle.’<sup>152</sup> Plog et al report that ‘humans and their immediate ancestors have lived on earth for about 4 million years, and for more than 99 percent of their time they grew no food of their own. Instead, they lived by hunting game animals and gathering of wild plants that grew wild in their habitats, as well as harvesting the honey of wild bees.’<sup>153</sup>

In traditional societies, especially among the hunter-gatherer peoples, game meat was a major source of food and wild animals played a significant role in nutrition by providing humans with the body’s nutritional requirements, especially protein. Meat contains about

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<sup>151</sup> However, not all wild animals are edible or eaten. Only edible wild animals are eaten, and only in certain communities.

<sup>152</sup> Interview on 15 January 2002 by this author with Joseph Polong a Maasai elder in Narok District of Kenya in a related research project sponsored by the Ford Foundation Eastern Africa Regional Office.

<sup>153</sup> F Plog, DG Bates & JR Acocella *Cultural Anthropology* (1980) 86.

25 percent protein, as well as minerals, vitamins and fat.<sup>154</sup> King and Burgess report that meat is a source of complete protein, iron, zinc, vitamins and fat.<sup>155</sup> Besides, meat is perhaps the most popular of all animal products worldwide.<sup>156</sup> As for game meat it 'is generally higher in protein and nutritional value than meat from domestic stock, which gives game meat a higher nutritional advantage over domestic meat.'<sup>157</sup> Hakimzumwami cites Central Africa where he says people favour game meat to domestic meat claiming that it has a better taste than the latter.<sup>158</sup> Indeed game meat can therefore be vital for the nutritional requirements of the rural people because of its role as a continuous supplement to livestock protein.<sup>159</sup> Besides, game meat, especially from culled and shot problem animals, can act as a cushion against the negative value of wildlife for the rural population who comprise the bulk of the people seriously afflicted by wildlife depredation and predation. If properly managed, wild lands can yield a large crop of game meat as well as numerous ancillary animal and plant products. It is estimated that wild game can produce more meat than can domestic stock using the same area.<sup>160</sup>

Moreover, today game meat is still a delicacy in many hotels in both countries; the main species on the menu being eland, impala, and crocodile.<sup>161</sup> In third world economies such as Kenya and Botswana which because of low per capita income and rising levels of poverty are characterized by food insecurity, famine, starvation and malnutrition, wildlife

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<sup>154</sup> See J Caldecott *Hunting and Wildlife Management in Sarawak* (1988) 51.

<sup>155</sup> See also S King & A Burgess *Nutrition for Developing Countries* (2000) 50.

<sup>156</sup> Chardonnet et al (note 149 above) 29.

<sup>157</sup> J Shaw *Introduction to Wildlife Law* (1985) 19. See also SVC Wantrup *Resource Conservation: Economics and Policies* (1952) 169.

<sup>158</sup> E Hakimzumwami 'Community Wildlife Management in Central Africa: A Regional Review.' Evaluating Eden Series, Discussion paper No.10 (2000) 19.

<sup>159</sup> Caldecott (note 154 above).

<sup>160</sup> Dasman (note 120 above) 6.

<sup>161</sup> Plog et al (note 153 above) 85.

can play an important role in alleviating the food problem. It is only that in the modern society the dependence of humans on game animals for food unlike that of their ancestors has progressively been reducing as dependence on domestic animals increased.<sup>162</sup> Omondi reports that ‘there has always been an interest especially by the Food and Agriculture Organization (FAO) in the potential of game meat as a viable source of food for Africa’s fast-growing population.’<sup>163</sup> While it may be important for Africa to exploit this potential, precautions should be taken to ensure that any such exploitation is kept within the limits of sustainability.

#### 3.1.4 MEDICINAL VALUE

Apart from the nutritional aspects of health, some wild animals are of medicinal value with their body parts being used in the cure of diseases and the manufacture of drugs. Besides, many people in most rural areas in Kenya and Botswana rely on traditional medicine for their health care.<sup>164</sup> Krunk notes that several wild animals are popular for their supposed medicinal properties, with parts of some of them being used either in witchcraft or traditional medicine.<sup>165</sup> It should be noted, however, that wild animals not only contribute to traditional medicine but modern medicine as well, with some of their extracts being used by pharmaceutical companies as raw material for the manufacture of drugs.<sup>166</sup> It is estimated that over 40 percent of all prescriptions in the US, for instance,

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<sup>162</sup> Chardonnet et al (note 149 above) 18.

<sup>163</sup> Omondi (note 6 above).

<sup>164</sup> Research conducted by this author in Kenya and Botswana between January and December 2006.

<sup>165</sup> H Krunk *Hunter and Hunted: Relationships Between Carnivores and People* (2002) 121.

<sup>166</sup> N Sifuna ‘Using Eminent domain Powers to Acquire Private Lands for Protected Area Wildlife Conservation’ (2006) *2/1 Law, Environment and Development J* 84, 88.

contain one or more drugs that originate from wild species.<sup>167</sup> Some species may also be used in medical research.

Wildlife in Kenya and Botswana has medicinal value in that parts of some wild animals are used for witchcraft, folk-medicine, and even modern medicine.<sup>168</sup> In both countries certain wild animals, for instance crocodile and rhinoceros, are popular for their supposed medicinal properties. Among the Yeyi of Botswana, burned ash of the rhino horn is sniffed to arrest nose-bleeding, while crushed powder of the horn mixed with milk is swallowed as a cure for asthma.<sup>169</sup> In Kenya, rhino horn is exported to Asia for use as an aphrodisiac while crocodile body fat is applied on the body to cure skin ailments.<sup>170</sup> In the Luhya community of western Kenya, meat of the private parts of a female crocodile cooked with any food is used as a love potion for adulterous husbands.<sup>171</sup> The use of crocodile meat as a cure for adulterous behaviour among men is worth investigating and could be the subject of an independent research. The most interesting one was the use of the lion's body fat among the Samburu people of Kenya to keep away their creditors as it is believed that the scent evokes an aura of fear.<sup>172</sup> In both countries, the elephant's urine is used to cure asthma, while its semen is used to cure impotence among the old men.<sup>173</sup>

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<sup>167</sup> UNEP, *Taking Action: An Environmental Guide for Your Community* (1995) 128.

<sup>168</sup> From interviews conducted by the author in Kenya and Botswana between January and December 2006.

<sup>169</sup> Interview with a group of Yei tribesmen in Maun area of Botswana on 14 September 2006.

<sup>170</sup> Interview with a group of curio dealers in Nanyuki town of Kenya on 9 February 2006.

<sup>171</sup> Gladys Mbone a housewife in Nanyuki town of Kenya interviewed by this author on 9 February 2006 revealed that women among the Luhya communities of western Kenya cook the private parts of a female crocodile together with food and serve it to their husbands. She claims that after a husband has eaten this concoction he will never admire any other woman apart from his wife. Pharmaceutical companies could consider the use of crocodile meat as a cure for adulterous behaviour generally.

<sup>172</sup> Interview with Mr Letipila a Samburu elder in Nanyuki area on 10 February 2006.

<sup>173</sup> Interviews with traditional healers in both countries between January and December 2006.

In Botswana, the Bushbaby is used by traditional healers.<sup>174</sup> In an area believed to have sorcerers, the dried skin of the Bushbaby is burnt near a child and the child made to inhale the smoke.<sup>175</sup> The smoke is believed to give protection to the child against the evil powers of the sorcerers. A portion of its dried meat is cooked together with certain herbs and the soup given to an epileptic to drink over a prescribed period as a cure for epilepsy.<sup>176</sup> The therapeutic value of such animals in folk medicine is especially important in Africa where most people can not afford medicine manufactured by pharmaceutical companies due to their high prices as compared to amounts charged by traditional healers.

### 3.1.5 EDUCATIONAL AND SCIENTIFIC VALUE

This comprises the wildlife benefits that add to human knowledge, either collectively or through research or individually through personal learning.<sup>177</sup> Wildlife has numerous educational benefits in terms of study and research. In terms of study, for instance, there is wildlife education as a distinct branch of study with its own curriculum and teachers. Both Kenya and Botswana have wildlife colleges and departments of wildlife in their institutions of higher learning. In Kenya, there is the Kenya Wildlife Service Institute in Naivasha as well as departments of wildlife and range management in three of the public universities; namely, University of Nairobi, Egerton University and Moi University. Botswana has the Botswana Wildlife training Institute and a department of environmental studies at the University of Botswana that encompasses wildlife studies. Today, both

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<sup>174</sup> 32 percent of the traditional healers interviewed by this author mentioned this animal.

<sup>175</sup> Interviews conducted by this author in Botswana between July and December 2006.

<sup>176</sup> Interviews conducted by this author in Botswana between July and December 2006.

<sup>177</sup> HW Steinhoff *Big Game of North America: Ecology and Management* (1980) 7.

countries have several scholars with Ph.D qualifications; having earned such qualifications from wildlife studies. Visits to wildlife educational centers by schools and adult groups for learning are another important form education. Both countries have various wildlife educational centers. Some of the leading centers in Kenya include the Wildlife Clubs of Kenya in Nairobi, William Holden Wildlife Educational Center in Mt. Kenya, and Mpala Wildlife Center in Laikipia. In Botswana, they include the Maun Wildlife Educational Park and Francistown Educational Park. Such centers play an important role in public education and training in the field of wildlife.

Wild animals are also useful for research in that most researchers use them as specimens for carrying out tests. Dasman reports that most advances in biological and medical research have come through the studies of wild or former wild species of animals, and cites the example of studies on rhesus monkeys which he says have revealed new facts about human blood chemistry and the prevention of disease.<sup>178</sup> Besides, most experiments on new medicines and vaccines are tested on wild animals. Semen from wild animals is, for instance, used in research in genetics, reproductive health as well as developing vaccines and drugs for certain ailments.<sup>179</sup>

### 3.1.6 RECREATIONAL VALUE

The recreational value of wildlife takes many different forms, and arises in terms of the pleasure that humans derive from non-consumptive wildlife utilization schemes.<sup>180</sup>

Wildlife has intrinsic beauty and is a source of recreation for humans, with several

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<sup>178</sup> Dasman (note 120 above) 9.

<sup>179</sup> Chardonnet et al (note 149 above) 29.

<sup>180</sup> B Green *Countryside Conservation: The Protection and Management of Amenity Ecosystems* (1992) 12.

wildlife-related recreation activities, especially aesthetic uses due to its aesthetic appeal.<sup>181</sup> Mungatana has identified game viewing, photography and sport hunting as the major wildlife-related recreation activities.<sup>182</sup> For his part, however, Allen notes that ‘the greatest significance of wild living things is aesthetic or environmental rather than exploitative.’<sup>183</sup> Be that as it may, the recreational value of wildlife is an important source of pleasure and enjoyment for society and is as important as the other consumptive uses discussed above. Indeed, many tourists visiting Kenya and Botswana come just to watch wild animals and take pictures of the abundant wildlife treasure.<sup>184</sup> Wildlife tourism is as a result of the aesthetic appeal of wildlife as tourists come for the purpose of viewing and photographing wild flora and fauna in their natural environment, and for sport hunting where permitted.

Notably, while sport hunting is allowed in Botswana, in Kenya, the Government in 1977 slapped a general ban on hunting and all forms of consumptive utilization of wildlife.<sup>185</sup> This in effect means that in Kenya, unlike in Botswana, the only permitted wildlife-related recreational uses are through photography and game viewing. In Botswana, sport hunting accounts for a large portion of the country’s wildlife earnings.<sup>186</sup> Even where consumptive uses are not permitted, as in the case of Kenya, wildlife is still a worthy

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<sup>181</sup> See Giles Jr (note 141 above) 17.

<sup>182</sup> See, for example, Mungatana (note 122 above) 5.

<sup>183</sup> DL Allen ‘Enjoyment of Wildlife’ HP Brokaw (ed) *Wildlife and America* (1978) 28.

<sup>184</sup> See, for example, Government of Botswana, *Wildlife Statistics 2004 (2005)* 20, which reports ‘wildlife tourists mostly come to the country for trophy hunting, wildlife photography and viewing.’ Wildlife tourists are tourists who come to a country because of its wildlife.

<sup>185</sup> Vide Republic of Kenya, Legal Notice No. 120 of 1977 *The Wildlife (Conservation and Management) (Prohibition on Hunting of Game animals) Regulations*. Also reported in Kenya Wildlife Service, *A Policy Framework and Five-Year Investment Programme 1990/91- 1995/96 Report* (1990) 3..

<sup>186</sup> Interview with Ms Nametso a research officer at the Department of Wildlife and National Parks (DWNP) in Gaborone on 14 August 2006.



resource- in simply being there. Dasman, for instance, notes: '[Even] if wildlife had no other value and were an economic detriment, it would still be worth preserving for its sheer beauty and appeal to the human spirit....Societies that spend great sums to preserve historical monuments, works of art, or scenic vistas also must be willing to preserve wildlife for its historic, artistic, and scenic merit.'<sup>187</sup>

### 3.1.7 SOCIO-CULTURAL VALUE

Wildlife in Kenya and Botswana has numerous socio-cultural benefits and traditional uses, and is part of the socio-cultural life of many ethnic communities in these countries. Notably, some wild animals as discussed below are so revered in some communities that their totemic (sacred), ritualistic and symbolic value is enhanced through a combination of songs, dances, mythology, artistic drawings, paintings, sculpture, carvings, as well as religion. Virtually all ethnic communities in both countries have a long-standing historical association with wildlife and traditionally have some cultural attachment to certain wild animals.<sup>188</sup> This is manifested in many traditional folklore and folktales over the years. There is, for instance, folklore and folktales about 'the cunning hare', 'the beautiful guinea fowl', 'the slow tortoise', 'the mighty lion', 'the stealthily leopard' and 'the majestic elephant.'<sup>189</sup> The proverbial use of wild animals in songs and stories acts as a reservoir for society's knowledge on wildlife, enhances the stylistic attributes of folklore and folktales, and in some cases symbolizes the cultural significance of certain animals in the community concerned as will be discussed below.

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<sup>187</sup> Dasman (note 120 above) 7-8.

<sup>188</sup> HI Ipara *Indigenous Wildlife Resources Management Systems: A Study of the Isukha Community of Western Kenya* (Unpublished D.Phil Thesis, Moi University, 2004) 210.

<sup>189</sup> Interviews with local communities in Kenya and Botswana between January and December 2006.

Besides, some wild animals are totems in certain communities, where they are perceived to be sacred. Totemism is ‘the designation of a particular animal as a sacred emblem, not to be interfered with.’<sup>190</sup> There are communities in Africa which believe that the spirits of their dead members reside in certain animal species. These species are “emblem” or totem for such communities and cannot be killed except for cultural rites or in defence against an attack by it, in the belief that a misfortune could befall the killer or his family.<sup>191</sup> Research for this study established that to this day there are tribes in Kenya and Botswana with their own tribal totem animals. In Botswana, it was evident among four tribes, namely, the BaKwena tribe (the crocodile), among the BaFurushe tribe (the baboon), among the BaRolong tribe (the wildebeest), and among the Bakgatla tribe (the monkey).<sup>192</sup> In Kenya, there are many tribes having tribal totem animals, for instance, the Kikuyu of central Kenya; the Meru, Akamba and Embu of Eastern Kenya; the Abagusii, Abakuria, Abaluhya, Luo and Ateso of western Kenya; the Taita, Mijikenda and Pokomo of the Kenyan Coast; the Kalenjin, Turkana and Maasai of the Rift Valley region. Some of the totemic wild animals include the leopard, monkey, fox, antelope, elephant, buffalo, crocodile, tortoise and certain species of snakes, for instance, the cobra, puff adder and python,<sup>193</sup>

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<sup>190</sup> P Kameri-Mbote *Property Rights and Biodiversity Management in Kenya* (2002) 86. See also Hakimzumwami (note 158 above) 10.

<sup>191</sup> Ipara (note 188 above) 207.

<sup>192</sup> See D Tsiako ‘Of Tribal Totems and Conservation’ African Conservation Forums website <[http://www.africanconservation.org/cgi-bin/dcforum/dcboard.cgi?az=read\\_count&om=1853&forum=DCForumID3](http://www.africanconservation.org/cgi-bin/dcforum/dcboard.cgi?az=read_count&om=1853&forum=DCForumID3)> Last accessed on 22 December 2007.

<sup>193</sup> Interviews conducted by this author in Kenya between January and June 2006 as well as personal knowledge.

Some animals are believed, among certain communities, to be a source of magical powers and/or strength, which powers whether real or perceived make such animals to be of remarkable socio-cultural significance in the concerned communities. It is, for instance, believed in certain communities that ‘association between humans and wildlife believed to be mighty, powerful and full of strength would in turn instil similar values and attributes in such humans.’<sup>194</sup> Animals such as the lion and leopard are in some communities still held as royal. In certain communities people have names adapted from certain animals considered to be totemic or royal.<sup>195</sup> In Botswana, these names include Ndlovu (elephant), Dube (Zebra), Nyati (Buffalo), and Lakwena (Crocodile).<sup>196</sup> In Kenya, the names include Simba (Lion), Kwach (Leopard), Nyang or Kwena (Crocodile), Wakhisi (Antelope), Ngari (Leopard), Ndwiga (Giraffe), Nguyo (Monkey), Mosonik (Baboon), Ngatia (Lion) and Njogu (Elephant).<sup>197</sup> Incidentally all these names are male names, it would be good for there to be a study seeking to establish the reason why women are not given names of wild animals yet there are female wild animals.

In both countries, wildlife and wildlife resources have several traditional uses. The hides of buffalos and giraffes, for instance, are used for making shields while that of the eland is used for making belts and ropes. In both countries also, body parts of certain wild animals are used for making clothing as well as traditional ceremonial regalia. The Basarwa of Botswana use the skins of monkey and antelopes to make clothing and

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<sup>194</sup> Ipara (note 188) 211.

<sup>195</sup> S Kasere ‘Campfire: Zimbabwe’s Tradition of Caring’ United Nations-Non Governmental Liason Service (UN-NGLS) *Voices of Africa* No.6: Sustainable Development Part 2 (1996) <<http://www.unsystem.org/ngls/documents.en/voices.africa/number6/vfab.08.htm>> Last accessed on 22 December 2007.

<sup>196</sup> Interviews with local people in Botswana between July and December 2006.

<sup>197</sup> Interviews with local communities in Kenya between January and June 2006.

bedding; and hippo skin for making lashes and ropes.<sup>198</sup> In Botswana, certain rare species of wildlife provided clothing of traditional chiefs and kings.<sup>199</sup> In Kenya, Maasai morans still wear the lion's mane as a head dress in ceremonies.<sup>200</sup> The Samburu of Kenya use antelope horns to make tobacco containers.<sup>201</sup> Some animals are part of traditional passage rites in certain indigenous communities, for instance, the Maasai of Kenya. Among the Maasai, an important part of the rite of passage for young adult men or 'morans' (meaning a Maasai warrior) is the killing of a lion as a demonstration of bravery.<sup>202</sup> In the course of an informal discussion with Mzee Ole Kipury a Maasai elder, this author established that the 'moran' is expected to return home with the head of the lion as a symbol of bravery.<sup>203</sup> On a lighter note, the said elder stated an age-old joke among the Maasai that a lion is likely to take to its heels if confronted by a 'moran'.

These traditional uses are increasingly being limited by the existing policies and laws in both countries and especially in Kenya where wildlife conservation is almost exclusively in the hands of the state, with the local communities having little or no say in its management. Colchester says that alienating wildlife to the state annuls, limits and restricts traditional user rights such as hunting.<sup>204</sup> The national park status, for instance, usually extinguishes traditional user rights thereby divesting local communities of the true ownership of indigenous resources and illegalizing any utilization activities by them.

A typical example is the Kenya government's legal ban on hunting and all forms of

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<sup>198</sup> Interview with a Basarwa tribesman in Maun in Botswana on 21 July 2006.

<sup>199</sup> Interviews with a Hambukushu (Bukusu) elder in Shakawe township, Botswana on 22 July 2006.

<sup>200</sup> Interview with a Maasai herdsman in Engwaki in Laikipia Kenya on 13 March 2006.

<sup>201</sup> Interview with a Samburu elder in Nanyuki town of Laikipia in Kenya on 20 March 2006.

<sup>202</sup> Kameri-Mbote (note 190 above) 115.

<sup>203</sup> Interview in Dol Dol, Laikipia Kenya on 16 March 2006.

<sup>204</sup> M Colchester 'Salvaging Nature: Indigenous Peoples and Protected Areas' K Ghimire & MP Pimbert (eds) *Social Change and Conservation* (1997) 109.

consumptive use of wildlife which has retained viewing and photography as the only lawful use of wildlife resources in Kenya. This ban has, for example, made it impractical to lawfully procure body parts of wild animals for traditional uses. There is, however, a variance between the law and practice in that there are communities in Kenya which still utilize or kill wild animals for cultural purposes, for instance, the Maasai.

Another factor that has relegated traditional African wildlife uses to the backyard is the modern way of life that has introduced foreign ideologies, conservation practices, lifestyles and religions such as Christianity. A UN report observes that most of these foreign religions for instance 'condemn African traditional religions which, hitherto, acted to maintain an ecological balance due to the society's beliefs that their gods either were the living species or at least they were manifest in these species in a special way.'<sup>205</sup> As a result, many indigenous communities continue to lose cultural and traditional user rights they have enjoyed over wildlife such as domestication and hunting because traditional methods of wildlife utilization continue to be overtaken by modern methods, restricted or even extinguished by the law. In both countries, many traditional practices and taboos continue losing their role in the use of wildlife, while tribal leaders continue losing a say in wildlife conservation and management. The situation is worse in Kenya where wildlife management is almost exclusively a state affair. In Botswana, the situation is not as critical because it seems to be mitigated by the existence of a community-based conservation system in which the local people are routinely consulted and allowed to participate in wildlife management, utilization as well as revenue and benefit-sharing.

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<sup>205</sup> Note 48 above, 187. There is for instance nothing logically wrong for some people turning to wildlife worship for spiritual nourishment as others go to church for the same reason.

### 3.2 “NEGATIVE” VALUE

Apart from the foregoing positive value, wildlife as already observed above ‘sometimes presents “negative” or adverse value.’<sup>206</sup> This may also be referred to as anti-value or counter-value.<sup>207</sup> It includes competition for resources with people and competing land uses, spread of diseases to domestic stock, attacks on people, depredation on crops, predation on domestic stock and destruction of other property. While the first two are also worthy studying they are outside the scope of the present study which focuses on wildlife damage. The idea that wildlife damage is a modern problem is untrue. Wild animals have from time immemorial always caused damage in society, sometimes even killing humans.<sup>208</sup> In the early times, however, such disadvantages were compensated by the meat, skins, fat, and other direct benefits that the people derived from the animals, especially psycho-spiritual uses. This symbiotic relationship was destroyed in a large measure by policies and laws that alienated wildlife to the state.

This chapter has demonstrated that wildlife is a valuable resource for the peoples of Kenya and Botswana. It has a positive contribution to the economies of both countries in terms of tourism earnings. The other uses are its ecological role in the ecosystem, its use as a source of food, its use in education and scientific research, its recreational value as well as its use in the treatment of diseases and the manufacture of drugs. Despite these benefits, wildlife also imposes negative costs on society when wild animals attack people and livestock or when they destroy crops and other physical property such as

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<sup>206</sup> Chardonnet et al (note 149 above) 16

<sup>207</sup> Ibid.

<sup>208</sup> Sifuna (note 2 above) 11.

infrastructure. However, wildlife's positive value outweighs its negative costs hence there is need to conserve wildlife for the present and the future generations. The next chapter examines the nature and extent of wildlife damage in Kenya and Botswana.

## CHAPTER FOUR

### NATURE AND EXTENT OF WILDLIFE DAMAGE IN KENYA AND BOTSWANA

#### 4.1 OCCURRENCE OF WILDLIFE DAMAGE IN KENYA AND BOTSWANA

Whereas wildlife is an invaluable resource to the peoples of Kenya and Botswana, wild animals are also known to impose negative costs to local communities in these countries when they cause damage to people or their property. Historical records and interviews with local communities show that wildlife depredation and predation have been a problem in these two countries for a long time. Esikuri has reported that in 1934, for instance, 80 elephants were shot by the Game Department in Laikipia as part of wildlife damage control.<sup>209</sup> In both countries, these animals undermine the peaceful existence and livelihoods of humans. They attack people and domestic stock, as well as damaging crops and other physical property. Attacks on humans by wild animals are more in Kenya than Botswana. The major reason for this is that Botswana is sparsely populated and it is not easy for a person to encounter a wild animal.<sup>210</sup>

In both countries, almost all wild animals, ranging from small rodents to large mammals and reptiles, cause one or other form of damage. However, the ones that are responsible for the major forms of damage are: Monkeys, baboons, leopards, hyenas, giraffes, crocodiles, hippos, lions, buffaloes, and elephants.<sup>211</sup> Apart from animals which are

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<sup>209</sup> Esikuri (note 8 above) 107.

<sup>210</sup> From interviews held by this author with officials of the Botswana wildlife authorities in Gaborone on 11 September 2006.

<sup>211</sup> From interviews, focus group discussions as well as responses to questionnaires in Kenya and Botswana between January and December 2006. See also Sifuna (note 2 above) 8.



popular for their nutritional, medicinal or aesthetic value, some animals are viewed as pests deserving extermination. This is so especially because some laws have classified certain animals as pests to be hounded and eliminated. Rightly put, while some animals are assets to some people, to others they are vermin. Table 2 below shows the most common forms of wildlife damage in Kenya and Botswana and the wild animals commonly involved in the respective forms of damage.

**Table 2: The Most Common Forms of Wildlife Damage in Kenya and Botswana and the Wild Animals Commonly Involved**

Type of Damage	Wild Animal(s) commonly Involved
Attacks on Humans	<ul style="list-style-type: none"> <li>• Elephants</li> <li>• Lions</li> <li>• Leopard</li> <li>• Cheetahs</li> <li>• Buffalos</li> <li>• Baboons</li> <li>• Rhinos</li> <li>• Hippos</li> <li>• Crocodiles</li> <li>• Hyenas</li> </ul>
Attacks on Domestic Stock	<ul style="list-style-type: none"> <li>• Lions</li> <li>• Leopards</li> <li>• Cheetahs</li> <li>• Hyenas</li> </ul>
Crop Damage	<ul style="list-style-type: none"> <li>• Elephants</li> <li>• Monkeys</li> <li>• Zebras</li> <li>• Giraffes</li> <li>• Wildebeest</li> </ul>
Damage to other Property e.g damage to infrastructure such as buildings, water pipes, power and telecommunication installations, etc	<ul style="list-style-type: none"> <li>• Elephants</li> <li>• Rhinos</li> </ul>

Source: From interviews and focus group discussions conducted by this author in Kenya and Botswana between January and December 2006 as well as responses to questionnaires.

The damage caused by wildlife in both countries may be divided into two categories, namely, direct damage and indirect damage. Direct damage comprises damage which wild animals actually occasion, while the second is that which is incidental and results not through direct causative action on the part of the animal but follows from the victim's perception. Research conducted for this study established that while the forms of wildlife damage in Kenya and Botswana are somewhat similar, they differ in many respects.

The most common forms of direct damage in Kenya include:<sup>212</sup> Killing and wounding people;<sup>213</sup> killing and wounding livestock and other domestic animals as well as fowl; destruction and eating of crops; destruction of property such as houses, food stores and granaries; and destruction of infrastructure.<sup>214</sup> In Botswana, the most common types of direct damage includes crop damage<sup>215</sup> as well as attacks on livestock and other domestic animals such as cattle, goats, sheep, donkeys, horses<sup>216</sup> and dogs. Wild animals also vandalize infrastructure<sup>217</sup> and sometimes, though rarely, cause road accidents.<sup>218</sup> While human deaths are rare, the most prevalent form of damage as already noted in this study is damage to crops and livestock. In both countries, indirect damage has also been

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<sup>212</sup> See Waithaka (note 9 above). See also Emerton (note 4 above). These also emerged from interviews this author had with respondents in Kenya between January and June 2006.

<sup>213</sup> An assistant Director of the KWS interviewed by this author on 18 May 2006 and who sought anonymity revealed that in Kenya, wildlife kills on average two people every week. Respondents interviewed by this author in Botswana between July and December 2006 reported attacks on humans are rare and that only occasionally would wild animals injure or kill people.

<sup>214</sup> Incidents of wild animals colliding with motor vehicles usually occur. See, for example, East African Standard (Nairobi) 11 July 2002, where three people are reported to have died and six others injured when a vehicle in which they were traveling collided with an elephant along the Taita-Voi road.

<sup>215</sup> Especially maize, millet, pumpkin and water melon.

<sup>216</sup> Unlike in Kenya where horses are the preserve of the rich, in Botswana they are kept by even peasants where like other livestock they eat shrubs and grass.

<sup>217</sup> For example telephone poles and water pipes.

<sup>218</sup> However, the animals notorious for causing accidents and more predisposed to causing such accidents are domestic stock.

reported, and is mainly in terms of psychological stress,<sup>219</sup> disruption of social life,<sup>220</sup> as well as the time and resources spent by the people to guard property.<sup>221</sup>

Research for this study established that in both Kenya and Botswana, most damage occurs in the areas adjacent to protected areas. The study employed group samples of respondents based on the distance from these areas. The result was that incidents of damage were highest in the regions falling within five kilometers from the protected areas; and decreased as one moves away from such areas. Areas lying beyond 20 kilometers from wildlife areas recorded less and in some instances no damage at all. Notably, unlike in Kenya where the PAs are surrounded by human settlement and activities, in Botswana, these areas are surrounded by support zones called Wildlife Management Areas (WMAs). These WMAs serve as buffer zones between PAs and human settlements; also as migratory corridors and dispersal areas for the wild animals. By so doing, they are intended to reduce the human-wildlife conflict.

In Botswana, despite the presence of buffer zones, wildlife still causes damage in the areas of human habitation, with the elephant topping the list of culprits.<sup>222</sup> The same was reported in Kenya, hence in both countries, the animals most feared for such attacks are elephants, buffaloes, lions, leopards, hyenas, hippopotamus and crocodiles. Elephants are

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<sup>219</sup> Nelson et al (note 10 above).

<sup>220</sup> Including restrictions on movement; foregone activities as a result of animal terror, in terms of children missing school or spouses abandoning their conjugal obligations to stand guard in the field.

<sup>221</sup> It is in terms of time and resources spent by the people guarding property (for instance firewood kerosene and torch batteries); resources expended on such guarding; and restrictions on movement. Others include psychological stress; foregone activities as a result of animal terror, for instance children missing school or spouses abandoning their conjugal obligations to stand guard in the field.

<sup>222</sup> From interviews conducted by this author in Botswana between July and December 2006, in both countries, elephants are the most destructive and do cause the most terror.

reported to be the most destructive.<sup>223</sup> They were reported to eat virtually any crop including pawpaw and other trees despite their height. They even destroy food stores and houses in search of farm harvest.<sup>224</sup> Almost all the households within five kilometers from PAs reported having suffered at least four raids by elephants a year.<sup>225</sup> There was in fact one infamous male rogue elephant in Nyahururu, Kenya, that the villagers have nicknamed “Osama”<sup>226</sup> because of the terror he unleashes on the villages when he strikes.

In both countries, leopards were reported to be the worst predator on livestock and particularly the small animals like sheep and goats; with very frequent attacks.<sup>227</sup> While lions were also reported to prey on livestock especially cattle, most of the predation on livestock was by leopards.<sup>228</sup> While buffaloes were reported to attack humans, such attacks were said to be rare and mostly by bad luck since the herds come on to farms mostly at night and usually graze on grass.<sup>229</sup> In Kenya, attacks by buffaloes were reported to occur mostly during dry spell when buffaloes come out of the protected areas in such of pasture and water.<sup>230</sup> There were also complaints from the livestock keepers of livestock diseases which they attribute to wild animals and especially grazers such as zebras, antelopes and gazelles.<sup>231</sup>

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<sup>223</sup> From interviews conducted by this author in Kenya and Botswana between January and December 2006.

<sup>224</sup> From interviews conducted by the author during the study period in Laikipia district, Kenya between January and June 2006.

<sup>225</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>226</sup> Named after Osama Bin Laden the alleged leader of Al Qaeda the terrorist group that is accused of being responsible for the bombing of the World Trade Center in New York, US on 11 September 2001.

<sup>227</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>228</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>229</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>230</sup> From interviews by this author in Laikipia Kenya between January and June 2006.

<sup>231</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

The high incidence of wildlife depredation in Kenya as compared to Botswana is on the one hand due to wildlife trespassing into areas of human settlements, and on the other hand, by people encroaching into the wildlife habitat. Sitati and Walpole have attributed it to 'increase in both the human and wildlife population with the former expanding into wildlife areas and the latter expanding from protected refuge into unprotected historical range.'<sup>232</sup> In the Laikipia region for instance, people bought huge tracts of land that were formerly game ranches, and sub-divided them into small pieces of land for settlement and farming activities.<sup>233</sup> It has been asserted by some authorities that while such land-use changes take place, the people often ignore the fact that these areas have been wildlife habitat.<sup>234</sup> Despite the presence of human settlements and activities in these areas that were formerly under vegetation, wild animals still try to migrate through them. Initially, many communities bordering game parks and reserves were essentially nomadic.<sup>235</sup> With the passage of time, however, these communities have radically changed their lifestyles, with many of them adapting permanent settlements and some form of arable farming. Sibanda, for instance, reports that in Kenya, most of wildlife spends a substantial amount of their time on community land.<sup>236</sup>

In Kenya, unlike Botswana, the situation is so critical in that some farmers even from high potential areas have even given up farming because their crops are destroyed by wild animals which sometimes get violent when they are driven away and maul innocent

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<sup>232</sup> Sitati & Walpole (note 140 above) 19.

<sup>233</sup> Muriuki (note 36 above).

<sup>234</sup> W Ottichilo et al 'Population Trends of large Migratory Wildlife Herbivores and Livestock in Maasai Mara ecosystem, Kenya: 1977-1997' (2000) 38 *African J of Ecology* 202, 205.

<sup>235</sup> For example the Maasai.

<sup>236</sup> B Sibanda 'Wildlife Conservation in Kenya: Wildlife or Local Communities at Crossroads' (1995) 5/1 *Environmental Policy and Practice* 35, 40.

villagers. During dry spells, women and children in arid areas encounter these animals at watering points when they go to fetch water.

The findings of this study on the incidence of wildlife damage in both countries are presented in **Table 3** below. In conducting research for this study, this author was cautious, however, of the likelihood of the local people exaggerating their experiences on wildlife damage in the belief that they would through this exercise get compensated by the wildlife authorities. So as to avoid being misled by the respondents, the author at the onset of each interview informed the respondent that this research was for a university degree and for information only and not for purposes of offering any compensation. Also that this information would, however, provide a better understanding of the problem of wildlife damage and assist in finding suitable solutions. Of the 40 households from local communities interviewed by this author in Kenya, 62.5 percent acknowledged having suffered property damage due to wildlife, while of the 40 households in Botswana only 35 percent reported having experienced such damage. This means that the incidence of wildlife damage is higher in Kenya than in Botswana.

The distribution of property damage in Kenya among the locals who reported having suffered this type of damage was as follows: 64.5 percent have suffered crop damage, 25.8 percent have experienced livestock damage, while 9.7 percent have experienced both. In Botswana, only 21.6 percent of the respondents who reported having suffered property damage have suffered crop loss as compared to 69.2 percent who have experienced livestock damage; and only 9.2 percent have suffered both crop and

livestock damage. With regard to attacks on humans by wild animals, only 6.7 percent of the locals interviewed by this author in Botswana have had themselves or their kin or friend attacked by wildlife, compared with 26.4 percent for Kenya.

Sixty-five percent of the respondents from the wildlife communities in Kenya who reported having suffered wildlife damage said they were not aware of the existence of compensation schemes as compared to 45 percent in Botswana. Of the respondents who reported having suffered wildlife damage, only 51 percent in Kenya had lodged claims for compensation as compared to 25 percent in Botswana. Of these, only 25 percent had been compensated in Kenya as compared to 60 percent in Botswana. As to how long it took to be paid compensation, 80 percent in Botswana got compensated within less than a year; 15 percent between two and four years; and 5 percent either took more than 4 four years or were still waiting. For Kenya, all claims took over one year with 68 percent taking between two to four years and 32 percent either over four years or were still waiting.



**Table 3: The Incidence of Wildlife Damage in Kenya and Botswana**

<b>Issues for Interview</b>	<b>Responses in %</b>	
	<b>Kenya</b>	<b>Botswana</b>
<b>Wildlife Damage to Property</b>		
Has experienced property damage	62.5	35
Has not experienced property damage	37.5	65
<b>Types of Damage to Property</b>	<b>Kenya</b>	<b>Botswana</b>
Crops	64.5	21.6
Livestock	25.8	69.2
Both Crops & Livestock	9.7	9.2
<b>Attacks on Humans</b>	<b>Kenya</b>	<b>Botswana</b>
Myself or close friend or relative was attacked	26.4	6.7
Neither I nor any of my close relatives or friends has been attacked	73.6	93.3

Source: From interviews conducted by this author in Kenya and Botswana between January and December 2006.

From the above data, it can be inferred that livestock damage by wild animals is more rampant in Botswana than Kenya, while crop damage is more rampant in Kenya than Botswana. The main reason for this disparity is that crop farming is more widespread in Kenya than Botswana whose predominant agricultural activity is livestock keeping. In both countries, attacks by wildlife on humans are not as frequent as attacks on agricultural enterprises such as crops and livestock. The reason for this could be that humans, being more intelligent than other animals usually take precautions against wildlife attacks.

## 4.2 MAJOR FACTORS CONTRIBUTING TO WILDLIFE DAMAGE IN KENYA AND BOTSWANA

There is some variance in the causes and nature of wildlife damage in Kenya and Botswana. There are five major factors that contribute to increased cases of wildlife depredation in Kenya, namely: loss and fragmentation of wildlife habitats; land use changes; changes in human lifestyles; human-induced changes in animal behaviour; and human negligence. The factors in play in Botswana are land-use changes, human-induced changes in animal behaviour, as well as human negligence. All these factors are explained below.

### 4.2.1 LOSS AND FRAGMENTATION OF WILDLIFE HABITATS

In Kenya, as in many parts of the world, wildlife habitats have reduced considerably over the years as a result of human population expansion, forest excisions, as well as inappropriate government programmes such as undesirable land reform programmes. This habitat loss tends to cram wildlife into small pockets hence causing the animals to come out of the now-constricted habitat in search of food, space and water. While these factors are more pronounced in Kenya, they are not of serious concern in Botswana at the moment. The discussion below examines how human population expansion, forest excisions and inappropriate government programmes have contributed to wildlife damage in Kenya.

### **(a) Population Expansion**

Kenya's population has over the years increased exponentially, and is currently estimated to be slightly over 30 million. While the population has been growing, Kenya's land area has not been expanding. As population increases, humans move into wildlife habitats and establish agricultural activities, livestock keeping and settlements in such areas.<sup>237</sup> Besides, increase in the populations of both humans and wildlife will more often lead to human populations expanding into wildlife areas as wildlife also expands from protected refuge into unprotected historical range.<sup>238</sup> The result is that there will be a relatively large population of wildlife living outside the PAs and spending a substantial amount of their time on private land. In certain places, the local communities were nomadic pastoralists, but on colonizing these wildlife areas, have resorted to other forms of land use such as arable farming.

When such land-use changes take place, the people often ignore the fact that these areas have been wildlife habitat. Despite the presence of human settlements and activities in these areas that were formerly under vegetation, wildlife still tries to migrate through them.<sup>239</sup> Nelson and Sillero-Zubiri report that wildlife damage is more frequent in areas bordering wildlife reserves where wildlife enjoys protection and land is often fertile,

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<sup>237</sup> On the world situation, Rudran notes that human population expansion has introduced some of the most serious problems to wildlife conservation in most, if not all, developing countries; R Rudran 'Problems and Prospects for Wildlife Conservation in Sri Lanka' JC Daniel & JS Serrao (eds) *Conservation in Developing Countries: Problems and Prospects: Proceedings of the Centenary Seminar of the Bombay Natural History Society* (1990) 252. See also MK Ranjitsingh 'The Fauna Outside National Parks and Sanctuaries' JC Daniel & JS Serrao (eds) *Conservation in Developing Countries: Problems and Prospects: Proceedings of the Centenary Seminar of the Bombay Natural History Society* (1990) 262 who has observed that 'while in developing world human settlements a century ago were islands in wild nature areas, today these nature areas have due to exponential increase in human numbers become islands in a sea of humanity.'

<sup>238</sup> Sitati & Walpole (note 140 above) 19.

<sup>239</sup> As this author has observed elsewhere 'conservations argue that such people ought not to be surprised when wild animals attack them or destroy their properties.' See Sifuna (note 2 above).

leading to agriculture.<sup>240</sup> This is the situation obtaining in many parts of Kenya. Coughenour reports that in some cases, the human population in areas around wildlife protected areas seem to be increasing at rates higher than the national population growth rate.<sup>241</sup> Laikipia is one example of a place where the human population growth rate is higher than the national rate.<sup>242</sup> Ottichilo et al for their part report that in areas surrounding Maasai Mara National Reserve of Kenya, human numbers and cultivated land increased by 7 percent and 1000 percent, respectively, between 1977 and 1997.<sup>243</sup> In a large measure, therefore, increase in wildlife damage in such regions can be attributed largely to the exponential increase in human populations and the resultant expansions of human settlements and human activities into wildlife areas.

#### **(b) Forest Excisions**

Forests are the major wildlife habitat outside the protected area estate since there is at least one or other form of wildlife in every forest. Indeed, bushes and forests are known to provide refuge for many wild animals. Unlike Botswana, most of which is arid, Kenya is richly endowed with forest and bush areas.<sup>244</sup> Unfortunately, most of Kenya's forest areas are increasingly being cleared for cultivation and settlement through official degazettements, *de facto* excisions and illegal encroachment. Notably, there have been massive government-spearheaded forest excisions, which have added to loss of wildlife

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<sup>240</sup> Nelson et al (note 10 above). See also IPAR (Institute of Policy Analysis & Research –Kenya) 'Policy Dimensions in Human-Wildlife Conflicts in Kenya: Evidence from Laikipia and Nyandarua Districts' (2005) 11/3 *IPAR Policy Brief* 1.

<sup>241</sup> M Coughenour 'Savanna Model: Providing Solutions for Wildlife Preservation and Human Development in East Africa and the United States. Research Report, February 2000, 4. These facts also emerged in interviews this author had with conservationists and government wildlife officials in Kenya between January and June 2006.

<sup>242</sup> Interviews with officials of the Laikipia Wildlife Forum in Nanyuki town on 25 March 2006.

<sup>243</sup> Ottichilo et al (note 234 above) 210.

<sup>244</sup> From observation by this author during the period of research for this study.

habitat. For instance, the Kenya government in 2001 degazetted and removed from forest protection over 167,000 acres of forest estate in thirteen forest reserves around the country.<sup>245</sup> This move was intended to create space for settlement and agriculture. The excision was equivalent to 10 percent of Kenya's total forest cover and a huge chunk of the country's wildlife habitat. The wild animals having been evicted from such forests are likely to increase the incidence of wildlife damage on private land outlying their former natural habitat. Before then, the government had between 1994 and 1999 degazetted and excised a total of 6,442 hectares of forests.<sup>246</sup>

The aforesaid excisions were carried out under an earlier legislation, the Forests Act of 1962, now repealed.<sup>247</sup> Excisions under this Act were without due regard to the interests of environmental conservation. Criticizing excisions under the Act, Wass says: 'they occurred without adequate consultations as the only legal requirement under the Act was a Gazette notice of 28 days prior to the excision without any provision for objections; there was no provision for environmental impact assessments of proposed changes in land use relating to excisions; and excisions are rarely compensated with corresponding gazettelement of new forest.'<sup>248</sup> These limitations have been addressed in the current forest legislation, the Forests Act of 2005.<sup>249</sup> While under the previous legislation excisions could be carried out without any consultations at all, the Forests Act of 2005 requires

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<sup>245</sup> LN Nos 140- 153 of 2001, Kenya Gazette Legislative Supplement No. 47 of 2001 (19 October 2001).

<sup>246</sup> V Matiru 'Forest Cover and Forest reserves in Kenya: Policy and Practice (1999), <<http://www.iucn.org/places/euro/pubs/forest/forestcover.pdf>> Last accessed on 22 December 2007.

<sup>247</sup> Cap 385 Laws of Kenya (now repealed).

<sup>248</sup> Wass (note 40 above) 17.

<sup>249</sup> Act No. 9 of 2005.

environmental impact assessment as well as prior public consultations and parliamentary approval before an excision can be carried out.

### **(c) Inappropriate Government Programmes**

There are times when governmental and state authorities in Kenya and Botswana through inappropriate programmes contribute to an upsurge in cases of wildlife depredation. An example is the rather populist land reform programmes for resettling the 'landless' and squatters. The target land for such programmes is usually public land and forests, except where land has been reclaimed from the sea as in the case of Holland.<sup>250</sup> Kenya's 2001 forest excision, discussed above, is an example of such programmes. Another government programme that increases cases of wildlife depredation is wildlife translocation, where animals are moved from one place to another. Interviews with government officials in Kenya and Botswana established that the wildlife authorities in both countries usually undertake translocation exercises. Despite the role of such relocations in restocking and destocking, sometimes wild animals are moved from one conflict area to yet another conflict area, increasing cases of wildlife damage in the latter.

#### **4.2.2 CHANGES IN LIFESTYLES**

Research for this study found that wildlife damage in Kenya and Botswana also occurs as a result of people changing their traditional ways of life and adopting new lifestyles that are either incompatible with wildlife as a land use or provide complicity for wildlife damage. An example is the rural-urban migration that has come with modern life. As

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<sup>250</sup> Generally, land is a fixed resource that does not expand or regenerate. There has been so far no reclamation of land from the sea in Kenya and Botswana.

people migrate to urban areas in search of business and employment opportunities, they abandon their farms, hence fostering overgrowth of vegetation that attracts wildlife. Such animals are likely to prey on crops or livestock in the neighbourhood.<sup>251</sup> Another way in which the rural-urban migration contributes to wildlife depredation is that it deprives the village of the necessary labour required for guarding. Lahm reports that crop-guarding in Gabon has ‘decreased with men moving to cities to seek employment, while children are increasingly involved in education.’<sup>252</sup> This is the same situation obtaining in Kenya and Botswana whose youthful population prefers staying in urban and peri-urban areas as opposed to villages.<sup>253</sup>

#### 4.2.3 HUMAN-INDUCED CHANGES IN ANIMAL BEHAVIOUR

An appreciable portion of wildlife damage in Kenya and Botswana is contributed to by humans engaging in conduct that modifies animal behaviour to cause such animals to either attack humans or prey on their livestock or crops. Such activities include hunting, poaching, logging, creation of artificial water points, as well as tourism.

##### **(a) Hunting and Poaching**

Hunting for food has been practiced in Africa for many centuries now, from the traditional African societies using rudimentary weapons such as spears and arrows, to modern society where guns are used. In the traditional society, hunting was mainly for food but in the modern society it has become an economic as well leisure activity.

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<sup>251</sup> Interviews by this author in Kenya and Botswana between January and December 2006.

<sup>252</sup> SA Lahm ‘A National-wide Survey of Crop-raiding by Elephants and Other Species’ 12 *Pachyderm* (1996) 69, 70.

<sup>253</sup> Interviews conducted by this author in Kenya and Botswana between January and December 2006.

Ideally, hunting reduces the availability of wild prey for predators and therefore increases the likelihood of attacks on livestock.<sup>254</sup> Human consumption of resources that would otherwise have been available for wildlife makes wild animals to look for other sources, otherwise how else can they survive in the circumstances? Related to hunting is another form of off-take called poaching; the illegal killing of wild animals in a protected area, usually for economic gain.<sup>255</sup> While hunting is existent in both Kenya and Botswana, poaching is mainly experienced in Kenya and is not yet a problem in Botswana at the moment.

Increased off-take of wildlife through hunting and poaching, especially the use of guns and automatic weapons, modifies animal behaviour by making the animals perceive humans as enemies, leading to an increase in wildlife attacks on humans. Akama says 'hunting increases the degree of separation between wildlife and humans by increasing wildlife's fear of humans.' Poaching also makes animals move out of the protected areas into areas of human settlement and agricultural and development activities, hence increasing incidents of wildlife damage to humans, crops, livestock and other property. In situations of war and armed conflicts, there are also cases of militia abducting cubs to set lions on local people. In July 2006, Ethiopian militiamen had been attacking inhabitants of North-Eastern Kenya abducted cubs from a pride of lions and went through a certain village.<sup>256</sup> Later a pride of lions encircled and raided the village in search of their cubs,

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<sup>254</sup> K Graham, AP Beckerman & S Thirgood 'Human-Predator-Prey Conflicts: Ecological Correlates, Prey Losses and Patterns of Management' 122 *Biological Conservation* (2005)159, 160.

<sup>255</sup> SK Eltringham *The Ecology and Conservation of Large African Mammals* (1979) 243. The most vulnerable species are those with marketable products such as leopards and crocodiles for their skins, elephants for their ivory tusks, and rhinos for their horns. Incidentally these are also the species regarded as dangerous animals.

<sup>256</sup> Daily Nation 16 July 2006.



destroying almost every life in their wake; apparently on a revenge or rescue mission because they killed tens of livestock but did not eat the carcasses.<sup>257</sup> Such are attempts to employ wild animals as agents of war.

**(b) Logging**

This is a problem in Kenya, and not Botswana most of which is arid. When people log in forests, they create abundant secondary vegetation that attracts wildlife, especially herbivores. Once the animals finish foraging on such vegetation they will be tempted to seek food in the neighbouring crop farms or livestock pastures, hence increased incidents of wildlife damage.

**(c) Creation of Artificial Water Points**

This factor is present in Botswana as well as the arid areas of Kenya. Artificially maintained water points such as boreholes and cattle troughs are a source of wildlife menace as they attract wild animals during drought, hence increasing the likelihood of these animals preying on livestock or crop land. Besides, these wild animals are known to chase their domestic counterparts (livestock) from such points.<sup>258</sup>

**(d) Tourism**

Whereas wildlife tourism contributes a large portion of the national income in terms of earnings and foreign exchange in both Kenya and Botswana, it also contributes to detrimental changes in animal behaviour. It is one of the causes of animals leaving their

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<sup>257</sup> Ibid.

<sup>258</sup> From interviews conducted in Kenya and Botswana between January and December 2006.

natural habitat to wander on private lands outside. Sibanda notes that tourism has resulted in increased human presence in wildlife parks such that animals choose to leave the parks, apparently in search of privacy.<sup>259</sup> Indeed, wild animals are “wild animals” and as such they would rather be on their own without much or any human presence at all. When wild animals leave their official habitat and wander in areas outside the protected areas, they occasion harm and losses to people in terms of human injuries and deaths, attacks on livestock, damage to crops and other property, as well as disrupting social life in the affected areas.

#### 4.2.4 HUMAN NEGLIGENCE

Some wildlife damage in Kenya and Botswana can be attributed to negligence on the part of the people in protecting themselves and their property. Sometimes the damage caused by these animals is one that could be prevented by reasonable care on the part of the victims or the wildlife authorities. There are instances where people themselves fail to take the necessary precautionary measures to prevent or abate depredation. This occurs when humans fail to fence their farms, when they grow crops in forests or on the fringes of protected areas;<sup>260</sup> and when they fail to secure their livestock in enclosures as they go to sleep. Sometimes people settle and extend agricultural and development activities on wildlife migration routes and corridors as well as dispersal zones. While such land-use changes take place, the people often ignore the fact that these areas have been wildlife habitat. Despite the presence of human settlements and activities in these areas that were formerly under vegetation, wildlife still tries to migrate through them. In certain places,

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<sup>259</sup> Sibanda (note 236 above).

<sup>260</sup> Wild animals may find it difficult to resist the urge of preying on crops or livestock maintained at their doorstep.

the local communities were nomadic pastoralists but on inhabiting these wildlife areas have resorted to incompatible forms of land use such as arable farming. Growing juicy crops at the door-step of wild animals, for instance, is like inviting them to come and feast.

#### 4.2.5 LACK OF LOCAL CAPACITY FOR WILDLIFE DAMAGE CONTROL

Another reason for increased cases of wildlife damage is lack of capacity in local communities for wildlife damage control.<sup>261</sup> Wildlife areas in Kenya and Botswana are mostly situated in rural villages inhabited by rural folk, most of whom are poor and illiterate. The vast majority of people in these rural areas rely primarily on small scale crop farming and livestock keeping for livelihood, and reside on small farms or tribal land that is communally owned. These people are also the ones who are most afflicted by wildlife depredation.<sup>262</sup> The problem is compounded by the fact that these people lack financial resources and technical know-how to adopt contemporary wildlife damage control methods. They are ill-equipped to undertake effective damage control measures such as electric fencing, use of firecrackers, chilli ropes, and chemical repellants. As a result, local communities invariably employ rudimentary methods such as hitting drums, erecting decoys and physically chasing the animals away, which methods are not effective on large mammals such as elephants. These people are too poor to afford sophisticated equipment because their main concerns are subsistence and immediate basic needs such as nutritional requirements, clothing, shelter, and perhaps school fees for their

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<sup>261</sup> Interviews with local communities in Kenya and Botswana between January and December 2006.

<sup>262</sup> Sifuna (note 2 above) 19.

children. Both Kenya and Botswana acknowledge poverty as one of the major challenges facing their people.<sup>263</sup> There is need to enhance the capacity of the local communities in wildlife damage control. The details on how this can be effected are discussed later in this work, in the section on recommendations.

#### 4.3 PUBLIC ATTITUDES IN KENYA AND BOTSWANA TOWARDS WILDLIFE

Incidents of wildlife damage usually lead to a human-wildlife conflict since this harm often excites negative human passions towards wild animals. In studying the public attitudes towards wildlife, this author adopts a hypothesis by Newmark et al, namely, that people living in close proximity to wildlife areas show a strong negative attitude towards wildlife.<sup>264</sup> This is particularly true for Kenya where most of the local people feel strongly that wildlife is a curse instead of an asset. This position is further supported by research conducted by Akama in the areas around Tsavo National Park in which he arrived at the same finding.<sup>265</sup> The findings of the present study on the public's attitude towards wildlife damage in both countries are presented in **Table 4** below:

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<sup>263</sup> See Government of Botswana, National Development Plan 9 2003/04-2008/9 (2003) 63. See also Republic of Kenya, Economic Survey 2007 (2008) 56.

<sup>264</sup> See generally, WD Newmark et al 'Conservation Attitudes of Local People Living Adjacent to Protected Areas in Tanzania' (1993) 63 *Biological Conservation* 177.

<sup>265</sup> See generally, JS Akama et al 'Conflicting Attitudes Toward State Wildlife Conservation Programs in Kenya' (1994) 8 *Society and Natural Resources* 133-144. See also JS Akama 'Wildlife Conservation in Tsavo: An Analysis of Problems and Policy Alternatives' (2003) 1/1 *J of East African Nat. Resources Management* 1-15.

**Table 4: Public Attitudes in Kenya and Botswana Towards Wildlife**

Public Attitudes to Conservation	Responses in %	
	Kenya	Botswana
Despite its nuisance I support Wildlife Conservation	27.2	68.7
Because of its nuisance I do not support Wildlife Conservation	66.8	21.5
Indifferent	6.0	9.8
Do you or your local community receive any direct benefits from park tourism revenue?		
Yes	12.5	64
No	87.5	36
Is any member of your family working with wildlife/park authorities?		
Yes	5	38
No	95	62

Source: From interviews conducted by this author in Kenya and Botswana between January and December 2006.

Out of the 40 households interviewed in Kenya, only 27.2 percent said they support wildlife despite the harm that wild animals cause to society. This is unlike Botswana where 68.7 percent said they support wildlife conservation despite the nuisance associated with it in terms of wildlife damage. When asked whether they receive any direct benefits from park tourism revenue, in Kenya an overwhelming majority of 87.5 percent said No as compared with 36 percent in Botswana, while only 12.5 percent in Kenya said Yes as compared with 64 percent in Botswana. This is an indication that while in Botswana local communities derive some direct benefits from wildlife, especially from tourism, in Kenya these communities hardly get any direct benefits. This fact was confirmed by the state and wildlife officials who in their responses to the questionnaire stated that the people obtain benefits mainly in the form of provision of social infrastructure.<sup>266</sup>

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<sup>266</sup> Interviews conducted by this author in Kenya between January and June 2006.

Public benefits such as construction of infrastructure, even when financed with tourism revenues, are considered by the local people to be part of the government's public responsibilities to the citizens, a responsibility which must be fulfilled any way. Those interviewed said they would prefer to get direct benefits such as employment opportunities, bonuses, subsidies on farm inputs, bursaries, hunting concessions, money hand-outs and even food donations as an incentive for tolerating wildlife depredation. One of the respondents Moses Ole Leloon, a village Elder in Laikipia district, said: 'How can a Maasai see the logic in conserving wildlife when the revenue from tourism ends up with the government, airlines, tour firms, hotels and corrupt county councils as he continues to wallow in abject poverty? For the ordinary Maasai to appreciate wildlife the way the government and the elite do, they will have to benefit from direct rewards commensurate with the big losses they incur when wild animals attack them, guzzle their pastures and water or eat their crops and livestock.'<sup>267</sup>

In Botswana, the benefits that the local people obtain from wildlife include revenue-sharing, employment opportunities, as well as concessions on traditional uses of wildlife for instance through subsistence hunting. These seem to have played out well as manifested by the positive attitudes by the people of Botswana towards wildlife.<sup>268</sup> When asked if there was any member of their family working with parks or wildlife authority only 5 percent of the households interviewed in Kenya responded affirmatively as

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<sup>267</sup> Interview of 30 April 2006.

<sup>268</sup> Besides, traditional hunting is usually for subsistence and the methods used are far likely to threaten game populations than the use of modern weapons such as firearms. The tools used in this kind of hunting are mainly spears and arrows, as opposed to guns.

compared with 38 percent in Botswana, while an overwhelming 95 percent said none of their family members is employed in the wildlife sector, as compared with 62 percent in Botswana. This means that while wildlife creates jobs for people, the reality is that in Kenya most of those employed in wildlife authorities and tourism establishments such as tour companies and hotels are people from outside the local communities, as the locals languish in poverty and unemployment. This makes the locals to view the park and wildlife personnel as foreigners who have taken their jobs and do not care about their plight. On this issue, Omondi rightly observes that ‘even though they [the locals] may not have the skills [and education] required for ... managerial positions, it is important to encourage their employment in less skilled positions.’<sup>269</sup>

The respondents on conservation attitudes (**Table 4** above) are the same ones who were used on the occurrence of wildlife damage (**Table 2** and **Table 3** above). From this survey, it can be said that people who had suffered wildlife damage were more likely to hold more negative attitudes towards wild animals than those who had not. The survey, however, also established that despite the occurrence of wildlife damage in both countries, people in Botswana still support wildlife conservation. Unlike Botswana, where there is remarkable public support for wildlife, people in most wildlife ranging states in Africa including Kenya have negative attitudes towards wildlife conservation and view the animals as a liability worth eradication. The reason, in a large measure, is due to the damage they cause in society, which has resulted in negative public attitudes

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<sup>269</sup> Omondi (note 6 above) 229.

towards conservation.<sup>270</sup> These facts apparently support the assertion by De Boer & Baquet that wildlife damage leads to negative human attitudes towards conservation ‘with a decrease in human appreciation of wildlife.’<sup>271</sup>

The attitudes of the local communities towards wildlife in Kenya are generally negative such that they would rather there were no wild animals. There are several reasons for this but four of them are outstanding, namely: (i) Wild animals occasion heavy losses to people in terms of human deaths and injuries, as well as damage to domestic stock and other property; (ii) The government’s approach to wildlife issues is generally insensitive to human concerns and seems to prefer wild animals to human beings; (iii) While the local communities are the ones who bear the brunt of wildlife damage, they hardly get any direct benefits from wildlife and receive little or no share of wildlife earnings such as proceeds from wildlife tourism;<sup>272</sup> (iv) Wildlife conservation is a form of land use and people do not appreciate the need to devote large tracts of land to wildlife instead of other beneficial uses such as agriculture and settlement.

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<sup>270</sup> Most people, especially rural populations in virtually all wildlife areas no longer support conservation. This is in a large measure because they are the majority of people in Africa are peasants, many of them hopelessly poor, living in rural areas and rely on livestock and subsistence farming for survival, yet they are the ones who bear the brunt of wildlife ravage. Gilbert & Dodds report that ‘in Africa, the marauding elephant or a herd of buffalo on the move can destroy the crops of an entire village in minutes!’<sup>270</sup> It is understandable for such people to get angry when wild animals invade and wreak havoc in their dwelling places or on their belongings. The majority of them are poor whose earnings are in certain cases less than a dollar a day, do not maintain any form of insurance at all for either themselves or their property, and can hardly afford hospital bills or funeral expenses.

<sup>271</sup> See WF De Boer & DS Baquete ‘Natural resource use, crop damage and attitudes of rural people in the vicinity of Maputo Elephant Reserve, Mozambique’ (1998) 25 *Mozambique Environmental Conservation* 208.

<sup>272</sup> While direct income from tourism for instance contributes about 5% of Kenya’s gross domestic product and a large part of her foreign exchange earnings, the local communities get little or nothing from these earnings. The lion’s share of the tourism earnings goes to tour companies and hotels. Sharing the burden of conservation without sharing its benefits is unfair.



In Kenya, local communities in regions adjacent to wildlife areas are so bitter with the government and the animals that they no longer see any sense in wildlife conservation. Some of the respondents interviewed in Kenya during the research for this study threatened to harm problem animals by lacing their crops with poison or laying traps using long nails. Such is the general attitude obtaining in virtually all wildlife areas in the country. There is dissatisfaction and discontent among the local communities with the way the Kenya government runs the wildlife sector, the major bone of contention being the ravage that the animals perpetrate on society. Referring to wildlife, Paulo Lengesa Samburu tribesman and herdsman in Laikipia, in an interview with this author said in the Swahili dialect *'ubaya wa hii serikali ya Kenya ni kwamba hata ng'ombe yao ikule ng'ombe yako ama ikuuwe haijali.'* Translated in the English language he was saying 'the problem with the Kenya government is that even if their cows [animals] eat your cows or kill you it does not care'.<sup>273</sup> In Kenya, the people with positive attitudes towards wildlife are the elite;<sup>274</sup> otherwise the rural folk, the bulk who bear the brunt of wildlife ravage, have rather hostile attitudes. While wildlife income and revenue account for a substantial portion of Kenya's Gross Domestic Product (GDP) and contrary to the belief that wildlife GDP can alleviate the high poverty levels of developing countries, the local communities in the rural areas of Kenya 'feel strongly that wildlife contributes to their poverty.'<sup>275</sup>

In virtually all wildlife areas of Kenya, the story is the same. It ranges from Zebras transmitting diseases to livestock, to monkeys eating a family's mature crop, to hippos

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<sup>273</sup> Interview of 30 April 2006. It emerged from interviews in many villages in the Laikipia region of Kenya between January and June 2006 that in many local communities in the area people refer to wildlife as the 'government's cows'.

<sup>274</sup> Such as Conservation NGOs, the donor community, tour companies, and government officials.

<sup>275</sup> Akama et al (note 265 above) 139.

overturning boats and mauling fishermen, to buffaloes foraging on farmland, to leopards preying on a farmer's entire livestock, to lions killing villagers, or elephants imposing week-long curfews on villages. During a focal group discussion that this author held in Nyahururu, Kenya, John Kimani, a village leader reported that at times all that the government (Kenya Wildlife Service) did in case of human death by a wild animal was to provide a vehicle to transport the body from the mortuary to the burial place.<sup>276</sup> During the same meeting, an enraged Paul Muriuki, a farmer in the area, reported that the situation was so bad and because the government did nothing about it, he was forced to build a makeshift shelter on top of a tree after marauding jumbos descended on his village. At the same meeting, Peruso Ole Sankale, a pastoralist said that the Kenya Wildlife Service (KWS) would rather see a dead Moran than a dead lion.

Apart from the socio-economic circumstances of the people, these negative public attitudes towards wildlife in Kenya are further compounded by lack of direct benefits from wildlife, as well as the fierce competition between people and wildlife for the ever-diminishing resources such as land, water and pasture.<sup>277</sup> Despite the huge sums of money that run into billions which government and other players in the wildlife and tourism sector earn, the local communities hardly receive any tangible economic benefits at all or receive just too little if any.<sup>278</sup> In the same vein, most wildlife policies and laws

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<sup>276</sup> Focal group discussion of 10 May 2006.

<sup>277</sup> Because they continue to diminish, they can no longer be merely described as 'scarce' hence the correct reference is 'ever-diminishing'.

<sup>278</sup> Most of the revenue from wildlife goes to urban-based tourist companies instead of the rural peasants who interact with wildlife on a day to day basis and bear the brunt of wildlife depredation. It emerged from the focus group discussions this author held with local communities in Laikipia Kenya that local communities do not appreciate such benefits and that they prefer direct monetary gains to indirect benefits. Indeed direct sharing of revenue may not only change the people's attitudes towards wildlife but may also

are over-protective of wild animals and seem to emphasize animal welfare more than that of humans.<sup>279</sup> Just as there is a category of wild species referred to as endangered, the wildlife menace is steadily driving people into the status of “vulnerable species”.<sup>280</sup>

As already noted in this work, the Kenya government in 1977 in an attempt to control poaching, slapped a general ban on hunting and any consumptive uses of wildlife.<sup>281</sup> The ban is still in force today.<sup>282</sup> This in effect means that in Kenya the only forms of wildlife utilization are non-consumptive ones such as photography and game viewing. Even Kenya’s Wildlife Bill of 2007, currently pending before Parliament and which is perhaps Kenya’s most progressive law on wildlife, expressly prohibits all forms of hunting.<sup>283</sup> Kenya’s approach to wildlife utilization seems to ignore the fact that historically there had traditionally been a symbiotic relationship between the peoples of Kenya and wildlife, in which people hunted wild animals for food, bedding and clothing as a trade-off for the nuisance that these animals pose; for instance, the damage they cause. Conversely, the laws and policies in Botswana allow the local communities to hunt in Wildlife Management Areas (WMAs) without a permit, for food. This seems to have improved public attitudes in Botswana towards wildlife and it would be good if the Kenya government reviewed the blanket ban in order to allow local communities to hunt wild animals for food. If properly regulated, game meat can be an important source of

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off-set some of the costs of living with wildlife. This is because while benefits are shared by the whole community, the real cost of harm is incurred by individuals.

<sup>279</sup> The regulatory regime tends to favour wildlife over people.

<sup>280</sup> These are species it is believed are likely to move into the endangered category if the causative factors continue operating.

<sup>281</sup> See note 149 above. Also reported in Kenya Wildlife Service, *A Policy Framework and Five-Year Investment Programme 1990/91- 1995/96 Report* (1990) 3.

<sup>282</sup> Interviews with Kenya Wildlife Service officials in Nairobi on 15 February 2006.

<sup>283</sup> Wildlife (Conservation and Management) (Amendment) Bill of 2007.

protein for the rural poor. Research conducted by this author for this study, however, revealed that the Kenya government has from time to time on a trial basis and under strict controls on private farms outside the protected areas allowed certain forms of consumptive wildlife utilization as a way of providing wildlife benefits to landowners through culling, game ranching and game farming.<sup>284</sup> Otherwise the only supply of game meat in Kenya is from crocodile and ostrich farms.<sup>285</sup>

Incidentally, in Botswana just like in Kenya, wild animals impose losses on society in terms of death and injury to humans and domestic stock, crop damage, as well as damage to other property and even infrastructure. However, the public attitudes in these countries differ radically. Despite the problem of wildlife damage in Botswana, generally people still have positive attitudes towards wildlife conservation. Amazingly, over 60 percent of the people interviewed in Botswana and almost all opinions expressed during focused group discussions supported wildlife. Five reasons were cited for this by the people interviewed in various parts of Botswana during this study. First, in Botswana, the people appreciate the economic contribution of wildlife tourism in terms of earnings from tourists and employment opportunities.<sup>286</sup> Secondly, there is direct utilization.<sup>287</sup> The people acknowledge that the government has allowed them to hunt and eat wild game. Thus, not much has fundamentally changed from the past, especially for communities

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<sup>284</sup> Interviews with Kenya Wildlife Service officials in Nairobi on 15 February 2006.

<sup>285</sup> Interviews with Kenya's Wildlife Service officials in Nairobi on 15 February 2006.

<sup>286</sup> The tourist sector is so developed that it has permeated almost all the parts of the country.

<sup>287</sup> Such direct benefits seem to compensate the people for the nuisance associated with wildlife.

with an established culture of hunting.<sup>288</sup> The Botswana government has allowed the local communities to hunt in the wildlife management areas for subsistence.<sup>289</sup>

Thirdly, Botswana is a sparsely populated country hence the low incidence of wildlife damage. Fourthly, unlike in Kenya where wildlife protected areas are bounded by areas of human habitation, in Botswana they are surrounded by buffer zones where some of the utilization activities are allowed. These support zones, also called wildlife management areas, are important because they have the potential to reduce the human-wildlife conflict. The fifth reason is that the country is basically arid and crop damage which is conventionally the major source of human-wildlife conflicts is limited to areas of good rainfall.<sup>290</sup> Besides, people are so sparsely populated and settlements are just dots in a sea of fallow land. Ironically, the wildlife territory is bigger than the human territory. Ironically also, unlike Kenya where the only people who support wildlife conservation are the elite and conservationists, in Botswana even the ordinary villager supports wildlife and would tell an inquirer how important it is.

It should be noted, however, that there exist in both countries different interest groups with differing and sometimes conflicting group interests with regard to wildlife conservation. These interest groups and their group interests are represented in **Diagram 1** below. Akama identifies four major interest groups, namely, (i) Local communities (small scale cultivators and pastoralists); (ii) Local wildlife conservation officials (game

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<sup>288</sup> The local communities derive direct benefits from wildlife through direct off-take of certain species

<sup>289</sup> This subsistence hunting by indigenous people such as the Basarwa (also known as the San or the Bushmen) of the Kalahari seems to mitigate public attitudes towards wildlife in Botswana.

<sup>290</sup> Due to the arid climatic conditions obtaining in Botswana, there is not much arable farming.

rangers and wardens; (iii) State (both the executive branch and different government departments); and (iv) International wildlife conservation organizations.<sup>291</sup> Attitudes towards conservation are often influenced by these interests. The interests of local peasants, local politicians, wildlife officers, international wildlife agencies and donors, policy-makers, wildlife authorities, and conservationists with regard to wildlife conservation differ a great deal. There is notable variance in the perceptions and attitudes of these interest groups towards wildlife. It is these different perceptions and attitudes that are referred to in this study as group interests. Akama calls them 'class interests' and notes that unless these interests are reconciled 'the chances of developing a sustainable policy of wildlife conservation are not good.'<sup>292</sup>

The interplay between the interests of conservationists and government on the one part and those of the local communities on the other, are often times conflicting and antagonistic. For instance, while the interests of the local people with regard to wildlife conservation are their immediate livelihood concerns such as subsistence, conservationists and the international community are interested mainly in conserving wildlife for ethical reasons such as its ecological, recreational, as well as its educational and scientific value. Governmental and state wildlife authorities at the local and national levels are for their part concerned mainly about its economic value, for example, its contribution to the GDP, especially in terms of wildlife foreign exchange. These conflicts between the above group interests may be referred to as 'indirect human-wildlife conflicts' as opposed to direct human-wildlife conflicts resulting from wildlife damage.

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<sup>291</sup> Akama (note 21 above) 20.

<sup>292</sup> Ibid.

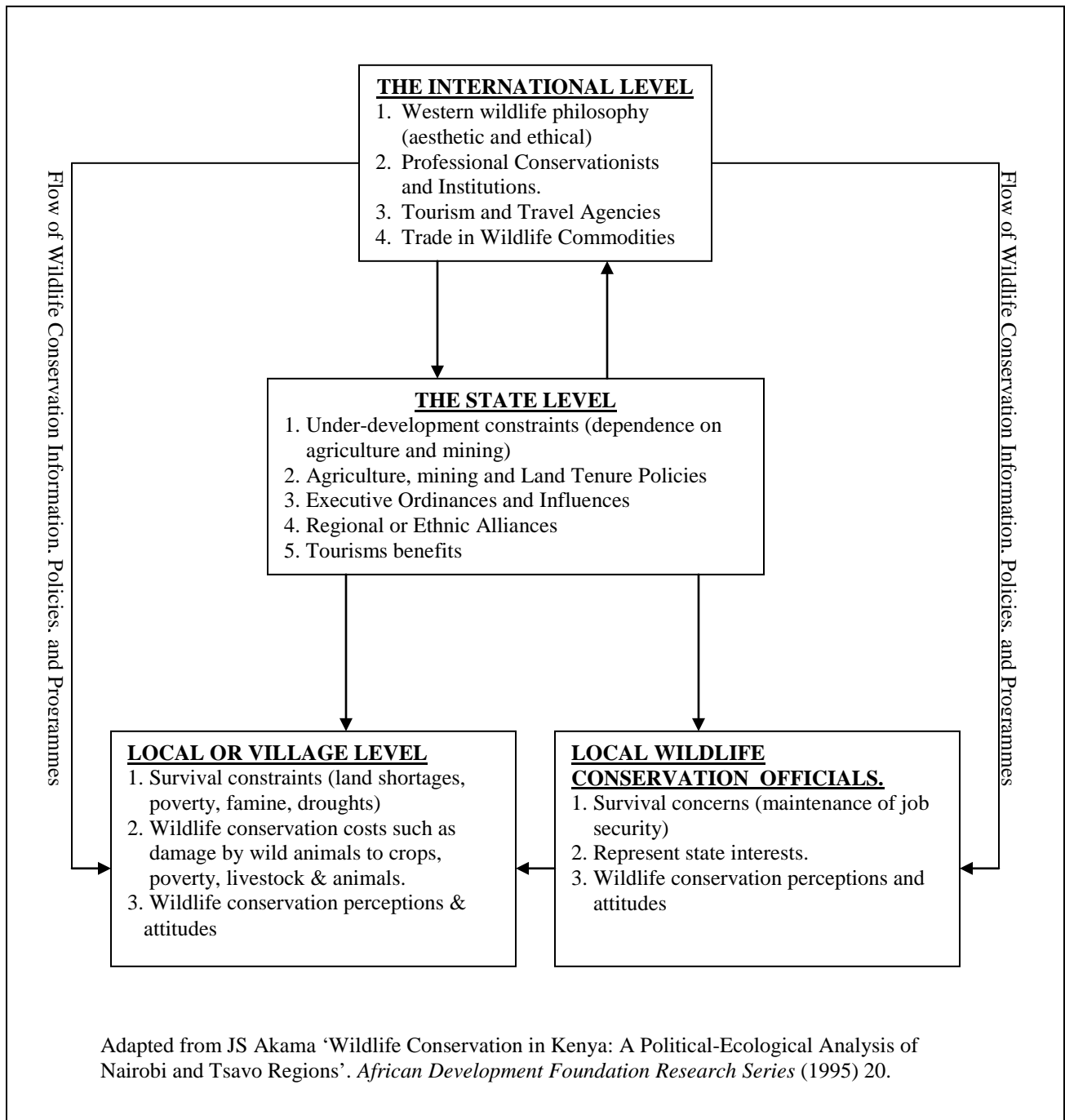
This antagonism and conflict usually undermines the success of conservation programmes and needs to be addressed lest the future of wildlife especially in rural Africa is bleak.

One front on which these interests groups differ is on how wildlife is to be utilized- the form of utilization. While the local people often times insist on consumptive use of wildlife resources in order to meet their basic needs and immediate livelihood concerns, state and governmental authorities as well as the international conservation community often prefer non-consumptive utilization such as aesthetics and recreational uses. Kenya is a classic example of this position. In Kenya, as already noted, the government has banned all forms of consumptive utilization of wildlife resources, such that the only uses of wildlife permitted are non-consumptive ones through viewing and photography. This has engendered a conflict between the more localized interests and the less localized interests. Deodatus, for instance, defines a human-wildlife conflict as ‘a confrontation between specific interests of populations living close to wildlife, with less localized interests related to wildlife conservation.’<sup>293</sup>

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<sup>293</sup> F Deodatus ‘Wildlife Damage in Rural Areas with Emphasis on Malawi’ HHT Prins et al (eds) *Wildlife Conservation by Sustainable Use* (2000) 115, 116.

**Diagram 1: Interest Groups and Group Interests on Wildlife Conservation**





For effective wildlife management and in order to ensure a future for wildlife conservation, there is need to strike a balance between these divergent group interests. Despite the need to address these interest conflicts, these group interests are a reality that can neither be abolished nor simply wished away. Therefore, provided the different interest groups exist, the conflicts will always arise. For this reason, the best way to address the situation is to create legal, institutional and policy frameworks that tend to minimize the conflict between the respective divergent group interests.

In discussing the nature and extent of wildlife damage in Kenya and Botswana, this chapter first identified the common forms of damage in both countries and classified them into four categories, namely, attacks on humans; attacks on livestock; crop damage; and damage to other physical property e.g infrastructure. It has then pinpointed the wild animals commonly involved in each category of damage. The factors that cause or increase wildlife depredation in both countries have also been discussed. Based on research and fieldwork conducted by this author in Kenya and Botswana for this study, the chapter has given statistics on the incidence of wildlife damage in both countries and its effects on public attitudes towards conservation. These findings are summarized in **Table 3** and **Table 4**, respectively. This study has focused on particular interest groups, namely, local communities, wildlife experts and wildlife authorities. This is due to their interaction with wildlife. While the sample used in this study is representative of these groups, it is not representative of the entire population at large in both countries. It is representative only of those who interact with wildlife, or are affected by, or experience

wildlife damage. This is because it is not the whole population in our study countries that interact with, or is affected by, or experience wildlife damage.

In all, this chapter has set the stage for demonstrating the need to address the problem of wildlife damage and identifying appropriate legal and institutional arrangements for that.

## CHAPTER FIVE

### THE NEED FOR LEGAL FRAMEWORKS ON WILDLIFE DAMAGE

#### 5.1 THE LEGAL BASIS FOR ADDRESSING WILDLIFE DAMAGE

As already noted in the preceding chapters, wildlife damage is one of the major challenges facing wildlife conservation in Kenya and Botswana today, and a major cause of the human-wildlife conflict. Damage by wild animals ordinarily arouses negative passions among people against wildlife, such that people are unlikely to support conservation. It also leads to retaliatory attacks on these animals by people. These negative passions as already discussed in this study, are present in both countries although in varying degrees. While cases of such retaliatory attacks are more rampant in Kenya than in Botswana, the possibility of an increase in such attacks in Botswana cannot be ruled out as the country's population continues to increase.<sup>294</sup> As already observed earlier on in this study, these direct harmful interactions between humans and wildlife often result in negative public attitudes towards conservation and are what are sometimes referred to as "human-wildlife conflict". One way in which the conflict in both countries can be addressed is through the instrument of law- the establishment of an appropriate legal framework on wildlife damage.<sup>295</sup>

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<sup>294</sup> While Kenya's and Botswana's total land surface area are almost equivalent, Kenya's human population is almost 16 times higher than that of Botswana.

<sup>295</sup> Law comprises rules, regulations and legal principles for controlling social behaviour and promoting public welfare. It is usually contained in legislation, by-laws and other subsidiary regulations, common law principles, court decisions as well as executive decrees in jurisdictions where they are accepted as a source of law. See N Sifuna & S Mogere 'Enforcing Public Health Law in Africa: Challenges and Opportunities, the Case of Kenya' (2002) 34 *Zambia Law Journal* 148, 149. See also D Hey *Wildlife Heritage of South Africa* (1966) 218, who argues that legislation is one of the first conservation measures to be taken by any country.

In almost all jurisdictions the state has by law vested in itself the control of the wildlife sector. This power entails the right to protect the animals as well as a duty to set up mechanisms on the negative costs of wildlife conservation; for instance, damage by these animals. This is because, while wild animals are a common heritage of humankind that should be protected for the present and future generations, there is a corresponding obligation on the part of the state and governmental authorities to ensure that these animals do not undermine the security and welfare of the people. The existence of appropriate legal arrangements and other mechanisms on the negative costs of wildlife will, in the long term, result in winning public support for wildlife conservation. It becomes imperative, therefore, for the government to address the adverse consequences of conservation, particularly the harm that wild animals cause to members of the society.

The most appropriate approach in this regard would be for the law to establish a general obligation on the part of humans and the government not to destroy wildlife species and their habitats, while at the same time obligating state and governmental authorities to take measures that protect people and their property against depredation by wildlife. This will ensure the incorporation of human welfare concerns into conservation efforts. Besides, given that wildlife damage is one of the major problems facing society, there is no reason why law should not be used to address the problem. In jurisdictions with wildlife, one would expect there to be some legal framework on wildlife. Wildlife damage is both a policy concern as well as a legal issue requiring appropriate legal response. Indeed, one can discern certain tangible measures that could be crafted into the law<sup>296</sup> for addressing

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<sup>296</sup>Law can be defined as a set of norms, regulations and principles for regulating conduct within society, enforcing public policy and promoting social welfare. See Sifuna & Mogere (note 295 above) 149.

this problem. It is this author's view that legal provisions on wildlife damage should address the following issues: responsibility for preventing wildlife damage; support for benign wildlife damage control measures; cooperation among stakeholders in matters of wildlife damage control and alleviation; responsibility for compensating wildlife damage; the kind of damage for which compensation may be paid; the type wildlife; the procedure for lodging a claim; the form of compensation; the mode of payment; methods of computing the quantum of payment; and disclaimers if any. These are some of the parameters that this study uses to evaluate Kenya and Botswana's legal frameworks on wildlife damage.

There are various rules, regulations, legislative provisions, and even common law formulations directly or indirectly touching on harmful human-wildlife interactions. These together form a distinct body of laws that can be described as the law relating to wildlife damage. The advantages of addressing wildlife damage through law instead of merely leaving it to the regulatory regime of policy and executive whims<sup>297</sup> are many. First, it is a cardinal legal principle that laws must be certain. Legal provisioning therefore has the propensity to bring about certainty such that it will be easy to know what measures the law stipulates. Secondly, laws create justiciable rights and obligations that can be enforced through the courts as opposed to choice by executive whim. Through legal provisioning, justiciable rights and duties for both the people and wildlife authorities can be created and which are legally enforceable. Thirdly, law does not act in vain - it always stipulates sanctions for breach, which could take the form of punishment for non-compliance or incentives for compliance. With such sanctions, there are, ideally,

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<sup>297</sup> Which are usually erratic.

high chances of compliance with legal edicts. Fourthly, the law establishes institutions and spells out their mandates. Creating institutions by law instead of mere policies makes them legal entities having legal competence with capacity to legally enforce their mandate.<sup>298</sup> Finally, law is perhaps the best means of addressing any major mischief in society because it is of universal application and applies to all without discrimination. What the law prescribes is enforced against everybody and everyone irrespective of religion, sex, race or position in society as obedience to law is a duty of every citizen; which in a large measure contributes to the success of the law as a means of social control.

Wildlife damage therefore is not just a policy issue but also a legal issue that has given rise to a genre of legal formulations addressing it. The existence of formal legal arrangements for addressing wildlife damage has the potential to (a) build public tolerance for wildlife nuisance; (b) build public support for wildlife conservation; and (c) diffuse criticism on wildlife conservation.

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<sup>298</sup> Besides, effective management of wildlife, as Cumming says requires 'the development of an appropriate body of law on which to base the actions of governmental and private institutions.' See DHM Cumming 'Conservation Issues and Problems in Africa' D Lewis & N Carter (eds) *Voices from Africa: Local Perspectives on Conservation* (1993) 23, 40.

## 5.2 THE ROLE OF LAW IN WILDLIFE DAMAGE CONTROL AND ALLEVIATION

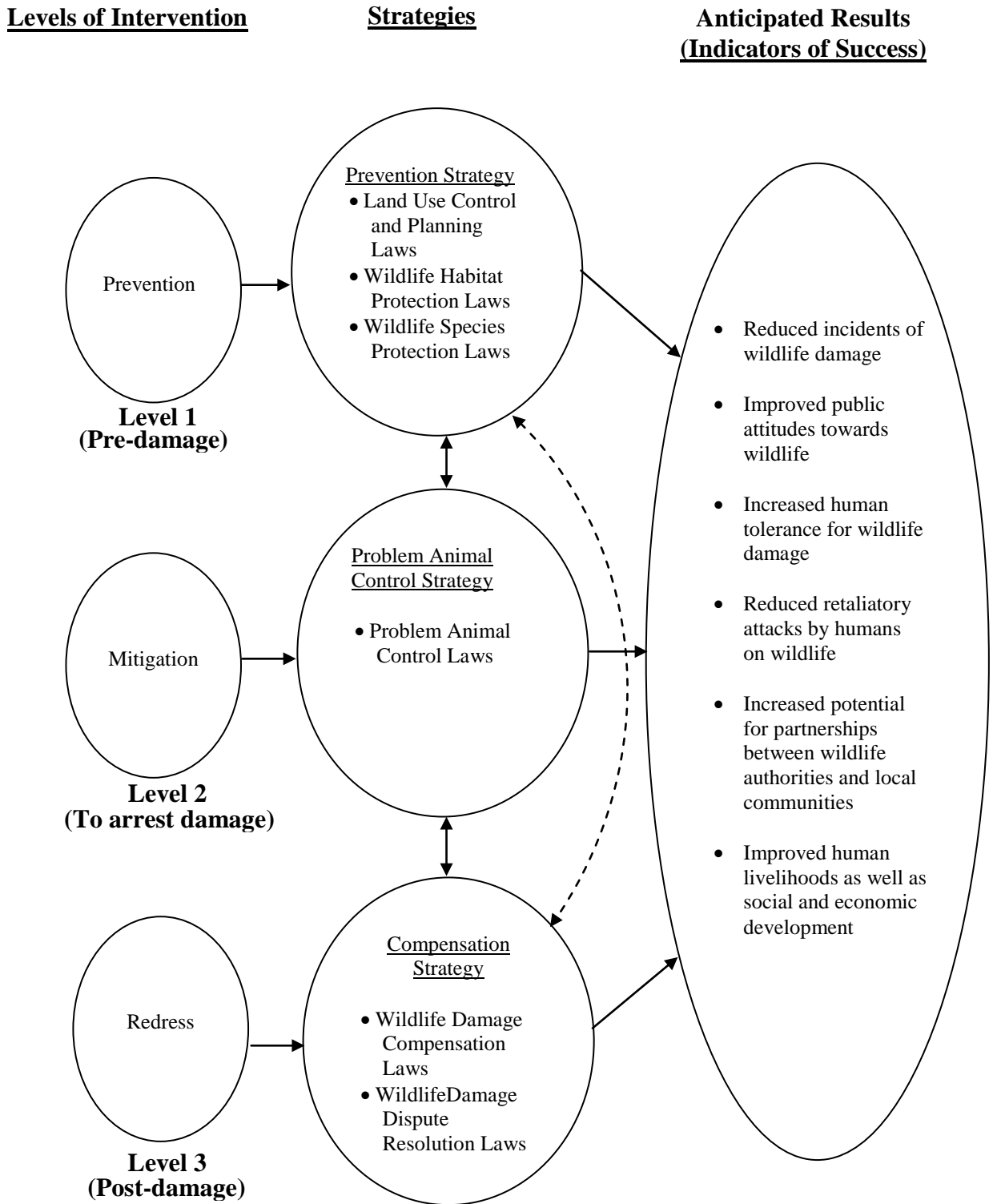
As represented in **Diagram 2** below, there are three classical approaches to dealing with harm of whatever kind, namely, prevention,<sup>299</sup> mitigation and redress.<sup>300</sup> Similarly there are three levels of legal intervention on wildlife damage which are fashioned along these approaches. The effective employment of the appropriate strategies at each of these three levels should result in success not only in controlling wildlife damage but in wildlife conservation as well. It will reduce incidents of wildlife damage; improve public attitudes towards wildlife where local communities start to support wildlife conservation and programmes; increase the people's tolerance to incidents of wildlife damage; reduce retaliatory attacks by people on wild animals; increase the potential for partnerships between wildlife authorities and local communities by providing an atmosphere favourable for participation between these players; lead to improved human livelihoods as well as social and economic development. The three approaches as well as levels of intervention are discussed in detail after **Diagram 2** below.

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<sup>299</sup> This is a precautionary approach intended to prevent the occurrence of harm. The preventive measures commonly adopted by the law include the following: protecting wildlife from harm by humans; protecting wildlife habitats from encroachment by humans; the requiring environmental impact assessment (EIA) for activities likely to affect wildlife; land use control and planning; controlling injurious wildlife; democratizing wildlife management.

<sup>300</sup> There are times when for some reason it is either difficult to predict with certainty that damage will occur or to prevent it. There are situations where no matter what precautions are taken, animals still cause harm. This approach is also good even though it is always better to prevent than to wait until harm has occurred. In this case the only option left is to provide redress by paying compensation.

**Diagram 2: Proposed Hypothetical Model of Legal Intervention Levels and Strategies on Wildlife Damage**





### **Prevention**

This is the first level of legal intervention and usually entails legal mechanisms aimed at preventing damage from occurring. It is basically a proactive approach intended to anticipate and avoid the occurrence of damage. There are mainly three types of legal strategies through which it is implemented, namely, laws controlling land use; laws protecting the wildlife habitat from human encroachment; and laws protecting certain species of wildlife. They are applied before any damage occurs.

### **Mitigation**

This is the second level of legal intervention and usually entails legal mechanisms aimed at intervening in a situation where harm is already occurring so as to arrest further harm. The measures are applied in a situation where wild animals are already causing damage, for instance, where a group of elephants are already on crop land destroying crops. This level of intervention is through the problem animal control laws that, for example, allow the local community and wildlife authorities to kill particular notorious wild animals or those that are already causing damage.

### **Redress**

This is the third level of legal intervention and is normally applied after damage has already occurred. It entails compensation to those who have suffered wildlife damage.<sup>301</sup>

The most common strategies adopted by the laws at this level of intervention are the

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<sup>301</sup> Reparation is therefore a proper concern for law because law is traditionally a channel for availing remedies to those who are aggrieved.

establishment of mechanisms for compensation as well as resolution of disputes arising from damage caused by wildlife.

The hypothetical model in **Diagram 2** above is used in chapter 7 of this work as a benchmark for evaluating the legal frameworks in Kenya and Botswana on wildlife damage. As represented in the said model, there are three classical approaches to dealing with harm of whatever kind, namely, prevention, mitigation and redress. It should be noted, however, that prevention and mitigation are not substitutes for reparation; hence the adoption of one does not exclude the others. Even where precautionary measures have been taken, damage can still occur as a result of negligence, as well as unforeseeable circumstances. Sometimes the occurrence of such harm is inevitable in the particular circumstances. This means, therefore, that reparation can still be applied together with monitorable preventive and mitigation measures. The part that follows below discusses the limitations of the law as an instrument for addressing wildlife damage.

### 5.3 THE LIMITATIONS OF LAW

The law has some inherent limitations that need to be taken into account in deciding to use it. These limit the suitability of law as a tool for addressing wildlife damage. While the law has several inherent limitations, this study considers six of them to be the most pronounced because of their potential to affect the efficacious application of the law. Firstly, law is somewhat rigid and hence lacks the flexibility necessary for prompt response to new situations and issues. This means the law will always lag behind even when the need for change is clear. Provisions in an Act of Parliament, for instance, will

only be amended by parliament itself. Secondly, the law cannot solve every problem or aspect of the problem; sometimes it creates problems that were not anticipated by the authorities. This can be a hindrance to effective wildlife management since such problems may undermine the policy objectives.

Thirdly, law is not self-executing but relies on some external agency or personnel to enforce it. For the most part, its usefulness will depend on the conduct of these enforcers. It would be pretentious to assume that the law is pure. It is a fact that some laws are influenced by non-judicial factors such as politics. Understanding the diverse interests that inform the formulation and implementation of laws is very important. Sometimes the influence may be so great that the laws end up being a hindrance to effective wildlife management. This dilemma is further compounded by the fact that almost every legal rule has an exception. The availability of these exceptions sometimes poses a challenge to the smooth operations of the law since such exceptions can be used by people to circumvent its intention.

Linked to this is the fact that law cannot satisfy the interests of all in society. With regard to wildlife, for instance, there are diverse interests in society. Such interests are as varied the segments of society and stakeholders. These include those of pastoralists, farmers, hunters, fishermen, developers, traders, educationists, conservationists, policy-makers and local communities. There are also private as well as societal and public interests. The diverse interests are usually conflicting and are sometimes irreconcilable, even through the instrumentality of law.

The fourth setback is that the law is dependent on institutions in regard to promulgation, interpretation, and enforcement; the absence of which laws become abstract things. It is the working of these institutions that gives laws meaning and the legal force, such that if these institutions abdicate their role then the law fails. Law demands supervision and unless infractions are brought to its attention they go unpunished. That is why acts that are done in complete privacy and secrecy, however illegal, are likely to go unpunished. The fifth limitation of law is that it only proscribes and prescribes conduct but does not provide for or propose alternatives. While a law prohibiting hunting would, for instance, reasonably be expected to say what else the former and potential hunters will do to earn a living, it does not.

Lastly, law deals with the outside and not the inside of humans; their overt acts and not their thoughts.<sup>302</sup> It tackles overt acts, leaving attitudes which are the main determinants of conduct. It is, however, said that not even the devil knows what is in a person's mind. While only those who are caught for killing or wounding wildlife are apprehended to face the law, there are many people in the local communities interviewed during this research particularly in Kenya who wished that wildlife would be extinct some day. They wished they would wake up one morning and find all wild animals dead, and that if they had the power they would exterminate wildlife. In fact, one of the questions in the questionnaires and interview schedules administered to the local communities was: 'Would you support the idea of wildlife being eradicated?' In their answers to this question, only one out of every five respondents interviewed in Kenya answered 'NO' as compared to three in Botswana. It is evident therefore that, generally, local communities in Kenya's wildlife

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<sup>302</sup> R Cotterell *The Sociology of Law* (1980) 55.

areas do not support conservation. The reasons commonly cited by respondents are wildlife damage as well as lack of suitable revenue and benefit sharing schemes. Unless there are appropriate legal arrangements and other mechanisms on wildlife damage and other aspects of wildlife management, for instance, revenue and benefit sharing, such attitudes are likely to continue. In which case, the future of wildlife conservation will be bleak.

This chapter has justified the need to have legal arrangements on wildlife damage and underscored the role of law in this regard. In demonstrating that the law is an invaluable tool for addressing the problem, the chapter examined the suitability as well as the inherent limitations of law. It then proceeded to identify three classical legal intervention approaches usually adopted in dealing with the problem of wildlife damage, namely: prevention, abatement and redress. On the basis of the foregoing, the chapter has finally developed a hypothetical model of legal intervention levels and strategies for wildlife damage control and alleviation. It is in fact this model that is used in chapter seven to evaluate the legal and institutional arrangements in Kenya and Botswana on wildlife damage. The next chapter examines the measures commonly employed by governmental and state authorities as well as local communities to control or alleviate wildlife damage.

## CHAPTER SIX

### **POLICY INITIATIVES AND MEASURES EMPLOYED IN KENYA AND BOTSWANA FOR WILDLIFE DAMAGE CONTROL AND ALLEVIATION**

#### 6.1 POLICY INITIATIVES BY THE STATE IN KENYA AND BOTSWANA FOR WILDLIFE DAMAGE CONTROL AND ALLEVIATION

Both Kenya and Botswana have clear policies on wildlife conservation. These policies are contained in the various policy documents such as National Development Plans and government policy papers. They can also be discerned from pronouncements of key government officials. Wildlife damage alleviation is one of the programmes that the governments of Kenya and Botswana undertake to address the human-wildlife conflict.<sup>303</sup>

While the wildlife policies of both countries acknowledge the importance of wildlife in national and social development, they also explicitly recognize the problem of wildlife damage. Kenya's policy in Sessional Paper No. 3 of 1975, for instance, states: 'The government accepts a general responsibility to assist with the control of the behaviour of wildlife, which is adverse to other activities or to human life, within the limits of available finance, manpower and techniques, and subject to co-operation by the relevant landowners and other members of the public.'<sup>304</sup>

Neither Kenya's nor Botswana's policy documents, however, espouse the need for legal arrangements for addressing wildlife damage nor outline the legal strategies to be adopted in this regard. This is a notable omission because law being a tool for implementing policy, it is necessary that the policy spells out the legal mechanisms for its

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<sup>303</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>304</sup> See Republic of Kenya, Statement on Future Wildlife Management Policy in Kenya. Sessional Paper No.3 of 1975 (note 52 above) 16.

implementation. This will help discover whether the policy objectives have been met. An examination of these policies reveals that they are not forthright on the subject of wildlife damage, and particularly on legal intervention strategies.

In Kenya, as IPAR notes, wildlife policy and legislation tend to favour wildlife over local communities.<sup>305</sup> The same situation obtains in Botswana. Policy-makers seem to prefer wild animals to people. It is this author's view that a wildlife policy that disregards human welfare is unsustainable in the long-run and inimical to human-wildlife conflict alleviation. This is because it breeds human contempt for wildlife, as the people would view wildlife as a curse instead of a resource.

In both Kenya and Botswana, the approach of preferring wildlife to people is a hangover from the colonial attitude that disregarded the dignity and welfare of the indigenous people since the colonial government was more interested in using Africa's resources in enriching their mother countries. Surprisingly, overtones of this imperialist attitude still exist in the post-colonial policies, programmes and laws. The reason could be the continued reliance by the post-independence governments of these countries almost entirely on foreign aid for the budgetary needs, including those of the wildlife sector.<sup>306</sup> Besides, most of the players in the non-governmental wildlife agencies are non-Africans; predominantly Europeans and Americans.

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<sup>305</sup> IPAR (note 240 above) 2.

<sup>306</sup> Note 101 above.

In Kenya, wildlife is regarded as the property of the state and is managed exclusively by the state. Although the Kenya Wildlife Service has recently introduced a community service initiative, this is just a pilot project and wildlife management in Kenya still remains state-centered. Despite the critical nature of the human-wildlife conflict, the people in Kenya have no say at all in wildlife matters and hardly derive any direct benefits from the resource. As a result, the local communities view wildlife as a liability notable only for its nuisance value. An earlier study by this author established that whereas wildlife damage is one of the major problems facing local communities in East Africa, the rage against wildlife in Uganda and Tanzania was not as pronounced as it was in Kenya.<sup>307</sup> Research for that study established that one of the reasons why the rage was low in those two countries compared to Kenya was their having adopted a community-oriented wildlife management that seemed to mitigate wildlife damage.<sup>308</sup> Uganda and Tanzania have allowed local communities to reap some direct benefits from the sector, which benefits seem to console and cushion the local communities against losses arising from wildlife ravage.<sup>309</sup> Moreover, these two countries have no programmes or schemes for compensating victims of wildlife damage and neither do their laws have any provisions for compensation.

Unlike Kenya's policy that adopts the state-centered command and control,<sup>310</sup> Botswana like Uganda and Tanzania has adopted a community based approach called Community Based Natural Resource Management (CBNRM) which emphasizes the role of local

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<sup>307</sup> Sifuna (note 2 above) 23- 24.

<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> At times militaristic.



communities. Under this model, the local communities are recognized as partners in conservation and are allowed to play a key role in the management of wildlife. The people are allowed to manage wildlife either on community basis or in joint ventures with the private sector.

Although presently the policy in force in Botswana is the Wildlife Conservation Policy of 1986, this policy is currently being reviewed.<sup>311</sup> There are also Strategic Management Plans for particular predator species as well a particular wildlife reserves, and a National Conservation Strategy (NCS) Action Plan. The main aim of the above policy documents is the sustainable management of wildlife resources and they are in line with the CBNRM model of wildlife management. This system emphasises direct utilization, benefits-sharing, as well community-based management of resources through a partnership between the local communities and the government and the private sector.

Under CBNRM, the local communities are allowed to manage wildlife either on a community basis or in joint ventures with the private sector to benefit from the latter's pool of expertise. While the Department of Wildlife and National Parks (DWNP) does not allow hunting in the protected areas (national parks and game reserves), hunting is allowed in the Wildlife Management Areas as well as outside the protected areas. This model is appropriate for Africa since consumptive utilization has always been part of the African culture. As part of the culture, people would only kill wildlife in defence and when they need to use it for food and for other culturally appropriate uses. Since its

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<sup>311</sup> National Development Plan 9 (note 101 above) 252.

adoption in Botswana, this system has achieved a significant reduction in the human-wildlife conflict.<sup>312</sup>

In a nutshell, the wildlife policies of Kenya and Botswana have been evolving and over the years generally moved from the original colonial policing outfit towards a managerial model. This is in line with international trends in wildlife policy, which seek to integrate the local communities and interests in conservation efforts. While the law in Botswana has also moved in this direction, Kenya's legislation has been resilient, and remains fashioned on the 'command and control' approach typical of the colonial past.

## 6.2 MEASURES EMPLOYED IN KENYA AND BOTSWANA FOR WILDLIFE DAMAGE CONTROL AND ALLEVIATION

Research for this study established that there are various measures commonly employed by the local communities and wildlife authorities in Kenya and Botswana to control or respond to wildlife damage.<sup>313</sup> They generally fall in either of three damage intervention strategies, namely, prevention, mitigation and reparation. These strategies are contained in the hypothetical model of legal intervention levels and strategies on wildlife damage (**Diagram 2**) in the preceding chapter. In both countries, the predominant approaches to wildlife damage control are prevention and mitigation. The most common methods employed by the local communities and the wildlife authorities in both countries for

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<sup>312</sup> From interviews this author had with several respondents including Government officials and people from the local communities in Botswana between July and November 2006.

