

***WILDLIFE LAW AND THE LEGAL
EMPOWERMENT OF THE POOR
IN SUB-SAHARAN AFRICA:
NEW CASE STUDIES***

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INTRODUCTION

This is the second legal study focusing on wildlife legislation and the empowerment of the poor in Sub-Saharan Africa. It follows up on FAO Legal Paper Online 77 “Wildlife law and the legal empowerment of the poor in Sub-Saharan Africa” that was published in May 2009 (www.fao.org/Legal/prs-ol/lpo75.pdf).¹ The purpose of this second paper is to analyze wildlife legislation in an additional fifteen African countries, and assess how similar issues (such as wildlife tenure, community-based wildlife management, benefit-sharing, public participation in decision-making and law enforcement, and human-wildlife conflicts) have been addressed. The lens through which available legislation has been analyzed is the concept of “legal empowerment of the poor,” as developed by the Commission on Legal Empowerment of the Poor, established under the aegis of the United Nations between 2005 and 2008.² Accordingly, national legal frameworks were examined in their potential to support the objective of effective regulation of wildlife management to promote environmental sustainability and socio-economic development with a view to allowing all members of society, and particularly disadvantaged people, to directly benefit from sustainable wildlife management. Thus, the study sought to evaluate whether wildlife legislation can significantly contribute to improving food security, alleviating poverty and enhancing rural livelihoods, by fulfilling international obligations and following best practices related to the conservation and sustainable use of biodiversity.

Several of the legal tools for sustainable wildlife management identified in the previous study were considered significant in contributing to the empowerment of the poor. According to the Commission on the Legal Empowerment of the Poor, four pillars sustain the concept of legal empowerment:

access to justice and the rule of law; property rights; labour rights; and business rights. Adequate wildlife management legislation may contribute to the implementation of at least three of these pillars: for the first, it may set out measures to promote equality under the law, clear rights and obligations, and facilitate access to justice; for the second, it may allocate property rights, or related use rights, in such a way that benefits are equitably shared, taking into account subsistence requirements, traditional titles and practices, and disadvantages faced; for the fourth, it may regulate contracts and other arrangements for utilization so that opportunities are available for all.

In particular, ownership of wildlife resources or other management rights over wildlife resources, and security of their tenure, are key legal tools for the empowerment of the poor that have been identified by this study. Legal tools to ensure overall good governance for the recognition, allocation and possible revocation of these rights have also been underscored, where possible. Public participation in decision-making and in management planning, as well as access to justice, are significant contributing factors in ensuring that governance of wildlife resources is transparent, authorities are accountable, and that the diverse interests of society – in particular those of the poor, other disadvantaged groups, and of local and indigenous communities – are duly taken into account. Finally, legal tools that may facilitate the access to financial services, the easy and affordable setting-up of business operations as well as the exit from a business as necessary, have been, to a lesser extent, detected in the legislation of some of the countries analyzed in this study. The question of benefit-sharing is also critical in having the poor profiting from or being compensated for the conservation and management of wildlife resources. Building upon the findings of the previous legal study, the present paper thus identifies further legal tools for empowering the poor in sustainable wildlife management, as well as singling out shortcomings and challenges that may provide useful food for thought for wildlife legislators around the world.

¹ The countries covered in the previous legal study were: Angola, Botswana, Lesotho, Madagascar, Malawi, Mozambique, Namibia, South Africa, Tanzania, Uganda, Zambia and Zimbabwe.

² The Commission completed its mandate in 2008. Available at www.undp.org/Legalempowerment. At its sixty-third session on 11 December 2008, the UN General Assembly, in a brief resolution (63/142), took note of the final report of the Commission, stressing the importance of sharing best national practices in the area of legal empowerment of the poor.

THE CONTENTS OF THIS STUDY

Part I of the previous study (Part I, chapter 1) included an overview of the international legal instruments related to wildlife management and their relevance to the design of national legislation in furtherance of effective wildlife conservation, sustainable use and empowerment of the poor. In this study, the overview is not reiterated and Part I chapter 1 includes only a brief report on current membership of the countries being considered in the relevant international agreements. In addition, it offers a brief overview of regional agreements that are relevant to wildlife management. The following chapter focuses on selected themes relevant to legal empowerment of the poor in wildlife management (mainly institutions and other stakeholders, tenure arrangements, management planning, conservation and utilization), commenting on some of the legal trends identified through country studies, including good practices as well as gaps and contradictions that have emerged (Part I, chapter 2). The emerging trends are then analyzed through the perspective of the empowerment of the poor, resulting in suggestions for the drafting of new/amended legal provisions which may help all members of society to benefit from wildlife management (Part I, chapter 3).

The country-by-country analysis is presented in Part II and provides an overview of the legal framework applicable to wild animals in each of the fifteen countries considered. The presentation describes the relevant provisions that are currently in place and whether they are included in legal instruments exclusively concerning wildlife or are in legislation addressing related subjects, such as environment, protected areas or forestry. The description focuses on provisions which are relevant to the identification of legal means to promote the enjoyment of benefits derived from sustainable wildlife management by people, particularly disadvantaged ones, taking into account existing measures that are likely to be successful in facilitating access to benefits as well as measures which may constitute a hindrance to this end. Therefore, the contents of the legislation are not intended

to be described comprehensively. In some cases, the presentation includes provisions relating to natural resources other than wildlife (such as forestry), where they set out institutions or procedures that can be considered as useful examples or may be otherwise relevant to the discussion. The selected countries are: Burkina Faso, Cameroon, Central African Republic (CAR), Congo, Democratic Republic of Congo (DRC), Ethiopia, Gabon, Ghana, Kenya, Liberia, Mali, Mauritius, Seychelles, Sudan and Swaziland.

With the goal of verifying the accuracy of available information and gathering additional data, a questionnaire was distributed by FAO to government officials and experts in each of the countries considered. The questionnaire specifically requested whether available legislation is currently in force and sought basic information on the institutional framework, the role of various actors in wildlife management, wildlife ownership and any conflicts which are likely to arise. Replies were received from at least one source in six of the countries considered (namely, Burkina Faso, Cameroon, Congo, Ethiopia, Liberia and Mauritius).

Some warnings must preliminarily be given regarding the analysis that has been carried out. Although efforts have been made to ensure the completeness of the legal research, some existing legal instruments may be missing, whether because they were not identified or not accessible during the preparation of the study. Another inherent limitation of desk reviews of legislation, such as the one presented in this study, is that critical information which can generally be found beyond the legal texts may not be available. An adequate evaluation of legal frameworks should involve consideration of the following factors: overall government objectives and their degree of implementation (e.g., decentralization), existing administrative practices at various territorial levels and their effectiveness, experience in the implementation of existing legislation (e.g., provisions which have remained dead letter, procedures which are bypassed in practice), local customs, public perception of the role of law and authority, economic and social needs, and gender issues.

This type of evaluation would obviously be a wider exercise, while the scope of this study is limited to legal provisions. The legal materials which are available are, in any case, numerous and interesting, thus making the analysis worthwhile. The legislation that has been examined, which is listed at the end of the study, is available on FAO's legislative database FAOLEX, open for consultation at www.fao.org.

PART I – INTERNATIONAL BACKGROUND AND EMERGING TRENDS IN NATIONAL LEGISLATION

1. INTERNATIONAL LEGAL FRAMEWORK

1.1 Membership in wildlife-related international agreements

Wildlife-related international agreements have been widely ratified by the countries covered by this study (namely the Convention on Biological Diversity – CBD, the World Heritage Convention – WHC, the Convention on International Trade in Endangered Species – CITES, the Ramsar Convention on Wetlands), with the exception of the Convention on Migratory Species (CMS) and its Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), as summarized in the table below (showing the date of entry into force of each agreement for a given country, except where otherwise indicated)³

	CBD	WHC	CITES	Ramsar	CMS	AEWA (CMS)
Burkina Faso	1993	1987	1990	1990	1990	
Cameroon	1994	1983	1981	2006	1983	
CAR	1995	1981	1980	2006		
Congo	1996	1988	1983	1998	2000	1999
DRC	1995	1975	1976	1996	1990	
Ethiopia	1994	1977	1989			
Gabon	1997	1986	1989	1987	2008	
Ghana	1994	1975	1976	1988	1988	2005
Kenya	1994	1991	1979	1990	1999	
Liberia	2000	2002	1981	2003	2004	
Mali	1995	1977	1994	1987	1987	2000
Mauritius	1992	1995	1975	2001	2004	2001
Seychelles	1992	1992	1977	2005	2005	
Sudan	1995	1995	1983	2005		1999
Swaziland	1994	2006	1997			

Regional wildlife-related agreements

Several regional agreements in Africa have direct or indirect relevance to wildlife management, and should be taken into account by legal drafters in the countries that are parties to them. The present section maps out relevant African agreements, starting from the broadest in geographical scope.

³ Information from ECOLEX (www.ecolex.org); last visited on 2009.

The African Convention on the Conservation of Nature and Natural Resources was originally concluded in 1968 in Algiers and was then revised in Maputo in 2003 by the Assembly of the African Union. The African Union was created after the decolonization of most African countries in order to promote unity and cooperation and enable the continent to enter the global economy. The original Convention has been ratified, as of today, by 26 states (Algeria, Burkina Faso, Cameroon, Central African Rep., Côte d'Ivoire, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Gabon, Ghana, Kenya, Liberia, Madagascar, Mali, Nigeria, Niger, Rwanda, Senegal, Sudan, Swaziland, Tanzania, Zambia, Uganda, Tunisia, and Togo) and signed by Burundi, Chad, Ethiopia, Gambia, Guinea, Libya, Lesotho, Mauritania, Mauritius, Sierra Leone and Somalia. The revised Convention adopted in Maputo has been ratified by eight countries (Burundi, Comoros, Ghana, Libya, Lesotho, Mali, Niger and Rwanda) and will enter into force upon ratification by fifteen countries.

The overall objective of the Convention is the conservation and management of animal and plant species and their environment (art. IX). To conserve animals and particularly threatened ones, parties are required to adopt policies and management measures for the sustainable use and the conservation of those species in situ and ex situ. Continued scientific research and monitoring is expected to guide decision-making and management of the species and their environment. Threatened or migratory species together with important areas for their survival shall be identified. Finally, sustainable use of wildlife is required through regulation hunting seasons or means of capture (art. IX). Parties are required to identify and deal with the factors that are causing wildlife depletion and to adopt specific protection measures in order to avoid further depletion (art. X). Appropriate steps shall be taken to reduce and eliminate illegal trade in wild fauna (art. XI). Conservation areas shall be designated according to the potential impacts and necessity (art. XI).

The Southern Africa Development Community (SADC) was created to promote and coordinate development projects within the region. The constitutive

Treaty (adopted in 1992 and entered into force in 1993) includes a general provision for the sustainable use of natural resources (art. 5). SADC countries are expected to cooperate in the field of natural resources and the environment in order to foster regional development and integration (art 21). SADC countries have been particularly active in the field of sustainable wildlife management, and have adopted a **Protocol on Wildlife Conservation and Law Enforcement** in 1999. The Protocol entered into force in November 2003 and has been ratified by Botswana, Lesotho, Malawi, Mauritius, Mozambique and Namibia. Angola, the Democratic Republic of Congo, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe remain signatories. The Protocol affirms the sovereign right of states over natural resources and creates a framework for regional wildlife management (preamble and art. 1). States shall control activities within their territory so as not to cause any damage to wildlife (art. 3). The main objective of the Protocol is thus to promote the sustainable use of wildlife. To this end, it aims to facilitate harmonisation of the relevant wildlife laws and management practices, their enforcement, the exchange of information and the establishment of transboundary conservation areas (art. 4).

Cooperation and collaboration between the different stakeholders at a national level but also between states to achieve international objectives relative to wildlife is emphasized (art. 3). The Protocol requires the establishment of specific institutions to facilitate cooperation and enforcement. A Wildlife Sector Technical Coordinating Unit composed of the food, agriculture and natural resources ministers of the member states is to meet once a year. A Committee of ministers will be responsible for adopting regional wildlife policies and strategies and supervise the implementation of the Protocol. A Committee of Senior Officials, comprised of responsible ministry members for wildlife, will monitor and assess the implementation of the Protocol. A Wildlife Sector Technical Committee will act as the Secretariat for the Protocol in supervising and co-ordinating the implementation (art. 5).

The Protocol further requires states to adopt measures for the protection, taking and

trading of wildlife, incentives to promote wildlife conservation as well as appropriate sanctions and enforce the relevant instruments (art. 6). States are required to integrate into their national development plans, management programmes for the conservation and sustainable use of wildlife (art. 7). They shall monitor the maintenance of the populations, prevent over-exploitation, restrict trade and control activities that may affect wildlife. The Protocol encourages the participation of multiple stakeholders in the process; programmes shall be adopted by states to promote co-operative management of wildlife resources at international, national and community-based level, economic. Social incentives shall encourage conservation and sustainable use. States shall also adopt programmes for education, increase of public awareness and research (art. 7). A public regional database is to be formed including information on wildlife status and management (art. 8).

Furthermore, to ensure effective enforcement of wildlife conservation and sustainable use laws, states shall ensure that adequate financial and human resources are available (art. 9). In a transboundary context, states must cooperate and exchange relevant information in order to eliminate and prevent illegal trade and illegal taking of wildlife products (art. 9). States shall adopt training programmes of current and indigenous wildlife management practices with a view to reinforce capacity-building for the wildlife management needs (art. 10).

Finally, a Wildlife Conservation Fund is to be established to fund the programmes and projects related to the Protocol (art. 11). The Protocol finally provides for sanctions against any state that fails to fulfil its obligations in a persistent way or which undermines the principles and objectives of the Protocol by adopting conflicting policies (art. 12). The Tribunal of the South African Development Commission is designated to settle any arising disputes (art. 13).

The Agreement establishing the Common Market for Eastern and Southern Africa (COMESA) was signed in November 1993 and entered into force on 8 December 1994. It currently has nineteen members (Burundi, Comoros, Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar,

Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe). The COMESA is one of the pillars of the African Economic Community and regulates trading within the state parties. When it comes to natural resources, the Agreement requires cooperation in managing and utilizing them in a prudent and rational way to the 'mutual benefit' of the states (arts. 122-123). The states undertook to develop a common environmental management policy with a view to maintaining and protecting ecosystems (art. 124). In order to protect wildlife within the Common Market, strong cooperation between the states is required. Particularly regarding the exploitation and utilization of wildlife, states need to exchange relevant information, adopt common policies relating to anti-poaching, use wildlife products for the development of national parks, establish wildlife ranches to help livestock production, encourage breeding research programmes on disease resistance, and adopt a uniform trophy pricing system to regulate hunting (art. 126).

The Protocol Agreement on the Conservation of Common Natural Resources (Khartoum, 1982) created a legal basis for concerted action between Sudan, DRC and Uganda and calls for appropriate measures for the protection of animal and plant species within protected areas (art. I). It imposes a general capture prohibition for those species unless capture is aimed for scientific purposes or in order to promote the species' survival. The exception will apply only if the use is circumscribed, short-term and not detrimental to the population (art. II). This agreement also regulates trade by requiring the issuing of certificates according to international trade standards (art. III). The agreement calls for the establishment of a sub-commission on illicit trade and poaching which is charged with recommending any relevant amendments to ensure a good implementation of the agreement (art. V).

The Lusaka Agreement on co-operative enforcement operations directed at illegal trade in wild fauna and flora was adopted in September 1994 and came into force in December 1996. It has been ratified by Congo (Brazzaville), Kenya, Tanzania, Uganda, Zambia and Lesotho. South Africa, Ethiopia and Swaziland are also signatories.

It was initiated in order to facilitate the efforts of different national law enforcement agencies in eliminating illegal trade in wild flora and fauna. To achieve this, it establishes a specific institutional framework at a regional level to assist in wildlife law enforcement and implementation. The Agreement establishes a Task Force as an international legal entity charged with information collection and sharing, as well as with investigating infringements (art. 5). It also created the Governing Council consisting of delegates of the states responsible for determining the Task Force's agenda (art. 7). States are required to investigate illegal trade and should return to the country of origin any specimen that was subjected to illegal trade (art. 4). States are also tasked with collecting information and transmitting it to the Task Force as well as assisting it on technical matters in order to ensure the effective cooperation of the agreement (art. 4). To this end, every party shall designate a National Bureau (art. 6). The Governing Council or an arbitral body shall deal with any disputes arising (art. 10).

The Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (CPMDMC of EA)

was adopted in 1985 together with the Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, the Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region and the Protocol concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region. It entered into force in 1996. These instruments were adopted under the aegis of the Nairobi Convention at the Conference of Plenipotentiaries on the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and are binding upon the same contracting parties (Comoros, France (La Reunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, Tanzania and South Africa). The Convention contains a general requirement for states to establish protected areas as a means to protect and conserve sensitive species whether rare, threatened, depleted or endangered and their ecosystems (art. 10).

The Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region

was also signed in 1985 and entered into force in 1996. Comoros, France (La Reunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, Tanzania and South Africa are the current parties. The Protocol requires the development of national strategies in order to co-ordinate the protection and preservation of fragile ecosystems (art. 2). Parties agree to prohibit the capture, killing, keeping and trading of animals listed in annex II of the Protocol, as well as to avoid any kind of disturbance to the environment of the species, especially during breeding, rearing or hibernation periods or any taking of their eggs (art. 4). Protection for species listed under annex III of the Protocol is limited to ensuring the maintenance and restoration of the population through the adoption of management plans for their capture, killing and trading (art. 5). Parties also agree to ensure special protection for migratory species listed in annex IV of the Protocol.

Finally, the Protocol requires the establishment of protection areas according to criteria enumerated within the Protocol and which concentrate on the importance of the areas to the species. States should therefore designate areas to maintain fauna and flora populations to the greatest number possible, to protect ecological and biological processes essential to the functioning of the Eastern African region; and protect representative ecosystem samples and areas of particular scientific, aesthetic, cultural or educational importance. Natural habitats critical for threatened or endemic species of fauna and flora, migration routes, fragile ecosystems and areas of scientific interest should be taken into account in establishing protected areas (art. 8).

Parties are required to adopt guidelines for the identification of such areas (art. 9) in order to achieve the international conservation and management objectives such as the regulation of trade or other activities which may have an impact on the environment of the species or the prohibition of the destruction of animals (art. 10). States may also designate buffer areas where activities are less restricted provided that the protection area purposes are respected (art. 11). Exemptions to the objectives should not

endanger the maintenance of the ecosystems of the survival of the species although indigenous practices shall be taken into account by states (art. 12). States should endeavour to establish transfrontier protected areas and try to work together with non-party states to the Convention (art. 13). The Protocol also contains some measures to increase public awareness and participation. To this end, states are encouraged to publicize the establishment of protected areas (art. 14) and the importance of the conservation of protected areas (art. 15). They shall further exchange information (art. 18) and co-ordinate research programmes (art. 17) with the view to establishing and extending the network of protected areas around the region (art. 16).

The Agreement on the Joint Regulations on Fauna and Flora (1977) was signed and entered into force in 1977 with the aim of achieving the objectives of the Convention of 22 May 1964 establishing the Lake Chad Basin Commission. It is therefore binding upon the state parties of the initial Convention – namely, Chad, Nigeria, Niger and Cameroon. It recognizes the need for protection of animal species and their habitats. It requires members to establish a list of all protected areas with a view to adopting common regulations and conservation policies for the biodiversity within the Lake Chad Basin (art. 1). It further requires the Commission to establish regulations on wildlife trade of trophies or specimens illegally captured or killed by creating a permit system (art. 2). A general prohibition to hunt reptiles listed is imposed upon states (art. 3), who are also required to adopt sanctions for any hunting offences (art. 4).

The Agreement establishing the Economic Community of West African States (ECOWAS) was concluded in 1975 to promote economic integration into a number of fields. The Agreement currently has fifteen state parties (Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo and Guinea – the latter's membership is, however, currently suspended). The Agreement includes a provision on cooperation in environment and natural resources requiring states to harmonise and

co-ordinate their policies and programmes regarding natural resources (art. 31).

2. EMERGING TRENDS IN WILDLIFE LEGISLATION

2.1 Wildlife legislation and other related legislation

An important contribution to legal empowerment of the poor and particularly to access to the rule of law is the certainty and clarity of the legal framework. Rules which are not ambiguous and may be easily identified and understood are much more likely to enable the poor, as well as any other sectors of society, to live and operate under the law.

Legal frameworks for wildlife management, in most of the countries which have been considered, include principal legislation on wildlife, whether along with forestry and/or protected areas or separately. In various cases the same piece of legislation regulates both forestry and wildlife, while forest laws often remain separate and do not usually address wildlife. This has helped to prevent possible overlap or conflict among the various pieces of legislation. An exception is the case of Liberia, where the forestry legislation includes numerous provisions on wildlife, superseding some of the contents of the wildlife and national parks legislation, making interpretation complex. Usually, environmental legislation, albeit fairly general, can have an impact on specific legislation on wildlife.

The practice of not **expressly repealing** principal and subsidiary legislation enacted before the entry into force of a more recent principal law may be another cause of uncertainty. This practice is fairly common in the countries which have been considered. Examples vary from principal laws on wildlife which are enacted after regulations adopted under previous laws, to principal laws addressing wildlife on the whole being adopted after other principal laws whose contents are limited to specific wildlife-related aspects. This happens for example in the Central African Republic where laws on hunting guides, hunting by foreigners and the introduction of weapons by non-resident hunters have not been expressly repealed by the 1984 Wildlife Ordinance. In some

cases, as in the Democratic Republic of Congo, the situation may be particularly confusing as the 1982 hunting law makes reference to an older decree and points to the need to fill gaps left by it, without clarifying whether such decree is completely replaced by the law. Usually the new law states that all legislation previously in force is repealed to the extent that it conflicts with it, or this rule applies even where such a statement is not expressly made. However, sometimes the determination of whether certain provisions of the previous legislation must be considered superseded is debatable, and this creates problems undermining legal certainty. Although the practice of not expressly specifying texts which are partly or wholly repealed is formally acceptable, therefore, it would be preferable to avoid it. Existing provisions to be repealed should be expressly identified and any texts of subsidiary legislation which are necessary for the implementation of a new law should be adopted within a reasonable time from the adoption of primary legislation.

Where the main relevant piece of legislation is relatively old, as in the Democratic Republic of Congo (1982), the focus of the law tends to be on **hunting, rather than generally on wildlife**. This approach is typical of legislation of a previous generation, in which the importance of biodiversity as a whole did not come into consideration and the main concern was to prevent overexploitation of game, often still with a view to protecting hunting interests. More recent legislation tends, more appropriately, to address conservation as well as multiple uses of wildlife. This is the case in most of the laws which have been examined.

Another aspect that must be noted is that few countries have adopted specific **legislation for the implementation of CITES** – one of the rare examples being a decree of the Democratic Republic of Congo of 2000. As the Convention does require parties to put in place institutions and a permit system specifically to implement it, the absence of provisions to this end is a likely cause for non-compliance with the international obligations.

One indispensable means to allow people to fully comprehend the contents of the law is

for the law to be expressed in the local language. Given the variety of languages that continue to exist in many of the selected countries, **translations from the official language into local ones** is sometimes difficult and this may make legislation inaccessible for most rural people. This can be a serious hindrance to the implementation of the first pillar of legal empowerment of the poor – access to the rule of law.

2.2 Institutions and role of stakeholders

2.2.1 Institutional set-up

In most of the selected countries, the provisions of the **principal legislation** regarding institutions are brief and general. This is frequently the case in other regions too, as governments usually wish to retain some flexibility in the allocation of responsibilities among ministries and departments. Therefore, acts of Parliament, which are not meant to be frequently revised, do not go into the details of institutional arrangements, but remain a basis for administrative arrangements which may vary from time to time. This may be an acceptable approach, as long as any institutional restructuring is timely supported by clear **subsidiary legislation** based on the applicable principal legislation. There are in fact cases in which the identification of responsible institutions and their functions is difficult if based solely on the examination of legislation. An example is the case of Burkina Faso, where provisions referring to institutions are brief and clear in the Forest Code, placing responsibilities to preserve forests, wildlife and fishery resources on the “technical forestry services,” in consultation with all other concerned actors. However, pursuant to more recent legislation – the decree of 2008 creating the National Protected Area Service – the latter is made responsible for ensuring the sustainable management of forests and wildlife, apparently (given the wide scope of its powers) becoming the only responsible authority and creating some confusion as to whether any other technical forestry services continue to exist.

An area in which institutional conflicts may sometimes develop is that of **relations between environmental and wildlife authorities**. The issue does not arise where

a single institution is in place, as in Swaziland where the Environmental Authority and National Trust Commission's responsibilities regarding the environment include wildlife. In most other cases, however, institutions responsible for wildlife – which in turn may or may not be responsible also for forestry – and environment are separate, and a division of labour is not always clearly designed.

Provisions which envisage the creation of an **inter-ministerial body** on environmental matters, as is done in Cameroon, Mali and Mauritius, may facilitate coordination between environmental and wildlife authorities. In Mauritius, in addition to the National Environment Commission made up of ministers, an Environment Coordination Committee further promotes cooperation, coordination and information sharing among agencies and departments dealing with environment protection.

In addition to a high level, inter-ministerial body, the existence of an environmental advisory body including non-governmental stakeholders, as happens in the same countries as well as in Gabon and Kenya, may further enhance coordination.

Another means used to prevent friction between environmental and sectoral institutions is to foresee the creation of **environmental units** within the various government sectors. This is done in Burkina Faso, where an environmental unit must be established within each ministerial department at the central and regional level, as well as in Ethiopia, where every government agency must also include an environmental unit, and regional environmental agencies must also be created.

2.2.2 Public participation in decision-making

With regards to public participation in decision-making, some wildlife legislation – or sometimes general environmental laws – ensures that non-governmental stakeholders are necessarily represented in **advisory councils** and management commissions.

Members of Ghana's Forestry Commission, for instance, are to a large extent appointed from the private sector, and must have

experience in relevant subjects, or represent the forestry and wildlife industry or non-governmental organizations. In the Central African Republic, a Higher Council for Hunting may be involved in matters relating to wildlife management, and is made up of twelve members, of whom six must represent hunting interests as well as generally the interests of the public. Among the latter members, two must be members of the legislative assembly, designated upon a proposal of its president. In Cameroon, a Consultative Commission on Environment and Sustainable Development should include three representatives of non-governmental organizations. In Mauritius, a Wildlife and National Parks Advisory Council advises the minister on any matters related to wildlife. In addition to the ten members from various environment-related government agencies, the remainder of the Council is appointed by the minister and comprised of: two members of the public with wide knowledge of the natural resources of Mauritius; one person involved in tourism or outdoor recreation in Mauritius; and three persons actively involved in wildlife conservation or environmental protection.

In those instances in which multi-stakeholder participation in decision-making is called for, legal provisions may be loosely drafted so that actual opportunities of input for users, environmental NGOs and local communities may be in fact restricted. Examples of this tendency are the provisions regarding the Kenya Wildlife Service, which is managed by a Board of Trustees, whose members must partly be selected among persons "who are conversant with nature conservation in all its aspects". In Liberia, advisory committees of experts and such other persons as the Authority may think fit may be appointed to assist in surveys and research. In Congo, the creation of "specialized associations" to advise on wildlife policy is "encouraged" at the national, departmental and local level". Thus, their creation is only an option rather than an obligation. Despite the variety of functions with which the associations are endowed, the law does not go into any further details as to their composition and operation. In Mali, **hunting councils** with consultative functions are to be created at the national level as well as within local authorities, but their composition and

functions remain to be determined, as for this purpose reference is made to regulations. In the same country, however, the inter-ministerial committee responsible for environmental matters is assisted by a consultative committee with wide representation of many sectors of society. Public participation may also be very limited if the number of representatives of non-governmental actors is much smaller compared to that of government officials. This happened in the Interdepartmental Committee on Environment, Nature Conservation and Tourism of the Democratic Republic of Congo, established by legislation of 1975, in which in addition to delegates of numerous government departments only two representatives of travel agencies were required to participate. In the same country, more recent legislation, in the form of a 2008 decree, is much more supportive of public participation, establishing that members of the Forestry Advisory Council, besides some twenty representatives of ministries, include two academics, experts in forestry law, four representatives of professional associations, four representatives of NGOs and one representative of local communities from each Provincial Council. Provincial Forestry Advisory Councils with a similar membership are also created.

In other instances, legislation may create an obligation for certain authorities to engage stakeholders in decision-making. This is the case in Burkina Faso, where the National Protected Area Service is in charge of developing partnerships between state, local authorities, civil society and the private sector in relation to forest and wildlife resource management. Similarly, the goal of Sudan's National Forests and Renewable Natural Resources Corporation is to "encourage effective popular participation." The degree to which these provisions determine the involvement of non-government actors is basically left to the discretion of the administration, and depends on the administration's effectiveness to implement the legal requirements.

2.2.3 Funds

In several countries analyzed in this study, legislation has been passed to appropriate funds associated with wildlife management.

These funds may facilitate the channelling of financial resources to the wildlife sector, although this objective is not ensured by the existence of the fund alone, as the principal source of the funds are usually appropriations from government budgets or donations. The extent of resources available depends on the governments' willingness to support the sector's overall financial governance and the ability to secure assistance from donors. The funds may in any case be useful instruments for the management of money actually allocated to the wildlife sector. Their adequate management, with transparent governance structures, can play a significant role in providing benefits to the poor, for example by supporting community-based initiatives.

