IMPLEMENTATION AND ENFORCEMENT OF THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA IN TANZANIA

H. I Majamba*

Introduction

The genesis of the Convention on International Trade in Endangered Species of Wild Fauna and Flora[1] (popularly referred to as "the CITES") is traceable in the early 1960's when rampant trade in endangered wild animal species and their products was at its peak. Noting the imminent danger facing humankind and the animal kingdom, due to the accelerated pace of wildlife carnage, the International Union for the Conservation of Nature (IUCN) summoned governments in 1963 with a view to deliberating measures to control and regulate the export, transit and importation of rare and endangered wild animal species.[2] Further to the IUCN initiative, the United Nations Conference on the Human Environment recommended that a special conference of Parties be convened in order to adopt a Convention whose implementation would effectively control and regulate international trade in certain specified species of wild animals and plants.

The special conference adopted the CITES which was signed in Washington on 3rd March 1973 and entered into force on 1st July 1975.[3] There are slightly over 150 Parties to the Convention. The Convention's main objectives are stated in the preamble. These are basically focused at preventing international trade from threatening the survival of wild fauna and flora for both present and future generations.[4] Tanzania

* LL. B (Dar) LL.M (Queen's) P h. D (Northeastern); Lecturer in Law, University of Dar-es-Salaam (A similar version of this paper was presented at the East Africa Regional Workshop on the CITES Implementation and Enforcement, held in Kampala, Uganda in June 2000)

became a signatory to the CITES in 1979 and the provisions of its principal law governing trade in wild animals species were enacted in 1974, a year after the CITES came into force.

This article explores the extent to which the provisions of the CITES have been implemented and enforced in Tanzania in view of emerging new trends in wildlife conservation and management regimes at both regional and international planes. The article identifies possible loopholes in Tanzania's CITES-related institutional, legal and policy-making framework and suggests ways to ameliorate implementation and enforcement mechanisms. A comparison of the implementation and enforcement of the Convention in Tanzania and Botswana, for purposes of drawing examples from relatively successful models from which Tanzania can learn, is also made.

The Development of Wildlife Trade in Tanzania: A Historical Perspective

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

The trade in wild animals and trophies, which later played a significant role in the decimation of certain wild animal species in huge numbers, went through two basic

stages in the history of wildlife trade in Tanzania. The first of these stages was at the level of barter trade where local community members generally exchanged goods, including various species of wild animal products and plants. Whereas wild animal products and trophies were generally traded for the performance and use of certain tribal ritual and rites, the plants involved in this trade were mainly those considered to have medicinal value. Later, mainly as a result of the emergence of proprietary relations based on individual ownership of property and the means of production, a more commercialized large-scale trade in certain species of wild animals emerged.

An exploration of the various stages in the history of trade in wild animals and trophies in Tanzania will set a foundation for a better understanding of the factors that helped shape the legal and institutional structures that were put in place to control and regulate trade in wild animal species and trophies in different historical periods. The analysis will also set a basis for a holistic understanding of the mechanisms put in place to enforce and implement the CITES in Tanzania.

The Pre-Colonial Era

A tranquil relationship between wild animal species and humankind was generally maintained and nurtured by most local community members of Tanzania prior to the advent of foreign influence. Most society members in this era maintained cultures, traditions and customary rituals that to some extent ensured this relationship. These cultures and traditions were well known to community members and there existed mechanisms to enforce them. Traditional authorities such as local chiefs and traditional

religious leaders who enforced the rituals applied well-known and communally accepted traditional norms to punish those who infringed the respected rules.

Among the many communities in Tanzania, some were hunter-gatherers, others were hunters per se but observed traditional hunting rituals. Other communities just hunted for the pot. Trade in some wild animal products, such as hides and skins, was usually practiced between community members who lived on subsistence farming and those who were predominantly hunters.

The impact of the small-scale trade and subsistence use of wildlife products did not have a significant effect on the continued survival of a number of wild animal species.[5] Large-scale trade in wild animals and related products among local community members in the pre-colonial era in Tanzania before the advent of foreign influence was generally non-existent.

However, with the arrival of Arab slave traders along the East Coast, things took a different turn. Features of specialized trade in ivory and other trophies, initially at a relatively small scale but later at a larger one, begun to take shape. Some tribes, for example, the Nyamwezi, engaged in long distance caravan trade, carrying elephant tusks from the mainland to the coast to trade with Arab merchants.

Later, the Arabs penetrated into the interior of Tanganyika and exercised direct and indirect authority over local tribes. They seized large amounts of ivory and transported it to the coast via Tabora.[6] At this time, relations and factors of production were still at a relatively rudimentary level and there was therefore no massive slaughtering of wild animal species to supply the trade in game.

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

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

The Colonial Era

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

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

The unlawful trade in wild animals denied the German custom officials an export tax due to the Kaiser. In an effort to rectify this, the colonial regime introduced formal

codified rules and laws to regulate hunting methods and trade in wild animals and trophies in 1891. These were mainly focused at protecting endangered species.