<sup>313</sup> Research conducted for this study in Kenya and Botswana between January and December 2006.

preventing and mitigating damage include the use of are deterrents and erection of game-proof barriers.<sup>314</sup>

In both countries, deterrents are widely and increasingly being used for the prevention and abatement of wildlife damage.<sup>315</sup> Indeed, the use of deterrent measures to prevent wild animals from causing mischief is not new in society and is perhaps the oldest method, having been used for centuries. This shows that as a method of keeping off animals it has withstood the test of time. It has been used by many communities around the world. Notably, however, sometimes the animals get used to some of these deterrent measures and defy them.<sup>316</sup> Besides, some deterrents are only effective with certain animals and not others, as will be discussed later in this chapter. Some of the commonly used deterrents are: fires; light, thunder flashes and flares; dummies and decoys; noise; repellants; and buffers.

Erection of physical barriers is the other widely applied method of wildlife damage control in both countries. Physical barriers are invariably considered to be one of the most enduring solutions to human-wildlife conflict hence are the most common form of wildlife damage control because they separate wildlife from farms, settlements and people.<sup>317</sup> The usual forms of such barriers are fences (both electrified and non-electrified fences), although trenches are also used by local communities often maliciously to harm

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<sup>314</sup> From interviews by the author in Kenya and Botswana between January and December 2006.

<sup>315</sup> Interviews with local communities and officials of the Kenya Wildlife Service and Botswana's Department of Wildlife and National Parks (DWNP) between January and December 2006.

<sup>316</sup> Interview with Peter Waruguru a farmer in Rumuruti Division of Laikipia District in Kenya on 20 April 2006.

<sup>317</sup> Nelson et al (note 10 above) 12

the animals. It is in most cases used as a retaliatory measure for revenge. Even though physical barriers are effective against some species, they are not very effective against others. Some wild animals, especially macro fauna, are known to challenge such barriers most of the times unsuccessfully, but at times successfully.<sup>318</sup> Apart from the use of deterrents and erection of physical barriers, the Kenya Wildlife Service (KWS) and Botswana's Department of Wildlife and National Parks (DWNP) have three major programmes on wildlife damage. These are: the creation of buffer zones around wildlife protected areas; wildlife translocation; and the problem animal control (PAC) programmes.

#### 6.2.1 SPECIFIC MEASURES EMPLOYED BY STATE AND GOVERNMENTAL AUTHORITIES

Research for this study established that there are mainly five measures that wildlife authorities, the Kenya Wildlife Service and Botswana's Department of Wildlife and National Parks employ to control or alleviate damage caused by wild animals, namely: fencing; shooting of problem animals (Problem Animal Control); wildlife translocation; monetary compensation schemes; and establishment of buffer zones. These are discussed below.

##### **(a) Fencing**

Fencing is generally the most popularly adopted method of preventing wildlife damage. There are two types of fences, electrified and non-electrified. Sitati & Walpole report that non-electrified fences are generally ineffective against large mammals such as elephants

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<sup>318</sup> From interviews conducted by the author in Kenya and Botswana between January and December 2006.

(*Loxodonta Africana*) which challenge them quite often, most of the time successfully.<sup>319</sup> For this reason, they are usually no real barrier to such animals. The elephant, for instance, uses its trunk to pull down such fences.<sup>320</sup> Electrified fences are therefore the most effective fences in preventing wildlife damage as they are effective against both small and large animals.<sup>321</sup> Nevertheless, even where fences are not electrified, they must be 'of solid construction, of sufficient height and they should be visible.'<sup>322</sup> Kangwana, however, reported that elephants have in the past passed through a six-strand 7,000 volt fence.<sup>323</sup>

Most wildlife protected areas in both countries have been fenced, some of them with electrified fences. The fencing is by the central government in the case of national parks and local councils in the case of game reserves. In Kenya's Laikipia region, there are electrified fences surrounding the Aberdares National Park and the Mt Kenya National Park.<sup>324</sup> In Botswana, virtually all wildlife protected areas fenced, most of them with electrified fences. As already noted above, fencing of whatever kind is not a perfect prescription for wildlife damage control, as studies have shown that even electrified fences are not game-proof.

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<sup>319</sup> Sitati & Walpole (note 140 above) 6; But see K Kangwana 'Human-Elephant Conflict: The Challenge Ahead Ahead (1995) 19 *Pachyderm* 10, who reports that elephants have in the past passed through a six-strand 7,000 volt fence.

<sup>320</sup> Interviews with local communities in Kenya and Botswana between January and December 2006. See also reported in Esikuri (note 8 above).

<sup>321</sup> FN Kasilly 'The Fence as a Moderator of the Wildlife Menace in Kenya' (2002) 40/4 *African Journal of Ecology* 407, 408.

<sup>322</sup> J Mackinnon, K Mackinnon, G Child & J Thorsell (eds) *Managing Protected Areas in the Tropics* (1986) 157.

<sup>323</sup> Kangwana (note 319 above).

<sup>324</sup> From observation during fieldwork for this study.

### **(b) Shooting of Problem Animals**

This method is also known as “Problem Animal Control” (PAC). It is widely used by the wildlife authorities in both Kenya and Botswana to control wildlife damage.<sup>325</sup> It entails the shooting of the particular problem animal having been positively identified to be notorious for causing harm. This method is also called “control shooting”. It is usually carried out by state and governmental authorities, usually personnel from the wildlife authorities. Nelson *et al* note that ‘on a PAC program, attempts are made to identify a “culprit” [animal] that is a known and persistent crop-raider, or one that has caused a human fatality.’<sup>326</sup>

The effectiveness of this method will depend on the accuracy in identifying the particular problem animals because there are circumstances that may make accurate identification difficult. Circumstances such as incidents occurring at night or raids by large herds, unfavourable weather conditions affecting visibility, can make identification difficult. In most of the wildlife systems, however, shooting of animals is used very sparingly, and as a last resort, in cases of human death or persistent crop-raiding.<sup>327</sup> Esikuri has noted that while shooting of problem animals may lower the incidents of wildlife damage, it ‘is likely to attract opposition from conservationists opposed to killing of wildlife under any circumstances.’<sup>328</sup>

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<sup>325</sup> From interviews the author had with officials of the Kenya Wildlife Service and Botswana’s Department of National Parks in Kenya and Botswana, respectively, between January and December 2006.

<sup>326</sup> Nelson et al (note 10 above).

<sup>327</sup> Esikuri (note 8 above) 124.

<sup>328</sup> Ibid.

**(c) Wildlife Translocation<sup>329</sup>**

Nelson *et al* note that even though wildlife translocation is not usually intended for wildlife damage control, it is an auxiliary panacea to the problem of wildlife damage ‘through the removal of “problem animals” from areas of conflict to areas where there will be reduced contact with people and their crops.’<sup>330</sup> In so doing, it may reduce incidents of damage. Translocation is practiced in Kenya and Botswana as a management strategy, usually for restocking and destocking.<sup>331</sup> In both countries, there have been several translocations of wild animals from one habitat to another.<sup>332</sup> From experience, translocations sometimes exacerbate human-wildlife conflict; for example when animals are moved from one conflict area to yet another conflict area, worsening the situation in the latter.<sup>333</sup> Besides, there is no guarantee that the remaining animals will not cause further damage.<sup>334</sup> Moreover, translocated animals in some cases have returned to their original habitat, in the process causing damage along the way. Esikuri has reported that some relocated animals have walked back after several weeks.<sup>335</sup> Where relocation separates mothers from calves, the mothers are likely to return to look for their young ones, causing damage along the way. Apart from this danger, the mere separation of a lactating mother may lead to death of the calves. In translocations, therefore, care should be taken to ensure that mothers are moved along with their calves.

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<sup>329</sup> This is the relocation, by wildlife authorities, of wild animals from one habitat to another.

<sup>330</sup> Nelson *et al* (note 10 above) 9

<sup>331</sup> Interviews with officials of the Kenya Wildlife Service and Botswana’s Department of Wildlife and National Parks.

<sup>332</sup> From interviews conducted by the author in Kenya and Botswana between January and December 2006.

<sup>333</sup> See Sifuna (note 2 above) 10

<sup>334</sup> Esikuri (note 8 above) 124.

<sup>335</sup> *Ibid.*

Notably, translocations may not be effective in controlling wildlife damage. They may, however, have a role in the overall management of wildlife for restocking purposes where the animals are taken where there are resources or for tourism purposes where they are moved to tourist destinations. In both Kenya and Botswana, the communities affected by these translocations expressed reservation to translocation as a method of controlling wildlife damage.<sup>336</sup> Their concerns relate to the lack of clear guidelines and procedures on translocations particularly on community involvement.<sup>337</sup> In both countries, the respondents complained that the government on virtually all occasions does not involve the local communities whenever it is relocating wildlife.<sup>338</sup>

#### **(d) Monetary Compensation Schemes**

In the context of this study, the term “compensation” refers to the payment made by wildlife authorities to victims of wildlife damage, or their kin in the case of death.<sup>339</sup> Both Kenya and Botswana have schemes for making money payments to those who suffer damage resulting from wild animals. Some conservationists that this author interviewed during the research for this study, however, argued that there is non-monetary compensation in the form of material donations or food rations or where victims are considered compensated by indirect benefits such as schools, hospitals and other such amenities that they already derive from wildlife conservation activities.<sup>340</sup>

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<sup>336</sup> Interviews with local communities in Kenya and Botswana between January and December 2006.

<sup>337</sup> Interviews with local communities in Kenya and Botswana between January and December 2006.

<sup>338</sup> Interviews with local communities in Kenya and Botswana between January and December 2006.

<sup>339</sup> See Sifuna (note 2 above) 14.

<sup>340</sup> Interview in Nanyuki Kenya with officials of the Laikipia Wildlife Forum in March 2006. See also debate on direct versus indirect compensation in PJ Ferraro & A Kiss ‘Direct Payments to Conserve Biodiversity’ *Science Magazine* Vol 298 November 2002,18-19 <[http://www.sciencemag.org/cgi/content/full/298/5599/1718? Maxtoshow=& hits=...8/7/2003](http://www.sciencemag.org/cgi/content/full/298/5599/1718?Maxtoshow=&hits=...8/7/2003)> Last accessed on 22 December 2007.



Non-monetary compensation would therefore be where victims are considered compensated by these indirect benefits. For purposes of this study, compensation means monetary payment where damage has already occurred hence the so-called “non-monetary compensation” through provision of social amenities such as infrastructure to the community generally is considered to be part of wildlife benefits in the overall wildlife management.

Kenya and Botswana have a large agricultural sector and a large livestock sector respectively, and since the major forms of wildlife damage are crop damage and livestock loss, it is only logical that such losses be compensated and adequately. It is encouraging that both countries have monetary compensation schemes for wildlife damage. Unfortunately, these compensation processes are flawed. Firstly, the amounts paid in both countries are generally small and in almost all cases not commensurate with the actual harm suffered. Secondly, while in Botswana compensation is available for all types of damage,<sup>341</sup> in Kenya it is available in cases only of human injury or death and none for crop, livestock or material damage. Thirdly, while in Kenya compensation is available for damage by any wild animal, in Botswana it is limited to damage by particular animals only, namely, the elephant, lion, leopard, cheetah, hyena, monkey (jackal), baboon and crocodile. Fourthly, the process in Kenya takes too long.

Under the scheme in Botswana, the incident has to be reported within 24 hours to the local office of the wildlife department, which then sends its staff to go and confirm the

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<sup>341</sup> Section 46 (4) of the Botswana Act merely provides that ‘compensation may be paid, as may be provided in regulations made under the Act, to any person who satisfactorily establishes that he has suffered damage from the action of an animal.’

report.<sup>342</sup> Once the incident has been confirmed and the claim verified, the loss is then assessed and compensation payment processed. The claimant waits for between two and six months to receive the payment. The amounts are not fixed but are calculated by the department in consultation with the claimant and experts.<sup>343</sup> Unlike in Kenya, the amounts are not stipulated in any legal document or policy. The amounts usually paid by the government for wildlife damage are generally lower than what courts would award if the claimants were to file claims based on common law. However, unlike Kenya where the people are visibly dissatisfied by the compensation rates offered by the government, in Botswana they do not seem to really mind the present rates because of the other benefits they are already deriving from wildlife.<sup>344</sup> Between 1994 and 1997, the Botswana government paid to farmers a total of BP 99 758 and BP 20 120 as compensation for wildlife damage to crops and livestock, respectively.<sup>345</sup> The wildlife damage compensation process in Botswana is represented in **Diagram 3** below.

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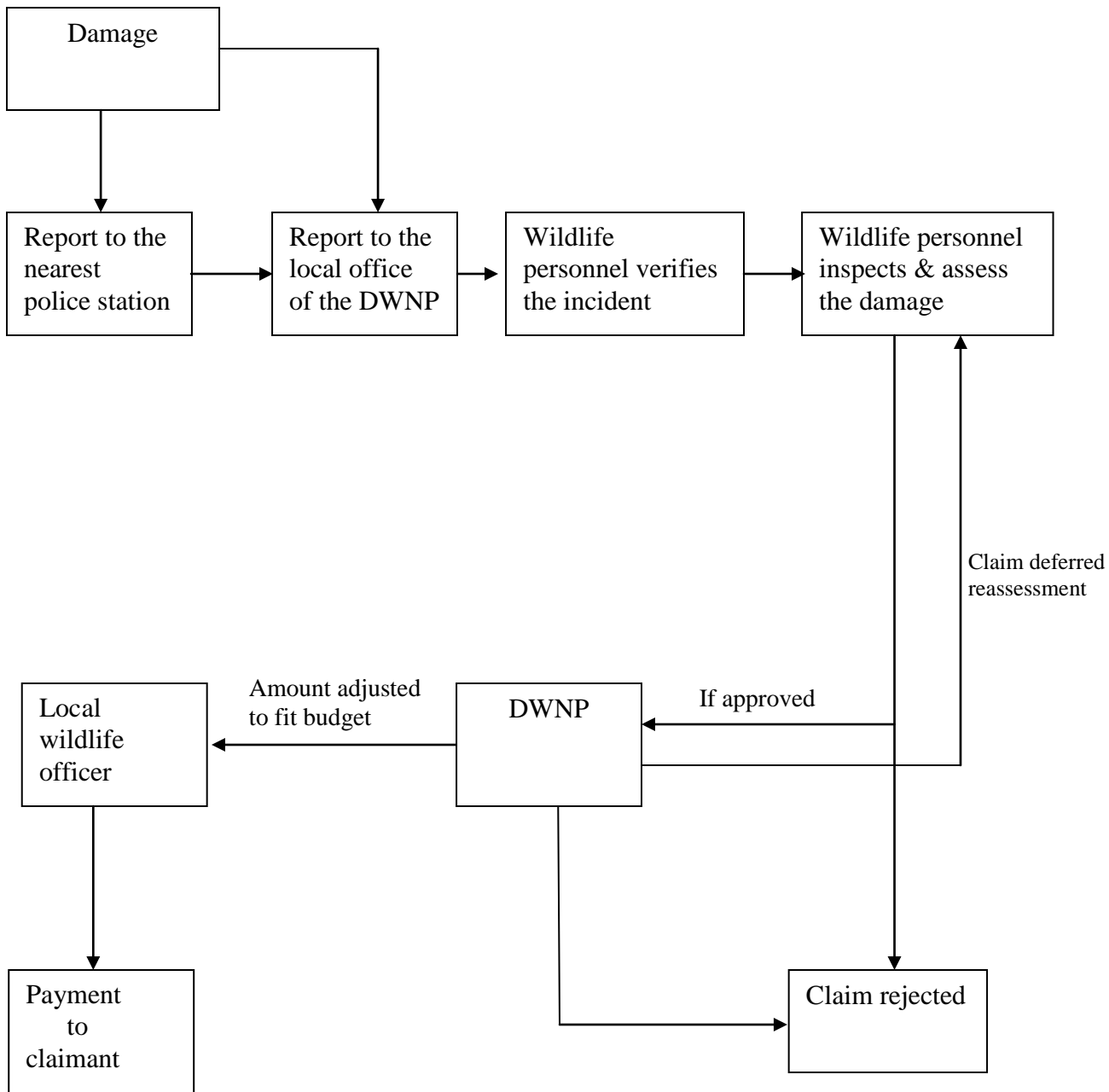
<sup>342</sup> From an email response this author received from Felix Monggae the Conservation Officer of the Kalahari Conservation Society on 9 August 2003 in an earlier study by this author. Research for the present study has established that the process has not changed.

<sup>343</sup> Interview with Ms Nametso a research officer at the Department of Wildlife and National Parks (DWNP) in Gaborone on 14 August 2006.

<sup>344</sup> Interviews with local communities in Botswana between June and December 2006.

<sup>345</sup> DL Kgathi, MBM Sekhwela & H Hamandawana 'Sustainability of Commercial Agriculture and Forestry in Chobe District, Botswana.' <<http://www.savannas.net/botswana/ubforst.htm>> Last accessed on 22 Decembers 2007.

**Diagram 3: The Wildlife Damage Compensation Process in Botswana**



In Kenya, the victim in the case of injury, or a next of kin in the case of death, is required to report the incident to the nearest police station, thereafter to the warden in charge of the nearest district office of the Kenya Wildlife Service. The district warden after investigating the claim and with his comments then presents it to a committee known as the District Wildlife Compensation Committee (DWCC),<sup>346</sup> which is in charge of deliberating wildlife compensation claims and recommending compensation.<sup>347</sup> The victim or next of kin, as the case may be, then lodges a claim for compensation with the DWCC in a prescribed form issued by the Committee, Form B. He/she lodges the claim by filling the said Form B and returning it to the Committee for further processing.<sup>348</sup> If the committee approves<sup>349</sup> the claim,<sup>350</sup> it then forwards the claim to the KWS Director who scrutinizes it and forwards it to the Ministry in charge of wildlife. The ministry approves payment on funds voted by the central government, sometimes with an adjustment of the amount to fit within the ministry's overall budget,<sup>351</sup> after which a payment cheque is prepared and sent to the District Committee of the respective district for collection by the claimant.

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<sup>346</sup> This Committee is established by Sect.62 (2) of the Wildlife (Conservation and Management) Act (note 56 above) is chaired by the District Commissioner. Other members are: the Divisional Officer of the Kenya Wildlife Service, the Officer in charge of Police in the District, the District Medical Officer, One Elected Member of the National Assembly representing a constituency in the district, who shall be appointed by the Minister, the Chairman of the County Council in the district, three other members appointed by the Minister to represent the general public of the district, and any other person as the committee may have co-opted.

<sup>347</sup> Under the act, it is the only organ with powers to reject a claim.

<sup>348</sup> Form B is appended to this study as Appendix 5.

<sup>349</sup> Under sect 65, if for any reason the DWCC rejects the claim the claimant has a right to appeal to the Wildlife Conservation and Management Service Appeal Tribunal established under the Act. The mandate of this Tribunal is to determine appeals from decisions taken in any matters arising under the Act.

<sup>350</sup> Or in the case of an appeal to the Tribunal, the appeal succeeds

<sup>351</sup> Compensation paid is from Treasury and not KWS.

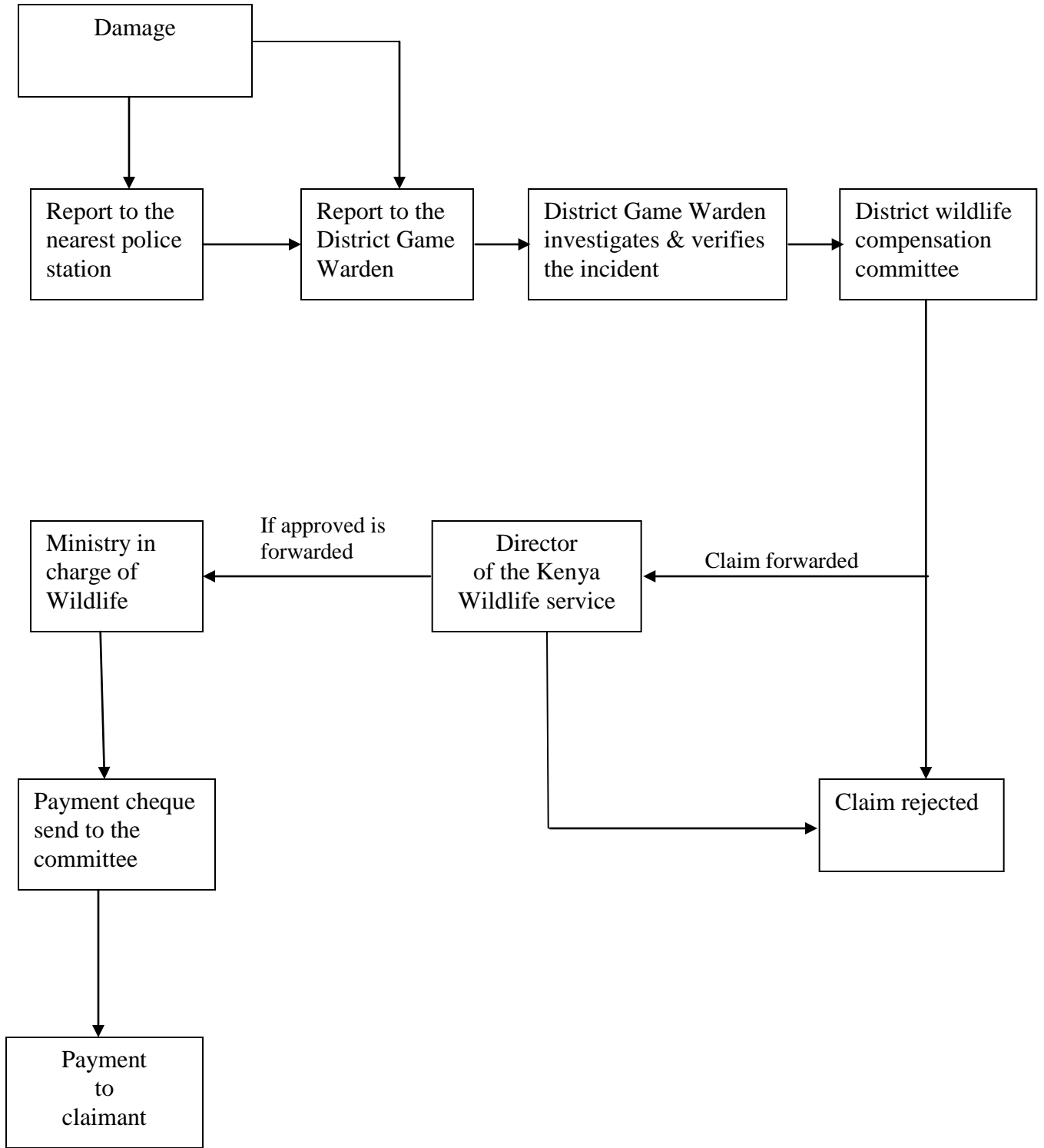
Although the amounts payable as compensation are not stipulated in the wildlife legislation, the government has been paying upto Ksh 15,000 for human injury and Ksh 30,000 for human death, respectively.<sup>352</sup> These amounts were recently increased by the minister to Ksh 50,000 for injury and Ksh 200,000 for death, respectively.<sup>353</sup> These amounts are still low and may in some cases not be commensurate with the gravity of the harm suffered, for instance, where one suffers paralysis. Besides, they are far lower than awards by courts for similar injuries in claims filed under common law. Notably, the process for compensation in Kenya has been so cumbersome and long, sometimes taking upto five years. Some of the respondents interviewed in Kenya reported that sometimes all that the government does in case of human death by a wild animal is to provide a vehicle to transport the body from the mortuary to the burial place. The wildlife damage compensation process in Kenya is represented in **Diagram 4** below.

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<sup>352</sup> Sifuna (note 2 above) 21.

<sup>353</sup> This information was obtained from interviews conducted by the researcher with officials at Kenya's Ministry of Tourism and Wildlife in Nairobi. A bill seeking to increase these amounts to Kenya Shillings Ten million and One million respectively failed to get Presidential Assent despite having been passed by Parliament; the Wildlife (Conservation and Management) (Amendment) Bill of 2004. This was a private member's motion by Hon GG Kariuki the former Member of Parliament for Laikipia East. It has however, been overtaken the Wildlife Bill of 2007 (note 294 above), a government-sponsored bill currently pending before Parliament and which is likely to be passed into law.

**Diagram 4: The Wildlife Damage Compensation Process in Kenya**



Botswana's wildlife damage compensation scheme is different from Kenya's present scheme in two respects. Firstly, it is shorter and easier than the latter. Secondly, currently Kenya does not provide compensation for crop damage and loss to livestock, which Botswana does<sup>354</sup> Besides, unlike Botswana which is predominantly an arid land that is reliant on minerals and livestock keeping, a considerable part of Kenya is arable and relies on crop farming and cash crop exports such as coffee, flowers and tea. The inhabitants of the north, north eastern Kenya as well as a greater portion of the Rift Valley rely on livestock keeping. It is only fair that compensation be provided for damage to agricultural enterprises such as crops and livestock. This is partly because, except for arid countries like Botswana, countries like Kenya which have a high rainfall potential should take measures to protect and enhance agriculture. After all, while it is desirable to have a vibrant wildlife-based tourist economy, observations of developed countries indicate that economic growth is stimulated by agriculture and industry, rather than tourism. Wildlife tourism should therefore not be allowed to undermine agriculture and other sources of livelihood.

While the existence of compensation schemes seems a notable step in addressing the problem of wildlife damage the payment of compensation has been and will continue to be a fairly controversial issue in conservation.<sup>355</sup> Not even conservationists themselves are in agreement on whether compensation should be provided.<sup>356</sup> There are generally two categories of thought on the issue, namely, those who support compensation and those who are opposed to it. For simplicity this author will just call them supporters and

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<sup>354</sup> Sifuna (note 2 above) 22.

<sup>355</sup> Ibid, 14.

<sup>356</sup> Ibid.

critics. In a nutshell, supporters of compensation advance two major arguments, namely, that the existence of effective compensation processes has the potential to build public tolerance to wildlife damage and that it may help diffuse public criticism on wildlife conservation.<sup>357</sup> Critics for their part mainly advanced three arguments: that compensation does not address the cause of the problem of wildlife damage; that it reduces the incentive for self-defence and abatement measures by the people; and that it is open to abuse and corruption. The arguments by both sides are addressed in detail and systematically analyzed below.

**(i) The Argument that Compensation Builds Public Tolerance for Wildlife Damage**

Supporters of compensation argue that it is likely to reduce retaliatory killing of problem animals by the affected communities since the probability of compensation is an avenue for addressing and redressing the harm.<sup>358</sup> Just like in the case of damage by livestock, the victims do not attack the animals but usually take up the matter with the owners. In this author's view, the availability of compensation has the potential to reduce rage among victims of wildlife damage. This may reduce the incidence of retaliatory attacks on the animals by people as more local people turn to the authorities instead of taking the matter in their hands. Eventually, communities adjacent to protected areas gradually start to accept the burden of living in such regions.

By accepting the burden of living in such areas, these communities will be willing to work with the authorities to find suitable strategies for curbing wildlife damage. This

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<sup>357</sup> Ibid, 14-19.

<sup>358</sup> Muriuki (note 36 above).



will, in turn, provide leverage for a partnership between conservationists, the locals and the game authorities. Such a partnership may turn would-be-poachers into conservators, rather than having adjacent communities whose people are all determined poachers. When local communities become partners in conservation, they are likely to: refrain from retaliatory attacks on wildlife; report poachers to the authorities;<sup>359</sup> give information to the authorities about weak, sick or stray animals;<sup>360</sup> be willing to attend meetings on wildlife conservation in general and wildlife damage in particular.<sup>361</sup>

## **(ii) The Argument that Compensation Diffuses Criticism on Wildlife**

Muriuki asserts that maintaining a sufficient and efficient compensation scheme may ultimately help in diffusing some of the loudest and emotional critics of wildlife continually increasing in Kenya by the day.<sup>362</sup> This assertion is, in this author's opinion, true and relevant to Kenya where hardly a week passes without a report in the mass media of wild animals attacking people and destroying their property. The local press has been a key player in this war against wildlife, carrying sensational reports of raids by

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<sup>359</sup> Research for this study conducted in Kenya and Botswana between January and December 2006 established that in the former, anti-poaching efforts by village vigilante groups have proved to sometimes work better than the official law-enforcement authorities, while in the latter, disgruntled local communities do provide poachers with shelter, water, food and information.

<sup>360</sup> Sometimes young animals whose mothers have left them while fleeing from poachers or been killed by them, have ended up roaming about and dying of starvation.

<sup>361</sup> A village elder interviewed by this author in Rumuruti Laikipia Kenya on 21 April 2006, proposed the establishment of a community-based wildlife in every village to plan the reduction of the human-wildlife conflict. Such groups have worked in Tanzania where as a result of the government's policy of shifting wildlife management to the grassroots, local communities have established Wildlife Committees to which they democratically elect representatives. See RD Baldus et al 'Experiences with Community Based Wildlife Conservation in Tanzania.' Tanzania Discussion Paper No. 29, GTZ Wildlife Programme, Dar Es Salaam (2001) 3. In the Amboseli area of Kenya for instance, there is an organization called Maasai Environmental Resource Coalition (MERC), whose mandate is to address the human-wildlife conflict; See Dapash (note 4 above) 23. In Laikipia, there is the Laikipia Wildlife Forum, an NGO supporting the local communities in addressing wildlife conservation issues, including the problem of wildlife damage.

<sup>362</sup> Muriuki (note 36 above).

wild animals, often in very emotional terms. Interestingly, wildlife is one of the top items on the agenda of politicians in the affected areas and usually gives them considerable political mileage.<sup>363</sup> Some even win elections merely for promising to lead campaigns for the extermination of wildlife. While public attitudes towards wildlife in Botswana are not as negative as they are in Kenya presently, one cannot rule out the possibility of increased incidents of wildlife damage as both the human and wildlife populations in Botswana continue to increase. Therefore, maintaining a fair and efficient compensation scheme administered side by side with benign monitorable abatement measures may help preempt the occurrence of a Kenya-like situation in Botswana.

Although compensating the victims of whatever harm has traditionally been the better option of addressing the harm, compensation for wildlife damage has been and will continue to be a fairly controversial issue. As already observed above, not even conservationists themselves are in agreement on whether compensation should be provided. There are conservationists who have criticized compensation.<sup>364</sup> They have argued that compensation as explained below: does not address the cause of the problem; reduces the incentive for self-defence and abatement measures by the people; and is open to abuse and corruption.

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<sup>363</sup> From interviews conducted by this author in Laikipia district during the time of this research, a Local Authority representative (Councilor) in the area confessed to me that all he has to do to win elections is tell the people what they want to hear about wild animals, and that is talk ill of them. In fact if there were no wild animals in Kenya some politicians would never have seen the gates of Parliament.

<sup>364</sup> See, for example, R Hoare 'Options for the Control of Elephants in Conflict with People' 19 *Pachyderm* (2000) 54-63; IUCN African Elephant Specialist Group (AFESG) Human-Elephant Conflict Taskforce (HECWG) 'Review of Compensation Schemes for Agricultural and Other Damage by Elephants' (2000), <<http://www.iucn.org/themes/ssc/sgc/afesg/hectf/comreview.html>> Last accessed on 22 December 2007; see also JK Yoder 'Damage Abatement and Compensation as Incentives for Wildlife Management on Private Land' L Clark, J Hone, JA Shivik, RA Watkins & KC Vercauteren (eds) *Human-Wildlife Conflicts: Economic Considerations* (2002) 186. <[http://www.aphis.usda.gov/ws/nwrc/symposia/economics\\_sympos](http://www.aphis.usda.gov/ws/nwrc/symposia/economics_sympos)> Last accessed on 22 December 2007.

**(iii) The Argument that Compensation Does not Address the Cause of the Human-Wildlife Conflict**

Critics have said that compensation addresses a symptom rather than the cause of the problem. The African Elephant Specialists Group (AFESG), for instance, makes the following recommendation: ‘...the AFESG recommends against using monetary compensation for elephant damage...unlike most other counter-measures against elephants, compensation for elephant damage can only at best address the symptoms and not the cause of the problem. It could even be argued that, at worst, compensation exacerbates the problem.’<sup>365</sup> It is true that compensation addresses the symptom rather than the cause. To solve a problem, it is usually better to address the latter than the former. This is why compensation has been accused of being unable to meet the ultimate goal, which is to reconcile human and wildlife interests. As already observed in this paper, it is the view of this author that the human-wildlife conflict can only be reduced but not eradicated, as long as both continue to co-exist.

The practical goal should be mitigation rather than eradication. Hence, for practical purposes, compensation may reduce, but cannot eradicate the human-wildlife conflict. That, however, does not mean we should not try to reduce the conflict. It will be nevertheless idle to talk about the cause, since not even conservationists themselves are in agreement on the actual cause of the conflict. While you can tell people not to attack wild animals, you cannot advise the animals. The real solution to this conflict therefore lies in

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<sup>365</sup> See IUCN African Elephant Specialist Group (AFESG) Human-Elephant Conflict Taskforce (HECWG) (2000) Review of Compensation Schemes for Agricultural and Other Damage by Elephants (BONN: IUCN), <<http://www.iucn.org/themes/ssc/sgc/afesg/hectf/comreview.html>> Last accessed on 22 December 2007.

proper land-use planning, as well paying compensation for damage, while at the same time giving incentives to the people to adopt suitable abatement measures.<sup>366</sup> These efforts are complementary and work hand in hand.

**(iv) The Argument that Compensation Reduces Incentive for Self-defence and Abatement Measures**

Critics of compensation also assert that it reduces the incentive for self-defence and abatement measures, where people find the occurrence of damage more lucrative than its prevention. Yoder, for instance, has said that where compensation covers 100 percent of the damage sustained as well as all incidental costs, a landowner will have no incentive to expend abatement effort as he gains nothing from such effort.<sup>367</sup> He argues that compensation reduces the marginal benefit to the landowner of abatement effort.<sup>368</sup> The main thrust of his argument is that in some instances the compensation package may be so tempting that a would-be victim of wildlife depredation sees no need of carrying out abatement.

This assertion is true, other things being equal, though to a small extent, in the case of damage other than human injury or death. To some farmers, where, for instance, the amount provided for compensation is higher than the market price of the harvest, it may be more lucrative for the crop to be destroyed than for them to tend the crop to maturity. In Kenya presently, the law expressly provides for compensation for human injuries or death only, and no compensation is available for damage to crops, livestock or other

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<sup>366</sup> Sifuna (note 2 above) 16.

<sup>367</sup> Yoder (note 364 above).

<sup>368</sup> Ibid.

material loss. With regard to human injury, the criticism does not apply. Even with compensation being available, it is very unlikely that a person will just lend himself or herself to be mauled by a wild animal in order that he or she may be compensated. The human instinct of self-preservation, which is a fundamental precept of the law of nature, cannot allow for such experimentation, and especially not with the dangerous animals such as the elephant, buffalo, lion, leopard and crocodile. The criticism is, however, relevant for Botswana where compensation is provided for wildlife damage to crops, livestock and other material property.

It is true that abatement measures are more suitable than reparation, since it is usually better to take precautions than wait to redress the harm. However, compensation is not a substitute to abatement but complementary to it. To address effectively the human-wildlife clash, compensation has to be undertaken hand in hand with benign, monitorable abatement techniques by both the government and the affected communities. This criticism of compensation can be addressed by, for instance, compensating only a certain percentage of the loss in order that compensation does not operate as an incentive to laxity and complacency.

**(v) The Argument that Compensation is Open to Abuse and Corruption**

Most of those who oppose the payment of compensation for wildlife damage cite the potential for abuse and corruption. The AFESG, for instance, in one of their reports argue that compensation is open to considerable abuse or blatant corruption through bogus claims, inflated claims and deliberate cultivation in places where crops are likely to be

damaged.<sup>369</sup> This has been one of the most cited criticisms and it is true especially in a country like Kenya with a high index of corruption there is a high likelihood of collusion between claimants and officials especially where the scheme is administered by the public sector.<sup>370</sup> Research for this study conducted by this author established that these are some of the arguments that led to the discontinuation by the Kenya government of compensation for crop damage.<sup>371</sup> Botswana, on the other hand, is a country in which corruption levels are relatively low compared with Kenya and is one of Africa's showcases for good governance.<sup>372</sup>

It is the author's view, however, that corruption and abuse are not a permanent phenomenon that should make us discard the whole idea of compensation. A compensation programme, like any other public programme, is likely to be riddled with corrupt practices. Such practices may include false claims, failure to verify claims and even the theft of funds by officials. It is a fact that the level of corruption in Kenya in the KANU<sup>373</sup> regime was high, but the current government has embarked on measures that have considerably reduced the vice. If this policy trend continues, it is to be hoped that in not so long a period to come, corruption will have been reduced considerably. Nevertheless, the potential for corruption *per se*, should not be used as an excuse. At best, it is just a scapegoat. This potential can be curbed through the establishment of stringent controls and enforcement of high ethical standards among public officials. Kenya, for

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<sup>369</sup> AFSEC (note 365 above) 65.

<sup>370</sup> On the prevalence of corruption in Kenya See K Kibwana, S Wanjala & Oketch-Owiti *The Anatomy of Corruption in Kenya: Legal, Political and Socio-Economic Perspectives* (1996) 40.

<sup>371</sup> AFSEG (note 365 above).

<sup>372</sup> Interview at the office of Botswana's Public Defender in Gaborone on 15 August 2006.

<sup>373</sup> Kenya African National Union, a political party that lost in the 2002 General elections, after 40 years in power.

instance, has two pieces of legislation that can be instrumental in this regard, one on public service ethics<sup>374</sup> and another on corruption.<sup>375</sup>

#### **(e) Buffer Zones**

This is usually done by encircling wildlife reserves with buffer zones planted with plants that are either unattractive to or less palatable to wild animals, for instance, tea, pepper chilli and sisal. It is usually undertaken as part of land use planning and zoning. If properly undertaken, this strategy is a viable option for reducing wildlife damage since it will prevent animals from accessing private farms. Buffer zones are also useful for protecting wildlife dispersal areas and migratory corridors from encroachment by human activity.<sup>376</sup> Buffer zoning has been applied by the Kenya government to prevent forest ecosystems, where all major forest areas are surrounded by tea plantations known as “Nyayo tea zones”. Not all crops are eaten by wildlife. While there are some crops that wild animals love to eat, there are others that are inedible or which wild animals dislike. If such crops are grown to surround other crops, they may provide a buffer and therefore protect such crops.

The use of buffer crops is, however, not very reliable because wild animals can render them ineffective by trampling them on their way to their preferred crops. Besides, most

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<sup>374</sup> The Public Officers Ethics Act of 2003, Act No. 4 of 2003; it states in the Preamble that it is ‘An Act of Parliament to advance the ethics of public officers by providing for a code of conduct and ethics for public officers and requiring financial declarations from certain public officers and to provide for connected purposes.’

<sup>375</sup> The Anti-Corruption and Economic Crimes Act, Act No. 3 of 2003.

<sup>376</sup> Wildlife dispersal areas are areas adjacent to or surrounding wildlife areas (especially protected areas) into which wild animals move during some periods of the year. Wildlife migration corridors are areas used by wild animals when migrating from one part of the ecosystem to another periodically in search of basic requirements such as water, food, space and habitat.

food crops are palatable to wildlife and animals will end up eating them.<sup>377</sup> Another form of buffer system adopted in Kenya is a zoning system by the African Wildlife Foundation (AWF), where the organization has leased large tracts of land in the neighbourhood of Nairobi National Park to be used as wildlife dispersal areas and migration corridors. This is a pilot project where willing farmers and pastoralists in the Kitengela region are paid 4 US dollars per acre per year, so that they do not adopt any incompatible land uses such as crop agriculture, and instead leave their lands to be used by wildlife as well as pastures for their livestock.<sup>378</sup> This project is, however, on a pilot basis and its success is yet to be realized. While crop damage is currently not a serious problem in Botswana, the AWF model could be adopted as a proactive measure for addressing wildlife damage in areas surrounding the protected areas. At present, this system is not yet being applied in Botswana but is a viable option for controlling wildlife damage.

With regard to zoning, the two countries could adopt a zoning system that ties compensation to zones. Such a system could, for instance, create zones in wildlife protected areas and designate some as “compensation zones” (in which any occurring wildlife damage may be compensated) and others as “non-compensation zones” (in which any occurring wildlife damage is not compensatable). These zones are represented in **Diagram 5** below. ‘Non-compensation zones’ should preferably be located in areas immediately surrounding protected areas, within a certain radius of, say, one kilometer. People carrying on crop farming or livestock keeping in this area should not be eligible

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<sup>377</sup> See Nelson et al (note 10 above). See also PK Masinde *Elephant Damage Control in the Tsavo Ecosystem: A Cost-benefit Analysis of Electric Fencing in the Bura-Mwatate Area, Kenya* (Unpublished M.Sc Thesis, International Institute of Aerospace Survey and Earth Sciences, Netherlands, 1995) 36.

<sup>378</sup> Ferraro & Kiss (note 340 above).



for compensation for any damage caused to their farming activities in the area. Incidentally, this is usually the area with a high incidence of wildlife damage since incidents of attacks by wild animals are usually higher in areas within close proximity to protected areas.<sup>379</sup> The people living in this area experience more incidents of wildlife raids than those in outlying areas. These outlying areas should be designated as “compensation zones”, such that wildlife damage occurring in them may be compensated, subject to proof of damage as well as other requirements as to lodging and processing of claims.

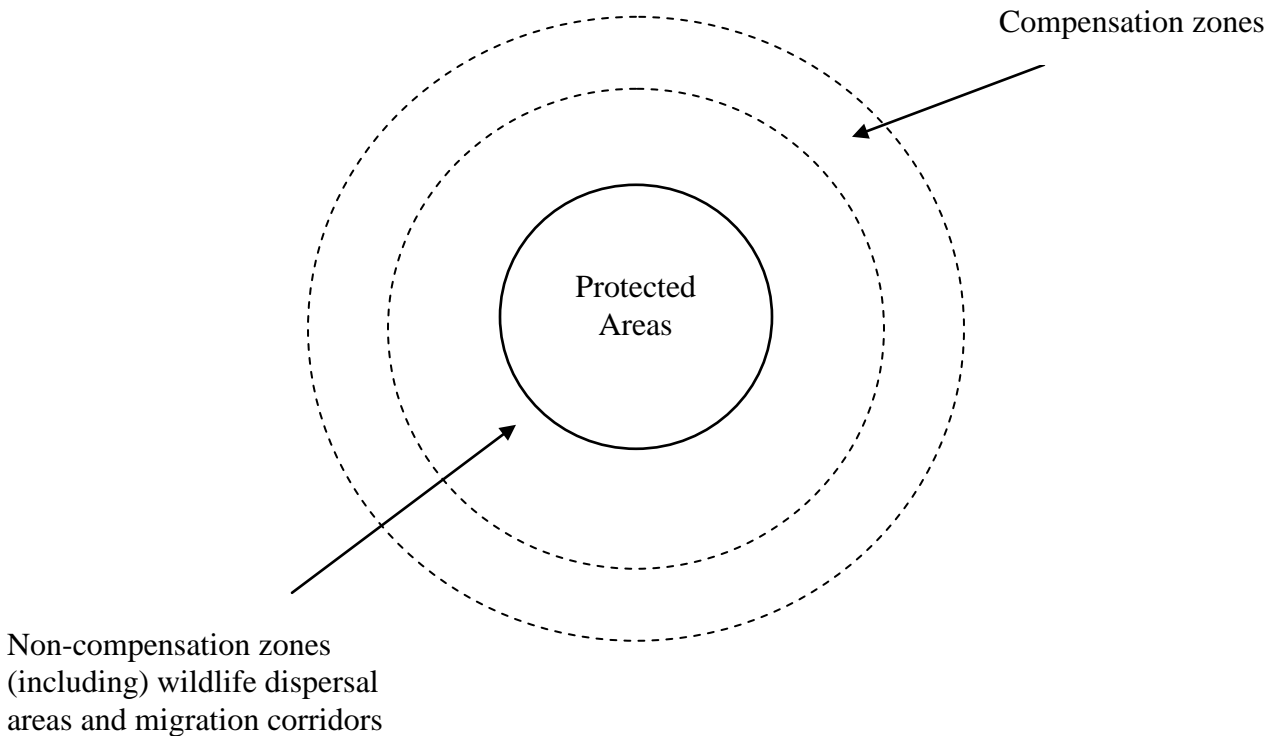
People living within the “non-compensation zones” unlike those in outlying areas, are to be persuaded to adopt land use practices compatible with wildlife conservation, for instance, eco-tourism activities, agroforestry, game ranching, wildlife research, etcetera. Land use in these zones should be restricted to supportive practices, that is, activities compatible with wildlife. This goal should be pursued through law and education programmes, without undue preference for legal compulsion. The relationship between protected areas (PAs) and their neighbours is important, in the sense that managers of these PAs should provide incentives for the surrounding communities living in adjacent areas to practice compatible land use forms. A militaristic approach by the authorities will not only make their policies unpopular among the local communities, but will attract other negative responses such as resistance as well as sabotage of the wildlife compensation zones model proposed by this author. Such an approach can only result in

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<sup>379</sup> From observations made during the research for this study and interviews by this author in Kenya and Botswana between January and December 2006.

conflict between wildlife authorities and conservationists on the one hand and local communities on the other, in turn leading to decreased cooperation between them.

**Diagram 5: Proposed Hypothetical Model of Wildlife Compensation Zones**



### 6.2.2 SPECIFIC MEASURES EMPLOYED BY LOCAL COMMUNITIES

From interviews and observation during research for this study, this author established that there are a number of techniques that the local people in both countries employ to prevent or minimize wildlife damage.<sup>380</sup> Eight of them are worthy of mention here: fencing; lighting fires; noise-making; use of dummies and decoys; use of torches,

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<sup>380</sup> Observation and interviews by this author in Kenya and Botswana between January and December 2006.

thunder flashes and flares; use of repellants; spiritual measures such as praying and cursing; and retaliation. These are discussed below.

**(a) Fencing**

While fencing remains the most popularly adopted method of preventing damage by wildlife among the local communities, electrified fences are very rare among these locals most of whom are poor.<sup>381</sup> In both countries, electrified fences have only been used by rich ranchers or the government and not the rural folk who comprise the bulk of the local communities in wildlife areas.<sup>382</sup> In both countries, electric fences are usually used on state-owned protected areas and wildlife ranches owned by rich individuals and companies. In Botswana, for instance, De Beers and Debeswana, a mining company, sponsored a 28km electrified fence around the Khama Rhino Sanctuary in Serowe.<sup>383</sup> The cost of constructing electrified fences places them beyond the reach of the ordinary Kenyan and Mtswana, thereby leaving them with the options of ordinary wire fences or vegetative fences. In Kenya, this cost was in 1997 estimated at USD 3,561 per kilometer.<sup>384</sup> With inflation and other factors, the cost could currently be more than USD 10 000 per kilometer.

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<sup>381</sup> Kasilly (note 321 above).

<sup>382</sup> From observations in the field during research for this study in Kenya and Botswana between January and December 2006. A latter visit to the study areas by this author between October and December 2007 established that nothing has changed on the ground.

<sup>383</sup> Interviews with Department of Wildlife and National Parks (DWNP) officials in Gaborone Botswana in August 2006. See also <<http://www.iexplore.com/eintmap/Zambia/58296>> Last accessed on 22 December 2007.

<sup>384</sup> East African Standard (Nairobi) 17 July 1997.

The other problem with electrified fences is that they require constant maintenance and repair services.<sup>385</sup> These services include servicing of the electrical gadgets; repairing of physical defects; clearing of vegetation under the fence; and controlling the development of gullies along the fence.<sup>386</sup> Esikuri, for instance, reports that all the electric fencing around Namelok Irrigation Scheme in Amboseli Kenya was in a state of disrepair.<sup>387</sup> Besides, Kenya and Botswana are characterized by frequent power blackouts, sometimes lasting a whole day.<sup>388</sup> Except where they are powered by solar power, electrified fences are ineffective when power goes off. Having stand-by generators or solar panels is an extra cost that makes electric fences even more expensive and unaffordable to the local communities.

### **(b) Lighting Fires**

Fire has been one of the most applied traditional methods in most communities in Kenya and Botswana for scaring away wild animals. Nelson et al report that most wild animals avoid fire and that fire can therefore serve as a deterrent, though a short-term measure.<sup>389</sup> While in both countries burning of wood is the most commonly used source of fire, old rubber tyres are also used.<sup>390</sup> Fires are only effective at night and not during day.<sup>391</sup> However, even at night, fires are still not a very effective deterrent unless accompanied by some other measure such as noise-making. In most cases, farmers light fires which

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<sup>385</sup> Mackinnon et al (note 322 above).

<sup>386</sup> Interviews with wildlife experts in Kenya and Botswana between January and December 2006. See also Masinde (note 377 above) 34.

<sup>387</sup> Esikuri (note 8 above) 124.

<sup>388</sup> Interviews conducted in Kenya and Botswana between January and December 2006 as well as observations by this author during the same period.

<sup>389</sup> Nelson et al (note 10 above) 4.

<sup>390</sup> Interviews with local people in Kenya and Botswana between January and December 2006.

<sup>391</sup> Interviews with local people in Kenya and Botswana between January and December 2006.

they leave in the field as they go home to sleep. Fires therefore serve merely as psychological deterrents having only a psychological effect on the animals, when animals begin to associate them with the presence of humans.

### **(c) Noise-making**

Another widely used method in preventing and abating wildlife damage in both Kenya and Botswana is noise-making.<sup>392</sup> Masinde says noise has two purposes, namely, (i) alerting the neighbourhood of the presence of a wild animal(s) or that an invasion is taking place and (ii) causing a general disturbance to wild animals so that they feel unwanted and move out of the area.<sup>393</sup> While making noise is perhaps the oldest method of scaring anything, in order to be effective on wildlife, for instance, such noise should be loud enough as to frighten the animal. Interviews by this author with local communities in Kenya and Botswana revealed that the most commonly applied methods of generating noise to scare wildlife are: beating drums, hitting plastic and metal containers, cowbells, shouting and screaming, whip-cracking, whistling, blowing whistles and trumpets, as well as firing weapons over the heads of the animals.<sup>394</sup> Esikuri has reported from his fieldwork in the Amboseli area of Kenya that noise-making 'is not effective because the animals soon get used to the noise.'<sup>395</sup> Indeed noise-making like fire serves as a psychological deterrent having only a psychological effect on the animals, when animals begin to associate noises with the presence of humans.

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<sup>392</sup> From interviews by the author in Kenya and Botswana between January and December 2006.

<sup>393</sup> Masinde (note 377 above) 35.

<sup>394</sup> From interviews conducted by the author in Kenya and Botswana between January and December 2006. These methods are usually used by the community as a cooperative effort among neighbours. Cowbells are widely used in Botswana.

<sup>395</sup> Esikuri (note 8 above) 124

#### **(d) Use of Dummies and Decoys**

Research for this study revealed that decoys and dummies are one of the most widely used methods in many local communities Kenya and Botswana for scaring away wild animals and birds. They are particularly successful in scaring birds and small animals such as monkeys.<sup>396</sup> The most common items in both countries are human effigies<sup>397</sup> as well as tying old clothes and rags on poles and trees.<sup>398</sup> These items are popular with local communities because they involve almost no monetary expense at all or very little if any. Most of the locals interviewed by this author in both countries reported that these items are not effective in scaring large mammals such as elephants, rhinos, buffaloes and lions.<sup>399</sup> Conversely, it was reported, they even inflame the rage of such animals and in turn increase the incidence of attacks on humans.<sup>400</sup>

#### **(e) Use of Torches, Thunder Flashes and Flares**

Interviews by this author with respondents in Kenya and Botswana during the research for this study established that while thunder flashes from hand-held “fire-crackers” are also used especially by government agents and rich farmers, torches are the most commonly used in the local communities in both countries.<sup>401</sup> The use of these lighting gadgets is, however, limited because usually they are used only at night especially in the

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<sup>396</sup> Research conducted for this study in Kenya and Botswana between January and December 2006.

<sup>397</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>398</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>399</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>400</sup> From interviews by this author in Kenya and Botswana between January and December 2006. Some respondents that large mammals do often vandalize effigies and dummies.

<sup>401</sup> Though they produce loud noise and bright light when detonated, their use may require government authority.

tropics where there is plenty of light during daytime. Nelson *et al* reports that light, thunder flashes and flares have been applied with success outside the tropics.<sup>402</sup>

#### **(f) Use of Repellants**

Although not yet widely used in Botswana, repellants are widely employed in Kenya to control wildlife depredation.<sup>403</sup> While the most common repellant against wildlife currently is chilli pepper, the burning of used rubber tyres is also used in parts of Kenya especially in areas adjoining urban areas. Rubber-burning is, however, not widely used. The repulsive effect of this method is that animals are deterred by the smell of chilli or rubber. Whereas the smell of burning rubber is widely and successfully used in many communities as a repellant for snakes, respondents interviewed by this author in Laikipia reported that it is not effective on animals such as leopards, lions, buffaloes and elephants. Pepper chilli for its part is used either by burning it or by mixing it with grease to produce a substance called chilli grease and applying it on ropes, which are then tied around the farm or on wildlife raiding routes.<sup>404</sup> While the use of repellants may be seen as a viable solution to the problem of wildlife depredation, the use of pepper grease particularly, is still being experimented and its tangible effects are yet to be seen. However, reporting on its success in a pilot project in Kenya, Sitati & Walpole report that ‘The farm encircled by chilli rope in the Lolgorien elephant corridor survived for two years without elephant crop-raiding, despite nine attempts by elephants to enter the farm.

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<sup>402</sup> Nelson (note 10 above) 5.

<sup>403</sup> From interviews by this author in Kenya and Botswana between January and December 2006.

<sup>404</sup> Nelson (note 10 above) 11.

A nearby farm without chilli rope was raided seven times during this period and was subsequently abandoned.<sup>405</sup>

### **(g) Spiritual Measures**

Interestingly, however, and worth noting, the study established that in both countries, there are cases of people resorting to spiritual methods to address the problem of wildlife damage. The most common spiritual methods include collective prayer, magic and cursing.<sup>406</sup> These methods as well as their supposed success are principally based on superstition; hence in the absence of empirical evidence, it is difficult to attribute any tangible results to them. It may, however, be necessary to investigate their effect in a future study.

### **(h) Retaliation**

Retaliatory response to wildlife damage is an informal approach lacking official approval but still being applied and involves malicious methods applied by the community against wildlife to avenge incidents of ravage. In the absence of formal methods or when they seem ineffective, people often resort to informal methods intended to harm the animals, particularly in revenge.<sup>407</sup> These revenge measures usually comprise crude acts committed against the animals. In most wildlife areas, it is common for villagers to be angry at wild animals and sometimes even avenging the trampling of crops or killing of

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<sup>405</sup> Sitati & Walpole (note 140 above) 9.

<sup>406</sup> From interviews conducted by the author in Kenya and Botswana between January and December 2006. Some respondents interviewed by this author in local communities in both countries reported that this spiritual methods sometimes work. They were however unable to support their claims with empirical evidence.

<sup>407</sup> Revenge however is an undesirable method that should be discouraged because it can encourage cruel treatment of animals and unnecessary killings. This is a method that is contrary to moral ethics where humans by virtue of their mental have a responsibility not to harm animals.



their loved ones.<sup>408</sup> In both Kenya and Botswana, local communities who suffer wildlife damage have resorted to retaliatory measures as a way of avenging the damage. This is, however, more pronounced in Kenya than Botswana.<sup>409</sup> Some of the retaliatory measures that the people resort to in response to the wildlife menace include the following: digging of pits, manholes and trenches on the paths of animals; placing sharpened stones, sharpened sticks, spikes, nails and even wire snares on the paths used by the animals; lacing crops with poison; and spearing the animals or shooting them with arrows (sometimes poisoned arrows) or guns. Retaliatory measures such as these end up worsening human-wildlife conflicts by provoking the wrath of the wildlife authorities or the animals themselves as some people have been killed in the cause of such revenge missions. These ruthless methods cannot be encouraged because of the malice with which they are employed since they are often in bad faith and lack any official endorsement. This is an example of a disconnect between the officially acceptable methods and those resorted to by a disgruntled local community.

This chapter has examined the measures commonly employed by governmental and state authorities as well as local communities to control or alleviate wildlife damage. A survey of the specific measures shows that they adopt either of the three classical approaches for intervention on wildlife damage, namely, prevention, abatement and redress. They range from preventive and abatement measures (such as wildlife translocation, killing of problem animals, the use of deterrents and barriers) to post-damage redress in the form of compensation. Apart from measures that have official endorsement, individual members

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<sup>408</sup> Sifuna (note 2 above) 13.

<sup>409</sup> From interviews conducted by the author in Kenya and Botswana between January and December 2006.

of the community were reported to adopt informal measures to retaliate incidents of attacks by wildlife. These include the use harmful methods such as the digging of pits and trenches and placement of harmful articles such as nails, spikes and poison on the wildlife routes, as well as actual attacks on the animals. These measures are usually taken maliciously in revenge or out of frustration when formal measures fail or when governmental and state authorities vested with wildlife damage control fail in their duties. A survey of the causes of the wildlife menace in chapter four shows that there is a disconnect between community efforts and those of the governmental and state authorities. Since some of these factors are institutional, the next chapter will examine not only the legal arrangements for wildlife damage in the study countries, but the institutional arrangements as well.

## CHAPTER SEVEN

### EVALUATING THE LEGAL AND INSTITUTIONAL ARRANGEMENTS IN KENYA AND BOTSWANA ON WILDLIFE DAMAGE

#### 7.1 LEGAL ARRANGEMENTS

The legal concern about wildlife damage in Kenya and Botswana has led to the existence of various legal arrangements on the problem. The legal basis for establishing mechanisms for addressing wildlife damage in Kenya is founded on constitutional principles, court decisions, legislation, as well as English common law. In Botswana, it is founded on constitutional principles, court decisions, legislation, as well as Roman Dutch law as modified by the English common law. Research for this study established that while wildlife damage has been the subject of litigation in Kenyan courts, it is yet to find its way in Botswana's courts. It will be interesting to see what the latter would say on responsibility for such damage and since incidents of wild animals damaging property do occur in Botswana, they will eventually be the subject of litigation. It is therefore important to examine the legal arrangements in both countries on wildlife damage.

##### 7.1.1 THE LEGAL STATUS OF WILDLIFE IN KENYA AND BOTSWANA

In Kenya, the legal status of wildlife is based on legislation, court decisions and the English common law. In Botswana, it is based on legislation, court decisions and the Roman Dutch law as modified by the English common law. Under common law and the Roman Dutch law, there are generally three doctrines with regard to the legal status of wildlife, namely, the public trust doctrine, the *res nullius* doctrine (*res nullius* is a term

adopted from Roman law, meaning “belonging to nobody”), and the state-ownership doctrine.

Under the public trust doctrine, wild animals living in natural conditions are considered to be public property belonging to the people collectively, with the state being vested with the power to protect and manage the resources on their behalf and for their benefit.<sup>410</sup> A good example of a jurisdiction where the public trust doctrine has been applied is the United States. Whereas the law in the US is silent on wildlife ownership, the courts in that country have held that the state does not own wildlife but only protects it.<sup>411</sup> Rodger, a US authority, observes that for a resource to qualify to be subject of the public trust doctrine and therefore be protected from unfair dealings and dissipation, it has to be a public resource and it ought to be for public use.<sup>412</sup> The aspects of all these three doctrines on wildlife ownership are present in the law and practice of both Kenya and Botswana.

According to the *res nullius* doctrine, wildlife in its *in situ* condition is nobody’s property.<sup>413</sup> This in essence means that while wild animals in the natural habitat belong to

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<sup>410</sup> See Shaw (note 157 above) 19. See also SVC Wantrup *Resource Conservation: Economics and Policies* (1952) 19. This therefore means that the state being a mere custodian, it is the who people (the public) who are the real owners of wildlife.

<sup>411</sup> See, for example, *Sickman and others v United States* 184 F.2d 616 (7<sup>th</sup> Circuit 1950) for instance, the US Court of Appeals for the 7<sup>th</sup> Circuit upheld a holding by a District Court that, while the government has a duty to protect wildlife, it does not own wildlife and therefore cannot be liable for damage caused by wild animals or birds. In this case, the plaintiff, Charles Sickman and others, brought action against the US government to recover damages for the destruction of their crops by migratory fowl. The plaintiffs in their submissions had argued that liability arose from the fact that wildlife was the property of the government. The trial court dismissed the claim, and an appeal by the plaintiffs was subsequently dismissed by the appellate court. While the court in this case ruled that the state does not own wildlife it did not say who owns it.

<sup>412</sup> WH Rodger *Environmental Law: Air and Water* (1986) 158.

<sup>413</sup> MT Cirelli *Legal Trends in Wildlife Management* (2002) 39.

nobody, any person who is the first to lawfully appropriate or alienate any such animal for instance by enclosing it on his land in a game proof enclosure becomes the owner of it. An example of a jurisdiction where this doctrine has been applied is Morocco. In Morocco, wild animals are considered as things that cannot be subject to ownership even by the owner of the land on which they occur unless they have been legally taken, or otherwise obtained.<sup>414</sup>

Under the state-ownership doctrine, the state owns all the wildlife occurring within its territory as an extension of sovereignty in line with its permanent sovereignty over its natural resources.<sup>415</sup> Cirrelli observes that ‘there are many countries where wildlife is state property, ranging throughout the continents.’<sup>416</sup> Examples of countries in which the law vests wildlife in the state include China, Uganda and Malawi.<sup>417</sup> These countries have legal provisions expressly vesting wildlife ownership either in the government<sup>418</sup> or in the executive who could either be a president or a monarch.<sup>419</sup> It is the view of this author that the state ownership doctrine is misplaced. A state is only a custodian of wildlife on behalf of the people and can never own it because wild animals are public property. State ownership of wildlife is tantamount to converting what is essentially a public good into state property hence radically changing public perceptions and attitudes towards it.<sup>420</sup> With time this exacerbates conflict between local populations and state

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<sup>414</sup> Ibid.

<sup>415</sup> Ibid.

<sup>416</sup> Ibid.

<sup>417</sup> Ibid.

<sup>418</sup> Art. 3 of the Chinese constitution.

<sup>419</sup> For example sect. 4 of the Ugandan Constitution and Sect 4 (1) of the Malawian Constitution.

<sup>420</sup> See P Kameri-Mbote ‘Land Tenure and Land Use and Sustainability: Toward Innovative Use of Property Rights in Wildlife Management’ <<http://ielrc.org/content/w054.pdf>.2005-4> Last accessed on 22 December 2007.

agencies with regard to matters of wildlife use, access as well as its negative costs such as depredation and predation. Wildlife wherever it occurs, whether on private or public lands, belongs to the people collectively as their natural heritage.<sup>421</sup> As such, it *stricto sensu* cannot be subject to state ownership, or even private ownership despite the widespread attempts at domesticating or privatizing it.<sup>422</sup> The real owners of wildlife are the people collectively, and there is only a public trust existing between the people and the state over the wildlife resource. No amount of legal provisioning can divest the people of their birthright to nature. Therefore, the only thing the law can confer is the authority of control or stewardship, not ownership.

Apparently reiterating the public trust doctrine, the Kenya government in one of its policy documents for instance states ‘The government holds in trust for the present and future generations, nationally and globally the biological diversity represented by Kenya’s extraordinary variety of animals, plants and ecosystems ranging from coral reefs to alpine moorlands. Special emphasis is placed on conserving Kenya’s assemblage of large mammals found in few other places on earth.’<sup>423</sup> Kenya’s Draft Wildlife Policy of 2007 for its part states that the ownership of wildlife is vested in the state on behalf of and for the benefit of the people of Kenya.<sup>424</sup> It is encouraging that this policy position is expected to receive legal backing from the country’s Wildlife Bill of 2007 which in section 4 (1) states ‘All Wildlife found in Kenya is vested in the state on behalf and for

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<sup>421</sup> Whether in the wild, on private ranches, on private land or domesticated.

<sup>422</sup> The demerit of vesting wildlife ownership and management exclusively in the hands of the state brings about the tendency to expect solutions to all wildlife-related problems from the government; which in itself is a disincentive to public participation in conservation.

<sup>423</sup> Wildlife Policy of 1996.

<sup>424</sup> Note 100 above.

the benefit of the people of Kenya.’<sup>425</sup> If this Bill is passed it will mean that in Kenya, wildlife is public property thus fully embracing the public trust doctrine. One would expect this position to get further legal backing from the Constitution with a constitutional provision on ownership of wildlife or natural resources generally.

Both Kenya’s and Botswana’s national Constitutions make no mention of the term “wildlife” and neither do they have any direct clauses on wildlife or natural resources. A Constitution is a basic charter for a country, representing the national goals as well as the primary obligations and mandate of state and governmental authorities. It should therefore recognize a country’s major resources and sectors. Besides, in both countries, just like in the US, while the existing laws are silent on wildlife ownership, they vest the responsibility for wildlife protection and management in the hands of the state.<sup>426</sup> In both countries, the state undertakes this stewardship by promulgating laws protecting wildlife and its habitats, by creating protected areas for wildlife conservation, and by having laws regulating the off-take of certain species. Notably, however, in such circumstances the state is only a custodian of wildlife on behalf of its subjects; and being only a trustee, there is a public trust created between the people and itself over the resource.

The case of *Abdikadir Sheikh Hassan & 4 Others v Kenya Wildlife Service*<sup>427</sup> seems to embrace this position. The plaintiff in this case, on his own behalf and on behalf of the community, sought an order from the High Court of Kenya to restrain the defendant, a

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<sup>425</sup> Note 283 above.

<sup>426</sup> In both countries wildlife is under state protection where the final authority on wildlife lies with the government, irrespective of whether it is on private or public lands.

<sup>427</sup> (2004) KLR 214.

Kenya Government Agency operating under an Act of Parliament, from removing or translocating a rare and endangered species named the “Hirola” from its natural habitat. Mbitio J observed, ‘according to the customary law of the people, those entitled to the use of the land are also entitled to the fruits thereof which include the fauna and flora, unless this has been changed by law. According to the Wildlife Conservation Act, the defendant is required to conserve wild animals in their natural state.’<sup>428</sup> The court acknowledged the historical relationship between the local community and the animal and held that the agency would be acting outside its powers if it were to remove any animals or flora from their natural habitat.<sup>429</sup>

From a property law point of view, ownership operates back to back with the power to control. This is, however, not the case unless such ownership is accompanied with possession. Possession alone without ownership is to be understood in terms of mere physical control. It is those with the power of controlling something that should bear liability for any undesirable consequences arising from it, for instance, wildlife damage in the case of wild animals. Apparently, however, the High Court of Kenya seems to say that even at common law, the government does not have an obligation to control wild animals. This was the position in *Anyama Mogona Suondo v The Accounting Officer, Ministry of Tourism & Wildlife*,<sup>430</sup> where Shield J held that there was no duty at common law on the government to confine and keep wild animals within national parks.

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<sup>428</sup> Ibid, 214-15.

<sup>429</sup> Ibid.

<sup>430</sup> Misc Civil Application No. 63 of 1990 High Court of Kenya at Mombasa (unreported).



While in both Kenya and Botswana the care and management of wildlife is the preserve of the government, in the latter, however, the law recognizes traditional hunting rights of the people. Landowners may hunt on their land without a licence, subject to restrictions as to the number of animals hunted and the payment of fees.<sup>431</sup> In Kenya, hunting is prohibited even for wildlife occurring on private land. This means therefore that in Kenya, wildlife on private land is only a burden to the landowners since it is state property, and landowners would rather put their land to more profitable uses than allow it to be used by wildlife. Unless landowners can derive some real benefits from wildlife as is the case in Botswana, they will not be prepared to share their land with it. As such landowners in Kenya usually eliminate wildlife from their land in preference to other more profitable forms of land use such as pastoralism and agriculture.<sup>432</sup> While there is no express provision in Botswana's legislation or policy on who owns wildlife in the country, the Wildlife Conservation and National Parks Act in Section 83 allows landowners to enjoy limited rights of ownership over wild animals enclosed in game proof fences on their land. These rights are limited as opposed to absolute because they are subject to the public trust doctrine which is applicable in the country through the English common law.

#### 7.1.2 CONSTITUTIONAL BASIS FOR ADDRESSING WILDLIFE DAMAGE

As already indicated above, the national Constitutions of both Kenya and Botswana make no mention of the term "wildlife" and neither do they have any direct wildlife protection clauses. In Anglo-American jurisprudence, the constitution is the supreme law of a

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<sup>431</sup> Note 85, sect 20. See also sect 83 under which a landowner who has kept or confined a wild animal in a game proof fence has a right of ownership over the animal.

<sup>432</sup> From interviews conducted by this author in Kenya between January and June 2006.

country; from which all other laws derive legitimacy. This is also the position in these two countries. The Kenyan Constitution, for instance, expressly asserts the supremacy of the constitution over all other laws.<sup>433</sup> The imperative for the state to establish a regulatory regime for addressing wildlife damage springs from its constitutional mandate to provide for the welfare of the people. As Ojwang, a Kenyan scholar, notes, ‘the constitution represents the primary obligations of the state and the public institutions, and constitutes the basic organizational norm of the public domain’.<sup>434</sup> Indeed, the constitution provides the overall political and legal framework for the national goals as well as the primary obligations and mandate of state and governmental authorities.

The absence in the national constitutions of provisions on wildlife is a major set back for conservation in both countries. Constitutional provisioning could, for instance, establish a solid base for the legal status of wildlife in terms of its ownership, responsibility for its management, which would in turn provide the basis for responsibility for the damage caused by wild animals. Conventionally, whoever has the responsibility to manage wildlife is the one liable for the damage caused by it. Similarly wildlife ownership carries with it the primary responsibility to compensate damage caused by wild animals.<sup>435</sup>

Whoever owns wildlife should be the one responsible for controlling it and ensuring it does not cause harm to society. Besides, including wildlife provisions in the national

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<sup>433</sup> Sect 3 states ‘This Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya, and subject to section 47, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall to the extent of the inconsistency, be void.’ Section 47 provides for its amendment and manner in which it can be amended. While there is no corresponding clause in Botswana’s National Constitution, the practice is that any laws that are contrary to the constitution will be invalid.

<sup>434</sup> J B Ojwang ‘The Constitutional Basis for Environmental Management’ C Juma & J B Ojwang (eds) *In Land We Trust: Environment, Private Property and Constitutional Change* (1996) 39, 40.

<sup>435</sup> Cirelli (note 413 above) 41.

constitution gives wildlife conservation issues a higher rank in the normative structure where it enjoys primacy over legislative and administrative rules as well as court decisions. This is because the constitution is the supreme law of the land, hence its provisions override all other laws.

### 7.1.3 THE COMMON LAW AND ROMAN LAW POSITIONS ON WILDLIFE DAMAGE

The English common law is part of the law applicable in Kenya and Botswana. The applicable common law in Kenya is the English common law while in Botswana it is the Roman Dutch law which was inherited from the Cape colony.<sup>436</sup> Incidentally, the positions of both these laws on wildlife ownership and tort law (derelict law under Roman Dutch law) are similar since both these laws have their origins in the Roman law. Besides, the Roman Dutch law applicable in Botswana has over the years been influenced by the English Common law after the British colonized the country.<sup>437</sup> Under the latter, as well as both the English common law and the Roman Dutch law, wild animals living under natural conditions are considered to be public property and the state holds them under the public trust doctrine.<sup>438</sup>

Under both regimes, the state's obligation to take measures to mitigate wildlife damage stems from its obligation to manage wildlife in trust for the people. Failing to adopt measures is tortuous and can be vindicated through the law of tort (or derelict under the

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<sup>436</sup> <[http://www.nyulawglobal.org/Globalex/Botswana.htm#\\_Historical\\_Note](http://www.nyulawglobal.org/Globalex/Botswana.htm#_Historical_Note)>. In Kenya, Sect 3 (1) of the Judicature Act Cap 8 lists English Common Law as one of the sources of law in the country.

<sup>437</sup> <[http://www.nyulawglobal.org/Globalex/Botswana.htm#\\_Historical\\_Note](http://www.nyulawglobal.org/Globalex/Botswana.htm#_Historical_Note)>.

<sup>438</sup> Note 157, 19.

Roman Dutch law), particularly the torts of negligence and nuisance. If there is any aspect of law on which the English common law and the Roman law have similar principles, it is the law of tort especially on the three tort law formulations of negligence, nuisance and even trespass. This is mainly due to the influence that the Roman law had on the English customary/common law. Besides, the Roman Dutch law applicable in Botswana has been influenced by the English common law hence it applies in a modified form that has adopted the bulk of the latter. Notably, the laws of Kenya and Botswana on torts are similar. Apart from common law, the other branch of law in both countries under which wildlife damage is covered is legislation. The part below examines the legislative arrangements put in place by the governments of Kenya and Botswana to address wildlife damage.

#### 7.1.4 LEGISLATIVE PROVISIONS

In both Kenya and Botswana, wildlife damage control is one of the major programs that the government undertakes in addressing the human-wildlife conflict. In both countries, the bulk of the legal mechanisms for the conservation and protection of wildlife, as well as for addressing the problem of damage by wildlife are in legislation. The bulk of Kenya's law on wildlife damage is comprised in the Wildlife (Conservation and Management) Act of 1976, as amended.<sup>439</sup> The country is in the process of enacting a new law to repeal and replace this Act. The government has published a Wildlife Bill, currently pending before Parliament for enactment, which Bill is discussed in this

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<sup>439</sup> Note 56 above.

work.<sup>440</sup> For Botswana, it is the Wildlife Conservation and National parks of 1992 as amended.<sup>441</sup>

While these pieces of legislation have provisions on wildlife damage, there are also other provisions which although do not directly address wildlife damage, their enforcement can be instrumental in stemming the menace. Irrespective of the form of the provision, it will either be aimed at preventing the occurrence of damage or providing redress for damage that has already occurred. There are four common legislative approaches to the problem of wildlife damage, namely, provisions to protect certain species of wildlife from harm; provisions to protect wildlife habitats from human encroachment; provisions on land use control and planning; and provisions on injurious wildlife. The part that follows below examines the extent or otherwise to which the Kenya and Botswana governments have adopted these approaches in their respective legal frameworks on wildlife damage. The principal wildlife legislation of these two countries are, Kenya's Wildlife (Conservation and Management) Act of 1976 (WCMA) and Botswana's Wildlife Conservation and National Parks Act of 1992 (WCNPA).<sup>442</sup> The particular legislative provisions in both countries applicable to human-wildlife conflicts and particularly wildlife damage are discussed below.

#### **A. Provisions to Protect Wildlife from Harm by Humans**

Kenya and Botswana have provisions in their respective laws whose aim is to protect wild animals from being harmed by humans. These provisions set measures for

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<sup>440</sup> Note 283 above.

<sup>441</sup> Note 73 above.

<sup>442</sup> These pieces of legislation consolidate and amend earlier legislation and incorporate schedules.

protecting wildlife generally or certain wildlife species from interference or harm by humans.<sup>443</sup> The provisions may be classified into three broad categories, namely: Provisions creating certain categories of wild animals; provisions on the killing, wounding, hunting and capture of wild animals; and provisions on the introduction of weapons into wildlife protected areas.

**(i) Provisions Creating Certain Categories of Wild Animals**

Cirelli observes that ‘the legal mechanism for protecting specific species is often to provide for a classification of animals which are to receive varying degrees of protection and therefore for the creation of lists.’<sup>444</sup> Kenya and Botswana have provisions in their laws classifying wild animals into certain categories and prescribing rules for the protection of animals in respective categories. Kenya’s Wildlife Conservation and Management Act creates various categories of game animals, namely, “game animals” and “protected animals”; and prescribes regulations regarding animals in these categories.<sup>445</sup> The Act defines a “game animal” as an animal specified in the First Schedule of the Act, which Schedule lists 56 wild animals including the elephant, leopard, lion, rhinoceros, buffalo, and hippopotamus.<sup>446</sup> Under the Act, a “protected

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<sup>443</sup> In some instances the protection is explicit in that the law expressly provide for those species. In other instances the protection is implicit or even incidental, especially where this protection is a secondary purpose. See C Klemn ‘Conservation Legislation’ DR Given (ed) Principles and Practice of Plant Conservation (1994) 189, 200 where he notes that ‘wild species may also be preserved by other legal instruments that are not specifically directed at the conservation of individual species, but which, nonetheless, provide a high degree of protection to natural and semi-natural habitats and, as a result, to all the species they contain...example.....protected area legislation’.

<sup>444</sup> Cirelli (note 413 above) 23. Governments may create lists of totally protected or partially protected species and prohibit attacks

<sup>445</sup> Note 56 above.

<sup>446</sup> Ibid, sect. 2.

animal” is defined as an animal specified in the Third Schedule,<sup>447</sup> which schedule lists as protected animals young animals; pregnant animals; animals with calves; albino and melanic animals.<sup>448</sup> Others listed in this schedule are the caracal, cheetah, dugong; certain species of duiker, certain species of antelopes and certain species of monkeys.<sup>449</sup> Botswana’s Wildlife Conservation and National Parks Act for its part has four categories of wild animals, namely, “game animals”, “protected game animals”, “partially protected game animals” and “non-designated animals” and has various rules regarding animals in the respective categories. Under the Act, the protected and partially protected categories comprise game animals in respect of which no hunting or capture is allowed except with a permit.<sup>450</sup>

Incidentally, most of the animals listed in the “game animals” category are also known to cause damage to people, livestock, crops, infrastructure and other physical property, and are essentially dangerous animals; for instance the elephant, leopard, lion, rhinoceros and the crocodile. The “protected animals” category for its part mainly comprises animals that need special protection, by reason of being vulnerable, rare or endangered. Vulnerable species are those that are predisposed to danger by reason of factors such as young age, pregnancy, being nursing mothers, albino or melanic. Kumar and Asija say that this category comprises species likely to move into the endangered category in the near future, if the causative factors continue to operate.<sup>451</sup> These factors include over-exploitation and extensive destruction of habitats. Rare species are those with small

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<sup>447</sup> Ibid.

<sup>448</sup> Ibid, third Schedule.

<sup>449</sup> Ibid.

<sup>450</sup> Note 73 above, sects 17 & 18. See also the sixth and seventh schedules to the Act.

<sup>451</sup> But see U Kumar & MJ Asija *Biodiversity: Principles and Conservation* (2000) 31.

populations usually localized within defined geographical areas or scattered over a rather expansive range.<sup>452</sup> Endangered species for their part are those which are in danger of extinction and whose survival is unlikely if the causative factors continue to operate.<sup>453</sup> This is usually a legal status declared by a government or international community for particular species. The conservation and protection of the above categories of species is necessary by reason of their being unique, endangered, or representative biomes; and is therefore useful for conservation purposes.

### **(ii) Provisions on the Killing, Wounding, Hunting and Capture of Wild Animals**

Another way in which the law in Kenya and Botswana protects wildlife from harm is through controls and prohibitions on the killing, wounding, hunting, capture and disturbance of wild animals. Prohibiting attacks by humans on certain species of wildlife is one way through which the law can address wildlife damage. Attacks by humans on the animals and entry into wildlife territory can result in attacks by animals on such persons. Wild animals are generally known to be savage and dangerous especially if provoked by activities such as hunting. These activities make the animals to perceive humans as enemies against whom they should protect themselves. The part below examines the various types of provisions under this category.

#### **(a) Provisions on killing and wounding of wild animals**

In both countries, a person may not kill or wound a wild animal except in accordance with wildlife legislation- the Wildlife (Conservation and Management) Act and the

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<sup>452</sup> For example the sitatunga antelope.

<sup>453</sup> For example the Hirola antelope and the white rhino.



Wildlife Conservation and National Parks Act in the case of Kenya and Botswana, respectively. Under both these pieces of legislation, it is an offence for any person to kill a wild animal except in defence of human life, crops, livestock and property or being a holder of a valid hunting permit.<sup>454</sup> In both countries, where an animal is killed, in the case of hunting an entry ought to be made in the hunting card and in any other case a report has to be made to the relevant state or governmental authority. In Botswana, where the animal killed is an elephant the killer is required to produce its lower jaw, its tail and its tusks to the wildlife office;<sup>455</sup> the horn where the animal killed is a rhinoceros;<sup>456</sup> and the skull in the case of a lion or a leopard.

Willful wounding of wild animals is also prohibited. Section 33 of Kenya's Wildlife Act makes it an offence for any person to cause unnecessary suffering to a protected animal or game animal.<sup>457</sup> The Act further requires any person who, in any circumstances, wounds such an animal to make every endeavour to kill or recover it at the earliest opportunity and if not possible he or she shall forthwith report the incident to an officer of the Kenya Wildlife Service.<sup>458</sup> Section 54 of Botswana's Wildlife Act also requires any person who, in any circumstances, wounds a wild animal to take reasonable steps to kill such an animal at the earliest opportunity.<sup>459</sup> Where such person fails to kill the wounded animal, he or she is required to report the incident to the nearest convenient police station or wildlife officer at the earliest opportunity after the failure of his efforts.

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<sup>454</sup> Note 56 above, sects 13(1), 26, 27, 30 (1), 31 & 32; See also note 73 above, sects 11, 17, 46, 47, 48, 58, 59 & 67.

<sup>455</sup> Note 73 above, sects 59 & 67 (1), (2), respectively.

<sup>456</sup> Ibid, sect 70.

<sup>457</sup> Note 56 above, sect 33.

<sup>458</sup> Ibid, sect 32.

<sup>459</sup> Note 73 above, sect 54.

(b) Provisions on hunting and capture of wild animals

Both Kenya and Botswana have in their laws provisions prohibiting hunting and capture of wild animals except with a permit from a competent authority. Section 22 (1) of Kenya's Wildlife Act provides that any person who hunts any protected animal or hunts any game animal otherwise than as the holder of a game licence authorizing him or she to hunt that animal shall be guilty of an offence.<sup>460</sup> Despite the presence of this provision in the law, hunting of game animals in Kenya was prohibited when the government in 1977 banned all forms of hunting of game animals in the country. This ban which was imposed through Legal Notice No. 120 of 1977 remains in force to date. While this ban prohibited hunting of game animals, the Wildlife Bill of 2007 goes further and bans all forms of hunting in the country. Section 67 (1) of the Bill states: 'Sport hunting or any other form of hunting is prohibited.'<sup>461</sup> Under section 17 of Botswana's Wildlife Act the hunting or capture of a protected game animal is an offence punishable by a fine of P10, 000 together with imprisonment for 7 years.<sup>462</sup> Where the animal is a rhinoceros, the sentence is P100, 000 together with 15 years imprisonment.<sup>463</sup>

**(iii) Provisions on the Introduction of Weapons into Wildlife Protected Areas**

Another way in which the law protects wildlife from harm by humans is through prohibitions on the introduction of weapons in wildlife protected areas. Under section 13 (2) of Kenya's Wildlife Act and section 8 (1), it is an offence for any person to convey

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<sup>460</sup> Note 56 above, sect 22 (1).

<sup>461</sup> Note 283 above, sect 61.

<sup>462</sup> Note 73 above, sect 17 (2).

<sup>463</sup> Ibid.

into a national park any weapon, ammunition, explosive, trap or poison.<sup>464</sup> Admittedly, the listed items are used by people for aggression on wild animals. Even where these items have been used to kill or wound a wild animal, they may still result in provocation of the animal. A wounded animal for instance poses a real danger to humans and domestic stock due to provocation.

## **B. Provisions to Protect Wildlife Habitats from Human Encroachment**

Botswana, like Kenya, has legal provisions for the protection of wildlife territory. This they do by creating wildlife protected areas and prescribing rules regarding them. As already noted in this work, wildlife protected area estate comprises approximately seven (7) and seventeen (17) percent of the total land area in Kenya and Botswana, respectively.<sup>465</sup> This is the land area covered by national parks; and game or national reserves as the case may be. In both countries, protected areas are given legal protection by legislation and their boundaries cannot be altered without the permission of the relevant state or governmental authority.<sup>466</sup> With regard to wildlife, a protected area is a geographically delimited area set aside for wildlife conservation and within boundaries of which human access and activity are restricted by law. Indeed, the major approach to wildlife management in both countries is the protected area system. The law adopts this system by designating some wildlife habitats as protected areas (PAs) and imposing regulations that restrict human access and activities in such areas. The activities prohibited in these protected areas include settlement, cultivation, hunting, grazing,

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<sup>464</sup> Note 56 and note 73.

<sup>465</sup> From interviews with officials of the Kenya Wildlife Service (KWS) in Nairobi and Botswana's Department of Wildlife and National Parks (DWNP) in Gaborone, on 15 February 2006 and 16 August 2006, respectively.

<sup>466</sup> See note 56 above, sect 8; and note 73 above, sect 5.

drilling of boreholes, mining, prospecting for honey, fishing and traffic.<sup>467</sup> The conduct prohibited in such areas includes the following: carrying weapons, explosives, setting of traps or poison; being in possession of game animals or their parts; introduction of domestic animals; destruction of vegetation; destruction of infrastructure such as water installations and fences; erecting buildings or infrastructure; passing through such areas; and causing fires in such areas.<sup>468</sup>

Human encroachment on wildlife habitats such as parks, biosphere reserves or other wildlife areas and the carrying on of human activities in such areas expose humans, their property and enterprises to destruction by wild animals. Through separation of humans from wildlife as well as restrictions on human access and activities in wildlife areas, the law is likely to reduce incidents of wildlife damage because most damage occurs because people have encroached on wildlife territory.<sup>469</sup> Legal and regulatory measures that protect wildlife habitats from encroachment by human activities, in consequence, also protect humans and their property from ravage by animals. They would otherwise be predisposed to attacks by wild animals as a result of living in close proximity to wildlife habitats. Growing crops or keeping livestock at wildlife's doorstep, for instance, is like inviting the animals to a feast, because they can hardly resist the urge to prey on such crops or livestock. Klemn says that when it comes to the protection of the habitats, emphasis should be placed on the prevention of conflicts rather than procedures for their resolution once they have occurred.<sup>470</sup>

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<sup>467</sup> Note 56 above, sects 13-17; and note 73 above, sects 8-14.

<sup>468</sup> Ibid.

<sup>469</sup> Ottichilo (note 234 above).

<sup>470</sup> Ibid.

Kenya's Wildlife Act provides for three types of wildlife protected areas, namely, national parks; national reserves; and game sanctuaries.<sup>471</sup> The overall role of superintending these protected areas is vested in the Kenya Wildlife Service.<sup>472</sup> While this agency directly manages the country's national parks,<sup>473</sup> it also assists local authorities in managing game reserves, and plays a regulatory role in the management of private wildlife sanctuaries.<sup>474</sup> Botswana's Wildlife Act for its part also establishes three types of wildlife protected areas, namely, national parks; game reserves; and wildlife sanctuaries.

It in addition to the latter establishes a special category of wildlife habitat called Wildlife Management Areas (WMAs). Both countries also have forest reserves that were created under their respective forest legislation, Kenya's Forests Act (Cap 385, now repealed) and Botswana's Forest Act.<sup>475</sup> Even Kenya's new Forests Act of 2005 provides for the establishment of forest reserves.<sup>476</sup> Apart from Forest Reserves which are managed by the forest departments of the respective countries, the management of wildlife reserves in both countries is vested in the respective wildlife agencies, KWS in the case of Kenya and the DWNP in the case of Botswana. It is important to note, however, that most of these wildlife protected areas are mere "paper Parks", existing only on maps having been encroached by humans for settlement and other activities.<sup>477</sup> The part below examines the

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<sup>471</sup> Note 56 above, sects 6, 18 & 19; and note 73 above, sects 5 & 12.

<sup>472</sup> Note 65, sect 3A.

<sup>473</sup> Note 56, sect 9 (1) empowers the director of the Kenya Wildlife Service shall through his officers, to control, manage and maintain all national parks.

<sup>474</sup> FDP Situma, 'Legislative and Institutional Framework for Community Based Natural Resource Management' (2003) 1 *University of Nairobi LJ* 55.

<sup>475</sup> Cap 385 (now repealed) and Act No 38: 04, respectively.

<sup>476</sup> Note 249, sect 31.

<sup>477</sup> United Nations Environment Programme, *The State of the World Environment* (1991) 24.

categories of protected areas envisaged by the existing legal frameworks in both countries. **Tables 4a and 4b** show the PAs in Kenya and Botswana, respectively, showing their respective category as well as their sizes.

**Table 4a: Protected Areas in Kenya and their Sizes**

<b>National Parks (N.P)</b>		<b>National Reserves (N.R)</b>		<b>Wildlife Sanctuaries</b>	
<b>Name</b>	<b>Size (sq km)</b>	<b>Name</b>	<b>Size (sq km)</b>	<b>Name</b>	<b>Size (sq km)</b>
Aberdare N.P	765.7	Arewale N.R	533	Kisumu Impala Sanctuary	0.34
Amboseli N.P	392	Bisanadi N.R	606	Maralal Game Sanctuary	5
Central Island N.P	5	Boni N.R	1339	Mwalughanje Elephant Sanctuary	229
Chyulu Hills N.P	736	Buffalo Springs N.R	131		96
Hell's Gate N.P	68	Diani/Chale Marine N.P	165	Sweetwaters Rhino Sanctuary	94
Kisite Marine N.P	6	Dodori N.R	877		
Kora N.P	1787	Kerio Valley N.R	66		
Malkamari N.P	876	Kiunga Marine N.R	250		
Meru N.P	870	Laikipia N.R	165		
Mombasa Marine N.P	26.09	Lake Bogoria N.R	107		
Mpunguti Marine N.P	28	Lake Kamnarok N.R	87.7		
Mt Elgon N.P	169	Losai N.R	1806		
Mt Kenya N.P	715	Marsabit N.R	1564		
Mt Longonot N.P	52	Masai Mara G.R	1510		
Nairobi N.P	117	Mwea N.R	68		
Ndere Island N.P	42	Mwingi N.R	183		
Oi Donyo Sabuk N.P	18	Nasalot N.R	194		
Ruma N.P	120	North Kitui N.R	745		
Saiwa Swamp N.P	2	Rahole N.R	1270		
Sibiloi N.P	1570	Samburu N.R	165		
South Island N.P	39	Shaba N.R	239		
Tsavo West N.P	9065	Shimba Hills N.R	192		
Tsavo East N.P	11747	South Kitui N.R	1133		
Watamu Marine N.P	10	South Turkana N.R	1019		
		Tana River Primate N.R	169		

Source: Republic of Kenya, The Wildlife (Conservation and Management) Bill, 2007 (Eighth Schedule).

**Table 4b: Protected Areas in Botswana and their Sizes**

<b>National Parks (N.P)</b>		<b>Game Reserves (G.R)</b>		<b>Wildlife Sanctuaries</b>	
<b>Name</b>	<b>Size (sq km)</b>	<b>Name</b>	<b>Size (sq km)</b>	<b>Name</b>	<b>Size (sq km)</b>
Chobe N.P	10566	Central Kalahari G.R	52800	Khama Rhino Sanctuary	4.5
Kgalagadi N.P	38000	Gaborone G.R	5	Maun Game Sanctuary	5
Makgadikgadi/Nxai		Khutse G.R	2500		
Pans N.P	7478	Manyelanong G.R	3		
		Mashatu G.R	450		
		Moremi G.R	4800		

Source: Government of Botswana, *Bajanala: A Tourist Guide to Botswana Vol 5 (2006) 4-9*. Also available at <<http://www.botswanaturism.org>> Last accessed on 22 December 2007.

### **National Parks**

A national park is an area set aside on state land exclusively for wildlife habitation and in which the killing of animals as well as human activities such as agriculture, pastoral, forestry and any consumptive forms of wildlife utilization are completely excluded.<sup>478</sup>

The only permitted human activity in a park is tourism. Notably, national park status usually extinguishes traditional user rights such as hunting. National parks are established exclusively for purposes of propagation, protection and preservation of wildlife, and they are usually established on state lands which are managed exclusively to preserve species in a reasonably natural state. Human presence is generally excluded and restricted to

<sup>478</sup> FAO 'Legislation on Wildlife and Protected Areas in Africa' Legislative Study No. 25 (1984) 28.



paying visitors only.<sup>479</sup> When the interests of the local communities conflict with those of the park, then the park should have precedence.<sup>480</sup> In Kenya, national parks are established under the Wildlife (Conservation and Management) Act by the minister in charge of wildlife, in consultation with parliament and the relevant authorities.<sup>481</sup>

In Botswana, the Wildlife Conservation and National Parks Act vests the power of establishing national parks in the President; with the minister for wildlife only having the power to manage and control these parks after they have been declared.<sup>482</sup> In both countries, the law prohibits human entry, the killing, capture and hunting of wildlife as well as other human activities in national parks.<sup>483</sup> Kenya is estimated to have over twenty national parks.<sup>484</sup> They include: Aberdare, Amboseli, Lake Nakuru, Meru, Mt Elgon, Mt Kenya, Nairobi, Ruma, Sibiloi and Tsavo. Botswana also has three national parks, namely, Chobe, Kgalagadi, and Makgadikgadi Pans-Nxai Pan national parks.

### **National Reserves and Game Reserves**

National reserves and game reserves are areas set aside for wildlife conservation but in which there is limited human activity such as grazing of livestock. Such activities though permitted are strictly regulated. These areas like national parks are also meant for the protection of wildlife; however, they differ from parks in two major respects. Firstly, unlike in national parks where human entry or activities are prohibited, in national and

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<sup>479</sup> Matiru (note 246 above) 36.

<sup>480</sup> SK Eltringham *The Ecology and Conservation of Large African Mammals* (1979) 216.

<sup>481</sup> Note 56, sect 6.

<sup>482</sup> Note 73, sect 5.

<sup>483</sup> Note 73, sects 7, 8 & 10; and note 56, sects 10, 11, 12, & 13.

<sup>484</sup> See the Kenya Wildlife Service website, <<http://www.kws.org/parks.html>>.

game reserves, human entry as well as limited rights of settlement as well as authorized activities such as traditional hunting rights, fetching firewood, honey harvesting and even livestock grazing are permitted.<sup>485</sup> This is in contrast with national parks, in which human settlements and activities are prohibited. Secondly, while national reserves and game reserves may be established on non-state land such as communal land and land owned by local authorities, national parks can only be established on state land having been owned by the government or having been acquired from private ownership through the powers of eminent domain.

While Kenya has both the “national reserve” and “game reserve” categories of reserves, Botswana has only the “game reserve” category. In Botswana, the power to declare a game reserve or alter its boundaries lies with the President, who carries out this authority by publishing an order to that effect in the government’s official gazette.<sup>486</sup> In Kenya, the minister for wildlife may with an agreement with a competent authority, land minister in the case of government land, county council in the case of trust land and landowner in the case of private land, by notice in the official gazette declare an area to be a national reserve.<sup>487</sup> Kenya has several national and game reserves. The major ones include: Buffalo Springs, Kora, Kamnarok, Lake Bogoria, Masai Mara, Marsabit, Mwea, Shaba and Shimba Hills. Botswana also has several game reserves. They include: Central Kalahari, Gaborone, Khutse, Manyelanong, Mashatu, and Moremi.

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<sup>485</sup> See J Mugabe et al ‘Biodiversity Management in Kenya’ J Mugabe & N Clark (eds) *Managing Biodiversity: National Systems of Conservation and Innovation in Africa* (1998) 91, 99.

<sup>486</sup> Note 73, sect 12.

<sup>487</sup> Note 56, sect 18 (1).

While game reserves exist in Kenya, the Wildlife Act mentions them in a rather incidental manner.<sup>488</sup> They are otherwise an entity introduced by the Wild Animals Protection Ordinance of 1951, which later became the Wild Animals Protection Act of 1962<sup>489</sup> and which was eventually repealed by the Wildlife (Conservation and Management) Act of 1976 as amended in 1989.<sup>490</sup> Since game reserves are mentioned within a section devoted to national reserves, it may be supposed that the Act intended to consider game reserves as assimilated into national reserves. Be that as it may, game reserves continue to exist under law as areas which may be created under local initiative or which may be administered by local authorities under supervision of the minister for wildlife. In this sense, then, they are distinct from national reserves which are directly administered by the Kenya Wildlife Service. Some game reserves have, however, through legal notices in the government's official gazette been upgraded to "national reserve" status, for instance, the Lake Kamnarok Reserve.<sup>491</sup> Nevertheless, Kenya still has the "game reserve" category, such as the Masai Mara Game Reserve.

The law of both Kenya and Botswana allows individuals, with the consent of the government, to establish private game or national reserves as the case may be (national reserves in the case of Kenya and game reserves in the case of Botswana) for the

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<sup>488</sup> Ibid, sect 18 (6) which states 'Any area which, immediately before the appointed day was administered by a local authority as a game reserve shall become a National Reserve and shall continue to be so administered until the Minister, after consultations with the competent authority, by notice in the Gazette, otherwise directs generally or in relation to any specified area.'

<sup>489</sup> Cap376 of 1962 (now repealed).

<sup>490</sup> Note 56 above.

<sup>491</sup> See, for example, Legal Notice No. 101 of 1983, where Kamnarok Game Reserve in the north rift region of Kenya was declared a national reserve after consultations with the Baringo County Council.

protection and preservation of wildlife and in which hunting is restricted.<sup>492</sup> In Kenya, however, the area covered by such reserves shall not exceed 2600 hectares.<sup>493</sup>

### **Game Sanctuaries**

Game sanctuaries or wildlife sanctuaries are areas set aside to give special protection to certain wild animals or animal communities in need of protection for being endangered, vulnerable or rare species. The law in both Kenya and Botswana provides for the establishment of local wildlife sanctuaries in which in a specified animal or animals shall not be hunted or captured.<sup>494</sup> By dint of section 12 of Botswana's Wildlife Act and section 19 (1) of Kenya's Wildlife Act, sanctuaries are often created for a specific animal or animals hence the particular animal or animals need to be specified in the legal notice declaring the particular sanctuary. A list of the sanctuaries will in most cases confirm the animal(s) concerned. Kenya's game sanctuaries include Maralal Game Sanctuary, Kisumu Impala Sanctuary, Sweetwaters Rhino Sanctuary and Mwalughanje Elephant Sanctuary.<sup>495</sup> Botswana's game sanctuaries include the Khama Rhino Sanctuary and the Maun Game Sanctuary.<sup>496</sup>

### **Wildlife Management Areas (WMAs)**

Unlike Kenya, where wildlife protected areas (PAs) are surrounded by human settlement, in Botswana PAs are surrounded by conservation zones called Wildlife Management Areas (WMAs) which serve as buffer zones between PAs and human settlements as well

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<sup>492</sup> Note 56, sect 18(5) and note 85, sect 13.

<sup>493</sup> Note 56, sect 19 (1).

<sup>494</sup> Created to protect specified species.

<sup>495</sup> < <http://www.parks.it/world/KEN/Eindex.html> > Last accessed on 22 December 2007.

<sup>496</sup> < <http://www.parks.it/world/BW/Eindex.html> > Last accessed on 22 December 2007.

as migratory corridors and dispersal areas for animals. Section 15 of Botswana's Wildlife Act gives the President, powers to declare an area a wildlife management area and empowers the minister for wildlife to make rules to govern the areas. Currently, the WMAs include Kwando Wildlife Management Area, Maltho-a-Phuduhudu Wildlife Management Area, Nata Wildlife Management Area, Ngamiland State lands Wildlife Management Area, Nunga Wildlife Management Area, Okavango Wildlife Management Area, Okwa Wildlife Management Area, Quago Wildlife Management Area and Southern District Wildlife Management Area. Besides acting as buffer zones to help ease human-wildlife conflict, these areas allow the local communities to enjoy traditional hunting rights as well as obtain food, firewood and traditional medicine in wildlife habitats. These activities are, however, regulated since certain conducts are prohibited in these areas, for instance, human settlements.<sup>497</sup>

Currently, 22 percent of Botswana's land area is designated as wildlife management areas.<sup>498</sup> Notably, due to the country's low population density, there is no great human demand for land as to pose a very serious threat to the wildlife habitat. However, while human encroachment on wildlife habitats is not a problem in Botswana at the moment, it is proper to put in place measures to check the likelihood of such encroachment as the population of both humans and wild animals grows. The Botswana legislation through the establishment of these WMAs prevents human encroachment on the wildlife protected areas since they act as buffer zones for the protected areas.

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<sup>497</sup> From interviews conducted by this author in Botswana between July and December 2006, these rights are restricted indigenous Batswana people who may for instance hunt in these areas for food without a licence.

<sup>498</sup> See note 68 above.

### **Forest Reserves and Nature Reserves**

This is a special category of wildlife protected area created under the forest law of both countries. In Kenya, they are known as nature reserves while in Botswana they are known as forest reserves. Under section 4 of Botswana's Forest Act of 1976, the President may in consultation with the competent authority declare any area a Forest Reserve.<sup>499</sup> Under section 31 of Kenya's Forests Act of 2005,<sup>500</sup> the minister responsible for natural resources may declare any forest area, which has a particular environmental, cultural, scientific or other special significance to be a nature reserve, for the purpose of preserving its natural amenities and the flora and fauna in it. Human activities such as residing, hunting, harvesting of forest produce, grazing livestock and starting a fire are restricted; and permission for them shall only be given with the object of conserving the natural flora and amenities of the reserve or cultural, religious, educational and scientific reasons.<sup>501</sup> Consumptive utilization of wildlife in these areas is not permitted. Nature reserves in Kenya include Kakamega Forest Nature Reserve, Mau Forest Nature Reserve and Arabuko Sokoke Forest Nature Reserve.<sup>502</sup> Botswana's forest reserves include Kasane Forest Reserve, Chobe Forest Reserve, Sibuyu Forest Reserve, Maikaelo Forest Reserve and Kazuma Forest Reserve.<sup>503</sup>

### **C. Provisions for Land Use Control and Planning**

In Kenya and Botswana, as anywhere else, wildlife is a form of land use that competes with other forms of land use such as agriculture, mining, industrial activity and

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<sup>499</sup> Cap 38:04.