Funds may be specific to wildlife, as in the case of Cameroon, where a Special Fund for the Management of Wildlife Conservation Areas was created. Along the same lines, in Kenya a Wildlife Service Fund was established to finance wildlife conservation and management projects, as may be determined by the Board of Trustees.

Alternatively, environmental funds or forestry funds (as in Burkina Faso) may have specific wildlife management objectives. In Mauritius, several funds which directly and indirectly provide for the conservation of wildlife have been established (namely, a National Parks and Conservation Fund, the National Environment Fund, and the National Heritage Fund – the latter financing safeguard of habitat of animals considered to be of outstanding value).

Not very often legislation also seeks to ensure that funds have transparent governance structures. For instance, in Congo, the committee of the environmental protection fund is made up only of representatives of various ministries, thus not including non-governmental stakeholders. Conversely, the Board of Trustees of Swaziland's Environmental Fund must have two members from non-governmental organizations that promote the conservation of the environment.

Relevant provisions rarely make reference to community initiatives regarding wildlife. One case is Mauritius' National Environment Fund, for which legislation specifies that resources may be utilized to support non-

governmental organizations engaged in environment protection and to encourage local environmental initiatives.

2.3 Wildlife tenure and use rights

Recognition of ownership of wildlife is generally a significant way of “empowering” people in wildlife management. The laws which have been examined either do not include any particular statements regarding ownership of wildlife, or establish that wildlife is state property or part of the national heritage. Although wildlife is never expressly declared to be property of the owners of land on which it is found, various laws, such as those of Burkina Faso and Cameroon, do recognize an exclusive right of land owners to hunt on their land and to exclude others from hunting unless authorized, even where wildlife is expressly declared to be state property. In Kenya, land owners have a similar right, but must apply for registration of their land if they wish to organize hunting by third parties on their land. In Mauritius, where wildlife is declared to be state property if found on state land, the consent of the owner or occupier is necessary to hunt on any other land. Even on leased state land the lessee has a right to the ownership of hunted animals, but must take certain measures to prevent illegal hunting. In the same country, the rights granted to land owners include also a right to kill animals which cause damage to crops, while a general right to self-defence does not seem to be envisaged. A less common provision regarding wildlife ownership is set out in Sudan, where wildlife is to be considered as state property in specified cases. In the first case (where an offence has been committed) this is presumably for the purpose of granting the state a right to claim compensation of damage; in the second case (where animals are accidentally killed or in self-defence) to exclude a right of persons who killed animals to the property of the animals killed (and therefore removing a possible incentive to abuses) and in the third case (where animals are found dead by any person not being the person who has lawfully killed the animal) also to prevent abuses. Gabon seems to be the only country in which hunting does not require a permit if within closed properties. In Swaziland, the permission of the landowner is required to hunt wildlife found on private forest lands.

Although the provisions just referred to do give significant consideration to the rights of land owners, this approach is not necessarily likely to provide benefits for the most disadvantaged members of society, considering that “private” land generally does not include **land held under customary tenure**. An exception is the legislation of Swaziland, which gives the residents of Swazi areas the same rights as those given to owners, lessees, or managers of land to hunt small game without a licence, except in the closed season (sec. 15). Similarly, where ownership of land is controversial (being for example formally state land but traditionally held as customary land), conflicts may be likely to arise regardless of the extent of rights given to “owners.”

Much of the legislation (as that of Burkina Faso, Cameroon, Gabon and Mali) recognizes **customary rights to hunt**, usually to the extent that they have not been expressly terminated and with numerous limitations. Frequently, the rules on these traditional rights allow their exercise only for certain non-protected species, for subsistence, non-commercial purposes and with traditional or otherwise specified weapons, and sometimes subject to a permit. In Burkina Faso a specific “*raabo*” (type of ministerial order) further limits subsistence hunting by allowing it to be practiced only within village hunting associations, requiring a permit against the payment of a fee. In the Central African Republic, limitations are slightly less strict, allowing customary hunting for purposes of subsistence of the whole village community and without a permit, even if an area has been allocated under a concession. Limitations of traditional hunting rights based on the ownership of land over which these rights may be exercised (for example whether or not on state land, or only on customary land) are less common, although they may be inherent in the limitation to hunt in the area where people reside. In Congo, in any case, the legislation expressly allows the exercise of customary rights in state forests, as well as forests belonging to communes or other local authorities. The provisions of the legislation of Mali setting out rights to practice hunting for ritual purposes are a less common form of traditional rights. In DRC, holders of rural or

collective hunting permits may be exempted from the payment of annual fees, particularly where they have little or no resources.

For the purpose of enhancing rural livelihoods, customary hunting should be allowed to the maximum extent possible, subject of course to sustainability. Therefore, limitations tending not to exceed sustainable yields, or to avoid destructive methods are justified, while others need to be carefully considered and sometimes avoided. For example, requirements for permits may be very difficult to implement both for the administration and for the concerned people and may be implemented for the sole purpose of gaining permit fees, although these may be quite limited. While such requirements are likely to remain unobserved, they do not help build a cooperative attitude between communities and the administration, inevitably pressing the poor outside of the rule of law. As for other aspects of wildlife management, a key contribution to the determination of appropriate, feasible rules could come from consultation with the concerned people. Provisions which envisage the **regulation of customary rights in consultation with customary users**, however, are very rare. They seem to exist only in the case of Congo, where such rights may be devised in management plans regarding protected areas – plans that the legislation requires to be adopted in consultation with concerned stakeholders. In the same country, customary rights may also be recognized in the declaration of protected areas, and the same possibility is envisaged in Mali. In both cases, however, these are only options rather than obligations, so that the position of interested people is not necessarily safeguarded in the process.

Consultation can be a useful means to reach consensus on limitations to customary hunting also if it takes place within traditional hunters' associations. This is reported to take place in Liberia, where some of the associations have adopted their own rules for the sustainable harvesting of bushmeat.

2.4 Wildlife management planning

Legal provisions on wildlife management planning are very diverse in scope and level of detail across the countries analyzed in this study. There is no explicit legal basis for

wildlife management planning in Ethiopia, Ghana, Seychelles, Swaziland, Sudan and Central African Republic.

Rarely do legal provisions require wildlife **surveys**. One exception is Congo, where legislation specifically calls for an inventory of forest and wildlife resources for which a "National Centre" was set up. Another exception is Cameroon, where the Wildlife Directorate's functions include the preparation of wildlife surveys and the study of animal population dynamics. More detailed are legal provisions in Liberia, whereby the authority must promote and undertake research on the distribution, habitat and population of wildlife with a view to providing sustained production and keeping a list of animals threatened by or in danger of extinction. The authority must review the population, distribution, and status of Liberia's wildlife and identify and keep a list of categories of animals and plants that are threatened or in danger of extinction. In Kenya, the gap is somehow filled by environmental legislation, which requires an inventory of biological diversity to monitor its status. Surveys may also be required for specific purposes. Hunting of big game is prohibited in Burkina Faso, except under express authorization of the minister, which may be issued upon submission of a survey of wildlife populations enabling the preparation of an appropriate hunting plan.

Although requirements regarding surveys and management plans are few, various countries, such as the Central African Republic, the Democratic Republic of Congo and Kenya require hunters to provide detailed information regarding animals. These provisions could facilitate the contribution of valuable information towards wildlife surveys, but are probably difficult to implement adequately.

Wildlife-specific management plans are sometimes directly requested to wildlife management concessionaires. In Burkina Faso, for instance, the holders of concessions to utilize wildlife in partial wildlife reserves, local refuges and ranches, are to develop wildlife management plans to be approved by the local wildlife administration. In other instances, communities may be called upon to develop plans. Once again in Burkina Faso, village

hunting areas must have a “management plan” approved by the regional wildlife administration. “Hunting plans” within each area are also to be established by the central wildlife administration, upon proposal of the regional administration.

Alternatively, **forest** management plans may also include wildlife-specific provisions, as in the case of Cameroon. In the Democratic Republic of Congo, management plans for forestry concessions must also envisage measures for the protection of wildlife.

More often, it is up to **protected areas management plans** to address wildlife conservation issues. In Mauritius, for instance, the Director of the National Parks and Conservation Service is tasked to prepare management plans for reserved land that also address wildlife conservation. The Director must publish management plans in two local newspapers and for sixty days must consider any persons’ written comments in response to the plan prior to finalizing it. The plans are then subject to review by the National Parks Advisory Council. In Gabon, every national park must have a management plan, formulated by the park’s administration after consultation with all concerned parties, among which communities living within the park and in neighbouring areas. The plan must take these communities’ customary usage rights into account. The latter two examples provide also interesting provisions on public participation in the design of management plans. In Mali, management plans for protected areas are also required, although apparently without any input from the public into the process leading to their adoption by decree.

Cameroon’s national legislation provides an articulated system of planning requirements. The Wildlife Decree distinguishes between “*plans d’aménagement*,” “*plans de gestion*,” and “*plans de chasse*.” *Plans d’aménagement* must be adopted (by the administration or, in the case of areas managed by private persons, proposed by the same persons and approved by the administration) for protected areas, while *plans de gestion* are prepared by the administration to set out strategies for the sustainable development of one or more wildlife resources. They must specify, among other, ways to involve local

populations in management. *Plans de chasse* specify the species and number of animals which may be hunted. *Plans d’aménagement* must set out objectives taking into account the interests of neighbouring populations and of biodiversity. *Plans de gestion* must also set out measures intended to involve local populations in all management phases and for the equitable sharing of benefits. “Simple” management plans approved by the forestry administration must be in place for every community forest. Hunting or capture of animals in a hunting area is subject to the hunting plan, adopted by order of the minister.

In some instances, management plans may play an important role in ensuring public **participation** in management and may include specific provisions on benefit-sharing. In Liberia, a national park management plan should include “plans for local involvement and public participation.” The relevant authority must consult with and take into account the views of local residents in the administration and management of protected areas, creating a local advisory committee to assist in this purpose. In Congo, local communities must be involved in the preparation and implementation of protected areas management plans and must benefit from revenues generated by activities carried out in protected areas. Minimum contents of plans include specific ways to involve the local population in management.

2.5 Wildlife conservation

Public participation is only sometimes required for the establishment and management of **protected areas** (PAs), although these are critical stages in which stakeholder involvement should be ensured and the empowerment of the poor should thus be promoted. In Seychelles, proposals to declare a natural park, reserve, or place of outstanding beauty, must be published for three consecutive weeks, advising where a map of the area can be publicly inspected, and allowing 28 days for the public to respond. Similarly, in Central African Republic, for the declaration of any of the protected areas envisaged in the Forest Code, a process of public consultation is required, including publicity of the proposal and the holding of a public hearing. In

Swaziland, land belonging to indigenous people cannot be declared as a park without obtaining the written permission of the Ngwenyama (ruler) who may impose restrictions as he may deem fit. In Mali, proposals to create a protected area or hunting area must be appropriately publicized and a detailed procedure is set out to ascertain claims over wildlife use by a committee including representatives of various local sectors of the administration as well as hunters' associations and villages.

Communities' involvement in the actual management of protected areas is addressed by legislation in Burkina Faso, where local refuges may be managed in collaboration between the local wildlife administration and representatives of concerned communities in management of local refuges, under partnership arrangements. In Gabon, every national park must have an outer area within which local villages are to be integrated, based on the identification of communities with which permanent collaboration is to be established in relation to the park's management. Usage rights within these areas, including hunting, are generally free, subject to a management contract between the communities and the park's manager.

In some instances, legislation also provides for **compensation** in this regard. According to Cameroon's Wildlife Decree, where third parties' rights are affected by the creation of a protected area, they must be compensated, and title to land must be vested in the state in protected areas. To this end, a committee including the representatives of the local government and local representatives of various specified ministries must be created to advise on any complaints which may have been raised. In other instances, as in Congo, legislation may require that public participation in PA management be ensured through the **PA management plan**. In Liberia, the protected areas management plan should include "plans for local involvement and public participation," and in all event authorities must consult with and take into account the views of local residents in the administration and management of PAs, creating a local advisory committee to assist in this purpose.

Most countries **classify animal species** for the purpose of granting them various

degrees of protection. Some, such as Burkina Faso, Central African Republic, Congo, Mauritius and Sudan, include lists in principal legislation. Others, as the Democratic Republic of Congo, Ghana and Liberia, also include lists in the principal legislation, but allow revisions by subsidiary legislation. In others countries, such as Gabon, the principal legislation requires the adoption of lists by subsidiary legislation. Seychelles has various regulations for the protection of specific species.

The determination of species and of the degree to which they should be protected may have a significant impact on species conservation, but also on people's livelihoods, determining consequences on availability of bushmeat as well as in terms of human-wildlife conflicts. It is therefore another issue over which a balance must be sought among environmental, economic and social interests, by considering various stakeholders' positions. However, participatory procedures for the determination of protected species are foreseen only in rare cases. One of them is the legislation of Mali, where the minister may list game species in addition to those set out in annex to the law, upon request of local authorities. Such input from the local level is however only an option and does not necessarily have to be requested. In Cameroon, where inventory and management plans for animal species are required and could presumably serve as a basis for classification of protected animals, there is no explicit obligation to consult stakeholders for this specific purpose.

With regards to **environmental impact assessments** (EIA), general environmental legislation may specifically address impacts on wildlife, or sometimes wildlife legislation complements EIA laws by creating linkages between the two sets of norms. In Ghana, projects for which environmental assessment is required include logging near wildlife reserves; while in Seychelles activities in a protected or ecologically sensitive area – thereby including natural habitats for rare protected or endemic species of fauna and flora – should be subject to EIA. In Kenya, on the other hand, activities that require an EIA include the "establishment or expansion of recreational townships in mountain areas, national parks and game reserves," while an EIA licence is

required for any activity which may have an adverse impact on an ecosystem, leading to the introduction of any exotic species or the unsustainable use of resources. While provisions regulating EIA usually provide means for involvement of the public in the process, this does not happen in all cases. In the Democratic Republic of Congo, the responsibility to carry out EIA is entrusted to a "Group of Environmental Studies," which may apparently act without any input from the public.

2.6 Wildlife use

2.6.1 Authorizations, permits and concessions

All countries that allow hunting subject it to permit requirements. Permits are usually different if for recreational hunting as opposed to traditional hunting in Burkina Faso, while in some cases (as in Cameroon, Central African Republic and Swaziland) permits are required for recreational hunting, but not for some or all types of traditional hunting.

Not all countries establish **qualifications** to be met to obtain hunting permits. An example is Cameroon, where applicants for permits must declare to be familiar with the legislation and hold a few other qualifications, mainly relating to the use of weapons. In Congo, requirements are also specified, including an obligation to be covered by insurance. The Democratic Republic of Congo goes further by requiring applicants for hunting permits to undergo a test on their ability to hunt, and establishing that hunting permits may be withdrawn in case of violations of applicable laws. Grounds for refusal or withdrawal of licences and permits are clearly spelt out also in Gabon, Ghana and Mauritius, basically including convictions for wildlife law violations. In Kenya, the provisions regarding suspension and cancellation of licences grant unusually wide discretionary powers to the administration: the Director may suspend or cancel any licence "without assigning any reason therefor," and licensing officers may refuse to issue a licence or authorization if they "think fit" and also "without assigning any reason therefor" (sec. 28). Similar formulations may hamper an equitable and transparent implementation of

the law, thus undermining legal certainty of users, and should for this reason be avoided.

Licences or certificates to exercise the profession of **hunting guide** are also frequently required. In this case, requirements to obtain the licence are usually set out in some detail in the principal legislation or in specific subsidiary legislation. In Burkina Faso, the Central African Republic and Congo, for example, an examination aiming at checking knowledge of wildlife legislation and species, and the ability to handle weapons must be passed. In DRC, hunting guides must complete a period of apprenticeship of 36 months and pass a test, for which procedures are specified in the legislation. In Gabon, an auctioning process is to be organized for the allocation of a specified area for hunting activities to a hunting guide.

With regards to guides' responsibilities, in Burkina, guides are responsible for the safety of their clients and for damage caused by them. They are also held jointly responsible for violations committed by clients, unless they prove that they had done everything possible to prevent the offence. Cameroon includes similar provisions. In Mali, hunting guides must ensure that their clients comply with the law, protect them from risks and record expeditions and animals hunted. They must be fully covered by insurance for their responsibilities. These provisions are aimed mainly at ensuring the safety of hunters and the reliability of guides who will accompany and lead them. Where objectivity in the granting of licences and certificates is ensured, they are also a useful means to ensure equitable treatment to applicants. This is not the case where qualification requirements are not clearly set out.

In the case of licences or certificates for guides, grounds for suspension or termination are specified more often than for any other licences or permits. Cameroon, Gabon and Mali appropriately include a list of possible reasons for suspension, including for the case in which (in Gabon) the guide is in charge of a hunting area. In Mali, for instance, grounds for suspension or cancellation of the hunting guide licence include giving false information at the time of application and allowing clients to hunt against the law, while in Gabon they include

second offences in relation to hunting, hunting in closed seasons or beyond the limits of the area of which the guide is charged and allowing illegal hunting by foreigners.

The profession of hunting guide may provide significant income to local and indigenous community members, who can use their traditional knowledge of wildlife and its habitats to support hunters, while at the same time monitor their behaviour and contribute to sustainable wildlife use. Legislation could possibly support local people in becoming hunting guides, for example by giving priority to them in the allocation of licenses. Along similar lines, in Cameroon, some hunting areas are reserved to nationals or national companies, in order to encourage nationals to take up the profession of hunting guide.

2.6.2 Sharing of benefits

General references linking wildlife management to poverty reduction can sometimes be found in legislation. In Burkina Faso, the PA institution is tasked with developing partnerships between state, local authorities, civil society and the private sector and promoting the fight against poverty through forest and wildlife resource management. In Liberia, authorities, in collaboration with local communities, non-governmental organizations, and interested international organizations, must undertake efforts to provide alternative livelihoods for communities adversely affected by the establishment or maintenance of protected forest areas. In addition, the Authority in Liberia must prepare an annual report of activities, which must describe “the nature and monetary value of benefits provided to every local community.

Specific legal tools to ensure the sharing of benefits derived from sustainable wildlife management are not common. Sometimes they are even inappropriately drafted, resulting in ambiguities of interpretation. There are generally two ways to share benefits from wildlife management: either communities are empowered to directly manage wildlife resources, and profit from it, or they can receive certain benefits from management entrusted to private entities or the state.

In Ethiopia, communities may be authorized to administer wildlife habitats under **agreements** with regions, and regulations should determine mechanisms to share the profits derived from the utilization of wildlife resources between federal government and regions and to benefit communities.

Although very general, this provision seems to prevent communities from directly obtaining the profits of wildlife management activities they may undertake, as it assumes that any profits are to be shared between central and regional governments, which are in turn to decide how to benefit communities with any such profits. In Burkina, the principal law expressly requires “*redevances et taxes*” derived from village hunting areas to be shared between local authorities’ budgets and village wildlife management organizations. A subsequent decree implementing the law, however, causes some confusion, establishing that *recettes* from concessions, which may also be established in village hunting areas, are to be shared between the state budget and the concerned local authority

In other cases, the law requires arrangements involving private entrepreneurs to specifically provide benefits to local communities. Liberia, forest management contracts must require the “holder” to establish a social agreement with local forest-dependent communities, approved by the Authority, defining benefits and access rights. A similar provision applies to “private use permits”, for which the land owner and the applicant undertake social obligations with respect to local communities.

Provisions on benefit-sharing are sometimes enshrined in legislation on **protected areas**. In Congo, local communities must be involved in the preparation and implementation of PA management plans and must benefit from revenues generated by activities carried out in protected areas. In Gabon, local villages are to be integrated in the management of areas surrounding national parks through permanent collaboration with the park’s management. Usage rights within these areas, including hunting, are generally free, and must be subject to a management contract with the specific objective of ensuring that any economic revenues directly benefit the communities.

2.6.3 Community-based wildlife management

Provisions on community-based wildlife management are perhaps the most direct instrument to implement empowerment of the poor in wildlife management. If drafted appropriately, they can ensure that all potential participants are adequately involved from the initial planning stage and throughout the operation of community-based initiatives and that communities' rights are secure with respect to the administration as well as third parties. Legislation on community-based initiatives is not uncommon in the countries being considered. It may directly concern hunting and other wildlife-related activities, or more generally forestry activities comprising wildlife aspects.

As regards the **initial undertaking of community-based activities**, Burkina Faso has detailed provisions in place regarding village hunting areas (*zones villageoises d'intérêt cynégétique*), which may be created on land belonging to a local community (*communauté de base*) for wildlife exploitation. The legislation requires a meeting of the village development council to be held before the responsible village authority, and a report of the meeting to be submitted and confirmed by the concerned local authority. Similarly, applications for the creation of community forests (where activities may include wildlife management) in Gabon must include a report of a meeting of the community's representative body. These are useful measures to promote the involvement of the whole population in the making of initial relevant determinations, to the extent that the representative body actually reflects the composition and interests of all members of society. Cameroon has similar provisions for the creation of community hunting areas, but is slightly more demanding on this point, as the report must be signed by all participants in the initial meeting, thus further ensuring their actual involvement.

Purposes for the undertaking of community-based initiatives are usually not limited to subsistence, and the law usually also gives basic guidelines on the degree to which communities may be entitled to revenues (provisions commented in the section on benefit sharing). In Burkina Faso, various

provisions allow and regulate possible commercial exploitation – for example by allowing leasing by the concerned communities to wildlife professionals. Similarly, in Gabon community forests may be managed directly by the community or leased out.

Some laws address in more detail than others the **agreements to be entered into by the communities and the administration** for the creation and operation of community-based initiatives. In Kenya, any member of a forest community, together with residents in the same area, may request registration of a “community forest association”. The association may then obtain to manage a state or local authority forest in accordance with a management agreement, which may address wildlife, including ecotourism. Conditions and procedure (including appeals) for termination or variation of these agreements are set out in detail.

Management plans for community hunting areas in Burkina Faso are required to be approved by the regional wildlife administration. There is no specific requirement for Cameroon's village hunting areas, but **simplified management plans**, which may address hunting, have to be prepared for community forests in the same country. Simplified management plans are also required in Gabon's community forests. In Kenya's community forests, the preparation of management plans by the communities is an option. As the plans are presumably the basic instrument regulating – and possibly limiting – the villagers' own activities, it would be important to ensure the involvement of all potentially affected people in their adoption. Although consultation may take place as a matter of practice in any community-managed areas, explicit legal requirements for consultation would strengthen the position of members of society who may tend to be disadvantaged.

Other legislation, although including significant statements supporting community-based wildlife management, remains more general. In Liberia, the Authority must undertake measures to institutionalize the participation of communities in forest management, promote recognition of community land tenure rights, regulate relations between any

contract/permit holders and communities and provide security of access by communities to forest resources and technical assistance. In Liberia there is also an option to create communal forests, which are limited to non-commercial purposes. In Ethiopia, communities may be authorized to administer wildlife habitats under agreements with regions, and wildlife-based tourism is generally promoted in the law.

Some countries, such as Burkina Faso, limit the possibility to undertake community-based wildlife management to **customary land**. Especially where there is potential for community involvement in wildlife management and related subsistence or commercial opportunities. It would be worthwhile to consider allowing similar arrangements also on **state land**. The related topic of traditional hunting by communities has already been addressed in the section on wildlife tenure and use rights above (section 2.3).

2.6.4 Private sector's wildlife management

An adequate legal framework for the private sector's involvement in wildlife management can contribute to the well-being of nearby rural people by creating an environment conducive to employment and business opportunities for all and/or simply because requirements may be imposed on private entrepreneurs to provide certain benefits to local communities.

In Burkina Faso, concessions in partial wildlife reserves, local refuges and ranches may be allocated to private natural or legal persons, with a view to promoting the commercial exploitation of hunting or ranching on an exclusive basis. Applicable annual fees are established on the basis of the potential of the concerned area. The concessions have a minimum duration of five years and are allocated following an invitation to submit offers issued by the minister responsible for wildlife. Concessionaires must comply with a technical agreement (*cahier de charges*) and formulate a management plan to be approved by the local wildlife administration. The *cahier de charges* must specify the concessionaire's obligations, including those regarding exploitation, protection and infrastructure, as well as principles regarding

relations between the concessionaire and local population. In Mali, hunting areas, wildlife reserves and special reserves may also be **leased** (*amodiées*) to hunting guides or hunting tourism companies. The lease contract must specify the advantages granted to neighbouring populations. The beneficiary of the lease obtains an exclusive right to the resources of the area, subject to the lease contract and a *cahier de charges*. Applications must include an undertaking to invest a specified amount in the area.

In most other cases, although similar or other various options for management of wildlife by the private sector are foreseen, **regulatory details tend to be minimal** and sometimes for this purpose require strengthening or the adoption of implementing texts. In the Central African Republic, rights to build and manage tourist infrastructure and to organize tours may be granted to private persons. A model technical agreement (*cahier de charges*) is to set out applicable conditions. "Hunting sectors" may be allocated to private parties under concessions for hunting or wildlife-watching tourism, in accordance with a contract and a model *cahier de charges*, or reserved to national and resident hunters. In Ethiopia, private investors "may be authorized to administer" wildlife conservation areas, whether established by the central or the regional governments, by entering into concession agreements with the government or the concerned region). In Cameroon, requirements are also not numerous: hunting areas may be declared on state forest and utilized either directly or by leasing them out (in this case, subject to a *cahier de charges*). A specification aiming at involving local people is made, by establishing that some of such areas are reserved to nationals or national companies. In Congo, hunting areas or wildlife reserves may also be leased to private persons for hunting purposes, subject to a "management contract", following a public invitation to submit offers. A yearly fee calculated as a percentage of the hunting quota allocated to the area applies. Respective rights and obligations of the parties to the contract are to be further determined in a *cahier de charges* attached to the management contract. In the Democratic Republic of Congo, hunting tourism enterprises must have qualified staff and must enter into an appropriate contract with the institutions

responsible for managing the concerned hunting area. In Mauritius, the minister may grant or auction land leases under which the lessee is granted rights to hunt. The lessee is subject to limitations regarding the clearing of land and must employ one person at all times to prevent poaching on the land.

In Gabon, the organization of hunting activities in a specified area may be allocated in **charge of a hunting guide**, following an auctioning process. The guide must ensure compliance with the law by his staff and clients and is responsible for damage caused by them and must be insured to cover such possible damage. In the same country, management of national parks for tourist purposes may be handed over to a private party by the National Parks Agency, under a concession agreement, “after examining a technical *dossier*”. There is no other specification of applicable rules. In Cameroon, hunting guides may be handed over the exploitation of a hunting area, subject to a *cahier de charges*.

In Mali, recognized **hunters associations** – a status that may be obtained by contributing to wildlife management and enforcement – may organize hunting and tourism within their territory and may obtain a lease for this purpose. Although this seems to be a promising approach to bring value to wildlife resources, this type of arrangement is not common in other countries.

In some countries, the involvement of the private sector is envisaged and promoted **within the context of community-based wildlife management initiatives**. In Burkina Faso, for example, exploitation of the village hunting areas may involve commercial objectives, and may be managed under **concessions** by technically capable persons. Concessions may be issued upon invitation to submit proposals, for an annual fee established by the minister responsible for wildlife and the minister responsible for finance, for a duration of 5 to 10 years. Concessions are subject to conditions set out in the document establishing their creation, in the concession contract, *cahier de charges*, and wildlife legislation in force. In Kenya, community forest associations may enter into partnerships with other

persons to ensure sustainable forest management.

There are also cases in which local communities’ interests are the object of a specific agreement with private entrepreneurs, subject to the control of the administration, as has been noted for the case of Mali. Similarly, holders of forest management contracts in Liberia must establish a **social agreement** with local forest-dependent communities, approved by the Authority, defining benefits and access rights. A similar provision applies to “private use permits”, for which the landowner and the applicant undertake social obligations with respect to local communities.

In few cases, such as Ghana and Congo, reference is made to the possibility of devising **fiscal incentives** for wildlife management. This is generally a good approach, although of course the effectiveness of such instruments towards the involvement of the private sector remains to be assessed against numerous factors such as actual financial advantages gained from the incentives and efficiency of the tax law enforcement system.

2.6.5 Eco-tourism

Eco-tourism is still rarely or scarcely addressed in legislation. Usually legal tools are limited to requiring **authorizations** for organizing wildlife-watching activities (seldom providing for certain conditions or limitations to these activities), and requiring the use of professional **guides**. In Burkina Faso, for instance, specific provisions on wildlife-watching tourism guides are set out, as wildlife-watching tourism expeditions within concession areas must be headed by hunting guides or wildlife-watching tourism guides. Qualification requirements do not seem to be foreseen. In Mauritius, eco-tourism activities (nature-based tourism activities or adventure-related tourism activities, or both) must be licensed by the Tourism Authority; however, there are no specific provisions governing wildlife-watching in the Tourism Authority Act. Similarly, in Congo tourist activities in relation to wildlife-watching can be organized by public or private operators: access to protected areas and wildlife-watching by visitors is subject to a permit or licence, upon payment of a fee. Licences

may also be necessary for professional taking of **photographs or filming** of wildlife but are not subject to any fees.

