



International Environmental  
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# **SUSTAINABLE MANAGEMENT OF WILDLIFE RESOURCES IN EAST AFRICA**

**A CRITICAL ANALYSIS OF THE LEGAL, POLICY  
AND INSTITUTIONAL FRAMEWORKS**

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## I. INTRODUCTION

Wildlife treaties represent the oldest examples of international environmental law. They range from species-specific treaties<sup>1</sup> to treaties providing protection for regional species.<sup>2</sup> Most of the wildlife treaties have been concerned with the conservation/preservation of wild animal species and have not incorporated sustainable management.<sup>3</sup> In this paper we will use the term wildlife to include faunal resources only.

Wildlife conservation, construed as preservation of wildlife, was not known in pre-colonial African societies. Conservation concerns were however, introduced into African laws as early as the 1900s<sup>4</sup> as a result of declining wildlife populations.<sup>5</sup> The most notable international agreement applicable to conservation in Africa is the 1933 Convention Relative to the Preservation of Fauna and Flora in their Natural State signed by colonial powers and premised on setting up conservation areas.<sup>6</sup>

In this paper I look at the national legal and institutional regimes for wildlife management in East African countries and the interface between these and international conventions dealing with wildlife management. I will critically analyse these regimes looking at the extent to which they provide mechanisms for sustainable wildlife management. By way of conclusion, I will identify ways of improving the efficacy of these regimes to ensure sustainable management of wildlife resources in the long run. For the purposes of this paper, we cover Kenya, Uganda and Tanzania mainland.

## II. AN OVERVIEW OF REGIONAL WILDLIFE ENDOWMENT

### A. Status and Trends

Despite accelerated losses in biological diversity, Africa is still relatively well endowed with biological resources. The African continent is estimated to hold at least twenty-five per cent of global biodiversity. It is estimated, for instance that tropical and sub-tropical Africa have 40, 0000-45, 0000 higher plant species. Kenya has at least 8,000 plant species<sup>7</sup> over 16% of the total land area in Uganda is covered by fresh water bodies; 81% is covered by natural forests and 10% is gazetted as wildlife protected areas.<sup>8</sup> Tanzania for its part has 33.5 million hectares equivalent to 35% of its total land area covered by forests and woodlands of which approximately 13 million hectares have been gazetted as forest reserves.<sup>9</sup> Within Africa, Eastern Africa has the highest number of endemic species of mammals, birds, reptiles and amphibians.<sup>10</sup>

The approach taken by most African countries to wildlife management is conservation through protected areas. It is noteworthy for instance, that protected areas in Kenya constitute seven per cent of the total land area while over seventy per cent of wildlife in Kenya is to be found on private communal land.<sup>11</sup> Enclosure of land for wildlife is also an important aspect of Tanzania's land use system where wildlife covers over twenty five per cent of the country's total land area. This approach has been challenged on the basis of the presence of wildlife in areas occupied by humans and on the ground that more enclosure of land for wildlife use would infringe on the rights of communities to use land in areas around or in close proximity of wildlife. Africa's wildlife is under threat from population pressure and migration, land use changes, over harvesting of natural resources and climatic changes. Trade in natural resources, specifically wildlife products such as skins, meat and trophies also threaten wildlife. In Madagascar and Kenya, for instance, *Aloe polyphylla* and *prunus Africana* respectively, have been exploited for trade purposes to such an extent that their sustainability is threatened.

## **B. Ecological and Economic Significance**

African countries rely on biological resources for their subsistence and economic survival to a far greater extent than other countries. These resources are fundamental to human well being since they provide food for the people and agriculture employs about sixty per cent of Africa's vast rural population. Wildlife-based tourism is, for instance, a significant foreign exchange earner for countries such as Kenya. Wildlife, and elephants as a keystone species, has an essential ecological role on African savannahs contributing to the diversification of ecosystems, dispersal of seeds, reduction of bush lands and tsetse fly and the expansion of grasslands.<sup>12</sup>

## **II. NATIONAL LEGAL REGIMES AND INSTITUTIONAL ARRANGEMENTS**

### **A. Legal Frameworks for Resource Planning and Development**

Resource planning and development with regard to wildlife management revolve around the arrangements for the protection, conservation and sustainable use of any wild plant or wild animal within a given area. In the east African countries, wildlife laws and policies offer few or no incentives to the custodians of biodiversity and thus provide limited tools for achieving the broader goals of conservation and promotion of sustainable development and equitable sharing of the resulting benefits. Wildlife laws and policies for most countries take the same approach and have similar objectives. The general approach is to provide for protection and management of wildlife resources through Constitutional provisions, in Framework Environmental legislation and specific sectoral legislation. The legislation takes a command and control approach entailing heavy presence of the government to ensure compliance with the set standards. Indeed conservation agencies for both wildlife and forests in most of Africa have remained paramilitary and uniformed with a sizeable amount of their budgets devoted to law enforcement.<sup>13</sup>

#### *Uganda*

Uganda, like most African countries, has several statutes relating to the conservation and management of wildlife. These include the Constitution of the Republic of Uganda 1995 which provides that sustainable development of the environment shall be promoted. Objective XXVII specifically provides that the utilization of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans. Parliament is empowered through Article 245 of the Constitution to legislate on this issue. Similar obligations are created under Article 237.<sup>14</sup> Another statute of relevance to wildlife protection and related aspects is the National Environment Statute, 1995. Section 73(2) of this statute makes provision for the protection and sustainable use of wildlife. Because all environmental management activities fall under the National Environment Management Authority (NEMA), the Uganda Wildlife Authority (UWA) falls under NEMA. Further, the Land Act, 1998 has been hailed as an innovative instrument introducing sustainable use of resources element in the property domain especially with regard to wildlife protection.<sup>15</sup> The relevant sections include sections 43 and 44 which, read with Articles 27 and 237(2) of the Constitution provide that land can be acquired for the protection of wildlife. Moreover, the occupier of land is enjoined by section 44 of the Act to use the land in an environmentally sustainable manner which includes a requirement to conform to the wildlife statute and other applicable laws.

The Uganda Wildlife Statute 1996, a law dedicated solely to issues of wildlife management, aims at promoting the conservation and sustainable utilization of wildlife for the benefit of the people of Uganda; enhancing benefit sharing through wildlife use rights and promoting public participation in wildlife management. Indeed Section 4 of this statute vests the ownership of wildlife in the Government in trust for the people.<sup>16</sup> Subsection

7 of Section 4 gives the Minister powers to allow the use of wildlife for cultural purposes by any community. It is however instructive to note that the statute defines wildlife narrowly so as to exclude wild plants or animals of a species not native to Uganda.<sup>17</sup>

It is clear from the foregoing that the Uganda Wildlife Statute makes attempts at changing the use, conservation and protection of wildlife. One fundamental change is the move away from the traditional state-centric approach to wildlife management to a modern approach involving the people living with wildlife or affected by wildlife legislation.<sup>18</sup>

## *Kenya*

While the Constitution of Kenya contains no direct wildlife protection provisions, Section 71 of the Constitution which deals with the right to life has been interpreted by some to include the right to a clean and healthy environment.<sup>19</sup> The Agriculture Act<sup>20</sup> and the Forests Act<sup>21</sup> are relevant in wildlife conservation and management since wildlife found on agricultural land and forests is under the control of the Agriculture and Forests departments respectively. The Forests Act provides the legal framework for the conservation of forests. It governs the conservation, management, and utilization of forests and forest products.<sup>22</sup> The killing of wild animals in a nature reserve is prohibited. Under the Agriculture Act, the Minister is authorised to make preservation rules that can play a crucial role in ensuring that wildlife on such land is conserved. It is noteworthy that good husbandry of agricultural land does not include adoption of tenets of wildlife conservation.<sup>23</sup> There remains, however, the wider question of compatibility of settled agriculture as a land use with wildlife conservation.