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

By the time the British took control, Tanganyika had become very famous for its variety of big game and diversity of landscapes. These attracted a steady stream of wealthy hunters who hunted various wild animal species for both sport and trade. Elephant populations had tremendously recovered to the extent of necessitating their culling in order to keep their numbers in line with a growing population and expanding agricultural base. The enforcement of legal rules on restrictions of hunting elephants and involvement in ivory trade contributed greatly to the recovery of the elephant population. The British colonial regime sought to maintain the achievement started by its predecessor.

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

The slaughter included those species that had previously been left unharmed by local people.[7] Although the British colonial government was a signatory to a number of

international agreements that sought to conserve wild animals on the continent, trade in endangered species of wild animals continued unabated during the colonial era.[8] In an effort to "blind fold" the international wildlife conservation pressure groups which had mounted, calling for a stop in the wanton destruction of Africa's wildlife by colonial settlers, the colonial administration enacted a number of wildlife legislation and regulations.

The Fauna Conservation Ordinance was the colonial government's main wildlife management legislation. The Ordinance was enacted with the objective of reflecting the colonial government's "compliance" with the obligations under the international wildlife conservation and management legal instruments it had assented and ratified rather than the interests of wild animal species and local community members.[9] Most of the provisions of the Ordinance and the regulations made there under were, gauged in a manner that ensured that the thriving trade in wild animals and trophies was not unduly affected. It is this wildlife management and conservation legacy that the independence government of Tanganyika inherited.

The Post-Independence Period

The post independence government of Tanzania retained most colonial wildlife laws, policies and institutions. As a result of the wholesale adoption of the colonial laws, the Fauna Conservation Ordinance became the independence government's main point of reference in matters relating to wildlife management, protection and trade. The rules and regulations governing trade in wild animals and related products that were promulgated

by the colonial administration under the Ordinance were subsequently incorporated in the adopted package.

The colonial wildlife legislative and institutional framework that the independence government adopted was derived from, among other international instruments, the 1900 Convention Concerning the Preservation of Wild Animals, Birds and Fish in Africa and the 1933 Convention Relative to the Preservation of Fauna and Flora in their Natural State.[10] These Conventions were essentially premised on the elevation of private interests of most colonial settlers who maintained that their rights to hunt and trade in wild animals and their products could not be invalidated by the merits of wildlife conservation.[11]

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

Expatriate staff that served in the colonial government still largely controlled the administration and management of most wildlife institutions in the immediate post-independence era. Most still operated on the colonial concept of wildlife conservation,

which emphasized supplying products to the international trophy market. This foundation set the basis for the continued bond between the independence government and Western countries in matters relating to wildlife conservation and management.

It was, therefore, not surprising that the independence government still relied on it's former colonial powers, albeit indirectly, through wildlife conservation and management organizations and agencies, for assistance in the conservation and protection of the country's wildlife resources.[12] The aid package included provision for training wildlife personnel to deal with, among other things, the regulation of trade in wildlife.[13]

With the advent of the concept of regionalism and African socialism, which were advocated for by some of the emerging influential leaders on the African continent, Tanzania's government approach and development strategies, including those relating to wildlife conservation and protection, changed. The Euro-centric concepts of wildlife conservation and management, which were primarily based on the notion that "West is best," were strongly criticized and considered as part of a continuing effort to impose Western capitalist values on Tanzania, at the local peoples' expense and to their detriment.

The ratification of the African Convention for the Conservation of Nature and Natural Resources of 1968 by the independence government in 1974, the repeal of the Fauna Conservation Ordinance and the subsequent enactment of the Wildlife Conservation Act in the same year was also partly influenced by the shift in the wildlife conservation paradigm.[14]

A Review of the Wildlife Trade Related Laws and Policies

Introduction

In its attempt to regulate and control trade in wild animals and plant species the CITES places endangered species of animals and plants in different lists (appendices) depending on their biological status and degree of their transaction at the international trading market. The species listed in Appendix I consist of those that are in danger of becoming extinct or may become so as a result of uncontrolled trade.[15] Species in this category may only be traded under very exceptional circumstances. Appendix II consists of those species that are not currently threatened with extinction but may become so unless their trade is strictly controlled and regulated in order to ensure their sustainability.[16] Tanzania's wildlife management legislative and policy regimes also contain provisions that seek to regulate trade in wild animal species and their products.

The current legislative framework governing wildlife management in Tanzania is comprised of a number of principal legislation, by laws and regulations.[17] The main legislation that reflect issues relating to the conservation, protection and general management of wildlife are the following:

- The Wildlife Conservation Act, 1974
- The Fisheries Act, 1970
- The National Parks Ordinance, Cap. 412
- The Forest Ordinance, Cap. 398: and
- The Ngorongoro Conservation Area Ordinance, Cap. 413

Although most of the provisions of the above pieces of legislation have a bearing on the implementation of the CITES in Tanzania, the most comprehensive and that which

sets the basis of the wildlife management regime, including trade in wild animals, is the Wildlife Conservation Act, 1974. The specific focus on the provisions of the Wildlife Conservation Act, 1974 should not obscure the fact that the other pieces of legislation are also important in the enforcement and implementation of the CITES in Tanzania.

The provisions of the Wildlife Conservation Act and the regulations made there under elucidate the extent of Tanzania's compliance with the CITES provisions.