Over-regulating eco-tourism licences and permits may act as a disincentive. On the other hand, the fact that qualification requirements are usually not specified and therefore that transparency cannot be ensured in the licensing process may further cause lack of confidence in the system by managers, particularly disadvantaged people.

In a few cases, referred to also in section 2.6.3 on community based wildlife management, legislation specifically supports **community-based eco-tourism**. In Kenya, community forestry initiatives may include wildlife-based ecotourism: community forestry concessions may in fact lead to the conclusion of management agreements to confer on the association holding the concession various forest user rights, including ecotourism and recreational activities.

Legislation may also assign responsibilities for the **promotion** of eco-tourism to certain institutions, and may couple this task with the duty to consult the public or local authorities. In Ethiopia, the relevant minister and regions must promote wildlife-based tourism, “in collaboration with other concerned bodies”. In Congo, the relevant minister is called upon to adopt promotional measures (such as fiscal incentives and training) in consultation with concerned populations.

2.6.7 Ranching and breeding

Ranching and breeding of wild animals are unevenly addressed in legislation. In the unusual case of Burkina Faso, however, provisions are quite detailed. Ranching is defined as an activity involving wildlife production and exploitation in an open area, which must not be fenced, aiming at developing wild animals. It must be authorized by the minister, and be subject to regular surveys by the local wildlife service or by the developer, to ensure rational utilization. A ministerial authorization is also required for ranching concessions, for which a technical agreement (*cahier de charges*) must specify the activities which may be carried out in combination with ranching.

Wildlife breeding, in turn, is defined as the production of wild animals, whether kept in captivity or semi-freedom, for commercial purposes. It is authorized without conditions on private land and is otherwise subject to a ministerial authorization. Animals bred under this arrangement are the property of the breeder. The owner of a breeding operation is responsible for damage caused by animals.

Apart from the provisions of Burkina which expressly grant ownership of animals bred to the breeder, the rest of the legislation is quite succinct and seems to provide limitations without devising any particular incentives. The provisions specifying that the breeder becomes owner of the animals may result in an encouragement to ranching and breeding. Mali makes reference to regulations to specify conditions for breeding for commercial purposes. A licence, in any case, is required to breed or ranch wild animals for commercial purposes. This licence has a duration of one year – an unusually brief duration for an activity which may involve some investment and medium- or long-term planning. In Congo, legislation differentiates between game farming licences for raising non-protected animals in a controlled environment for trading purposes, and game ranching licences for the repopulation of non-wholly-protected animals in a protected or managed area, with a view to permitting their exploitation as food or for other purposes. In Mauritius, breeding and trade of wildlife are simply subject to a licence, but there are no specific criteria to guide the issuance of such licence.

Ranching and breeding may have significant impacts (both positive and negative) on the surrounding environment and on local and indigenous communities. Likely impacts should be identified, at the stage of planning, and specific provisions for the minimization of negative impacts could be embedded in the concession or technical agreement to ensure environmental sustainability and possibly benefit-sharing with local communities. Consultations with potentially affected stakeholders should therefore be requested to this end, as well as monitoring systems once the activity has been authorized.

2.7 Human-wildlife conflicts

Killing wild animals in self-defence, in defence of another person, or sometimes also to protect property, is often not considered an offence in the legislation of the countries covered by this study. Frequently, a report of the killing must be made to authorities within a certain deadline (24 hours in Liberia), or at least for certain protected species (Ghana). Sometimes these provisions are qualified by the need to take "reasonable measures" (Sudan), or by limiting lawful killings to absolute necessity (Liberia). Thus, in Liberia and Kenya, self-defence must be proven by the person claiming it, may not be claimed if the animal has been provoked or the person was breaking the law. Property owners must fence or otherwise protect their land so as to prevent the entry of wild animals and inform authorities immediately of any damage to crops or property by a wild animal.

In Kenya, game animals causing damage to land, crops or stock may be killed by the owner of such land, crops or stock or by the occupier of any land. Wounded game animals or protected animals must be killed. Where any person is injured or killed by an animal his/her dependants may apply to a district committee established for the purpose of providing **compensation**, unless the person was committing an offence, or the injury or death occurred "in the course of normal wildlife utilization activities". The committee must include some specified officials of the district and county level and three other members appointed by the minister to "represent the general public" of the district.

In some instances, authorities are called upon to take measures to prevent or reduce human-wildlife conflicts. In Liberia, in the case of protected animals, authorities must take measures to **prevent** such animals from causing damage to private property, "encourage and cooperate with property owners to prevent the entry of such animals" and compensate damage, unless the property owner has not complied with the obligation to fence or protect the land. In Swaziland, the Minister of Agriculture can direct the owner of any holding (including Swazi Nation indigenous peoples) to reduce any species of game that the minister deems to constitute a danger to stock,

crops, grazing, or other natural resources. If the owner fails to reduce said species of game within one month, the minister may undertake measures to perform such reduction and expenses incurred by the minister may be offset by the sale of carcasses of any destroyed game. In Congo, the administration may organize **culling** operations (*battues administratives*) in case of animals which constitute a danger for persons and their property. In Central African Republic, the wildlife service must promote methods to prevent damaging of crops or livestock by wild animals. When animals constitute a danger for persons or property in any place, the authority responsible for public order requests the intervention of the Wildlife Service which may decide to undertake culling in case no other measures are viable to terminate the danger. A report of culling including various details must be submitted to the minister.

2.8 Law enforcement and access to justice

Legal provisions on **law enforcement** often allow for public participation in the detection and prevention of violations of wildlife legislation. This is frequently achieved through the creation or recognition of honorary wildlife inspectors (as in Burkina Faso, Ghana, Sudan and Kenya). Usually these inspectors are required to submit a yearly report to the wildlife management authority. In other instances, local/village committees may fulfil this purpose (Cameroon). In Mali, hunters associations may obtain recognition as public service associations if they contribute to law compliance and fight against poaching.

Generally, wildlife legislation does not provide rewards or other incentives for public participation in law enforcement. In Gabon, however, the administration may appoint "*lieutenants de chasse*" as volunteer guards who may participate in culling as well as assist in enforcing the law, by taking direct action in case a violation is committed, or alternatively to report to the administration. They carry out their functions free of charge, but are entitled to the same rewards envisaged for enforcement officials for the offences they report. Another exception is Swaziland, where game rangers and park wardens who provide information which leads to the arrest and

conviction of a person who has violated the Game Act will receive an award, the amount of which is determined by the minister.

With regard to **access to justice**, special tribunals have sometimes been set up to ensure an appropriate examination of wildlife-related cases. In Kenya, a Wildlife Conservation and Management Service Appeal Tribunal was established to determine appeals where any person is aggrieved by a decision made under the Wildlife Conservation and Management Act, including issues of compensation. In Mauritius, an Environmental Appeal Tribunal hears appeals of decisions regarding environmental impact assessments, licences, and injunction orders.

In other instances, legislation may empower citizens to submit a **complaint** or request an injunction for violations of wildlife laws. This is the case of Swaziland, where any person may request in writing the authority to investigate alleged violations of environmental legislation, or sue for damages, an injunction, or protective order with regard to acts or omissions that contravene environmental laws, whether or not that person has been affected by the violations. However, no costs or damages will be awarded if the court finds that the motivation for the filing of an action was other than for the protection of the environment

Naturally the degree to which these various arrangements may actually ease the position of disadvantaged members of society depends on a number of factors, such as the degree of objectivity of environmental courts as opposed to ordinary courts, their geographical distribution and the cost of procedures. A preliminary issue to facilitating access to the courts is the adequacy of the legislation to be applied. There may be no point in accessing the courts to challenge the exercise of powers by the administration, if the powers given by the law (for example to issue and revoke permits) are largely discretionary.

2.9 Gender and food security

References to **gender equality** in access and management of wildlife are scant in the legislation analyzed in this study. One exception is Liberia, where the legal basis

for the creation of a multi-stakeholder advisory committee for forest management calls for fair representation of the interests of women and youth.

Food security concerns are occasionally addressed by wildlife legislation. In more than one country some provisions tend to secure to the benefit of local populations **meat** which might otherwise be wasted. There is, for example, a requirement to distribute meat from animals killed in self-defence to local people in the Democratic Republic of Congo, along with a prohibition to sell it. In Cameroon, meat derived from culling expeditions or from animals killed out of necessity is to be handed over to "victim" populations and partly to hunters who have volunteered in the culling. Similarly, in Gabon, meat deriving from culling operations must be left to the local population. In Congo, any surplus of hunting not utilized on the spot by hunters, as well as meat resulting from culling by the administration, is to be left to the local population or charity institutions, and meat of animals killed for self-defence must be distributed in accordance with local customs. In Liberia, in some communities, hunters associations make rules to govern hunters to ensure sustainable harvesting of bushmeat. In Central African Republic, meat abandoned by hunters belongs to the villages which are the closest to the hunting places. Hunters abandoning meat must notify the first village they encounter or the first camp reached. In Sudan, a provision authorizes the killing of protected animals to obtain meat "in case of urgent necessity," requiring a report, except by natives.

Provisions as those described are useful but perhaps not particularly significant in terms of contributing to the livelihood of local people and their legal empowerment. More effective legal support to food security is perhaps given by the provisions of Sudan allowing obtaining meat "in case of urgent necessity." As people faced with food shortages are likely to resort to any available bushmeat whether or not this is allowed by the law, the latter provisions are also more realistic and therefore more likely to encourage people to act under the framework of the law rather than outside of it.

Trade in bushmeat is often regulated in the countries analyzed in this study (Burkina

Faso and Ghana, for instance), whereby generally an authorization or a permit is necessary. In Kenya, the possession or movement of, or any dealings in any meat may be prohibited by regulation. In Central African Republic, the sale of game meat is allowed after the opening of the hunting season and until thirty days after its closure.

3. CONCLUSIONS AND RECOMMENDATIONS

The overview of legislation in selected countries shows that many useful provisions towards empowerment of the poor in wildlife management, particularly through community-based initiatives, have been introduced in the legislation in the region. Few, however, have a full and adequate legal framework in place regarding this aspect. There is, therefore, a need to strengthen and complete the applicable legal framework: this section will provide specific recommendations to this end.

3.1 Scope of wildlife legislation and coordination among relevant laws

The analysis that has been made does not identify any significant conflicts in the contents of wildlife legislation as opposed to legislation concerning related subjects such as environment and forestry. A problem that has been identified in some cases is that the scope of the wildlife legislation is too limited, as its **focus is on hunting, rather than on wildlife conservation and utilization on the whole**. As was recommended in the first study on the legislation of other Sub-Saharan countries, wildlife legislation should take into account and address a variety of interests, including environmental sustainability, socio-economic development particularly targeting local communities, customary use and traditional knowledge, gender equity, consideration of vulnerable and indigenous groups, and food security. Laws focusing mainly on “hunting” or on “game,” such as those respectively of the Democratic Republic of Congo and of Swaziland, are to a large extent inadequate to meet this recommendation. Even where legislation does not concern hunting only, it could benefit from further consideration of the multiple aspects mentioned, and where

they are not adequately addressed the legislation should be revised.

Another problematic area in the countries of this region is that of the **relations among various pieces of legislation concerning wildlife adopted through time**, due to the practice of not expressly repealing principal and subsidiary legislation enacted before the entry into force of a new principal law. Although in theory earlier provisions that conflict with more recent ones of the same level must be considered repealed, simply relying on this general rule is often a source of uncertainty. Countries could easily prevent this problem by including more specific statements in new laws, expressly identifying provisions to be repealed. Furthermore, any subsidiary legislation which is necessary for the implementation of a new law should be adopted within a reasonable time from its adoption.

Other shortcomings have been noted and should be addressed where necessary. One of them is the almost complete absence of legislation to implement CITES. There is also a need to translate existing legislation into local languages, as the concept of legal empowerment is based on knowledge of the legislation by all concerned people.

3.2 Institutional setup and role of stakeholders

Not all countries have clear legal provisions in place to **regulate institutions** responsible for wildlife. It is acceptable, especially for principal legislation, not to enter into detailed arrangements to remain relevant even in the face of subsequent institutional reforms. What must be avoided, however, are provisions that are contradictory or otherwise unclear. Another important objective of provisions regarding the institutional framework is to facilitate coordination among different authorities with related functions. The law could be strengthened on this point by establishing inter-ministerial bodies, following the examples of some countries that have already done so. It could also be strengthened by creating units responsible for dealing with environmental matters within sectoral ministries, as has also been done in Burkina Faso and Ethiopia. The composition of bodies including representation of various institutions is

sometimes extended to members of the public representing various sectors of society. This is usually required for bodies that are to advise to the responsible minister or the administration, and may become a useful instrument to enable people's participation in decision-making.

Stakeholders may be allowed to take part in wildlife planning and decision-making both at the central and at the local level, as appropriate. Where the participatory mechanisms that are envisaged effectively ensure ample representation, they may significantly contribute to supporting the interests of the less advantaged members of society. In various cases, where representation is not envisaged or only loosely required, existing provisions could be strengthened to this effect. Sometimes public participation requirements may have the paradoxical result of excluding certain key stakeholders (often, the most vulnerable or marginalized). Relevant provisions can therefore be coupled with provisions aiming at ensuring transparency in the making of appointments on the advisory or administrative bodies, for example requiring the advertising of open positions and setting out selection criteria (as seen in the case of South Africa, in the previous legal study).

Where **funds** are established to support wildlife, forestry or the environment, their regulation could be strengthened in various ways, which have been indicated in the previous wildlife study. Ideally, legislation should clearly indicate that local communities are among the beneficiaries of funds for wildlife management and that local communities' involvement in wildlife management should be a main (or even a priority) objective of these funds. In addition, legislation should provide for technical and other assistance for disadvantaged people to submit proposals to these funds. Furthermore, funds may be specifically earmarked or utilized to facilitate an equitable participation among men and women in wildlife management. Finally, public participation should be ensured in the management structures of funds, or at least provision for clear procedures for public intervention in decision-making or monitoring regarding use of the funds should be made. The adequacy of legal provisions regarding the operation of funds is an indispensable precondition to their utilization to "empower the poor." Otherwise,

availability of funds in the absence of adequate fund management procedures will likely lead to fraudulent practices and to further impoverish disadvantaged people.

3.3 Wildlife tenure and use rights

The issue of wildlife ownership, and of people's rights over wildlife, whether or not depending on ownership, is rather directly linked to the accessibility of benefits arising from sustainable wildlife management by rural people, either in the form of financial or other material advantages or of alleviation of damage caused by wildlife.

Although the provisions analyzed give significant consideration to the rights of land owners, this approach is not necessarily likely to involve benefits for the most disadvantaged members of society, considering that "private" land generally does not include **land held under customary tenure**. Similarly, where ownership of land is controversial (being for example formally state land but traditionally considered as customary land), conflicts may be likely to arise regardless of the extent of rights given to "owners". In the previous study describing the experience of other African countries, it was noted that statements on wildlife ownership are less important than **substantive provisions entitling to benefits from wildlife use**. The grant of hunting and other management rights to land owners have often served as a basis for successful private wildlife management initiatives, even where ownership of wildlife has not been transferred to private nor communal land owners. Such experiences are generally less common in the countries considered in this study. Wildlife legislation ensuring that any rights granted under it are secure can be a useful contribution to undertaking wildlife management initiatives also in the countries considered in this study.

Much of the legislation examined in this study recognizes **customary rights to hunt**, usually to the extent that they have not been expressly terminated and with numerous limitations. Frequently the rules on these traditional rights allow their exercise only for certain non-protected species, for subsistence, non-commercial purposes and with traditional or otherwise specified weapons, and sometimes subject to a

permit. Most of the existing legislation in fact addresses customary rights more for the purpose of limiting them than to facilitate their exercise.

As **bushmeat** can give a significant contribution to the livelihood of rural people in this part of the world, subsistence hunting should be allowed to the maximum extent possible, subject only to sustainability concerns. Therefore, limitations tending not to exceed sustainable yields, or to avoid destructive methods are justified, while others need to be carefully considered and sometimes avoided. Requirements that are likely to remain unobserved should be avoided as they tend to lower the degree of respect for the law in general and do not help to build a cooperative attitude between the people and the administration, inevitably pressing the poor outside of the rule of law. Where limitations to hunting are inevitable, as they have become in many places where the availability of bushmeat has dramatically decreased, a key contribution to the determination of appropriate rules can come from consultation with the concerned people.

Provisions which envisage the **regulation of customary rights in consultation with customary users** need to be introduced more widely in the legislation of all the countries considered. Consultation should be regularly envisaged in the context of management planning, whether or not the process involves the adoption of formal management plans. It could also take place within traditional hunters' associations, as happens where the associations adopt their own rules for the sustainable harvesting of bushmeat. Adequate consideration, and where possible continuation of traditional practices, is also a significant contribution to the livelihood of rural people, whose skills and knowledge can thus be utilized in benefiting their interests as well as those of society.

3.4 Wildlife management planning

The considerations to be made with respect to legal frameworks for wildlife management planning do not differ considerably from those already made with respect to other African countries in the previous study. Generally, a **legal framework for wildlife management planning** should, at a

minimum, consist of a requirement to survey some or all wildlife populations and prepare one or more management plans based on the surveys' findings. The issue of licences and permits for activities concerned by a management plan should be made subject to the plan's contents. The adoption of plans, following the above basic steps, should be clearly and specifically required by law. Provisions should take into account the context of other existing planning processes, and focus on comprehensively addressing a country's wildlife, or at least those species which are subject to particular pressure. An essential component should be requirements for public participation in the process leading to the adoption of the plans.

The legislation of the selected countries includes many useful provisions that are in line with the above recommendations. For example, some countries, such as Cameroon and Burkina Faso (the latter as regards village hunting areas), require some types of wildlife surveys. Some, as again Burkina for village hunting areas and Cameroon as regards customary rights require limitations to hunting to be based on management plans, or, as Congo, allow customary rights to be set out in management plans. Some, as Congo and Gabon, appropriately require plans for protected areas to be adopted following consultation. At best, only some of the appropriate provisions are in place and there are significant gaps in the legal frameworks of each country. The legislation should therefore be strengthened, whether appropriate provisions are included in wildlife legislation or are part of wider frameworks, such as the environmental legislation.

As has already been noted with respect to public participation in related aspects of wildlife law (for example, human-wildlife conflicts), adequate participatory requirements for the preparation of management plans can be useful tools for the "empowerment of the poor." Provisions resulting in the participation of disadvantaged members of society can allow them to see and enjoy the benefits of operating under the rule of law, and support them in obtaining protection of their assets and activities. On the one hand, therefore, planning exercises should allow public participation so as to be enriched by

information provided by various stakeholders. On the other hand, resulting plans should clearly identify opportunities for public participation in the plan implementation.

3.5 Wildlife conservation

Public participation in the process of creation and management of protected areas is an essential component of good wildlife legislation, but is required only in some cases in the legislation examined in the selected countries. As was recommended in the study concerning the legislation of other Sub-Saharan countries, legal frameworks should at least require:

- an adequate process of divulging information, prior to a proposed declaration or the adoption or revision of protected areas management plans;
- a clear invitation to the public to submit comments and/or to participate in public meetings organized for this purpose prior to make the decision; and
- serious consideration of the observations received by the responsible authority, giving reasons for comments which are rejected.

The law should also require provision of information to the public and, when needed, extension on the objectives and needs of any protected area. Ideally, access of local communities to professional advice so that their interests may be adequately represented should be supported. Furthermore, stakeholder participation in the efforts to conserve wildlife and opportunities to share the benefits arising from wildlife conservation should also be specifically addressed by legislation, giving priority to local communities.

Participation of concerned people would also be useful in the process of **classification of wild animal species** in order to grant them various degrees of protection. There are few cases in which participation is required for this purpose. This process, however, may have a significant impact on species conservation as well as on people's livelihoods, determining consequences on availability of bushmeat and in terms of human-wildlife conflicts. It is therefore another issue over which a balance must be sought among

environmental, economic and social interests, by considering various stakeholders' positions.

Wildlife conservation efforts and participatory aspects could also be strengthened by EIA requirements, which may be set out either in separate legislation or in the wildlife legislation itself. Enhanced participation of people in protected area creation and management and in the setting of conservation measures would contribute to prevention and settlement of **conflicts regarding possible land uses** as well as human-wildlife conflicts. Disadvantaged people could thus obtain direct benefits, while their involvement in the setting of rules could facilitate their access to the rule of law, the protection of their assets, and security of their initiatives. Additional benefits would generally develop from improved conservation, which could bring about opportunities for sustainable utilization. Improved procedures for land use planning would also facilitate enhancement of the position of people who are normally put under pressure (if not compulsorily moved or impoverished) by the creation of protected areas or by some conservation provisions.

3.6 Wildlife use

3.6.1 Authorizations, permits and concessions

All countries subject hunting and most other forms of wildlife utilization to permit requirements. A gap that has been noted, however, is the frequent absence of provisions establishing required qualifications to obtain licences or permits, as well as of provisions regulating their suspension or cancellation. There are even provisions that expressly leave relevant determinations totally to the free will of the authorities. The gap seems to be less significant in some cases (for example as regards the qualifications required to become hunting guides) – but this may be due to the prevailing need to protect hunters' interest by ensuring the reliability of guides. Another noteworthy gap is the failure to link the issue of licences and permits to management plans where they are required.

As was recommended in the previous study, the laws should set appropriate limits to the

discretion of the administration, establishing transparent procedures for the allocation of any benefits or their revocation. At the same time, compliance with the law should not be made excessively expensive and/or unnecessarily technically complex, pushing economically disadvantaged people outside the scope of the law. When the administration is vested with sweeping regulatory powers and is not itself clearly subject to the rule of law, poor people are often the ones who suffer the most serious consequences, as they are not able to put pressure on the system to secure rights and other protection.

3.6.2 Sharing of benefits

The analysis of legislation shows that references to the provision of benefits to people from wildlife use are not uncommon, but usually formulated in rather general terms that do not necessarily entail practical consequences. Provisions that require private entrepreneurs involved in wildlife management to undertake to provide certain benefits to local people may be a good contribution to rural livelihoods, especially if negotiated with the concerned people and tailored to their needs (as noted also in the section in private sector wildlife management).

As was noted in the previous study regarding other African countries, more innovative solutions to support to the development of local populations would rather be to support the undertaking of productive activities by them, both by utilizing available funds for this purpose and generally by improving the legal framework recognizing use rights and strengthening security of arrangements for local communities to become “managers” of wildlife, not just users.

3.6.3 Legal frameworks for community-based natural resource management

Provisions on community-based wildlife management are perhaps the most direct instrument to empower the poor in wildlife management. If drafted appropriately, they can ensure that all potential participants in wildlife management initiatives are adequately involved from the initial planning stage and throughout their operation and that communities’ rights are secure with

respect to the administration as well as third parties. Legislation on community-based initiatives is not uncommon in the countries being considered. It may directly concern hunting and other wildlife-related activities, or more generally forestry activities comprising wildlife aspects. Although there are various useful examples of provisions adequately addressing some particular aspect of community-based management (for example prior consultation of villagers, or management planning, or agreements with the administration), these provisions are unevenly distributed among the laws of the various countries. The resulting legal framework respectively applicable in the various countries, however, is often insufficient to provide a sound basis for community initiatives. The previous study relating to the legislation of other Sub-Saharan countries summarizes a number of provisions that can be considered as series of minimum requirements to be incorporated into any legislation. These minimum requirements are the following:

- where a proposal to create a community-managed area is made by the administration, it must be adequately publicized;
- any persons living in the area or having strong traditional ties to it must be given a fair opportunity to join the community-managed area;
- selection criteria must be set out for the case in which more than one group or community may be interested in arrangements concerning the same land;
- relations among the members of the group or community applying to manage natural resources must be appropriately verified: there must be a certain degree of general consensus and representatives must have been appropriately designated and may have to be periodically reappointed; there must also be a clear agreement among community members about respective rights and obligations and sharing of benefits;
- the ability and willingness of the group or community to undertake the relevant activities as well as to manage funds must also be verified;
- various concerned actors must be consulted, including central and local government, neighbouring communities,

- traditional authorities, as may be appropriate;
- the suitability of the area and availability of resources for the proposed activities must be verified;
 - existing rights of occupancy or use over the concerned area must be considered and either accommodated into the arrangement, upon agreement of right holders, or if extinguished, compensated;
 - an agreement setting out respective rights and obligations (including a simple management plan based on an inventory of resources and setting out activities to be undertaken, prohibitions, payments due, assistance to be provided, duration, applicable conditions, etc.) must be adopted between the administration and the group or community;
 - the group or community must be given some power to issue its own binding rules regarding the activity being undertaken, including rules on land access and use by the same group and by third parties;
 - arrangements must be made for enforcement of any relevant applicable rules within the concerned area, including where appropriate enforcement by members of the group;
 - the group or community must be given clear rights of ownership or to dispose of produce resulting from the initiatives being undertaken, waiving unnecessary requirements (e.g. permit requirements) which would be otherwise applicable under general law;
 - consequences for violations (grounds for suspension and termination, compensation) must be set out, providing an opportunity for communities to remedy to the non-compliance within a certain deadline before deciding on termination of their right;
 - procedures for effective settlement of disputes must be in place;
 - the administration must be required to provide information, training, advice and management and extension, upon request of the community.

Countries should consider inclusion of all of these provisions into their legislation, adapting them as may be necessary to their domestic characteristics and to initiatives which they intend to support. Initiatives for

community management of state land, rather than only land owned by the communities, should also be encouraged where possible.

The applicable legal framework given in most countries results from basic provisions included in the **law** and more detailed ones spelt out in **agreements** between the administration and the concerned communities. While leaving some flexibility in the contents of these agreements is desirable, the conditions set out in the law, as indicated in the above list, should provide a sound basis for them, with a view to protecting both the interests of sustainable wildlife management and those of communities.

Community-based wildlife management is an obvious, essential contributor to legal empowerment of the poor, and all recommendations made in this section are in line with this objective. Special efforts must be made for the formulation of provisions focusing on the inclusion of the most disadvantaged people among the beneficiaries of the opportunities afforded by community wildlife management. For example, provisions which require groups or associations being handed over some management rights to give formal account of how the group was formed and how “democratically” it is operated provide means by which to identify whether any members of a community are being marginalized for any reason.

3.6.4 Legal frameworks for the private sector’s wildlife management

This section addresses private wildlife management initiatives in general, mainly referring to organized recreational hunting activities on private land or under leases or concessions of state land, while additional considerations on eco-tourism and wildlife ranching and breeding are made in separate sections below (sections 3.7.5 and 3.7.6). An adequate legal framework for the private sector’s involvement in wildlife management can contribute to the well-being of all rural people by creating an environment conducive to generating employment and business opportunities for all. It may also expressly require private entrepreneurs to provide certain benefits to local communities, usually in accordance with a

specific agreement made with the administration or with them.

Most of the selected countries require some authorization for the private sector to undertake wildlife management initiatives, whether on private or other land. A few other rules may be included, but in general the applicable legislation is quite limited and often not sufficient to provide a framework to encourage sustainable management by reliable entrepreneurs. Aspects to be addressed in the law at a minimum are similar to those recommended to be addressed in community-based initiatives, although with some significant distinctions:

- the suitability of the area (whether on private or state land) and availability of resources for the proposed activities must be verified;
- separate provisions may be set out respectively for the case of state land and private land;
- where an opportunity to award the management of a certain area of state land to one or more private entities is made available by the administration, it must be adequately publicized;
- criteria to make a selection among possible competitors must be set out: these should include technical and financial qualifications, past performance, as well as where appropriate a financial offer;
- provisions must be included to ensure transparency of selection procedures (e.g., publication of results with reasons for the action taken);
- various concerned actors must be consulted before the allocation of significant wildlife management rights to a private entity, including central and local government, neighbouring communities and traditional authorities, as may be appropriate;
- existing rights of occupancy or use over the concerned area must be considered and either accommodated into the arrangement, upon agreement of right holders, or if extinguished, compensated;
- an agreement setting out respective rights and obligations of the parties must be entered into by the administration and the private entity, including, where appropriate,
 - a management plan based on an inventory of resources and setting out activities to be undertaken or prohibited;
 - specification of duration, to be appropriate for the type of activity and investments expected;
 - exclusivity if granted;
 - social obligations of the private entity, preferably following consultation with concerned stakeholders;
 - sharing of benefits and payments due;
 - all other applicable conditions (such as an obligation to monitor the status of wildlife, and report back to authorities periodically);
- arrangements must be made for enforcement of any relevant applicable rules within the concerned area, including where appropriate enforcement by members of the group;
- the private entity must be given clear rights of ownership or to dispose of produce resulting from the initiatives being undertaken, waiving unnecessary requirements (e.g. permit requirements) which would be otherwise applicable under general law;
- consequences for violations (grounds for suspension and termination, compensation) must be set out, with the possibility to remedy to the non-compliance within a certain deadline;
- procedures for effective settlement of disputes must be in place;
- provision must be made for monitoring of compliance with the agreement by the administration as well as by the public.

In the current legislation there are also cases in which the involvement of the private sector is envisaged and promoted **within the context of community-based wildlife management initiatives**. The opposite case (involvement of community in the context of private wildlife management initiatives) can also be conceived, although it does not seem to be addressed in the legislation examined. Legislation must be designed in such a way that options are left open for these various arrangements to be set up and adequately regulated.

