

***WILDLIFE LAW AND THE LEGAL  
EMPOWERMENT OF THE POOR  
IN SUB-SAHARAN AFRICA***

***BY***

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## INTRODUCTION

### 1. Initiatives for the improvement of wildlife legislation and legal empowerment of the poor

There is a wide variety of interests to be balanced in wildlife management. These interests range from the conservation of biodiversity and specific endangered species and their habitats, to valuable opportunities in eco-tourism or hunting tourism, to the needs and traditions of the local population relating to hunting and collection of animals or their products. In the case of rural communities in some parts of the world, especially where alternative sources of food and revenue are scarce, the impact of inadequate wildlife management which can result in decreased availability of bushmeat or cash or in exacerbated human-wildlife conflicts, may endanger the survival of wild animal species. However, this may be difficult to assess precisely, as based on existing literature, the actual degree of dependence of people on wildlife resources varies greatly. In any case, it is evident that the contribution of sustainable wildlife management to the reduction of poverty and food security, supported by appropriate legal frameworks, is essential. Nevertheless, enacting effective legal reforms in the area of wildlife management is challenging.

In 2007-2008, the Food and Agriculture Organization of the United Nations (FAO) and the International Council for Game and Wildlife Conservation (CIC) reviewed legislation on wildlife management in Western and Central Asia. This review launched a regional dialogue on international obligations and standards on wildlife management, based on current challenges at national and regional levels. Through this regional initiative, a set of design principles on how to develop effective national legislation on sustainable wildlife management was developed ([www.fao.org/legal/prs-ol/lpo75.pdf](http://www.fao.org/legal/prs-ol/lpo75.pdf)). These principles were developed to provide tools for the analysis of the comprehensiveness and effectiveness of existing legal frameworks, as well as provide guidance for amending or developing new wildlife management legislation based on existing international guidelines and best

practices. In addition, the principles were devised to build the capacity of decision-makers, legal drafters and resource managers to understand wildlife legislation, engage in participatory and inter-disciplinary legislative drafting, and use legislation to support sustainable wildlife management for the empowerment of the poor and environmental sustainability.

In 2009, FAO and CIC undertook to further refine these principles, taking into account the challenges faced and lessons learnt by wildlife legislators in different regions of the world. To this end, the present study examines the legislation of a select group of Sub-Saharan countries and provides an analysis of legal provisions concerning wildlife tenure (ownership and use rights, obligations and relation to land and forest tenure), public participation in wildlife decision-making and planning, and community-based wildlife management. The purpose is to identify legal tools that allow all members of society, and particularly disadvantaged people, to directly benefit from wildlife management, thereby, improving food security, alleviating poverty, enhancing rural livelihoods, and ultimately contributing to the process of "legal empowerment of the poor". (This concept has been developed by the Commission on Legal Empowerment of the Poor, established under the aegis of the United Nations between 2005 and 2008, and will be addressed in the context of wildlife management and wildlife law at section 3.1 of Part I of this paper). Both strengths and weaknesses of current legal frameworks may provide useful guidance to legislators with the objective of effective regulation of wildlife management to promote environmental sustainability, socio-economic development and the empowerment of the poor.

### 2. The contents of this study

Part I of this study includes an overview of the international legal instruments related to wildlife management, their relevance to the design of national legislation in furtherance of effective wildlife conservation, and the tools to promote sustainable use and participatory approaches for the empowerment of the poor and environmental sustainability (Part I, chapter 1). 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 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 twelve 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 those disadvantaged, 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.

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 they were not identified or not accessible during the preparation of the study. Another inherent limitation, in the case of desk reviews of legislation, as this study is based, 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](http://www.fao.org).

## PART I – INTERNATIONAL BACKGROUND AND EMERGING TRENDS IN NATIONAL LEGISLATION

### 1. INTERNATIONAL LEGAL INSTRUMENTS RELATED TO SUSTAINABLE WILDLIFE MANAGEMENT

Wildlife management has long been regulated at the international level. Initially this was implemented through a focus on the protection of certain species or wildlife habitats. More recently, the focus has shifted to more comprehensive approaches, epitomised by the innovative features of the Convention on Biological Diversity. All these international legally binding agreements are of key importance for the review and drafting of effective national legislation on sustainable wildlife management, either because they pose limits to the sovereignty of countries in regulating wildlife use and protection, or because they call for the operationalization of specific principles, methods and processes for the management, protection and use of wildlife.<sup>1</sup>

Among the species-based conventions, the **Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES, Washington, 1973)** protects endangered species by restricting and regulating their international trade through export permit systems. For species threatened with extinction which are or may be affected by trade (listed in Appendix I to the Convention), export permits may be granted only in exceptional circumstances and subject to strict requirements. The importation of these species also requires a permit, while trade for primarily commercial purposes is not allowed. For species which may become endangered if their trade is not subject to strict regulation (listed in Appendix II), export permits (including those for commercial trade) may only be granted if export is not detrimental to the survival of that

<sup>1</sup> For a more detailed discussion of the relevant international legal framework, see Morgera, E. and Wingard, J., *Principles for developing sustainable wildlife management laws*, FAO Legal Paper Online #75; and Birnie, P. and Boyle, A. 2002. *International Law and the Environment*, Oxford University Press (hereinafter, Birnie and Boyle).

species and if other requirements are met. A third list concerns species subject to national regulation and requiring international co-operation for trade control (listed in Appendix III). In this case, export permits may be granted for specimens not obtained illegally. Basically, the Convention requires states to adopt legislation that:

- designates at least one Management Authority and one Scientific Authority;
- prohibits trade in specimens in violation of the Convention;
- penalizes such trade; and
- calls for the confiscation of specimens illegally traded or possessed.

**The Convention on the Conservation of Migratory Species of Wild Animals (CMS, Bonn, 1979)** aims to conserve terrestrial, marine and avian migratory species throughout their range, thus requiring cooperation among "range" states host to migratory species regularly crossing international boundaries. With regard to those species considered endangered (listed in Appendix I), states must conserve and restore their habitats; prevent, remove or minimize impediments to their migration; prevent, reduce and control factors endangering them; and prohibit their taking. With regard to other species which have an unfavourable conservation status (listed in Appendix II), range states undertake to conclude global or regional agreements to maintain or restore concerned species in a favourable conservation status. These agreements may range from legally binding treaties (called Agreements) to less formal instruments, such as Memoranda of Understanding (MoU), and can be adapted to the requirements of particular regions. With regard to the latter, those agreements relevant to the countries covered in this study are the **Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA, 1995)** and the **Agreement on the Conservation of Albatrosses and Petrels (ACAP, 2001)**.

Among the area-based conventions, the Ramsar Convention calls upon Parties to designate wetlands in their territory for

inclusion in a List of Wetlands of International Importance. The Convention further requires parties to promote the conservation and wise use of the designated wetlands, for example by establishing nature reserves. The concept of "wise use" does not forbid or regulate the taking of species for any purpose; however, such use must not affect the ecological characteristics of wetlands.<sup>2</sup> The **World Heritage Convention** provides for the identification and conservation of sites of outstanding universal value from a natural or cultural point of view, which are included in the World Heritage List. Natural habitats may include areas which constitute the habitat of threatened species of animals of outstanding universal value from the point of view of science or conservation (art. 2). Parties to the Convention must adopt protective policies, create management services for conservation and take appropriate measures to remove threats (arts. 4–5).

Among the international commitments of a more general nature (calling for the operationalization of broad principles, methods and processes), the most notable arise in the **Convention on Biological Diversity (CBD)**, Rio de Janeiro, 1992). The CBD has three objectives, which include the conservation and sustainable use of biodiversity components (thereby including wildlife), as well as the fair and equitable sharing of the benefits arising from the utilization of genetic resources (art. 1). Sustainable use is defined as using biodiversity components in a way and at a rate that does not lead to the long-term decline of biological diversity, thus meeting the needs and aspirations of present and future generations (art. 2). This concept is particularly relevant for the sustainable management of wildlife as it entails, at a minimum, that countries monitor use, manage resources on a flexible basis, adopt a holistic approach and base measures on scientific research.<sup>3</sup> The main obligations of the CBD that have a bearing on national wildlife legislation are the following:

- adopting specific strategies, plans and programmes on biodiversity conservation and sustainable use and incorporating

- relevant concerns into any plans, programmes and policies (art. 6);
- including sustainable use of biodiversity as a consideration in national decision-making (art. 10(a));
- establishing a system of protected areas, rehabilitating and restoring degraded ecosystems and promoting the recovery of threatened species (art. 8);
- identifying and controlling all potential sources of adverse impacts on biodiversity, and carrying out environmental impact assessments of projects likely to have "significant adverse effects" on biological diversity (art. 14);
- conserving animals outside their natural habitats ("ex-situ conservation", such as in zoos, parks, etc.), with a focus on facilitating recovery and rehabilitation of threatened species and reintroducing them into their natural habitats under appropriate conditions, while at the same time avoiding threatening ecosystems and in-situ populations of species (art. 9);
- protecting and encouraging customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements, supporting local populations to develop and implement remedial action in degraded areas, and encouraging cooperation between governmental authorities and the private sector in developing methods for sustainable use (art. 10);
- building incentives into conservation and sustainable use objectives (art.11).

Overall, the most significant limits to the sovereignty of countries in regulating wildlife use and conservation derive from CITES and CMS Appendix-I listings, as state parties have limited, if any, flexibility in translating them into national legislation. In addition, both CITES and CMS explicitly allow states to adopt stricter domestic measures. Conversely, state parties have a variety of options in implementing the CBD obligations at the national level. Nonetheless, these broad principles and general obligations may have a highly innovative impact on the design of national legislation, particularly when introducing new concepts in a national legal framework (for instance, the participatory approach).

<sup>2</sup> Birnie and Boyle, at 618.

<sup>3</sup> *Ibid* at 638

Wildlife-related international agreements have been widely ratified by the countries covered in this study, with the exception of the CMS, as summarized in the table below (showing the date of entry into force of each agreement for a given country, except where otherwise indicated)<sup>4</sup>

	<b>CBD</b>	<b>WHC</b>	<b>CITES</b>	<b>Ramsar</b>	<b>CMS</b>	<b>AEWA (CMS)</b>	<b>ACAP (CMS)</b>
<b>Angola</b>	1998	1992			2006		
<b>Botswana</b>	1996	1999	1978	1997			
<b>Lesotho</b>	1995	2004	2003	2004			
<b>Madagascar</b>	1996	1983	1975	1999	2007	2007	
<b>Malawi</b>	1994	1982	1982	1997			
<b>Mozambique</b>	1995	1983	1981	2004			
<b>Namibia</b>	1997	2000	1991	1995			
<b>South Africa</b>	1996	1997	1975	1975	1991	2000	2004
<b>Tanzania</b>	1996	1977	1980	2000	1999	1999	
<b>Uganda</b>	1993	1988	1991	1988			
<b>Zambia</b>	1993	1984	1981	1991			
<b>Zimbabwe</b>	1995	1982	1981				

<sup>4</sup> Information from ECOLEX ([www.ecolex.org](http://www.ecolex.org)); last visited on 16 February 2009.

It should be further noted that wildlife may also be the subject of regional treaties. This is the case in the **Protocol on Wildlife Conservation and Law Enforcement to the Treaty of the Southern African Development Community**, which entered into force in 2003 and is binding upon Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Tanzania and Zambia (with Angola and Zimbabwe having signed the Protocol only). According to the Protocol, Parties undertake to, *inter alia*, adopt and enforce legal instruments necessary to ensure the conservation and sustainable use of wildlife resources, endeavour to harmonise their legal instruments governing wildlife use and conservation (art. 6), integrate management and conservation programmes into national development plans and assess and control activities which may be detrimental to such resources (art. 7). Measures for the conservation and sustainable use of wildlife resources are to be effectively enforced (art. 4 and 9) and a regional database on the status and management of wildlife is to be established to facilitate sharing of information (art. 8). Transfrontier measures, such as the establishment of conservation areas, are to be promoted (art. 4). In addition, a Wildlife Conservation Fund is to be established (art. 11), and the Tribunal of the South African Development Commission is designated to settle disputes arising from the implementation or interpretation of this Protocol (art. 13). Other relevant regional treaties include the African Convention on the Conservation of Nature and Natural Resources (Revised Version) of 2003 (to which Lesotho is a party and other countries in the region are signatories) and the Lusaka Agreement on Co-operative Enforcement Operations directed at Illegal Trade in Wild Fauna and Flora of 1994 (to which Lesotho, Tanzania, Uganda and Zambia are parties, and South Africa is a signatory).

## 2. EMERGING TRENDS IN WILDLIFE LEGISLATION

### 2.1 Wildlife legislation and other related legislation

The overview of the wildlife legal frameworks of the abovementioned countries demonstrates that almost every state has a specific piece of

principal legislation that regulates wildlife, and usually protected areas as well. A positive legislative trend which may be identified over the past twenty years is the comprehensive approach of the wildlife laws. These laws do not merely provide for the regulation of hunting, as was the case in the legislation of the previous decades. Rather, they extend to wildlife conservation and wildlife use for various purposes, devising arrangements for access to resources by different users, with the objective of sustainable management.

At the same time, other legislation exists regarding related subjects, such as forestry and environment or biodiversity, and frequently includes provisions concerning wildlife. This is understandable in light of the integrated approach to ecosystems that sustainable management of natural resources requires, necessarily disallowing the consideration of single resources in isolation. On the other hand, the existence of more than one law relating to the same resource may lead to possible overlap of management functions and therefore to conflicts - whether such conflicts arise between institutions or among different land and resource uses.

The analysis made shows that there are in fact a few problems of coordination among different laws affecting wildlife. Sometimes the problems are a direct consequence of loosely drafted definitions and reflect on important aspects, such as sharing of institutional responsibilities. A typical problem is exemplified in the definition of "forest produce" or "forest resources" as used in forest laws. This definition may include wild animals although not all the affected provisions of the law are intended to refer to animals. This is the case, for instance, of the provisions of the Forest Act of Malawi which defines forest produce as including wild animals and authorize the "collection" of "forest produce" for domestic needs on customary land (sec. 50). It is unlikely that the Act authorizes the taking or hunting of wild animals for domestic needs without a permit, especially given the use of the term "collect", which is less appropriate than the word "take" as a synonym of "hunt". In a similar case, in Zimbabwe, a consequence of the definition of "forest produce" is that different entities seem to be given responsibility for wildlife found in different categories of forest areas, because the

Forestry Commission's responsibility is limited to wild animals in "demarcated forests". If responsibilities are actually meant to be thus allocated – an approach which would perhaps be debatable in itself – this should be expressly stated, rather than implied with some uncertainty by the definitions sections. These discrepancies should not be overlooked, as they can only contribute to unsustainable management.

Other provisions in which problems of coordination tend to emerge are those establishing advisory bodies. The various relevant laws sometimes envisage more than one advisory body respectively responsible for environment, forestry and wildlife – an aspect further addressed in the following section. Before providing for the creation of new advisory bodies, an assessment of actual needs should be made. The overall objective should be to obtain independent advice and facilitate coordination among existing bodies. Where, for example, a body designed to advise as to environment and natural resources management is already in place, it may be unnecessary to create an additional agency to govern wildlife. This, however, may sometimes happen simply to meet the ambitions of certain sectors of the administration. Depending on the circumstances, it may thus be preferable to maintain a single forum for discussion of these matters. On the contrary, there may be valid reasons to establish a new body, such as the inadequacy of the composition or functioning of an existing body, the fact that the separate bodies would be advising two different ministers, or the desire to obtain independent advice.

Another area where coordination among different wildlife-related laws tends to be lacking is in the provisions regarding the adoption and content of management plans. The basis for integrated management of natural resources should ideally be comprehensive plans which address interrelated resources and land uses. However, where this is not possible, the objective of achieving coordination of the various applicable plans (for example, land use, forestry and environmental plans) should guide the legislative drafting process. Consequently, the law may require the process leading to the adoption of a single plan to systematically include consultation of all

concerned authorities, at the central and local level, in addition to the concerned public. It may also require aspects of certain management plans to be subject to the provisions of other management plans concerning the same subject. For example, in Namibia, hunting in classified forests is expressly required to comply with the forest management plans. In drafting the law, existing planning requirements of related laws and the responsibilities of pre-existing institutions will thus have to be considered. As a result, aspirations of single authorities may be curbed, limiting their role to the specified aspects of an overall environmental and land use management planning scheme.

In any case, whenever more than one authority is involved in a decision making process, provisions mandating coordination, or preferably institutionalizing it by making it part of decision making procedures, should always be included, as complete separation of functions is rarely possible in the environment and natural resource sector. It is therefore advisable to include requirements for coordination in all laws addressing this sector.

## 2.2 Institutions and role of stakeholders

A description of the provisions regarding institutions and the participation of non-governmental actors in institutional mechanisms has been made in the sections devoted to "Institutional setup and role of stakeholders" of Part II of this study. The analysis shows that most countries in the region require the representation of various sectors of society in some aspect of wildlife-related institution. This form of participation strengthens the "empowerment" of certain sectors of society. Although the most disadvantaged people may rarely be directly represented at the institutional level, the increased participation of society at large in decision making (e.g. by non-governmental organizations and international donors) may indirectly contribute to support of their interests.

In the majority of cases, the requirements for representation of various interest groups apply to institutions whose function is limited to an advisory role, rather than to decision-making administrative authorities. For example, Malawi's Wildlife Research and Management

Board and the South African National Biodiversity Institute are both called upon to advise authorities in decision making, specifically in the wildlife sector. In Angola, the composition of the Council for Nature Protection explicitly includes representatives of farmers, hunters and environmental protection associations. In some cases, as in Lesotho, an advisory body with multi-stakeholder representation may be in place only at the level of environmental institutions, rather than specifically for wildlife. In other cases, as in Malawi and Namibia, more than one advisory body is in place, each of which is to respectively address environment, wildlife or forestry. In the case of Namibia, the composition of the Nature Conservation Advisory Board is not subject to specific representation requirements. This is unusual, however, when one considers the the high degree of involvement of the private sector in wildlife management in Namibia. Nonetheless, it should be noted that more recent legislation in Namibia has required representation of community-based organizations in certain wildlife-related entities, such as the state-owned Wildlife Resorts Corporation, confirming an overall trend towards increased consideration of local communities' interests.

Some countries require representation of various interests, not simply in advisory bodies, but in the managing entities of administrative authorities. Uganda, for example, requires the representation of various stakeholders in the managing Boards of both the wildlife and the environmental authorities. Similarly, in Zambia, representatives of the farming community and chiefs of local communities must be members of the Forestry Commission.

Another interesting example is the legislation of South Africa, which in setting out requirements for public participation in the bodies established to advise the minister on environmental and biodiversity matters, specifically requires the advertisement of membership openings in the bodies, rather than empowering a government official to appoint members in a top-down manner. Provisions of this type are a means of promoting equitable access to representative bodies and transparency in selections.

It should also be noted that advisory bodies may effectively be established at the central

and local levels with different functions. At the central level, functions usually entail providing advice concerning national plans, programmes and draft legislation. At the local level, advisory bodies may be more involved in local management planning and authorization processes. In Mozambique, for instance, local management councils are composed of representatives of local communities, the private sector, as well as associations and local authorities for the protection, conservation and promotion of the sustainable use of wildlife and forest resources. In Tanzania, local government councils may appoint local committees to advise the national-level Wildlife Authority and submit annual reports to it.

Other interesting institutional arrangements that may have a significant impact on the transparency and participatory nature of decision-making are those that provide means to facilitate access to justice for matters related to wildlife management. In Lesotho and Tanzania, special environmental tribunals are created to handle appeals of decisions related to natural resources management, which may impact upon wildlife management. In Uganda, a Wildlife Tribunal has been created to deal specifically with appeals of decisions made on the basis of wildlife legislation. Specialized judges may be better equipped to examine these decisions and the underlying delicate balance between the environmental, economic and social issues. In Angola and Mozambique, members of the public also have a right to request an injunction when their environmental rights may be negatively affected. In other countries, such as Madagascar and South Africa, environmental mediation is used to prevent or resolve conflicts within or among communities and/or public authorities. In the absence of these specific provisions, general provisions regarding the right to appeal administrative decisions concerning wildlife management should be referred to or inserted in wildlife laws, even where such rights are provided for in other legislation.

It should also be a duty of public authorities to inform users, particularly local communities, of their right to appeal and the ways in which they may exercise this right. In this respect, the law should specifically require that information regarding an appeal is clearly indicated in any administrative decision subject to same – for

example, in a fine, the rejection of an application or the suspension or cancellation of a licence.

Corollary to the institutional organization is the issue of ensuring that appropriate financial resources are devoted to wildlife management. This is a critical concern that may in practice negatively impact the implementation and enforcement of wildlife laws and the actual attainment of their objectives. Very seldom does legislation specifically address this topic, although a basis in primary legislation is necessary to earmark certain resources from the general budget to wildlife management. International standards do point to the need to re-invest wildlife management-generated revenues to wildlife protection and sustainable use. Almost all the laws which have been examined provide for the creation of funds, to support the environment, or more specifically to support wildlife management and/or forestry. These wildlife-related funds may be a way to set aside some public funds, possibly wildlife revenues as well as other sources, and permanently devote them to wildlife management. In the majority of cases, funds are only allocated to environmental protection and sustainable forest management, rather than specifically allocated to wildlife. In spite of this, wildlife may fall under the umbrella of environmental protection activities and be funded, as a result of the general coverage of the law governing these funds. In a few cases, however, wildlife-specific funds have been created or are expected to be created. This can be seen in draft legislation in Angola which explicitly includes wildlife conservation and sustainable use, repopulation, education and law enforcement among eligible activities to be funded. In Malawi, a fund is specifically devoted to conservation purposes (namely, national parks and wildlife reserves), and in Tanzania to wildlife protection purposes. It is not possible from an examination of the legal provisions alone to determine the actual effectiveness of these funds. Some provisions, however, seem to be better equipped than others to support the more needy sectors of society in accessing possible benefits. For example, the Namibian Game Products Trust Fund Act was amended in 2006 to require the representation of community-based organizations involved in sustainable wildlife resource management projects on the Fund's Board. Support of community-based

environmental management programmes is an express objective of Tanzania Mainland's National Environmental Trust Fund. In Zambia, non-governmental beneficiaries are explicitly identified as eligible for funding (specifically, persons in need of accessing natural resources without negatively affecting the environment, as identified by local authorities).

These provisions could be further strengthened by requiring adequate advertising of any available opportunities especially among rural communities, which would in turn contribute to the transparency throughout the process of operation of the funds. The law or the funds' operational rules could also permit some funding to be made available to assist communities, particularly disadvantaged people, in the formulation of proposals to be funded. The funding would assist those disadvantaged persons that would otherwise be unlikely to independently submit a proposal.

### **2.3 Wildlife tenure and use rights**

The issue of wildlife ownership and of people's rights with respect to wildlife is directly linked to the accessibility of benefits by them, whether such benefits are manifested in the form of financial benefits, material advantages, or limitation of damage caused by wildlife.

The laws which have been examined demonstrate a variety of approaches used to establish ownership of wildlife and rights of individuals with respect to wildlife. Some countries, such as Botswana and Zimbabwe, expressly recognize ownership of wildlife by the owners of land on which the animals are found or at least in some cases grant various privileges to landowners. Similarly, in Madagascar and Namibia, even if ownership of wild animals is not addressed in legislation, hunting rights are respectively reserved to the state on state land and to private owners on their respective property. In other places, as in Malawi, ownership of wildlife is expressly reserved to the state, although private land owners may decide whether or not to allow access onto their land by hunters.

The grant of hunting and other management rights to land owners by principal legislation, as seen in Namibia and Zimbabwe, has often served as a basis for successful private wildlife management initiatives, even where, as in

Namibia, ownership of wildlife has not been transferred to land owners. The security of rights being granted and, therefore, the clarity and stability of the legal provisions granting them, may in this case, be more important than ownership of the resources. Where, instead, management rights are linked to the ownership of resources and to the land on which they are found, as in Zimbabwe, a key factor becomes the security of title to the land, which may remain different between private holdings and customary communal land. In this case, the feasibility of successful wildlife management initiatives tends to rely less directly on wildlife legislation, and more on land legislation and its interrelation with land use customs.

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. In the laws which have been examined, measures such as the listing of protected animals, "problem animals" or "dangerous animals", is common. Frequently, rights are granted to land owners (but also, to some extent, other people who may suffer damage) to kill these animals. In some places, limitations to these rights are considered unjustified and it is argued that the right to self-defence should be further extended. In Namibia, for example, the applicable provisions have caused problems to conservancies because only animals threatening people or livestock may be killed, while the considerable damage they cause to crops and structures does not justify action (Boudreaux).

More often than not, the country's administration simply adopts lists of "problem" animals. Another way in which these provisions could be improved would be to implement some consultation over the adoption of relevant measures, focusing on the modification of rules to actual protection needs and the support of the people for any necessary restrictions. Basing applicable rules on an understanding and agreement with people who are mostly concerned by human-wildlife conflicts would be another tool for "empowering the poor", which would also have the likely beneficial effect of an overall improvement of compliance with the law.

Botswana moves beyond the possibility of eliminating "problem animals", by being among

the few countries which address the issue of compensation for damage caused by wild animals in principal legislation, although this is achieved in a somewhat contradictory way (as reported in Part II, section 2.3). Compensation schemes have been experimented with by other countries in the region, such as Namibia and Zimbabwe (Lamarque et al.). Although a compensation scheme for damage caused by wild animals may provide some relief in human-wildlife conflicts, the difficulties which have been experienced in practice in formulating and implementing effective compensation mechanisms are now seen as an argument against the necessity of such schemes altogether. Other arguments against a compensation scheme include the consideration that compensation does not address the cause of the problem but simply the symptoms, does not encourage precautionary measures and indirectly supports agricultural intensification (which may be unsustainable in certain areas) (Lamarque et al., reporting the position of various authors and of the IUCN African Elephant Specialist Group (AfESG) and the Human-Elephant Conflict Taskforce (HECWG)). Nonetheless, assuming that financial resources are available and that their use for compensation does not create an inappropriate impact on other uses of the same funds, legal frameworks could be strengthened in order to make compensation schemes more effective.

An even more useful, comprehensive approach to the management of human-wildlife conflicts is recommended in recent literature regarding this topic (Lamarque et al.). It would entail the involvement of communities mostly affected by the conflicts in the identification and implementation of strategies used to prevent and fight conflicts. In December 2007, Namibia adopted a "National Policy on Human-Wildlife Conflict Management" promoting this approach. Communities could, for example, be involved in setting out prevention measures, such as adequate land use planning aimed at mitigating conflicts with wildlife, identification of prevention measures, monitoring and surveillance. The legislation could set out appropriate measures accordingly. A few suggestions in this regard are given in the conclusions and recommendations (in this Part, section 3.3).

## 2.4 Wildlife management planning

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. Furthermore, the issuance of licences and permits for activities should be subject to the requirements of the management plans, thus making the plans legally binding. Similar requirements are not common in the legislation examined here, although examples of provisions which foresee some of these steps do exist.

The law of Uganda sets out one of the rare requirements to base measures on the result of scientific investigation, including monitoring of species and habitats, as well as the views of affected communities. Requirements to survey wildlife populations are also rare and, where they exist, tend to be generic. One example is the environmental law of Madagascar which requires inventories of all natural resources in consideration of their rational management. Another is the biodiversity legislation of South Africa which requires the Biodiversity Institute to report to the minister the status of listed species, and in turn, requires the minister to designate monitoring mechanisms to determine the conservation status of biodiversity components. In Zambia, the administration must take stock of natural resources. In Angola, the wildlife inventory is to be periodically updated and its results to be made public through a cadastre. In addition, licensed hunters must provide annual reports of their activities which include both factual information that may feed into wildlife information-gathering processes as well as suggestions on management measures that may feed into planning. Along the same lines, in Botswana, landholders should provide yearly reports on hunted animals.

Wildlife laws do not tend to include a general requirement to adopt wildlife management plans – whether for specific species, whole ecosystems or for all wildlife within national boundaries. One exception is the biodiversity legislation of South Africa, which envisages the adoption of plans for wild species upon the request of any person. Some planning requirements are more frequently found in environmental laws, as seen in Lesotho,

Tanzania, Uganda and Zimbabwe. Obviously wildlife management planning is not the specific focus of these plans. In some countries, however, such as under the environmental legislation of Namibia, the environmental authority may require sectoral authorities to prepare plans.

Another common requirement is to adopt management plans for protected areas –for example in Botswana, Malawi, South Africa, Tanzania, Uganda, and Zambia – or for forest areas (as in Malawi and Namibia). These protected area or forest management plans may focus particularly on wildlife in game reserves or areas similarly set aside for wildlife management purposes.

Requirements for public participation in management planning are fairly common but not all are equally appropriate. Some provisions appropriately envisage the participation of concerned stakeholders in the process of formulation of the plan, as seen in Tanzania's Mainland plans, Zanzibar's forest management plans and Uganda's wildlife protected areas' plans. In the case of South Africa, management planning is left to the initiative of individuals, organizations or organs of the state, who may submit a draft plan to the competent national authority.

Some other provisions, less appropriately, require that the plans address the needs of rural populations (as in Madagascar, Tanzania Mainland and Zanzibar) or set out areas for community participation (as in Botswana), or allow agreements with local communities for the plans' implementation (as in Malawi). These types of provisions seem to result in communities being addressed in the plan rather than being involved as actors in the process. Therefore, if these provisions are not accompanied by provisions promoting involvement of stakeholders from the early stages of shaping management objectives and measures before the plans become definitive, they are not likely to result in effective plans.

By genuinely involving concerned people, planning exercises are better equipped to account for traditional practices and knowledge, with the aim of assessing to what extent customary use may benefit wildlife and its ecosystems or to what extent it may cause negative impacts. Adequate venues for the

participation of local communities and traditional users are therefore necessary to duly take into account customary use and traditional knowledge issues. In Uganda, for instance, the legislation provides for a study of historical or cultural interests of any individual or class of persons resident in a wildlife conservation area.