The Wildlife Conservation Act, 1974[18]

Although this legislation primarily deals with the management of wildlife populations inside areas designated as Game Reserves, Game Controlled Areas and Partial Game Reserves, some of it's provisions, though not very explicitly, reflect the requirement stipulated by the CITES relating to international trade in wild animal species and their trophies.

The provisions of section 63 (1) of the Act, prohibit the export of any trophy unless there is issued a valid trophy certificate authorizing such export. Sub-section 2 of this provision empowers the Director of Wildlife to issue trophy export certificates to any person/s entitled to export any trophy. The provision provides that the certificate be in a prescribed form. Indeed, the forms are prescribed by regulations made in pursuance of this provision. The regulations (as will be noted later) require compliance with the CITES. Section 64 of the Act also re-echoes the CITES as it prohibits the general importation of trophies. The Director of Wildlife may, however, authorize importation of trophies.

Another aspect of the Wildlife Conservation Act , 1974that reflects the CITES is that which disqualifies persons who have been convicted for any offense related to wildlife trade in any jurisdiction from holding trade/import licenses. The Director of Wildlife may, however, lift such disqualification.[19]

The Wildlife law also reiterates the CITES directive which requires Party States to put into place penal provisions to discourage trade in wild animal species. Section 65 of the Act provides for offences and prescribes penalties for contravening provisions of the act. The offences targeted at include unlawfully engaging in, among other things, the export and import of trophies. The court may order forfeiture to the government of any animal or trophy involved in the commission of an offence under this provision.[20]

The provisions of sections 56 and 65 of the Act also have a bearing on the obligation placed upon Contracting Party States to the CITES to take strict domestic measures in their jurisdictions to ensure compliance with conditions of trade in wild animal species.[21]

The schedules to the Wildlife Conservation Act, 1974 also reiterate the requirements stipulated by the CITES. These list down different species of animals and stipulate conditions to be met in order to hunt the scheduled species and categories of animals that are to be specially protected, for example, those considered "national game."[22]

The CITES directs Party States to impose strict domestic regulations and other legal mechanisms to supplement wildlife legislation in a bid to facilitate the control and regulation of trade in endangered species of flora and fauna.[23] The rules and regulations made under the provisions of the Act, in many aspects, reiterate the CITES's directive.

The Wildlife Conservation (Hunting of Animals) Regulations, 1974 (as amended)[24] and the Wildlife Conservation (Capture of Animals) Regulations, 1974,[25] for example, were promulgated in pursuance of the Wildlife Conservation Act, 1974 whose provisions, as noted earlier, are not very explicit in terms of making reference to trade in wild animal species.

The Regulations prescribe, among other things, the requirements for exporting wild animals and trophies by providing a mechanism that ensures compliance with the CITES provisions. The Regulations governing the capture of animals, for example, provide that any person who intends to export a wild animal is required to inform the Director of Wildlife, in writing, of his/her intention to do so at least two weeks before the date of export. The exporter would also have to produce a letter from a recognized and reputable zoological institution or similar establishment at the port where the animal would be received as evidence that the institution or establishment will receive the animal. Within 90 days upon arrival, such institution or establishment is required to acknowledge receipt of the anima to the Director of Wildlife.[26]

The Eighth Schedule to the Wildlife Regulations (Dealings in Trophies) Amendment Regulations of 1989 also restates one of the CITES objective by providing for the kind of species of wild animals that are required to be accorded such protection by the CITES.[27]

The foregoing review reveals that the Wildlife Conservation Act makes a vivid attempt to give effect to the provisions of the CITES by requiring different levels of protection for wild animal species listed in the four schedules to the Act. The permit and

licensing procedures and the regulations made under the principal wildlife law also prescribe the CITES-related conditions that have to be met before a trophy is exported or imported.

The analysis also reveals that schedules to the Act, which are substantive parts of the principal legislation, contain detailed specifications on control and regulation of trade in all wild animal species, whether such species are endangered or not. This is in all respects a positive reflection of the provisions of the CITES.

Subsequent developments in Tanzania' wildlife regime, that have implications for the implementation of the CITES have been introduced by the promulgation of the wildlife policy in 1998.

The Wildlife Policy

The coordination of wildlife conservation and management matters in Tanzania was generally ad hoc and uncoordinated in the sense that there was no guiding policy until the promulgation of one in 1998. Prior to the 1998 policy what was often referred to as one of the principle guides on wildlife conservation is the statement by the late Mwalimu Nyerere in 1963, who had stated that:

> *"The survival of our wildlife is a matter of grave concern to all of us in Africa. These wild creatures amid the wild places they inhabit are not only important as a source of wonder and inspiration but they are an integral part of our natural resources and of our future livelihood and well being. In accepting the trusteeship of our wildlife, we solemnly declare that we will do everything in our power to*

make sure that our children's grand children will be able to enjoy this rich and precious inheritance…."[28]

To the extent that one of the CITES's major objective is to regulate and control trade in endangered species of wild animals in order to ensure that present and future generations benefits from their continued survival, the pre-policy guiding principle reflected one of the CITES's primary objective which provides that the Contracting Party States recognize:

" [T] hat wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for <u>this and the other generations to come</u>…"[29] (emphasis provided)

The new wildlife policy sets out a strategy designed to encourage direct utilization of wildlife.[30] One of the forms of wildlife utilization introduced by the policy is the concept of ranching. The definition of ranching provided for by the policy places an obligation on the part of the government to foster improved legal mechanisms in order to implement the provisions of the CITES. The policy document defines ranching to mean: *"..the rearing in a controlled environment of specimens, usually of young, taken from the wild <u>with the intention of engaging in wildlife trade</u>" (emphasis provided).*

From the definition above, it is clear that the official policy on wildlife now places significant emphasis on trade in wild animal species and trophies. This is a new approach to utilization of wildlife resources in Tanzania and the Wildlife Conservation Act, 1974 has not taken it into account. Since policies are governments' main tool for implementing legislation, any reform process of the Wildlife Conservation Act, 1974 ought to effectively reflect this new development.