There are also numerous pieces of legislation regulating dealings in land. These have been the subject of debate since the 1970s culminating in the creation of the Njonjo Commission of Inquiry on Land Laws, 1999. This Commission was mandated to look into the issue of land use and planning activities. Land forms the foundation upon which wildlife is built. About 7.5 per cent (44,092 square kilometres) of Kenya's land area is set aside exclusively for wildlife. Increased settlement activities have extended into land that used to be part of national parks and reserves, seasonal migratory paths and game corridors leading to intense conflict between wildlife and the surrounding communities.

As early as 1986, the government expressed intentions of appointing a high level commission to review the land policy in the country including land tenure laws and practices.<sup>24</sup> The land use policy issue was revisited in the Sixth Development Plan 1989-1993 with the Government indicating that it would set up an Independent Land Use Commission during the Plan period to review questions relating to land and advice on its utilization for sustainable development in agro-ecological zones. The same plan, 1989-1993, showed that wildlife population was on the decline. The Wildlife Management Department of the then Ministry of Tourism and Wildlife was given the leading role in addressing the competitive demands on land use between wildlife management and agricultural production. It recognised that wildlife conservation and management does offer a balance between human economic activity and environmental conservation. However, when it came to establishing the optimal balance between the two, the Plan adopted an exploitation centred strategy that did not cater for the communities living with wildlife.<sup>25</sup> The Development Plan 1994-1996, launched the Government's commitment to sustainable development. Under the measures to be pursued in implementation of the projects, KWS was to, inter alia, "seek solutions to conflicts arising between the demand for the wildlife conservation and the competing interests of the landowners and the local communities living within or near wildlife protected and dispersal areas."<sup>26</sup>

The first attempt at a comprehensive policy on wildlife management in Kenya is contained in Sessional paper No. 5 of 1975.<sup>27</sup> This policy recognised the value of wildlife both within and outside protected areas and identified the primary goal of wildlife conservation as the optimisation of returns from wildlife defined broadly to include aesthetic, cultural, scientific and economic gains, taking into account the income from other land uses.<sup>28</sup> The Policy recognised that wildlife needed space outside the protected areas if it was to flourish without intensive management and ecological impoverishment. It envisioned that additional space for wildlife man-

agement would be secured from landowners willing to accommodate wildlife<sup>29</sup> on the basis of their reaping the benefits.<sup>30</sup> Moreover, the policy indicated a preference for flexible regulations able to capture local needs and anticipate future changes in generating optimum returns from wildlife rather than rigid legislative provisions.<sup>31</sup>

The operative law is the Wildlife (Conservation and Management) Act.<sup>32</sup> The Wildlife (Conservation and Management) Act established the legal provisions for the 1975 Policy.<sup>33</sup> It vests the powers of management and control of protected areas in a consolidated service of the government, KWS. The stated objective of the statute is to ensure that wildlife is managed and conserved for the benefit of the nation generally and certain areas in particular.<sup>34</sup> The system of wildlife conservation established under the Act wraps nature in protected areas in which other forms of land-use are excluded.<sup>35</sup>

The Environment Management Coordination Act<sup>36</sup> provides for the establishment of an appropriate legal and institutional framework for the management of the environment.<sup>37</sup> It, among other things, establishes guidelines on cross-sectoral issues such as wildlife conservation.<sup>38</sup> It is worth noting here that plans are under way to develop a new wildlife policy and law that will bring the law in line with the framework legislation and also reflect changed thinking in the wildlife management arena.

## *Tanzania*

Tanzania's National Environmental Policy seeks to ensure protection and utilisation of wildlife resources in a sustainable manner.<sup>39</sup> Among the stated objectives of the more specific Wildlife Policy of Tanzania are the continuance and establishment of protected areas, promotion of conservation outside the core areas, the devolution of wildlife management roles to local communities and the prevention of illegal use of wildlife.<sup>40</sup> Other policies relevant to wildlife conservation in Tanzania include the National Policies for National Parks (NPNP) and the National Land Policy.

The National Policies for National Parks was adopted by the Board of Trustees of Tanzania National Parks Authority (TANAPA) in 1994. Perhaps one of the most innovative concepts introduced by this policy document is the integration of the communities surrounding wildlife in the planning and benefit-sharing of wildlife resources.<sup>41</sup> The National Land Policy 1995 addresses matters of land use and land tenure. This policy also deals with the question of overlapping land uses in wildlife conservation areas and the conflicts between wildlife and settlements/agriculture. The Policy for Wildlife Conservation was put in place in 1998 to form the basis of reforming wildlife laws. One of the core policy objectives of wildlife protection contained in the document, as pointed out above, is to transfer the management of wildlife management areas to local communities and thereby ensure that the local communities obtain substantial tangible benefits from wildlife conservation.<sup>42</sup>

The principal pieces of legislation that govern wildlife conservation in Tanzania include the Forest Act 2002, the National Parks Ordinance of 1959, the Fisheries Act of 1970, the Marine Parks and Reserves Act of 1994, the Ngorongoro Conservation Ordinance and the Wildlife Conservation Act of 1974. The National Parks Ordinance governs the twelve national parks in the country. The President may declare any area of land to be a national park and upon such declaration all rights on such land become extinct except mining rights.<sup>43</sup> The Marine Parks and Reserves Act, 1994 became operative in 1995. It established parks, marine parks and reserves. These, unlike the national parks, are not within the control of the Board of Trustees of Tanzania National Parks (TANAPA). The Minister responsible for national parks has jurisdiction over marine parks and reserves. One of the objectives of marine parks and reserves is the "ensurance that villages and other local resident users in the vicinity of, or dependent on a marine park or marine reserve are involved in all phases of the planning, development and management of that marine park or marine reserve, share in the benefits of the operation of the protected area, and have priority in the resource use and economic opportunity afforded by the establishment of the marine park or reserve".<sup>44</sup>

Under Section 8, failure to conform to the procedural rights (including notification of actions to village councils; acceptance; consideration of and response to comments from villages) would invalidate decisions. More importantly, the surrounding resident users may use marine parks or reserves. This includes residing in the areas and they have preferential treatment in the event any other rights are to be granted. However, the Minister has powers to regulate and control their activities therein.<sup>45</sup>

The Forest Act 2002 provides for the involvement of local communities in the conservation and management of forests through joint management agreements with appropriate user rights and benefits accorded to the respective parties. The Wildlife Conservation Act<sup>46</sup> provides for the protection, conservation, development, regulation and control of wildlife and wildlife products. It applies to wildlife in protected areas only. Wildlife conservation areas are differentiated by the degree and nature of utility permitted in each area. The policy<sup>47</sup> creates wildlife management areas. These have greater wildlife utilization to the local communities than other categories of protected areas. There is a draft Wildlife Act 2004 seeking to repeal the 1974 Act and give legislative basis for the provisions of the 1998 Policy.<sup>48</sup> It provides for the establishment of Wildlife Management Areas for purposes of effecting community based wildlife conservation areas outside the core protected areas, in areas used by local communities and within village land.<sup>49</sup>

### *Resource Planning and Development: A Critique of the Existing Legal Frameworks*

Most domestic laws for wildlife management in post colonial states are a relic of their colonial past. They pre-date the rational management resource oriented laws that have gained currency in international environmental law and do not include aspects of environmental management that have only recently come to the fore. In some countries, for instance environmental management laws are formulated in line with natural resource sectors such as land, water, forestry, wildlife, minerals with little cross-sectoral co-ordination. There have however been attempts at making the laws favourable to environmental conservation as critical elements of environmental degradation have emerged.<sup>50</sup>