The analysis also shows that legal frameworks for wildlife management planning generally remain fragmentary. The legislation could be used more effectively to provide a basis for sustainable wildlife management if the adoption of plans with all basic steps were more clearly and specifically required, including participatory conditions. This would have to be done within the context of other existing planning instruments, with the goal of comprehensively addressing a country's wildlife, as well as those species which are subject to particular pressure.

## 2.5 Wildlife conservation

Rules aiming at the conservation of wildlife are usually in the form of general statements requiring sustainability, general prohibitions, classification of species to be granted varying degrees of protection, creation of protected areas and the protection of wildlife from negative effects of other land uses. Although this study does not mean to analyze the adequacy of these provisions with respect to the objective of effective conservation, a few general observations may be made.

Among the weaknesses which may be noted is the lack of clear legal frameworks for management planning, already pointed out in the above section, which makes it difficult to achieve sustainability. Another weakness is the tendency to concentrate conservation efforts on more attractive species rather than all wild animals, and on protected areas rather than whole countries. Possible loopholes within the loosely defined exceptions to conservation regimes. In the case of Zimbabwe, for instance, "guests of the state" may be authorized to hunt in conservation areas, without any further criterion to ensure that environmental considerations are fully taken into account.

The conservation provisions which are most likely to affect the livelihood of rural people are

those regarding the creation and management of protected areas. Many laws require some form of consultation in this regard, both for declaration and management. In Lesotho, however, although public participation is envisaged in protected areas-specific management planning, a "protected natural environment" may be declared by the environmental authorities simply after consultation with line ministries. In Botswana, public notice of proposals for declaration is required only for national parks, while in the management of wildlife management areas some representative organisms (district councils and land boards) must be consulted. In Malawi, only the advisory board established on wildlife matters is to be consulted before the declaration of national parks or wildlife reserves. In contrast, in Madagascar, a thorough consultative process is set out.

The draft wildlife legislation of Angola takes a more comprehensive approach to the issues which may arise in relation between local people and protected areas, specifically addressing communities' presence and involvement in protected areas. The legislation protects human settlements in protected areas, provides guarantees for the relocation of people when justified by environmental necessity, and creates a series of incentives, benefits and rights to participate in planning for local communities.

Consultation is indeed essential to the seeking of agreement over competing land uses in this context, necessarily contributing to adequate land-use planning and prevention of human/wildlife conflicts. Where consultation is not required in a fairly detailed way, it is very unlikely that the less prominent members of society may be significantly involved and may draw any benefits from the process.

Provisions on environmental impact assessment (EIA), which exist in a number of countries, may either be included in general environmental legislation or in wildlife-specific legislation. EIAs may be required to assess impacts on wildlife by the use of specific arms, hunting methods, or commercial exploitation; by projects that may affect migratory routes or protected areas; by the proposed introduction of new species into the environment; or by activities that may result in restrictions to the existing use of natural resources. In addition,

specific wildlife impact assessments may be requested (as in Malawi and Zambia). Requirements for EIAs (as in Uganda) or specific wildlife impact assessments are usually adequate with regard to participatory requirements, but of course apply to the cases in which a significant environmental impact on wildlife is expected; thus not constituting a permanent participatory mechanism in wildlife conservation. Therefore, they may significantly contribute to conservation efforts, but may not be expected to be a significant means through which rural people will immediately benefit.

Legal obligations to involve concerned people in the adoption of conservation rules, such as classification of animal species or limitations to hunting, are even rarer than participatory requirements in the declaration and management of protected areas. One example is the provisions of Zimbabwe which require a consultative procedure for the declaration of protected animals and for the adoption of rules limiting hunting and allowing reduction of problem animals on alienated land. Another is the Angolan draft legislation, which envisages the drawing of lists of protected species following public consultations.

Laws which do not provide for the involvement of concerned communities in the designation and management of protected areas, tend to phase out or ignore existing use rights or set out prohibitions to use wildlife which, if actually applied, would result in a considerable cutback of local subsistence means and will inevitably result in problems of implementation and ineffectiveness. These problems may be even more acute where rules are imposed over areas and resources (as wild animals) which have always been perceived as belonging to the local communities, regardless of legal definitions of land ownership and wildlife ownership. Clear legal provisions requiring the involvement of concerned stakeholders are therefore necessary in the context of rules focusing on conservation.

## 2.6 Utilization

### 2.6.1 Authorizations for hunting, eco-tourism and other activities

Most countries require an authorization (whether it be in the form of "permit", "licence" or other) for various types of wildlife use and,

in particular, hunting. In a limited number of cases, some criteria is set out for the issue of such authorizations. For example, hunting in national parks or wildlife reserves in Malawi, or in wildlife protected areas in Uganda, is subject to the requirement that harvest does not exceed the sustainable yield. In other cases, although criteria for rejection of applications for some permits are very general – in Zambia for example it is sufficient for the applicant not to be considered a "fit and proper person" – the reasons for rejection must be expressly stated.

In most other places (as in Botswana, Tanzania and Zimbabwe) clear criteria for the issue of authorizations are not given. A useful means to promote sustainability would be to subject the issue of authorizations to applicable management plans, but this rarely happens. On the contrary, frequently prohibitions set out under the law for conservation purposes apply only "unless otherwise authorized" (or with a condition formulated in similar words). Therefore, discretionary powers given to the administration for the issue of authorizations, licences or permits, are quite extensive. This inevitably narrows the possibility of guaranteeing transparency in the process of issue of authorizations, which can easily result in a detriment to the people who are not in a position to put any pressure on the system. In turn, this may result in preferential treatment for more influential people and at the same time cause a threat to conservation. These considerations apply to hunting permits but also to all types of authorizations, licences or permits envisaged in the legislation examined, such as licences for professional hunters, professional guides or trophy dealers.

There are some examples of specific licences reserved to local people (as the special game licences of Botswana, or the game licences and bird licences of Malawi, which may be obtained by citizens dependent on hunting for their food, or the resident licences of Tanzania), which usually exist along with licences for activities to be practiced in the context of sports or tourism. The licences reserved to locals are presumably a means to grant local people some preferential treatment. In most countries licences devised for local people are in fact different from licences to be issued to foreigners for hunting tourism. This distinction does not necessarily result in a

privilege for potential "beneficiaries" and could in fact become a burden if activities which had long been carried out freely by rural people have after the adoption of the law become subject to the requirement of a permit. Customary usage rights were addressed in older legislation of Botswana, which presumably is now superseded, but as frequently happened in colonial-type legislation, these applicable provisions tended to phase out such rights rather than to protect them. Usage rights are given further consideration in Madagascar, where management of some protected areas is necessarily subject to an agreement made between the management entity and traditional holders of such rights. Furthermore, hunting with traditional weapons is allowed as a customary right, if limited to personal needs. In Malawi, forest produce may be collected without a permit for domestic needs. According to the definition, wild animals would be included, although as has already been noted, it is debatable whether "hunting" may be considered as included in the concept of "collecting". In Angola, the right of rural communities to use wildlife found in their community law according to their traditional practices is explicitly recognized but is subject to the obligation to avoid exceeding customary practices and causing negative impacts on wildlife. In Madagascar, an agreement is necessary between the traditional users and the protected area management entity, with the exercise of traditional rights being subject to the PA management plan.

While the provisions waiving general requirements for the benefit of local people remain rare, some concern must be expressed with regard to a tendency to introduce numerous rules for wildlife utilization even where this is not strictly necessary – a tendency which may be referred to as over-regulation. Examples may be found not only in requirements for permits for activities, which people have long practiced without the need for such permits, but also in provisions granting hunting privileges to landowners (in Botswana), which are implemented by regulations setting out related requirements for registration, apparently making the exercise of privileges more difficult. Where compliance becomes excessively burdensome, it is unlikely that rural people over whom the rules have been imposed are willing or able to obey

them, and this may lead to unacceptable consequences as unreasonable punishments or plain ineffectiveness of the legislation.

The tendency towards over-regulation can be a serious hindrance to the empowerment of the poor, where the law is perceived as a burden to be avoided, even if people manage to live away from its constraints. At the same time, however, the disadvantaged are then deprived of the security and opportunities the law can afford.

Wildlife use rights may also be granted under medium to long-term periods of time involving some exclusive use of land and the transfer of significant wildlife management responsibilities. Where local communities are meant to be involved, the legislation usually sets out a specific framework for this purpose (a topic addressed in the following section 2.6.4). Where the private sector is meant to be involved, these arrangements are usually referred to as concessions (addressed in section 2.6.5). These tools have significant legal and practical implications. As opposed to authorizations and permits, where the public administration remains fully in charge of management planning, concessions and similar long-term arrangements effectively transfer the right to plan and make management decisions for a certain area to non-governmental stakeholders. Thus, concessions make non-governmental stakeholders responsible and accountable while at the same time providing them some flexibility and incentives for reaching long-term sustainability objectives. Such transfer of responsibility from public authorities to local communities and the private sector, however, does not deprive authorities of their monitoring, advisory and law enforcement functions. To the contrary, national authorities remain responsible for the overall supervision of various concessions or similar arrangements over national territory, with the goals of preventing and mitigating cumulative effects on wildlife and ensuring protection of internationally listed species, particularly migratory ones.

#### 2.6.2 Sharing of benefits

Provisions regarding the sharing of money or other benefits derived from wildlife between the administration and the people have been

expressly included in the wildlife legislation of a few of the countries examined in this study. These provisions are drafted with the goal of supporting local communities. In the case of draft legislation in Angola, the relevant provisions aim to ensure that wildlife management contributes to social and economic development, particularly to local communities through the promotion of tourism and the participation of communities in the benefits derived from protected areas management. In some cases, communities are by law granted a share of the revenue derived from wildlife, regardless of their involvement in management. The law of Zambia, for example, reserves 50 percent of licence fee revenues to community resources boards and part of the meat of hunted elephants to the local community. In Angola, local communities have a right to 15 percent of PA entrance fees. In Mozambique, 20 percent of any fees related to wildlife use should be allocated to local communities residing in the area in which the use took place. In Uganda, a wildlife fund was created to collect 20 percent of park entry fees and transfer them to local governments of surrounding areas.

It is interesting to note that certain countries prefer to channel financial benefits to local administrations, which will administer the funds for the benefit of local communities (in the case of Botswana, for instance, fees collected from hunting are allocated to district councils; in Tanzania, park entry fees are transferred to the local government). In other instances, in Mozambique where "community funds are established to this end, funds are directly attributed to communities themselves, which are to set-up accountable systems for the management of the funds. Similarly, in Zambia, proceeds from the sale of hunting licenses are in part allocated to local communities, and guidelines for the use of these funds are provided by the authorities.

Other benefits may also be realized, such as priority in the allocation of the right to manage areas for ecotourism purposes or in the provision of services related to accommodation and guided tours; the possibility of receiving monetary prizes for the local residents that have best served the conservation of protected areas; or priority in access to training and local employment opportunities.

The actual impact of any of these provisions on the livelihood of the rural poor may vary depending on how money is spent or other advantages are distributed. Furthermore, even where the share of benefits allocated to people happen to be generous, they may still be considered far from fair by the people concerned, especially where they perceive animals and/or land as their own property, contrary to official statements of the legislation. In drafting legislation, efforts will have to be made to set out equitable arrangements, facilitating the resolution of similar conflicts, rather than ignoring them.

In addition, legislation sometimes regulates the sharing of revenues derived from wildlife management initiatives which communities or others may undertake. This aspect is briefly addressed in the following section on community based wildlife management initiatives (section 2.6.3). In any case, the genuine involvement of rural people in wildlife management and their participation in the sharing of revenue to which they have contributed is likely to be more successful than the option of fees being distributed by the administration.

### 2.6.3 Legal frameworks for community-based wildlife management

Provisions setting out arrangements for community-based natural resource management have become fairly common in the regions being considered, as evidenced in Madagascar, Malawi, Namibia, Tanzania including Zanzibar and Zimbabwe.

One legal option is to set up "community use zones", which in the case of Botswana, may be set up within national parks or game reserve management plans and can be used for commercial tourism activities but not for hunting. Similarly, in Mozambique, special areas of "historic-cultural value" are identified with the purpose of allowing the use of wildlife for religious and other cultural practices by local communities. Another option is to have communities organized in a group ("communautés de base" in Mozambique for instance) that is recognized by the administration and subject to a management agreement. In Namibia, "conservancies" or "wildlife councils" can be created by local communities to manage wildlife on communal

land. In Zambia, "community resource boards" may be registered for wildlife management purposes. Agreements are also provided for in Malawi, specifically for the implementation by communities of previously developed management plans. Alternatively, in Mozambique, "community hunters" are recognized by their community and registered with local authorities. Yet another option is to include community representatives in state-owned companies that directly manage wildlife resorts (Namibia).

Some of the legislation is appropriately formulated and include a number of useful requirements for local management of natural resources, as exemplified by 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;
- groups or communities applying to enter into a community-based arrangement must specify how they have been made aware of the proposal;
- 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. All of these are among the most important factors in helping the poor participate in decision making and subsequent 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 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 management plan based on an inventory of resources and setting out activities to be undertaken, prohibitions etc., may be part of the agreement), 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;
- procedures for effective settlement of disputes must be set out;
- the administration is required to provide information, training, advice and management and extension.

This list includes a combination of points addressed in the various laws, and although none of them includes all of the above elements, many provide a sound basis for participatory natural resource management. Some (such as those of Madagascar, Namibia, South Africa and Tanzania) are more detailed than others (as that of Malawi). Countries which do not yet have in place such a framework or whose legislation addresses only some of the above matters should consider improvements accordingly. Finally, legal tools

for community-based forest management may sometimes provide the only or an additional avenue for community-based wildlife management.

Sometimes the framework for community-based management seems to be limited to private or communal land, while the state retains full control over areas of state land. Where the extent and location of state land allow it, it would be useful to promote wildlife management initiatives by local communities and/or the private sector on state land, by offering the possibility of entering into secure management arrangements similar to those already addressed. The legislation of Zimbabwe, for example, which can be considered a useful framework for community based natural resource management on private or communal land, is less encouraging of community involvement in public land, with provisions that only offer the possibility of entering into lease agreements (for example on "safari land") or granting hunting rights, with the only specification of a minimum duration. In Madagascar provisions are even more detailed, allowing for the lease of land to third parties for hunting purposes, whether or not by public auctions, with specification of applicable conditions in a "cahier de charges". Becoming part of these arrangements is presumably open both to communities and to private parties.

In most cases presented above, the applicable legal framework results from basic provisions included in the law and more detailed ones spelt out in agreements between the administration and the concerned communities. Some flexibility in the contents of these agreements is desirable which will allow parties to negotiate the respective rights and obligations in a realistic way. The conditions set out in the law, however, should provide a sound basis for the agreements, aiming to protect both the interests of sustainable wildlife management and the interests of communities with regard to subsistence and enjoyment of products derived from their efforts and resources. The absence of a sound legal basis would undermine the security of such arrangements altogether and consequently the livelihood of rural people. The matters to be addressed in the agreements should therefore be detailed in the law that should include provisions regarding duration, respective rights

and obligations (payments due, sharing of benefits, assistance to be provided) and consequences for violations by either party.

#### 2.6.4 Legal frameworks for the private sector's wildlife management

In addition to requirements for authorizations for single wildlife-related activities, such as hunting or ecotourism, some laws include rules regarding wildlife management by private parties other than indigenous communities. Where management responsibilities and some (to a certain extent exclusive) use of land is granted, usually by the state to third parties, the arrangement is frequently referred to as a concession – a term, however, whose meaning may vary in different countries. Pursuant to the draft legislation of Angola, for example, concessions may be created within protected areas, for eco-tourism purposes, but may also be created on private land or community land handed over to others by their owners. Under the current legislation of the same country, in official hunting areas (*coutadas oficiais*) private parties may be handed over management rights through a contract. Concessions are also addressed in the laws of Mozambique and Zambia. These laws generally set out main conditions (duration, ownership of animals introduced by the concessionaire, etc.) and refer to agreements for further specifications.

Whether or not "concessions" are addressed in the law, other possible initiatives by the private sector are generally required to be authorized, even where they take place on a person's own land. As was noted, in Angola, for example, the creation of private hunting areas (*coutadas particulares*) must be licensed. In Botswana, "private game reserves" may be created by presidential declaration upon a request by the landowner. In these reserves hunting or capturing of all or specified species is either prohibited or allowed only by the landowner or persons authorized by him/her and subject to conditions specified in the declaration establishing the reserve. Pursuant to the available legislation of Lesotho, no significant differences are envisaged in the regimes set out for private, community or cooperative forests, which may be created by holders of allotted or leased land by entering into an agreement with the administration, purposes for which may include production and marketing of forest produce. This legislation

appropriately specifies that derivative revenues belong to the landholders.

Legal provisions concerning arrangement for wildlife management initiatives undertaken by private persons or companies on state land are not numerous. In Madagascar, hunting rights on state lands may be granted to third parties, who may presumably be private entrepreneurs or communities, by a lease agreement or by public auction under a « cahier de charge » setting out requirements which may include repopulation of certain species or hunting rules. In Uganda, the administration may enter into commercial arrangements with any person for the management of a protected area, the provision of services or infrastructure in a protected area or the management of a species or a class of species of animals or plants. Persons entering into such agreements must submit a management plan. In Zimbabwe, the administration may lease land within safari areas for up to twenty-five years and grant hunting or other rights for up to ten years, but there are no specifications for this arrangement in the legislation available.

In all cases in which some management rights are handed over to private parties by the administration, under concessions or any other types of arrangements, contractual agreements are an appropriate means to negotiate and then set out all necessary details. It is important, however, for the law to provide a sound legal basis for such agreements, safeguarding both the interests of sustainable wildlife management and the interests of private entrepreneurs to act in a secure business environment. However, many of the laws examined seem to have reduced relevant requirements to a minimum, and are thus not adequately designed to prevent loose arrangements which may be likely to be unfair to the disadvantaged people of society. This is especially true in countries where contractual arrangements in general do not tend to be adequately fair and secure. If the legal system allows it the wildlife law should provide specific rules concerning agreements, for example, addressing alternative dispute settlement mechanisms outside of ordinary courts of law. Where the award of public contracts tends to be unfair, separate procedures ensuring transparency could be introduced. The law should also set out minimum required contents of concessions of other private wildlife

management contracts, making it compulsory to address duration, respective rights and obligations (including "social" obligations of concessionaires, payments due, sharing of benefits, assistance to be provided) and consequences for violations by either party.

#### 2.6.5 Eco-tourism

Eco-tourism is a fairly recent area of regulation. In some instances, the main wildlife legislation may provide specific requirements for licenses for eco-tourism activities, sometimes in conjunction with hunting tourism activities. In Zambia, for instance, a photographic tour operator licence is necessary. In Mozambique, hunting guides, who are authorized by the National Directorate of Protected Areas, upon advice from the hunters' associations, may conduct hunting and photographic safaris. In Zimbabwe, conducting photographic safaris for profit within any national park, sanctuary, safari area, forest land or within any Communal Land, requires a professional hunter's licence, learner professional hunter's licence or professional guide's licence.

In other countries, norms specifically dealing with eco-tourism have been devised in the context of protected areas legislation. In Angola, for instance, a yearly management plan is required for eco-tourism operators working in protected areas. Submissions for obtaining an eco-tourism concession need to indicate the expected economic and social benefits for local and regional development. Basic conditions for environmental sustainability and for sharing benefits with local communities may then be determined by the law or attached to eco-tourism licenses. A legal tool to involve local communities in eco-tourism is provided for in Botswana, where the management plan for national parks and game reserves may designate an area as a "community use zone", which may only be used to conduct commercial tourism activities but not for hunting.

Alternatively, eco-tourism can be regulated as part of ranching and breeding activities. In Angola, for instance, "hunting farms" are delimited areas of public rural land or community land where the farm manager may authorize photographic safaris and ecotourism.

### 2.6.6 Ranching and breeding

Few laws address ranching or breeding of wild animals. One example is the law of Botswana, which subjects such activities to some requirements, but waives the applicability of limits to the number of animals which may be taken. This is a useful incentive which is not often provided for in the legislation of other countries. At the same time, the legislation of Botswana establishing a game reserve allows the director to withdraw permissions for breeding, if land and wildlife management practices are not satisfactory. The generality of this statement, and therefore the wide discretion left to the administration, is an example of how the security of a useful arrangement may be undermined, probably resulting in lack of trust in this type of arrangement altogether. In order to prevent similar consequences, it would be preferable to require the administration and the person interested in ranching or breeding to enter into a specific agreement, setting out conditions to be applied. Withdrawal of authorizations would then be subject to more specific criteria rather than discretionary evaluation.

An example of a more detailed specification of applicable obligations undertaken by the developer is found in the draft legislation in Angola. There, the developer is requested to formulate a management and exploitation plan, including issues of infrastructure, control and fire prevention, and take into account the needs of neighboring communities related to security, access to food and economic development. An environmental impact assessment may also be required for large-scale operations. In Malawi, some requirements for inspection, record keeping and prohibitions related to ranching are specified in the law. Legislation in Mozambique also provides for planning requirements for ranching and regular inspection of facilities. Furthermore, the authorization process for ranching activities may explicitly include consideration of community interests, as is the case in proposed legislation in Angola, in which local communities are actually involved in the evaluation of proposals.

Conditions applicable to authorized ranching activities, such as an obligatory preference for local recruitment among communities may

significantly contribute to the empowerment of the poor.

A more significant contribution to the economic development of rural areas through ranching and breeding of wildlife, however, may come from incentives to ranching and breeding. The legislation of Mozambique is among the few which provide such incentives – particularly by stating that animals introduced by a concessionaire are the ownership of the developer. With the aim of encouraging private initiative, privileges of this type should be offered more widely by the law, along with necessary basic rules for ranching and breeding. Granting rights to own and dispose of animals resulting from ranching and breeding would be useful and fair, but in the absence of specific provisions to this end it may be presumed that concerned animals are subject to general conditions for exploitation.

The possibility of introducing some provisions for the promotion of these activities should be explored as a possible means to contribute to the support of rural livelihoods.

### 2.7 Law enforcement

Sometimes wildlife legislation contains specific tools to promote public participation in law enforcement, with the purpose of involving and at the same time holding accountable local communities and the private sector. To some extent, these legal tools may also contribute to empowering the poor.

Both in Angola and Mozambique, for instance, the law calls for the creation of community law enforcement officers who have a right to receive part of the penalties for violations detected within their area of surveillance. Similar arrangements are optional in Tanzania, as found in the framework of community forest management agreements. Along the same lines, in Zimbabwe, members of environment committees and the Environment Board may enter land to make investigations regarding animals, after giving notice to the occupier or owner. In addition, hunters may ask any other hunter to produce evidence of his right to hunt. In Malawi, village natural resource management committees have the power to enforce their own rules by seizing produce taken in violation thereof.

Generally, environmental or wildlife legislation may create a broad obligation for all members of society to inform public authorities of violations of the law (Angola, Mozambique), or may call upon users specifically to do so (as is the case for hunting guides in Mozambique). In addition, general legal provisions that may grant part of fines or other incentives to those members of the public that contributed to the prevention or detection of wildlife legislation violations may also serve to significantly support the law enforcement efforts of public authorities and contribute to empowering local communities and other users.

## 2.8 Gender and food security

References to gender issues are scarce in wildlife legislation. This may be particularly problematic when wildlife use is based upon traditional or customary systems in which women appear significantly disadvantaged due to their exclusion from decision-making or from entitlement to certain rights, as highlighted by recent cases in Angola. Some exceptions to this trend, however, have been identified in the course of this study. In Mozambique and South Africa, for instance, general principles embodied in the environmental law (which are also applicable to wildlife management) call for guaranteeing opportunities of equal access and use of natural resources to women and men. This is reflected more specifically in the requirement that men and women are equally represented in the committee for the management of financial benefits arising from wildlife use. In Zambia, gender issues are addressed at the level of public participation in decision-making: legislation expressly states that membership in wildlife advisory bodies should ensure "equitable gender participation." Furthermore, provisions guaranteeing "equitable access" within communities may be envisaged for community applicants for wildlife use rights (Uganda).

References to food security are not very common either. A notable exception is the draft wildlife legislation of Angola, in which one of the aims of wildlife management is contributing to food security and the well-being of citizens. Several specific provisions on the free distribution of meat to local communities support this objective, in the cases of wild animals killed in self-defence, seized by law enforcement officers or killed for the purposes

of the scientific investigation and when hunters are unable to maximize the use of products from hunted animals. A few provisions along these lines can also be found in Mozambique and in Zambia (in the latter case, specifically for the meat of elephants killed during sport hunting). Furthermore, Angolan draft legislation provides incentives for wildlife ranching activities that contribute to food security and calls upon wildlife ranchers to take into account the implications of their activities on neighbouring communities in terms of availability of meat.

## 3. CONCLUSIONS AND RECOMMENDATIONS

### 3.1 The pillars of legal empowerment of the poor

Several of the legal tools for sustainable wildlife management identified in the previous chapter can contribute to the empowerment of the poor. According to the Commission on the Legal Empowerment of the Poor, established under the aegis of the United Nations in 2005,<sup>5</sup> four pillars sustain the concept of legal empowerment of the poor: 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

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<sup>5</sup> The Commission completed its mandate in 2008. See [www.undp.org/Legalempowerment](http://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.

resources, and their tenure security, 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 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 participating in or being compensated for the conservation and management of wildlife resources.

On the basis of the analysis of the previous chapters, various recommendations may be made for the improvement of existing legislation with the objective of contributing to legal empowerment of the poor in the wildlife sector, enhancing the role of disadvantaged people in wildlife management and increasing their participation in the sharing of benefits.

### **3.2 Scope of wildlife legislation**

Wildlife legislation should reflect a variety of interests, including environmental sustainability, socio-economic development (particularly targeting local communities), customary use and traditional knowledge, gender equity, vulnerable and indigenous groups, and food security. Some of these issues are taken into account in the legislation analyzed in this study, in particular the involvement of local communities, and to some extent food security. A more systematic, comprehensive approach to all these interlinked issues at the time of drafting legislation would be more valuable. The trend towards addressing not only hunting, but also conservation and utilization aspects, is a positive development which has been noted. In some cases, however, it is only one step in the desired direction.

To ensure that the scope of wildlife legislation is appropriate, the relevant international obligations of a country should be taken into account (see Part 1, Chapter 1), as well as all the sectoral or horizontal national legislation that is directly or indirectly related to wildlife management (land, environmental protection, environmental impact assessment, protected areas, forestry, etc.). In light of the above analysis, a determination of the various issues to be addressed must then be made, as well as of an analysis of the sector and its environmental and social needs. Where, for example, there is need for subsistence hunting, the issue must be addressed and this practice should be accommodated as much as possible. Where there is potential for sustainable tourism development, legal means should be provided for viable arrangements. The implications of the process of determining the scope of a law concerning legal empowerment of the poor are evident, as overlooking (or over-regulating) some aspects, such as traditional hunting and subsistence needs, may result in the exclusion of disadvantaged people from legal processes altogether.

### **3.3 Participation of stakeholders in institutions and decision making processes**

Most countries in the region already require some form of representation of various sectors of society in some wildlife-related institution. Further strengthening of people's participation in decision making could contribute to support the interests of less advantaged members of society.

Participation is currently already realized, and should be further extended, in some advisory bodies. As some countries have already done, providing for the representation of various stakeholders in responsible administrative bodies should also be considered. As has been done in other cases, transparency in appointments should also be encouraged by requiring the advertisement of open positions and setting out selection criteria. Avenues for participating in decision-making and management planning should be provided both at the central and at the local level, as appropriate.

Access to justice - one of the pillars of legal empowerment - is a key complementary

aspect to ensure meaningful participation of stakeholders in wildlife management. In addition to access to courts of law, alternative dispute resolution mechanisms should be devised – as seen in the examples of wildlife tribunals, mediators or other specific conflict prevention and solution mechanisms. Where this is not possible, general provisions on the right to appeal administrative decisions related to wildlife management should be referred to or inserted in wildlife laws. It should also be the duty of public authorities to inform users, particularly local communities, of their right to appeal and the ways in which they may exercise this right. It should be required that information regarding the right to appeal is set out in the same document containing an administrative decision.

Where funds are established to support wildlife, forestry or the environment, it would be useful to require the representation of local communities' interests on the funds' managing boards and provide for some priority to be given to the support of community-based initiatives. It would also be useful for the law to require adequate advertising of opportunities, transparency in the allocation of resources and to allow access to funding to assist in the formulation of project proposals.

The adequacy of legal provisions regarding the operation of funds is an indispensable precondition to the utilization of financial resources to "empower the poor". Otherwise, availability of funds, in the absence of adequate and transparent management procedures, will likely lead to fraudulent practices and the exclusion of disadvantaged people. 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, ensuring public participation in the management structures of funds, or at least provision for clear procedures for public intervention in decision-making regarding use of the funds, could further

contribute to empowering the poor in the use of financial resources devoted to wildlife management.

### **3.4 Wildlife tenure and use rights**

The issue of wildlife ownership and of people's rights with respect to wildlife is directly linked to the accessibility of benefits by them, whether such benefits are manifested in the form of financial benefits, material advantages, or limitation of damage caused by wildlife. The analysis made shows that statements on wildlife ownership are less important than substantive provisions which allocate benefits from wildlife use. The grant of hunting and other management rights to land owners has often served as a basis for successful private wildlife management initiatives, even where ownership of wildlife has not been transferred to private or communal land owners. The security of rights being granted, and therefore the clarity and stability of the legal provisions granting them, should be guaranteed in the wildlife legislation, but not necessarily in connection with ownership of wildlife. Where management rights are linked to the ownership of resources and to the land on which they are found, a key factor becomes the security of title to the land, which may change between private holdings and customary communal land. In this case, the feasibility of wildlife management initiatives tends to rely more on land legislation in its interrelation with land use customs than on wildlife legislation.

In drafting wildlife legislation, with the aim of "empowering the poor", it is important to address issues of ownership and use rights, while taking into account the latter elements (law and customs governing land) and possible discrimination of disadvantaged groups (for example women) resulting from them. All possible efforts to avoid the perpetuation of discrimination in the wildlife sector should be made. The new wildlife legislation would then have to be particularly clear in granting specific rights to targeted groups, thus, "bypassing" any ambiguities or inequities of other legislation or practices.