It should also be pointed out that the strategies for trade in wildlife products laid down by the policy include the regulation of international trade in wildlife and related products in accordance with international standards and norms. Implicitly, the policy here is advocating for compliance with the CITES provisions as the CITES is the main international instrument that sets guidelines on matters relating to trade in wild animals and trophies. The strategies that the policy sets out to govern trade in wildlife products to a great extent also re-echo the obligations placed onto Contracting Parties States by the comparable provisions of the CITES. The policy strategies are aimed at:

> *"(i) Regulating trade in wildlife products derived from various types of utilization, natural mortality and confiscation;*
>
> *(ii) Retaining the mandate of international trade in products produced under the jurisdiction of other sectors, such as forestry, fisheries under their jurisdiction (sic);*
>
> *(iii) Regulating international trade in wildlife and its products in accordance with the appropriate Tanzania laws and international regulations; and*
>
> *(iv) Instituting the appropriate measures to ensure that the export of (the) CITES species or parts derived from the forestry and fisheries sectors meet the requirements of (the) CITES regulations."*[31]

The policy also lays out strategies to guide the government in its endeavors to comply with international and regional obligations on wildlife conservation and management. Among these, the policy focuses on the government committing itself to playing a truly international and regional role to ensure that successful conservation of

wildlife is achieved both within and outside Tanzania and collaborating with neighboring countries in the conservation and management of transboundary species and ecosystems.

One of the strategies that the CITES advocates for, in order to effectively implement its provisions, is the putting into place institutional mechanisms within the Contracting Party States' legal and policy-making frameworks. The wildlife policy also reflects this approach.

Institutional Arrangements for the Implementation of the CITES

The CITES require Contracting Party States to designate Scientific and Management Authorities in their jurisdictions in order to monitor and oversee the implementation of the Convention. It directs Parties to:

> *" Designate for the purpose of the Present Convention:*
>
> *(a) One or more Management Authorities to grant permits or certificates on behalf of that Party; and*
>
> *(b) One or more Scientific Authorities."* [32]

The situation in Tanzania in this respect is precarious. Neither the Wildlife Policy nor the Wildlife Conservation Act, 1974 explicitly makes reference to these authorities. However, this does not mean that there exists a lacuna in this respect. The implementation of the CITES in Tanzania has generally been coordinated by the Directorate of Wildlife in the Ministry of Natural Resources and Tourism. Whereas the Director of Wildlife acts as the Management Authority, the Chief Research Officer of the Game Division, also under the Directorate of Wildlife assumes the role of the Scientific Authority as envisaged by the CITES. Regulations made under the Wildlife Conservation

Act 1974, however, albeit not expressly, make reference to these two authorities, implying that they have been vested with this task.

The Wildlife Conservation (Dealings in Trophies) Regulations of 1974 and the Wildlife Regulations (Dealings in Trophies) (Amendment) Regulations of 1989 vest the Director of Wildlife and the Research Officer of the Game division with the duty to implement one of the obligations of the CITES. It is in the extensive and unrestricted construction of these Regulations that some inference to the authorities envisaged by the CITES can be located. The Regulations provide that:

"…[A] trophy export certificate in respect of any animal or trophy made from any part of an animal specified in the eighth schedule to the regulations and which is protected by the 1973 Convention on International Trade in Endangered Species of Flora and Fauna entered into at Washington shall be valid only if issued and signed both by (sic) the Director and the Game Research Officer of the Game Division."[33]

Another development that has a bearing on the implementation of the CITES within the wildlife institutional framework is the establishment of a CITES desk at the wildlife department. The desk officer is responsible for issuing permits, compiling annual trade reports and ensuring that matters relating to trade in wildlife are regulated in accordance with the provisions of the CITES.

Besides the Research Department of the Game Division and the Directorate of Wildlife, there exist other institutions and authorities which coordinate the CITES related activities. The functions and duties of these are related to wildlife conservation, protection and trade in some aspects. As a result, these could also rightly be construed as the authorities envisaged by the CITES in view of the failure by the Policy and the law to

make specific reference to the authorities envisaged by the CITES. The situation becomes more complicated as some of these institutions work in conjunction with the wildlife department, while others boast of autonomy, having been created by separate independent legislation.

The 1978 amendment to the Wildlife Conservation Act, 1974 called for the creation of a Wildlife Protection Unit (WPU) and established the Tanzania Wildlife Protection Fund (TWPF). [34] The TWPF is essentially a retention fund and it receives its revenue from, among other avenues, fees derived from trophy permits. Its other function is to provide support to other agencies involved in wildlife conservation.