It is noteworthy that Tanzania's proposed 2004 Wildlife bill makes provision for devolution of wildlife management tasks from the central state to communities and the private sector thus essentially incorporating the principles contained in international conventions such as the Convention on Biological Diversity.<sup>51</sup> Indeed section 3 of the proposed bill provides that the ownership of wildlife is vested in the government 'on behalf of, and for the benefit of, the people of Tanzania'. Kenya is also working on a new wildlife policy, one of whose objectives is to devolve wildlife user rights to communities and private land owners.<sup>52</sup> It is evidently clear in the Kenyan case that state monopoly and a preservationist stance is not in the best interests of sustainable wildlife management and must change. There is a private members' bill before parliament seeking to amend the Kenya Wildlife (Conservation and Management) Act to allow land owners to utilise wildlife resources on their land and provide compensation for depredations caused by wildlife to people's property.<sup>53</sup>

To make the provisions of these proposed laws effective, there is need for government agencies to integrate, harmonise and enforce land use policies and legislation intended to conserve wildlife and other natural resources in line with the spirit of the Biodiversity Convention. It is instructive that the Convention seeks to promote the conservation of biodiversity, the sustainable use of its components and the fair and equitable sharing of benefits arising from the use of the resources, including appropriate access to genetic resources and transfer of relevant technologies.<sup>54</sup> These concerns apply to wildlife resources as one of the facets of biodiversity. At a regional level, national laws and policies predate the revised African Convention on the Conservation of nature and Natural Resources adopted by the African Union in July 2003.<sup>55</sup>

## **B. National Institutional Arrangements**

Rights to natural resources are mainly vested in states. In many of the African states, wildlife and forests are owned by the state and the communities living with or around them have no rights to the resources. Natural resources outside protected areas are mainly held by individuals where states have pursued the policy of individual ownership of resources. Most African states have adopted protected area management systems for

wildlife management as we will see below. There is however, a discernible trend conceding to communities' and individuals' rights to these resources as exemplified by the proposals for changes in the law in Tanzania and Kenya.

## *Uganda*

The administrative agency charged with the control and management of wildlife in general in Uganda is the Uganda Wildlife Authority (UWA). The Authority is charged with the responsibility of, inter alia, ensuring the sustainable management of wildlife. Significantly, the Wildlife Policy 1995 that laid the basis for the wildlife law in Uganda states the mission of the Uganda Wildlife Authority:

*"[to] conserve in perpetuity the resources within the National Parks and other wildlife areas to enable the people and the global community to derive ecological, economic, and aesthetic and education benefits from wildlife."*<sup>56</sup>

The Uganda Wildlife Authority is a body corporate with perpetual succession and powers to sue and be sued.<sup>57</sup> The Uganda Wildlife Statute also makes provision for integrating local interests in the implementation of the wildlife legislation. Under Sections 12 and 13 of the Statute local authorities are empowered to form wildlife committees to advice on wildlife management and utilization within the local jurisdiction. It is consequently possible for individuals and communities to manage wildlife.

The Minister has power, after consultation with the local authorities, to declare certain areas wildlife conservation areas.<sup>58</sup> Wildlife Conservation areas can either be wildlife protected areas or wildlife management areas. The following activities may be permitted in wildlife protected areas: biodiversity conservation, recreation, scenic viewing, scientific research, and other economic activities such as regulated extractive utilization of natural resources.<sup>59</sup>

Wildlife management areas are those protected for sustainable management of wildlife.<sup>60</sup> Accordingly, such areas include wildlife sanctuaries and community wildlife areas. Under the former, activities which are not destructive to the protected species or its habitat may be permitted, while under the latter persons with property rights may engage in sustainable management and utilization subject to applicable laws and regulations. Under Section 19(8), a community wildlife area declared under paragraph (b) of subsection (3) shall be an area in which individuals that have property rights to land may carry out activities for the sustainable management and utilization of wildlife if the activities do not adversely affect wildlife and in which areas the State may prescribe land use measures.

## *Kenya*

The wildlife management authority in Kenya is the Kenya Wildlife Service (KWS) which is charged with the control and management of wildlife and connected purposes. The service is a corporate body. Its functions include preparing and implementing management plans for wildlife for the promotion of tourism and for the benefit and education of the inhabitants of Kenya; and rendering services to the farming and ranching communities in Kenya necessary for the protection of agriculture and animal husbandry against destruction by wildlife.<sup>61</sup>

The Service is managed by a Board of trustees of the Service consisting of six appointees of the President and not more than six others appointed by the Minister. The Minister's appointees need not be from the local communities. They only need to be conversant with nature conservation aspects.<sup>62</sup>

The service is headed by the Director, appointed by the President. It is established as an unincorporated and disciplined service, and as such its members may not become members of a trade union.<sup>63</sup> The Act provides for four types of wildlife protected areas namely, national parks, national reserves, local sanctuaries and game reserves.<sup>64</sup> The first three are vested in KWS and human activities are completely excluded from national parks while various degrees of human activities are allowed within the national reserves as long as they are compatible with conservation efforts or requirements. Game reserves, on their part are large conservation areas which are vested in local authorities (County Councils) who administer them under the overall guidance and control

of the relevant government ministry and in trust for the residents of the area and both restricts the influx of new immigrants and controls the number of livestock kept on the land owns the land in the reserves.

Section 29 (2) of the Cap. 376 makes provision for owners of private land opening their land up for hunting of game. They are required to register their land with KWS and thus the Service regulates to some extent the conservation of wildlife on private land. Section 47 authorised game ranching and cropping subject to conditions set out by the Minister responsible for Wildlife. This latter provision permitted landowners to kill meat producing animals under soundly managed procedures and was in line with the objective of ensuring that landowners secured returns from hunting done on their land.<sup>65</sup> However, the bans on hunting and trade in wildlife products put an end to all forms of consumptive utilisation of wildlife leaving wildlife-based tourism as the only legal form of utilisation.<sup>66</sup>

### *Tanzania*

The Department of wildlife under the Ministry of Natural Resources and Tourism manages wildlife in Tanzania. The Department is headed by the Director of Wildlife who is appointed by the President.<sup>67</sup> Because of the inevitable overlap between various institutions and their functions that characterizes the wildlife legislation in Tanzania, the Wildlife Department collaborates with the Departments of Forestry, Fisheries, the Tanzania National Parks Authority (TANAPA), and other wildlife conservation authorities.<sup>68</sup>

TANAPA was created by the National Parks Ordinance.<sup>69</sup> The Ordinance vested the Board of Trustees of TANAPA with the authority to manage national parks. With the Minister's consent the trustees may take actions outside national parks.<sup>70</sup> TANAPA is a body corporate. It however focuses on conservation rather than profit-making and has obligations of a trust. As indicated above it manages controls, administers and maintains the currently twelve national parks in Tanzania. It is headed by a Director General. In practice, the Director General of TANAPA reports to the Director of Wildlife.<sup>71</sup> The Chair of the Board of TANAPA is answerable to the Minister of Tourism and Natural Resources pursuant to the National Parks Ordinance. Reforms introduced in 1997 propose to establish TANAPA as an autonomous body corporate.<sup>72</sup>

Another institution for wildlife management is the Ngorongoro Conservation Area Authority created under the Ngorongoro Conservation Area Authority Ordinance, Chapter 413. This conservation area allows grazing and human settlement. The Authority manages, through its Board of Directors, the conflicts between wildlife and local people in this area. More specifically, it is required to conserve and develop the natural resources and to safeguard and promote the integration of Maasai citizens of the United Republic of Tanzania engaged in livestock production in the area.<sup>73</sup>