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

requiring some consultation over the adoption of relevant measures, while also obtaining people's support of any necessary restrictions.

Relevant literature tends to point out various limits in the usefulness of compensation for damage caused by wild animals. 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 posting of requests and grants;
  - 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.

### 3.5 Wildlife management planning

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 issuance of licences and permits for activities should be subject to the regulations of the management plans.

The adoption of plans, following the above basic steps, should be clearly and specifically required by law. Provisions should include participatory conditions and coordination within the context of other existing planning processes and focus on comprehensively addressing a country's wildlife, as well as those species which are subject to particular pressure.

Public participation is an essential component of management planning. Legal provisions should require a thorough participatory process for the adoption of plans and include local communities, rather than simply address the needs of local communities in the plans. The genuine involvement of concerned people and communities from the early stages of shaping management plans provides useful means by which to assess the extent to which traditional wildlife management practices should be encouraged or limited. Most of the legal frameworks examined should be strengthened in this respect, 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 requiring participation of the disadvantaged can serve to strengthen their role as actors in wildlife management, allow them to see and enjoy the benefits of operating under the rule of law, and assist them in obtaining protection of their assets and activities.

### 3.6 Wildlife conservation

Legal provisions requiring the involvement of concerned stakeholders in decision-making are essential also in the context of rules focusing on conservation. They should be devised in the process of creation and management of protected areas and for the adoption of conservation rules, such as classification of species.

Legislation 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 to participate in public meetings organized for this purpose; 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 ongoing 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.

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, protection of assets, and security of initiatives. Additional benefits to people 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.

### 3.7 Wildlife use

#### 3.7.1 Issue of authorizations, licenses, permits and concessions

While excessive bureaucratic procedures and over-regulation of wildlife utilization must be avoided, minimum criteria should nonetheless be established in the law for the issue of authorizations, licenses, permits or concessions to use wildlife. A basic minimum requirement should be to subject the issue of these instruments to applicable management plans.

Prohibitions which apply only "unless otherwise authorized" should be avoided, and transparent procedures should increasingly be set out in legislation which limits the degree of discretion left to the administration on the basis of clear criteria for decision-making.

These aspects are critical in the enhancement of the conditions of the poor, as over-regulation almost certainly puts them outside the scope of the law by making compliance with the law excessively expensive and/or unnecessarily technically complex. In the alternative, simplified procedures and requirements may be put in place to give advantage to local communities, with the concurrent goal of empowering the administration to technically support local communities in their gradual assumption of wildlife management responsibilities. When 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.

Customary and other traditional use rights should be carefully investigated before generally applicable rules are set out and if possible their exercise should continue to be authorized by or subjected to a specialized and flexible legal regime. 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.

### 3.7.2 Sharing of benefits

Although revenues from the wildlife sector may be considered irrelevant as a contribution to the national GDP, they may be very significant at the local level. These revenues can constitute a considerable amount to be channeled back to wildlife management and local communities that are affected by wildlife management. Provisions which establish that certain benefits, such as a share of revenues from wildlife use, must be allocated to people, may be useful – depending, of course, on the quantity of funds transferred and the conditions and modalities for their utilization. Legislation in this respect needs to allocate clear responsibilities and transparent frameworks for the collection and allocation of these benefits. In addition, subsidiary legislation may be necessary to spell out the mechanisms and/or procedures for the actual benefit sharing. These provisions, however, are not an automatic contribution to enhancing the livelihood of the poor – especially where funds are not appropriately channeled to local communities or when their quantity is small and/or perceived as insufficient for the limitation of rights or other damage suffered. Another aspect to consider is that the legislation should not be too restrictive in determining the use of economic benefits by communities; rather it should provide a flexible framework, allowing case-by-case decisions on the use of economic benefits depending on the priorities of each community. In addition, non-monetary benefits may also be critical and should be considered alongside with monetary ones by legislators and the administration. These generally include training and employment opportunities, as well as recognition of merit.

In all events, these solutions should be coupled with genuine support for the direct involvement of local populations in the undertaking of productive activities related to wildlife management, both by utilizing available funds for this purpose and by devolving management responsibilities and related rights to benefit from wildlife management. This generally requires improving the legal framework recognizing use and management rights and strengthening the security of these arrangements. The duration of these arrangements should promote the creation of long-term incentives in the sustainable

management of the resource, and rewards (such as automatic renewal of these arrangements) for sustained good management practices.

### 3.7.3 Legal frameworks for community-based natural resource management

The legislation which has been examined includes numerous useful provisions for community-based wildlife management. Countries should consider inclusion of all these provisions - described in some detail in section 2.6.3 - 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 in most countries appropriately 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 should provide a sound basis for the content, with the purpose of protecting both the interests of sustainable wildlife management and those of communities. The matters to be addressed in the agreements should, therefore, be listed in the law and include duration, respective rights and obligations (payments due, sharing of benefits, assistance to be provided) and consequences for violations by either party (such as procedures for suspension and revocation, appeals and other dispute settlement mechanisms)

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 sound legal frameworks for community wildlife management. For example, provisions which require groups or associations with management rights to give a 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.

#### 3.7.4 Legal frameworks for the private sector's wildlife management

Some countries regulate concessions or other initiatives in which the private sector is involved, usually requiring some authorization, even for those activities occurring on a person's own land. In most cases, both the law and specific contracts regulate relations between parties. It was noted that legal requirements should be more stringent than they generally are, in order to prevent loosely drafted agreements which might hamper the interests of disadvantaged people. The law should also set out minimum required contents of concessions or private wildlife management contracts, making it compulsory to address duration, respective rights and obligations (including "social" obligations of concessionaires, payments due, sharing of benefits, assistance to be provided) and consequences for violations by either party.

A fair and transparent system of allocation of wildlife-related concessions and contracts, which can bring about improved conservation as well as increase business opportunities for the whole society, can also be utilized to directly or indirectly strengthen legal empowerment of the poor. Local communities may also be assigned priority by law in the allocation of concessions, if specific community-based management arrangements are not available in a specific jurisdiction or are not considered sufficient to allow effective involvement of local populations in wildlife management. To ensure that a transparent system of allocation of wildlife management rights is in place, it may be necessary to include specific provisions applicable to the wildlife sector in wildlife legislation, rather than relying on general legislation governing public contracts. In addition, forms of public participation in the screening and assessment of applications for wildlife management rights should also be provided for in legislation. Provisions for public participation in the monitoring of compliance with those obligations arising from the awarded concessions or contracts should also be included in legislation.

Provisions which specifically target the enhancement of the conditions of the poor are those that require private-sector applicants for concessions or contracts to undertake certain social obligations. These provisions could be further improved by requiring consultation with affected local people in order to identify social needs which should most urgently be addressed.

#### 3.7.5 Eco-tourism

Many of the countries which have been examined have introduced provisions regarding eco-tourism. These provisions usually require the issuance of licences or concessions and may address specific qualification requirements. The recommendation made with respect to other types of authorizations and concessions apply also here: it is advisable to set out specific criteria for the issuance of such licences or concessions, rather than completely relying on the discretion of the administration, and avoid over-regulation. For example, professional requirements for operators and guides could rather easily be introduced through subsidiary legislation to implement principal law. If applicable, separate specifications for local guides as opposed to larger tourist companies could also be introduced. In legislation concerning wildlife management by private parties, provisions can sometimes be found regarding social obligations and sharing of benefits with concerned local people. These provisions could be more widely adopted and expanded.

A further step which could significantly contribute to legal empowerment of the poor would be to promote community-based initiatives specifically promoting the involvement of local people in eco-tourism.

#### 3.7.6 Ranching and breeding

Legislation should also be designed with the intent to promote ranching and breeding of wildlife, which may provide a significant contribution to rural livelihoods. 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 pursuant to such

legislation. 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. Clearly, such provisions should include exemptions from rules applicable to the utilization of wild animals as appropriate. Otherwise, animals would be 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 contracts for the specification of applicable conditions.

### 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. In the examples examined, local people, or any member of the public, may be called upon to report violations or carry out enforcement functions, such as requiring hunters to show licences. In addition, the public could be more directly involved in investigations and offered a portion of fine revenues as an award for cooperation. These arrangements are a useful option for "empowering the poor", as they are a way of officially recognizing the role of local communities in relation to the sustainable management of the resources, thereby, allowing them to enjoy firsthand the benefits derived from the rule of law.

### 3.9 Gender and food security

References to gender issues are scarce in wildlife legislation. This may be particularly problematic when wildlife use is based upon traditional or customary systems in which women are disadvantaged. However, some

exceptions to this trend have been identified, where opportunities of equal access and use of natural resources are expressly provided for, allowing for equal representation of women and men on certain bodies. These types of provisions should be extended to other countries. Cross-sectoral legal provisions or customs, for example those regarding inheritance rights, which discriminate against women may be difficult to address and settle through wildlife legislation. Nonetheless, efforts should be made to address these problems where possible. Legal options in this regard include:

- 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.<sup>6</sup>

References to food security are not very common, except for a few provisions reserving meat procurement from certain activities, such as scientific research, sport hunting or self-defence, to locals, or encouraging wildlife ranching. Wildlife management legislation could contribute to food security and improvement of the conditions of poor people by extending similar provisions. In addition, legislation could include consideration of customary hunting practices – allowing them where sustainable on the basis of consultative processes, especially where they are indispensable for food security. People faced with food security needs are certain to resort to available bushmeat even if they have to violate the law. More careful consideration of their needs would be useful to bring these people under the umbrella of the law.

### 3.10 Coordination among different laws affecting wildlife

An effort should be made at the time of drafting legislation to prevent problems of coordination

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<sup>6</sup> Inspired by "Gender", in FAO, "Law and Sustainable Development since Rio", FAO Legislative Study # 73 (2002), at 257.

among wildlife law and related laws, such as those regarding environment and forestry. For example, the definition of such expressions as "forest produce" may have significant consequences on the sharing (or, most often, overlapping) of institutional responsibilities. Where certain implications are intended, they should be expressly stated. Consequences of definitions of related terms, even if given in different laws, must be cross-checked throughout the texts in order to avoid awkward implications.

Other problems of coordination among related laws tend to emerge in the provisions governing advisory bodies. When multiple bodies exist for institutional coordination and public participation in decision-making, the choice of having more than one body in place must be made for appropriate reasons (inadequacy of the composition or functioning of an existing body, need to advise two different ministers, or to give separate advice on protected areas, desirability of obtaining more independent advice), rather than simply meeting the aspirations of existing branches of the administration.

Coordination among laws also needs to be strengthened in the area of management planning requirements. When multiple requirements for management planning exist, coordination could be facilitated by requiring systematic consultation of concerned authorities, making some plans subject to others, and limiting some planning processes to providing a component of wider planning exercises.

## PART II – CASE STUDIES: OVERVIEW OF NATIONAL LEGISLATION

This Part examines the national legislation directly and indirectly related to wildlife in a group of select countries, mostly from Southern Africa. Attention will be drawn to the institutional set-up and legal options for public participation in wildlife-related decision-making, wildlife tenure and use rights, management planning, conservation and different types of use.

### 1. ANGOLA

#### 1.1 Overview of the legal framework

The 1992 Constitution of Angola expressly calls upon the state to adopt the necessary measures for the protection of fauna (art. 24), and to promote the conservation of natural resources and ensure that their exploitation benefit the whole community (art. 12).

The existing legal framework related to wildlife management is still that elaborated during colonial times, namely Decree No. 40.040 ruling on the protection of land, flora and fauna of 1955 (Chapter V). This decree was implemented by the Hunting Regulations of 1957 (as amended in 1972). The stated purpose of Decree No. 40.040 is to conserve wildlife as an element of the ecological balance and to use it for the benefit of humans, provided that such use is not detrimental to wildlife (art. 42). These provisions should be interpreted in light of the intervening framework law on the environment of 1998, which provides general principles applicable also to wildlife management.

Innovative provisions on participatory wildlife management, empowerment of the poor and food security have been embodied in the draft Forest, Wildlife and Protected Areas Law (2006) and its draft regulations on hunting and protected areas.<sup>7</sup> It should be noted from the

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<sup>7</sup> These drafts have been prepared in the framework of an FAO technical assistance project (namely, "Forest and Trees to Support Livelihoods and Sustainable Land-Use in Angola", which was implemented over the period 2005-2008). The drafts are contained in the final legal reports

outset that the draft wildlife law sets among its aims that of ensuring the contribution of wildlife and biodiversity to sustainable economic and social development, food security and the well-being of citizens (art. 4(a)). At the time of writing, the status of this draft is not clear. However, it is considered instructive to refer to those proposed provisions that provide best practice examples of legal tools supporting sustainable wildlife management to benefit the poor.

#### 1.2 Institutional setup and role of stakeholders

According to the existing rules (Decreto-Lei n.4/03), the Ministry of Urbanism and Environment is responsible for nature protection and the sustainable use of renewable natural resources. A Council for Nature Protection was established by Decree 40.040, whose membership included representatives of farmers' associations, hunters' associations, and of environmental protection associations (art. 5). The Council must provide an opinion on draft legislation affecting wildlife. The Council may also propose legislation or plans for wildlife management, monitor the implementation of relevant legislation (art. 9), and advise on the establishment or modification of protected areas.

Draft legislation on wildlife mainly requires the ministry responsible for forests to ensure wildlife management planning and control, while leaving the ministry responsible for environmental protection to supervise and coordinate measures for forest and wildlife management. The draft wildlife law further provides for the establishment of a National Council for the Protection of Forests and Wildlife, as an organ for institutional coordination and public participation in decision-making. Provincial councils are also envisaged.

National reports highlight the limited effectiveness of the institutional framework at the central level, which explains to a certain extent limited law enforcement. Arguably, this is due to recurrent institutional restructuring of the central administration which have caused

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produced by these projects, and are on file with the authors.

delays in the implementation of environmental legislation (Ministério do Urbanismo e Ambiente de Angola, "Legislação sobre a Biodiversidade em Angola", 2006).

While public participation was contemplated only to a limited extent in the earlier legislation on wildlife, the more recent environmental law guarantees public participation in decision-making that may negatively impact the environment (art. 5), grant a right to environmental associations to participate or be represented in fora for environmental protection (art. 9) and call for public consultations for all projects that may impact on community interests, undermine the environmental balance, or the use of natural resources to the detriment of third parties, for which an environmental impact assessment (EIA) is obligatory (art. 10). The environmental law further provides for the right of the public to access environmental information (art. 21), to access justice for environmental matters (art. 23) and to obtain injunctions when a member of the public deems his/her rights to a favourable environment negatively affected (art. 23). In addition, the law also places obligations on all members of the public to inform authorities of violations of the law (art. 26) and on the government to create community law enforcement officers (art. 32) and provide incentives for sustainable development (art. 33).

In line with these general provisions, the draft wildlife law mandates public participation, particularly that of local communities, in sustainable wildlife management. In addition, the draft contains several specific provisions guaranteeing public participation in wildlife-related decision-making, as illustrated in section 2.1.6.

The draft wildlife law further provides for the establishment of a fund for the promotion of forests and wildlife under the ministries in charge of forests, the environment and finance. The fund will be used to finance plans, programmes and projects for the attainment of the objectives of the law, including conservation and sustainable use of wildlife, repopulation and rehabilitation of degraded areas, scientific research and education, additional means for control and law enforcement.

### 1.3 Wildlife tenure and use rights

The 1992 Constitution of Angola specifies that all natural resources are the property of the state (art. 12), which is to determine the conditions for their development, use and exploration. Land owners may hunt without a licence within their land, if it is fenced in such a way that wild animals may not freely enter and exit (Decree 40.040, art. 59). Hunters become owners of hunted animals, unless a pursued animal enters in a protected area, in which case it remains the property of the state (art. 55).

Recent case studies, however, show that communities believe they have a traditional property right over land and forests and free access to forest resources including wildlife. According to these traditional rights, the control and management of resources is entrusted to the traditional authorities and to families with regard to specific plots allocated to them. Traditional authorities are called upon to monitor resource use and punish non-compliance with traditional obligations. With regard to hunting, this is open to all members of the community. Within these traditional systems, women appear significantly disadvantaged, as their access to resources is often limited or precluded - the allocation of areas of forests for traditional exploitation depends on decisions of the father, brother, or husband (FAO, "Traditional Rights and Practices in Forest and Wildlife Resource Management in Angola", 2008 (unpublished)).

The draft wildlife law takes into account this dichotomy between statutory and customary law. On the one hand, it confirms that wildlife is part of the national wealth and is the property of the state, with the exception of domesticated and ranched species. The draft hunting regulations indicate that hunters acquire the property of animals that they have legally captured or killed. In case of injured wild animals that take refuge in a demarcated area, landowners must hand over these animals to the hunter or facilitate the hunter's access to the land to continue the chase. On the other hand, the draft law specifically recognizes the rights of rural communities to use wildlife found in their community land, according to their traditional practices and relevant legislation (art. 10), with the underlying obligation to avoid exceeding customary practices and causing

negative impacts on wildlife and its ecosystems. The state is called upon to promote rural development through the integration of wildlife use in community and family enterprises, as well as in other small and medium-scale enterprises.

Among its general principles, the draft wildlife law includes the fair and equitable sharing of benefits deriving from wildlife sustainable management and the right to food and related access to wildlife resources for subsistence purposes. Incentives should be provided for wildlife ranching activities that contribute to food security or wildlife reproduction. Hunters are called upon to use, to the maximum extent possible, the products of hunted animals. Hunters are required to distribute the meat to local residents, if it is not going to be sold or used by his/her company (draft hunting regulations). Similarly, meat produced from scientific hunting should be distributed for free to local communities, when it is not necessary for the purposes of the scientific investigation.

With regard to human-wildlife conflicts, the legislation provides that protection of humans and domestic animals from wild animals should be oriented, as much as possible, towards the flight of wild animals (Decree 40.040, art. 43). However, persons owning or cultivating land may destroy any wild animals found causing damage on cultivated land (art. 60). Similarly, the draft wildlife law allows taking wild animals without a permit in defence of people's lives or property, if there is an actual or imminent attack and when it is not possible to chase them away (art. 166). The draft calls for incentives to this end, namely buying captured animals for repopulating degraded areas and *ex situ* conservation or ranching. In addition, the draft PA regulations establish that meat obtained from wild animals killed in self-defence should be distributed to the local population or in equal shares to the local population and the hunters involved in the taking. Under the draft hunting regulations, killing wild animals in defence should be promptly communicated to the administration in the area in which the animal was killed and trophies should be handed over within 48 hours; otherwise, the right to defence cannot be invoked.

#### 1.4 Wildlife management planning

Although management planning is not specifically covered by the existing legislation, scientific investigations are called for with the purpose of adopting conservation, development and use measures and organizing supervision of fauna migrations and accidental displacements (Decree No. 40.040, art. 122).

On the contrary, draft legislation specifically refers to this issue. The draft wildlife law includes among the obligations of the state, the duties to maintain an inventory and classification of wildlife and to update it periodically, as well as creating and maintaining wildlife cadastres and databases on the state of wildlife resources necessary for their sustainable management. Wildlife management planning is to be based on the wildlife inventory and needs to provide the basis for all concessions and rights for wildlife use. The national wildlife plan is considered an integral part of the national forest plan. Furthermore, a registry of traditional knowledge of local communities related to wildlife and forest resources should be established.

Management plans for protected areas are to be adopted according to the draft PA regulations, which allow local communities residing in these areas to collaborate in their drafting, as well as including local interests associations and environmental associations.

#### 1.5 Wildlife conservation

The Framework Law on the Environment prohibits all activities undermining biodiversity or the conservation, reproduction, quality and quantity of biological resources, particularly if these resources are threatened with extinction (art. 13). In existing legislation, the government is called upon to ensure the maintenance of present wildlife populations, the regeneration of animal species and the restoration of degraded habitats (art. 13). In addition, the government must control the use of substances that may negatively affect wildlife and its habitat (art. 13).

According to the draft wildlife law, protected species (endangered, rare and threatened) should be determined on the basis of reports

based on the best available scientific information, and subject to the approval of local communities, taking into account historic records of population levels and existing risks. Lists of protected species should be updated regularly, at least every ten years, and should be established with the participation of interested stakeholders and environmental organizations. These lists should be prepared with the same frequency as forest management plans.

The draft wildlife law charges the ministry responsible for forestry with the task of identifying, preventing and controlling pests and diseases affecting wildlife. To this end, this ministry should establish a system of early warning and develop plans for the eradication of pests and diseases affecting wildlife, which may include quarantine for affected wild animals and the demarcation of infected areas.

The Environmental Law provides the basis for the establishment of protected areas, specifying that these areas need to be subject to classification, conservation and control measures that take into account the needs for biodiversity protection as well as the social, economic, cultural, scientific and landscape values (art. 14). Decree No. 40.040 establishes the types of protected areas as follows: national parks, absolute natural reserves, partial reserves, and special reserves (art. 53). The latter include forest reserves and other areas for the conservation of certain species that cannot otherwise be adequately protected. National parks should be surrounded by buffer zones. Hunting Regulations specify that hunting is prohibited in national parks, absolute nature reserves, and partial nature reserves (art. 11). Pursuing or otherwise disturbing wild animals in protected areas is prohibited (art. 143, Hunting Regulations). Outside PAs, declining species must be the object of a special monitoring regime in determined areas, where hunting can be temporarily prohibited or where the closed season may be prolonged (art. 17).

The draft wildlife law adds natural monuments and landscapes to the existing list of PAs. All protected areas should be surrounded by buffer zones. It specifies that protected areas should contribute to the conservation and sustainable management of wildlife species, as well as to social and economic development,

particularly of local communities through the promotion of tourism and the participation of communities in the benefits deriving from PA management. Local communities should also be included in the management of buffer zones, where they can carry out economic activities that are compatible with conservation purposes. Local communities should also receive incentives for abstaining from activities undermining the objectives of the PA. Proposals for the classification or reclassification of PAs may be put forward by environmental organizations or representatives of local interests. The creation of PAs must be subject to a process of local consultations. Local communities have priority in the allocation of management rights over protected landscape areas in which they reside (draft PA regulation).

The draft wildlife law further states that hunting is prohibited in PAs, with the exception of subsistence hunting by local communities and PA staff and for the control of fauna populations. Ecotourism in protected areas should be carried out in accordance with a yearly management plan to be approved by the ministry responsible for the environment. Hurt animals that take refuge in PAs may no longer be pursued and hunters should instead inform PA managers of the fact. Taking of animal species in protected areas may be allowed for certain scientific purposes. In these cases, the meat of the animals will be distributed for free to local communities residing inside or near the PA (draft hunting regulations).

The draft PA regulation addresses the issue of human populations residing in PAs in detail. It establishes that in general PAs that would not allow human presence in their territory should not be established in areas already populated, unless in case of overriding environmental necessity. The ministry responsible for the environment and that for land management should consult with local administrations and traditional chiefs to put in place the necessary conditions for the relocation of families residing in an area to be classified as PA. A series of rights to compensation is provided for in the draft PA regulations.

In partial reserves, national parks and protected landscape areas communities' participation in the management of PAs extends to having access to natural resources

without undermining the protection objectives of the area. This access is subject to the PA management plan conditions regarding presence, circulation and subsistence use. To this end, concerned communities need to be involved in the preparation of the PA management plan. Benefit-sharing is also expressly addressed: communities have priority in the recruitment of PA staff, and a right to the allocation of a certain percentage of the revenues from PAs (15 percent of the entrance fees) to the promotion of communities' well-being. Moreover, communities may have priority in the allocation of the right to manage PAs for ecotourism purposes or in the provision of services related to accommodation and guided tours. Furthermore, the budgets for PAs need to include an annual allocation to provide prizes to the local residents that have best served the conservation of the PA.

The Environmental Law establishes the obligation to carry out an environmental impact assessment for all projects that could interfere with the interests of communities, the natural balance, or that use natural resources to the detriment of third parties. Protection of fauna is among the objectives of EIAs. EIAs necessarily imply public consultations (Environmental Law, art. 10). The draft wildlife law specifically calls for cooperation between the ministry in charge of forestry and the ministry in charge of the environment to promote studies of environmental impacts on wildlife and their habitats of specific arms and hunting methods (art. 169). In addition, the draft law requires EIAs for projects that may have significant negative impacts on wildlife and terrestrial ecosystems, with the possibility for both the ministries responsible for forestry and water resources to provide advice on such EIAs.

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

Hunting is regulated by Decree No. 40.040, which provides that hunting rights may vary depending on species, time of year, place, licences already issued and other circumstances set by legislation (art. 56). Hunting is prohibited in burnt or flooded areas and in bird nesting places (art. 54). The Decree also establishes closed seasons, general ones in which only migratory birds can be hunted and special ones for specific species or areas

(art. 63). Hunting is subject to a licence, with the exception of subsistence hunting of species that are not absolutely protected by law (arts. 74-75). Annex I lists wild animals of which hunting is prohibited, and Annex II lists migratory birds of which hunting is permitted during the general closed season. The Hunting regulations contain Annexes on species that cannot be hunted, species that can be hunted, and species designated as dangerous animals. The lists of animals that cannot be hunted (which specifies which species need special protection) and of animals that can be hunted in specified time periods were updated by Executive Decree n. 37/99. Hunting may be authorized (with a special permit) in forest areas under the direct management of agriculture and forestry services (Forest Regulations, art. 180).

Under the draft wildlife law, hunting is generally subject to a permit and all hunting products should bear a certificate proving that they have been legally acquired (art. 186). According to draft hunting regulations, hunting licenses may be issued by provincial authorities, which may request the advice of the provincial council for the protection of forest and wildlife. Hunters applying for a licence are requested to provide a deposit as a guarantee for possible fines or damages that may be caused by themselves, their companies or auxiliaries. Different licence types are envisaged for recreational hunting, tourist hunting, hunting of potentially dangerous species, or specialized hunting (including the operation of hunting safaris and ecotourism). The draft hunting regulations specify that recreational hunting can target small game ("caça miuda") only when this does not affect the subsistence needs of local populations. Licensed hunters are expected to file an annual report of their activities, including technical information on the density and levels of populations, their movements and migrations, as well as suggestions as to the measures necessary to enhance conservation, protection and control of wildlife use.

Pursuant to Decree 40.040, hunting may be practised in open parcels of land (*i.e.*, onto which access is not effectively forbidden by their owners) or in private or official hunting areas (*coutadas oficiais* and *coutadas particulares*) (arts. 57 and 58). *Coutadas particulares*, where hunting is reserved to owners or persons authorized by them, may

be created upon obtaining a licence, which may be issued after hearing the opinion of the Council for Nature Protection (art. 61). In public hunting areas, the right to obtain meat for subsistence purposes is reserved to the local population (art. 62.1) and areas may be devoted to tourism where population density is low (art. 62.2). Management of these areas by private enterprises under contracts is possible (art. 62.2).

Pursuant to the draft law, hunting may be exercised in public lands, in community lands, in rural areas in concession from the landowner, and in "hunting areas" ("*coutadas*"). Hunting on community lands may be authorized by the community in written form or in oral form by the traditional chief of the community, together with a representative of the local administration. "Hunting farms" are delimited areas of public rural land or community land where the right to hunt can be granted by the farm manager. Activities are limited to recreational hunting, photographic safaris and other ecotourism activities, and capture of animals for repopulation. *Coutadas* may be established in areas of low population density, the economic development of which is not foreseen in the short-term. The application for the creation of a *coutada* needs to be accompanied by an exploitation plan, indicating the contribution foreseen for local development, existing conditions for control, and information on local communities residing within or in the vicinity of the area. Community-based *coutadas* may either be directly managed by communities or by a partnership of communities and third parties according to a financial agreement – in the latter case, the partner must pay a fixed annual amount to communities or a percentage of the income generated by the *coutada*. The evaluation of proposals must be done jointly by the administration and local communities. Concessions will then provide for specific actions to ensure recovery of population levels, prevention of forest fires, and obligatory preference for local recruitment (as long as local communities have sufficient manpower). Concessions are initially issued for a period of 15 years and, depending on the situation of local wildlife, are renewable every 5 years if management has proven satisfactory.

According to the draft wildlife law, subsistence hunting – which is defined as hunting realized

by local communities for their own consumption or that of their families for food, clothing, medicinal or cultural products – is free of charge and not subject to licensing, in the case of small game ("*caça miuda*"). This type of hunting may be suspended for repeated violations or when the community observers, local authorities or traditional chiefs find that a hunter is not sufficiently qualified for the exercise of the right. Subsistence hunting should occur in the area in which the local community resides and in areas in which other communities reside only with their agreement. Products exceeding the subsistence needs of hunters may be commercialized: 1) in limited amount, with neighbouring communities, if it is in accordance with traditions or 2) within the same community of the hunter. Subsistence hunters must be listed in a register, together with the number of the animals, species and areas of hunting, to be maintained by local observers.

When allocating hunting rights on public land, priority is given to nationals, and particularly to members of local communities residing in the area in which wildlife is located (draft wildlife law).

Eco-tourism in protected areas is also comprehensively regulated in the draft PA regulation. The definition of eco-tourism specifically includes the observation, photography and video-taking of wild animals. Basic conditions are set forth for eco-tourism as follows: the tourist activity is compatible with the primary conservation objective of the PA, the tourist potential is significant, appropriate facilities exist for tourists and sufficient capacity exist for monitoring tourist activities. A concession should be issued for eco-tourism operators. Applications should include an indication of the economic and social benefits that are intended to be provided to local or regional development. The concession must necessarily include a clause giving priority to local recruitment, if local communities have qualified and experienced resources.

The draft wildlife law specifically addresses repopulation of wild animals, which should be ensured by the government in degraded areas and in areas in which wild animals populations were reduced, or may be significantly reduced, as a result of economic activities. The state is to provide incentives to this end, and should

involve the public, environmental organizations and local communities in these efforts, particularly through the creation of ranching areas. Ranching farms may be established upon a proposal containing: 1) an environmental impact assessment, if the area is larger than 5000 hectares; 2) a plan for infrastructure development; a plan for the control of the farm and forest fire prevention; and 3) an indicative plan of exploitation. The implications of ranching farms for neighbouring communities, in terms of personal security, availability of meat and local economy, will be evaluated by the administration before authorizing the activity.