Placed under the administration of the Director of Wildlife, the WPU is charged with the duty of enforcing restrictions relating to the hunting, capture of wild animal species and securing of trophies. These duties are closely associated with and are incidental to trade in wild animal species. Their enforcement by the WPU is an indication of the government's intention, way back in 1978, to comply with the CITES.[35]

The College of African Wildlife Management in Mweka is another institution whose activities to some extent relate to and have a bearing on implementing the provisions of the CITES in Tanzania. The College of African Wildlife Management Act, 1964 only made reference to the College in 1964.[36] The College was not legally established by the 1964 Act. It was established 30 years after the coming into force of the Act![37]

The amendment to the 1964 Act provides for the functions of the College. These include the provision of research and consultancy services to individuals and organizations concerned with the conservation and management of African wildlife. The

regulation of trade in endangered species of wild animals comprises one of the ways of conserving wild animal species. In this respect, therefore, though not directly, the training accorded to students at the College of African Wildlife Management underscores the objectives of the CITES.

In the performance of its statutory duty, the Tanzania Wildlife Research Institute (TAWIRI), formerly the Serengeti Wildlife Research Institute (SWRI), created under the Serengeti Wildlife Research Institute Act, 1980 also indirectly implements the directives of the CITES.[38]

TAWIRI is vested with the overall control of other wildlife research institutions. The Act establishing TAWIRI also places the management and control of some wildlife institutions and centers into TAWIRI for purposes of coordinated and effective research. The institutions and centers that have been placed under TAWIRI are listed in the 7th schedule to the Act. These are the Gombe Wildlife Research Center, the Kingupira Wildlife Research Center, the Mahale Mountain Wildlife Research Center, Njiro Wildlife Research Center and the Serengeti Wildlife Research Center.

The kind of research conducted by the Institute and the affiliated centers may not always be directly related to matters of international trade in wildlife. However, TAWIRI indirectly incorporates matters relating to the implementation of the CITES is so far as it identifies species which are threatened with extinction with a view to preventing or restricting their exploitation through, among many other avenues, illicit trade.[39] The existence of the various wildlife research and training institutions, offering courses in regulating trade in endangered species in Tanzania compliments the CITES requirement

of ensuring that exportation of wild animal species or specimens is not detrimental to their survival.[40]

Another statutory institution, charged with the management of wildlife and whose duties can closely be associated with implementing the CITES in Tanzania is the Tanzania National Parks Authority (TANAPA). The National Parks Ordinance establishes the TANAPA.[41] The board of trustees of TANAPA is empowered to sell or exchange any specimen of animal or vegetation in a national park and purchase or sell any specimen for introduction into a national park.[42] This obligation reflects one of the essential goals of the CITES - to ensure that trade in species is conducted on a sustainable basis for the future.

The Pasiansi Wildlife Training Institute trains scouts and rangers to combat illegal hunting (a main supplier of wild animals and wild animal products to the export market). By performing this function, this institution reiterates the CITES obligation which requires Party States to have in place mechanisms to enforce the law regulating trade in fauna and flora.

One of the strategies of combating illicit trade in wildlife products that the wildlife policy of Tanzania also places emphasis on is the institution of measures to ensure that the export of the CITES species or parts derived from the forestry and fisheries sectors meet the requirements of the CITES regulations. In this respect, the fisheries and forestry institutions also play a significant role in Tanzania's effort to comply with the provisions of the CITES.[43]

A common feature of government departments in most developing countries is their apparent lack of compiling and maintaining reliable records and information. The

wildlife department is not an exception to this general rule as its official data/records relating to the legal and illegal trade in the CITES-listed wild animal species is not readily available. The sketchy information and data that is available has not been officially compiled nor documented.

Informal information relating to statistics on the CITES implementation may, however, be obtained in a piece-meal fashion from a perusal of scattered research reports and studies compiled by private individuals and organizations dealing with wildlife management generally. Some information may also be obtained from data on the aerial census of wild animal species from projects conducted by the Tanzania Wildlife Conservation Monitoring (TWCM) in collaboration with the German Technical Development Cooperation (GTZ), the Ngorongoro Area Authority, Tanzania National Parks Authority (TANAPA), the Wildlife Division and the Frankfurt Zoological Society.[44]

The data obtained from these studies is essentially compiled to determine the population sizes of various species, in order to find out, for example, those that are declining and those that are stable. They cannot be readily relied upon in determining the status of international trade in wild animals and related products pertaining to Tanzania in accordance with the requirements of the CITES.

Efforts to improve the data and record keeping processes at the Wildlife Department had commenced with the installation of an advanced computerized database systems at the Wildlife Division in 1998 with support from the Trade and Records Analysis of Flora and Fauna in Commerce (TRAFFIC) providing most of the funds.[45] The aim of this project was to assist the department set up a database system in order to

improve its data records in a bid to comply with the CITES provisions. The training of local staff in order to equip them with the necessary expertise to enable them run the database system, for example, making entries on animal exports, imports, sales and other CITES-related activities comprised part of the package. The project has, however, apparently been stalled for unknown reasons and it is not clear when or whether it will continue. Its completion would certainly lead to a more reliable and effective monitoring of international trade in endangered wild animal species in Tanzania in accordance with the CITES requirements.