The Tanzania Wildlife Research Institute (SWRI) established under the Serengeti Wildlife Research Institute Act<sup>74</sup> oversees wildlife research in Tanzania. The Act also makes provision for several wildlife research centres. The Institute has no express authority to research on the wildlife conflicts with local people. Its authority is couched in broad terms whose general thrust is to promote the development, improvement, protection and sustainable conservation of wildlife in Tanzania.<sup>75</sup> The Institute is run by a Board of Directors under general or specific directions from the Minister and the Director of Wildlife.<sup>76</sup>

## **C. Access Arrangements and Mechanisms for Benefit Sharing**

The critical issue here is the extent to which countries have put in place mechanisms for ensuring that communities living with or near wildlife refuges have access to wildlife resources or benefit from the resources. Most countries as we have pointed out use protected areas to manage wildlife and there are rules on the extent to which communities living with or near wildlife areas interact with the protected area authorities. A cursory look at the legal frameworks in the selected countries indicates that in most countries attempts at addressing the question of community rights over wildlife resources stop short of addressing the root causes of the problem, namely, tenure to the resources. We have pointed out above that the basis of wildlife management in African countries where conservation is mainly carried out in situ, is land. Land forms the habitat for wildlife

and tenure to it has practical implications for sustainable management thereof. We will here critically assess mechanisms put in place for community access to wildlife resources and sharing of benefits derived from those resources in the countries under investigation.

## *Uganda*

Significantly, whereas the purpose of a wildlife protected area is largely conservation of wildlife to generate economic benefits for the people of Uganda generally, wildlife management areas are aimed at benefiting communities living with wildlife in those management areas. Section 20(2) of the Wildlife Statute seeks to balance the interests of wildlife conservation with those of communities living with or near wildlife refuges. It is to the effect that wildlife should be managed in such a way as to ensure the co-existence of communities with wildlife and protection of wildlife notwithstanding the continued use of the land in the area by people and communities ordinarily residing there. Where a person intends to use resources in a wildlife protected area they must obtain authority from the Minister.<sup>77</sup>

Under Section 26 certain historic rights are not affected by the restrictions on use of resources in conservation areas. These include persons actually residing in Game Reserves on the 1st July, 1959; persons who lawfully acquired rights in National Parks before 3rd April, 1952 and persons residing in forests having been exempted from provisions of the Forests Act and which forests are now within national parks. The Uganda Wildlife Authority (UWA) is given powers to facilitate access of persons neighbouring or resident in wildlife conservation areas to the resources therein in the following words

*“The Authority may establish guidelines for access of communities neighbouring conservation areas to resources which are crucial to the survival of those communities. The Authority may study, identify and protect historical or cultural interests of any individual or class of persons resident in a wildlife conservation area not protected by any other law.”<sup>78</sup>*

UWA may also compulsorily acquire private property (land in wildlife conservation area) in the public interest. This may be for instance where the acquisition is necessary in the interests of sustainable management of wildlife. Similarly persons resident in such areas may be resettled within the same area or outside it. Where resettlement takes place within a conservation area the Authority may prescribe the permitted measures of land use.

The Wildlife Statute creates certain wildlife use rights. These include hunting, farming, ranching, trading in wildlife and wildlife products, educational and scientific use; and general extraction. The Minister has powers to vary these rights as he deems fit.<sup>79</sup> To obtain any of these use rights one must apply to the Authority for a grant of the right. The procedure is set out in the Statute and where the applicant is a community, there is need for a group representative.<sup>80</sup>

All wildlife use right grants are subject to the condition that the grantee commences his activities under the right within two years. The statute lists more than ten conditions which may be included in a wildlife use right grant. Conditions may also be imposed on the applicant's land even though this land may not be the subject of the application.<sup>81</sup> The grant may be varied, revoked, surrendered or transferred. Professional hunters and trappers may obtain licences from the Authority's Board to access resources in a wildlife conservation area.<sup>82</sup>

Section 69 establishes the Wildlife Fund. This fund is administered by the Board of the Authority. The concept of benefit sharing is dealt with under Section 70 of the Statute. For instance, twenty per cent of the park entry fees collected from wildlife protected areas is to be paid to the local government of the area surrounding the wildlife protected area from which the fees were collected.<sup>83</sup>

## *Kenya*

The wildlife Act, responding to increasing human-wildlife conflicts, provides for compensation to landowners who support wildlife on their land and for properties destroyed by wildlife.<sup>84</sup> Compensation for personal injury or death may be made under Section 62. No compensation is claimable where the injury or death occurred in the course of an unlawful act by the person concerned or in the course of normal wildlife utilization activities.

Further, KWS implements a scheme for revenue sharing of park entrance fees with rural communities as a way of encouraging those communities to take part in wildlife conservation.<sup>85</sup>

The Kenya Wildlife Service Fund established under Section 5A of the Act is operated and managed by the Board of Trustees for wildlife conservation and management. Under Section 5B, the Board may establish wildlife advisory councils or committees in wildlife conservation areas and such councils shall include the representative of the local authority concerned. The role of these advisory councils does not extend to taking part in the business of wildlife conservation and management but merely apprising the Board of local issues of wildlife conservation and management.

A serious attempt at community involvement in wildlife management in Kenya was made under the KWS Community Wildlife Service department established in 1992 and charged with ensuring good management of wildlife outside protected areas for the benefit of communities who interact with wildlife, to create trust and dialogue between KWS and those communities, help communities benefit from wildlife and protect them against losses caused by wildlife and also initiate collaboration with other sectors concerned with land use. Through it, some of the financial benefits accruing from wildlife conservation are channelled to local communities through the construction of amenities like schools and hospitals, water supply and cattle dips.<sup>86</sup>

Another mechanism for enlisting community and land owner support for wildlife management was through granting wildlife use rights in a pilot wildlife utilisation scheme started in some areas in 1992. To obtain wildlife use rights, one had to be a private landowner or a community having rights to a piece of land, provide KWS with a wildlife management plan, a map of the ranch and results of a recent game count and indicate the quota applied for. Possible proposed uses for wildlife in the ranch included cropping, hunting for home consumption, live animal capture for translocation, bird shooting, game farming (no sport/safari hunting). Use rights were granted to individual ranches or associations of ranches that have formed a wildlife management unit. They were for an initial 5 years and could be renewed. During the duration of the licence, the landowner was obliged to provide KWS with quarterly reports specifying the off-take by species, numbers and sex and an explanation on the use to which the animals taken were put and the manner in which products such as meat, skins and horns were disposed off.<sup>87</sup> This project was terminated in 2002 and landowners and communities have since been clamouring for changes in the law to allow them to benefit from wildlife resources on their land. With a growing population, issues of individual and community access to wildlife resources need to be given careful consideration. A review of wildlife conservation completed in 1994 however proposed that the government needed to reconsider the ban on hunting as one way of dealing with the wildlife-human conflict.<sup>88</sup> The ongoing policy review accepts in principle that some form of consumptive utilization of wildlife needs to be provided for as a way of devolving user rights and giving incentives to property holders to participate in wildlife management activities.<sup>89</sup>

### *Tanzania*

The Tanzania Wildlife Protection Fund was established in 1978 by the addition of a new Section 69A to the Wildlife Conservation Act. The Fund receives twenty five per cent of all game revenues, and a hundred per cent of all revenues from observer, conservation, permit and trophy handling fees. It supports state agencies involved in wildlife conservation.<sup>90</sup>

Towards the achievement of the benefit sharing objective a revolving fund is set up partly to benefit local adjacent communities.<sup>91</sup> The Board is obligated to give a portion of the revenue to the local authorities within which the marine park or reserve falls.<sup>92</sup> The Wildlife Policy recognises that there are many direct and indirect benefits to be derived from wildlife and that it is important that these are shared between diverse stakeholders. More importantly, it lists such stakeholders to include rural communities and private landholders living with or near protected areas, district councils, wildlife authorities, central government and the private sector.<sup>93</sup> The strategies that the Policy anticipates as useful in the sharing of benefits are firstly the involvement of various stakeholders in determining the distribution of revenue and benefits among themselves, determining proportions for benefit sharing by the government and setting out criteria for varying these as the need arises.