### **1.7 Law enforcement**

Certain provisions of the draft wildlife law ensure public participation. More specifically, they ensure the involvement of local communities in law enforcement. Among the objectives of wildlife control are those of informing local communities of their rights and obligations related to wildlife, ensuring that communities are aware of the importance of the protection of their traditional knowledge, and promoting public participation, in particular by local and rural communities in wildlife monitoring and environmental protection.

Specifically, the draft wildlife law establishes "community observers", as members of local or rural communities that collaborate in control activities in their area of residence, with the basic conditions of knowing how to write and read, and the geography of the area. They are designated by the local administration, upon proposal by the community to which they belong. Their functions include: surveillance in the area in which they reside; participation in the prevention, detection and fight of forest fires; and notification to law enforcement officers of all violations of which they are aware as well as of all information useful for conservation and sustainable use of wildlife. They have a right to receive a portion of fine revenues for the violations occurred within their area of surveillance. In accordance with the draft PA regulations, community observers should also have priority in the admission to the selection of protected areas guards. Other entities, such as holders of rights to exploit wildlife in areas neighbouring the PA, must collaborate with the control services of PAs. The draft PA regulations establish that

50 percent of the fines collected will be allocated to those that participated in the detection of the violation. Seized wildlife products may be sold for the market price and proceeds then donated to social services or distributed to local communities.

## **2. BOTSWANA**

### **2.1 Overview of the legal framework**

The Wildlife Conservation and National Parks Act (1992) is the main piece of principal legislation concerning wild animals in Botswana. Numerous regulations have been adopted under the Act. Some are more general in their contents, such as those concerning hunting and licensing, while others are more specific, limiting the taking of specific species or declaring or regulating single protected areas. Regulations adopted under the National Parks Act and the Fauna Conservation Act (Cap 38:01), which is no longer in force, do not appear to have been expressly repealed, so they presumably remain in force to the extent that they do not conflict with the more recent Act. The Forest Act (1968) as amended, focuses on forests, serving also the purpose of implementing the CITES convention, without addressing substantive aspects of wildlife management.

### **2.2 Institutional setup and role of stakeholders**

The Wildlife Conservation and National Parks Act provides for the designation of a Director of Wildlife and National Parks. The director acts also as the CITES Management Authority and Scientific Authority (sec. 3).

Unlike in other countries in the region, which have tended to establish bodies including representatives of non-governmental stakeholders to advise authorities, no entity of this type is created by the legislation of Botswana. Some involvement of the private sector and local residents in the declaration and management of protected areas is however foreseen. The relevant provisions are briefly reported in the section below on conservation.

### 2.3 Wildlife tenure and use rights

The ownership of wild animals is expressly granted to the owner of land on which animals are kept or confined within a game-proof fence (sec. 83). Landowners or other specified lawful occupiers hold the right to hunt non-protected animals without a licence, on their land, subject to restrictions on the number of animals hunted and the payment of fees (sec. 20).

Landholders may use such "privileges" for profit, by authorizing third parties to hunt on their land, subject to the approval of the administration. The landholder must verify that persons thus authorized hold any required licences (sec. 21). In the exercise of such privileges, the landholder must maintain and submit annually a record specifying sex, species, place and date of hunting (sec. 22). Hunting without the permission of the landowner or occupier is an offence (sec. 49). Pursuant to the Hunting Regulations, persons entitled to landholder's privileges must register with the administration before exercising any such privileges, utilizing forms that vary depending on whether or not their exercise is for profit (reg. 13).

Botswana recognizes a right of owners or occupiers of land to kill animals that threaten persons or crops or other property on their land (sec. 46). Killing or wounding animals in self-defence or defence of another person, "if immediately and absolutely necessary", is allowed by any person (sec. 47). In all of these cases, there is a requirement to report the circumstances to responsible officials as soon as possible.

In accordance with regulations, compensation may be paid to any person who has suffered damage from the action of an animal (sec. 46 (4)). The provision does not specify who would be liable to pay, nor does the Fauna Conservation (Compensation for destruction of livestock and other property) Order, adopted under the wildlife legislation previously in force, serve to clarify this point. Presumably compensation would have to be paid by the owner of the wild animal, who may only be attached with ownership if the land from which the animal came was fenced. The state would therefore be responsible in all other cases. This would be in patent conflict, however, with another provision of the Act, by which the state is exempted from any liability for damage caused by wild animals (sec. 87).

### 2.4 Wildlife management planning

There is no requirement to survey the status of wildlife populations, or to generally plan the management of wildlife or of specific species. Management planning requirements are set out only for national parks and game reserves by the National Parks and Game Reserve Regulations, 2000, which require the adoption of a management plan for both national parks and game reserves. The plan may designate an area as a community use zone, which may only be used to conduct commercial tourism activities and for the sustainable use of veld products but not for hunting, unless otherwise provided under the Regulations. A fee may be charged for the collection or use of veld products, including firewood (reg. 18).

### 2.5 Wildlife conservation

National parks may be declared following publication of proposals and subsequent confirmation by parliament (sec. 5). On the contrary, consultation of the public or even concerned owners does not seem to be required for the creation of other types of protected areas, regardless of the fact that "any" lands may be concerned. In the management of wildlife management areas, however, the administration is required to consult with district councils and with land boards (sec. 15). The latter, pursuant to the Tribal Land Act, are entities in which tribal land is vested, comprising an equal number of representatives of ministries and of local people. In addition to national parks, the law of Botswana envisages game reserves or sanctuaries that may be established with respect to specified species, which may be captured within these areas only for scientific purposes (sec. 12).

Some orders provide for the special protection of cheetahs and lions, by prohibiting the killing of specimens of these species even when there is a threat that they may cause damage, as an exception to the provisions of section 46 of the Act (Wildlife Conservation and National Parks (Cheetahs) (Killing Suspension) Order 2005 and Wildlife Conservation and National Parks (Lions) (Killing Suspension) Order 2005).

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

In the Wildlife Conservation and National Parks Act, a distinction is made between "bird licences", "single game licences", "small game licences" and "special game licences" (secs. 26–38), the latter of which may be issued to citizens "who are principally dependent on hunting and gathering veld produce for their food" (sec. 30). Under the Hunting and Licensing Regulations, an additional "controlled hunting area permit" is a requirement to hunt in controlled hunting areas (reg. 10).

The minister may, by order, direct that any fees collected from hunting in controlled hunting areas be paid to specified district councils (sec. 16(4)). There is no indication regarding the utilization of such funds by the district councils.

Customary usage rights do not seem to be addressed in the current legislation. On the contrary, the Fauna Conservation (Hunting on State Land) Regulations, issued under the Fauna Conservation Ordinance replaced by the current Act, and therefore presumably superseded, provided for hunting by persons residing on state land who were "subject to customary law", although they perhaps aimed more at limiting customary usage rather than at encouraging it.

In addition to hunting licences, permits to capture or kill animals may be issued by the director in some specified cases. The degree of discretion given to the director in issuing these permits is wide, as a wide variety of option is left open, varying from cultural or scientific purposes to "the interests of wildlife utilization" (Hunting and Licensing Regulations, reg. 14).

There may also be "private game reserves" (created by presidential declaration upon a request by the landowner), in which the hunting or capturing of all or specified species is either prohibited or allowed only by the landowner or persons authorized by him/her, at conditions specified in the declaration establishing the reserve (sec. 13). Hunting or capturing wild animals may be practised in "wildlife management areas" and "controlled hunting areas", respectively declared by the president and the minister (secs. 15 and 16).

The law does not include specifications as to possible grounds for declaration.

Regarding ranching, "permission" is required by the Act to farm or ranch game animals. Fencing may be required. "Protected" and "partially protected" game animals may be farmed or ranched only under a specific authorization. If the area is fenced, there is no limit to the number of animals of specified species that may be taken. Otherwise, "culling" is subject to a permit. A permit is also required for sale of animals, meat or trophies (sec. 24).

The Declaration of Private Game Reserve Order of 31 January 1992, which establishes Mokolodi Private Game Reserve, requires permission of the director for any breeding or cross-breeding scheme involving the introduction of wildlife species into the reserve. Approval of the director is also required for any arrangement of facilities for the purpose of breeding, putting on display, trading or rehabilitation of animals. The director may withdraw his permission or approval if, in his opinion, no reasonable or satisfactory steps have been taken to introduce sustainable land and wildlife management practices, including the provision of adequate water facilities for the animals, or fire-breaks for the control of veld fires. Similar provisions were set out in the Private Game reserve Order of 24 June 1968.

Pursuant to the Wildlife Conservation and National Parks (Hunting and Licensing) Regulations (2001) persons entering Botswana on a "commercial tour" must be accompanied by a guide licensed in accordance with the regulations, which provide for professional guides, assistant professional guides and special guide licences (regs. 16, 17, 20 and 22–23). Foreign hunters must be accompanied by a professional hunter, also to be licensed in accordance with the regulations (regs. 25–32). A trophy dealer's licence is required to deal in trophies and may be issued provided that the applicant's premises are suitable for storing trophies (reg. 35). There are no indications as to criteria to be applied in the issue of such licences.

Regarding enforcement, "wildlife officers" in charge of the implementation of the Act are officers of the Department of Wildlife and National Parks. Honorary officers with the

same powers may also be appointed by the minister (secs. 3 and 4).

### **3. LESOTHO**

#### **3.1 Overview of the legal framework**

Although an older act concerns wildlife, along with flora and cultural assets (Historical Monuments, Relics, Fauna and Flora Act 1967), more meaningful provisions regarding the management and conservation of wild animals are to be found in the environmental and forestry legislation of Lesotho (Environment Act 2001 and Forestry Act 1998). Although wider in scope, the Environment Act relates to wildlife, along with other natural resources. The Forest Act addresses tree tenure, duties of the forestry administration, management planning and forest protection. Under the Forest Act, "game" is included as part of "forest produce" (sec. 2), although the main focus of the Act is on tree resources. The legislation available, therefore, basically does not address utilization.

#### **3.2 Institutional setup and role of stakeholders**

There is no provision requiring the representation of non-government sectors in any institutions or advisory bodies in the available legislation of Lesotho. The following bodies are the principal institutions responsible for the environment and forestry.

Lesotho's Environment Act (2001) establishes a National Environment Council, including numerous ministers and a few representatives of the private sector, as a supreme policy-making body (sec.5). It also establishes the Lesotho's Environment Authority (sec. 9). The Authority is the principal agency for the management of the environment and is responsible for coordinating, monitoring and supervising all sectoral activities in the field of environment, "ensuring the integration of environmental concerns in national planning through coordination with all line Ministries" (sec. 10).

A National Environment Fund is created for the protection, enhancement and management of the environment and natural resources (secs. 98–100). A Forestry Fund is created under the Forest Act (sec. 7). Considering the

inclusion of wild animals as part of forest produce, any of these funds could be utilized for wildlife purposes. There is, however, no express reference to wildlife management or to access to the funds by any possible beneficiaries in the provisions of these laws. Under the Historical Monuments, Relics, Fauna and Flora Act, 1967, a Commission is created for the purposes of implementing the Act (sec. 3).

An environmental tribunal for appeals against decisions made under the Act is also established (secs. 109–112). Regulatory powers of the minister responsible for the implementation of the Act (minister responsible for the environment include power to make regulations for the protection of fauna and flora (sec. 122(2)(c)).

Freedom of access to environmental information is expressly granted (sec. 95).

#### **3.3 Wildlife tenure and use rights**

There are no specific provisions regarding the ownership of wild animals or entitlement to use rights. The provisions regarding tree tenure could be an interesting precedent in case express provisions were adopted on wildlife ownership, and particularly animals bred in ranches or in captivity, as it recognizes an ownership right on trees planted and grown on land lawfully held to the person or other entity that planted them (sec. 3).

#### **3.4 Wildlife management planning**

There are no provisions specifically requiring the adoption of wildlife management plans or for plans concerning specific species. A National Environmental Action Plan, which must address natural resources, thus, necessarily including wildlife, is to be adopted by the Authority, in consultation with line ministries, under the Environment Act (sec. 25). Public consultation is required in the course of environmental impact assessment processes (sec.28 (5)). These must be carried out for a number of activities specified in schedule to the Act, which include creation of national parks and game reserves, commercial exploitation of natural fauna and flora (item 12 in the schedule) and activities which may affect bird migration sites (item 17).

Pursuant to the Forest Act, a "Forest Sector Plan" is to be prepared by the Chief Forestry Officer, who must request comments from the public. The Plan must be adopted by the minister. It includes a description of forests, an assessment of present and future needs of "forest produce" (which pursuant to the definitions includes wild animals) and harvesting and post-harvesting measures (sec. 9). Forest management plans must also be prepared for every forest reserve and include, among other provisions, "silvicultural, harvesting and reforestation measures". There is no specific reference to the management of animal resources (sec. 16).

### **3.5 Wildlife conservation (protected areas, protected species, impact assessment)**

In its chapter on "environmental management", the Environment Act refers to a number of environmental and natural resources issues, such as forests, energy, protection of biological diversity, access to genetic resources, management of rangelands and land use planning. Pursuant to this chapter, the Authority, always in consultation with the line ministries, is required to issue guidelines to address these matters (secs. 60-83). The Authority may declare any area as a "protected natural environment for the purposes of promoting and preserving specific ecological processes, natural environmental systems, natural beauty or places of indigenous wildlife or the preservation of biological diversity in general". It may also issue management guidelines and measures, always in consultation with line ministries (sec. 73). Although other parts of the law of Lesotho do require public participation in wildlife management – for example in the case of the adoption of plans and of environmental impact assessments – there is no particular requirement to solicit the views of any other stakeholders in the process for the creation of protected natural environments.

A procedure for environmental impact assessment, which is required for projects and activities listed in a schedule to the Act, is set out and includes the consultation of concerned communities (sec. 28). Among others, projects which may affect bird migration sites are subject to EIA (Schedule to the Act).

Under the Historical Monuments, Relics, Fauna and Flora Act, the minister may declare protected fauna or flora, although no particular criteria are set out (sec. 8). Destruction, damaging or removal of protected fauna from its habitat is prohibited (sec. 10).

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

The holders of allotted or leased land may enter into an agreement with the administration for the creation of a private, community or cooperative forest, the purposes of which may include production and marketing of trees and other forest produce, and therefore possibly animals pursuant to the definition (sec. 17(1)). Proceeds from a private or cooperative forest belong to the landholders (sec. 18). Local authorities may propose the creation of forest reserves to the minister (secs. 12–15). Regulations under the Forest Act may concern hunting or fishing in forest reserves (sec. 41(1)(h)). There are no particular provisions regarding neither hunting outside forest reserves nor ranching of animals or trade in animals in the legislation available.

## **4. MADAGASCAR**

### **4.1 Overview of the legal framework**

Law No. 90-033 is Madagascar's "Environmental Charter". It sets out the framework for environmental protection and management, including that of wild animals, although provisions more directly regulating hunting are found in an older piece of legislation, Ordinance No. 60-126 establishing the hunting, fishing and wildlife protection regime. Wild animals are also addressed in Law No. 2001-005 setting out the Protected Area Management Code, which, among other protected areas, provides for the creation of wildlife reserves. Law No. 96-025 on local management of renewable natural resources also covers wildlife, providing a framework for management by local communities. The forestry legislation does not particularly address wildlife.

## 4.2 Institutional setup and role of stakeholders

Ordinance No. 60-126 on hunting, fisheries and wildlife protection requires the creation of a consultative committee on hunting, fishing and protection of fauna by decree (art. 37). Decree No. 62-321 thus establishes the Higher Council for the Protection of Nature, which includes numerous ministers, other public officials and some experts. The Council may invite other public officials or private persons to be members (art. 2). The Council is expressly required to be consulted on any proposals concerning wild animals and hunting (art. 3). These provisions are limited from the point of view of ensuring the representation of the various concerned stakeholders in institutional mechanisms. However, numerous other provisions of the legislation of Madagascar (described in the sections below) require public participation in wildlife management, specifically with regard to creation of protected areas and agreements for the management of natural resources by local communities.

## 4.3 Wildlife tenure and use rights

Pursuant to the Ordinance on hunting, hunting rights on state lands belong to the state. This applies to the "*domain public*", i.e., lands that the state holds in its capacity as a public authority, which are usually inalienable, as well as to and the "*domain privé*", i.e., land held as private property by the state (art. 6). On these lands, hunting is "free", subject to the conditions of the law. However, if state lands are cultivated, the consent of the person cultivating the land is required (art. 7). On other properties, if fenced, clearly marked or cultivated, hunting rights belong to the owner of the land (art. 8).

Hunting rights on state lands may be granted to third parties by a direct lease agreement (*amodiation à l'amiable*) or by public auction. Hunting for commercial purposes may only be practised under such a lease of hunting rights (art. 13).

## 4.4 Wildlife management planning

Law 90-033 (the "Environmental Charter") requires the adoption of an environmental action plan, including among its objectives the conservation and improvement of the livelihood

of rural populations (art. 6). The Law includes an environmental policy, which requires inventories of resources with a view to their rational management and utilization. On the basis of this formulation, surveys of wildlife should be considered an obligation. The involvement of private actors, such as users' associations, enterprises and NGOs, is expressly encouraged in the policy.

Pursuant to the Protected Area Code (Law 2001-005), every protected area must have a management plan approved by the body in charge of the national protected area network. The zoning plan and internal rules must be publicized for every protected area (art. 33). The following section includes a further brief description of the provisions on protected areas found in the Code.

## 4.5 Wildlife conservation (protected areas, protected species, impact assessment)

Ordinance No. 60-126 sets out three categories of wild animals, i.e., protected animals, noxious animals and game.

The Protected Area Management Code defines "special reserves" as areas that have the objective of protecting an ecosystem, a specific site or an animal or plant species. Special reserves may be:

- wildlife reserves, which are devoted to conservation, management and reproduction of wild animals, and in which, for the purpose of protecting animals and their habitats, hunting is completely banned, except by the administration for management purposes;
- partial reserves or sanctuaries, which are set aside for the protection of endangered animal communities or animal species and their habitats, and where all activities are subject to this objective; or
- soil, water and forest reserves (art. 3).
- Hunting and fishing, along with any activities that may disturb wild animals or plants, are completely prohibited within nature reserves (art. 41.2)

Decree No. 2005-848 implementing Law No. 2001-005 introduces new types of protected areas, namely natural parks, natural monuments, protected landscapes and natural resource reserves (art. 2). The procedure for

the declaration of protected areas is set out in Decree 2005-013 (not available). The Code establishes that the final decision is adopted by the Government Council (art. 18). Decree 2005-848 sets forth a separate procedure for the creation of protected areas outside of the concession granted to the National Association for the Management of Protected Areas. These provisions apply to protected areas regardless of whether wildlife management is included among the objectives of a particular type of protected area. Public participation is required in a number of detailed provisions (arts. 11-23). Compensation may have to be paid in case the management plan foresees limitations of existing rights (art. 17). Areas comprising one or more categories of protected areas may be subject to « delegated management » (from the concerned ministry to third parties), or « co-management » (management by the ministry and third parties, either in the form of « participatory management » involving consultation of all concerned stakeholders or as actual joint management by the ministry and some third party) (art. 24).

Among the objectives of natural parks is to preserve ecosystems and offer benefits to local communities through contributing to their livelihood by allowing access to natural forestry or fishing products and preserving cultural traditions. "Forestry" products are not defined, but examples such as "drinking water" and "sustainable tourism" are mentioned (art. 3). Usage rights may be exercised in accordance with the management plan (art. 4).

Natural resource reserves, purposes for which may be scientific, economic or subsistence, are managed in accordance with the principle of sustainable development (art. 9). Resources may be taken provided that at least two thirds of the area remains in its natural state, in accordance with the management plan (art. 10).

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

Pursuant to the Protected Area Code, the body in charge of the national protected area network may take initiatives, for the purpose of enhancing the value of the area and increasing revenues, alone or in partnership with others, provided that such initiatives do not conflict with the objectives of conservation. The same

body may also charge fees upon granting rights to enter, research, to film and intellectual property rights (art. 34).

Subject to usage rights, protected areas are managed in accordance with their statute. Usage rights for domestic, non-commercial purposes, whether vital or customary, are reserved to the local population, in accordance with an agreement between the concerned population and the management entity (art. 41.1).

Under Law No. 96-025 concerning the local management of renewable natural resources, local communities may be entrusted the management of resources belonging to the state or local authorities, including wildlife (arts. 1 and 2). Local communities ("*communautés de base*") may be formed within any settlement, village or a group of villages by interested people (art. 3). These communities may be entrusted with the management of natural resources after they have been recognized by the administration (arts. 4 and 5). The process leading to recognition and their operation are further specified in Decree No. 2000-027. The arrangement is regulated by a management agreement and includes a *cahier de charges* (art. 6). The *commune*, within whose area of competence the resources are found, must also participate in the agreement (art. 7). The administration which has been addressed an application for this purpose must verify: (a) whether the community actually exists and the degree of interest of the local society in the request; (b) that the applicants actually represent the community and have been lawfully designated by it to represent it; (c) the quantity and quality of the relevant resources; and (d) the management capability of the community. The final decision regarding the application is made by the council of the concerned *commune* (art. 13). Decisions must be published and motivated (arts. 14–15).

Environmental "mediation" is a negotiation process that must be undertaken when a community first requests to be recognized. Negotiation must also be employed when more than one community applies for natural resource management. Resort to an "environmental mediator" is also possible to strengthen communities' capabilities before applying to be recognized or to assist them on various matters relating to the implementation

of the management contract or generally on sustainable utilization of resources (arts. 17–23). Rules on the qualifications and roles of environmental mediators are further specified in Decree No. 2000-028, pursuant to which mediators are expected to facilitate discussions among the various stakeholders aimed at developing common, sustainable management strategies.

Management agreements have duration of three years, and may be renewed for an additional period of ten years, upon positive evaluation of the community's performance by the administration (art. 39 of Law No. 96-025). Approval of management agreements may be withdrawn if the community fails to comply with the obligations set out in the agreement (art. 41).

The community may be compensated if it cannot fully enjoy the rights set out in the agreement due to the administration, or in the case of unilateral termination of the contract by the administration. Appeals to the higher administrative authority are allowed in the latter case. Appeals to the courts are allowed only in cases of rejection or if such an administrative appeal is not possible (art. 46). Disputes may also be settled by arbitration (art. 48).

Specific provisions are devoted to the regulation of relations among the community members, which are to be determined by "*Dina*" as approved by the community members in accordance with customs (art. 49). *Dinas* are subject to the law and to customs of the *commune* and must be approved by the mayor of the *commune* (art. 50). Some advantages, such as fiscal incentives, may be granted by law to communities involved in natural resource management, in order to facilitate the sustainable utilization of deriving products (art. 54). Technical assistance may be requested by the community to the administration (art. 55).

Under Decree 69-85, regulating capture of butterflies, a commercial hunting permit is required to capture, transport, sell and export butterflies whose taking is not prohibited (art. 1). Reports of the number and species of butterflies must be submitted by permit holders to the administration (art. 3). A separate permit is required for tourists wishing to capture butterflies (art. 6).

As already noted, hunting rights on state lands may be granted to third parties by a direct lease agreement (*amodiation à l'amiable*) or by public auction (art. 12 of the Hunting Ordinance). In this regard, Decree 61-093, setting out rules of implementation of the Hunting Ordinance, establishes that a « *cahier de charge* » issued by the administration should set out applicable conditions (arts. 1 and 5). Repopulation of certain species or prohibition of certain hunting methods may be part of the requirements (art. 1).

Pursuant to the Hunting Ordinance, a hunting permit is required to hunt, and an additional authorization, specifying numbers and species, is required for commercial hunting (art. 18). A special hunting permit for visitors, which may provide the same rights to hunt as to citizens but is valid only for two months, may also be granted (arts. 13–14). A permit to hunt or capture wild animals for commercial purposes may be granted to persons who engage in trade of hunted, live or domesticated animals, provided that they hold all appropriate technical qualifications (« *toutes les garanties au point de vue technique*») (art. 18). Holders of commercial hunting authorizations must report the number and species of animals hunted every three months. Commercial hunting authorizations are subject to a fee to be paid every three months and must be published in the official journal with details of holders and duration of validity (art. 19). Pursuant to *Arrêté* No. 327-MAP/FOR, which implements Article 14 of the Hunting Ordinance, hunting for personal needs with locally made weapons is authorized as a customary right, except in areas where keeping such weapons is prohibited (art. 3).

## 5. MALAWI

### 5.1 Overview of the legal framework

The National Parks and Wildlife Act (1992) is the main relevant piece of legislation, setting out institutional arrangements, a wildlife impact assessment process and rules for the declaration of national parks and wildlife reserves, hunting and trade in wildlife. The Environment Management Act (1996), which defines "environment" as including "the biological factors of fauna and flora" (sec. 2), is relevant as a logical framework, and does

include substantive provisions for the management of wild animals. The Forest Act (1997) is more relevant in that it considers animals and meat as "forest produce", thus, containing provisions which could be directly applicable to the management of wild animals found in the forests. There is, therefore, some degree of overlap, although not any patently conflicting rules, between this law and the wildlife legislation.

## 5.2 Institutional setup and role of stakeholders

In addition to the principal administrative authorities, various advisory bodies that include representatives of concerned stakeholders have been established in Malawi in the wildlife and related sector. A Wildlife Research and Management Board is established to advise the minister on wildlife matters, including declaration of protected areas and import and export of wildlife (National Parks and Wildlife Act, sec. 17). The Board includes an approximately equal number of representatives of the public and private sector. Three to five of the members must be appointed by the minister to represent the general public (sec. 18). A Chief Wildlife Officer is responsible for the management of national parks and wildlife (secs. 5 and 6).

A National Council for the Environment is established as an advisory body to the minister and includes representatives of all government Ministries and other public institutions and a much smaller representation of the private sector (one member respectively nominated by the Malawi Chamber of Commerce, a non-governmental environmental organization and the University) (Environment Management Act, sec. 10). A Technical Committee on the Environment, of up to twenty members with specific knowledge in environment and natural resource matters, is created to examine scientific issues on behalf of the minister, the director or the council (secs. 16-17). A Director of Environmental Affairs is appointed as the head of the environmental administration (sec. 8).

A Forestry Management Board is established by the Forest Act to advise on "tree and forestry" matters. It includes the heads of numerous government departments and other institutions and a smaller number of members

(up to five) appointed by the minister to represent the general public, in addition to representatives of the university and the timber industry (sec. 16). A Director of Forestry, appointed under the Act, is the head of the forestry administration (sec. 4).

A national parks and wildlife fund is created for the purpose of promotion and management of national parks and wildlife reserves (sec. 103). An environmental fund is established under the Environment Management Act (sec. 53). A forest management and development fund is created under the Forestry Act (sec. 55). The objectives to promote respectively wildlife and protected areas, environment and forest resources are stated in general terms. Accordingly, any of the funds could be used for wildlife-related purposes, but there is no reference to the possibility for the private sector or communities to access these funds.

## 5.3 Wildlife tenure and use rights

The ownership of wild animals, as well as plants, is vested in the president, on behalf of and for the benefit of the people (sec. 4(1)), but specimens lawfully taken pursuant to a licence become the property of the licensee (sec. 4(3)). However, entering private land without permission is not permitted, even in the pursuit of wounded animals which are otherwise required to be killed. In this case, a report must be made to the owner, who has sole authority to decide whether to allow access (sec. 79).

Any person may kill any protected animal in defence of himself or of another person or any property, crop or domestic animal if immediately and absolutely necessary (sec. 74). Owners or their "servants" may kill any game animal which is causing damage to their property or livestock (sec. 75). Killing animals under these circumstances must be reported to the administration and does not entitle ownership of the carcass (secs. 76).

## 5.4 Wildlife management planning

The principal legislation on wildlife does not address management planning regarding wild animals, although management planning of protected areas is addressed. Pursuant to the Forest Act, a national forest plan is to be adopted (sec. 5) and management plans are

required to be prepared for every forest reserve (sec. 24). However, there are no specific requirements as to the contents of these plans, so presumably they could address wildlife only as a part of the forest ecosystem, without actually providing a framework for the management of wild animals. The director may enter into agreements with local communities for the implementation of these plans (sec. 25). The Environment Management Act provides for the adoption of an action plan at the national and district levels (secs. 21–23).

### **5.5 Wildlife conservation (protected areas, protected species, impact assessment)**

Any person may propose that a wildlife impact assessment be conducted of any existing or proposed process or activity that may have an adverse effect on wildlife. Following such a request the minister may call upon the Board to conduct the assessment. The Board's assessment report must include recommendations for subsequent government action (secs. 23–25).

National Parks or wildlife reserves may be declared by the minister on public land, upon consultation with the Board, and land other than public land may be acquired for this purpose (secs. 26–29). Hunting in protected areas is generally forbidden but may be authorized under a provision that leaves ample discretion to the administration (sec. 39). Removing any animal or vegetation, whether live or dead, other than animals or vegetation lawfully introduced into a protected area by the person removing it, is an offence (National Parks and Wildlife (Protected Areas) Regulations, 1994, reg. 6(j)). There are no provisions requiring the involvement of concerned communities in the management of protected areas.

The Forestry Act classifies forest areas as forest reserves or protected forest areas. The protection of outstanding fauna through protection of a forest is one of the grounds for declaration of protected forest areas. Thus, wildlife management aspects can be addressed under this framework, although trees are likely to be the main focus for consideration. Forest reserves may be declared on public land by the minister after consultation with the minister responsible for land matters (sec. 22), or on

private land upon its compulsory acquisition (sec. 23). Possible grounds for declaration of a forest reserve are not specified, so it must be assumed that the basic underlying reason for declaration is permanent dedication to forestry of the concerned area. On the contrary, protected forest areas may be declared by the minister where an area is required to be maintained or established as a forest for "the protection of soil and water resources, outstanding flora and fauna". In this case, consultation is required with the landowner, land occupier or the concerned traditional authority. However, acquisition is not required and protective measures binding landowners or occupiers are set out in the ministerial declaration (sec. 26 and 27).

