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Wildlife Law in the Southern African Development Community



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WILDLIFE LAW IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

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Preface

By Gaoju Han

FAO Sub-regional Representative for Southern Africa



By adopting the SADC Protocol on Wildlife Conservation and Law Enforcement, entered into force in 2003, the Southern African Development Community (SADC) member countries have expressly undertaken to sustainably use and conserve wildlife resources which are now under the scope of Community activities and sets the ambitious objective of “standardizing” wildlife management measures.

The extent to which standardization will be pursued and areas to which priority may be given remain to be determined.

However, it is evident that some measures could benefit from harmonization of policies and laws more than others, and may require more urgent reforms. This is the case, for example, for provisions addressing transboundary conservation and powers of enforcement officers in the same context. The express call for standardization in the Protocol requires countries, as a minimum, to seek options for this purpose.

The process is likely to provide opportunities for all countries to reconsider and improve their current legal frameworks for wildlife management. This study will contribute to legislative reforms in wildlife management in the concerned countries. Following a series of studies made by FAO in this and other parts of the world, it offers a comparative thematic analysis of legislation in the concerned countries in light of international principles and good practices.

The analysis is also made with a view to identifying legal options to facilitate the involvement of the least advantaged members of society in wildlife management. Opportunities for empowerment of the poor through application of the law are sought both by identifying potential obstacles and by suggesting ways to support the involvement of rural communities and disadvantaged persons within them.

The FAO Sub-regional Office for Southern Africa is pleased to support this work which should provide its member countries with a comprehensive overview of current legal frameworks and guidance on how to improve and possibly harmonize them in the SADC region.

I would like to thank colleagues from the FAO Legal Office (Development Law Service) for this excellent work and their support to the Southern Africa sub-region. I believe our member countries will welcome this publication which is part of ongoing joint FAO/CIC initiatives to share best practices in wildlife management and conservation to encourage wider adoption of sustainable wildlife policies and laws.

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INTRODUCTION

1. General background

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 control of human-wildlife conflicts, the creation of valuable opportunities in eco-tourism or hunting tourism in response to the needs and respect of the traditions of local populations depending on hunting and other wildlife uses. As a consequence, the enactment of effective legal frameworks for sustainable wildlife management, which are able to contribute to poverty reduction and food security and at the same time protect wild animals, is a challenging task.

Since 2007, the Food and Agriculture Organization of the United Nations (FAO) and the International Council for Game and Wildlife Conservation (CIC) have launched an international dialogue on obligations and standards on wildlife management, with a focus on instruments for the legal empowerment of the poor. The initiative started with a review of the relevant legislation Western and Central Asia, which led to the publication of a set of principles on how to develop effective national legislation on sustainable wildlife management (www.fao.org/Legal/prs-ol/lpo75.pdf). A series of studies on the wildlife legislation in other regions of the world, also published on the FAO website, followed (<http://www.fao.org/Legal/prs-ol/paper-e.htm>). Two of these studies concern altogether twenty-seven countries of Sub-Saharan Africa. This paper draws upon the information contained in those studies, focusing on SADC countries.

Some warnings must preliminarily be given regarding the analysis that has been carried out in the studies. Although efforts have been made to ensure the completeness of the legal research, some existing legal instruments may be missing, because they were not identified or not accessible. Another inherent limitation of desk reviews of legislation is that critical information which generally rests beyond the legal texts may not be available. An adequate evaluation of legal frameworks should involve consideration many factors, such as 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 analysis has obviously not been possible for all countries.

The legislation that has been examined, which is listed at the end of the paper, is available on FAO's legislative database FAOLEX, open for consultation at www.fao.org.

2. Overview of the study

Part I of this paper starts with an overview of the **international legal instruments** related to wildlife management, including those adopted at the regional level (Part I, chapter 1). The following chapter focuses on selected themes (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). Common trends are then analyzed, and accompanied with suggestions for the drafting of legal provisions that may

help in ensuring that sustainable wildlife management benefits the most vulnerable members of society, in particular indigenous and local communities (Part I, chapter 3).

An **overview of the legal framework** applicable to wild animals in each of the fifteen SADC countries is presented in Part II. The presentation describes the relevant provisions that are currently in place, whether they are included in legal instruments exclusively concerning wildlife or in legislation addressing related subjects, such as environment, protected areas or forestry.

Conclusions may be summarized as follows:

SADC countries have already undertaken a meaningful process towards harmonization of wildlife legislation by adopting the Protocol on Wildlife Conservation and Law Enforcement to the SADC Treaty. There are many reasons to effectively pursue harmonization, adequately implementing the Protocol. Efforts should not necessarily lead to the adoption of identical legal texts, but to the identification of objectives, general provisions and principles that should be common, along with measures requiring further specification to be adapted to the specific context of each country.

The **scope of wildlife legislation** in any country must be determined in light of the country's international obligations, as well as all relevant national legislation (regarding land, environment, protected areas, forestry, etc.), including customary rules. Current environmental and social needs will then further determine the extent to which certain aspects (as for example subsistence hunting, eco-tourism or other economic activities) should be addressed.