<sup>500</sup> Note 249 above.

<sup>501</sup> Ibid, sect 32 & note 499, sect 12 (1).

<sup>502</sup> <<http://www.parks.it/world/KEN/Eindex.html>> Last accessed on 22 December 2007.

<sup>503</sup> <<http://www.parks.it/world/BW/Eindex.html>> Last accessed on 22 December 2007.

pastoralism. Both these countries have land planning legislations through which wildlife areas can be made an integral part of land use planning. Presently, land use does not pose a real problem to wildlife conservation or human-wildlife interface in Botswana. In Kenya it does and it is a major source of human-wildlife conflict.<sup>504</sup> The major reason for this is that while Botswana has a low population density resulting in vast space for wildlife range Kenya is characterized by high population pressure and a fast-shrinking wildlife range. The latter's situation is compounded by the country's policies which seem to encourage land sub-division. This land sub-division and subsequent registration of individual parcels invariably leads to fencing of such parcels and the blocking of wildlife migration routes and dispersal areas.<sup>505</sup>

There are two ways in which land use control and planning can address the problems associated with wildlife damage. Firstly, through land planning and zoning. Secondly, through the instrumentality of Environmental Impact Assessment (EIA) and Environmental Audits for projects and certain anthropogenic activities especially in areas adjoining wildlife habitats.

#### **(i) Land Planning and Zoning Regulations**

Indeed, land use planning and zoning laws can be one of the best ways for controlling wildlife damage in both Kenya and Botswana, as they direct the manner in which important areas are utilized for conservation. Before the coming into existence of public control over the use and development of land in both countries, landowners were free to

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<sup>504</sup> From interviews conducted by this author in Kenya and Botswana between January and December 2006.

<sup>505</sup> Muriuki (note 36 above).

use their land as they wished, subject only to any limitations in the grant under which they held it and to obligations placed upon them at common law.<sup>506</sup> Provided an owner acted within the confines of his estate and interest and committed no nuisance or trespass against his neighbour's property, he was free to use his land for the purpose for which it was economically best suited.<sup>507</sup> However, with regulation, the situation has changed and any developmental activities have to be in accordance with the land planning laws, which provide for the granting of permits and prescribe land zoning regulations.

The bulk of Kenya's land use regulation and zoning law is found in the Physical Planning Act of 1996,<sup>508</sup> while for Botswana it is in the Town and Country Planning Act of 1980.<sup>509</sup> These Acts provide for the preparation and implementation of physical development plans for urban areas, rural areas and even regions in order to regulate development and other land use activities. Such regulation achieves this goal by requiring that certain developmental and land use activities in wildlife areas or the surrounding areas are subject to approval of the relevant wildlife and local government authorities.<sup>510</sup> Regulation also ensures that the available land is applied to the various uses, for instance, by the creation of zones for the respective land uses.

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<sup>506</sup> From interviews conducted by this author in Kenya and Botswana between January and December 2006.

<sup>507</sup> From interviews with wildlife experts and as well as officials of the Kenya Wildlife Service (KWS) and Botswana's Department of Wildlife and National Parks (DWNP) between January and December 2006 during research conducted by this author for this study.

<sup>508</sup> Act No. 6 of 1996.

<sup>509</sup> Cap 32:09

<sup>510</sup> From interviews by this author with government officials in Kenya and Botswana between January and December 2006. Most planning legislation has given to the local government direct power and responsibility to administer planning control.



With regard to wildlife, Kenya and Botswana have different zoning systems. In Kenya currently, the Kenya Wildlife Service classifies the country's land as either (a) part of the protected area or (b) outside protected areas.<sup>511</sup> Botswana for its part has three classifications, namely (a) protected area; (b) wildlife management area; and (c) outside protected areas. Incidentally, these zoning patterns have not been incorporated in these countries' respective land planning laws. This has led to a disconnect between wildlife conservation and land planning, such that the latter does not serve the interests of conservation.

#### **(ii) Environmental Impact Assessment and Audit Regulations**

Another way in which land-use regulation can control wildlife damage is through the instrumentality of environmental impact assessment (EIA) and environmental audits for projects and certain anthropogenic activities especially in areas adjoining wildlife habitats. EIA provisions, if properly applied, are an important way of protecting wildlife from harmful human activities and humans from harmful activities of wild animals such as wildlife damage. Where damage is unavoidable, as in the case of some notorious species, appropriate mitigation criteria and procedures should be developed to reduce or compensate the resultant harm.

In Kenya, EIA and environmental audits have since 2000 been a legal requirement under the Environmental Management and Co-ordination Act of 1999.<sup>512</sup> There are other laws under which environmental assessments are required. These include the Physical

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<sup>511</sup> KWS, Wildlife Human Conflicts Executive Summary, <<http://www.safariweb.com/kwild/summery.htm>> Last accessed on 22 Decembers 2007.

<sup>512</sup> Sect 58.

Planning Act of 1996<sup>513</sup> and the Water Act of 2002.<sup>514</sup> For instance, among the activities for which the Environmental Management and Coordination Act requires EIA are those related to wildlife protected areas as well as wildlife species.<sup>515</sup> Botswana has recently enacted an EIA law, the Environmental Impact Assessment Act of 2005.<sup>516</sup> Subsequently, EIA is now a legal requirement in Botswana for certain prescribed activities or activities with certain effects, including effects on natural ecosystems and wildlife habitats. There is now a legal obligation on a developer or industrialist in the country to conduct EIA or audit as the case may be and to take mitigation measures if the activity has significant effects on natural ecosystems and wildlife habitats.<sup>517</sup>

#### **D. Provisions on Injurious Wildlife**

While wildlife is a valuable resource in both Kenya and Botswana, some wild animals are injurious and a source of nuisance to people in terms of the injuries and deaths to people and domestic stock as well as damage to crops and other property. This has prompted the governments of both countries to enact legal provisions regarding such wild animals as are harmful or dangerous and setting up procedures as well as institutional structures for dealing with them.<sup>518</sup>

Legal response to wildlife damage should not just be looked at in terms of providing compensation where damage has already occurred. A good law on wildlife damage

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<sup>513</sup> Note 508 above.

<sup>514</sup> Act No. 8 of 2002.

<sup>515</sup> See list in the Second Schedule of the Environmental Management and Co-ordination Act of 1999 (Note 521 above).

<sup>516</sup> Act No. 6 of 2005.

<sup>517</sup> Ibid, sect 6.

<sup>518</sup> In the context of this study, wild animals are harmful if they can cause material damage and are dangerous if they can maim or cause loss of life.

should be proactive (and not merely reactive) by putting in place mechanisms for avoidance and abatement of damage. Besides, in a country where depredation occurs, an ideal wildlife law will be expected to contain provisions regarding harmful wildlife species and activities. It is encouraging that Kenya and Botswana have legal provisions regarding injurious wildlife. These provisions may be categorized into three categories, namely, (i) provisions seeking to control such animals; (ii) provisions for destruction of wildlife in defence of human life and property as well as provisions for self-defence,<sup>519</sup> and (iii) provisions for payment of compensation for damage caused by wildlife.<sup>520</sup>

#### **(i) Provisions to Control Injurious Wildlife**

These provisions give power to wildlife authorities to take measures to control harmful wildlife. They mainly comprise provisions with clauses regarding abatement and control measures such as responsibility to confine wild animals and the shooting of problem animals. Botswana's Wildlife Conservation and National Parks Act of 1992<sup>521</sup> gives express permission to wildlife authorities to destroy problem animals. Under section 80 (1) of the Act, a wildlife officer may kill a wild animal which threatens human life, causes or is likely to cause damage to any livestock, crops, water installation or fence.<sup>522</sup> Kenya's Wildlife Conservation and Management Act for its part lacks an express provision allowing wildlife authorities to destroy problem animals.<sup>523</sup> The absence of such provision in the law therefore makes wild animals vulnerable to being killed by the

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<sup>519</sup>These comprise provisions allowing public authorities to destroy particular animals posing a danger to people or allowing people to attack such animals in self-defence.

<sup>520</sup> Provisions providing for compensation for such damage as well as those setting up institutions and procedures for receiving reports and for processing claims arising from incidents of damage by animals.

<sup>521</sup> Note 73 above.

<sup>522</sup> Ibid.

<sup>523</sup> Note 56 above.

people as they are likely to see no need in reporting to the authorities about rogue animals. Interviews with officials of the KWS, however, revealed that the agency has a problem animal control strategy under which its officers kill notorious individuals.

As already observed in this work, both Kenya's and Botswana's Wildlife Acts designate some animals as "game animals" and "protected game animals" respectively and prohibit the hunting and capture of these categories of animals except with a permit from the relevant wildlife authority.<sup>524</sup> Indeed most of the animals listed in these two categories are also those known to cause damage to people, livestock, crops, infrastructure and other physical property, and are essentially dangerous animals; for instance the elephant, leopard, lion, rhinoceros and the crocodile.

Apart from these two categories, both these Acts introduce a third category of wild animals, namely, "dangerous animals".<sup>525</sup> Section 2 of the Kenyan Act lists this category of animals as elephant, rhinoceros, hippopotamus, buffalo, lion and leopard. Botswana in the Ninth Schedule to its Wildlife Act lists "dangerous animals" as leopard, lion, elephant, rhinoceros, hippopotamus, buffalo and crocodile.<sup>526</sup> Notably, the list is the same, save for the crocodile which is not included in the Kenyan list. It is not clear why the crocodile is not listed, yet it is one of the most notorious and vicious attackers of humans and livestock in most of Kenya's rivers and lakes.<sup>527</sup>

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<sup>524</sup> Note 73, sects 17 & 18. See the sixth and seventh schedules to the Act.

<sup>525</sup> Ibid, sect 2 & Note 68 above.

<sup>526</sup> Ibid, ninth schedule.

<sup>527</sup> It emerged from the interviews and focus group discussions held by this author in Kenya and Botswana between January and December 2006 that crocodiles are found in rivers and lakes and usually attack people and livestock when they go to such water bodies to bath, to fish, to fetch water or to water livestock. Some of the attacks lead to human and livestock deaths.

Although these pieces of legislation do not define what a “dangerous animal” is, logically this is an animal that can kill or maim a human being or livestock.<sup>528</sup> In determining the actual meaning of this expression, the common law criteria can be applied; which adopts the test of danger. With regard to damage this is a very critical category of wildlife and one would have expected the legislators to coin a substantive definition of the term and even formulate a criterion of the attributes of an animal that may be classified as dangerous. Ideally, however, most wild animals in the natural state (except those domesticated) are essentially dangerous and that is why they are referred to as wild or *ferae naturae* (fierce by nature). The Kenyan Act makes the wounding of “dangerous animals” an offence punishable by imprisonment and a fine.<sup>529</sup> This is meant to prevent humans from provoking such animals. Under the Act, a person who in any circumstances wounds a protected animal or game animal should make every effort to kill it, and where the person fails to kill or recover the animal, he or she should report these facts to the nearest office of the KWS.<sup>530</sup>

Lastly, while the Kenya Wildlife Service and Botswana’s Department of Wildlife and National Parks use wildlife translocation to control wildlife damage, it is a policy activity not embodied in any of the laws of the respective countries. Besides, as established by this author during research for this study, both countries lack clear guidelines and procedures on translocations hence they are carried out at the pleasure and whim of the

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<sup>528</sup> Note 73 above.

<sup>529</sup> Note 56 above, sect 32 (3).

<sup>530</sup> Ibid, sect 32 (1) & (2).

administrative authorities.<sup>531</sup> They are, for instance, undertaken without involving the local communities in the affected areas.

## **(ii) Provisions for Destruction of Wild Animals in Defence of Human Life and Property**

Another way in which the law addresses the problem of wildlife damage is by expressly recognizing people's right to attack the animals in defence of oneself, one's property or any other person. Kenya and Botswana have provisions in their respective wildlife statutes that permit people to attack and even kill wild animals in defence of human life, crops, livestock and property.<sup>532</sup> This is called self-defence. Self defence is defined by the Black's Law Dictionary as 'the use of force to protect oneself, one's family or one's property from a real or threatened attack.'<sup>533</sup> Allen refers to it as private defence and defines it as 'the use of force to protect oneself, one's property or others from attack'.<sup>534</sup> Indeed self-defence is a justification recognized by common law and legislation in many jurisdictions. Besides, it is an inherent fundamental right of every creature hence legislation is only said to recognize it but not to create it. However, in order for the use of force to be recognized as self-defence, the user of such force ought not to have provoked or engineered the attack. For an act of force to qualify as self-defence, it usually ought to have been pre-emptive and not retaliatory. In other words, it should be immediately before an attack and when such an attack is imminent, and not after the attack is complete. If the attack was avoidable, for instance, where a person had a chance to run

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<sup>531</sup> A fact admitted by senior officials of the KWS and DWNP in Kenya and Botswana on non-attribution basis during research for this study.

<sup>532</sup> Note 56, sects 30 & 31 and note 85, sects 46 & 47 respectively.

<sup>533</sup> HC Black *Black's Law Dictionary* 7<sup>th</sup> Ed (1999) 1364.

<sup>534</sup> MJ Allen *Textbook on Criminal Law* (2001) 195.

away or where one has himself/herself engineered or provoked the attack, self-defence does not arise.

In Kenya, the right of people to attack wild animals in defence of human life and property is provided for in sections 30 and 31 of the Wildlife Conservation and Management Act, while in Botswana it is provided for in sections 46 and 47 of the Wildlife Conservation and National Parks Act.<sup>535</sup> Section 30 of Kenya's Wildlife Act deals with destruction of wildlife in defence of human life and it states:

Nothing in this Act shall make it an offence for any person to kill or injure by any means any animal in immediate defence of human life; but the exemption provided by this section shall not apply where such killing or injuring is done by a person who, at the time thereof, was committing an offence under this Act or is done under circumstances amounting to deliberate provocation or enticement of the animal by or with the knowledge of that person.<sup>536</sup>

Section 31 of the same Act deals with killing of wild animals for the protection of crops, livestock and property, and provides that 'Notwithstanding anything to the contrary in this Act any occupier of land or his servant or any owner of crops or stock or his servant, may, if necessary for the protection of his land, crops or stock, kill any game animal which is causing material damage or loss to his land or to any crop or stock thereon.' Section 46 of Botswana's Wildlife Act, like section 31 of Kenya's Act, deals with the killing of wild animals for the protection of crops, livestock and property. It states that 'Notwithstanding anything to the contrary in this Act, the owner or occupier of land, any agent of such owner or occupier may, subject to the provisions of this Act, kill any animal which caused, is causing or threatens to cause damage to any livestock, crops,

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<sup>535</sup> Ibid

<sup>536</sup> Note 56, sect 30 (1).

water installation or fence of such land.’<sup>537</sup> Section 47 of the same Act, like section 30 of Kenya’s Wildlife Act deals with the killing of wild animals for the protection of human life. It states that ‘it shall not be unlawful for any person to kill or wound any animal in defence of himself or any other person if immediately and absolutely necessary.’<sup>538</sup> The burden of proving that an animal has been killed or wounded in self defence lies with the person who did the killing or wounding.<sup>539</sup>

In Botswana, a person may kill a wild animal in case of imminent danger to life as well as land, crops and livestock. In Kenya, pre-emptive killing is only permitted in the case of human harm, hence with regard to damage to crops, livestock or other property, a wild animal may only be killed where it has actually caused damage and continues to do so. From the above provisions also, the Kenyan Act merely requires that the killer of such animal reports the killing to a wildlife officer ‘at the earliest practical moment’.<sup>540</sup> However, Botswana’s law goes a step further to state that apart from reporting ‘within not more than seven days in any event, to the nearest wildlife officer or police station, the person may be directed by the authority to deliver the carcass or parts of it to a wildlife officer or police station.’<sup>541</sup>

While the laws of Kenya and Botswana provide for a right to self defence, they strictly circumscribe this right by stipulating the acts permitted to be used for self-defence. The

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<sup>537</sup> Note 73 above.

<sup>538</sup> Ibid, sect 47 (1).

<sup>539</sup> Ibid, sect 47 (2).

<sup>540</sup> See note 56, sect 30 (2).

<sup>541</sup> Treating the animal as a Government trophy. See Note 85, sect 47 (3). See also sect 46 (6) which makes it an offence for a person to use, retain or dispose of any such trophy or meat.



law in Kenya, for instance, makes it an offence for any person to maim, mutilate or cause unnecessary and undue suffering to any protected animal or game animal.<sup>542</sup> Whereas Kenya's and Botswana's laws expressly permit people to kill wild animals in defence of both life and property, research for this study established that in both countries, in practice, killing is allowed more widely in defence of people than property; and is in any event required to meet strict conditions.<sup>543</sup>

### **(iii) Provisions on Compensation for Wildlife Damage**

The Wildlife statutes of Kenya and Botswana provide for payment of compensation to victims of wildlife damage, or their next of kin in the case of death. In Kenya, the provisions on compensation for wildlife damage are found in section 62 (1) of the Wildlife Conservation and Management Act of 1976 (Chapter 376 as amended in 1989), while in Botswana compensation is provided for in section 46 (4) of the Wildlife Conservation and National Parks Act of 1992.<sup>544</sup> Section 62 (1) of the Kenyan Act above provides as follows: 'where any person suffers any bodily injury from or is killed by any animal, the person injured or in the case of a deceased person, any other person who was dependent upon him at the date of his death, may make application to a district committee established by this section, for the award of compensation for the injury or death.'<sup>545</sup> Section 46 (4) of Botswana's Act above provides: 'Compensation may be paid, as may be provided in regulations made under the Act, to any person who satisfactorily establishes

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<sup>542</sup> Note 56, sect 33.

<sup>543</sup> From interviews with wildlife authorities in Kenya and Botswana between January and December 2006.

<sup>544</sup> Note 56 above and note 73 above, respectively.

<sup>545</sup> Note 56 above.

that he has suffered damage from an action of a wild animal.’<sup>546</sup> Consequently, the governments of Kenya and Botswana maintain compensation procedures under their respective Wildlife Acts for paying those who suffer damage resulting from wild animals.

While in Botswana compensation is available for any kind of wildlife damage, in Kenya it appears from section 62(1) above that compensation is available only where a wild animal has killed or injured a human being, and not for any other damage such as destruction of livestock, crops or property. Kenyan courts, however, seem prepared to adopt a rather innovative, common-law based interpretation of sections 3A and 62 of the Wildlife (Conservation and Management) Act, in such a way as to lay a basis for compensation for damage to crops and livestock.<sup>547</sup> This is illustrated in *Ngera & Another v. Kenya Wildlife Service*<sup>548</sup> where the Court of Appeal re-affirmed the government’s obligation to compensate victims of crop and livestock damage.

The appellants in this case owned land near Lake Nakuru, on which they planted wheat. When the crop was ripened and headed with seed, birds from Lake Nakuru National Park descended on the crop and destroyed it. This resulted in loss estimated at Kenya shillings 5, 520,000, which loss the appellants attributed to the respondent, on account breach of statutory duty under the provisions of section 3A of the Wildlife Conservation and

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<sup>546</sup> Note 73 above.

<sup>547</sup> Note 56, sect 3A under which one of the functions of the Kenya Wildlife Service is to ‘render services to the farming and ranching communities in Kenya necessary for the protection of agriculture and animal husbandry against destruction by wildlife.’ This means that if damage occurs to crops or livestock, then the Kenya Wildlife Service and, by extension the government, through the relevant ministry is liable. In effect, although the law does not expressly provide for compensation for damage to crops and livestock as it does in the case of human injury and death, there is nothing in the law that can prevent a person whose crops or livestock is destroyed by wildlife from obtaining compensation for the loss.

<sup>548</sup> (2004) KLR 1.

Management Act (WCMA). They filed a suit against the respondent in the High Court claiming compensation. The trial court dismissed the claim, holding that by virtue of section 62 of the WCMA, no compensation is payable in respect of loss other than human injury or death. This provision the court argued placed no liability on the defendant for loss of property occasioned by wildlife. The claimant appealed to the Court of Appeal.

In reversing the trial court's decision, the appellate court held that although the 1989 amendment to the WCMA removed compensation for crop damage, it in its place provided as one of the functions of KWS the 'rendering of services to the farming and ranching communities in Kenya for the protection of agriculture and animal husbandry against destruction by wildlife.' The court further observed that failure by KWS to carry out this function is a breach of duty, notwithstanding the non-provision of a remedy for breach. To support this position, the court quoted Clarke and Lindsell on Tort, where it is stated:

If a statute creates a duty but imposes no remedy, civil or criminal for breach, there is a presumption that a person who is injured thereby will have a right of action, for otherwise, 'the statute would be but a pious aspiration'. This may be subject to qualification, however, which has often been stated, though also emphatically denied that there will be no right of action unless the statute was intended to benefit designated individuals or particular class of persons rather than the public at large.<sup>549</sup>

This being a decision by Kenya's highest court, it signifies the judiciary's willingness to entertain litigation on crop and livestock loss attributed to wildlife. Besides, it is a very progressive and realistic decision that should be taken to represent Kenya's legitimate position on compensation for wildlife damage. It is imperative that section 62 aforementioned be amended in order to reflect this position. It is disturbing for a statute

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<sup>549</sup> M Jones *Clark and Lindsell on Torts* (1995)19<sup>th</sup> edn para 1407 at 741.

to say one thing and the courts another. This section should be revised to be in tandem with section 3A from which it is derived. In fact, crop and livestock damage has been the major source of the human-wildlife conflict in Kenya and Botswana. The position adopted by the law in Botswana where compensation is available for harm to humans, livestock and crops is the way to go for Kenya if the human-wildlife conflict has to be reduced. Furthermore, the agricultural and livestock sectors are the main source of livelihood in these two countries, hence anything that adversely affects these two sectors is most undesirable.

Apart from the kind of damage for which compensation should be paid, there is also the issue of the rates of compensation. Although the laws in both countries provide for compensation, they currently do not stipulate the amounts. Botswana's Wildlife Act, however, in Section 46 (5) provides that 'the Minister may, by notice in the [Official Government] Gazette, determine rates of compensation to be paid in respect of claims made under the provisions of this section, where he considers such claims and such rates to be justified.'<sup>550</sup> While Kenya's current law neither stipulates the rates nor how they are to be determined, her proposed law, the Wildlife (Conservation and Management) Bill of 2007, however, fixes the ceiling of compensation by stipulating that 'compensation shall not exceed one million shillings' in any event.<sup>551</sup> Fixing the ceiling without stipulating the actual rates or a table of such rates means not much has changed.

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<sup>550</sup> Ibid.

<sup>551</sup> Note 283, sect 66(2).

This proposed law further allows the minister to prescribe rules and guidelines regarding compensation and even to review the limits of compensation.<sup>552</sup> Besides, unlike Kenya's current Wildlife Conservation and Management Act (Cap 376), which provides for compensation for human injury and death only, the Bill provides compensation for damage to crops, livestock and other property as well.<sup>553</sup> On the computation of the quantum of compensation, the Bill provides that the award of compensation, in the case of crop, livestock or other property damage shall be valued at the local market rates.<sup>554</sup>

The Bill is currently pending before parliament and its passing shall depend on the lobby effort by the stakeholders and the ability of the relevant parliamentary committee to appreciate the need to reform the current law. If finally enacted into law, this bill will be Kenya's most progressive wildlife statute ever. However, while it is an improvement from the present law, the Wildlife Conservation and Management Act of 1976 (Cap 376), there are various areas which its drafters would have been expected to address. They include: permitting consumptive utilization of wildlife; stipulating the duration within which compensation claims should be processed as well as a table of compensation rates; establishing wildlife revenue-sharing and benefit-sharing mechanisms; and incorporating wildlife damage abatement measures. These are discussed in detail in the recommendations section of this study and they could inform the agenda for future legal and policy reforms in the country's wildlife sector.

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<sup>552</sup> Ibid, sect 66 (8) & (9).

<sup>553</sup> Ibid, sect 66 (3).

<sup>554</sup> Ibid, sect 66 (4).

## 7.2 INSTITUTIONAL ARRANGEMENTS IN KENYA AND BOTSWANA ON WILDLIFE DAMAGE

### 7.2.1 KENYA

Within the governmental structures, wildlife falls within the docket of the Ministry of Tourism and Wildlife. The ministry has a wildlife desk whose responsibility is to advise the government on matters relating to wildlife as well as to co-ordinate with other players and stakeholders in the sector. The responsibility of managing and conserving Kenya's wildlife is vested in the Kenya Wildlife Service (KWS). This agency was established in 1990 as a state corporation under the Wildlife (Management and Conservation) (Amendment) Act of 1989 as the sole custodian of wildlife within protected areas and outside the protected area estate, wherever it occurs throughout the country.<sup>555</sup>

KWS was established as a successor to the Game Department and the National Parks Service. As a parastatal it is a legally autonomous institution most of whose operations are free from the bureaucratic red tape of a government department. It operates as a commercial as well as legal entity with its own budgetary and financial control, with capacity to sue and be sued, borrow money, negotiate contracts, hire and fire its own staff, independent of the government's structures. Besides, it can develop proposals and negotiate with donor organizations for funding. It has managed to attract heavy donor funding for its programmes which has enabled it improve staff remuneration and infrastructure in wildlife areas, as well as acquire modern equipment to control poaching. Commenting of the Department, Richard Leakey the founding Director of KWS in his autobiography says the department 'was one of the most- if not the most- corrupt

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<sup>555</sup> Note 65, sect 3.

organization in the government. I suspected that one cause was the rangers' and wardens' arduous life of long working hours, isolation and low pay. Rangers earned barely enough to feed and clothe their families, certainly not enough to pay their children's school fees, too.<sup>556</sup>

KWS was developed as a result of the government's restructuring of the country's sector which was necessitated by the problems experienced in the sector in the 1980s. Firstly, the Wildlife Conservation and Management Department lacked adequate funds to carry out its mandate. As a result, staff salaries were low, staff morale was low, infrastructure deteriorated, there was lack of equipment, poaching activities increased and wildlife numbers dwindled. Secondly, because of its location in a ministry as a government department, it lacked institutional autonomy to develop proposals and approach donors for funding.

Unlike its predecessor, KWS also has a pilot extension service dubbed the "Community Wildlife Service" (CWS) through which it has established mechanisms where landowners in selected conservation units obtain wildlife-related benefits in exchange of tolerating the costs imposed on them by wild animals in terms of attacks on people, livestock, crops and other property.<sup>557</sup> KWS, in one of its bulletins, has reported that through the CWS, 'landowners in selected districts are encouraged to accept wildlife on their land, along with training and certain responsibilities...and in return, participants in this programme

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<sup>556</sup> R Leakey & V Morell *Wildlife Wars: My Fight to Save Africa's Natural Treasures* (2001) 63.

<sup>557</sup> From interviews this author had with KWS officials in Nairobi Kenya on 15 February 2006. See also the KWS 'Community Wildlife Service, <<http://www.kws.org/community.htm>> Last accessed on 22 Decembers 2007.

receive certain wildlife-related benefits including park revenue-sharing rights, to consumptive utilization of wildlife and assistance with non-consumptive enterprises such as tourism.’<sup>558</sup> These benefits are, however, limited to revenue-sharing and indirect utilization enterprises such as tourism. This programme is, however, on a pilot basis and covers very few areas hence its benefits are almost negligible in a national-wide context. It was established in 1992 with support from the United States Agency for international Development (USAID) and operates in certain focal districts.<sup>559</sup> Currently the focal districts of the Community Wildlife Service include Laikipia, Samburu, Narok, Machakos and Kajiado.<sup>560</sup> These also happen to be districts of a high incidence of wildlife damage hence the need for mobilizing the local communities in achieving conservation goals. One of the goals of the CWS is ‘to work with others to conserve, protect and sustainably manage wildlife resources outside protected areas for the benefit of the people.’<sup>561</sup> Despite being a pilot project, CWS ‘presents a stimulating model of community mobilization and awareness’.<sup>562</sup>

The agency’s role also extends to the prevention of wildlife damage. With regard to wildlife damage, the statutory function of the KWS is to ‘render services to the farming and ranching communities in Kenya necessary for the protection of agriculture and animal husbandry against destruction by wildlife.’<sup>563</sup> The agency carries out this duty in

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<sup>558</sup> Note 103 above.

<sup>559</sup> Interviews with KWS officials in Nairobi Kenya on 15 February 2006.

<sup>560</sup> Ibid.

<sup>561</sup> KWS ‘Community Wildlife Service, <<http://www.kws.org/community.htm>> Last accessed on 22 Decembers 2007.

<sup>562</sup> Note 103 above.

<sup>563</sup> Note 65, sect 3A (1) states that the other functions of the KWS as: Its functions as stated section 3A of the Act are to:



three ways. Firstly, through a problem animal control strategy by which problem animals threatening to cause harm or which actually cause harm are either shot dead, captured or translocated by the agency's personnel from areas of high incidence of human-wildlife conflict to other areas within the protected areas. KWS has assigned a specialized unit of its paramilitary rangers to hunt down notorious problem animals and shoot them dead.<sup>564</sup>

It is usually the notorious individual culprits who are dealt with, as opposed to species or a population in a particular place. Secondly, through the establishment of physical

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- (a) formulate policies regarding the conservation, management and utilization of all types of fauna (not being domestic animals) and flora;
  - (b) advise the Government on the establishment of National Parks, National Reserves and other protected wildlife sanctuaries;
  - (c) manage National Parks and Game Reserves
  - (d) prepare and implement management plans for National Parks and Game Reserves and display of fauna and flora in their natural state for the promotion of tourism and for the benefit and education of the inhabitants of Kenya;
  - (e) provide wildlife conservation education and extension services to create public awareness and support for wildlife policies;
  - (f) sustain wildlife to meet conservation and management goals;
  - (g) conduct and co-ordinate research activities in the field of wildlife conservation and management;
  - (h) identify manpower requirements and recruit manpower at all levels for the Service for wildlife conservation and management;
  - (i) provide advice to the Government and local authorities and landowners on the best methods of wildlife conservation and management and be the principal instrument of the Government in the pursuit of such ecological appraisals or controls outside urban areas as are necessary for human survival;
  - (j) administer and co-ordinate international protocols, conventions and treaties regarding wildlife in all its aspects in consultation with the Minister;
  - (k) solicit by public appeal or otherwise, and accept and receive subscriptions, donations, devises and bequests (whether movable or immovable property and whether absolute or conditional) for the general or special purposes of the Service or subject to any trust.

<sup>564</sup> This unit was established in the 1990s when wildlife damage cases escalated as wildlife populations increased due to strict enforcement of anti-poaching regulations as well as the ban on hunting.

barriers especially fences to deter wild animals from moving out of protected areas to cause mischief to the local communities adjoining such areas. The agency is currently involved in the erection of electric fences in high-potential agricultural areas such as Laikipia to separate wildlife from human settlements. Thirdly, through the wildlife damage compensation scheme, established under the Wildlife (Conservation and Management) (Amendment) Act of 1989 where monetary compensation is paid to those who suffer damage from wild animals. Kenya Wildlife Service has in its structure a compensation officer whose responsibility is to receive reports of damage by wild animals and to advise it on matters relating to compensation for such damage.<sup>565</sup> The compensation office is under the Community Wildlife Service (CWS) department. It receives reports on wildlife damage from the KWS field officers on a daily basis then compiles weekly and monthly reports.<sup>566</sup> The office has plans of maintaining a database on wildlife damage.<sup>567</sup>

Research for this study indicated that despite its clear statutory mandate on wildlife damage, KWS has generally been ineffective in addressing the problem.<sup>568</sup> It is encouraging, however, that KWS has a clear statutory mandate to deal with wildlife damage which is widely acknowledged as one of the major causes of human-wildlife conflict in many parts of the world including Kenya and Botswana.

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<sup>565</sup> Interviews with officials of the Kenya Wildlife Service on 15 February 2006.

<sup>566</sup> Interviews with officials of the Kenya Wildlife Service on 15 February 2006.

<sup>567</sup> Interviews with officials of the Kenya Wildlife Service on 15 February 2006. A visit by the author to the Compensation office in January 2008 established that the office has already begun setting up the database.

<sup>568</sup> From interviews conducted by this author in Kenya between January and June 2006.

## 7.2.2 BOTSWANA

The wildlife sector in Botswana is under the Department of Wildlife and National Parks (DWNP) which is established within the bureaucratic machinery of government as a department in the Ministry of Environment, Wildlife and Tourism (MEWT).<sup>569</sup> The country has a conservation system adapted to the Community Based Natural Resources Management (CBNRM) model.<sup>570</sup> Under this model, the people are not only involved in the management and utilization of wildlife, but in planning as well.<sup>571</sup> The local communities organize themselves into Community Based Organizations (CBOs) and get registered. The government through the said Department of Wildlife then grants these CBOs wildlife user rights, quotas and leases. These user rights would either be consumptive through hunting or non-consumptive through tourism.<sup>572</sup> The performance of the department in wildlife damage control is rather ineffective, not only due to bureaucracy and lack of adequate resources, but also because the department lacks a clear mandate on wildlife damage. Its role with regard to damage is amorphous and is determined by the whims of government officials. The problem of wildlife damage is of such grave concern to conservation that it requires to be addressed within a framework of

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<sup>569</sup> Note 104, 237. It has the responsibility for formulating, coordinating, development and implementation of policies and programmes for wildlife management.

<sup>570</sup> The CBNRM model has also been incorporated into the Wildlife Conservation and National Parks Act (Act No. 28 of 1992). The aim of this model is to strengthen the relationship between Protected Areas and adjacent communities. Apart from giving them direct benefits in the form of user rights, the policy also allows them to take part in the management of problem animals. This model also adopts an approach called the 'Parks and People Strategy,' through which the government facilitates regular communication between Park managers and adjacent communities, e.g. , through formal surveys, suggestion boxes, participatory rural appraisal techniques and public forums, public wildlife awareness and education, and management collaboration where adjacent communities are involved in management and planning.

<sup>571</sup> GOB, Government Paper No. 1 of 2001: Community Based Natural Resources Management Policy (2001).

<sup>572</sup> As regards elephants, a specific number of animals available for harvest is allocated to particular CBOs. Indeed, elephant hunting and viewing are the biggest tourist attraction in Botswana. The CBOs then utilize their user quotas or sublease their leases for profit. With such direct benefits being derived, the people see the elephant as an asset.

a clearly defined legal mandate and not administrative discretion and whims of government officials as is the case in Botswana currently. Being an administrative outfit, DWNP faces several other challenges in the performance of its functions, akin to the one faced in Kenya before 1990 by the Game Department, the predecessor of the Kenya Wildlife Service (KWS).

Unlike the KWS, which is an autonomous parastatal corporation, the DWNP is a government department and is so tied to the ministry's structure and mandate that it lacks institutional autonomy to independently develop proposals and approach donor organizations for funding. Any project or programme it develops has to go through a lengthy bureaucratic process in the ministry. DWNP does not have a clear mandate of its own because under Wildlife Conservation and National Parks Act, the responsibility of managing Botswana's wildlife resources and reserves is vested in the Minister in charge of wildlife, currently the Minister for Environment, Wildlife and Tourism.<sup>573</sup> Interviews by this author with the department's officials revealed that its activities are hampered mainly by lack of adequate funding.<sup>574</sup> The department relies on the parent ministry's budgetary allocations by the Treasury from the government's recurrent expenditure which has to be shared by other departments within the ministry. Besides, DWNP cannot retain the revenue from national parks and game reserves as a large share of the funds go to the Treasury. As a result, the department lacks adequate funds to cover its running costs in terms of better staff salaries, good infrastructure and modern equipment. It also

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<sup>573</sup> Note 73, sect 6 (1).

<sup>574</sup> Interviews with officials of Botswana's Department of Wildlife and National Parks (DWNP) in Gaborone 16 August 2006.

lacks well-trained personnel as most experts prefer the better terms offered by the private sector and NGOs. As a mere department within a government ministry, its activities are limited by the ministry's resources in terms of finances and expertise, which are, as is typical of many government departments in the developing world, usually inadequate.

The respondents within the DWNP also complained of unnecessary bureaucratic delays and structures within the ministry. For instance, it took this author close to a year to obtain authorization to conduct research for this study despite informing ministry officials that this was degree work that was limited in terms of time and finances. Obtaining a research permit for this research was so difficult since the ministry had just slapped a ban on all wildlife research in Botswana by foreigners. This author had to spend several months shuttling between South Africa and Botswana, which was obviously very frustrating. Even though the department's staff were sympathetic, they could actually not assist as that was a government directive by the Permanent Secretary at the ministry headquarters. These are some of the problems associated with locating vital institutions within the regular government bureaucracy. Ojwang observes that 'functions usually conducted within the bureaucratic machinery [do] not always fully accommodate the order of priority that should be attached to certain activities involving national resources and heritages.'<sup>575</sup>

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<sup>575</sup> JB Ojwang *Constitutional Development in Kenya: Institutional Adaptation and Social Change* (1990) 180.

### 7.3 FACTORS AFFECTING THE EFFECTIVENESS OF WILDLIFE DAMAGE LAWS IN KENYA AND BOTSWANA

Having laws on wildlife damage is one thing and whether or not they are effective in addressing the problem is a totally different issue all together. This study rests on the premise that an effective corpus of laws on wildlife damage is not only key to the success of conservation policies and programmes in Kenya and Botswana, but also crucial to the survival of the problem species themselves. The reason is that by addressing such a critical problem, the law will win over public support for conservation and also build tolerance to wildlife depredation. Despite having an extensive plethora of laws on wildlife damage in Kenya and Botswana, there are a number of factors which have affected the efficiency of these laws in addressing the problem of wildlife damage. On the effectiveness of laws, Allot says ‘...laws are often ineffective, doomed to stultification almost at birth, doomed by the over-ambitions of the legislator and the under-provision of the necessary requirements for an effective law, such as adequate preliminary survey, communication, acceptance, and enforcement machinery.’<sup>576</sup>

The study identified the following factors as being the major ones affecting the effectiveness of wildlife damage control laws in the two study countries: (a) Their suitability for the purpose as well as their relevancy to the local circumstances of the country; (b) Their acceptability to the stakeholders and particularly the local communities; (c) The appropriateness of the relevant policy frameworks; (d) The presence and effectiveness of wildlife-related dispute resolution mechanisms; and (e) The

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<sup>576</sup> A Allot *The Limits of Law* (1980) 287.

effectiveness of the existing institutional mechanisms.<sup>577</sup> The part below examines how these factors have played out in Kenya and Botswana our study countries, and how these countries can cope with them.

**(a) Relevance and Suitability**

For a law to be effective for the purpose for which it was promulgated and apply smoothly, it has to be suitable and relevant to the local circumstances of the jurisdiction or locality in which it is applied and to its inhabitants. Laws which are out of context for being either irrelevant or unsuitable usually do not work well. This study established that some of the wildlife damage laws in force in Kenya and Botswana are out of context, for being either irrelevant or unsuitable for the local circumstances of these countries. Some of these laws were, for instance, imported by the colonialists and have been retained by the post-independence governments. Laws of this nature are often unsuitable because, first of all, the circumstances under which they were adopted have since changed, and, secondly, they are fashioned on western concepts, values and perceptions which are inappropriate to the indigenous African circumstances.

Before the introduction of western laws and policies by the colonialists, the indigenous communities in Kenya and Botswana had their own customary laws and practices on wildlife as well as traditional African wildlife values and uses. There were also traditional customary norms and practices that ensured wildlife including many problematic species co-existed with humans without much threat to each other, for instance, those norms and practices that totemized certain animals or regulated their off-take. The introduction of

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<sup>577</sup>Bolen & Robinson (note 139 above) 481.

foreign concepts relegated these traditional practices and traditional wildlife values and uses to the backyard. Besides, wildlife laws in most of Africa including Kenya and Botswana are generally still insensitive to traditional African cultural practices.

Some cultural orientation makes people resist even the edicts of law despite the presence of sanctions for violations.<sup>578</sup> In Africa, most government programmes and policies have failed because of their being insensitive to the cultural values of the people.<sup>579</sup> This setback is compounded by the fact that in most countries in Africa, including Kenya and Botswana, African customary law is one of the sources of law. The neglect for traditional customary values is well summarized by Miller in the following poetic words when commenting on the Kenyan scenario: 'The historic tragedy in Kenya is not the slaughter of so many animals....Most of the species could still rebuild their numbers. The tragedy is that African interests, particularly farmers, were not taken into account when formulating policies [and laws] governing wildlife management. Herein lies the seed of wildlife destruction.'<sup>580</sup> Besides, wildlife laws in most of Africa including Kenya and Botswana are generally insensitive to traditional African cultural practices. For instance, while the Maasai in their culture have to kill lions as part of their rite of passage, there is no mention in the law of such practices.

Another problem is that wildlife damage laws in Kenya and Botswana are in most cases reactive instead of proactive, such that the law will typically address a problem after it has occurred. With this characteristic the law will often lack mechanisms for anticipating

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<sup>578</sup> See Sifuna & Mogere (note 295 above)

<sup>579</sup> Ibid.

<sup>580</sup> NN Miller 'Wildlife: Wild Death' (1982) 5/3 *Swara* 7.



and preventing wildlife damage. In the area of wildlife damage, for instance, farmers in the northern hemisphere have resources to adopt abatement measures and are even cushioned by insurance cover and government subsidies. Their African counterparts are peasants who rely on farming to produce for their families' direct consumption. They cannot afford insurance cover and neither do they have subsidy from their governments. In the event of a raid by wild animals on their crops, they would most likely attack the animal rather than report the incident to state and governmental authorities. A law, for example, requiring landowners to adopt abatement and preventive measures on their land against wildlife depredation and predation would be unsuitable. This lack of mechanisms for anticipating wildlife damage is a major set back because some consequences, especially those affecting public resources such as wildlife, may have implications that seem remote but with far reaching effects on posterity.

#### **(b) Acceptance by Stakeholders**

This study established that some wildlife damage laws in Kenya and Botswana are unacceptable to key stakeholders, particularly the local communities.<sup>581</sup> The unacceptability of such laws hampers their effectiveness in addressing the problem of wildlife damage. This study, for instance, established that whereas the local communities are key stakeholders in wildlife management, conservation laws in the two countries generally tend to favour wildlife interests over those of the local communities and the welfare of wild animals over that of humans.<sup>582</sup> In both countries, wildlife legislation

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<sup>581</sup> There are three key stakeholders in wildlife management, namely, local communities, the government and the conservation community comprising conservationists.

<sup>582</sup> From interviews and fieldwork conducted in Kenya and Botswana between January and December 2006 as well as from research reports. See also, for example, note 252 above.

alienates wildlife to the state, thereby annulling, limiting or restricting traditional user rights such as subsistence hunting.

This has fomented tension between state agencies and local communities, especially in Kenya where wildlife is exclusively a state affair with the people having very little say in its management. This tension has resulted in decreased co-operation between local communities and state agencies. In Botswana, this tension has been mitigated by the community-based system of wildlife conservation, although there are still pockets of discontent among the locals which could be further mitigated by the establishment of a co-management system where the government and local communities manage wildlife as equal partners. However, the situation in Botswana is better than in Kenya where there is a war-like relationship between the state agencies and the local communities. In order to guarantee a future for wildlife conservation, this state of affairs has to change, otherwise both the people and wildlife will find it increasingly difficult to co-exist as was the situation in some West African countries where wildlife has almost been eradicated.

Indeed, wildlife laws fall in the province of public law hence should incorporate certain subtle public values such as participation, consultation as well as promotion of the public interest.<sup>583</sup> Public law, as the name suggests, is concerned with public interest issues and public rights. Such a law should shift from theory to values in order to institutionalize certain societal values such as democracy, fairness, human rights and livelihoods. It should, for instance, attempt to strike a balance between wildlife conservation and

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<sup>583</sup> A law relating to public resource such as wildlife, for instance one on wildlife damage, is essentially in the domain of public law.

competing human interests as well as other forms of land use, and between the different wildlife group interests such as the interests of conservationists and the state on the one part, and those of the local communities on the other part.<sup>584</sup> Rosencranz et al assert that 'wildlife and people are not always compatible.'<sup>585</sup> Conflicts between humans and wildlife arise especially when wildlife attacks people and their property or when people attack wildlife. Legal intervention on wildlife damage is therefore desirable in any country with wildlife, and it is encouraging that Kenya and Botswana have laws on the subject.

In setting up legal frameworks on wildlife damage, the law makers ought to take into account the acceptability of these frameworks to the stakeholders and the public generally, also known as the persuasive power of the law. These stakeholders comprise the local people as well wildlife interest diverse interest groups such as expatriate researchers, local researchers, conservationists, wildlife enthusiasts, amateur naturalists, the international community, financial donors, non-governmental organizations, as well as governmental and state authorities. Wildlife laws, for instance, should embrace the interests of conservationists and those of the local communities. The enactment of laws should be preceded by wide consultations between the law-making authorities and key stakeholders such as the general public. This is because laws that are imposed without

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<sup>584</sup> As Roscoe Pound, an eminent legal scholar, rightly observes, the function of law is social engineering as its work is to harmonize conflicting interests within society to ensure they exist with minimum friction and waste. See JW Harris *Legal Philosophies* (1980) 251. In this vein therefore, having a law addressing the human-wildlife conflict fits in well with sociological jurisprudence which emphasizes the social function of law. Indeed social engineering is not just for addressing conflicts between humans but between humans and other forms of life occurring in society, such as wildlife.

<sup>585</sup> A Rosencranz et al *Environmental Law and Policy in India: Cases and Statutes* (1991) 235.

adequate consultation with the stakeholders do not work well as they are likely to be resisted by them.

Sifuna and Mogere observe that the public especially in Africa where customs are a law in themselves (African customary law), will be prepared to disobey laws of such character as described above.<sup>586</sup> In order to avoid such situations, the government needs to be careful about clothing controversial wildlife policy positions in the form of law, because laws resulting from this will be resisted by the people. Undeniably, the public's acceptance of laws and their ability to comply with them are some of the most crucial determinants of the effectiveness of any law.<sup>587</sup> As a fact, for conservation efforts to succeed, they require the support of the local communities.<sup>588</sup> Atiyah observes 'Unless the mass of the public feels that there is some moral obligation to observe established law, then the law may come to be unenforceable.'<sup>589</sup> Draconian and militaristic laws, such as the ones that take away established rights, established traditions or disregard human welfare and livelihoods, fall in this category. Such laws will be unacceptable to the local communities and will therefore not operate smoothly.

Notably, most legal frameworks are fashioned on the 'command and control' systems that emphasize punishment as if it was the only means of enforcing policy.<sup>590</sup> This approach is inimical to the broader goals of conservation programmes as over-emphasis

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<sup>586</sup> Sifuna & Mogere (note 295 above).

<sup>587</sup> Bolen & Robinson (note 139 above) 481.

<sup>588</sup> These are the people living close to the resource and are key stakeholders in any conservation efforts.

<sup>589</sup> PS Atiyah *Law and Modern Society* (1983) 98.

<sup>590</sup> Sifuna & Mogere (note 295 above).

on penalties without provision for incentives makes the implementation agencies unpopular to the very communities whose wildlife resources they are to conserve.<sup>591</sup>

The operation of this fact can be illustrated by example of the Ogiek, a forest-dwelling hunter-gatherer aboriginal tribe of the Mau Forest in Kenya who the government has been trying to evict from the said forest for years without success. In 1999, the government issued a notice to the community to vacate the said forest or risk being forcibly ejected from it. After receiving the said eviction notice, the community filed a constitutional reference in the High Court alleging that the intended eviction violated their constitutional rights to livelihood; *Francis Kemai & Others v. Attorney General & 3 Others*.<sup>592</sup> They argued that, despite the said forest being a gazetted forest, it is their ancestral home where they live and derive a livelihood through hunting, gathering food, farming and harvesting wild honey. The government, on the other hand, argued that the said forest being a gazetted forest is subject to the provisions of the Forests Act which make it illegal for anybody to reside in a gazetted forest. This case was dismissed by the court. In dismissing the case, the court (Oguk & Kuloba JJ) held that under the Forests Act no settlement or human activities are permitted in the forest except with a permit from the relevant authorities and that members of the community, like other Kenyans, can obtain permits to enter the forest and engage in lawful activities. The court observed ‘...allowing the Ogiek to remain in the forest would be tantamount to allowing for conversion of public land to private ownership without following the laid down procedure, or better still, allowing a reckless access to a public natural resource.’

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<sup>591</sup> Ibid, 148.

<sup>592</sup> High Court Civil Case No. 238 of 1999 (OS) (Nairobi) (Unreported).

Several years after that ruling, the Ogiek community still resides in the Mau Forest, arguing that the Forests Act was enacted in 1942 when they were already in the forest.<sup>593</sup> This is a perfect example of a case where people are prepared to disobey the law and even the courts if the law is not acceptable to them. Unlike the Kenyan court, the High Court of Botswana held that the San people (Basarwa) were entitled to reside in the Central Kalahari Game Reserve because it was their ancestral land and that the restrictions imposed on the reserve under the Wildlife Conservation and National Parks Act, while applicable to other communities, do not apply to the San because they are permanent residents of the reserve. This was in *Roy Sesana & Others v. Government of Botswana*.<sup>594</sup> In this case, the government had attempted to evict the community from the reserve in order to set aside the area for wildlife and tourism development. This is a rather progressive decision and it is unclear why the Kenyan court failed to understand that the Mau Forest was the ancestral land of the Ogiek where they have resided and from which they hunted, gathered and even farmed. This is a case of the authorities clothing controversial policies with law as shall be illustrated in the part that follows below.

### **(c) Appropriateness of the Relevant Policy Frameworks**

Any study of the legal mechanisms on an issue inevitably calls for the examination of the state of policy on it, because law is one of the tools for implementing policy. Hence

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<sup>593</sup> This author is one of the lawyers representing the Ogiek in some of the cases that some members of the community have filed against the Kenya government to stop their eviction from the said forest.

<sup>594</sup> High Court Misc Civil Application No. 52 of 2000 (Lobatse) (Unreported). Judgement in this case was delivered in December 2006 while the author was in Botswana for fieldwork for this study. For the full text of judgement <[http://www.survival-international.org/files/related\\_material/11\\_532\\_995\\_Bushmen%20Ruling.doc](http://www.survival-international.org/files/related_material/11_532_995_Bushmen%20Ruling.doc)>

without an appropriate policy framework to support the legal framework, the latter cannot be effective. Elsewhere, this author has argued that law is a tool for enforcing policy.<sup>595</sup> It does this by enforcing the national policy position on a particular issue, wildlife damage for instance. Ojwang has also argued that while the state has to design and implement policy, it has to enact the relevant laws to validate such policies.<sup>596</sup> Indeed, any country with policies on wildlife damage will be expected to have laws relating to the same.<sup>597</sup>

Policy, however, may be likened to a toothless bulldog that barks but does not bite. It is legal provisioning that gives policy the teeth to bite by translating policy statements into legally enforceable obligations and rights. Atiyah considers law to be an instrument of policy and a means by which goals and values can be pursued.<sup>598</sup> He says ‘law is an instrument of policy, ... a means by which goals or values can be pursued.’<sup>599</sup> The effectiveness or otherwise of law depends, among other things, on its response to trends in policy. It is therefore proper for such a study to also examine the state of national policies on wildlife damage and wildlife generally. Ogolla also says that law ‘...translates policy into specific enforceable norms, standards of behaviour and compels, by threat of sanctions, their observance...lays down to public officials, basic guidelines for implementation of demands of the normative regime.’<sup>600</sup>

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<sup>595</sup> Sifuna & Mogere (note 295 above) 149.

<sup>596</sup> JB Ojwang ‘Law and the Public Interest: Some Introductory Remarks’ JB Ojwang & JW Kabebere (eds) *Law and the Public Interest*. Occasional Paper No. 52. Institute of Development Studies (IDS), University of Nairobi (1988) 1, 1.

<sup>597</sup> The term policy refers to statements of ideals adopted by a government, and it is in this sense that this term is used in this work.

<sup>598</sup> Atiyah (note 589 above) 80.

<sup>599</sup> Ibid.

<sup>600</sup> BD Ogolla ‘Environmental Policy and Law’ (1992) 22/3 *Environmental Policy and Law* 171.

One of the reasons why wildlife damage laws in Kenya and Botswana generally, and particularly in the former, are generally ineffective is because they lack the appropriate policy arrangements to support the regulatory regime. As already noted above, wildlife policy in the study countries tend to favour wildlife over local communities, which is outrightly unacceptable to the locals. Indeed, wildlife legislation seems to have gone the same way as these policy trends. These policies, for instance, tend to divest wildlife ownership and control from the public domain (from the people) and vest it into the state hence curtailing the people's rights of access, use and management of wildlife resources.

**(d) Presence and Effectiveness of Wildlife-related Dispute Resolution Mechanisms**

One of the social functions of law is the resolution of disputes. With regard to wildlife damage, the law should establish mechanisms for resolution of disputes arising from damage. The law in both Kenya and Botswana has such mechanisms. In Kenya, the Wildlife Conservation and Management Act of 1976 as amended in 1989 establishes a District Wildlife Compensation Committee for every administrative district (DWCC) whose work is to receive, investigate and process claims for compensation of wildlife damage.<sup>601</sup> It also establishes an Appeals Tribunal, the Wildlife Conservation and Management Service Appeal Tribunal, whose work is to determine appeals from decisions regarding compensation such as rejection of claims or the manner of assessment of the amount of compensation.<sup>602</sup> Apart from these two, there is also the National Environment Tribunal established under the Environmental Management and

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<sup>601</sup> Note 56, sect 62 (2).

<sup>602</sup> Ibid, sect 65.



Co-ordination Act of 1999 to handle environmental disputes including wildlife disputes generally.<sup>603</sup>

In Botswana, wildlife damage compensation claims are handled by the Department of Wildlife and National Parks (DWNP) with no clear mechanisms for appeals. However, interviews conducted by this author in the course of research for this study established that there is a practice where persons dissatisfied by decisions of the DWNP may appeal to the Minister in charge of wildlife, for intervention as part of his reserve powers under section 46 of the Wildlife Conservation and National Parks Act.<sup>604</sup> Notably, the effectiveness of the wildlife damage laws in Kenya and Botswana depends in a great measure on the effectiveness of these dispute settlement mechanisms. This study established that in both countries there is a general dissatisfaction by the public with the dispute resolution mechanisms.<sup>605</sup> In Kenya, the processes are rather slow and inefficient and it usually takes a long time for a dispute to be settled. Besides, the National Environment Tribunal sits only in Nairobi, the capital city, and is overwhelmed by the number of disputes since it has to deal with all types of environment-related disputes, leave alone wildlife disputes, from all over the country.<sup>606</sup> For Botswana, needless to say, the dispute resolution mechanisms are not well provided for in the laws hence there is no clear mandate on the same. This ambiguity and looseness, stakeholders complain, is the reason for the ineffectiveness of the dispute resolution mechanisms.<sup>607</sup>

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<sup>603</sup> Act No. 8 Of 1999, sects 125-129.

<sup>604</sup> Note 73.

<sup>605</sup> Interviews conducted in Kenya and Botswana between January and December 2006.

<sup>606</sup> Interviews with stakeholders in the environment and wildlife sectors in Kenya between January and June 2006.

<sup>607</sup> Interviews with stakeholders in the wildlife sector in Botswana between July and December 2006.

### **(e) Effectiveness of the Existing Institutional Mechanisms**

Another challenge to the effectiveness of wildlife damage laws in Kenya and Botswana is institutional weaknesses, especially in the agencies responsible for administering wildlife policies and laws, and particularly those responsible for wildlife damage control or compensation processes for damage caused by wild animals. This is because for wildlife damage laws to thrive they require effective institutional mechanisms for their implementation and enforcement. Generally, this study identified three major institutional problems hampering the smooth operation of wildlife damage laws in the two countries, namely: (i) Overlapping responsibilities; (ii) Lack of adequate resources; and (iii) Lack of motivation among staff. While these are generally the factors that affect the effectiveness of the institutional arrangements in both countries on wildlife damage, some play out more in one country than the other. The part below examines how these factors have played out in each of the two countries.

#### **(i) Overlapping Responsibilities**

Wildlife is a sector that interacts with many other sectors, namely, land, agriculture, water, livestock, forestry and so on. For this reason, some of the policies, laws and programmes in these other sectors are likely to have and usually have impacts on wildlife. Besides, wildlife can be affected by some laws that have no direct relation with it, for instance forestry, agricultural and land laws. Laws on forestry, agriculture and land tenure, although for the most part are not intended to govern the wildlife sector, may have implications that adversely affect wildlife resources or militate against the declared

objectives of the wildlife policies. Activities on forestry, for instance, are likely to affect wildlife. Forests, for example, are known to be a key wildlife habitat and the clearing of forests through excision programmes reduces the wildlife habitat. This is likely to cause wild animals to leave the forest and wander on private land, which is likely to increase human-wildlife conflict in areas of human settlement when the animals cause damage to people, crops, livestock and other property. Similarly, poor land use practices and inappropriate agricultural activities, such as carrying on crop farming near a national park, may also increase the incidents of wildlife damage.

In both Kenya and Botswana, however, the management of these sectors is vested in various ministries, namely, Ministry of Agriculture, Ministry of Water Resources, Ministry of Livestock Development and Ministry of Environment; and are governed by various sector laws enforced by the respective sector agencies. This poses a great challenge on the management of the wildlife sector and to the enforcement of wildlife laws and policies because of the overlapping responsibilities among the various agencies. Overlapping responsibilities among agencies is likely to lead to inter-agency conflicts where the respective agencies take different positions on a particular issue or where the officials argue on which agency is the most suited to act in a particular situation. It may also lead to non-action where one agency expects the other one to act in a given situation.

Besides, where there is duplication or over-lapping of roles among various agencies, there is need for effective co-ordination so as to harmonise and synchronize the respective efforts of these institutions. The study established that both countries lack

effective co-ordination of the responsibilities of the various agencies, which has greatly undermined the efficacy of these institutions in the discharge of their duties as well as their effectiveness in enforcing wildlife-related laws and policies.<sup>608</sup> In situations where a responsibility is vested in various ministries, wildlife for instance, there is need for having an inter-ministerial committee to co-ordinate the efforts of the various ministries. Notably, there is also lack of effective co-ordination in wildlife damage control efforts between public agencies and local communities in both countries.<sup>609</sup>

**(ii) Lack of Adequate Resources**

This study established that both Kenya and Botswana generally lack adequate resources for wildlife management and for wildlife damage programmes in terms of personnel, infrastructure and finances. This is a general problem in most developing countries because of their level of development. As a result, these countries have to rely on expatriates as well as donor funding for payment of the salaries of the wildlife staff; construction of roads in wildlife areas; building schools and hospitals for the local communities in wildlife areas; carrying out wildlife damage control programmes; paying compensation for wildlife damage; and maintaining wildlife protected areas,

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<sup>608</sup> From interviews conducted in Kenya and Botswana between January and December 2006.

<sup>609</sup> From this author's observations during the research period between January and December 2006 as well as interviews conducted in Kenya and Botswana in the same period.

### **(iii) Lack of Motivation Among Staff**

Another factor that undermines the effectiveness of wildlife institutions in Kenya and Botswana is lack of motivation among their staff, mainly as a result of low pay and poor terms of service such as housing, allowances, transport and other fringe benefits as compared with their counterparts in the private sector.<sup>610</sup> This has resulted in lack of morale hence what a senior wildlife officer in Kenya referred to as ‘the public service attitude.’<sup>611</sup> This is an attitude of lethargy in most cases accompanied with corrupt or unethical practices such as collusion with poachers. Richard Leakey a former Director of the Kenya Wildlife Service (KWS) in his memoirs reported:

It is no wonder that rangers, wardens, and indeed many in public service look for ways to augment their official earnings. Some rangers worked together as poaching teams, using coded messages to alert their fellow criminals when and where an aerial survey, for instance, was to take place. At Meru, for example, I discovered that senior park officers were almost certainly involved in the killing of the five white rhinos in their *boma* (an enclosure similar to a *karaal*),....The poachers had entered the park in broad daylight and shot the animals (which were supposedly being guarded by rangers) scarcely a mile from the park’s headquarters. No shots were fired at the poachers, and no arrests were ever made. I’m sure that some park officials received a handsome payoff for those rhino horns.<sup>612</sup>

This chapter has set out the legal and institutional arrangements in Kenya and Botswana on wildlife damage. It first of all examined the legal status of wildlife in both countries as well as their specific provisions of their relevant legislation with regard to wildlife damage. It then evaluated the effectiveness of these arrangements in preventing, abating and mitigating wildlife damage and in addressing the human-wildlife conflict associated with such damage. Lastly, it has also discussed the factors that influence the effectiveness of these arrangements and how each factor has played out in each of the two study

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<sup>610</sup> From interviews with staff in Kenya’s Wildlife Service (KWS) as well as Botswana’s Department of Wildlife and National Parks (DWNP) between January and December 2006.

<sup>611</sup> From an interview with a Senior Warden at the Kenya Wildlife Service in May 2006.

<sup>612</sup> Note 556, 63-65.

countries. The factors identified by this study include: the relevance, suitability and acceptability of these arrangements to stakeholders; appropriateness of the existing supportive policy frameworks; and institutional factors. It is on the basis of these findings that recommendations are made in the next chapter on how these factors can be addressed as well as how these frameworks can be improved in order to make them more effective in addressing the problem of wildlife damage in both countries.

## CHAPTER EIGHT

### CONCLUSION AND RECOMMENDATIONS

#### 8.1 CONCLUSION

This study has established that wildlife is a valuable resource for the peoples of Kenya and Botswana in terms of earnings from wildlife tourism as well as its ecological role in the ecosystem, its use as a source of food, its use in education and scientific research, its recreational value as well as its use in the treatment of diseases and the manufacture of drugs. It also established, however, that despite these benefits, wildlife also imposes negative costs to societal life and livelihoods in terms of competition for resources as well as direct damage. With regard to damage, wild animals kill and injure people and livestock. They also destroy crops and other physical property such as infrastructure. The losses to a victim sometimes run into millions of shillings, for example, in *Ngera & Another v. Kenya Wildlife Service*, where the loss to the plaintiff was over five million Kenya shillings.<sup>613</sup> However, wildlife's positive value outweighs these negative costs, hence there is need to conserve wildlife for the present and the future generations.

Despite the overall positive value of wildlife, the losses attributable to wildlife were in this study found to have generally made the local communities to have negative attitudes towards wildlife and become politically opposed to conservation efforts, making wildlife a major source of conflict. This was particularly true for Kenya where local communities in regions adjacent to wildlife areas no longer see any sense in wildlife conservation, with most local people feeling strongly that wildlife is a liability that should be eradicated. Ordinarily, people who had suffered wildlife damage were more likely to hold more

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<sup>613</sup> Note 548 above.

negative attitudes towards wild animals than those who had not. This was found to be the case in both these study countries. Unlike in Kenya, however, people in Botswana still strongly support wildlife conservation.

This author identified the major reason for this support to be the community-based system of wildlife management which allows local communities to not only participate in management but also to derive direct benefits from the resource. Besides, given the country's low population and arid climate resulting in less agricultural activity, incidents of damage to agricultural enterprises are not rampant. While in Kenya incidents of wildlife depredation are rampant, the system of wildlife management alienated wildlife to the state and does not allow the people to derive direct benefits from the resource. The Kenya government has, for instance, banned hunting and any consumptive uses of wildlife, such that in Kenya the only forms of wildlife utilization are non-consumptive ones such as photography and game viewing.

In most areas in both countries, the cases of wildlife damage are either persistent or increasing. Apart from the increasing populations of both humans and wildlife, the other major reason is that depredation occurs mainly in rural areas where the local communities, due to widespread poverty and illiteracy lack capacity, in terms of financial resources and technical know-how, either fail or are unable to adopt contemporary wildlife damage control methods such as electric fencing, use of firecrackers, chilli ropes and chemical repellants. They, as a result, employ rudimentary methods such as hitting drums, erecting decoys and chasing, which methods are not effective on large mammals



such as elephants. Incidentally, in both countries the rural population comprises the bulk of society and being reliant on subsistence their determined retaliatory response against wild animals can exterminate wildlife. In the long run it might be more beneficial to wildlife conservation if the governments of both countries show commitment to protecting people and their property from wildlife depredation, and where damage has occurred, ensure adequate and prompt compensation.

This study has taken the position that there is need to address wildlife damage, because, initially it is the people who appear to be victims when the animals attack them or destroy their property, but later wild animals become the real victims and suffer greatly when people in turn retaliate by poisoning, attacking them or ensnaring the animals using traps or manholes. This position was found in this research to be the trend the human-wildlife conflict in both countries is taking. Therefore, unless the problem of wildlife damage is properly addressed, the future of wildlife is bleak. Besides, whereas state and governmental authorities should take measures to protect wildlife, they also have, by virtue of their constitutional mandate to provide for the welfare of the citizens, a corresponding obligation to set up mechanisms to control wildlife damage. It is encouraging that both Kenya and Botswana have such mechanisms. Research for this study revealed that in both countries, wildlife damage alleviation is one of the major programmes that the state and governmental authorities undertake in addressing the human-wildlife conflict, for example, monetary compensation schemes and wildlife translocations. Apart from government efforts, local communities also adopt several damage control strategies on their land. The strategies commonly used by wildlife

authorities and landowners include: erection of physical wildlife-proof barriers such as fences, walls and trenches; lighting fires; use of torches, thunder flashes and flares; noise-making; use of dummies and decoys; and use of repellants such as chilli grease.

The study further established that both Kenya and Botswana have in their respective laws arrangements on wildlife damage. These are in their common law and legislation. While common law has formulations that may be applicable regarding wildlife ownership and control as well as liability for wildlife damage, there are also various provisions in legislation that the author considers relevant to wildlife damage. The study identified four categories of such provisions, namely: provisions to protect certain species from harm by humans; provisions to protect wildlife habitats from human encroachment; provisions on land use control and planning; and provisions regarding injurious wildlife. Notably, Kenya and Botswana are among the few countries where the law provided compensation for wildlife damage. While provision of compensation is good, one would have expected the law to also expressly prescribe specific measures to be adopted to control damage. These are absent in the laws of the two countries. Notably, Kenya has in its wildlife legislation a provision obligating the Kenya Wildlife Service to take measures to protect agriculture and animal husbandry against destruction by wildlife.<sup>614</sup> Although Botswana's statute empowers the Wildlife Minister to provide for compensation to victims of wildlife damage, it lacks a clause similar to Kenya's; hence in Botswana there is nothing in the law that binds the government to initiate wildlife damage control measures. Such measures are usually undertaken by virtue of government policy without any legal imperative.

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<sup>614</sup> Note 65, sect 3A.

It emerged from this study that despite the availability of compensation schemes in both countries, these schemes are inefficient. First, the majority of the people in general and victims of wildlife damage in particular, are not aware of such schemes. Secondly, the sums usually paid by the respective government authorities of the two countries are generally low and there is a general feeling among the people that these amounts should be improved. These amounts are rather low compared with the amounts awarded by the courts for similar damage on claims filed under common law. In some cases, the amounts actually paid out as compensation are not even adequate to pay the victim's medical fees or the school fees of orphaned children in the case of death. Thirdly, there is no clear provision on the rates of compensation and how the amounts may be computed. Fourthly, there are no stipulations on the duration for processing compensation claims; hence the process sometimes takes too long and the amounts paid, as was observed above, are generally low compared with awards by courts for similar losses and are also often not commensurate with the harm suffered. While in Botswana it takes about six months to process compensation claims for wildlife damage, in Kenya it takes too long, sometimes as long as five years. Many victims who filed their claims many years ago are yet to receive compensation.

In both countries there are no stipulated periods in which compensation claims should be concluded. Since even the about six months duration in Botswana is just out of practice, one can not rule out the possibility of claims taking longer than that or even as long as they take in Kenya. Some respondents interviewed by this author in Kenya revealed that

at times compensation is not forthcoming and all the government does in cases of death is to provide a vehicle to transport the body to the burial place. Besides, in both countries, compensation is currently paid from the treasury, which caters for the government's day to day expenditure and there is usually not enough allocation in the budgets to meet all compensation claims. Budgetary allocations from the Consolidated Fund usually depend on what expenditure items Parliament considers a priority at the time. Such priorities usually vary according to circumstances and political exigencies and there is no guarantee that wildlife damage will always remain a top priority item.

A survey of the wildlife legislation of both countries revealed that on wildlife damage control and alleviation measures, there are express provisions only on compensation and the killing of problem animals as if they are the only wildlife damage alleviation methods used in these countries. There are many other measures adopted to control and alleviate wildlife damage in both countries. These include: Fencing, creating buffers, wildlife translocation as well as land-use control and planning. These are not even mentioned in the laws, yet they are widely applied to control or alleviate wildlife damage in both countries. It is important that the law regulates the manner in which these measures are employed or even provides for their use.

The study also found that despite the presence of laws in both Kenya and Botswana on wildlife damage, these laws have been ineffective as evidenced by increasing incidence of wildlife damage as the human populations expand and the resultant negative public attitudes towards wild animals, which has perpetuated human-wildlife conflict in both

countries. The author identified the following as the major factors affecting the effectiveness of wildlife damage laws in both countries: Most of the laws are either irrelevant or unsuitable to circumstances of these countries; most of these laws are unacceptable to the local communities, having been passed without wide consultations or based on controversial policy positions; most of the existing wildlife policies are not appropriate to damage control and alleviation efforts; weak dispute resolution mechanisms on wildlife damage; and ineffectiveness of the existing institutional mechanisms with regard to wildlife management and wildlife damage control.

Another major set back of wildlife laws in both countries is with regard to wildlife ownership. While there is no clause in Kenya's and Botswana's laws on wildlife ownership, the practice in both countries is to treat wildlife as state property. This in effect has irregularly converted what is essentially a public resource into state property; hence in reality alienating it from its true owners, the people. Research for this study found that this conversion has radically generally changed public perceptions in Kenya and Botswana towards wildlife such that the people, especially in Kenya, view wildlife as the property of the state and which they have nothing to do with. This perception has compounded the already existing negative attitudes the people have towards wildlife as a result of wildlife damage. In Botswana, this state ownership and the negative public attitudes that are usually associated with it are mitigated by the availability of direct wildlife benefits to the people through consumptive utilization schemes such as traditional hunting rights. In Kenya wildlife is a state monopoly, with the government having sole rights of ownership, use and revenue. This study established that wildlife

damage and state ownership are the major reasons for the extensive lack of public support for wildlife in Kenya.

Lastly, unlike Botswana's wildlife legislation which is fashioned along the community-based conservation model, Kenya's is state-oriented and largely disregards the role of local communities in wildlife matters. As a result, wildlife management in Botswana is more democratic than in Kenya because a community-oriented system has more space for public participation. It has emerged from this study that a community-based or participatory system<sup>615</sup> tends to mitigate the human-wildlife conflict resulting from wildlife damage and also tends to obviate the agitation for compensation. For instance, it transforms the people from being victims and mere neighbours of wildlife into being managers of wildlife. Apparently, the participatory element reduces the agitation for compensation when people begin to take responsibility for protecting the wild animals. By being involved in its management and deriving direct benefits, people develop an affinity for wildlife and start to view it as an asset instead of a nuisance, despite any losses that some wild animals may cause to people and their property. This, together with workable benefit and revenue-sharing schemes, has the potential of building people's tolerance to depredation by wildlife. Moreover, within this framework, the authorities can mount damage control programmes in which the local communities are actively involved.

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<sup>615</sup> As is the case in Botswana.

## 8.2 RECOMMENDATIONS

The practical solution to the problem of wildlife damage lies not in blaming the people or the animals but in establishing appropriate legal and institutional arrangements on wildlife damage, while at the same time adopting benign alleviation measures. This should work hand in hand with a conservation strategy and laws that take into account core human welfare concerns and values because while humans have responsibility for wildlife welfare, human welfare is paramount and should be given priority. Admittedly, the human-wildlife conflict cannot be fully resolved; what can be solved is the rage the people have towards the animals. There is need therefore for the Kenya and Botswana governments to have effective legal and institutional arrangements on wildlife damage and maintain sustainable wildlife management systems that do not undermine human rights, human welfare and livelihoods. To achieve this, the author recommends the following reforms:

### **(i) Need for Constitutional Provisions on Wildlife.**

While Kenya and Botswana have legislative provisions on wildlife, both countries lack constitutional provisions on wildlife or even natural resources. The need for such constitutional provisioning has already been canvassed in this study and the adverse effect of lack of it on the effectiveness of wildlife laws and policies have also been demonstrated. Primarily, a Constitution is a basic charter for a country, representing the national goals as well as the primary obligations and mandate of state and governmental authorities, and should therefore recognize a country's major resources and sectors.

Wildlife is one of the key resources and sectors in Kenya and Botswana. Inclusion of wildlife-related provisions in the national constitutions of these countries is likely to give direction to law-making and provide a basis on which to enforce such laws. There is a need to amend the national constitutions of Kenya and Botswana to include provisions on wildlife. Such a provision could preferably be in the form of a statement of public policy, for instance, stating that wildlife is a national heritage vested in the state on behalf of, and for the benefit of, the present and future generations. It could either be on natural resources generally or specific to wildlife. Such provisioning would not only be a guideline for governmental action in matters of wildlife, but would also have given direction on issues of wildlife ownership, control, use, as well as benefits and revenue.

#### **(ii) Need for Legal Provisions on Wildlife Ownership**

The national constitution and wildlife statutes of both countries should be amended to expressly provide for wildlife ownership. Since liability for wildlife damage is linked to ownership, it will be easier to know who should pay compensation or alleviate loss. Such provisions could, for instance, vest ownership in the government for the benefit of the people and devolve part of it to the local communities, by allowing landowners to own wildlife.<sup>616</sup> In Kenya's Draft Wildlife Policy of 2007, for instance, the Government states that ownership of wildlife is vested in the state on behalf of, and for the benefit of, the people of Kenya. This approach would allow those people who feel that they do not receive enough income from pastoralism or crop agriculture to keep wildlife instead. Such ownership would go hand in hand with liability to compensate or alleviate wildlife

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<sup>616</sup> State ownership does not necessarily guarantee its ownership on private land.



damage as well as the obligation to adopt preventive measures. The government and donor agencies could assist landowners to convert their land from unprofitable uses to wildlife conservation and tourism.

### **(iii) Need to Increase the Current Rates of Compensation**

While it is encouraging that the governments of Kenya and Botswana have schemes for paying compensation to victims of wildlife damage, the study established that in both countries the amounts paid are generally low and there is a general feeling among the people that these amounts should be improved. In most cases, the amounts usually paid by the government authorities in both countries are low compared to awards by the courts for similar damage on claims filed under common law, and are also often not commensurate with the gravity of the damage suffered. Often these amounts do not reflect the realities of the values of the respective currencies of the two countries, especially the Kenya Shilling and the factor of inflation.<sup>617</sup> Sometimes, the amounts actually paid are not even adequate to pay the victim's medical fees or the school fees of orphaned children in the case of death. There is need for these rates to be revised upwards to reflect the present values of the respective currencies and cost of living of the study countries, at least to make them even approximate to what a victim could obtain in the courts on claims filed under common law.

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<sup>617</sup> Most of the Kenyans interviewed by this author proposed amounts ranging from Kenya Shillings one million to two million for death and a maximum of KSH 500,000 for injuries. For crops, livestock and other property, most of respondents were for a shared compensation, settling for between 30 percent and 60 percent of the market value.

Kenya's Wildlife Bill of 2007, for instance, has attempted to address this problem by stipulating the amount.<sup>618</sup> However, this stipulation falls short of the expectation and is rather unhelpful as far as alleviating the human-wildlife conflict because it only fixes the maximum by stating that '...compensation shall not exceed one million shillings.' One would have expected it to come up with a table of compensation rates instead of leaving the amounts at the discretion of the District Wildlife Conservation Committees.

#### **(iv) Stipulating Compensation Amounts in the Law**

Kenya and Botswana should amend their wildlife legislation to expressly stipulate the amount of compensation payable for wildlife damage, preferably with detailed scales. Currently, their respective statutes neither stipulate the amount payable nor provide the formula to be used in assessing compensation. There is need to amend Kenya's Wildlife (Conservation and Management) Act and Botswana's Wildlife Conservation and National Parks Act, so as to specify the actual amounts payable or the formula for computing the amount. This can be by way of a table in a schedule to the Act, as is the case with the Workmen's Compensation Act, or a method for assessing the amount of compensation. Contemporary schemes by insurance companies and courts<sup>619</sup> for calculating compensation for injuries and death can be applied to wildlife inflicted damage. Factors to be considered in the assessment of compensation should include age, status in society, number of dependants, inflation and loss of earning.

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<sup>618</sup> Note 283, sect 66 (1).

<sup>619</sup> There are law reports on awards by the High Court and Court of Appeal.

**(v) Stipulating Compensation Processing Duration in the Law**

While in Botswana it takes about six months to process compensation claims for wildlife damage, in Kenya it takes too long, sometimes as long as five years. Many victims who filed their claims many years ago are yet to receive compensation. In both countries, there are no stipulated periods in which compensation claims should be concluded. Since even the about six months duration in Botswana is just out of practice, one can not rule out the possibility of claims taking longer than that or even as long as they take in Kenya. The solution to this would be for the duration for processing compensation to be stipulated in the law so as to ensure the claimants get their compensation timely and without undue delay.

This study recommends that the respective wildlife statutes of both Kenya and Botswana should be amended to include a provision stipulating the maximum amount of time within which the claims are to be processed. There is need for a time limit so as to ensure efficiency and diligence in the process. As already noted above, it presently it takes up to five years before the claimant receives payment in Kenya. This is very frustrating and some claimants do give up due to fatigue associated with the anxiety and the uncertainty of waiting. While in Botswana a claim currently takes about six months, there is no guarantee that this will continue being the case and chances of claims taking longer in future cannot be ruled out. A maximum period of, say, six months from the date of lodging the claim, is reasonable and adequate for verification, investigation and processing of payment. The incorporation of a specific waiting period in the law grants victims the right to sue if the claim is not paid on time. This may even enable claimants

to go to the High Court for an order compelling the government to pay. Interestingly, even Kenya's Wildlife Bill of 2007 that is thought to be the country's most progressive wildlife statute if enacted, has failed to stipulate the duration in which claims are to be processed, hence nothing may change with regard to claims taking too long as is the case presently.

**(vi) Establishing a Compensation Fund for Wildlife Damage**

Under the wildlife damage compensation schemes in both Kenya and Botswana, compensation is currently paid from budgetary allocations voted by Parliament from the Consolidated Fund according to expenditure items that Parliament considers a priority at the time. Such priorities usually vary according to circumstances and political exigencies and there is no guarantee that wildlife damage will always remain a top priority item, hence there is usually not enough allocation for wildlife damage compensation. There is need therefore to set up a fund specifically designated for paying victims of wildlife damage. Monies from this fund should then be used only for compensating damage caused by wildlife. Such monies may be derived from revenue from tourism and wildlife related activities, or through the traditional methods of raising government revenue, for instance, taxation. Kenya's draft Wildlife Bill of 2007 proposes the establishment of a Wildlife Compensation Fund to be managed by trustees.<sup>620</sup>

In countries like Kenya and Botswana, where wildlife is a public resource, a wildlife tax should target only the stakeholders. Such stakeholders include conservationists, tourist establishments and communities living adjacent to wildlife areas. These stakeholders

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<sup>620</sup> Note 283, sect 65 (1).

could be subjected to modest taxes or levies. It is, however, easier to impose such levies for private sector resources than for public sector resources such as wildlife. Nevertheless, for this taxation in the wildlife sector to work, the government should consider privatizing wildlife resources or at the very least democratizing their management to create room for increased stakeholder participation, not only in management but in planning as well.<sup>621</sup>

Take the case of tourism. Wildlife-based tourism is one of the leading foreign exchange earners in both countries, bringing in millions of shillings and pula annually. There is no harm in designating a percentage of this income for compensating damage caused by wildlife. The wildlife sector is perhaps the leading tourist attraction and if it were to be extinct these tourists would go to other destinations. It is therefore only fair that the tourism industry pays for the nuisance associated with these animals. Besides, since wildlife is a common heritage of humankind, the international community should support it wherever it is located. Donor countries, international financial institutions and international NGOs involved with conservation are a possible source of funding for the compensation fund. Since charity as we know 'begins at home', money can also be raised locally from voluntary donations by well wishers.

#### **(vii) Kenya Should Adopt a Consumptive Model of Wildlife Management**

While Botswana's legal regime allows for consumptive utilization of wildlife resources, Kenya's embraces the non-consumptive model. Kenya should amend its legislation to adopt a consumptive model of wildlife management and grant user rights to local

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<sup>621</sup> The Botswana model of CBNRM is an evidentiary exhibit on this.

communities and land owners, especially those living around wildlife PAs. It could, for instance, provide for flexible agreements between local communities and wildlife authorities for negotiated access to wildlife and wildlife resources.

Even though Botswana has tried this by granting hunting rights to indigenous people for subsistence, it can still expand these rights beyond subsistence needs. This will make such access rights more economically viable. Even where wildlife is by law state property, landowners can be permitted to utilize wildlife on their land within the limits of sound conservation practices. It would therefore be important for Kenya to retain certain areas as biosphere areas and game reserves instead of national parks, or, better still, establish Wildlife Management Areas as is the case in Botswana, and allow local communities to retain certain rights such as traditional grazing rights and hunting for food.

The starting point would be for the Kenya government to lift the 1977 ban on hunting and other forms of consumptive uses of wildlife, at least for traditional non-commercial user rights by the local communities. Unfortunately, even the Wildlife Bill of 2007 prohibits all forms of hunting, in effect meaning that there can be no consumptive utilization in the country.<sup>622</sup> Consumptive utilization schemes such as hunting are likely to encourage local communities to support wildlife conservation, because the people who use a resource are the ones likely to protect it. It will also encourage the local communities to be more tolerant to incidents of wildlife damage since their consumptive use of wildlife will act as a trade-off for the damage that wild animals cause to the community. In any case,

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<sup>622</sup> Note 283, sect 61 (1).

traditional hunting methods as already observed in this study are far less likely to threaten game populations than the use of modern weapons such as firearms.

**(viii) Clear Mechanisms for Wildlife Revenue and Benefits Sharing**

Currently there are no mechanisms at all in Kenya for sharing of wildlife revenue and benefits between the government and the local communities. While in Botswana local communities are allowed to have a share of revenues and benefits from wildlife, the country lacks clear mechanisms on the actual sharing. Kenya and Botswana should, through the relevant governmental agencies, for instance, KWS and DWNP, formulate modalities on how the revenue and benefits accruing from wildlife and tourism can be shared between the government, park authorities and the local communities. This author recommends sharing on percentage basis on the a ratio of 70 percent: 30 percent for government and local communities, respectively. The percentage of the total revenue share demanded by the respondents this author interviewed in the local communities in Kenya and Botswana was between 50 percent and 60 percent.

A policy of sharing of benefits and revenue will ensure that the local communities benefit positively and directly from wildlife revenue as well as benefits such as boosting cottage industries and improving communal infrastructure such as schools and hospitals. Other benefits could include: allowing some grazing of domestic animals within designated sections of protected areas during drought periods; allowing local people to cut thatching grass for personal use on a regulated basis; allowing people to access water sources in the protected areas; providing transit through protected areas without permit requirements;

and offering employment opportunities to locals on a preferential basis. After all, these are the people living with or most affected by wildlife in their day to day lives. They share their land with wildlife, and winning their support for conservation is crucial for the future survival of wildlife. Such benefits will reduce negative attitudes towards wildlife.<sup>623</sup>

The research for this study, however, found out that local communities do not appreciate such benefits and that they prefer direct monetary gains to indirect benefits.<sup>624</sup> Indeed, direct sharing of revenue may not only change the people's attitudes towards wildlife but may also off-set some of the costs of living with wildlife. This is because while benefits are shared by the whole community, the real cost of harm is incurred by individuals. After all, conservation cannot succeed without the support of the local communities who live near the resource.

#### **(ix) Expansion of Wildlife Damage Alleviation Measures Adopted in Legislation**

There is need for Kenya and Botswana to review their current wildlife as well as land use control and planning legislation to establish a legal regime that incorporates wildlife damage control strategies and methods. This entails three things. First, incorporate in legislation, provisions that address issues of land tenure in areas surrounding PAs, where necessary creating environmental wildlife easements for local communities. The law needs to expressly recognize that it is not practicable to contain wildlife in protected areas alone. Such a law could have in-built land use control for the areas surrounding wildlife

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<sup>623</sup> Unless the people get more from wildlife than from their cows, crops and other forms of land use, they will understandably continue to resent wildlife.

<sup>624</sup> From interviews conducted by this author in Kenya and Botswana between January and December 2006.



PAs, for instance, by seeking to ensure that developments on land adjacent to wildlife PAs do not interfere with wildlife conservation. This will help harmonise conservation and development needs. There needs to be an integrated approach where wildlife PAs are managed not as islands in a sea of humanity, but as an integral part of the national land use process.

Secondly, there is also need to make wildlife an integral component of land use planning and zoning. One way of doing this is by making provision for wildlife zones and plans, and the other way is for the law to make wildlife considerations a mandatory factor to be considered in making any decisions on land use. When dealing with land use control and planning in areas adjacent to protected areas, there is need for instance to restrict incompatible land uses and practices. Thirdly, there is need for wildlife legislation in both Kenya and Botswana to catalogue and regulate all the acceptable methods that may be used by wildlife authorities and landowners to control wildlife damage in the respective countries. The legislation in both countries currently provides only for compensation and the killing of problem animals. There is need for the legislation to stipulate as exhaustively as possible the legitimate methods of damage control to be applied in the respective country, such as erection of physical wildlife-proof barriers, noise-making, use of firecrackers, as well as wildlife translocation. This would not only preclude the use of crude and torturous methods such as poisoning, use of pits, placing nails on the wildlife routes, ensnaring and entrapment, it will also provide clear guidelines and procedures on the way in which legitimate methods are to be used by the state and governmental authorities and landowners.

**(x) Legal Provisions in Botswana that Obligate the State to Initiate Wildlife Damage Control Programmes**

Kenya has in its wildlife legislation a provision obligating the Kenya Wildlife Service to take measure to protect agriculture and animal husbandry against destruction by wildlife.<sup>625</sup> Although Botswana's statute empowers the Wildlife Minister to provide compensation to victims of wildlife damage, it lacks a clause similar to Kenya's hence in Botswana there is nothing in the law that binds the government to initiate wildlife damage control measures. Such measures are usually undertaken by virtue of government policy without any legal prompting. There is need for the law to expressly oblige the government to initiate wildlife damage control programmes at community level and also enhance the capacity of the local communities in wildlife damage control.

The local communities should be facilitated to adopt one or more forms of wildlife damage control strategies. These programmes can be initiated by government and non-governmental agencies in partnership with the local communities but then run by local communities themselves through local institutions. There are three ways in which this can be done. Firstly, by initiating training programmes for the local communities in wildlife damage control, or simply providing them with literature on the contemporary methods of controlling wildlife depredation, or assisting them in designing fences and other means of protection. Because of widespread illiteracy in both countries as already observed in this work, information can be transmitted through radio broadcasts, films and advertisements.

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<sup>625</sup> Note 56, sect 3A.

Secondly, schemes can be initiated for giving local communities loans with which to undertake wildlife damage control measures such as fencing, spraying and compatible land-use forms. Funds for these schemes could be provided by governmental as well as non-governmental players having interest in wildlife conservation, preferably through a fund to be called “Wildlife Support Fund”. This fund should be established through legislation so that it can have the legal backing. Money for this Fund may come from revenue derived from tourism and wildlife-related activities, or through the traditional methods of raising government revenue, for instance taxation. Thirdly, the government could reduce tax on certain wildlife damage control equipment such as fire-crackers, fencing wire and high voltage torches.

Even where the above resources are provided by state, governmental agencies, NGOs and donors, the programmes should be managed in partnership with the local communities and employ locals themselves to guard their property, dig trenches and fences.<sup>626</sup> The advantage of this is that the locals know the terrain, which is likely to increase effectiveness of the programmes. Participation by locals also reduces the operational cost by obviating the need to provide transport, and provide the locals with employment and income. It can also attenuate the negative passions that local communities usually have against wildlife, such as the one observed in Kenya. This attenuation may in turn increase local support for conservation efforts.

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<sup>626</sup> Many locals I interviewed felt that the government should provide them with resources and expertise to protect their property and farms from attacks by wild animals.

**(xi) Legal Provisions that Obligate the State to Undertake Wildlife Civic Education**

There is need for government and nongovernmental players in the conservation sector to initiate education programmes to educate local communities living around wildlife areas on the importance and benefits of wildlife. These education programmes should not only focus on the local communities but should also include the policy-makers and implementers as well as law enforcement agencies. They should be made aware of the need to integrate conservation with human needs and welfare. This is because wildlife tourism is a key major contributor to the economies and a major source of foreign exchange of both countries. Wildlife therefore is a resource that deserves to be conserved for present and future generations while mitigating the harm that wild animals are likely to cause. There is need, for instance, to disseminate information on the strategies used by the local communities for preventing damage. Knowledge of such strategies may be used to reinforce the existing methods of wildlife damage control. A general problem noted with the majority of the population in the rural areas of the wildlife menace is ignorance. This is compounded by the lack of a broad enough provision in the law for self-defence. As established by this study, most of the people in the local communities are not aware that the law allows them to attack wild animals or that compensation is available for wildlife damage. Besides, they seem to have no voice against the wildlife authorities in cases of depredation by wild animals.

There is need for wildlife civic education to educate the people on their rights and duties with regard to wildlife. This will help empower them and involve them in the decision-making processes and wildlife management in general. Local communities should also be

sensitized on the need to adopt benign abatement measures to prevent damage.<sup>627</sup> This author established that households who have suffered wildlife damage were more likely to hold more negative attitudes towards wildlife than those who have not.

### **(xii) Adoption of Legislative Provisions Requiring Consultation and Public Participation in the Establishment of Protected Areas**

As noted in the preceding chapter, protected areas have been established by the government without consulting and involving the local communities. Even the eminent domain procedures through which the state acquires private land for public purposes in these two countries are not particularly democratic.<sup>628</sup> Incidentally, these areas are sometimes set up in places of human activity and usually involve displacement of people who usually subsequently come back to settle on the fringes of such areas. Such people later become victims of wildlife raids, with wild animals trampling their crops and houses, and sometimes attacking them and their livestock.

The provisions in Kenya's and Botswana's legislation regarding the powers of the government to establish PAs neither oblige it to consult the local communities nor make provision for public participation. This is an anomaly because in a democracy the role of public participation in decision-making especially on a public resource such as wildlife need not be over-emphasised. The laws should be amended to provide mechanisms for

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<sup>627</sup> Such abatement measures include: fencing their farms; guarding their properties; adopting land use activities that are compatible with conservation; proper land use planning to avoid having human activities on wildlife migration routes and dispersal areas; and avoiding negligent entry protected areas.

<sup>628</sup> See, for example, N Sifuna 'Using Eminent Domain Powers to Acquire Private Lands for Protected Area Wildlife Conservation: A Survey Under Kenya Law' (2006) 2/1 Law Environment and Development Journal 86-104 <<http://www.lead-journal.org/content/06084.pdf>> Last accessed on 22 December 2007.

such consultations and negotiations with stakeholders. People who have been forcibly displaced to create space for the establishment of wildlife protected areas develop negative attitudes and are unlikely to support conservation. Such people are unlikely to tolerate incidents of wild animals leaving the protected areas and causing damage to them or their property. Conversely, cordial relations between those managing protected areas on the one hand, and local communities on the other hand, may provide incentive for such communities to practice compatible land-use forms in the adjacent areas.

In 1975, the International Union for the Conservation of Nature (IUCN) at its twelfth General Assembly at Kinshasa, Congo, adopted a resolution discouraging the establishment of wildlife reserves without adequate consultation.<sup>629</sup> Public participation in natural resource decision-making is a cornerstone of environmental good governance. Including stakeholders' voices in decision-making promotes governmental accountability and increases the likelihood that decisions will take into account the concerns of those directly affected by them. Promoting public participation is, in effect, promoting the democratic process by fostering transparency and broadening the base of people involved in the decision-making, which can strengthen the ultimate decisions. Moreover, public participation in the process is more likely to generate public support for the eventual outcomes of that process.

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<sup>629</sup> Cholchester (note 204 above) 116.

**(xiii) Kenya Should Adopt a Community-Based Wildlife Management System**

There is an urgent need for Kenya to overhaul her wildlife legislation to create a legal framework for a community-based wildlife management model that is participatory and consultative. Participation is not merely informing people of decisions already made by the government. Rather, it entails actually involving the public in the decision making processes as well as overall management by directly involving the local communities in the utilization, management and planning of wildlife resources.

One key attribute of the community-based conservation is that it adopts an approach that is responsive to the needs and welfare of the local communities. This is the same approach that lawmakers should adopt in order that the law may receive public acceptance and be effective. A good conservation law should attempt to harmonize conservation imperatives with human welfare. It does this by *inter alia* incorporating social values. Such a regime could also have provisions for the registration of wildlife local community interest groups as well as local institutions as is the case in Botswana. In Kenya, currently such groups may only register under the Societies Act, Companies Act and the Business Names Act, even if they are conservation groups, which curtails their integration in the institutional mechanisms on wildlife conservation. Local institutions such as these are important partners in development and crucial in public policy-making as well as implementation of public programmes in the wildlife sector. Notably, the trend in wildlife management in Africa and even Asia is towards community-oriented system where local communities are involved in the utilization and management of wildlife resources. Adopting a community-based or a community-responsive management system

does not mean a total divestiture of state authority, because under the community-oriented system the government still retains the role of monitoring and control, which is necessary for the protection of the animals.

**(xiv) Botswana Should Establish an Autonomous Statutory Institution to Manage the Wildlife Sector**

There is need for Botswana to establish an autonomous institution to replace the Department of Wildlife and National Parks (DWNP). This should preferably be done through an amendment to the Wildlife Conservation and National Parks Act, creating the institution as a legal entity with the ability to borrow money, negotiate with donors for funds, control the revenue generated from the wildlife sector and control its own budget. In order to effectively manage the country's wildlife resources and address the problems facing the wildlife sector in the country, for instance, damage by wildlife, such an institution should be established outside the bureaucratic machinery of government so that it is not tied down to the limitations inherent in the regular government bureaucracy. It should preferably be a parastatal business corporation called the Botswana Wildlife Service, an outfit similar to the Kenya Wildlife Service (KWS). Institutional and financial autonomy such as that enjoyed by the KWS will help it avoid the government bureaucracy currently experienced by the DWNP where any decisions, proposals or projects are subject to the red tape bureaucratic process in the Ministry of Environment, Wildlife and Tourism. Being a commercial entity with financial autonomy will enable the new agency to source for and control its funds hence alleviate the lack of funds



associated with over-reliance on a ministry's annual budgetary allocations by Treasury as is the case with the DWNP presently.

## **BIBLIOGRAPHY**

### **A. BOOKS:**

A Kiriro and C Juma (eds) *Gaining Ground: Institutional Innovations and Land Use Management in Kenya* (1987)

A Rosencranz, S Divan and M Noble *Environmental Law and Policy in India: Cases and Statutes* (1991).

A Youdeowei, F Ezedinma and O Onazi (eds) *Introduction to Tropical Agriculture* (1986).

AM Freeman *The Measurement of Environmental and Resource Values* (1993).

B Green *Countryside Conservation: The Protection and Management of Amenity Ecosystems* (1992).

C Juma and J.B Ojwang *In Land We Trust* (1996).

D Lewis and N Carter (eds) *Voices from Africa: Local Perspectives* (1993).

DR Helliwell, *Planning for Nature Conservation* (1985).

EA Fiallo and SK Jacobson *Local Communities and Protected Areas: Attitude of Rural Residents Toward Conservation at Machalila National Park, Ecuador* (1995).

EG Bolen and WL Robinson *Wildlife Ecology and Management* (1995).

EP Odum *Ecology* (1975).

F Plog, DG Bates and JR Acocella *Cultural Anthropology* (1980).

F Savage and A Burgess *Nutrition for Developing Countries* (2000).

HHT Prins, JG Grootenhuis and TT Dolan (eds) *Wildlife Conservation by Sustainable Use* (2000).

HP Brokaw (ed) *Wildlife and America* (1978).

J Caldecott *Hunting and Wildlife Management in Sarawak* (1988).

J Mackinnon, K Mackinnon, G Child and J Thorsell (eds) *Managing Protected Areas in the Tropics* (1986).

J Mugabe and N Clark (eds) *Managing Diversity: National Systems of Conservation and Innovation in Africa* (1998).

J Shaw *Introduction to Wildlife Law* (1985).

JB Ojwang *Constitutional Development in Kenya: Institutional Adaptation and Social Change* (1990).

JR Kamugisha, ZA Ogutu and M Stahl *Parks & People- Conservation and Livelihood at the Crossroads- Four Case Histories* (1997).

JW Harris *Legal Philosophies* (1980).

K Ghimire and MP Pimbert (eds) *Social Change and Conservation* (1997).

K Ross *Okavango: Jewel of the Kalahari* (1987).

L Clark L et al (eds) *Human-Wildlife Conflicts: Economic Considerations* (2002).

M Jones *Clark and Lindsell on Torts* (1995) 19 ed.

MT Cirelli *Legal Trends in Wildlife Management* (2002).

P Kameri-Mbote *Property Rights and Biodiversity Management in Kenya* (2002).

P Wass (ed) *Kenya's Indigenous Forests: Status, Management and Conservation* (1995).

PS Atiyah *Law and Modern Society* (1983).

R Cotterell *The Sociology of Law* (1980).

R Leakey and V Morell *Wildlife Wars: My Fight to Save Africa's Natural Treasures* (2001).

RF Dasman *Wildlife Biology* (1964).

RH Giles Jr *Wildlife Management* (1978).

RH Hoare, *Wildlife Fencing as a Management Tool for Protected Areas in Africa* (1996).

RJ Scholes and BH Walker *An African Savanna: Synthesis of the Nylsvley Study* (1993).

S King and A Burgess *Nutrition for Developing Countries* (2000).

S Lyster *International Wildlife Law* (1985).

SVC Wantrup *Resource Conservation: Economics and Policies* (1952).

U Kumar and MJ Asija *Biodiversity: Principles and Conservation* (2000).

WH Rodger *Environmental Law: Air and Water* (1986).

## **B. JOURNAL ARTICLES & PAPERS:**

A Kiss (ed) 'Living with Wildlife: Wildlife Resource Management With Local Participation in Africa' World Bank technical paper No.130 (1991).

B Sibanda 'Wildlife Conservation in Kenya: Wildlife or Local Communities at the Crossroads?' (1995) 5/1 *Environmental Policy and Practice* 35-45.

C Juma 'Environment and Economic Policy in Kenya' in A Kiriro and C Juma (eds) *Gaining Ground: Institutional Innovations and Land Use Management in Kenya* (1987) 28.

D Tsiako 'Of Tribal Totems and Conservation' African Conservation Forums website <[http://www.africanconservation.org/cgi-bin/dcforum/dcboard.cgi?az=read\\_count&om=1853&forum=DCForumID3](http://www.africanconservation.org/cgi-bin/dcforum/dcboard.cgi?az=read_count&om=1853&forum=DCForumID3)> Last accessed on 22 December 2007.

D Western 'Amboseli National Park: Human Values and the Conservation of Savanna Ecosystem' JA McNeely and KR Miller *National Parks, Conservation and Development* (1994).

DL Kgathi, MBM Sekhwela and Hamandawana 'Sustainability of Commercial Agriculture and Forestry in Chobe District, Botswana' <<http://www.savannas.net/botswana/ubforst.htm>> Last accessed on 22 December 2007.

DM Lewis, GB Kaweche and A Mwenya 'Wildlife Conservation Outside Protected Areas: Lessons From an Experiment in Zambia.' Lupande Research Project No.4 (1987).

DR Helliwell, 'Valuation of Wildlife Resources' (1974) 3 *Regional Studies* 41-47.

DR Helliwell, 'Priorities and Values in Nature Conservation' (1973) 1 *Journal of Environmental Management* 85-125.

E Esikuri and DF Stauffer 'Assessment of Elephant Damage and Mitigation Options in Amboseli Basin, Kenya' 2<sup>nd</sup> International Wildlife Management Congress, Godollo, Hungary (1999).

E Hakimzumwami 'Community Wildlife Management in Central Africa: A Regional Review.' Evaluating Eden Series, Discussion paper No.10 (2000).

EB Hecox 'A Comparative Analysis of Protection Versus Utilization: Kenya and Zimbabwe' (1996)

<<http://www.coloradocollege.edu/Dept/EC/Faculty/Hecox/erichecox/kenzim.html>> Last accessed on 22 December 2007.

EN Marekia 'Managing Wildlife in Kenya' in AA Kiriro and C Juma (eds) *Gaining Ground: Institutional Innovations in Land-use Management in Kenya* (1991).

F Pertet 'Depredation and Predation Problems' S Macmillan 'Wildlife/Livestock Interfaces on Rangelands: Proceedings of a Conference held at Taita Hills Lodge, Kenya, on 22-25 April 1985 (1986) 41-46.