"Village forest areas" may be designated by village headmen for protection and management, with the advice of the administration, for the benefit of the village community (sec. 30). Forest management agreements between the director and a "management authority" designated in the agreement are to provide for forestry practices, allocation of land among villagers and election of village natural resource management committees. Despite the denomination of the committee, there is no particular reference to resources other than trees. Hence, it may be presumed that the agreements are more likely to focus on forests than on other aspects (sec. 31). Village natural resource management committees are given powers of seizure with respect to produce and items taken in contravention of rules made by them.

Possession and use of weapons, traps, explosives, poisons or hunting animals within forest reserves and protected forest areas is prohibited (sec. 43). Hunting and fishing are offences (sec. 66). In this regard, the National Parks and Wildlife Act further specifies (sec. 69) that hunting by traditional methods, which is generally exempted from other prohibitions, is not allowed in national parks, wildlife reserves and forest reserves.

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

Hunting is forbidden in national parks and wildlife reserves. "Where it is intended to harvest resource", however, the Chief Wildlife Officer may issue authority to any person for

this purpose and must ensure that the annual harvest does not exceed sustainable yield level, unless otherwise determined by the minister for management purposes (sec. 39). Outside of protected areas, hunting of protected species requires a licence (sec. 47). Classes of licences which may be issued under the Act are:

- bird licences (for specified species of birds, only for residents);
- game licences (for specified species of animals, only for residents);
- hunting licences (for specified species in national parks or wildlife reserves, only in connection with a professional hunter's licence);
- special licences (for scientific or educational purposes) and
- visitor's licences.

Decisions issued by the chief wildlife officer regarding licences may be appealed before the minister, whose decision is final (sec. 56).

The Forest Act also authorizes villagers to "collect forest produce" from customary land that is not declared as a village forest area for domestic needs. As the definition of forest produce includes animals and meat, this could be interpreted to mean that wild animals may be taken, although the term "collecting" is not a good synonym for "hunting". The provisions would thus be difficult to reconcile with the Wildlife Act, which requires licences in all cases to hunt game animals. The same section of the Forest Act also allows the village natural resource management committee to dispose of "wood" (not "produce") in excess of such needs "for the benefit of the community" (sec. 50).

The National Parks and Wildlife (Wildlife Ranching) Regulations, 1994, lay down requirements and conditions for wildlife ranching. A permit, whose form is set out, is always required and harvesting requires the approval of the administration. Other provisions regulate inspection, release into the wild, destruction of escaping animals, record keeping and prohibition to kill with weapons other than firearms.

Under the National Parks and Wildlife (Control of Trophies and Trade in Trophies) Regulations (1994), a trophy dealer's permit is

required for trade in trophies or manufacture of articles from trophies for sale. There is no other particular reference to activities which might be of interest for tourism. The Regulations set out the form for requiring such permits.

Possession, sale and purchase of specimens of protected species is an offence, unless the specimen has been lawfully taken and a certificate of ownership has been obtained (secs. 86 and 88). Trade in live animals requires a live animal dealer's permit, which may be issued under the National Parks and Wildlife (Control of trade in Live Animals) Regulations (1994).

## 6. MOZAMBIQUE

### 6.1 Overview of the legal framework

The main legal instrument on wildlife management in Mozambique is Law n. 10/99 of 1999, which establishes the principles and basic norms on the protection, conservation and sustainable use of forest and wildlife resources (hereinafter, Wildlife Law; implemented by the Regulations on Forests and Wildlife, Decree n. 12/2002, hereinafter, wildlife regulation). In addition, Environmental Law n. 20/97 of 1997 and its regulations provide general principles and specific tools that are also relevant for wildlife management.

### 6.2 Institutional setup and role of stakeholders

The wildlife regulation specifies that the Ministry of Agriculture and Rural Development is responsible for wildlife management and law enforcement (arts. 86 and 107), while the Ministry of Tourism is responsible for the management of protected areas and wildlife law enforcement in PAs, in coordination with the Ministry for the Coordination of Environmental Action (arts. 87 and 107). Hunting licences may be issued jointly by the Ministry of Agriculture and Rural Development and the Ministry of Tourism (art. 56).

The environmental law establishes a National Council for Sustainable Development as a consultative body to the Council of Ministers and as a forum for the consideration of public opinions on environmental issues (art. 5).

Among its tasks, the Council is expected to consider sectoral policies related to natural resources management, put forward proposals for new or amended sectoral legislation on natural resources, propose financial incentives and resolve institutional conflicts related to the management of natural resources (art. 6). It may therefore intervene in wildlife management-related policies and legislation.

The wildlife law provides for the creation of local management councils, composed of representatives of local communities, the private sector, associations and local authorities for the protection, conservation and promotion of the sustainable use of wildlife and forest resources (art. 31). These councils are required to: examine requests for wildlife use, ensure that wildlife use contribute to the enhancement of the quality of life of local communities, ensure conflict resolution, propose improvements to wildlife legislation, control forest fires, and issue directives for the preparation of management plans (wildlife regulation, art. 97). In addition, they may provide advice to the Ministries of Agriculture and of Tourism and request the withdrawal of a project when it may undermine rural development or the sustainable use of wildlife and forests (*ibid.*).

The environmental law establishes the principles of rational use and management of environmental components, with the purpose of promoting the quality of life of citizens, and the protection of biodiversity and ecosystems; the recognition of traditional knowledge of local communities that contribute to the conservation of natural resources and of the environment; broad public participation, and gender equality to guarantee opportunities of equal access and use of natural resources to women and men (art. 4). Appropriate mechanisms should be created for the involvement of different sectors of civil society, local communities and environmental associations, in the elaboration of policies and legislation on natural resources management (art. 8). Specifically, the environmental law recognises the right of citizens to access environmental information (art. 19), access justice for environmental matters (art. 20), request injunctions (art. 22), as well as their obligation to use natural resources responsibly (art. 24).

Along the same lines, the wildlife law includes among its general principles (art. 3): the involvement of local communities, the private sector and civil society and the respect of traditional practices in the conservation and sustainable use of wildlife in the framework of decentralization. Furthermore, local communities should have part in the benefits arising from wildlife use (wildlife law, art. 31). In addition, the state may delegate its powers to manage wildlife, also for repopulation purposes, to local communities or the private sector (art. 33).

An Environmental Fund (FUNAB) was established by Decree No. 39/2000, with the purpose of funding management of natural resources at the local level, management of protected areas, and environmental impact assessments, among others (art. 2). Wildlife management activities may well fall within the scope of the fund.

### **6.3 Wildlife tenure and use rights**

The wildlife law specifies that wildlife is the property of the state (art. 3). Land holders may use wildlife resources on their land for their personal consumption, but would otherwise need a licence (art. 9). Generally, the right to use wildlife is subject to a licence (see section 2.6.6 below). Hunters become the owners of legally killed or captured animals, as well as the trophies (hunting regulation, art. 45).

Wild animals introduced by private concessionaires in protected areas are the property of the state, unless otherwise stated in the concession. Wild animals introduced in wildlife farms and in ranches are the property of the concessionaires, unless otherwise stated in the concession (hunting regulation, art. 83).

### **6.4 Wildlife management planning**

The wildlife law defines wildlife inventory as the collection, analysis and record-keeping of data on the species composition, density and distribution to provide the basis for the sustainable management of wildlife (art. 1). Several requirements for inventory and management plans are scattered in wildlife legislation, depending on the type of wildlife use (see section 2.6.6). Furthermore, protected area management plans should be elaborated

with the participation of local communities (wildlife law, art. 10).

### 6.5 Wildlife conservation

Protected areas (PAs) should be established and managed, taking into account the need to protect biodiversity as well as social, economic, cultural, scientific and landscape values. The role of local communities should also be considered in the creation of protected areas (environmental law, art. 13). The wildlife law classifies PAs as: national parks, national reserves and areas of historic-cultural use or value. Buffer zones in which multiple uses may be allowed may be established around PAs by the Council of Ministers (art. 10). In national parks – which may be created for the protection, reproduction, conservation and management of wildlife – and in national reserves – which may be created for the complete protection of certain rare, endemic, threatened wildlife species – hunting is prohibited (arts. 11–12). Wildlife in areas of historic-cultural use and value may be used in accordance with the cultural practices of the concerned communities (art. 13). These include areas in which wildlife is used for religious practices (wildlife regulation, art. 7).

National parks and national reserves are established by the Council of Ministers, following the advice of district administrators based on consultations with local communities (wildlife regulation, art. 2). Areas of historic-cultural use and value are declared by the provincial governor, when these areas are notoriously used for cultural purposes or upon request of local communities (art. 7). Nonetheless, the declaration is not necessary for the exercise of the cultural use of wildlife in areas of historic-cultural value (art. 7).

The principle of prevention and prudence enshrined in the wildlife law (art. 3) calls for an environmental impact assessment (EIA) before the introduction of new species and technologies in the wildlife sector. The Regulation on EIA of 2004 includes, among the projects of category A for which EIA is mandatory, the creation of national parks, national reserves, ranches, wildlife management areas and buffer zones, as well as commercial exploitation of wildlife and the introduction of exotic fauna species (Annex 1). In addition, an EIA is still mandatory for other

activities, when the proposed activity may result in a restriction of the use of natural resources (art. 14). Public participation throughout the EIA process is guaranteed, through information, consultations, request for clarification, submission of comments and suggestions (art. 14).

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

Hunting can be exercised in: multiple-use areas; wildlife farms (*fazendas do bravio*, i.e. pursuant to the wildlife law (art. 1.21); clearly demarcated areas, whether fenced or not fenced, in which hunting rights are reserved to holders of land use rights or persons authorized by them, if duly licensed); official hunting areas (*coutadas oficiais*), i.e. pursuant to the wildlife law (art. 1.8); areas of state land devoted to sport hunting, hunting tourism or species protection under concession agreements; buffer zones; and areas of historic-cultural value (wildlife regulation, art.46). Legislation distinguishes between:

- simple licence: this is issued to nationals and local communities for their own use, by local councils, in coordination with the relevant sectoral authorities, and in accordance with traditional customs (wildlife law, art. 21);
- licence for commercial hunting: this is issued to individuals or groups in wildlife farms with a view to obtaining trophies for commercialization (art. 23);
- licence for recreational hunting: this is issued to nationals and foreigners in *coutadas oficiais* and *fazendas do bravio* (art. 22).

The wildlife regulation provides explicitly for hunting guides, who are authorized by the National Direction of Protected Areas, upon advice from the hunters' associations (art. 53), to conduct hunting excursions, as well as hunting and photographic safaris (art. 51). Hunting guides are obliged, among other things, to: distribute, whenever possible, the meat of animals hunted by tourists to local communities residing in the area of the hunt; report all violations of the law; and defend local communities from the attacks of wild animals that are considered dangerous (art. 52). Community hunters are also specifically addressed by the wildlife regulation, as

individuals that have been recognised by their community as qualified for hunting in accordance with traditional practices. Community hunters then need to be recognised as such by the provincial services for forest and wildlife management, based on a verbal declaration of the hunter accompanied by 5 community members as witnesses. The status of community hunters cannot be transferred (art. 63). Community hunters are responsible for defending their community from animal attacks.

Killing wild animals in defence of persons or property is allowed without a licence in case of actual or imminent attacks by wild animals, when flight or capture is not possible. These killings should be undertaken by the specialized brigade of the state, the private sector or local communities that have been duly authorized (wildlife law, art. 25). The meat of animals killed in defence will be distributed for free to local communities, after part of it has been allocated to the hunters (wildlife regulation, art. 72).

Repopulation is subject to a management plan, and may be promoted with incentives. Those who have provoked a decline in wild animals have an obligation to repopulate (wildlife law, art. 29). Wildlife ranching may be exercised in duly identified areas, in observance of a management plan (art. 20). Wildlife ranching operators should prepare an inventory of existing wildlife resources, and install safety facilities for dangerous animals (hunting regulation, art. 84). Ranching facilities will be inspected regularly by the provincial services for forest and wildlife management (art. 85). As already noted, wild animals introduced in wildlife farms and in ranches are the property of the concessionaires, unless otherwise stated in the concession (hunting regulation, art. 83).

The possession, transport and commercialization of trophies are subject to registration and marking of the trophies, and payment of a fee (hunting regulation, art. 74). Generally, licence fees are applicable to the use of wildlife and for eco-tourism in protected areas, with the exception of local communities utilising wildlife for their own consumption. An additional fee of 15 percent may be applied to ensure the repopulation of wildlife (wildlife law, art. 35; wildlife regulation, art. 101). The wildlife

regulation establishes that 20 percent of any fees related to wildlife use should be allocated to local communities residing in the area (art. 102). Licensing authorities are therefore called upon to promote the creation of committees for the management of these funds within the beneficiary communities, which should comprise ten members including men and women (Government Decree n. 93/2005, art. 2). Licensing authorities will then be responsible for the allocation of the percentage of fees and their deposit into a bank account named "community fund" every three months (art. 4). Funds will be distributed by dividing the total amount for the number of communities living in the area in which wildlife resources whose use was licensed are located. The committee will then open a bank account for each of these communities (art. 5). Funds can be accessed by at least three members of the committee and will be subject to monitoring and reporting. The committee will inform each community annually of the activities realized with the funds and their justification (art. 6).

#### **6.7 Law enforcement**

The environmental law specifically creates a general obligation for the public to report all violations of environmental law, of which they know or reasonably presume are about to occur, to the closest policeman or other administrative officer (art. 24). In addition, to enhance the participation of local communities in control and law enforcement activities, the government is to promote, together with local authorities, the appointment of community law enforcement agents (art. 30).

The wildlife law adds that all citizens, and in particular the local management councils and licence holders, are to collaborate in monitoring for the protection of wildlife and notify the nearest authority of any violation of wildlife law (art. 37). The wildlife regulation allocates 50 percent of the fines for violations of forest and wildlife law to the law enforcement officers and community agents that contributed to the detection of the violation, and to the local communities or individual citizens that denounced the violation (art. 112). Wildlife law enforcement officers benefit from a subsidy for risk corresponding to 20 percent of the basic salary (art. 113).

## 7. NAMIBIA

### 7.1 Overview of the legal framework

The Environmental Management Act (2007) provides a framework for the management of natural resources. The Nature Conservation Ordinance (1975), originally adopted for the Territory of South West Africa, as amended, is a basic piece of legislation providing for the establishment of game parks and nature reserves and the control of "problem animals". Its 1996 amendment introduces "nature conservancies" specifically for the involvement of communities in wildlife management. Some of the provisions of the Forest Act, enacted in 2001, which govern community-based forest management, could involve the management of wild animals, as "living organisms" found in forests, are considered part of "forest produce". There are no particular conflicts among these laws.

### 7.2 Institutional setup and role of stakeholders

The main legislation regarding wildlife dates back to 1975. Although it was subsequently modified, it does not necessarily ensure the involvement of different stakeholders in decision making, leaving the appointment of members of the Nature Conservation Board to Cabinet, without any particular requirements for representation. The more recent environmental legislation is more progressive in this regard.

The Nature Conservation Board, originally established by the Nature Conservation Ordinance, 1967, and continued pursuant to the Nature Conservation Ordinance, 1975, advises the minister on management of protected areas, issues wildlife dealers' licences, and carries out any other functions which may be referred to it by the minister. The number of members ranges from five to ten (secs. 3 and 11).

The Environmental Management Act establishes a Sustainable Development Advisory Council (sec. 6). The involvement of communities in the management of natural resources and in the sharing of benefits derived from their use is expressly required (sec. 3). Functions of the Council are to promote cooperation among institutions,

NGOs, community-based organizations, private sector and donors, as well as to advise the minister on environmental matters (sec. 7). The Council includes four persons who represent the interests of the state and four persons appointed by the minister to represent associations, organizations and institutions (sec. 8).

The Game Products Trust Fund Act (1997) calls for the creation of a Board to manage the Fund. Pursuant to a 2006 amendment, the Board is to include at least two members representing community-based organizations and involved in sustainable wildlife resource management projects or programmes (sec. 5, as amended by the State-owned Enterprises Governance Act, 2006, sec. 14).

The same provision requiring the representation of community-based organizations applies to membership in the Board managing the Namibia Wildlife Resorts Corporation (Namibia Wildlife Resorts Corporation Act, sec. 4, as amended by the State-owned Enterprises Governance Act, 2006, sec. 16) – a state-owned company created to manage wildlife resorts.

The Forest Act establishes a Forestry Council which includes three representatives of ministries, two persons appointed by associations representing farmers and one person nominated by the Council of Traditional Leaders (sec. 2). The Council advises the minister on forestry matters, including policy, legislation and issues proposed by Council members (sec. 3). The Director of Forestry is the head of the forestry administration (sec. 7). As noted in the introductory section, the definition of forest produce given in the forestry legislation also covers wild animals, although the Forest Act does not otherwise address wild animals in any substantive way.

### 7.3 Wildlife tenure and use rights

Hunting on state land ("land owned by the government of the Territory"), including communal land, is not allowed without the written permission of the Cabinet (sec. 28). A number of privileges are set out for owners and occupiers of land, although in a somewhat complex way. As for protected game, owners or lessees of land not smaller than one thousand hectares, enclosed with jackal-proof

fencing, may, have a right of ownership and may kill any ant bear or honey badger found on such land and any steenbok which is lawfully on it (sec. 27).

With regard to "hunnable game", the owner or lessee of (a) a farm which is enclosed with a game-proof fence or an adequate fence; or (b) any piece of land which is not less than one thousand hectares in extent and enclosed with a game-proof fence, is the owner of all "hunnable game", "hunnable game birds" and "exotic game" (sec. 29) and may hunt it without a permit (sec. 31). Game hunting by other persons may be practised only if an "authority" is issued by the owner or lessee of the land where hunting will be practised (in addition to a permit from the administration). The owner or lessee must specify the number of animals that may be taken, within the limits set out in the law. This limitation, however, does not apply to farms enclosed within game proof fences. Landowners or lessees may seek compensation in an amount agreed with the person to whom the authority to hunt on their land is granted (sec. 30).

With regard to game birds, hunting is permitted with authority from the owner or lessee of a farm which is enclosed by either a game-proof fence or adequate fence or by the owner or lessee of a piece of land not less than one thousand hectares and also enclosed by a game-proof fence (sec. 32). The owner or lessee of any land may hunt game birds on said land, if such land's boundaries are clearly indicated, and may also hunt other birds which destroy crops.

The owner of a farm or land may lease his farming rights to third parties, in which case the lessee will have exclusive hunting rights. Contracts must be in writing and apply to a period of at least six months (sec. 35).

The owner or lessee of a farm or any piece of land not less than one thousand hectares may for any purpose capture and keep game on said farm or land, provided such farm or land is enclosed with a game-proof fence. Such capture is subject to previous written approval of capture methods by the administration, and, upon such a direction of the Cabinet, subject to the obligation to capture game under the supervision of the Directorate (sec. 40).

Private game parks or private nature reserves may be declared by the minister upon application of the owner of the concerned land and prior publication of a notice of the proposal in the Gazette, soliciting possible objections from the public (sec. 22). The owner has a right to hunt in private game parks. Hunting by third parties must be authorized by the owner and is also subject to the permission of the minister (Nature Conservation Ordinance, sec. 23).

Conservancies and Wildlife Councils declared under the Ordinance, (as modified by the 1996 amendment) are given the same rights and obligations with respect to wildlife as any owner or lessee of land (in substance those described in the previous paragraphs), but the limitations regarding the minimum size of land and fencing do not apply (sec. 24A (5)). The provisions regarding Conservancies and Wildlife Councils are further described in the section below on utilization (2.7.6).

Owners and lessees of land or occupiers of communal land may kill specially protected game on their land in defence of a human life or to prevent a human being from being injured. In addition, such persons may kill specially protected game to protect the life of any livestock, poultry or domestic animal of such owner, lessee or occupier whilst the life of such livestock, poultry or domestic animal is actually being threatened. A report must be made to the nearest nature conservator (sec. 26(4)).

The owner or lessee of land may hunt any game, excluding elephant, hippopotamus and rhinoceros, that is destroying or damaging crops, including at night, if the land is fenced as prescribed and smaller than one hundred hectares. Occupiers of communal land may also hunt game that is damaging crops, excluding the same animals, if the land is fenced in a way approved by the administration. Any such killing must be reported within ten days. Permits to owners or lessees of land may be granted to hunt specified species and numbers of game specifically to protect grazing on any land (sec. 37).

The owner or lessee of land may at any time hunt any "problem animal" (animals thus formally identified by ministerial declaration)

found on such land. The minister may instruct officials or any other any persons to hunt problem animals on any land, even without the consent of its owner or lessee (sec. 54).

#### **7.4 Wildlife management planning**

There is no specific requirement to adopt wildlife management plans. Environmental plans, however, are to be adopted under the Environmental Management Act in order to coordinate and harmonize the environmental policies, plans, programmes and decisions of the various organs of state and minimize duplication of procedures and promote consistency (sec. 23). The minister responsible for the environment may list organs of state that carry out functions which may affect the environment, and such organs must prepare an environmental plan subject to the same minister's approval (secs. 24–25). Under this provision, the wildlife administration could be required to prepare an environmental plan.

The Forest Act requires the preparation of a management plan for all classified forests (forest reserves, community forests and forest management areas). These plans are required to describe "forest produce" (defined as including all living organisms) and how it is being used, and then to state management objectives and measures (sec. 12). This presumably means that plans must include wildlife management aspects. Further information on management planning is included in the section below on utilization, where forest reserves and community forests are addressed (2.7.6).

#### **7.5 Wildlife conservation (protected areas, protected species, impact assessment)**

In the Nature Conservation Ordinance the area known as Etosha National Park is declared to be a game park for the "benefit and enjoyment" of residents of the area (sec. 13). The minister may declare other game parks and reserves for the same purposes (sec. 14). Hunting without the written permission of the minister in any game park or any nature reserve is prohibited (sec. 20). However, a dangerous animal may be killed in defence of a human life or to prevent a human being from being injured (sec. 20).

Pursuant to the Environmental Management Act, environmental impact assessment may be required with respect to projects involving "resource removal, including natural living resources" and "renewal of natural resources", if listed in a ministerial notice issued for this purpose (sec. 27). A thorough process of consultation of the public and concerned institutions is required (secs. 36 and 44).

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

A permit is required to hunt specially protected game, which is listed in schedule to the Ordinance (sec. 26). A permit is required also to hunt protected game and "hunnable" game, except for landowners' or lessees' privileges, as described in the section above on wildlife tenure. The permit applies only to the number of animals which may be specified by the owner or lessee, within some limits set out in the law (either three heads of big game and no small game, or a smaller number of big game and some small game). This limitation, however, does not apply to farms enclosed within game-proof fences. Exotic game may be hunted only by its owner or if authorized by the owner, or by the owner of the land on which such game trespasses (sec. 34).

Pursuant to the Forest Act, hunting in classified forests (forest reserves, community forests or forest management areas) must comply with the applicable management plan (management plans are in fact required by Section 12 to address "forest produce", which includes all living organisms). Permits under the Nature Conservation Ordinance may not be issued if not in accordance with the forest management plan (sec. 24 (5)).

The minister may declare any wild animal to be a "problem animal" (sec. 53), so that (pursuant to the above-mentioned sec. 54) the animal may be hunted by land owners at any time or culled by the administration.

Hunting "for the sake of trophies" requires a separate permit, which may be issued for up to two animals to persons "from any country". No particular criteria are set out for the grant of such permits. Manufacturing any articles from trophies for purposes of sale requires a licence as a manufacturer of articles from trophies.

Dealing in trophies, including display trophies, requires a licence (sec. 36).

Capture, transport or keeping of game or any other wild animal for commercial purposes requires a licence as a game dealer (sec. 41). The sale of game or game meat are prohibited except by the owner or lessee of a farm which is enclosed with a game-proof fence or a piece of land which is at least one thousand hectares in extent and which is enclosed with a game-proof fence, or by licensed game dealers or butchers (sec. 47). The transport of game or game meat is also regulated in general, being allowed to persons already authorized to hunt or to deal in game, or if in small quantities (sec. 48).

A state-owned company, the Namibia Wildlife Resorts Company (established by the Act with the same name) is to carry on the business of managing wildlife resorts, promoting training and research with a view to increasing productivity in the wildlife resorts service and developing, with or without the participation of the private sector, commercially viable enterprises or wildlife projects. As noted in the section above regarding institutional aspects (2.7.2), the Board of this company has been required to include two members representing community-based organizations since 2006.

A legal framework for management of areas as "conservancies" is set out in the 1996 amendment of the Wildlife Ordinance. Any group of persons residing on communal land may apply to be recognized as the "conservancy committee" of the area. The minister must be satisfied that (a) the committee is representative of the community residing in the area; (b) the constitution of the committee provides for the sustainable management of game; (c) the committee "has the ability to manage funds and has an appropriate method for the equitable distribution, to members of the community, of benefits derived from the consumptive and non consumptive use of game in such area"; (d) in the identification of the area, the views of the local Council have been taken into account and (e) the area is not subject to any lease and is not a game park or reserve. Upon positive evaluation, the minister may declare the area to be a "Conservancy". In case the minister wishes to withdraw the declaration, the committee must be notified the reasons and be

given a period to object. The committee has rights and duties with regard to consumptive and non-consumptive uses and wildlife management, "in order to enable members of the community to derive benefits" from it (sec. 24A).

Another innovation introduced by the 1996 amendment of the Wildlife Ordinance is the possibility for the minister to create Wildlife Councils. Such councils are created, following consultation with a community residing on communal land, if such land does not include any conservancy, game park or nature reserve or is not under any lease. There is no provision regarding the composition of Wildlife Councils. Provisions applicable to them are the same as those applicable to Conservancies: the intention to withdraw the declaration must be given to the Council, which in turn must be given a period to object. Wildlife Councils also have rights and duties with respect to wildlife management in order to enable members of the community to derive benefits (sec. 24B).

Under the Forest Act, state forest reserves or regional forest reserves may be declared on communal land, upon proposals respectively of the minister or of a regional council on communal land, where effective management as a community forest is not possible. Proposals must be advertised and must include a management plan and details of how revenues from the reserve will be allocated. As noted above in the section on management planning, these plans must presumably include wildlife management aspects. The minister or regional council may enter into an agreement with the chief or traditional authority for the concerned land which creates the forest reserve and states how the revenue will be allocated. If an agreement cannot be reached, a state forest reserve may be declared by order. Compensation must be paid to persons or communities who lose pre-existing rights over the land (secs. 13 and 14).

Community forests may be created by agreement between the minister and any entity that the ministry believes represents the interests of persons who have rights over communal land and is able to manage the land as a community forest (sec. 15). The agreement must include a management plan, confer the right to manage and use forest produce and other natural resources of the

forest and provide for equal use of the forest and equal access to forest produce by members of the communal land.

## 8. SOUTH AFRICA

### 8.1 Overview of the legal framework

In South Africa, the National Environmental Management Act (1998) sets out a framework for the management of the environment, leaving it to the National Environmental Management Biodiversity Act 2004 to govern the protection of indigenous biological resources. A more specific legal regime for wildlife is established at the Provincial level.

A National Environmental Management Protected Areas Act (2003) is in place to regulate protected areas. The National Parks Act (1976) remains in force, addressing national parks more specifically. Pursuant to the Forest Act (1998), "forest produce" means anything which appears or grows in a forest, including any living organism and any product of it. Therefore, some of the Act's provisions are applicable to wild animals found in forests.

### 8.2 Institutional setup and role of stakeholders

There are numerous provisions in the legislation of South Africa which require the involvement of different stakeholders in advisory bodies, as well as in decision making processes. These provisions are in line with South Africa's Constitution (secs. 32 and 33) and legislation that promotes justice and access to information by making consultation mandatory whenever a government Department or entity makes a decision that affects the rights or interests of any person or class of persons.

Institutions responsible for wildlife are not specifically addressed in the legislation available. The principal ones are the Department of Environmental Affairs and Tourism, South African National Parks and Provincial Parks authorities.<sup>8</sup>

Under the National Environmental Management Act, a National Environmental

Advisory Forum with advisory functions is established. The Act includes detailed provisions aimed at ensuring wide representation of stakeholders on the Forum (which includes 12 to 15 members appointed by the minister), including women, youth and disadvantaged persons. Before appointments, various sectors of society must specifically be invited to submit nominations (secs. 3 and 4).

A Committee for Environmental Coordination, composed of administrative officials, is created to promote the integration and coordination of environmental functions by the relevant organs of state, and, in particular, promote the achievement of the objectives of environmental implementation and management plans as set out in section 12 (secs. 7–8).

The South African National Biodiversity Institute, established by the National Environmental Management Biodiversity Act, was created to assist in achieving the objectives of the Act. It has research and advisory functions (noted in further detail in the section below on management planning). Members of its Board are to be appointed by the minister. However, the public is invited to submit nominations for members, with the purpose of promoting fair representation, together with expertise in various sectors (secs. 10–11).

The "national biodiversity framework", to be adopted under the Act, must provide for an integrated, coordinated and uniform approach to biodiversity management by organs of state, in all spheres of government, nongovernmental organizations, the private sector, local communities, other stakeholders and the public (sec. 39).

The National Parks Board established by the National Parks Act, (subsequently named National Parks South Africa), is responsible for the control and management of the parks. It has 18 members appointed by the minister, nine of whom are appointed after publication of a notice soliciting proposed nominations (National Parks Act, sec. 5). A National Parks Land Acquisition Fund is created to acquire land for the creation of parks (sec. 12).

A National Forests Advisory Council, composed of fourteen to twenty members appointed by the minister, is created by the

<sup>8</sup> The information in this and the preceding paragraph was provided by S. Moolla.