A Contrasting Perspective - Lessons for Tanzania

The implementation of the objectives, directives and obligations of the CITES by some of the Contracting Parties States has been relatively more successful and effective compared to others, like Tanzania. There are, admittedly, many factors that may explain this variance. One of the main factor that has contributed to successful implementation of the CITES in some jurisdictions is the having in place legislative provisions in the Contracting Party States' principal wildlife laws whose provisions unequivocally incorporate the objectives and directives of the CITES.

Principal (as opposed to subsidiary) legislation usually serves as the main point of reference for wildlife management personnel and implementing agencies. On the other hand, subsidiary legislation, which includes, regulations, is usually not known and made reference to by most people who apply laws relating to trade in wild animals in day-to-day enforcement activities.

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

> *"…Make further and better provision for the conservation and management of the wildlife of Botswana, giving effect to (the) CITES and any other international convention for the protection of fauna and flora to which Botswana is, from time to time, a party…"*[46]

Also, the country's principal wildlife legislation reproduces the whole of the CITES in the schedule, in effect making the whole Convention part of the country's wildlife law.[47] It should also be noted that the definition accorded to the CITES by this wildlife legislation is broad enough to enable the incorporation of developments that may arise in future within the framework of the CITES. The principal wildlife law defines the CITES as:

> *"…the Convention on International Trade in Endangered Species of Wild Fauna and Flora to which Botswana is a Party, as set out in the Fifth Schedule to this Act, and includes any appendices thereto and <u>any resolutions of the Conferences of the Parties.</u>"*[48](Emphasis provided.)

As noted earlier, the authorities and establishments that have been designated to implement the CITES as envisaged by the Convention in Tanzania are not specifically provided for by the processes and laws creating or establishing them. As a result, the

authorities and establishments are likely to be confronted with conflicting mandates in performing their CITES-related functions.[49]

Unlike Tanzania's principal wildlife legislation whose provisions do not establish Authorities envisaged by the CITES, Botswana's principal wildlife law explicitly provides for the creation of the Scientific and Management Authorities. The legislation provides that:

> *"The Director (of wildlife) shall be the Scientific and Management Authority for the purpose of (the) CITES in respect of animals, but may delegate his (sic) responsibilities as such Authorities (sic) to any wildlife officer, subject to his (sic) own overriding control."* [50]

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

In matters relating to the export and import of wild animal species, Botswana's wildlife law contains express and specific provisions that reiterate the objectives and goals of the CITES. Part X, which deals with the export, import and sale of wild animals, trophies and game meat require strict adherence to the provisions of the Convention. [51] Part XI provides for stricter adherence to the terms of the Convention in respect of hunting and trading in elephants and rhinoceros or their parts. These are some of the most endangered wild animal species in Africa.[52]

Botswana's principal wildlife law empowers the Minister responsible for wildlife management to exercise his/her discretion where s/he considers it necessary or expedient to facilitate compliance with the CITES.[53] The Minister for wildlife, as is the case in most jurisdictions, including Tanzania, has been vested with tremendous powers in the management and control of the country's wildlife. For example, the law vests the Minister with the power to exercise his/her discretion when issuing permits or licences or suspending, restricting, or limiting the operation of the wildlife law.

However, unlike other wildlife laws that leave the Minister's discretionary powers unchecked, Botswana's wildlife law places a mechanism that guarantees a checks and balance system on the Minister's powers in relation to the regulation and control of trade in endangered species of wild fauna and flora. The law explicitly requires the Minister to exercise his/her discretion in such matters in conformity with the terms stipulated by the CITES.[54]

Botswana's approach to implementing the CITES, by laying emphasis on the main wildlife law, reflects a Contracting Party's genuine and serious effort to implement and comply with the CITES provisions. This approach has been commended as having played a significant role in contributing to Botswana's successful implementation of the objectives and directives of the CITES.[55]

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

Convention. As a result of the overlapping and conflicting mandates, problems in the interpretation of the provisions of regulations and legislation are bound to occur. The main guide to interpreting regulations, (these being subsidiary legislation), is the principal legislation. Indeed the power to promulgate by laws, rules and regulations is usually provided for by the principal law. In most cases, the principal legislation usually omits details purposely. These are often taken care of by byelaws or regulations. This is a common practice in most jurisdictions and has its merits.

However, it is the administrative personnel who are not always well versed with skills to master the legal intricacies of legislative drafting and statutory interpretation who often draft regulations. When confronted with a complicated scenario, prudent administrative personnel would make reference to the principle law for guidance.

Where the principle law contains provisions that unequivocally provide for the incorporation of the CITES, the prudent drafter would easily find a way out as there would be some guide, a reference point. In this respect, therefore, Botswana's approach of expressly incorporating the CITES in its principle wildlife conservation and management law avoids interpretation problems which could in turn lead to problems in implementing the obligations and requirements of the provisions of the CITES.

Having in place a mechanism to check the discretionary powers of wildlife authorities specifically entrenched in the wildlife legal regimes is a progressive development in controlling illicit trade in wild animals and trophies. The approach reflects transparency in dealings with wild game and trophies. It is a vital tool that can be invoked to limit, reduce and ultimately eliminate abuse of discretion, usually granted to wildlife authorities

and bodies, with a view to ensuring conformity with international obligations such as the requirements of the CITES.