FK Kangwana 'Human Elephant Conflict: the Challenge Ahead' (1995) 19 *Pachyderm* 10-19.

FN Kasilly 'The Fence as a Moderator of the Wildlife Menace in Kenya' (2002) 40/4 *African Journal of Ecology* 407-409.

FX Mkanda and SM Munthali 'Public Attitudes and Needs Around Kazungu National Park, Malawi' (1994) 3 *Biodiversity and Conservation* 29-44.

GM Ruigu 'Seed Industry in Kenya: Evolution, Current Status and Prospects' (1988) Mimeo.

J Boshe 'Wildlife Law Enforcement' (1986) 9/2 *Swara* 8-9.

JB Ojwang 'Law and the Public Interest: Some Introductory Remarks' in JB Ojwang & JW Kabeberi (eds) *Law and the Public Interest*. Occasional Paper No. 52. Institute of Development Studies (IDS), University of Nairobi (1988) 1-2.

JK Yoder 'Damage Abatement and Compensation as Incentives for Wildlife management on Private Land' in L Clark, J Hone, JA Shivik, RA Watkins and KC Vercauteren (eds) *Human-Wildlife Conflicts: Economic Considerations* (2002) 186. <[http://www.aphis.usda.gov/ws/nwrc/symposia/economics\\_sympos](http://www.aphis.usda.gov/ws/nwrc/symposia/economics_sympos)> Last accessed on 22 December 2007.

JN Muriuki 'Co-operation or Conflict: Managing Scarce Resources of Africa: A Case for Community-Wildlife Conservation in Kenya' (1996) (mimeo) < <http://www.katunetwork.fi/artikkelit/kirja2/tekstit/muriuki.html>> Last accessed on 22 December 2007.

JR Kideghesho 'Participatory Land-use Planning for Kwakuchinja Wildlife Corridor, Kakakuona: Tanzania. *Wildlife Quaternary Magazine on Nature, Conservation and Environment* (2000).

JS Akama 'Wildlife Conservation in Kenya: A Political-Ecological Analysis of Nairobi and Tsavo Regions.' *African Development Foundation Research Series* (1995).

JS Akama 'Wildlife Conservation in Tsavo: An Analysis of Problems and Policy Alternatives' (2003) 1/1 *J of East African Nat. Resources Management* 1-15.

JS Akama, CL Lant and GW Burnett 'Conflicting Attitudes Toward State Wildlife Conservation Programs in Kenya' (1994) 8 *Society and Natural Resources* 133-144.

K Campbell and M Said 'People and Wildlife: Spatial Dynamics and Zones of Africa' in ARE Sinclair and P Arcese (eds) *Serengeti II: Dynamics and Management, and Conservation of an Ecosystem* (1995).

K Graham, AP Beckerman and S Thirgood 'Human-predator Conflicts: Ecological Correlates, Prey Losses and Patterns in Management' (2005) 122 *Biological Conservation* 159.

M Colchester 'Salvaging Nature: Indigenous Peoples and Protected Areas' K Ghimire and MP Pimbert (eds) *Social Change and Conservation* (1997) 109.

M Coughenour 'The Savanna Model: Providing Solutions for Wildlife Preservation and Human Development in East Africa and the United States'. Research Report, February 2000.

MO Dapash 'Coexisting in Kenya: The Human-Elephant Conflict' (2002) 51/1 *Animal Welfare Institute Quarterly*, <<http://www.awionline.org/pubs/Quarterly/winter02/humanelephant.htm>> Last accessed on 22 December 2007.

MP Pimbert and JN Pretey 'Parks, People and Professionals: Putting Participation into Protected Area Management' (United Nations Research Institute for Social Development Discussion Paper No. 57). Geneva: United Nations Research Institute for Social Development (1995).

MS Mulama 'Assessment of Crop Raiding by Elephants in Laikipia East Srima Location.' A Report to the Kenya Wildlife Service (1990).

MW Murphree 'Communities as Institutions for Resource Management' Occasional Paper. Centre for Applied Social Sciences, University of Zimbabwe (1991).

N Marekia 'Land Tenure and Wildlife Conservation: A Status Review Paper' African Center for Technology Studies, Nairobi (1990).

N Sifuna and S Mogere 'Enforcing Public Health Law in Africa: Challenges and Opportunities, the Case of Kenya' (2002) 34 *Zambia Law Journal* 148-159.

N Sifuna 'Providing Compensation for Damage Caused by Wildlife: A Case Study of Kenya with Particular Reference to Elephants' (2005) 20/1 *Journal of Social Development in Africa* 7-39.

N Sifuna 'Using Eminent Domain Powers to Acquire Private Lands for Protected Area Wildlife Conservation: A Survey Under Kenya Law' (2006) 2/1 *Law Environment and Development Journal* 86-104 <<http://www.lead-journal.org/content/06084.pdf>> Last accessed on 22 December 2007.

N Sitati and M Walpole 'Assessing Farm-based Measures for Mitigating Human-Elephant Conflict in Transmara District, Kenya (2006) mimeo.

NN Miller 'Wildlife: Wild Death' (1982) 5/3 *Swara* 7.

P Chardonnet, B des Clers, J Fischer, R Gierhold, F Jori and F Lamarque 'The Value of Wildlife' *Rev. Sci. tech. Off. Int.Epiz* (2002) 21/1, 15-51 <http://www.oie.int/eng/publication/rt/2101/ph.%CHARDONNET.pdf> Last accessed on 22 December 2007.

PJ Ferraro and A Kiss 'Direct Payments to Conserve Biodiversity' *Science Magazine* August 2003, <<http://www.sciencemag.org/cgi/content/full/298/5599/1718?Maxtoshow=&hits=...8/7/2003>> Last accessed on 22 December 2007.

P Kameri-Mbote 'Land Tenure and Land Use and Sustainability: Toward Innovative Use of Property Rights in Wildlife Management' <<http://ielrc.org/content/w054.pdf.2005-4>> Last accessed on 22 December 2007.

PN Takirambudde 'The Role of Law in Commercial and Industrial Expansion: The Case of Botswana, Lesotho and Swaziland' JB Ojwang and JW Kabeberi (eds) *Law and the Public Interest*. Occasional Paper No. 52. Institute of Development Studies (IDS), University of Nairobi (1988) 15-29.

R Hoare 'African Elephants and Humans in Conflict: the Outlook for Co-existence 34/1 *Oryx* (2000) 34-38.

R Hoare 'Options for the Control of Elephants in Conflict with People' (2000) 19 *Pachyderm* 54-63.

RD Baldus, D Kahn, S Kaihula, CC Mahundi, M Murphree, K Roettcher, L Siege and M Zacharia 'Experiences with Community Based Wildlife Conservation in Tanzania'. Tanzania Wildlife Discussion Paper No. 29 Prepared for the GTZ Wildlife Programme, Dar es Salaam (2001).

RF Dasmann 'Wildlife and Ecosystem' in H.P Brokaw (ed) *Wildlife and America* (1978) 18.

RFW Barnes 'The Conflict Between Humans and Elephants in the Central African Forests' (1996) 26 2/3 *Mammals Review* 67-80.

S Bury and H Fischer 'Top Ten Reasons to Support Rancher Compensation' (1999) 24/2 *Endangered Species Bulletin* 24-25.

S Eriksen, E Ouko and N Marekia 'Land Tenure and Wildlife Management' C Juma and J.B Ojwang *In Land We Trust* (1996)199.

SK Eltringham *The Ecology and Conservation of Large African Mammals* (1979).

SM Munthali 'Traditional and Modern Wildlife Conservation in Malawi: The Need For An Integrated Approach (1993) 27(2) *Oryx* 1-3.

SR Kellerart 'Social and Perception Factors in Endangered Species Management (1995) 49/2 *Journal of Wildlife Management* 528-536.

V Matiru 'Forest Cover and Forest reserves in Kenya: Policy and Practice (1999), <<http://www.iucn.org/places/earo/pubs/forest/forestcover.pdf>> Last accessed on 22 December 2007.

V Shauri and L Hitchcock 'Wildlife Corridors and Buffer Zones in Tanzania: Political Will and Wildlife Management in Tanzania'. Policy Brief No. 2. Lawyers' Environmental Action Team (LEAT), Dar es Salaam, Tanzania (1999) 1-19.

W Kiiru, 'The Current Status of Human-Elephant Conflict in Kenya' (1995) 19 *Pachyderm* 15-18

W Ottichilo, J. Leeuw, A. Skidmore, H. Prins, and M. Said. 'Population Trends of Large Migratory Wildlife Herbivores and Livestock in Maasai Mara Ecosystem, Kenya: 1977-1997' (2000) 38 *African Journal of Ecology* 202-216.

WD Newmark, NL Leonard, HI Sariko and DM Gamassa 'Conservation Attitudes of Local People Living Adjacent to Five Protected Areas in Tanzania' (1993) 63 *Biological Conservation* 177-183.

WJ Lusigi 'New Approaches to Wildlife Conservation in Kenya' (1981) 10/2-3 *Ambio* 88-92.

### **C. THESES & DISSERTATIONS:**

ED Mungatana *Recreational Value of Wildlife Viewing: A Case Study of Lake Nakuru National Park Kenya*. Unpublished M.Sc Thesis, Agricultural University of Norway, 1992.



EE Esikuri *Group Ranches, National Parks and Agriculture: Resource Use Conflicts and Opportunities for Pastoral and Wildlife Development in Kenya, A Case Study From Amboseli Basin*. Unpublished M.Sc Thesis Agricultural University of Norway, 1991.

EE Esikuri *Spatio-Temporal Effects of Land Use Changes in a Savanna Wildlife Area of Kenya*. Unpublished PhD Thesis Virginia State University, 1998.

HI Ipara *Indigenous Wildlife Resources Management Systems: A Study of the Isukha Community of Western Kenya*. Unpublished D.Phil Thesis, Moi University, 2004.

HP Knegt *Whose Wildlife? Local Participation in Wildlife-based Tourism Related Activities Under the Kenya Wildlife Service's Partnership Programme: A Case Study of the Four Maasai Group Ranches Surrounding the Amboseli National Park in Kenya*. Unpublished Master Thesis, Catholic University of Nijmegen Netherlands, 1998.

PK Masinde *Elephant Damage Control in the Tsavo Ecosystem: A Cost-benefit Analysis of Electric Fencing in the Bura-Mwatate Area, Kenya*. Unpublished M.Sc Thesis, International Institute of Aerospace Survey and Earth Sciences, Netherlands, 1995.

P Omondi *Wildlife-Human Conflict in Kenya: Integrating Wildlife Conservation With Human Needs in the Maasai Mara Region*. Unpublished D.Phil Thesis, McGill University, 1994.

#### **D. DOCUMENTS & REPORTS:**

Government of Botswana, *National Development Plan 9 2003/04-2008/9* (2003).

Government of Botswana, *The Botswana Elephant Paradox*. Botswana's Country Paper to the CITES COP 12 Santiago, Chile (2002) < <http://www.cbnrm.bw>> Last accessed on 22 December 2007.

Government of Botswana, *Wildlife Statistics 2004* (2005).

IUCN Environmental Law Center, *African Wildlife Laws* (1987).

IUCN, African Elephant Specialist Group (AFESG) Human-Elephant Conflict Taskforce (HECWG) (2000) *Review of Compensation Schemes for Agricultural and Other Damage by Elephants* (BONN: IUCN). <http://www.iucn.org/themes/ssc/sgc/afesg/hectf/comreview.html> Last accessed on 22 December 2007.

Kenya Wildlife Service, *A Policy Framework and Development Programme, 1991-96. Annex 6: Community Conservation and Wildlife Management Outside Parks and Reserves* (1990).

Kenya Wildlife Service, *A Policy Framework and Development Programme 1991 – 1996. Annex 4: National Park and Reserve Planning* (1990).

Kenya Wildlife Service, *A Policy Framework and Five-Year Investment Programme 1990/91 – 1995/96 Report* (1990).

Kenya Wildlife Service, *Development Policy and Activities 1991-1996* (1990).

Kenya Wildlife Service, *Wildlife-Human Conflicts in Kenya: The Five-person Review Group* (1994).

Republic of Kenya, *African Socialism and Its Application to Planning in Kenya. Sessional Paper No.10 of 1965* (1965).

Republic of Kenya, *Statement on Future Wildlife Management Policy in Kenya. Sessional Paper No.3 of 1975* (1975).

Republic of Kenya, *The Kenya National Environment Action Plan, NEAP* (1994).

UNEP and KWS *People, Parks and Wildlife: Guidelines for Public Participation in Wildlife Conservation* (1985).

Republic of Kenya, *National Development Plan 2002–2008:Effective Environmental Management for Sustainable Economic Growth and Poverty* (2002).

Republic of Kenya, *Draft Wildlife Policy 2007*.

UNEP/Kenya Wildlife Service Fund Trustees, *People, Parks and Wildlife: Guidelines for Public Participation in Wildlife Conservation: Case Studies in Kenya* (1988).

UNEP/UNDP/DUTCH Joint Project on Environmental Law and Institutions in Africa, East African Sub-Regional Project *Development and Harmonization of Environmental Laws. Volume 6. Report on the Development and Harmonization of the Laws Relating to Wildlife Management* (1999).

United Nations Environment Programme, *The State of the World Environment* (1991).

World Commission on Environment and Development, *Our Common Future* (1987).

#### **E. INTERNET SITES:**

<[http://www.aphis.usda.gov/ws/nwrc/symposia/economics\\_sympos](http://www.aphis.usda.gov/ws/nwrc/symposia/economics_sympos)> Last accessed on 22 December 2007.

<[http://www.botswana-tourism.gov.bw/tourism\\_s/tourism\\_s.html](http://www.botswana-tourism.gov.bw/tourism_s/tourism_s.html)> Last accessed on 22 December 2007.

<<http://www.iucn.org/places/earo/pubs/forest/forestcover.pdf>> Last accessed on 22 December 2007.

<<http://www.iucn.org/themes/ssc/sgc/afesg/hectf/comreview.html>> Last accessed on 22 December 2007.

<<http://www.monbiot.com/archives/1994/07/01/keepers-of-the-artificial-wilderness/>> Last accessed on 22 December 2007.

<<http://www.parks.it/world/BW/Eindex.html>> Last accessed on 22 December 2007.

<<http://www.parks.it/world/KEN/Eindex.htm>> Last accessed on 22 December 2007.

<<http://www.peopleandwildlife.org.uk/crmanuals/HumanElephantConflictP&WManual>> Last accessed on 22 December 2007.

<<http://www.oie.int/eng/publication/rt/2101/ph.%CHARDONNET.pdf>>

<<http://www.safariweb.com/kwild/summary.htm>> Last accessed on 22 December 2007.

<<http://www.iexplore.com/eintmap/Zambia/58296>> Last accessed on 22 December 2007.

<[http://www.nyulawglobal.org/Globalex/Botswana.htm#\\_Historical\\_Note](http://www.nyulawglobal.org/Globalex/Botswana.htm#_Historical_Note)> Last accessed on 27 December 2007.

## **APPENDICES**

**APPENDIX 1:**

**QUESTIONNAIRE FOR WILDLIFE AUTHORITIES**

**I: Individual data**

Name:

Department/institution:

Its mandate:

Your position/designation:

**II: Wildlife conservation, human welfare and the human- wildlife interface**

Q: What are the uses of wildlife in your country?

Q: What is the legal status of wildlife in your country?

Q: Comment on the interface between wildlife conservation and human livelihoods?

Q: Do the local communities in wildlife areas in your country derive any direct benefits from wildlife?

Yes [ ] No [ ]

Q: If yes, how?

(a) Provides social infrastructure [ ]

(b) Provides employment opportunities [ ]

(c) Direct payments to locals [ ]

(d) Any other, specify.....

Q: What is your government's policy on revenue and benefit sharing?

Q: How does wildlife conservation compare with competing land uses?

Q: What are the major problems facing wildlife conservation in your country?

Q: What are the major challenges for the human-wildlife interface in your country?

Q: What are the attitudes of the local communities towards wildlife in your country generally?

Q: What are the reasons often advanced for such attitudes?

Q: Are such attitudes justified?

Yes  No

Q: Explain your answer.....

### **III: Wildlife damage**

Q: Do wild animals in your country cause any damage or loss to the community?

Yes  No

Q: If yes, what are the major forms of damage?

Q: Is there any statistics on this? For instance the number of people and livestock injured or killed, the acreage of crop land destroyed, the value of crops destroyed, the value of property destroyed, etc. Yes  No

Q: Are these figures documented? Yes  No

Q: If they are documented does the government keep these records?

Yes  No

Q: If yes, which office or government department is in charge of documenting and keeping these records?

Q: Are these records available to the public for inspection?

Yes  No

Q: What is the procedure incase any member of the public wishes to access these records?

Q: How many people were killed by wildlife in the last three years?

Q: What is the estimated damage caused by wild animals to livestock, crops and property in monetary terms in the last year, please quantify the damage.

Q: Does your government have any policy on wildlife damage?

Yes  No

**IV: Legal and institutional arrangements on wildlife damage**

Q: Are there any provisions in your country's laws on wildlife damage?

Yes  No

Q: Where in the laws are these provisions?

Q: What is the form of these provisions?

(a) Constitutional provisions

(b) Legislative provisions

(c) By-laws

(d) Executive decree

(e) Any other (specify).....

Q: Does government have any institutions/agencies for addressing wildlife damage?

Yes  No

Q: If yes, what are these institutions/agencies and their mandate?

Q: Do you support the existence of these legal and institutional arrangements?

Yes  No

Q: Explain the reasons for your answer.

Q: Has the government involved the local communities in these arrangements

Yes  No

Q: If yes, to what extent?

Q: Are there any problems or challenges experienced by the government or wildlife authorities in maintaining these arrangements?

Yes  No

Q: If yes what are the major ones?

**V: Recommendations**

Q: What legal and institutional reforms should state and governmental authorities in your country take in order to efficiently address the problem of wildlife damage?



**APPENDIX 2:**

**QUESTIONNAIRE FOR EXPERTS**

**I: Individual Data**

Name:

Organization/Institution:

Designation/Position:

Professional/Educational Background:

**II: Wildlife conservation and management generally**

Q: What is the value of wildlife?

Q: What is the legal status of wildlife in Kenya/Botswana?

Q: Comment on the conservation/human welfare (livelihoods) interface.

Q: Do the local communities in wildlife areas derive any direct benefits from wildlife?

Yes [ ] No [ ]

Q: If yes, how?

(a) Provides social infrastructure [ ]

(b) Provides employment opportunities [ ]

(c) Direct payments to locals [ ]

(d) Any other, specify.....

Q: What is your opinion on revenue and benefit sharing in the wildlife sector between local communities and wildlife agencies?



### **III: Damage by wildlife**

Q: Wild animals are known to attack humans and even destroy property. How and what implications has this on conservation and especially on the people's attitudes towards wildlife? Explain.

Q: What are the major forms of damage?

Q: What animals are known to cause this?

Q: What is your suggestion to the park authorities regarding measures for addressing the problem of wildlife damage?

### **IV: Need for legal and institutional arrangements on wildlife damage**

Q: Do you think the law can have any role to play in addressing the problem of wildlife damage?

Q: What is the legal basis for addressing wildlife damage?

Q: If yes, what would be the appropriate form of such legal provisions, for instance, what aspects do you think they need to address?

Q: Do you know of examples of such laws in any country, and how they have worked or failed to work?

Q: What factors do you think have contributed to the successes or failures of these laws, above, in addressing human-wildlife conflicts?

Q: About institutions, what institutional arrangements need to be put in place to address the problem? (Governmental, non-governmental, community/local, and international).

Q: Do you know of examples of any such institutions in any country, and how they have worked or failed to work?

Q: How may those legal and institutional arrangements be strengthened to effectively deal with the problem?

**V. Recommendations**

Q: What legal and institutional reforms should state and governmental authorities in your country take in order to efficiently address the problem of wildlife damage?

**APPENDIX 3:**

**QUESTIONNAIRE FOR THE LOCAL COMMUNITIES**

**I: Personal Details**

Name:

Q: What are your names?

Residence:

Q: Where do you live?

Village/town\_\_\_\_\_Division\_\_\_\_\_District\_\_\_\_\_

**II: Wildlife conservation**

Q: Do you see any value in conserving wildlife? Yes [ ] No [ ]

Q: If yes, what do you consider to be the value?

Q: If no, why?

Q: Does the community in which you reside derive any direct economic benefits from wildlife? Yes [ ] No [ ]

Q: If yes what kind of these benefits? (a) hunting rights; (b) grazing rights; (c)share of park fees; (d) If other, specify

Q: Do you support the idea of local communities sharing wildlife revenues and benefits with the government?

Q: If yes on what ratio? (a) Government 50%-60%: Locals 50%;-40% (b) Government 70%-80%: Locals 30%-20%.

Q: Would you support the idea of wildlife being eradicated? Yes [ ] No [ ]

State reasons for your answer.

**III: Wildlife damage:**

Q: Wild animals have been reported to be attacking people and at times destroying their property, livestock and crops, do you know whether this happens in your area?

Q: If yes, what are the most common the types of damage?

Q: Which animals are most notorious for damage?

Q: Do you use any strategy(ies) to protect your crops, livestock and property from wild animals?      Yes        No   

If yes, specify the strategy(ies):

- Fire
- Noise-making
- Guarding
- Thunderflashes
- Fence
- Buffer crops
- Ditch
- Traps
- Poison
- Attacks on wild animals
- Other (specify).....

Q: Have you or any member of your family or friend been victim of such attack?

Yes        No   

Q: Which animal was responsible?

Q: What happened? Explain briefly, (a) Injury to person (b) Death of human (c) Attack on livestock (d) Destruction of crops (e) If other loss specify.

Q: Has this incident(s) been reported to the wildlife authorities (Kenya Wildlife Service/Botswana's Department of Wildlife and National Parks)?

Q: What was their response?

Q: How is their response whenever an incident is reported?

SLOW                       PROMPT                          NO RESPONSE   

Q: Do you know whether there is a wildlife damage compensation scheme in your country?    Yes        No   

Q: Have you or anybody that you know ever lodged a claim for compensation for wildlife damage?    Yes        No   

Q: If yes, has compensation been paid?    Yes        No   

Q: If yes, how long did it take to get compensated?

0-1 year                       1-3 years                       Over 3 years

Q: In your opinion was the amount paid to you/that person as compensation adequate for the loss incurred?    Yes        No   

Q: If No, how would you have liked it to be?.....

Q: Do you think a compensation scheme is a good idea?    Yes        No   

Q: What do you think about translocation as a method of controlling wildlife damage

Q: Have these incidents of wildlife damage influenced your attitude or that of anybody that you know, towards wildlife conservation?

Q: If yes, explain, if No why?

Q: What is your suggestion to the wildlife authorities regarding measures for addressing the problem of wildlife damage?

**IV: Legal and institutional arrangements by government or other agencies to address wildlife damage**

Q: Whose responsibility should it be to control wild animals to ensure they do not cause damage to people or their crops, livestock and property?

Q: What measures do you think are appropriate in this regard?

Q: Do you know whether or not your government or any other institution has any measures addressing wildlife damage?

Q: If yes, are they in the form of laws and institutions?

Q: Are you aware of any abatement and remedial measures that wildlife authorities take with regard to damage?

Q: How do you rate the efficiency of the authorities in managing wild animals?

Q: Do you know whether the government maintains any programme, scheme, or arrangements on wildlife damage?

Q: If yes, is it incorporated in any law?

Q: In your opinion, are these arrangements adequate in addressing the problem? Explain



Q: Please identify what you think are the human interests and what you think are wildlife conservation interests.

Q: Do local communities have any role to play in resolving the clash between human interests and and wildlife conservation interests?

Q: If yes, what role do you think they should or can play?

Q: If not, what is your reason for that?

#### **V. Benefits to the local communities**

Q: Have you and/or your community benefited from the presence of wildlife in your area? Yes  No

Q: If yes, how?.....

Q: What do you think about indirect benefits such as infrastructural development?

Q: What direct benefits do think you as the local community should derive from wildlife/park authorities?

Q: Is there any member of your family working with wildlife/park authorities?  
Yes  No

#### **APPENDIX 4:**

### **CONVERSATIONAL THEMES FOR FOCUS GROUP DISCUSSIONS WITH LOCAL COMMUNITIES IN KENYA AND BOTSWANA BETWEEN JANUARY AND DECEMBER 2006**

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#### **Conversational Themes**

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1. Conservation and development issues in the local's contexts and perspectives.
2. Nature of the existing relationship between wildlife authorities and local communities
3. Nature and extent of the problem of wildlife damage in the area
4. Wildlife damage and compensation issues
5. Effectiveness of the wildlife authorities in addressing wildlife damage including measures adopted by these authorities for control
6. Measures used by the local communities for wildlife damage control

**APPENDIX 5:**

**FORM "B" (KENYA'S WILDLIFE COMPENSATION CLAIM FORM)**

**REPUBLIC OF KENYA**

**FORM "B"**

**COMPENSATION FOR PERSONS INJURED/DEATH CAUSED BY WILDLIFE**

**PART I (INJURED/DEATH)**

NAME .....

ID/NO .....

ADDRESS .....

MALE/FEMALE .....

AGE .....

**PART II (PLACE OF RESIDENCE)**

SUB-LOCATION/VILLAGE.....

LOCATION .....

DIVISION .....

ASSISTANT CHIEF .....

CHIEF .....

DISTRICT .....

**PART III (OCCUPATION)**

EMPLOYER'S NAME.....

IF SELF EMPLOYEES, NATURE OF BUSINESS.....

.....  
SALARY/WAGES/INCOME PER YEAR .....

**PART IV (PARTICULARS OF DEATH/INJURY)**

PLACE OF DEATH/INJURY .....

DATE OF DEATH/INJURY .....

CIRCUMSTANCES OF DEATH/INJURY .....

.....  
(a) While in the National Reserve Lawfully/illegally .....

(b) While in the National Park Lawfully/illegally .....

(c) While hunting Lawfully/illegally .....

(i) Unawareness .....

(ii) In self defence .....

(III) ANIMAL RESPONSIBLE FOR DEATH/INJURY .....

(IV) DEATH/INJURY REPORTED TO:

Police Station .....

Comments from OCS/OCPCD .....

.....  
Designation .....

Signature .....

Date.....

(V) MEDICAL OFFICER OF HEALTH

COMMENTS:

.....  
.....  
.....

Designation .....

Signature .....

Date.....

DISTRICT WARDEN .....

Designation .....

Comments

.....  
.....  
.....

Signature .....

Date .....

**NEXT OF KIN:**

NAME OF CLAIMANT .....

ID/NO .....

RELATIONSHIP .....

(Parent/Guardian incase of a minor)

DEPENDANTS OF THE DECEASED:

1.....

2.....

3.....

4.....

ADDRESS.....

**PART V: (DISTRICT WILDLIFE COMPENSATION COMMITTEE)**

**COMMENTS**

.....  
.....  
.....

**RECOMMENDATIONS:**

Amount recommended in words.....

Amount in figures .....

Date .....

Committee Members	Names	Signatures
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1. Chairman .....

2. Secretary .....

3. Member .....

4. Member .....

5. Member .....

- 6. Member .....
- 7. Member .....
- 8. Member .....
- 9. Member .....

**PART VI: (MINISTRY)**

Recommendations .....

.....

.....

Signature.....

Date.....

APPENDIX 6

**THE WILDLIFE (CONSERVATION AND MANAGEMENT)  
ACT, CAP 376 (KENYA)**

Revised 1985 (1977)

**THE WILDLIFE (CONSERVATION AND  
MANAGEMENT) ACT, 1976**

ARRANGEMENT OF SECTIONS

*Section*

PART I-PRELIMINARY

1. -Short title and commencement.
2. -interpretation

PART II – ADMINISTRATION

3. -Wildlife Conservation and Management Service.
4. -Honorary game wardens.
5. -Delegation, etc., of functions.

PART III-NATIONAL PARKS, NATIONAL RESERVES AND  
LOCAL SANCTUARIES

6. -Declaration of National Parks.
7. -Cessation of area as a National Park, National Reserve or Local Sanctuaries.
8. -Amendment of boundaries.
9. -Management of National Parks.
10. -Restriction on prospecting and mining.
11. -Restriction on commercial film making.
12. -Flying restrictions in respect of National Parks.
13. -General offences in National Parks.
14. -Animal not to be followed into National Park.
15. -Protection areas.
16. -National Park Regulations.
17. -Impounding of domestic animals.
18. -National Reserves.
19. -Local Sanctuaries.
20. -Agreements by Director.

PART IV – CONTROL OF HUNTING

21. -Powers of honorary game wardens.
22. -Prohibition of unlicensed hunting. etc.
23. -Game licences.
24. -General provisions as to game licences.

25. -Game registers.
26. -Special authorization to hunt.
27. -Professional hunters.
28. -Cancellation, etc., of licences.
29. -Hunting on private land.
30. -Protection of human life.
31. -Protection of property.
32. -Wounded animals.
33. -Causing suffering.
34. -Unlawful methods of hunting, general provisions
35. -Aircraft, motor vehicles, etc.
36. -use of dogs.
37. -Power to prohibit use of certain weapons. etc.
38. -Close seasons.

#### PART V – TROPHIES AND LIVE ANIMALS

39. -Government trophies.
40. -Importation of trophies.
41. -Certificates of ownership relating to hunted animals.
42. -Certificates of ownership for possession of trophies.
43. -Dealers.
44. -Transfer of trophies,
45. -Export of trophies, etc.
46. -Exemptions.
47. -Game meat.
48. -Permit to keep live animals.

#### PART VI-ENFORCEMENT

49. -Powers of officers.
50. -Disposal of persons arrested and things seized.
51. -Effect of conviction and powers of court.
52. -Forfeiture.
53. -Ineligibility to hold licences, etc.
54. -Conduct of prosecutions.
55. -Exemption of officers of the Service.
56. -General penalties.
57. -Corporations and. firms.

#### PART VII- THE WILDLIFE FUND

58. -Wildlife Fund Trustees.
59. -The Wildlife Fund.
60. -Accounts and audit.

#### PART VII – GENERAL PROVISIONS AS TO OFFICERS, ETC OF THE SERVICE

61. -Unlawful possession of Service property, etc.



PART IX – MISCELLANEOUS

62. -Compensation for personal injury, death or loss of property.
63. -Land use.
64. -Application of Act to non-game animals.
65. -Appeal Tribunal.
66. -Duplicate licences.
67. -Power to make regulations.
68. -Repeals, amendment and transitional provisions.

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

**CHAPTER 376**

**THE WILDLIFE (CONSERVATION AND  
MANAGEMENT) ACT**

*Commencement: 13<sup>th</sup> February 1976*

1 of 1976  
6 of 1976  
L.N. 38/1976  
L.N. 41/1976  
16 of 1977  
L.N. 126/ 1981,  
11 of 1983

An Act of Parliament to consolidate and amend the law relating to the protection, conservation and management of wildlife in Kenya; and for purposes connected therewith and incidental thereto.

WHEREAS it is desirable that the present powers relating to the management and conservation of wildlife in Kenya should be amalgamated and placed in a consolidated Service of the Government;

AND WHEREAS the prime objective of the Service should be to ensure that wildlife is managed and conserved so as to yield to the Nation in general and to individual areas in particular, optimum returns in terms of cultural, aesthetic and scientific gains as well as such economic gains as are incidental to proper wildlife management and conservation and which may be secured without prejudice to such proper management and conservation;

AND WHEREAS it is necessary, for the achievement of the said objective, that full account should be taken of the varied forms of land use and the inter-relationship between wildlife conservation and management and other forms of land use:

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

**PART I – PRELIMINARY**

1. This Act may be cited as the Wildlife (Conservation and management) Act.

Short title

2. In this Act, unless the context otherwise requires-

"aircraft" means any type of aeroplane, airship, balloon or kite, whether captive, navigable or free, and whether controlled or directed by human agency or not;

Interpretation  
11 of 1983, Sch.

"animal" means any animal or the young or egg thereof, but does not include a human being or any animal which is commonly considered to be a domestic animal or the young or egg thereof;

"appointed day" in relation to any provision of this Act means the day appointed under section 1 in respect of such provision;

"authorized officer" means an officer of the Service, a forest officer, a police officer or an administrative officer;

"competent authority" means-

- (a) in relation to Government land, the Minister for the time being responsible for matters relating to land;
- (b) in relation to Trust land, the county council in which the land is vested;
- (c) in relation to any other land, the owner thereof or the person for the time being entitled to the rents and profits thereof;

"dangerous animal" means an elephant, a rhinoceros, a hippopotamus, a buffalo, a lion or a leopard;

"dealer" means any person who, in the ordinary course of any business or trade carried on by him, whether on his own behalf or on behalf of any other person-

- (a) sells, purchases, barter or otherwise in any manner deals with any trophy; or
- (b) cuts, carves, polishes, preserves, cleans, mounts or otherwise prepares any trophy;

"Director" means the Director of Wildlife Conservation and Management mentioned in subsection (1) of section 3 of this Act;

"forest officer" has the meaning assigned to it by the Forests Act; Cap. 385.

Cap. 385.

"forfeiture offence" means an offence which is so designated by any of the provisions of this Act creating offences;

"former Trustees" means the Trustees of the National Parks of Kenya established by the National Parks of Kenya Act (now repealed);

Cap. 377 (1962)

Act hereby repealed;

"game animal" means an animal specified in the First Schedule to this Act;

"game bird" means a bird specified in the Second Schedule to this Act;

"game licence" means a licence issued under section 23 of this Act;

"Government trophy" means a trophy declared to be a Government trophy by section 39 of this Act;

"hunt" includes the doing of any act immediately directed at the killing, wounding, injuring or capture of any animal, and the taking or willful molestation of any nest or eggs;

"land" includes land covered by sea or other water;

"licensing officer" in respect of any of the provisions of this Act, means a person appointed by the Minister, by notice in the Gazette, to be a licensing officer\* for the purposes of that provision;

"local sanctuary" means an area of land declared to be a local sanctuary by or under section 19 of this Act;

"meat" means the fat, blood, &h or tissue of any game animal, game bird or protected species, whether fresh or dried, pickled or otherwise preserved or processed;

"Minister" means the Minister for the time being responsible for matters relating to wildlife;

"motor vehicle" includes a vehicle of the type commonly known as a "hovercraft";

"National Park" means any area of land declared to be a National Park by or under section 6 of this Act;

"National Reserve" means any area of land declared to be a National Reserve by or under section 18 of this Act:

"owner" in relation to private land, includes a lessee or a mortgagee in possession, and any person authorized by an owner, lessee or mortgagee in possession to act on his behalf in his absence, and group representatives incorporated under the Land (Group Representatives) Act;

"private land" means any land--

- (a) which is held under a conveyance, lease or licence (other than a temporary occupation licence under the Government Lands Act) from the Government or a country council; or
- (b) which has been recorded as being in the ownership of any person or group of persons under any written law relating to the adjudication or recording of such ownership;

"professional hunter" means the holder of a valid licence issued under section 27 of this Act;

"protected animal" means an animal, or all animal of a species, sub-species or group, specified in the Third Schedule to this Act;

"protection area" means an area declared to be a protection area under section 15 of this Act;

"rules" means any rules, regulations or by-laws made under this Act;

"senior officer" means a warden, a forest officer of or above the rank of assistant conservator of forests, or a police officer of or above the rank of Assistant Inspector;

"Service" means the Wildlife Conservation and Management Service established under section 3 of this Act;

"subordinate officer" means any authorized officer who is nor a senior officer;

"trophy" means any protected animal, game animal, or game bird alive or dead, and any bone, claw, egg, feather, hair, hoof, skin, tooth, tusk or other durable portion whatsoever of any such animal or bird or fish or other aquatic life whether processed, added to or changed by the work of man or not, which is recognizable as such a durable

"Trustees" means the Wildlife Fund Trustees established by section 58 of this Act;

"vegetable" includes any form of vegetable matter, alive or dead;

"warden" means an officer of the Service of or above the rank of game warden or its equivalent.

## **PART II ADMINISTRATION**

**3.** (1) there shall be established as a Department of the government a Wildlife Conservation and Management Service which shall consist of a Director of Wildlife Conservation and Management and such other officers as may be necessary for the carrying into effect of the provisions of this Act.

Wildlife conservation  
and management  
Service

(2) The Director shall, subject to the provisions of this Act, have the general superintendence of all matters within the province of this Act.

(3) In order to secure optimum financial returns from the economic gains incidental but not prejudicial to proper wildlife management and conservation, the Service may engage in such commercial activities either alone or in conjunction with other persons for the effective utilization of wildlife resources, as the Minister after consultation with the Treasury, may approve.

(4) All officers of the Service and all licensing officers shall in the exercise of the powers and performance of the duties conferred or imposed upon them by or under this Act, conform with any lawful instruction or directions, whether general or special, which may be given to them by the Director in respect of such exercise or performance.

(5) The Minister may give such general or special directions to the Director as he may deem necessary for the more efficient carrying into effect of the provisions of this Act.

**4.** (1) The Director may, with the prior approval of the Minister, appoint fit and proper persons to be honorary game wardens for the purpose of assisting in the carrying into effect of the provisions of this Act.

Honorary game  
wardens.

(2) The appointment of an honorary game warden

(a) shall be notified in the Gazette;

(b) shall be effective unless sooner revoked by the Director, for a period of three years; and

(c) may be made subject to any conditions which the Director may think fit to impose.

**5.** (1) The Director may delegate or assign any of his functions under this Act-

Delegation etc., of  
functions

(a) to any officer of the Service; or

- (b) to any officer of the Forest Department; or
- (c) to any officer of the Fisheries Department; or
- (d) to any public officer, or officer of the Community, approved by the Minister.

(2) Any delegation or assignment under this section shall be by notice in the Gazette and may have effect throughout Kenya or in such area only as may be specified in such notice.

### PART III - NATIONAL PARKS, NATIONAL RESERVES AND LOCAL SANCTUARIES

**6.** (1) The Minister, after consultation with the competent authority, may by order declare any area of land to be a National Park:

Declaration of  
National parks.

Provided that, where the competent authority does not consent to such declaration, no such order shall be made unless-

- (a) the National Assembly has, by resolution, approved a draft of the order, whether with or without modification; and
- (b) in the case of Trust land, the area concerned has first been set apart in accordance with section 118 of the Constitution; or
- (c) in the case of private land, the area concerned has first been acquired under the Land Acquisition Act.

Cap. 295.

(2) All National Parks declared to be such under the National Parks of Kenya Act and existing immediately before the appointed day are hereby declared to be National Parks for all the purposes of this Act, and the names and boundaries of such National Parks, unless and until they are amended under this Act, shall be those existing on the appointed day.

(3) All National Parks staff existing immediately before the appointed day, unless and until replaced under this Act, shall be the staff of the Government on the appointed day.

**7.** (1) Subject to subsection (2) of this section, the Minister, after consultation with the competent authority, may by order declare that any National Park, National Reserve, local sanctuary, specified part thereof, shall cease to local be a National Park, National Reserve, or local 'sanctuary sanctuary.

Cessation of areas  
as a National Park  
National Reserve or  
Local Sanctuary

(2) No order shall be made under subsection (1) of this section unless-

- (a) a notice of the intention to make such order, with details thereof, and inviting objections thereto within a period of not more than 60 days, has been published in the Gazette and in at least one news- paper circulating throughout Kenya; and

- (b) not earlier than sixty days after the last date of such publication a draft of the order has been laid before the National Assembly and the National Assembly has by resolution approved the order.

**8.** Subject to sections 6 and 7 of this Act, the Minister of may, by order-boundaries.

Amendment of  
Boundaries

- (a) assign a name to a National Park or amend any such name;
- (b) define the boundaries of a National Park, or alter the same whether by adding to or subtracting from the area thereof or otherwise;
- (c) amalgamate two or more National Parks into one National Park;
- (d) divide any National Park into two or more National Parks;
- (e) transfer any part of a National Park to another National Park.

**9.** (1) It shall be the duty of the Director, through the officers of the Service, control, manage and maintain ,all National Parks.

Management of  
National Parks.

- (2) Within a National Park the Director may--
  - (i) reserve or set aside any portion of the Park as n breeding place for animals or as nurseries for vegetation;
  - (ii) authorize the construction of such roads, briclges, air- fields, buildings and fences, the provision of such water supplies, and the carrying out of such other works, as may be necessary for the purposes of the Park;
  - (iii) with the approval of the Minister, let sites for the erection of hotels, or other accommodation for visitors to the Park; Provided that nothing in any document connected with any such letting shall be construed as in any manner abridging the overall control of the Park by the Service, or as preventing the Director from giving directions as to the manner in which the premises concerned shall be managed in the interests of the lnatters set forth in paragraph (i) of this sub- section.

**10.** (1) Subject to ariy rights lawfully acquired before the relevant date, and notwithstanding anything contained in any other written law, no person shall search for, attempt to win or win any minerals in, or remove any minerals from, a National Park except with the written consent of the Minister given after consultation with the Minister for the time being responsible for mines, and in accordance with any conditions which the Minister may impose in relation to such consent.

Restriction on  
prospecting and  
mining.

(2) Any person who is aggrieved by the giving or with- holding of consent by the Minister and any conditions imposed in connection therewith may, within fourteen days of thl: Minister's decision, appeal to the High Court.

(3) The Minister may, in consultation with the Minister for the time being responsible for mines, by notice in the Gazette, prescribe fees chargeable respect of any consent given under this section.

(4) The giving of a consent under this section shall not 1~ construed as in any manner exempting any person from complying with the provisions of any other written law relating to the searching for, or the mining or winning of, minerals.

(5) For the purposes of subsection (1) of this section, "relevant date" means-

- (a) in respect of a National Park declared by subsection (2) of section 6 of this Act to be a National Park, the appointed day; or
- (b) in respect of any area declared under subsection (1) of the said section to be a National Park, the date upon which the relevant order under that subsection comes into operation.

(6) Any person who contravenes subsection (1) of this section, or who fails to comply with any conditions imposed by the Minister under that subsection, shall be guilty of a forfeiture offence and shall be liable to a fine of not less than twenty thousand shillings or to imprisonment for a period of not less than three years, or to both such fine and imprisonment in addition to any penalty for forfeiture offences.

**11.** (1) Notwithstanding anything contained in the Films and Stage Plays Act, no person shall in a National Park make any cinematograph film for sale or other commercial use unless the filming licence issued under that Act has been produced to the Director and the Director has upon payment of the prescribed fee given his written authorization, subject to such conditions as he may think necessary, to the making of the film.

Restriction  
on commercial  
film making.  
Cap.222.

(2) Any person who contravenes subsection (1) of this section, or who fails to comply with any conditions imposed in connection with any authorization under this section, shall be guilty of a forfeiture offence.

**12.** (1) Except as may be necessitated by sudden emergency endangering the safety of any aircraft, the proof of which shall lie on the pilot thereof, no aircraft-

Flying restriction  
in respect of  
National parks 6  
Of 1976, sch.

- (a) shall be landed in a National Park otherwise than at a recognized airfield and in accordance with the rules;
- (b) except for the purpose of landing at or taking off from a recognized airfield, shall be flown at a height of less than one thousand five hundred feet over a National Park unless the written authorization of the Minister, which may be given subject to such conditions as the Minister may think fit to impose, has previously been obtained.

(2) The pilot of an aircraft who contravenes the provisions of this section, or fails to comply with any conditions attached to an authorization by the Director, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment:



Provided that nothing in this subsection shall apply to the operation of any aircraft which is, at the time of any such contravention, being used for any purpose of the Service.

**13.** (1) Any person who, not being an officer of the Service acting in the course of his duties as such, hunts any animal in a National Park shall be guilty of a forfeiture offence and liable to a fine of not less than five thousand shillings and not more than twenty thousand shillings or to imprisonment for a term which shall not be less than six months and not more than three years, with or without corporal punishment, or to both.

General offences  
in National  
Parks.

(2) Any person who, without authorization conveys into a National Park, or being within the area thereof, is in possession of, any weapon, ammunition, explosive, trap or poison, shall be guilty of a forfeiture offence.

(3) Any person who without authorization-

(a) enters or resides in a National Park otherwise than in the course of his duty as a public officer or as a person lawfully employed in the Park;

(b) cuts, injures or sets fire to any vegetation in a National Park, or allows any fire lighted by himself or his servants to enter a National Park;

(c) collects or attempts to collect any honey or beeswax, or hangs on any tree or elsewhere any honey barrel or other receptacle for the purpose of collecting honey or beeswax, in a National Park;

(d) willfully damages any object of geological, prehistoric, archaeological, historic, marine or other scientific interest within a National Park, or knowingly removes or attempts to remove any such object or any portion thereof from a National Park;

(e) is, without lawful excuse in possession of any animal or trophy within or without a National Park;

(f) knowingly introduces any animal or domestic animal or vegetation into a National Park;

(g) deliberately disturbs or stamples any animal in a National Park;

(h) willfully damages any structure lawfully placed in a National Park;

(i) clears, cultivates or breaks up for cultivation any land in a National Park; or

(j) catches or attempts to catch any fish in a National Park,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(4) For the purposes of this section, an act shall be deemed to be done with authorization if, but only if, it-

(a) is authorized by the rules; or

- (b) is done with the written permission of an officer of the Service; and
- (c) the provisions of the rules, or any conditions imposed upon such permission by the officer concerned, are fully complied with.

**14. (1)** Notwithstanding any other provision of this Act, no person shall follow any wounded animal into a National Park, and where, under any such provision, a person has in other circumstances a duty to follow or kill, or to make a report relating to a wounded animal he shall, at the earliest practicable moment, make a report to an officer of the Service as to all the circumstances of the case.

Animal not to be followed into National Park.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

**15. (1)** Where the Minister, after consultation with the competent authority, is satisfied that it is necessary, for ensuring the security of the animal or vegetable life in a National Park or in a National Reserve or in a local sanctuary or for preserving the habitat and ecology thereof, to prohibit, restrict or regulate any particular acts in any area adjacent to the Park, National Reserve or local sanctuary he may, by notice in the Gazette, declare such area to be a protection area and may, by the same or a subsequent notice, specify the acts which are prohibited or restricted or regulated and the extent or manner of such restriction or regulation.

Protection areas.

(2) Any person who, in a protection area, does any act in contravention of a notice under subsection (1) of this section relating to that area shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both

**16. (1)** The Minister may make regulations for any or Regulations. all of the following matters-

National Park Regulation.

- (a) the form in, and the conditions subject to which permission to enter a National Park may be granted or withdrawn, and the periods or times during which a National Park or any portion thereof shall be open to the public;
- (b) the fees to be paid for permission to enter or reside in a National Park, for the admission of vehicles, or for the use of any amenities provided by the Service in a National Park;
- (b) the conditions under, and the extent to, which any of the acts mentioned in subsection (2) or subsection (3) of section 13 of this Act may be lawfully performed and the fees to be paid in respect of such performance.
- (d) the conditions under which the services or attendance of officers of the Service, or of

any other person licence that behalf by the Director, may be obtained in a National Park, and the fees to be paid in respect thereof;

- (e) the regulation of landing of aircraft in, and of traffic in or over, a National Park, the carriage of goods and passengers in a National Park, the points by which a person may enter, and the routes to be followed in or through, a National Park;
- (f) generally for the efficient control and management of a National Park and the efficient performance of the duties of the Service therein.

(2) Regulations under this section may be made applicable to all or any specific National Parks, and different regulations may be made in respect of different National Parks.

(3) Regulations under this section may provide, in respect of any contravention thereof, penalties not exceeding a fine of six thousand shillings or imprisonment for a term not exceeding six months, or both such fine and imprisonment.

**17.** Any domestic animal found in a National Park may be impounded by an Officer of the Service and the owner thereof shall prove ownership before delivery.

Impounding of domestic animals

**18.** (1) With the agreement of the competent authority, (the Minister may, by notice in the Gazette, declare any area of land to be a National Reserve.

National Reserves

(2) An agreement between the Minister and a competent authority under subsection (1) of this section may include agreement as to restrictions or conditions relating to the provisions of this Part which shall apply to the area concerned. and any such restrictions or conditions shall be specified by the Minister in the notice declaring the area to be a National Reserve.

(3) The provisions of this Part shall apply to a National Reserve as they apply to all National Parks save in so far as-

- (a) they are modified or excluded by any such conditions or restrictions as are mentioned in subsection (2) of
- (b) they are further modified or excluded as the Minister may, by the notice declaring the area to be a National Reserve or by a subsequent notice in the Gazette, otherwise direct.

(4) Any areas which, immediately before the appointed day, were administered by the former Trustees as national reserves shall on that day become National Reserves for the purposes of this Act, and the powers, duties and functions which immediately before the appointed day were exercisable by the former Trustees in any such area shall thereafter be exercisable by the Director in so far as they conform to the provisions of this Part.

(5) Notwithstanding any law to the contrary, no person shall purport to establish any game reserve or National Reserve except with the approval of the Minister, and any such approval-

- (a) may be made subject to such conditions and restrictions, including conditions relating to the application of this Part to such reserve, as the Minister may, after consultations with the competent authority impose;

(b) shall be published in the Gazette.

(6) Any area which, immediately before the appointed day, was administered by a local authority as a game reserve shall become a National Reserve and shall continue to be so administered until the Minister, after consultations with the competent authority, by notice in the Gazette, otherwise directs either generally or in relation to any specified area.

**19.** (1) The Minister may, after consultations with the competent authority, by notice in the Gazette, declare that any specified area shall be a local sanctuary wherein any animal specified in the same or a later notice shall not be hunted.

Local sanctuaries

(2) The area of a local sanctuary shall not exceed two thousand six hundred hectares.

Cap. 376 (1962)

(3) All local sanctuaries declared to be such under the Wild Animals Protection Act and existing immediately before the appointed day are hereby declared to be local sanctuaries for all the purposes of this Act.

(4) Any person who in a local sanctuary hunts any animal which is specified in respect of that sanctuary under subsection (1) of this section shall be guilty of a forfeiture offence.

**20.** (1) The Director may enter into any agreement with a competent authority which the Director may consider necessary for the purpose of ensuring that animal migration patterns essential to the continued viability of a National Park or National Reserve are maintained.

Agreements by Director.

(2) An agreement under this section may, with the approval of the Minister, provide for compensation to be payable to the competent authority concerned in respect of rights forgone or of damage caused by animals.

#### PART IV – CONTROL HUNTING

**21.** An honorary game warden appointed under section 4 of this Act shall, for all the purposes of this Part, be deemed to be a warden.

Powers Honorary game wardens.

**22.** (1) Save as otherwise expressly provided by this Act or the rules any person who-

Prohibition of unlicensed hunting etc.

(a) hunts any protected animal; or

(b) hunts any game animal otherwise than as the holder of, and in accordance with any

conditions attaching to, a game licence authorizing him to hunt such animal, shall be guilty of a forfeiture offence.

(2) Save as otherwise provided by this Act or the rules, any person who hunts any game bird otherwise than as the holder of, and in accordance with any conditions attaching to, a game licence authorizing him to hunt such bird shall be guilty of an offence.

**23.** (1) Subject to the provisions of subsection (4) of section 3 of this Act, a licensing officer may, in his discretion, issue in accordance with the rules a game licence in a prescribed form.

(2) Game licences shall, subject to Part I11 of this Act, authorize the hunting of such game animals or game birds, in such areas, for such periods and subject to such conditions as may be prescribed, and the prescribed fees shall be payable in respect of the issue thereof.

Game licences

(3) Notwithstanding any other provision of this Act, no game licence shall authorize the holder thereof to hunt any game animal unless-

(a) he is a professional hunter; or

(b) he is accompanied at the time of hunting by a professional hunter; or

(c) his licence is endorsed by the Director, after such inquiry or test as to competence as

the Director may think fit, to the effect that the holder may, subject to any conditions which the Director may consider necessary, hunt unaccompanied by a professional hunter either generally or in respect of the animal actually hunted.

**24.** (1) For the purpose of computing the number of provisions game animals or game birds which may be hunted under a game licence, all such animals or birds which are killed wounded or captured shall be taken into account.

General provisions as to game licences

(2) Every game licence shall be personal to the person to whom it was issued and shall not be transferable.

(3) Every holder of a game licence shall carry the licence with him at all times when engaged upon any of the activities authorized by the licence, and any person who fails to comply with this subsection shall be guilty of an offence.

(4) Subject to the provisions of this Act relating to the cancellation of licences, a game licence shall be valid for the period specified in the licence: Provided that a game licence shall cease to be valid as soon as all the animals the hunting of which is authorized by the licence have been killed, wounded or captured.

**25.** (1) Every holder of a game licence shall keep a register in the prescribed form of the prescribed particulars of every game animal killed, wounded or captured by him, or deemed by any provision of this Act to have been killed, wounded or captured by him.

Game registers

(2) Every professional hunter shall keep a register in such form, and containing such particulars, as the Director may require at the time that the professional hunter's licence is issued.

(3) So far as is practicable, every register kept under this section shall have the registrable particulars entered therein at the conclusion of each day's hunting.

(4) A person required to keep a register under this section shall-

(a) produce the register at any reasonable time upon being requested to do so by an authorized officer;

- (b) produce the register to a warden within seven days after the date upon which any game licence held by him ceases to be valid under subsection (4) of section 24 of this Act;
  - (c) furnish to the Director within twenty one days after such date a copy of the register.
- (5) Any person who, being required by this section to keep a register-
- (a) fails so to do;
  - (b) makes, or is privy to the making of, any fake entry in such register;
  - (c) fails to record in the register any particulars which are required to be so recorded; or
  - (d) fails to produce the register, or to furnish a copy thereof, when required by - subsection (4) this section so to do,

shall be guilty of an offence, and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

**26.** (1) Where the Director is satisfied that it is desirable so to do for scientific purposes, or by reason of any circumstances of an unusual or emergency nature, he may, with the prior approval of the Minister in each case, issue a special authorization to hunt any animal in any specified area other than a National Park.

Special  
authorization to  
hunt.

- (2) An authorization issued under this section-
- (a) shall be subject to such conditions as the Director may deem it necessary or desirable to impose thereon;
  - (b) shall, except as may be expressly provided by any such condition, be deemed to be a game licence for all the purposes of this Act; and
  - (c) shall be subject to the payment of such fee as the Minister may, on granting his approval thereof, direct.

**27.** (1) Any person who, not being the holder of a professional hunter's licence issued under this section-

Professional  
hunters.

- (a) carries on the business of a professional hunter, or advertises himself of solicits custom in connection with such business; or
- (b) for hire or reward with the intention of making profit, assists any person to hunt any game animal or game bird,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a period not exceeding three years, or to both such fine and imprisonment:

Provided that paragraph (b) of this subsection shall not apply to any person employed solely as a tracker, gun-bearer or beater.

(2) The Director may issue a professional hunter's licence to any person who is able to satisfy the Director that by reason of his competence with firearms, knowledge of game animals and of the written law pertaining thereto, and of any other matters which the Director may consider relevant, he is a fit and proper person to carry on the business of a professional hunter

Provided that where a person seeks a professional hunter's licence in continuation of one previously held by him he shall, in the absence of any evidence to the contrary, be deemed to be such a fit and proper person.

(3) There shall be paid in respect of the issue of a professional hunter's licence such as may be prescribed and, subject to the provisions of if his section, every such licence shall be valid for the period of twelve months following the date of issue thereof.

(4) If the holder of a professional hunter's licence is convicted of any offence against this Act or the rules-

- (a) he shall, within fourteen days after the date of his conviction, surrender his licence to the Director for cancellation; and
- (c) he shall not be eligible to be issued with another such licence for such period as the Director may determine having regard to the circumstances of the case and any person who fails to surrender his licence accordingly shall be guilty of an offence.

(5) A professional hunter's licence shall not authorize the hunting of any animal by the holder thereof except in so far as may be necessary in his own defense or in the defence of any other person or to prevent the escape of a wounded animal :

Provided that where an animal so killed was wounded by the holder of a game licence employing the professional hunter it shall, for all the purposes of this Act, be deemed to have been killed by such holder.

(6) Where any person who commits an offence against this Act or the rules is accompanied by a professional hunter. employed by him, at the time that such offence is committed, the professional hunter shall, unless he establishes to the satisfaction of the court that he used all due diligence to prevent the commission of the offence and was unable to prevent the commission thereof, be guilty of the like offence.

**28.** (1) The Director may, without assigning any reason therefor, suspend or cancel any licence or authorization issued under this Part, and in any such case a proportionate part of the fee paid for such licence may be refunded to the person to whom it was issued.

Cancellation,  
etc. of  
Licences.

(2) Any officer authorized under this Part to issue any licence or authorization may, if he thinks fit and without assigning any reason therefor, refuse to issue such licence or authorization.

**29.** (1) No game licence shall authorize hunting on any private land unless it is expressed so to do by endorsement, specifying the land concerned, made by a licensing officer, and no such endorsement shall be made unless-

Hunting on private  
land.

- (a) the holder of the licence is the owner of the land concerned; or

- (b) the person applying for the endorsement produces to the licensing officer the written consent of the owner of the land thereto; or
- (c) the land concerned is registered under subsection (2) of this section.

(2) Where the owner of private land desires to afford facilities for the hunting of game animals or game birds on such land, he may register the land, in such manner and on furnishing such particulars as may be prescribed, with the Director or with such officer of the Service as the Director may, by notice in the Gazette, appoint for that purpose, and in any such case-

- (a) the registration may be effected in respect of the whole of the land of such owner or of such portion thereof as the owner may specify;
- (b) the registration may be made subject to such conditions as to the giving of notice to the owner or his representative of intention to hunt, or as to the types of animals which may be hunted, as the owner may specify, and any endorsement under this section in respect of the land shall include a reference to such conditions;
- (c) there shall be paid to the registered owner such fees, whether calculated as a proportion of the fees paid in respect of licences endorsed as valid in respect of the land of the owner or otherwise, as may be prescribed.

**30.** (1) Nothing in this Act shall make it an offence for any person to kill or injure by any means any animal in immediate defence of human life: Provided that the exemption provided by this subsection shall not apply where such killing or injuring is done by any person who, at the time thereof; was committing any offence against this Act or is done, under circumstances amounting to deliberate provocation or enticement of such animal by or with the knowledge of such person.

Protection of human life.

(2) Where any protected animal or game animal is killed in immediate defence of human life the person killing such animal shall make a report of the fact at the earliest practicable moment to an officer of the Service.

**31.** Notwithstanding anything to the contrary in this Act, any occupier of land or his servant or any owner of crops or stock or his servant, may, if necessary for the protection of his land, crops or stock, kill any game animal which is causing material damage or loss to his land or to any crop or stock thereon.

Protection of protection

**32.** (1) Where any person, in any circumstances whatsoever, wounds any protected animal or game animal he and any professional hunter accompanying him shall make every endeavour to kill or recover such animal at the earliest opportunity.

Wounded animals

(2) Where an animal mentioned in subsection (1) of this section is not killed of, recovered within twenty-four hours after the wounding thereof the person by whom the animal is wounded shall forthwith make a report of the facts to an officer of the Service, who shall take such action upon such report as he may consider necessary.

(3) Any person who fails to comply with the provisions of this section shall be guilty of an offence and liable-

- (a) if the animal wounded is a dangerous animal, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding, two years. or to both such fine and imprisonment;
- (b) in any other case, to a fine not exceeding two thousand shillings or to imprisonment



for a term not exceeding twelve months, or to both such fine and imprisonment.

**33.** Any person who-

- (a) in any circumstances whatsoever, causes unnecessary or undue suffering to any protected animal or game animal; or
- (b) without the permission of a warden, is in possession of or has in his control or keeping, any such animal which has been maimed or mutilated, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding eighteen months, or to both such fine and imprisonment.

Causing suffering

**34.** (1) No person shall-

- (a) sell, buy, use or have in his possession any snare or similar trap having a jaw length of four inches or more, or any snare or similar contrivance made of wire;
- (b) for the purpose of or in connection with hunting or assisting in hunting any animal, cause any fire or surround any animal with fire, or make, use or have in his possession any of the following things-
  - (i) any firearm capable of firing more than one missile as a result of one pressure of the trigger or of reloading itself without further action by the operator;
  - (ii) any explosive, other than the propellant charge in firearms cartridges, or any missile containing explosive;
  - (iii) any fixed stake or similar sharp instrument;
  - (iv) any set-gun, pitfall, game-pit, trench or similar excavation;
  - (v) any net, fence or enclosure;
  - (vi) any gin, trap, snare or similar device other than such as are mentioned in paragraph of this subsection;
  - (vii) any poison or like injurious substance, or any poisoned weapon;
  - (viii) any other means or method of hunting which may be prescribed as unlawful;
- (c) hunt any game animal during the period between seven o'clock in the evening and half-past five o'clock in the morning;
- (d) partake in any game drive other than a drive of birds;
- (e) drive any game animal into water for the purpose of incapacitating, killing or capturing it.

Unlawful methods of hunting.

(2) Any person who contravenes any of the provisions of subsection (1) of this section shall be guilty of a forfeiture offence.

(3) Any person who is found away from his place of abode in possession of any of the things mentioned in paragraph (b) of subsection (1) of this section in circumstances which, having regard in particular to the place in which he is so found and the place to or from which he is or appears to be travelling, raise a reasonable assumption that he has used, or intends or is about to use, such thing for hunting shall, unless he proves otherwise to the satisfaction of the court, be presumed to have such thing in his possession for the purpose of hunting an animal.

**35.** (1) No person shall approach in a motor vehicle Aircraft. or aircraft to within five hundred metres of any game animal for the purpose of hunting such animal.

Aircraft, motor vehicles, etc.

(2) No person shall use an aircraft or radio telephone for locating any game animal for the purpose of that animal being hunted or killed within forty-eight hours of such use.

(3) No person shall use any aircraft, motor vehicle or mechanically propelled vessel in such a manner as to drive, stampede or unduly disturb any protected animal or game animal for any purpose whatsoever : Provided that this subsection shall not prohibit the use of an aircraft or radio telephone or vehicle-

- (a) for the purpose of driving any animal away from a recognized aerodrome or airfield or from any other area if necessary to enable an aircraft to land safely;
- (b) for the purpose of driving any animal away from land for the time being under cultivation or in use for the grazing or herding of stock; or
- (c) for any other purpose which may be prescribed.

(4) No person shall discharge any firearm at or in the direction of any game animal from a motor vehicle or aircraft or from within four hundred metres of a motor vehicle.

(5) No person shall shoot any game animal from a mechanically propelled vessel whilst such vessel is in mechanically induced motion.

(6) Any person who contravenes any of the provisions of this section shall be guilty of a forfeiture offence.

**36.** (1) No person shall, without the written permission use of a warden, which may be refused without any reason being dogs. assigned therefor, use dogs for the purpose of hunting any game animal.

Use of dogs

(2) Any person who uses a dog in contravention of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, and the court by which such person is convicted may also order the destruction of such dog.

**37.** (1) The Minister may, by notice in the Gazette, prohibit the hunting of any game animal, or may by such notice impose such conditions or restrictions in respect of the use of any specified means of hunting, weapon or missile as he may think fit.

Power to prohibit use of certain weapons, etc.

(2) Any person who hunts any animal-

- (a) by any means, weapon or missile the use of which is prohibited under this section; or
- (b) in breach in respect of the use of the means, weapon or missile used by him in such hunting, shall be guilty of a forfeiture offence.

**38.** (1) The Minister may, by notice in the Gazette, declare that, during such period and within such area as may be specified in the notice, the hunting of such game animals or game birds as may be so specified shall be unlawful.

Close seasons.

(2) Any person who hunts any animal in contravention of a notice under this section shall be guilty of a forfeiture offence.

#### PART V – TROPHIES AND LIVE ANIMALS

**39.** (1) Save as otherwise provided in this Act, the following shall be Government trophies and the property of the Government-

Government trophies

- (a) any trophy found without an owner;
- (b) any protected animal, game animal or game bird found dead or killed by accident or mistake;
- (c) any protected animal or game animal killed in defence of life, or in other

- circumstances authorized by or under this Act, by a person who is not the holder of a game licence authorizing him to hunt such animal;
- (d) any animal or trophy in respect of which a breach of any of the provisions of This Act or the rules has been committed;
  - (e) any animal killed by an officer of the service in the course of his duties as such;
  - (f) the meat of any animal mentioned in this subsection.

(2) Any person who by any means obtains possession a Government trophy shall forthwith make a report thereof an authorized officer and shall hand such trophy over to such officer.

(3) Any person who-

- (a) fails to make a report required by subsection (2) of this section; or
  - (b) is unlawfully in possession of, or unlawfully deals in, any government trophy,
- shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

(4) In any proceedings against any person for an offence against this section, the onus of proving that any possession or dealing was lawful shall be upon that person.

**40.** (1) After the appointed day no person shall import any trophy, or any unmanufactured ivory or rhinoceros horn of any description, unless it is imported through a customs port of entry and produced at the time of importation to a proper officer of customs: Provided that no person shall, without the written permission of the Minister, import any trophy of a class which the Minister, by notice in the Gazette, has declared to be a prohibited import.

Importation of trophies

(2) An officer of customs to whom any trophy, ivory or horn is produced under subsection (1) of this section shall issue to the person by whom it is produced an acknowledgement of production in the prescribed form, and shall forthwith send a copy of the acknowledgement to the Director.

(3) Within fourteen days after any importation under this section, the importer shall produce the trophy, ivory or horn concerned, together with the acknowledgement of production issued under subsection (2) of this section, to the Director who shall weigh, mark and register the trophy, ivory or horn in such manner if any as may be prescribed and shall, unless the importer is in possession of Certificate of ownership) or equivalent document issued by a competent authority of the country of origin of the trophy, ivory or horn, and subject to subsection (4) of this section, issue a certificate of ownership in respect thereof.

(4) A certificate of ownership shall not be issued under subsection (3) of this section in respect of any trophy, ivory or rhinoceros horn imported directly from any country to which this subsection has been applied by the Minister by notice in the Gazette unless the Director is satisfied that such trophy, ivory or horn has been lawfully exported from such country.

(5) Any person who-

- (a) imports or attempts to import any trophy, ivory or rhinoceros horn in contravention of subsection (1) of this section; or
- (b) fails to produce any trophy, ivory or rhinoceros horn as required by subsection (3) of this section,

shall be guilty of a forfeiture offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment .

**41.** (1) Where any person kills or captures any animal under the authorization of a game licence, he shall, within thirty days after such killing or capture, produce the animal or, as the case may be, any trophy of the animal which he wishes to retain, to a warden who shall issue a certificate of ownership in respect thereof:

Certificates of ownership relating to hunted animals.

Provided that, if such person wishes to have any process applied in Kenya to any such trophy, a warden may, upon application made to him in that behalf, extend the said period of thirty days for such further period as he may consider necessary to enable such processing to be carried out before the issue of a certificate of ownership in respect of the completed trophy.

(2) Any person who fails to produce any animal or trophy as required by this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment: Provided that it shall be a defence to any proceedings under this subsection for the accused to prove to the satisfaction of the court that his failure to comply with the provisions of subsection (1) of this section arose from circumstances beyond his control and that he produced the animal or trophy concerned to a warden at the earliest practicable time.

**42.** (1) Save as otherwise provided by this Act, any person who is in possession of any trophy, or of any ivory or rhinoceros horn of any description, without also being in possession of trophies. Possession of a certificate of ownership in respect thereof shall be guilty of an offence and-

Certificates of ownership for possession of trophies. 16 of 1977, Sch.

- (a) if such is the holder of a dealer's licence under section 43 Of this Act, be liable to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; or
- (b) in any other case, be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(2) This section shall not apply to the possession of a trophy by any person who has such possession solely by reason of being a receiver or trustee in bankruptcy or the personal representative of a deceased person.

(3) In this section, and in sections 44 and 45 of this Act, "certificate of ownership" means-

- (a) a certificate of ownership issued under any of the provisions of this Act;
- (b) a certificate of ownership issued under any former law relating to wildlife; and
- (c) a certificate of ownership or equivalent documents issued by a competent officer or other authority of the country of origin of the trophy concerned.

**43.** (1) No person shall carry on the business of a dealer unless he is the holder of a valid dealer's licence issued by a licensing officer.

Dealers

(2) An application for a dealer's licence shall be made to a licensing officer in the prescribed form, and the licensing officer may, in his discretion, grant or, without assigning any reason therefor, refuse to grant such licence.

(3) A dealer's licence

- (a) shall be in the prescribed form;

(b) shall be subject to such conditions as may be prescribed or authorized by the rules regulating the manner, place or hours in, at or during which the licensed business may be carried on and the trophies or class of trophies which may be dealt in;

(c) shall be subject to the payment of the prescribed fee, and different fees may be prescribed for different classes of dealers;

(d) shall, subject to any other provision or this Act, be valid for a period of twelve months from the date of issue thereof.

(4) Any person who-

(a) not being the holder of a dealer's licence, carries on the business of a dealer; or

(c) being the holder of a dealer's licence, fails to comply with any condition to which the licence is subject, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment transfer of trophies.

**44.** (1) Subject to subsection (3) of this section, no person shall transfer the ownership of any trophy to any , other person by way of gift, sale or otherwise unless he is in possession of a certificate of ownership in respect of 'the . trophy and unless, at the time of the transfer, he endorses the certificate with the date of transfer and the name of the person to whom the trophy is transferred and hands over the certificate to that other person.

Transfer of trophies

(2) Any person who transfers any trophy to another otherwise than in compliance with subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

(3) Nothing in this section shall apply to any transfer of ownership of a trophy by operation of law or in consequence of the death of the owner of such trophy import of

**45.** (1) No person shall export any live protected animal, trophies, etc. game animal or game bird except-

(a) through a customs port of entry; and

(b) under and in accordance with the conditions of a permit, issued by the Minister authorizing such export, for which no fee shall be payable but which may be refused by the .Minister .in his discretion without assigning any reason therefor.

Export of trophies etc  
11 of 1983, sch.

(2) No person shall export any trophy other than a live animal except through a customs port of entry and upon production to a proper officer of customs of a certificate of ownership relating to such trophy.

(3) Notwithstanding subsections (1) and (2) of this section, no person shall, without the written permission of the Minister, export any animal or trophy of a class which the Minister, by notice in the Gazette, has declared to be a prohibited export.

(4) Nothing in {his section shall apply to any animal or trophy which is-

(a) in transit through Kenya if such animal or trophy is accompanied by the necessary transit documents issued in the country of origin or export and is entered through a customs port of entry; or

- (b) accompanied by a person who is in possession of, and produces to a proper officer of customs, a certificate issued in Tanzania or Uganda certifying that such person is lawfully authorized to export. such animal or trophy, and such person satisfies the officer of customs that-
- (i) the certificate was issued to him; and
  - (ii) that he is himself exporting the animal or trophy from Kenya.

(5) Any person who exports or attempts to export any animal or trophy in contravention of any of the provisions of this section shall be guilty of a forfeiture offence.

**46.** The Minister may, by notice in the Gazette, exempt any class of trophy from all or any of the provisions of this Part.

Exemptions

**47.** (1) The Minister may, by regulation, prohibit, control or regulate the possession or movement of, or any dealings of any nature whatsoever in, any meat.

Game meat

(2) Without prejudice to the generality of subsection (1) of this section, regulations thereunder may-

- (a) provide for the licensing of persons and premises;
- (b) provide for the inspection of premises other than dwelling-houses;
- (c) specify the conditions upon which game-ranching and game cropping may be undertaken, and provide for the exemption of game-ranching and game cropping from the provisions of this Act relating to game or other licences;
- (d) prescribe the fees to be payable in respect of any licence, permit or authorization issued or given thereunder;
- (e) impose penalties, in respect of any breach of the regulations, not exceeding a fine of twenty thousand shillings or imprisonment for a term not exceeding three years or both such fine and imprisonment;
- (f) provide for the forfeiture of any meat in respect of which any breach of the regulations occurs.

**48.** (1) No person shall keep in captivity any live protected animal, game animal or game bird except in accordance with a permit issued by a licensing officer in that behalf.

Permit to  
keep alive

(2) A permit under this section-

- (a) shall be in addition to any certificate of ownership required under this Act;
- (b) shall be issued, upon application, by the licensing officer unless he has reason to believe that the applicant is not a proper person to keep the animal when the licensing officer may refer the matter to the Director who may direct the licensing officer to issue or refuse the permit, and the decision of the Director thereon shall be final.

(3) Any animal or birds kept under the authority of a permit under this section shall be made available for inspection, together with the cage or other enclosure in which it is normally kept, by any warden at all reasonable times.

(4) If, upon an inspection made under this section, a warden is satisfied that the animal or bird concerned is not being adequately cared for, or that the conditions under which it is kept are not reasonably healthy or humane, the warden shall report the facts to the Director who may thereupon cancel the permit concerned and confiscate the animal or bird concerned which shall become the property of the Government.

(5) Any person who keeps any animal or bird in contravention of subsection (1), or fails to make an animal, bird, cage or enclosure available for inspection as required by subsection (3), of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and-imprisonment.

#### PART VI – ENFORCEMENT

**49.** (1) An authorized officer may stop and detain any Powerful person who he sees doing any act for which a licence or officers. permit is required under the provisions of this Act or the rules, for the purpose of requiring such person to produce such licence or permit, and if such person fails to produce the appropriate licence or permit he may be arrested by the officer without a warrant unless he furnishes his name and address and otherwise satisfies the officer that he will duly answer any summons or other proceedings which may be taken out or instituted against him.

Powers of  
officers

(2) If an authorized officer has reasonable grounds for believing that any person has committed an offence against this Act or the rules he may-

(a) require such person to produce for inspection-

- (i) any animal, or any meat or other part of an animal, in the possession of such person;
- (ii) any firearm or other weapon, trap, net or poison, or any instrument, material or thing, in relation to or in connection with which any offence appears to such officer to have been committed;
- (iii) any licence, permit or other document required to be had or be kept by such person under the provisions of this Act or the rules;

(b) enter and search, with or without assistance, any land, building, tent, vehicle or boat in the occupation or possession of such person, and open and search any baggage or other thing in the possession of such person

Provided that no dwelling-house shall be entered without a warrant except under exceptional circumstances;

(c) seize and detain anything which appears to the officer to be a Government trophy, or any vehicle, boat, firearm or other weapon, trap, net or poison, or any instrument, material or thing whatsoever in relation to or in connexion with which any offence against this Act or the rules appears to have been committed or which appears to the officer to have been used in, or for the purposes of, the commission of any such offence, whether or not it is in the immediate possession of any person;

(d) arrest and detain such person if he has reason to believe that such person will not appear and answer any charge which may be preferred against him.

(3) For the purpose of the more effective enforcement of the provisions of this Act, a senior officer, or a subordinate officer authorized by him in that behalf, may erect a temporary barrier across any road or place and any person approaching such barrier shall, on being required by such officer so to do, stop and allow such officer to carry out such search of his own person and of any vehicle as may appear to the officer to be necessary or expedient.

- (4) Any person who-
- (a) without reasonable excuse, fails to produce anything which, under the powers conferred by this section, he is required to produce; or
  - (b) fails to stop or to allow a search when so required under subsection (3) of this section; or
  - (c) assaults, resists or willfully obstructs any officer in the exercise of the powers conferred upon such officer by this section,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

(5) Neither the Government nor any officer shall be responsible for any loss or damage which may occur to any property during the act of seizure, or whilst such property is detained, under this section, unless the same has been caused maliciously or fraudulently or by gross neglect.

**50.** (1) Any person arrested under section 49 of this Act shall forthwith be taken before a court to be dealt with according to law.

(2) Where anything other than a Government trophy is seized and detained under section 49 of this Act, it shall be returned to the person from whom it was seized within a period of three months after the date of seizure unless within such period some person is charged with a forfeiture offence and it is alleged that-

- (a) such offence was committed in relation to or in connection with such thing; or
- (b) such thing was used in, or for the purpose of, the commission of such offence.

(3) Notwithstanding the provisions of subsection (2) of this section-

- (a) where anything seized and detained under section 49 of this Act is subject to speedy and natural decay, and it is not reasonably practicable to take effective steps to preserve the same, the officer by whom the same is seized or an officer to whose orders he is subject may, without obtaining' any order from a court, destroy or otherwise dispose of that thing if he considers it desirable so to do;
- (b) where any apparently unlawful means of hunting cannot practicably be removed from its location it may forthwith be rendered inoperative;
- (b) where the owner of anything so seized and detained cannot be ascertained, such thing shall be forfeited to the Government.

**51.** (1) Where the holder of any licence, permit permission or authorization granted or issued under this Act or the rules is convicted of an offence against this Act, such conviction shall, unless the court otherwise directs for reasons to be recorded in writing, have the effect of cancelling such licence,

(2) The holder of any licence, permit, permission or authorization which is cancelled under subsection (1) of this section shall, within fourteen days from the date of conviction, surrender to the court the licence or permit, or any document evidencing the permission or authorization, and any person who fails to comply with the provisions of this subsection shall be guilty of an offence.

Disposal of  
persons  
arrested  
and things  
seized

Effect of  
conviction  
and powers  
of court



(3) Where any person is convicted of an offence against this Act or the rules in respect of any game-pit, pitfall, trench or similar excavation, or any fence or enclosure, or any other device whatsoever fixed to the ground, which such person has unlawfully made, used or had in his possession for the purpose of hunting, the court may, in addition to any other punishment, order that such game-pit, pitfall, trench, excavation, fence, enclosure or device shall be destroyed or obliterated by the Service in such manner as the court may specify, and any expenditure incurred on account of such order shall be a civil debt recoverable summarily from such person by the Government.

(4) A court before which a person is convicted of an offence against this Act or the rules shall forthwith make a report in the prescribed form to the Director containing the details of the offence and the sentence and particulars of any other order made by the court in relation to such conviction.

**52.** (1) Where a person is convicted of a forfeiture offence the court shall, unless it considers, for reasons to be recorded by the court, that in, all the circumstances of the case it would be unjust so to do, order that any animal, trophy, weapon, net, vehicle, instrument, material or thing whatsoever, whether similar to those enumerated or not, in relation to, in connection with, or by means of which the offence has been committed shall be forfeited to the Government .

Forfeiture

(2) Where anything other than a Government trophy has been seized under section 49 of this Act and a person charged with a forfeiture offence in relation thereto within three months of such seizure has not appeared to answer such charge, the Director may apply to a court for an order that such thing shall be forfeited to the Government, and the court may make such order in relation to such application as it thinks just.

(3) Where a court other than the High Court fails or refuses to make an order for forfeiture under this section the Director may appeal against such failure or refusal to the High Court which may make such an order or may dismiss the appeal, and the decision of the High Court thereon shall be final.

**53.** Save as otherwise expressly provided in this Act, any person who is convicted of an offence against this Act or the rules, or under any law relating to the preservation of wild game for the time being in force in Tanzania or Uganda, shall be disqualified from holding a licence or permit under this Act or the rules for a period of three years from the date of such conviction: Provided that the Minister may, in any particular case, direct that this section shall not apply or that the said period of disqualification shall be reduced.

Ineligibility to hold licences, etc.

**54.** Any warden may, subject to the directions of the Attorney-General, conduct any prosecution for an offence against this Act or the rules, and shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

Conduct of prosecutions.  
Cap. 75.

**55.** Nothing in this Act shall be constructed as rendering an officer of the Service guilty of an offence against this Act or the rules in respect of anything done by him in the course of his duty as such officer, but where such an officer is charged with such an offence the onus of proving that anything done by him was done in the course of his duty shall lie upon him.

Exemption of officers of the service

**56.** (1) Any person who is guilty of an offence against this Act for which no other penalty is expressly provided shall be liable-

General penalties.

(a) if the offence is committed in respect of a protected animal or an animal mentioned in

Part I of the First Schedule to this Act, or in respect of any trophy of such animal, to a fine not exceeding forty thousand shillings or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment;

- (b) if the offence is committed in respect of an animal mentioned in Part II of the said Schedule, or in respect of any trophy of such animal, to a term not exceeding twenty thousand shillings or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment;
- (c) if the offence is a forfeiture offence not included in paragraph (a) or (b) of this section, to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;
- (d) in any other case, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) Upon the conviction of any person for an offence against this Act which relates to more than one animal or trophy the court may inflict an additional punishment in respect of each animal or trophy after the first of a fine not exceeding six thousand shillings or one-half of the fine prescribed by this Act for such offence, whichever is the less.

**57.** (1) Where a corporation is guilty of an offence against this Act or the rules, every director, secretary or officer of the corporation shall, unless he proves that the offence was committed without his knowledge or consent, also be liable to be prosecuted, tried, convicted and punished for that offence.

Corporations  
and firms.

(2) Where any firm or individual has, in the course of business, committed any offence against this Act or the rules then, without prejudice to the liability of such firm or individual for such offence, every manager or other person concerned in the management of such business shall, unless he proves that the offence was committed without his knowledge or consent, also be liable to be prosecuted, tried, convicted and punished for that offence.

#### PART VII – THE WILDLIFE FUND

**58.** (1) There is hereby established a body of trustees to be known as the Wildlife Fund Trustees which shall, by that name, be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued and may purchase, hold, manage and dispose of movable and immovable property and enter into all such contracts as it may deem necessary or desirable.

Wildlife  
fund  
trustees

- (2) The trustees shall consist of.
  - (a) the Permanent Secretary of the Ministry for the time being responsible for the administration of this Act, or his nominee;
  - (b) one person appointed by the Minister for the time being responsible for finance;
  - (c) the Permanent Secretary of the Ministry of Local Government, or his nominee;
  - (d) not less than seven and not more than twelve other persons appointed by the Minister;
  - (e) Permanent Secretary of the Ministry of Natural Resources, or his nominee.

(3) The Minister shall nominate one of the Trustees to be the Chairman.

(4) The Director or his nominee shall be the secretary to the Trustees.

(5) The quorum necessary for the transaction of the business of the Trustees shall be one-third of their total number.

(6) The seal of the Trustees shall be authenticated by the signature of any two of their number, and any document not required by law to be under seal made by, and all decisions of, the Trustees may be authenticated by the signature of any two of their number.

(7) Each appointed Trustee shall, unless previously removed by the Minister, remain in office for one year from the date of his appointment, but shall be eligible for re-appointment.

**59.** (1) There is hereby established a Wildlife Fund which shall be vested in, and operated and managed by, the Trustees.

The wildlife fund.

(2) There shall be paid into the Fund

- (a) all sums vested in the Trustees by the Fourth Schedule to 'this Act;
- (b) donations, loans or other moneys received from any source for the purposes of wildlife conservation or management;
- (c) any sums from time to time provided by Parliament for the purposes of the Fund.

(3) There shall be paid out of the Fund-

- (a) sums required to launch, operate or expand projects of wildlife conservation and management;
- (b) any other payments either generally or specially recommended by the Trustees and approved by the Minister.

**60.** (1) The Trustees shall cause to be kept all proper books of account and other books and records in relation to the Fund and to all the undertakings, funds, activities and property of the Trustees as the Trustees may see necessary, and shall, within a period of four months after the end of the financial year, or within such longer period as the Treasury may approve, prepare, sign and transmit to the Controller and Auditor-General—

Accounts and audit

- (a) a balance sheet showing in detail the assets and liabilities of the Fund;
- (b) a statement of income and expenditure in the financial year concerned; and
- (c) such other statements of account as the Trustees may deem necessary.

(2) The accounts of the Fund shall be examined, audited and reported upon annually by the Controller and Auditor-General and paragraphs (a) and (b) of subsection (1), and subsection (2), of section 26 of the Exchequer and Audit Act shall apply to such audit.

Cap. 412

## PART VII\_\_GENERAL PROVISION AS TO OFFICERS,ETC OF THE SERVICE

**61.** (1) Any person who, not being an officer of the Service, is in possession of any article which has been supplied to any such officer for use in the execution of his

Unlawful possession of service property, etc.

duties as such, and who fails to account satisfactorily for such possession shall be guilty of an offence.

- (2) Any person who, without lawful authority-
- (a) purchases or receives any article which has been supplied to an officer of the Service for use in the execution of his duties. as such; or'
  - (b) aids or abets any officer of the Service in selling or disposing of any such article; or
  - (c) assumes the uniform, or any distinctive part thereof. of, or otherwise pretends to act as or to personate, any officer of the Service, shall be guilty of an offence.

## PART IX – MISCELLANEOUS

**62.** (1) Where after the appointed day any person suffers any bodily injury from or is killed by, any animal or suffers any damage to or loss of crops or property or, in the case of a deceased person, any other person who was dependent upon him at the date of his death, may make application to a District Committee established by this section, for the award of compensation for such injury or death or damage or loss:

Compensation for personal injury, death or loss of property.

Provided that no such compensation shall be claimable where the injury or death or damage or loss occurred-

- (a) in the course of any conduct on the part of the person concerned which would constitute an offence under his Act; or
- (b) in the course of normal wildlife utilization activities.

(2) For the purposes of receiving and considering applications under subsection (1) of this section, and of awarding compensation thereunder, there is hereby established in each district a committee which shall consist of-

- (a) the District Commissioner, who shall be the chairman of the committee;
- (b) the Divisional Officer of the Service;
- (c) the Officer in Charge of the Police Division;
- (d) the District Medical Officer;
- (e) one Elected Member of the National Assembly re- presenting a constituency in the district, who shall be appointed by the Minister;
- (f) the Chairman of County Council in the district; and
- (f) three other members appointed by the Minister to represent the general public of the district.

(3) A District Committee may co-opt any person whom it considers may assist it either generally or for the consideration of any particular case.

(4) Compensation awarded under this section shall be payable out of moneys provided by parliament for that purpose.

**63.** Where any written law, or any document of title to ally land, makes a reference to improvements to such land, or to principles of goodhusbandry, or any like reference which relates to livestock, such reference shall be deemed to include any game-ranching, game cropping or other wildlife utilization lawfully undertaken under the rules.

Land use

Application of Act to non-game animals.

**64.** The Minister may, by notice in the Gazette, declare that any provision of this Act shall apply to any animal not mentioned in a Schedule, or to any trophy or meat of any such animal, and upon publication of such notice the animal concerned shall be deemed to be a game animal or game bird for the purposes of such provision.

**65.** (1) There is hereby established an Appeal Tribunal which shall be known as the Wildlife Conservation and Management Service Appeal Tribunal.

Appeal  
Tribunal.

(2) The Tribunal shall consider and determine appeals from any decision in any matter, wherein any person is aggrieved by a refusal of the grant or issue of, or by any condition other than a prescribed condition attached to, or the cancellation or suspension of, any licence, permit or authorization under this Act.

(3) Any person who is dissatisfied with the manner in which compensation is made or not made under section 62 of this Act may appeal to the Tribunal within sixty days.

(4) Appeals to the Tribunal under this Act shall be made within thirty days of the date of the decision appealed against.

(5) The Tribunal shall consist of-

(a) the Chairman appointed by the Minister; and

(b) not less than two and not more than five other members appointed by the Minister of whom one shall be appointed for his knowledge of wildlife management and conservation.

(6) There shall be an assessor to the Tribunal who shall be an advocate of not less than five years standing appointed by the Tribunal with the approval of the Minister and the assessor, when the Tribunal so requires, shall attend the proceedings of the Tribunal and advise it on questions of law.

(7) The Minister shall appoint a Public Officer to be secretary to the Tribunal.

(8) For the purposes of hearing and determining the appeals, by the Tribunal-

(a) the chairman or other person presiding may administer oaths;

(b) the chairman may, by notice under his hand, summon any person to attend and give evidence and to produce any relevant document.

(9) The cost of the appeal shall be in the discretion of the Tribunal, which may make such costs order as to costs as appear to it just; and any such costs shall be recoverable as a civil debt.

(10) Any person who, after payment or tender to him of his reasonable expenses, without reasonable excuse fails, when summoned by the Tribunal, to attend and give evidence or produce any document which he is required to produce shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

**66.** Where any licence, permit or authorization granted or issued under this Act or the rules has been lost or destroyed, the person to whom it was granted or issued may apply to the officer by whom it was issued for a duplicate thereof which may be issued at the discretion of such officer upon payment of the prescribed fee.

Duplicate  
licences.

**67.** The Minister may make regulations for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of such power, such regulations may-

Power  
to make  
regulations.

- (a) specify the conditions subject to which any licence, permit or authorization may be granted or issued under this Act;
- (b) prescribe the procedure to be followed in respect of an application for any such licence, permit or authorization;
- (c) classify game licences and specify the animals which [may be included in any game licence, and the numbers thereof which may be hunted under such licence;
- (d) limit the number of game licences which may be issued to any person or in respect of any specified period or area;
- (e) prohibit the use of any specified type or caliber of weapon in the hunting of any specified type of game animal or game bird;
- (f) restrict, regulate or otherwise control the supply of trophies to dealers;
- (g) make provision for the manner and time in which applications for the award of compensation under section 62 of this Act may be made, and for the regulation of the proceedings of District Committees established by that section, and also for the proceedings of the Appeal Tribunal established under section 65;
- (h) make provision for the training of personnel for the service.

**FIRST SCHEDULE (S. 2)**

**GAME ANIMALS**

**Part I**

Elephant	... ..	<i>Loxodonta africana</i> (Blumenbach).
Leopard	... ..	<i>Panthers pardus</i> (L.).
Lion	... ..	All races of <i>Panthera leo</i> (L-).
Rhinoceros	... ..	<i>Diceros bicornis</i> (L.),

**Part II**

Bongo	... ..	<i>Boocercus euryceros</i> (Ogilby).
Giraffe, Reticulated	... ..	<i>Giraffa Camelopardalis reticulata</i> (De Winton).
Giraffe, Rothschild	... ..	<i>Giraffa Camelopardalis rorhschildi</i> Krumbiegel.
Hartebeeste, Kenya	... ..	<i>Alcelaphus birselaphus Kenyae</i> (Gunther).
Kudu, Greater	... ..	<i>Tragelaphus strepsiceros</i> (Pallas).
Monkey, Black and White		
Colobus	... ..	All races of <i>Colobus abyssinicus</i> (Oken).
Oryx ,Beisa	... ..	<i>Oryx beisabeisa</i> (Ruppell)
Oryx. Fringe-cared	.....	<i>Oryx beisa callotis</i> (Thomas)

Zebra, Grevy	... ,..	<i>Equus grevyi</i> (oustalet)
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**Part III**

African Wild Cat	... ..	All races of <i>Felis lybica</i> Forster.
Buffalo	... ..	<i>Syncercus caffer</i> (Sparrman)
Bushbuck	... ..	<i>Tragelaphus scriptus</i> (Fallas)
Civet	... ..	All species of the genera <i>Civetticus</i> (Pocock) and <i>Nandinia</i> (Gray).
Crocodile	... ..	<i>Crocodilus niloticus</i> (Laurenti).
Dikdik	... ..	<i>Rhynoctragus kirki</i> (Gunther) and <i>Rhynoctragus guentheri</i> (Thomas).
Duiker, Red or Harvey's	... ..	All races of <i>Cephalophus natalensis</i> (Thunberg)
Duiker, Blue	... ..	All races of <i>Cephalophus monticola</i> (Thunberg).
Duiker, Foster's or Hook's, Black-fronted	... ..	All races of <i>Cephalophus nigrifrons</i> Gray
Duiker, Grey	... ..	All races of <i>Sylvicapra grimmia</i> (L.).
Eland	... ..	<i>Taurotragus Oryx</i> (Pallas)
Gazelle, Grant's	... ..	All races of <i>Gazella granti</i> Brooke.
Gazelle, Thomson's	... ..	<i>Gazella thomsoni</i> Gunther.
Genet	... ..	All species and races of genus <i>Genetta</i> (Oken).
Gerenuk	... ..	<i>Litocranius walleri</i> (Brooke).
Giant Forest Hog	.....	<i>Hylochoerus meinertzhageni</i> (Thomas).

Giraffe, Common	... ..	All races of <i>Giraffa camelopardalis</i> the genus
Hartebeeste, Coke's	... ..	<i>Alcelaphus buselaphus cokei</i> (Gunther).
Hippopotamus	... ..	<i>Hippopotamus amphibius</i> (L.)
Honey-badger (Ratel)	... ..	<i>Mellivora capensis</i> (Schreber).
Hyrax, Rock	... ..	<i>Procavia capensis</i> (Pallas)
Hyrax, Tree	... ..	<i>Dendrohyrax arboreus</i> (A. Smith).
	... ..	<i>Heterohyrax brucei</i> (Gray).
Impala	... ..	<i>Aepyceros melampus</i> (Liechtenstein)
Jackal	... ..	<i>Canis aureus</i> (L.), <i>Canis adustus</i> Sun <i>mesomelas</i> chreber
Klipspringer	... ..	<i>Oreorragus oreotrugrs</i> (Zimmermann)
Kudu, Lesser	... ..	<i>Tragelaphus imberbis</i> Blyth.
Zebra, Common	... ..	<i>Equus burchelli</i> (Gray).
Monkey, Blue or Syke's	... ..	All races of <i>Cercopithecus mitis</i> .
Monkey, Putty-nosed	... ..	All races of <i>Cercopithecus nictitans</i> (L.).
Monkey, Vervet	... ..	All races of <i>Cercopithecus aethiops</i> (L.)
Oribi, Cotton's and Haggard's and Kenya (Laurillard).	... ..	All species and races of genus <i>Ourebia</i>
Ostrich	... ..	All races of <i>Struthio camelus</i> (L.).
Otter, River and Clawless	... ..	All members of the genera <i>Lutra</i> (Brisson) and <i>Aonyx</i> (Lesson
Reedbuck, Bohot	... ..	<i>Redunca redunca</i> (Pallas)
Reedbuck, Chanler's	... ..	<i>Redunca fulvorufula chanleri</i> (W. Rothschild).
<b>Steenbok</b>	... ..	<b><i>Raphicerus campestris</i> (Thunberg).</b>
Suni	... ..	All races of <i>Nesotragus moschatus</i>
<b>Topi .....</b>		<b><i>Damaliscus Korrigum</i> (Ogilby).</b>
Warthog	... ..	<i>Phacochoerus aethiopicus</i> (pallas)
Wild Dog	... ..	<i>Lycaon picus</i> (Temminck)
Wildebeest	... ..	all races of <i>connochaetes taurinus</i> (Burchell).



**SECOND SCHEDULE**

**GAME BIRDS**

Oese and Ducks	... ..	All members of the family <i>Anatidae</i> (Geese, Ducks, Pochards, Teals, Wigeons, Shovelers).
Francolins, Partridges, Quails, Guinea Fowls and Spurfowls	.... ..	All members of the families <i>Phasianidae</i> and <i>Turnicidae</i> .
Lesser Bustards	... ..	All members of the genera <i>Eupodotis</i> , <i>Lophotis</i> and <i>Lissotis</i> .
Snipe	. ... ..	All members of the genera <i>Rostratula</i> , <i>C a p e l l</i> and <i>Lymnocyptes</i> .
Sandgrouse	... ..	All members of the family <i>Pferoclididae</i> .
Pigeons and Doves	... ..	All members of the family <i>Colurnbidae</i> .

### THIRD SCHEDULE

#### PROTECTED ANIMALS

1. Any game animal which is obviously immature, i.e. not fully grown.
2. Any female game animal when it is either-
  - (a) clearly or seemingly pregnant; or
  - (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.
3. Albino and melanic animals of whatever species.
4. All birds other than Game Birds, or queleas (genus *Quelea*) and Mouse-birds (genus *Collius*).
5. Any animal of any of the following species, sub-species or groups:

Aardvark	... ..	<i>Oryzomys afer</i> (Pallas).
Aardwolf	.....	exception of Coke's <i>hartebeeste</i> <i>Proreles</i>
Bat-eared Fox	... ..	<i>Otocyon megalotis</i> (Desmarest).
Caracal or Lynx	... ..	<i>Felis caracal</i> Schreber
Cheetah	... ..	<i>Acinonyx jubatus</i> (Schreber).
Dugong	... ..	<i>Dugong dugong</i> (Mueller).
Duiker, Abbott's	.....	<i>Cephalophus spadix</i> True.
Duiker, Yellow-backed	... ..	<i>Cephalophus silviculror</i> (Afzelius).
Golden Cat	... ..	<i>Felis aurata</i> Temminck.
Hunter's Antelope (or Hirola)	.....	<i>Damaliscus hunteri</i> (P.L Sclater)
Kob, Thomas's	... ..	<i>Adonota kob thomasi</i> (P.L Scclater)
Monkey, De Brazza's	... ..	All races of <i>Cercocebus patas</i> (schelegel)
Monkey, Mangabey	... ..	All races of <i>Cercebus galeritus</i> Peters
Monkey. Red or Patas	... ..	All races of <i>Erythrocerus</i> (Schrebe).
Potto	... ..	All races of <i>perodicticus pottos</i>
Pangolins S. Muller)	... ..	All races of family <i>Manidae porro</i> (P. L.
Roan Antelope	... ..	All races of <i>Hippotragus equinus</i> (Desmarest).
Sable Antelope	... ..	All races of <i>Hippotragus niger</i> (Harris).
Serval Cat	... ..	All races of <i>Felis brachyura</i> (Wagner) and <i>Felis serval</i> (Schreber).
Sitatunga Sclater)	... ..	All races of <i>Tragelaphus spekei</i> (P. L.
Turtle, Green Marine	... ..	<i>Chelonia mydas</i> (L.)
Turtle, Hawksbill	... ..	<i>Chelone imbricata</i> (L.)
Baboons	... ..	all races of <i>Papio anubis</i>
Bushbabies	... ..	All members of the family <i>Galagidae</i>

**APPENDIX 7**

**THE WILDLIFE (CONSERVATION AND MANAGEMENT)  
(AMENDMENT) ACT, ACT NO. 16 OF 1989 (KENYA)**

**An Act of Parliament to amend the Wildlife (Conservation and Management) Act to establish a Kenya Wildlife Service as a body corporate and for connected purposes**

.

**ENACTED** by the Parliament of Kenya as follows:-

**1.**This Act may be cited as the Wildlife (Conservation and Management) (Amendment) Act, 1989 and shall come into operation on a date to be appointed by the Minister by notice in the Gazette.

Short title and commencement.

**2.**Section 2 of the Wildlife (Conservation and Management) Act, in this Act referred to as the principal Act, is amended—

Amendment to section 2 of Cap. 376.

(a) by deleting the definitions of "appointed day" and "Trustees";

(b) by deleting the definitions of "Director", "Service" and "warden" and inserting the following new definitions—

"Director" means the Director of the Service appointed under section 3C;

"Service" means the Kenya Wildlife Service established under section 3;

"warden" means a member of the Service above the rank of ranger;

(c) by inserting the following new definitions in proper alphabetical order—

"Board of Trustees" means the Board Trustees of the Service constituted under section

**3B;**

"ranger" means a member of the Service, not being a warden, designated as such by the Director;

"State Corporations Advisory Committee" means the State Corporations Advisory Committee established under section 26 of the State Corporations Act.

3. The principal Act is amended by repealing section 3 and inserting the following new sections –

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

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

(3) The headquarters of the Service shall be in Nairobi.

(4) The Service shall be the successor to the Wildlife Fund Trustees established under section 58 (now repealed); and, subject to this Act all rights, duties, obligations, assets and liabilities of the Wildlife Fund Trustees existing at the date of the coming into operation of this Act shall be automatically and duly transferred to the Service and any reference to the Wildlife Fund Trustees in any written law or in any contract or document shall for all purposes be deemed to be a reference to the Service established under subsection (1).

3A. The functions of the Service shall be to

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

(b) advise the Government on establishment of National Parks, National Reserves and other protected wildlife sanctuaries;

(c) manage National Parks and National Reserves;

(d) prepare and implement management plans for National Parks and National Reserves and the display of fauna and flora in their National Park for the promotion of tourism and for the promotion and education of the inhabitants of Kenya;

(e) provide wildlife conservation education and extension services to create public awareness and support for wildlife policies;

(f) sustain wildlife to meet conservation and management goals;

(g) conduct and co-ordinate research activities in the wild of wildlife conservation and management;

(h) identify manpower requirements and recruit manpower at all levels for the Service for wildlife conservation and management;

(i) provide advice to the Government and local authorities and landowners on the best methods of wildlife conservation and management and be the principal instrument of the government in

Replacement of section 3 of Cap. 376.

Establishment of the service

Functions of the service.

pursuit of such ecological appraisal or controls outside urban areas as are necessary for human survival;

(j) administer and co-ordinate international protocols, convention and treaties regarding wildlife in all its aspects in consultation with the Minister;

(k) solicit by public appeal or otherwise, and accept and receive subscriptions, donations, devises and benefits (whether movable or immovable properly and whether absolute or conditional) for the general or special purposes for the Service or subject to any trust;

(i) render services to the farming and ranching communities in Kenya necessary for the protection of agriculture and animal husbandry against destruction by wildlife.

3B. (1) The Service shall be managed by a Board of Trustees of the Service which shall, subject to section 3c, consist of—

The board of Trustees

(a) a chairman appointed by the President;

(b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to wildlife;

(c) the Permanent Secretary in the Ministry for the time being responsible for finance;

(d) the Permanent Secretary in the Ministry for the time being responsible for local government;

(e) the Commissioner of Police;

(f) the Director of Forests;

(g) a representative of the Permanent Secretary in the Office of the President responsible for internal security;

(h) the Director of Veterinary Services;

(i) not more than six other trustees to be appointed by the Minister from amongst persons who are conversant with nature conservation in all its aspects.

(2) The chairman and the trustee- appointed under subsection (1)(a) and (i) shall hold office for three years and shall be eligible for reappointment.

(3)The Board shall elect a vice-chairman from among its members.

(4)The Board shall meet at least four times in every year.

(5) The chairman shall convene an extraordinary meeting of the Board within fourteen days after receipt by him of a written requisition to that effect signed by at least three trustees.