Forests Act. In making appointments to the Council, the minister is required to solicit the submission of nominations and to balance the interests of numerous categories of stakeholders, such as "categories of persons disadvantaged by unfair discrimination", communities involved in community forestry, environmental interest groups, small entrepreneurs and forest industry trade unions (sec. 34). A panel is created from which facilitators, mediators and arbitrators may be selected for the resolution of disputes arising under the Forest Act. In resolving a dispute, facilitators, mediators and arbitrators must always consider "the historical and cultural association of the community or communities with the forest" and the "need to find equitable solutions to problems in the forests sector" (sec. 45).

The Protected Areas Act also provides for certain procedures to apply wherever consultation and public participation are required under the Act. They require thorough consultation of local authorities and lawful occupiers of land, publication of notices with invitations to provide comments and due consideration of observations received (secs. 31–33).

Similarly, a single procedure is established to apply to the numerous processes which, under the National Environmental Management Biodiversity Act, require consultation, including the adoption of the national biodiversity framework, bioregional plans and biodiversity management plans and the classification of species by the minister. Pursuant to the required procedure, the minister must consult with all concerned central and local authorities and solicit comments from the public by publishing a notice (secs. 99 and 100).

### **8.3 Wildlife tenure and use rights**

The legislation which has been examined does not include any specific statement regarding wildlife ownership. However, pursuant to the section, "state's trusteeship of biological diversity", the state is required, through its organs, to manage, conserve and sustain South Africa's biodiversity and its components and genetic resources (sec. 3 of the National Environmental Management Biodiversity Act). Although the position of land owners with respect to wild animals is not specifically

addressed, South Africa, along with Namibia and Zimbabwe, is one of the countries in the region which has most significantly shifted management responsibilities, with consequential enjoyment of benefits, to the owners of land where wildlife is located. Pursuant to applicable Provincial legislation, a private land owner may apply to register as a wildlife operator as long as the ranch meets certain criteria for size and perimeter fencing. If the government grants approval, hunting is under the full control of the landowner and no permit is required (Cumming, 1990, cited in Muir-Leresche and Nelson, p. 17). Similar to the treatment of wildlife resources in the Biodiversity Act, under the Protected Areas Act, the state acts as a trustee of protected areas and must implement the Act in partnership with the people (sec. 3).

The rights to forest produce (which includes all living organisms) in state forests vest in the minister, subject to legislation which may determine the restitution or temporary protection of land rights (Restitution of Land Rights Act, 1994 and Interim Protection of Informal Land Rights Act, 1996). Powers of the minister in relation to forest produce in state forests may not be exercised if in conflict with an existing right under a licence, servitude or agreement (sec. 22).

### **8.4 Wildlife management planning**

Provinces and listed government departments must adopt environmental implementation plans (where they exercise functions which may affect the environment) and/or environmental management plans (where they exercise functions which involve management of the environment) (secs. 11–16).

The South African National Biodiversity Institute must monitor and report to the minister on the status of biodiversity, including the conservation status of all listed threatened or protected species (sec. 11, National Environmental Management Biodiversity Act). The minister must prepare and adopt a national biodiversity framework and regularly update it at least every five years (sec. 38). The minister must also adopt bioregional plans for areas which may be declared as "bioregions" (areas containing "whole or several nested ecosystems" and

"characterized by its landforms, vegetation cover, human culture and history) (sec. 40).

Any person, organization or organ of state may submit to the minister a draft management plan for (a) an ecosystem, (b) an indigenous species which warrant special conservation attention or (c) a migratory species protected in a binding international agreement. The minister must identify a suitable person or entity which is willing to be responsible for the implementation of the plan and enter into an agreement with such a person or entity, publishing the approved "biodiversity management plan" in the Gazette (sec. 43).

The minimum content to be included in management plans for protected areas are set out under the Protected Area Act. The plans must include "the terms and conditions of any applicable biodiversity management plans" (sec. 41).

Some provisions of the National Environmental Management Biodiversity Act are specifically devoted to coordination among the various environmental and related plans. For example, the biodiversity management plan must be consistent with plans adopted under the Environmental Management Act and any municipal integrated development plan (sec. 45). At the same time, when an organ of state must prepare a plan under the National Environmental Management Act, or a municipality must adopt an integrated development plan, they are required to align such plans with the national biodiversity framework and any applicable bioregional plan (sec. 48).

The minister must designate monitoring mechanisms and set indicators to determine the conservation status of various components of South Africa's biodiversity and any negative and positive trends (sec. 49).

### **8.5 Wildlife conservation (protected areas, protected species, impact assessment)**

Under the National Environmental Management Biodiversity Act, the minister may publish lists of:

- critically endangered species (indigenous species facing an extremely high risk of

extinction in the wild in the immediate future);

- endangered species (indigenous species facing a high risk of extinction in the wild in the near future, although not critically endangered);
- vulnerable species (indigenous species facing an extremely high risk of extinction in the wild in the medium-term future, although not a critically endangered species or an endangered species; and
- protected species (which are of such high conservation value or national importance that they require national protection, although not listed above (sec. 56).
- The Environmental Management Protected Areas Act sets out a protected area "system" consisting of:
  - special nature reserves;
  - nature reserves (including wilderness areas);
  - protected environments;
  - World Heritage sites;
  - specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act; and
  - mountain catchment areas declared in terms of the Mountain Catchment Areas Act (sec. 9).

One of the purposes to declare a nature reserve may be to provide for a sustainable flow of natural products to meet the needs of a local community (sec. 23). Protected environments may be declared by the minister, among other purposes, to enable owners of land to take collective action to conserve biodiversity on their land and seek legal recognition (sec. 28).

The minister, or the responsible member of Executive Committee at the provincial level, who undertakes the process of declaring a protected area, may follow the consultation procedure he/she considers appropriate. However, the procedure is subject to specified requirements regarding consultation, adequate publication, invitation to submit comments and due consideration of same, and cross-consultation between the provincial and the national level (secs. 31–33).

The National Parks Act sets out a number of prohibitions applicable to the parks, such as the prohibition to enter or reside in the area,

and to disturb, introduce or remove animals (sec. 21). Permits to enter or reside in the parks may be issued only in limited cases, such as study or recreation (sec. 23).

Under the Forest Act, specially protected areas may be created (forest nature reserves, forest wilderness areas or other types of protected areas recognized in international law or practice) (sec. 8). A consultation procedure is required, including publication of a notice inviting objections, consideration of comments received and consultation with local communities (sec. 9).

### **8.6 Wildlife utilization (hunting, eco-tourism, ranching, trade and other uses)**

The minister may issue licences for hunting and fishing in state forests (Forest Act, sec. 22). Similar to other countries, the forestry legislation addresses community arrangements for "forestry" which could extend to wildlife aspects. Under the Forest Act, not only does the definition of forest include all biological organisms, it also includes the desire to "do anything in a state forest for which a licence is required" (which could apply to hunting) (sec. 29). This is a sufficient reason to apply for the creation of a community forest. In practice, it is likely that such arrangements have been and will be set up only where the management of trees remains the main activity. Nonetheless, it is interesting to analyze to what extent the communities' interests and the interest of all its members, have been taken into account under the procedure.

Communities that wish to engage in community forestry may enter into agreements with the minister. The procedure and minimum requirements for the content of such agreements are set out under the Act. The minister may make financial or other assistance available to communities. Proposals from communities must include details of the membership of the community, constitution or customs which regulate the community and of any rights held by the community over the state forest, in terms of the Interim Protection of Informal Land Rights Act (1996). This Act establishes that persons may not be deprived of their informal rights to land without their consensus or without compensation, except in the case of communal

land, in which case deprivation is possible in accordance with the customs of the community. The minister must investigate the offer and establish whether there are any other eligible communities which have interests in the forest, and invite them to make offers, evaluate the suitability of the forest for community forestry, and select the most suitable offer or appoint a facilitator (sec. 29).

A community forestry agreement must "not discriminate unfairly". In addition, the agreement must: identify respective management responsibilities; specify licensed activities; set out duties under the agreement, including payments; provide for dispute resolution through informal mediation or arbitration, whether by a member of the panel referred to in section 45 or otherwise; and provide for remedial measures in the event of a breach, including the suspension or cancellation of the community forestry agreement. The agreement may require the community or communities to draft and comply with a sustainable forest management plan which is acceptable to the minister. It may also include, as a party, a person who is not a community or a member of the community and who wishes to conduct "forestry" for commercial, environmental or other purposes. The agreement may provide for the management of a protected area (sec. 31). The minister may also provide information, training, advice and management and extension services for community forestry (sec. 32).

Under the Protected Areas Act, the management authority may enter into an agreement with another organ of state, local community, individual or other party for the co-management of the area by the parties or the regulation of human activities that affect the environment in the area. The agreement may provide for delegation of powers, benefit sharing, use of biological resources, development of local management capacity and knowledge exchange. The minister may cancel a co-management agreement after giving reasonable notice "if the agreement is not effective or is inhibiting the attainment of any of the management objectives of the protected area" (sec. 42).

## 9. TANZANIA

### 9.1 Overview of the legal framework

Tanzania is a "Union" between Tanganyica and Zanzibar, and pursuant to its Constitution, the environment is a subject reserved to the respective legislative authorities of the two federated states.

The main piece of legislation of Tanganyica regarding wildlife is the Wildlife Conservation Act (1974). The Act is implemented through a number of regulations concerning game reserves, game controlled areas, national game, hunting, close seasons, suitable weapons, capture of animals, commercial game photography, registration of trophies and dealing in trophies, president's licences, authorized officers' identity cards, compounding of offences, and the Wildlife Protection Fund. These texts set out required forms and specify boundaries of game reserves and game controlled areas, among other details. Most were adopted in the 1970s. Significant developments are expected shortly, as at the time of publication of this study a Wildlife Conservation Bill, which will replace the existing Act, has been gazetted and is awaiting presidential assent to enter into force. The Bill, in accordance with the 1998 National Wildlife Policy, which encouraged the creation of Community Based Organizations for wildlife management, expressly includes among its objectives the involvement of traditional communities as well as of the private sector (sec. 5).

The Environmental Management Act, 2004 provides the framework for sustainable management of the environment and natural resources, expressly considering fauna among "environmental resources", but without addressing wildlife issues specifically. The Act outlines principles and addresses impact and risk assessments, prevention and control of pollution, waste management, environmental quality standards, public participation and enforcement.

The National Parks Ordinance (1959) provides for the creation of national parks and establishes the Serengeti National Park. The Marine Parks and Reserves Act (1994) addresses the creation and management of marine parks and reserves, covering

institutional aspects by specifically including public participation, management and the creation of a Conservation and Development Fund. In addition to sea areas, any islands or coastal zone may be declared as marine parks (sec. 8), so that even terrestrial animals found within them are subject to the regime set out by this law. The Ngorongoro Conservation Area Ordinance, 1959, was adopted with the specific purpose to control entry into and residence within the Ngorongoro area and for its conservation and development.

The Forest Act (2002) provides for the conservation and management of forest resources in Tanzania and regulates the trade of forest produce. The definition of "forest produce" includes anything "which is naturally found in a forest", although animals are not specifically mentioned in the list of produce (sec. 2).

The only relevant legislation available for Zanzibar is the principal forestry legislation (Forest Resources Management and Conservation Act 1996). The Act expressly includes animals among forest resources (sec. 2).

### 9.2 Institutional setup and role of stakeholders

The wildlife legislation, perhaps due to the fact that it is not very recent, does not include any particular form of participation of the public in institutional arrangements, even in terms of membership in any advisory bodies. More recently, however, there has been some involvement of stakeholders in the process which has led to the formulation of the Wildlife Conservation Bill. Stakeholder involvement has also occurred in some areas such as the Ngorongoro Conservation Area, where Maasai representatives were appointed on the Board of Directors of the Area, and a Pastoralist Council was created as a semi-autonomous body representing Maasai local communities. The Wildlife Conservation Bill also envisages the creation of a Hunting Block Allocation Advisory Committee, which in addition to five members representing various institutions, must include five others drawn from the private sector and civil society (sec. 37).

Provisions regarding the creation of institutional bodies were introduced into the

Wildlife Conservation Act by the 1978 Amendment, which established a Wildlife Unit to protect wildlife and enforce laws regarding same (sec. 4 A-C). The Amendment also established a Wildlife Protection Fund with a Board of Trustees to administer it. Members of the Board are public officials and two other persons appointed by the minister, so representation of non-governmental entities or communities is possible but not necessarily required. The fund may be used for wildlife-related purposes, but there is no provision promoting or regulating access to the fund by private sector or communities in the Act (sec. 69 A and B) or in the Wildlife Protection Fund Regulations. The new Wildlife Bill envisages the creation of an autonomous Authority similar to those which currently exist for National Parks (Tanzania National Parks Authority (TANAPA) and the Ngorongoro Conservation Area Authority (NCAA), for wildlife living outside these areas (sec. 7) Pursuant to the same Bill, a "para-military" "Wildlife Protection Unit", would be in place for enforcement purposes (secs. 9–12).

The Bill also provides for the continuation of the Wildlife Protection Fund, among which one of the objectives is to develop communities living adjacent to wildlife protected areas (sec. 90). Provisions on the composition of the Fund's Board of Trustees are very similar to those of the current Act.

On the contrary, some public participation is provided for in the more recent Environmental Management Act, which establishes a National Environmental Advisory Committee as an advisory body to the minister (sec. 11). The majority (some twenty officials) of the Committee members must be heads of government departments. Three other members must represent, respectively, higher learning institutions, civil society organizations and private sector (First Schedule). The environmental administration is composed of a National Environment Management Council, whose functions include management, enforcement and overall supervision of environmental matters (secs. 16–18). The Council may also direct other agencies to perform certain duties established by law in relation to environmental matters. If the agency fails to comply, the Council may act on the agency's behalf, recovering costs from it (sec. 24). A regional environment management

expert advises local authorities on the implementation of the Act (sec. 35). Among the Officer's functions are to gather information on environment and natural resource utilization and review of by-laws (sec. 36). Other institutional requirements, including the appointment of a local environment management expert, are set out for local governments (secs. 36–41).

Requirements for public participation in environmental decision making, including requirements to grant rights to participate in the formulation of policies and legislation, receive timely information and opportunities to give oral and written comments, are set out in a specific section (sec. 178).

An Environmental Appeals Tribunal, for appeals of decisions adopted under the Act (sec. 204), and a National Environmental Trust Fund are established (sec. 213). Among the stated objectives of the latter is to support community-based environmental management programmes (sec. 214).

Pursuant to the National Parks Ordinance, a Board of Trustees is established as a body corporate to control and manage national parks (sec. 10). The Board includes the heads of the forestry and wildlife administration, while other members (whose number may range from six to ten) are appointed by the minister (Second Schedule). These appointments are not subject to any particular requirements, so the participation of private entities is possible but not compulsory. The Board may make regulations, subject to the approval of the minister, regarding a number of specified matters concerning the management of national parks (sec. 18).

A Marine Parks and Reserves Unit was established within the Division of Fisheries to create and manage marine parks and reserves (sec. 3). A Board of Trustees is to be appointed to formulate policies, oversee the use of the Marine Parks and Reserves Revolving Fund and advise the director (Marine Parks and Reserves Act, sec. 4). The Board must include representatives of NGOs and the business sector, in addition to government officials (First Schedule to the Act). An Advisory Committee (sec. 5) and a Warden (sec. 6) are to be appointed for each marine park. Villages that affect or are affected

by the marine park or reserve are to be notified and to fully participate in all aspects of the development of regulations, zoning and management plan for the park (sec. 8).

The Ngorongoro Conservation Area Ordinance (Establishment of Ngorongoro Pastoral Council) Rules (2000) establish a Pastoral Council, whose composition and functions are to be set out in its "constitution" (rule 3). The Council must involve the pastoralists before any decision (rule 6).

A National Forestry Advisory Committee is established, under the Forest Act, to advise the minister. In appointing its members, the minister must: select persons who possess the necessary expertise in all aspects of forest management and marketing of forest produce (defined as anything naturally found in a forest, although animals are not included in the specific list of sec. 2); ensure gender balance; and include persons who are not in the public service. One member must represent local authorities (sec. 10 of the Forest Act).

A Tanzania Forest Fund is established under the Act (sec. 79). Among the purposes of the Fund is to assist in the development of community forestry (sec. 80(b) and to assist individuals to participate in public debates on forestry, including environmental impact assessments (sec. 80(e)). A Forestry Development Fund is also required to be established by the Zanzibar Forest Resources Management and Conservation Act (sec. 80). This Fund may be used for "loans and grants to persons or groups wishing to plant trees and manage forests" (sec. 81). Although, as noted in the introductory section above, the definitions of forest produce in both the Mainland and the Zanzibar forestry law to some extent cover animals, there is no express reference to wildlife in the provisions regarding these funds.

### 9.3 Wildlife tenure and use rights

While there are no general statements regarding ownership of wildlife in the existing legislation, the provisions regarding grant of use rights by the administration imply that wildlife is state property. The Wildlife Conservation Bill expressly states that "all animals in Tanzania" "continue to be public property" and are vested in the president on

behalf of the people, unless taken in accordance with the law (sec. 4). Pursuant to the existing law, animals may be killed in defence of life or property, unless the animal was provoked or the person whose life or property is threatened was committing an offence at the time the animal molested him. A report must be made to the nearest game officer and valuable parts must be handed over. Meat may be utilized by the person who kills the animal and or by the owner or occupier of the concerned land (sec. 50). The person who killed an animal accidentally or in self-defence has the onus of proving it (sec. 51). The Wildlife Bill introduces a form of "consolation" (as opposed to full "compensation") for damage caused by wild animals to persons or crops (sec. 70).

### 9.4 Wildlife management planning

Environmental action plans are required to be adopted at the national and local government level, as well as for each "sector", with public participation occurring at the national level (Environmental Management Act, secs. 42–46). The Council must prepare an "environmental protection plan" for every environmental protected area and may prepare an "ecosystem management plan" as well (sec. 48). For other protected areas, the respective managing authorities are required to prepare an "environmental management plan", which must identify communities, users and institutions to be involved and management measures, including benefit sharing (sec. 49).

The current wildlife legislation does not refer to planning, but the Wildlife Conservation Bill requires the director to prepare a general management plan for every Wildlife Management Area "in a participatory manner" (sec. 33).

In the Marine Parks and Reserves Act, the contents of the general management plan to be adopted for each park are listed, and include a description of the biological, environmental, geologic and cultural resources of the area, and of the use of the area by local residents (sec. 14). In the preparation of the general management plan for each park, the minister, the Board, the Advisory Committee and village councils must "work closely with the planning commission or any regional planning body" (sec. 15).

Under the Forest Act, some detailed provisions are devoted to the adoption and contents of management plans. These plans are worth examining, because, at least in theory, wildlife resources being "naturally found in the forest", should be addressed in the plans, and as a useful framework for public participation. The plans must: set out local user zones "to facilitate local communities who obtain benefits from the forest reserve"; list any existing user rights; describe "local communities residing in the vicinity of the forest and their relationship to the forest, including their practices and customs regulating and governing their use of the resources of the forest"; and (with respect to forests other than village land forest reserves) outline a scheme for the involvement of the communities "in the use and management of the resources of the forest and of any local user zone, including any benefits that may be made available to such communities where direct involvement in use and management may not be appropriate" (sec. 11). In the preparation of forest management plans, consideration must be taken of the views of the local authorities in the vicinity of the forest, "users and organisations of users of the forest from the private sector" and local communities (secs. 12–14). A procedure is set out for this purpose (secs. 12–14).

Under Zanzibar's Forest Resources Management and Conservation Act, a National Forest Resource Management Plan and a forest management plan for each reserve are to be adopted (sec. 10). A procedure for public comment and intersectoral consultation during the formulation of the national plan is set out (sec. 12). The plan must also include strategies to be adopted to maximise public participation (sec.13). The plan for a forest reserve must "describe the communities residing in the vicinity of the reserve, including the level and type of their dependence on forest resources and their practices and rights with regard to the Forest Reserve", set forth a programme for their involvement in forest use or management, if appropriate, and identify any areas that might be appropriate for designation as a Community Forest Management Area under the Act (sec. 30).

### **9.5 Wildlife conservation (protected areas, protected species, impact assessment)**

Under the Wildlife Conservation Act, the president may declare any area of Tanganyica to be a game reserve or require the application of conditions applicable to game reserves in an area (sec. 5). The minister may also declare controlled game areas (sec. 6). Possession of weapons is prohibited in game reserves (sec. 8), unless permission is granted or proof is given that it was intended for purposes other than hunting (sec. 11 (1)(b)). Hunting is prohibited in any game reserve and controlled game area, except with permission (sec. 10). Grazing is also prohibited, unless with permission (sec. 12). The director may declare "partial game reserves", where hunting is also prohibited except with permission (sec. 13).

Pursuant to the new Wildlife Conservation Bill, game reserves and game controlled areas may be created respectively by the president and the minister, in both cases "in consultation with local authorities" (secs. 13 and 15). Hunting without a permit in any game reserve, game controlled area or wetland reserve remains a serious offence, punishable with imprisonment for a minimum of one year (sec. 18). The minister may also declare wildlife corridors, dispersal areas, buffer zones and migratory routes (sec. 21) and species management areas (sec. 22) – all in consultation with local authorities.

As it appears from the above provisions of existing legislation, practically any prohibition set out under the law for conservation purposes does not apply, if an authorization from the administration is granted. The legislation however does not clearly set out criteria for the grant of such permissions, except for a provision (in sec. 55) which allows (but does not bind) the director to refuse permissions "if it is in the public interest to do so". The same considerations apply to the new Bill, which prohibits the taking of national game, or game during closed seasons, except under a permit from the director (secs. 25 and 27). The same Bill allows the president to lift any restrictions applicable to game reserves or game controlled areas "in the public interest" (sec. 28). The degree of discretion left to the administration is so wide that even acts that should obviously be prohibited without exception may be authorized (for example, see

"molesting wild animals" in partial game reserves (sec. 14 of the current Act)). These provisions result in loosely binding conservation arrangements. The lack of transparency which may result from them may easily disadvantage the less influential members of society.

The legislation regarding national parks takes precedence over the provisions of the Wildlife Conservation Act concerning the hunting or taking of animals (Wildlife Conservation Act, sec. 20). Under the Environmental Management Act, areas that are ecologically fragile or sensitive may be declared as Environmental Protected Areas by the minister on the recommendation of the National Environmental Advisory Committee (47).

Reference is made in regulations to determine rules for the conservation of biological diversity *in situ* and *ex situ* (secs. 67 and 68). The general requirements for public participation in the formulation of legislation (set out in section 178 and briefly described in the section on institutions) would apply to the legislative drafting process.

In marine parks and reserves, the minister may, by regulation, require local councils to keep a list of local resident users to whom access into a marine park or reserve is granted, pursuant to the general management plan or require residents to apply for a resident certificate (Marine Parks and Reserves Act, sec. 19(1)). Where local resident user certificates are issued, the general management plan may itemize requirements (sec. 19(b)). Hunting and fishing in marine parks and reserves are prohibited, except in accordance with regulations (sec. 22).

The National Parks Ordinance (1959) allows the Governor, with the consent of the Legislative Council, to declare any area of land to be a national park (sec. 3). As a consequence, any rights, interests and claims with respect to that land, except mining rights, are extinguished (sec. 6).

Pursuant to the Ngorongoro Conservation Area Ordinance, the Ngorongoro Conservation Area Authority (introduced by the 1975 Game Parks (miscellaneous amendments) Act) may, by regulation, restrict or prohibit residence (sec. 6, as amended) and may prohibit or regulate

settlement in any part of the Conservation Area, except on "land held under a right of occupancy granted under the Land Ordinance" (sec. 8, as amended). Among the stated functions of the Authority, one is to promote the interests of the Masai, but there are no particular provisions to ensure the involvement of the Masai or others, in management decisions (sec. 5a). The Authority may issue orders prohibiting or regulating a number of activities within the Area (sec. 9, as amended). Detailed rules are set out in sections concerning appeals of decisions of the Authority (secs. 14–14 C). The Ngorongoro Conservation Area Authority (Control of Settlement, Residence and Prevention of Soil Erosion, Fauna and Flora) By-Laws (1992) allow the Authority to declare "prohibited areas" within which almost any activity is prohibited, except with a permit. Hunting and fishing, along with other activities, are prohibited in Zanzibari forest reserves, except with a permit (Forest Resources Management and Conservation Act, sec. 23).

#### **9.6 Wildlife utilization (hunting, eco-tourism, ranching, trade and other uses)**

Pursuant to the 1974 amendment of the National Parks Ordinance, hunting, capturing, killing, wounding or molesting of an animal, without a permit, is prohibited (sec. 16). Hunting of "specified animals" (as listed in the Second Schedule) and "scheduled animals" (as listed in the Third Schedule) is prohibited except in accordance with the conditions of a valid game licence issued under the Act (Wildlife Conservation Act, sec. 23). Citizenship or 12-month residence is required to obtain a licence (sec. 25(2)(c)).

The minister may declare any body of persons or *ujamaa* village to be an "authorized association" (sec. 26). Authorized associations may obtain a game licence for the hunting of a specified animal, if the licensing officer is satisfied that the meat of the animal will be made available to all members of the association (sec. 27). The minister may declare any legal entity a "designated organization", which may be granted a licence to hunt specified numbers of scheduled animals (sec. 28). Regulations may require that no licence to hunt scheduled animals be issued to any person, except with the recommendation of a designated organization (sec. 29(a)).

Capture permits may be issued to provide specimens for zoos or for educational, scientific, cultural purposes or purposes of national interest (sec. 32). A permit is also required for commercial game photography (sec. 36). A valid licence and the permission of the owner are required for hunting or taking animals on private land (sec. 40(1)). Where the hunting or capture is considered to be in the public interest, the owner's consent is not necessary, but a copy of the authorization must be served on him (sec. 40(2)).

A president's licence may be issued to authorize hunting, capture or photography of protected animals or any other animals to display in exhibitions, for educational or cultural purposes, or as gifts or emergency food supplies (sec. 41). Detailed provisions concern the registration of trophies (secs. 58–60) and dealing in trophies, for which a trophy dealer's licence must be held (secs. 61–65).

"Resident licences", required under the hunting of animals regulations, authorize the holder to hunt not more than one animal of the species specified in the licence, unless otherwise specified in the Third Schedule (reg. 5), or no more than one hundred birds in a year.

The minister may declare any animals or classes of animals to be national game (sec. 15). These animals may be hunted or taken only with the permission of the director (sec. 16). "Closed seasons" may be declared (sec. 17). Killing of animals, by accident or in error, must be reported (sec. 47). Animals declared to be "dangerous" are listed in the Fourth Schedule (sec. 48). Wounded animals must be killed. If a dangerous animal that has been wounded enters a protected area, such entry must be reported and the officer who has received such notice must assist in killing the animal (sec. 49).

The new Wildlife Conservation Bill provides for the creation of Wildlife Management Areas for the specific purpose of community based wildlife management within village land. Benefit sharing must comply with guidelines which may be issued by the government and be in line with mechanisms of equitable distribution of costs and benefits. The minister must prepare "model bye-laws to be adopted by the village authorities", in consultation with the minister responsible for local government. The

local community must be consulted. Associations managing Wildlife Management Areas may enter into agreements with investors, provided that representatives of the Wildlife Division and District Councils are involved in the negotiations and signing (sec. 30). These provisions are somewhat contradictory, as if by-laws are to be adopted as a "model". It is not clear which local community the minister should consult with, nor to what extent the village authorities may modify and adapt the by-laws to local realities. The involvement of the administration and local authorities in agreements with investors may also be an inappropriate requirement. Even if the purpose of this requirement is to protect local villagers from unequal bargains, the direct participation of administrative officials in business dealings is hardly likely to facilitate them. Districts, including Wildlife Management Areas, must establish a District Natural Resources Advisory Body to advise both the authorized associations managing Wildlife Management Areas and local government (sec. 32). An environmental impact assessment, in accordance with the Environmental Management Act, is required for every "significant development" within Wildlife Management Areas (sec. 34). Where a project or activity is likely to adversely affect wildlife species and/or habitats of communities, a wildlife impact assessment must be conducted (sec. 35).

Pursuant to the same Bill, no hunting of specified animals or scheduled animals is allowed without a licence (sec. 39). "Written authority" of the director is required for hunting other animals (sec. 54). Hunting licences, whether for trophy or subsistence hunting, may be issued subject to certain conditions, which include holding a licence to use firearms (sec. 42). The minister may declare communities to be "traditional communities" and prescribe particular conditions for the utilization of wildlife by them. A single licence to hunt a specified number of animals may be issued to such communities. The minister may also designate certain areas as "resident hunting areas", allowing hunting by residents, subject to conditions to be specified (sec. 44). A professional hunter licence may be issued to entitle its holder to supervise hunting and guide trophy hunting. Tourist hunting companies must ensure that an equal number of foreign and national professional hunters are

employed (sec. 46). Licences and other permits may be refused, suspended or cancelled for "good cause", which is defined to include fraud, forgery, misrepresentation or conviction by a court (sec. 65).

Also, pursuant to the Wildlife Bill, holders of rights of occupancy may engage in breeding, game sanctuaries, zoos, ranching, orphanage centres or farming game animals, subject to an authorization by the director. Wildlife ranching is allowed only by citizens or mainly Tanzanian companies (sec. 88).

The forestry legislation is again worth examining, because it could include aspects of wildlife management and serve as an example of a framework for community involvement, both in the Mainland and in Zanzibar. Pursuant to the Mainland's Forest Act, joint management agreements between private and public parties may be made (sec. 16). Forestry dedication covenants for private forests between the director and the holder of a right of occupancy may also be entered into (sec. 17). In determining whether to approve an application for a concession of forest land, the responsible authority must consider, among other elements, "the attention the applicant has paid and is proposing to pay to associating the local community, if any, with his uses and management of the forest land" (sec. 20).

The procedure leading to the declaration of a forest reserve must include an investigation of claims to customary rights, the principles and steps of which are set out in detail (sec. 24). Village land and community forest reserves are subject to separate procedures (secs. 32–48). The formation of "Groups" wishing to create or manage a community forest reserve is subject to various "principles", tending to ensure equal access to this opportunity by members of the community (sec. 42). Rights and duties of all the Management Group members in community forest reserves are specified (and may be further specified in agreements with the Village Councils) and include harvesting and use of forest produce (sec. 47).