An important contribution to the effectiveness of legislation are requirements which ensure the **representation** of various sectors of society in bodies which are called upon to advise or make decisions on wildlife management, both at the central and at the local level. **Access to justice** – one of the pillars of legal empowerment of the poor – is also a key aspect to ensure meaningful participation of stakeholders in sustainable wildlife management and should be facilitated through appropriate legislation – for example by devising alternative dispute resolution mechanisms.

Appropriately addressing **wildlife ownership** and people's rights over wildlife is essential to ensure that benefits deriving from conservation and sustainable wildlife management are accessible to the most vulnerable sectors of society. The analysis of national legislation in the SADC region shows that general statements on wildlife ownership are less important than substantive provisions entitling to benefits from wildlife use. The grant of hunting and other management rights to private or communal landowners have often served as a basis for successful private wildlife management initiatives, even where ownership of wildlife has not been transferred to landowners. Wildlife legislation should therefore clearly and securely grant management rights, whether or not in connection with ownership of wildlife. Legal frameworks should also adequately regulate **wildlife management planning**. Rules should at least require surveying some or all wildlife populations, preparing one or more management plans based on the surveys' findings, and regularly updating them. The issuing of relevant licences and permits for activities should be made subject to the plan's contents. A thorough participatory process for the adoption of plans, including local communities, should be required.

Participation of concerned people in establishing and managing **protected areas** and in setting conservation measures would also contribute to the prevention and settlement of conflicts regarding possible land uses as well as human-wildlife conflicts.

Community-based wildlife management, for eco-tourism, sustainable hunting, ranching and breeding, is also an aspect to be addressed in legislation. These initiatives are to be encouraged both on community land as well as on state land where appropriate. They should have a clear and secure basis in the law and be further specified in agreements between the administration and concerned communities. Special efforts must be made for the formulation of provisions focusing on the inclusion or representation of all members of the community in these initiatives.

Concessions or other initiatives in which the private sector is involved also require a legal basis, whether or not taking place on private land. As in the case of community-based initiatives, the law should 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 to be identified in consultation with local people, payments due, sharing of benefits, assistance to be provided by the administration) and consequences for the case of violations by either parties or the administration.

Specifically as regards **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 should establish some minimum criteria for environmental and social sustainability.

Legislation can also contribute to the **reduction of human-wildlife conflicts**. Provisions addressing “problem animals” should be part of a strategy to address such conflicts, requiring for example the creation of a system to collect data and the involvement of concerned people in the determination of measures to prevent, and if appropriate compensate damage.

Strengthening **law enforcement** by involving communities or local authorities should also be sought in legislation, for example by allowing local people to require hunters to show their licences or involving them in investigations. Such contributions to law enforcement should be rewarded according to legislation.

Gender issues may become relevant in wildlife legislation where wildlife use is based upon traditional or customary systems in which women are disadvantaged. The legislation should tend to provide equal access to available opportunities and require equal representation of men and women on relevant multi-stakeholder bodies.

Wildlife management legislation could also further contribute to **food security** by enhancing consideration of customary hunting practices – allowing and facilitating them, where sustainable, on the basis of consultative processes.

PART I – INTERNATIONAL BACKGROUND AND EMERGING TRENDS IN NATIONAL LEGISLATION OF SADC COUNTRIES

1 INTERNATIONAL LEGAL INSTRUMENTS RELATED TO SUSTAINABLE WILDLIFE MANAGEMENT

1.1 Global agreements

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 (Birnie and Boyle, 2002; Morgera and Wingard, 2009).

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 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 that 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 paper 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 (Birnie and Boyle, 2002). 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 that 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, and adopt a holistic approach and base measures on scientific research (Birnie and Boyle, 2002). 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).

Wildlife-related international agreements have been widely ratified by SADC countries, as summarized in the table below (showing the date of entry into force of each agreement for a given country, except where otherwise indicated).¹ There are, however, some prominent gaps, especially as regards CMS. It is to be hoped that SADC countries that have not yet ratified all these conventions will do so, with a view to harmonizing their national legislation accordingly.

	CBD	WHC	CITES	Ramsar	CMS	AEWA (CMS)	ACAP (CMS)
Angola	1998	1992			2006		
Botswana	1996	1999	1978	1997			
Dem. Rep. of Congo	1994	1974	1976	1996	1990	1990	
Lesotho	1995	2004	2003	2004			
Madagascar	1996	1983	1975	1999	2007	2007	
Malawi	1994	1982	1982	1997			
Mauritius	1992	1995	1975	2001	2004	2004	
Mozambique	1995	1983	1981	2004	2009		
Namibia	1997	2000	1991	1995			
Seychelles	1992	1980	1977	2005	2005		
South Africa	1996	1997	1975	1975	1991	2000	2004
Swaziland	1994	2005	1997				
Tanzania	1996	1977	1980	2000	1999	1999	
Zambia	1993	1984	1981	1991			
Zimbabwe	1995	1982	1981				

¹ Information from ECOLEX (www.ecolex.org); last visited on 4 November 2009.