(6) Not less than seven days' previous notice of a meeting of the Board shall be given in writing to every trustee; but accidental failure to give or to receive such notice shall not invalidate the proceedings of a meeting.

(7) The quorum necessary for the transaction of the business of the Board shall be seven trustees inclusive of the person presiding; and all acts, matters or things authorized or required to be done by the Board shall be effected by a resolution passed by a majority of the members present and voting at a meeting at which there is a quorum.

(8) The chairman, or in his absence the vice-chairman, shall preside at meetings of the Board; but in case of the absence of both the chairman and vice-chairman at any meeting of the Board the trustees present at the meeting shall elect one of their number to preside at that particular meeting.

(9) At every meeting of the Board the chairman, or in his absence the vice-chairman or the trustee presiding, shall have a casting as well as a deliberative vote.

(10) Subject to this section and to Part III of the State Corporations Act, the Board of Trustees shall determine its procedure.

Cap. 446.

3c. (i) There shall be a Director of the Service Director, who shall be a member of the Board of Trustees, the chief executive and head of the Service.

Appointment of Director.

(2) The Director shall be appointed by the President.

(3) The Director or his nominee shall be the secretary to the Board of Trustees.

(4) The Director shall, on behalf of the Board of Trustees and subject to this Act, have the general superintendence of all matters within the scope of in his Act.

3D. (1) the Board of Trustees, in consultation with the State Corporations Advisory Committee, shall establish the terms and conditions for the appointment and enlistment of the members of the service. Service and the secondment of any other persons to serve with the Service.

Terms and conditions of appointment, enlistment and secondment to the service

(2) The Board of Trustees may appoint and may employ such members, agents or servants of the Service as may be necessary for the discharge of the functions of the Service under this Act upon the terms and conditions of service established under subsection (1).

(3) The Board of Trustees shall within a reasonable time provide for a staff superannuation scheme of a type that will enable the President to determine service with the Kenya Wildlife Service to be public service for the purposes of the Pensions Act.

Cap. 189.

3E. (1) Members of the Service shall be of the ranks of, the ranks specified in the Fourth Schedule and the members of Minister may. By notice in the Gazette, amend that Schedule.

Ranks of and direction of, the members of the service

(2) All members of the Service shall, in exercise of the powers and in performance of the duties conferred or imposed upon them under this Act, conform with any lawful instructions, directions or orders, whether general or specific, which may be given to them by the Director.

(3) The Director may, with the approval of the Board of Trustees, from time to time make administrative orders, to be called "Service Standing Orders", for the general control, direction and information of the members of the Service.

(4) The Board of Trustees may give such general or special directions to the Director as may be necessary for the more efficient carrying into effect of the provisions of this Act.

3F. (1) The Board of Trustees may issue a disciplinary code for the Service, and the disciplinary code may provide for the following matters –

- (a) the investigation of disciplinary offences and the hearing and determination of disciplinary proceeding and
- (b) disciplinary penalties and awards.

Disciplinary code and regulations.

(2) The following disciplinary penalties and awards, or any combination thereof, may be included in the disciplinary code for infringements of such code

- (a) dismissal from the Service;
- (b) reduction in rank;
- (c) confinement in a guard room or restriction to the confines of any camp or other area where a part of the Service is stationed, for not more than fourteen days;
- (d) fines;
- (e) where the offence has occasioned any expense, loss or damage, stoppages of pay
- (f) extra bills, parades or fatigues;
- (g) severe reprimand;
- (h) reprimand;
- (i) admonition.

(3) A disciplinary code issued under this section may provide that a member of the Service committing a disciplinary offence may be arrested without warrant by or on the order of a member senior to himself or placed in command over him, who may, if the circumstances so warrant, confine that member or cause that member to be confined in a building suitable for the purpose, pending the determination of disciplinary proceedings.

3G. (1) No member of the Service shall be or become a member of

- (a) a trade union or a body or association affiliated to a union;
- (b) a body or association the object, or one of the objects, of which is to control or influence conditions of employment in a trade or profession;
- (c) a body or association the objects, or one of the objects, of which is to control or influence pay, pension or conditions of service of the Service other than a trade union established and regulated by rules or regulations made under this Act.

Prohibition against members of the service joining trade unions.

(2) A member of the Service who contravenes subsection (1) shall be liable to be dismissed from the Service and forfeit all rights to pension or gratuity.

(3) If a question arises as to whether a body is a trade union or an association to which this section applies, the question shall be referred to the Minister whose decision thereon shall be final.

3H. (1) A member of the Service who -

- (a) strikes or otherwise uses violence to, or offers violence to or incites any other person to use violence to a member senior to or placed in command over him or to that other person; or

Insurbodinate behaviour.

(b) uses threatening or insubordinate language to a member senior to or placed in command over him shall be guilty of an offence and liable to imprisonment for a term not exceeding one year.

(2) The Director or an officer of or above the rank of senior warden to whom the power so to do has been delegated by sh: Director may direct that an offence committed under subsection (1) be tried summarily and not prosecuted in court.

3I. (1) A member of the Service who absents himself from duty without leave or just cause for a period of twenty-one days or more shall, unless he proves the contrary, be deemed to have deserted from the Service.

Desertion.

(2) A member who deserts the Service shall forfeit any pay or allowances due to him, and all rights in respect of any pension, provident or other scheme operated by the Service.

(3) No pay or allowance shall be paid to a member in respect of any day during which he is absent from duty without leave, unless the Director otherwise directs.

**3J.** Nothing in this Act or any subsidiary legislation made thereunder shall exempt a member of the Service from being proceeded against for an offence under any other law.

Liability under other law.

**3K.** No member of the Service shall, without, in the case of a gazetted officer, the prior written approval of the Board of Trustees and, in the case of any other member, the prior written approval of the Director, engage himself in any trade, business or employment or take part in any commercial undertaking outside the scope of his duties as a member of the Service.

Members of Service not to engage in trade, etc.

**4.** The principal Act is amended by inserting the following new title and Part IIA immediately after section 5 –

Insertion of new Part IIA in Cap. 376.



**PART IIA – THE KENYA WILDLIFE SERVICE FUND**

**5A.** (I) There is established a fund to be known as the Kenya Wildlife Service Fund which shall be vested in, and be operated and managed by the Board of Trustees for the purpose of the Service and this Act.

The Kenya  
Wildlife  
Service Fund.

(2) There shall be paid into the Fund

(a) all sums veiled in the former Wildlife Fund Trustees under section 59

(now repealed);

(b) donations, loans or other moneys received from any source for the purpose of wildlife conservation or management;

(c) any sums from time to time provided by Parliament for the purposes of the Fund.

(3) There shall be paid out of the Fund

(a) sums required to launch, operate or expand projects of wildlife

conservation and management:

(b) any other payments either generally or specifically approved by the Board of Trustees.

**5.** The principal Act is amended *by* inserting in proper numerical sequence the following new section 5B-

Insertion of new  
section 5B in  
Cap. 376

**5B.** (1) For the better carrying out of the powers, duties and functions of the Service the Board of Trustees may by notice in the Gazette establish such wildlife advisory councils in respect of any area in which any National Park or National Reserve is situated as may be necessary from time to time.

Wildlife  
Advisory  
Councils.

(2) An advisory council established under subsection (1) shall consist of such persons not exceeding seven including the representative of the local authority concerned, as the Board of Trustees shall determine.

(3) An advisory council shall not take part in the day-to-day business of wildlife conservation and management but shall bring to the notice of the Board of Trustees for appropriate action all problems and other matters relating to wildlife conservation and management affecting the area for which the advisory council is established.

(4) The Board of Trustees shall determine the tenure and vacation of office of members of an advisory council, its meetings and procedure and its staff,

**6.** Section 49 of the principal Act is amended by deleting subsection (1) and inserting the following new subsection-

Amendment of  
Section 49 of Cap.  
376.

(1) An authorized officer may stop and detain any person whom he finds doing any act for which a licence or permit is required under this Act or the rules for the purpose of requiring that person to produce his licence or permit, and if that person fails to produce the appropriate licence or permit he may be arrested by the officer without a warrant.

7. Section 50 of the principal Act is amended-  
(a) by deleting subsection (2) and inserting the following-

(2) Where anything other than a trophy seized and detained under section 49 of this Act shall be forfeited to the Government after a period of three months unless within that period some person is charged with a forfeiture offence under the Act and it is alleged that-

Amendment of  
Section 49 of Cap.  
376.

- (a) the offence was committed in relation to or in connection with that thing; or  
(b) the thing was used in, or for the purpose of, the commission of such an offence.

- (b) by deleting paragraph (r) of subsection (3).

8. Section 52 of [the principal Act is amended—

Amendment of  
section 52 of  
Cap. 376.

- (a) by deleting subsection (2) and inserting the following

(2) Where anything other than a Government trophy has been seized and detained under section 49 of this Act and a person charged with a forfeiture offence in relation thereto within three months of the seizure has not appeared to answer the charge that thing shall be forfeited to the Government,

- (b) by deleting subsection (3).

9. The principal Act is amended by inserting immediately after section 57 the following new section—

Insertion of  
new section  
57A in Cap.  
376.

57A. (1) The President may, through the Commissioner of Police, make available to the Service such firearms as may be necessary for the Service to effectively carry out its functions under this Act.

(2) A member of the Service may use firearms to the extent necessary for the efficient management and conservation of wildlife including but without prejudice to the generality of the foregoing—

Use of  
firearms.

- (a) in the course of law enforcement, against-

(i) any person in lawful custody charged with an offence punishable under section 56 (1) (a), (b) or (c) when that person is escaping or attempting to escape;

(ii) any person who by force rescues or attempts to rescue any

other person from lawful custody;

(iii) any person who by force rescues or attempts to prevent the lawful arrest of himself or any other person; and

(iv) any person unlawfully hunting any game animal or protected animal in any place or hunting any animal, bird or reptile within a National Park, National Reserve or local sanctuary;

- (b) in the course of animal population control and management and also for the protection of persons and property against any animal, bird or reptile causing destruction to human life or property or crops:

Provided that resort to the use of fire-arms shall not be had

- (i) under paragraph (a) d) of this subsection unless the member of the Service concerned has reasonable grounds to believe that he cannot otherwise prevent the escape and unless he has given warning to the person that he is about to use firearms against him and the warning is unheeded;
- (ii) under paragraph (a) iii) or paragraph (a) (iii) of this subsection unless the member of the Service concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm or that he cannot otherwise prevent the rescue, or, as the case may be, effect the arrest.

**10.** Part VII of the principal Act relating to the Wildlife Fund and comprising sections 58, 59 and 60 of the principal Act is repealed.

Repeal of Part VIII of Cap. 376.

**11.** Section 62 of the principal Act is amended by repealing subsection (1) and inserting the following new subsection

Amendment of Section 62 of Cap. 376.

62. (1) Where any person suffers any bodily injury from or is killed by any animal, the person injured or in the case of a deceased person, any other person who was dependent upon him at the date of his death, may make application to a district committee established by this section, for I he award of compensation for the injury or death:

Compensation for personal injury or death

Provided that no compensation shall be claimable where the injury or death occurred

- (a) in the course of any conduct on the part of the person concerned which would constitute an offence under this Act; or
- (b) in the course of normal wildlife utilization activities.

**12.** The principal Act is amended by inserting the Addition of new following new Fourth Schedule Fourth Schedule-

Addition of new Fourth Schedule to Cap. 376.

**FOURTH SCHEDULE**

Ranks of members of the Service in order of seniority  
Gazetted Officers

(a) Officers of Field Rank-

Director  
Deputy Director  
Assistant Director  
Senior Warden

(b) Senior Officers

Warden I  
Warden II

*Junior Officers*

Assistant Warden I  
Assistant Warden II  
Assistant Warden III  
Field Assistant

*Rangers*

Ranger Sergeant Major  
Senior Sergeant  
Sergeant  
Corporal  
Ranger

**13.** The several sections of the principal Act set out in the first column of the Schedule are amended in the manner specified in the second column.

Additional amendments to Cap. 376.

**14.** Section 26A of the Firearms Act is amended by adding thereto the following new subsection

Amendment of Cap. 114.

(6) For the purposes of this section the expression "public officer" shall include any member of the Kenya Wildlife Service established under the Wildlife (Conservation and Management) Act, for the time being in possession of any Government firearm or ammunition and using it under section 57A of that Act.

**15.** (1) In this section, "former Department" means the Government Department known as the Wildlife Conservation and Management Service established under section 3 of the principal Act (now repealed).

Transitional provisions.

(2) All the funds, assets and other property, movable and immovable, which immediately before the coming into operation of this Act, were held by the Government for the former Department shall, under this subsection and without further assurance vest in the Services.

(3) Every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of fee or other charge and upon request by or on behalf of the Service, do all such things as are by law necessary to give final effect to the transfer of the property mentioned in subsection (2).

(4) All rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of this Act were vested in, imposed on or enforceable by or against the Government for the former Department other than the powers of forfeiture of trophies, shall under this subsection, be transferred to, vested in, imposed on or be enforceable by or against the Service.

(5) On and after the coming into operation of this Act, all actions, suits or legal proceedings pending by or against the Government in respect of the former Department shall be carried on or prosecuted by or against the Service and no such suit action or legal proceeding shall abate or be prejudicially affected by the enactment of this Act.

(6) The Director and other officers, members and servants of the former Department and of the Wildlife Fund Trustees in office on the day of the coming into operation of this Act shall, until they have been recruited into the Service or otherwise deployed by the Government, be deemed to be the duly appointed Director, officers, members and servants of the Service and shall accordingly be subject to the disciplinary provisions relating to the Service from time to time in force.

(7) The terms of office of the Wildlife Fund Trustees in office at the date of coming into operation of this Act shall terminate on that date.

(8) The annual estimates of the former Department for the financial year in which this Act comes into operation shall be deemed to be the annual estimates of the Service for the remainder of the financial year but those estimates may be varied by the Board of Trustees in such manner as the accounting officer of the Treasury may approve.

### SCHEDULE

<i>Section</i>	<i>Amendment</i>
9 (1), 16 (1) (d) .. .. .	Delete "officers" and insert "members".
5 (I) (a), 13 (1), 39 (1) (a). 56, 61 01). 61 (2.) (a), 61 (2) (b), 61 (2) (r)	Delete "officer" and insert "member".
28 (2) .. .. .	Delete "officer" and insert "licensing officer".
4. 21 .. .. .	Delete "game" wherever it occurs.
5 (1) (d).. .. .	Delete "officer of the Community".

**APPENDIX 8**

**THE WILDLIFE (CONSERVATION AND MANAGEMENT)  
(AMENDMENT) BILL OF 2007 (KENYA)**

The Wildlife (Conservation and Management) Bill, 2007

**THE WILDLIFE (CONSERVATION AND MANAGEMENT) BILL, 2007**

**ARRANGEMENT OF SECTIONS**

*Section*

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- 2-Application
- 3-Interpretation.

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- 4-Ownership of wildlife

**PART III: ADMINISTRATION**

- 5-Establishment of a Department
- 6-Functions of the Department
- 7-Establishment of the Service
- 8-Headquarters of the Service
- 9-Functions of the Service
- 10-Establishment of the Board of Trustees
- 11-Functions of the Board
- 12-Powers of the Board
- 13-Committees of the Board
- 14-Appointment of the Director General
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- 16-Meetings of the Board
- 17-Establishment of regional wildlife areas and committees
- 18-Establishment of the Kenya Wildlife Service Training Institute
- 19-Establishment of the Manyani Field Training School
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- 21-Funds of the Service
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- 23-Annual estimates
- 24-Accounts and audit
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- 28-Creation of national reserves
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- |                          |   |
|--------------------------|---|
| <b>First schedule:</b>   | Provisions relating to the officers of the Service  |
| <b>Second schedule:</b>  | Provisions relating to the conduct of business and affairs of the Board                     |
| <b>Third Schedule:</b>   | Provisions as to public consultation  |
| <b>Fourth Schedule:</b>  | Listed endangered and threatened ecosystems   |
| <b>Fifth Schedule:</b>   | Listed endangered, threatened and vulnerable species  |
| <b>Sixth Schedule:</b>   | Wildlife species for which game farming may be allowed                                      |
| <b>Seventh Schedule:</b> | Wildlife species for which compensation may be paid   |
| <b>Eighth Schedule:</b>  | National parks, national reserves and community wildlife conservation areas and sanctuaries |

## **THE WILDLIFE (CONSERVATION AND MANAGEMENT) BILL 2007**

### **A Bill for**

**AN ACT** of Parliament to provide for the protection, conservation and management of wildlife in Kenya; and for purposes connected therewith and incidental thereto;

**RECOGNIZING** that wildlife is an important national heritage of common concern, a public asset at local, regional, and global levels and the need for an integrated ecosystem approach to conserving wildlife resources;

**FURTHER RECOGNIZING** that wildlife should be utilized in a manner that does not impinge on cultural values, compromise the quality and value of the resource, or degrade the carrying capacity of supporting ecosystems;

**ACKNOWLEDGING** that a coordinated and participatory approach to wildlife conservation and management is important, and must involve the government, local authorities, private sector, civil society and communities as appropriate;

**AND WHEREAS** it is essential to conserve in perpetuity Kenya's rich diversity of species, habitats and ecosystems for the well being of its people and the global community,

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

### **PART I: PRELIMINARY**

#### ***Short title and commencement***

1. This Act may be cited as the Wildlife (Conservation and Management) Act, 2007 and shall come into operation on such date as the Minister may, by notice in the Gazette appoint, but not later than 30 days from the date of Assent. Different dates may be appointed for different provisions.

#### ***Application***

2. This Act shall apply to the conservation and management of all wildlife resources in national parks, national reserves, and on communal and private lands.

#### ***Interpretation***

3. In this Act, unless the context otherwise requires-

“aircraft” means any type of aeroplane, airship, balloon or kite, whether captive, navigable or free, and whether controlled or directed by human agency or not;

“animal” means any species or the young or egg thereof, but does not include a human being or any animal which is commonly considered to be a domestic animal or the young or egg thereof or plant;

“authorized officer” means a member of the Service, a forest officer, a fisheries officer, a police officer, a customs officer or an administrative officer;

“benefited environment” means that environment which has benefited through the imposition of one or more obligations on the burdened land;

“biodiversity” means the variability among living organisms from all sources including ecosystems and the ecological complexes of which they are a part;

“Board ” means the Board of Trustees of the Service established under section 10;

“biopiracy” refers to the expropriation of biological resources from some countries or communities and their use in the development of commercial products protected through intellectual property rights by public or private entities (including corporations, universities and governments) without fair compensation or sharing of benefits derived with the individuals, peoples or nations in whose territory the materials were originally discovered;

“bioprospecting” refers to the exploration of wildlife for commercially valuable genetic and biochemical resources;

“burdened land” means the land in the vicinity of the benefited environment designated under section 49 of this Act;

“community” refers to a clearly defined group of users of land and wildlife, which may, but need not be, a clan or ethnic community. These groups of users hold a set of clearly defined rights and obligations over land and wildlife;

“community conservation area” refers to a conservation area set aside by community for purposes of wildlife conservation;

"community wildlife scout" means a person appointed as such by the Director General under this Act;

“competent authority” means:

- (a) in relation to Government land, the Minister for the time being responsible for matters relating to land;
- (b) in relation to Trust land, the county council in which the land is vested;
- (c) in relation to any other land, the owner thereof or the person for the time being entitled to the use, rents and profits thereof;

“conservation order” refers to a wildlife conservation order issued under section 49 of this Act;

“constituency” refers to a constituency established under the constitution and relevant electoral laws.

"constituency wildlife association" means an association registered under the Societies Act, and recognized by the Service under section 58 of this Act;

“conservation” means the protection, maintenance, rehabilitation, restoration and enhancement of wildlife;

“conservation area” refers to any area (including national parks and reserves) wholly or partially designated and registered for the conservation of wildlife;

“conservation hotspot” refers to a conservation priority area;

“corridors” means areas used by wild animals when migrating from one part of the ecosystem to another periodically in search of basic requirements such as water, food, space and habitat;

“cropping” means harvesting of wildlife for a range of products;

“culling” means selective removal of wildlife based on ecological scientific principles for management purposes;

“dealer” means any person who, in the ordinary course of any business or trade carried on by him, whether on his own behalf or on behalf of any other person-

(a) sells, purchases, barter or otherwise in any manner deals with any trophy; or

(b) cuts, carves, polishes, preserves, cleans, mounts or otherwise prepares any trophy; or

(c) transports or conveys any trophy;

“decentralization” means the devolution of responsibility for planning, management and control of wildlife resources from the national wildlife agency to the local delimited geographic and functional domains at the regional, district and constituency levels;

“department” means the Department of Wildlife established under section 5;

“devolution” means the transfer of rights, authority and responsibilities by the national wildlife agency to the local delimited geographic and functional domains at the regional, district and constituency levels;

“Director-General” means the Director-General of the Service appointed under Section 14;

“dispersal areas” means areas adjacent to or surrounding protected and community conservation areas into which wild animals move during some periods of the year;

“district wildlife conservation committee” refers to the committee established under section 17.

“easement” means an easement imposed under section 49;

“ecosystem” means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit;

“endangered species” means any wildlife specified in the Fifth Schedule of this Act or declared as such by any other written law or any wildlife specified in Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

“environmental impact assessment” has the meaning assigned to it under the Environmental Management and Coordination Act No. 8 of 1999;

“ex-situ conservation” means conservation outside the natural ecosystem and habitat of the biological organism;

“financial year” means the period of twelve months ending on the thirtieth June in every year;

“firearm” means a lethal barreled weapon of any description from which any shot, bullet or other missile can be discharged or which can be adapted for the discharge of any shot, bullet or other missile, and any weapon of whatever description designed or adapted for

the discharge of any noxious liquid, gas or other thing, and includes the barrel, bolt and chamber, and any other essential component part, of the weapon;

“forest officer” has the meaning assigned to it under the Forests Act, 2005;

“forfeiture offence” means an offence which is so designated by any of the provisions of this Act creating offences;

“game farming” refers to the rearing of wildlife in an enclosed and controlled environment for wildlife conservation, trade and recreation;

“game ranching” means the keeping of wildlife in an enclosed environment with the intention of engaging into wildlife conservation, recreation and trade;

“General Fund” means General Fund established under section 21;

“genetic resources” means genetic material of actual or potential value;

“Government trophy” means a trophy declared to be a Government trophy by section 62;

“habitat” means a place or site where wildlife naturally occurs;

“honorary warden” refers to a honorary warden appointed by the Minister under section 15 of this Act;

“hunt” includes the doing of any act immediately directed at the killing, wounding, injuring or capture of any animal, and the taking or willful molestation of any nest or eggs except killing done by officers of the Service for purposes of problem animal control or for management purposes as prescribed under this Act;

“in-situ conservation” means conservation within the natural ecosystem and habitat of the biological organism;

“intergenerational equity” means that the present generation should ensure that in exercising its right to beneficial use of the environment the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

“intragenerational equity” means that all people within the present generation have the right to benefit equitably from the exploitation of the environment, and that they have an equal entitlement to a clean and healthy environment;

“invasive alien species” means a species that is not an indigenous species or an indigenous species translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its nature distribution range by natural means of migration or dispersal without human intervention. It includes viruses, fungi, algae, mosses, ferns, higher plants, invertebrates, fish, amphibians, reptiles, birds and mammals;

“land” includes land and land covered by sea or other body of water;

“land owner” means those with individual or corporate title to land, leaseholders and those with collective community customary rights;

“land use” means activities carried out on a given piece of land;

“lead agency” means any government ministry, department, parastatal, state corporation or local authority, in which any law vests functions of management or control of any element of wildlife resources;

“licence” means a licence or permit or other written authorization issued under any of the provisions of this Act;

“licencing officer”, means a person appointed by the Minister, by notice in the Gazette, to be a licencing officer for the purposes of this Act;

“local authority” has the meaning assigned to it in section 2 of the Local Government Act;

“management agreement” means any agreement between the Service and any other person, department, association, body corporate or other competent authority for the conservation and management of wildlife in accordance with the provisions of this Act;

“management plan” means a management plan prepared for the conservation and management of wildlife pursuant to section 36;

“marine protected area” means any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment;

“meat” means the fat, blood, flesh or tissue of any animal, whether fresh or dried, pickled or otherwise preserved or processed;

“member of the uniformed and disciplined cadre” means a member of the Service holding any of the ranks specified 2(b) of paragraph 1 of the First Schedule;

“Minister” means the Minister for the time being responsible for matters relating to wildlife;

“ministry” means the ministry for the time being responsible for matters relating to wildlife;

“motor vehicle” includes a vehicle of the type commonly known as a "hovercraft";

“multilateral environmental agreement” means international legal instruments for the regulation of activities affecting the environment particularly wildlife resources to which Kenya is a Party;

“national park” means an area of land declared to be a National Park by or under this Act;

“national reserve” means any area of land declared to be a National Reserve by or under this Act;

“owner”, in relation to private land, includes a lessee or a mortgagee in possession, and any person authorized by an owner, lessee or mortgagee in possession to act on his behalf in his absence, and group representative incorporated under the Land (Group Representatives) Act, Cap, 287;

“ownership” on the part of the state in relation to wildlife means custodianship or stewardship on behalf of the people of Kenya;

“partnership” means an affiliation between a competent authority, stakeholders and other individuals or groups formed for the purposes of conserving and managing wildlife within a specified area;

“private land” means any land –

- (a) which is held under a conveyance, lease or licence (other than a temporary occupation licence under the Government Lands Act, (Cap. 280) from the Government or a county council; or
- (b) which has been recorded as being in the ownership of any person or group of persons under any written or customary law;

“protected area” means an area declared to be a protected area under this Act or any other written law;

"ranger" means a member of the Service in the uniformed and disciplined cadre and includes corporal, sergeant, senior sergeant and sergeant major;

"regional wildlife conservation committee" refers to the committee established under section 17 of this Act;

“regional wildlife conservation area” refers to regional wildlife conservation areas designated under section 17 of this Act;

"rules" means any rules or regulations made under this Act;

“sanctuary” refers to an area of land or of land and water set aside and maintained , by government, community, individual or private entity, for the preservation and protection of one or more species of wildlife;

"Service" means the Kenya Wildlife Service established under section 7;

"specimen" means any animal or wild plant whether alive or dead and any part or derivative thereof;

“species” means a population of individual organisms capable of mating with one another and producing fertile offspring in a natural setting and that share common and specialized characteristics from others;

“sport hunting” means authorized pursuit and killing of wildlife for recreation and trophy collection;

“stakeholder” refers to an individual or group having a vested interest in the conservation issues relating to a particular area;

“sustainable use” means present use of the wildlife resources, which does not compromise the ability to use the same by future generations or degrade the carrying capacity of wildlife ecosystems and habitats;

“sustainable management”, in relation to wildlife, means management of wildlife resources so as to permit only such use of it as constitutes sustainable use;



"threatened species" means any animal or plant species specified in the Fifth Schedule of this Act or declared as such under any other written law or specified in Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

"transfrontier conservation area" means the area or component of a large ecological region that straddles the boundaries of two or more countries, encompassing one or more protected areas, as well as multiple resource use areas;

"trophy" means any animal alive or dead, and any bone, claw, egg, feather, hair, hoof, skin, tooth, tusk or other durable portion whatsoever of that animal whether processed, added to or changed by the work of man or not, which is recognizable as such a durable portion;

"warden" means an officer of the Service above the rank of sergeant major;

"wetlands" means areas of marsh, fen, peat land, or water, whether natural or artificial, permanent or temporary, with that is static or flowing, fresh, brackish, salt,

including areas of marine water the depth of which at low tide does not exceed 6 meters.

"wildlife" means any wild and indigenous animal, plant or micro-organism or parts thereof within its constituent habitat or ecosystem on land or in water, as well as species that have been introduced into or established in Kenya;

"wildlife user rights" means a bundle of use rights granted to stakeholders by the Minister, through the relevant competent authorities, which clearly define each stake holder's access to direct and indirect use of wildlife resources;

## **PART II: OWNERSHIP AND CONTROL**

### ***Ownership of Wildlife***

4. (1) All wildlife found in Kenya is vested in the state on behalf of and for the benefit of the people of Kenya.
- (2) The Minister shall have and may exercise control over every wildlife resource in Kenya in accordance with the provisions of this Act.
- (3) The right to the use of wildlife resources is hereby vested in the Minister and subject to the provisions of this Act, the Minister may, grant wildlife user rights to individuals, communities or bodies corporate.
- (4) The Minister shall be assisted in the discharge of his duties under this section by the Director of the Department of Wildlife established under section 5 of this Act.

## **PART III: ADMINISTRATION**

### ***Establishment of a Department***

5. There is established a department to be known as the Department of Wildlife (hereinafter referred to as the "Department") headed by a Director.

### ***Functions of the Department***

6. The Department shall:
  - (a) be responsible for policy formulation and directions for purposes of this Act;

- (b) set national targets, indicators, objectives and determine policies and priorities for the conservation and management of wildlife resources countrywide;
- (c) promote cooperation among public departments, local authorities, private sector, non-governmental organizations and such other organizations engaged in wildlife conservation and management;
- (d) coordinate the negotiation and implementation of wildlife-related treaties, conventions or agreement, whether bilateral or multilateral agreements, in consultation with the Service and other relevant lead agencies;
- (e) in consultation with the Service, advise the Minister on the establishment of national parks, national reserves, community conservation areas and sanctuaries;
- (f) advice on granting of wildlife user rights with recommendation of the Service;
- (g) monitor the effectiveness of the Trust Fund in enhancing the conservation and management of wildlife;
- (h) be responsible for dispute resolution between the Service and other entities involved in wildlife conservation and management ;and
- (i) perform such other functions as are assigned under this Act.

***Establishment of the Service***

7. (1) There is established a Service known as the Kenya Wildlife Service (hereinafter referred to as the “Service”).

(2) The Service shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of:

- (a) suing and being sued;
- (b) taking, purchasing, charging and disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all such other things or acts for the proper discharge of its functions under this Act, which may lawfully be performed by a body corporate.

8. The headquarters of the Service shall be in Nairobi.

***Functions of the Service***

9. (1) The object and purpose for which the Service is established is to be the principal instrument of the Government in implementation of all policies relating to wildlife conservation and management.

(2) Without prejudice to the generality of the foregoing, the Service shall:

- (a) formulate guidelines and prescribe measures for wildlife conservation and management countrywide;
- (b) conserve and manage national parks, provisional wildlife conservation areas, national reserves and sanctuaries under its jurisdiction;
- (c) collaborate with local authorities, communities and landowners for purposes of effective conservation and management of national reserves, community wildlife areas and sanctuaries;
- (d) conduct and co-ordinate research activities in the field of wildlife protection, conservation and management and ensure application of

- research findings in conservation planning, implementation and decision making processes;
- (e) prepare and implement integrated management plans for national parks, provisional wildlife conservation areas, national reserves and sanctuaries under its jurisdiction;
  - (f) assist and advice in the preparation of integrated management plans for national reserves, community wildlife areas and sanctuaries;
  - (g) render advice and technical support to entities engaged in wildlife conservation and management so as to enable them carry out their responsibilities satisfactorily;
  - (h) collaborate with local authorities, communities and other stakeholders in prescribing and implementing measures necessary for the mitigation of conflict between people and wildlife;
  - (i) set wildlife security national standards and ensure their implementation by all the relevant law enforcement agencies, local authorities and community wildlife scouts;
  - (j) undertake and conduct enforcement activities such as anti-poaching operations, wildlife protection, intelligence gathering and investigations or the effective carrying out of the provisions of this Act;
  - (k) provide security for wildlife and visitors in national parks, provisional wildlife conservation areas, reserves and sanctuaries managed by the Service;
  - (l) collaborate with local authorities, local communities and landowners to provide security for wildlife and communities in the respective wildlife conservation areas under their jurisdiction;
  - (m) undertake every two years an assessment and audit of wildlife conservation efforts, measures and initiatives at the national level and issue a bi-annual national wildlife conservation status report;
  - (n) promote or undertake commercial and other activities for the purpose of attaining sustainable wildlife conservation goal;
  - (o) formulate, in collaboration with the department, mechanisms and prescribe measures for granting, implementation and monitoring of wildlife user rights;
  - (p) monitor and assess wildlife conservation activities, including activities being carried out by local authorities, communities and non-governmental organizations, in order to ensure that sound wildlife conservation principles and practices are adhered to;
  - (q) mobilize resources for wildlife conservation and management;
  - (r) collect revenue and charges due to the Service from wildlife and as appropriate develop mechanisms for benefit sharing with communities living in wildlife areas;
  - (s) undertake, in collaboration with relevant lead agencies and stakeholders, programmes intended to enhance wildlife conservation education and extension services about the need for sound wildlife conservation and management as well as for enlisting public support;
  - (t) develop and implement wildlife disaster plans and wildlife diseases surveillance; and
  - (u) perform such other functions as the Minister may assign the Service or as are incidental or conducive to the exercise by the Service of any or all of the functions provided under this Act.
- (3) The Minister shall lay every two years a national wildlife conservation status specified under subsection (2)(m) of this section before the National Assembly as soon as reasonably practicable after its publication where the National Assembly is in session, or where not in session, within twenty one days of the day the National Assembly next sits after such publication.

***Establishment of the Board of Trustees***

10. (1) The Service shall be managed by a Board of Trustees, which shall consist of:

- (a) the Permanent Secretary in the ministry for the time being responsible for matters relating to wildlife or an officer of that ministry designated in writing by the Permanent Secretary;
- (b) the Permanent Secretary in the ministry for the time being responsible for finance or an officer of that ministry designated in writing by the Permanent Secretary;
- (c) the Permanent Secretary in the ministry for the time being responsible for local government or an officer of that ministry designated in writing by the Permanent Secretary;
- (d) the Permanent Secretary in the ministry for the time being responsible for provincial administration and internal security or an officer of that ministry designated in writing by the Permanent Secretary;
- (e) The Permanent Secretary in the ministry for the time being responsible for lands or an officer of that ministry designated in writing by the Permanent Secretary
- (f) the Director General of the Service who shall be the secretary to the Board;
- (g) the Commissioner of Police or a senior police officer designated in writing by the Commissioner of Police;
- (h) the Director of Fisheries;
- (i) the Director of Kenya Forest Service;
- (j) the Director of Veterinary Services;
- (k) one representative from the tourism private sector nominated by the relevant umbrella tourism organization and appointed by the Minister;
- (l) three trustees appointed by the Minister, all of whom shall be nominated by the designated regional wildlife conservation committees; and
- (m) four other trustees appointed by the Minister, taking into account gender parity and professionals.

- (2) The members appointed subsection (1) paragraphs (k), (l) and (m) of this section shall be persons who hold at least a degree from a recognized university with at least 5 years experience in corporate management.
- (3) One of the members appointed under paragraphs (k) (l) and (m) of subsection (1) shall be appointed by the President to be the Chairman of the Board.
- (4) The Board shall elect a vice chairman from among the members appointed under paragraphs (k), (l) or (m) of subsection (1).
- (5) The members appointed under paragraphs (k) (l) and (m) of subsection (1) shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.
- (6) There shall be paid to the chairman and members of the Board such remuneration, fees or allowances for expenses as the Minister may determine.

***Functions of the Board***

11. The functions of the Board shall be to:

- (a) ensure effective and efficient management of the Service;
- (b) consider and recommend to the Minister proposals for the establishment of national parks, national reserves, community wildlife conservation areas and sanctuaries;

- (c) consider and recommend to the minister proposals for the determination and alterations or rationalization of national parks and reserves;
- (d) approve operational policies of the Service effecting sustainable management of wildlife resources;
- (e) approve and ensure that the Service strategic plan and performance contracts are accomplished in time;
- f) formulate policies for the administration and management of the Kenya Wildlife Service Training Institute (KWSTI) and Manyani field training school;
- (g) formulate policies for the administration and management of the airwing;
- (h) consider and approve all management agreements entered into by entities engaged in wildlife conservation and management;
- (i) negotiate for financial and other incentives for the advancement of wildlife-related activities of communities, landowners, private sector and non-governmental organizations;
- (j) monitor inter - agency wildlife activities in the country;
- (k) approve modalities and guidelines for collaborative management of wildlife conservation areas between the Service, communities, local authorities, other government agencies, private sector and non-governmental organizations;
- (l) in consultation with the department, advice the Minister on all matters pertaining to wildlife conservation and management in Kenya;
- (m) establish the regional wildlife conservation areas for purposes of ensuring ecosystem approach to wildlife conservation and management;
- (n) approve the provision of funding mechanisms and technical training for national reserves, community wildlife conservation areas and sanctuaries; and
- (o) manage the Trust Fund established under section 25 of this Act.

***Powers of the Board***

12. (1) The Board shall have all the powers necessary for the performance of its functions under this Act, and, in particular but without prejudice to the generality of the foregoing, the Board shall have power to:

- (a) approve and ratify the policies of the Service;
- (b) manage, control and administer the assets of the Service in such a manner and for such purposes as are best to promote the purposes for which the Service is established;
- (c) receive any gifts, grants, donations or endowments made to the Service;
- (d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Service;
- (e) open bank accounts for the funds of the Service;
- (f) invest any monies of the Service not immediately required for the purposes of this Act;
- (g) determine and issue the terms and conditions for the appointment and emoluments of personnel to the Service;
- (h) cooperate with other organizations undertaking functions similar to its own, whether within Kenya or otherwise;
- (i) provide for a staff superannuation scheme for the employees of the Service; and
- (j) approve the borrowing of funds in consultation with the Ministry and the Treasury.

- (2) Subject to this Act, the Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers of the performance of any of the functions or duties of the Board under this Act.

#### ***Committees of the Board***

13. (1) The Board may from time to time establish committees for the better carrying out of its functions.
- (2) The Board may, with the approval of the Minister, co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are deemed necessary for the functions of the Board.

#### ***Appointment of the Director General***

14. (1) There shall be a Director General of the Service who shall be appointed by the Board, in consultation with the Minister, through a competitive process, and who shall hold office on such terms and conditions as may be specified in the instrument of his appointment.
- (2) A person appointed under subsection (1) of this section shall hold a post graduate degree from a recognized university with at least 10 years experience in corporate management at a senior management level.
- (3) The Director General shall be the chief executive officer of the Service and responsible to the Board.
- (4) In exercising his functions, the Director General shall be assisted by directors who shall be responsible for, inter alia, protected areas, community wildlife service and research and monitoring, appointed by the Board through a competitive process.
- (5) A director appointed under subsection (4) of this section shall hold a postgraduate degree from a recognized university in the field of wildlife and natural resources management or relevant discipline and has at least ten years' experience in the relevant field.

#### ***Officers of the Service***

15. (1) The Board may, on such terms and conditions as it deems fit, appoint:-
  - (a) such uniformed and disciplined officers as are specified in paragraph (2)(b) of paragraph 1 of the First Schedule;
  - (b) such officers of the Service as are specified in subparagraph (2)(c) of paragraph 1 of the First Schedule; and
  - (c) such other employees, agents or servants of the Service,as may be necessary for the performance of the functions of the Service.
- (2) Every person appointed under subparagraph (b) of subsection (1) shall take and subscribe to the oath of allegiance set out in Part II of the First Schedule.
- (3) The provisions of the First Schedule shall have effect with respect to the officers of the Service.
- (4) The Board shall provide for a staff superannuation scheme to determine service for the employees of the Service.
- (5) The Director General may, with the approval of the Board and on recommendation of the regional wildlife conservation committees, appoint

suitable persons to be honorary wardens for the purposes of assisting the carrying out the provisions of this Act.

(6) A honorary warden shall:

- (a) be appointed by notice published in the Gazette;
- (b) hold office, subject to such conditions as the Board may prescribe, for a period of three years and shall be eligible for reappointment for one further term of three years; and
- (c) have such functions as may be prescribed by rules made under this Act.

***Meetings of the Board***

16. The provisions of the Second Schedule shall have effect with respect to the procedure at the meetings of the Board.

***Establishment of Regional wildlife conservation areas and committees***

17. (1) The Board shall establish regional wildlife conservation areas for the proper and efficient ecosystem management to wildlife conservation and may divide such wildlife areas into district wildlife conservation and management areas.

(2) There shall be established a regional wildlife conservation committee in respect of each regional wildlife conservation area established under subsection (1) whose secretariat shall be the Service regional office.

(3) The functions of the committee shall be to –

- (a) facilitate the development and implementation of ecosystem-based Management plans within the region of which they are appointed;
- (b) inform the Service of the projects, programmes, plans, ideas and opinions of the people in regional wildlife conservation areas in all matters relating to the conservation and management of wildlife within such areas;
- (c) provide a platform for collaboration between protected area management and communities, local authorities, landowners and other stakeholders within the region of which they are appointed;
- (d) facilitate communities and landowners to benefit from revenues and other rights derived from use of wildlife resources within the region of which they are appointed;
- (e) identify land to be set aside for the creation of wildlife conservation areas within the region of which they are appointed;
- (f) assist local authorities, communities and land owners to set aside critical wildlife habitats, corridors and dispersal areas for the conservation and management of wildlife within the region of which they are appointed;
- (g) recommend different forms of wildlife user rights to be licenced within the region in respect of which they are appointed and monitor compliance; and
- (h) perform such other functions as the Board may require or delegate to it.

(4) A regional wildlife conservation committee shall consist of –

- (a) a chairman appointed by the Board upon election by the members of the regional wildlife conservation committee, who shall have at least ten years' experience in wildlife conservation and management;

- (b) one representative from each of the provincial administration within which the region is situated;
  - (c) one representative from each of the local authorities involved in wildlife conservation in the region;
  - (d) four persons knowledgeable in wildlife matters nominated by district wildlife conservation committees;
  - (e) a representative of the ministry of agriculture responsible for area within which the region is situated;
  - (f) a representative of the National Environment Management Authority responsible for the area within which the region is situated;
  - (g) a representative of Kenya Forest Service for the area within which he region is situated;
  - (h) a representative of Fisheries Department responsible for the area within which the region is situated
  - (i) a representative of Water Resources Management Authority responsible for the area within which the region is situated;
  - (j) a representative of the physical planning department responsible for the area within which the region is situated;
  - (k) a representative of ministry of the livestock responsible for the area within which the region is situated; and
  - (l) the Service regional officer responsible for the region, who shall be the secretary.
- (5) There shall be established a district wildlife conservation committee whose function shall be to –
- (a) assist constituency wildlife associations with technical and scientific support in their wildlife conservation and management initiatives;
  - (b) develop and implement, in collaboration with constituency wildlife associations, mechanisms for mitigation of human-wildlife conflicts;
  - (c) review and recommend claims for payment of compensation resulting from wildlife damage;
  - (d) undertake education, extension service and public awareness; and
  - (e) perform such other functions as the Service and/or regional wildlife conservation committee may require or delegate to it.
- (6) A district wildlife conservation committee shall consist of –
- (a) a chairman appointed from among the members;
  - (b) the district commissioner or his representative;
  - (c) one representative from each of the constituency wildlife associations in the district;
  - (d) a representative of the local authority;
  - (e) the District Agricultural Officer;
  - (f) the District Medical Officer of Health;
  - (g) the District Forest Officer;
  - (h) the District Livestock Officer;
  - (i) the Officer Commanding Police Division;
  - (j) the District Veterinary Officer;
  - (k) the District Physical Planner;
  - (l) a representative of the National Environment Management Authority at the district level;



- (m) three persons knowledgeable in wildlife matters nominated by the district environment committee of which one shall be a woman and one representing the youth; and
  - (n) a district warden who shall be the secretary.
- (7) Persons who are not members of the committee may be invited to attend meetings of the committee and take part in its deliberations but shall not have voting powers.
- (8) A member of the regional and district wildlife conservation committee shall be entitled to be paid such allowances as the Board may, with the approval of the Minister determine.
- (9) The Minister may, in consultation with the Board, make rules and regulations governing the procedures and functions of the regional and district wildlife conservation committees.

***Establishment of the Kenya Wildlife Service Training Institute***

18. (1) There is hereby established a training institute of the Service to be known as the Kenya Wildlife Service Training Institute (hereinafter referred to as “KWSTI”) whose main purpose shall be to coordinate and undertake training and build capacities of the Service staff, regional and district wildlife conservation committees, constituency wildlife associations, community wildlife scouts, local authority staff involved in wildlife matters and other stakeholders involved in wildlife conservation and management.
- (2) The Board shall appoint a person with advanced degree in wildlife and natural resources management and relevant discipline and ten years experience as the principal of KWSTI.
- (3) the Principal shall, with the approval of the Board and in collaboration with the relevant lead agencies, develop and implement wildlife and conservation management curricula to cater for the various cadres.
- (4) The Principal may, with the approval of the Board, establish such branches of the KWSTI as may be necessary in furthering the performance of its functions under the provisions of this Act or any rules made there under.
- (5) Perform such other functions as may be delegated by the Director General or the Board.

***Establishment of the Manyani Field Training School***

19. (1) There is hereby established a field training school of the Service to be known as the Manyani Field Training School (hereinafter referred to as “School”) whose main purpose shall be to undertake paramilitary training and build capacities of the Service staff, community wildlife scouts and local authority staff involved in wildlife security matters and such other persons as may be approved by the Board for effective and efficient implementation of this Act.
- (2) The Board shall appoint a person with relevant experience and skills as the Officer Commanding of the School.
- (3) The Officer Commanding shall, with the approval of the Board and in

collaboration with the relevant law enforcement agencies, develop and implement wildlife security curricula to cater for the various cadres of the Service uniformed and disciplined staff, honorary wardens and community wildlife scouts.

- (4) Perform such other functions as may be delegated by the Director General or the Board.

***Establishment of the Kenya Wildlife Service Airwing***

20. (1) There is hereby established an airwing of the Service to be known as the Kenya Wildlife Service Airwing (hereinafter referred to as “Airwing”) whose main purpose shall be to operate a fleet of aircrafts to provide air support services, aerial patrols and rescue missions for enhanced conservation and management of wildlife.
- (2) The Board shall, appoint a person with relevant experience and skills as the Chief Pilot to head the airwing.
- (3) The Board may, appoint persons with relevant experience and skills as pilots of the Service.
- (4) Subject to the licences issued by the Kenya Civil Aviation Authority, the Director General may, with the approval of the Board, authorize the use of the Service aircraft for commercial purposes in addition to wildlife conservation and management efforts so as to generate additional resources to support the operation and maintenance of the aircrafts.
- (5) Perform such other functions as may be delegated by the Director General or the Board.

***Funds for the Service***

21. (1) There shall be a general fund of the Service which shall vest in the Board.
- (2) There shall be paid into the general fund:
  - (a) such moneys or assets as may accrue to or vest in the Service in the course of the exercise of its powers or the performance of its functions under this Act or any other written law and approved by Parliament; and
  - (b) all moneys from any other source provided for or donated or lent to the Service.
- (3) There shall be paid out of the funds of the Service all sums required to defray the expenditure incurred by the Service in the exercise of its powers and the performance of its functions under this Act.

***Financial year***

22. The financial year of the Service shall be the period of twelve months ending on the thirtieth of June in each year.

***Annual estimates***

23. (1) At least three months before the commencement of each financial year, the Board

shall cause to be prepared estimates of revenue and expenditure of the Service for ensuing year.

- (2) The annual estimates shall make provision for the estimated expenditure of the Service for the financial year, and in particular, the estimates shall provide for:-
  - (a) payment of salaries, allowances, pensions, gratuities and other charges  
in respect of the staff of the Service, regional and district wildlife conservation committees and community wildlife scouts;
  - (b) the proper maintenance of the buildings and grounds of the Service;
  - (c) the maintenance, repair and replacement of the equipment and other property of the Service; and
  - (d) the creation of such reserve funds as the Service may deem appropriate to meet the recurrent expenditure and contingent liabilities of the Service.
- (3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval with the concurrence of the Treasury, and thereafter the Board shall not increase the annual estimates without the consent of the Minister.

#### ***Accounts and audit***

24. (1) The Service shall cause to be kept all proper books and other records of accounts of the income, expenditure and assets of the Service.
- (2) Within a period of four months from the end of each financial year, the Service shall submit to the Controller and Auditor General or an auditor appointed under subsection (3), the accounts of the Service in respect of that year together with –
  - (a) a statement of the income and expenditure of the Service during the year; and
  - (b) a statement of the assets and liabilities of the Service on the last day of the year.
- (3) The accounts of the Service shall be audited and reported upon in accordance with the provisions of the Public Audit Act No. 13/2003.

#### ***Establishment of Wildlife Conservation Trust Fund***

25. (1) There is hereby established a Wildlife Conservation Trust Fund, (hereinafter referred to as the “Trust Fund”), which may be used for the following purposes:
  - (a) development of wildlife conservation initiatives;
  - (b) conservation, management and maintenance of national parks;
  - (c) conservation, management and maintenance of national reserves and sanctuaries;
  - (d) facilitation of research and monitoring activities;
  - (e) the protection of endangered and threatened wildlife species, habitats and ecosystems;
  - (f) rehabilitation of degraded wildlife habitats and ecosystems;
  - (g) facilitation of community-based wildlife conservation initiatives;
  - (h) the provision of conservation education and extension service; and
  - (i) such other purposes as may be prescribed by rules made under this Act.

- (2) The Trust Fund shall consist of –
- (a) moneys appropriated by Parliament for purposes of the Trust Fund;
  - (b) moneys levied upon wildlife user rights in such manner as the Minister may, upon the recommendation of the Board, determine;
  - (c) such sums as may be levied for payment of environmental services by beneficiaries in productive and service sectors as a contribution towards the Trust Fund;
  - (d) income from Trust Fund investments made by the Board; and
  - (e) such grants, donations, bequests or other gifts as may be made to the Trust Fund.
- (3) The management of the Trust Fund is vested in the Board, which shall –
- (a) determine the amounts of money payable in respect of any purpose for which the Trust Fund is established and formulate the conditions for disbursement;
  - (b) make necessary investments from the Trust Fund for the realization of the Trust Fund's objectives, in securities approved from time to time by the Treasury; and
  - (c) keep and maintain audited accounts of the Trust Fund and publish such accounts in such manner as may be approved by the Treasury.
- (4) All moneys due to the Service shall be collected or received on behalf of the Board by the Director General and, subject to the direction of the Board, paid into a special account of the Trust Fund in line with obtaining financial regulations.
- (5) The records of the Trust Fund shall be accessible for public inspection upon payment of prescribed fees.

#### **PART IV – NATIONAL WILDLIFE CONSERVATION AND MANAGEMENT STRATEGY**

##### ***National wildlife conservation and management strategy***

- 26 (1) Following public consultation, the Minister shall formulate and publish in the Gazette at least every five years, a national wildlife conservation and management strategy in accordance with which wildlife resources of Kenya shall be conserved and managed.
- (2) The national wildlife conservation and management strategy shall prescribe the principles, objectives, standards, indicators, procedures and institutional arrangements for the management, protection, use, development, conservation and control of wildlife resources and, in particular, for
- (a) measures for the protection of wildlife species and their habitats and ecosystems particularly in using ecosystem-based conservation plans to achieve land use compatibility;
  - (b) norms and standards for ecosystem-based conservation plans as conservation area management plans;
  - (c) measures facilitating community-based natural resources management practices in wildlife management and wildlife law enforcement;
  - (d) priority areas for wildlife conservation and projections on increasing designated wildlife conservation areas in form of national parks, national reserves, community wildlife conservation areas and sanctuaries;

- (e) innovative schemes, measures and incentives to be applied in securing identified critical wildlife migratory routes, corridors and dispersal areas for sustainable wildlife conservation and management in Kenya;
  - (f) clear targets indicating specific percentage of landscape or seascape to be brought under protected areas, community wildlife conservation areas and sanctuaries;
  - (g) national research and monitoring priorities and information systems, including:
    - (i) research priorities,
    - (ii) the collection and management of data and information regarding the status of wildlife resources, and
    - (iii) procedures for gathering data and the analysis and dissemination of information on wildlife resources;
  - (h) special arrangements for the protection of endangered and threatened wildlife species;
  - (i) guidelines for granting and monitoring wildlife user rights;
  - (j) innovative measures for mitigating human wildlife conflict;
  - (k) measures necessary to ensure equitable sharing of benefits;
  - (l) capacity building and training for effective wildlife management;
  - (m) measures for wildlife diseases surveillance;
  - (n) adaptation and coping up measures to adverse impacts of climate change;
  - (o) reflect regional cooperation on issues concerning conservation and management of shared wildlife resources; and
  - (p) any other matter that the Minister considers necessary for the better conservation and management of wildlife resources.
- (3) The Minister shall periodically review the national wildlife conservation and management strategy and may from time to time publish in the Gazette a revised strategy.
- (4) The Minister, the Service, and all public bodies shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the national wildlife conservation and management strategy.

## **PART V: CONSERVATION AND MANAGEMENT OF WILDLIFE**

### ***Declaration of national parks***

27. The Minister may, on recommendation of the Board and after a public consultation process, by notice in the Gazette declare:
- (a) any unalienated Government land;
  - (b) any land purchased or otherwise acquired by the Government, to be a national park.

### ***Creation of national reserves***

28. Upon the recommendation of the regional wildlife conservation committee for the area within which a wildlife area is situated and after a public consultation process with the concerned local authority and the Board, the Minister shall declare any land under the jurisdiction of a local authority to be a national reserve where the land is:-
- (a) rich in wildlife resources or contains rare, endangered or threatened species;
  - (b) an important catchment area critical for the sustenance of a wildlife conservation area; or

- (c) an important wildlife buffer zone, migratory route, corridor or dispersal area.

***Establishment of community wildlife conservation areas and sanctuaries***

29. (1) Any person or community who own land on which wildlife inhabits, may individually or collectively apply to the Service for consideration for establishment of a community wildlife conservation area or sanctuary under this Act.
- (2) The Service shall review the application and in consultation with the regional wildlife conservation committee, in which the land is situated and recommend for approval by the Board.
  - (4) The Minister may, on the recommendation of the Board, by notice in the Gazette, declare such land a community wildlife conservation area or sanctuary, whichever is applicable.
  - (5) A declaration under subsection (3) of this section, shall entitle community wildlife conservation area or sanctuary to receive from the Service –
    - (a) technical advice regarding sustainable wildlife conservation practices and approaches; and
    - (b) subject to availability of funds, support from the Trust Fund for the development of the conservation area or sanctuary, provided that the funds are obtained and utilized in accordance with the procedures set out by the Service.

***Declaration of provisional wildlife conservation area***

30. (1) Upon the recommendation of the Board, the Minister may, by order published in the Gazette, declare any national reserve, community wildlife conservation area and sanctuary, which in the opinion of the Board is mismanaged or neglected, to be a provisional wildlife conservation area.
- (2) A declaration under subsection (1) of this section shall only be made where-
    - (a) the regional wildlife conservation committee has made recommendation to the effect that that is the best option available; or
    - (b) the local authority or the owners of the community wildlife conservation area or sanctuary have made a request for the national reserve or community wildlife conservation area or sanctuary should be put under provisional wildlife conservation area status; and
    - (c) the Director General has issued a notice requiring the local authority or private or communal owners of the wildlife conservation area, as the case may be, to undertake measures to improve the integrity of the national reserve, community wildlife conservation area or sanctuary, and such notice has not been complied with, or they are unable to undertake the specified corrective measures.
  - (3) A provisional wildlife conservation area shall be managed by the Service, in collaboration with the owner thereof, for a period of five years, which period shall be subject to review and any profits accruing therefrom shall be paid to such

owner less the expenses incurred by the Service in managing the wildlife conservation area concerned.

Reversion of provisional wildlife conservation area

31. (1) A provisional wildlife conservation area shall revert to the owner where the Board is satisfied that it has been adequately rehabilitated and the owner has given an undertaking to efficiently manage it.
- (2) The Minister may, on recommendation of the Board, upon reversion of a provisional wildlife conservation area, prescribe for observance by the owner such conditions as may be necessary to ensure compliance, with the provisions of this Act.

***Variation of boundaries or revocation of national parks or reserves***

32. (1) A notice under this section which proposes to:-
- (a) vary the boundaries of a national park or national reserve; or
  - (d) declare that a wildlife conservation area shall cease to be a national park or national reserve; or
  - (c) change of status from national park to national reserve or vice versa, shall only be published where a proposal is recommended by the Board in accordance with subsection (2) of this section and is subsequently approved by resolution of Parliament.
- (2) The Service shall not recommend any such proposal unless:
- (a) it has been approved by the regional wildlife conservation committee for the area in which the national park or national reserve is situated;
  - (b) it is satisfied that such variation of boundary or cessation of national park or national reserve proposed by the notice:-
    - (i) shall not endanger any rare, threatened or endangered species;
    - (ii) shall not interfere with the migration and critical habitat of the wildlife;
    - (iii) does not adversely affect its value in provision of environmental goods and services; and
    - (iv) does not prejudice biodiversity conservation, cultural site protection, or its use for educational, ecotourism, recreational, health and research purposes.
  - (c) the proposal has been subjected to an environmental impact assessment in accordance with the provisions of the Environmental Management and Coordination Act No. 8 of 1999.
  - (d) public consultation in accordance with the Third Schedule has been undertaken in relation to the proposal.
- (3) The provisions under subsection (2) with respect to the revocation of declaration of a national park or reserve or the variation of boundaries thereof shall apply with respect to a community wildlife conservation area and sanctuary.

***Exchange of part of a protected area with private land***

33. (1) Subject to section 32(2), the Minister may, on recommendation of the Board after consultation with the relevant regional wildlife conservation committee, exchange part of a national park or reserve with private land with the consent of the owner of such land where:
- (a) the exchange enhances the efficient wildlife conservation and management;
  - (b) the exchange is equitable to the Service and the land owner, according to an independent valuation;
  - (c) an environmental impact assessment has been conducted and has shown that such exchange shall not adversely affect wildlife conservation and the environment in general; and
  - (d) the wildlife conservation area to be exchanged does not contain rare, threatened or endangered species and is not a water catchment area, wetland or a source of springs.
- (2) The Service or local authority may, with the approval of the Minister, acquire by purchase any land suitable to be declared a national park, reserve, wildlife corridor, migratory route or dispersal area under this Act.
- (3) No purchase shall be transacted under this section unless prior public consultation is carried out in accordance with the Third Schedule.

***Donations and Bequests***

34. (1) Any person who is registered as a proprietor of land in accordance with the provisions of any written law may donate or bequeath all or part of that land to the state, community, an educational institution or an association for purposes of wildlife conservation.
- (2) The wildlife conservation area established on the land so donated or bequeathed shall be gazetted in accordance with this Act.
- (3) The land so donated or bequeathed shall not be used for any purpose other than the establishment of a wildlife conservation area as originally desired by the previous owner.

***Fiscal incentives***

35. (1) Notwithstanding the provisions of any relevant revenue Act, the Minister responsible for finance may, on the recommendation of the Service, propose to Government tax and other fiscal incentives or disincentives to induce or promote wildlife conservation and management.
- (2) A person or community who establishes a wildlife conservation area or sanctuary may apply to the relevant authorities, on recommendation of the Service, for exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which the wildlife conservation area or sanctuary is established.



## **Management of Wildlife Conservation Areas**

### ***Management Plans***

36. (1) Every national park, national reserve, provisional wildlife conservation area, community wildlife conservation area and sanctuary shall be managed in accordance with a management plan that complies with the requirements prescribed by rules made under this Act.
- (2) The Service shall be responsible for the preparation of a management plan with respect to each national park, provisional wildlife conservation area and national reserve under its management.
- (3) A local authority, in consultation with the Service, shall be responsible for the preparation of a management plan with respect to each national reserve under its jurisdiction.
- (4) A land owner or communal land owners, with assistance and advice from the Service, shall be responsible for the preparation of a management plan with respect to their respective community wildlife conservation area or sanctuary.
- (5) In preparing and adopting a management plan, the Service, the local authority or landowner, as the case may be, shall consult with the local regional and district wildlife conservation committees as well as the relevant constituency wildlife associations.
- (6) The Minister shall, on recommendation of the Board, by notice in the gazette, publish the approved management plans.
- (7) The Minister may, on recommendation of the Board, by notice in the Gazette, make rules to give effect to the provisions of management plans.

### ***Activities not included in management plans***

37. (1) Any activities within a wildlife conservation area which are not included in the management plan shall only be undertaken with the consent of the Board granted in accordance with this section.
- (2) A person intending to undertake any activity referred to in subsection (1) within a wildlife conservation area shall apply in that behalf to the regional wildlife conservation committee in which the area concerned is situated, and the application shall be accompanied by the results of an environmental impact assessment conducted in respect of the proposed activity.
- (3) Upon receipt of the application, the regional wildlife conservation committee shall review the proposal and submit its recommendations to the Board for consideration.
- (4) The Board shall review the proposal together with the recommendations made by the regional wildlife conservation committee and before the Board grants its approval under this section, it shall cause a notice of such intention to be published in the Gazette and in at least two newspapers of national circulation, and by posting a notice in such a manner as to bring to attention of the persons likely to be directly affected by such activity, and giving a period of not less than ninety days within which any person may make objections to the Board. The Board shall

deliberate on any objection received and deliver its decision to the objector within a period of sixty days from the date of receipt thereof.

- (5) Any objector aggrieved by a decision of the Board under this section may within thirty days after receipt of such decision appeal to the National Environment Tribunal established under the Environmental Management and Coordination Act No. 8 of 1999.

### ***Management of national parks***

38. (1) The Service shall, in collaboration with the regional wildlife conservation committees, manage, control and maintain all national parks and national reserves under its management.
- (2) Within a national park; national reserve or sanctuary managed by the Service, the Board may subject to the management plan:
- (a) reserve or set aside any portion of the park as a breeding and critical foraging habitat for wildlife or as nurseries for vegetation;
  - (b) authorize the construction of such roads, bridges, airfields, buildings, sanitary facilities and fences, the provision of such water supplies, and the carrying out of such other works as may be necessary for the purposes of the park;
  - (c) authorize snorkeling, diving and other marine related recreational activities;
  - (d) let sites for the erection of hotels or other accommodation for visitors to the park,
  - (e) set aside camping areas; and
  - (f) erect accommodation facilities within the parks:

Provided that nothing in any document connected with the letting shall be construed as in any manner abridging the overall control of the park, reserve or sanctuary by the Service, or as preventing the Director General from giving directions as to the manner in which the premises concerned shall be managed in the interest of the long term conservation of wildlife resources.

- (3) The Minister may, with the recommendation of the Board, by notice in the Gazette, publish rules to regulate and govern activities to be undertaken in the national parks, reserves and sanctuaries.

### ***Management of National Reserves***

39. (1) Each local authority shall, on the advice of the Service and in collaboration with the regional wildlife conservation committee, manage, control and maintain a national reserve under its jurisdiction.
- (2) Within a national reserve, each local authority may, with the approval of Board and subject to the management plan:-
- (a) reserve or set aside any portion of the reserve as a breeding place for animals or as nurseries for vegetation;
  - (b) authorize the construction of such roads, bridges, airfields, buildings, sanitary facilities and fences, the provision of such water supplies, and the carrying out of such other works as may be necessary for the purposes of the reserve;
  - (c) let sites for the erection of hotels or other accommodation for visitors to the reserve,
  - (e) set aside camping areas; or

(f) erect accommodation facilities within the reserve:

Provided that nothing in any document connected with the letting shall be construed as in any manner abridging the overall control of the reserve by the local authority, or as preventing the Director General from giving directions as to the manner in which the premises concerned shall be managed in the interest of the long term conservation of wildlife resources.

- (3) A local authority may, with the approval of the Minister after consultation with the Service, enter into a management agreement with a suitably qualified agent on mutually agreed terms for the management of the reserve.
- (4) The Minister may, with the recommendation of the Board and after consultation with the respective local authorities and regional wildlife conservation committees, by notice in the Gazette, publish rules to regulate and govern activities to be undertaken in the national reserves.

#### ***Management of Community Wildlife Conservation Areas and Sanctuaries***

40. (1) Individual or corporate or community land owners shall, on the advice of the Service and in collaboration with the regional wildlife conservation committee, manage, control and maintain community wildlife conservation area and sanctuary.
- (2) Within a community wildlife conservation area or sanctuary, the owners may, with the approval of Board and subject to the management plan:
  - (a) reserve or set aside any portion of the conservation area or sanctuary as a breeding place for animals or as nurseries for vegetation;
  - (b) authorize the construction of such roads, bridges, airfields, buildings and fences, the provision of such water supplies, and the carrying out of such other works as may be necessary for the purposes of the community wildlife conservation area or sanctuary; or
  - (c) let sites for the erection of hotels or other accommodation for visitors to the community wildlife conservation area or sanctuary
  - (d) set aside camping areas; or
  - (e) erect accommodation facilities within the conservation area or sanctuary,

Provided that nothing in any document connected with the letting shall be construed as in any manner abridging the overall control of the community wildlife conservation area or sanctuary by the land owners, or as preventing the Director General from giving directions as to the manner in which the premises concerned shall be managed in the interest of the long term conservation of wildlife resources.

- (3) Individual or corporate or community land owners may, with the approval of the Minister after consultation with the Service, enter into a management agreement with a suitably qualified agent on mutually agreed terms for the management of the community wildlife conservation area or sanctuary.
- (5) The Minister may, with the approval of the Board after consultation with the owner and regional wildlife conservation committees, by notice in the Gazette,

publish rules to regulate and govern activities to be undertaken in community wildlife conservation areas and sanctuaries.

***Management of Wildlife Conservation Area by the Service***

- 41.(1) The Director General may, with the approval of the Board, enter into a management agreement with a local authority for the management of a national reserve.
- (2) The management agreement referred to in subsection (1) shall clearly specify among other things:
- (a) the duration of the agreement;
  - (b) the terms and conditions under which the Service shall manage the national reserve;
  - (c) management fees and charges payable to the Service;
  - (d) a management plan to be followed by the Service;
  - (e) money to support research and development within the reserve
  - (f) the mechanism for settlement of disputes arising in respect of the agreement, and
  - (g) the circumstances under which the agreement may be terminated.
- (3) Where a local authority enters into a management agreement with the Director General in accordance with subsection (1) of this section, the agreement shall be enforceable against such local authority or its successors in title, assignees or any or all other persons deriving title from her.
- (4) The provisions of this Part with respect to the management of a national reserve by the Service shall apply mutatis mutandis with respect to community wildlife conservation area and sanctuary.
- (5) The Board may prescribe measures, guidelines and procedures for entering into such management agreements.

***Consent for Mining and Quarrying***

42. (1) No person shall mine or quarry in a national park or national reserve without the approval and consent of the Board.
- (2) The Board shall, in consultation with the relevant regional wildlife conservation committee, only approve and give consent for mining or quarrying where:-
- (a) the area does not contain rare, endangered or threatened species;
  - (b) the area is not a critical habitat and ecosystem for wildlife; the area is not an important catchment area or source of springs;
  - (c) an environmental impact assessment has been carried out in accordance with the provisions of the Environmental Management and Coordination Act No. 8 of 1999;
  - (d) the miner has undertaken through execution of a bond the value of which will be determined by the Board, to rehabilitate the site upon completion of his operation to a level prescribed by the Board:

Provided that the Minister may, on the recommendation of the Board, and in consultation with the Minister responsible for mining, by notice in the Gazette, publish rules to regulate and govern mining operations in such protected areas;

- (e) the carrying on of mining or quarrying operations shall not contravene any rules made under this Act.
- (3) Subject to subsection (2), mining or quarrying may be carried out in a national park and reserve under the authority of a licence issued by the Service and the local authority, as the case may be.
- (4) A licence under subsection (3) shall not be issued unless the applicant has implemented measures to prevent injury to human beings and wildlife and consent thereof has been obtained from the Commissioner of Mines.
- (5) The provisions of this Part with respect to mining and quarrying shall apply *mutatis mutandis* with respect to community wildlife conservation area and sanctuary.

#### ***Conservation and Management of Marine Ecosystem***

- 43. (1) The Minister shall, on recommendation of the Service and after consultation with the relevant lead agencies and the regional wildlife conservation committee concerned, as the case may be, establish marine protected and community marine conservation areas.
- (2) The marine protected or community marine conservation area established under subsection (1) of this section shall be managed by an approved management plan prepared through a consultative process with the communities concerned and relevant lead agencies.
- (3) A system of marine zones may be identified in a marine protected or community conservation area for any or all of the following:
  - (a) extraction or no extraction zones in respect of marine resources;
  - (b) protection of nesting, breeding and foraging areas;
  - (c) no take areas in respect of fisheries;
  - (d) the conservation of marine resources in accordance with Part VI of this Act; and
  - (e) any other purposes with respect to specified human activities within the zone.
- (4) The Minister shall, in consultation with the relevant lead agencies and the relevant regional wildlife conservation committee, by notice in the Gazette, issue appropriate rules and regulations for effective management of marine protected and community marine conservation areas.

#### ***Conservation and Management of Wetlands***

- 44. (1) The Minister shall, in consultation with the relevant lead agencies and the relevant regional wildlife conservation committee, by notice in the Gazette, declare a wetland that is an important habitat or ecosystem for wildlife conservation a protected wetland.
- (2) As soon as practicable, after declaring it a protected wetland, the Service in collaboration with the person or community who holds an interest in the wetland and the relevant lead agencies, shall prepare an integrated management plan for the conservation and management of the protected wetland.
- (3) The Minister shall, in consultation with the relevant lead agencies and other stakeholders, by notice in the Gazette, prescribe measures, rules, guidelines,

procedures and regulations for effective conservation and management of the protected wetland.

## **PART VI: PROTECTION OF ENDANGERED AND THREATENED ECOSYSTEMS AND SPECIES**

### ***Protection of endangered and threatened ecosystems***

45. (1) The Minister may, on the advice of the Service after consultation with the regional wildlife conservation committees, by notice in the Gazette, publish a national list of wildlife ecosystems and habitats that are threatened and are in need of protection as Fourth Schedule under this Act.
- (2) The following categories of ecosystems may be listed in terms of subsection (1):-
- (a) critically endangered ecosystem, being an ecosystem that has undergone severe degradation of ecological structures, function or composition as a result of human intervention and are a subject to an extremely high risk of irreversible transformation;
  - (b) endangered ecosystem, being an ecosystem that has undergone degradation of ecological structures, function or composition as a result of human intervention, although it is not critically endangered ecosystem;
  - (c) threatened ecosystem, being an ecosystem that is undergoing degradation of ecological structures, function or composition as a result of human intervention, although it is not critically endangered ecosystem or endangered ecosystem;
  - (d) vulnerable ecosystem, being an ecosystem that has a high risk of undergoing significant degradation of ecological structures, function or composition as a result of human intervention, although it is not critically endangered ecosystem, endangered ecosystem; or threatened ecosystem; and
  - (e) area of environmental significance, being an ecosystem that is of high conservation value or of high national, regional or local importance, although it does not qualify to be listed under paragraphs (a), (b) (c) or (d) of this section.
- (3) A list published under subsection (1) shall describe in sufficient detail the location of each ecosystem on the list, the threats and the measures being taken to restore its ecological integrity for enhanced wildlife conservation.
- (4) The Minister shall, upon recommendation of the Service, at least every five years review any national list published under subsection (1) of this section.

### ***Listing of Endangered and Threatened Species***

46. (1) The Minister may, on the advice of the Service, by notice in the Gazette, publish a list, as Fifth Schedule under this Act, of:-
- (a) critically endangered species, being species facing an extreme high risk of extinction in its natural habitat in the immediate future;
  - (b) endangered species, being any species facing an extreme high risk of extinction in its natural habitat in the near future, although its not critically endangered species;

- (c) threatened species, being any species facing a high risk of extinction in its natural habitat in the immediate future, although its not a critically endangered species or an endangered species;
  - (d) vulnerable species, being any species facing an extreme high risk of extinction in its natural habitat in the medium future, although its not a critically endangered species or an endangered species; and
  - (e) protected species, being any species which is of such high conservation value or national importance that it requires special protection, although it does not qualify to be in paragraphs (a), (b) or (c) of this section.
- (2) The Minister shall at least every five years review the lists published under subsection (1) of this section.

***Restricted Activities Involving Listed Species***

47. (1) A person may not carry out any activity involving a specimen of a listed species without a licence from the Service.
- (2) The Minister may, on recommendation of the Service, by notice in the Gazette, prohibit the carrying out of any activity:-
- (a) which is of a nature that may negatively impact on the survival of a listed species; or
  - (b) which is specified in the notice or prohibit the carrying out of such activity without a licence issued by the Service.

***Recovery Plans***

48. (1) The Service shall develop and implement recovery plans for the conservation and management of all the listed species.
- (2) The Service shall, in developing the recovery plans, to the maximum extent practicable:-
- (a) give priority to those rare, threatened and endangered species; and
  - (b) incorporate in each recovery plan-
    - (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;
    - (ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and
    - (iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.
- (3) The Service may, in developing and implementing recovery plans, enlist the services of appropriate public, private or non-governmental organizations and institutions and other qualified persons:

Provided that no resources shall be solicited by the service provider, under this section, without the approval of the Board or where such resources are received in the course of performance of the task, they shall be declared to the Board.

- (4) The Minister shall, on advice of the Service, report to the National Assembly through the National Wildlife Conservation Status report under section 9(3) the status of efforts to develop and implement recovery plans for all listed species and on the status of all species for which such plans have been developed.
- (5) The Service shall implement a system in cooperation with the regional wildlife conservation committees and constituency wildlife associations to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this section are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under section 46.

## **PARTVII: WILDLIFE CONSERVATION ORDERS AND EASEMENTS**

### ***Wildlife Conservation Orders and Easements***

49. (1) Any person may enter into negotiations with a land owner for an easement to be imposed on his land to further the principles of sustainable wildlife conservation and management:

Provided that an easement agreed upon through a private agreement shall be registered in accordance with the provisions of the Act applicable to that particular system of registration for easements or where an easement is agreed upon on any communally held land, the regional wildlife conservation committee of the area in which that land is situated shall register the easement on a register maintained for that purpose in accordance with the provisions of this Act.

- (2) A court may, on an application made under this Part, grant an easement or a wildlife conservation order subject to the provisions of this Act.
- (3) The object of an easement or wildlife conservation order is to further the principles of sustainable wildlife conservation and management as embodied in this Act by facilitating the enhancement of a wildlife conservation area.
- (4) An easement may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest under customary law as the court may determine.
- (5) Without prejudice to the general effect of subsection (3), an easement or wildlife conservation order may be imposed on burdened land so as to:
  - (a) preserve flora and fauna;
  - (b) create or maintain migration corridors and dispersal areas for wildlife;
  - (c) preserve the quality and flow of water in a dam, lake, river or aquifer;
  - (d) preserve any outstanding geological, physiographical, ecological, archaeological, cultural or historical features of the burdened land that are of importance to wildlife conservation;
  - (e) preserve scenic view, natural contours and features of the burdened land;
  - (f) prevent or restrict the scope of any activity on the burdened land which has as its object the mining and working of minerals or aggregates that may adversely affect wildlife conservation;
  - (g) prevent or restrict the scope of any agricultural or other activity on the burdened land; or



- (h) create and maintain works on burdened land so as to limit or prevent harm to the environment.
- (6) Where an easement is imposed on burdened land on which any person has at the time of the imposition of the easement, any existing right or interest to the land and that easement will restrict that right or interest, there shall be paid to that person, by the applicant for the easement such compensation as may be determined in accordance with section 53.
- (7) An easement may exist in gross; that is to say, the validity and enforceability of the easement shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited or, of a person with an interest in that plot of land who can be benefited by the easement.

#### ***Application for Conservation Orders and Easements***

50. (1) A person or a group of persons may make an application to the court for the grant of one or more wildlife conservation orders and easements.
- (2) The court may impose such conditions on the grant of an easement as it considers to be best calculated to advance the object of an easement:

Provided that in exercising the jurisdiction conferred upon it under this section, the court may require the Service or appoint any persons with special skills or knowledge on wildlife conservation issues which are a subject matter of the easement or wildlife conservation order before the court to prepare a technical report as may be required for proper determination of the matter.

#### ***Proceedings to Enforce Easements***

51. (1) Proceedings to enforce an easement may be commenced only by the person in whose name the easement has been issued.
- (2) Proceedings to enforce an easement may request the court to:
- (a) grant a wildlife conservation order; or
  - (b) grant any remedy available under the law relating to easements in respect of land.
- (3) The court shall have discretion to adapt and adjust, so far as seems necessary to it, the law and procedures relating to the enforcement of the requirements of an easement.

#### ***Registration of Easements***

52. (1) Where an easement is imposed on land, the title of which is registered under a particular system of land registration, the easement shall be registered in accordance with the provisions of the Act applicable to that particular system of registration for easements.
- (2) Where an easement is imposed on any land other than land referred to in subsection (1), the regional wildlife conservation committee of the area in which that land is situated shall register the easement on a register maintained for that purpose in accordance with the provisions of this Act.

- (3) In addition to any matter which may be required by any law relating to the registration of easements in respect of land, the registration of an easement shall include the name of the applicant for the easement as the person in whose name the easement is registered.

### ***Compensation for Easements***

53. (1) Any person who has a legal interest in the land which is the subject of an easement, shall, in accordance with the provisions of this Act, be entitled to compensation commensurate with the lost value of the use of the land.
- (2) A person described in subsection (1) may apply to the court that granted the easement for compensation stating the nature of his legal interest in the burdened land and the compensation sought.
- (3) The court may require the applicant for the easement to bear the cost of compensating the person described in subsection (1).
- (4) The court may, if satisfied that the easement sought is of national importance, order that the Government compensates the person described in subsection (1).
- (5) The court in determining the compensation due under this section shall take into account the relevant provisions of the Constitution and any other laws relating to compulsory acquisition of land.

## **PART VIII: RESEARCH AND MONITORING**

### ***Coordination of Wildlife Research***

54. (1) The Service shall, in collaboration with relevant agencies, undertake, promote and coordinate research on wildlife conservation, including sustainable use, ecosystem and habitat management and protection of endemic, rare, threatened and endangered species.
- (2) Without prejudice to the generality of the foregoing, research on wildlife may include but not limited to:
  - (a) collection and analysis of information about:
    - (i) the conservation status of the various components of biodiversity in particular wildlife resources;
    - (ii) negative and positive trends affecting wildlife conservation;
    - (iii) threatening processes or activities likely to impact on wildlife conservation;
  - (b) the assessment of strategies and techniques for wildlife conservation;
  - (c) the determination of wildlife conservation needs and priorities;
  - (d) research oriented towards informing conservation planning and management decision making; and
  - (e) the sustainable use, protection and conservation of endemic, rare, threatened and endangered species;
  - (f) wildlife diseases surveillance;
  - (g) disaster preparedness, impacts and coping and adaptive strategies; and
  - (h) mitigation measures to enhance wildlife conservation and management.

- (3) Subject to the provisions of this Act and any other written law, any research permit request relating to wildlife resources shall be approved by the department, and shall be done in collaboration with the Service:

Provided that where the scientist is from outside Kenya, he shall be required to have a sponsoring institution from the home country and a locally recognized collaborating institution, which shall guarantee that the scientist shall comply with the requirements under this Act.

- (4) Any person granted a permit to undertake research on wildlife under subsection (3) of this section shall be required upon completion of the research to deposit a copy of the research report, thesis or assessment with the Service.
- (5) The Minister may, on recommendation of the Board, by notice in the Gazette, promulgate rules, regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.

#### ***Wildlife database***

55. (1) The Service shall, in collaboration with relevant lead agencies and stakeholders, establish a comprehensive database for wildlife resources in Kenya.
  - (2) Any database established under subsection (1) of this section shall include data collected as a result of the expenditure of public funds, including data produced by the Service, universities and research institutions or as a consequence of collaborative research with foreign institutions and scientists;
  - (3) The Service shall, in consultation with relevant lead agencies, ensure that any data collected is collected in accordance with approved national standards as set out under rules and regulations promulgated under subsection (8) of this section.
  - (4) The Service shall in respect of wildlife resources information that it holds:-
    - (a) progressively make the information available to all the stakeholders and the public by means which are easily accessible; and
    - (b) take reasonable steps to organize the information with a view to the active and systematic dissemination to the relevant stakeholders and the public of the information.
  - (5) Subject to subsection (2) of this section, where an applicant requests that a particular type of information relating to wildlife resources be made available in a particular format, the Service shall make it so available, unless:-
    - (a) it is classified and restricted information relating to endangered or threatened species;
    - (b) it is reasonable for it to make the information available in another format; or
    - (c) the information is already publicly available and easily accessible to the applicant in another format:

Provided that where the Service makes the information requested available, it may charge the applicant a prescribed fee for making the information available.

- (6) If the information is not made available as requested under subsection (5) of this section, the Service shall:-

- (a) explain the reason for its decision as soon as possible and no later than 21 working days after the date of receipt of the request for the information; and
  - (b) provide the explanation in writing if the applicant so requests.
- (7) Except classified and restricted information and subject to subsection (1) of this section, any person may access the national wildlife database on the payment of a prescribed fee:
- (8) The Minister may, on recommendation of the Board, by notice in the Gazette, promulgate rules, regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.

### ***Monitoring***

- 56.(1) The Minister may, in consultation with the Board, designate monitoring mechanisms and set indicators to determine:
- (a) the conservation status of wildlife resources; and
  - (b) any negative and positive trends affecting the conservation status of wildlife resources.
- (2) The Minister shall require any person, public or private organization or non governmental organization with expertise in wildlife conservation and management to regularly report to him on the results of such monitoring measured against the predetermined indicators.
- (3) The Minister shall:-
- (a) at least every two years submit to the National Assembly a monitoring report undertaken under this section which shall form a part of the National Wildlife Conservation Status report prepared under section 9(3) of this Act; and
  - (b) make such information publicly available.

### ***Bioprospecting***

57. (1) No person may, without a permit from the Minister:-
- (a) engage in bioprospecting involving any wildlife resources; or
  - (b) export from Kenya any wildlife resources for the purpose of bioprospecting or any other kind of research.
- (2) Any person desirous of undertaking bioprospecting involving any wildlife resources may apply to the Minister for a permit in a prescribed format and on payment of prescribed fees.
- (3) The Minister shall in reviewing the application ensure that any interests of the following stakeholders may have in the proposed bioprospecting are protected:
- (a) a person, including a public or private organization or institution or community, providing or giving access to the wildlife resource to which application relates;
  - (b) an indigenous community-
    - (i) whose tradition uses of the wildlife resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; and
    - (ii) whose knowledge of or discoveries about the wildlife resource

to which the application relates are to be used for the proposed bioprospecting.

- (4) The Minister may, on the recommendation of the Board, where a stakeholder has an interest as set out in subsection (3)(a) of this section, issue a permit only if-
  - (a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholders for the provision of or access to such resources;
  - (b) the applicant and the stakeholder have entered into-
    - (i) a material transfer agreement that regulates the provision of or access to such resources; and
    - (ii) a benefit-sharing agreement that provides for sharing by the stakeholders in any future benefits that may be derived from the relevant bioprospecting and approved by the Minister.
- (5) The Minister may, on recommendation of the Board, where a stakeholder has an interest as set out in subsection (3)(b) of this section, issue a permit only if-
  - (a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder to use any of the stakeholder's of or discoveries about the indigenous wildlife resources for the proposed bioprospecting; and
  - (b) the applicant and stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting and approved by the Minister.
- (6) The Service shall, in all bioprospecting involving any wildlife resources, be a joint partner on behalf of the people of Kenya.
- (7) The Minister shall, on recommendation of the Board, require that a particular per centum of the proceeds from the bioprospecting is contributed to the Trust Fund.
- (8) The Minister may, on recommendation of the Board, by notice in the Gazette, promulgate rules, regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.
- (9) Any person who contravenes any provisions of this section or the rules made thereunder shall be guilty of an offence.

## **PART IX: COMMUNITY PARTICIPATION**

### ***Application for Community Participation***

58. (1) Upon public consultative process and under the direction of the district wildlife conservation committee, persons resident in a particular constituency may, on recommendation of the relevant regional wildlife conservation committee, register a constituency wildlife association under the Societies Act, Cap 108.
- (2) An association registered under subsection (1) may, on recommendation of the regional wildlife conservation committee, apply to the Director General for

permission to participate in the conservation and management of wildlife resources within their area of jurisdiction in accordance with the provisions of this Act:

Provided that no application under this subsection shall be made where there is existing association.

- (3) The application referred to in subsection (2) shall be in the prescribe form and shall contain:
  - (a) a list of the members of the association;
  - (b) the constitution of the association with clear governance structures;
  - (c) the association's financial regulations;
  - (d) the type of wildlife conservation activities that the association proposes to be involved in;
  - (e) the association's draft management plan detailing -
    - (i) type of wildlife resources in their area and type of conservation initiatives being undertaken;
    - (ii) measures to enhance the conservation of wildlife resources in their area;
    - (iii) type of wildlife user rights they propose to engage in that will enhance conservation and survival of wildlife in their area;
    - (iv) land use practices in the area and proposed measures to ensure land use compatibility with wildlife conservation;
    - (v) methods of monitoring wildlife;
    - (vi) community scouting scheme that will help to provide wildlife surveillance and in addressing problem animal control; and
    - (vii) any other aspect deemed necessary.
  - (f) such other information as the Director General may require.
- (4) The Director General may, with the approval of the Board, authorize the association subject to whatever terms and conditions as he may deem fit.
- (5) The Director General shall cause to be kept an up to date record of all associations participating in the conservation and management of wildlife.
- (6) The Minister may, on recommendation of the Board, by notice in Gazette, prescribed measures and guidelines to govern the operation of the association in relation to conservation and management of wildlife.

#### ***Functions of Constituency Wildlife Association***

59. An association authorized by the Director General under section 58 to participate in the conservation and management of wildlife shall:
- (a) establish community wildlife conservation areas or sanctuaries to be managed pursuant to an approved management plan for the purpose of wildlife conservation;
  - (b) formulate and implement wildlife conservation programmes, projects and activities in accordance with the approved management plan;
  - (c) assist the Service in enforcing the provisions of this Act and any rules and regulations made pursuant thereto, in particular to poaching and bushmeat trade;

- (d) with the approval of the Board enter into partnerships with other persons for the purposes of ensuring the efficient and sustainable use of wildlife resources;
- (e) keep the regional and district wildlife conservation committees informed of any development changes and occurrences within their area that may adversely affect wildlife conservation;
- (f) help on problem animal control through community wildlife scouts; and
- (g) do any other act that is necessary for enhanced community participation in wildlife conservation and management.

***Grant of Wildlife User Rights***

60. (1) Any person or association authorized by the Director General may, on approval of the Board and on recommendation of the regional wildlife conservation committee for the area concerned, apply to the Minister for granting of wildlife user rights in a prescribed form and on payment of prescribed fees.

- (2) The Minister may grant all or any of the following wildlife user rights:
- (a) wildlife-based tourism;
  - (b) recreational;
  - (c) photography and filming;
  - (d) scientific and educational
  - (e) religious and cultural;
  - (f) game farming of wildlife listed in the Sixth Schedule; and
  - (g) game ranching.

(3) The Minister may, on recommendation of the Board, grant sale of live animals and cropping in game farming operations which shall be done under the supervision of the Service and in consultation with the respective regional wildlife conservation committee.

(4) Subject to the rules and regulations made under this section, the Minister may, on recommendation of the Service and the relevant regional wildlife conservation committee, grant cropping to be undertaken in game ranching operations where applicable:

Provided that cropping shall not be done in contravention of the provision of this Act or be in conflict with the long term goal of wildlife conservation and management.

(5) The Minister may, on recommendation of the Service and after consultation with relevant regional wildlife conservation committee, authorize culling of wildlife in a wildlife conservation area as a management tool by the Service:

Provided that culling shall not be carried out in such a manner as to conflict with the long term goal of wildlife conservation and management.

(6) The Service shall keep record of all records of wildlife trophies from the cropping and culling operations to mitigate against illegal trade in wildlife trophies.

(7) The Minister may, on recommendation of the Board, authorize local processing and sale of wildlife trophies from the cropping activities under the supervision of the Service.

- (8) The Minister may, on recommendation of the Board and approval by resolution of the National Assembly, donate wildlife as a gift to another state for non-commercial purposes.
- (9) The Minister may, on recommendation of the Board, by notice in the Gazette, prescribe standards, guidelines and rules as are necessary and appropriate to carry out the purposes of this section.

### ***Prohibition of Sport Hunting***

61. (1) Sport hunting or any other form of hunting is prohibited.
- (2) Any person engaging in sport hunting or any other form of hunting will be committing an offence.

### ***Government Trophies***

62. (1) Except as otherwise provided in this Act, the following shall be Government trophies and the property of the Government-
  - (a) any trophy found without an owner;
  - (b) any animal, found dead or killed by accident or mistake;
  - (c) any animal killed in defence of life, or in other circumstances authorized by or under this Act.
  - (d) any animal or trophy in respect of which a breach of any of the provisions of this Act or regulations or the rules has been committed;
  - (e) any animal killed by a member of the Service in the course of his duties.
- (2) The Minister may, on recommendation of the Board, by notice in the Gazette, prescribe measures, rules, regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.

### ***Assignment of Wildlife User Rights***

- 63 (1) Any person or association, with the approval of the Minister after consultation with the Service, may assign any or all the wildlife user rights granted under section 60 to a suitably qualified agent on mutually agreed terms.
- (2) The Minister shall not approve any assignment which would derogate from the main objectives and purposes set out in the instrument granting the wildlife user rights.
- (3) The instrument granting the wildlife user rights shall be deemed to provide that any person or association shall be liable for all the activities, acts and omissions of the assignees of its rights under the licence.

### ***Withdrawal of Wildlife User Rights***

64. (1) The Minister may, on recommendation of the Board, withdraw a particular wildlife user right granted to any person or association where
  - (a) the person or an association breaches the terms and conditions thereof;
  - (b) he considers such action as necessary for purposes of protecting and conserving wildlife; or



- (c) the person or association concerned so requests.
- (2) Where the Minister intends to withdraw a particular user right on either of the grounds stipulated in subsection (1) (a) or (b) of this section, it shall give the affected person or association thirty days notice to show cause why the wildlife user right should not be so withdrawn.
- (3) Where the person or association is aggrieved by the decision of the Minister, may within thirty days after being notified of the decision appeal to the National Environment Tribunal established under the Environmental Management and Coordination Act No. 8 of 1999.
- (4) Nothing in this section shall be construed to limit the grounds on which, in accordance with the terms under which any wildlife user right may be withdrawn.

### ***Compensation for Wildlife Damage***

#### ***Establishment of Wildlife Compensation Fund***

65. (1) There is hereby established a Wildlife Compensation Fund, (hereinafter referred to as the "Compensation Fund"), which shall be used for the following purposes:
- (2) The Compensation Fund shall consist of:-
    - (a) moneys appropriated by Parliament for purposes of the compensation fund;
    - (b) a proportion of the user fees determined by the Minister in consultation with the Service;
    - (c) such sums of money as may be received by the compensation fund in the form of donations, endowments, grants and gifts from whatever source and specifically designated for the compensation fund; and
    - (d) such sums as may be levied from wildlife user rights and other levies as a contribution towards the compensation fund.
  - (3) The Compensation Fund shall be vested in five managing trustees appointed by the Minister by a notice in the Gazette. The managing trustees shall be persons holding at least a degree from a recognized university at the time of their appointment.
  - (4) The object of the Compensation Fund shall be to facilitate payment for injury to person or death, livestock, crops and property damage occasioned by wildlife.

#### ***Compensation for Personal Injury or Death or Damage to Crops and Property***

66. (1) Where any person suffers any bodily injury or is killed by any animal listed under the Seventh Schedule, the person injured or in the case of a deceased person, his personal representative or successor or assign, may make an application to a district wildlife conservation committee in his jurisdiction established by section 17 for verification.
- (2) The district wildlife conservation committee shall verify the claim and with their recommendations submit it to the managing trustees of the Compensation Fund for award and payment, which compensation shall not exceed one million shillings: Provided that no compensation will be payable where the injury or death occurred in the course of any conduct on the part of the person concerned which would constitute an offence under this Act.

- (3) Any person who suffers loss or damage to crops, livestock or other property from a game animal specified in the Seventh Schedule hereof and subject to the rules made by the Minister, may submit a claim to the district wildlife conservation committee who shall verify the claim and make recommendations as appropriate and submit it to the managing trustees of the Compensation Fund for award and payment.
- (4) The Compensation Fund managing trustees shall review the claim and award and pay a compensation valued at the local market rates:

Provided that no compensation will be paid where the owner of the livestock, crops or property failed to take reasonable measures to protect the crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.

- (5) Where the person is dissatisfied with the decision and award made by the compensation fund managing trustees, he may within thirty days after being notified of the decision and award appeal to the National Environment Tribunal established under the Environmental Management and Coordination Act No. 8 of 1999.
- (6) Any person who makes a false claim or makes a false statement to the district wildlife committee or Compensation Fund in respect of a wildlife damage claim shall be guilty of an offence under the applicable laws dealing with corruption and economic crimes.
- (7) The Minister may, by notice in the Gazette, revise the Seventh Schedule for which compensation is payable on recommendation of the Board after consultation with the managing trustees of the Compensation Fund
- (8) The Minister may, on recommendation of the Board and after consultation Compensation Fund managing trustees and regional wildlife conservation committees, review the limits on the compensation payable for injury or death, loss of livestock, crop or property.
- (9) The Minister may, on recommendation of the Board, by notice in the Gazette, prescribe measures, rules, regulations and guidelines as are necessary and appropriate to carry out the purposes of this section

## **PART X: REGULATION OF TRADE IN ENDANGERED SPECIES**

### ***General Prohibition***

67. (1) No person shall trade in, import, export, re-export or introduce any specimen of an endangered or threatened species into or from Kenya without a permit.
- (2) Without prejudice to the generality of the foregoing, it is unlawful for any person to:
  - (a) import any such species into, or export any such species from Kenya;
  - (b) take any such species within Kenya or Kenya's territorial sea;
  - (c) take any such species upon the high seas;

- (d) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of paragraphs (b) and (c);
  - (e) deliver, receive, carry, transport, or ship in regional commerce, by any means whatsoever and in the course of a commercial activity, any such species;
  - (f) sell or offer for sale in commercial transaction within or outside Kenya any such species;
  - (g) products of listed species
  - (h) violate any rules and regulations pertaining to such listed species.
- (3) Any person who contravenes any provisions of this section shall be guilty of an offence.

***Application for a Permit***

68. (1) Any person who intends to import, export, re-export, introduce from the sea or otherwise trade in any endangered or threatened or exploited species shall apply to the Director General for a permit in a prescribed manner and on payment of a prescribed fee.
- (2) Every application for a permit shall specify-
- (a) the full names and address of the applicant,
  - (b) the type of trade to which the application relates,
  - (c) the species and number of specimens of the species to be traded,
  - (d) the source of the species with a recommendation from the regional wildlife conservation committee from which the species is to be gotten or introduced,
  - (e) the country to or from which specimens are to be conveyed, and
  - (f) the customs port of entry through which the specimen is to be conveyed.

Provided that:

- (i) the purpose for which the application is made is not detrimental to the survival of the species,
  - (ii) the proposed recipient of that specimen is suitably equipped to conserve the species,
  - (iii) that specimen is not to be used primarily for commercial purposes,
  - (iv) evidence of consent from the regional wildlife committee from which or which is likely to receive the species,
  - (v) where appropriate, compensation has been paid to the concerned communities, and
  - (vi) permission to export or re-export that specimen has been granted by the relevant authority of the country of export or re-exports.
- (2) The Minister may, on recommendation of the Board, issue a permit on such terms and conditions as may be appropriate and necessary to enhance conservation and management of listed species.
- (3) The Minister may, on recommendation of the Board, by notice in the Gazette, promulgate rules, regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.

- (4) Any person who contravenes any provisions of this section or the rules made thereunder shall be guilty of an offence.

***Revocation of a Permit***

69. The Minister on the recommendation of the Service revoke a permit issued under section 68 if he finds that the permittee is not complying with the terms and conditions of the permit.

**PART XI: INTERNATIONAL TREATIES, CONVENTIONS AND AGREEMENTS**

***International Treaties, Conventions and Agreements***

70. (1) Where Kenya is a party to an international treaty, convention or agreement, whether bilateral or multilateral, concerning the management of wildlife, the Service shall, subject to the direction and control of the Minister:
- (a) initiate legislative proposals for consideration by the Attorney-General, for purposes of giving effect to such treaty, convention or agreement in Kenya or for enabling Kenya to perform her obligations or exercise her rights under such treaty, convention or agreement; and
  - (b) identify other appropriate measures necessary for the national implementation of such treaty, convention or agreement.
- (2) The Service shall, in relation to the formation of international treaties, conventions or agreements for the conservation and management of wildlife, assist the Ministry in negotiating such treaties, conventions or agreements.
- (3) The Service shall keep a register of all international treaties, agreements or conventions relating to the conservation and management of wildlife to which Kenya is a party.
- (4) The Minister may, on recommendation of the Board after consultation with the other relevant agencies, negotiate and establish transfrontier wildlife conservation areas for the better management of shared wildlife resources.
- (5) The Minister may, on recommendation of the Board and after consultation with the relevant lead agencies, promulgate rules and regulations for effective management of transfrontier wildlife conservation areas established under subsection (4) of this section.
- (6) The Minister shall publish regularly through the biannual wildlife conservation status report under section 9(3) on the progress of Kenya's implementation of wildlife related bilateral or multilateral environmental agreements to which Kenya is a Party.

**PART XII: LAW ENFORCEMENT**

***Powers of Authorized Officers***

71. (1) An authorized officer may
- (a) demand from any person the production of an authority, licence or permit for any act done or committed by that person in relation to

wildlife resources for which an authority, permit or licence is required under this Act or under any rules made thereunder;

- (b) require any person found within or without wildlife conservation areas who has in his possession any wildlife specimen, to produce authority, permit or licence authorizing him to possess such wildlife specimens, where no such proof is produced, arrest and take such person before a magistrate;
- (c) search any person suspected of having committed an offence under this Act or of being in possession of any wildlife specimen in respect of which an offence has been committed, arrest and detain the person, seize and detain any baggage, parcel or house being used to carry or hide the such wildlife specimen by the person or his agent.
- (d) search any vehicle or vessel and seize and detain any wildlife specimens in respect of which there is reason to believe that an offence has been committed, together with any tools, equipments, vessels or vehicles used in the commission of the offence:

Provided that the authorized officer detaining the person and seizing such property shall forthwith take the person and the seizure to the magistrate having jurisdiction over the area where the offence takes place within 48 hours;

- (e) confiscate any equipment or receptacle placed for purposes of capturing, harming or killing wildlife animals.
- (f) conduct investigation and undertake intelligence gathering as appropriate on any land, premises, vessels and vehicles to apprehend suspected offenders of this Act.

(2) Notwithstanding the provisions of sub-section (1) of this section:-

- (a) where anything seized and detained under this section is subject to speedy and natural decay, and it is not reasonably practicable to take effective steps to preserve the same, the officer by whom the same is seized or an officer to whose orders he is subject may, without obtaining any order from a court, destroy or otherwise dispose of that thing if he considers it desirable so to do; or
- (b) where any apparently unlawful means of hunting cannot be practicably be removed from its location it may forthwith be rendered inoperative.

(3) The Director General or any authorized officer may-

- (a) enter any land, premises, vessel, vehicle, aircraft or trailer in order to assess the condition of wildlife thereof or to perform any such other act which he considers necessary in the circumstances;
- (b) require the production of, inspect, examine and copy licences, registers, records, management plan and other documents relating to this Act; and
- (c) take all reasonable steps to prevent the commission of an offence under this Act.

(4) In exercising his powers under this Act, the authorized officer shall suitably identify himself.

***Erection of a Temporary Barrier***

72. (1) Any authorized officer of or above the rank of Senior Warden may erect a temporary barrier across any road or place and any person approaching the barrier shall, on being required by the officer so to do, stop and allow the officer to carry out search of his own person and of any vehicle as may appear to the officer to be necessary or expedient.
- (2) Any person who:
- (a) fails to stop or allow a search when so required under sub-section (1) of this section ; or
  - (b) assaults, resists or willfully obstructs any officer in the exercise of the powers conferred upon such officer by this section, shall be guilty of an offence and liable to a fine of not less fifty thousand shillings or to imprisonment for a period of not less than six months or to both such fine and imprisonment.

***Use of Firearms***

73. (1) The President may, through the Commissioner of Police, make available to the disciplined officers of the Service such firearms as may be necessary for the Service to carry out its functions under this Act.
- (2) The Service shall coordinate and control all wildlife security issues in all the national parks, reserves and community wildlife conservation areas and sanctuaries in collaboration with other law enforcement agencies, local authorities and community wildlife scouts.
- (3) A member of the uniformed and disciplined cadre, after acquiring the requisite training, and when authorized by the Director General, may use firearms for the following purposes:
- (a) in the course of law enforcement against-
    - (i) any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape lawful custody;
    - (ii) any person who, by force, removes or attempts to remove any other person from lawful custody;
    - (iii) any person who, by force, attempts to prevent the lawful arrest of himself or any other person; or
    - (iv) any person unlawfully hunting any wildlife using a firearm.
  - (b) for the protection of people and property against any animal causing destruction to human life or crops or livestock or property;
  - (c) for the protection and safety of visitors in wildlife conservation areas against banditry or animals;
  - (d) in the course of problem animal control.