## IV. TRANSBOUNDARY WILDLIFE RESOURCES MANAGEMENT

### A. International Legal Instruments for Transboundary Management of Wildlife Resources

Wildlife management laws, like other natural resource management laws in Africa, are part of an intricate web of international, regional and national legal norms. However, the conceptual and normative framework for environmental management still draws largely from international environmental agreements and little has been done to tailor domestic laws to the needs of African countries generally and local communities in particular. The 1968 African Convention on the Conservation of Nature and Natural Resources signed among newly independent countries was hailed as the most comprehensive multilateral treaty for the conservation of wildlife yet negotiated.<sup>94</sup>

#### *The African Convention*

With many African countries getting independence from their former colonial masters in the 1960s, there arose a need for a new conservation initiative both to provide a basis for national legislation as well as to co-ordinate conservation measures across frontiers. The London Convention was perceived as a good starting point for the negotiation of a new agreement. Thus the African Convention on the Conservation of Nature and Natural Resources, drafted by the Organisation of African Unity states with the assistance of the International Union for the Conservation of Nature and Natural Resources (IUCN), adopted many of the principles of the London Convention.<sup>95</sup> The African Convention is primarily concerned with wildlife conservation and has been described as the most comprehensive multilateral treaty for the conservation of wildlife yet negotiated.<sup>96</sup> As pointed out above, a revised version of the Convention was adopted by the African Union in 2003. The Preamble to the Convention reiterates international environmental law principles developed from the Stockholm Declaration in 1972 to the United Nations Conference on Environment and Development in 1992.<sup>97</sup>

Two of the Convention's objectives are fostering the conservation and sustainable use of natural resources and harmonization and coordination of policies to ensure "ecologically rational, economically sound and socially acceptable development policies and programmes".<sup>98</sup> The Convention covers all aspects of sustainable natural resources' management including inter alia land and soil, water, vegetation cover and species and genetic diversity.<sup>99</sup> The overall thrust of these provisions is to have member states adopt measures necessary to ensure the conservation, utilisation and development of natural resources in accordance with scientific principles and with regard to the best interests of the people. The Convention also seeks to protect animal and plant species that are threatened with extinction and their habitats through adoption of relevant legislation.<sup>100</sup>

In order to implement the African Convention, African States are required to pass legislative enactments for environmental management of species and their habitats incorporating the salient provisions of the Convention in municipal law. Land use planning and wildlife management laws need to be aligned to the Convention's provisions. The marginalisation of the citizens in conservation activities with the governments assuming all powers of control and management in protected areas makes these areas isolated and a target of illegal conversions of land to pasture lands and agricultural development. One important area of intervention is the promulgation of laws more favourable to community participation in wildlife management.<sup>101</sup>

#### *The World Heritage Convention*

Though the Convention Concerning the Protection of World Cultural and Natural Heritage does not deal specifically with wildlife conservation, it has potential to protect unique wildlife habitats.<sup>102</sup> It was adopted within the general conference of the United Nations Educational, Scientific Cultural Organisation (UNESCO) in 1972 and constituted the first international environmental agreement recognising the overriding interest of the global community in the management of domestic resources.<sup>103</sup>

Member States to this convention can seek to have nationally important cultural, historical or natural sites recognised and listed as internationally important. Once the sites are added on the World Heritage List, they qualify for support from the international fund set up under the convention to facilitate preservation. It is noteworthy that state sovereignty is not infringed upon at all because the procedure, though internationally devised, is voluntary.<sup>104</sup> The incentives are the international recognition gained from enlisting the sites on the World list and the financial assistance accorded to members. This approach has been extremely successful in enlisting state support for conservation measures of sites of recognised international importance.<sup>105</sup>

Tanzania has implemented some provisions of the World Heritage Convention through the identification, protection and conservation of objects of cultural and natural heritage such as the Serengeti and Ngorongoro sites.<sup>106</sup> Uganda's Ruwenzori and Bwindi National Park are also included on the World Heritage List and there are proposals to identify and include more sites.<sup>107</sup> Kenya is a party to the World Heritage Convention.<sup>108</sup> Mount Kenya National Park is a World Heritage site. The protection of the cultural and natural heritage of the country has been integrated in the national development programmes.

## **B. International Trade in Species and Specimens**

The main international instrument addressing issues of trade in wildlife species and specimens is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>109</sup> It provides the primary international control structure for trade in wildlife products. It focuses on the identification of endangered species and their withdrawal from the world market through a listing process. This Convention was adopted partly in recognition of the fact that people are and should be the best protectors of their own wild fauna and flora.<sup>110</sup>

CITES appendices list the species that are threatened with extinction currently and those for which there is some indication that they face the threat of extinction in the future. The Conference of Parties determines what species should be listed.<sup>111</sup> Any species listed in appendix 1 may not be shipped without the issuance of an export permit by the exporting state which permit may only be issued upon certification by the exporting state that such export will not be detrimental to the survival of the species.<sup>112</sup> An appendix I listing thus acts as an effective ban on trade of a species because even if the exporting state wishes to continue trading in the listed species, the importing state is under an obligation to bar all other than scientific imports.<sup>113</sup> An Appendix II listing on the other hand allows for trade in the listed species at the discretion of the exporting state. The importing state has an obligation to ensure that the exporting certificate has been issued.<sup>114</sup>

Appendix III of CITES provides the least amount of protection and it includes species that are subject to regulation under the jurisdiction of any member state for the purposes of preventing or restricting exploitation.<sup>115</sup> The provision for an appendix III listing is to assist countries with domestic regulations to enforce those regulations internationally. Restrictions on trade thereunder are limited to specimens from the state that has listed the species.<sup>116</sup> The management and scientific authorities set up at the national level by member states limit the numbers of permits issued and thus effectively establish quotas for the species concerned. The permits also facilitate the monitoring of international trade in wildlife.<sup>117</sup>

All the east African countries are parties to CITES and have deposited in their national laws measures to control trade in wildlife species. The Uganda Wildlife Statute, 1996 specifically provides for the preservation of endangered species. Section 20(1)(c) provides that one of the purposes of wildlife conservation areas is "to preserve populations or rare, endemic and endangered species of wild plants and animals". The use of import, and export or re-export permit is also provided for under Part X of the Statute dealing with international trade in species and specimens. However, it has been argued that these provisions are inadequate in the light of the fact that apart from the Wildlife Statute, the other wildlife-related legislation does not make any mention of CITES provisions.<sup>118</sup> In Tanzania, the Wildlife Conservation Act, 1974, makes provisions for different levels of protection by the schedule method adopted by CITES. Similarly, the Act adopts the CITES system of import/export permits.<sup>119</sup> The Kenya Wildlife (Conservation and Management) (Amendment) Act similarly makes provisions prohibiting the import; export; and the possession of and domestic trade in wild species, except under a permit.<sup>120</sup>

CITES has remained at the centre of the divergence between eastern and southern African countries with respect to the African elephant. The latter support wildlife management strategies and have put in place community-based programmes encouraging such management while the former support preservationist strategies.<sup>121</sup>

At the 1989 meeting of the Conference of the Parties, the elephant was moved to Appendix I and all trade in ivory banned. This move was supported by Eastern African countries led by Kenya but opposed by five Southern African states who promptly entered reservations with respect to the elephant listing arguing that their elephant populations did not decline as did those in other countries in the 1970s and 1980s.<sup>122</sup> This issue arose again in 1992 when the Southern African countries attacked the complete ban on ivory trade.<sup>123</sup> At the tenth meeting of the Conference of Parties held in Harare Zimbabwe in June 1997, elephant populations in Zimbabwe, Botswana and Namibia were moved from appendix I to appendix II.<sup>124</sup> These countries were also allowed to trade in ivory, but initially only in legally held ivory.<sup>125</sup> The eleventh meeting of the Conference of Parties, held in Nairobi in April 2000, maintained the position taken in 1997.