Botswana's approach in this regard also sheds some light for the Tanzania's wildlife management regime. This approach could also be incorporated in the principal wildlife law of Tanzania in view of the observations on abuse of discretionary powers by authorities arising mainly because of the unchecked powers granted to the authorities by the Wildlife Conservation Act, 1974.[56]

From the above observations, it is apparent that in many aspects the concepts and approaches that are inherently entrenched in Botswana's wildlife legislative regime provide important lessons for the CITES-related legislative framework and implementation machinery pertaining to Tanzania. The incorporation of the CITES implementation approach inherent in Botswana's model should be seriously considered in any process that seeks to revise or review the Wildlife Conservation Act, 1974 of course, by taking into account the social, economic and cultural factors pertaining to the Tanzania wildlife conservation and management regime.

Conclusion

Despite it's relatively shaky historical foundation that was not guided by any formal policy, the wildlife management legal and policy regimes in Tanzania have made an impressive attempt to implement the provisions of the CITES. Some of the institutions and organs that are charged with the implementation of the CITES have been enumerated. These comprise of the Director of Wildlife, the Chief Research Officer of

the Game Division and a variety of wildlife, forestry and fisheries research centers and training institutions.

The legislation and policy regime, however, do not explicitly vest any of these institutions with the mandate to implement the CITES. As a result, the institutions are placed in a precarious position especially in matters of enforcement mainly due to overlapping functions and conflicting mandates.

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

One of the weaknesses of the legal and institutional regime created by the CITES is that it does not focus on the destruction of wildlife refuge which is also a major cause why species become extinct. Instead, the CITES lays more emphasis on commercial trade in endangered wild animal species. The legal, policy- making and related enforcement regimes in some Contracting State Parties that have adopted the CITES's approach wholly have often failed to see this weakness and, consequently, inadvertently incorporated this bias in their statutory provisions dealing with wildlife conservation, management and trade.

Indeed, the Wildlife Conservation Act, 1974 reflects this bias to the extent that its primary objectives re-echo the objectives of the CITES, consequently, focusing mainly on fauna without a corresponding focus on flora. Although this anomaly has been partially addressed by the wildlife policy, the Forest Ordinance and other institutions

such as the forestry institutes, the review process of the Wildlife Conservation Act, 1974 should, accordingly, be amended to address this inherent bias.

It has been pointed out that the regulations and rules made pursuant to Tanzania's principal wildlife law also address pertinent issues covered by the CITES. In fact, the regulations have gone a step further by providing for the control and regulation of trade in all species of wild animals whether or not they are endangered.

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

The existing overlapping mandates in the legal and institutional framework on wildlife management and conservation can prove to be a stumbling block to efforts geared at implementing the provisions of the CITES in Tanzania.[57] It is recommended that overlapping features be dealt with in order to foster cross- sectoral coordination in the overall effort to implement the CITES within the legal, institutional and policy-making framework on wildlife conservation and management.

The need to check the discretionary powers of the authorities that have been vested with the power to determine the issuance of wild animals export permits, licences and disposal of confiscated trophies has been reiterated. It is important to ensure that the

powers are not abused to the detriment of enforcing the CITES. For example, the Minister's power to amend schedules, which are the only part of the law that explicitly reflect the provisions of the CITES, is not subjected to any form of scrutiny.[58] This does not augur well for a Contracting Party that is serious in its efforts to implement and enforce the provisions of the Convention.

It would be prudent to invoke a clause in the law that will ensure that the discretion accorded to authorities charged with the implementation of the CITES is exercised in accordance with the Convention's objectives.

Tanzania should also reinforce cross border checks with neighboring States in order to combat illicit trade in wild animal species and trophies. This will be in conformity with the objective of the Lusaka Agreement on Cooperative Enforcement Operation Directed at Illegal Trade in Wild Fauna and Flora, Lusaka, 1994 whose principle objectives reflect the CITES directives. The main objective of the Lusaka Agreement is to reduce and ultimately eliminate illegal trade in wild fauna and flora.[59] Tanzania has ratified this Agreement and is therefore obliged to implement it effectively.

The government of Tanzania should also consider effectively implementing the Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region executed in Nairobi in 1985. This Protocol also re-echoes an approach similar to the Lusaka Agreement in its endeavor to eliminate illicit cross-border poaching and illegal dealings in game trophies.[60]

The Wildlife Policy of 1998 also emphasizes effective and adequate implementation of the government's obligation under regional Agreements. The Policy focuses and lays emphasis on, among other things, the need for regional and international

cooperation in implementing wildlife management strategies and plans, including curbing illicit trade in wild animal species.

NOTES AND REFERENCES

[1] UNTS, Vol. 993, p. 243

[2] See generally Lyster, S. *International Wildlife Law*, Grotius Publications Ltd. Cambridge, 1985

[3] 1993 UNTS 243; 12 I.L.M 1085 (1973)

[4] *Ibid*., see the first and last paragraphs of the Preamble.