- (4) Notwithstanding the foregoing, a uniformed and disciplined officer of the Service shall not resort to the use of firearms-
- (a) under paragraph (a)(i) of subsection (3), unless the officer concerned has reasonable grounds to believe that he cannot otherwise prevent the escape, and unless he has given ample warning to such person that he is about to use a firearm against him, and the warning is unheeded; or
  - (b) under paragraph (a)(ii) or (a)(iii) of subsection (3), unless the officer concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm, or that he cannot otherwise prevent the removal, or, as the case may be, effect the arrest.
- (5) When a person has been taken into custody for any offence under this Act, the authorized officer shall, if it does not appear practicable to bring that person to the nearest police station or competent court within 48 hours after he has been so taken into custody, detain the person in appropriate premises at the nearest Service station.
- (6) A person arrested and detained in accordance with subsection (5) of this section shall be brought before a competent court or the nearest police station within 48 hours.
- (7) Any person who, without authorization conveys into a wildlife conservation area, or being within the area thereof, is in possession of, any weapon, ammunition, explosive, trap or poison, shall be guilty of an offence.
- (8) The Minister may, on recommendation of the Board and in consultation with the minister responsible for local authorities, make rules and regulations in respect of wildlife security operations in national reserves.

#### ***Offences Relating to Management Plans***

74. Any person who-

- (a) contravenes an approved management plan required to be developed under this Act; or
- (b) fraudulently alters the approved management plan under this Act,

commits an offence and is liable upon conviction to a fine of not less than one hundred thousand or to imprisonment for a term of not more than two years or to both such fine and imprisonment.

#### ***Offences Relating to Pollution***

75. (1) Any person who-

- (a) discharges any dangerous materials, substances, oil into a designated wildlife area contrary to the provisions of this Act and any other written law;
- (b) pollutes wildlife habitats and ecosystems;
- (c) discharges any pollutant detrimental to wildlife into designated wildlife conservation areas contrary to the provisions of this Act or any other written law, commits an offence and shall be liable upon conviction to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.

- (2) In addition to any sentence that the court may impose upon a polluter under subsection (1) of this section, the court may direct that person to –
- (a) pay the full cost of cleaning up the polluted wildlife habitat and ecosystem and of removing the pollution; and
  - (b) clean up the polluted habitats and ecosystems and remove the effects of pollution to the satisfaction of the Service.
- (3) Without prejudice to the provisions of subsections (1) and (2) of this section, the court may direct the polluter to contribute to a wildlife conservation activity as compensation, restoration and restitution.

***Offences Relating to Conservation Orders and Easements***

76. Any person who

- (a) fails, neglects or refuses to comply with a wildlife conservation order made under this Act;
- (b) fails, neglects or refuses to comply an easement issued under this Act,

commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not less than three years, or to both such fine and imprisonment.

***Offences Relating to Permits***

77. Any person who, for the purpose of obtaining, whether for himself or another, the issue of a permit or certificate –

- (a) knowingly or recklessly makes a statement or representation which is false in a material particular; or
- (b) knowingly or recklessly furnishes a document or information which is false in a material particular; or
- (c) for any purpose in connection with this Act, knowingly or recklessly uses or furnishes a false, falsified or invalid permit or certificate or one altered without authorization; or
- (d) knowingly contravenes any condition or requirement of a permit, commits an offence and shall be liable upon conviction, to a fine of not less than fifty thousand shillings or to imprisonment for a term not less than six months, or to both such fine and imprisonment.

***Offences Relating to Flying Aircrafts in Wildlife Conservation Areas***

78. (1) Except as may be necessitated by sudden emergency endangering the safety of any aircraft or persons or carrying out an evacuation, the proof of which shall lay on the pilot thereof, no aircraft:-

- (a) shall be landed in a wildlife conservation area otherwise than at a recognized airfield and in accordance with the rules;
- (b) except for the purpose of landing at or taking off from a recognized airfield, shall be flown at a height of less than one-thousand-five hundred feet over a wildlife conservation area.

- (2) The pilot of an aircraft who contravenes the provisions of this section, or fails to comply with any rules made thereunder shall be guilty of an offence and liable to a fine not less than fifty thousand shillings or to imprisonment for a term not less than six months or to both such fine and imprisonment:



Provided that nothing in this sub-section shall apply to the operation of any aircraft, which is, at the time of the contravention, being used for any purpose of the Service and other lead agencies.

***Other Offences***

79. (1) Any person who-

- (a) commits a breach of, or fails to comply with the provisions of this Act;
- (b) commits a breach of, or fails to comply with any of, the terms or conditions of a licence or permit issued to him under this Act;
- (c) fails to comply with a lawful requirement or demand made or given by an authorized officer;
- (d) obstructs a person in the execution of his powers or duties under this Act;
- (e) makes or is found in possession of any wildlife, wildlife meat or trophy without a licence or permit from the Minister or the Service;
- (f) enters or resides in a national park or reserve otherwise than in the course of his duty as authorized officer or a person lawfully employed in the park or reserve, as the case may be;
- (g) sets fire to any vegetation in any wildlife conservation area or allows any fire lighted by himself or his servants to enter a wildlife conservation area;
- (h) carries out logging in a national park or reserve;
- (g) clears and cultivates any land in the national park or reserve;
- (h) wilfully damages any object of geological, prehistoric, archaeological, historic, marine or other scientific interest within a wildlife conservation area, or knowingly removes or attempts to remove any such object or any portion thereof in the course of his duty thereof from wildlife conservation areas;
- (i) knowingly introduces any alien species into any wildlife conservation area;
- (j) undertakes any activity in wildlife conservation area contrary to the provisions of this Act:

commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings or to imprisonment for a term of not less than six months, or to both such fine and imprisonment.

***Offences Relating to Bodies Corporate***

80. (1) When an offence against this Act, is committed by a body corporate, the body corporate and every director or officer of the body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence.

(2) Where an offence against this Act is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge or who should have had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.

- (3) A person shall be personally liable for an offence against this Act, whether committed by him on his own account or as an agent or servant of another person.
- (4) An employer or principal shall be liable for an offence committed by an employee or agent against this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.

### ***General Penalty***

81. Any person found guilty of an offence against the provisions of this Act for which no specific penalty is provided shall be liable to a fine of not less than one hundred thousand or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

### ***Forfeiture***

82. (1) The Court before which a person is charged for an offence under this Act or any regulations made thereunder may, in addition to any other order:
  - (a) upon the conviction of the accused; or
  - (b) if it is satisfied that an offence was committed notwithstanding that no person has been convicted of an offence;
  - (c) order that the wildlife trophy, motor vehicle, equipment and appliance or other thing by means whereof the offence concerned was committed or which was used in the commission of the offence be forfeited to the State and be disposed of as the court may direct.
- (2) In making the order to forfeit under subsection (1) the Court may also order that the cost of disposing of the substance, motor vehicle, equipment, appliance or any other thing provided for in that subsection be borne by the person convicted thereunder.
- (3) The Court may further order that any licence, permit or any authorization given under this Act, and to which the offence relates, be cancelled.

### ***Exemptions of the Officers of the Service***

83. Nothing in this Act shall be construed as rendering an officer of the Service guilty of an offence under this Act or the rules in respect of anything done by him in the course of duty as such officer, but where the officer is charged with such an offence the onus of proving that anything done by him was done in the course of his duty shall lie upon him.

### ***Prosecutorial Powers***

84. An authorized officer may with the leave of the Attorney General given under the Criminal Procedure Code, conduct any prosecution for any offence committed under this Act.

### ***Restraint of Breaches of the Act***

85. (1) Every citizen of Kenya, and any person who is ordinarily resident in Kenya, who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for-
  - (a) a declaration that the provisions of this Act are being, have been, are about to be contravened;

- (b) an injunction restraining any specified person from carrying out such a contravention;
  - (c) the writ of mandamus against any officer or person who has failed to perform a duty imposed by or under this Act; and
  - (d) any remedy at law or equity for preventing or enforcing the provisions of this Act.
- (2) The petition submitted under subsection (1) shall state-
- (a) the particulars of the petitioner;
  - (b) the nature of the violation or likely violation;
  - (c) the provision(s) of this Act which is or are being violated; and
  - (d) the person, agency or body violating or about to violate the said provisions.

### **PART XIII: MISCELLANEOUS**

#### ***Rules***

86. (1) The Minister may, on recommendation of the Board, make rules and regulations for or with respect to any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of the foregoing, rules and regulations may be made under this section for-
- (a) grant of wildlife user rights;
  - (b) prescribing the amount of user fees payable under this Act generally or in particular cases;
  - (c) specifying the conditions subject to which any licence, permit or authorization may be granted or issued under this Act;
  - (d) regulating activities in the national parks, reserves, community wildlife conservation areas and sanctuaries;
  - (e) prescribing measures that enhance community participation in the conservation and management of wildlife;
  - (f) providing for the protection of endangered and threatened ecosystems, habitats and species; and
  - (g) prescribing the manner of nomination of representatives of communities and other stakeholders to the Board, the regional and district wildlife conservation committees.
- (3) Rules made under this section may require acts or things to be performed or done to the satisfaction of the Service, and may empower the Board to issue orders imposing conditions and dates upon, within or before which such acts or things shall be performed or done.
- (4) Upon recommendation of the Board after consultation with the relevant local authority and regional wildlife conservation committee, the Minister, in consultation with the minister for the time being responsible for matters related to local authorities, make rules in respect of any or all national reserves managed by local authorities.
- (5) The provisions of section 27 of the Interpretation and General Provisions Act shall not apply to rules made under this section.

***Director General to Maintain Registers***

87. (1) The Director General shall maintain registers of:
- (a) all licences and permits issued under this Act;
  - (b) national parks, national reserves, community wildlife conservation areas and sanctuaries established under this Act and the management thereof;
  - (c) all associations participating in conservation and management of wildlife;
  - (d) names of all honorary wardens appointed under this Act; and
  - (e) all management plans developed pursuant to the provisions of this Act.
- (2) All registers maintained under this section shall be open for inspection at the office of the Director General, or such designated office, by members of the public during official working hours.

***Protection of Life and Property***

88. (1) Notwithstanding anything to the contrary in this Act any occupier of land or his servant or any owner of crops or stock or his servant, may, if necessary for the protection of his land, crops or stock, kill any wildlife which is causing material damage or loss to his land or to any crop or stock.
- (2) Any person who kills any wildlife as prescribed under subsection (1) of this section shall file a report with the nearest Service office, police station or provincial administration within 48 hours.
- (3) Any person who fails to file a report as prescribed under subsection (2) of this section shall be guilty of an offence.

***Environmental Impact Assessments and Tribunal***

89. (1) The provisions of Part VI and Part XII of the Environmental Management and Coordination Act No. 8 of 1999 shall apply, mutatis mutandis, to and in respect of a licence under this Act and any environmental impact assessment as well as reference to the National Environment Tribunal required under this Act.
- (2) The provisions of the Environmental Management and Coordination Act No. 8 of 1999 regarding reference to the Tribunal established under that Act shall apply to hearing of appeals arising from the decisions made under this Act.

**PART XII: TRANSITIONAL PROVISIONS**

***Repeal of Cap 376***

90. The Wildlife (Conservation and Management) Act Cap 376 as amended in 1989 is repealed.

***Savings***

91. Notwithstanding the repeal of the Wildlife Act-

- (a) any land which, immediately before the commencement of this Act, was a national park, national reserve or sanctuary, shall be deemed to be a national park, national reserve or sanctuary, under this Act;
- (b) any licences or permits granted under that Act and in force immediately before the commencement of this Act shall, with the approval of the Minister on recommendation of the Board, be deemed to have been granted under the provisions of this Act, and that regard set out in the licence, as the case may be, or renewed as a licence or permit under this Act; and
- (c) any rules and regulations promulgated under that Act and in force immediately before the commencement of this Act, with the approval of the Minister on recommendation of the Board, be deemed to have been promulgated under the provisions of this Act, and shall remain in force until revoked in accordance with any rules and regulations made under this Act.

## FIRST SCHEDULE

### PART 1

#### PROVISIONS RELATING TO THE OFFICERS OF THE SERVICE

##### *Officers of the Service*

1. (1) The officers of the Service shall hold the ranks specified in subparagraph (2).

(2) The ranks of the officers of the Service referred to in subparagraph (1) in order of seniority shall be as follows:

**(a) Director General**

**(b) Uniformed and Disciplined Officers Cadre**

*(i) Gazetted Officers*

*Director*

Deputy Director  
Senior Assistant Director  
Assistant Director  
Senior Warden

*(ii) Senior Officers*

Warden I  
Warden II

*(iii) Junior Officers*

Assistant Warden I  
Assistant Warden II  
Assistant Warden III  
Cadet

*(iv) Rangers*

Sergeant Major  
Senior Sergeant  
Sergeant  
Corporal  
Ranger  
Ranger Recruit

**(c) Scientific Cadre**

Chief Scientist/Director  
Senior Principal Scientist  
Principal Scientist  
Senior Scientist  
Scientist I  
Scientist II  
Scientist III  
Research Assistant I  
Research Assistant II  
Research Assistant III

**(d) Other officers appointed by the Board on specified schemes**

- (3) The officers of the Service shall, in the performance of the duties conferred upon them under this Act and any other written law, conform with any lawful instructions, directions or orders which may be given by the Director General.
- (4) The Director General may, with the consent of the Board, from time to time make and issue administrative orders to be called Service Standing Orders for the general control, direction and information of the officers of the Service.

***Disciplinary Code and Regulations***

2. (1) The Director General shall, with the approval of the Board, issue a Disciplinary Code for Officers of the Service, which shall apply to the uniformed and disciplined officers of the Service and which may provide for the following matters: -
  - (a) the investigation of disciplinary offences and the hearing and determination of disciplinary proceedings;
  - (b) disciplinary penalties and awards; and
  - (c) any other related matters as pertains to the Act.
- (2) The following disciplinary penalties, or any combination thereof, may be included in the Disciplinary Code for infringement of the Code issued under subparagraph (1): -
  - (a) dismissal from the Service;
  - (b) reduction in rank;
  - (c) confinement for not more than fourteen days in a guard room or restriction to the confines of any camp or other area where a part of the Service is stationed;
  - (d) fines;
  - (e) surcharge;
  - (f) where the offence has occasioned any expense, loss or damage, stoppages of pay or allowances;
  - (g) extra drills, parades or fatigues;
  - (h) severe reprimand;
  - (i) reprimand; and
  - (j) admonition.
- (3) A Disciplinary Code issued under this paragraph may provide that a disciplined officer of the Service committing a disciplinary offence may be arrested without a warrant by or on the order of an officer senior to him or placed in command over him, who may, if circumstances so warrant, confine that officer or cause that officer to be confined in a building suitable for the purpose, pending the determination of disciplinary proceedings:

Provided that no person shall be confined for more than five days without a warrant being issued for his arrest.

***Insurbordinate Behaviour***

3. (1) A uniformed and disciplined officer of the Service who
- (a) strikes, or otherwise uses violence on, or threatens violence to or incites any other person to use violence on, an officer senior to or placed in command over him or that other person; or
  - (b) uses threatening or insubordinate language to an officer to or placed in command over him,

shall be guilty of an offence and liable to imprisonment for a term not exceeding one year.

- (2) The Director General or an officer of or above the rank of Assistant Director, or an officer above the rank of Principal Scientist to whom power so to do has been delegated by the Director General, may direct that an offence committed under this paragraph be dealt with under the Code.

***Desertion and Absenteeism***

4. (1) A uniformed and disciplined officer of the Service who absents himself from duty without leave or just cause for a period of or exceeding twenty-one days shall, unless he proves the contrary, be deemed to have deserted from the Service.

- (2) A uniformed and disciplined officer who deserts the Service shall forfeit any pay or allowance due to him, and subject to the provisions of the Retirement Benefits Act be paid such pension, provident fund or any other scheme operated by the Service, less liabilities due to the Service and in addition, such member shall be liable to disciplinary action.

- (3) No pay or allowance shall be paid to a uniformed and disciplined officer in respect of any day during which he is absent from duty without leave, unless the Director General otherwise directs.

- (4) Any uniformed and disciplined officer who deserts from the Service for a cumulative and successive period of or exceeding twenty-one days shall be guilty of an offence and liable to disciplinary action.

- (5) Any uniformed and disciplined officer who, upon being dismissed from the Service, or who deserts from the Service for a period of twenty-one days and does not surrender the property of the Service or the Government within a period of or not exceeding seven days from the date of dismissal or desertion, shall be guilty of an offence and liable to imprisonment for one year or a fine not exceeding fifty thousand shillings or both such fine and imprisonment.

***Prohibition from Joining Trade Unions***

5. (1). No uniformed and disciplined officer of the Service shall be or become a member of:
- (a) a trade union or any body or associate affiliated to a trade union;
  - (b) a body or association the objects or one of the objects of which is to control or influence conditions of employment in a trade or profession; or



(c) a body or association the objects, or one of the objects of which, is to control or influence pay, pension or conditions the Service other than a staff association established and regulated by rules or regulations made under this Act.

(2) A uniformed and disciplined officer of the Service who contravenes subparagraph (1) shall be liable to be dismissed from the Service and subject to the provisions of the Retirement Benefits Act be paid such pension, gratuity, provident fund or any other scheme operated by the Service, less liabilities due to the Service.

(3) If a question arises as to whether a body is a trade union or an association to which this paragraph applies, such question shall be referred to the Minister whose decision thereon shall be final.

**Definition**

6. In this Part, “uniformed and disciplined officer” means an officer specified in subparagraph (2)(b) of paragraph 1.

**PART II  
OATH OF ALLEGIANCE**

“I,..... do hereby Swear by Almighty God (or do hereby solemnly and sincerely affirm) that I will give faithful and loyal service during my service in Kenya Wildlife Service and that I will bear true allegiance to the President and the Republic of Kenya: that I will subject myself to all Acts, Orders and Regulations now or in the future in force relating to my service in Kenya Wildlife Service; that I will obey all lawful orders of the officers placed over me; and that I will discharge all the duties of a Kenya Wildlife Service officer according to law, without fear, favour, affection or ill-will (so help me God”)

.....  
Signature or thumbprint of Declarant

Personal Number.....

Sworn/affirmed before me.....

On the .....

## SECOND SCHEDULE

### PROVISIONS RELATING TO THE CONDUCT TO BUSINESS AND AFFAIRS OF THE BOARD

#### *Tenure of office and conduct of business of the Board*

1. (1) The chairman of the Board shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.
- (2) Other than ex-officio members, a member of the Board shall, subject to the provisions of this section, hold office for a period not exceeding three years on such terms and conditions as may be specified in the instrument of appointment, and shall eligible for re-appointment for one further term of three years.
- (3) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office fall at different times.
- (4) A member other than the chairman an ex-officio member may –
  - (a) at any time resign from office by notice in writing to the Minister;
  - (b) be removed from office by the Minister if the member –
    - (i) has been absent from three consecutive meetings of the Board without the permission of the chairman; or
    - (ii) is adjudged bankrupt or enters in to a composition scheme or arrangement with his creditors; or
    - (iii) is convicted of an offence involving fraud or dishonesty; or
    - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
    - (v) is incapacitated by prolonged physical or mental illness; or
    - (vi) is found to have acted in a manner prejudicial to the aims and objectives of this Act; or
    - (vii) fails to comply with the provisions of this Act relating to disclosure; or
    - (viii) is otherwise unable or unfit to discharge his functions as a member of the Board.

#### *Meetings of the Board*

2. (1) The Board shall meet not less than four times in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting:

Provided that the chairman may call a special meeting of the Board at any time where he deems it expedient for the transaction of the business of the Board.

- (2) Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board by the secretary.

- (3) The quorum for the conduct of business of the Board shall be half of the members' and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.
- (4) The chairman shall preside over all meetings of the Board in which he is present, but in his absence the vice-chairman shall preside, and in his absence the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
- (4) At the first meeting of the Board, the members shall elect a vice-chairman, not being a public servant, from among its members.

***Disclosure of Interests***

- 3.(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at the meeting of the Board at which the contract, proposed contract or matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose that fact and shall be excluded at the meeting at which the contract, proposed contract or matter is being considered.
- (2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

***Board may regulate procedure***

4. Save as provided in this Schedule, the Board may regulate its own procedure.

### THIRD SCHEDULE

#### PROVISIONS AS TO PUBLIC CONSULTATION

1. (1) Where this Act imposes a requirement for public consultation, the responsible authority shall publish a notice in relation to the proposal –
  - (a) in the Gazette;
  - (b) in at least two national newspapers;
  - (c) in at least one newspaper circulating in the locality to which the proposal relates; and
  - (d) in at least one Kenyan radio station broadcasting in the locality.
  
- (2) The notice shall in each case –
  - (a) set out a summary of the proposal;
  - (b) state the premises at which the details of the proposal may be inspected;
  - (c) invite written comments on or objections to the proposal;
  - (d) specify the person or body to which any such comments are to be submitted; and
  - (e) specify a date by which any such comments or objections are required to be received, not being a date earlier than 60 days after publication of the notice.
  
2. The responsible authority shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the proposal which are in the possession of the responsible authority.
  
3. The responsible authority shall consider –
  - (a) any written comments or objections received on or before the date specified under paragraph 2(2) (e); and
  - (b) any comments whether in writing or not, received at any public meeting held in relation to the proposal at which the responsible authority was represented, or pursuant to any other invitation, to comment.
  
4. The responsible authority shall publish, through the same media as were employed pursuant to paragraph 1, notice of the fact a copy of the decision in writing of the responsible authority in relation to the proposal, and of the reasons there of, is available for public inspection at the same premises as were notified under paragraph 1(2) (b).
  
5. Where rules made under this Act so require, the responsible authority shall cause a public meeting to be held in relation to a proposal before the responsible authority makes its decision on the proposal.

#### FOURTH SCHEDULE

#### LISTED ENDANGERED AND THREATENED ECOSYSTEMS

##### a) Critically Endangered Ecosystem

Name	Size	Location (Ha)	Major Threat	Status	Interventions
Mara	151,000	The Mara and the adjoining areas	Reducing habitats due land subdivision, Over developments, Impact of Tourism	National Reserve	Trans boundary Management
Amboseli	483,286	02°33' to 02°45'S; 37°06' to 37°24'E	Overgrazing, Impact of tourism, desertification	Man and biosphere reserves; Protected as National Park	Integrated Management Planning
Nairobi	292,500	Nairobi national park, Athi Kitengela & Kaputei Plains	Blockage of migration route; Land subdivision; urban sprawl	Nairobi National park is protected the rest is	Strategic zoning through Development of Spatial Private land frameworks/Master Plans

##### b) Endangered Ecosystems

Name	Size	Location	Major Threat	Status	Interventions
Lake Nakuru	18,800	00°46' S, 036°22' E	Pollution, Siltation, invasive species, fluctuating water levels, Catchments degradation	Protected as National Park Ramsar site;	concerted stakeholder efforts in the Mau forest catchment
Lake Elementaita	10,880	00°46' S 036°23' E	Declining water	Ramsar site levels due to catchments degradation, Encroachment, Water diversion	Ramsar site; Concerted stakeholder efforts
Sibilo National Park	157,085	40° 00' N, 36°20' E	Encroachment	World Heritage sites; National Park	Protected as a National Park; World Heritage sites
Tana Delta	60,000 (Ha)	01° 75' to 02° 15' S; 41° 00' to 41° 15' E	Uncontrolled resource Harvesting; Encroachment	Trust Land Mangrove Forest Reserve	Stake holder collaboration; Joint management

##### c) Vulnerable Ecosystems

Name	Size	Location	Major Threat	Status	Interventions
Eastern Mau,	64,970	35° 09' E; 00° 48' S	Illegal logging Encroachment	Forest reserve	Integrated Management Planning
Western Mau	22,700	35° 59' E; 00026' S	Illegal logging	Forest reserve	Integrated Management Planning
South-western Mau	83,395	35° 49' E; 00049 S	Encroachment	Forest reserve	Integrated Management Planning
Trans-Mara	35,270	35° 52 E; 00069 S	Illegal logging	Forest reserve	Integrated Management Planning
OI Pusimoru	36,947	36° 02' E; 00066 S	Encroachment	Forest reserve	Integrated Management Planning

**d) Areas of Environmental Significance**

Name	Size (Ha)	Location	Major Threat	status	Interventions
Lake Baringo	31,469	00°32'N 036°05'E	Encroachment, Over	National Reserve	Ramsar site; Protected as National Reserve
Lake Bogoria	10,700	00°15'N 036°05'E	Encroachment, Eutrophication,	National Reserve Declining water levels over exploitation, Siltation , invasive species	Ramsar site; Protected as National Reserve
Kiunga	60,000	01°75' to 02°15'S; 41°00' to 41°15'E	Overexploitation of mangrove resources	Man and biosphere reserves	Man and biosphere reserves
Malindi Watamu	19,600	03°14' to 03°25'S; 39°57' to 40°11'E	Overexploitation of mangrove resources	National Park/Reserves	Man and biosphere reserves; Protected as National Park/Reserves
Baomo reserve	16	40°14 E,-1.9N	Siltation ,	Nature reserve	Protected as Nature
East Baomo reserve	206	40°.13E;-1.93N	Encroachment Siltation ,	Nature reserve	Protected as Nature
South Mt. Elgon	208,821	30°20'49'' E and 0°43'31'' N 35°3'55'' E and 01°02'02'' N	Encroachment Encroachment Illegal logging	National reserve	Park Man and biosphere reserves; Protected as National Park
Mt. Kenya	71,759	00°10'S; 37°20'E	Encroachment, Illegal logging, Uncontrolled	National Park and ; Forest Reserve water, abstraction Overgrazing	Man and biosphere reserves; Protected as National Park and ; Forest Reserve
Mt. Kulal	700,000	02°25' to 03°25'N; 36°30' to 37°30'E	Encroachment Illegal logging	Man and biosphere	Man and biosphere reserves reserves
Central Island	500	3° 29' N,30 0 36 'E	Encroachment	National Park	World Heritage sites
South Island	3,900	N2 37 57 E36 35 41	Encroachment	National Park	World Heritage sites
Lake Naivasha	30,000	00°24'S 036°05'E	Pollution, clearance of riparian vegetation, invasive species, catchments degradation	Non Protected efforts	Ramsar site Concerted Stakeholders
Aberdare Ranges	250,000		Encroachment	National Park	Protected as a National Park

**FIFTH SCHEDULE**  
**LISTED ENDANGERED, THREATENED AND VULNERABLE SPECIES**  
**A) MAMMALS**

Category and Species name	Common Name
<b>Critically endangered</b>	
<i>Cephalophus adersi</i>	ADERS' DUIKER
<i>Diceros bicornis</i>	BLACK RHINOCEROS
<i>Beatragus hunteri</i>	HIROLA
<i>Procolobus rufomitratu</i>	EASTERN RED COLOBUS
<b>Endangered</b>	
<i>Ceratotherium simum simum</i>	WHITE RHINO
<i>Balaenoptera borealis</i>	COALFISH WHALE
<i>Balaenoptera musculus</i>	BLUE WHALE
<i>Equus grevyi</i>	GREVY'S ZEBRA
<i>Lycaon pictus</i>	AFRICAN WILD DOG
<i>Grammomys gigas</i>	GIANT THICKET RAT
<i>Otomys barbouri</i>	BARBOUR'S VLEI RAT
<i>Otomys jacksoni</i>	MOUNT ELGON VLEI RAT
<i>Rhynchocyon chrysopygus</i>	GOLDEN-RUMPED ELEPHANT SHREW
<i>Panthera pardus</i>	LEOPARD
<b>Near Threatened</b>	
<i>Tadarida ventralis</i>	AFRICAN GIANT FREE-TAILED BAT
<i>Limnodromus semipalmatus</i>	ASIAN DOWITCHER
<i>Otomys lacustris</i>	TANZANIAN VLEI RAT
<i>Scotophilus nigrata</i>	SCHREBER'S YELLOW BAT
<i>Chaerephon russata</i>	RUSSET FREE-TAILED BAT
<i>Miniopterus natalensis</i>	NATAL LONG-FINGERED BAT
<i>Mops demonstrator</i>	MONGALLA FREE-TAILED BAT
<i>Beamys hindei</i>	LESSER HAMSTER-RAT
<i>Miniopterus minor</i>	LEAST LONG-FINGERED BAT
<i>Otomops martiensseni</i>	LARGE-EARED FREE-TAILED BAT
<i>Glauconycteris beatrix</i>	BEATRIX'S BAT
<i>Hipposideros megalotis</i>	ETHIOPIAN LARGE-EARED ROUNDLEAF BAT
<i>Taphozous hamiltoni</i>	HAMILTON'S TOMB BAT
<i>Saccolaimus peli</i>	PEL'S POUCHED BAT
<i>Praomys delectorum</i>	DELECTABLE SOFT-FURRED MOUSE
<b>Threatened</b>	
<i>Colobus badius</i>	RED COLOBUS
<b>Vulnerable</b>	
<i>Loxodonta Africana</i>	AFRICAN ELEPHANT
<i>Panthera leo</i>	AFRICAN LION
<i>Cloetis percivali</i>	PERCIVAL'S TRIDENT BAT
<i>Hippopotamus amphibius</i>	COMMON HIPPOPOTAMUS
<i>Myonycteris relicta</i>	EAST AFRICAN LITTLE COLLARED FRUIT BAT
<i>Megaptera novaeangliae</i>	HUMP WHALE
<i>Dugong dugon</i>	DUGONG (E, F, S)

<i>Physeter macrocephalus</i>	CACHELOT
<i>Bdeogale jacksoni</i>	JACKSON'S MONGOOSE
<i>Rhynchocyon petersi</i>	BLACK AND RUFOUS ELEPHANT SHREW

<i>Pelomys hopkinsi</i>	HOPKINS'S GROOVE-TOOTHED SWAMP RAT
<i>Taphozous hildegardeae</i>	HILDEGARDE'S TOMB BAT
<i>Gazella soemmerringii</i>	SOEMMERRING'S GAZELLE
<i>Profelis aurata</i>	AFRICAN GOLDEN CAT
<i>Acinonyx jubatus</i>	CHEETAH
<i>Rhinopoma macinnesi</i>	MACINNES'S MOUSE-TAILED BAT
<i>Surdisorex norae</i>	ABERDARE SHREW
<i>Surdisorex polulus</i>	MT. KENYA SHREW

## B) BIRDS

Category And Species Name	common name
<b>Critically endangered</b>	
<i>Apalis fuscigularis</i>	TAITA APALIS
<i>Turdus helleri</i>	TAITA THRUSH
<i>Fregata andrewsi</i>	CHRISTMAS ISLAND FRIGATEBIRD
<i>Gypaetus barbatus</i>	BEARDED VULTURE
<b>Endangered</b>	
<i>Acrocephalus griseldis</i>	BASRA REED-WARBLER
<i>Anthreptes pallidigaster</i>	AMANI SUNBIRD
<i>Eremomela turneri</i>	TURNER'S EREMOMELA
<i>Anthus sokokensis</i>	SOKOKE PIPIT
<i>Ardeola idea</i>	MADAGASCAR POND-HERON
<i>Cisticola aberdare</i>	ABERDARE CISTICOLA
<i>Falco cherrug</i>	SAKER FALCON
<i>Ploceus golandii</i>	CLARKE'S WEAVER
<i>Otus ireneae</i>	SOKOKE SCOPS-OWL
<i>Macronyx sharpei</i>	SHARPE'S LONGCLAW
<i>Zoothera guttata</i>	SPOTTED GROUND-THRUSH
<i>Zosterops polioaster silvanus</i>	TAITA MONTANE WHITE-EYE
<b>Threatened</b>	
<i>Apalis thoracica fuscigularis</i>	TAITA-BAR THROATED APALIS
<b>Near Threatened</b>	
<i>Balearica pavonina</i>	BLACK CROWNED-CRANE
<i>Limosa limosa</i>	BLACK-TAILED GODWIT
<i>Glareola nordmanni</i>	BLACK-WINGED PRATINCOLE
<i>Aetobatus narinari</i>	BONNETRAY
<i>Rynchops flavirostris</i>	AFRICAN SKIMMER
<i>Tryngites subruficollis</i>	BUFF-BREASTED SANDPIPER
<i>Crex crex</i>	CORNCRAKE
<i>Coracias garrulus</i>	EUROPEAN ROLLER
<i>Tauraco fischeri</i>	FISCHER'S TURACO
<i>Gallinago media</i>	GREAT SNIPE



<i>Prionops poliophopus</i>	GREY-CRESTED HELMET-SHRIKE
<i>Euplectes jacksoni</i>	JACKSON'S WIDOWBIRD
<i>Bulweria fallax</i>	JOUANIN'S PETREL
<i>Phoenicopterus minor</i>	LESSER FLAMINGO
<i>Anthus melindae</i>	MALINDI PIPIT
<i>Encephalartos hildebrandtii</i>	MOMBASA CYCAD
<i>Chlorocnemis pauli</i>	ORANGE-TIPPED THREADTAIL
<i>Circus macrourus</i>	PALLID HARRIER
<i>Laniarius mufumbiri</i>	PAPYRUS GONOLEK
<i>Anthreptes reichenowi</i>	PLAIN-BACKED SUNBIRD
<i>Mobula eregoodootenkee</i>	PYGMY DEVILRAY
<i>Hadrothemis scabrifrons</i>	RED JUNGLE-SKIMMER
<i>Falco vespertinus</i>	RED-FOOTED FALCON
<i>Ficedula semitorquata</i>	SEMICOLLARED FLYCATCHER
<i>Circaetus fasciolatus</i>	SOUTHERN BANDED SNAKE-EAGLE
<i>Neotis denhami</i>	STANLEY'S BUSTARD
<i>Falco fasciinucha</i>	TAITA FALCON
<i>Larus leucophthalmus</i>	WHITE-EYED GULL
<i>Streptopelia reichenowi</i>	WHITE-WINGED COLLARED-DOVE
<b>Vulnerable</b>	
<i>Hirundo atrocaerulea</i>	BLUE SWALLOW
<i>Falco naumanni</i>	LESSER KESTREL
<i>Apalis chariessa</i>	WHITE-WINGED APALIS
<i>Turdoides hindei</i>	HINDE'S PIED-BABBLER
<i>Aquila clanga</i>	GREATER SPOTTED EAGLE
<i>Aquila heliaca</i>	IMPERIAL EAGLE
<i>Torgos tracheliotos</i>	LAPPET-FACED VULTURE
<i>Glareola ocularis</i>	MADAGASCAR PRATINCOLE
<i>Muscicapa lendu</i>	CHAPIN'S FLYCATCHER
<i>Chloropeta gracilirostris</i>	PAPYRUS YELLOW WARBLER
<i>Cinnyricinclus femoralis</i>	ABBOTT'S STARLING
<i>Balaeniceps rex</i>	SHOEBILL
<i>Sheppardia gunningi</i>	EAST COAST AKALAT
<i>Cisticola aberrans</i>	TAITA ROCK CISTICOLA

**C) Reptiles**

Category And Species Name	common name
<b>Critically Endangered</b>	
<i>Eretmochelys imbricata</i>	HAWKSBILL TURTLE
<b>Endangered</b>	
<i>Chelonia mydas</i>	GREEN TURTLE
<i>Lepidochelys olivacea</i>	OLIVE RIDLEY
<i>Python nateleensis</i>	AFRICAN ROCK PYTHON
<i>Eretmochelys imbricata</i>	<i>HAWKSBILL TURTLE</i>
<b>Vulnerable</b>	
<i>Malacochersus tornieri</i>	CREVICE TORTOISE
<i>Pelusios broadleyi</i>	TURKANA MUD TURTLE

C) Fish

Category And Species Name	common name
<b>Critically Endangered</b>	
<i>Oreochromis esculentus</i>	SINGIDIA TILAPIA
<i>Oreochromis hunteri</i>	LAKE CHALA TILAPIA
<i>Oreochromis jipe</i>	JIPE TILAPIA
<i>Oreochromis variabilis</i>	VICTORIA TILAPIA
<i>Ptyochromis sp. nov.</i>	RAINBOW SHELLER
<i>Xenoclarias eupogon</i>	LAKE VICTORIA DEEPWATER CATFISH
<i>Platycephalus amboniensis</i>	MONTANE DANCING-JEWEL
<b>Endangered</b>	
<b>Alcolapia alcalicus</b>	
<i>Cheilinus undulatus</i>	GIANT WRASSE
<i>Marcusenius victoriae</i>	VICTORIA STONEBASHER
<i>Xystichromis nuchisquamulatus</i>	KYOGA FLAMEBACK
<b>Near Threatened</b>	
<i>Carcharhinus macrotis</i>	HARDNOSE SHARK
<i>Carcharhinus sealei</i>	BLACKSPOT SHARK
<i>Epinephelus fuscoguttatus</i>	BROWN-MARBLED GROUPE
<i>Epinephelus coioides</i>	ESTUARY COD
<i>Epinephelus malabaricus</i>	MALABAR GROUPE
<i>Synodontis victoriae</i>	LAKE VICTORIA SQUEAKER
<b>Vulnerable</b>	
<i>Carcharias Taurus</i>	GREY NURSE SHARK
<i>Thunnus obesus</i>	BIGEYE TUNA
<i>Rhincodon typus</i>	WHALE SHARK
<i>Urogymnus asperrimus</i>	PORCUPINE RAY
<i>Carcharhinus longimanus</i>	OCEANIC WHITETIP SHARK
<i>Carcharodon carcharias</i>	GREAT WHITE SHARK
<i>Rhina ancylostoma</i>	OWMOUTH GUITARFISH
<i>Taeniura meyeni</i>	BLACK-BLOTCHED STINGRAY
<i>Rhynchobatus djiddensis</i>	GIANT GUITARFISH
<i>Pseudoginglymostoma breviceaudatum</i>	SHORTTAIL NURSE SHARK
<i>Epinephelus lanceolatus</i>	BRINDLE BASS
<i>Nothobranchius patrizii</i>	BLUE NOTHO
<i>Nothobranchius bojiensis</i>	BOJI PLAINS NOTHOBRANCH
<i>Nothobranchius elongatus</i>	ELONGATE NOTHOBRANCH
<i>Labeo percivali</i>	EWASO NYIRO LABEO

D) TREES

Category And Species Name	common name
<b>Endangered</b>	
<i>Encephalartos kisambo</i>	VOI CYCAD
<i>Lovoa swynnertonii</i>	KILIMANJARO MAHOGANY
<i>Gigasiphon macrosiphon</i>	GIGASIPHON
<i>Osyris lanceolata</i>	EAST AFRICAN SANDALWOOD

<b>Vulnerable</b>	
<i>Prunus africana</i>	RED STINKWOOD
<i>Vitex keniensis</i>	MERU OAK
<i>Ocotea kenyensis</i>	MERU OAK
<i>Polyscias kikuyuensis</i>	PARASOL TREE
<i>Aloe ballyi</i>	RAT ALOE
<i>Populus ilicifolia</i>	TANA RIVER POPLAR

**SIXTH SCHEDULE**

**WILDLIFE SPECIES FOR WHICH GAME FARMING MAY BE ALLOWED**

**Animals**

*Crocodile*

Tortoise

Chameleon

Reptiles (other than snakes)

Snails

Frog

Lizards

Butterfly

Snake (for display and venom extraction, export of live for breeding)

**Plants**

Aloe

Prunus Africana

Osyris

**Birds**

Ostrich

Pigeon

Doves

Ducks

Guinea Fowl

Quail

**SEVENTH SCHEDULE**

**WILDLIFE SPECIES FOR WHICH COMPENSATION MAY BE PAID**

***A. Death and Injury***

***B.***

Elephant

Lion

Leopard

Rhino

Hyena

*Crocodile*

Cheetah

Buffalo

Snakes

Hippo

Shark

Stone Fish

Whale

Sting ray

***B. Crop and property damage***

Elephant

Lion

Leopard

Rhino

Hyena

Crocodile

Cheetah

Buffalo

Hippo

Zebra

Eland

Wildebeest

## EIGHTH SCHEDULE

### NATIONAL PARKS, NATIONAL RESERVES, COMMUNITY CONSERVATION AREAS AND SANCTUARIES

#### National Parks (N.P)

Park Name	Area in Sq. Km	Park Name	Area in Sq. Km
1. Tsavo East N. P.	11,747	16. Mt. Elgon N. P	169
2. Tsavo West N. P.	9,065	17. Saiwa Swamp N. P.	2
3. Aberdares N. P.	765.7	18. Ndere Island N.P.	42
4. Mt. Kenya N. P.	715	19. Malka Mari N. P.	876
5. Lake Nakuru N. P.	52	20. Chyulu Hills N. P.	736
6. Amboseli N. P.	392	21. Central Island N. P.	5
7. Nairobi N. P.	117	22. Ruma N. P.	120
8. Meru N. P.	870	23. Arabuko N. P.	6
9. Kora N. P.	1,787		
10. South Island N. P.	39	<b>Marine Parks</b>	
11. Mt. Longonot N. P.	52	24. Mombasa Marine N. P.	26.093
12. Hell's Gate N. P	68	25. Watamu Marine N. P.	10
13. Oldonyo Sabuk N. P.	18	26. Mpunguti N. P.	28
14. Marsabit N. P.	68	27. Malindi Marine N.P.	6
15. Sibiloi N. P.	1,570		

#### National Reserves (NR)

Reserve Name	Area in Sq. Km	Park Name	Area in Sq. Km
1. Marsabit N. R.	1,564	19. Boni N. R.	1,339
2. South Turkana N. R.	1,019	20. Doodori N. R.	877
3. Nasalot N. R.	194	21. Tana River Primate N. R.	169
4. Losai N. R.	1,806	22. Shimba Hills N. R.	192
5. Shaba N. R.	239	23. Chepkitalel N. R.	178.2
6. Samburu N. R.	165	24. Nyambene N. R.	640.6
7. Buffalo Springs N. R.	131	25. Mt. Kenya N. R.	2,124
8. Bisinadi N. R.	606	26. Tsavo Road & Railways	212
9. Rahole N. R.	1,270	27. Nga Ndethia	212
10. North Kitui N. R	745	28. Laikipia N. R.	165
11. Lake Bogoria N. R.	107		
12. Kamnarok N. R.	87.7	<b>Marine Reserves</b>	
13. Kerio Valley N. R.	66	29. Malindi Marine N. R.	213
14. Kakamega N. R.	44.7	30. Watamu Marine N. R	32
15. Masai Mara N. R.	1,510	31. Mombasa Marine N. R.	200
16. South Kitui N. R.	1,133	32. Mpunguti Marine N. R.	11
17. Mwea N. R.	68	33. Kiunga Marine N. R.	250
18. Arawale N. R.	533	34. Diani-Chale Marine N. R.	165

#### National Sanctuaries (NS)

1. Maralal N.S. (Km2)	5	3. Ondago Swamp (ha)	24.8
2. Lake Simbi (Ha)	41.7	4. Kisumu Impala N. S.	0.34

**APPENDIX 9**

**WILDLIFE CONSERVATION AND NATIONAL PARKS ACT, CAP 38:01  
(BOTSWANA)**

Chapter 38:01

## **WILDLIFE CONSERVATION AND NATIONAL PARKS ACT, 1992**

An Act to make further and better provision for the conservation and management of the wildlife of Botswana, giving effect to CITES and any other international convention for the protection of fauna and flora to which Botswana is, from time to time, a party, to provide for the establishment, control and management of national parks and game reserves, and for matters incidental thereto or connected therewith.

Act 28, 1992,  
Act 16, 1993,  
S.I. 31, 1994,  
S.I. 61, 1995,  
S.I. 86, 1995,  
S.I. 28, 1999

*[Date of Commencement: 11th December, 1992]*

### **ARRANGEMENT OF SECTIONS**

#### **SECTION**

#### **PART I**

##### *Preliminary*

1. Short title
2. Interpretation
3. Wildlife officers
4. Honorary officers

#### **PART II**

##### *National Parks, Game Reserves, Sanctuaries and Private Game Reserves*

5. Declaration of national parks
6. Control of national parks
7. Entry into national parks
8. Certain acts in a park prohibited
9. Regulations in respect of national parks
10. Mining in a national park
11. Offences in a national park
12. Game reserves and sanctuaries
13. Private game reserves
14. Regulations in respect of reserves and sanctuaries

#### **PART III**

##### *Wildlife Management Areas and Controlled Hunting Areas*

15. Wildlife management areas
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#### **PART IV**

##### *Protected Game Animals*

17. Protected game animals



**PART V**

*Hunting and Capture of Animals*

18. Partially protected game animals
19. Hunting and capturing of animals generally
20. Landholder's privileges
21. Use of landholder's privileges for profit
22. Record of animals killed in exercise of landholder's privileges
23. Permission or authority of owner or occupier of land

**PART VI**

*Game Farms and Ranches*

24. Game farms and ranches
25. Regulations in respect of game farms or ranches

**PART VII**

*Licences to Hunt*

26. Game licences
27. Bird licence
28. Single game licence
29. Small game licence
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31. Issue of licences
32. Number of licences and animals
33. Disqualification for grant of licence
34. Hunting card
35. Refund of licence fees
36. Open season
37. Loss or destruction of licence
38. Register of animals killed

**PART VIII**

*Permits*

39. Permits that may be granted by the Director
40. Permits which licensing officer may grant
41. Conditions applicable to permits
42. Appeal to the Minister

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43. Professional guides
44. Professional hunters
45. Prohibition of certain activities in specified areas
46. Killing of animals causing damage
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48. Killing of animals by accident or in error
49. Hunting or capturing of animals without permission of land owner or occupier
50. Conveyance of loaded weapon in certain circumstances
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52. Prohibition of certain activities in specified areas
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54. Wounding of animals
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56. Hunting or capturing during close season
57. Unlawful methods of hunting
58. Elephant and buffalo hunting
59. Killing of lion or leopard
60. Sale of animals or parts or eggs thereof
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**PART X**

*Export and Import of Animals, Trophies and Meat of Animals, and Sale and Manufacture of Articles from Trophies*

62. Export and import of animals, etc.
63. Export duty to be paid
64. Dealing in trophies
65. Trophy dealer's licence
66. Records and returns by trophy dealers

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*Ivory and Rhinoceros Horn*

67. Killing of elephant and rhinoceros
68. Ivory or tusks imported into or acquired in Botswana
69. Transfer of ivory
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71. Government trophies

## **PART XIII**

### *Evidence, Prevention and Detection of Offences and Forfeitures*

72. Evidence and presumptions
73. Powers of wildlife officers, gate attendants and police officers
74. Erection of road barriers
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77. Magistrates' courts' special jurisdiction
78. Alternative verdicts
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## **PART XIV**

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80. Destruction of animals by wildlife officers in certain circumstances
81. Hunting in forest areas
82. Keeping of animals
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84. Powers of licence and permit holders etc. in respect of other hunters
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First Schedule - National Parks

Second Schedule - Game Reserves and Sanctuaries

Third Schedule - Wildlife Management Areas

Fourth Schedule - Controlled Hunting Areas

Fifth Schedule - CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora)

Sixth Schedule - Protected Game Animals

Seventh Schedule - Game Animals and Birds

Eighth Schedule - Maximum Number of Animals which may be Killed by virtue of Landholders' Privileges during any one Period Specified

Ninth Schedule - Dangerous Animals

Tenth Schedule - Notice of Intended Prosecution

## **PART I**

### *Preliminary (ss 1-4)*

1. This Act may be cited as the Wildlife Conservation and National Parks Act.
2. (1) In this Act unless the context otherwise requires—
- "animal" means and includes any vertebrate or invertebrate animal or bird and the eggs and young thereof, but does not include a fish, except in a national park or a game reserve, or a domestic animal or bird, or the eggs and the young thereof;
- "capture" includes any act immediately directed at the taking alive of any animal or the taking of any nest, eggs or young of any animal;
- "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora to which Botswana is a Party as set out in the Fifth Schedule to this Act, and includes any Appendices thereto and any Resolutions of the Conferences of the Parties;
- "close season", in relation to any game animal and any area, means any period which is not an open season in respect of that animal and that area;
- "controlled hunting area" means an area of land declared to be a controlled hunting area under section 16 and specified in the Fourth Schedule;
- "dangerous animal" means any animal specified as a dangerous animal in the Ninth Schedule;
- "Director" means any person for the time being holding the public office of Director of Wildlife and National Parks;
- "district office" means an office of a district administrative officer;
- "domestic animal" means any horse, mare, gelding, ass, mule, bull, cow, ox, ram, ewe, wether, goat, pig, camel, dog or cat, commonly regarded as a domestic animal, or the young of any such animal;
- "domestic bird" means any fowl, duck, goose, turkey, or pigeon commonly regarded as a domestic bird or the eggs or young thereof;
- "game" or "game animal" means any animal specified in the Sixth and Seventh Schedules of this Act;
- "game reserve" means an area of land declared to be a game reserve by or under section 12 and specified in the Second Schedule;
- "gate attendant" means any person employed in a national park or game reserve as a gate attendant;
- "Government trophy" means anything which under this Act is declared to be a Government trophy;
- "honorary officer" means a person appointed as an honorary officer under section 4;
- "horn" includes rhinoceros horn;
- "hunt" means and includes—
- (a) kill, injure, shoot at or follow;
  - (b) wilfully disturb or molest by any method;
  - (c) lie in wait for, or search for, with intent to kill, injure or shoot at;
- "ivory" means elephant ivory in whatever form;
- "land board" means a land board established as such under the provisions of the Tribal Land Act;
- "licence" means a licence issued under this Act;
- "licensing officer" means a person appointed as a licensing officer under section 3;
- "meat" includes the fat, blood and flesh of any animal, whether fresh, dried, tinned or otherwise preserved;
- "national park" means a national park declared as such under this Act and specified in the First Schedule;

Short title

Interpretation

- "night" in any year from the 1st March to 30th September means the period of time between half past six in the evening and six o'clock in the morning, and from the 1st October to the last day of February means the period of time between half past seven in the evening and half past five o'clock in the morning;
- "non-designated animal" means any animal which is not a game animal;
- "occupier", in relation to land, means the person in actual lawful occupation of the land who has the right to exercise general control over such land and actually resides thereon;
- "open season", in relation to any game animal, other than a protected game animal, and any area, means the period declared by the Minister under section 36 as the period during which such game animal may be lawfully hunted in such area;
- "owner", in relation to any land, means—
- a) in the case of private land, the person in whose name such land is registered in the Deeds Registry;
  - b) in the case of land vested in a city or town council or a township authority, the said council or authority;
  - c) in the case of State Land, the President;
  - d) in the case of a tribal area, the land board established in respect of that tribal area;
- "partially protected game animal" means any animal which is so declared under section 18 and specified in Part I of the Seventh Schedule;
- "permit" means a permit granted in accordance with the provisions of section 39 or section 40 of this Act;
- "possession" shall have the same meaning as is given to the word "possession" in section 2 of the Penal Code;
- "private game reserve" means an area of land declared to be a private game reserve under section 13;
- "private land" means any land the ownership of which has, by law, grant or title deed, become vested in any person other than the State or a tribe;
- "professional guide" means any person, other than a tracker, driver, beater, bearer or domestic servant who, for hire or reward, conducts or assists any other person or party for the purpose of visiting, viewing or photographing animals or places of interest or beauty, or of botanical, historical, geological, ethnological or archaeological significance, or for the purpose of sport fishing, but which purpose shall not include the hunting or capture of animals;
- "professional hunter" means any person who, for hire or reward, conducts hunting or photographic parties, or any person other than a tracker, driver, beater, bearer or domestic servant who, for hire or reward, assists any person or party in the hunting or photographing of any animal;
- "protected game animal" means any animal which is so declared under section 17 and specified in the Sixth Schedule;
- "purchase" includes barter or exchange;
- "sanctuary" means an area of land declared to be a sanctuary under the provisions of this Act;
- "season" means, in relation to any game animal and any area, the open season or, where no open season has been declared, a year commencing on the first Tuesday in April in such year;
- "sell" means sell, barter, exchange, hawk, offer or expose for sale;
- "trap" means any net, rod, hook, spring, gin, snare, contrivance or device by means of which an animal can be captured, netted or snared;
- "tribal area" has the same meaning as in the Tribal Land Act;
- "tribe" has the same meaning as in the Chieftainship Act, and includes a tribal community as defined in that Act;

"trophy" means any horn, ivory, tooth, tusk, bone, claw, hoof, hide, skin, hair, feather, egg or other durable portion whatsoever of any animal, whether processed or not, which is recognizable as a durable portion of such animal;

"trophy dealer" means a person who carries on the business of buying trophies for resale or export, or who carries on the business of processing trophies;

"water installation" means a canal, channel, reservoir, embankment, weir, dam, borehole, well, pipeline, pumping plant, filter-bed, filter, purification plant, machinery, appliance, apparatus, fitting or accessory or anything constructed, erected or used for or in connection with the impounding, storage, passage, drainage, control or abstraction of water, or the development of water power, or the filtration or purification of water, or the use of water, or the conservation of rainfall;

"weapon" means any firearm or ammunition therefor, or any other instrument capable of propelling a projectile or capable of being propelled or used in such manner that any animal can be killed or injured thereby;

"wildlife management area" means an area of land declared to be a wildlife management area under section 15 and specified in the Third Schedule;

"wildlife officer" means any person for the time being holding the public office of Director or any other public officer of the Department of Wildlife and National Parks charged with the implementation and administration of the provisions of this Act, and, to the extent to which an honorary officer is permitted to act, includes an honorary officer.

(2) For the purposes of this Act, a person shall be deemed to be a resident of Botswana if—

- a) he is a public officer or a teacher employed by the Unified Teaching Service, or the spouse or child of such an officer or teacher;
- b) he is a member of a class of persons designated for the purposes of this subsection by the Minister by notice in the Gazette; or
- c) he holds a residence permit or an exemption certificate which he has held for a continuous period of 12 months, and has been present within Botswana for at least 9 months of the immediately preceding period of 12 months.

3. (1) There shall be designated a public officer to be the Director of Wildlife and National Parks, and there shall be within the public service such wildlife officers as are necessary for the purposes of this Act.

Wildlife  
officers

(2) The Director shall designate suitable wildlife officers to be licensing officers for the purposes of this Act.

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

4. (1) The Minister may, by notice published in the Gazette, appoint fit and proper persons to be honorary officers for the purpose of assisting in carrying out the duties imposed on wildlife officers by this Act.

Honorary  
officers

(2) In carrying out their duties under this Act, honorary officers shall have such powers as are conferred by the Act on wildlife officers, unless otherwise specifically provided.

(3) An honorary officer shall hold office for a period of three years, unless the Minister sooner revokes his appointment, and shall be eligible to be reappointed.

## **PART II**

*National Parks, Game Reserves, Sanctuaries and*

*Private Game Reserves (ss 5-14)*

5. (1) Any area specified in the First Schedule to this Act is hereby declared to be a national park for the propagation, protection and preservation therein of wild animal life, vegetation and objects of geological, ethnological, archaeological, historical or other scientific interest for the benefit and advantage and enjoyment of the inhabitants of Botswana.

Declaration  
of national  
parks

(2) The President may, by order published in the Gazette, declare any area of State Land or any land bequeathed or donated to him or to any other person, to be a national park, either on its own or adding it to an existing national park: Provided that the President shall not declare to be a national park or add to a national park any land so bequeathed or donated to any other person or persons, unless he is satisfied that such person has or all such persons have, as the case may be, consented thereto.

(3) Where circumstances exist that in his opinion so warrant, the President may, by order published in the Gazette, amend the boundaries of a national park by adding new areas thereto or by excising part thereof.

(4) Before the President makes an order under subsection (2) or subsection (3), the Minister shall cause public notice of the intended order to be given, and shall, in such notice, call for any intended objections to such order to be lodged, in writing, with him within such reasonable time as shall be specified, and any objections so received shall be laid before the President for his consideration.

(5) For the purposes of subsection (4) "public notice" means a notice published once in the Government Gazette and at least once during each of three successive weeks in a newspaper circulating in the area to which the notice relates, the first insertion in the newspaper being made in the same week as the publication in the Government *Gazette*.

(6) Any order made under subsection (2) shall be laid before Parliament as soon as possible after it has been published in the Gazette, and shall, unless confirmed by resolution of Parliament during the session it is so laid before it, lapse and cease to have effect as from the date of the conclusion of that session.

6. (1) The Minister shall be responsible for the control, management and maintenance of national parks, and without derogation from the generality of the foregoing the Minister shall for such purposes, within such parks, have power to—

Control of  
national  
parks

- a) construct such roads, bridges, aerodromes, soil and water conservation works, irrigation works, buildings and fences, and to carry out such other works as he may consider necessary for the purposes of such national parks;
- b) take such steps as will ensure the security of the animals and vegetation in national parks and the preservation of such parks and the animals and vegetation therein in a natural state;
- c) reserve or set aside any areas of such parks as breeding places for indigenous animals, and nurseries for indigenous trees, shrubs, plants and flowers;
- d) let sites for the erection of shops, hotels, restaurants or other buildings for the accommodation or recreation of visitors, to let sites to yachting clubs, boating clubs, boatwrights and persons plying boats for hire, and to control the manner in which such undertakings are carried on;
- e) construct, maintain, administer or let hotels, restaurants, rest camps and other buildings and let accommodation therein;
- f) control the charges which may be made by shopkeepers, hotel keepers, restaurant proprietors, boatwrights and persons plying boats for hire;
- g) sell or exchange any specimen of animal or vegetation in a national park;

- h) purchase, exchange or otherwise acquire any specimen of indigenous animal or vegetation which he may consider it desirable to introduce into a national park;
- i) authorize any person to take or collect and remove any specimen of animal or vegetation from a national park, or do anything otherwise prohibited under this Act, for scientific purposes;
- j) authorize any scientific investigations on such terms and conditions as he may approve; and
- k) authorize the killing or capturing of any animal, or the destruction or removal of any species of vegetation in the interest of the conservation of the fauna and flora of such parks, and of their management and control.

(2) The Minister may delegate to the Director or to any wildlife officer such of his powers under this section as he considers necessary or desirable.

**7.** (1) Except as is otherwise provided in this Act, and notwithstanding the provisions of any other written law, no person other than a wildlife officer or a gate attendant shall enter, be in or reside in a national park except under and in accordance with the permission of the Minister or of any wildlife officer authorized to grant such permission:

Entry  
into  
national

Provided that—

- (i) the Minister may by notice exhibited at the entrance to a national park grant permission to persons to enter therein on such days and during such hours as may be stated in the notice, and on payment of such fees and subject to such conditions as may be prescribed by regulations;
- (ii) this subsection shall not apply to persons in the employment of the Government who, with the written permission of the Director enter, are in or reside in a national park in the execution of their official duties as employees of the Government.

(2) Permission may be given in accordance with the provisions of subsection (1) subject to such terms and conditions as may be prescribed or as may be deemed necessary by the person granting permission, and shall be granted only for the purposes of—

- (a) health, study or recreation, or matters incidental thereto;
- (b) travel or transport along such roads as may be prescribed;
- (c) transacting any lawful business with or concerning any person within a national park,

or if the person seeking permission was, or belongs to a community which was, resident in the national park prior to the date when the area was declared as a national park.

**8.** (1) Except as provided in subsection (2), no person other than a wildlife officer or a gate attendant acting in the exercise of his official duties or any other employee of the Government with the written permission of the Director and acting in the exercise of his official duties as such employee, shall—

Certain  
acts in a  
park  
prohibite

- a. convey into or be in possession of any weapon, explosive, trap or poison within a national park;
- b. without lawful excuse, be in possession of, or kill, hunt, injure, capture or disturb any animal, or take or destroy any egg or nest, in a national park;
- c. cause any damage to or disturb any object of geological, ethnological, historical, archaeological or other scientific interest within a national park, or remove any such object from a national park;
- d. introduce any wild or domestic animal or any fish or any vegetation into a national park, or permit any domestic animal to stray into a national park;



- e. remove from a national park any animal or part of an animal or any vegetation, whether alive or dead, other than an animal he has lawfully introduced into the park;
- f. cut, damage or destroy any tree or other vegetation in a national park;
- g. erect any structure, whether permanent or otherwise, or make any road or airstrip, or otherwise alter the natural environment, except as may be expressly permitted by the Minister or by a wildlife officer authorized to give such permission;
- h. destroy or deface any object, whether animate or inanimate, in a national park; or
- i. willfully or negligently cause any veld fire in a national park.

(2) Notwithstanding the provisions of subsection (1), it shall not be an offence for any person—

- a) to kill any dangerous animal in a national park where such killing is necessary in defence of human life or to prevent the infliction of personal injury; or
- b) with the permission of the Minister or a wildlife officer authorized to grant such permission, to convey into or through a national park any animal or weapon required in connection with lawful travel or transport in or through a national park, or lawful residence or sojourn therein.

(3)(a) Any domestic animal found within a national park, other than an animal in the lawful possession of a wildlife officer or a gate attendant, or introduced into the park in accordance with subsection

(2)(b), may be destroyed by a wildlife officer or a park attendant.

(b) Any vegetation introduced into a national park in contravention of the provisions of this Act may be destroyed by or on the instructions of a wildlife officer.

**9.** Regulations made by the Minister under section 92 may, in respect of national parks, include the following—

- a. the powers and duties of wildlife officers and gate attendants in relation to national parks;
- b. the exclusion of members of the public from certain areas within a park;
- c. the killing, capturing or impounding of any animal within a park and the disposal thereof;
- d. the burning of grass and the cutting of trees and vegetation within a park;
- e. the conditions subject to which permission to enter, be or reside in a park may be granted under section 7, and the periods or times during which a park or any part thereof shall be open to the public;
- f. the conditions under which domestic animals may be introduced into and conveyed through a park in accordance with the provisions of section 8(2)(b);
- g. the conditions under which the services or attendance of wildlife officers or gate attendants may be obtained by any person entering, passing through or sojourning within a park, and the fees to be paid in respect of such services or attendance;
- h. the protection and preservation of parks and of the animal life and vegetation therein in a natural state;
- i. the regulation of traffic and the carriage of passengers in a park, including the closing of public roads as defined in the Public Roads Act and other roads, at specified times;
- j. conditions governing the use therein of vehicles, aeroplanes and microlight aircraft;
- k. defining and controlling the points at which persons may enter a park and the roads by which they may pass through a park;

Regulations  
in respect of  
national  
parks

- l. the protection from damage or defacement, by writing or other wise, of any tree, rock, bridge, fence, seat or any other object in a park;
- m. the regulation, control, restriction or prohibition of boating and yachting on, or fishing in, any waters in a park, the issue of permits or licences in respect thereof and any fees to be paid in respect thereof;
- n. any matter, including the setting up of local committees, to advise on the administration of any park, and defining the functions of such committees; and
- o. the fees, if any, to be paid by persons entering therein or doing any specified thing therein or for the use of any article or facility therein.

**10.** Mining in a national park Subject to any mining rights lawfully acquired in any area by any person before the date on which such area became a national park, any prospecting or mining in the area or the acquisition of any prospecting or mining rights in the area in terms of the Mines and Minerals Act shall be prohibited except with the written permission of the Minister.

**11.** (1) Any person who kills, hunts or captures any animal in a national park shall be guilty of an offence and without derogation from his liability under any other provision of this Act shall be liable to a fine of P10 000 and to imprisonment for 7 years.

Offences  
in a  
national  
park

(2) Any person who contravenes or fails to comply with any other provision of section 7(1), 8(1) or 10 shall be guilty of an offence and without derogation from his liability under any other provision of this Act shall be liable to a fine of P2 000 and to imprisonment for 2 years.

**12.** (1) Each of the areas defined in the Second Schedule is hereby declared to be a game reserve or a sanctuary in respect of the animals, species, or variety, specimen or sex of animal specified in relation thereto.

Game  
reserves  
and  
sanctuaries

(2) The President may, from time to time, by order published in the Gazette declare any other area of land to be a game reserve or a sanctuary, or alter the boundaries of, or abolish, any game reserve or sanctuary:

Provided that in respect of any particular game reserve or sanctuary, the President may declare that it shall be a game reserve or a sanctuary only in respect of animals of such species, variety, specimen or sex of animal or animals as may be specified, and may amend any such declaration.

(3) In any game reserve or sanctuary, no person shall hunt or capture any animal, or species or variety, specimen or sex of any animal specified in relation to such game reserve or sanctuary, except only under and in accordance with the terms and conditions of a permit issued under section 39, and any person who contravenes the provisions of this section shall be guilty of an offence and, without derogation from his liability under any other provision of this Act, shall be liable to a fine of P5 000 and to imprisonment for 5 years.

**13.** (1) The owner of private land may apply in writing to the President to have his land declared a private game reserve, and the President may, by order published in the Gazette, and subject to such terms and conditions as the President may determine, declare such land to be a private game reserve for the protection and preservation therein of all wild animal life or of such species or variety of animals as may be specified in the order.

Private  
game  
reserves

(2) The President may similarly amend or revoke an order published under this section.

(3) Within a private game reserve, no person shall hunt or capture any animal or any species or variety of animal which is specified in the order declaring it to be a private game

reserve, and any person who contravenes the provisions of this subsection shall be guilty of an offence and, without derogation from his liability under any other provision of this Act, shall be liable to a fine of P5 000 and to imprisonment for 5 years:

Provided that the provisions of this subsection shall not apply to the hunting or capture of an animal by the owner of the land, or by a person acting under his written authority, when such hunting or capture is under and in accordance with such terms and conditions as were determined by the President under subsection (1), or as the Director may, in the interest of proper wildlife management, approve.

**14.** Regulations in respect of reserves and sanctuaries Regulations made by the Minister under section 92 may, with regard to game reserves, sanctuaries and private game reserves, or any one such reserve or sanctuary, or any part thereof, include the following—

- (a) the administration thereof;
- (b) the prohibition, restriction, control or regulation of entry therein, passage through or sojourn therein;
- (c) the control of persons who, or animals, including domestic animals, which are therein, either permanently or temporarily;
- (d) the prohibition, restriction, control or regulation of introduction therein, passage or conveyance through or keeping therein of any domestic animal;
- (e) the prohibition, restriction, control or regulation of the burning of vegetation or the felling, cutting and removal of trees therein or therefrom;
- (f) the prohibition, restriction, control or regulation of the searching for honey therein or the removal of honey therefrom;
- (g) the prohibition, restriction, control or regulation of fishing therein;
- (h) the prohibition, restriction, control or regulation of the carrying or possession of weapons therein;
- (i) conditions governing the use therein of vehicles, aeroplanes, microlight aircraft and boats; and
- (j) the fees, if any, to be paid by persons entering therein or doing any specified thing therein or for the use of any article or facility therein.

### **PART III**

#### *Wildlife Management Areas and Controlled Hunting Areas (ss 15-16)*

**15.** (1) The areas specified in the Third Schedule are hereby declared to be wildlife management areas.

(2) The President may, by order published in the Gazette, declare any area to be a wildlife management area, or in like manner abolish any such wildlife management area, or amend the boundaries of any such wildlife management area by adding new areas or by deleting areas.

(3) Regulations made by the Minister under section 92 may, in respect of wildlife management areas or any wildlife management area, include the following—

- (a) any matter referred to in section 14 paragraphs (a) to (i), except paragraph (g);
- (b) the hunting or capture of animals therein by virtue of any licence or permit to hunt or capture;
- (c) the erection of any dwelling house or other building therein, or the residence therein of any person, or the size of any settlement therein;
- (d) the grazing of any stock therein and any conditions or limitations concerning the husbandry of stock therein;

- (e) the cultivation of any land therein, the conditions under which persons may cultivate, and the allocation of land for cultivation;
- (f) conditions governing the drilling, allocation and use of boreholes;
- (g) conditions governing the use therein of vehicles, aeroplanes, microlight aircraft and boats;
- (h) the entry or the presence therein of persons other than residents thereof; and
- (i) the culling of animals therein in accordance with any approved game animal utilization scheme.

(4) In his duties relating to the development of wildlife management areas, their management plans and their administration, the Director shall consult with the land boards and district councils responsible for the areas concerned.

**16.** (1) The areas specified in the Fourth Schedule are hereby declared to be controlled hunting areas.

(2) The Minister may, by order published in the Gazette, declare any area of land in Botswana to be a controlled hunting area, and may, in like manner, abolish declared controlled hunting areas or amend the boundaries of declared controlled hunting areas by adding other areas thereto or by deleting areas therefrom.

(3) Except for persons authorized therefor under sections 30, 39 and 40, and notwithstanding the issue of any licence to hunt under this Act, no person shall hunt or capture any animal in a controlled hunting area without such authority to hunt in that area as shall be endorsed on his licence, and without paying such fee, as may be prescribed.

(4) The Minister may, by order published in the Gazette, direct that any fees collected in accordance with subsection (3), shall be paid to such district council or councils as may be specified in the order.

(5) Any person hunting in a controlled hunting area shall, as soon as possible and in any event within 7 days of the completion of such hunting, unless otherwise authorized by a licensing officer and endorsed on his licence, report such completion to a wildlife officer, and any person who fails to comply with the provisions of this subsection shall be guilty of an offence and liable to a fine of P500 and imprisonment for 6 months.

(6) Any person hunting or capturing any animal in a controlled hunting area without such authority and paying such fee as may be prescribed in accordance with subsection (3), or contrary to the terms of such authority, shall be guilty of an offence and, without derogation from his liability under any other provision of this Act, shall be liable to a fine of P2 000 and to imprisonment for 2 years.

Controlled  
hunting  
areas

## **PART IV**

### *Protected Game Animals (s 17)*

**17.** (1) The animals specified in the Sixth Schedule shall be protected game animals throughout Botswana.

(2) No person shall, except only under and in accordance with the terms and conditions of a permit issued by the Director under section 39 or section 40, hunt or capture any protected game animal, and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P10 000 and to imprisonment for 7 years:

Protected  
Game  
Animals

Provided that, where the animal in respect of which the offence is committed is a rhinoceros, the offender shall be liable to a fine of P100 000, and to imprisonment for 15 years.

## **PART V**

### *Hunting and Capturing of Animals (ss 18-23)*

**18.** The animals specified in Part I of the Seventh Schedule shall be partially protected game animals throughout Botswana, and no person shall, except under and in accordance with the terms and conditions of a licence or permit issued under this Act, hunt or capture any partially protected game animal.

Partially  
Protected  
Game  
Animals

**19.** (1) Except as, or to such extent as may be, specially provided in this Act, no person shall hunt or capture any animal (other than a non-designated invertebrate animal outside of a national park or a game reserve) otherwise than under and in accordance with the terms and conditions of a licence issued, or a permit granted, under this Act:

Hunting  
and  
capturing  
of  
animals

Provided that a citizen of Botswana may hunt any non-designated animal, other than in a national park or a game reserve, for consumption by himself or his dependants, without a licence or permit.

(2) The animals specified in Parts II and III of the Seventh Schedule are animals that may be hunted under and in accordance with the terms and conditions of a licence issued under this Act:

Provided that where an area is or areas are specified in relation to a particular animal, that animal may only be hunted in that area or in those areas, as the case may be.

(3) Any person who contravenes the provisions of section 18 or subsection (1) of this section shall be guilty of an offence and shall be liable—

- (a) if the contravention is in respect of a partially protected game animal, to a fine of P5 000 and to imprisonment for 5 years: Provided that where the animal in respect of which the offence is committed is an elephant, the offender shall be liable to a fine of P50 000, and to imprisonment for 10 years;
- (b) if the contravention is in respect of any animal specified in Part II of the Seventh Schedule, to a fine of P2 000 and to imprisonment for 2 years;
- (c) if the contravention is in respect of a bird specified in Part III of the Seventh Schedule, to a fine of P1 000 and to imprisonment for 1 year;
- (d) if the contravention is in respect of any non-designated animal, or in respect of any term or condition of any licence or permit issued to that person, to a fine of P500 and to imprisonment for 6 months.

**20.** (1) A person shall be entitled to landholder's privileges under this section if—

- (a) he is the owner of private land or the owner of not less than a quarter undivided share in private land in Botswana;
- (b) in the case of land elsewhere than in a game reserve or national park, he is the occupier of such land under an agreement of lease or of purchase granted to him by the State or a land board other than for the purpose of hunting;
- (c) he is the occupier of private land in Botswana and has occupied that land for the immediately preceding period of not less than three months and has the written permission of the owner of the land to enjoy landholder's privileges in respect of that land, which written permission shall be in such form as may be prescribed.

Landholder's  
privileges

(2) A person shall be entitled to enjoy landholder's privileges under this section if—

- (a) he is the bona fide employee of any person such as is referred to in subsection (1)(a) or (1)(b) and has the written permission of that person to enjoy landholder's privileges in respect of the land in question, which written permission shall be in such form as may be prescribed;
- (b) he is the bona fide employee of any person such as is referred to in subsection (1)(c) and has the written permission of the owner of the land in question to enjoy landholder's privileges in respect of such land, which written permission shall be in such form as may be prescribed;
- (c) he is the spouse or child of any person such as is referred to in subsection (1)(a) or (1)(b);
- (d) he is the spouse or child of any person such as is referred to in subsection (1)(c) or (2)(b) and has the written permission of the owner of the land in question to enjoy landholder's privileges in respect of that land, which written permission shall be in such form as may be prescribed;
- (e) he is the spouse or child of any person such as is referred to in subsection (2)(a) and has the written permission of the employer of that person to enjoy landholder's privileges in respect of the land in question, which written permission shall be in such form as may be prescribed.

(3) No person shall be entitled to landholder's privileges or to enjoy landholder's privileges under this section unless he is a citizen or resident of Botswana, or, being a company, has its registered office in Botswana, or at least 51% of its beneficial shareholders are citizens of Botswana, or the Minister has, by notice in writing, declared, in the interests of wildlife management, that such person shall be entitled to such privileges.

(4) A person shall be entitled to landholder's privileges or to enjoy landholder's privileges under this section only in respect of the land from which in terms of this section the privileges are derived.

(5) Notwithstanding any other provision of this Act, an individual entitled to landholder's privileges or to enjoy landholder's privileges in accordance with the provisions of subsection (1) or subsection (2) may, subject to such fees as may be prescribed, hunt and kill, without a licence or permit, any animals, other than protected and partially protected game animals, within the limits of the land in respect of which he is entitled to or to enjoy such privileges, but shall not kill any animal which is listed in the Eighth Schedule in excess of the number specified in relation to that animal in the second column of that Schedule within any one period such as is specified in the corresponding entry in the third column of that Schedule.

(6) Any person who contravenes the provisions of subsection (5) shall be guilty of an offence and, where no other penalty is provided under this Act in respect of the hunting of the animal concerned, shall be liable to a fine of P500 and to imprisonment for 6 months.

(7) Where, in any case such as is referred to in subsection (2), the owner or occupier of land has given written permission under this section to another person to enjoy landholder's privileges in respect of that land, the owner or occupier may, by notice in writing to that person, at any time withdraw such permission, and such notice shall have the effect of cancelling that person's entitlement to enjoy landholder's privileges in respect of that land with effect from the time when the notice is personally delivered to him.

(8) The owner or occupier of land in respect of which he is entitled to landholder's privileges shall not give permission to any other person to hunt and kill any game animal on such land unless such other person is either the holder of a valid licence or permit entitling or authorizing him to hunt and kill such animal on such land, or is otherwise entitled to hunt and kill such animal on such land, and any owner or occupier who contravenes the provisions of this subsection and has failed to take all reasonable steps to satisfy himself that such other

person was so entitled or authorized to hunt and kill such animal on that land shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

**21.** Any owner or occupier of land entitled to landholder's privileges may, for his own profit, with the approval of the Director, authorize, in writing, any person who is not so entitled, to hunt on such land those animals that he himself would be entitled to hunt:

Use of  
landholder's  
privileges for  
profit

Provided that—

(a) nothing in this section shall entitle or authorize such person to hunt any animal on such land without being in possession of such licence or permit to hunt such animal as may be otherwise prescribed in this Act; and

(b) the owner or occupier shall not give such authority unless he has taken all reasonable steps to satisfy himself that such person is in possession of such licence or permit, and any owner or occupier who contravenes or fails to comply with the provisions of this paragraph shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

**22.** (1) Every owner or occupier of land in respect of which he is entitled to landholder's privileges, shall keep and maintain a record of every animal killed on that land by himself or by any other person hunting on that land with his permission or authority, and shall make that record available forthwith for inspection by any wildlife officer or any police officer who requires him so to do.

Record of  
animals killed  
in exercise of  
landholder's  
privileges

(2) The record maintained under this section shall contain, in respect of every animal killed, the following particulars—

- (a) its species and sex;
- (b) the date on which it was killed;
- (c) the location where it was killed;
- (d) the full name of the person who killed it.

(3) Every owner or occupier of land in respect of which he is entitled to landholder's privileges shall, not later than the 15th February in each year, produce to a licensing officer, the record kept by him under this section, or a true copy of every entry made therein, during the immediately preceding year commencing on the 1st January.

(4) Every owner or occupier of such land as is referred to in this section, who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

**23.** Any written permission or authority of the owner or occupier of land required in accordance with section 20 or section 21 shall be valid only if signed personally by such owner or occupier, or, where such owner or occupier is a company, by the person duly authorized by the company to sign such permission or authority.

Permission  
or authority  
of owner or  
occupier of  
land

## **PART VI**

### *Game Farms and Ranches (ss 24-25)*

**24.** (1) Any owner of land or leaseholder, or any person authorized by the Minister for the purposes of this section, who wishes to farm or ranch game animals on the land he owns or occupies may apply therefor, in such form as may be prescribed, to the Director, and the Director may, in conformity with any land use plan, and with any other written law, and subject to the payment of such fees as may be prescribed, and such terms and conditions as he considers necessary or desirable, grant such permission in writing.

Game  
farms  
and  
ranches

(2)(a) Any permission given in accordance with subsection (1) shall be for a period of not less than 10 years, and may be renewed, or, if the applicant is a leaseholder and the unexpired portion of his lease is less than 10 years, for the period of such unexpired portion.

(b) The Director shall cause notice of such permission to be published in the Gazette, and a notice shall be posted at the entrance, or the entrances, of the farm or ranch referring to such Gazette notice.

(3) Any permission given by the Director in accordance with subsection (1) may be withdrawn by him forthwith if the person to whom such permission is given is convicted of an offence under this Act, or contravenes any of the terms and conditions subject to which such permission was given.

(4) Any person granted permission under subsection (1) shall be entitled to farm, ranch, hunt or capture animals on his land, for commercial purposes, subject to the provisions of this section and any terms and conditions subject to which such permission was granted:

Provided that protected game animals and partially protected game animals shall only be farmed, ranched, hunted or captured on such land if specifically authorized by the Director.

(5) The terms and conditions subject to which permission may be given under subsection (1), may include the requirement that the land concerned should be enclosed by a game proof fence of such type and specifications as the Director considers suitable and satisfactory.

(6) Where the game farm or ranch is enclosed by a game proof fence to the satisfaction of the Director, there shall be no limit to the number of animals that are specified in Part II of the Seventh Schedule that may be killed or captured on the farm or ranch, unless the Director otherwise directs, but where the farm or ranch is not enclosed by a game proof fence to the satisfaction of the Director, the culling of animals shall be subject to the written permission of the Director, who shall also, if satisfied that such culling is a sustainable form of game utilization, specify the number of animals that may be culled, and such culling shall be subject to the payment of such fees as may be prescribed.

(7) Where the land in respect of which permission is granted under this section is not enclosed by a game proof fence, the Director may require that its boundaries be marked in such manner as he may specify.

(8)(a) The provisions of sections 21, 22, and 23 shall apply, mutatis mutandis, with respect to the hunting or capture of animals on game farms and ranches and the keeping of records.

(b) The provisions of section 39(1)(c) shall apply in respect of obtaining permission for the sale of animals, or meat or trophies from such animals, and such animals, meat or trophies shall not be otherwise disposed of in any manner not approved by the Director.

(9) The hunting or capture of animals on game farms or ranches may be permitted throughout the year, and at night, and in respect of animals of any age or either sex, as provided for under this Act, but unlawful methods of hunting or capture as specified under sections 55 and 57 may only be used with the written permission of the Director.

(10) The operation of a live capture business on a game farm or ranch, or anywhere else, shall only be undertaken with the written permission of the Director.

(11) Where dangerous animals, or animals not indigenous to Botswana are on a game farm or ranch in accordance with the terms and conditions of permission granted under subsection (1), the owner or occupier of such farm or ranch shall take all reasonably possible steps to ensure that they do not escape therefrom, and if they do so escape shall take all reasonably possible steps to recapture or kill them.



(12) No person shall hunt or capture any animal on a game farm or ranch, or be on such farm or ranch with intent to hunt or capture any animal, without the permission of the owner or occupier thereof.

(13) Any person who contravenes any provision of this section shall be guilty of an offence and, without derogation from his liability under any other provision of this Act or any other written law, shall be liable, in respect of an offence under subsections (4), (6), (8)(b) or (12) to a fine of P5 000 and to imprisonment for 5 years, and in respect of any offence under any other subsection, to a fine of P500 and to imprisonment for 6 months.

**25.** Regulations made by the Minister may, in respect of game farms or ranches, and without prejudice to his general power to make regulations, include regulations governing the conditions under which animals should be kept on a game farm or ranch, the methods of killing or capturing animals on a game farm or ranch, the fees to be paid for the killing or capturing or selling of animals on a game farm or ranch which is not enclosed by a game proof fence, and any other fees in connection with the operation of game farms or ranches.

Regulations  
in respect of  
game farms  
or ranches

## **PART VII**

### *Licences to Hunt (ss 26-38)*

**26.** Licences to hunt game shall be in such form as may be prescribed, and shall be of the following kinds—

- (a) a bird licence;
- (b) a single game licence;
- (c) a small game licence; or
- (d) a special game licence of a kind prescribed under section 30.

Game  
licence

**27. (1)** Subject to the provisions of this Act, a bird licence shall entitle the holder thereof to hunt such birds as are listed in Part III of the Seventh Schedule, in such areas, Bird licence such numbers as shall be specified in the licence.

(2) A bird licence issued to a citizen or a resident of Botswana shall be issued for one year, commencing on the day of issue.

(3) A bird licence issued to a person who is neither a citizen nor a resident of Botswana may be issued for one week, one month or one year, as required, commencing on the day of issue.

(4) No person shall hold more than one bird licence at any one time.

**28. (1)** Subject to the provisions of this Act, a single game licence shall entitle the holder thereof to hunt on the land specified in the licence one animal only of such species and kind, listed in Parts I and II of the Seventh Schedule, as may be specified in the licence, and for such period only as may be therein specified.

Single  
game  
licence

(2) Regulations made under this Act may provide for the maximum number of valid single game licences which may be held by one person at any one time or during any year.

(3) Where a person is entitled to hunt on any land by virtue of the authority of the owner or occupier of that land in accordance with the provisions of section 21, a single game licence will only be issued to him on production of the written consent of such owner or occupier to the issue of such licence, and the withdrawal of such consent subsequent to the issue of the licence shall have the effect of cancelling such licence.

Small  
game  
licence

**29. (1)** Subject to the provisions of this Act, a small game licence shall entitle the holder thereof to hunt within such area or areas as may be specified in the licence, animals of such species and kind, listed in Part II of the Seventh Schedule and of such numbers as may be specified in such licence.

(2) A small game licence shall be issued only to a person who is a citizen of Botswana, and shall be valid only for the period specified therein, and only one such licence may be held by one person at any one time.

(3) Regulations made under this Act may provide for the maximum number of animals of each species and kind which may be hunted by the holder of a small game licence in any one season, the period for which such a licence may be issued, and the categories of persons to whom such a licence may be issued.

(1) Regulations made under this Act may provide for the issue of special game licences in respect of any animals other than protected game animals to citizens of Botswana who are principally dependent on hunting and gathering veld produce for their food, and such regulations may provide for—

Special  
game  
licence

- (a) the types of special game licence which may be issued;
- (b) the animals for the hunting of which each type of special game licence may be issued;
- (c) the categories of persons to whom such licences may be issued;
- (d) the periods for which such licences may be issued; and
- (e) the maximum number of animals of each species and kind which may be hunted by virtue of such a licence in any one period, and the area or areas within which they may be hunted.

(2) Subject to the provisions of this Act and any regulations made thereunder, a special game licence shall entitle the holder thereof to hunt, on the land and during the period specified in the licence, animals of the kind and of the number therein specified.

(3) The holder of a special game licence shall not be entitled to and shall not be issued with any other type of licence.

**31. (1)** Every application for the issue of a licence referred to in section 26 shall be made to a licensing officer in such form as may be prescribed, and any licensing officer to whom such an application is made may, provided that the applicant is of or above the age of 15 years and subject to the provisions of subsections (2) and (3) and any regulations made under this Act, issue the licence applied for on payment of such fee as may be prescribed for that licence.

Issue of  
licences

(2)(a) A licensing officer may, before issuing any licence, require the applicant to appear before him in person, to produce for inspection proof of his identity and age and such other information as he considers necessary or desirable, and any arms certificate or permit granted to him in terms of the Arms and Ammunition Act entitling him to have arms in his possession, and if the applicant fails to appear, or fails to satisfy the licensing officer on any matter arising out of his application, the licensing officer may refuse to grant the licence applied for.

(b) A licensing officer may, before issuing any licence, require the applicant to undergo such tests as he considers necessary or desirable to satisfy himself that the applicant is a fit and proper person to be granted a licence.

(3) The previous holder of a licence who has failed, without a satisfactory explanation, to keep, maintain and produce for inspection when so requested, the register required to be kept and maintained in accordance with the provisions of section 38, or has failed, without a satisfactory explanation, to submit the return required to be submitted in accordance with the

provisions of section 38 (3), shall have any current licence cancelled and shall not be eligible for the issue of a licence for the following season.

(4) A licensing officer shall not issue a licence to a person who is not a citizen or a resident of Botswana unless he is satisfied that such person will, at all times when hunting, be accompanied by a professional hunter, and may in any other instance when issuing a licence add as a condition of such issue that the holder of the licence shall not hunt without being accompanied by such person as he may stipulate.

(5)(a) Any person aggrieved by the refusal of a licensing officer to issue the licence applied for, or by any request made by the licensing officer under subsection (2), or by any condition imposed by the licensing officer under subsection (4), may ask that the matter be referred to the Director for his decision, and the Director, after such further enquiries as he considers necessary, confirm the decision of the licensing officer, or reverse it, or vary it to such extent as he considers desirable.

(b) Any person aggrieved by any decision of the Director under paragraph (a) may appeal therefrom to the Minister, and the Minister's decision thereon shall be final.

(6) Where a licensing officer issues a licence under this section, other than a bird licence, a special game licence or a small game licence, there shall be attached to such licence as an integral part thereof a register in the prescribed form, and a detachable return in the prescribed form shall be annexed to every licence other than a bird licence and a small game licence.

(7) A licence issued under this section shall bear the stamp of the Department of Wildlife and National Parks in red, and no licence shall be valid or accepted unless it is the original licence and bears such stamp.

(8) A licence issued under this section shall be personal to the person to whom it is issued and shall not be transferable, and may not be amended to permit hunting thereunder to be transferred from one controlled hunting area to another, except only under and in accordance with regulations made under this Act.

**32.** (1) Regulations under this Act may provide for the maximum number of licences that may be held by any person at any one time or during any one season, and the maximum number of animals of each species that may be hunted in accordance with each licence, but such regulations shall be subject to any determination made by the Director under subsection (2).

Number of  
licences and  
animals

(2) The Director may, after consultation with the appropriate local authorities and land boards, determine the number of animals of each species, or of a particular sex, that may be hunted during any season in any specified controlled hunting area, or any other specified area, and shall cause to be displayed a notice to this effect, at offices of the Department of Wildlife and National Parks, and at such other places as he may determine.

(3) Any person who makes any statement which to his knowledge or which he should have known is false or in any way misleading in connection with an application for a licence, which leads to or is likely to lead to his being issued with more licences than he is entitled to, or to the issue of licences purporting to entitle him to hunt more animals than he is entitled to hunt, shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for one year.

**33.** (1) A person who has been convicted of any contravention of the provisions of the game laws of Botswana or any other country shall be disqualified for the grant of a licence under this Act for a period of three years from the date of such conviction, or for such other period as the Minister may determine in any particular case.

Disqualifica  
tion for  
grant of  
licence

(2) Any person who fails to inform a licensing officer, at the time of his application for any licence under this Act, of any fact which might disqualify him for the grant of a

licence, or that he has been previously refused any licence or who makes a false declaration in or in connection with an application for any such licence, shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for 1 year.

**34.** (1) There shall be issued together with the first licence, other than a special game licence, to be granted to any person, a hunting card in the prescribed form, on which the holder thereof shall enter particulars of all licences, permits or other authorizations issued to or held by such person, and such other information as may be prescribed.

Hunting  
card

(2) A hunting card shall be personal to the person to whom it is issued, shall not be transferable and shall be carried by the holder at all times whilst hunting.

(3) When a hunting card has no room for further entries the holder may apply to a licensing officer for the issue of a new card, and any such new card issued shall be endorsed by the licensing officer to indicate whether it is a second or subsequent card, and shall be pinned or attached to the previous card or to all the previous cards, as the case may be.

(4) The holder of a hunting card shall make it available for inspection—

- (a) when required to do so by a wildlife officer;
- (b) whenever the holder applies for another licence.

(5) The loss of a hunting card shall be reported to a wildlife officer or to a police officer without delay and in any case within 30 days of the loss being detected, and if the loss is so reported, a licensing officer may issue a new hunting card to replace the one lost, on payment of such fee as may be prescribed, but shall endorse on such card the fact that it is a duplicate card.

(6) Any person who—

- (a) makes a false statement to a licensing officer for the purpose of obtaining a hunting card;
- (b) uses another person's hunting card;
- (c) obtains or attempts to obtain another person's hunting card;
- (d) fails to record on it information which he is required to record on it, or records on it information which he knows or ought to know is false or misleading; or
- (e) refuses or fails to produce it for inspection when required to do so in accordance with the provisions of subsection (4), shall be guilty of an offence and liable to a fine of P500 and to imprisonment for six months.

**35.** The Minister may, where he considers it just, direct the refund of any licence fees, or any part thereof, to any person whose licence is surrendered or cancelled during the period of its validity:

Refund  
of  
licence  
fees

Provided that no such refund shall be made in respect of any licence fee if the cancellation of such licence is the result of, or in connection with, a contravention of any provision of this Act.

**36.** The Minister may, from time to time, by order published in the Gazette, declare the period during which game animals may be hunted, either throughout Botswana or in any defined part of Botswana, and such order may make different provisions in respect of different areas, different species of game animals or in respect of animals of a specified sex.

Open  
season

**37.** (1) If a licence is lost or destroyed, the licence holder shall, within 21 days of such loss report the event to the licensing officer who issued it, and shall at the same time furnish the licensing officer with a written statement setting out to the best of his recollection the entries that had been recorded in the register attached to the licence, or, but for the loss or destruction thereof, would have been recorded therein.

Loss or  
destruction of  
licence

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

**38.** (1) Every single game licence holder shall, in animals the register attached to his licence, make a record of any animal killed by him, including any animal killed by accident or in error, and any animal deemed to have been killed by him in terms of such licence under section 44, and any animal wounded by him.

Register  
of  
animals  
killed

(2) Where under this section any person is required to keep and maintain a register, he shall—

- (a) where an animal is killed or deemed to have been killed by him, at the time of the killing where possible, and in any event before the animal is moved or dismembered, record the event in such register, and the date and time of the killing;
- (b) where an animal is wounded, record the date time and circumstances. of the event in such register as soon as pursuit of the wounded animal is abandoned.

(3) Every licence holder shall, in addition to keeping and maintaining a register under this section, within thirty days of the termination of hunting, or of the termination of his licence, or the termination of the hunting season, whichever is the soonest, submit to a licensing officer the return attached to his licence, duly completed, whether or not any animals were killed or wounded by him in accordance with the terms of the licence.

(4) Any person who, being required under this section to keep and maintain a register, or submit a return within the specified period—

- (a) fails to do so;
- (b) fails to record therein any particular which he is required to record therein;
- (c) makes, or is party to the making of, any false entry therein;
- (d) fails to produce his register upon the request of a licensing officer or any other person entitled under this Act to request its production; or
- (e) fails to furnish a true copy of his register to a licensing officer within twenty one days of being requested to do so by a licensing officer, shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

**PART VIII**

*Permits (ss 39-42)*

**39.** (1) Notwithstanding anything in this Act, the Director may, acting in accordance with such directions as may be given by the Minister, grant permits authorizing—

- (a) the killing or capturing of any animal for the purposes of education or scientific research, providing specimens for museums, zoological gardens and similar institutions, or the breeding, farming or domestication of any animal;
- (b) the killing or capturing of animals in the interests of the conservation,
- (c) management, control or utilization of wildlife; or
- (d) the selling of animals killed or captured under the authority of a licence or permit and the selling of any meat, trophy or eggs from such animals, where the Director is satisfied that such selling is in the interests of wildlife conservation and the proper regulation of commercial development connected with wildlife.

(2) The Director shall not grant a permit authorizing the killing or capturing of any animal in a national park, game reserve or sanctuary for any of the purposes mentioned in subsection (1), except only on the ground that, and where he is satisfied that, such killing or capturing is necessary for scientific purposes or for the protection of life or property, or in the interests of the conservation, management, control or utilization of wildlife.

(3) The Director may, acting in accordance with any instructions as may be given by the Minister, delegate any of the powers referred to in subsection (1)(c) to a licensing officer.

Permits that may be granted by the Director

**40.** (1) Notwithstanding anything in this Act, a licensing officer may grant a permit authorizing, elsewhere than in a national park, game reserve or sanctuary—

- (a) the killing, capturing and driving of animals for the purpose of the control of disease; or
- (b) the killing or capturing of animals in the interests of public safety or for the protection of livestock, grazing, crops, water installations or fences.

(2) Notwithstanding the provisions of subsection (1), where the animals in respect of which the permit is sought are protected game animals, the licensing officer shall refer the matter to the Director, and the grant of the permit shall be by the Director at his discretion.

Permits which licensing officer may grant

**41.** (1) Every permit issued under this Act shall be subject to such terms and conditions as may be prescribed and to all such other terms, conditions and requirements as the Minister, the Director or the licensing officer, as the case may be, deems fit to impose in each case, and as shall be endorsed on the permit, and any person to whom such permit is issued who contravenes or fails to comply with any of the terms, conditions or requirements subject to which it is issued shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for 1 year, and where the contravention is in respect of the killing or capturing of any animal, shall be liable to the same penalties as are provided in sections 17, 18 and 19 in respect of the hunting or capture of the same animal.

(2) The applicant for any permit which may be issued under this Act shall pay such fees as may be prescribed, unless the Minister, in any particular case, and for good cause, grants exemption from the payment of such fees.

(3) The Minister may, at any time, and without assigning a reason therefor, cancel, amend or modify a permit issued under this Act, forthwith so informing the holder of the permit, and such holder shall return such permit to the Minister for cancellation, amendment or modification, as the case may be, within 21 days from the date of his being so informed.

(4) Any permit holder who is required under subsection (3) to return such permit and who fails to do so within the period prescribed, shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

Conditions applicable to permits

42. Any person who is aggrieved by the refusal of a licensing officer or the Director to grant a permit under section 39 or section 40, or by any terms and conditions imposed by them in accordance with the provisions of section 41(1), may appeal against that refusal or those terms and conditions to the Minister, whose decision thereon shall be final.

Appeal to  
the Minister

## **PART IX**

### *General Provisions with regard to Hunting (ss 43-61)*

43. (1) No person shall act as a professional guide unless he is in possession of such valid professional guide's licence as may be prescribed, and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

Professional  
guides

(2) Application for a professional guide's licence shall be made to the Director in such form as may be prescribed, and the Director may, require the applicant to take and pass such examination as he thinks fit.

(3) The Director may, at his discretion, issue a professional guide's licence, subject to such terms and conditions as he may approve, and on payment of such fee as may be prescribed, and such licence shall be valid until the 31st day of December in the year of its issue: Provided that the Director may revoke the licence of any professional guide who fails to comply with any term or condition of the licence or who is guilty of any offence under this Act or under section 131 of the Penal Code, or who permits a client to contravene any of the provisions of this Act or of any regulations made under the Act.

(4) A professional guide's licence shall not be transferable, and no person other than the person to whom it is issued shall operate under the authority of a professional guide's licence, and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

(5) Any person aggrieved by the refusal of the Director to issue a licence under this section, or by any of the terms and conditions subject to which it is issued may appeal against such refusal or those terms and conditions to the Minister whose decision thereon shall be final.

44. (1) No person shall act as a professional hunter unless he is in possession of such professional hunter's licence as may be prescribed, and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years.

Professional  
hunters

(2) Application for such licence as is referred to in subsection (1) shall be made to the Director in such form as may be prescribed, and the Director may require the applicant to take and pass such examination as he thinks fit.

(3) The Director may, at his discretion, issue such licence, subject to such terms and conditions as he may approve, and on payment of such fee as may be prescribed, and such licence shall be valid until the 31st day of December in the year of its issue: Provided that the Director may revoke the licence of any professional hunter who fails to comply with any term or condition of the licence or is guilty of any offence under this Act or under section 131 of the Penal Code, or who permits a client to contravene any of the provisions of this Act or any regulations made under the Act.

(4) A professional hunter's licence shall not be transferable, and no person other than the person to whom it is issued shall operate under the authority of such licence, and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

(5) A professional hunter's licence shall, subject to the provisions of this section, entitle the holder thereof to act as a professional guide and in addition shall entitle the holder to assist any other person who is the holder of any licence or permit issued under this Act, to do any act or thing which the holder of such licence or permit is authorized to do under his licence or permit.

(6) A professional hunter's licence shall not entitle the holder to shoot at any animal except as provided in section 47, or to prevent the escape of an animal already wounded, and any such licence holder who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years.

(7) If a professional hunter, while assisting any other person, kills any animal which he is not otherwise entitled under this Act to kill, and the person whom he is assisting is the holder of a licence or permit entitling such holder to hunt or kill an animal of that species, such animal shall be deemed to have been killed by such holder under that licence or permit, and shall be counted as an animal killed in terms of such licence or permit, and the holder thereof shall record the killing in accordance with the provisions of section 38:

Provided that nothing in this subsection shall be construed as relieving the professional hunter of liability for any contravention of the provisions of subsection (6).

(8)(a) A professional hunter shall take all reasonable steps to ensure that his client understands the terms and conditions of any licence or permit issued to him and does not contravene any of those terms and conditions or any of the provisions of this Act, and where his client commits an offence under this Act or any regulations made under this Act he shall report the commission of such offence to a wildlife officer.

(b) Without derogating from the liability of his client in respect of any contravention of this Act or any regulations under this Act, any professional hunter who fails to comply with any provision of paragraph (a) shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years.

(c) Where a client is convicted of an offence under this Act or any regulations made thereunder it shall be presumed that the professional hunter with whom he was hunting failed to take all reasonable steps to ensure that the client understood the terms and conditions of his licence or permit or to prevent the client from contravening the Act or the regulations, unless the contrary is proved.

(9) Any person aggrieved by the refusal of the Director to issue a licence under this section, or by any terms and conditions subject to which such licence is issued, may appeal against that refusal or those terms and conditions to the Minister, whose decision thereon shall be final.

**45.** (1) The Minister may, by order published in the Gazette, prohibit, for periods not exceeding 12 months at a time, the hunting or disturbance of any animals, or any species or sex of animals or any specimen of animal, in any defined area or areas, or the removal of any animal or part of any animal from any defined area or areas, for purposes of control of the spread of disease, protection of life or property, or for administrative purposes: Provided that where the area to which the order relates, or any part thereof, is private land, the Minister shall, in addition to the publication of the order in the Gazette, cause it to be published for seven consecutive days on the notice board of the district office for the area in which that land is situated.

(2) No person shall, in any such defined area, hunt, capture or wilfully disturb any animal or any species or sex of animal or any specimen of animal, the hunting or disturbance of which is prohibited in accordance with an order issued under subsection (1), and no person shall

remove or cause to be removed any animal or any part of an animal from any such area, the removal from which is prohibited by the order, and any person who contravenes the provisions

Prohibition of  
certain  
activities in  
specified areas



of this subsection shall be guilty of an offence and without derogation from his liability under any other provision of this Act shall be liable to a fine of P2 000 and to imprisonment for 2 years.

**46.** (1) Notwithstanding anything to the contrary in this Act, the owner or occupier of land, or any agent of such owner or occupier may, subject to the provisions of this Act, kill any animal which caused, is causing or threatens to cause damage to any livestock, crops, water installation or fence on such land:

Killing of animals causing damage

Provided that nothing in this section shall authorize the killing of an animal which is in a national park or a game reserve, or the use of any poisoned weapon, pitfall or snare for the killing of any animal.

(2) Any person who has killed an animal in terms of subsection (1) shall, as soon as possible, and in any case not later than 7 days after the event, report the circumstances of such killing, and deliver the trophies of such animal, to the nearest wildlife officer or police station.

(3) The trophies and meat of any animal killed in accordance with the provisions of subsection (1) shall be Government trophies, but where the report required under subsection (2) has been made, and it is established that the killing was in accordance with those provisions, the Director or the licensing officer may issue a permit for the sale of the meat by the person concerned: Provided that no such permit shall be issued for the sale or other disposal of the meat of any elephant, rhinoceros or cheetah, or the meat of any animal that was killed because it was merely threatening to cause damage.

(4) Compensation may be paid, as may be provided in regulations made under the Act, to any person who satisfactorily establishes that he has suffered damage from the action of an animal.

(5) The Minister may, by notice in the Gazette, determine rates of compensation to be paid in respect of claims made under the provisions of this section, where he considers such claims and such rates to be justified.

(6) Any person who—

- (a) kills any animal in defence of property otherwise than in accordance with the provisions of subsection (1);
- (b) fails to report the killing of any animal in accordance with the provisions of subsection (2); or
- (c) uses, retains or disposes of any trophy or meat of the animal so killed otherwise than under or in accordance with this section,

shall be guilty of an offence and without derogation from his liability under any other provision of this Act shall be liable to a fine of P1000 and to imprisonment for 1 year.