### **C. Conflict prevention and Dispute Resolution Mechanisms**

Human-wildlife conflicts are prevalent in the countries studied to varying extents. In Kenya for instance, it has been stated that “[w]ildlife is widely reviled in Kenya. Few landowners see wild animals as anything but a threat to life and property.<sup>126</sup> These conflicts have been defined to include “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”.<sup>127</sup> These conflicts include injuries and death, economic and psychological losses, competition and group interests relating to resources and wildlife benefits, among others.

In addressing these wildlife-human conflicts, wildlife legislation and regulations attempt to make provisions for community participation; land use and land tenure systems; compensation; tourism development; and access to dispute resolution mechanisms. Most wildlife resources in Africa are regarded as trust property publicly owned and vested in appropriate authorities as trustees on behalf of the citizens.<sup>128</sup> Once land has been declared a conservation area it becomes trust property. The critical question here relates to compensation for alienated land and also compensation for injuries occasioned by animals. Under the Tanzanian wildlife legislation there exists no system of compensation for wildlife damage.<sup>129</sup> Similarly, there is no compensation for land declared to be a wildlife conservation area.<sup>130</sup> In Uganda the Wildlife Conservation Statute establishes the Wildlife Tribunal. This Tribunal hears appeals from the decisions of the Wildlife Authority.

In Kenya, compensation may only be obtained for loss of life or personal injuries. Even where compensation is available, it is usually insufficient or not proportional to loss. For instance, the maximum compensation for loss of human life is Kshs.30,000. Lack of or inadequate knowledge of these administrative procedures greatly hamper access to justice. The policy of non-compensation for damage to property goes against the demands of conflict prevention.

Another potential source of conflict is revenue and other benefits sharing. There is lack of knowledge of who the stakeholders are and what actually constitutes equitable distribution of wildlife benefits.<sup>131</sup> Moreover, it is not enough for laws and regulations to be enacted, the relevant authorities must ensure the implementation of these laws and regulations. For instance, while provisions are made for a part of wildlife revenue to go to local communities in Kenya, KWS is given authority to meet its financial needs first, thus making implementation well nigh impracticable.

## V. CONCLUSION

The success of wildlife management laws is dependent on the alignment of these laws with both national development objectives as well as the interests of the citizens in the countries who provide the context for the management activities. The fact that wildlife resources traverse terrain that is owned by different entities requires that the property owners' rights be taken into consideration and inform wildlife legislation and policy. In this regard, although the national laws studied make appreciable attempts to provide for wildlife conservation, they have only recently begun to take account of human settlement and land use. Previously, emphasis was laid on declaration of potential wildlife areas into conservation and thus protected areas as a way of separating people from the resources due to the perception that people could not manage the resources.

One of the issues that needs immediate attention in planning and implementing wildlife management is tenure to resources, both wildlife and land. It is gratifying to note that the states studied recognise the centrality of tenure to wildlife management and the need to vest the resources in the government for and on behalf of the citizenry. It is however imperative that the trusteeship bestowed on the state is clearly mapped out to ensure that the integrity of the resources is maintained. Examples from Kenya show how an unclear trusteeship can result in the conversion of public resources into private resources without recourse to the public. Giving individuals and communities living with wildlife the necessary incentives to invest in wildlife management is another critical issue in sustainable wildlife management. The steps being made in Tanzania and Kenya are commendable steps towards enlisting the cooperation of diverse actors in wildlife management and ease the burden of the central government and wildlife authorities.

It is noteworthy that international legal instruments such as the African Convention and the Convention on Biological Diversity devote considerable attention to the cultural/traditional or customary interests of and the participation of local communities in wildlife conservation and utilization. African Wildlife conservation legislation needs to provide sufficient mechanisms for the achievement of this goal. Given that biodiversity resources such as wildlife are resident within nation states, the failure of states to take a lead in these areas renders them impracticable though enshrined in international treaties. Moreover, while these international and regional instruments provide for procedural rights such as access to information, public participation in environmental decision-making and access to justice, these are not clearly laid out in the national wildlife laws. Indeed the development and implementation of most of these laws has been in blatant violation of these rights. This is notwithstanding the fact that the rights are contained in some national constitutions in the countries studied and also in their framework environmental laws. The efficacy of new wildlife initiatives will require effective implementation of procedural rights, provisions. At a regional level, it is imperative that transboundary wildlife resource management plans be devised since wildlife is a fugitive resource and political boundaries as such may not be coterminous with ecosystems.

## ENDNOTES

- <sup>1</sup> See e.g., Convention on the Conservation of Migratory Species of wild Animals, 19 I.L.M. (1980).
- <sup>2</sup> See e.g., Convention destinée à assurer la conservation des diverses espèces animales vivant à l'état sauvage en Afrique qui sont utiles à l'homme ou inoffensive, London 19 May 1900, *reprinted in* Rüster, B. & Simma, B., *International Protection of the Environment - Treaties and Related Documents* (Vol. 28), 214.
- <sup>3</sup> Sustainable management is used here to denote a balance of conservation and utilisation.
- <sup>4</sup> *Ibid.*
- <sup>5</sup> See, e.g., Daniels, Nomsa D., 'Protecting the African Environment: Reconciling North-South Perspectives', *Critical Issues*, 3 (1992), 12.
- <sup>6</sup> See Preamble of the Convention Relative to the Preservation of Fauna and Flora in their Natural State - Signed at London, 8 Nov. 1933, 172 L.N.T.S. 241. In many countries, substantial amounts of land were set aside for wildlife conservation. Thus, 16%, 21% and 25% of Rwanda, Botswana and Tanzania were designated as nature reserves by 1988. See Barbier, E. B., 'Community-based Development in Africa', in Timothy M. Swanson & Edward B. Barbier (eds.), *Economics for the Wilds: Wildlife, Diversity and Development* (London: Earthscan, 1992), 103, 107.
- <sup>7</sup> Report of the World Conservations and Monitoring Centre, 1992 at 66.
- <sup>8</sup> See J. Anywar, "Report on Wildlife Legislation in Uganda" (Consultancy Report for UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa, November 1998) at 1. (On file with the author).
- <sup>9</sup> [http://wildlife-programme.gtz.de/wildlife/wildlife\\_forestry\\_sector.html](http://wildlife-programme.gtz.de/wildlife/wildlife_forestry_sector.html) visited on 26th October 2004.
- <sup>10</sup> *Supra* note 7.
- <sup>11</sup> See C. Omondi, "Review and Harmonization of Wildlife Legislation in Kenya with Special Emphasis on the National Implementation of Relevant International Legal Instruments" (Consultancy Report for UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa, June 1998) at 33. On file with the author.
- <sup>12</sup> Western, D., "The Ecological Value of Elephants: A Keystone Role in African Ecosystems", in *The Ivory Trade and the Future of the African Elephant*, 1989.
- <sup>13</sup> See Michael O. Odhiambo, Liberalisation, Law and the Management of Common Property Resources in Kenya : The Case of Public Land and Forests, (27 Mar. 1996) (mimeographed paper presented at the East African Regional Symposium on Common Property Resource Management, Kampala, 26-28 Mar. 1996, on file with the author).
- <sup>14</sup> See e.g., Article 237(2)(b) to the effect that "the Government or a local government as determined by Parliament by law, shall hold in trust for the people and protect, natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens."
- <sup>15</sup> Anywar, *supra* note 8 at 11.
- <sup>16</sup> See § 4(1) of the Wildlife Statute which provides that the ownership of every wild animal and wild plant existing in its wild habitat in Uganda is vested in the Government on behalf of, and for the benefit of, the people of Uganda.
- <sup>17</sup> § 2.
- <sup>18</sup> § 4 (7)
- <sup>19</sup> See Wamukoya, G. M., & Situma, F.D.P. *Environmental Management in Kenya: A Guide to the*