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

[6] Assa Okoth, *A History of Africa (1855-1914)* Bookwise Ltd. Nairobi, 1987, Pp. 17-21

[7] See Sinclair, A.R.E, *The African Buffalo, A Study of Resource of Limitation of Populations*, University of Chicago Press, 1977 p. 233 and Benhard and Grizmer, *Serengeti Shall Not Die*, Dutton and Co. Inc. New York, 1960 pp. 296-298

[8] It was pressure from international wildlife conservation and protection groups that made colonial administrations ratify wildlife conservation and protection conventions. See Daniels, N.D *Protecting the African Environment: Reconciling North-South Perspectives* Council for Foreign Relations, New York, 1922 p. 12

[9] Chapter 302, Laws of Tanganyika

[10] 94 B.F.S.P 715 and 17 L.N.T.S 241, respectively

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

[12] The speech by the late Mwalimu Nyerere's (former President of Tanzania) delivered to the newly independent African States at a symposium on the Conservation of Natural Resources in Modern African States held in Arusha in 1961 illustrates this assertion. The speech can be retrieved from the proceeding of the Symposium (IUCN Publication New Series, No. 1 1963)

[13] See Jonathan Adams and Thomas Mc-Shane, *The Myth of Wild Africa: Conservation Without Illusion, University of California, Berkeley,* 1996, at Pp. 113-121 and Daniels, N.D., *op.cit*, at p. 12

[14] Ironically, some of the provisions that reflected colonial interests in regulating wildlife trade were retained in the Wildlife Conservation Act, 1974!

[15] In Tanzania, Appendix I species includes the African elephant, the black rhino, cheetah, leopard, viviparous African toads and tree ferns.

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

[17] Most wildlife related legislation is undergoing review to reflect emerging trends, policy directives and strategies

[18] No. 12 of 1974 (as amended) came into force on 1st December 1974, (See G.N 265/1974). (Herein referred to as the Act.)

[19] *Ibid*., section 56

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

[21] See Article XIV (1) of the CITES

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

[23] See Article XIV (1) of the CITES

[24] See G.N. No. 191 of 1989

[25] Government Notice No. 272 of 8/11/1974 and Government Notice No. 278 of 8/11/1974, respectively

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

[27] Government Notice No. 190 of 22/6/1989

[28] Quoted from the proceedings of the Symposium on the Conservation of Nature and Natural Resources in Modern African States held in Arusha. (See IUCN Publication News Series No.1 of 1963) The quotation has also been reproduced by Jonathan Adams and Thomas Mc Shane in *The Myth of Wild Africa: Conservation Without Illusion*, *op.cit* at Pp. 113-114

[29] See Paragraph 1 of the Preamble to the CITES

[30] The definition of "wildlife" provided for by the policy is much broader than that of the Wildlife Conservation Act in the sense that it includes terrestrial invertebrates, plants, ecosystems and constituent habitats.

[31] See Paragraph 3.4 of the Policy Document

[32] See Articles IX (1) and III of the CITES.

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

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

[35] Section 4B, of the 1978 amendment

[36] Act No. 8 of 1964, Laws of Tanzania

[37] See section 3 (1) of the amendment (Act No. 32 of 1994)

[38] See Act No. 4 of 1980 (as amended) and the SWRI Bill, 1979 pp. 64-70)

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

[40] See Article IX (1) (b) of the CITES

[41] Chapter 412 of the Laws of Tanganyika

[42] Ibid., see section 10 (1) (b) and (c)

[43] See the functions of the Fisheries Research Institute in Act, No. 6 of 1980 that establishes the Institute and those of the Forestry Institute in Act, No. 5 of 1980 that establishes the Forestry Institute.

[44] See the Special Report on Animal Count in Selous Game Reserve, Mikumi National Park and Surrounding Areas in *Kakakuona Publications, (Tanzania Wildlife Quarterly Magazine on Nature, Conservation and Environment* Nos. 16 and 17), of January-March and April -June, 2001, respectively.

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

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

[47] *Ibid.*, See Section 2 and the Fifth Schedule to the Wildlife Conservation and National Parks Act, 1992.

[48] *Ibid.*, Section 2 of the Wildlife Conservation and National Parks Act,1992.

[49] See generally the Report on Institutional and Legal Framework for Environmental Management in Tanzania, Institutional, Legal and Environmental Framework Program (ILFEMP) and Lawyers Environmental Action Team (LEAT), Dar-es-Salaam, July 1999

[50] *Ibid.*, See section 3 (1) of the Wildlife Conservation and National Parks Act, 1992.

[51] *Ibid.*, see section 62 (1) (2).

[52] *Ibid.*, see sections 67 (2) and (3), 68 (1) and 69.

[53] *Ibid.*, section 88 (1).

[54] *Ibid.*, see sections 89 (2) and 90 of the Act.

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

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

[57] *"The Report on Institutional and Legal Framework for Environmental Management in Tanzania"* ILFEMP/LEAT *op.cit*,

[58] See sections 21, 23, 24 and 35 of the Act and schedules thereof.

[59] See Article 2 of the Agreement.

[60] See Makaramba, R.V, *"Review and Harmonization of Wildlife Laws and Regulations in Tanzania,"* pp.69 - 72 in the *Report for UNEP/UNDP Project on Environmental Law and Institutions in Africa: East Africa Sub-Regional Projec*t, Dar-es-Salaam, December, 1999