3.6.5 Eco-tourism

Some of the countries which have been considered have introduced provisions regarding eco-tourism, usually requiring licences. A problem that has been noted is the absence of specific qualification requirements to obtain these licences, making the licensing system useful only for the purpose of keeping track of eco-tourism operators and to cash applicable fees. Similar requirements, however, need to be considered against the risk of them acting simply as disincentives, especially where bureaucratic procedures are burdensome and licences cannot be easily obtained. The absence of specific rules on necessary qualifications also causes lack of transparency and probably lack of confidence in the overall system by disadvantaged people – a typical hindrance to legal empowerment of the poor.

On the contrary, rural communities are usually in a good position to undertake eco-tourism initiatives and should be encouraged to do so by legislation that facilitates their involvement and where possible grants exemptions from general rules (waiving of fees for community initiatives etc.). At the same time, minimum requirements to ensure the environmental sustainability of eco-tourism activities should be set out (in legislation, or voluntary guidelines).

3.6.6 Ranching and breeding

The legislation examined is quite succinct as regards ranching and breeding and in general provides limitations without devising any particular incentives. It may even discourage potential investors by setting out limits to the duration of licences (one year) that are incompatible with medium- or long-term planning and investments.

Ranching and breeding may provide a significant contribution to environmental sustainability and rural livelihoods and should for this reason be encouraged, to the extent that they do not conflict with environmental concerns. The same recommendations made in the study referring to the laws of African wildlife legislation may be made here. The legislation should avoid **unnecessary rules**, while at the same time establishing some minimum criteria for environmental and

social sustainability. Management plans and environmental impact assessments for large-scale activities could reasonably be requested. Consideration of food security and traditional practices of neighboring communities should also be included, possibly with the option of involving members of these communities in ranching and breeding activities. In addition to any available **financial incentives**, legislation could grant some **privileges**, such as the rights to own (or dispose of) and harvest animals derived from these activities. Exemptions from rules applicable to the utilization of wild animals should be granted as appropriate, so that animals are not subject to general conditions for utilization, which may result in a disincentive. Incentives, and particularly exemptions from general rules, should be devised depending on the purposes or particular arrangements of the ranching or breeding operation. For example, provisions should be more extensive where objectives such as food security are pursued or local communities are involved. As was noted and recommended for other private sector and/or community-based initiatives, the law could refer to agreements with the administration for the specification of applicable conditions.

3.7 Human-wildlife conflicts

Legislation can also contribute to the **reduction of human-wildlife conflicts**, thus alleviating the position of some of the less advantaged people in rural communities. Provisions addressing “problem animals” could be improved by foreseeing some consultation over the adoption of relevant prevention measures – a rare requirement in current legislation. Consideration must also be given to the possibility of envisaging compensation of damage caused by wild animals.

The previous study regarding the legislation of other African countries reports that, in relevant literature, various limits in the usefulness of compensation for damage caused by wild animals are pointed out. Nonetheless, where compensation is possible, adequate legal provisions are required. They should preferably be adopted within the context of a wider strategy to address human/wildlife conflicts. The legislation, following relevant policies where they exist, should include the following:

- requirements for people to report cases and for the administration to set up a system to collect data;
- provisions allowing people to participate in appropriate meetings, where the meetings are adequately publicized and objectives and measures regarding human-wildlife conflicts could be set out, in light of available data. For example, measures could be:
 - agreement on land use planning, preferably as part of larger land-use planning exercises, with the goal of preventing conflicting land uses and incidents of wildlife attacks;
 - where possible, compensation, subject to certain conditions, e.g., fencing in certain ways, cultivation of certain crops, grazing in certain areas. Transparency in allocating compensation should be ensured – for example simply by requiring the advertising of requests and grants in prominent places and online;
 - cooperative surveillance arrangements;
 - requirements for the administration to monitor the implementation of measures adopted in relation to human-wildlife conflicts.

Where feasible, the legislation could also require recourse to mutual or private insurance schemes.

Adequate provisions regarding human-wildlife conflicts, along the lines suggested, would be useful tools for the "empowerment of the poor", as they would ease the involvement of such persons under the rule of law. As a result, disadvantaged persons could participate in shaping the law and thereby, seek better protection of their belongings. In addition, this could facilitate private or community wildlife management initiatives.

3.8 Law enforcement

As some countries are already doing, some innovative solutions to strengthen enforcement by involving communities or local authorities should be experimented with. Examples which have been pointed out in this study are generally limited to the creation of bodies of volunteer guards. Other countries of Southern Africa, as described in the previous study, call upon local people, or

anybody in the public, to report violations or carry out enforcement functions such as requiring hunters to show licences. They may also allow people to get involved in investigations and offer them part of the fines as an award for cooperating. As noted in that study, these arrangements are a useful option for "empowering the poor", officially recognizing the role of local communities in relation to the resources, allowing them to enjoy benefits derived from the rule of law and improving enforcement. They might therefore be considered also in other places.

3.9 Gender and food security

References to gender issues are quite rare in the legislation examined in this study. This may be particularly problematic when wildlife use is based upon traditional or customary systems in which women are disadvantaged. The previous study regarding the legislation of other African countries recognizes that there is little that wildlife legislation can do to address cross-sectoral legal provisions that may discriminate against women (such as those on inheritance rights), recommending however to address inequities where possible. The same study recommends the consideration of the following legal options for inclusion in wildlife legislation, which seem relevant also in the context of the countries selected for the present study:

- including gender equality among the objectives of wildlife laws;
- requiring the consideration of gender issues in wildlife management planning and decision-making;
- granting special support to women that contribute to the conservation and/or sustainable use of wildlife; and
- creating mechanisms ensuring women's representation in wildlife management bodies.⁴

References to food security are not uncommon in the legislation that has been examined. They consist mainly of provisions that tend to secure **meat** which might otherwise be wasted (derived from self-

⁴ Inspired by "Gender," in FAO, "Law and Sustainable Development since Rio," FAO Legislative Study 73 (2002), p 257.

defence, culling or sport hunting) to local populations. There is also a provision authorizing the killing of protected animals to obtain meat “in case of urgent necessity”. Such a provision, although allowing action that people would take anyway if faced with critical subsistence needs, may be useful, in its realistic approach, to strengthen people’s confidence in the legal system. Provisions that are more relevant to food security are those regarding traditional hunting, which have been addressed in section 3.4 above.

Wildlife management legislation could contribute to food security and improvement of the conditions of poor people by incorporating provisions as the ones recommended in this section, as well as by allowing subsistence hunting practices to the extent that may be environmentally sustainable.

PART II CASE STUDIES: OVERVIEW OF NATIONAL LEGISLATION

1. BURKINA FASO

1.1 Overview of the legal framework

The regulation of wildlife management in Burkina Faso is based on the **Forest Code** of 1997, which includes a specific part concerning fauna. The Code is implemented by some decrees (respectively on concessions and guides of 1998, on village hunting areas of 2008 and for the creation of a National Protected Area Service also of 2008). Other decrees (concerning village hunting of 1994 and exploitation of wildlife of 1996), although adopted before the Code, continue to be in force, although they are currently under revision.

Further regulatory details are set out in a number of orders and “*raabos*” (type of ministerial order) regarding specific aspects of wildlife management, including village hunting, hunting seasons, hunting guides and a forestry fund. An Environmental Code (1997), as well as a Decree on environmental impact assessment (2001), is in place but neither particularly addresses wildlife.

1.2 Institutional setup and role of stakeholders

Pursuant to the Forest Code, the State must fulfil its obligation to preserve forests, wildlife and fishery resources through its **technical forestry services**, in consultation with all other concerned actors (art. 5). The Code does not go into other details regarding institutions, and does not set specific procedures for public participation in decision-making. The technical forestry services are placed within the Ministry of Environment. Based on information provided by a national expert in response to a FAO questionnaire (hereinafter “questionnaire”), a national council for hunting and wild animals is currently being created.

The **National Protected Area Service** is in charge of ensuring the sustainable management of state and local authority forests, strengthening participatory management, developing partnerships between state, local authorities, civil society and the private sector and promoting the fight against poverty through forest and wildlife resource management (Decree No. 2008-171/PRES/PM/MEF/MECV/MAHRH, art. 1.2).

A Decree of 1979, establishing a Higher Council for the Protection of Nature, is in substance considered repealed (questionnaire). According to recent legislation, an **environmental unit** (*Cellule environnementale*) must be established within each ministerial department at the central and regional level, as well as within public and private enterprises, to take environmental concerns into account in all phases of activities (Decree No. 2008-125/PRES/PM/MECV).

A **forestry fund** is established for purposes that include management of wildlife resources (Forest Code, art. 8). The Code does not address the modalities of governance of the fund nor the objectives to be supported by it. An *arrête* of 2001 establishes forest funds for each forest under communal management, and for those under commercial exploitation, for purposes of sustainable exploitation of forest resources, without particularly referring to wildlife. Where forests are under communal management, the fund is under the responsibility of the concerned management group (*Arrête conjoint* No. 01-48 MEF/MATD/MEE *portant institution d'un Fonds d'aménagement forestier*, art. 3).

1.3 Wildlife tenure and use rights

Wildlife is considered to be state property if found on state land and private property if

found on private land (questionnaire). Pursuant to the Forest Code, wildlife is an integral part of the national heritage (art. 4), and the state is responsible for its protection (art. 5). Land owners hold the exclusive right to hunt on their land, subject to the hunting legislation (art. 129). Article 119 of the Code, which establishes that no person may hunt without a permit, must necessarily be interpreted to mean that land owners must, in any case, obtain a permit to hunt. Land owners may allow others to hunt on their land (art. 129). Animals bred within fenced areas (as noted in section 1.6 below) are the property of the breeder and are not subject to the general regime applicable to wildlife.

1.4 Wildlife management planning

Forests, fauna and fishery resources must be addressed in a **national forestry policy** (Forest Code, art. 6). The policy must be based on a number of fundamental principles that include actual involvement of people and decentralized management of natural resources (art. 7).

A **management plan**, specifying infrastructure to be set up and activities which are allowed, must be adopted by the minister for every **protected area** (Forest Code, art. 78). There are no other procedural requirements for these plans in the Code. Where utilization rights within a partial wildlife reserve, local refuge or ranch is granted to a **concessionaire** under the Code (arts. 153–157, described in section 1.6 below), the concessionaire must prepare a management plan to be approved by the wildlife administration (art. 157). Requirements for the adoption of management plans and hunting plans, including the preparation some surveys of animals, are set out with respect to village hunting areas (also described in section 1.6 below).

1.5 Wildlife conservation

Wildlife is classified into **wholly protected species** (“list A”) and **partly protected species** (which may either be listed in “list B” or “non-listed”). The classification is to be made by decree of the council of ministers (Forest Code, arts. 103–105). There are no particular criteria given in the law which provide a basis for classification, nor are there any requirements for involvement of

stakeholders in making relevant determinations.

Several types of protected areas are listed: national parks, strict or partial game reserves, biosphere reserves, sanctuaries, ranches, local refuges and village hunting areas (art. 77). **National parks, biosphere reserves, sanctuaries and strict wildlife reserves** must be created by law (arts. 83, 86 and 93). Usage rights may not be exercised in national parks except in exceptional cases, but the law establishing the park must provide for compensatory measures (art. 87). Hunting is prohibited in national parks and in strict wildlife reserves (arts. 88 and 92). Wildlife reserves are created with the purpose of conservation and reproduction of wildlife or habitat management (art. 91). **Partial wildlife reserves** must be created by decree of the Council of Ministers (art. 93). There is no particular requirement for the involvement of concerned people or institutions in the creation of any of these protected areas. **Revenues derived from wildlife reserves** must be shared between the state and local budgets (Forest Code, art. 94). There are no further specifications in this regard in the Code.

Local refuges may be established by local authorities (*collectivités territoriales décentralisées*) for purposes of wildlife reproduction and utilization, and conservation of habitats. Their management (but not their creation) is subject to some participatory requirements (art. 95). The wildlife administration at the local level must provide technical support to local authorities, which must ensure the participation of the representatives of concerned communities in management of local refuges, under partnership arrangements (art. 97).

1.6 Wildlife utilization (hunting, eco-tourism, ranching, trade and other uses)

A distinction is made between sport hunting (without commercial purposes and subject to a sport hunting licence) and subsistence (or traditional) hunting (for individual and family consumption) (Forest Code, art. 114). A “*raabo*” of 1989 concerning “village hunting” establishes that subsistence hunting may be practiced by villagers only within village hunting associations, may only concern small game, and animals hunted may not be

sold (arts. 2 and 6). A village hunting permit is required (art. 3). Applicable fees are to be shared in specified percentages among hunters' associations at various territorial levels and the local governments (art. 10). Hunters' associations are called upon along with forestry and other officials to carry out surveillance and fight illegal hunting (arts. 16 and 19).

Village hunting areas (*zones villageoises d'intérêt cynégétique*) may be created on land belonging to a local community (*communauté de base*) for wildlife exploitation upon submission of a report of a meeting of the responsible village authority, which is then confirmed by the concerned local authority (Forest Code, art. 99). The areas may be leased by the concerned communities to wildlife professionals for commercial exploitation (art. 100). The community, with the assistance of the local wildlife services, may establish which activities are authorized (art. 101).

Revenues ("*redevances et taxes*") are shared between local authorities' budgets and village wildlife management organizations (art. 102). Decree No. 2008-312 further regulates the creation and management of village hunting areas (*zones villageoises d'intérêt cynégétique*), implementing articles 99-102 of the Forest Code. Stated "principles" include participation of communities in the protection and enhancement of wildlife resources and the management of resources in their own interest (art. 2). Village hunting areas may be created only on community land (arts. 4-5). An order of the mayor, following a resolution of the communal council, is required for their creation (art. 8). The wildlife administration at the local level must encourage the creation of such areas and provide technical assistance (art. 3). Their creation must be undertaken by a Village Development Council (a body established under the Local Authorities Code (Law No. 055-2004/AN, art. 222), within which a "wildlife commission" must be established. Applications must be submitted to the Communal administration and must include a report of the meeting of the concerned Village Development Councils, a plan including authorized activities and an environmental impact statement with an opinion of the Minister of Environment (art. 8). Every area must have a **management plan** approved by the regional

wildlife administration. **Hunting plans** within the area are established by the central wildlife administration, upon proposal of the regional administration. Hunting of big game is prohibited except under express authorization of the minister, which may be issued upon submission of a survey of wildlife populations enabling the preparation of an appropriate hunting plan (art. 10).

Village hunting areas are to be managed by the wildlife management commission, under the control of the Village Development Council and the Communal Council (art. 11). They may also be managed under **concessions** by technically capable persons. Concessions may be issued upon invitation by the minister to submit proposals, for an annual fee established by the minister responsible for wildlife and the minister responsible for finance (art. 12), for a duration of 5 to 10 years. Concessions are subject to conditions set out in the document establishing their creation, in the concession contract, technical agreement (*cahier de charges*), and wildlife legislation in force (art. 15). Revenues (*recettes*) are to be shared between the state budget and the concerned local authority, subject to specifications set out in a joint order of the ministers responsible respectively for wildlife and finance (art. 16). Village hunting areas are subject to regular surveillance by the forestry and police officials (art. 17).

Three categories of **sport hunting permits** are set out, respectively for nationals (category A), resident foreigners (category B) and non-resident foreigners (category C) (Forest Code, art. 120). Every category may cover any of three "degrees" of practising hunting, i.e., small, medium or big game hunting (art. 122). **Commercial capture permits** may be issued for the capture and sale of live wild animals (art. 124).

In wildlife reserves and local refuges hunting expeditions may be led exclusively by **professional hunting guides** (art. 132), who may be assisted by experienced trackers (art. 133). Occasional trackers may be hired and 50 percent of their daily fees must be paid to the state (Arrêté No. 244/MF/MET, art. 3).

A distinction is made between hunting guides and wildlife-watching tourist guides (Decree No. 98-305/PRESS/PM/MEE/MTT,

art. 19). Both types of **guides** must hold a professional certificate (art. 21). While there are no particular requirements to obtain a certificate for wildlife-watching guides, the certificate for hunting guides is issued upon an examination organized by the ministry responsible for wildlife, testing their knowledge of wildlife legislation, species identification and ability to handle weapons (Forest Code, art. 135; and Order No. 2004-017/MECV, art. 2). The subjects to be covered in the examination are specified in the Order (art. 7). Hunting guides are responsible for the safety of their clients and responsible for damage caused by them. They are also held jointly responsible for violations committed by clients, unless they prove that they had done everything possible to prevent the offence (Forest Code, art. 137).

Trade in game meat is allowed if engaged in by authorized restaurants or salesmen (Forest Code, art. 132).

Rights to utilize wildlife in partial wildlife reserves, local refuges and ranches may be allocated to private natural or legal persons, for purposes of commercial exploitation of hunting or ranching (art. 153). Such a **concession** is granted upon payment of an annual fee established on the basis of the potential of the concerned area and confers exclusive rights (art. 154). The concession is granted for a minimum duration of five years following an invitation to submit offers issued by the minister responsible for wildlife (art. 154). Concessionaires must comply with a *cahier de charges* (art. 156) and formulate a management plan to be approved by the local wildlife administration (art. 157). The *cahier de charges* must specify the concessionaire's obligations, including those regarding exploitation, protection and infrastructure, as well as principles regarding relations between the concessionaire and local population (art. 160). A licence is issued to them by the ministry responsible for wildlife, and a person may not obtain more than one concession area (art. 158). Hunting or wildlife-watching tourism expeditions within concession areas must be headed by hunting guides or wildlife-watching tourism guides (art. 159).

Ranching is defined as an activity involving wildlife production and exploitation in an

unfenced open area and aimed at developing wild animals (arts. 142 and 144). It must be authorized by the minister (art. 143). Wildlife populations exploited within a ranch must be regularly surveyed by the local wildlife service or by the developer, for the purpose of ensuring rational utilization (art. 145). A ministerial authorization is also required for **ranching concessions** (art. 161). In this case, besides applicable obligations, the *cahier de charges* must specify the activities that may be carried out in combination with ranching (art. 162). The concessionaire of a ranch may sell his/her utilization rights to tourism promoters (art. 163). An order specifies requirements for applicants for concessions (as well as to become guides), including the submission of their *curricula vitae* (Order No. 2001-051MEE/SG/DGEF/DFC). There is no particular reference in any of these provisions to environmental concerns, or to the possible impact of these activities on local residents or their involvement, but reference is generally made to subsidiary legislation to further specify applicable conditions (art. 143).

Wildlife **breeding** is defined as the production of wild animals, whether kept in captivity or semi-freedom, for commercial purposes (art. 146). It is authorized without conditions on private land and is otherwise subject to a ministerial authorization (arts. 147–148). Concerned areas must be appropriately fenced (art. 150). Animals bred under this arrangement are the property of the breeder and are not subject to the general regime applicable to wildlife, particularly hunting. The owner of a breeding operation is responsible for damage caused by wild animals kept for breeding (art. 151).

1.7 Law enforcement

Pursuant to a *Raabo* of 1985 hunters must be members of the local hunting association (arts. 1 and 6). The 1989 *Raabo* on village hunting, as noted above, requires hunters' associations, along with forestry and other officials, to carry out surveillance and work against illegal hunting (arts. 16 and 19).

2. CAMEROON

2.1 Overview of the legal framework

Cameroon has a general **Law setting out the Forestry, Wildlife and Fisheries Regime** of 1994 and Decrees respectively implementing the provisions on wildlife (No. 95-466/PM of 1995, hereinafter “Wildlife Decree”) and on forestry (of 1996). A Decree also regulates the operation of the funds established by the Law. The Forestry, Wildlife and Fisheries Regime Law considers wildlife as part of forest produce when taken from the forest (art. 9), but includes also a specific part on wildlife. There is also a **National Parks Law** of 1978, which mainly sets out offences, and a **Framework Law on Environmental Management** of 1996, which includes general provisions on the sustainable development of natural resources.

2.2 Institutional setup and role of stakeholders

A 2005 Decree sets out the organization of the **Ministry of Forests and Wildlife** (Decree No. 2005/099). The Wildlife Directorate’s functions include the preparation of wildlife surveys and management plans and the formulation of related rules, the study of animal population dynamics, the creation of hunting areas, game ranches and village hunting areas, and the formulation of strategies for participatory management and their implementation (Decree No. 2005/099, arts. 53–57).

An **Inter-ministerial Environmental Committee** to assist the government in formulating and implementing environmental and sustainable development policies was created by a Decree in 2001 (Decree No. 2001/718/PM, amended in 2006). It is composed solely of representatives of ministries, thereby, excluding representatives of non-governmental stakeholders. Another inter-ministerial committee to facilitate the implementation of forests/environment inter-sectoral programme, also only consisting of representatives of ministries, is also in place pursuant to an order of 2006.

A **Consultative Commission on Environment and Sustainable Development** was established by a decree of 1994 to advise the government. Its members include numerous representatives of ministries, but, pursuant to a 1998 amendment, there are also three representatives of non-governmental organizations and two representatives of financing institutions involved in the environmental sector (art. 3).

The principle of **public participation** is set out among others in the Framework Law on Environmental Management (art. 9). Public participation must be encouraged through free access to environmental information, consultation and people’s representation on consultative organs (art. 72).

A **Special Fund for the Management of Wildlife Conservation Areas** is created by the Forestry, Wildlife and Fisheries Law (art. 105) and further regulated by a Decree issued in 1996. Although quite detailed, the relevant provisions do not make any particular reference to community initiatives regarding wildlife. Seventy percent of revenues derived from wildlife fees are paid into the state budget and 30 percent are paid into this Special Fund (art. 105). An **environmental fund** is established by the Framework Law on Environmental Management. One of the purposes of the fund is to encourage local initiatives for sustainable development of natural resources (art. 12). Rules for the operation of the fund are not included in the Law.

2.3 Wildlife tenure and use rights

Hunting in communal forests, community forests or forests belonging to private owners must be expressly **authorized by the landowner** (Wildlife Decree, art. 19). Hunting in open areas (*zones banales*) is open to holders of permits (art. 20).

Customary rights are defined as rights reserved to the local population to make personal use of forestry and wildlife products. They exist unless suspended or terminated by the minister for public purposes, in accordance with the legislation applicable to expropriation of land for public purposes (Forests, Wildlife and Fisheries

Law, art. 8). This presumably involves some compensation for damages suffered.

Culling expeditions may be authorized by the administration where certain animals constitute a danger (Forestry, Wildlife and Fisheries Law, art. 82), regardless of whether it is upon request by concerned populations (Wildlife Decree, art. 12). Killing protected animals is allowed in defence of persons, crops or livestock. Proof of self-defence must be given to a wildlife officer within 72 hours (Forestry, Wildlife and Fisheries Law, art. 83). Efforts must be made to kill animals that have been wounded (Wildlife Decree, art. 13).

2.4 Wildlife management planning

Pursuant to the Framework Law on Environmental Management, a **national environmental management plan** must be in place (art. 13). The same law requires an inventory of existing species, particularly if endangered, and **management plans for species** and for the preservation of their habitat (art. 64).

The Wildlife Decree distinguishes between “*plans d’aménagement*”, “*plans de gestion*” and “*plans de chasse*”. *Plans d’aménagement* must be adopted (by the administration or, in the case of areas managed by private persons, proposed by the same persons and approved by the administration) for **protected areas**, while *plans de gestion* are prepared by the administration to set out strategies for the sustainable development of one or more **wildlife resources**. Among other matters, they must specify ways to involve local populations in management (Wildlife Decree, art. 14). *Plans de chasse* specify the species and number of animals that may be hunted (art. 2).

Plans d’aménagement must set out objectives, taking into account the interests of neighbouring populations and of biodiversity (art. 11). *Plans de gestion* must also set out measures to involve local populations in all management phases and for the equitable sharing of benefits (art. 22). A “simple” management plan approved by the forestry administration must be in place for every **community forest** (Forests, Wildlife and Fisheries Law, art. 37).

Hunting or capture of animals in a hunting area is subject to the **hunting plan**, adopted by order of the minister (art. 21). Planning requirements are set out also in the provisions regarding community forests, briefly described in section 2.6 below.

2.5 Wildlife conservation

The state must ensure the conservation of forestry, wildlife and fishery resources (Forests, Wildlife and Fisheries Law, art. 11). Based on different degrees of protection to be granted, three **classes of animals** are to be set out by ministerial decree:

- class A (animals which may not be killed but may be captured under a permit);
- class B (animals which are protected but may be hunted with a permit); and
- class C (partly protected animals, which may be captured and killed in accordance with provisions set out in a ministerial order) (art. 78).

Hunting is prohibited in protected areas and in the buffer zones which surround them (art. 105).

Protected areas are addressed in the Wildlife Decree, which defines them as any areas managed for the purpose of achieving specific conservation or sustainable development objectives for one or more natural resources (art. 2). A decree of the Prime Minister is required for the establishment of national parks, wildlife reserves, sanctuaries and game ranches. Where third parties’ rights are affected, they must be compensated, and title to land must be vested in the state in protected areas (art. 5). Before the creation of any such areas, the **public** must be informed by any appropriate means, including posting notices or audio-visual means (art. 6). A committee, including the “representatives” of the local government and local representatives of various specified ministries, must be created to issue an opinion on any complaints that may have been raised (art. 7).

2.6 Wildlife utilization (hunting eco-tourism, ranching, trade and other uses)

The definition of **hunting** includes taking photographs of wildlife for commercial purposes (art.85, Forests, Wildlife and Fisheries Law). The only significant

consequence of this broad definition is that a “licence” subject to applicable fees is required to actually hunt, as well as to take photographs for commercial purposes (art. 87). **Traditional hunting** is allowed without a permit, except in state forests and on land belonging to third parties (art. 85). Traditional hunting is defined as hunting with weapons of vegetable origins (Wildlife Decree, art. 2). It is allowed anywhere with the consent of the owner of the land with respect to class C animals, and products derived from them must necessarily be used for household consumption (Decree No. 95-466/PM, art. 24). Otherwise, a permit or licence is always required for hunting (art. 87).

Areas of state forest may be declared as **hunting areas** and can be utilized either directly or by leasing them out (in this case, subject to a *cahier de charges*) (art. 92). Some hunting areas are reserved to nationals or national companies, in order to encourage nationals to take up the profession of hunting guide (Wildlife Decree, art. 18).

Upon obtaining a licence issued by the administration, professional hunters may act as **hunting guides** to organize and lead hunting expeditions, (art. 93).

Hunting outside of declared hunting areas in state forests is subject to a daily fee (art. 94). Hunting in state forests, community or private forests and in hunting areas is governed by a management plan prepared in cooperation between the wildlife and forestry administrations (art. 95).

Community hunting areas (*territoires de chasse communautaire*) may be created on state land allocated to communities for them to manage wildlife resources in their own interest. The wildlife administration must provide assistance for this purpose (Wildlife Decree, art. 25). Communities wishing to undertake the creation of a hunting area must designate a responsible person at a meeting held for this purpose under the supervision of the local administrative authority and wildlife administration. The report of this meeting must be signed by all participants (art. 27).

Community forests may be created upon agreement between the forestry

administration and a community undertaking to manage a forest. Products from the forest are the exclusive property of the concerned community. The community has priority in the purchase of such products (Forests, Wildlife and Fisheries Law, art. 37). Communities wishing to enter into this arrangement must hold a meeting at which the proposal must be discussed with the supervision of the local administrative authority and forestry services (Decree 95-531/PM, art. 28). Applications to create a community forest must include a description of objectives, the details of the community and a designated responsible person, a report on the current state of the forest and activities being carried out in it, and the *curricula vitae* of the persons in charge of forestry operations. If the application is approved, the local forestry services must provide assistance; however, activities required for the preparation of a management plan, including a forest inventory, are the responsibility of the community (art. 29). Following the approval of the required “simple management plan” by the administration, a management agreement is entered into by the forestry administration and community (art. 30). Any usage rights within the community forest, including hunting, are subject to the management plan (art. 31).

Persons wishing to carry out activities relating to wildlife must be qualified to carry out:

- wildlife surveys;
- wildlife exploitation, either as a guide or in capture of wildlife;
- “utilization” of protected areas as a guide; and
- management of protected areas as a guide (Wildlife Decree, art. 32).

Applications to obtain the required status must include *curricula vitae*, and the opinion of a technical consultative committee set up for this purpose must be heard (arts. 33 and 59). Representatives of various specified ministries are the only members of the committee.

Hunting permits are issued for sport hunting and may be of three types (small, medium and large-scale hunting) (art. 35). Certain requirements, including a declaration to be familiar with the hunting

legislation, must be met to obtain such permits (art. 36). Requirements to obtain permits to keep trophies or ivory are also detailed in the Decree (art. 45). Hunting guides must hold a licence (art. 50) and may be allocated a hunting area for exploitation, subject to a *cahier de charges* (art. 51). Hunting guide licences may be terminated for specified reasons, primarily for violation of the *cahier de charges* or the law (art. 52).

Game ranches belonging to the state may be managed directly by it, leased out to specialized bodies, or handed over to specialized bodies or private entities in accordance with regulations (Forests, Wildlife and Fisheries Law, art. 102). Breeding of wild animals on ranches or farms is subject to an authorization issued by the wildlife administration (art. 103). It appears from the formulation of the Wildlife Decree (in art. 5, although not from the general definition of protected areas in art. 2) that game ranches are “protected areas” and, therefore, concerned land must belong to the state or have been acquired by it for this purpose. If so, creation of ranches on private or communal land would not be possible. It would be worthwhile to consider modifying these provisions to allow or even encourage the creation of game ranches on any land, provided that any necessary basic rules for the preservation of biodiversity are respected. Pursuant to the Wildlife Decree, **game ranching** is subject to a licence, while an “authorization” must be obtained for game farming (arts. 53–54). There is no other regulation of these activities in the Decree.