- Environmental Management and Coordination Act, 1999, 2000, CREEL, Nairobi.*
- 20 Chapter 318 of the Laws of Kenya.
- 21 Chapter 385 of the Laws of Kenya.
- 22 *Cf.* the Timber Act (Cap. 386); Agriculture Act (Cap. 318) emphasizes agro-business rather than agro-ecology; Water Act, (Cap. 372), etc.
- 23 *See* Chapter III, Part B:2 (3) and accompanying notes.
- 24 Sessional paper No. 1 of 1986 on Economic Management for Renewed Growth
- 25 Republic of Kenya Development Plan 1989-93, p. 184.
- 26 *Ibid.* at 195-196.
- 27 *See Republic of Kenya, Statement on the Future of Wildlife Management Policy in Kenya (Sessional Paper No. 3, 1975) [hereinafter 1975 policy].*
- 28 *Ibid.* at ¶ 1.
- 29 This policy thus showed the inadequacy of confining conservation activities and policies to the protected areas because these areas could not maintain the abundance and vigour of wildlife without access to larger ecosystems and intensive management.
- 30 This Policy maintained that making wildlife pay its way is the best approach to safeguarding the existing and future value of wildlife in a changing national context and to this end the policy foresaw the need to provide information, advice and assistance to local landowners on how to secure higher returns from wildlife on their land. *Ibid.* ¶ 36.
- 31 *Ibid.* ¶ 12.
- 32 Cap. 376 of the Laws of Kenya (Act No. 1 of 1976, 8 Kenya Gazette Supplement, February 1976) [hereinafter Cap. 376 of the Laws of Kenya].
- 33 *But see Government of Kenya, Wildlife Policy (1996)* noting that the Act does not fully reflect the intent of the 1975 Policy. For instance, the provisions for the co-existence of wildlife conservation and human activities are not reflected in the Act.
- 34 *See* Preamble, Cap. 376 *supra* note 32.
- 35 *International Union For The Conservation Of Nature (IUCN), United Nations List Of National Parks And Protected Areas (1982).*
- 36 Act No. 8 of 1999.
- 37 *See* § 9 on objects and functions of the National Environment Management Authority (NEMA) which includes taking stock of the conservation and utilisation of Kenya’s natural resources.
- 38 *See* §§ 50-52 and § 148 requiring environmental laws in existence before itself to be aligned with its provisions.
- 39 *See* The United Republic of Tanzania, *National Environmental Policy*, and December, 1997.
- 40 *See* The United Republic of Tanzania, *The Wildlife Policy of Tanzania*, March, 1998.
- 41 *See* R. V. Makaramba, “Review and Harmonization of Wildlife Laws and Regulations in Tanzania” (Country Report for UNEP/UNDP/Dutch Government Project on Environmental Law and Institutions in Africa, 1998) at 6. On file with the author.
- 42 *See* Article 3.2 of the *Wildlife Policy of Tanzania*, *supra* note 40.
- 43 §§ 6 & 7 of the National Parks Ordinance.
- 44 § 10 of the Marine Parks and Reserves Act.
- 45 §§ 18 and 19.

- <sup>46</sup> Act No. 12 of 1974
- <sup>47</sup> Wildlife Policy 1998 *supra* note 40.
- <sup>48</sup> See United Republic of Tanzania, Ministry of Natural Resources and Tourism, Wildlife Division, Revised Wildlife Act, 2004, Task Force Draft, Dar Es Salaam May 2004.
- <sup>49</sup> See United Republic of Tanzania, Ministry of Natural Resources and Tourism, Wildlife Division, Revised Wildlife Act, 2004, Task Force Draft, Dar Es Salaam May 2004 at § 29.
- <sup>50</sup> See, e.g., Ogolla Bondi, 'The Role of Environmental Law in Development', in S. Panou (et al. eds), *Contemporary Conceptions of Social Philosophy* (Stuttgart, Steiner, 1985).
- <sup>51</sup> See Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, *reprinted in* 31 I.L.M. 818 (1992).
- <sup>52</sup> See Kenya Wildlife Service, Draft Wildlife Policy, September 2004 (On file with the author)
- <sup>53</sup> The Wildlife (Conservation And Management) (Amendment) Bill 2004.
- <sup>54</sup> *Supra* note 51 Article 1.
- <sup>55</sup> See African Convention on the Conservation of Nature and Natural Resources adopted at Maputo, July 2003. Article III on Principles includes both the right to a satisfactory environment favourable to development, the duty of states to ensure the enjoyment of the right to development and the duty of states to ensure that developmental and environmental needs are met in a sustainable, fair and equitable manner.
- <sup>56</sup> See Anywar, *supra* note 8 at 2.
- <sup>57</sup> § 5(2).
- <sup>58</sup> § 18.
- <sup>59</sup> §§ 19(5) and (6).
- <sup>60</sup> § 2.
- <sup>61</sup> §§ 3A(d) and (l).
- <sup>62</sup> § 3B(1).
- <sup>63</sup> § §3(1) and 3G.
- <sup>64</sup> *Id.* at §§ 18 and 19, Cap. 376 *supra* note 32.
- <sup>65</sup> See 1975 policy, *supra* note 27 at 14.
- <sup>66</sup> See Njeri Marekia, Land Tenure and Wildlife Conservation : A Status Review Policy Outlook Paper, on file with the author (1990).
- <sup>67</sup> This is pursuant to the 1974 Wildlife Conservation Act. See, e.g., § 3 which creates the office of a Director to administer the Act.
- <sup>68</sup> See Makaramba, *supra* note 41 at 36.
- <sup>69</sup> Chapter 412, 1959.
- <sup>70</sup> § 11.
- <sup>71</sup> See Makaramba, *supra* note 41 at 38.
- <sup>72</sup> See Makaramba, *supra* note 41 at 38.
- <sup>73</sup> § 5A of Act No. 14 of 1975.
- <sup>74</sup> Act No. 4 of 1980.
- <sup>75</sup> See § 5(1)(a) -(j) of the Serengeti Wildlife Research Institute Act.
- <sup>76</sup> §§ 8, 9 & 12.