**47.** (1) Notwithstanding anything in this Act, it shall not be unlawful for any person to kill or wound any animal in defence of himself or any other person if immediately and absolutely necessary.

Killing of animals in self defence

(2) The burden of proving that an animal has been killed or wounded in accordance with the provisions of this section shall lie upon the person who did the killing or wounding.

(3) Where any game animal is killed in circumstances such as are referred to in subsection (1) by any person who is not the holder of a licence or permit entitling or authorizing him to kill such animal, such animal shall be a Government trophy and such person shall as soon as possible, and in any event not later than 7 days after the killing, report such killing to the nearest convenient wildlife officer or police station, and shall, if so directed, deliver the animal or such parts thereof as may be specified, to such wildlife officer or police

station, as the case may be, and any person who fails to comply with the provisions of this subsection shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

**48.** (1) Where any game animal is killed by accident or in error by any person whilst he is hunting, and such person is not the holder of a licence or permit entitling or authorizing him to kill such animal, such animal shall be a Government trophy and such person shall as soon as possible and in any event not later than 7 days after the event report the killing to the nearest convenient wildlife officer or police station, and shall, if so directed, deliver the animal or such parts thereof as may be specified, to such wildlife officer or police station, as the case may be.

Killing of animals by accident or in error

(2) Where any animal is killed by accident or in error by any person while he is hunting and such person is the holder of a licence or permit entitling or authorizing him to kill such animal it shall be counted as an animal killed in terms of such licence or permit, and the person who killed it shall record the killing thereof in his register in accordance with the provisions of section 38.

(3) Where any game animal is killed by accident or in error by any person whilst he is driving a vehicle upon any road, he shall, if he retrieves the animal or any part thereof, as soon as possible, report the killing to the nearest convenient wildlife officer or police station, and shall, if so directed, surrender to such wildlife officer or police station, as the case may be, the animal or such of the parts retrieved by him as may be specified.

(4) Any person who contravenes the provisions of subsection (1) or (3) shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for 1 year:

Provided that—

- (a) where the animal killed is a rhinoceros the offender shall be liable to a fine of P100 000, and to imprisonment for 15 years; and
- (b) where the animal killed is an elephant the offender shall be liable to a fine of P50 000, and to imprisonment for 10 years.

**49.** (1) No person shall enter upon any land for the purpose of hunting or capturing any animal without the written permission of the owner or occupier of such land or unless he is accompanied by such owner or occupier or by the duly appointed representative of such owner or occupier, and any person who contravenes the provisions of this subsection shall be guilty of an offence and shall be liable to a fine of P1 000 and to imprisonment for 1 year.

Hunting or capturing of animals without permission of land owner or occupier

(2) Any person seen or found on any land in possession of any firearm, or of any other weapon capable of killing any animal by the discharge of any missile, or by the use of any poisoned bait, poisoned weapon, birdlime or trap, or with a dog, shall be deemed to have entered upon such land in contravention of the provisions of this section, unless he proves to the contrary or proves that he had the permission of the owner or occupier of such land to enter upon the land for the purpose of hunting or capturing animals, as is required under subsection (1).

(3) Any police officer or any owner or occupier of land who finds any person such as is mentioned in subsection (2) upon such land, may require such person to satisfy him that he is not on the land in contravention of the provisions of subsection (1), and if such person is unable so to give satisfactory proof, may demand from him his full name and address and may forthwith direct him to leave the land, and if such person fails to give his name and address, or gives a false or incomplete name and address, or fails forthwith to leave the land after being directed to do so, he shall be guilty of an offence and liable to a fine of P 1000 and to imprisonment for 1 year.

(4) The powers conferred on the owner or occupier of land under this section shall be without prejudice to any other power conferred by any other written law, and liabilities and penalties prescribed for contraventions of the provisions of this section shall be without prejudice to any liability or penalty prescribed under any other written law in respect of a contravention of that law.

**50.** (1) Any person who conveys in any vehicle any loaded weapon, other than a revolver or pistol, whilst travelling along a road to which the public has access, traversing private land in any area where game is or is likely to be found, not being the owner or occupier of such land, or not having the permission of the owner or occupier of the land to hunt any animal thereon, or not having been given the permission of the owner or occupier to convey such weapon across such land in such vehicle, shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for 1 year.

Conveyance  
of loaded  
weapon in  
certain  
circumstances

(2) For the purposes of this section a loaded weapon means a weapon having a bullet or cartridge in the breach thereof.

**51.** The owner or occupier of private land on which there are any game animals, may kill any dog found hunting on such land if such dog is not in the keeping of and accompanied by a person who is lawfully on such land:

Killing  
of dogs  
in certain  
circumstances

Provided that the provisions of this section shall not apply in respect of land within a township, and nothing in this section shall in any way affect or derogate from the right of such owner or occupier to kill the dog in terms of any other law.

**52.** (1) The owner or occupier of private land, or any person authorized thereto by him may, without warrant, search any premises, hut, tent, camping place, vehicle or receptacle on such land or any road traversing such land, if such owner, occupier or authorized person has reasonable cause to suspect that there is contained therein any animal, meat or trophy, or any thing or article by means of which, or in respect of which, any provision of this Act has been contravened, and may seize any such animal, meat, trophy, thing or article found by him.

Prohibition  
of certain  
activities in  
specified  
areas

(2) Any person obstructing or hindering any person carrying out a search in terms of the provisions of subsection (1), shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

**53.** Where under this Act the authority or permission of the owner or occupier of land is required for the doing of any act, such authority or permission shall in the case of any tribal area, unless otherwise specifically provided in this Act, be valid for the purposes of this Act only if given by the land board established in respect of that tribal area, or by any person authorized by that land board to give such authority or permission.

Permission  
in respect of  
tribal land

**54** (1) Any person who, in any circumstances, wounds any animal, shall take all such steps as may be reasonable in the circumstances to kill such animal at the earliest opportunity.

Wounding  
of animals

(2) Any person who, in any circumstances, wounds but does not kill a dangerous animal, shall make a report thereof at the nearest convenient police station or to a wildlife officer at the earliest opportunity after the failure of his efforts to kill such animal, and such report shall specify the date on which and the place at which it was wounded, the type of wound and the weapon with which it was inflicted, the efforts made to kill the animal after it was wounded, the time and place at which the animal was finally lost, and any other information likely to be of use in locating or identifying the animal, and shall include the name of any other person who witnessed the wounding or who participated in the efforts made to kill the animal.

(3) Any person who, whilst hunting, witnesses the wounding of a dangerous animal, shall make a report thereof at the nearest convenient police station or to a wildlife officer at the earliest opportunity after witnessing the event, stating the name of the person who inflicted the wound, unless to his knowledge some other person has already made such report.

(4) Any person who fails to comply with any provision of this section with which it is his duty to comply shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years.

(5) Where the holder of a licence such as is referred to in section 28, or a professional hunter whilst assisting such licence holder, wounds but does not kill any animal which such licence holder is entitled to hunt by virtue of such licence, such animal shall be counted as an animal killed by him in terms of such licence, and shall be recorded as such by him in the register he is required to maintain under the provisions of section 38.

**55.** (1) Subject to the provisions of subsection (2) no person shall hunt or capture any game animal by night or use any dazzling light for the purpose of hunting or capturing any game animal, and any person who contravenes the provisions of this subsection shall be guilty of an offence and without derogation from his liability under any other provision of this Act shall be liable to a fine of P5 000 and to imprisonment for 5 years.

Hunting or capturing by night

(2) Nothing in subsection (1) shall apply to the holder of a valid permit granted under this Act which specifically authorizes the holder thereof to kill or to capture any game animal by night or by means of a dazzling light, or to any person acting in accordance with the terms of section 46(1) or section 47(1).

**56.** No person shall hunt or capture any game animal during the closed season, and any person who contravenes the provisions of this section shall, without prejudice to his liability to be prosecuted under any other section of this Act, be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years:

Hunting or capturing during closed season

Provided that the provisions of this section shall not apply to the holder of a valid permit granted under this Act which specifically authorizes the holder thereof to hunt or capture such game animal during the closed season, or to the holder of a special game licence issued under section 30(2), or to any person acting in accordance with the provisions of section 46(1) or section 47(1).

**57.** (1) Subject to subsections (2) and (3), no person shall—

- (a) whilst he is in or on any vehicle, aircraft or mechanically propelled vessel, discharge any weapon at or towards any game animal;
- (b) use any vehicle, aircraft or mechanically propelled vessel in such manner as to drive, stampede or disturb any animal for any purpose;
- (c) use any vehicle or mechanically propelled vessel for the purpose of capturing any game animal; or
- (d) in any vehicle or mechanically propelled vessel approach nearer than 200 metres to any animal for the purpose of hunting or capturing the animal.

Unlawful methods of hunting

(2) Nothing in subsection (1) shall apply to the use of a vehicle, aircraft or mechanically propelled vessel for—

- (a) the hunting or capture of any animal by any person acting in accordance with the provisions of section 46(1) or section 47(1);

- (b) the hunting or capture of any animal by the holder of a valid permit granted under this Act which authorizes the use of a vehicle, aircraft or mechanically propelled vessel in the hunting or capture of such animal; or
- (c) the driving away of any animal from any Government aerodrome or any licensed aerodrome by any person concerned with the maintenance of such aerodrome, or the driving away of any animal from an emergency landing ground by any person when it is necessary so to drive the animal to ensure the safety of any aircraft which is on, or about to land on, or about to take off from such emergency landing ground.

(3) Nothing in subsection (1) shall apply to the use of a mechanically propelled vessel for the hunting of any waterfowl specified in Part III of the Seventh Schedule or the hunting or capture of any crocodile or situngu.

(4) No person shall, for the purpose of hunting or capturing of any animal, drive or surround such animal by means of fire or, for the purpose of such hunting or capturing, cause any grass or bush fire, or use any other method of hunting or capture which the Minister may, by regulations, declare to be unlawful.

(5) No person shall, except under and in accordance with the written permission of a licensing officer, use for the purpose of hunting or capturing any animal any immediate means other than a hunting rifle, a shotgun or a dog used subject to such limitations as may be imposed by regulations:

Provided that the provisions of this subsection shall not apply to any person acting in accordance with the provisions of section 46(1) or section 47(1), or to the extent that regulations made for the purposes of section 30 provide otherwise in respect of persons hunting in accordance with the provisions of a special game licence.

(6) Any person who contravenes the provisions of this section shall be guilty of an offence and without derogation from his liability under any other provision of this Act shall be liable to a fine of P5 000 and to imprisonment for 5 years.

**58.** (1) No person shall use a Martini Henry or a muzzle loader or any firearm other than a rifle of a calibre not less than 9,3mm or ,375 magnum and capable of firing a cordite cartridge, for the purpose of hunting any elephant or buffalo, and a licence or permit authorizing the hunting of an elephant or a buffalo will only be issued on production by the applicant of an arms certificate or a temporary permit for a rifle which conforms to the requirements of this subsection.

Elephant  
and buffalo  
hunting

(2) Any person who hunts an elephant or a buffalo with a weapon other than one of a calibre and type specified for such hunting in subsection (1) shall be guilty of an offence and, without prejudice to his liability to any other penalty in respect of any other offence under this Act, shall be liable to a fine of P500 and to imprisonment for 6 months.

**59.** Any licence holder who kills a lion or a leopard shall produce its skull to a licensing officer for inspection, and any person who fails to comply with the provisions of this subsection shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

Killing  
of lion or  
leopard

**60.** (1) No person shall, except under and in accordance with the terms and conditions of a permit granted in terms of section 39(1)(c), sell any game animal or non-designated animal, or the meat, eggs or trophy of any such animal:

Sale of  
animals or  
eggs thereof

- Provided that the provisions of this section shall not apply to—
- i. the holder of a trophy dealer's licence, or to any person in effecting a sale to the holder of a trophy dealer's licence in accordance with the terms and conditions of that licence;

- ii. or any person entitled to landholder's privileges, or to enjoy landholder's privileges, in accordance with section 20 in respect of any land, in effecting a sale, with the written approval of the Director, of any game animal or the meat, eggs or trophy of any game animal lawfully killed on that land by such person; or
- iii. the sale of a trophy where a single game licence pertaining to that trophy is handed over with the trophy, or to the sale of a trophy obtained in accordance with the terms of a small game licence, or to the sale of a trophy obtained outside a national park or a game reserve by the holder of a special game licence, where the buyer records and retains the number of the licence and the name and address of the holder of such licence.

(2) Any game animal or non-designated animal, or the meat, eggs or trophy of any such animal found in any shop, store or other place of business, shall be presumed to have been acquired for the purpose of sale, and the person in whose possession it is found shall be presumed to have dealt therewith in contravention of the provisions of this section unless he is the holder of a valid permit granted to him in terms of section 39(1)(c) or unless he proves to the contrary.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P1000 and to imprisonment for 1 year.

**61.** (1) No person shall purchase from another person any game animal or non-designated animal or the meat, eggs or trophy thereof without satisfying himself, by reasonable evidence, that such other person is the holder of a valid permit granted to him in terms of section 39(1)(c) authorizing him to sell such animal, meat, eggs or trophy, or that he is entitled to do so in accordance with the provisions of section 60 or by virtue of regulations made under section 30, and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

Purchases  
of animals  
or parts or  
eggs thereof

(2) Notwithstanding the provisions of subsection (1), a person shall not be guilty of an offence under that subsection if he purchases such animal, meat, eggs or trophy—

- (a) from a stall at any fete, bazaar or other like function which is open to the public;
- (b) from any person who lawfully exhibits his goods for sale in any road, street or other public place; or
- (c) in the ordinary course of business from a person who carries on business in a shop, store or other fixed place of business.

## **PART X**

*Export and Import of Animals, Trophies and Meat,  
and Sale and Manufacture of Articles from Trophies (ss 62-66)*

**62.** (1) No person shall, except under and in accordance with the terms and conditions of a permit granted to him by the Director under S.I. 31/1994. subsection (3), export from or import into or transport through or re-export from Botswana any animal, or trophy, meat or eggs thereof.

Export  
and  
import of  
animals,  
etc.

(2) The export, import, transport through and re-export of animals listed under the Appendices to CITES, and any trophy, meat or eggs thereof shall be permitted only in accordance with the provisions of CITES, and before any permit is issued under S.I. 31/1994. subsection (3), the Director, as Management Authority in accordance with the terms of CITES, shall require to be satisfied that—

- (a) the animal, trophy, meat or eggs has or have been lawfully acquired;
- (b) the issue of the permit will not in any way be detrimental to the survival of the species;

- (c) where required, the Management Authority of the importing country has granted an import permit in respect of the animal, trophy, meat or eggs; and
- (d) in the case of a live animal, all necessary steps have been taken to minimize the risk of injury, cruelty or damage to its health during transport or transshipment of the animal to its destination.

(3) Subject to compliance with the provisions of any other written law relating to the export or import of goods, to the provisions of subsections (2) and (4), and to any regulations made or directions given, or terms and conditions imposed by the Minister in respect of certain or specified animals, a licensing officer may, on application being made in such form and on payment of such fee as may be prescribed, grant permits for the export from or import into or re-export from Botswana of any animal, or trophy, meat or eggs thereof.

(4) Where, subject to the provisions of subsection (2), a permit for the export of any elephant tusk is granted, the weight thereof and the distinctive mark and number placed thereon in terms of section 67(2) shall be endorsed on the permit.

(5) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P10 000 and to imprisonment for 7 years:

Provided that—

- (a) where the contravention is in respect of a rhinoceros or any trophy thereof, the penalty shall be a fine of P100 000, and imprisonment for 10 years; or
- (b) where the contravention is in respect of an elephant or any trophy thereof, the penalty shall be a fine of P50 000, and imprisonment for 10 years.

63. Export duty at such rate as the Minister may, by order in the Gazette, from time to time determine, shall be paid to the licensing officer to whom application is made for an export permit, on all animals, or trophies, meat, hide, skins or eggs thereof exported from Botswana:

Export duty  
to be paid

Provided that—

- (a) the provisions of this section shall not apply in respect of any animal, or trophy, meat, hide, skin or eggs thereof acquired by the holder of a Minister's licence issued in accordance with the provisions of section 89, by virtue of such licence, or lawfully imported into Botswana and then re-exported; and
- (b) no order by the Minister that has the effect of imposing such a duty, or of increasing the existing rate of duty, in respect of any animal or item, shall have force or effect until the expiration of a period of two months from the date of publication of the order in the Gazette.

64. No person shall sell or otherwise deal in, or manufacture any article from, any trophy that has not been lawfully imported into, or which has not been obtained from an animal lawfully killed or captured in, Botswana, and any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years:

Dealing  
in  
trophies

Provided that where the offence is in respect of a trophy from a rhinoceros or an elephant, the penalties shall be as provided respectively in paragraphs (a) and (b) of the proviso to section 62(5).

65. (1) No person shall carry on the business of a trophy dealer except under the authority of and in accordance with the terms and conditions of a trophy dealer's licence, and no person other than the holder of a trophy dealer's licence shall employ or engage any other person to manufacture any article from any trophy.

Trophy  
dealer's  
licence

(2) Application for a trophy dealer's licence shall be made to the Director in such form as may be prescribed, and the Director may, at his discretion, where the circumstances so warrant, and on payment of such fee as may be prescribed, issue the licence in the prescribed form, subject to such terms and conditions as he may determine, and as shall be endorsed on the licence.

(3) A trophy dealer's licence may be issued in respect of certain classes of trophy only, as may be endorsed on the licence, and the holder thereof shall not deal in trophies other than those so endorsed.

(4) A trophy dealer's licence shall not be transferable, and no person other than the person to whom it is issued shall make use of such licence.

(5) A trophy dealer's licence shall be valid for one year from the date on which it is issued:

Provided that the Director may forthwith cancel the licence of any trophy dealer convicted of an offence under this Act.

(6) Any person aggrieved by the refusal of the Director to issue a licence under this section, or by any terms and conditions subject to which such licence is issued, or by the cancellation of a licence by the Director, may appeal therefrom to the Minister whose decision thereon shall be final.

(7) Any person who contravenes or fails to comply with the provisions of this section or with the terms and conditions subject to which his licence was issued, shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years.

**66.** (1) A trophy dealer shall keep and maintain a register in such form and shall make such returns as may be prescribed, and any trophy dealer who contravenes or fails to comply with the provisions of this section shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

(2) A wildlife officer or a police officer may, at all reasonable times, enter the licensed premises of a trophy dealer and inspect the register and returns which he is required to keep or make under subsection (1).

Records  
and returns  
by trophy  
dealers

## **PART XI**

### *Ivory and Rhinoceros Horn (ss 67-70)*

**67.** (1) Any person who kills an elephant shall produce its lower jaw, its tail and its tusks to a licensing officer at such wildlife office as may be prescribed for such purpose, within 7 days immediately after the killing, or within such extended period as the licensing officer may, in any special circumstances, authorize, together with the appropriate licence or permit, and where the licence or permit holder fails to produce any one of such parts, or the licence, the licensing officer may refuse to register the tusks.

(2) The licensing officer to whom such tusks are produced shall, if satisfied after such enquiry as he may consider necessary that they have been lawfully obtained, and that possession and ownership thereof will not be contrary to the terms of CITES, weigh them and cause them to be marked with a distinctive mark and number and the name of the owner, the date and such other information as may be required in a register to be kept for that purpose, and, subject to subsection (3), return them to the person producing them together with a certificate of ownership in the prescribed form, on which shall be endorsed the registered particulars.

(3) Where a licensing officer is not satisfied that the tusks have been lawfully obtained, or that possession or ownership thereof will be in accordance with the terms of CITES, he may retain them pending further investigation: Provided that if no criminal proceedings are instituted against the person producing the tusks within three months of their

Killing of  
elephant  
and  
rhinoceros



being produced, the licensing officer shall, subject to the terms of CITES, proceed to deal with the tusks in accordance with subsection (2).

(4) Where a tusk is of an immature elephant, as determined in accordance with regulations made under section 92, it shall be a Government trophy, and the licensing officer shall not register it or return it to the licence holder.

(5) Any person who fails to comply with the provisions of subsection (1), or who is found in possession of tusks which have not been registered in accordance with the provisions of subsection (2), shall be guilty of an offence and liable to a fine of P50 000 and to imprisonment for 10 years.

(6) Any person who kills a rhinoceros shall produce the horn thereof to a licensing officer, at such wildlife office as may be prescribed for that purpose, as soon as possible, and in any event within 7 days immediately after the killing, and report the circumstances of the killing, the location and the date and time thereof, and any person who fails to comply with the provisions of this subsection or who is found in possession of a rhinoceros horn which has not been produced in accordance with the provisions of this subsection shall be guilty of an offence and liable to a fine of P100 000 and to imprisonment for 15 years.

**68.** (1) Any person who imports any ivory or any tusk into Botswana, or who acquires, within Botswana, any ivory, or any tusk, without a certificate of ownership issued under section 67(2) shall, within 7 days of so importing or acquiring it, produce such ivory or tusk to a licensing officer, at such wildlife office as may be prescribed for that purpose, for registration, together with such reasonable proof of the lawful importation or acquisition thereof as the licensing officer may require, and where appropriate the provisions of section 67(2) or (3) shall *mutatis mutandis* apply in respect thereof:

Ivory or tusks imported into or acquired in Botswana

Provided that the provisions of this subsection shall not apply in respect of any tusk or ivory which is imported into Botswana by any museum or scientific or educational institution, or in respect of any ivory which is in such form, or is acquired from such source, as the Minister may, bearing in mind the terms of CITES, by regulations made under this Act, or in any particular case exempt therefrom.

(2) Any person who fails to comply with or contravenes the provisions of subsection (1), or who is found in possession of any tusk or ivory and cannot produce a certificate of ownership issued under section 67(2) therefor, or proof of registration thereof or any reasonable proof of lawful importation or possession thereof, shall be guilty of an offence and liable to a fine of P50 000 and to imprisonment for 10 years.

**69.** (1) Except as otherwise specially provided in CITES, and as may be provided in regulations made under this Act, no person shall transfer to another person any tusk or any ivory which, under the provisions of this Act, is required to be registered and which has not been so registered.

Transfer of ivory

(2) Where any tusk or ivory that has been registered under the provisions of this Act is transferred, the transferor shall hand over to the transferee the certificate of ownership in respect thereof, or proof of registration thereof, as the case may be, after he has endorsed thereon the fact of such transfer and such endorsement has been signed by both the transferor and the transferee.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of P50 000 and to imprisonment for 10 years.

**70.** Any rhinoceros horn shall be a Government trophy and, except only as provided in section 67(6), no person shall have in his possession, transfer or in any way deal in rhinoceros horn, and any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of P100 000 and to imprisonment for 15 years:

Rhinoceros horn

Provided that the provisions of this section shall not apply in respect of the possession of any duly registered rhinoceros horn by a person who acquired it lawfully prior to the commencement of this Act and who registers such possession with a licensing officer, at such wildlife office as may be prescribed for the purpose, within three months after the commencement of this Act.

## **PART XII**

### *Government Trophies (s 71)*

**71.** (1) The following are declared to be Government trophies, in addition to any other. Government trophies so declared in any other provision of this Act—

Government trophies

- (a) any game animal found dead, and any trophy or part thereof;
- (b) any animal killed or captured in contravention of any provision of this Act, and any trophy or part of such animal;
- (c) any trophy in respect of which a breach of this Act has been committed;
- (d) any animal or trophy which is, on reasonable grounds, suspected of being stolen or otherwise unlawfully obtained, and which is in the possession of any person who is unable to give a reasonable explanation to a licensing officer as to how he came by it; and
- (e) any other animal or trophy which may be prescribed as a Government trophy.

(2) Except as otherwise specially provided in this Act, any person who by any means obtains possession of a Government trophy, shall forthwith make a report thereof to the nearest wildlife officer or police station and shall, if so directed, deliver such trophy to such wildlife officer or police station, as the case may be.

(3) Any person who contravenes the provisions of subsection (2) or who is found in unlawful possession of a Government trophy shall be guilty of an offence and, without derogation from his liability under any other provision of this Act, shall be liable to a fine of P5 000 and to imprisonment for 5 years.

(4) Government trophies shall be disposed of in such manner as the Minister may, where relevant in accordance with the terms of CITES, direct.

## **PART XIII**

### *Evidence, Prevention and Detection of Offences and Forfeitures (ss 72-79)*

**72.** (1) The possession of any animal or the meat or trophy of a freshly killed animal shall be prima facie evidence against a person accused of contravening any provision of this Act, that he has hunted, killed or captured such animal.

Evidence and presumptions

(2) Any holder of a licence or permit issued or granted under this Act who is found in possession of animals, or the meat or trophies thereof, in excess of the numbers specified in such licence or permit, or of any animal or species or sex of animal not authorized therein shall be presumed, unless the contrary is proved, to have hunted, killed or captured such animal or animals in contravention of the provisions of this Act.

(3) Where any animal, or the meat or trophy of an animal is found upon or in any vehicle, boat or aircraft, or at any camping place, every person who is upon or in or in any way associated with such vehicle, boat or aircraft, or who is at or in any way associated with such camping place, shall be presumed, unless the contrary is proved, to be in possession of such animal, meat or trophy.

(4) Any person charged with doing any act which constitutes an offence under this Act if done without a licence, permit, authority or permission, shall be presumed to have done such act without such licence, permit, authority or permission, as the case may be, unless the contrary is proved.

(5) The burden of proving any fact which would be a defence to a charge of contravening or failing to comply with any provision of this Act shall lie on the person charged with such contravention or failure.

(6) In any prosecution for an offence under this Act, whenever—

(a) the question whether any fresh, dried, unprocessed or partly processed meat is or was the meat of any animal, is relevant to the issue before the court, such meat shall be presumed to be or to have been the meat of such animal, unless the contrary is proved;

(b) the question whether any unprocessed or partly processed hide or skin, which has been rendered unidentifiable as the hide or skin of any particular animal or species or sex of animal, is or was the hide or skin of any animal or species or sex of any animal is relevant to the issue before the court, such hide or skin shall be presumed to be or to have been the hide or skin of such animal or species or sex of animal, unless the contrary is proved.

(7) Whenever, in any proceedings against any person upon a charge alleging that he committed an offence under this Act on any particular piece of land, it is proved that any act constituting or forming an element of such offence was committed in or near the locality wherein such land is situated, such act shall be presumed to have been committed on such piece of land, unless it is proved that it was committed on another piece of land.

(8) Whenever the hunting of one or other sex, or of any particular class or species of animal is unlawful, and the hunting of the other sex or any other class or species of such animal is lawful, any carcass of such animal from which the distinguishing features of sex or of such particular class or species have been removed shall be presumed to be the carcass of an animal of the sex or class or species which it is unlawful to hunt, unless the contrary is proved.

(9) Whenever, in any prosecution under this Act it is alleged that an offence was committed in connection with or in respect of any species of animal, it shall be presumed that the offence, if committed, was committed in connection with or in respect of such species of animal, unless the contrary is proved.

(10) Whenever, in any prosecution under this Act, it is alleged that the person charged has failed to report any matter, or to deliver any article or thing to a wildlife officer or to a police station, it shall be presumed that he so failed to report the matter or to deliver the article or thing, as the case may be, unless the contrary is proved.

(11) Any person found at night on any land on which there are any animals or where animals may reasonably be expected to be, and has in his possession any dazzling light and any firearm or other weapon capable of killing or capturing any animal by the discharge of any missile, or any trap or other contrivance capable of being used in the hunting or capture of any animal, shall be presumed to be acting or to have acted in contravention of the provisions of section 55, unless the contrary is proved.

(12) Any person found at night conveying any game animal, or any meat, trophy or egg thereof, and not being in possession of a valid licence or permit to hunt or capture such animal, shall be presumed to have hunted or captured such animal in contravention of the provisions of section 55, unless the contrary is proved.

(13) In any prosecution under this Act, any record, book or document kept by a wildlife officer or gate attendant, and any other person authorized thereto under this Act, in the course of his duties under this Act, shall, upon production to the court by such wildlife officer, gate attendant or other person, be prima facie evidence of the facts recorded therein.

(14) If any vehicle fails to stop when required or signalled to do so by any person authorized to stop such vehicle under this Act, it shall be presumed that the person in whose name the vehicle is registered was driving the vehicle at the time it failed to stop, unless the contrary is proved.

(15) Any person found traversing any land in an area where game is or is likely to be found, conveying any loaded weapon, other than a pistol or revolver, and not being the owner or occupier of such land, or having the permission of the owner or occupier to convey such weapon across such land shall be presumed to be hunting or to have hunted unlawfully on such land, unless the contrary is proved.

(16) Any person who is found in or leaving a national park, game reserve or a sanctuary, and to have in his possession any object of geological, ethnological, archaeological, historical or other scientific interest shall be presumed to have acquired such object unlawfully in such national park, game reserve or sanctuary unless the contrary is proved.

**73.** (1) If any wildlife officer or police officer has reasonable grounds for believing that any person has committed an offence under this Act, he may—

- a) stop and search such person or require him, or enter upon any land and there search or require him, to produce for inspection any animal, meat, trophy or weapon in his possession, or any licence, permit or other document issued to him or required to be kept by him under this Act or the Arms and Ammunition Act;
- b) enter and search any land, building (including a dwelling house), tent, vehicle, boat or aircraft in the possession of or being used by such person, and open and search any baggage or thing in his possession;
- c) stop, seize and search any vehicle, boat or aircraft which he believes to have been used in the commission of the offence, or to contain anything which might provide evidence of the offence;
- d) require such person, or the driver of such vehicle, or the pilot of such aircraft, or the person in charge of such boat, or any passenger in such vehicle, boat or aircraft to furnish his full name and address and the details of any licence, permit, authority or permission issued to him under this Act.
- e) seize any animal, meat, trophy or weapon in the possession of any person, which he believes, on reasonable grounds, to constitute evidence of the offence and, unless he is satisfied that such person will appear and answer any charge that may be preferred against him, arrest and detain him;
- f) undertake any inspection which he may deem necessary to determine whether the provisions of this Act and any other written law relating to the hunting, capture, acquisition, game farming, keeping in captivity, destruction or disposal of animals in Botswana are being complied with; and
- g) destroy any pitfall or trap suspected of being used for the unlawful hunting or capture of any animal, and which cannot be removed from the place where it is found, or the removal of which is difficult.

(2) Within a national park or a game reserve, a gate attendant may exercise such powers conferred on a wildlife officer by subsection (1) as are appropriate.

(3) Where it is necessary for the discharge of his duties or the exercise of his powers under this Act, and notwithstanding the provisions of the Arms and Ammunition Act, a wildlife officer may carry a firearm with him, even on land of which he is not the owner, for the protection of himself or any other person, the prevention or investigation of offences against this Act, or the arrest of any person committing or suspected of committing an offence under this Act, and where the Director so directs, such firearm may be of a type not otherwise permitted under the Arms and Ammunition Act.

Powers of  
wildlife  
officers,  
gate  
attendants  
and police  
officers

(4) Every wildlife officer and gate attendant shall, when discharging his duties or exercising his powers under this Act, have in his possession and produce on request, an identity card in such form as may be prescribed, signed by the Director, as evidence of his identity and his appointment as a wildlife officer or gate attendant, and such identity card shall be sufficient proof of identity and such appointment.

(5) Every person who is detained, and every thing seized under powers conferred by this Act shall be taken as soon as possible before a court of competent jurisdiction, to be dealt with according to law.

(6) Any person who fails to comply with any request or direction made or given in accordance with powers conferred by this section, or who gives information which he knows or ought reasonably to know is false, shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

(7) Any person who assaults, wilfully obstructs or resists arrest by a wildlife officer or a gate attendant in the performance of his duties under this Act, and any person assisting or encouraging such person, shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years.

**74.** (1) For the effective carrying out of the provisions of this Act, and notwithstanding the provisions of any written law relating to the obstruction of roads, any wildlife officer may erect a temporary barrier across any road:

Erection  
of road  
barriers

Provided that at the same time the officer shall erect warning signs or notices in such form as may be prescribed at such distances either side of such barrier as may be prescribed and take all such other steps as may be reasonably necessary to protect users of the road from injury to themselves or their property.

(2) Where a person is required to do so by a uniformed wildlife officer in the exercise of his duties under subsection (1), whether by word, sign or signal, he shall stop, and any person who fails to comply with such request shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for 1 year.

**75.** (1) Where any person is convicted of an offence under this Act, the court may order, and shall order where the offence is one punishable with a fine of P2 000 or over, that any weapon, trap, animal, vehicle, aircraft or boat used for the purpose of or in connection with the commission of the offence, shall be forfeited to the State.

Forfeitures,  
etc

(2) Where the holder of a licence, permit, authority or permission issued or granted under this Act is convicted of an offence under the Act for which the penalty prescribed is P1 000 or over, such conviction shall have the effect of cancelling such licence, permit, authority or permission, unless the court in any particular case decides otherwise.

(3) Anything forfeited to the State under this section shall be disposed of as the Minister may direct: Provided that such disposal shall not in any way include returning any of the items to the offender or any party to the offence.

**76.** (1) Notwithstanding any provision contained in this or any other written law, it shall be lawful for any wildlife officer specially authorized therefor by the Minister, to serve personally on any person reasonably suspected of having committed an offence under this Act or any regulations made under this Act, for which the prescribed penalty does not exceed a fine of P500 and imprisonment for 6 months, or such other offence as the Minister may by order published in the Gazette prescribe, a notification in the form set out in the Tenth Schedule, charging such person with having committed the offence or offences indicated in the notification, and requiring such person to attend court to answer such charge or charges at such time, which shall not be sooner than 21 days after the date of delivery of the notification, as is indicated in the notification.

Admissi  
on of  
guilt

(2) Such notification shall for all purposes be deemed to be a summons issued under the provisions of the Criminal Procedure and Evidence Act:

Provided that the person served with the notification shall not be obliged to attend court in answer to the charge or charges if he has pleaded guilty in writing, and sent the plea together with the notification and a sum equal to half the prescribed maximum fine for the offence or offences, or such other amount as the Minister may, by order published in the Gazette, prescribe for the purposes of this section, to such police station as shall be specified in the notification, within 14 days from the date on which the notification was served on him.

(3) If any person, having been served with a notification issued under this section, fails either to attend court on the day and at the time specified in such notification, or to plead guilty and pay the fine as provided in subsection (2), he may be brought before the court to answer the charge or charges either by summons or by warrant.

(4) The provisions of this section shall be without prejudice to the power to proceed in the normal manner against the accused person.

**77.** (1) Notwithstanding anything to the contrary contained in any law relating to magistrates' courts, a court presided over by a Magistrate Grade I or over shall have special jurisdiction to hear any case under this Act, to impose any penalty provided in this Act for an offence thereunder, and to exercise the powers conferred by subsection (2).

Magistrates' courts' special jurisdiction

(2) Where any person is convicted of an offence under this Act punishable by a fine of P5 000 or over, and where the Director is satisfied that the offender has received pecuniary benefit resulting from the contravention or contraventions of this Act giving rise to the conviction, he may make or cause to be made an application to the court before which the conviction was obtained, or to the High Court, for a confiscation order in accordance with the provisions of the Cap. 08:03 Proceeds of Serious Crime Act, and for the purpose of that Act the offence giving rise to the conviction shall be deemed to be a serious crime.

**78.** Where any person is charged with contravening any particular provision of this Act, and the evidence discloses that he was not guilty of contravening that provision, but such evidence supports a conviction for a lesser offence under the Act, the court trying him may find him guilty of such lesser offence notwithstanding that he was not so charged.

Alternative verdicts

**79.** Where any person is convicted of any offence under this Act, having previously been convicted for a contravention of the Act or of regulations under the Act, the maximum penalty prescribed for such offence shall be increased by fifty percent:

Second or subsequent offence

Provided that where the offence is one in connection with a rhinoceros or an elephant the penalty for a second or subsequent offence shall be a term of imprisonment without the option of a fine, in addition to the imposition of a fine.

## **PART XIV**

### *General (ss 80-94)*

**80.** (1) Any wildlife officer may, with the consent of the owner or occupier in respect of private land, where it is necessary for the purpose, go onto any land, and destroy any animal which—

Destruction of animals by wildlife officers in certain circumstances

- (a) has caused or is causing or is likely to cause damage to any livestock, crops, water installation or fence;
- (b) is or is likely to be dangerous to human life;
- (c) he has been directed to destroy as part of his official duties:

Provided that, where the animal is a dangerous animal which has been previously wounded or otherwise injured so as to make it a potential source of danger to human life, the wildlife

officer may follow such animal with the intention of killing it on any land notwithstanding that the consent of the owner or occupier of the land has not been first obtained, but he shall as soon as possible inform such owner or occupier of the fact that he has followed such animal on to the land and whether he was successful in killing it or whether it is still at large.

(2) Any wildlife officer may destroy any dog found hunting an animal on land other than private land, if such dog is not in the keeping of or accompanied by a person who is lawfully on such land.

**81.** Nothing in this Act, and no licence, permit authority or permission issued or granted under this Act shall, or shall be deemed to, authorize any person to hunt or capture any animal in an area declared to be a reserved area under the Forest Act except under and in accordance with such permit, authorization or permission as may be required by that Act, and any person who contravenes the provisions of this section shall be guilty of an offence and, without derogation from his liability under any other provision of this Act or the Forest Act, shall be liable to a fine of P2 000 and to imprisonment for 2 years.

Hunting in forest areas

**82.** (1) No person shall keep or possess any live animals in confinement except only under and in accordance with a permit issued therefor by the Director:

Keeping of animals

Provided that this shall not apply to the temporary keeping or possession of a sick or injured animal for the purpose of affording it treatment, or to animals within private game farms, ranches or reserves surrounded by game proof fences, or to such animals and in such circumstances as may be specified in regulations and sold or kept as pets.

(2) A permit issued by the Director in terms of subsection (1) may be granted subject to such conditions relating to the manner in which the animal is to be kept as the Director may see fit to impose, or as may be prescribed.

(3) No person shall exhibit any animal to the public, or to any section thereof, except in accordance with a permit issued by the Director and such conditions thereof as the Director may see fit to impose relating to the manner in which the animal is to be kept and members of the public are to be allowed access to it, or as may be prescribed.

(4) Any person keeping an animal in accordance with a permit issued under this section shall not release such animal or otherwise dispose of it without first obtaining the approval of the Director.

(5) Where a dangerous animal or an animal not indigenous to Botswana is kept in confinement in accordance with the provisions of subsection (1), or is confined within a game proof fence on a private game reserve, ranch or farm, the person keeping it shall take all reasonably possible steps to ensure that it does not escape, and if it does so shall take all reasonably possible steps to recapture it or kill it.

(6) Any person who contravenes or fails to comply with the provisions of this section, or who fails to comply with the provisions of any permit issued under this section shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

**83.** (1) Notwithstanding the provisions of any other written or unwritten law, the owner of land on which any animal is kept or confined, and which is enclosed by a game proof fence or in such other manner as may be approved by the Director, shall enjoy rights of ownership over such animal.

Rights of ownership in animals

(2) Such rights of ownership shall not be lost merely because the animal escapes from such land or confinement, and any person who, knowing or having reason to know that the

animal came from such land or confinement, appropriates it, shall be guilty of the offence of stealing it in accordance with the provisions of section 274 of the Penal Code, or, if he kills it with intent to appropriate the carcass or skin thereof, shall be guilty of an offence in accordance with the provisions of section 285 of the Penal Code.

**84.** (1) Any person who is lawfully on any land by virtue of any licence or permit to hunt or capture animals thereon, or being entitled to or to enjoy landholder's privileges in respect of that land, may require any other person found by him on such land and whom he reasonably believes to be hunting or capturing animals on that land, to produce any licence, permit, authority or permission authorizing him to be on such land, or to furnish him with his full name and address.

Powers of licence and permit holders etc. in respect of other hunters

(2) Any person who, upon being requested to do so in accordance with subsection (1)—

- (a) refuses, or being able to do so fails to produce any such licence, permit, authority or permission; or
- (b) refuses or fails to furnish his full name and address, or furnishes a false or incomplete name and address, shall be guilty of an offence and liable to a fine of P500 and to imprisonment for 6 months.

**85.** Any person who—

- (a) falsely represents himself to be a wildlife officer, honorary officer or a gate attendant; or
- (b) without lawful excuse wears any uniform, or carries or displays any badge or letter or other document of appointment or identity authorized or required under this Act to be worn or carried by a wildlife officer, honorary officer or gate attendant, or so nearly resembling any such uniform, badge, letter or other document as to be calculated to deceive, shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

Personation of officers etc

**86.** Without obtaining an arms certificate or permit under the Cap 24:01 Arms and Ammunition Act to authorize the delivery or possession of firearms, the Minister, the Director and any wildlife office may deliver arms and ammunition to any gate attendant which he may require for the performance of his duties as such gate attendant, and any gate attendant may possess such arms and ammunition for such purpose.

Delivery of firearms to gate attendant

**87.** No liability shall attach to the State or to the Minister or the Director or any wildlife officer or gate attendant for any loss of life or property or any damage or injury sustained by any person anywhere in Botswana by reason of the presence, action or depredations of any non-captive animal, whether or not such animal is within a national park, game reserve or sanctuary.

Freedom from liability

**88.** (1) Where he considers it in the public interest to do so, and in particular where he considers it necessary or expedient to do so in order to facilitate compliance by Botswana with CITES and any other international agreement to which Botswana is a party, or the discharge by Botswana of any other international obligation by which it is bound, the Minister may give directions, either generally or in a particular case, to all or any public officers, or to all or any wildlife officers or other persons appointed by him under this Act as to the carrying out of their functions or the performance of their duties under this Act, and any person to whom such directions are given shall comply therewith.

Directions by Minister

(2) Subject to the provisions of this Act and to any directions that may have been given to him by the Minister under subsection (1), where any person is vested by this Act with



a power to allow, give consent to, grant, specify or revoke or cancel any matter or thing, that person may, without giving any reasons therefor and in his absolute discretion, allow or disallow, give or withhold consent, grant or not grant, specify or not specify, revoke or cancel or not revoke or cancel that matter or thing as he thinks most conducive to the public good:

Provided that nothing in this section shall be construed as referring to any function of or any power vested in any court by or under this Act.

**89.** (1) Notwithstanding anything in this Act, the Minister may, upon such terms and conditions as he deems fit, grant to any person a complimentary licence, to be known as a Minister's licence.

Minister's licence

(2) A Minister's licence shall, subject to the terms of CITES, entitle the holder thereof to hunt any animals, other than protected game animals, in any area of Botswana which is not in a national park, a game reserve or private land, in any season, whether or not such area is an area in which hunting is prohibited or restricted, and whether or not such season is the open season for such animals in that area, and as may be specified in the licence.

(3) The Minister may at any time, and without assigning any reason therefor, cancel any licence issued under this section.

**90.** The Minister may, by order published in the Gazette, suspend, restrict or limit the application of any of the provisions of this Act, either generally or in respect of any area, for such period and subject to such conditions as he deems fit:

Power to suspend, etc. operation of Act

Provided that such suspension, restriction or limitation does not contravene the terms of CITES.

**91.** (1) In order to enable Botswana to give full effect to the terms of CITES and to Resolutions of the Conferences of the Parties, as they may from time to time be amended, the Minister may by order published in the Gazette amend the Fifth Schedule and the list of animals contained in the Appendices to the Convention.

Amendment of Schedules

(2) Where the President has, by order published in the Gazette declared any area of land to be a national park, a game reserve or sanctuary or a wildlife management area, or has amended the boundaries of such a park, reserve, sanctuary or area, or has abolished the same, the Minister may by order published in the Gazette amend the First, Second, Third or Fourth Schedule, as appropriate, to reflect such additions or changes.

(3) The Minister may, at any time, or from time to time, as necessary or desirable, by order published in the Gazette, amend any of the other Schedules to this Act.

**92.** (1) The Minister may make regulations to give force and effect to the provisions of this Act and for its better administration, and without derogating from the generality of the foregoing such regulations may provide for the following matters—

Regulations

- (a) any matters which this Act specially provides may be prescribed or may be made by regulations;
- (b) forms of applications, licences, permits, certificates, registers, returns and other forms that may be required for the purposes of this Act, and any fees to be paid in respect thereof;
- (c) the administration of controlled hunting areas or any such area or any part thereof the restriction, control or regulation of the hunting or capture of animals in such areas or any such area or part thereof, and the terms and conditions under which animals may be hunted or captured therein and the fees to be paid for such hunting or capture or in respect of the doing of any specified thing therein or the use of any article or facility provided therein;
- (d) the terms and conditions to be complied with by the holder of any licence or permit;

- (e) facilitating the compliance by Botswana with CITES and any other international agreement to which Botswana is or becomes a party;
- (f) the payment of royalties by holders of permits, the circumstances in which such royalties shall be paid, and fixing and altering such royalties;
- (g) prohibiting, restricting, controlling or regulating the coursing of animals with dogs, or the driving of animals by beaters;
- (h) the care and handling during and after capture of animals captured under the authority of a permit, the stabling and feeding of such animals and the conditions under which they may be transported;
- (i) prohibiting, restricting, controlling and regulating the sale of any trap or similar contrivance, which may be used in the trapping, snaring or capture of animals;
- (j) the payment of rewards to persons finding and surrendering trophies generally, or particular trophies, the amounts of such rewards and the conditions subject to which they shall be paid;
- (k) the payment of the costs of transporting trophies generally or particular trophies surrendered or delivered to district offices or police stations, and the manner of calculating the amounts to be paid;
- (l) the wearing of uniforms or badges by wildlife officers, gate attendants and honorary officers, and the type or description of such uniforms or badges;
- (m) the provision of a code of conduct to regulate the conduct and discipline of wildlife officers; and
- (n) the control of the use of and the administration of firearms within the Department.

(2) Different regulations may be made in respect of different animals or classes or species of animals, or in respect of the same animals, classes or species in different circumstances, or in respect of different or particular areas.

(3) Different regulations, including the prescribing of different fees to be paid, may be made in respect of citizens of Botswana, residents of Botswana and other persons.

(4) Regulations made under this Act may provide that any offence thereunder may be punishable by a fine of P1 000 and by imprisonment for one year.

**93.** Where the Minister so recommends, any revenue deriving from the payment of fees for licences or permits to hunt, capture, sell or farm any animals or in respect of any other wildlife activity in its area, other than in a national park or game reserve, shall be paid to the district council concerned.

Payment  
of fees to  
district  
councils

**94.** (1) The Law 21 of 1961 Fauna Conservation Act and the Act 48 of 1967 National Parks Act are hereby repealed.

Repeal and  
saving

(2) Any subsidiary legislation made under and in accordance with the provisions of the Fauna Conservation Act or the National Parks Act shall continue of force and effect as if made under the provisions of this Act, to the extent that it is not inconsistent with such provisions, until revoked or amended by or under this Act.

(3) Any licence, permit or authorization issued or granted under the Acts repealed by this Act shall, in so far as it is not inconsistent with the provisions of this Act, remain of force and effect as though issued or granted under the responding provisions of this Act.

## FIRST SCHEDULE

### NATIONAL PARKS

(Section 5)

1. Commencing at a point in the middle of the Chobe River, being a point on the International Boundary between Botswana and Namibia (Caprivi Strip), northwest of beacon "A" of Lease Area 6-RO as shown on diagram DSL No. 1/70, also being the southwestern beacon of the Kasane Township boundary, the boundary runs in an east southeast direction in a straight line through the said beacon "A" of the aforesaid Lease Area 6-RO and beacon "A" thereof to beacon "B" thereof; thence in a northeast direction to beacon "C" of Lot 2 Kasane (formerly Farm 1-RO) as shown on diagram DSL No. 5667/61; thence continuing in a north northeasterly direction along the eastern boundary of the said Lot 2 Kasane to a beacon co-ordinates Y-16696.59, X-1969 864.10 situated at the junction of firebreak No. 5 with the Kazungula-Ngoma Road, to that point where the aforesaid straight line intersects the western edge of firebreak No. 2 approximately 5 metres south of the junction of firebreak No. 5 with firebreak No. 2; thence in a generally southwesterly direction along the northwestern edge of firebreak No. 2 for approximately 4 km to a beacon FR16 at the intersection of firebreak No. 2 with firebreak No. 7; thence in a southeasterly direction for approximately 2,2 km to beacon FR14 in the Sidudu Valley, being the point of intersection with firebreak No. 8; thence generally southeastwards along the west side of firebreak No. 8 following the Sidudu Valley for approximately 7,1 km to beacon FR10, being the point of intersection with firebreak No. 17; thence southwestwards along the eastern edge of the cutline for approximately 21,3 km to a beacon on the south side of the Lesomo-Ngwezumba Bridge Road; thence south for approximately 17,6 km to the point of intersection with the northern edge of the Kakulwane Seloko, approximately 500 metres northwest of Makororo Pan; thence generally northwestwards along the northern edge of the said Seloko for approximately 7,6 km; thence southeastwards for approximately 28 km to a point on the Ngwezumba Bridge-Nunga Valley road; thence generally westwards along the south side of this road for 27 km to a beacon marked Chobe Game Reserve, situated at the point of intersection with a cutline from the southwest; thence south southwestwards for approximately 50,8 km to the southern edge of the cutline; thence in the same direction along the prolongation of the said cutline for approximately 11,8 km to the point of intersection with latitude 19°S; thence due west along the said latitude 19°S for approximately 85 km to the point of intersection with longitude 24°02'E; thence south southwestwards for approximately 13 km to a point, being the point of intersection of latitude 19°07' S with longitude 24°E; thence southwestwards for approximately 26,4 km to a point being the point of intersection for latitude 19°20'S with longitude 23°53'E, being also a point on the Batawana Tribal Territory boundary and corresponding to point N of the Moremi Game Reserve boundary; thence due north along the Batawana Tribal Territory boundary to a point of intersection with the International Boundary between the Republic of Botswana and the Caprivi Strip; thence along the said International Boundary in a generally northeastwards direction for 2,5 km to a point S; thence southeastwards for approximately 28 km to a beacon Chobe 2 in Sisuma Pan, latitude 18°21'43"S, longitude 24°10'32"E; thence continuing southeastwards for approximately 41,0 km to a beacon Chobe 3 at Nxunxutsha Pan in the Kashaba Valley, latitude 18°29' 14"S, longitude 24°32' 32"E; thence generally northeastwards up the said Kasahaba valley to a point at Sikiylana Pan situated at the junction of the Namuchira Valley and the Molapowadiphofu; thence generally northwards and northeastwards up the said Namuchira Valley to a point at its source at Namuchira Pan; thence due east for approximately 1,7 km to the southern end of firebreak No. 19; thence generally northwards for approximately 34 km along the eastern

Chobe  
National Park

edge of the said firebreak No. 19 to a beacon at Ngoma; thence due north to a point in the middle of the Chobe River, being a point on the International Boundary between the Republic of Botswana and the Caprivi Strip; thence generally northwestwards and eastwards along the said International Boundary to the point of commencement, as will more fully appear from Plan BP 205F deposited with the Director of Surveys and Lands, Gaborone.

2. Commencing at a boundary beacon V167 at latitude 26°28'17.4"S, longitude 20°36'56.5"E, being a beacon in the middle of the Nossop River at Tweerivieren on the International Boundary between Botswana and South Africa, the boundary runs east northeastwards for approximately 16 km to a point at latitude 26°27'05.3"S, longitude 20°46'30.2"E; thence east northeastwards for 24 km along the northern boundary of the Kgalagadi Tribal Area to a beacon on Flys Kop at latitude 26°24'51.6"S, longitude 21°00'56.8"E; thence northeastwards for 144 km along the northwestern boundary of the Kgalagadi Tribal Area to a point latitude 25°21'38.7"S, longitude 21°50'21.8"E; thence due east for 32 km to latitude 25°21'38.7"S, longitude 22°09'28.7"E; thence north for 56 km to latitude 24°51'07.4"S, longitude 27°09'28.7"E; thence west for 32 km to latitude 24°51'07.4"S, longitude 21°50'21.8"E; thence west northwestwards to meridian 20° of East longitude being the International Border between Botswana and Namibia; thence south along the said International Boundary for 72 km to a beacon at Unions End on the Nossop River being that point when the borders of Botswana, Namibia and South Africa meet; thence generally southeastwards and southwestwards along the middle of the Nossop River, being the International Boundary between Botswana and South Africa, to the point of commencement.

Gemsbok  
National Park

3. Commencing at a point marked NG/47/48/49 (app. co-ord. 35E244500N7786900), being a point 5 km west of the old Bushman Pits-Pandamatenga trek route on the 20° latitude, the boundary runs in a straight line in a northeastwards direction (26°) to a point marked NG/42/ 48 (app. co-ord. 35E270900N7838700), being a point 5 km west of Trig. Station BPP168, which is located on the old Bushman Pits-Pandamatenga trek route road; thence in a straight line due East to a point marked NG/42/48/CT 1 (app. co-ord. 35E290200N7838900) being the point of intersection with the Ngamiland and Central District boundaries, formed here by the 25° longitude; thence due South along the said longitude to a point marked NG/48/51/CT7 (app. co-ord. 35E290700N7787500), being the point of intersection of longitude 25° and latitude 20°; thence in a straight line southwestwards (221°) to a point marked NG/48/51/A (app. co-ord. 35E284500N7780200), being the northwest corner point of the Odiakwe BLDC ranch and located approximately 200 metres northeast of Trig. Station BPP126; thence in a straight line southwards following the fence line of the said ranch to a point marked NG/48/ 51/B (app. co-ord. 35E285150N7764100), being the point of intersection of the fence line with the new Nata-Maun public road; thence following the northern edge of the said road westwards to a point marked NG/48/49/A (app. co-ord. 35E254600N7761700), being the point of turn-off from the said road to the main access track to the Nxai Pan National Park wildlife office; thence following the said track north and northeastwards to a point marked NG/48/49B (app. co-ord. 35E261100N7787100), being the point of intersection with latitude 20°; thence due West along the said latitude to the point of commencement.

Nxai Pan  
National  
Park

4. Commencing at a point on the Ngamiland and Central Districts boundary at the intersection of the Boteti River and the southern edge of the ford at Matime the boundary runs northeastwards along the southern and eastern side of the road from Matime to Bushman Pits to a point where it is intersected by the southern side of the new Nata to Maun public road; thence generally eastwards following the southern side of the said Nata to Maun road to a point 0,8 km west of Xhane Road Camp; thence southwards on a straight line having the

Makgadikgadi  
Pans National  
Park Section 1 -  
Ngamiland  
District

same longitude as the aforesaid point 0,8 km west of Xhaneo Road Camp to the intersection of the Central District boundary; thence generally westwards to the point of intersection of the Boteti River with the meridian of 24°31'E, thence following the thalweg of the Boteti River in a northwesterly direction to the point of commencement.

Commencing at a point on the Ngamiland and Central Districts' boundary at the point of intersection of the Boteti River with the meridian of 24°31' E, the boundary runs in an easterly direction along the District boundary to a point at the intersection of a line whose longitude is the same as a point 0,8 km west of Xhaneo Road Camp; thence southwards on a line of the same longitude of the aforesaid point to a point at latitude 20°50' S, thence in a straight line due West to the intersection with the Boteti River, thence following the thalweg of the Boteti River generally northwards to the point of commencement.

Section 2 -  
Central  
District

**SECOND SCHEDULE**  
**GAME RESERVES AND SANCTUARIES**

(Section 12)

*First column*

*Second Column*

1. *Mogobane Bird Sanctuary*

That part of the Bamalete Tribal Territory which lies within 1,61 km of the Mogobane Dam.

All wild birds  
other than game  
birds

2. *Bathoen Dam Bird Sanctuary*

That part of the Bangwaketse Tribal Territory which lies within 1,61 km of the Bathoen Dam.

3. The Central Kalahari Game Reserve

That part of the Ghanzi District which lies to the east of the meridian of longitude which passes through the highest point of the hills known as Great Tsau.

All wild birds  
other than game  
birds

4. Moremi Game Reserve All animals

Commencing at a point marked NG/27/28/32 (app. co-ord. 34E731500N7835100), being a point on the southern bank of Nxaraga lagoon, the boundary follows the Boro River northwards to a point marked NG/27/28/ A (app. co-ord. 34E710400N7842700), being a point in the middle of the Tshwaralengwana (middle Boro) River, west of Xakae island; thence in a straight line southwestwards (244°) to a point marked NG/27/28/30 (app. co-ord. 34E705700N7840500), being a point on the northern bank of an island on a hunting track from Bobo Island in the direction of the Xo flats; thence in a straight line northwestwards (298°) to a point marked NG/27/28B (app. co-ord. 34E688700N789900), being a bridge site at Nxabega Island on the Maun-Xighera Road; thence following the said road in a generally northwesterly direction to a point marked NG/25/26/28 (app. co-ord. 34E675400N7863000), being a point at the north-western tip of an island east of the last stretch of the Maun-Xighera Road; thence in a straight line northwestwards (70°) to a point marked NG/25/28/A (app. coord. 34E676900N7863500), being a point at the top of Ganga Island; thence due East in a straight line to a point marked NG/25/28/B (app. co-ord. 34E679300N7863500), being a point in the middle of the Jao (upper Boro) River; thence following the Jao (Upper Boro) River northwards to a point marked NG/23/24/28 (app. co-ord. 34E665900N7900100), being a point where the Okavango River branches into the Nqoga and Jao (upper Boro) Rivers; thence following the Ngoqa River eastwards to a point marked NG/22/28 (app. co-ord. 34E708600N7890400), being a point where the Ngoqa River flows into the Mwanachira River; thence following the Mwanachira River to a point marked NG/21/22/28 (app. co-ord. 34E712500N7888900), being the middle of Dxherega (Dobe) lagoon, thence in a straight line southeastwards (111°) to a point marked NG/21/28/B (app. co-ord. 34E721800N7881200), being a point on an island in the middle of Jerejere lagoon; thence in a straight line southeastwards (117°) to a point marked NG/21/29/A (app. co-ord. 34E6719500N7885100), being a point in the middle of Mboroga channel; thence following the said channel to a point marked NG/21/28/C (app. co-ord. 34E721600N7880900), being a point in the middle of Mboroga channel, thence in a straight line northwestwards (64°30') to a point marked NG/21/28/H (app. co-ord. 34E728622N7884226), being a point on the southern side of Shindi lagoon; thence in a straight line eastwards (82°) to a point marked NG/20/28 I (app. co-ord. 34E743295N7886159), being a point approximately 1,5 km north of the Mwanachira River; thence in a straight line eastwards (98.30°) to a point marked NG/18/28/J (app. co-ord. 34E767220N7882187), being a point 5,5 km away on a southeasterly bearing 124° from

All animals

Trig. Station BPS257; thence in a straight line southeastwards (115°) to a point 18/28/K (app. coord. 34E781159N7875928), being a point on the southerly tip of an island approximately 3 km east of Dombo lagoon; thence in a straight line northeastwards (57°) to a point marked NG/18/19/28 (app. co-ord. 34E785500N78900), being a point on the northern bank of the Khwai River; thence following the Khwai River eastwards to a point marked NG/19/ 28/40 (app. co-ord. 34E803345N7882652), being the point of intersection of the Khwai River with the stateland boundary (being longitude 23.53°); thence following the stateland boundary southwards to a point marked NG/ 28/34/40/41/43 (app. co-ord. 34E802968N7859948); thence in a straight line due West to a point marked NG/28/34/0 (app. co-ord. 34E782291N7860281); thence in a straight line southwards (201°) to a point marked NG/28/33/34/B (app. co-ord. 34E773700N7840500); being a point in the middle of the Mogogelo River; thence in a straight line westwards (261°) to a point marked NG/28/32/34 (app. co-ord. 34E765700N7839200), being a point in the middle of the Gomoti River; thence following the most southeastern channel of the Gomoti River northwards to a point marked NG/28/31B (app. co-ord. 34E752400N7851400), being a point on the western bank of the Gomoti River; thence in a straight line westwards (267°) to a point marked NG/28/31/A (app. co-ord. 34E742500N7850800), being a point on the western bank of Qahetaa lagoon; thence in a straight line southwestwards (206°) to a point marked NG/17/28B (app. co-ord. 34E739132N7843060), being a point at the northerly end of Motsebe channel; thence following the easterly branch of Motsebe channel southwards to a point marked NG/17/28/A (app. co-ord. 34E741325N783572); thence in a straight line southwestwards (212°) to a point marked NG/17/28/32 (app. co-ord. 34E740046N7830713); thence in a straight line northwestwards (294°) to the point of commencement.

#### 5. *Maun Game Sanctuary*

Commencing at the junction of the middle of the Thamalakane River with the middle of the Boro River the boundary runs southeastwards to a point in the middle of the old Maun to Bushman Pits Road, the geographical co-ordinates of which point are approximate latitude 19°55'30"S, approximate longitude 23°31'30"E; thence southwestwards for a distance of approximately 20,93 km to a point 2,41 km southeast of the confluence of the Shashe and the Thamalakane Rivers, the geographical co-ordinates of which point are approximate latitude 20°03'45"S, approximate longitude 23°23' 15"E; thence northwestwards to the junction of the middle of the Thamalakane River with the middle of the Shashe River; thence northwards along the middle of the Shashe River for a distance of 4,83 km; thence northeastwards for a distance of approximately 16,42 km to a point in the middle of the Boro River 3,22 km upstream from the junction of the middle of the Thamalakane River with the middle of the Boro River; thence southeastwards along the middle of the Boro River to the point of commencement.

All animals

#### 6. *Nnywane Dam Game Reserve*

The area of land comprising portion 1 of the farm "Moroekwe" No. 4-JO and portion 3 (a portion of portion 1) of the farm "Request" No. 5-JO as fully described on approved diagrams S.G. Nos. 6/66 and 7/66 respectively.

All animals

#### 7. *Khutse Game Reserve*

Commencing at a point 24,15 km due north of Borehole No. 302 at Dutlwe Village the boundary runs due east to a point on the line of longitude which passes through a point 24,15 km due west of Borehole No. 735 at Mosero, thence in a straight line in a northeasterly direction passing through a point 2,42 km due east of the most eastern edge of Galalabadimo Pan to its intersection with the northern boundary of the Bakwena Tribal Territory; thence

All animals

westwards following the said Bakwena Tribal Territory boundary to a point on the boundary due north of the point of commencement, thence due south to the point of commencement.

*8. Gaborone Game Reserve*

The areas known as Lots 10028 and 13042, Gaborone City, as delineated on Diagram D.S.L. Nos. 128/78 and 178/80 respectively.

*All animals*

*9. Mannyelanong Game Reserve*

The area of Mannyelanong Hill, as delineated on Plan JO-4 deposited with the Director of Surveys and Lands, Gaborone.

*All animals*



### THIRD SCHEDULE

#### WILDLIFE MANAGEMENT AREAS

(Section 15)

1. Commencing at a point marked NG/13/14/NA (app. co-ord. 34E743200N8008500), being the point of intersection of the International Boundary with Namibia with the Kwando River; thence following the International Boundary, being the middle of the Kwando and Linyanti

*Kwando  
Wildlife  
Management  
Area*

Rivers, southwards and subsequently northeastwards to a point marked NG/15/CH3/NA (app. co-ord. 34E805300N7977700), being the point of intersection of the International Boundary with Namibia with the Chobe National Park boundary; thence following the Chobe National Park boundary due South to a point marked NG/19/28/40 (app. co-ord. 34E803400N7882700) being the point of intersection with the boundary of the Moremi Game Reserve in the middle of the Khwai River; thence following the northern Moremi Game Reserve boundary in a westerly direction to a point marked NG/23/24/28 (app. co-ord. 34E665900N7900100), being a point where the Okavango River branches into the Nqoga and Jao (upper Boro) Rivers; thence following the Okavango River northwards to a point marked NG/12/23/24 (app. coord. 34E666200N7901100) being the start of the northern buffalo fence on the western bank of Dube island; thence following the fence line in a northeasterly and northerly direction to a point marked NG/11/13/14 (app. co-ord. 34E715966N7961673), being Trig. Station BPS566.

2. Commencing at a point marked NG/7/10/24 (app. co-ord. 34E637100N7920000), being a point in the middle of the Okavango River, north of Ikoga lagoon, where the defunct Thaoge channel branches off from the Okavango River, the boundary follows the Okavango River in a southerly direction to a point marked NG/23/24/28 (app. co-ord. 34E665900N7900100), being a point where the Okavango River branches into to the Nqoga and Jao (upper Boro) Rivers; thence following the Jao (upper Boro) River, which forms the Moremi Game Reserve boundary here, in a southerly direction to a point marked NG/25/28B (app. co-ord. 34E679300N7863500); thence following the western and southern boundary of the Moremi Game Reserve in a generally southerly and easterly direction to a point marked NG/28/34/ 40/41/43 (app. co-ord. 34E803000N7860150), being the point of intersection of the Moremi Game Reserve boundary with the Ngamiland Statelands boundary; thence following the Statelands boundary southwards to a point marked NG/34/35/43 (app. co-ord. 34E802500N7827000), being the point of intersection of the southern buffalo fence with the Statelands boundary; thence following the southern buffalo fence in a generally westerly, southwesterly, northwesterly and northerly direction to a point marked NG/7/8/25 (app. coord. 34E650400N7868300), being the top end of the buffalo fence; thence in a straight line in a northwesterly direction (336°) to a point marked NG/7/24/25 (app. co-ord. 34E643800N7884100), being a point in the middle of the Thaoge River, east of Wabe lagoon; thence following the Thaoge River northwards to the point of commencement.

*Okavango  
Wildlife  
Management  
Area*

3. Commencing at a point latitude 19°S, longitude 24°02'E, the boundary runs due east along the said latitude 19°S being also the boundary of the Chobe National Park, to a point of intersection with the meridian of longitude 25°E, being the most northeasterly point of the Ngamiland Statelands; thence due south along the said meridian of longitude to the point of intersection with the northeast corner of the boundary of the Nxai Pan National Park; thence following the said boundary of the Nxai Pan National Park west, southwest, east and south to

*Ngamiland  
Statelands  
Wildlife  
Management  
Area*

the point of intersection with the new Nata-Maun public road; thence westwards along the said road to the eastern boundary of the Makalamabedi B.L.D.C. Ranch; thence north and then west along the said boundary to the point of intersection with the veterinary cordon fence at

longitude 23°53'E; thence due north along the said fence to the point where it turns west, continuing in a straight line due north to the point of intersection with the southernmost extension of the boundary of the Chobe National Park at latitude 19°20'S; thence northeast and north along the boundary of the Chobe National Park to the point of commencement.

4. Commencing at a point "S", being a point on the southwestern corner of the Maikaelelo Forest Reserve boundary and the southeastern boundary of the Chobe National Park; the boundary runs due East along the said Maikaelelo Forest Reserve boundary to point "R", being also, a point on an old cattle track; thence southeastwards along the said Maikaelelo Forest Reserve boundary and track to point "Q" being also a point of intersection of the said track and a dry valley constituting the southeastern boundary of the said Maikaelelo Forest Reserve; thence southeastwards along a straight line to a point of intersection of the southern edge of the Ngwezumba Bridge-Nunga Valley road with the meridian of longitude 25°30'E being also on the western boundary of the Sibuyu Forest Reserve; thence due south along the said meridian and boundary to a point of intersection with parallel of latitude 19°S, corresponding to point "AA" of the southwestern corner of the said Sibuyu Forest Reserve boundary; thence due west along the said parallel of latitude to a point on the southeastern corner of the Chobe National Park boundary; thence northeastwards along the said Chobe National Park boundary to the point of commencement, as will more fully appear on Plan BP 245, deposited with the Director of Surveys and Lands, Gaborone.

Nunga  
Wildlife  
Management  
Area

5. Commencing at a point latitude 19°S, longitude 25°E, the boundary runs due east along the said latitude 19°S, being the boundary between Chobe District and Central District, to the point of intersection with the International Border of Botswana with Zimbabwe; thence southeast along the said International Border to the point of intersection with the veterinary cordon fence; thence following the said fence in a westerly direction to its point of intersection with the meridian of longitude 25°E, being the boundary of Central District with the Ngamiland Statelands; thence due north along the said boundary to the point of commencement.

Nata  
Statelands  
Wildlife  
Management  
Area

6. Commencing at a point "WA" (app. latitude 24°51'20"S, longitude 23°03'40"E), being the ultimate southwest corner of Southern District, the boundary runs due north along the boundary between Southern District and Kgalagadi District to point "WB" (app. latitude 24°28'40"S, longitude 23°03'40"E); thence eastwards to point "WC" (app. latitude 24°28'40"S, longitude 23°10'E); thence northeastwards to point "WD" (app. latitude 24°05'S, longitude 23°21'30"E), being a point on the boundary between Southern District and Kweneng District, thence southeastwards along the said boundary to point "WE" (app. latitude 24°10'S, longitude 23°36'40"E), thence southwestwards to point "WF" (app. latitude 24°40'S, longitude 23°21'20"E), thence southwards to point "WG" (app. latitude 24°51' 10"S, longitude 23°21'E), being a point on the boundary between the Southern District and Kgalagadi District, thence westwards following the said boundary to the point of commencement.

Southern  
District  
Wildlife  
Management  
Area

7. Commencing at a point on the Ghanzi-Lobatse public road, being the point of intersection with latitude 22°40'S; the boundary runs due West along the said latitude to the point of intersection with longitude 21°02'32"E; thence due south along the said longitude to the point of intersection with the northeastern corner of the stateland Ncojane Ranches; thence south, following the eastern boundaries of the Ncojane Ranches; thence westwards following the southern boundary of Ncojane Ranch-21 IJ; thence southwards following the eastern boundary of the Ncojane A.I. Camp; thence westwards following the southern boundaries of the Ncojane Ranches to the southwestern corner of Ncojane Ranch 22-LJ from where the boundary runs due south following longitude 20°35' 34"E to the point of intersection with

Matlho-a-  
Phuduhudu  
Wildlife  
Management  
Area

latitude 23°19'13.6664"S, being also a point on the common boundary between Ghanzi Tribal Area and Kgalagadi Tribal Area; thence due east along the said latitude to the point of intersection with the Ghanzi-Lobatse public road; thence north-westwards along the said Ghanzi-Lobatse road to the point of commencement.

**8.** Commencing at a point of intersection of latitude 21°S on the common boundary between Ghanzi Tribal Area and the Batawana Tribal Territory, with the longitude passing through Tsau Hill, being longitude 22°47'52.9491 "E; the boundary runs due south along the said longitude to the point of intersection with latitude 23°19'13.6664S, being the common boundary between Ghanzi District and Kgalagadi District; thence westwards along the said latitude to the point of intersection with the Ghanzi-Lobatse public road; thence northwestwards to the point of intersection with the southern boundary of Ghanzi Farm 120NK; thence eastwards along the southern boundary of Ghanzi Farm 120-NK to the northeastern corner of Stateland Extension Farm 174-NK; thence southeastwards along the western boundary of Farm 174-NK to its southwestern corner from where the boundary runs eastwards along the southern boundary of Farm 174-NK; thence east along the southern boundary of the TGLP Second Development Area, thence north following the eastern boundary of the said Second Development Area, turning west where the boundary intersects with the eventual eastern corner point of Ghanzi Stateland Extension Farms 181-NL and 182NL; thence north following the western boundaries of Farms 182-NL, 183-NL, 184-NL and 185-NL; thence eastwards along the southern boundary of Farms 186-NL and 187-NL; thence eastwards along the southern boundaries of Farms 188-NL and 189-NL; thence northwards along the western boundaries of Farms 189-NL, 190-NL, 191-NL and 192-NL to the point of intersection with latitude 21°S, being a point on the common boundary between Ghanzi Tribal Area and the Batawana Tribal Territory; thence due east along the said latitude 21°S to the point of commencement.

Okwa Wildlife  
Management  
Area

**9.** Commencing at a point on the International Boundary between Botswana and Namibia, being a point of intersection with the parallel of latitude 21°S with the meridian of longitude 21°E, being also a point on the common boundary between Ghanzi Tribal Area and the Batawana Tribal Territory; the boundary runs due east along the said parallel of latitude and common boundary to the intersection point with the northern prolongation of the western boundary of Farm 176-NI; thence generally southwards along the said prolonged western boundary of farm 176-NI and the western boundary of Farm 175-NL to the point of intersection with the northern boundary of Farm 163-NK; thence westwards along the northern boundaries of Farms 163-NK, 162-NK and 161-NK and southwards along the western boundary of Farm 161-NK to the northeast corner of Farm 160-NK; thence westwards along the northern boundaries of Farms 160-NK, 159-NK and 158-NK and southwards along the western boundary of Farm 158-NK to the northeast corner of Farm 157-NK; thence westwards and southwards along the northern and western boundaries of Farm 157-NK to the northeast corner of Farm 156-NK; thence westwards along the northern boundaries of farms 156-NK, 155-NK and 154-NK and southwards along the western boundary of Farm 154-NK to the northeast corner of Farm 153-NK; thence westwards and southwards along the northern and western boundaries of Farm 153-NK to the northeast corner of Farm 152-NK; thence westwards along the northern boundaries of Farms 152-NK and 151-NK to the point of intersection with the meridian of longitude 21°E being a point on the International Boundary between Botswana and Namibia; thence due north along the said meridian of longitude 21°E to the point of commencement.

Quago  
Wildlife  
Management  
Area

#### FOURTH SCHEDULE

#### CONTROLLED HUNTING AREAS S.I. 61/1995; S.I. 86/1995.

(Section 16)

1. Commencing at a point marked NG/11/13/NA (app. co-ord. 34E630200N7990900) being a point at the International Boundary of Botswana with Namibia at boundary beacon BP18/1914, the boundary follows the International Boundary with Namibia eastwards to a point marked NG 13/14/NA (app. co-ord. 34E743200N8008500), being the point of intersection with the Kwando River; thence in a straight line southwestwards (219°) to a point marked NG/13/14 (app. co-ord. 34E723589N7984710), being Trig. Station BPS564; thence in a straight line southwestwards (198°) to a point marked NG/11/13/14 (app. co-ord. 34E715966N7961673), being Trig. Station BPS 566; thence in a straight line northwestwards (279°) to a point marked NG/11/13/A (app. co-ord. 34E652600N7970800); thence in a straight line north-northwestwards (339°) to a point marked NG/11/13/B (app. co-ord. 34E646400N7986700), thence in a straight line in a northwesterly direction (284°) to the point of commencement.

Controlled  
Hunting  
Area NG/13

2. Commencing at a point marked NG/11/13/14 (app. co-ord. 34E715966N7961673), being Trig. Station BPS566, the boundary runs in a straight line in a northeasterly direction (18°) to a point marked NG/13/14 (app. co-ord. 34E723579N7984710), being Trig. Station BPS564; thence in a straight line in a northerly direction (39°) to a point marked NG/13/14/NA (app. co-ord. 34E743200N8008500), being the point of intersection of the International Boundary with Namibia and the Kwando River; thence following the International Boundary, being the middle of the Kwando River, southwards to a point marked NG/14/15/16NA (app. co-ord. 34E771200N7955000); thence in a straight line in a westerly direction (274°) to a point marked NG/14/16/C (app. co-ord. 34E768400N7955200), thence in a straight line southwestwards (254°) to a point marked NG/14/16B (app. co-ord. 34E755900N7951800), being a point where the road to Shumamorei crosses the Selinda spillway; thence following the most northern channel of the said spillway in a southwesterly direction to a point marked NG/14/16/A (app. co-ord. 34E739600N7940400), being the point of intersection of the spillway with the Seronga-Savuti road; thence following the said road in a northwesterly direction (285°) to a point marked NG/11/12/14/16 (app. co-ord. 34E714800N7947300), being the point of intersection of the said road with the north-south section of the northern buffalo fence. Thence following the fence line northwards to the point of commencement.

Controlled  
Hunting  
Area NG/14

3. Commencing at a point marked NG/15/16/18/20 (app. co-ord. 34E763489N7934129), being Trig. Station BPS288, the boundary runs in a straight line in a northeasterly direction (23°) to a point marked NG/15/16 (app. co-ord. 34E767800N7943900), being a point on the southern bank of the beginning of the Savuti Channel; thence in a straight line in a northeasterly direction (16°) to a point marked NG/14/15/16/NA (app. co-ord. 34E771200N7955000), being a point in the middle of the Kwando River, which forms the International Boundary with Namibia; thence following the International Boundary northeastwards to a point marked NG/15/CH3/NA (app. co-ord. 34E805300N7977700), being the point of intersection with the Chobe National Park boundary; thence following the said boundary due south to a point marked NG/15/18/CH3 (app. co-ord. 34E804700N7926300), being the point of intersection of the said Chobe National Park boundary with the Savuti-Seronga road; thence following the said road in a westerly and northwesterly direction to the point of commencement.

Controlled  
Hunting  
Area NG/15

4. Commencing at a point marked NG/11/12/14/16 (app. co-ord. 34E714800N7947300) being the point of intersection of the Seronga-Savuti road with the south-north section of the northern buffalo fence, the boundary follows the said road in a southeasterly direction (105°) to a point marked NG/14/16/A (app. co-ord. 34E739600N7940400), being the point of intersection of the road with the Magwegana or Selinda spillway; thence following the most northern channel of the said spillway in a northeasterly direction to a point marked NG/14/16B (app. co-ord. 34E755900N7951800), being a point where the road to Shumamorei crosses the spillway; thence following a straight line in a northeasterly direction (74°) to a point marked NG/14/16/C (app. co-ord. 34E768400N7955200), thence in an easterly direction (94°) to a point marked NG/14/15/16/NA (app. co-ord. 34E771200N7955000), being a point in the middle of the Kwando River which forms the International Boundary with Namibia; thence in a straight line in a southwesterly direction (196°) to a point marked NG/15/16 (app. co-ord. 34E767800N7943900), being a point on the southern bank of the beginning of the Savuti Channel; thence in a straight line in a southwesterly direction (203°) to a point marked NG/15/16/18/20 (app. co-ord. 34E763489N7934129), being Trig. Station BPS288; thence in a straight line in a southwesterly direction (246°) to a point marked NG/16/20/22 (app. co-ord. 34E716397N7910854), being Trig. Station BPS262; thence in a straight line in a northerly direction (338°) to a point marked NG/12/16/22 (app. co-ord. 34E710900N7925400), being the corner of the northern buffalo fence at Sandoroka lagoon; thence following the fence line due North to the point of commencement.

Controlled  
Hunting  
Area NG/16

5. Commencing at a point marked NG/17/28/31 (app. co-ord. 34E739500N7844900), being a point of intersection of the Moremi Game Reserve boundary and the Santantadibe River, the boundary follows the Santantadibe River in a southeasterly direction to a point marked NG/17/31/32 (app. co-ord. 34E749300N7833900), being a point on the northern bank of Gporoku island, east of Ikamkum lagoon, thence in a straight line southwestward (253°) to a point marked NG/17/28/32 (app. co-ord. 34E740300N7831200), being a corner point in the Moremi Game Reserve boundary; thence following the Moremi Game Reserve boundary (formed by the easterly branch of the Motshebe channel) northwards to the point of commencement.

Controlled  
Hunting  
Area NG/17

6. Commencing at a point marked NG/15/16/18/20 (app. co-ord. 34E763489N7934129), being Trig. Station BPS288, the boundary runs southeastwards and eastwards along the Seronga-Savuti road to a point marked NG/15/18/CH3 (app. co-ord. 34E804700N7926300), being the point of intersection of the said road with the Chobe National Park boundary; thence following the said Chobe National Park boundary due South to a point marked NG/18/19/40 (app. co-ord. 34E803400N7892900); thence in a straight line due west to a point marked NG/18/19/C (app. co-ord. 34E798900N7892900), being a point at the top end of the Khwai north airstrip; thence following the airstrip in a southwesterly direction to a point marked NG/18/19B (app. co-ord. 34E797900N7892400), being a point just south of the airstrip at the road from the airstrip to beacon BPS256; thence following the said road in a west-southwesterly direction to a point marked NG/18/19/A (app. co-ord. 34E785500N7888200); thence in a straight line due south to a point marked NG/18/19/28 (app. co-ord. 34E785500N7878900) on the northern bank of the Khwai River; thence following the Moremi Game Reserve boundary in a southwesterly direction to a point marked NG/18/20/28 (app. co-ord. 34E763500N7883000); thence in a straight line due North to a point marked NG/18/20 (app. co-ord. 34E763585N7885868), being Trig. Station BPS257; thence in a straight line due north to the point of commencement.

Controlled  
Hunting  
Area NG/18

7. Commencing at a point marked NG/18/19/28 (app. co-ord. 34E785500N7878900), being at the northern bank of the Khwai River, the boundary runs in a straight line due north to a point marked NG/18/19/A (app. co-ord. 34E785500N7888200) on the road from Trig. Station BPS256 to the old Khwai north airstrip; thence following the said road in an east-northeasterly direction to a point marked NG/18/19B (app. co-ord. 34E797900N78924000), being a point just south of the airstrip; thence following the airstrip in a northeasterly direction to a point marked NG/18/19/C (app. co-ord. 34E798900N7892900) at the end of that airstrip; thence in a straight line due east to a point marked NG/18/19/40 (app. co-ord. 34E803400N7892900), being a point on the Ngamiland Statelands boundary; thence due south along the said boundary to a point marked NG/19/28/40 (app. co-ord 34E803400N7882700), being the point of intersection with the Khwai River; thence following the Khwai River in a westerly direction to the point of commencement.

Controlled  
Hunting  
Area NG/19

8. Commencing at a point marked NG/16/20/22 (app. co-ord. 34E716397N7910854), being Trig. Station BPS262, the boundary runs in a straight line in a northeasterly direction (66°) to a point marked NG/15/16/18/20 (app. co-ord. 34E763489N7934129), being Trig. Station BPS288, thence in a straight line due south to a point marked NG/18/20 (app. co-ord. 34E763585N7885868), being Trig. Station BPS257; thence due south to a point marked NG/18/20/28 (app. co-ord. 34E763500N7883000), being a point on the Moremi Game Reserve boundary; thence following the said Moremi Game Reserve boundary in a westerly direction to a point marked NG/20/21/28 (app. co-ord. 34E735800N7885000); thence in a straight line due North to a point marked NG/20/21/B (app. co-ord. 34E735800N7889600); thence in a straight line in a northwesterly direction (288°) to a point marked NG/20/21/A (app. co-ord. 34E719749N7895230), being Trig. Station BPS260; thence in a straight line in a northwesterly direction (309°) to a point marked NG/20/21/22 (app. co-ord. 34E713931N7900106), being Trig. Station BPS261; thence in a straight line in a north-northeasterly direction (12°) to the point of commencement.

Controlled  
Hunting  
Area NG/20

9. Commencing at a point marked NG/21/22/28 (app. co-ord. 34E708600N7890400), being the middle of Dxherega (Dote) Lagoon, the boundary runs in a straight line in a north-northeasterly direction (29°) to a point marked NG/20/21/22 (app. co-ord. 34E713931N7900106), being Trig. Station BPS261; thence in a straight line in a southeasterly direction (129°) to a point marked NG/20/21/A (app. co-ord. 34E719749N7895230), being Trig. Station BPS260; thence in a straight line in a southeasterly direction (108°) to a point marked NG/20/21/B (app. co-ord. 34E735800N7889600); thence in a straight line due south in the direction of Gadikwe Lagoon to a point marked NG/20/21/28 (app. co-ord. 34E735800N7885000), being the point of intersection with the Moremi Game Reserve boundary; thence following the Moremi Game Reserve boundary in a westerly, southwesterly and northwesterly direction respectively, to the point of commencement.

Controlled  
Hunting  
Area NG/21

10. Commencing at a point marked NG/12/22/23 (app. co-ord. 34E690173N7906584), being Trig. Station BPS264, the boundary follows the northern buffalo fence in a northeasterly direction to a point marked NG/12/16/22 (app. co-ord. 34E710900N7925400), being the corner of the fence line at Sandoroka Lagoon, where the fence turns northwards; thence in a straight line in a southerly direction (158°) to a point marked NG/16/20/22 (app. co-ord. 34E716397N7910854), being Trig. Station BPS262; thence in a south-southeasterly direction (167°) to a point marked NG/20/21/22 (app. co-ord. 34E719749N7895230), being Trig. Station BPS260; thence in a straight line in a southwesterly direction (244°) to a point marked NG/21/22/28 (app. co-ord. 34E708600N7890400), being the middle of the Dobe Lagoon, thence following the Mwanachira and Nqoga channels respectively in a westerly direction to a

Controlled  
Hunting  
Area NG/22

point marked NG/22/23/28 (app. co-ord. 34E691800N7891200), being a point on the northern bank of Xaenga Island; thence in a straight line northwards (354°) to the point of commencement.

**11.** Commencing at a point marked NG/12/23/24 (app. co-ord. 34E666200N7901100), being the start of the northern buffalo fence on the western bank of Duba Island, the boundary follows the fence line in a northeasterly direction (77°) to a point marked NG/12/22/23 (app. co-ord. 34E69073N7906584), being Trig. Station BPS264; thence in a straight line in a southerly direction (174°) to a point marked NG/22/23/28 (app. co-ord. 34E691800N7891200), being a point on the northern bank of Xaenga Island; thence following the Nqoga channel in a westerly and then northwesterly direction to the point of commencement.

Controlled  
Hunting  
Area NG/23

**12.** Commencing at a point marked NG/7/10/24 (app. co-ord. 34E637100N7920000), being a point in the middle of the Okavango River, north of Ikoga Lagoon, where the defunct Thaoge channel branches off from the Okavango River, the boundary follows the Okavango River in a southerly direction to a point marked NG/23/24/28 (app. co-ord. 34E665900N7900100), being a point where the Okavango River branches into the Nqoga and Jao (upper Boro) Rivers; thence following the Jao (upper Boro) River to a point marked NG/24/25/28 (app. coord. 34E670100N7883800), being a point in the middle of the Jao (upper Boro) River, west of Xhamae (Moshupatsile) Island; thence in a straight line due west (270°) to a point marked NG/7/24/25 (app. co-ord. 34E643800N7884100), being a point in the middle of the Thaoge River, east of Wabe Lagoon; thence following the Thaoge River northwards to the point of commencement.

Controlled  
Hunting  
Area NG/24

**13.** Commencing at a point marked NG/7/24/25 (app. co-ord. 34E643800N7884100), being a point in the middle of the Thaoge River east of Wabe Lagoon, the boundary runs in a straight line due East to a point marked NG/24/25/28 (app. co-ord. 34E665900N7900100), being a point in the middle of the Jao (Upper Boro) River, west of Xhamae (Moshupatsile) Island, thence following the Jao (Upper Boro) River in a southerly direction to a point marked NG/25/28B (app. co-ord. 34E679300N7863500); thence due West (270°) in a straight line to a point marked NG/25/28A (app. co-ord. 34E676900N7863500), being a point at the top of Ganga Island; thence in a southwesterly direction (250°) to a point marked NG/25/26/28 (app. co-ord. 34E675400N7863000), being a point at the northwestern tip of an island east of the last stretch of the Maun-Xighera road; thence in a straight line in a westerly direction (269°) to a point marked NG/8/25/26 (app. co-ord. 34E648200N7862500), being a point on the western buffalo fence; thence following the fence line in a northeastern direction to a point marked NG/7/8/25 (app. co-ord. 34E650400N7868300), being the top end of the fence; thence in a straight line in a northwesterly direction (336°) to the point of commencement.

Controlled  
Hunting Area  
NG/25

**14.** Commencing at a point marked NG/8/25/26 (app. co-ord. 34E648200N7862500), being a point on the buffalo fence, the boundary runs in a straight line in a northwesterly direction (89°) to a point marked NG/25/26/28 (app. co-ord. 34E675400N7863000), being a point at the northwestern tip of an island east of the last stretch of the Maun-Xighera road; thence following the said road to a point marked NG/26/27/28 (app. co-ord. 34E684100N7851600), being a bridge site at Nxabega Island on the Maun-Xighera road; thence in a straight line due south to a point marked NG/26/27 (app. co-ord. 34E684100N7842600), being a point on the southwestern bank of Nxabega Island; thence in a straight line in a southeasterly direction (141°) to a point marked NG/26/27/29 (app. co-ord. 34E692700N7832000), being a point at the western tip of PomPom Island; thence in a straight line in a southwesterly direction (243°) to a point marked NG/8/26/29 (app. co-ord.

Controlled  
Hunting  
Area NG/26

34E650700N7810400), being a corner point in the southern buffalo fence; thence following the fence line in a northwesterly and northerly direction respectively to the point of commencement.

**15.** Commencing at a point marked NG/26/27/28 (app. co-ord. 34E684100N7851600), being a bridge site at Nxabega Island on the Maun-Xighera road, the boundary follows the Maun-Xighera road in a southeasterly direction to a point marked NG/27/28B (app. co-ord. 34E688700N7849900), being another bridge site at Nxabega Island; thence in a straight line southeastward (118°) to a point NG/27/28/30 (app. co-ord. 34E705700N7840500), being a point on the northern bank of an island on a hunting track from Bobo Island in the direction of the Xo flats; thence in a straight line in a south-southwesterly direction (216°) to a point marked NG/27/29/30 (app. co-ord. 34E69800N7829600), being a point on the western bank of the Xudum river; thence in a straight line in a west-northwesterly direction (292°) to a point marked NG/26/27/29 (app. co-ord. 34E692700N7832000), on the western tip of Pompom Island; thence in a straight line in a northwesterly direction (321°) to a point marked NG/26/27 (app. co-ord. 34E684100N7842600), being a point at the southwestern bank of Nxabega Island; thence due north to the point of commencement. Sector b Commencing at a point NG/27/28 (app. co-ord. 34E710400N7842700), being a point in the middle of the Tshwaralengwana (middle Boro River), west of Xakae Island; thence following the said river/Moremi Game Reserve boundary in a southeasterly direction until it comes to the southern bank of Nxharaga Lagoon at a point marked NG/27/28/32 (app. co-ord. 34E731500N7835100); from there it runs in a straight line in a west-southwesterly direction (244°) until it hits the southern bank of the Kiri River at a point marked NG/27/30/32 (app. co-ord. 34E718100N7829000), at the Department of Water Affairs (DWA) staff camp; thence in a straight line in a northwesterly direction (313°) to a point marked NG/27/30 (app. co-ord. 34E705700N7840500), being a point on the northern bank of an island on a hunting track from Bobo Island in the direction of the Xo flats; thence in a straight line in a northwesterly direction (64°) to the point of commencement.

Controlled  
Hunting Area  
NG/27 Sector a

**16.** Commencing at a point NG/8/26/29 (app. co-ord. 34E650700N7810400), being a corner point in the southern buffalo fence, the boundary runs in a straight line in a northwesterly direction (63°) to a point marked NG/26/37/29 (app. co-ord. 34E6922700N7832000), being a point on the western tip of PomPom Island; thence in a straight line in a southwesterly direction (112°) to a point marked NG/27/29/30 (app. co-ord. 34E698000N7832000), being a point on the western bank of the Xudum River; thence in a straight line in a southeasterly direction (155°) to a point marked NG/29/30/35 (app. co-ord. 34E717600N7785900), being the point of intersection of the buffalo fence with the Xudum River; thence following the buffalo fence in a southwesterly direction and northwesterly direction to the point of commencement.

Controlled  
Hunting  
Area NG/29

**17.** Commencing at a point marked NG/27/29/30 (appr. co-ord. 34E698000N7829600), being a point on the western bank of the Xudum River; the boundary runs in a straight line in a northeasterly direction (36°) to a point marked NG/27/28/30 (appr. co-ord. 34E705700N7840500), being a point on the northern bank of an island on a hunting track from Bobo Island in the direction of the Xo flats; thence in a straight line in a southeastern direction to a point marked NG/27/30/32 (appr. co-ord. 34E718100N7829000), being a point on the southern bank of the Kiri River where there is a Department of Water Affairs (DWA) staff camp; thence following the Kiri River in a southern direction to a point marked NG/30/32 (appr. co-ord. 34E731500N7811200); thence in a straight line in a southerly direction (167°) to a point marked NG/30/32/35 (appr. co-ord. 34E733300N7802900), being a corner point in the southern buffalo fence; thence following the fence in a southwesterly

Controlled  
Hunting  
Area NG/30



direction to a point marked NG/29/30/35 (appr. co-ord. 34E717600N7785900), being a point of intersection of the buffalo fence with the Xudum River; thence in a straight line in a northwesterly direction (335°) to the point of commencement.

**18.** Commencing at a point marked NG/17/28/31 (appr. co-ord. 34E739500N7844900), being a point of intersection of the Moremi Game Reserve boundary and the Santantadibe River, the boundary runs in a straight line northwestwards (27°) to a point marked NG/28/31/A (appr. co-ord. 34E742500N7855800), being a point on the western bank of Qahetaa Lagoon; thence in a straight line eastwards (87°) to a point marked NG/28/31/B (appr. co-ord. 34E752400N7851400), being a point on the western bank of the Gomoti River; thence following the most southwestern channel of the Gomoti River southward to a point marked NG/28/31/32 (appr. co-ord. 34E761400N7843200); thence in a straight line southwestwards (232°) to a point marked NG/17/31/32 (appr. co-ord. 34E749300N7833900), being a point on the northern bank of Gporoku Island, east of Ikamkum Lagoon; thence following the Santantadibe River northwards to the point of commencement.

Controlled  
Hunting Area  
NG/31

**19.** Commencing at a point marked NG/27/28/32 (appr. co-ord. 34E731500N7835100), being a point on the southern bank of Nxharaga Lagoon, the boundary follows the Moremi Game Reserve boundary in a southeasterly direction (114°) to a point marked NG/17/28/32 (appr. co-ord. 34E740300N7831200); thence in a straight line in an easterly direction (73°) to a point marked NG/17/31/32 (appr. co-ord. 34E749300N7833900), being a point on the northern bank of Gporoku Island, east of Ikamkum Lagoon; thence in a straight line northeastward (52°) to a point marked NG/28/31/32 (appr. co-ord. 34E761400N7843200), being a point on the southern bank of the most southwestern channel of the Gomoti River; thence following the most southwestern channel of the Gomoti River to a point marked NG/32/34/35 (appr. co-ord. 34E772100N7827500), being the point of intersection of the Gomoti River with the southern buffalo fence; thence following the southern buffalo fence in a westerly, southwesterly and northwesterly direction to a point marked NG/30/32/35 (appr. co-ord. 34E733300N7802900), being a corner point in the southern buffalo fence; thence in a straight line northwards to a point marked NG/30/32 (appr. co-ord. 34E731500N7811200), being a point on the southern bank of the Kiri River; thence following the Kiri River northwards to a point marked NG/27/30/32 (appr. co-ord. 34E718100N7829000), being a point on the southern bank of the Kiri River where there is a Department of Water Affairs (DWA) staff camp; thence in a straight line in a northeasterly direction (64°) to the point of commencement.

Controlled  
Hunting  
Area NG/32

**20.** Commencing at a point marked NG/28/33/34/A (appr. co-ord. 34E777500N7849700), being the entrance point to Moremi Game Reserve, known as South Gate, the boundary follows the road from South Gate to Maun in a southeasterly direction to a point marked NG/33/34/A (appr. co-ord. 34E780800N7846900); thence in a straight line in a southerly direction (182°) to a point marked NG/33/34/B (appr. co-ord. 34E780500N7835500), being a point on the southern bank of Mogogelo River; thence in a straight line westward (305°) to a point marked NG/28/33/34/B (appr. co-ord. 34E773700N7840500), being a point in the middle of the Mogogelo River and being a corner point in the boundary of the Moremi Game Reserve; thence following the Moremi Game Reserve boundary in a northerly direction to the point of commencement.

Controlled  
Hunting Area  
NG/33

**21.** Commencing at a point marked NG/28/33/34/A (appr. co-ord. 34E777500N7849700), being the entrance point to Moremi Game Reserve, known as South Gate, the boundary follows the Moremi Game Reserve boundary northwards to a point

Controlled  
Hunting Area  
NG/34

marked NG/28/34 (appr. co-ord. 34E782200N7860150), being a corner point in the Moremi Game Reserve boundary; thence due East following the Moremi Game Reserve boundary to a point marked NG/28/34/40/41/43 (appr. co-ord. 34E803000N7860150), being the point of intersection of the Moremi Game Reserve boundary with the Ngamiland Statelands boundary; then following the statelands boundary southwards to a point marked NG/34/35/43 (appr. co-ord: 34E802500N7827000), being the point of intersection of the southern buffalo fence with the statelands boundary, thence following the southern buffalo fence westwards to a point marked NG/32/34/35 (appr. co-ord. 34E772100N7827500), being the point of intersection of the Gomoti River with the southern buffalo fence; thence following the Gomoti River northwards to a point marked NG/28/32/34 (appr. co-ord. 34E765700N7839200), being a corner point in the Moremi Game Reserve boundary; thence following the Moremi Game Reserve boundary in an easterly direction (81°) to a point marked NG/28/33/34/B (appr. co-ord. 34E773700N7840500), being a point in the middle of the Mogogelo River; thence in a straight line southeastwards (125°) to a point marked NG/33/34/B (appr. co-ord. 34E780500N7835500), being a point on the southern bank of the Mogogelo River; thence in a straight line northwards (02°) to a point marked NG/33/34/A (appr. co-ord. 34E780800N7846900), being a point on the road from Maun to South Gate; thence following the said road northwards to the point of commencement.

**22.** The area of the Chobe National Park contained within the Ngamiland District as described in the First Schedule of the Cap. 38:01 Wildlife Conservation and National Parks Act.

Controlled  
Hunting  
Area NG/40  
S.I.  
86/1995.

**23.** Commencing at a point NG/40/41/CH/3 situated on the boundary of the Chobe National Park and the District boundary between Ngamiland and Chobe Districts, also being the northwest corner of the Ngamiland State Lands Wildlife Management area (approximate co-ordinates 35E187650N7896540); thence southerly along the Chobe National Park boundary to a point NG/40/41, where the National Park boundary turns southwesterly (approximate co-ordinates 35E184360N7883560); thence southwestwards along the National Park boundary to a point NG/28/34/40/41/43 which is the most southerly point of the Chobe National Park extension (approximate co-ordinates 34E802960N7859760); thence due east along latitude 19°20' S to a point NG/41/42/43 (approximate co-ordinates 35E240840N7860440); thence due north in a straight line to a point NG/41/42/CH/3 which lies on the boundary of the Chobe National Park and is also on the boundary between Ngamiland and Chobe districts (approximate co-ordinates 35E240320N7897350); thence due west along this boundary to the point of commencement.

Controlled  
Hunting  
Area NG/41  
S.I. 86/1995

**24.** Commencing at a point NG/41/42/CH/3 on the boundary between the Ngamiland and Chobe districts and the boundary of the Chobe National Park (approximate co-ordinates 35E240320N7897350); thence due south to a point NG/41/42/43 being the point of intersection with latitude 19°20' S (approximate co-ordinates 35E240840N7860440); thence southeastwards to a point NG/42/43/47 being the point of intersection with the veterinary cordon fence (approximate co-ordinates 35E249500N7829900); thence following the said cordon fence in a generally northeasterly direction to a point NG/42/47 (approximate co-ordinates 35E263100N7838600); thence eastwards to a point NG/42/47/48 being the northwestern corner of the Nxai Pan National Park (approximate co-ordinates 35E270900N7838700); thence due east along the Park boundary to a point NG/42/48/CT/1, also being a point on the boundary between the Ngamiland and Central Districts (approximate co-ordinates 35E290150N7838900); thence due north along the said boundary to a point NG/42/CH/11/CT/1, where the boundaries of the Ngamiland, Chobe and Central

Controlled  
Hunting  
Area NG/42  
S.I.  
86/1995.

districts meet (approximate co-ordinates 35E289470N7897980); thence due west along the District boundary to the point of commencement.

**25.** Commencing at a point NG/28/34/40/41/43 being the most southerly point of the Chobe National Park also being a point on the Ngamiland State Land boundary (approximate coordinates 34E802960N7859760), thence due south along the State Land boundary to a point NG/35/43/45, where the veterinary cordon fence turns east (approximate co-ordinates 34E802070N7807120); thence easterly along the said cordon fence to a point NG/43/45/47 on the veterinary cordon fence (approximate co-ordinates 35E206400N7810400); thence continuing easterly along the cordon fence to a point NG/43/47, where the cordon fence turns in a northeasterly direction (approximate co-ordinates 35E226000N7812700); thence northeasterly along the said cordon fence to a point NG/42/43/47 (approximate co-ordinates 35E249500N7829900); thence northwesterly in a straight line to a point NG/41/42/43 (approximate co-ordinates 35E240840N7860440), being the point of intersection with latitude 19°20' S; thence due west along the said latitude to the point of commencement.

Controlled  
Hunting  
Area NG/43  
S.I. 86/1995

**26.** Commencing at a point NG/35/43/45 on the Ngamiland State Land boundary, being the point where the veterinary cordon fence turns east (approximate co-ordinates 34E802070N7807120); thence due south along the Ngamiland State Land boundary to a point NG/35/45/CT/8 being the point of intersection with the Boteti river, also being a point on the boundary between the Ngamiland and Central Districts (approximate co-ordinates 34E801100N7750600); thence in a generally easterly and northeasterly direction, following the District boundary along the thalweg of the Boteti river to a point NG/45/49/CT/8 being the southeastern corner of the area known as the Makalamabedi BLDC ranch (approximate coordinates 35E204800N7763100); thence northeastwards along the fence line of the said BLDC ranch to a point NG/45/49 being the point of intersection with the new Nata — Maun road (approximate co-ordinates 35E207200N7765800); thence due north along the fence line of the Makalamabedi BLDC ranch to a point NG/45/47/49 being the point of intersection with latitude 20° (approximate co-ordinates 35E206800N7786100); thence continuing due north to a point NG/43/45/47 on the veterinary cordon fence (approximate co-ordinates 35E206400N7810400); thence westwards along the said cordon fence to the point of commencement.