Meat derived from culling expeditions or killed for self-defence needs is handed over to “victim” populations and partly to hunters who have volunteered to participate (art. 62).

Persons **processing wildlife products** must register with the wildlife administration (art. 63). A **certificate of origin** is required to keep, transport or export wildlife or its products (art. 64).

2.7 Law enforcement

Local or village committees have been formed in order to combat illegal hunting through surveillance are in place (questionnaire). Surveillance in community forests is the responsibility of the affected community. However, public prosecution for violations of any rules adopted for the management of a community forest remains the responsibility of the forestry administration, to which the community appointed representative responsible for the forest may report any violations (Decree No. 95-531/PM, art. 32).

3. CENTRAL AFRICAN REPUBLIC

3.1 Overview of the legal framework

The legislation most specifically addressing wildlife is the Ordinance of 1984 on protection of wildlife and regulation of hunting (hereinafter “**Wildlife Ordinance**”). Subsidiary legislation issued under the Wildlife ordinance includes an ordinance on the capture of wild animals and a decree on applicable fees. Subsidiary legislation issued prior to the enactment of the Wildlife Ordinance also formally remains in force, including decrees and orders addressing the profession of ivory craftsman (1962), identity cards for hunting guides (1972), conditions for foreign hunting guides and “*brigades de controle*” for hunting products (1971). In addition, the following laws also remain in force governing: 1) the profession of hunting guide and hunting by foreigners (1960); 2) the introduction of weapons by non-resident hunters (1961); 3) the establishment of a Higher Council for Hunting (1962); and 4) offences in national parks and nature reserves (1962). Like the Wildlife Ordinance, the more recent **Forest Code** (1990) addresses protected areas, among which are wildlife reserves. Otherwise, the Code does not address wildlife in any respect.

A 1989 Decree creates a Commission for the Protection and Rational Utilization of the Environment, which is the main piece of **environmental legislation** available.

3.2 Institutional setup and role of stakeholders

There are references to the “**minister in charge of fauna**” and its “technical services” or similar expressions in the Wildlife Ordinance, however there is no explicit framework for the establishment of an institution to enforce or implement the Ordinance, let alone forms of public participation in such institutions’ decision-making processes.

A **Higher Council for Hunting** is established by a law of 1962. The Council may be involved in matters relating to wildlife management, such as regulation of hunting, protection of nature, management of protected areas and tourism (art. 2). The Council is composed of twelve members, six of whom are representatives of specified government offices and six of whom must represent hunting interests, as well as the general interests of the public. Among the latter members, two must be members of the legislative assembly, designated upon a proposal of its president (art. 4).

A **National Committee for the Protection and Rational Utilization of the Environment** issues opinions on all matters relevant to the country’s environmental policy. Its tasks include the survey and analysis of factors that influence the environment and the collection and dissemination of environmental information (Decree No. 89.047, arts. 1–3). There is no particular requirement as to its composition. The Committee includes a permanent secretariat directly placed under the head of state (arts. 4–5).

3.3 Wildlife tenure and use rights

Wildlife is part of the national heritage (Wildlife Ordinance, art. 1). The Ordinance regulates the exercise of customary hunting rights and the allocation of rights to hunt subject to the issuance of permits (as described in further detail in section 3.6 below).

The Wildlife service must promote methods to prevent **damaging** of crops or livestock by wild animals (art. 94). Land owners or users have the right to repel animals that pose an immediate danger to their crops or livestock (art. 95). Where animals constitute

a **danger** to persons or property in any place, the authority responsible for public order requests the intervention of the Wildlife Service, which may decide to undertake culling if no other measures exist to abate the danger (art. 96). A report of culling, including various details, must be submitted to the minister (art. 97).

3.4 Wildlife management planning

There are no specific provisions which address management planning.

3.5 Wildlife conservation

Pursuant to the Wildlife Ordinance, **protected areas** include strict natural reserves (art. 2), national parks (arts. 3–7) and wildlife reserves (art. 7). The Forest Code mentions the same protected areas, as well as recreational forests, protection areas, reforestation areas and production forests, as part of the state forest estate (Forest Code, art. 4).

The Wildlife Ordinance and the Forest Code define **wildlife reserves** in the same way – as areas devoted to the protection of fauna and its environment, in which traditional agro-pastoral activities and access to the public are regulated (Wildlife Ordinance, art. 7; and Forest Code, art. 8). The Ordinance, however, explicitly provides that holders of customary rights belonging to villages within wildlife reserves may not exercise such rights within the reserve (art. 7).

For the declaration of any of the protected areas and other areas referenced in the Forest Code, a process of **public consultation** is required, including publication of the proposal and a public hearing (Forest Code, art. 65; and Wildlife Ordinance, art. 18).

Hunting is prohibited in strict nature reserves, national parks, wildlife reserves and hunting reserves (Wildlife Ordinance, arts. 5 and 66).

A distinction is made among **protected species** (which may not be hunted or captured), **partly protected species** (whose hunting or capture is subject to regulation) and **ordinary game** (which may be hunted freely) – all of which are listed in schedule to the Ordinance respectively as lists A, B and C (arts. 27–29). Only free roaming animals

may be considered as partly protected or ordinary game (art. 31).

The Law of 1962 on poaching (*braconnage*) in national parks and wildlife reserves exclusively addresses the matter of encroachment by livestock into these protected areas by severely prohibiting it. Domestic animals, that despite an order of the authority have not been removed, must be killed up to a certain number.

3.6 Wildlife utilization (hunting eco-tourism, ranching, trade and other uses)

Rights to build and manage **tourist** infrastructure and to organize guided tours may be granted by the ministry responsible for wildlife to private persons (Wildlife Ordinance, art. 23). A model technical agreement (*cahier de charges*) is to set out conditions applicable to these arrangements (art. 24). The Wildlife Ordinance does not establish any further conditions in this regard.

Hunting is forbidden, except to those holders of customary hunting rights or those with a valid hunting permit (art. 34). Members of village communities may hunt list C animals without a permit for purposes of subsistence of the whole village community. They may use locally made weapons, but cannot use firearms, poison, gear with metal wire, night hunting and traps (arts. 35–38). A decree may specify which villages are entitled to such **customary rights** and other necessary rules (art. 39). The rights apply even if an area has been allocated under a concession.

A distinction is made between small-scale **hunting permits** (for list C animals), medium-scale hunting permits (for list C and B animals, as may be specified by yearly regulations), and large-scale hunting permits (for list C and additional species of list B, as specified by yearly regulations). Yearly regulations must also establish hunting quotas (arts. 41–43).

Different fees apply depending on whether permits are issued to **nationals, resident foreigners, or foreign visitors** (art. 47). Every applicant for a hunting permit must hold a hunting weapon permit or, in the case of visiting foreigners, a “temporary import permit” (art. 50). Hunters must maintain a

register on which information on hunted game must be entered every day (art. 51). Based upon declaration by the hunter, hunting fees are calculated and paid at specified offices (*préfecture, sous-préfecture* or *Centre National pour la Protection de l'Aménagement de la Faune*) (arts. 53–54).

“Hunting sectors” are also established and may be closed to hunting for repopulation purposes, allocated to private parties under **concessions** for hunting or wildlife-watching tourism or reserved to national and resident hunters (art. 69). The allocation of hunting sectors as concessions is to be regulated by a contract based on a model technical agreement (*cahier de charges*) approved by the minister (art. 71).

Meat abandoned by hunters belongs to the villages that are the closest to the hunting areas. Hunters abandoning meat must notify the first village they encounter or the first camp they reach (art. 75). Sale of game meat is permitted from the opening of the hunting season to thirty days after its closure (art. 76).

Persons professionally processing **ivory** (*ivoirier*) must declare their activity. Any person crafting ivory must make a certificate stating their own details and information on the origin of the ivory for every object and submit a yearly report of their activity, with details of ivory bought and sold. A certificate of origin issued by the *ivoirier* is also necessary to export ivory (arts. 86–88).

The minister may make regulations regarding wildlife related professions, such as hunting guides, hunting or wildlife-watching tourism guides, taxidermists, and ivory workers, and may also regulate wildlife-related activities, such as filming of wild animals (art. 104). A prior law on **hunting guides** of 1960 requires a special licence to be a hunting guide, to be issued following a period of apprenticeship and a test. The commission which administers the test shall include public officials as well as a representative of hunting guides (art. 5). Subjects and testing procedures are also specified in the law (art. 6).

3.7 Law enforcement

The Wildlife Ordinance does not address enforcement, while the 1971 decree

establishing a team for the control of hunting products (*brigade de contrôle des produits de chasse*) simply refers to an ordinary body of enforcement officers created within the responsible ministry. Therefore, there are no legal provisions allowing or encouraging public participation in law enforcement.

4. CONGO

4.1 Overview of the legal framework

The **Constitution** of Congo of 2002 establishes a right for every citizen to a healthy environment and an obligation for them to protect it (art. 35). Environmental protection and conservation of natural resources must be regulated by law (art.111)

Congo adopted a **Law on Wildlife and Protected Areas** in 2008 (hereinafter “2008 Wildlife Law”), which expressly repeals both the previous law on conservation and exploitation of wild animals of 1983 and a decree setting out fees issued under it. Pursuant to the 2008 Wildlife Law, any other legislation contrary to it is also to be considered as repealed (art. 119). However, it seems that the prior law continues to be considered in force, since rules for implementation of the 2008 Wildlife Law have not yet been enacted (questionnaire). A 1985 decree for implementation of the 1983 Wildlife Law is, therefore, also considered still in force, along with orders regarding protected species and export of wildlife products (1984) and, presumably, an earlier one on hunting seasons (1972).

The **Environmental Protection Law** of 1991 briefly addresses the creation of protected areas and the classification of flora and fauna species to be protected, with provisions which may in substance be considered superseded by the 2008 Wildlife Law, as described at the end of section 5.5.

The **Forestry Code**, adopted in 2000, does not address wildlife other than to permit the exercise of usage rights, including hunting, in some forests (as noted in section 5.3).

4.2 Institutional setup and role of stakeholders

The 2008 Wildlife Law is not completely clear with respect to the institutional set-up for wildlife management. The **administration of wildlife** and protected areas is arguably subject to the ministry responsible for water and forestry (art. 89). A decree of 2008, however, which sets out the organization of a ministry of forestry economy (*Ministère de l'économie forestière*), does not make reference to wildlife. On the other hand, a decree of 2002 implementing the Forest Code establishes the **water and forestry guards** corps as a paramilitary body in charge of the management, control and conservation of forests and fauna. Officials of this body must promote agroforestry and community forestry, and assist “local governments, communities, non-governmental organizations and associations” in the sustainable management of forests, wildlife and biodiversity (art. 5).

For the purpose of “strengthening citizens’ interest in wildlife”, “the creation of **specialized associations**” is “encouraged” at the national, departmental and local level. Thus, their creation is only an option rather than an obligation. These associations are to advise the administration on wildlife policy by issuing their opinion on any relevant matters, contributing to the determination of hunting quotas and even participating in the identification of the authors of violations (2008 Wildlife Law, art. 3). Despite the variety of functions with which the associations are endowed, the law does not go into any further details as to their composition and operation.

A **Higher Council for the Environment** is to contribute to the formulation and implementation of environmental policy, as well as having other advisory functions. Its members are representatives of numerous ministries and a representative of non-governmental organizations (art. 3, Decree No. 99-280 of 1999).

An **environmental protection fund** is created generally for the purpose of protecting the environment. A decree issued in 1999, to regulate the operation of the fund, refers to plans to be adopted by the fund’s management committee to determine

activities to be funded (Environmental Protection Law, arts. 86-89; and Decree No. 99-149). The committee is composed solely of representatives of various ministries (art. 2, Decree No. 99-149), thereby, excluding non-governmental stakeholders.

A **forestry fund** to manage forest resources is created by the Forest Code (art. 110) and further regulated by a decree of 2002. Despite the fact that forest resources do not specifically include wild animals in the Forest Code, the 1983 Wildlife Law requires “part” of the fees accrued from wildlife utilization to be transferred to that fund (art. 80).

4.3 Wildlife tenure and use rights

Pursuant to the 1983 Wildlife Law, wild animals that may be used for tourism purposes or for meat or other products, belong to the state (art. 1). There is no general statement regarding **wildlife ownership** in the 2008 Wildlife Law, although fauna is defined as “common biological heritage” of the nation (art. 5).

The killing of animals in the immediate need of **self-defence**, defence of another person, or in defence of a person’s own property cannot be prosecuted. This applies only to cases of encounters with dangerous animals. A person who killed an animal under these circumstances must report it to the authorities, and the meat must be distributed in accordance with local usages (2008 Wildlife Law, art. 65). The administration may organize culling operations (*battues administratives*) when animals constitute a danger for persons and their property (art. 66).

Pursuant to the Forest Code, within “protected forests” (i.e., unclassified, non-permanent forests which are part of the state’s *domaine public*) local populations may exercise **usage rights**, including hunting, subject to regulations to be issued by the minister (art. 40). Usage rights may also be recognized in decrees which classify forests, or in management plans, in forests which are part of the state’s *domaine privé* or belonging to communes or other local authorities (art. 41). Their exercise may not exceed personal needs (art. 41) and is free of charge (art. 42). The allocation of other rights

to hunt and practise other wildlife-related activities is addressed in section 4.6 below.

4.4 Wildlife management planning

Every protected area must have a **management plan** (2008 Wildlife Law, art. 19). Local communities must be involved in the preparation and implementation of the plan and must benefit from revenues generated by activities carried out in protected areas, at conditions to be determined by decree of the Council of ministers (2008 Wildlife Law, arts. 20 and 22). The Law also indicates issues to be addressed in the plans. Ways to involve the local population in management must be specified in the plans (art. 21).

The **inventory of forest and wildlife resources** is addressed in a 2002 decree (No. 2002-435, not available), which establishes a “National Centre” for this purpose. Responsibilities of the Centre include the keeping of an inventory of forest and wildlife resources, management of data and preparation of forest management plans.

4.5 Wildlife conservation

Protected areas include national parks, strict nature reserves, wildlife reserves, special reserves or wildlife sanctuaries, and hunting areas (*zones d'intérêt cynégétique*) (2008 Wildlife Law, art. 5). They may be established by decree of the Council of ministers (art. 6), following an environmental impact assessment which accounts for the needs of neighbouring populations (art. 8). The declaration must set out the boundaries of the area, consider existing socio-economic activities, address ways to involve local populations and specify which usage rights may continue to be exercised (art. 10). Any exploitation of natural resources (and therefore presumably hunting) is prohibited in **national parks** (art. 12). In **strict nature reserves**, hunting is prohibited, along with other activities, except under an express authorization by the responsible authority. The authority is not bound by any specific conditions in this regard (art. 13). In **wildlife reserves** killing and capturing wild animals is prohibited (art. 14). In **special reserves or wildlife sanctuaries**, only activities that are compatible with objectives stated in the declaration of the area or in management

plans are allowed (art. 15). Hunting within **hunting areas** is subject to “the potential of wildlife” and the applicable management plans (art. 16). The regime to be applied in protected areas created by local authorities is to be determined by decree of the Council of ministers (art. 18).

As was done in the 1983 Wildlife Law (art. 2), animals are divided into three categories – **wholly protected, partly protected and other species**. Regulations are to establish hunting conditions with respect to the various categories, but hunting of partly protected species is generally allowed (2008 Wildlife Law, arts. 23 and 25). The Environmental Protection Law includes less detailed (and presumably superseded) provisions in this regard, generally requiring the ministers responsible for environment and for forestry to set out lists of plant and animal species requiring protection (art. 18).

Pursuant to the Environmental Protection Law, any project for economic development is subject to an **environmental impact study** (art. 2). A 1986 decree regulates these studies, specifying which projects are subject to it and the criteria to be taken into account, including the relevance of the area for wildlife (annex II). The decree also sets forth the procedure for impact studies, which take place within the Ministry of Environment and do not involve any public consultation.

The provisions of the Environmental Protection Law concerning **protected areas** and protected species are also presumably superseded by those of the 2008 Wildlife Law. They seem to completely overlook concerned people’s interests, establishing that protected areas may be established by ministerial declaration (art. 11) and any usage rights within these areas are abolished (art. 13). Only holders of land-related rights (*droits reels*) may be indemnified in case of “certain and direct” prejudice (art. 12).

4.6 Wildlife utilization (hunting eco-tourism, ranching, trade and other uses)

The wildlife administration is to determine all rules applicable to hunting – including open and closed seasons and areas, and limits by department or area – every year, after

hearing the opinion of “concerned institutions” (2008 Wildlife Law, art. 35).

A weapon permit is a prerequisite to obtaining a **hunting permit** (art. 38), which is required for any hunting activity (art. 39). The following types of permits may be granted (art. 41):

- sport hunting permit (category A for nationals and foreign residents, and B for foreigners);
- scientific hunting permit;
- permit to keep animals;
- village hunting or collection permit;
- collection permit (authorizing the keeping of parts of animals that are not wholly protected).

“Licences” are used to authorize different wildlife-related activities and include (art. 42):

- hunting guide licence;
- commercial capture licence;
- game farming licence; and
- game ranching licence.

Insurance covering risks of hunting-related accidents is required for sport hunting permits, scientific hunting permits and commercial capture licences (art. 43).

The 1983 Wildlife Law is generally simpler, devising three types of “permits” – for sport, scientific purposes and to keep animals (art. 12). The same law and its 1985 decree also provide a different classification of sport hunting permits, dividing them into permits for *grande chasse* (for partly protected animals) and *petite chasse* (for non-protected animals). Each of these may be respectively for nationals, residents or foreigners (Decree No. 85/879, arts. 1-6). All hunters are required to register details of animals hunted in their *carnet* (art. 7). Documentation required to obtain a hunting permit is listed and includes previous carnets duly filled out, a weapon permit and proof of insurance (art. 11). Limits to the number of animals which may be taken under each permit are set out (arts. 13–14).

Compared to the 1983 Wildlife Law, the 2008 Wildlife Law extends and simplifies the cases in which meat is to be made available to local people: any surplus of hunting **meat**

not utilized on the spot by hunters is to be left to the local population or charity institutions (art. 55). The same applies to meat resulting from culling by the administration (art. 57), while meat of animals killed for self-defence must be distributed in accordance with local customs (art. 65). In contrast, the 1983 Wildlife Law provides that trophies and carcasses belong to hunters where animals have been legally hunted. Big game hunters may not keep more meat than they and their family may use for consumption and must leave the rest for the local population (art. 20).

Hunting guide licences are issued to candidates who have passed a test organized by the administration for this purpose (2008 Wildlife Law, art. 48). Candidates must have professional insurance covering damage caused by them, their delegates, their clients or by wildlife in the course of their guided hunting operations (art. 49).

Game farming licences authorize the raising of non-protected animals in a controlled environment, with the purpose of trading in them (2008 Wildlife Law, art. 53). **Game ranching licences** authorize the repopulation of partly-protected animals in a protected or managed area, with a view to allowing their possible exploitation as food or for other purposes (art. 54). These two types of licences are not mentioned in the 1983 Wildlife Law. There are no particular conditions for the issue of these licences in the Law.

Hunting areas or wildlife reserves may be **leased** to private persons for hunting purposes (art. 58). Relevant arrangements are subject to a “management contract”, following a public invitation to submit offers, in accordance with a procedure to be regulated by decree of the Council of Ministers (art. 59). The “beneficiary” of the contract must pay a yearly fee that is calculated as a percentage of the hunting quota allocated to the area. The beneficiary must undertake to manage fauna in a sustainable manner and protect its “biotope” (art. 60). Respective rights and obligations of the parties to the contract are also to be further determined in a decree of the Council of Ministers and a technical agreement (*cahier de charges*), which must be attached to the management contract (art. 61). The

1983 Wildlife Law also references the possibility of granting leases to tourist organizations “exceptionally”, where it may be necessary to limit the number of wild animals, provided that such organizations have qualifications considered appropriate by the administration (art. 25).

Traditional hunting rights are recognized in a number of provisions, the interpretation of which, however, is sometimes unclear. Traditional rights are expressly recognized “to rural people” to satisfy their needs and those of their community within their “territories” or other areas slated for this purpose. It would be useful if the law specified what “territories” mean in this context, as the meaning of the expression could be debatable. Traditional hunters who by mistake or for self-defence kill wholly protected or partly protected animals must report it to the administration within seven days, or otherwise it can be assumed that hunting was illegal (art. 63). This provision, therefore, implies that traditional hunting rights are granted only with respect to non-protected animals. Thus, it is not completely clear what exemptions from general rules, if any, are actually granted to traditional hunters. Furthermore, “**village hunters**” must join a village hunters’ association and village hunting permits “may” be issued upon payment of a fee (art. 64). It is not clear whether the expression “village hunter” is equivalent to “traditional hunter” – the expression utilized in the previous two articles. It is also not clear whether village hunting permits are a sort of collective permit for a village or whether another permit is required for traditional hunting. The 1983 Wildlife Law expressly allows traditional hunting of non-protected animals, with traditional weapons, for subsistence purposes, in hunting areas within the commune of the hunter’s residence (art. 32).

Some sections of the 2008 law are devoted to **eco-tourism**. Tourist activities in relation to wildlife-watching can be organized by public or private operators subject to the applicable law (art. 67). The ministers responsible for water and forestry and tourism must adopt measures to promote wildlife-watching tourism, in consultation with concerned populations (art. 68). Wildlife-watching tourism is to benefit from fiscal incentives and training measures (art. 69). Access to protected areas and

wildlife-watching by visitors is subject to a permit or licence, upon payment of a fee (art. 70). The provisions of this title mainly refer to future measures to be adopted. As such, they cannot be considered as an adequate instrument to promote eco-tourism, unless such complementary measures are adequately in place. The 1983 Wildlife Law and its 1985 decree of implementation require a licence for professional taking of **photographs or filming** of wildlife (1983 Wildlife Law, art. 13, and Decree No. 85/879, art. 47), but they are less strict with regard to wildlife-watching, which is not subject to any licensure or fees.

Importing, keeping or exporting wholly protected animals is not allowed, except pursuant to authorizations that may be issued for purposes of research or reproduction (2008 Wildlife Law, art. 27). Importing or exporting partly protected animals or trophies therefrom is subject to an authorization to be issued pursuant to a decree of the Council of Ministers (art. 28). Keeping or transporting protected animals or their trophies or carcasses requires a certificate of origin to identify them (art. 30).

4.7 Law enforcement

There are no particularly significant provisions to be reported concerning enforcement.

5. DEMOCRATIC REPUBLIC OF CONGO

5.1 Overview of the legal framework

The legislation of the Democratic Republic of Congo which directly affects wildlife is entitled the **Hunting Law** of 1982. With a formulation that is commonly used, the law repeals “all previous legislation contrary to it” (art. 89), without further specifications. This is a debatable approach as in the preamble of the 1982 Law, reference is made to the inadequacy of a **Decree on Hunting and Fishing** dating back to colonial times (1937) and the need to “fill gaps” left by it (without referring to the need to repeal it), leaving some uncertainty on the status of that Decree. In any case, the contents of the Decree are in substance superseded, as

basically the same issues are addressed in both pieces of legislation (mainly permits and rules on hunting methods, seasons and areas). It is also interesting to note that both pieces of legislation, respectively in a report introducing the Decree and in the preamble of the Law, point to the need of limiting traditional hunting by local population, as it is the cause of wildlife depletion. The 1982 Law is implemented mainly through an order of 2004, as well as by numerous other orders on fees (2006), protected species (2006), capture of *perroquets gris* (2001), and specifically on the implementation of CITES (2000). An order on permits to keep animals (1980) that was issued before the 1982 Law presumably remains in force, as it is not in conflict with it. Other legislation (for example regarding hunting guides) is superseded by the 2004 order. There is also a brief Law on “*sécteurs sauvegardés*” – areas covered by plans for urban development where hunting may be prohibited. This, however, is not very significant.

A **Law on the Protection of Nature** of 1969 provides for the creation of protected areas. There is no general **environmental legislation** available. Ordinances of 1975, however, address institutional aspects in the environmental and wildlife sector. A 2008 decree regulates “social and environmental impact assessments”.

The **Forestry Code** of 2002 concentrates on forestry regulation. Some of the subsidiary legislation issued to implement it, however, is interesting, in contrast with the wildlife legislation, it significantly increases opportunities for public participation, for example through the creation of advisory councils (described in the following section). Forestry subsidiary legislation affects wildlife, as well as the interests of local populations, by placing certain obligations on forestry concessionaires (see wildlife protection measures as well as “social” obligations of concessionaires, through concession agreements in Decree No. 08-09).

5.2 Institutional setup and role of stakeholders

A 2008 ordinance sets forth the functions of all ministries. The ordinance lists among the functions of the Ministry of Environment, Conservation of Nature and Tourism, the

sustainable development of forests, water, fauna and the environment and the protection of same (Ordinance No. 08/74, art. 1, item 12). Earlier legislation (two ordinances of 1975), not expressly repealed by the 2008 ordinance, set out the responsibilities of the **Department of Environment, Nature Conservation and Tourism** and create an **Interdepartmental Committee on Environment, Nature Conservation and Tourism**. The Department is responsible, among other tasks, to create and manage protected areas, protect wildlife, promote tourism and address environmental issues in urban areas (Ordinance 75-2331, art. 1). The Committee is to advise on policy and legal environmental matters, development proposals and tourism. It includes delegates of numerous government departments and two representatives of travel agencies (Ordinance No. 75-232, arts. 2–3).

A **National Forestry Advisory Council** is established to advise on forestry policy and related matters. In addition to some twenty representatives of ministries, the Council is made up of two academics, experts in forestry law, four representatives of professional associations, four representatives of NGOs and one representative of local communities from each Provincial Council (Decree No. 08-03, art. 4). Provincial Forestry Advisory Councils are also in place, mainly to advise on classification of forests. Their composition is similar to that devised for the National Council, including numerous representatives of the provincial sectors of the administration, as well as experts, representatives of local communities and NGOs (art. 4, Order No. n°034/CAB/MIN/ECN-EF/2006).

5.3 Wildlife tenure and use rights

Wildlife is the **property of the state** and managed in the interests of the nation (1982 Hunting Law, art. 2). Provisions regarding the allocation of rights to hunt and practice other wildlife-related activities are described in section 5.6 below.

Any **defence** action may be taken against animals which threaten a person's life or property, as long as they have not been provoked (art. 83). Killing or injuring animals in cases of self-defence must be reported

within eight days to the authorities and efforts must be made to provide adequate information for investigations (art. 84). Meat of animals killed in self-defence may not be sold and must be delivered to local populations (Hunting Law, art. 37).

5.4 Wildlife management planning

There are no provisions requiring plans for wildlife management in the legislation available. However, measures for the protection of fauna are to be devised in **management plans for forestry concessions**. Compliance with obligations undertaken by concessionaires in this regard is one of the criteria to evaluate subsequent applications for concessions (Decree No. 08-09, art. 27).

5.5 Wildlife conservation

Strict natural reserves may be created under the Nature Protection Law of 1969 (art. 1). Reflecting the limited concern for local residents' interests – which is typical of much legislation of its generation – this Law turns the national parks existing at the time of its adoption into strict nature reserves. It seems to operate on the assumption that “as they have been nationalized”, all customary rights within them are extinguished, unless they had been previously expressly recognized (art. 2).

The Hunting Law also seems to be an example of legislation of the earlier generation. Pursuant to the law, the *Commissaire d'Etat* responsible for hunting, upon proposal of the regional Governor, may declare strict or partial wildlife reserves (Hunting Law, art. 8). There is no requirement to consult concerned parties. Hunting of any animals, carrying hunting gear, wild animals or parts thereof, and the damage to any habitat are prohibited in wildlife reserves, including with respect to “animals considered dangerous”, “unless authorized by the local authority.” An exception is made for cases of self-defence, provided that a report is made to the administration within 48 hours, that the danger situation has not been provoked and that adequate proof is given (art. 13). There is no specification of criteria on the basis of which a local authority might authorize activities prohibited under this section. Any modifications, such as re-settlement or

immigration of people, deforestation as well as any activities which may harm wildlife, are also prohibited in both strict and partial wildlife reserves (art. 14). Exemptions from this provision may however be granted by the *Commissaire d'Etat* to improve habitats or facilitate the exploitation of wildlife (art. 15). Partial wildlife reserves may be **leased** out for management by hunting tourism enterprises or hunting associations, in accordance with an agreement between them and the administration (art. 17).

The Hunting Law concentrates on protection of game ("*animaux de chasse*"), establishing three categories: wholly protected game (listed in schedule I), partly protected game (listed in schedule II), and other non-listed animals (Hunting Law, art. 26). The *Commissaire d'Etat* (now the minister) may modify the schedules (art. 27). There are no requirements for consultation of experts or concerned people in relation to the **listing of animal species**.

Keeping of wild animals is possible with a permit, which may be issued simply upon payment of a fee (Decree No. 69 of 1980).