Forest reserves in Zanzibar may be created following a procedure that is subject to public consultation. A notice of the proposal must be published in newspapers and delivered to appropriate representatives of local communities (Forest Resources Management

and Conservation Act, sec. 18). A public review period of at least ninety days follows, during which comments are solicited, at least one public meeting is held, and existing legal and customary rights investigated (secs. 20–22). If claims may not be accommodated, rights may be extinguished and must be compensated (sec. 23). Community forest management areas may be created and managed under an agreement, for the purpose of providing "local communities of groups with a means of acquiring a clear and secure rights to plan, manage and benefit from local forest resources" (sec. 34). Where rights of occupancy or use exist, the consent of their holder is necessary, or the provision for such rights must be addressed in the management plan (sec. 35). Any group of local residents may form a community forest management group proposing the creation of a community forest, "provided that any person living in close proximity to the proposed area or having strong traditional ties to its use shall be given a free and fair opportunity to join" (sec. 37). The administration must consult with the group, other persons living in the vicinity, relevant government authorities and community leaders, taking into consideration: (a) whether the proposed area has good potential for the proposed activities; (b) environmental characteristics; (c) existing rights and whether they can be accommodated; (d) whether other responsible government institution or other persons having power over the allocation of such land agree; (e) whether there is general local consensus; (f) whether the group has actually given persons living in close proximity to the proposed area or having strong traditional ties to its use a free and fair opportunity to join; (g) whether the group has demonstrated willingness and capacity to manage the area in an equitable and sustainable manner (sec. 38).

Management is in accordance with a community forest management agreement, entered into by the group and the forestry administration, which establishes access and management rules, penalties for violations of the working plan, and respective rights and duties (secs. 36 and 39). The right to harvest and sell forest produce without paying royalties to the administration must be included (sec. 40). The agreement may provide for the appointment of some members of the group as enforcement officers, with some or all of the

powers vested in the administration's enforcement officers (sec. 44). Revocation of the agreement by the administration is possible upon repeated and continuing violations by the management group, if the group fails to take appropriate steps to remedy violations. The group has a right to be compensated for forest produce that would otherwise have been harvested, minus subsidies already received (sec. 47).

## 10. UGANDA

### 10.1 Overview of the legal framework

Uganda has a Wildlife Act, adopted in 1996 (cap. 200 of 2000), which regulates wild animals and plants. The National Environment Statute (1995), addresses environmental planning, environmental standards, pollution and other aspects of the environment, without including substantive regulatory provisions on wild animals. The principal forestry legislation (National Forestry and Tree Planting Act, 2003) is not available.

### 10.2 Institutional setup and role of stakeholders

A National Environment Management Authority is created under the National Environment Statute (sec. 5). Its responsibilities include the integration of environmental concerns in overall national planning, through coordination with the relevant ministries and liaison with the private sector and intergovernmental organizations (sec. 7). The Authority is headed by a Board of Directors, appointed by the minister with the approval of the Policy Committee. Established by the same statute, the Policy Committee on the Environment is composed of ten ministers, whose functions include the formulation and coordination of environmental policies for the Authority (sec. 8 and First Schedule). The Board is to include two representatives of academic institutions, two from the private sector and two from NGOs, in addition to the representatives of three concerned ministries (Second Schedule).

A Wildlife Authority is created as the main administrative entity responsible for wildlife and the preparation of management plans for conservation areas and for wildlife outside these areas and the implementation of collaborative arrangements and policies for the

benefit of communities (sec. 5 of the Wildlife Act). The Authority must coordinate with any lead agencies involved in the field of wildlife management (sec. 7(2)). The governing body of the Authority is a Board of Trustees appointed by the minister (sec. 8). The Board must include not more than fifteen members, respectively representing local communities residing in areas with wildlife (five members), private sector (two members), tourism industry (three members), scientific community (two members), other communities or institutions recommended by the Board itself (two members), in addition to *ex officio* members from concerned government sectors (Schedule to the Act).

A local government council may appoint a committee to advise the Authority on the management and utilization of wildlife within the local jurisdiction. Committees thus appointed must submit an annual report to the Board on their activities and wildlife management in their areas (sec. 13). A wildlife fund is also created under the Statute (sec. 69). Twenty percent of the park entry fees collected from a wildlife protected area must be transferred to the local government of the surrounding area (sec. 70). There is no other requirement regarding the use of the fund's assets.

A Wildlife Tribunal of up to seven persons appointed by the Chief Justice is created for appeals of any decisions adopted under the Act (secs. 87–89). Decisions of the Tribunal may be appealed before the High Court.

### 10.3 Wildlife tenure and use rights

The ownership of wild animals is vested in the government, on behalf of and for the benefit of the people. Ownership of animals lawfully taken by any person vest in that person (sec. 4).

Killing of animals in defence of people is permitted (sec. 60). However, killing of animals which may endanger property is allowed as a last resort, if it does not endanger the survival of a species (sec. 62). Such action must be followed by notification to an officer, who must determine the necessary action.

Use rights and traditions of local communities are given specific consideration in some of the

provisions of the Act. By regulation, the minister may, on the advice of the Board, prescribe "measures for the registration and management of the specimens used for cultural purposes by any community" (sec. 4(7)). The Authority "may establish guidelines for access of communities neighboring conservation areas to resources which are crucial" to their survival, and may "study, identify and protect historical or cultural interests of any individual or class of persons resident in a wildlife conservation area" (sec. 26 (2) and (3)). At the same time, "the Authority may recommend to the minister that any rights to land protected under this section should be acquired in public interest", "if the continued private ownership or control of such interests are contrary to the needs of the sustainable management of wildlife" (sec. 26(4)). It may also resettle any persons residing in a wildlife conservation area and, where resettlement is within a wildlife conservation area, prescribe measures of land use (sec. 26 (5)).

#### 10.4 Wildlife management planning

The Environment Authority must prepare a National Environment Action Plan with guidelines for the management and protection of the environment and natural resources, to be disseminated to the public and approved by parliament (sec. 18). The Environmental Authority must, in consultation with the lead agency, issue guidelines and prescribe measures for the conservation of biological diversity. The guidelines may include the creation and maintenance of an inventory of biological diversity of Uganda (sec. 42 of the National Environment Statute).

Measures taken under the Wildlife Act are to be "based on the result of scientific investigation, in so far as it is economical, including the monitoring of species status and habitat condition as well as taking into account the views of affected communities" (sec. 3).

A "comprehensive" management plan is to be adopted for every wildlife protected area. For this purpose, before the drafting of the plan, the director must publish a notice requesting suggestions, solicit proposals from district councils, organize and attend public meetings to provide explanations and consider

comments. The plan is subsequently drafted and further reviewed (sec. 14)

#### 10.5 Wildlife conservation (protected areas, protected species, impact assessment)

In consultation with the lead agency, the Environment Authority must prescribe measures to ensure the conservation of biological resources *in situ*, issuing guidelines for "land use methods that are compatible with the conservation of biological diversity", for the selection and management of protected areas and "integrating traditional knowledge for the conservation of biological diversity with mainstream scientific knowledge". *Ex situ* conservation measures and guidelines must especially include species threatened with extinction and address, *inter alia*, zoos and germplasm banks (sec. 43).

The minister may, on the recommendation of the Board, declare any species of wild plant or wild animal to be classified as a protected species. Species which migrate to or through Uganda, and that are protected under any international convention or treaty to which Uganda is a party, are considered protected species (sec. 28 of the Wildlife Act).

Projects which may have a significant effect on any wildlife species or community are subject to environmental impact assessments (sec. 16). The environmental impact assessment process is applicable to a number of listed projects and activities, which, however, do not make reference to wild animals. The procedure is generally set out in the National Environment Management Statute, which provides guidelines for specifications on public participation requirements (secs. 20–23). An environmental impact assessment must be "appropriate to the scale and possible effects of the project", and accordingly consist of an environmental impact "review" (for projects that may have an impact on the environment), environmental impact "evaluation" (for projects that are likely to have an impact) or an environmental impact "study" (for project that will have a significant impact) (sec. 20(5)).

The minister may, after consultation with local government councils and with the approval of parliament, declare an area of land or water to be a wildlife conservation area. An

environmental impact "study", including a report on the social and ecological consequences of the declaration, is required (sec. 18). The declaration is to state whether the conservation area is a wildlife management area (which can be a "wildlife sanctuary", a "community wildlife area" or "any other area as the minister may declare as a wildlife management area") or a wildlife protection area (which can be a national park, wildlife reserve or other area as determined by the minister) (sec. 19). The provisions on community wildlife areas are briefly addressed in the section below on wildlife utilization (2.10.6).

Residing in any protected areas, except in accordance with the provisions of the Act, is an offence (sec. 23). An exception, however, is made for the case of "historic rights" of individuals, as may have been specified under other legislation (for example the forestry legislation) or as determined by the Authority (sec. 26(1)).

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

Among the purposes of the Wildlife Act is the enhancement of economic and social benefits from wildlife management by establishing wildlife use rights and the promotion of tourism (sec. 3).

The Executive Director may, with the approval of the Board, enter into any suitable commercial arrangements with any person for the management of a protected area, the provision of services or infrastructure in a protected area or the management of a species or a class of species of animals or plants. Persons entering into such agreements must submit a management plan (sec. 15).

For the purpose of harvesting resources within a wildlife protected area, the director may issue permits, ensuring that the annual harvest does not exceed the sustainable yield level, unless the Board temporarily considers it desirable to do otherwise (sec. 24).

Although only briefly addressed in the Act, "community wildlife areas" may be created by establishing that within these areas "holders of property rights in land may carry out activities for the sustainable management of wildlife",

subject to land use measures which may be prescribed (sec. 19(8)).

Wildlife use rights are expressly classified into hunting (class A), farming (class B), ranching (class C), trading in wildlife and wildlife products (class D), using wildlife for educational or scientific purpose including medical experiments and developments (class E) and general extraction (class F). These classes are subject to modification by the minister upon parliamentary approval (sec. 30). Applications for the grant of wildlife use rights are subject to specific requirements and rules of evaluation that require consideration of the position of neighbouring landowners or occupiers (secs. 32 and 33). Detailed provisions follow, regarding the case of non-compliance with the grant (with possible issue of "compliance notices", and "stop notices", the latter being for immediate suspension of activities during the time given to comply with the former) and revocation (secs. 34-38 and 40). There may be a variation of wildlife use rights which have been granted, if the Authority considers it necessary, following investigation of performance or upon reliable information, or as a result of a natural disaster or for any other relevant reason (sec. 39).

A specific provision aims at facilitating equitable access to resources by different members of communities: where the applicant for a wildlife use right is a community or part of it, the community must supply a statement explaining how the community has been made aware of the proposal and specifying the role and proposed functions of the body which will manage the activity for which the application is submitted (sec. 32(3)).

While some wildlife use rights may be transferred only upon permission of the Authority, others (farming, ranching, trading and "general extraction"), may be transferred "as private property rights" ("market transfers"). However, notice of market transfers must in any case be given to the Authority, which may object or modify applicable conditions (secs. 43 and 44).

The activities of professional hunter and professional trapper are addressed specifically, by requiring a licence, which may be suspended or cancelled in case of violation or improper conduct (secs. 46-48).

## 11. ZAMBIA

### 11.1 Overview of the legal framework

The Environmental Protection and Pollution Control Act (1990) is the general environmental law for Zambia. However, the focus of the Act is more on pollution than overall environmental management. The legislation most directly relevant to wild animals is the Wildlife Act (1998). Numerous texts of regulations adopted under the wildlife legislation previously in force have not been expressly repealed and so remain valid to the extent that they are not in conflict with the current Act. The Forest Act (1999), although expressly created for the sustainable management of forest ecosystems, does not address wild animals in any particular way.

### 11.2 Institutional setup and role of stakeholders

Pursuant to the legislation of Zambia, institutions responsible for environment and wildlife must include representatives of various non-governmental actors. In this respect, the legislation differs from that of other countries of the region, which generally relegate the participation of non-government entities and private sector to bodies which are established to advise the institutions, rather than in the institutions themselves.

An Environmental Council, created under the Environmental Protection and Pollution Control Act, must include one representative of an NGO, in addition to representatives of various government sectors (sec. 4). The Council's function is "to protect the environment and control pollution, so as to provide for the health and welfare of persons, animals, plants and the environment" (sec. 6).

The Wildlife Authority, pursuant to the 2001 amendment of the Wildlife Act, has nine members, two of whom must be patrons (*i.e.*, chiefs) of community resources boards and one of whom must have wide commercial experience in the private sector (Schedule). Functions of the Authority include the management of protected areas and, "in partnership with local communities", game management areas, and to ensure sustainability in wildlife management (sec. 5).

The Zambia Forestry Commission is to be established under the Forest Act and its functions include the promotion of sustainability, preservation of ecosystems and biological diversity in National Forests, Local Forests and open areas and the implementation of participatory forest management and "equitable gender participation" (sec. 5). Among the Commission's fifteen members, one must have experience in the timber industry, one must represent the farming community and two must be chiefs (First Schedule). The Commission has not yet been established, but is expected to come into existence in 2009.<sup>9</sup>

A local community neighbouring a game management area or an open area, or a chiefdom with common interest in the wildlife and natural resources in that area, may apply to the Authority for registration as a community resources board. Every board must include seven to ten elected representatives of the community, one representative of the concerned local authority and one chief representative. A chief must be the "patron" of the board. Such composition is a sufficient requirement for registration (sec. 6). Some rules are given for the creation and management of a fund by every board (sec. 9). Other provisions applicable to community resources boards are described in the section below on wildlife utilization.

### 11.3 Wildlife tenure and use rights

Ownership of wild animals is vested in the president on behalf of the people of Zambia (sec. 3). "Hunting game" animals or protected animals in any open area without a licence is an offence; exceptions exist where the hunter is the owner of such land or if the hunter has been given the landowner's permission. Thus, provision requires the possession of a valid licence (sec. 67), while also granting a significant privilege to landowners.

Wild animals may be killed for self defence or in defence of other persons. Landowners and owners of crops or livestock on land held under a lease or customary law may kill any "game animal, non-game animal, protected or non-protected animal which is identified as causing

<sup>9</sup> Information provided by P. Towela Sambo Chilubanama.

or has caused material damage to land, buildings, crops or livestock". A report to an officer must be made within forty-eight hours. Killing an animal under any such circumstances does not entitle the actor to its ownership. However, ownership of the carcass, trophy or meat of the animal may be given by the administration as compensation for any damage (sec. 78).

#### **11.4 Wildlife management planning**

Under the Environmental Protection and Pollution Control Act, the Council must "take stock of the nation's natural resources and their utilisation" in liaison with other relevant agencies and experts dealing with natural resources conservation (sec. 76). The Authority, in consultation with a community natural resources board, must develop management plans for the Game Management Area or open area under the jurisdiction of the board (sec. 6).

#### **11.5 Wildlife conservation (protected areas, protected species, impact assessment)**

Under the Environmental Protection and Pollution Control Act, the Council must adopt regulations, with the approval of the minister, to protect wildlife (sec. 76). The president may declare national parks after consultation with the Authority and the local community (sec. 10). Land over which any person holds any rights may be compulsorily acquired (sec. 11). Hunting, disturbing or removing wild animals from national parks is an offence. A permit, however, may be issued to hunt specified animals "for the better preservation of other animal life, or for other good and sufficient reason" (sec. 16).

Pursuant to the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations (1997), projects "located in or near environmental sensitive areas", such as "zones of high biological diversity" require a "project brief" (the first step of a full environmental impact assessment) (First Schedule). Commercial exploitation of fauna and flora requires an environmental impact assessment (Second Schedule). Among the impacts to be considered for inclusion in the terms of reference of an environmental impact assessment are the effects on number, diversity and breeding sites

of fauna, on "breeding populations of game" and on rare and endangered species (Third Schedule).

State or private plans or activities which may have an adverse effect on any wildlife species or community in a national park, game management area or open area are subject to a wildlife impact assessment, upon request by any person. "Existing or anticipated impacts upon wildlife, including an account of the species, communities and habitats affected and the extent to which they are or may be threatened and endangered species which are or may be affected are to be taken into account. Reference is made to the procedures specified by the Environmental Council under the Environmental Protection and Pollution Control Act (sec. 32).

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

Hunting of game animals or protected animals requires a permit (sec. 31). The president may, after consultation with the Authority and the local community, declare any area to be a game management area for the sustainable utilisation of wildlife. Land held under a leasehold title cannot be affected, except with the written consent of the occupier, who may apply for inclusion. Hunting protected animals in game management areas is an offence (sec. 26).

The following classes of licences may be issued: (a) non-resident hunting licence (to the client of a licensed "hunting outfitter"), (b) resident hunting licence, (c) bird licence, (d) professional hunter's licence, (e) apprentice professional hunter's licence, (f) professional guide's licence, (g) apprentice professional guide's licence, (h) special licence. The latter type of licences may be issued for scientific or educational purposes, or to hunt in national parks or game management areas, or to capture animals to rear them, or for chiefs or other authorized persons. Resident licences and special licences may authorize the licence holder to appoint other persons to hunt in their place. All licences specify the species and number of animals which may be taken (secs. 33–51).

Under the Tourism Act, persons holding a tourism enterprise licence, may obtain a

photographic tour operators licence (sec. 52). Residents who hold a hunting concession over a game management area, may apply for a hunting outfitter's licence (sec. 53). A restricted professional hunter's licence may be issued to carry on business as a professional hunter in respect of "non-dangerous animals" (sec. 54). A commercial photographic licence may also be issued to create paintings or to take films or video for commercial purposes in a National Park (sec. 55).

Applications for any licences may be rejected if the applicant "is not a fit or proper person to hold such a licence" or if "the Director-General is satisfied that in the interest of good game management the licence should not be issued" and reasons for the refusal must be stated in writing (sec. 56). Licences may be revoked in case of failure to comply with conditions (sec. 58) or suspended "in the interests of good game management" (sec. 60). Appeals to the Authority, and subsequently to the High Court, of decisions to reject applications or suspend or revoke licences are possible.

A trophy dealer's permit is required to buy, sell or process or otherwise deal in any trophy, or manufacture any article from any readily recognisable part of it, in the course of trade. The requirement does not apply to the case of sale, processing or manufacturing of animals hunted by the holder of a hunting permit (secs. 86 and 87).

Purchase, sale or possession of game animals, protected animals, or meat from either group of animals is also subject to rules. The Director-General may issue a certificate of ownership to any person who is in lawful possession of any game animal or protected animal or who intends to sell any meat of a game animal or protected animal. The seller must endorse such a certificate and hand it over to the buyer. These rules do not apply to sellers from authorized commercial outlets (secs. 101, 102 and 104). On the advice of the Authority, the minister may, by statutory instrument, regulate or prohibit the trade in live or game animals or protected animals or the trade in carcasses, meat and skins of such animals during specified periods or in certain areas (sec. 103).

The main requirements for import are: (a) for any wild animal or any meat of any wild animal

or any trophy, an import permit issued by the Director-General; and (b) for the import of ivory or rhinoceros horn, an import permit issued by the director with the approval of the Authority (sec. 105). For export, requirements are: (a) for any ivory or rhinoceros horn or any protected animal, an export permit issued by the Authority with the approval of the minister; and (b) for any non-protected animals, an export permit issued by the Director-General with the approval of the Authority (sec. 110).

Wounded animals must be killed but not if they enter protected areas. Whenever killing the wounded animal is not possible, a report to the wildlife officer must be made within forty-eight hours (sec. 81). Any person who under any circumstances kills any elephant or rhinoceros must, within forty-eight hours, produce the ivory or rhinoceros horn of the animal to a wildlife officer to weigh and register it (sec. 93). The same must be done by a person who imports ivory or rhinoceros horn. If the officer finds that the ivory or rhinoceros horn has been lawfully obtained, they are returned with a certificate of ownership (sec. 94).

The Zambia Wildlife (Elephant) (Sport Hunting) regulations, 2005, set out specific conditions for sport hunting of elephants, limiting it to a maximum of twenty per year. Subsidiary agreements are to be entered into between the Authority and the concerned concessionaires regarding the hunting of animals, in accordance with basic requirements set out in the regulations (reg. 6). Fifty percent of the quota is allocated to game management areas specified in the schedule. The rest is sold by auction to other concessionaires. Fifty percent of the meat of an elephant killed during sport hunting is to be given to local communities (sec. 6 (4)). Forty-five percent of the proceeds from the sale of licences issued for the hunting of animals must also be paid to local communities at the end of the hunting season "and the Authority's guidelines to communities on the use of community funds" apply. Another five percent must be paid to the concerned communities' chiefs (reg. 10 (3)).

The Zambia (Community Resources Boards) Regulations require that fifty percent of licence fee revenues be paid to the Community Resources Boards of the areas where the licences have been issued, and a proportion of the sums due to the Community Boards (five

percent according to the schedule) must be paid to the local chief ("patron") (reg. 3).

## 12. ZIMBABWE

### 12.1 Overview of the legal framework

The Environmental Management Act (Cap. 20:27) sets out the general legal framework for environmental matters, addressing environmental institutions, planning, standards and impact assessment. The main legislation for the management of wildlife is the Parks and Wildlife Act (Cap. 20:14). The Parks and Wildlife (Amendment) Regulations implement the provisions of the Act in a number of areas. Other legislation directly regulating wildlife matters is less significant. The Protection of Wildlife (Indemnity) Act (Cap. 20:15) holds "indemnified persons" (responsible public officers and honorary officers) free from criminal liability for law enforcement acts done in good faith. A Trapping of Animals Act (Cap. 20:21), specifically provides for the making and use of traps. The Quelea Control Act (Cap. 19:10) provides against the excessive proliferation of quelea birds, allowing the minister to order owners to take certain measures.

The Rural District Councils Act (Cap 29:13) provides for the establishment of environment committees (named conservation committees before the Environmental Management Act amended this Act) within district councils. These committees are given specific functions under the Parks and Wildlife Act (briefly described in the following section).

Pursuant to the Forest Act, wild animals are to be considered as "forest produce" if found in "demarcated forests", as declared by the president under the Act (secs 2 and 35). The Forestry Commission owns and is in charge of managing forest produce (sec.2) within demarcated forests and any other land designated by the minister (secs. 15 and 16). There is, therefore, a direct responsibility of the Forestry Commission to manage wildlife in the demarcated forests (but apparently not in other forest areas). These provisions result in disparate treatment of wild animals, depending on whether or not they are found within a demarcated forest. Even if this discrepancy

does not arise in practice, the provisions as currently formulated should be improved if an appropriate framework for sustainable wildlife management is to be in place.

### 12.2 Institutional setup and role of stakeholders

The environmental, wildlife and forestry legislation all provide for the establishment of respectively responsible institutions and (in the case of the environmental legislation) an advisory body (the National Environment Council). Requirements for the involvement of non-government representatives in these bodies are given only in the case of this Council, while the requirements for membership in the Environmental Management Board and Parks and Wildlife Boards only pertain to expertise in certain subjects. Participation of concerned stakeholders in the making of decisions by wildlife institutions is, therefore, likely to be limited under this legal framework.

The National Environment Council established by the Environment Management Act must include, in addition to concerned government officials, two representatives of universities, two representatives of specialised research institutions, three representatives of the business community and two representatives of local non-governmental organizations active in the environmental field (sec. 7). The Council is to advise on policy formulation and the implementation of the Act, while promoting co-operation among departments, local authorities, private sector, non-governmental organizations and others (sec. 8).

The Environmental Management Agency is established by the same Act as the administrative authority responsible for environmental management, including the establishment of quality standards (sec. 10). The Agency is managed by an Environment Management Board, whose composition (nine to fifteen members) must include experts in various listed disciplines (sec. 11).

The Parks and Wildlife Management Authority is established by the Parks and Wildlife Act to manage protected areas and report to the minister on conservation and management of wildlife resources (sec. 3). The Authority is managed by the Parks and Wildlife

Management Board, which includes six to twelve members who are appointed by the minister, after consultation with the president, based on their experience and ability in relevant subjects (sec. 5).

The Rural District Councils Act provides for the creation of Rural District Councils by presidential declaration, following consultation of a committee of local residents made up for the purpose of advising on the creation of the Council (sec. 9). Councils consist of one elected member for each ward of the Council area and other members representing special interests, appointed by the minister (sec. 11). The same Act requires District Councils to appoint an environmental committee to recommend measures to the Council for the management and protection of the environment and generally cooperate in the implementation of the Environmental Management Act. Half of the members must be members of the Council itself and appointed by it and the other half must be appointed by the Council in consultation with the minister. There are no other requirements as to the composition of the committee (sec. 61). One of the Councils' local government functions is the conservation of natural resources (Schedule I). Councils may make binding by-laws (sec. 71). Further reference to the role of the District Councils in wildlife management is made in the following section.

A Forestry Commission is established as the main forestry authority, with functions which include the management of state forests and the exploitation of forest produce (sec. 8). Members of the Commission are to be appointed by the minister in consultation with the president, and there is no requirement for the involvement of any particular sectors of society or for the creation of any advisory body to the minister.

An environment fund is also created (Environmental Management Act, sec. 48). Among its purposes is to make grants to local authorities to assist "needy persons to obtain access to natural resources without affecting the environment", and to finance the extension of environmental management services to under-serviced areas (sec. 52).

### 12.3 Wildlife tenure and use rights

As noted above, pursuant to the Forest Act, the Commission owns and manages forest produce, which within demarcated forests includes wild animals (secs. 2 and 15).

The current version of the Parks and Wildlife Act does not include other provisions regarding ownership of wildlife. Nevertheless, Zimbabwe is one of the countries of the region where control over wildlife has fully been transferred to landowners, paving the way for successful private and community wildlife management initiatives. While originally the Act (adopted in 1975) granted ownership of wildlife resources and wildlife management rights only to the owners or occupiers of alienated land (excluding communal land), the success of management initiatives on alienated land prompted a 1982 amendment to grant wildlife management rights to communal land farmers. However, these farmers did not have formal claim to the land, so ownership and management responsibilities were given to District Councils rather than directly to customary holders. Any Rural District Council which demonstrated a commitment to the local level management of wildlife could be given the same use rights to wildlife as enjoyed by private landowners. This was the basis for the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE). In 1988, District Councils were empowered to adopt by-laws addressing natural resource management. This was perceived as a re-empowerment of local communities and significantly improved the means of implementation of CAMPFIRE.

Pursuant to the Parks and Wildlife Act, killing of any animal in defence of any person is always allowed, if immediately and absolutely necessary (sec. 61). In this case, unless the animal is a "dangerous animal", a report must be made to the authorities as soon as possible (sec. 63). "Problem animals" and "dangerous animals" are respectively listed in Schedules to the Act, which may be revised by the minister. There is no particular criterion for the identification of these types of animals, nor is consultation with concerned people required under the Act. The only consultation requirement is with the Authority (secs. 80 and 121).

## 12.4 Wildlife management planning

A national environmental plan for the protection and sustainable management of Zimbabwe's environment is to be adopted, following consultation with such persons as the minister considers necessary or desirable (secs. 87–88 of the Environmental Management Act). Comments from the public must be invited by publication in newspapers, and the minister is to take them into account before finalizing the plan (secs. 89–90). Local authorities must prepare environmental action plans, which must be publicized to obtain comments (sec. 95). There is no other specific requirement for involvement of concerned stakeholders. There is also no particular management planning requirement in the Parks and Wildlife Act.

## 12.5 Wildlife conservation (protected areas, protected species, impact assessment)

National parks may be created by presidential notice, which parliament may rescind or vary in the following twenty-eight days (sec. 22 (1) and (4)). The Authority may authorize the controlled reduction of wildlife, to ensure its "security" and maintenance in a natural state (sec. 23 (1)(g)). It may also authorize the killing of animals which cause damage to property or in defence of people (sec. 23 (1)(j)).

Sanctuaries may be declared by presidential notice, on recommendation by the Authority, to afford special protection to some or all species of animals in a certain area (sec. 31). Hunting in sanctuaries is prohibited, but permits may be issued for purposes including control of animal populations, science, defence of persons and property or "in the interests of the conservation of animals" (sec. 33).

Safari areas may be created to preserve and protect the natural habitat to provide opportunities for "camping, hunting, and viewing of animals" (secs. 35 and 36). A permit is required to hunt in these areas, and may be issued for purposes of "management and control of animal populations", in the interests of conservation or to "guests of the state" (sec. 39).

National parks, sanctuaries and safari areas may only be declared on state land or trust

land with the consent of the trustees (secs. 22 (3)) 31(3)) and 36(3)).

"Specially protected animals" are listed in schedule to the Act. The minister may modify the schedule. Hunting such animals may be authorized for scientific purposes, management and control of animal populations, or in the interests of conservation (secs. 43 and 46).

Under the section of the Act regarding protection of animals on alienated land, the minister may within the area of an environment committee on alienated land declare any animal, which by reason of its scarcity or value deserves to be further protected, to be a protected animal. This declaration may only be made after consultation by the minister with the Environmental Management Board and the environment committee concerned, The minister may also order that hunting of certain animals be restricted, or allow the environment committee to reduce the number of "problem animals". A proposed notice setting out such rules must be notified to "the appropriate authority for the land concerned" and a reasonable opportunity of making representations must be given before adoption. Copies of the notice must be published in three consecutive issues of a newspaper circulating in the area. Hunting of animals declared to be protected may be allowed by land owners or occupiers, upon application for licenses to the environment committee of the area. Appeals of decisions of the committee may be made to the Environmental Management Board, whose decision is final (sec. 77).

Members of environment committees and the Environment Board may enter land to make investigations regarding animals, giving notice to the occupier or owner (sec. 78). Another provision tending to strengthen enforcement allows persons who are in the process of hunting, in compliance with the law, to ask any other hunter to produce evidence of his authority to hunt (sec. 70). Environment committees may serve notice on the "appropriate authority" for a land within their area (which may be a private land owner), proposing to recommend to the Environment Management Board that measures be taken to restrict hunting. It may also temporarily prohibit the hunting of specified animals for fourteen days (sec. 79).