Controlled  
Hunting Area  
NG/45 S.I.  
86/1995

**27.** Commencing at a point NG/43/45/47 on the veterinary cordon fence (approximate coordinates 35E206400N7810400); thence due south to a point NG/45/47/49, being the point of intersection of the eastern fence line of the Makalamabedi BLDC ranch with latitude 20° (approximate co-ordinates 35E206800N7786100); thence due east to a point NG/47/48/49, which is the most western point of the Nxai Pan National Park (approximate co-ordinates 35E244500N7786700); thence northeast along the National Park boundary to a point NG/42/47/48 being the northwestern corner of the said National Park (approximate coordinates 35E270900N7838700); thence westwards to a point NG/42/47 (approximate coordinates 35E263100N7838600) on the veterinary cordon fence; thence southwestwards along the cordon fence to a point NG/42/43/47 (approximate co-ordinates 35E249500N7829900); thence southwestwards and westwards along the said cordon fence to a point NG/43/47, where the cordon fence turns westerly (approximate co-ordinates 35E226000N7812700); thence westwards along the veterinary cordon fence to the point of commencement.

Controlled  
Hunting Area  
NG/47 S.I.  
86/1995.

**28.** The area of the Nxai Pan National Park as described in the First Schedule of the Cap. 38:01 Wildlife Conservation and National Parks Act.

Controlled  
Hunting  
Area NG/48

**29.** Commencing at a point NG/45/47/49 being the intersection of the eastern fence line of the Makalamabedi BLDC ranch and latitude 20° (approximate co-ordinates 35E206800N7786100); thence due south along this fence line to a point NG/45/49 being the point of intersection with the new Nata — Maun road (approximate co-ordinates 35E207200N7765800); thence southwestwards along the fence line of the said BLDC ranch to a point NG/45/49/CT/8, being the point of intersection with the Boteti river, also being a point on the boundary between the Ngamiland and Central Districts (approximate coordinates 35E204800N7763100); thence in a generally easterly and northeasterly direction, following the District boundary along the thalweg of the Boteti river, to a point NG/49/52/CT/8 at the intersection of the Boteti River and the southern edge of the ford at Matime (approximate co-ordinates 35E214000N7761000); thence northeastwards along the southern and eastern side of the road from Matime to Bushman Pits to a point NG/49/52, where the road is intersected by the southern side of the new Nata-Maun road (approximate co-ordinates 35E221800N7765800); thence generally eastwards along the southern side of the new Nata — Maun road to a point NG/48/49/52 (approximate co-ordinates 35E254600N7761500), being the turn-off from the said road to the main access track to the Nxai Pan National Park wildlife office; thence following the said track north and northeastwards to a point NG/48/49 (approximate co-ordinates 35E261100N7786900), being the point of intersection with latitude 20°; thence due west to a point NG/47/48/49 being the most western point of the Nxai Pan National Park (approximate co-ordinates 35E244500N7786700); thence continuing due west along latitude 20° to the point of commencement.

Controlled  
Hunting Area  
NG/49 S.I.  
86/1995.

**30.** Commencing at a point NG/48/51/CT/7 (approximate co-ordinates 35E290800N7787300), being the point of intersection of longitude 25° and latitude 20°, also being a point on the boundary of the Nxai Pan National Park and the boundary between the Ngamiland and Central Districts; thence in a straight line southwestwards (221°) along the boundary of the National Park to a point NG/48/51 (approximate co-ordinates 35E284500N7779900), being the northwest corner of the area known as the Odiakwe BLDC ranch and located approximately 200 metres northeast of Trig. Station BPP 126; thence in a straight line southwards following the fence line of the said ranch to a point NG/48/51/52 (approximate co-ordinates 35E285200N7761600), being the point of intersection of the fence line with the new Nata - Maun road; thence following the southern side of the said road eastwards to a point NG/51/52 (approximate co-ordinates 35E302900N7764200) located 0,8 km west of Xhaneo Road Camp, being the most northeastern corner of the Makgadikgadi Pans National Park; thence due south along the boundary of the National Park to a point NG/51/52/CT/9/CT/11 (approximate co-ordinates 35E303100N7747600) being the point of intersection with the boundary between the Ngamiland and Central Districts; thence eastwards along the said District boundary for approximately 5.5 km to a point NG/51/CT/7/CT/11 (approximate co-ordinates 35E308500N7748000), being Beacon C at the southwestern corner of the Gweta area as described in the Tribal Territories Act; thence northwards along the boundary between the Ngamiland and Central Districts for approximately 32 km to a point NG/51/CT/7 (approximate co-ordinates 35E308200N7780200) being Beacon B at the northwestern corner of the Gweta area as described in the Tribal Territories Act; thence in a straight line westnorthwestwards along the aforementioned District boundary to the point of commencement.

Controlled  
Hunting Area  
NG/51 S.I.  
86/1995.

**31.** The area of the Makgadikgadi Pans National Park contained within the Ngamiland District, as described in the First Schedule of the Cap. 38:01 Wildlife Conservation and National Parks Act.

Controlled  
Hunting Area  
NG/52 S.I.  
86/1995.

1. Commencing at a point A in the middle of the Chobe river, being a point on the international boundary between the Republic of Botswana and the Republic of Namibia (the Caprivi Strip), which is the most northwestern point of the Chobe National Park (approximate co-ordinates 35E258700N8017900); thence generally southwestwards and westwards along the international boundary to a point B which is the point of intersection of this boundary with the Chobe National Park (approximate co-ordinates 34E807600N7978300); thence southeastwards for approximately 28km along the boundary of the National Park to a beacon Chobe 2 in Sisuma Pan (approximate co-ordinates 35E201520N7967450); thence continuing southeastwards to a point C on the boundary of the Chobe National Park (approximate co-ordinates 35E209300N7964800) being the point of intersection with the Ngoma-Savuti road; thence northeastwards along the line of this road to a point D being a point on the boundary of the Chobe National Park (approximate co-ordinates 35E258700N8016800); thence northwards along the National Park boundary to the point of commencement.

Controlled  
Hunting  
Area CH/1  
S.I. 61/1995

2. Commencing at a point D being a point on the boundary of the Chobe National Park south of Ngoma (approximate co-ordinates 35E258700N8016800); thence generally southwestwards along the line of the Ngoma-Savuti road to a point C being the point of intersection with the boundary of the Chobe National Park (approximate co-ordinates 35E209300N7964800) thence southeastwards along the National Park boundary to a beacon Chobe 3 at Nxunxutsha Pan in the Kashaba valley (approximate co-ordinates 35E240470N7954140); thence along the National Park boundary northeastwards up the said Kashaba valley to a point at Sikiylana Pan situated at the junction of the Namuchira valley and the Molapowadiphofu; thence along the National Park boundary generally northwards and northeastwards up the said Namuchira valley to a point at its source at Namuchira Pan; thence along the National Park boundary due east for approximately 1,7km to the southern end of firebreak 19 (approximate co-ordinates 35E258400N7983400); thence generally northwards along the National Park boundary to the point of commencement. This area being also known as the Chobe Forest Reserve.

Controlled  
Hunting  
Area CH/2  
S.I.  
61/1995.

3. The area of the Chobe National Park contained within the Chobe District as described in the First Schedule of the Cap. 38:01 Wildlife Conservation and National Parks Act.

Controlled  
Hunting Area  
CH/3 S.I.  
61/1995.

4. Commencing at a point CH/4/5 on the international boundary between Botswana and Zimbabwe being the southeast corner of the Kasane Forest Extension (approximate co-ordinates 35E328500N7996200); thence generally southwestwards along the southern boundary of the Kasane Forest Extension to a point CH/3/4/5 on the eastern boundary of the Chobe National Park (approximate co-ordinates 35E299800N7983100); thence following the National Park boundary generally southwards to a point CH/5/7 on the northern boundary of the Maikaelelo Forest Reserve (approximate co-ordinates 35E308100N7956200); thence southeastwards along the northern boundary of the Maikaelelo Forest Reserve to the most easterly point (CH/5/7/8) of the said Forest Reserve (approximate co-ordinates 35E315200N7952700); thence easterly in a straight line to a point CH/5/6/8 on the western boundary of the Kazuma Forest Reserve (approximate co-ordinates 35E334000N7957100); thence following the boundary of this Forest Reserve northwards and eastwards until it reaches a point CH/5/6 on the international boundary between Botswana and Zimbabwe (approximate co-ordinates 35E342100N7973000); thence northwards along the international boundary to the point of commencement.

Controlled  
Hunting  
Area CH/5  
S.I.  
61/1995.

5. Commencing at a point CH/6/9 on the international boundary between Botswana and Zimbabwe, being the most eastern point of the Kazuma Forest Reserve (approximate coordinates 35E348700N7960700); thence generally northwestwards along the international

Controlled  
Hunting  
Area CH/6  
S.I.  
61/1995.

boundary to a point CH/5/6 which is the most northern point of the said Forest Reserve (approximate co-ordinates 35E342100N7973000); thence southwestwards and south along the western boundary of this Forest Reserve to a point CH/5/6/8 (approximate co-ordinates 35E334000N7957100); thence in a southeasterly direction to a point CH/6/8/9, being the most southerly point of this Forest Reserve (approximate co-ordinates 35E340100N7950600); thence in a northerly and northeasterly direction along the southeastern boundary of this Forest Reserve to the point of commencement. This area is also known as the Kazuma Forest Reserve.

6. Commencing at a point CH/5/7/8 which is the most northeasterly point of the Maikaelelo Forest Reserve (approximate co-ordinates 35E315200N7952700); thence following the northern boundary of the said Forest Reserve in a northwesterly direction to a point CH/3/5/7 being a point on the Chobe National Park boundary (approximate co-ordinates 35E308100N7956200); thence westwards along the National Park boundary to a point CH/3/7 where the boundary turns south (approximate co-ordinates 35E282000N7959800); thence southwards along the National Park boundary to a point CH/3/7/11, being the most southwest corner of the Maikaelelo Forest Reserve (approximate co-ordinates 35E279200N7940800); thence due east and generally southerly along the southern boundary of the said Forest Reserve to a point CH/7/8/11/12, being the southeast corner of the Forest Reserve (approximate co-ordinates 35E303700N7937300); thence northeasterly along the eastern boundary of this Forest Reserve to the point of commencement. This area is also known as the Maikaelelo Forest Reserve.

Controlled  
Hunting Area CH/7  
S.I.  
61/1995.

7. Commencing at a point CH/5/7/8 being the northeastern corner of the Maikaelelo Forest Reserve (approximate co-ordinates 35E315200N7952700); thence in a generally southwest direction following the eastern boundary of the said Forest Reserve to a point CH/7/8/11/12, which is the southeast corner of this Forest Reserve (approximate co-ordinates 35E303600N7937200); thence southeastwards in a straight line to a point CH/8/12/13 being a point on the western boundary of the Sibuyu Forest Reserve (approximate co-ordinates 35E341900N7922800); thence due north to a point CH/8/9/13 being the northwestern corner of the said Forest Reserve (approximate co-ordinates 35E341800N7927300); thence north in a straight line to a point CH/6/8/9, which is the most southerly point of the Kazuma Forest Reserve (approximate co-ordinates 35E340100N7950600); thence northwesterly following the boundary of the said Forest Reserve to a point CH/5/6/8 on this boundary (approximate co-ordinates 35E334000N7957100); thence in a straight line southwestwards to the point of commencement.

Controlled  
Hunting Area CH/8  
S.I.  
61/1995.

8. Commencing at a point CH/6/9 on the international boundary between Botswana and Zimbabwe, being the most eastern point of the Kazuma Forest Reserve (approximate coordinates 35E348700N7960700); thence southwest and southerly along the southeastern boundary of the said Forest Reserve to a point CH/6/8/9, which is the most southerly point of this Forest Reserve (approximate co-ordinates 35E340100N7950600); thence southerly in a straight line to a point CH/8/9/13, being the northwestern corner of the Sibuyu Forest Reserve (approximate co-ordinates 35E341800N7927300); thence due east along the northern boundary of this Forest Reserve to a point CH/9/10/13 (approximate co-ordinates 35E352700N7927400); thence in a straight line northeastwards to a point CH/9/10 on the international boundary between Botswana and Zimbabwe (approximate co-ordinates 35E366600N7943300); thence northwestwards along the international boundary to the point of commencement.

Controlled  
Hunting Area CH/9  
S.I.  
61/1995.

**9.** Commencing at a point CH/10/13 on the international boundary between Botswana and Zimbabwe, being the northeast corner of the Sibuyu Forest Reserve (approximate coordinates 35E372100N7927400); thence generally northwards along the international boundary to a point CH/9/10 on this boundary (approximate co-ordinates 35E366600N7943300); thence in a straight line in a southwesterly direction to a point CH/9/10/13 on the northern boundary of the Sibuyu Forest Reserve (approximate co-ordinates 35E352700N7927400); thence due east along the northern boundary of the said Forest Reserve to the point of commencement.

Controlled  
Hunting Area  
CH/10 S.I.  
61/1995.

**10.** Commencing at a point CH/7/8/11/12 being the southeastern corner of the Maikaelelo Forest Reserve (approximate co-ordinates 35E303600N7937300); thence in a northwesterly and westerly direction along the southern boundary of this Forest Reserve to a point CH/3/7/11, where this boundary joins the eastern boundary of the Chobe National Park, also being the northwestern corner of the Nunga Wildlife Management Area (approximate co-ordinates 35E279400N7940800); thence in a southwesterly direction along the boundary of this National Park to a point CH/3/11/NG/42 where this boundary joins the boundary between Chobe and Ngamiland Districts (approximate co-ordinates 35E273400N7897800); thence due east along the District boundary to a point CH/11/12/NG/42/CT/1 where the District boundaries of Chobe, Ngamiland and Central Districts meet (approximate co-ordinates 35E289500N7898000); thence northeasterly in a straight line to the point of commencement.

Controlled  
Hunting Area  
CH/11 S.I.  
61/1995.

**11.** Commencing at a point CH/7/8/11/12, being the southeastern corner of the Maikaelelo Forest Reserve (approximate co-ordinates 35E303600N7937300); thence in a straight line in a southwesterly direction to a point CH/11/12/NG/42/CT/1, where the boundaries of the Chobe, Ngamiland and Central Districts meet (approximate co-ordinates 35E289500N7898000); thence east along the Chobe District boundary to a point CH/12/13/CT/2, which is the southwestern corner of the Sibuyu Forest Reserve, also being the southeastern corner of the Nunga Wildlife Management Area (approximate co-ordinates 35E342100N7898500); thence due north along the western boundary of this Wildlife Management Area to a point CH/8/12/13, being the northwestern corner of the Nunga Wildlife Management Area (approximate co-ordinates 35E341900N7922800); thence northwestwards in a straight line to the point of commencement.

Controlled  
Hunting  
Area CH/12  
S.I.  
61/1995.

**12.** Commencing at a point CH/8/9/13, being the northwestern corner of the Sibuyu Reserve (approximate co-ordinates 35E341800N7927300); thence due south along the western boundary of the said Forest Reserve to a point CH/12/13/CT/2, where this boundary joins the Chobe District boundary (approximate co-ordinates 35E342100N7898500); thence due east along the District boundary to a point CH/13/CT/3, where this boundary joins the international boundary between Botswana and Zimbabwe (approximate co-ordinates 35E392900N7898900); thence generally northwestwards along the international boundary to a point CH/10/13, being the northeast corner of the Sibuyu Forest Reserve (approximate co-ordinates 35E372100N7927500); thence due west in a straight line to the point of commencement. This area is also known as the Sibuyu Forest Reserve.

Controlled  
Hunting  
Area CH/13  
S.I.  
61/1995.

**CONTROLLED HUNTING AREA DESCRIPTIONS — NATA STATE LAND,  
CENTRAL DISTRICT**

1. Commencing at a point CH/11/12/NG/42/CT/1 where the boundaries of the Central, Chobe and Ngamiland Districts meet (approximate co-ordinates 35E289470N7897980); thence due south along the Central District boundary to a point NG/42/48/CT/1, being the most northeastern corner of the Nxai Pan National Park (approximate co-ordinates 35E290150N7838900); thence continuing due south along the boundary of the Central District to a point NG/48/CT/1/7, being the point of intersection with the veterinary cordon fence (approximate co-ordinates 35E290500N7805100); thence in a generally northeasterly and easterly direction along the said cordon fence to a point CT/1/2/7 (approximate coordinates 35E337600N7818400); thence in a straight line due north to a point CT/1/2/CH/12 on the boundary between the Chobe and Central District (approximate co-ordinates 35E336800N7898500); thence due west along the District boundary to the point of commencement.

Controlled  
Hunting Area  
CT/1 S.I.  
86/1995.

2. Commencing at a point CT/1/2/CH/12 on the boundary between the Central and Chobe districts (approximate co-ordinates 35E336800N7898500); thence in a straight line due south to a point CT/1/2/7 being a point on the veterinary cordon fence (approximate co-ordinates 35E337600N7818400); thence in a generally southeasterly and easterly direction along the said cordon fence to a point CT/2/3/4/5, being the point of intersection with the Nata-Kazungula road (approximate co-ordinates 35E400600N7821400); thence in a northerly direction along the said road to a point CT/2/3/CH/13, being a point on the boundary between the Central and Chobe Districts (approximate co-ordinates 35E361300N7898700); thence due west along the District boundary to a point CH/12/13/CT/2 (approximate co-ordinates 35E342100N7898500); thence due west along the District boundary to the point of commencement.

Controlled  
Hunting  
Area CT/2  
S.I.  
86/1995.

3. Commencing at a point CT/2/3/CH/13 on the boundary between the Central and Chobe Districts, also being a point on the Nata - Kazungula road (approximate co-ordinates 35E361300N7898700); thence in a southerly direction along the said road to a point CT/2/3/4/5, being the point of intersection with the veterinary cordon fence (approximate coordinates 35E400600N7821400); thence in a straight line due east to a point CT/3/5, being a point on the international boundary between Botswana and Zimbabwe (approximate coordinates 35E437700N7821600); thence in a generally northerly and northwesterly direction along the international boundary to a point CH/13/CT/3, being the point of intersection with the Chobe District boundary (approximate co-ordinates 35E392900N7898900); thence due west along the District boundary to the point of commencement.

Controlled  
Hunting  
Area CT/3  
S.I.  
86/1995.

4. Commencing at a point CT/2/3/4/5 being the point of intersection of the veterinary cordon fence and the Nata-Kazungula road (approximate co-ordinates 35E400600N7821400); thence following the said road in a southerly direction to a point CT/4/5/6, being the point where the veterinary cordon fence turns southeastwards (approximate co-ordinates 35E408400N7806600); thence following the said cordon fence in a southeasterly direction to a point CT/5/6/A, where the veterinary cordon fence turns northeastwards (approximate coordinates 35E430000N7803300); thence along the said cordon fence in a northeasterly direction to a point CT/5/6/B being the point of intersection with the international boundary between Botswana and Zimbabwe (approximate co-ordinates 35E441100N7816400); thence following the international boundary to a point CT/3/5 (approximate co-ordinates 35E437700N7821600); thence in a straight line due west to the point of commencement.

Controlled  
Hunting  
Area CT/5  
S.I.  
86/1995.



**FIFTH SCHEDULE**

**CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora)**

*(Section 2)*

**Convention on International Trade in Endangered Species of Wild Fauna and Flora**

The Contracting States,

*Recognizing* 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; *Recognizing* that peoples and States are and should be the best protectors of their own wild fauna and flora;

*Recognizing*, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

*Convinced* of the urgency of taking appropriate measures to this end; Have agreed as follows:

## **ARTICLE I**

### *Definitions*

For the purpose of the present Convention, unless the context otherwise requires:

- (a) "Species" means any species, subspecies, or geographically separate population thereof;
- (b) "Specimen" means:
  - (i) any animal or plant, whether alive or dead;
  - (ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or derivate thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and
  - (iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species;
- c) "Trade" means export, re-export, import and introduction from the sea;
- d) "Re-export" means export of any specimen that has previously been imported;
- e) "Introduction from the sea" means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;
- f) "Scientific Authority" means a national scientific authority designated in accordance with Article IX;
- g) "Management Authority" means a national management authority designated in accordance with Article IX;
- h) "Party" means a State for which the present Convention has entered into force.

## **ARTICLE II**

### *Fundamental Principles*

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

- (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and
- (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in subparagraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identified as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

### **ARTICLE III**

#### *Regulation of Trade in Specimens of Species included in Appendix I*

1. All trade in specimens of species included in Appendix I shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;
- (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and
- (d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

- (a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;
- (b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
- (c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

4. The re-export of any specimen of a species included in Appendix I shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

- (a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;
- (b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and
- (c) a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen.

5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

- (a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved;
- (b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
- (c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

#### **ARTICLE IV**

##### *Regulation of Trade in Specimens of Species included in Appendix II*

**1.** All trade in specimens of species included in Appendix II shall be in accordance with the provisions of this Article.

**2.** The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
- (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

**3.** A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management authority of suitable measures to be taken to limit the grant of export permits for specimens of that species.

**4.** The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

**5.** The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

- (a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention; and
- (b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

**6.** The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

- (a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved; and
- (b) a Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

7. Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, when appropriate, international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in such periods.

## **ARTICLE V**

### *Regulation of Trade in Specimens of Species included in Appendix III*

1. All trade in specimens of species included in Appendix III shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

- (a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
- (b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. The import of any specimen of a species included in Appendix III shall require, except in circumstances to which paragraph 4 of this Article applies, the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit.

4. In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.

## **ARTICLE VI**

### *Permits and Certificates*

1. Permits and certificates granted under the provisions of Articles III, IV and V shall be in accordance with the provisions of this Article.

2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted.

3. Each permit or certificate shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority.

4. Any copies of a permit or certificate issued by a Management Authority shall be clearly marked as copies only and no such copy may be used in place of the original, except to the extent endorsed thereon.

5. A separate permit or certificate shall be required for each consignment of specimens.

6. A Management Authority of the State of import of any specimen shall cancel and retain the export permit or re-export certificate and any corresponding import permit presented in respect of the import of that specimen.

7. Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.



## **ARTICLE VII**

### *Exemptions and Other Special Provisions Relating to Trade*

1. The provisions of Articles III, IV and V shall not apply to the transit or trans-shipment of specimens through or in the territory of a Party while the specimens remain in Customs control.

2. Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.

3. The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where:

- (a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or
- (b) in the case of specimens of species included in Appendix II:
  - i. they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;
  - ii. they are being imported into the owner's State of usual residence; and
  - iii. the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens; unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

4. Specimens of animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.

5. Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Articles III, IV or V.

6. The provisions of Articles III, IV and V shall not apply to the non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority.

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:

- (a) the exporter or importer registers full details of such specimens with that Management Authority;
- (b) the specimens are in either of the categories specified in paragraphs 2 or 5 of this Article; and
- (c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.

## **ARTICLE VIII**

### *Measures to be Taken by the Parties*

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

- (a) to penalize trade in, or possession of, such specimens, or both; and
- (b) to provide for the confiscation or return to the State of export of such specimens.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

- (a) the specimen shall be entrusted to a Management Authority of the State of confiscation;
- (b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and
- (c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under subparagraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of this article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

- (a) the names and addresses of exporters and importers; and
- (b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

7. Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

- (a) an annual report containing a summary of the information specified in

(b) subparagraph (b) of paragraph 6 of this Article; and a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.

**8.** The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

**ARTICLE IX**

*Management and Scientific Authorities*

1. Each Party shall designate for the purpose of the Present Convention:
  - (a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and
  - (b) one or more Scientific Authorities.
  
2. A State depositing an instrument of ratification, acceptance, approval or accession shall at that time inform the Depositary Government of the name and address of the Management Authority authorized to communicate with other Parties and with the Secretariat.
  
3. Any changes in the designations or authorizations under the provisions of this Article shall be communicated by the Party concerned to the Secretariat for transmission to all other Parties.
  
4. Any Management Authority referred to in paragraph 2 of this Article shall if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.

**ARTICLE X**

*Trade with States not Party to the Convention*

Where export or re-export is to, or import is from, a State not a party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

## **ARTICLE XI**

### *Conference of the Parties*

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.

2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties.

3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:

- (a) make such provision as may be necessary to enable the Secretariat to carry out its duties and adopt financial provisions;
- (b) consider and adopt amendments to Appendices I and II in accordance with Article XV;
- (c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III;
- (d) receive and consider any reports presented by the Secretariat or by any Party; and
- (e) where appropriate, make recommendations for improving the effectiveness of the present Convention.

4. At each regular meeting, the Parties may determine the time and venue of the next regular meeting to be held in accordance with the provisions of paragraph 2 of this Article.

5. At any meeting the Parties may determine and adopt rules of procedure for the meeting.

6. The United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State not a Party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but not to vote.

7. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

- (a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and
- (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.

## **ARTICLE XII**

### *The Secretariat*

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-governmental or nongovernmental, international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

2. The functions of the Secretariat shall be:

- (a) to arrange for and service meetings of the Parties;
- (b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;
- (c) to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;
- (d) to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;
- (e) to invite the attention of the Parties to any matter pertaining to the aims of the present Convention;
- (f) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in those Appendices;
- (g) to prepare annual reports to the Parties on its work and on the implementation of the present Convention and such other reports as meetings of the Parties may request;
- (h) to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature;
- (i) to perform any other function as may be entrusted to or by the Parties.

### **ARTICLE XIII**

#### *International Measures*

1. When the Secretariat in the light of information received is satisfied that any species included in Appendices I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.

2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.

3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.



## **ARTICLE XIV**

### *Effect on Domestic Legislation and International Conventions*

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:

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

2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.

3. The provisions of the present Convention shall in no way affect the provisions of, or obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external customs control and removing customs control between the parties thereto insofar as they relate to trade among the States members of that union agreement.

4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligation imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.

5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

## **ARTICLE XV**

### *Amendments to Appendices I and II*

The following provisions shall apply in relation to amendments to Appendices I and II at meetings of the Conference of the Parties:

- (a) any Party may propose an amendment to Appendix I or II for consideration at the next meeting. The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of subparagraph (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting;
- (b) amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment;
- (c) amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

2. The following provisions shall apply in relation to amendments to Appendices I and II between meetings of the Conference of the Parties:

- (a) any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph;
- (b) for marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties. It shall also consult inter-governmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring co-ordination with any conservation measures enforced by such bodies. The Secretariat shall communicate the views expressed and data provided by these bodies and its own findings and recommendations to the Parties as soon as possible;
- (b) for species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations;
- (c) any Party may, within 60 days of the date on which the Secretariat
- (d) communicated its recommendations to the Parties under subparagraphs (b) or
- (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information;
- (d) the Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible;
- (e) if no objection to the proposed amendment is received by the Secretariat within 30 days of the date the replies and recommendations were communicated under the provisions of subparagraph (e) of this paragraph, the amendment shall enter into force 90 days later for all Parties except those which make a reservation in accordance with paragraph 3 of this Article;
- (f) if an objection by any Party is received by the Secretariat, the proposed
- (e) amendment shall be submitted to a postal vote in accordance with the
- (f) provisions of subparagraphs (h), (i) and (j) of this paragraph;
- (g) the Secretariat shall notify the Parties that notification of objection has been received;
- (h) unless the Secretariat receives the votes for, against or in abstention from at least one half of the Parties within 60 days of the date of notification under subparagraph (h) of

this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration;

- (i) provided that votes are received from one half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote;
- (j) the Secretariat shall notify all Parties of the result of the vote;
- (k) if the proposed amendment is adopted it shall enter into force 90 days
- (l) after the date of notification by the Secretariat of its acceptance for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

**3.** During the period of 90 days provided for by subparagraph (c) of paragraph 1 or subparagraph (1) of paragraph 2 of this Article any Party may by notification in writing to the Depositary Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a Party to the present Convention with respect to trade in the species concerned.

## **ARTICLE XVI**

### *Appendix III and Amendments thereto*

1. Any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I.

2. Each list submitted under the provisions of paragraph 1 of this article shall be communicated to the Parties by the Secretariat as soon as possible after receiving it. The list shall take effect as part of Appendix III 90 days after the date of such communication. At any time after the communication of such list, any Party may by notification in writing to the Depositary Government enter a reservation with respect to any species or any parts or derivatives, and until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.

3. A Party which has submitted a species for inclusion in Appendix III may withdraw it at any time by notification to the Secretariat which shall communicate the withdrawal to all Parties. The withdrawal shall take effect 30 days after the date of such communication.

4. Any Party submitting a list under the provisions of paragraph 1 of this Article shall submit to the Secretariat a copy of all domestic laws and regulations applicable to the protection of such species, together with any interpretations which the Party may deem appropriate or the Secretariat may request. The Party shall, for as long as the species in question is included in Appendix III, submit any amendment of such laws and regulations or any new interpretations as they are adopted.

## **ARTICLE XVII**

### *Amendment of the Convention*

1. An extraordinary meeting of the Conference of the Parties shall be convened by the Secretariat on the written request of at least one-third of the Parties to consider and adopt amendments to the present Convention. Such amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

2. The text of any proposed amendment shall be communicated by the Secretariat to all Parties at least 90 days before the meeting.

3. An amendment shall enter into force for the Parties which have accepted it 60 days after two-thirds of the Parties have deposited an instrument of acceptance of the amendment with the Depositary Government. Thereafter, the amendment shall enter into force for any other Party 60 days after that Party deposits its instrument of acceptance of the amendment.

## **ARTICLE XVIII**

### *Resolution of Disputes*

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.

2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague and the Parties submitting the dispute shall be bound by the arbitral decision.

## **ARTICLE XIX**

### *Signature*

The present Convention shall be open for signature at Washington until 30th April 1973 and thereafter at Berne until 31st December 1974.

## **ARTICLE XX**

### *Ratification, Acceptance, Approval*

The present Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Swiss Confederation which shall be the Depositary Government.

## **ARTICLE XXI**

### *Accession*

The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.

## **ARTICLE XXII**

### *Entry into Force*

1. The present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government.

2. For each State which ratifies, accepts or approves the present Convention or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force 90 days after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

## **ARTICLE XXIII**

### *Reservations*

1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.

2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:

- (a) any species included in Appendix I, II or III; or
- (b) any parts or derivatives specified in relation to a species concluded in Appendix III.

3. Until a Party withdraws its reservation entered under the provisions of this article, it shall be treated as a State not a party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.

## **ARTICLE XXIV**

### *Denunciation*

Any Party may denounce the present Convention by written notification to the Depositary Government at any time. The denunciation shall take effect twelve months after the Depositary Government has received the notification.

## **APPENDICES I AND II**

### **ANIMAL AND PLANT SPECIES S.I. 28/1999.**

As adopted by the Conference of the Parties, valid from 18th September 1997 (reprinted with corrections, 30th June, 1998).

## **INTERPRETATION**

1. Species included in these appendices are referred to:

- (a) by the name of the species; or
- (b) as being all of the species included in a higher taxon or designated part thereof.

2. The abbreviation "spp." is used to denote all species of a higher taxon.

3. Other references to taxa higher than species are for the purposes of information or classification only.

4. The following abbreviations are used for plant taxa below the level of species:

- (a) "ssp." is used to denote subspecies;
- (b) "var(s)." is used to denote variety (varieties); and
- (c) "fa." is used to denote forma.

5. The abbreviation "p.e." is used to denote species that are possibly extinct.

**6.** An asterisk (\*) placed against the name of a species or higher taxon indicates that one or more geographically separate populations, subspecies or species of that species or taxon are included in Appendix I and are excluded from Appendix II.

**7.** Two asterisks (\*\*) placed against the name of a species or higher taxon indicate that one or more geographically separate populations, subspecies or species of that species or taxon are included in Appendix II and are excluded from Appendix I.

**8.** The symbol (-) followed by a number placed against the name of a species or higher taxon denotes that designated geographically separate populations, species, groups of species or families of that species or taxon are excluded from the appendix concerned, as follows:

- 101 Population of West Greenland
- 102 Populations of Bhutan, India, Nepal and Pakistan
- 103 Populations of Botswana, Namibia and Zimbabwe
- 104 Population of Australia
- 105 Populations of *Pecari tajacu* of Mexico and the United States of America
- 106 - Argentina: the population of the Province of Jujuy and the semi-captive populations of the Provinces of Jujuy, Salta, Catamarca, La Rioja and San Juan

Bolivia: the populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and LÍpez-Chichas, with a zero annual export quota

Chile: part of the population of Parinacota Province, 1a. Region of, Tarapacá

Peru: the whole population

- 107 Populations of Afghanistan, Bhutan, India, Myanmar, Nepal and Pakistan
- 108 Cathartidae
- 109 *Melopsittacus undulatus*, *Nymphicus hollandicus* and *Psittacula krameri*
- 110 Population of Argentina
- 111 Population of Ecuador, subject to a zero annual export quota until an annual export quota has been approved by the CITES Secretariat and the IUCN/SSC Crocodile Specialist Group
  
- 112 Populations of Botswana, Ethiopia, Kenya, Madagascar, Malawi, Mozambique, South Africa, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe. Apart from ranched specimens, the United Republic of Tanzania will authorize the export of no more than 1100 wild specimens (including 100 hunting trophies) in 1998, 1999 and 2000
  
- 113 Populations of Australia, Indonesia and Papua New Guinea
- 114 Population of Chile
- 115 All species that are not succulent
- 116 *Aloe vera*; also referenced as *Aloe barbadensis*.

**9.** The symbol (+) followed by a number placed against the name of a species, subspecies or higher taxon denotes that only designated geographically separate populations of that species, subspecies or taxon are included in the appendix concerned, as follows:

- + 201 Populations of Bhutan, India, Nepal and Pakistan



- + 202 Populations of Bhutan, China, Mexico and Mongolia
- + 203 Populations of Cameroon and Nigeria
- + 204 Population of Asia
- + 205 Populations of Central and North America
- + 206 Populations of Bangladesh, India and Thailand
- + 207 Population of India
- + 208 Populations of Botswana, Namibia and Zimbabwe
- + 209 Population of Australia
- + 210 Population of South Africa
- + 211 Argentina: the population of the Province of Jujuy and the semi-captive populations of the Provinces of Jujuy, Salta, Catamarca, La Rioja and San Juan
  
- Bolivia: the populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and LÍpez-Chichas, with a zero annual export quota
  
- Chile: part of the population of Parinacota Province, 1a. Region of, Tarapacá
  
- Peru: the whole population
  
- + 212 Populations of Afghanistan, Bhutan, India, Myanmar, Nepal and Pakistan
- + 213 Population of Mexico
- + 214 Populations of Algeria, Burkina Faso, Cameroon, the Central African Republic, Chad, Mali, Mauritania, Morocco, the Niger, Nigeria, Senegal and the Sudan
- + 215 Population of Seychelles
- + 216 Population of Europe, except the area which formerly constituted the Union of Soviet Socialist Republics
- + 217 Population of Chile.

**10.** The symbol (=) followed by a number placed against the name of a species, subspecies or higher taxon denotes that the name of that species, subspecies or taxon shall be interpreted as follows:

- = 301 Also referenced as *Phalanger maculatus*
- = 302 Includes family *Tupaiidae*
- = 303 Formerly included in family *Lemuridae*
- = 304 Formerly included as subspecies of *Callithrix jacchus*
- = 305 Includes generic synonym *Leontideus*

- = 306 Formerly included in species *Saguinus oedipus*
- = 307 Formerly included in *Alouatta palliata*
- = 308 Formerly included as *Alouatta palliata (villosa)*
- = 309 Includes synonym *Cercopithecus rolway*
- = 310 Formerly included in genus *Papio*
- = 311 Includes generic synonym *Simias*
- = 312 Includes synonym *Colobus badius kirkii*
- = 313 Includes synonym *Colobus badius rufomitatus*
- = 314 Includes generic synonym *Rhinopithecus*
- = 315 Also referenced as *Presbytis entellus*
- = 316 Also referenced as *Presbytis geei* and *Semnopithecus geei*
- = 317 Also referenced as *Presbytis pileata* and *Semnopithecus pileatus*
- = 318 Includes synonyms *Bradypus boliviensis* and *Bradypus griseus*
- = 319 Includes synonym *Priodontes giganteus*
- = 320 Includes synonym *Physeter macrocephalus*
- = 321 Includes synonym *Eschrichtius glaucus*
- = 322 Formerly included in genus *Balaena*
- = 323 Formerly included in genus *Dusicyon*
- = 324 Includes synonym *Dusicyon fulvipes*
- = 325 Includes generic synonym *Fennecus*
- = 326 Also referenced as *Selenarctos thibetanus*
- = 327 Also referenced as *Aonyx microdon* or *Paraonyx microdon*
- = 328 Formerly included in genus *Lutra*
- = 329 Formerly included in genus *Lutra*; includes synonyms *Lutra annectens*, *Lutra enudris*, *Lutra incarum* and *Lutra platensis*
- = 330 Includes synonym *Eupleres major*
- = 331 Also referenced as *Hyaena brunnea*
- = 332 Also referenced as *Felis caracal* and *Lynx caracal*
- = 333 Formerly included in genus *Felis*
- = 334 Also referenced as *Felis pardina* or *Felis lynx pardina*
- = 335 Formerly included in genus *Panthera*
- = 336 Also referenced as *Equus asinus*

- = 337 Formerly included in species *Equus hemionus*
- = 338 Also referenced as *Equus caballus przewalskii*
- = 339 Also referenced as *Choeropsis liberiensis*
- = 340 Also referenced as *Cervus porcinus calamianensis*
- = 341 Also referenced as *Cervus porcinus kuhlii*
- = 342 Also referenced as *Cervus porcinus annamiticus*
- = 343 Also referenced as *Cervus dama mesopotamicus*
- = 344 Includes synonym *Bos frontalis*
- = 345 Includes synonym *Bos grunniens*
- = 346 Includes generic synonym *Novibos*
- = 347 Includes generic synonym *Anoa*
- = 348 Also referenced as *Damaliscus dorcas dorcas* or *Damaliscus pygargus dorcas*
  
- = 349 Formerly included in species *Naemorhedus goral*
- = 350 Also referenced as *Capricornis sumatraensis*
- = 351 Includes synonym *Oryx tao*
- = 352 Includes synonym *Ovis aries ophion*
- = 353 Formerly included as *Ovis vignei* (see also Decisions of the Conference of the Parties directed to the Parties regarding the inclusion of *Ovis vignei vignei* in Appendix I)
- = 354 Also referenced as *Rupicapra rupicapra ornata*
- = 355 Also referenced as *Pterocnemia pennata*
- = 356 Also referenced as *Sula abbotti*
- = 357 Also referenced as *Ciconia ciconia boyciana*
- = 358 Includes synonyms *Anas chlorotis* and *Anas nesiotis*
- = 359 Also referenced as *Anas platyrhynchos laysanensis*
- = 360 Probably a hybrid between *Anas platyrhynchos* and *Anas superciliosa*
- = 361 Also referenced as *Aquila heliaca adalberti*
- = 362 Also referenced as *Chondrohierax wilsonii*

- = 363 Also referenced as *Falco peregrinus babylonicus* and *Falco peregrinus pelegrinoides*
- = 364 Also referenced as *Crax mitu mitu*
- = 365a Formerly included in genus *Aburria*
- = 365b Formerly included in genus *Aburria*; also referenced as *Pipile pipile pipile*
- = 366 Formerly included in species *Crossoptilon crossoptilon*
- = 367 Formerly included in species *Polyplectron malacense*
- = 368 Includes synonym *Rheinardia nigrescens*
- = 369 Also referenced as *Tricholimnas sylvestris*
- = 370 Also referenced as *Choriotis nigriceps*
- = 371 Also referenced as *Houbaropsis bengalensis*
- = 372 Also referenced as *Amazona dufresniana rhodocorytha*
- = 373 Often traded under the incorrect designation *Ara caninde*
- = 374 Also referenced as *Cyanoramphus novaezelandiae cookii*
- = 375 Also referenced as *Opopsitta diophthalma coxeni*
- = 376 Also referenced as *Pezoporus occidentalis*
- = 377 Formerly included in species *Psephotus chrysopterygius*
- = 378 Also referenced as *Psittacula krameri echo*
- = 379 Formerly included in genus *Gallirex*; also referenced as *Tauraco porphyreolophus*
- = 380 Also referenced as *Otus gurneyi*
- = 381 Also referenced as *Ninox novaeseelandiae royana*
- = 382 Formerly included in genus *Glaucis*
- = 383 Includes generic synonym *Ptilolaemus*
- = 384 Formerly included in genus *Rhinoplax*
- = 385 Also referenced as *Pitta brachyura nympa*
- = 386 Also referenced as *Muscicapa ruecki* or *Niltava ruecki*
- = 387 Also referenced as *Dasyornis brachypterus longirostris*
- = 388 Also referenced as *Meliphaga cassidix*

- = 389 Includes generic synonym *Xanthopsar*
- = 390 Formerly included in genus *Spinus*
- = 391 Also referenced in genus *Damonia*
- = 392 Formerly included as *Kachuga tecta tecta*
- = 393 Includes generic synonyms *Nicoria* and *Geoemyda* (part)
- = 394 Also referenced as *Geochelone elephantopus*; also referenced in genus *Testudo*
- = 395 Also referenced in genus *Testudo*
- = 396 Also referenced in genus *Aspideretes*
- = 397 Formerly included in *Podocnemis* spp.
- = 398 Includes *Alligatoridae*, *Crocodylidae* and *Gavialidae*
- = 399 Also referenced as *Crocodylus mindorensis*
- = 400 Also referenced in genus *Nactus*
- = 401 Includes generic synonym *Rhoptropella*
- = 402 Formerly included in *Chamaeleo* spp.
- = 403 Includes generic synonyms *Calumna* and *Furcifer*
- = 404 Includes families *Bolyeriidae* and *Tropidophiidae* as subfamilies
- = 405 Also referenced as *Constrictor constrictor occidentalis*
- = 406 Includes synonym *Python molurus pimbura*
- = 407 Includes synonym *Sanzinia manditra*
- = 408 Includes synonym *Pseudoboa cloelia*
- = 409 Also referenced as *Hydrodynastes gigas*
- = 410 Includes synonyms *Naja atra*, *Naja kaouthia*, *Naja oxiana*, *Naja philippinensis*, *Naja samarensis*, *Naja sputatrix* and *Naja sumatrana*
- = 411 Includes generic synonym *Megalobatrachus*
- = 412 Formerly included in *Nectophrynoides* spp.
- = 413 Formerly included in *Dendrobates* spp.
- = 414 Also referenced in genus *Rana*
- = 415 *Sensu D'Abbrera*

- = 416 Includes synonyms *Pandinus africanus* and *Heterometrus roeseli*
- = 417 Includes *Aphonopelma albiceps*, *Aphonopelma pallidum* and *Brachypelmides klaasi*
- = 418 Also referenced as *Conchodromus dromas*
- = 419 Also referenced in genera *Dysnomia* and *Plagiola*
- = 420 Includes generic synonym *Proptera*
- = 421 Also referenced in genus *Carunculina*
- = 422 Also referenced as *Megalonaias nickliniana*
- = 423 Also referenced as *Cyrtonaias tampicoensis tecomatensis* and *Lampsilis tampicoensis tecomatensis*
- = 424 Includes generic synonym *Micromya*
- = 425 Includes generic synonym *Papuina*
- = 426 Includes only the family *Helioporidae* with one species *Heliopora coerulea*
- = 427 Also referenced as *Podophyllum emodi* and *Sinopodophyllum hexandrum*
- = 428 Includes generic synonyms *Neogomesia* and *Roseocactus*
- = 429 Also referenced in genus *Echinocactus*
- = 430 Also referenced in genus *Mammillaria*; includes synonym *Coryphantha densispina*
- = 431 Also referenced as *Lobeira macdougallii* and *Nopalxochia macdougallii*
- = 432 Also referenced as *Echinocereus lindsayi*
- = 433 Also referenced in genera *Cereus* and *Wilcoxia*
- = 434 Also referenced in genus *Coryphantha*; includes synonym *Escobaria nellieae*
- = 435 Also referenced in genus *Coryphantha*; includes *Escobaria leei* as a subspecies
- = 436 Includes synonym *Solisia pectinata*
- = 437 Also referenced as *Backebergia militaris*, *Cephalocereus militaris* and *Mitrocereus militaris*; includes synonym *Pachycereus chrysomallus*
- = 438 Includes *Pediocactus bradyi* ssp. *despainii* and *Pediocactus bradyi* ssp. *winkleri* and synonyms *Pediocactus despainii* and *Pediocactus winkleri*

- = 439 Also referenced in genus *Toumeyia*
- = 440 Also referenced in genera *Navajoa*, *Toumeyia* and *Utahia*; includes *Pediocactus peeblesianus* var. *fickeisenii*
- = 441 Also referenced in genera *Echinocactus* and *Utahia*
- = 442 Includes generic synonym *Encephalocarpus*
- = 443 Includes synonyms *Ancistrocactus tobuschii* and *Ferocactus tobuschii*
- = 444 Also referenced in genera *Echinomastus* and *Neolloydia*; includes synonyms *Echinomastus acunensis* and *Echinomastus krausei*
- = 445 Includes synonyms *Ferocactus glaucus*, *Sclerocactus brevispinus*, *Sclerocactus wetlandicus* and *Sclerocactus wetlandicus* ssp. *ilseae*
- = 446 Also referenced in genera *Echinocactus*, *Echinomastus* and *Neolloydia*
- = 447 Also referenced in genera *Coloradoa*, *Echinocactus*, *Ferocactus* and *Pediocactus*
- = 448 Also referenced in genera *Echinocactus*, *Mammillaria*, *Pediocactus* and *Toumeyia*
- = 449 Also referenced in genera *Echinocactus* and *Ferocactus*
- = 450 Also referenced in genus *Pediocactus*
- = 451 Includes generic synonyms *Gymnocactus*, *Normanbokea* and *Rapicactus*
- = 452 Also referenced as *Saussurea lappa*
- = 453 Also referenced as *Euphorbia decaryi* var. *capsaintemariensis*
- = 454 Includes *Euphorbia cremersii* fa. *viridifolia* and *Euphorbia cremersii* var. *rakotozafyi*
- = 455 Includes *Euphorbia cylindrifolia* ssp. *tuberifera*
- = 456 Includes *Euphorbia decaryi* vars. *ampanihyensis*, *robinsonii* and *spirosticha*
- = 457 Includes *Euphorbia moratii* vars. *ansingiensis*, *bemarahensis* and *multiflora*
- = 458 Also referenced as *Euphorbia capsaintemariensis* var. *tulearensis*
- = 459 Also referenced as *Engelhardia pterocarpa*
- = 460 Includes *Aloe compressa* var. *rugosquamosa* and *Aloe compressa* var. *schistophila*
- = 461 Includes *Aloe haworthioides* var. *aurantiaca*

- = 462 Includes *Aloe laeta* var. *maniaensis*
- = 463 Includes families Apostasiaceae and Cyripediaceae as subfamilies Apostasioideae and Cyripedioideae
- = 464 *Anacampseros australiana* and *A. kurtzii* are also referenced in genus *Grahamia*
- = 465 Formerly included in *Anacampseros* spp.
- = 466 Also referenced as *Sarracenia rubra* ssp. *alabamensis*
- = 467 Also referenced as *Sarracenia rubra* ssp. *jonesii*
- = 468 Formerly included in *Zamiaceae* spp.
- = 469 Includes synonym *Stangeria paradoxa*
- = 470 Also referenced as *Taxus baccata* ssp. *wallichiana*
- = 471 Includes synonym *Welwitschia bainesii*.

11. The symbol (°) followed by a number placed against the name of a species or higher taxon shall be interpreted as follows:

°601 A zero annual export quota has been established. All specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly

°602 Specimens of the domesticated form are not subject to the provisions of the Convention

°603 Annual export quotas for live specimens and hunting trophies are granted as follows:

Botswana:	5
Namibia:	150
Zimbabwe:	50

The trade in such specimens is subject to the provisions of Article III of the Convention.

°604 For the exclusive purpose of allowing: 1) export of hunting trophies for noncommercial purposes; 2) export of live animals to appropriate and acceptable destinations (Namibia: for non-commercial purposes only); 3) export of hides (Zimbabwe only); 4) export of leather goods and ivory carvings for non-commercial purposes (Zimbabwe only). No international trade in ivory is permitted before 18 months after the transfer to Appendix II comes into effect (i.e. 18 March 1999). Thereafter, under experimental quotas for raw ivory not exceeding 25.3 tonnes (Botswana), 13.8 tonnes (Namibia) and 20 tonnes (Zimbabwe), raw ivory may be exported to Japan subject to the conditions established in Decision of the Conference



- of the Parties regarding ivory No. 10.1. All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly
- °605 For the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and hunting trophies. All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly
- °606 For the exclusive purpose of allowing international trade in wool sheared from live vicuñas of the populations included in Appendix II (see +211) and in the stock extant at the time of the ninth meeting of the Conference of the Parties (November 1994) in Peru of 3249 kg of wool, and in cloth and items made thereof, including luxury handicrafts and knitted articles. The reverse side of the cloth must bear the logo type adopted by the range States of the species, which are signatories to the Convenio para la Conservación y Manejo de la Vicuña, and the selvages the words “VICUÑA-COUNTRY OF ORIGIN .....”, depending on the country of origin. All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly
- °607 Fossils are not subject to the provisions of the Convention
- °608 Artificially propagated specimens of the following hybrids and/or cultivars are not subject to the provisions of the Convention:  
*Hatiora x graeseri*  
*Schlumbergera x buckleyi*  
*Schlumbergera russelliana x Schlumbergera truncata*  
*Schlumbergera orssichiana x Schlumbergera truncata*  
*Schlumbergera opuntioides x Schlumbergera truncata*  
*Schlumbergera truncata (cultivars)*  
*Gymnocalycium mihanovichii (cultivars) forms lacking chlorophyll*, grafted on the following grafting stocks: *Harrisia Jusbertii*, *Hylocereus trigonus* or *Hylocereus undatus*, *Opuntia microdasys (cultivars)*.
- °609 Artificially propagated specimens of cultivars of *Euphorbia trigona* are not subject to the provisions of the Convention
- °610 Seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers are not subject to the provisions of the Convention
- °611 Artificially propagated specimens of cultivars of *Cyclamen persicum* are not subject to the provisions of the Convention. However, the exemption does not apply to such specimens traded as dormant tubers.

12. In accordance with Article I, paragraph b, sub-paragraph (iii), of the Convention, the symbol (#) followed by a number placed against the name of a species or higher taxon included in Appendix II designates parts or derivatives which are specified in relation thereto for the purposes of the Convention as follows:

- #1 Designates all parts and derivatives, except:
  - (a) seeds, spores and pollen (including pollinia);
  - (b) seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers; and
  - (c) cut flowers of artificially propagated plants.
  
- #2 Designates all parts and derivatives, except:
  - (a) seeds and pollen;
  - (b) seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;
  - (c) cut flowers of artificially propagated plants; and
  - (d) chemical derivatives.
  
- #3 Designates whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas and confectionery.
  
- #4 Designates all parts and derivatives, except:
  - (a) seeds, except those from Mexican cacti originating in Mexico, and pollen;
  - (b) seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;
  - (c) cut flowers of artificially propagated plants;
  - (d) fruits and parts and derivatives thereof of naturalized or artificially propagated plants; and
  - (e) separate stem joints (pads) and parts and derivatives thereof of naturalized or artificially propagated plants of the genus *Opuntia* subgenus *Opuntia*.
  
- #5 Designates logs, sawn wood and veneer sheets
  
- #6 Designates logs, wood-chips and unprocessed broken material.
  
- #7 Designates all parts and derivatives, except:
  - (a) seeds and pollen (including pollinia);
  - (b) seedling or tissue cultures obtained in vitro, in solid or liquid media,
  - (c) transported in sterile containers; cut flowers of artificially propagated plants; and
  - (d) fruits and parts and derivatives thereof of artificially propagated plants of the genus *Vanilla*.
  
- #8 Designates all parts and derivatives, except:
  - (a) seeds and pollen;
  - (b) seedling or tissue cultures obtained in vitro, in solid or liquid media,
  - (c) transported in sterile containers;
  - (d) cut flowers of artificially propagated plants; and
  - (e) finished pharmaceutical products.

13. As none of the species or higher taxa of FLORA included in Appendix I is annotated to the effect that its hybrids shall be treated in accordance with the provisions of Article III of the Convention, this means that artificially propagated hybrids produced from one or more of these species or taxa may be traded with a certificate of artificial propagation, and that seeds and pollen (including pollinia), cut flowers, seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers of these hybrids are not subject to the provisions of the Convention.

	I	II
FAUNA		
CHORDATA		
MAMMALIA		
MONOTREMATA		
Tachyglossidae	Zaglossus spp.	
DASYUROMORPHIA		
Dasyuridae	Sminthopsis longicaudata Sminthopsis psammophila	
Thylacinidae	Thylacinus cynocephalus p.e.	
PERAMELEMORPHIA		
	Peramelidae Chaeropus ecaudatus p.e. Macrotis lagotis Macrotis leucura Perameles bougainville	
DIPROTODONTIA		
Phalangeridae		Phalanger orientalis Spilocuscus maculatus =301
Vombatidae	Lasiorhinus krefftii	
Macropodidae	Lagorchestes hirsutus Lagostrophus fasciatus Onychogalea fraenata Onychogalea lunata	Dendrolagus inustus Dendrolagus ursinus
Potoroidae	Bettongia spp. Caloprymnus campestris p.e.	
CHIROPTERA		
Pteropodidae	Acerodon jubatus Acerodon lucifer p.e.	Acerodon spp. *  Pteropus spp. *

Pteropus insularis  
Pteropus mariannus  
Pteropus molossinus  
Pteropus phaeocephalus  
Pteropus pilosus  
Pteropus samoensis  
Pteropus tonganus

PRIMATES

PRIMATES spp. \* =302

Lemuridae	Lemuridae spp.
Megaladapidae	Megaladapidae spp. =303
Cheirogaleidae	Cheirogaleidae spp.
Indridae	Indridae spp.
Daubentoniidae	Daubentonia madagascariensis
Callithricidae	Callimico goeldii
	Callithrix aurita =304
	Callithrix flaviceps =304
	Leontopithecus spp. =305
Callithricidae	Saguinus bicolor
	Saguinus geoffroyi =306
	Saguinus leucopus
	Saguinus oedipus
Cebidae	Alouatta cohibensis =307
	Alouatta palliata
	Alouatta pigra =308
	Ateles geoffroyi frontatus
	Ateles geoffroyi panamensis
	Brachyteles arachnoides
	Cacajao spp.
	Chiropotes albinasus
	Lagothrix flavicauda
	Saimiri oerstedii
Cercopithecidae	Cercocebus galeritus galeritus
	Cercopithecus diana =309
	Macaca silenus
	Mandrillus leucophaeus =310
	Mandrillus sphinx =310
	Nasalis concolor =311
	Nasalis larvatus
	Presbytis potenziანი
	Procolobus pennantii kirkii =312
	Procolobus rufomitratus =313
	Pygathrix spp. =314
	Semnopithecus entellus =315
	Trachypithecus geei =316
	Trachypithecus pileatus =317
Hylobatidae	Hylobatidae spp.
Hominidae	Gorilla gorilla
	Pan spp.
	Pongo pygmaeus

XENARTHRA

Myrmecophagidae		Myrmecophaga tridactyla
Bradypodidae		Bradypus variegatus =318
Dasypodidae		Chaetophractus nationi
	601	
	Priodontes maximus =319	
PHOLIDOTA		
Manidae		Manis spp.
LAGOMORPHA		
Leporidae	Caprolagus hispidus Romerolagus diazi	
RODENTIA		
Sciuridae	Cynomys mexicanus	Ratufa spp.
Muridae	Leporillus conditor Pseudomys praeconis Xeromys myoides Zyzomys pedunculatus	
Chinchillidae	Chinchilla spp. °602	
CETACEA		CETACEA spp. *
Platanistidae	Lipotes vexillifer Platanista spp.	
Ziphiidae	Berardius spp. Hyperoodon spp.	
Physeteridae	Physeter catodon =320	
Delphinidae	Sotalia spp. Sousa spp.	
Phocoenidae	Neophocaena phocaenoides Phocoena sinus	
Eschrichtiidae	Eschrichtius robustus =321	
Balaenopteridae	Balaenoptera acutorostrata ** -101 Balaenoptera borealis Balaenoptera edeni Balaenoptera musculus Balaenoptera physalus Megaptera novaeangliae	
Balaenidae	Balaena mysticetus Eubalaena spp. =322	
Neobalaenidae	Caperea marginata	
CARNIVORA		
Canidae	Canis lupus ** +201 Canis lupus * -102	Cerdocyon thous =323 Chrysocyon brachyurus Cuon alpinus Pseudalopex culpaeus =323 Pseudalopex griseus =324 Pseudalopex gymnocereus =323

	Speothos venaticus	Vulpes cana Vulpes zerda =325
Ursidae	Ursidae spp. * Ailuropoda melanoleuca Ailurus fulgens Helarctos malayanus Melursus ursinus Tremarctos ornatus Ursus arctos ** +202 Ursus arctos isabellinus Ursus thibetanus =326	
Mustelidae Lutrinae	Aonyx congicus ** +203 =327 Enhydra lutris nereis Lontra felina =328 Lontra longicaudis =329 Lontra provocax =328 Lutra lutra Pteronura brasiliensis	Lutrinae spp. *
Mephitinae		Conepatus humboldti
Viverridae	Mustelinae Mustela nigripes	Cryptoprocta ferox Cynogale bennettii Eupleres goudotii =330 Fossa fossana Hemigalus derbyanus Prionodon linsang
	Prionodon pardicolor	
Hyaenidae Felidae	Acinonyx jubatus °603 Caracal caracal ** +204 =332 Catopuma temminckii =333 Felis nigripes Herpailurus yaguarondi ** +205 =333 Leopardus pardalis =333 Leopardus tigrinus =333 Leopardus wiedii =333 Lynx pardinus =334 Neofelis nebulosa Oncifelis geoffroyi =333 Oreailurus jacobita =333 Panthera leo persica Panthera onca Panthera pardus Panthera tigris Pardofelis marmorata =333 Prionailurus bengalensis bengalensis ** +206 =333 Prionailurus planiceps =333	Parahyaena brunnea =331 Felidae spp. * °602

	Prionailurus rubiginosus ** +207 =333 Puma concolor coryi =333 Puma concolor costaricensis =333 Puma concolor couguar =333 Uncia uncia =335	
Otariidae		Arctocephalus spp. *
Phocidae	Arctocephalus townsendi Monachus spp.	Mirounga leonina
PROBOSCIDEA		
Elephantidae	Elephas maximus	
SIRENIA		
Dugongidae	Loxodonta africana ** -103 Dugong dugon ** -104	Loxodonta africana * +208 °604 Dugong dugon * +209
Trichechidae	Trichechus inunguis Trichechus manatus	
		Trichechus senegalensis
PERISSODACTYLA		
Equidae	Equus africanus =336 Equus grevyi Equus hemionus hemionus Equus onager khur =337 Equus przewalskii =338 Equus zebra zebra	Equus hemionus * Equus kiang =337 Equus onager * =337 Equus zebra hartmannae
Tapiridae	Tapiridae spp. **	Tapirus terrestris
Rhinocerotidae	Rhinocerotidae spp. **	Ceratotherium simum simum * +210 %605
ARTIODACTYLA		
Suidae	Babyrousa babyrussa Sus salvanius	
Tayassuidae		Tayassuidae spp. * -105
Hippopotamidae	Catagonus wagneri	Hexaprotodon liberiensis = 339
Camelidae		Hippopotamus amphibius Lama guanicoe
Moschidae	Vicugna vicugna ** -106 Moschus spp. ** +212	Vicugna vicugna* +211 °606 Moschus spp. * -107
Cervidae	Axis calamianensis =340 Axis kuhlii =341	

Cervus	Axis porcinus annamiticus =342 Blastocerus dichotomus Cervus duvaucelii Cervus elaphus bactrianus Cervus elaphus hanglu Cervus eldii Dama mesopotamica =343 Hippocamelus spp. Megamuntiacus vuquanghensis Muntiacus crinifrons Ozotoceros bezoarticus	
		Pudu mephistophiles
Antilocapridae Bovidae	Pudu puda Antilocapra americana +213 Addax nasomaculatus	
		Ammotragus lervia Bison bison athabascae
	Bos gaurus =344 Bos mutus =345 °602 Bos sauveli =346 Bubalus depressicornis =347 Bubalus mindorensis =347 Bubalus quarlesi =347	
	Capra falconeri	Budorcas taxicolor
	Cephalophus jentinki	Cephalophus dorsalis
	Gazella dama Hippotragus niger variani	Cephalophus monticola Cephalophus ogilbyi Cephalophus silvicultor Cephalophus zebra Damaliscus pygargus pygargus =348
	Naemorhedus baileyi =349 Naemorhedus caudatus =349 Naemorhedus goral Naemorhedus sumatraensis =350 Oryx dammah =351 Oryx leucoryx	Kobus leche
	Ovis ammon hodgsonii Ovis ammon nigrimontana	Ovis ammon *
		Ovis canadensis +213



	Ovis orientalis ophion =352	
	Ovis vignei vignei =353	
	Pantholops hodgsonii	
	Pseudoryx nghetinhensis	
	Rupicapra pyrenaica ornata =354	
		Saiga tatarica
AVES		
STRUTHIONIFORMES		
Struthionidae	Struthio camelus +214	
RHEIFORMES		
Rheidae		Rhea americana
	Rhea pennata =355	
TINAMIFORMES		
Tinamidae	Tinamus solitarius	
SPHENISCIFORMES		
Spheniscidae		Spheniscus demersus
	Spheniscus humboldti	
PODICIPEDIFORMES		
Podicipedidae	Podilymbus gigas	
PROCELLARIIFORMES		
Diomedidae	Diomedea albatrus	
PELECANIFORMES		
Pelecanidae	Pelecanus crispus	
Sulidae	Papasula abbotti =356	
Fregatidae	Fregata andrewsi	
CICONIIFORMES		
Balaenicipitidae		Balaeniceps rex
Ciconiidae	Ciconia boyciana =357	
	Jabiru mycteria	Ciconia nigra
	Mycteria cinerea	
Threskiornithidae		Eudocimus ruber
	Geronticus eremita	Geronticus calvus
	Nipponia nippon	
Phoenicopteridae		Platalea leucorodia
		Phoenicopteridae spp.
ANSERIFORMES		
Anatidae	Anas aucklandica =358	

	Anas bernieri	
	Anas formosa	
	Anas laysanensis =359	
	Anas oustaleti =360	
	Branta canadensis leucopareia	
	Branta ruficollis	
	Branta sandvicensis	
	Cairina scutulata	
	Coscoroba coscoroba	
	Cygnus melanocorypha	
	Dendrocygna arborea	
	Oxyura leucocephala	
	Rhodonessa caryophyllacea p.e.	
	Sarkidiornis melanotos	
	FALCONIFORMES	
	FALCONIFORMES spp. * -108	
Cathartidae	Gymnogyps californianus	
	Vultur gryphus	
Accipitridae	Aquila adalberti =361	
	Aquila heliaca	
	Chondrohierax uncinatus wilsonii =362	
	Haliaeetus albicilla	
	Haliaeetus leucocephalus	
	Harpia harpyja	
	Pithecophaga jefferyi	
Falconidae	Falco araea	
	Falco jugger	
	Falco newtoni ** +215	
	Falco pelegrinoides =363	
	Falco peregrinus	
	Falco punctatus	
	Falco rusticolus	
GALLIFORMES		
Megapodiidae	Macrocephalon maleo	
Cracidae	Crax blumenbachii	
	Mitu mitu =364	
	Oreophasis derbianus	
	Penelope albipennis	
	Pipile jacutinga =365a	
	Pipile pipile =365b	
Phasianidae	Catreus wallichii	Argusianus argus
	Colinus virginianus ridgwayi	
	Crossoptilon crossoptilon	
	Crossoptilon harmani =366	
	Crossoptilon mantchuricum	

	Lophophorus impejanus	Gallus sonneratii
	Lophophorus lhuysii	Ithaginis cruentus
	Lophophorus sclateri	
	Lophura edwardsi	
	Lophura imperialis	
	Lophura swinhoii	
		Pavo muticus
		Polyplectron bicalcaratum
	Polyplectron emphanum	
		Polyplectron germaini
		Polyplectron malacense
		Polyplectron schleiermachersi =367
	Rheinardia ocellata =368	
	Syrmaticus ellioti	
	Syrmaticus humiae	
	Syrmaticus mikado	
	Tetraogallus caspius	
	Tetraogallus tibetanus	
	Tragopan blythii	
	Tragopan caboti	
	Tragopan melanocephalus	
	Tympanuchus cupido attwateri	
GRUIFORMES		
Gruidae	Gruidae spp. *	
	Grus americana	
	Grus canadensis nesiotes	
	Grus canadensis pulla	
	Grus japonensis	
	Grus leucogeranus	
	Grus monacha	
	Grus nigricollis	
	Grus vipio	
Rallidae	Gallirallus sylvestris =369	
Rhynochetidae	Rhynochetos jubatus	
Otididae		Otididae spp. *
	Ardeotis nigriceps =370	
	Chlamydotis undulata	
	Eupodotis bengalensis =371	
CHARADRIIFORMES		
Scolopacidae	Numenius borealis	
	Numenius tenuirostris	
	Tringa guttifer	
Laridae	Larus relictus	

COLUMBIFORMES

Columbidae

Caloenas nicobarica  
Ducula mindorensis

Gallicolumba luzonica

Goura spp.

PSITTACIFORMES spp.

PSITTACIFORMES

\*-109

Psittacidae

Amazona arausiaca  
Amazona barbadensis  
Amazona brasiliensis  
Amazona guildingii  
Amazona imperialis  
Amazona leucocephala  
Amazona pretrei  
Amazona rhodocorytha =372  
Amazona tucumana  
Amazona versicolor  
Amazona vinacea  
Amazona viridigenalis  
Amazona vittata  
Anodorhynchus spp.  
Ara ambigua  
Ara glaucogularis =373  
Ara macao  
Ara maracana  
Ara militaris  
Ara rubrogenys  
Aratinga guarouba  
Cacatua goffini  
Cacatua haematuropygia  
Cacatua moluccensis  
Cyanopsitta spixii  
Cyanoramphus auriceps forbesi  
Cyanoramphus cookii =374  
Cyanoramphus novaezelandiae  
Cyclopsitta diophthalma coxeni  
=375  
Eos histrio  
Geopsittacus occidentalis p.e.  
=376  
Neophema chrysogaster  
Ognorhynchus icterotis  
Pezoporus wallicus  
Pionopsitta pileata  
Probosciger aterrimus  
Psephotus chrysopterygius  
Psephotus dissimilis =377  
Psephotus pulcherrimus p.e.  
Psittacula echo =378  
Pyrrhura cruentata  
Rhynchopsitta spp.  
Strigops habroptilus  
Vini ultramarina

CUCULIFORMES

Musophagidae

Musophaga porphyreolopha =379

Tauraco spp.

STRIGIFORMES

Tytonidae  
Strigidae

Tyto soumagnei  
Athene blewitti

STRIGIFORMES

spp. \*

Mimizuku gurneyi =380  
Ninox novaeseelandiae undulata =381  
Ninox squamipila natalis

APODIFORMES

Trochilidae

Trochilidae spp. \*

Ramphodon dohrnii =382

TROGONIFORMES

Trogonidae

Pharomachrus mocinno

CORACIIFORMES

Bucerotidae

Aceros nipalensis

Aceros spp. \*

Aceros subruficollis

Anorrhinus spp. =383

Anthracoceros spp.

Buceros spp. \*

Buceros bicornis  
Buceros vigil =384

PICIFORMES

Ramphastidae

Penelopides spp.

Pteroglossus aracari  
Pteroglossus viridis  
Ramphastos sulfuratus  
Ramphastos toco  
Ramphastos tucanus  
Ramphastos vitellinus

Picidae

Campephilus imperialis  
Dryocopus javensis richardsi

PASSERIFORMES

Cotingidae

Cotinga maculata

Rupicola spp.

Pittidae

Xipholena atropurpurea

Pitta guajana

Pitta gurneyi  
Pitta kochi

Atrichornithidae	Atrichornis clamosus	Pitta nympa =385
Hirundinidae	Pseudochelidon sirintarae	
Pycnonotidae		Pycnonotus zeylanicus
Muscicapidae		Cyornis ruckii =386
	Dasyornis broadbenti litoralis p.e.	
	Dasyornis longirostris =387	
		Leiothrix argentaurea
		Leiothrix lutea
		Liocichla omeiensis
	Picathartes gymnocephalus	
	Picathartes oreas	
Zosteropidae	Zosterops albogularis	
Meliphagidae	Lichenostomus melanops cassidix =388	
Emberizidae		Gubernatrix cristata
		Paroaria capitata
		Paroaria coronata
		Tangara fatuosa
Icteridae	Agelaius flavus =389	
Fringillidae	Carduelis cucullata =390	
		Carduelis yarrellii =390
Estrildidae		Amandava formosa
		Padda oryzivora
		Poephila cincta cincta
Sturnidae		Gracula religiosa
		Leucopsar rothschildi
Paradisaeidae		Paradisaeidae spp.

**REPTILIA**

**TESTUDINATA**

Dermatemydidae

Emydidae

Batagur baska

Clemmys muhlenbergi

Geoclemys hamiltonii =391

Kachuga tecta =392

Melanochelys tricarinata =393

Morenia ocellata

Dermatemys mawii

Callagur borneoensis

Clemmys insculpta

Terrapene spp. \*

	Terrapene coahuila	
Testudinidae		Testudinidae pp.
	Geochelone nigra =394 Geochelone radiata =395 Geochelone yniphora =395 Gopherus flavomarginatus Psammobates geometricus =395 Testudo kleinmanni	
Cheloniidae	Cheloniidae spp.	
Dermochelyidae	Dermochelys coriacea	
Trionychidae	Trionyx ater =396 Trionyx gangeticus =396 Trionyx hurum =396 Trionyx nigricans =396	Lissemys punctata
Pelomedusidae		Erymnochelys madagascariensis =397 Peltocephalus dumeriliana =397 Podocnemis spp.
Chelidae	Pseudemydura umbrina	
CROCODYLIA		CROCODYLIA spp. * =398
Alligatoridae	Alligator sinensis Caiman crocodilus apaporiensis Caiman latirostris ** -110 Melanosuchus niger ** -111	
Crocodylidae	Crocodylus acutus Crocodylus cataphractus Crocodylus intermedius Crocodylus moreletii Crocodylus niloticus ** -112 Crocodylus novaeguineae mindorensis =399 Crocodylus palustris Crocodylus porosus ** -113 Crocodylus rhombifer Crocodylus siamensis Osteolaemus tetraspis Tomistoma schlegelii	
Gavialidae	Gavialis gangeticus	
RHYNCHOCEPHALIA		
Sphenodontidae	Sphenodon spp.	
SAURIA		

Gekkonidae		Cyrtodactylus =400	serpensinsula
Agamidae		Phelsuma spp. =401 Uromastyx spp.	
Chamaeleonidae		Bradypodion spp. =402	
Iguanidae	Brachylophus spp.	Chamaeleo spp. =403 Amblyrhynchus cristatus	
	Cyclura spp.	Conolophus spp.	
	Sauromalus varius	Iguana spp. Phrynosoma coronatum	
Lacertidae	Gallotia simonyi	Podarcis lilfordi Podarcis pityusensis	
Cordylidae		Cordylus spp.	
Pseudocordylus spp.			
Teiidae		Cnemidophorus hyperythrus Crocodylurus lacertinus Dracaena spp. Tupinambis spp.	
Scincidae		Corucia zebrata	
Xenosauridae		Shinisaurus crocodylurus	
Helodermatidae		Heloderma spp.	
	Varanidae Varanus spp. *		
	Varanus bengalensis		
	Varanus flavescens		
	Varanus griseus		
	Varanus komodoensis		
SERPENTES			
Boidae		Boidae spp. * =404	
Acrantophis spp.			
	Boa constrictor occidentalis =405		
	Bolyeria multocarinata		
	Casarea dussumieri		
	Epicrates inornatus		
	Epicrates monensis		
	Epicrates subflavus		
	Python molurus molurus =406		
	Sanzinia madagascariensis =407		
Colubridae		Clelia clelia =408	



		Cyclagras gigas =409 Elachistodon westermanni Ptyas mucosus
Elapidae		Hoplocephalus bungaroides Naja naja =410 Ophiophagus hannah
Viperidae	Vipera ursinii +216	
		Vipera wagneri
AMPHIBIA		
CAUDATA		
Ambystomidae		Ambystoma dumerilii Ambystoma mexicanum
Cryptobranchidae	Andrias spp. =411	
ANURA		
Bufo	Altiphrynoides spp. =412 Atelopus varius zeteki Bufo periglenes  Bufo retiformis Bufo superciliaris Nectophrynoides spp. Nimbaphrynoides spp. =412 Spinophrynoides spp. =412	
Myobatrachidae		Rheobatrachus spp. Allobates spp. =413 Dendrobates spp. Epipedobates spp. =413 Minyobates spp. =413 Phobobates spp. =413 Phyllobates spp.
Dendrobatidae		
Ranidae		Mantella aurantiaca Euphlyctis hexadactylus =414 Hoplobatrachus tigerinus =414
Microhylidae		Dyscophus antongilii
PISCES		
CERATODONTIFORMES		
Ceratodontidae	Neoceratodus forsteri	
COELACANTHIFORMES		
Latimeriidae	Latimeria chalumnae	

ACIPENSERI

		FORMES 1 1 ACIPENSERIFORMES spp.*
Acipenseridae	Acipenser brevirostrum	
	Acipenser sturio	Acipenser oxyrhynchus
Polyodontidae		Polyodon spathula
OSTEOGLOSSIFORMES		
Osteoglossidae	Scleropages formosus	Arapaima gigas
CYPRINIFORMES		
Cyprinidae		Caecobarbus geertsi
	Probarbus jullieni	
	Catostomidae Chasmistes cujus	
SILURIFORMES		
Pangasiidae	Pangasianodon gigas	
PERCIFORMES		
Sciaenidae	Cynoscion macdonaldi	
ARTHROPODA		
INSECTA		
LEPIDOPTERA		
Papilionidae		Bhutanitis spp. Ornithoptera spp.* =415
	Ornithoptera alexandrae	
	Papilio chikae	
	Papilio homerus	
	Papilio hospiton	
		Parnassius apollo Teinopalpus spp. Trogonoptera spp. =415 Troides spp. =415
ARACHNIDA		
SCORPIONES		
Scorpionidae		Pandinus dictator Pandinus gambiensis
		Pandinus imperator =416
ARANEAE		
Theraphosidae		Brachypelma spp. =417
ANNELIDA		
HIRUDINOIDEA		
ARHYNCHOBDELLAE		
Hirudinidae		Hirudo medicinalis
MOLLUSCA		
BIVALVIA		
VENEROIDA		

Tridacnidae

Tridacnidae spp.

UNIONOIDA

Unionidae *Conradilla caelata*

*Cyprogenia alberti*  
*Dromus dromas* =418  
*Epioblasma curtisi* =419  
*Epioblasma florentina* =419  
*Epioblasma sampsoni* =419  
*Epioblasma sulcata perobliqua* =419  
*Epioblasma torulosa gubernaculum* =419

*Epioblasma torulosa rangiana* =419  
*Epioblasma torulosa torulosa* =419  
*Epioblasma turgidula* =419  
*Epioblasma walkeri* =419  
*Fusconaia cuneolus*  
*Fusconaia edgariana*  
*Lampsilis higginsii*  
*Lampsilis orbiculata orbiculata*  
*Lampsilis satur*  
*Lampsilis virescens*  
*Plethobasus cicatricosus*  
*Plethobasus cooperianus*

*Pleurobema clava*  
*Pleurobema plenum*  
*Potamilus capax* =420  
*Quadrula intermedia*  
*Quadrula sparsa*  
*Toxoplasma cylindrella* =421  
*Unio nickliniana* =422  
*Unio tampicoensis tecomatensis*  
=423  
*Villosa trabalis* =424

GASTROPODA

STYLOMMATOPHORA

Achatinellidae

Camaenidae

*Achatinella* spp.

*Papustyla*  
*pulcherrima* =425

MESOGASTROPODA

Strombidae

CNIDARIA

*Strombus gigas*

ANTHOZOA

COENOTHECALIA

COENOTHECALIA  
spp. =426 °607

STOLONIFERA

Tubiporidae

Tubiporidae spp.  
°607

ANTIPATHARIA

SCLERACTINIA

ANTIPATHARIA spp.  
SCLERACTINIA spp.

		° 607
HYDROZOA		
MILLEPORINA		
Milleporidae		Milleporidae spp. °607
STYLASTERINA		
Stylasteridae		Stylasteridae spp. °607
FLORA		
AGAVACEAE	Agave arizonica Agave parviflora  Nolina interrata	Agave victoriae-reginae #1
AMARYLLIDACEAE		Galanthus spp. #1 Sternbergia spp. #1
APOCYNACEAE	Pachypodium ambongense Pachypodium baronii Pachypodium decaryi Rauvolfia serpentina #2	Pachypodium spp. * #1
ARALIACEAE		Panax quinquefolius #3
ARAUCARIACEAE	Araucaria araucana ** +217	Araucaria araucana * -114 #1
ASCLEPIADACEAE		Ceropegia spp. #1 Frerea indica #1
BERBERIDACEAE		Podophyllum hexandrum =427 #2
BROMELIACEAE		Tillandsia harrisii #1 Tillandsia kammii #1 Tillandsia kautskyi #1 Tillandsia mauryana #1 Tillandsia sprengeliana #1 Tillandsia sucrei #1 Tillandsia xerographica #1
BYBLIDACEAE		Byblis spp. #1
CACTACEAE		CACTACEAE spp. * %608 #4
CARYOCARACEAE		Caryocar costaricense #1
CEPHALOTACEAE		Cephalotus follicularis #1
COMPOSITAE		Saussurea costus =452
(ASTERACEAE)		
CRASSULACEAE		Dudleya stolonifera Dudleya traskiae
CUPRESSACEAE		Fitzroya cupressoides  Pilgerodendron uviferum

CYATHEACEAE		CYATHEACEAE spp. #1
CYCADACEAE		CYCADACEAE spp. * #1
DIAPENSIACEAE	Cycas beddomei	Shortia galacifolia #1
DICKSONIACEAE		DICKSONIACEAE spp. #1
DIDIEREACEAE		DIDIEREACEAE spp. #1
DIOSCOREACEAE		Dioscorea deltoidea #1
DROSERACEAE		Dionaea muscipula #1
ERICACEAE		Kalmia cuneata #1
EUPHORBIACEAE		Euphorbia spp. * -115 °609 #1 Euphorbia ambovombensis Euphorbia capsaintemariensis =453 Euphorbia cremersii =454 Euphorbia cylindrifolia =455 Euphorbia decaryi =456 Euphorbia francoisii Euphorbia moratii =457 Euphorbia parvicynthophora Euphorbia quartziticola Euphorbia tulearensis =458
FOUQUIERIACEAE	Fouquieria columnaris #1 Fouquieria fasciculata Fouquieria purpusii	
JUGLANDACEAE	Oreomunnea pterocarpa =459 #1	
LEGUMINOSAE	Dalbergia nigra	
(FABACEAE)		Pericopsis elata #5 Platymiscium pleiostachyum #1 Pterocarpus santalinus #6
LILIACEAE	Aloe spp. * -116 #1 Aloe albida Aloe albiflora Aloe alfredii Aloe bakeri Aloe bellatula Aloe calcairophila Aloe compressa =460 Aloe delphinensis Aloe descoingsii	

	Aloe fragilis	
	Aloe haworthioides =461	
	Aloe helenae	
	Aloe laeta =462	
	Aloe parallelifolia	
	Aloe parvula	
	Aloe pillansii	
	Aloe polyphylla	
	Aloe rauhii	
	Aloe suzannae	
	Aloe thorncroftii	
	Aloe versicolor	
	Aloe vossii	
MELIACEAE	Swietenia humilis #1	
	Swietenia mahagoni #5	
NEPENTHACEAE		Nepenthes spp. * #1
		Nepenthes khasiana
ORCHIDACEAE	Nepenthes rajah	ORCHIDACEAE spp. *=463#7
	Cattleya trianaei °610	
	Dendrobium cruentum °610	
	Laelia jongheana °610	
	Laelia lobata °610	
	Paphiopedilum spp. °610	
	Peristeria elata °610	
	Phragmipedium spp. °610	
	Renanthera imschootiana °610	
	Vanda coerulea °610	
PALMAE (ARECACEAE)		Chrysalidocarpus decipiens #1
PINACEAE	Abies guatemalensis	Neodopsis decaryi #1
PODOCARPACEAE	Podocarpus parlatorei	
PORTULACACEAE		Anacampseros spp. =464 #1
		Avonia spp. =465 #1
		Lewisia cotyledon #1
		Lewisia maguirei #1
		Lewisia serrata #1
PRIMULACEAE	Cyclamen spp. %611 #1	
PROTEACEAE		Orothamnus  zeyheri #1
		Protea odorata #1
RANUNCULACEAE		Hydrastis canadensis #3
ROSACEAE		Prunus africana

RUBIACEAE	Balmea stormiae	#1
SARRACENIACEAE	Sarracenia spp. * #1 Sarracenia alabamensis ssp. alabamensis =466 Sarracenia jonesii =467 Sarracenia oreophila	Darlingtonia californica #1
SCROPHULARIACEAE		Picrorhiza kurrooa #3
STANGERIACEAE	Stangeria eriopus =469	Bowenia spp. =468 #1
TAXACEAE		Taxus wallichiana =470 #8
THYMELEACEAE (AQUILARIACEAE)		Aquilaria malaccensis #1
VALERIANACEAE		Nardostachys grandiflora #3
WELWITSCHIACEAE		Welwitschia mirabilis =471 #1
ZAMIACEAE	Ceratozamia spp. Chigua spp. Encephalartos spp. Microcycas calocoma	ZAMIACEAE spp. * #1
ZINGIBERACEAE		Hedychium philippinense #1
ZYGOPHYLLACEAE		Guaiacum officinale #1  Guaiacum sanctum #1

**APPENDIX III  
ANIMAL SPECIES**

Common Name	Scientific Name	Country
	MAMMALS Order: CHIROPTERA Family: PHYLLOSTOMATIDAE	
White-lined bat	Vampyros lineatus	Uruguay
	Order: EDENTATA Family: MYRMECOPHAGIDAE	
Tamandua	Tamandua tetradactyla	Guatemala
	Family: CHOLOEPIDAE	
Hoffman's two-toed sloth	Choeloeopus hoffmanni	Costa Rica
	Family: DASYPIDIDAE	
Northern naked-tailed armadillo	Cabassous centralis	Costa Rica
Uruguay naked-tailed armadillo	Cabassous tatouay	Uruguay
	Order: PHOLIDOTA Family: MANIDAE	
Giant pangolin	Manis gigantea	Ghana
Long-tailed pangolin	Manis tetradactyla	Ghana
Tree pangolin	Manis tricuspis	Ghana
	Order: RODENTIA Family: SCIURIDAE	
Temminck's giant squirrel	Epixerus ebii	Ghana
Long-tailed marmot	Marmota caudata	India
Himalayan marmot	Marmota himalayana	India
Deppe's squirrel	Sciurus deppei	Costa Rica
	Family: ANOMALURIDAE	
Beecroft's flying squirrel	Anomalurus beecrofti	Ghana
Lord Derby's flying squirrel	Anomalurus derbianus	Ghana
Pel's flying squirrel	Anomalurus peli	Ghana
Pygmy scaly-tailed squirrel	Idiurus macrotis	Ghana
	Family: HYSTRICIDAE	
African porcupine	Hystrix cristata	Ghana
	Family: ERETHIZONTIDAE	
Mexican tree porcupine	Sphiggurus mexicanus	Honduras
Spiny tree porcupine	Sphiggurus spinosus	Uruguay
	Family: AGOUTIDAE	
Paca	Agouti paca	Honduras
	Family: DASYPROCTIDAE	
Agouti	Dasyprocta punctata	Honduras



Order: CARNIVORA

Family: CANIDAE

Golden jackal	<i>Canis aureus</i>	India
Bengal fox	<i>Vulpes bengalensis</i>	India
Red fox	<i>Vulpes vulpes griffithi</i>	India
Red fox	<i>Vulpes vulpes Montana</i>	India
Indian fox	<i>Vulpes vulpes pusilla</i>	India

Family: PROCYONIDAE

Bushy-tailed olingo	<i>Bassaricyon gabbii</i>	Costa Rica
Central American cacomistle	<i>Bassaricyon sumichrasti</i>	Costa Rica
Coati	<i>Nasua nasua</i>	Honduras
South Brazilian coati	<i>Nasua nasua solitaria</i>	Uruguay
Kinkajou	<i>Potos flavus</i>	Honduras

Family: MUSTELIDAE

Grey-headed tayra	<i>Eira barbara</i>	Honduras
Greater grison	<i>Galictis vittata</i>	Costa Rica
Yellow-throated marten	<i>Martes flavigula</i>	India
Central Asian stone marten	<i>Martes foina intermedia</i>	India
Honeybadger	<i>Mellivora capensis</i>	Ghana Botswana
Mountain weasel	<i>Mustela altaica</i>	India
Stoat	<i>Mustela erminea</i>	India
Yellow-bellied weasel	<i>Mustela kathiah</i>	India
Siberian weasel	<i>Mustela sibirica</i>	India

Family: VIVERRIDAE

Binturong	<i>Arctictis binturong</i>	India
African civet	<i>Civettictis civetta</i>	Botswana
Masked palm civet	<i>Paguma larvata</i>	India
Common palm civet	<i>Paradoxurus hermaphroditus</i>	India
Jerdon's palm civet	<i>Paradoxurus jerdoni</i>	India
Large-spotted civet	<i>Viverra megaspila</i>	India
Large Indian civet	<i>Viverra zibetha</i>	India
Small Indian civet	<i>Viverricula indica</i>	India

Family: HERPESTIDAE

Small Indian mongoose	<i>Herpestes auropunctatus</i>	India
Indian grey mongoose	<i>Herpestes edwardsi</i>	India
Indian brown mongoose	<i>Herpestes fuscus</i>	India
Ruddy mongoose	<i>Herpestes smithii</i>	India
Crab-eating mongoose	<i>Herpestes urva</i>	India
Stripe-necked mongoose	<i>Herpestes vitticollis</i>	India

Family: PROTELIDAE

Aardwolf	<i>Proteles cristatus</i>	Botswana
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Order: PINNIPEDIA

Family: ODOBENIDAE

Walrus	<i>Odobenus rosmarus</i>	Canada
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Order: ARTIODACTYLA

	Family: HIPPOPOTAMIDAE	
Hippopotamus	Hippopotamus amphibius	Ghana
	Family: TRAGULIDAE	
Water chevrotain	Hyemoschus aquaticus	Ghana
	Family: CERVIDAE	
Barbary deer	Cervus elaphus barbarus	Tunisia
Guatemalan red brocket	Mazama americana cerasina	Guatemala
Guatemalan white-tailed deer	Odocoileus virginianus mayensis	Guatemala
	Family: BOVIDAE	
Blackbuck	Antilope cervicapra	Nepal
Bongo	Boocerus eurycerus	Ghana
Water buffalo	Bubalus arnee	Nepal
Topi	Damaliscus lunatus	Ghana
Edmi gazelle	Gazella cuvieri	Tunisia
Dorcas gazelle	Gazella dorcas	Tunisia
Sand gazelle	Gazella leptoceros	Tunisia
Four-horned antelope	Tetracerus quadricornis	Nepal
Sitatunga	Tragelaphus spekei	Ghana



		Costa Rica Guatemala Honduras
Plain chachalaca	<i>Ortalis vetula</i>	Guatemala Honduras
Crested guan	<i>Penelope purpurascens</i>	Honduras
Highland guan	<i>Penelope nigra</i>	Guatemala
	Family: PHASIANIDAE	
White-breasted guineafowl	<i>Agelastes meleagrides</i>	Ghana
Ocellated turkey	<i>Agriocharis ocellata</i>	Guatemala
Brown-breasted hill partridge	<i>Arborophila brunneopectus</i>	Malaysia
Chestnut-necklaced partridge	<i>Arborophila charltonii</i>	Malaysia
Ferruginous wood partridge	<i>Caloperdix oculea</i>	Malaysia
Crestless fireback pheasant	<i>Lophura erythrophthalma</i>	Malaysia
Crested fireback pheasant	<i>Lophura ignita</i>	Malaysia
Black wood-partridge	<i>Melanoperdix nigra</i>	Malaysia
Mountain peacock-pheasant	<i>Polyplectron inopinatum</i>	Malaysia
Long-billed partridge	<i>Rhizothera longirostris</i>	Malaysia
Crested wood-partridge	<i>Rollulus rouloul</i>	Malaysia
Satyr tragopan	<i>Tragopan satyra</i>	Nepal

Order: CHARADRIIFORMES

Family: BURHINIDAE

Double-striped thick-knee	<i>Burhinus bistriatus</i>	Guatemala
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Order: COLUMBIFORMES

Family: COLUMBIDAE

Speckled or Cape pigeon	<i>Columba guinea</i>	Ghana
Western bronze-naped pigeon	<i>Columba iriditorques</i>	Ghana
Rock pigeon	<i>Columba livia</i>	Ghana
Afep pigeon	<i>Columba uncinata</i>	Ghana
Pink pigeon	<i>Nesoenas mayeri</i>	Mauritius
Namaqua dove	<i>Oena capensis</i>	Ghana
Mourning dove	<i>Streptopelia decipiens</i>	Ghana
African collared dove	<i>Streptopelia roseogrisea</i>	Ghana
Red-eyed dove	<i>Streptopelia semitorquata</i>	Ghana
Laughing dove	<i>Streptopelia senegalensis</i>	Ghana
Western turtle dove	<i>Streptopelia turtur</i>	Ghana
Vinaceous dove	<i>Streptopelia vinacea</i>	Ghana
African green pigeon	<i>Treron calva</i>	Ghana
Bruce's green pigeon	<i>Treron waalia</i>	Ghana
Black-billed wood dove	<i>Turtur abyssinicus</i>	Ghana
Blue spotted wood dove	<i>Turtur afer</i>	Ghana
Blue-headed wood dove	<i>Turtur brehmeri</i>	Ghana
Tambourine dove	<i>Turtur tympanistria</i>	Ghana

Order: PSITTACIFORMES

Family: PSITTACIDAE

Rose-ringed parakeet	<i>Psittacula krameri</i>	Ghana
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Order: CUCULIFORMES

	Family: MUSOPHAGIDAE	
Great blue turaco	<i>Corythaeola cristata</i>	Ghana
Western grey plantain-eater	<i>Crinifer piscator</i>	Ghana
Violet turaco	<i>Musophaga violacea</i>	Ghana
Crested turaco	<i>Tauraco macrorhynchus</i>	Ghana
	Order: PICIFORMES	
	Family: CAPITONIDAE	
Toucan barbet	<i>Semnornis ramphastinus</i>	Colombia
	Family: RAMPHASTIDAE	
Keel-billed toucan	<i>Ramphastos sulfuratus</i>	Guatemala
	Order: PASSERIFORMES	
	Family: COTINGIDAE	
Amazonian umbrella-bird	<i>Cephalopterus ornatus</i>	Colombia
Long-wattled umbrella-bird	<i>Cephalopterus penduliger</i>	Colombia
	Family: MUSCICAPIDAE	
Rodrigues' warbler	<i>Bebornis rodericanus</i>	Mauritius
Mauritius flycatcher	<i>Tchitreia bourbonensis</i>	Mauritius
	Family: ICTERIDAE	
Saffron-cowled blackbird	<i>Xanthopsar flavus</i>	Uruguay
	Family: FRINGILLIDAE	
Streaky-headed seed-eater	<i>Serinus gularis</i>	Ghana
White-rumped canary	<i>Serinus leucopygius</i>	Ghana
Yellow-fronted canary	<i>Serinus mozambicus</i>	Ghana
	Family: ESTRILDIDAE	
Cut-throat	<i>Amadina fasciata</i>	Ghana
Orange-breasted waxbill	<i>Amandava subflava</i>	Ghana
Waxbill	<i>Estrilda astrila</i>	Ghana
Lavender waxbill	<i>Estrilda caerulescens</i>	Ghana
Orange-cheeked waxbill	<i>Estrilda melpoda</i>	Ghana
Black-rumped waxbill	<i>Estrilda troglodytes</i>	Ghana
Black-backed firefinch	<i>Lagonosticta larvata</i>	Ghana
Black-bellied firefinch	<i>Lagonosticta rara</i>	Ghana
Brown-backed firefinch	<i>Lagonosticta rubricata</i>	Ghana
Bar-breasted firefinch	<i>Lagonosticta rufopicta</i>	Ghana
Red-billed firefinch	<i>Lagonosticta senegala</i>	Ghana
Black-breasted mannikin	<i>Lonchura bicolor</i>	Ghana
Bronze mannikin	<i>Lonchura cucullata</i>	Ghana
Magpie mannikin	<i>Lonchura fringilloides</i>	Ghana
Silverbill	<i>Lonchura malabarica</i>	Ghana
Green-backed twin-spot	<i>Mandingoa nitidula</i>	Ghana
White-chested oliveback	<i>Nesocharis capistrata</i>	Ghana
Chestnut-breasted negro-finch	<i>Nigrita bicolor</i>	Ghana
Grey-crowned negro-finch	<i>Nigrita canicapilla</i>	Ghana
White-breasted negro-finch	<i>Nigrita fusconata</i>	Ghana
Pale-fronted negro-finch	<i>Nigrita luteifrons</i>	Ghana
Quail-finch	<i>Ortygospiza atricollis</i>	Ghana

Antpecker	<i>Parmoptila woodhousei</i>	Ghana
Tiny tit	<i>Pholidornis rushiae</i>	Ghana
Black-bellied seedcracker	<i>Pyrenestes ostrinus</i>	Ghana
Red-faced pytilia	<i>Pytilia hypogrammica</i>	Ghana
Red-winged pytilia	<i>Pytilia phoenicoptera</i>	Ghana
Low-mantled weaver	<i>Ploceus tricolor</i>	Ghana
Common masked weaver	<i>Ploceus velatus</i>	Ghana
Red-headed quelea	<i>Quelea erythroptera</i>	Ghana
Speckle-fronted weaver	<i>Sporopipes frontalis</i>	Ghana
Village indigobird	<i>Vidua chalybeata</i>	Ghana
Uelle paradise whydah	<i>Vidua interjecta</i>	Ghana
Bako indigobird	<i>Vidua larvaticola</i>	Ghana
Pin-tailed whydah	<i>Vidua macroura</i>	Ghana
Common paradise whydah	<i>Vidua paradisaea</i>	Ghana
Jambandu indigobird	<i>Vidua raricola</i>	Ghana
Togo paradise whydah	<i>Vidua togoensis</i>	Ghana
Wilson's indigobird	<i>Vidua wilsoni</i>	Ghana

### REPTILES

Order: TESTUDINATA

Family: TRIONYCHIDAE

Nile soft-shelled turtle *Trionyx triunguis* Ghana

Family: PELOMEDUSIDAE

Helmeted turtle	<i>Pelomedusa subrufa</i>	Ghana
White-breasted side-necked turtle	<i>Pelusios adansonii</i>	Ghana
West African mud terrapin	<i>Pelusios castaneus</i>	Ghana
Stripe-backed side-necked turtle	<i>Pelusios gabonensis</i>	Ghana
Black side-necked turtle	<i>Pelusios niger</i>	Ghana

Order: SERPENTES

Family: COLUBRIDAE

Olive keelback watersnake	<i>Atretium schistosum</i>	India
Dog-faced watersnake	<i>Cerberus rhynchops</i>	India
Chequered keelback watersnake	<i>Xenochrophis piscator</i>	India

Family: ELAPIDAE

Atlantic coral snake	<i>Micrurus diastema</i>	Honduras
Black-banded coral snake	<i>Micrurus nigrocinctus</i>	Honduras

Family: VIPERIDAE

Cantil or Mexican moccasin	<i>Agkistrodon bilineatus</i>	Honduras
Darba or amarilla viper	<i>Bothrops asper</i>	Honduras
Hog-nosed pit viper	<i>Bothrops nasutus</i>	Honduras
Jumping viper	<i>Bothrops nummifer</i>	Honduras
Large-superocular viper	<i>Bothrops ophryomegas</i>	Honduras
Palm or eye-lash viper	<i>Bothrops schlegelii</i>	Honduras
Cascabel	<i>Crotalus durissus</i>	Honduras
Russell's viper	<i>Vipera russellii</i>	India

Where an Order, Family, Genus or Species, is listed under Appendix II or III, as well as under Appendix I or II, either specifically or generally, this shall not derogate from the higher listing.

**SIXTH SCHEDULE**

**PROTECTED GAME ANIMALS**

*(Section 17)*

Protected Game Animals

Night-ape  
Pangolin  
Aardwolf  
Brown hyaena  
Cheetah  
Serval  
Blackfooted cat  
Wild dog  
Otter  
Honey badger  
Civet  
Antbear  
Rock dassie  
Yellow-spotted dassie  
Rhinoceros  
Hippopotamus  
Giraffe  
Klipspringer  
Oribi  
Sharpe's steenbok  
Mountain reedbuck  
Waterbuck  
Puku  
Roan antelope  
Vaal rhebok  
All pelicans  
All herons  
All egrets  
All bitterns  
Hammerkop  
All storks  
All ibises  
Spoonbill  
All flamingoes  
Secretary bird  
All vultures  
All falcons  
All kites  
All eagles  
All buzzards  
All sparrowhawks  
All goshawks  
All harriers  
All cranes  
Kori bustard  
Stanley bustard  
All jacanas  
Fishing owl  
Narina trogon  
Python

**SEVENTH SCHEDULE**

**GAME ANIMALS AND BIRDS**

*(Section 18)*

**PART I**

*Partially Protected Game Animals*

Leopard  
Lion  
Elephant  
Chobe bushbuck  
Sable antelope  
Eland

**PART II**

*Game Animals which may be Hunted under Licence*

Vervet monkey  
Baboon  
Spotted hyaena  
Caracal  
Wild cat  
Bateared fox  
Silver fox  
Sided striped jackal  
Blackbacked jackal  
Elephant  
Zebra  
Wild pig  
Warthog  
Duiker  
Steenbok  
Kudu  
Sitatunga  
Bushbuck  
Impala  
Reedbuck  
Lechwe  
Springbok  
Gemsbok  
Buffalo  
Blue wildebeest  
Hartebeest  
Tsessebe  
Scrub hare  
Cape hare  
Porcupine  
Springhare  
Ostrich  
Crocodile



**PART III**

*Game Birds which may be Hunted under Licence*

Spur-wing goose  
Egyptian goose  
Whitefaced duck  
Knob-billed duck  
Cape shoveller  
Yellow-billed duck  
Red-billed teal  
Cape teal  
Southern pochard  
Francolin  
Quail  
Guinea-fowl  
Snipe  
Sandgrouse  
Green pigeons  
Turtle doves

**EIGHTH SCHEDULE**  
**MAXIMUM NUMBER OF ANIMALS WHICH MAY BE KILLED BY VIRTUE OF**  
**LANDHOLDER'S PRIVILEGES DURING ANY ONE PERIOD SPECIFIED**  
*(Section 20)*

Animal	Maximum permitted to be killed	Relevant period
Zebra	10	one year
Kudu	10	one year
Gemsbok	10	one year
Wildebeest	10	one year
Hartebeest	10	one year
Ostrich	10	one year
All other game animals	25 of each specie	one year

**NINTH SCHEDULE**

**DANGEROUS ANIMALS**

*(Section 2)*

Leopard  
Lion  
Elephant  
Rhinoceros  
Hippopotamus  
Buffalo  
Crocodile

**TENTH SCHEDULE**

**NOTICE OF INTENDED PROSECUTION**

(Section 76)

**DEPARTMENT OF WILDLIFE AND NATIONAL PARKS**

WILDLIFE CONSERVATION AND NATIONAL PARKS ACT (Chapter 38:01)

To: .....Wildlife Office: .....

Address: .....

..... Date: .....

Birth place: .....

Nationality: .....

Age:.....Sex:.....

Identity/Passport No: .....

**NOTICE OF INTENDED PROSECUTION**

IT is alleged that on ..... 20 ..... in the .....

District/ ..... National Park/Game Reserve, you  
contravened section/regulation .....of the Cap. 38:01 Wildlife Conservation and  
National Parks Act/Statutory

Instrument No ..... (Description of the offence)

.....  
.....  
.....

YOU are now informed that consideration will be given to prosecuting you in terms of the  
aforesaid section/regulation.

TAKE note that you may pay P ..... Admission of Guilt within  
..... days from .....at..... police station. If you decline to  
pay Admission of Guilt, in terms of section 76 of the Cap. 38:01 Wildlife Conservation and  
National Parks Act, application will be made to a public prosecutor for a summons ordering  
you to appear before the Magistrate's Court at .....

..... on the ..... day of .....  
at ..... hours to answer the aforesaid charge(s)

Issued by No: ..... Rank:..... Name:.....

Signature of the Accused:..... Signature:.....

..... Date:.....

Place:.....