The Decree of 2008 regulating "**social and environmental impact assessment**" requires an institute to be set up for this purpose to assess any new or old development project (art. 1). Although quite recent, therefore, the Decree does not seem to require participation of concerned stakeholders in the relevant procedures. A subsequent decree creates a "Group of Environmental Studies" to implement this requirement. There is no reference, therefore, to a procedure involving public scrutiny of the proposals. There is also no specific mention of impact on wildlife in these pieces of legislation.

5.6 Wildlife utilization (hunting, eco-tourism, ranching, trade and other uses)

In addition to wildlife reserves, the *Commissaire d'Etat* responsible for hunting, upon proposal of the regional Governor, may declare hunting areas (*domaines de chasse*) (Hunting Law, art. 8). Numerous **permits to hunt or take wild animals** are provided for under the law and include a sport hunting permit and tourist hunting permit (depending on whether they are issued to residents or tourists), which may

both be used either for "small-scale hunting" or "large-scale hunting" (depending on the species which may be targeted, as may be specified by subsidiary legislation). In addition to the aforementioned permits, rural hunting permits, collective hunting permits, commercial capture permits, scientific permits, and permits for administrative purposes are provided for pursuant to the law (Hunting Law, art. 5). Furthermore, any photography or filming of game in wildlife reserves and hunting areas requires an "authorization" (art. 34). Applicants for hunting permits must undergo a test on their ability to hunt and must already legally possess a weapon (art. 37). Hunting permits may be withdrawn in case of violation of the law or its regulations (art. 39).

Rural hunting permits, along with collective hunting permits, are a way of regulating customary hunting rights, as they may be issued to nationals of Congo who are in possession of a single, specified type of firearm, exclusively used to hunt listed non-protected animals in their region of residence (Hunting Law, art. 53; and Order n° 014/CAB/MIN/ENV/2004, art. 17). Hunting of partly protected species under these permits may be authorized from time to time (art. 58). **Collective hunting permits** authorize hunting of non-protected animals, by groups of indigenous people, within the limits of subsistence needs, under the responsibility of the local chief. Only traditional hunting gear may be used and quantity limits must be established yearly by the local wildlife administration depending on local availability of wildlife. They authorize hunting only within the limits of subsistence needs (Hunting Law, art. 54; and Order n° 014/CAB/MIN/ENV/2004, arts. 18 and 19). In DRC, holders of rural or collective hunting permits may be exempted from the payment of annual fees, particularly where they have little or no resources (art. 59).

As already noted, meat of animals killed in self-defence may not be sold and must be delivered to local populations (Hunting Law, art. 37). Animals hunted must be recorded in a hunter's *carnet*, with relevant details, within 48 hours (Order n° 014/CAB/MIN/ENV/2004, art. 28).

Exploitation of wild animals for commercial purposes is subject to a "licence" issued by

the wildlife administration for this purpose (art. 38) A licence is also necessary to carry out the activity of **hunting guides** (Hunting Law, art. 35), which is defined as guiding hunting expeditions upon payment by clients, independently or on behalf of a hunting tourism agency (Order No. 014/CAB/MIN/ENV/2004, art. 45). The licence may be issued exclusively to nationals of Congo who have undergone a period of apprenticeship of 36 months and passed a test, for which subjects and procedure are specified (arts. 46-52). Hunting guides must report to the administration in case it has not been possible to kill injured dangerous animals. They have a number of other obligations, including protecting their clients and ensuring that they comply with the legislation (arts. 54-59).

Hunting tourism enterprises must have qualified staff and must enter into an appropriate contract with the institutions responsible for managing the concerned hunting area (art. 61). A professional hunters' association may not guide hunting expeditions unless all its members hold a hunting guide licence (art. 62). Raising of partly protected or non-protected wild animals may be authorized. The offspring of animals whose breeding was authorized may be regarded as livestock (art. 82).

5.7 Law enforcement

There is nothing particularly significant to be reported with regard to provisions on enforcement.

6. ETHIOPIA

6.1 Overview of the legal framework

Proclamation No. 541/2007 on the "**development, conservation and utilization of wildlife**" is the principal piece of legislation governing wildlife in Ethiopia (hereinafter "Wildlife Proclamation"). The Wildlife Proclamation is fairly brief and legislation that has been issued to implement it (2008 Regulation of the Council of Ministers) is not available. A separate Proclamation of 2008 amends it and establishes the Wildlife Development and Conservation Authority. A Wildlife Policy and

Strategy was formulated by the wildlife administration and formally approved by the Council of Ministers in March 2005.

Environmental legislation includes an **Environmental Protection Organs Establishment Proclamation** and an **Environmental Impact Assessment Proclamation**, which address environmental resources in general without particularly concentrating on wildlife. The principal piece of forestry legislation was replaced in 2007, however it is not available. A National Policy on Natural Resources and the Environment and a Strategy have been in place since 1997.

6.2 Institutional setup and role of stakeholders

The **Ethiopian Wildlife Development and Conservation Authority** is established as "an autonomous public agency of the federal government" and is accountable to the Ministry of Culture and Tourism (Ethiopian Wildlife Development and Conservation Authority Proclamation, art. 3).

The Preamble to the Wildlife Proclamation states that "allowing communities residing around conservation areas and private investors to actively participate in wildlife development, conservation and utilization has significant value". In line with this concept, some management powers are decentralized and allocated to the regions, and the possibility of allocating some wildlife habitats for community management is recognized in the Proclamation. Relevant provisions, however, are very brief and therefore need to be complemented with more detailed ones to constitute an effective legal framework for stakeholder participation.

An **Environmental Protection Authority** is established as an autonomous body accountable to the Prime Minister by the Environmental Protection Organs Establishment Proclamation of 2002. The Authority includes a Director and a Council, among whose members are representatives of non-governmental organizations and trade unions (art.8). Its functions are to advise the government as well as to approve directives and guidelines issued by the Authority (art. 9). Every government agency must include an **environmental unit**, and

regional environmental agencies must also be created (arts. 14–15).

6.3 Wildlife tenure and use rights

Wildlife is considered to be **held by the state on behalf of the people**, although the principal wildlife legislation does not include any specific statement in this regard.

Control of **problem animals** is addressed in the wildlife policy and strategy, which calls for the study of type and extent of damage that has occurred and subsequent formulation of necessary measures, as well as for prevention (item 1.6, Wildlife Policy and Strategy).

6.4 Wildlife management planning

The legislation available does not address wildlife management planning at any level. The 2005 wildlife policy and strategy, however, views “research on the number and distribution of selected species” as a means to meet the objective of management of wildlife outside protected areas (item 1.4).

6.5 Wildlife conservation

“**Wildlife conservation areas**” (including “national wildlife conservation parks, wildlife sanctuaries, wildlife reserves and wildlife controlled hunting areas” – Wildlife Proclamation, art. 2) may be established at the federal level by regulations of the Council of Ministers or alternatively by legislation of the regions (arts. 4–5).

The Proclamation on **environmental impact assessments** requires responsible authorities to make impact study reports accessible and to solicit comments. It also requires that comments received, in particular from concerned communities, be adequately taken into account (art. 15). There is no specific reference to impacts on wildlife, although the definition given of “environment” is quite broad and includes all living organisms.

The wildlife policy and strategy calls for the establishment of an integrated system to prevent and control **diseases** that affect wildlife. Strategies to meet such objectives include wildlife health research, control of disease transmission, capacity building,

prevention and control mechanisms (item 1.4).

6.6 Wildlife utilization (hunting eco-tourism, ranching, trade and other uses)

Among the policy objectives set out in the wildlife policy and strategy, income secured from wildlife resources must be used to benefit local people, wildlife conservation endeavors, as well as the overall growth of the national economy. Strategies to achieve these objectives are to create a **revenue sharing** system between federal and regional governments and creation of employment opportunities for communities residing around protected areas (item 2.4).

The policy also calls for the promotion of eco-tourism (item 2.2) and involvement of private investors in management of protected areas and production of export-oriented wildlife products (item 3).

Private investors “may be authorized to administer” wildlife conservation areas, whether established by the central or the regional governments, by entering into **concession** agreements with the government or the concerned region (art. 6). **Communities** may be authorized to administer wildlife habitats under agreements with regions (art. 7). Reference is made to regulations to determine mechanisms to **share the profits** derived from the utilization of wildlife resources between federal government and regions and to benefit communities (art. 10). Although very general, this provision seems to prevent communities from directly receiving the profits of wildlife management activities they may undertake, as it assumes that any profits are to be shared between central and regional governments, which in turn are to decide how communities may benefit from any such profits.

A **hunting** permit is always required to hunt – reference is made to regulations for further specification (art. 8). A permit is also required for “any activity of **trade in wildlife products**” and for the ownership, sale, transfer, import or export of wildlife products, subject to any regulations or directives which may be issued (art. 12).

ministry and regions must promote **wildlife-based tourism**, “in collaboration with other

concerned bodies” (art. 11). Among other tasks, the Authority must issue hunting permits to foreign tourists (Wildlife Development Conservation and Utilization Proclamation, art. 13; Development and Conservation Authority Establishment Proclamation, art. 6).

Responsibilities of the regions include the supervision of **wildlife conservation areas administered by private investors or communities** (Wildlife Proclamation, art. 14). Regions must also issue permits for the establishment of **wildlife ranches and farms** (art. 14, Wildlife Development Conservation and Utilization Proclamation). These provisions, therefore, imply that permits are required, although the Proclamation does not otherwise clearly establish such a requirement. A statement that wildlife ranching and farming are subject to a permit, and conditions for the issue of such permits, would be appropriate.

6.7 Law enforcement

There are no particularly significant provisions in the legislation available on law enforcement.

7. GABON

7.1 Overview of the legal framework

The **Forestry Code** of 2001 is the main piece of legislation regulating wildlife, as well as forests. Pursuant to the Code definitions, forestry products include genetic, fauna and fishery resources (art. 4). Numerous decrees issued under the previous principal law formally remain in force. These decrees, mainly dating back to the 1980s, set out and modify lists of protected animals, limit the number of animals which may be hunted by species, regulate hunting permits, special authorizations for trade and other activities and the exercise of usage rights and of the profession of hunting guide. A **National Parks Law** has been in place since 2007. A previous order of 2004 regulates activities within protected areas’ buffer zones.

The **Environmental Protection Law** of 1993 includes a chapter on flora and fauna, which generally requires their sustainable management and calls for the adoption of

strict rules governing endangered species, any activities which may have a negative impact on them, and the import of exotic plants and animals (arts. 22–25).

7.2 Institutional setup and role of stakeholders

The **Water and Forestry Administration** is a paramilitary organization responsible for the implementation of the Code, providing relevant information, promoting public awareness, providing extension and prosecuting offences (Forestry Code, art. 15).

A **National Agency for National Parks** under the ministry responsible for national parks is in place as the main administrative body for parks management. Among its tasks are: to approve management plans, to enter into parks concession agreements, following consultation with the concerned park management authority and local communities, and to promote participatory management (National Parks Law, arts. 27–30; and Decree No. 000019/PR/MEFPPN, arts. 1 and 4). A **High Council for National Parks** is a consultative body established to assist the President in the formulation and implementation of national parks policy. The Council’s members are numerous specified ministers and two members of Parliament (National Parks Law, arts. 24–25). There is no particular requirement regarding membership of any other possible stakeholders. A local consultative committee, whose composition and functions are to be determined by regulations, is to be created within every national park (art. 45).

A **National Committee for Sustainable Development** is established by a Decree of 2005 to advise the government on relevant matters. It is made up of representatives of numerous ministries but also of Parliament, labour unions and NGOs.

7.3 Wildlife tenure and use rights

There is no general statement concerning **ownership of wildlife** in the Forestry Code. However, hunting within closed properties does not require a licence.

A distinction is made between a state permanent forest estate, which may be

either “productive” or “classified” and “is the habitat of wildlife”, and a rural forest estate which is reserved for the enjoyment of village communities (Forestry Code, arts. 5, 6 and 12). All forests are part of the “national forest estate” and are exclusive state property, but village communities may exercise customary rights in accordance with regulations (art. 14). The exercise of **customary usage rights** is free within rural forests for neighbouring communities, subject to restrictions for management or protection needs (art. 253). With regard to hunting, customary rights are strictly limited as to the utilization of weapons, specified by order, and as to non-protected animals (art. 258), in specific, non-protected areas (art. 259).

Killing of animals in violation to the rules is justified for immediate **defence** of any person or for the protection of a person’s own livestock or crops (art. 172). In case of damage to crops caused by wild animals, the administration, following investigation, may authorize **culling** or other measures within a determined area. Meat derived from these operations must be left to the local population (art. 196).

7.4 Wildlife management planning

Although forest legislation includes management planning provisions (notably, on *plans d’aménagement* and subject to them *plans de gestion*) for all state forests (*forêts domaniales*), wildlife is not required to be addressed (Forestry Code, arts. 22 and 30). Contents of the required inventory of forest resources do not include wildlife either (arts. 53 and 57).

Every **national park** must have a management plan, formulated by the park’s administration after consultation with all concerned parties, including those communities living within the park and in neighbouring areas. The plan must take these communities’ customary usage rights into account (National Parks Law, art. 21).

7.5 Wildlife conservation

National parks are to be created by law, after taking into account the customs of local communities (National Parks Law, art. 21). Any legislative proposal must be submitted to the National Parks Agency, which after

consulting with the local communities, local authorities and the scientific committee (established under the same law), must issue an opinion (National Parks Law, art.4). Taking into account the conservation of natural resources and customary usage rights, the National Parks Agency may authorize certain activities, which include capture and killing of animals for reasons of scientific research or management or public order in the parks (art. 10).

Every national park must have an outer area (***zone périphérique***) within which local villages are to be integrated, to facilitate transition between rural areas and the park and to identify communities with which permanent collaboration is to be established in relation to the park’s management. Usage rights within these areas, including hunting, are generally free, subject to a management contract between the communities and the park’s manager (arts. 13, 15 and 16). This “*contrat de gestion de terroir*” (as defined in art. 3) has the specific objective of ensuring that any economic revenues directly benefit the communities.

Wild animal species are classified as **strictly protected** (whose taking is completely prohibited), **partly protected** (whose taking is subject to “specific” regulation) and **non-protected** (whose taking is subject to “general” regulation). The lists are prepared by the water and forestry administration and may be revised by regulations (Forestry Code, art. 92). There are no requirements in the Code regarding consultation of experts or concerned persons prior to the classification of animals.

7.6 Wildlife utilization (hunting eco-tourism, ranching, trade and other uses)

Within “rural forests”, **community forests** may be created upon request of a village community for the sustainable management of “natural resources”, and therefore also possibly covering wildlife. They are to be managed under a “simplified management plan” (Forestry Code, arts. 156-157). For the processing of timber, contracts may be entered into with local companies (art. 158). They may be managed directly by the community or leased out (art. 160). Revenues are the property of the community (art. 161). Applications must include a report of a meeting of the community’s

representative body and a description of the status of the forest (art. 162).

A **hunting licence** is required to hunt, except in closed properties (art. 163). The licence may only be issued to holders of a weapon permit.

Permits and licences are categorized as follows:

- small-scale and large-scale hunting permit (each may be issued respectively to nationals, foreign residents, or tourists. Both authorize hunting of non protected or partly protected animals with weapons of specified calibre);
- scientific hunting permit and scientific capture permit;
- commercial capture licence for live animals (only for nationals for commercial, tourist or breeding purposes) (art. 177); and
- a licence for photographic safaris (*licence de chasse d'images*), to film or take photographs (required for professionals, for commercial purposes) (art. 178). Professional filming of protected areas is also subject to authorization and payment of a fee (art. 218).

Conditions for the issuance of licences and permits are to be specified in regulations. These regulations, however, are not to be applied to small-scale hunting licences, except as they apply to insurance requirements (art. 180). Holders of small-scale and large-scale hunting permits must register partly protected animals that have been hunted and other details (art. 186).

Grounds for **refusal or withdrawal** of a licence or permit are specified, basically including convictions for forestry or wildlife violations (art. 182).

Persons wishing to exploit live wild animals or carcasses, trophies, or other products of hunting must obtain a **certificate of origin** and an **exploitation permit**, along with an **animal health certificate** (art. 199).

As already noted, meat derived from culling or self-defence killings must be left to the local population (art. 196).

Except for holders of hunting or commercial capture permits, in the **possession or selling** hunting products requires a special authorization (*agrément special*) issued by the ministers responsible for wildlife and for trade. The provision does not apply to game sold in hunting areas (Decree No. 677/PR/MEFE, arts. 2-3). Holders of this authorization must keep a register in which numerous details regarding transactions must be entered (art. 6). Grounds for refusal or suspension or cancellation of such an authorization, such as previous convictions, are set out (art. 10). Special authorizations are of different types, respectively for: seller; restaurant keeper; ivory processor; seller of processed ivory, trophies or carcasses; and taxidermist.

The organization of hunting activities in a specified area may be entrusted to a **hunting guide**, following an auctioning process (art. 203). The guide must ensure compliance with the law by his or her staff and clients. The guide is responsible for damage caused by them and must be insured to cover such possible damage. Grounds for suspending such an arrangement or suspending hunting guide licences are specified, including second offences in relation to hunting, hunting in closed seasons or beyond the limits of the area of which the guide is in charge and allowing illegal hunting by foreigners (art. 207). The activity of hunting guides is further regulated by a decree that was also issued before the current Forestry Code. Its provisions do not seem to be superseded by the Code, and the Code, as has just been described, in fact includes some of them in very similar terms. Applicants for a hunting guide licence must submit required documentation, which include a *curriculum vitae* and a declaration that one is aware of the applicable legislation (Decree No. 193/PR/MEFCR, art. 5). A committee made up of representatives of various ministries and of hunting guides is established to evaluate applications (art. 6). Exploitation of hunting areas (*domaines de chasse*) is reserved to hunting guides who hold a hunting guide concession issued by the minister, following an auctioning procedure, which also subject to evaluation by a committee (arts. 9-16). Every such area is subject to a *cahier de charges* that sets out applicable hunting rules. The guide and his clients must file a report on details of

animals hunted after every hunting expedition (art. 23). Grounds for withdrawal of the licence or concession are set forth in the decree (art. 25).

The National Parks Agency, may hand over **management of national parks for tourist purposes** to a private party under a concession agreement, “after examining a technical *dossier*” (National Parks Law, art. 22). There are no further specifications in this provision.

7.7 Law enforcement

The administration may appoint “*lieutenants de chasse*” as **volunteer guards** who may participate in culling as well as assist in enforcing the law (Forest Code, art. 201). *Lieutenants* are also referred to in a decree issued under the wildlife legislation previously in force. Under that decree, they are empowered to take direct action in case a violation is committed or alternatively required to report to the administration (186/PR/MEFCR art. 3). They must carry out their functions free of charge, but are entitled to the same rewards enforcement officials receive for the offences they report (art. 5). They must provide an annual report of their activity to the administration (art. 4).

8. GHANA

8.1 Overview of the legal framework

The wildlife legislation of Ghana is a few decades old and its reform, although it began in the 1990s, is still underway. The **Wild Animals Protection Act** of 1961 is a brief piece of legislation mainly setting out lists of protected animals and regulatory powers. It is implemented by the Wildlife Conservation Regulations and Wildlife Reserves Regulations, originally adopted in 1971.

The **Forestry Commission Act** of 1999 has introduced some innovations as to institutional aspects. The Trees and Timber Decree of 1974, as amended by the **Trees and Timber Act** of 1994, regulates the creation of protected areas, but tends to be limited to areas that may be lucrative from a forestry production perspective. The more recent **Timber Resources Management**

Act, adopted in 1997, regulates timber rights contracts (i.e., forest concessions), although in its 2002 amendment it also briefly addresses wildlife management initiatives, with a view to providing fiscal incentives for them. The Environmental Protection Agency Act of 1994 sets out the Agency’s composition and functions. No other pieces of principal legislation relating to the environment were available for the purposes of the present review.

8.2 Institutional setup and role of stakeholders

The Forestry Commission Act merges the existing **Forestry Commission**, which was formerly mainly advisory, and the departments of forestry and wildlife of two different ministries into a the newly created Forestry Commission, which is now responsible for all functions relating to the protection and management of forestry and wildlife resources. Members of the Commission are, to a large extent, appointed from the private sector, and must have experience in relevant subjects, or represent the forestry and wildlife industry or non-governmental organizations (art. 4).

A **National Environment Fund** is established to fund environmental education, research, training and other purposes that may be established by the Agency’s Board (Environmental Protection Agency Act, art. 17). There is neither reference to possible beneficiaries of the fund, nor are there any other rules for its operation.

8.3 Wildlife tenure and use rights

There are no general statements on the ownership of wildlife in the legislation of Ghana. Killing animals in **self-defence** or in defence or another person is not an offence; however, if a protected animal is killed, a report must be made to the Chief game and Wildlife Officer (Wildlife Conservation Regulations, reg. 17).

8.4 Wildlife management planning

There is no provision referring to plans to manage wildlife, nor is there a requirement

to check the status of animal populations, in available legislation.

8.5 Wildlife conservation

Schedules to the Wild Animals Protection Act list:

- animals which are **completely protected**;
- animals of which the young are completely protected;
- animals of which females accompanied by the young are completely protected;
- animals of which only a limited number may be killed; and
- animals in respect of which measures may be taken to reduce their number.

The President may by legislative instrument modify the schedules (art. 3), and make any other regulations to implement the Act (art. 11). No particular input from experts or any other concerned stakeholders is required.

The Wildlife Reserves Regulations include a list of categories of **protected areas** (“national parks”, “strict nature reserve”, a “wildlife sanctuary” and a “game production reserve”), all of which are, thereby, declared “reserves” and sets out basic prohibitions applicable in these areas. The regulations do not provide for any form of public participation, which is basically in line with legislation of the period in which they were adopted (1971, with subsequent amendments up to 1984).

Projects for which **environmental assessments** are required are listed in regulations (Environmental Assessment Regulations, schedule I) and include logging near wildlife reserves. Detailed requirements for consultation of the public during the process are included.

8.6 Wildlife utilization

The Wildlife Conservation Regulations require a specific **licence for trading in bush-meat** (defined as “meat from any wild, undomesticated animal”), to be issued at the central or District level. Eighty percent of the fees collected for the issue of these licences must be paid to the District Assembly, while

the rest must go to the government budget (reg. 6A, introduced by the 1989 amendment).

Game licences are required for any type of hunting. The Chief Game and Wildlife Officer may refuse to issue a game licence at his/her discretion, particularly where he or she finds that the licence would be detrimental to the conservation of concerned species, that the applicant has been convicted of a wildlife offence or that the applicant does not have adequate capacity to recognize species or use firearms (reg. 9).

The **export of game and trophies** also requires a permit, which may be issued by the Chief Game and Wildlife Officer (regs. 11-13). These permits may be refused at his or her discretion, where the issue of a permit would be detrimental to the conservation of species or the Chief is of the opinion that the items have not been lawfully obtained (reg. 14).

The Timber Resources Management Act of 1997, as amended in 2002, regulates the issue of timber utilization contracts, in substance affecting the use of large areas of forest land, including land under customary tenure. However, **customary uses** of such land, including hunting, are not recognized, nor are they addressed. The only provisions seeking to safeguard the interests of concerned land owners are those that require applicants for contracts to undertake social obligations towards local communities (art. 3).

The same act provides for some **fiscal incentives** for persons who invest in forestry or wildlife management, by providing some internal revenue benefits which are cross-referenced in the legislation. It further allows the minister to negotiate additional incentives. Among related benefits is that expatriate personnel employed in wildlife enterprises are expressly allowed to make remittances abroad up to the amount of their official wages (art. 14, as amended by the 2002 amendment).

8.7 Enforcement

The Wild Animals Preservation Act provides for the appointment of **honorary game officers** by the minister, without further addressing the topic or providing incentives (art. 1).

9. KENYA

9.1 Overview of the legal framework

A **Wildlife Conservation and Management Act** has been in place since 1976 in Kenya. The 1989 amendment to the Act establishes the Kenya Wildlife Service. Under the Act, the Wildlife (Conservation and Management) National Parks Regulations, originally adopted in 1976, are mainly limited to establishing applicable restrictions on entry, prohibitions and fees. Other regulations which are in place prohibit the hunting of “game” animals listed in a schedule and restrict the export of raw ivory (Wildlife (Conservation and Management) (Control of Raw Ivory) Regulations of 1976 and Wildlife (Conservation and Management) (Prohibition on Hunting of Game Animals) Regulations of 1977).

The **Environmental Management and Co-ordination Act** of 1999 sets out an institutional framework for environmental management and sets forth the requirements for an environmental impact assessment procedure, which is further specified in regulations.

The **Forests Act** does not regulate wildlife, but includes a number of provisions recognizing the value of forests as wildlife habitat and tend to ensure that wildlife conservation interests are taken into account in managing forests. It also regulates community forestry initiatives, which may include wildlife-based eco-tourism. Most likely because it is more recent than the above referenced legislation, the Act further promotes public participation in forest management, including specific procedural requirements for consultation in a schedule.

9.2 Institutional setup and role of stakeholders

The **Kenya Wildlife Service** is the main wildlife administrative authority, which is also responsible for the management of protected areas (Wildlife Conservation and Management Act, art. 3A). It is managed by a Board of Trustees, whose members must partly represent various listed public offices and partly (in number of up to six) be selected by the minister among persons “who are conversant with nature conservation in all its aspects” (art. 3B).

A **Kenya Wildlife Service Fund** is established to finance wildlife conservation and management projects, as may be determined by the Board of Trustees of the Kenya Wildlife Service. There are no other specifications on activities to be funded or on eligible beneficiaries (art. 5A). **Wildlife Advisory Councils** may be established for every national park or national reserve by the Board of Trustees (art. 5B). The Board has full powers to designate members of the Councils – the only requirement being that the representative of the concerned local authority must be included. A **Wildlife Conservation and Management Service Appeal Tribunal** is established to determine appeals where any person is aggrieved by a decision made under the Act, including regarding compensation (Wildlife Conservation and Management Act, art. 65).

A **National Environment Council** whose members are the minister, the permanent secretaries of various concerned ministries, as well as representatives of universities, business community and non-governmental organizations, is established to formulate environmental policy and directions (Environmental Management and Co-ordination Act, arts. 4–5). An **Authority** is “the principal instrument of government in the implementation of all policies relating to the environment (art. 9).

A **national environment trust fund** (to improve environmental management including capacity building) and a **restoration fund** (to serve as insurance in case of environmental damage whose author has not been identified) are administered by the Authority (arts. 24–25).

A National Environment Action Plan Committee, whose members must represent the business community, non-governmental organizations and research institutions, in addition to public offices, is established to prepare a national environmental action plan every five years for adoption by the National Assembly (art. 37).

Among the functions of the **Forest Service** is to promote the empowerment of associations and communities in the control and management of forests (Forests Act, art. 5).

9.3 Wildlife tenure and use rights

Game licences do **not authorize hunting on private land** unless issued to the concerned landowner or to a person who has the written consent of the owner. **Owners wishing to “afford facilities for hunting”** of game animals or game birds must apply for registration of their land. Registration may be made subject to conditions specified by the owner, who may for example require that persons wishing to hunt give prior notice to him. Owners permitting others to hunt on their land are entitled to a fee to be prescribed by ministerial regulations (Wildlife Conservation and National Parks Act, art. 29).

Killing or injuring any animal in immediate **defence** of human life is not an offence, unless done by a person committing an offence or provoking the animal. A report to the Service must be made as soon as possible (art. 30). Game animals causing damage to land, crops or stock may be killed by the owner of such land, crops or stock or by the occupier of any land (art. 31). Wounded game animals or protected animals must be killed (art. 32). Where any person is injured or killed by an animal his or her dependants may apply to a district **committee** established for the purpose of providing **compensation**, unless the person was committing an offence, or the injury or death occurred “in the course of normal wildlife utilization activities”. The committee must include some specified officials of the district and county level and three other members appointed by the minister to “represent the general public” of the district (art. 62).

9.4 Wildlife management planning

There is no general requirement for plans for the management of any wildlife species. A management plan may be adopted for forests placed under community forestry arrangements, which may address wildlife, as described in section 9.6 below.

The environmental Authority must keep an **inventory of biological diversity** and monitor its status (Environmental Management and Co-ordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations, regs. 6-7).

9.5 Wildlife conservation

The minister may, after consultation with the relevant authority, **declare national parks, national reserves or local sanctuaries** (Wildlife Conservation and National Parks Act, arts. 18-19). The minister may also declare areas adjacent to such areas to be “protection areas” (art. 15) to serve as a sort of buffer zone, supporting the management of the protected area. **Hunting** is prohibited in national parks and local sanctuaries (arts. 13 and 19).

The Director may enter into any agreement with a competent authority to maintain **animal migration patterns** essential to the continued viability of a National Park or National Reserve, providing **compensation** to the authority for damage caused by animals (art. 20).

Causing unnecessary suffering to a protected animal or game animal or being in possession of animals that have been maimed or mutilated is an offence (art. 33). Killing animals in forests is prohibited, except as may be authorized under a permit issued under the Wildlife Conservation and Management Act (Forests Act, art. 54). No particular conditions are specified.

An **environmental impact assessment** procedure, foreseeing the opportunity for the public to submit comments, is provided for in the Environmental Management and Co-ordination Act (arts. 58-67). Among the activities that require an assessment is the “establishment or expansion of recreational townships in mountain areas, national parks and game reserves” (second schedule). An

environmental impact assessment licence is required for any activity that may have an adverse impact on an ecosystem, lead to the introduction of any exotic species or the unsustainable use of resources (reg. 6).