Contrary to the trend of involving local communities in natural resource management which has emerged in many countries, one provision of the Environmental Management Act allows the president to set aside areas of Communal Land for environmental purposes, including "conservation or improvement of natural resources", without providing for any consultation. The provision seems to assume that communities may simply be relocated, as it requires that the minister responsible for the administration of the Communal Land Act be "satisfied that suitable provision has been made elsewhere for the inhabitants who will be affected by the setting aside of the area" (sec. 110).

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

The Authority, "with the concurrence of the minister", may lease land within safari areas for up to twenty-five years and grant hunting or other rights for up to ten years (sec. 37). There are no other provisions regulating these particular arrangements in the Act.

Hunting outside national parks, sanctuaries and safari areas requires a permit (sec. 59).

No particular conditions are set out for the issuance of such permits.

Conducting hunting or photographic safaris for reward within any national park, sanctuary or safari area, on forest land or within any Communal Land for which the Authority is the appropriate authority, requires a professional hunter's licence, learner professional hunter's licence or professional guide's licence. These licences may be issued to any persons whom the minister "deems fit" (secs. 65–69).

Animals born or hatched and held in captivity may be killed and sold, and trophies derived from them may be sold (sec. 72). If interpreted to refer to breeding and ranching of wild animals, this provision could serve as an encouragement to entrepreneurial initiatives. However, given the debatable meaning of the term "captivity", which is not otherwise defined, it is not clear if this interpretation is possible, or whether the provision is meant to apply only to smaller-scale situations in which animals are kept in cages or small confined areas.

Purchase of animals and trophies is allowed only from authorized sellers, or if the animal has been born and raised in captivity (sec. 74). A permit to sell any live animals or trophies may be issued (sec. 75).

## Annex I - LEGISLATION REVIEWED

### Angola

Lei Constitucional da República de Angola, n. 23/92  
Decree No. 40.040 ruling on the protection of land, flora and fauna of 1955  
Regulamento de Caça, Dip.Leg. n.º 2,873 of 1957, as amended by Dip.Leg. n.º 86/72  
Regulamento Florestal – Dec. n.º 44531, de 21 Agosto 1962  
Lei de Bases do Ambiente, n. 5/98  
Anteprojecto de Lei de Florestas, Fauna Selvagem e Áreas de Conservação, 2006  
Decreto sobre a Avaliação de Impacte Ambiental, n.51/04  
Proposta de Regulamento de Caça (2008)  
Proposta de Regulamento Peral das Areas de Conservação (2008)

### Botswana

Wildlife Conservation and National Parks Act, 1992 (No. 28 of 1992): An Act to make further and better provision for the conservation and management of the wildlife in Botswana, giving effect to the CITES and any other international convention for the protection of fauna and flora to which Botswana is, from time to time, a party, to provide for the establishment, control and management of national parks and game reserves, and for matters incidental thereto or connected therewith. 10 November 1992, as amended by the Wildlife Conservation and National Parks Act (Amendment) Act (No. 16 of 1993)  
Wildlife Conservation and National Parks (Hunting and Licensing) Regulations. 10 August 2001, as consolidated in 2005  
Wildlife Conservation and National Parks (Cheetahs) (Killing Suspension) Order (S.I. No. 27 of 2005). 22 April 2005  
National Parks and Game Reserves Regulations (S.I. No. 28 of 2000). 1 April 2000  
Educational Game Reserve Regulations (S.I. No. 71 of 2004). 13 August 2000  
Wildlife Conservation and National Parks (Lions) (Killing Restriction) Order (S.I. No. 27 of 2005). 22 April 2005  
Wildlife Conservation (Possession and Ownership of Elephant Tusks or Ivory) Regulations (S.I. No. 27 of 1999). 10 August 2001, as consolidated in 2005  
Gemsbok National Park Regulations (S.I. No. 79 of 2000). 31 January 1992, as consolidated in 2000  
Controlled Hunting Areas (Fees) Order (S.I. No. 16 of 1995). 17 March 1995  
Declaration of Private Game Reserve Order. 31 January 1992, as consolidated in 2000  
Declaration of Private Game Reserves Order. 24 June 1968, as consolidated in 1985  
Fauna Conservation (Compensation for Destruction of Livestock and Other Property) Order. 28 November 1980, as consolidated in 1981  
Fauna Conservation (Names of Animals) Regulations (S.I. No. 74 of 1967). 22 December 1967  
Forest Act, 10 March 1968, as consolidated in 2005

### Lesotho

Environment Act, 2001: An Act to provide for the management of the environment and all natural resources of Lesotho and for connected matters.  
Forestry Act, 1998 (No. 17 of 1998): An Act to repeal and replace the law relating to the planting and preservation of forests; and to provide for the regulation and control of dealings in forest produce and the sustained management of forests and forest reserves; and for matters connected therewith.  
Historical Monuments, Relics, Fauna and Flora Act (No. 41 of 1967): an Act to provide for the preservation and protection of natural and historical monuments. relics, antiques, fauna and flora and for connected matters.  
Land Act, 1979 (No. 17 of 1979): An act to consolidate and amend the law relating to land thus providing for - (a) the grant of title to land; (b) the conversion of titles to land; (c) the declaration of

selected development areas and selected agricultural areas and titles to land therein; (d) the setting aside of land for use for public purposes; (e) the establishment of a Land Tribunal; (f) the grant of public servitudes; and for connected purposes.

Land (Agricultural Lease) Regulations, 1992 (L.N. No. 100 of 1992).

## Madagascar

Loi n° 90-033 relative à la Charte de l'environnement malagasy. 21 December 1990, as amended by Law No. 97-012 modifiant et complétant certaines dispositions de la loi No. relative a la charte de l'environnement malagasy

Arrêté interministériel n° 3090/06 portant modification du statut du réseau de transfert de gestion des ressources naturelles renouvelables (r-tgrn).

Décret n° 84-445 portant simultanément adoption de la stratégie malgache pour la conservation et le développement durable et création d'une Commission nationale de conservation pour le développement. 14 December 1984

Loi n° 2001-005 portant Code de gestion des aires protégées. 11 November 2003

Décret n° 2005- 848 appliquant les articles 2 alinéa 2, 4, 17, 20 et 28 de la loi n° 2001-005 portant Code de gestion des aires protégées. 13 December 2005

Arrête interministériel n° 382 /2007-minenvf/maep/mem portant protection temporaire de l'Aire protégée en création dénommée "Complexe Andreba". 8 January 2007

Arrêté n° 378/2007 MINENVEF prorogeant l'arrête N°20.022 12005-MinEnvEF portant protection temporaire de l'Aire Protégée en création dénommée "Makira" District de Maroantsetra de la Région d'Analanjirifo, Province autonome de Toamasina ; Districts de Mandritsara et de Befandriana-Nord de la Région de Sofia, Province Autonome de Mahajanga ; et Districts d'Andapa et d'Antalaha de la Région de Sava, Province autonome d'Antsiranana. 8 January 2007

Arrêté n° 379/2007 MINENVEF portant prorogation de l'arrête n° 20.021/2005-MINENVEF portant protection temporaire de l'Aire protégée en création dénommée « Corridor Forestier Ankeniheny-Zahamena », Districts d'Ambatondrazaka, Moramanga, Brickaville, Toamasina II, Vavatenina Région Atsinanana, Alaotra - Mangoro, Analanjirifo Province autonome de Toamasina. 8 January 2007

Arrête interministériel n° 16 069/2006-minenvf/maep/mem portant protection temporaire de l'aire protégée en création dénommée « corridor forestier bongolava » districts de port – berge et mampikony région de la sofia province autonome de mahajanga. 2006

Arrête interministériel n° 16 070/2006-minenvf/maep/mem portant protection temporaire de l'aire protégée en création dénommée « Montagne des français » communes rurales de Ramena et de Mahavanona, district d'Antsiranana II, région de Diana, province autonome d'Antsiranana. 2006

Arrête interministériel n° 16 071/2006-minenvf/maep/mem portant protection temporaire de l'aire protégée en création dénommée "corridor forestier fandriana-vondrozo". 2006

Arrête interministériel n° 16 072/2006-minenvf/maep/mem portant protection temporaire de l'Aire protégée en création dénommée « forêt d'Analalava » Fokontany de Morarano, Commune de Mahavelona – Foulpointe District de Toamasina II, Région d'Atsinanana Province autonome de Toamasina. 2006

Décret n° 2002-790 portant changement des points sommets et limites du parc national n° 3 de Mantadia. 7 August 2002

Décret n° 2002-796 portant changement de statut de la réserve naturelle intégrale n° 8 de Namoroka en parc national. 2 August 2002

Décret n° 2002-797 portant changement de statut de la réserve naturelle intégrale n° 12 de Tsimanampetsotsa en parc national. 7 August 2002

Décret n° 2002-798 portant changement de statut de la réserve naturelle intégrale n° 15 d'Ankarafantsika et de la réserve forestière en parc national. 7 August 2002

Décret n° 69-085 règlementant la chasse au papillon et arrêté n° 2023-MAERT/FIN fixant le montant du permis commercial de chasse au papillon et du permis spécial de chasse au papillon pour touriste, 1969. 25 February 1969

Décret n° 66-242 constituant certains territoires en réserves naturelles intégrales pour la protection de la faune et de la flore. 1 June 1966

Décret n° 64-380 instituant la réserve spéciale du Pic d'Ivohibe, canton et sous-préfecture d'Ivohibe, province de Fianarantsoa. 16 September 1964

Ordonnance n° 62-020 sur la détention des lémuriens. 18 August 1962  
Loi n° 96-025 relative à la gestion locale des ressources naturelles renouvelables. 10 September 1996  
Décret No. 2000-027 relatif aux communautés de base chargées de la gestion local des ressources naturelles renouvelables. 13 January 2000  
Décret No. 2000-028 relatif au médiateurs environnementaux. 13 January 2000  
Loi n° 71-006 établissant un droit de sortie sur les animaux sauvages et sur les orchidées 30 June 1971  
Décret n° 62-321 portant organisation du Conseil supérieur de la protection de la nature. 3 July 1962  
Ordonnance n° 60-126 fixant le régime de la chasse, de la pêche et de la protection de la faune. 3 October 1960  
Décret n° 61-093 portant application de l'ordonnance n° 60-126 du 3 octobre 1960 fixant le régime de la chasse, de la pêche et de la protection de la faune. 16 February 1961  
Arrêté n° 327-MAP/FOR fixant les modalités d'application de l'article 14 de l'ordonnance n° 60-126 du 3 octobre 1960. 8 February 1961  
Décret n° 61-088 fixant la destination à donner aux oiseaux, animaux ou poissons saisis à la suite d'infraction à la réglementation de la chasse, de la pêche et de la protection de la faune, 1961. 16 February 1961  
Décret n° 61-096 répartissant en trois catégories les oiseaux et les autres animaux sauvages vivant sur le territoire de la République Malgache. 16 February 1961  
Loi n° 97-017 portant révision de la législation forestière. 8 August 1997-08-08  
Décret n° 97-1200 portant adoption de la politique forestière malagasy. 2 October 1997  
Arrêté n° 5139-94 complétant la réglementation en vigueur en matière d'exploitation forestière et réglementant la commercialisation des produits principaux des forêts. 15 November 1994  
Décret n° 87-110 fixant les modalités des exploitations forestières, des permis de coupe et des droits d'usage. 31 March 1987  
Ordonnance n° 60-128 fixant la procédure applicable à la répression des infractions à la législation forestière, de la chasse, de la pêche et de la protection de la nature, modifiée par l'ordonnance n° 62-085 du 29 septembre 1962. 3 October 1960

## **Malawi**

National Parks and Wildlife Act (Act No. 11 of 1992). 15 April 1992  
National Parks and Wildlife (Wildlife Ranching) Regulations, 1994 (Government Notice No. 82). 30 March 1994  
National Parks and Wildlife (Control of Trophies and Trade in Trophies) Regulations, 1994 (G.N. No. 86 of 1994). 9 December 1994  
National Parks and Wildlife (Control of Trade in Live Animals) Regulations, 1994 (Government Notice No. 81). 30 March 1994  
National Parks and Wildlife (Game Species) (Classification) Notice, 1994 (Government Notice No. 79). 30 March 1994  
National Parks and Wildlife (Hunting Weapons) Regulations, 1994 (Government Notice No. 83). 30 March 1994  
National Parks and Wildlife (Miscellaneous Forms) Regulations, 1994 (G.N. No. 88 of 1994). 30 March 1994  
National Parks and Wildlife (Protected Areas) Regulations, 1994 (G.N. No. 87 of 1994). 30 March 1994  
National Parks and Wildlife (Protected Species) (Declaration) Order, 1994 (G.N. No. 89 of 1994). 30 March 1994  
National Parks and Wildlife (Use of Substances or Devices in Hunting) Regulations, 1994 (Government Notice No. 80). 30 March 1994  
Environment Management Act (No. 23 of 1996). 5 August 1996  
Forestry Act, 1997 (No. 4 of 1997). 18 April 1997

## **Mozambique**

Environmental Act (Lei n. 20/97 of 30 July 1997)

Government Decree No. 198/2005 on Environmental Impact Assessment (EIA) of 28 September 2005  
Decree No. 45/2004 approving the Regulation on the Environmental Impact Assessment (EIA) of 29 September 2004

Decree No. 32/2003 ruling on Environmental Audit of 12 August 2003

Government Decree 93/2005 regulating the distribution among local communities of the 20 percent of tax funds collected from the use of forest and wildlife resources of 4 May 2005

Decree No. 39/2000 creating the Environmental Fund (FUNAB) of 17 October 2000

Decree No. 12/2002 approving the Regulation on Forestry and Wildlife of 6 June 2002

Forest and Wildlife Act (No. 10/1999) of 7 July 1999

Government Decree No. 131/2004 regulating the Centre for Natural Resources' Sustainable Development of 28 July 2004

Resolution No. 5/2002 regulating the functions and terms of reference for the role of Park Administrator and National Reserve Administrator of 3 May 2002

## **Namibia**

Nature Conservation Ordinance, 1975 (No. 4 of 1975): An Ordinance to consolidate and amend the Laws relating to the conservation of nature; the establishment of game parks and nature reserves; the control of problem animals and to provide for matters incidental thereto. 19 June 1975, as amended by the Nature Conservation Amendment Act, 1996, the Nature Conservation (General Amendment) Act, 1990, and the Inland Fisheries Resources Act, 2003

Environmental Management Act, 2007 (No. 7 of 2007): An Act to promote the sustainable management of the environment and the use of natural resources by establishing principles for decision making on matters affecting the environment; to establish the Sustainable Development Advisory Council; to provide for the appointment of the Environmental Commissioner and environmental officers; to provide for a process of assessment and control of activities which may have significant effects on the environment; and to provide for incidental matters. 21 December 2007

Forest Act, 2001 (No. 12 of 2001): An Act to provide for the establishment of a Forestry Council and the appointment of certain officials; to consolidate the laws relating to the management and use of forests and forest produce; to provide for the protection of the environment and the control and management of forest fires; to repeal the Preservation of Bees and Honey Proclamation 1923 (Proclamation No. 1 of 1023), Preservation of Trees and Forests Ordinance, 1952 (Ordinance No. 37 of 1952) and the Forest Act, 1968 (Act No. 72 of 1968); and to deal with incidental matters. 6 December 2001

Namibia Wildlife Resorts Company Act, 1998 (No. 3 of 1998): An Act to establish a company to be known as Namibia Wildlife Resorts Limited, to provide for its powers, duties and functions, to provide for the transfer of the wildlife resorts enterprise of the state to the company and the transfer of staff members to the company and to provide for incidental matters. 20 February 1998, as amended by the State owned Enterprises Governance Act, 2006

Game Products Trust Fund Act, 1997, as amended by the State owned Enterprises Governance Act, 2006

## **South Africa**

National Environmental Management Act (No. 107 of 1998): An Act to provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote cooperative governance and procedures for co-ordinating environmental functions exercised by organs of state; to provide for certain aspects of the administration and enforcement of other environmental management laws; and to provide for matters connected therewith. 19 November 1998

National Environmental Management Biodiversity Act, 2004 (No. 10 of 2004): An Act to provide for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act, 1998; the protection of species and ecosystems that warrant national

protection; the sustainable use of indigenous biological resources; the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources; the establishment and functions of a South African National Biodiversity Institute; and for matters connected therewith.

31 May 2004

National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003): An Act provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; and for matters in connection therewith.

11 February 2004

National Parks Act: An Act to consolidate the laws relating to national parks. 6 April 1976, consolidated as of 1995 and as amended by the National Parks Amendment Acts, 1997, 1998 and 2001.

Regulations for the proper administration of special nature reserves, national parks and world heritage sites (No. R. 1061 of 2005). 28 October 2005

National principles, norms and standards for the sustainable use of large predators in South Africa. 13 June 2003

National Forests Act (No. 84 of 1998): An Act to reform the law on forests; to repeal certain laws; and to provide for related matters. 20 October 1998

Sea Birds and Seals Protection Act: An Act to provide for the control over certain islands and rocks; for the protection, and the control of the capture and killing, of sea birds and seals; and for the disposal of the products of sea birds and seals and for matters incidental thereto; and to repeal the Fish Protection Act, 1893 (Act No. 15 of 1893 of the Cape of Good Hope), and the provisions of the Sealing and Fisheries Ordinance, 1949 (Ordinance No. 12 of 1949 of South West Africa), relating to the killing, pursuit or capture of seals. 1973, as consolidated in 1975-

## Tanzania

Environmental Management Act, 2004 (No. 20 of 2004): An Act to provide for legal and institutional framework for sustainable management of environment; to outline principles for management, impact and risk assessments, prevention and control of pollution, waste management, environmental quality standards, public participation, compliance and enforcement; to provide a basis for implementation of international instruments of environment; to provide for implementation of the National Environment Policy; to repeal the National Environment Management Act, 1983 and to provide for continued existence of the National Environment Management Council; to provide for the establishment of the National Environmental Trust Fund and to provide for other related matters.

Marine Parks and Reserves Act, 1994 (No. 29 of 1994): An Act to provide for the establishment, management and monitoring of marine parks and reserves, to establish a Park and Marine Reserves Unit, and repeal certain provisions of existing legislation.

1995-01-17

Marine Parks and Reserves (Declaration) Regulations, 1999 (G.N. No. 85 of 1999)

Fisheries (Marine Reserves) Regulations, 1975 (G.N. No. 137) 1975-06-27

Wildlife Conservation Act (No. 12 of 1974): An Act to repeal and replace the Fauna Conservation Ordinance, to make provision for the protection, conservation, development, regulation and control of fauna and fauna Products and for matters incidental thereto and connected therewith. 1974-07-30, as amended by the Marine Parks and reserves Act, 1994 (No. 29 of 1994) and the Wildlife Conservation (Amendment) Act, 1978 (No. 21 of 1978)

Wildlife Protection Fund Regulations, 1981 (G.N. No. 57 of 1981). 1981-04-15

Wildlife Conservation (Game Controlled Areas) Order, 1974 (G.N. No. 269 of 1974). 1974-12-01

Wildlife Conservation (Game Reserves) Order, 1974 (G.Ns. Nos. 265 and 275 of 1974). 1974-12-01

Wildlife Conservation (National Game) Order, 1974 (G.Ns. Nos. 265 and 274 of 1974). 1974-12-01

Wildlife Conservation (Suitable Weapons) Order, 1974 (G.Ns. Nos. 265 and 267 of 1974). 1974-12-01

Wildlife Conservation (Close Season) Order, 1974 (G.Ns. Nos. 265 and 266 of 1974). 1974-12-01

Wildlife Conservation (Registration of Trophies) Regulations, 1974 (G.Ns. Nos. 265 and 276). 1974-10-31

Wildlife (Capture of Animals) Regulations, 1974 (G.Ns. Nos. 265 and 278 of 1974). 1974-??  
Wildlife Conservation (Authorized Officers) (Identity Cards) Regulations, 1974 (G.Ns. Nos. 265 and 270). 1974-??  
Wildlife Conservation (Commercial Game Photography) Regulations, 1974 (G.N.'s Nos. 265 and 277). 1974-??  
Wildlife Conservation (Compounding of Offences) (Forms) Regulations, 1974 (G.Ns. Nos. 265 and 270). 1974-  
Wildlife Conservation (Dealings in Trophies) Regulations, 1974 (G.Ns. Nos. 265 and 268). 1974-  
Wildlife Conservation (Hunting of Animals) Regulations, 1974 (G.Ns. Nos. 265 and 272). 1974-  
Wildlife Conservation (President's Licence) Regulations, 1974 (G.Ns. Nos. 265 and 273). 1974-  
Tanzania Wildlife Corporation (Establishment) Order, 1974 (G.N. No. 231 of 1974). 1974-09-07  
National Parks Ordinance, 1959 (Ordinance No. 12 of 1959): An Ordinance to provide for the establishment, control and management of National Parks, and for purposes connected therewith, and to repeal the National parks Ordinance. 1959-07-01, as amended by the Game Parks Law (Miscellaneous Amendments) Act, 1975 (No. 14 of 1975) and the National Parks Ordinance (Amendment) Acts No. 27 of 1974, No. 7 of 1967, No. 44 of 1963 and 27 of 1962.  
Ngorongoro Conservation Area Ordinance (No. 14 of 1959): An Ordinance to control entry into and residence within the Ngorongoro Crater Highlands Area, to make provision for the conservation and development of natural resources therein and for purposes connected therewith, and to amend the Mining, Fauna Conservation, Forest and Mining (Mineral Oil) Ordinances. 1959-01-01, as amended by the Game Parks Law (Miscellaneous Amendments) Act, 1975 (No. 14 of 1975) and the Ngorongoro Conservation Area Ordinance (Amendment) Act, , 1968 (No. 5 of 1968).  
Ngorongoro Conservation Area Ordinance (Establishment of Ngorongoro Pastoral Council) Rules, 2000 (G.N. No. 234 of 2000). 2000-05-29  
Ngorongoro Conservation Area Authority (Control of Settlement, Residence, and Prevention of Soil Erosion, Flora and Fauna) By-laws, 1992. 1992-  
National Environment Management Act, 1983  
Forest Act, 2002 (Act No. 7 of 2002): An Act to provide for the management of forests, to repeal certain laws relating to forests and for related matters. 2002-06-04, as amended by the Written Laws (Miscellaneous Amendments) Act, 2004 (No. 19 of 2004)  
Forest Resources Management and Conservation Act (Act No. 10 of 1996): An Act for the sustainable management and conservation of Zanzibar's forest resources and matters related thereto. 1996-10-27  
Land Tenure Act, 1992 (No. 12 of 1992) (Zanzibar): An Act to provide for land ownership, use and rights attached to land and matters connected or incidental thereto. 1993-01-29  
Land Act, 1999 (No. 4 of 1999): An Act to provide for the basic law in relation to land other than the village land, the management of land, settlement of disputes and related matters. 1999-05-15  
Serengeti Wildlife Research Institute Act, 1980 (No. 4 of 1980): An Act to establish the Serengeti wildlife research Institute and to provide for its powers and operations in relation to the promotion and conduct of wildlife research. 1980-02-02

## **Uganda**

Uganda Wildlife Act, Cap. 200, 2000: A Statute to provide for the sustainable management of wildlife; to consolidate the law relating to wildlife management; to establish a co-ordinating, monitoring, and supervisory body for that purpose and for matters incidental to or connected with the foregoing.  
National Environment Statute, 1995 (No. 4 of 1995): A Statute to provide for sustainable management of the environment; to establish an Authority as a co-ordinating, monitoring and supervisory body for that purpose; and for other matters incidental to or connected with the foregoing. 17 May 1995

## **Zambia**

Environment Protection and Pollution Control Act, 1990 (Act No. 12): An Act to provide for the protection of the environment and the control of pollution; to establish the Environmental Council and

to prescribe the functions and powers of the Council; and to provide for matters connected with or incidental to the foregoing. 23 July 1990, as amended by Act No. 12 of 1999

Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, 1997 (S.I. No. 28 of 1997). 17 February 1997

Zambia Wildlife Act (No.12 of 1998). : An Act to establish the Zambia Wildlife Authority and to define its functions; to provide for the establishment, control and management of National Parks and for the conservation and enhancement of Wildlife ecosystems, biodiversity, and of objects of aesthetic pre historic historical geological, archaeological and scientific interest in National parks; and for the promotion of opportunities for the equitable and sustainable use wildlife and effective management of the wildlife habitat in Game management Areas; to enhance the benefits of Game Management Areas; to provide for the development and implementation of management plans; to provide for the regulation of game ranching; to provide for the licensing, sale, import and export of wild animals and trophies; to provide for the implementation of the convention on International Trade in Endangered Species of Wild Flora and Fauna, the convention on Wetlands of International Importance Especially as Water Fowl Habitat, the convention on Biological Diversity and the Lusaka Agreement on Cooperative Enforcement Operations Directed at illegal Trade in Wild Fauna and Flora; to repeal the National Parks and Wildlife Act, 1991; and to provide for matters connected with or incidental to the foregoing. 24 April 1998

Zambia Wildlife (Elephant) (Sport Hunting) Regulations, 2005 (S.I. No. 40 of 2005). 6 May 2005

Zambia Wildlife (Community Resource Boards Revenue) Regulations, 2004 (S.I. No. 89 of 2004).6 October 2004

National Parks Regulations. 1993

National Parks and Wildlife (Night Game Drives) Regulations, 1997 (S.I. No. 49 of 1997). 22 April 1997

National Parks and Wildlife (Bird Sanctuaries) Regulations. 1993

National Parks and Wildlife (Camping Sites) Regulations. 1993

National Parks and Wildlife (Elephant and Rhinoceros) Regulations. 1993

National Parks and Wildlife (Game Animals) Order. 1993

National Parks and Wildlife (Licence and Fees) Regulations. 1993

National Parks and Wildlife (Methods of Hunting) (Restriction) Regulations. 1993

National Parks and Wildlife (Prescribed Trophies) Regulations. 1993

National Parks and Wildlife (Prohibition of Holding Both a District Game Licence and a National Game Licence) Regulations. 1993

National Parks and Wildlife (Sumbu National Park) (Use of Boats) Regulations. 1993

National Parks and Wildlife (Trophy Dealers) Regulations. 1993

National Parks and Wildlife (Wild Animals in Captivity) Regulations. 1993

Forests Act 1999 (Act No. 7 of 1999): An Act to establish the Zambia Forestry Commission and to define its functions; to provide for the establishment of National Forests, Local Forests and joint forest management areas; to provide for the participation of local communities, traditional institutions, non-governmental organisations and other stakeholders in sustainable forest management; to provide for the conservation and use of forests and trees for the sustainable management of forest ecosystems and biological diversity; to provide for the implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna; the Convention on wetlands of International Importance Especially as Water Fowl Habitat, the Convention on Biological Diversity and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa; to repeal the Forests Act, 1973; and to provide for matters connected with or incidental to the foregoing. 4 October 1999

Local Forests (Control and Management) Regulations, 2006 (S.I. No. 47 of 2006). 20 April 2006

## Zimbabwe

Environmental Management Act [Chapter 20:27]: An Act to provide for the sustainable management of natural resources and protection of the environment; the prevention of pollution and environmental degradation; the preparation of a National Environmental Plan and other plans for the management and protection of the environment; the establishment of an Environmental Management Agency and an Environment Fund; to amend references to intensive conservation areas and committees and associated matters in various Acts; to repeal the Natural Resources Act [Chapter 20:13]; the Atmospheric Pollution Prevention Act [Chapter 20:03], the Hazardous Substances and Articles Act [Chapter 15:05] and the Noxious Weeds Act [Chapter 19:07], and to provide for matters connected with or incidental to the foregoing. 2002

Rural District Councils Act [Chapter 29:13]: An Act to provide for the declaration of districts and the establishment of rural district councils; to confer and impose functions upon rural district councils and provide for the administration of their areas; and to provide for matters connected with or incidental to the foregoing. 19 August 1988, as last amended by Act No. 13, 2002

Parks and Wild Life Act [Chapter 20:14]: An Act to establish a Parks and Wild Life Board; to confer functions and impose duties on the Board; to provide for the establishment of national parks, botanical reserves, botanical gardens, sanctuaries, safari areas and recreational parks; to make provision for the preservation, conservation, propagation or control of the wild life, fish and plants of Zimbabwe and the protection of her natural landscape and scenery; to confer privileges on owners or occupiers of alienated land as custodians of wild life, fish and plants; to give certain powers to intensive conservation area committees; and to provide for matters incidental to or connected with the foregoing. 11 January 1975, as amended

Trapping of Animals (Control) Act [Chapter 20:21]: An Act to provide for the control, restriction and regulation of the making, possession and use of certain traps for the purpose of trapping animals; to control the sale and disposal of certain animals; and to provide for matters incidental to or connected with the foregoing. 1972

Protection of Wild Life (Indemnity) Act [Chapter 20:15]: An Act to indemnify and protect certain persons against criminal liability in respect of acts or things advised, commanded, ordered, directed or done or omitted to be done by them in good faith for the purposes of or in connection with the suppression of the unlawful hunting of wild life; and to provide for matters connected therewith or incidental thereto. 1989

Parks and Wildlife (General) Regulations, 1981 (S.I. No. 900 of 1981). 1980

Quelea Control Act [Chapter 19:10]: An Act to provide for the control of quelea birds and for matters incidental thereto and connected therewith. 1972

Parks and Wildlife (Payment for Hunting of Animals and Fish) Notice, 1987 (S.I. No. 101 of 1987). 1987

Forest Act [Chapter 19:05]: An Act to establish a commission for the administration, control and management of state forests, to provide for the transfer of certain assets belonging to the government to the said Commission; to provide for the setting aside of state forests and for the protection of private forests, trees and forest produce; to establish a Mining Timber Permit Board and to control the cutting and taking of timber for mining purposes; to provide for the conservation of timber resources and the compulsory afforestation of private land; to regulate and control trade in forest produce including the use of trade names and marks in connection with forest produce; to regulate and control the burning of vegetation; and for other purposes connected with the foregoing. 1949

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