- 77 § 4 of Uganda Wildlife Statute.
- 78 *Ibid.* at § 26(2) and (3).
- 79 *Ibid.* at § 30.
- 80 *Ibid.* at § 32.
- 81 *Ibid.* at § 33(8).
- 82 *Ibid.* at § 46-49.
- 83 *Ibid.* at § 70(4).
- 84 *See* § 20(1) Cap. 376 *supra* note 32.
- 85 *See* 'Richard Leakey talks to Swara', 13 *Journal of East African Wildlife Society* 15 (1990).
- 86 The Main objectives of the Department are to: 1) To minimise conflicts between wildlife and man outside protected areas - protect human life and property from wildlife depredation; 2) To discourage human encroachment into wildlife protected areas - strengthen the relationship between KWS and people living outside protected areas through dialogue; 3) To encourage communities outside protected areas to assist in the conservation and management of wildlife resources where it is a viable land use system - thus communities to be encouraged to apply for wildlife use rights in areas outside the protected areas and there to be a memorandum of understanding between communities living outside protected areas on a clear land use policy; revenue sharing schemes and problem animal control to be initiated by KWS; and 4) To encourage communities to undertake economically healthy wildlife related projects - create income generating projects, both consumptive and non-consumptive, related to wildlife to lure community support for wildlife conservation; also educate people on the importance of wildlife conservation for present and future generations; also ingrain sense of sustainable management to ensure continued flow of benefits. *See* Kenya Wildlife Service, Report of the Proceedings of Strategic Planning Workshop for the Community Wildlife Service Department, held in Nairobi, Kenya ( 29 June - 1 July 1992).
- 87 *See* Matte Sommerlatte & Kenya Wildlife Service, *Report of Wildlife Utilisation* (1992).
- 88 *See* Kenya Wildlife Service, Report of the Five-Person Review Committee on Wildlife Human Conflict, released by the Director, Kenya Wildlife Service 8 (December 1995) (On file with the author).
- 89 *See* Kenya Wildlife Service, Draft Wildlife Policy, September 2004 (On file with the author).
- 90 *See* Makaramba, *supra* note 41 at 36.
- 91 § 7(6).
- 92 § 7(7) of the Act.
- 93 *See* Wildlife Policy of Tanzania, *supra* note 40 at ¶ 3.3.9.
- 94 *See* Lyster, S., *International Wildlife Law - An Analysis of International Treaties Concerned with the Conservation of Wildlife* (Cambridge, Grotius Publications, 1985). *See also* Sands, P., *Principles of International Environmental Law I - Frameworks, Standards and Implementation* (Manchester, Manchester University Press, 1995), 388 acknowledging that both the 1900 and London Conventions included provisions and techniques for international conservation still found in modern treaties.
- 95 African Convention on the Conservation of Nature and Natural Resource - Adopted at Algiers, 15 Sept. 1968, 1976 UNTS 4. The link between the two conventions is clearly spelled out in Article XXI. 3 which provides that the London Convention shall cease to have effect in States in which the new Convention has come into force. The African Convention entered into force on 7 May 1969.
- 96 *See* Lyster, *supra* note 94.

- 97 The principles of the sustainable development, precaution, permanent sovereignty over natural resources, conservation of the environment as a common concern of humankind are all contained in the Convention.
- 98 African Convention on the Conservation of Nature and Natural Resource - Adopted in July 2003 (On file with the author].
- 99 See Articles VI to IX of the Convention.
- 100 *Ibid.* at Article X.
- 101 See, e.g., Ogolla, *supra* note 50. See also Nickerson, B. J., 'The Environmental Laws of Zimbabwe: A Unique Approach to Management of the Environment', 14 *B. C. Third World Law Journal* 189 (1994) and UNEP, African Ministerial Conference on the Environment (AMCEN), Report of the Expert Group Meeting (Doc. \6th Session\6se\_re.exp, Nairobi, 11-13 Dec. 1995) and Report of the Ministerial Session of the Conference, Sixth Session - African Ministerial Conference on the Environment (AMCEN), Nairobi, 14-15 Dec.1995 (Doc.\6THSESSN\6se\_rep.min) which proposes a different vision of environmental management for African countries, emphasising the significance of increased population and declining agricultural productivity.
- 102 UNESCO, 1972, Convention for the Protection of the World Cultural and Natural Heritage - Adopted on 16 Nov. 1972, *reprinted in* 11 I.L.M. 1358 (1972).
- 103 See Swanson, Timothy, 1992, 'The Role of Wildlife Utilization and other Policies for Diversity Conservation', in Swanson T. M. & Barbier E. M., *Economics for the Wilds* 65.
- 104 See Article 3 of the World Heritage Convention, *supra* note 102.
- 105 See LYSTER , *supra* note 94. 211
- 106 See Makaramba, *supra* note 41 at 65.
- 107 See Anywar, *supra* note 8 at 29.
- 108 See Wamukoya & Situma, *supra* note 19 at 87.
- 109 See Convention on International Trade in Endangered Species of Wild Fauna and Flora *reprinted in* 12 I.L.M. 1085 (1973).
- 110 *Ibid.* Preamble.
- 111 *Ibid.* Article II.
- 112 See Article III of CITES *supra* note 109.
- 113 See Swanson, *supra* note 103. See also, Michael J. Glennon, 'Has International Law Failed the African Elephant?' 84 *American Journal of International Law* 1, 11 (1990).
- 114 See Article II(2), CITES *supra* note 109.
- 115 See Article II(3), CITES *supra* note 109.
- 116 See Article V (2) & (3), CITES *supra* note 109.
- 117 See United Nations Environment Programme, The Convention on International Trade in Endangered Species of Wild Fauna and Flora, Environment Brief No. 8 (1989)10.
- 118 See Anywar, *supra* note 8 at 31.
- 119 §§ 63 and 64.
- 120 See Part VI of the Act.
- 121 See, e.g., Marshall Murphree, The lesson from Mahenye: Rural Poverty, Democracy and Wildlife Conservation, The Wildlife and Development Series, [http://www.wildnetafrica.com/bushcraft/articles/document\\_campfire1.html](http://www.wildnetafrica.com/bushcraft/articles/document_campfire1.html) (last visited 04/01/98).
- 122 See Official Documents, Seventh Meeting of the Conference of the Parties Lausanne

(Switzerland), 19-20 October 1989. Further, the a Panel of Experts recently concluded that elephant populations in these countries did not meet biological criteria for listing in Appendix I. It is however felt that resumption of ivory trade without proper trade and regulatory mechanisms in exporting and importing nations.

- <sup>123</sup> See, e.g., Favre, David S., 'Debate within the CITES Community : What Direction for the Future?', 33 *Natural Resources Journal* 875, 903-904 (1993).
- <sup>124</sup> See *Proposals Concerning Export Quotas for Specimens of Species in Appendix I or II*, Convention in International Trade in Endangered Species of Wild Fauna and Flora, Tenth Meeting of the Conference of the Parties, Harare 9-20 June 1997 UN Doc 10.89. Prop. 10:25,26,27
- <sup>125</sup> Legally held ivory includes ivory confiscated from poachers and ivory got from natural elephant mortality and management activities. Convention in International Trade in Endangered Species of Wild Fauna and Flora, Tenth Meeting of the Conference of the Parties, Harare 9-20 June 1997 Doc 10.89 Proposals Concerning Export Quotas for Specimens of Species in Appendix I or II; Prop. 10:25,26,27
- <sup>126</sup> KWS Director, Dr. David Western, opening address on the national debate on the Wildlife-Human Conflict, 7 (August 3, 1995).
- <sup>127</sup> See Five-Person Review Group Report, *supra* note 88.
- <sup>128</sup> See, e.g., Makaramba, *supra* note 41 at 34 and § 4 of Wildlife Statute of Uganda.
- <sup>129</sup> See Makaramba, *supra* note 41 at 34.
- <sup>130</sup> See Makaramba, *supra* note 41 at 34-35.
- <sup>131</sup> See, e.g., Five-Person Review Group Report, *supra* note 88.