9.6 Wildlife utilization [hunting, eco-tourism, ranching, trade and other uses]

Hunting requires a licence (art. 22). **Game licences** authorize the hunting of such game animals or game birds, in such areas, for such periods and subject to such conditions as may be prescribed. However, hunters must be accompanied by a professional hunter, or otherwise their licence must be endorsed by the Director, after testing the applicant's competence as the Director may think fit (art. 23). Holders of game licences must keep a register of the prescribed particulars of every game animal killed, wounded or captured (art. 25). A **professional hunter's licence** may be issued to persons who meet specified competence requirements regarding firearms and game animals (art. 27). Animals killed or captured under a game licence or trophies obtained there from must be produced within thirty days to a warden who must issue a **certificate of ownership** (art. 41).

Provisions regarding suspension and cancellation of licences grant unusually wide discretionary powers to the administration: the Director may **suspend or cancel any licence** "without assigning any reason therefor", and licensing officers may refuse to issue a licence or authorization if they "think fit" and also "without assigning any reason therefor" (art. 28). Similar formulations may hamper an equitable and transparent implementation of the law and should, for this reason, be avoided by setting forth more specific grounds for refusal, suspension and cancellation of licences.

A **dealer's licence** is required to carry out the business of a wildlife dealer (art. 43). An **export licence** is necessary for the export of any live protected animal, game animal or game bird, unless the animal is accompanied by a person who is in possession of a certificate issued in Tanzania or Uganda certifying that such person is lawfully authorized to export (art. 45).

The minister may, by regulation, prohibit, control the possession or movement of, or any **dealings in any meat** (art. 47). Such regulations may also specify conditions for **game ranching and game cropping**, providing for the exemption of game-ranching and game cropping from the provisions of this Act relating to game (art.47).

The Forests Act also includes rules on community forestry arrangements, under which wildlife aspects may be addressed. Any member of a forest community, together with residents in the same area, may request registration of a **community forest association**. The registered association may apply to the Director for permission to participate in the conservation and management of a state forest or local authority forest, stating details of members, constitution of the association, financial regulations, proposals concerning use of forest resources and "methods of **monitoring and protecting wildlife**". The association may also submit a **management plan** (art. 46). The association must then manage the forest pursuant to an approved **management agreement**, formulating forest programmes "consistent with the traditional forest user rights of the community concerned in accordance with sustainable use criteria". The association may also enter into partnerships with other persons to ensure sustainable forest management. The management agreement may confer various forest user rights on the association, including harvesting of timber or fuel wood, grazing, eco-tourism and recreational activities, and other benefits which may from time to time be agreed upon between an association and the Service (art. 47). Hunting or other utilization of wild animals, however, is not referred to in the Act. Conditions and procedures (including appeals) for termination or variation of the agreements are set out in detail (art. 49).

Game ranching, game cropping or other wildlife utilization are to be considered "improvements" wherever any law or document makes reference to improvements to land or principles of good husbandry (art. 63).

9.7 Law enforcement

The Director may, with the prior approval of the minister, appoint fit and proper persons to be **honorary wardens**, who are to be considered as wardens for hunting control purposes (Wildlife Conservation and Management Act, arts. 4 and 23).

An association carrying out community forestry (and which may therefore carry out wildlife-related functions) must assist the Service in enforcing the forestry legislation and assist in fire fighting (Forests Act, art. 46).

10. LIBERIA

10.1 Overview of the legal framework

Pursuant to the 1986 **Constitution** of Liberia, the Republic must manage natural resources so as to ensure the maximum feasible participation of citizens under conditions of equality. The **Wildlife and National Parks Act** of 1988 is the main piece of legislation addressing wildlife. However, the **National Forestry Reform Law** of 2006 includes fauna among forest resources (art. 1.3) and addresses wildlife, as well as protected areas, in a number of provisions, some of which supersede the contents of the Wildlife Act. The same law also requires the responsible authority to present a framework law on wildlife to the Legislature within one year from its enactment (art. 9.11), although such new law is not yet in place. The contents of an Act for the Establishment of a Protected Forest Area Network of 2003 are mainly incorporated into the National Forestry Reform Law.

The **Environment Protection Law** of 2002 sets out an environmental impact assessment process and addresses numerous environmental issues, including the protection of biodiversity, without specifically addressing wildlife.

10.2 Institutional setup and role of stakeholders

The **Forest Development Authority** is the “representative of the government” in matters relating to management and use of forest resources (art. 2.2). The same body

acts as the responsible Authority for the management and administration of wildlife and protected areas, according to information received in reply to the questionnaire.

A **Forestry Management Advisory Committee** of up to twelve people must be appointed by the Forest Development Authority to provide advice to it. Members must be selected from civil society organizations, professional forester associations, forest labour organizations, logger associations, academic institutions and the Environmental Protection Agency. The interests of women and youth must be fairly represented (National Forestry Reform Law, art. 4(2)).

10.3 Wildlife tenure and use rights

Pursuant to the Wildlife and National Parks Act, “the wildlife of Liberia are the **property of the nation** and as such are subject to control and management by the government for the benefit of the people of Liberia and for the benefit of mankind” (art. 4). Along similar lines, all forest resources in Liberia (which include animals) “are **held in trust by the Republic for the benefit of the People**”, except for forest resources located in communal forests or developed “on private or deeded land through artificial regeneration” (National Forestry Reform Law, art. 2.1).

In practice, conflicts regarding respective rights of communities and the government over land or natural resources are reported to be fairly frequent (questionnaire). In some cases conflicts have arisen with regard to the (controversial) ownership of land for which a concession had been granted.

Any person may take reasonable measures to **defend people or property** from an immediate attack by any wild animal subject to protection, resorting to killing the animal only where absolutely necessary. Self-defence, which must be proven by the person claiming it, may not be claimed if the animal has been provoked or the person was committing a violation. Circumstances must be reported within no longer than 24 hours to the nearest officer of the Authority (Wildlife and National Parks Act, art. 39). Property owners must fence or otherwise protect their land so as to prevent the entry

of wild animals and inform the Authority immediately of any damage to crops or property by a wild animal. The Authority, in the case of protected animals, must take measures to prevent such animals from causing damage to private property, “encourage and cooperate with property owners to prevent the entry of such animals” and compensate damage, unless the property owner has not complied with the obligation to fence or protect the land (art. 40).

10.4 Wildlife management planning

A **management plan**, including “plans for local involvement and public participation”, must be in place for every national park and nature reserve (Wildlife and National Parks Act, art. 17). The Authority must consult with, and take into account the views of, **local residents** in the administration and management of National Parks and Nature Reserves, creating a local advisory committee to assist in this purpose (art. 28).

The Authority must promote and undertake **research on the distribution, habitat and population** of wildlife in Liberia with to the purpose of providing sustained production (art. 32) by keeping a list of animals threatened by or in danger of extinction in Liberia in Schedule I to the Act (art. 45). Similar provisions are included in the National Forestry Law (art. 9.1). The Authority must **review the population, distribution, and status** of Liberia’s wildlife and identify and keep a list of categories of animals and plants that are threatened or in danger of extinction (National Forestry Reform Law, art. 9.12)

A **national forest policy** and national forest management strategy must be in place (National Forestry Reform Law, arts. 4.3–4.4)

10.5 Wildlife conservation

The Authority may propose the creation of **national parks and nature reserves**. Proposals must include a summary of the comments of persons affected by the proposed establishment. They must be submitted to the President and by the President to the legislature for declaration by law (Wildlife and National Parks Act, arts. 8–10). After declaration, the Authority may “by right of eminent domain” take all

private lands within the national park or nature reserve and must pay **compensation** for any valid rights or claims, including customary rights, to land or other resources, as well as pay the cost of resettlement. Persons aggrieved by the terms of settlement proposed by the Authority may institute proceedings in the Land Claims Commission (art. 13). **Areas surrounding a national park or nature reserve** must be declared as game reserves or controlled hunting areas wherever possible, to protect the boundaries from disturbance and to preserve the natural state of the area (art. 16). **Hunting** is otherwise prohibited in national parks and nature reserves (art. 22).

The Authority may by regulation declare any area or land to be a **game reserve**, for the protection, breeding and sustained production of wildlife, or a **controlled hunting area**, in which hunting is subject to regulations (art. 29). **Hunting** is prohibited in game reserves (art. 30).

The Authority must establish a **protected forest area network**, including national forests, national parks, nature reserves and strict nature reserves, in line with the categories established under the Protected Forest Area Network Law of 2003 (National Forestry Reform Law, arts. 9.1–9.2). In addition to these categories, the Authority must by regulation identify and establish other protected forest area categories, including, but not limited to, “game reserves, controlled hunting areas, communal forests, and other buffer zones, as **conservation corridors** to facilitate sustainable protected forest management and biodiversity protection” (art. 9(9)). The Authority, in collaboration with local communities, non-governmental organizations, and interested international organizations, “must undertake efforts to provide **alternative livelihoods** for communities adversely affected by the establishment or maintenance of protected forest areas” (art. 9(10)).

The Authority may conserve, manage, and, by regulation, control the use of wildlife, control hunting to achieve sustainable harvests and establish requirements for the issue of “hunting and wildlife trading certificates and licenses” (National Forestry reform Law, art. 9(11)). Hunting of **protected animals** (those species appearing in the list the Authority is required

to maintain) is prohibited (National Forestry Reform Law, art. 9(12)). Species listed in Schedule I to the Act may not be hunted or traded (Wildlife and National Parks Act, art.46).

It is reported that in practice there has been no involvement of local communities in the creation and management of protected areas. This has led to serious pressure from people to access resources and their collusion with outsiders in committing violations of wildlife legislation.

10.6 Wildlife utilization (hunting, eco-tourism, ranching, trade and other uses)

The “**commercial use of forest resources**” requires permission, which may be granted by the Authority in the form of “forest management contracts, timber sale contracts, forest use permits” (which may refer to wildlife-related activities) (National Forestry Reform Law, art. 5(5)), or “private use permits”. The Authority may also require permission for non-commercial forest uses and by regulation “control any activity involving forest land, forest resources, or forest products” (art. 5(1)).

The Authority must undertake measures to institutionalize the **participation of communities** in forest management, including recognition of community land tenure rights, formulation of a code of conduct to govern relationships between contract/permit “holders” and communities, provision for security of access by communities to forest resources and provision of technical assistance to community foresters (art. 5(1)). **Forest management contracts**, whose required contents are specified in the law in considerable detail, must require the “holder” to establish a social agreement with local forest-dependent communities, approved by the Authority, defining benefits and access rights (art. 5(1)). A similar provision applies to “private use permits”, for which the landowner and the applicant undertake social obligations with respect to local communities (art. 5(6)).

In some communities, such as in Lofa County, hunters associations make rules to ensure sustainable harvesting of **bushmeat** by hunters. Local community leaders may also establish local guidelines that govern and control hunters’ activities (questionnaire).

A permit is required for the **export** of any wildlife, subject to the more restrictive rules applicable to the export of CITES appendix I and II species (National Forestry Law, art. 12(1)).

The Authority must prepare an annual report of activities, which among other topics must describe “the nature and monetary value of **benefits provided to every local community**” (National Forestry reform Law, art. 3(4))

Provisions regarding hunting of protected animals do not concern animals **born or lawfully placed in captivity** and for which the owner has obtained a certificate to that effect from the Authority (National Forestry Reform Law, art. 9(12)). A **professional hunting license** is required to provide guide services for hunters (art. 9(12)).

A licence is required to hunt in controlled hunting areas or any other area as may be designated by the Authority (art. 34).

The Authority is required to grant **user and management rights to local communities**, transferring control of forest use and building their capacity for sustainable forest management, by regulations to be issued. Such regulations should, at a minimum:

- specify rights and responsibilities of communities with respect to ownership and uses of forest resources;
- establish mechanisms to promote informed community participation in forest-related decisions;
- create a framework that allows communities fair access to forest resources – including wildlife; and
- establish social, economic, and technical procedures for capacity building to ensure that communities can equitably participate in and equitably benefit from sustainable management of the forests.

The Authority must also present to the Legislature a comprehensive law governing community rights with respect to Forest Lands within one year from the enactment of the law (National Forestry Reform Law, art. 10.1).

Communal forests may also be created by statute or regulation for the sustainable use

of forest products by local communities or tribes. Unlike community forestry initiatives, communal forests are presumed to be used on a non-commercial basis (art. 1.3).

10.7 Law enforcement

As in other countries of the region, **honorary game wardens** may be appointed. The Authority may grant them arrest powers (art. 60). There are no particular incentives for persons acting as honorary wardens.

11. MALI

11.1 Overview of the legal framework

The main piece of wildlife legislation in Mali is Law on the Management of Wild Fauna and its Habitats of 1995 (hereafter referred to as the **Wildlife Law**). Institutional aspects are addressed in a 1998 ordinance, in addition to two decrees issued the same year, which set up a National Directorate for Conservation of Nature and regulate its functions. Other subsidiary legislation issued to implement the Law includes: an order on traditional hunting (*chasse rituelle*) (1995); a decree on declaration of wildlife reserves, sanctuaries and hunting areas (1996); an order on import of weapons by tourists (1997); a decree on conditions for the exercise of hunting rights (1997); a decree on hunting guides (1997); and a decree on fees (2001).

Environmental legislation includes a decree addressing the institutional framework (1998) and a decree on environmental impact assessment (1999). The principal forestry legislation (Law on Management of Forest Resources of 1995) does not address wildlife.

11.2 Institutional setup and role of stakeholders

The **Conservation of Nature Directorate** is the main administrative authority responsible for wildlife management. Among other functions, the Directorate is responsible for formulating legislation for the conservation of forestry and fauna resources and for preparing management plans for forests, parks and reserves (*Ordonnance* n° 98-025/P-RM, art. 2).

The Wildlife Law establishes that “**hunting councils**” with consultative functions are to be created at the national level as well as within local authorities. Reference is made to regulations, which do not seem to have been implemented, for the determination of the composition and functions of such bodies (art. 95).

An inter-ministerial committee established as the highest administrative authority on **environmental matters** is assisted by a consultative committee, which includes representatives of ministries but also representatives of associations of workers, women, non-governmental organizations and other private sector entities (Decree No. 98-415/P-RM, art. 14).

11.3 Wildlife tenure and use rights

Hunting rights are vested in the state which may allocate them to natural or legal persons upon payment of a fee or freely (Wildlife Law, art. 60). A “hunting title” is always required to hunt, except in the case of “usage rights” (art. 61): **private forest owners** have a “usage right” to hunt on their land, subject to the hunting legislation (art. 73).

“**Usage rights**” to hunt are defined as those practised with respect to non-protected animals for non-commercial purposes by the population, within the limits of their respective territories and with authorized hunting gear (art. 70). Within protected areas (excluding strict nature reserves and national parks), usage rights may be recognized in the declaration of the area (art. 71). Species that may be hunted as a matter of usage rights are specifically listed in the *arrêté* on “**ritual hunting**” (Order No. 95-2489/MDRE-SG, art. 8). Only hunting practised by members of hunters’ associations on the occasion of a ceremony may be considered as ritual hunting (art. 69). This type of hunting is allowed without a permit with respect to non-protected or partly protected animals (Order No. 95-2489/MDRE-SG, art. 2.).

Culling of animals that may cause damage may be authorized, following a field investigation by a wildlife officer (art. 106). Persons who have acted in **self-defence** or for the defence of other persons or of their property may not be prosecuted (art. 108),

provided that proof of having acted in self-defence is given (art. 109).

11.4 Wildlife management planning

A **management plan** must be adopted by order of the minister for national parks, wildlife reserves sanctuaries, hunting areas and leased areas (Wildlife Law, art. 55). There are no other requirements regarding the drawing up of these plans, so it seems that the plans may be adopted without consultation of the public.

11.5 Wildlife conservation

The “national fauna *domaine*” includes all **areas set aside for the conservation of wildlife**: strict nature reserves, national parks, wildlife reserves, special reserves or sanctuaries, biosphere reserves, hunting areas (*zones d'intérêt cynégétique*), and game ranches, areas allocated to hunting guides under leases and free hunting areas (Wildlife Law, arts. 2 and 28).

Proposals to create a wildlife reserve, sanctuary or hunting area must be publicized among the concerned population by appropriate means in accordance with local usages (Decree No. 96-050/P-RM, art. 3). Claims over wildlife use other than to ordinary usage may be raised and must be entered into a register held by the local administration (art. 4). A committee including representatives of various local sectors of the administration as well as hunters' associations and villages is set up to investigate possible claims (art. 5). Disputes are settled amicably or otherwise brought before the competent court (art. 8). Final declaration is by made through a ministerial order. Hunting areas may be created, without any required formalities, in state or local authority forests, whether or not under leases (Wildlife Law, art. 56)

Hunting is prohibited in strict nature reserves, national parks and wildlife reserves, except for wildlife management purposes (arts. 39, 41 and 43).

Animal species may be wholly **protected** (meaning they may not be hunted nor taken except for scientific purposes, and are listed in Annex I to the Law), partly protected (meaning they may be hunted in limited numbers, and are listed in Annex II) or non-protected. The latter are considered as

“game” if hunting them requires a “hunting title” (arts. 23–25 and 52–53). Upon a request from the wildlife administration or a local authority, the minister may adopt certain protection measures or extend the list of game animals attached as Annex III (art. 54).

Impacts on fauna are expressly required to be considered for projects subject to **environmental impact assessment** (Decree No. 99-189/P-RM, art. 3). Environmental impact studies must be publicized and local communities and other concerned persons must be consulted (art. 14).

11.6 Wildlife utilization (hunting eco-tourism, ranching, trade and other uses)

Permits for sport hunting, commercial capture and scientific usage of wildlife are required pursuant to the Wildlife Law (Wildlife Law, art. 75). **Sport hunting permits** are issued for four categories: small, medium and large-scale hunting and for waterfowl. Species that may be taken under these permits are specified in the decree on hunting titles (Decree No. 97-052/P-RM). Each category of permits may be of three types: for nationals, non-resident or resident foreigners (Wildlife Law, arts. 75–77). Non-resident foreigners must either be the clients of a hunting guide or be invited by a hunters' association to be allowed to hunt (art. 84). Applicants for hunting permits must be in possession of a weapon permit (art. 82). Holders of medium and large hunting permits must keep records of animals hunted (Decree No. 97-052/P-RM, art. 45) A **commercial capture permit** is required to capture animals for commercial purposes (arts. 64, 79 and 80). A scientific permit to hunt or capture wildlife also exists (art. 87).

A hunting guide licence of type A (for nationals) or B (for foreigners) is required to be a **hunting guide** (Wildlife Law, arts. 66, 89 and 90–92). A licence to exploit fauna (*licence d'exploitant de la faune*) is also required (art. 66). There is no other mention of the latter type of licence in the law, so it is not clear whether the same is required for other types of exploitation of wildlife, or what its contents and conditions should be. The decree on hunting guides requires applicants to obtain the qualification of

hunting guides to pass a test concerning identification of species, hunting legislation, use of weapons and safety (Decree No. 97-051/P-RM, art. 6). Among the obligations of hunting guides is to ensure that their clients comply with the law, to protect them from risks and to record expeditions and animals hunted (art. 17). Guides must be fully covered by insurance for their responsibilities (art. 18). Grounds for suspension or cancellation of the hunting guide licence are specified and include giving false information at the time of application and allowing clients to hunt against the law (art. 25).

As noted above, hunting areas may be created in state or local authority forests, whether or not under leases (Wildlife Law, art. 56). Hunting areas, wildlife reserves and special reserves may be **leased** (*amodiées*) to hunting guides, hunting tourism companies or recognized hunters' associations for management (Wildlife Law, art. 20; Decree No. 97-052/P-RM art. 57). A model *cahier de charges* to regulate this arrangement is attached to the Decree. The lease contract must specify the advantages granted to neighbouring populations (Wildlife Law, art. 57). The beneficiary of the lease obtains an exclusive right to the resources of the area, subject to the lease contract and *cahier de charges* (art. 60). Applications for the "concession" of state land (the term is used only once in the context of the provisions on *amodiation*) may be submitted to the minister and must include an undertaking to invest a specified amount in the area (art. 63).

Breeding of wildlife for commercial purposes or establishment of zoological parks are authorized, pursuant to conditions to be specified by order (Wildlife Law, art. 58). A licence to exploit fauna is required also to **breed or ranch wild animals** for commercial purposes. This licence has a duration of one year – an unusually brief duration for an activity which may involve some investment and medium- or long-term planning (Decree No. 97-052/P-RM, art. 34).

A "professional document" for which no further specification is given in the Law) is required for **trackers** (Wildlife Law, art. 67). **Wildlife-watching tourism** is addressed briefly, only to specify that it is authorized upon payment of a fee in national parks,

wildlife reserves, sanctuaries and wildlife ranches (Decree No. 97-052/P-RM, art. 55).

Hunters associations may obtain recognition as public service associations if they contribute to conservation of nature, law compliance, development of wildlife resources, and fight against poaching. Recognized associations may organize hunting and tourism within their territory (arts. 93 and 94).

The **import of weapons** by tourists is regulated by an order that establishes that a specific authorization needs to be issued upon application from hunting tourism companies or hunters' associations (order n° 97-972/MATS/MDRE/MFC/MIAT-SG).

11.7 Law enforcement

In addition to forestry officers and other authorized officers, hunting guides, trackers and hunters' associations may detect offences (art. 114, Wildlife Law,). There are no particular incentives, or other specifications as to the powers of enforcement actually given to these persons and as to whether they might act independently or (as is more likely) only upon request of enforcement officials.

12. MAURITIUS

12.1 Overview of the legal framework

The **Wildlife and National Parks Act**, enacted in 1993 and repealing the 1983 Wildlife Act, is the principal legislation governing wildlife in Mauritius. This Act provides for the protection of fauna and flora and related matters such as administration of wildlife resources and the creation of protected areas. The Act is implemented by several regulations, including the National Parks and Reserves Regulations, 1996, the Wildlife Regulations, 1998, and the Wildlife (Amendment of Schedule) Regulations, 2004.

The **Environment Protection Act of 2002** provides for the protection, management and sustainable development of the environmental assets of Mauritius. While the Act does not explicitly address substantive aspects of wildlife management, it is generally applicable to wildlife, given that its

section 3 defines environment as including “all living organisms.” Furthermore, pollutant is defined as “a substance that may cause harm, damage or injury to the environment, to plant or animal life”, which indicates the effect of pollution on wildlife is also contemplated under the Act (art. 3).

The **National Heritage Fund Act, 2003**, establishes a fund to safeguard and promote national heritage, which can include the habitat of animals considered to be of outstanding value (art. 12).

12.2 Institutional setup and role of stakeholders

Enactment of the Wildlife and National Parks Act resulted in the establishment of the **Wildlife and National Parks Advisory Council** and the **National Parks and Conservation Service** (arts. 3 and 8). The Advisory Council advises the **Minister of Agriculture, Fisheries and Natural Resources** on any matters related to wildlife and conservation (art. 4). In addition to the ten members from various environment-related government agencies, the remainder of the Council is appointed by the minister and comprised of: two members of the public with wide knowledge of the natural resources of Mauritius; one person involved in tourism or outdoor recreation in Mauritius; and three persons actively involved in wildlife conservation or environmental protection (art. 5). The National Parks and Conservation Service implements the Wildlife and National Parks Act. Its duties include preserving wildlife in national parks and other areas as assigned by the minister (arts. 9-10).

The Environment Protection Act established a **National Environment Commission** that operates under the Ministry of Environment and National Development Unit (art. 5). The Commission is headed by the Prime Minister and is solely comprised of ministers from numerous sectors of government, including agriculture, environment, fisheries and tourism (art. 5). It sets goals and policies for the environment, reviews and monitors environmental management projects undertaken by public departments and ensures coordination between public departments, local authorities, and government organizations engaged in environmental protection programmes

(art. 6). In addition, the Act created: the **Department of the Environment**, responsible for day-to-day management of the Act (art. 8); the **Environmental Police**, a unit of state police to enforce the Act (art. 9); and the **Environment Coordination Committee**, which promotes maximum cooperation and coordination among enforcing agencies and other public departments dealing with environmental protection, as well as policies for maximum information sharing among agencies (art. 14).

Several funds that directly and indirectly provide for the conservation of wildlife have been established by Mauritian legislation. The Wildlife and National Parks Act creates the **National Parks and Conservation Fund** that consists of government funding, donations, and proceeds from licensing and sale of lands (art. 25). The Fund must be utilized for administration of the Act and no disbursements may be made without authorization of the Managing Committee which is composed of the Director, Permanent Secretary and two persons appointed by the minister (art. 25). The Act, however, does not clarify who can benefit from the fund. The **National Environment Fund** was established by the Environment Protection Act of 2002 and is funded by money lawfully accruing to the Fund or funds raised from public activities (art. 62). The funds must be used to promote and protect the environment and to encourage local environmental initiatives and can specifically be utilized to support non-governmental organizations engaged in environment protection (art. 60). The **National Heritage Fund Act of 2003** created a Board of government representatives from various ministries and persons with knowledge of national heritage, including one person from the ministry responsible for the environment (art. 5). The Board can recommend that a habitat of animals considered to be of outstanding value be declared a national heritage site and funds can be used to safeguard the site (art. 12).

As Mauritius does not have communities that are indigenous to the island, there are no legislative provisions promoting participation in wildlife management by indigenous groups. Limited public participation in decision-making is provided for in legislation

concerning **management plans** for protected areas, as discussed in section 12.4. In addition, when reviewing a preliminary **environmental impact report**, the Director of Environment may request other public departments and non-governmental organizations to submit their observations on the report within 14 days of the request (Environment Protection Act, art. 16).

Under the Wildlife and National Parks Act, the intermediate criminal jurisdiction courts can hear actions for violation of the Act (art. 29). The Act solely provides criminal penalties for violations thereof and does not include any provisions that facilitate access to justice for local communities. For violations of the Environment Protection Act, district courts can try persons accused of violating the Act and issue fines or imprisonment as sentences (art. 85). The Court can also issue an injunction for the prohibition of certain actions in contravention of the Act (art. 86). In addition, the Environment Protection Act establishes an **Environmental Appeal Tribunal** that hears appeals of decisions regarding environmental impact assessments, licences, and injunction orders (arts. 53-54).

12.3 Wildlife tenure and use rights

Wildlife is the **property of the state**, if it is found on state land. Individuals can lease state forest land for shooting and fishing pursuant to the Shooting and Fishing Leases Regulations issued in 1982. Based on these Regulations, it seems that wildlife caught or hunted on a lessee's land belongs to the lessee (art. 2). However, the lessee is also required to take any reasonable steps necessary to prevent poaching on the leased land and employ one person for the purpose (art. 14). Based on the Wildlife and National Parks Act, no person may hunt on land owned or occupied by another person except with the landowner's consent (art. 18). In addition, a hunting licence is not required for land owners to hunt game which has been found to damage crops or to have strayed on a person's cultivated land (art. 19). Thus, it can be assumed that wildlife is the property of landowner, if found on private land.

Legislation does not provide recourse for persons whose property has been damaged by a wild animal; nor does it address self-

defence or defence of people and properties in general from wildlife.

12.4 Wildlife management planning

Based on existing legislation, there is no requirement to survey the status of wildlife populations or for the planning of management of wildlife generally or of specific species. Nevertheless, certain planning provisions can be found in the Wildlife and National Parks Act, which requires the Director of the National Parks and Conservation Service to prepare **management plans for national parks and reserves**, concerning wildlife conservation. The Director must prepare a draft management plan for each park or reserve and submit it to the Advisory Council which provides comments on same (Wildlife and National Parks Act, art. 13). The draft, together with the comments, is then presented to the minister, for approval. Once approved, it must be published in two local newspapers (art. 13). For sixty days, the Director must consider any persons' written comments in response to the plan prior to finalizing it (art. 13). A management plan, once approved by the minister, must be published and made available for purchase by the public (art. 13).

12.5 Wildlife conservation

The President of Mauritius may, by proclamation, declare land to be a **national park or reserve** (Wildlife and National Parks Act, art. 11). The land must be of natural, scenic, scientific, educational, or recreational value and preservation must be necessary to properly protect and enjoy it (art. 11). The National Parks and Conservation Service is relegated with the duty of preserving wildlife in national parks and in other areas as designated by the minister (art. 10). In addition, conservation management areas (CMA) have been established within the national parks. For example, there are eight CMA's within the Black River Gorges National Park that are extensively managed to keep out pigs and deer to protect local vegetation and provide a habitat for endemic birds (available at www.gov.mu/portal/sites/moasite).

The Wildlife and National Parks Act defines "protected wildlife" as all wildlife except animals listed in schedule II, which are

presumably to be considered less significant, and “game”, which is listed in schedule I.

The National Heritage Fund Act may also serve to protect wildlife habitats. Under the Act, the minister may, on recommendation of the board, designate by regulation any geological or delineated area which constitutes the habitat of animals and plants of outstanding value to be national heritage; therefore, proceeds can conceivably be utilized from the fund to protect and promote wildlife and their habitats (art. 12). This Act can also apply to private property and the state can assist the property owner in conserving the property (arts. 13–14).

Provisions regarding **environmental impact assessments** can also affect wildlife, given that the environment includes all living organisms under the Environment Protection Act (art. 3). The environmental impact assessment must include measures the applicant proposes to take to avoid and where possible mitigate the effect on the environment (art. 16). Only certain undertakings listed in a Schedule to the Act require an environmental impact assessment (art. 15). Thus, the Act is not applicable to all activities that may harm the environment (art. 15). However, if the minister believes an activity by its nature may have an impact on the environment, he or she can require an environmental impact assessment (art. 17).

12.6 Wildlife utilization (hunting, eco-tourism, ranching, trade and other uses)

The minister, at his or her unlimited discretion, can grant or auction land leases under which the lessee is granted rights to **hunt** (Shooting and Fishing Leases Act, art. 2). Rent is then payable to the conservator of forests (art. 8). The lessee is subject to limitations regarding the clearing of land and must employ one person at all times to prevent poaching on the land (arts. 12 and 14).

Hunting is further regulated in the Wildlife and National Parks Act. Hunting, rearing or trading in “protected wildlife” is subject to a “permit” issued by an “authorized officer” (art. 15). The latter are defined as those among the National Parks and Conservation Service, police, forest or fisheries officers

who are authorized by the permanent secretary (art. 2). There are no particular conditions specified for the issue of the permits regarding protected wildlife. **Game licence** applications are made to the Commissioner of Police and can be issued to residents, subject to the commissioner’s discretion, and to visitors, as the superintendent of police may see fit (art. 20); nevertheless, if the applicant is a previous violator of the Act, a licence cannot be re-issued for five years (art. 21).

A hunting licence is not required for landowners to hunt game which has been found to damage crops or to have strayed on a person’s cultivated land (art. 19). In this case, however, if an animal is killed, the landowner must forward the carcass to the nearest police station (art. 19). Hunting and disturbing the nests of enumerated species of birds listed in schedules to the Act is also prohibited without written approval of an authorized officer (art. 16). Hunting or possession of weapons for same, possession of wildlife, and introduction of non-indigenous species is not permitted on any reserve lands or national parks (National Parks and Reserves Regulations art. 3).

Breeding and trade of wildlife are also subject to a licence, although maintaining wildlife species as pets is not (Wildlife and National Parks Act, art. 17). In addition, no animal, other than livestock or fish, can be introduced into the state without a permit from an authorized officer of the National Parks and Conservation Service (art. 23). Wildlife Regulations, 1998, govern permits issued for breeding and trading wildlife and discretion is afforded to the authorizing officer to issue permits (art. 3-6).

Pursuant to the Consumer Protection (Price and Supplies Control) Act 1991, wildlife is a controlled good and monitored by **export** permits. Exporting and importing wildlife is governed by the Wildlife Regulations 1998. The Regulations set out a framework for issuance of export permits, stating that a permit cannot be issued unless the authorizing officer is satisfied that: the export will not be detrimental to that species; that the animal was not obtained in contravention of law; in cases of species listed in schedules, that such species were imported with an import permit; and that the export

was not in breach of CITES (art. 7). Similarly, importing wildlife is subject to a permit, which cannot be issued unless that import is not detrimental to species and the applicant can house and care for the specimen and it is not being used for commercial purposes (art. 8). If wildlife was imported prior to CITES, an individual can apply for a pre-convention certificate allowing the possession of the wildlife (art. 11).

Eco-tourism activities are regulated under the Tourism Authority Act, 2008. Eco-tourism activities (nature-based tourism activities or adventure-related tourism activities, or both) must be licensed by the Tourism Authority; however, there are no specific provisions governing wildlife in the Act (art. 26).

12.7 Law enforcement

There are no significant provisions to be reported regarding enforcement.

13. SEYCHELLES

13.1 Overview of the legal framework

In Seychelles, the principal act of legislation governing wildlife is the **Wild Animals and Birds Protection Act**, enacted in 1961. Numerous regulations have been enacted pursuant to the Act, which protect certain species, including but not limited to Seychelles Pond Turtles, Giant Land Tortoises, and a variety of endemic birds. In addition, the **Birds' Eggs Act**, 1933, regulates the collection of bird eggs on the islands.

Other related legislation includes the **National Parks and Nature Conservancy Act**, 1969, which provides for the establishment of strict and special nature reserves to conserve wildlife. The **Environment Protection Act**, passed in 1994, provides the framework for long-term protection and sustainable management of the environment and is also applicable to the protection of wildlife, given that the definition of environment includes the interrelationship between air, water, land, humans, and other living creatures (art. 2).

13.2 Institutional setup and role of stakeholders

The **Ministry of Environment and Natural Resources** is responsible for implementing policies for environmental protection (Environment Protection Act, art. 4). The **Department of Environment** is established under the ministry and consists of four divisions: policy, planning and services, nature and conservation, landscape management and pollution control and environmental impact. The **nature and conservation division** has the greatest impact on wildlife protection (Ministry of Environment Website (www.env.gov.scl)).

Additionally, a **National Environmental Advisory Council** is created under the Environment Protection Act and, among other duties, has the responsibility to consider matters affecting the quality of environment and advise the Minister of Environment and Natural Resources of same (art. 5). The Council members are appointed by the minister from government bodies, non-governmental organizations and associations having environment-related functions. At least one member is a person of knowledge and experience in environmental matters (art. 5).

The **Seychelles National Environment Commission** (Commission) is the governing body of state parks and reserves under the National Parks and Nature Conservancy Act. It is also the governing body implementing the specific regulations issued for each protected area (art. 3). The Commission is headed by the minister as Chairman and must have at least 5 members (Schedule 1). Pursuant to the Act, the duties of the Commission include drawing up national policy for the environment, reviewing and revising the policy as necessary and coordinating activities, including those of the government, that concern conservation of the environment (art. 3). However, environmental policy is now implemented by the Ministry of the Environment (Ministry of Environment Website www.env.gov).

Requirements for **public participation** in decision-making regarding wildlife exist with specific regard to the establishment of protected areas and environmental impact assessment (EIA). When the Commission

proposes to declare an area as a natural park, reserve, or place of outstanding beauty, it must publish notice of its intent for three consecutive weeks (National Parks and Nature Conservancy (Procedure for Designation of Areas) Regulations, art. 2). The notice must describe the area, advise where a map of the area can be publicly inspected, and allow 28 days for the public to respond (art. 3). Public responses must then be considered by the Commission (art. 5). Likewise, when an EIA is prepared and considered, public notice for submission of comments must be given in two issues of a newspaper publication, with at least a seven-day interval in between, and possibility of inspection must be given (Environment Protection Act, art. 15).

13.3 Wildlife tenure and use rights

Legislation in Seychelles does not provide for the ownership of wildlife, but it places a duty of protection and conservation of animal species on the state. In fact, there seems to be no general right to hunt or recover damage caused by animals. Individuals have a derivative right to the protection of endemic wildlife through the EIA process. A person who undertakes an activity in a protected or ecologically sensitive area (natural habitats for rare protected or endemic species of fauna and flora) must carry out an EIA to be reviewed by an Environmental Appraisal Committee (Environment Protection Act, art. 15). It is interesting to note that the framework for the EIA requires that the applicant provide analysis of any **direct or indirect effects on population of fauna** (art. 15). However, the Administrator of the Act is the sole individual that can initiate prosecutions or interlocutory orders for violations of the Act (art. 17).

13.4 Wildlife management planning

Based on existing legislation, there is no requirement to survey the status of wildlife populations or for the planning of management of wildlife generally or of specific species. However, the Commission may create management plans for national parks and reserves (National Parks and Nature Conservancy Act, art. 16). Specific regulations for national parks and reserves, adopted under the National Parks and Nature Conservancy Act, provide a framework for management of the areas.

There are no requirements to involve any concerned stakeholders in the preparation of these plans.

13.5 Wildlife conservation

Legislation in Seychelles provides for extensive wildlife conservation. The Commission can designate any area as a natural park, strict natural reserve, special reserve or area of outstanding beauty (National Parks and Nature Conservancy (Procedure for Designation of Areas) Regulations, art. 2). The areas are classified as follows:

- a national park can be set aside for the preservation of wildlife;
- a special reserve can be created to protect characteristic wildlife and all other activities are subordinated to this end; and
- a strict natural reserve area can be set aside for free interaction of all natural ecological factors (National Parks and Nature Conservancy Act, art. 2).

The declaration of privately owned land to be a reserve requires the owner to refrain from any activities that would adversely affect bird life; however, the costs to take measures to protect species, as directed by the Chief Agricultural Officer, are borne by the state (art. 7).

In addition, the Wild Birds Protection (Nature Reserves) Regulations provide for the declaration of wild bird nature reserves (art. 2). There are seven reserves and parks that are regulated by the Commission (See National Parks (Aldbara Island Special Reserve) Regulations, National Parks (Aride Island Special Reserve) Regulations, National Parks (Cousin Island Special Reserve) Regulations, National Parks (Curieuse Marine National Park) Regulations, National Parks (La Digue Veuve Special Reserve) Regulations, Port Launay Marine National Park Regulations 1981, St. Anne Marine National Park Regulations).

In national parks and reserves, any form of hunting, disturbing animals, grazing, and introduction of new species is strictly prohibited (National Parks and Nature Conservancy Act, art. 10). Under the Wild Animals and Birds Protection Act, various

regulations have been enacted to protect certain species. The regulations prohibit the taking, killing, keeping, selling, exhibiting, importing and exporting of the Giant Land Tortoise, Seychelles Pond Turtle, and other species of turtles (Wild Animals (Giant Land Tortoises) Protection Regulations, Wild Animals (Seychelles Pond Turtle) Protection Regulations, Wild Animals (Turtles) Protection Regulations). The Wild Birds Protection Regulations prohibit killing, taking, purchasing, selling, exhibiting and exporting of wild birds of wild birds: exceptions regarding certain birds and establishing time periods are included in the regulation (art. 3).

13.6 Wildlife utilization [hunting, eco-tourism, ranching, trade and other uses]

Pursuant to the Wild Birds Protection Regulations, certain birds are not protected, and thus, may be hunted (art. 3). **Exporting birds' eggs** is strictly regulated. The Birds' Eggs Act gives the minister power to create regulations regarding close seasons, exporting, and taking of birds' eggs (art. 3). Exporting birds' eggs or products is prohibited unless that person has been allotted a share of the quota under the Act (Birds' Eggs and Birds' Eggs Products (Exportation) Regulations, art. 2). A 1941 Order establishes the export quota of birds' eggs at 20 tons, although it is unclear whether this Order is still enforced (Order relative to quota of birds' eggs and products).

As the Seychelles were uninhabited until the discovery of the islands, there is no legislation addressing the customary usage rights of indigenous peoples. In addition, neither breeding, community-based wildlife management nor eco-tourism are specifically addressed by current legislation.

13.7 Enforcement

For wild bird reserves, the President can appoint **wardens** and resident wardens to implement regulations protecting wild birds (Wild Birds Protection (Nature Reserves) Regulations, art. 3).

14. SUDAN

14.1 Overview of the legal framework

The principal wildlife legislation available for Sudan is the **Ordinance for the Preservation of Wild Animals** (hereafter referred to as Wildlife Ordinance), dating back to 1935. It is implemented by regulations on game (1936, as amended) and on national parks, sanctuaries and reserves (1939, as amended).

The **Environmental Protection Act** of 2001 establishes a High Council for the Environment and Natural Resources, but does not specifically address wildlife.

The **Forests and Renewable Natural Resources Act for the year 2002** is the current forestry legislation, which replaced a 1989 Forest Act. The Act does not address wildlife, even though referring to "any renewable natural resources such as forests, their crops, water resources, range, fodder, soil, natural range and plants". The Forestry Commission Act of 2003 regulates the composition and functions of the Commission. The Timber Utilization and Management Act of 2003 regulates the grant of timber rights but does not address the use of wildlife resources nor of any existing usage rights within concerned areas.

14.2 Institutional setup and role of stakeholders

The Wildlife Ordinance vests all relevant powers in the "Minister of Animal Resources", authorizing the delegation of any powers to the Assistant Director of the **Game and Fisheries Department** (art. 3A).

An "independent corporation" – named the "**National Forests and Renewable Natural Resources Corporation**" – with an administrative Council to be in charge of the corporation's affairs, is established by the Forests and Renewable Natural Resources Act for the year 2002 (arts. 4 and 7). Members of the Council must represent relevant competent authorities (art. 7). The tasks of the Corporation include the promotion of afforestation and "investment services, where the private sector cannot operate individually". Another task of the corporation is to "encourage effective popular participation" (art. 5).

A **Forestry Commission** is in place “for the regulation, management and utilization of forests and forestry resources” (Forestry Commission Act, art. 5). Its functions include advising on national policy and practices related to forest and associated resources and keeping a “comprehensive database on national forestry resources for decision-making” (art. 5). Members of the Commission must include persons with sufficient knowledge and experience in forests (art. 8).

Pursuant to the Environmental Protection Act, the **High Council for the Environment and Natural Resources** includes concerned Ministers as well as other persons with appropriate knowledge and experience.

14.3 Wildlife tenure and use rights

The Wildlife Ordinance does not include a general statement regarding wildlife ownership. However, all protected animals and their parts are property of the state when:

- an offence has been committed;
- they are accidentally killed or killed in lawful self-defence; and
- they are found dead by any person not being the person who has lawfully killed the animal (Wildlife Ordinance, art. 22).

“Reasonable measures” against protected animals may be taken in defence of persons or to prevent serious damage to property (art. 10).

14.4 Wildlife management planning

There are no provisions addressing management planning in the available legislation.

14.5 Wildlife conservation

National parks, sanctuaries and animal reserves may be established by regulations (Wildlife Ordinance, arts. 12(A), 13 and 14). No hunting is allowed in national parks and sanctuaries (arts. 12(A) and 13). In animal reserves, hunting of such species as may be specified by regulations is prohibited, except under a “special permit” (art. 14).

National parks and reserves are respectively listed in schedule to the National Parks,

Sanctuaries and Reserves Regulations. In the case of reserves, the schedule includes also a list of animals whose taking is prohibited in the various reserves. Any shooting, except for self-defence, is prohibited in national parks (reg. 4). Introducing any wildlife is also prohibited (reg. 7).

“**Reserved areas**” may be created by an order of the Minister under the forestry legislation. The order is to specify “non-confiscated rights”, following a review of claims by the National Forests and Renewable Natural Resources Corporation. The relevant provisions are somewhat unclear, as the area must be “located in a state-owned land”, but measures “relating to the cancellation of property” must be taken by the corporation in accordance with the law (Forests and Renewable Natural Resources Act, arts. 27–28).

Animals listed in schedules to the Ordinance are to be considered as “**specially protected**” (schedule I and II, arts. 4–5) or “**protected**” (schedule III, art. 6). Any licence may be cancelled in case of wasteful or cruel shooting (Wildlife Ordinance, art. 7). Section 14.7 provides further details regarding provisions authorizing the taking of protected animals to obtain meat in exceptional circumstances.

14.6 Wildlife utilization (hunting eco-tourism, ranching, trade and other uses)

Schedule I animals may be hunted or captured only under a “**special permit**”, which may be issued for scientific or essential administrative purposes (art. 4). Schedule II animals may be hunted only under a “**special licence**”, except for elephant and giraffe, whose hunting may be authorized by a chief or local authority as long as no firearms are used (art. 5). Schedule III animals may be hunted without a licence, if without firearms, or otherwise with an **ordinary “licence”** (art. 6). **Traditional hunting** is therefore basically authorized without a licence under this section. Ordinary licences may be refused if a person is not in possession of a suitable weapon or in case of violations of the wildlife legislation of Sudan or of other countries (Game Regulations, reg. 4 (3)).

Holders of ordinary or special licences must keep a record of animals killed or captured, specifying various details (Game Regulations, reg. 3).

A provision that is not common in the region authorizes the killing of protected animals (i.e. those listed in schedules I, II and III) to obtain meat “in case of urgent necessity” (art. 11). The killing must be reported. In the case of “natives”, however, a report is necessary only in the case of killing of specially protected animals (i.e. those of schedules I and II) (art. 12).

The **export** of any protected animal requires a permit (art. 19). Sale or exposure of protected animals is prohibited, unless authorized by regulations (art. 21). Other wildlife-related activities, such as ranching or tourism, are not addressed.

14.7 Law enforcement

The Wildlife Ordinance briefly addresses **honorary game wardens**, defining them as persons appointed as such by the minister (art. 3). As in other countries, therefore, honorary wardens may be appointed to cooperate with official wardens in enforcing the law. There are no legal provisions providing incentives in this regard.

15. SWAZILAND

15.1 Overview of the legal framework

There are several pieces of legislation that address wildlife management in Swaziland. The **Game Act**, originally enacted in 1953 and amended in 1991, is the principal legislation governing the conservation of wild game. Similarly, the **Wild Bird Act**, enacted in 1918, serves to protect wild birds. In addition, the **Game Control Act** of 1947 concerns the control of game that constitutes a danger to stock, crops or other natural resources.

The **Environmental Management Act**, passed in 2002, provides the framework for protection, conservation and sustainable management of the environment, which, according to the definition provided in the Act, includes living organisms other than humans (art. 2). In fact, one of the objectives of the **Environment Authority**, created

under the Act, is to ensure proper treatment of the environment that specifically includes but is not limited to fauna (www.environment.gov.sz). The **Private Forest Act**, 1951, is also relevant, as forest produce under the Act includes game. Finally, the **National Trust Commission Act**, 1972, also serves to protect wildlife in national parks and reserves in Swaziland.

15.2 Institutional setup and role of stakeholders

The **Swaziland Ministry of Tourism and Environmental Affairs** was established in 1996 and, among its other duties, is responsible for the protection and development of wildlife. Within the ministry are the **Swaziland Environmental Authority** and **National Trust Commission**, both of which serve to preserve wildlife. Members of the National Trust Commission are appointed by the Deputy Prime Minister, while the Commission can then elect up to four additional members with expert knowledge or experience (National Trust Commission Act, art. 4). The issuance of licences for hunting, capture and trade in wildlife is at the discretion of the Minister of the Environment who determines the type and amount of wildlife that may be hunted in a sustainable manner (Game Act, art. 11). All government wildlife authorities are arguably limited in their broad discretion by the general principle of sustainable management of the environment which is defined as protecting and managing the use of natural resources in a manner that maintains the life-supporting capacity and quality of ecosystems, including living organisms, to enable future generations to meet their reasonably foreseeable needs (Environmental Management Act, arts. 2 and 7).

Non-governmental stakeholders are more involved in the various governing boards. The Swaziland Environmental Authority institutes measures for the implementation of the Act and ensures coordination with other government agencies to protect the environment (Environmental Management Act, art. 12). In addition to the members of the **Management Board** who represent government agencies, one member with a particular knowledge of the environment must be nominated by the public and one

must be from a non-governmental organization, the main purpose of which is to protect the environment (art. 13). The **Swaziland Environmental Fund** also must have two members of its Board of Trustees from non-governmental organizations that promote the conservation of the environment (Environmental Management Act, art. 24). The fund is specially designed so that it may only be utilized for programmes, projects and activities that provide for and promote the protection, conservation and enhancement of the environment and community involvement in same; however, it may not be used for operating costs of the Authority (art. 23). Monies for the Fund are provided through a combination of funds appropriated by the state, donations from various international and non-governmental organizations and funds collected from fees and fines imposed under the Act (art. 25).

Legislation concerning wildlife in Swaziland does provide for a limited amount of **public participation** in decision-making, particularly in the Environment Management Act. For example, the Director of the Authority must consider any public comments on the application for a licence to undertake a project that may impact the environment (art. 52). Any person may in writing request the Director of the Authority to investigate alleged violations of the Act (art. 57). Similarly, any person may in writing request the Director to issue an order under the Act (art. 56). The legislation also provides a degree of transparency in decision-making by the Environmental Authority as any documents required to be submitted under the Act are subject to public review (art. 52). If there are at least ten written and substantiated objections, the minister must, with prior notice, convene a public hearing regarding the document (art. 52). Furthermore, the issuance of notices of acceptance of environmental impact assessments and environmental audit reports by the Environmental Authority are subject to public review and possible public hearing (Environmental Audit, Assessment and Review Regulations, 2000, arts. 11–12).

With regard to **access to justice**, any person may sue for damages, an injunction, or protective order with regard to acts or omissions that contravene the Act, whether or not that person has been affected by the

violations of the Act. However, no costs or damages will be awarded if the court finds that the motivation for the filing of an action was not for the protection of the environment (Environmental Management Act, art. 58).

15. 3 Wildlife tenure and use rights

Although legislation in Swaziland does not clearly assign a right of ownership of wildlife, based on the Constitution (2005), the state ultimately owns wildlife and has the duty to protect and conserve it (Constitution of Swaziland, art. 210). Under the Game Act, the minister is given sole discretion to issue hunting licences, which allow pursuing, taking, killing or wilfully disturbing game (arts. 2 and 9). Wildlife found on private land belongs to the landowner, as no person can hunt on private forest lands without the permission of said owner (Private Forest Act, art. 4).

With regard to **indigenous communities**, individuals lawfully residing in a Swazi area (Ngwenyama land) or owners, lessees, or managers of land can hunt for small game without a licence, except in the closed season (art. 15). Similarly, the legal residents of Swazi areas are afforded additional rights, as they are the only ones permitted to hunt on Swazi land without permission of the Ngwenyama (ruler) (Safeguarding of Swazi Areas Act, art. 4). Any person convicted of causing damage to any Swazi area due to hunting must pay recovery to the Ngwenyama, who thereby distributes the proceeds to the persons affected or as he sees fit (art. 6).

With regard to **human-wildlife conflicts**, landowners or occupiers are granted the right to kill small game which is causing damage to crops and is within the cultivated land of the owner or occupier (Game Act, art. 16). The Minister of Agriculture can direct the owner of any holding (including Swazi Nation indigenous peoples) to reduce any species of game that the minister deems to constitute a danger to stock, crops, grazing, or other natural resources (Game Control Act, art. 3). If the owner fails to reduce said species of game within one month, the minister may undertake measures to perform such reduction and expenses incurred by the minister may be offset by the sale of carcasses of any destroyed game (arts. 5 and 8).

15.4 Wildlife management planning

Currently, there are no specific provisions requiring wildlife management plans. The National Trust Commission is required to manage and control state reserves and parks but no management plan is required (National Trust Commission Act, art. 6). There are, however, legislative provisions which require ongoing environmental reporting which can, according to the definition of natural resources as abovementioned, affect wildlife. Every three years, each Cabinet Minister must ensure that an **Environmental Management Strategy** for each government ministry for which the Cabinet Minister is responsible is prepared and submitted to the Authority for approval (Environmental Management Act, art. 7). The Strategy must contain a description of the principal effects produced by the activities regulated by the ministry on the environment and the sustainable management of natural resources (art. 7). Furthermore, every two years, the Minister of the Environment must publish a **report on the state of environment** (art. 29).

15.5 Wildlife conservation

The establishment of national parks and nature reserves is a power of the Deputy Prime Minister, who, upon recommendation of the National Trust Commission and after consultation with the Prime Minister, may by notice proclaim any state-owned area to be a natural park. In addition, the Deputy Prime Minister can declare private or public land to be a nature reserve or be part of an existing reserve, if the Commission gives one month's notice to the owner and attempts to enter into an agreement with the landowner to manage the reserve land. However, no Swazi Nation Land can be declared a park without obtaining the written permission of the Ngwenyama who may impose restrictions as he may deem fit (National Trust Commission Act, art. 12). The Commission manages these parks and reserves and ensures the preservation of indigenous animals in a natural state (art. 16). It can also set aside breeding places for certain species (art. 16). Activities, such as hunting, molesting, injuring or removing animals are prohibited in the reserves and parks (art. 20). In addition, the Minister of Environment may, by notice in the Gazette, declare a sanctuary, prohibiting hunting of certain

species or class of game (Game Act, art. 6). Furthermore, the minister can declare prohibit hunting in a private forest even without the permission of the owner or person lawfully in control (Private Forests Act, arts. 2 and 4). Given that forest produce under the Act includes game, it is also unlawful to injure or remove wildlife from these areas (arts. 3 and 12).

15.6 Wildlife utilization (hunting, eco-tourism, ranching, trade and other uses)

Hunting is prohibited in national parks and reserves (National Trust Commission Act, art. 20). Hunting without the written permission of the Ngwenyama is prohibited on Swazi Nation lands (Safeguarding of Swazi Areas Act, art. 4). Similarly, no person can hunt in private forest lands without the permission of the owner (Private Forest Act, art. 4). The Game Act sets forth the circumstances in which hunting is permitted, and lists which animals may be hunted with a licence (art. 8). **Licences** for hunting in game reserves are issued at the sole discretion of the minister (art. 9). Unlimited discretion is allowed the minister who may issue **permits to hunt** large or small game at specified conditions and times (arts. 9 and 16). Disturbing, destroying, selling or purchasing youth of game is generally prohibited unless written permission is obtained from the Commissioner (art. 20).

Hunting violations result in severe punishment under the Act. An offender convicted of illegally hunting "specially protected game" can be punished with imprisonment without the option of a fine and illegally hunting "royal game", as listed in the Schedule to the Act, can result in stiff fines or imprisonment for up to five years (art. 8).

The export or sale of **game meat** without a licence is prohibited (Game Act, art. 17). Wild skins may not be sold without written permission of Principal Veterinary Officer (art. 19). The Wild Birds Protection Act prohibits the selling or exporting of wild birds (art. 3). The Act further provides for confinement minimum requirements for wild birds (art. 8).

Eco-tourism is not explicitly addressed in current legislation. Nevertheless, camping in game reserves is permitted with written

permission from a game ranger or district commissioner (art. 5).

As discussed above, persons lawfully residing in a Swazi area, owner, lessee or manager of land may at any time except for the closed season hunt small game without a licence (Game Act, art. 15). However, other **customary usage rights** to indigenous peoples, as well as breeding, do not seem to be addressed in current legislation.

15.7 Enforcement

Pursuant to the Game Act and National Trust Commission Act, **game rangers** and **park wardens** are appointed by the Minister of the Environment in consultation with the Swaziland National Trust Commission.

Those who provide information which leads to the arrest and conviction of a person who has violated the Game Act will receive an award, the amount of which is determined by the minister (Game (Amendment) Act, art. 29).

LIST OF LEGISLATION CITED

BURKINA FASO

Loi n° 006/97/ADP portant Code forestier au Burkina Faso. 31/01/1997.

Décret n° 96-061/PRES/PM/MEE/MATS/MEFP/MCIA/MTT portant réglementation de l'exploitation de la faune au Burkina Faso. 11/03/1996.

Décret n° 98-305/PRES/PM/MEE/MTT portant réglementation des concessions de gestion de la faune et des activités de concessionnaire et de guide. 15/07/1998.

Raabo n° 0020/CNR/PRES/MET/MATS portant organisation des chasseurs au Burkina Faso, 1985. 26/11/1985.

Raabo n° AN-VII 0001/F/MET/MAT/MF portant définition et réglementation de la chasse villageoise, 1989. 14/08/1989.

Décret n° 2008-312 /PRES/PM/MECV/MATD/MEF du 9 juin 2008 portant conditions de création et de gestion des Zones villageoises d'intérêt cynégétique. 09/06/2008.

Arrêté n° 2004-017/MECV portant modalités d'organisation d'examen de guide de chasse. 07/07/2004.

Arrêté n° 2004-018/MECV portant conditions d'utilisation des armes à feu pour l'exercice de la chasse au Burkina Faso. 07/07/2004.

Arrêté n° 2001-051MEE/SG/DGEF/DFC portant composition des dossiers de demande de licence de guide de chasse et de titre de concessionnaire. 23/11/2001.

Arrêté conjoint n° 96-022/MEE/MICA/MEF portant fixation des taxes, redevances et titres d'exploitation de la faune au Burkina Faso. 23/12/1996.

Décret n° 2008-171/PRES/PM/MEF/MECV/MAHRH du 16 avril 2008 portant création d'un Office National des Aires Protégées. 16/04/2008.

Arrêté n° 244/MF/M.E.T. portant recrutement de pisteurs occasionnels et répartition des frais de pistage. 12/03/1984.

Arrêté conjoint n°. 01-48 MEF/MATD/MEE portant institution d'un Fonds d'aménagement forestier. 08/11/2001.

Loi n° 005/97/ADP portant Code de l'environnement au Burkina Faso. 30/01/1997.

Décret n° 2001-342/PRES/PM/MEE portant champ d'application, contenu et procédure de l'étude et de la notice d'impact sur l'environnement. 17/07/2001.

Décret n° 2008-125/PRES/PM/MECV du 7 mars 2008 portant création, attributions, organisation et fonctionnement des cellules environnementales dans les différents départements ministériels, les régions administratives et les entreprises publiques et privées. 06/03/2008.

CAMEROON

Loi n° 94/01 du 20 janvier 1994 portant régime des forêts, de la faune et de la pêche. 20/01/1994.

Décret n° 95-466/PM du 20 août 1995 fixant les modalités d'application du régime de la faune. 1995-07-20

Décret n° 2005/099 du 06 avril 2005 portant organisation du Ministère des Forêts et de la Faune. 06/04/2005.

Décret n° 96/238/PM du 10 avril 1996 fixant la rémunération de certains services rendus au titre de l'application du régime des forêts et du régime de la faune. 10/04/1996.

Loi n° 78-23 du 29 décembre 1978 relative à la protection des parcs nationaux. 29/12/1978.

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