1.2 Regional agreements

Wildlife may also be the subject of regional treaties. An important one in this context is the **Protocol on Wildlife Conservation and Law Enforcement to the SADC Treaty** which entered into force in 2003 and has been ratified by Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Tanzania and Zambia (with Angola and Zimbabwe having signed the Protocol only).

The Protocol recognizes states' sovereign rights to manage their wildlife resources, with a corresponding responsibility to sustainably use and conserve these resources. It also recognizes that wildlife survival depends on the perceptions and development needs of people living with wildlife (Preamble). The "primary objective" of the Protocol is to establish within the framework of the respective national laws of each party common approaches to the conservation and sustainable use of wildlife resources and to assist with the effective enforcement of laws governing those resources (art. 4). Measures to be standardized must include, but are not limited to: "(a) measures for the protection of wildlife species and their habitat, (b) measures governing the taking of wildlife, (c) measures governing the trade in wildlife and wildlife products and bringing the penalties for the illegal taking of wildlife and the illegal trade in wildlife and wildlife products to comparable deterrent levels, (d) powers granted to wildlife law enforcement officers, (e) procedures to ensure that individuals charged with violating national laws governing the taking of and trading in wildlife and wildlife products are either extradited or appropriately sanctioned in their home country, (f) measures facilitating community-based natural resources management practices in wildlife management and wildlife law enforcement, (g) economic and social incentives for the conservation and sustainable use of wildlife and (h) measures incorporating obligations assumed under applicable international agreements to which member states are party" (art. 6). States must also establish management programmes for the conservation and sustainable use of wildlife and integrate such programmes into national development plans (art. 7). Appropriate international institutional mechanisms are set out for the operation of these objectives, including a Wildlife Sector Technical Cooperating Unit (art. 5).

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). Transboundary 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 SADC Tribunal 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 and Zambia are parties, and South Africa is a signatory).

There are also examples of regional agreements made specifically to create protected areas, such as the Great Limpopo Transfrontier Park and the Kgalagadi Transfrontier Park, respectively created by treaties of 2002 and 1998.²

2. EMERGING TRENDS IN WILDLIFE LEGISLATION

2.1 Wildlife legislation and other related legislation

The overview of the wildlife legal frameworks of the SADC countries demonstrates that almost every state has a specific piece of principal legislation that regulates wildlife. These laws do not merely provide for the regulation of hunting, but 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. This positive trend towards more comprehensive wildlife legislation has gradually developed over the past three decades. Where, as in the Democratic Republic of Congo, the main relevant piece of legislation is relatively old (1982), the focus of the law is prevention of overexploitation of game, often still with the limited goal of protecting hunting interests.

At the same time, in every country 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 ecosystem-based approach that prevents 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 carried out in the SADC region 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 authorizes the “collection” of “forest produce” for domestic needs on customary land (sec. 50). It is unlikely that those provisions intend to authorize 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”. Where, as in the case of Malawi, coordination among the authorities respectively responsible for forestry and wildlife is effective, similar provisions do not involve negative effects, but it is generally advisable to carefully consider all consequences of similar definitions and if possible to avoid them. 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

² For an extensive analysis of regional and domestic legislation and policies regarding community empowerment in transfrontier conservation see Dhliwayo, M. et al. (2009).

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 considerations should not be overlooked, as they may cause uncertainty and hamper sustainable 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 institutions. 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 entity to advise on wildlife. This, however, may sometimes be done 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 contents of management plans. The basis for integrated management of natural resources should ideally be comprehensive plans addressing 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 any 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 need to 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.

The practice of not **expressly repealing** principal and subsidiary legislation enacted before the entry into force of a more recent principal law may be another cause of uncertainty. Examples of this practice vary from regulations that formally remain in force although a new principal law has come into existence, to principal laws comprehensively addressing wildlife adopted after other principal laws whose contents are limited to specific wildlife-related aspects. In some cases, as in the Democratic Republic of Congo, the situation may be particularly confusing as the 1982 hunting law makes reference to an older decree and points to the need to fill gaps left by it, without clarifying whether such decree is completely

replaced by the law. Usually the new law states that all legislation previously in force is repealed to the extent that it conflicts with it, or this rule applies even where such a statement is not expressly made. However, sometimes the determination of whether certain provisions of the previous legislation must be considered superseded is debatable, and this undermines legal certainty. Although the practice of not expressly specifying texts that are partly or wholly repealed is formally acceptable, therefore, it would be preferable to avoid it. Existing provisions to be repealed should be expressly identified and any texts of subsidiary legislation that are necessary for the implementation of a new law should be adopted within a reasonable time from the adoption of primary legislation.

2.2 Institutions and role of stakeholders

2.2.1 Institutional setup and public participation

An area in which institutional conflicts may sometimes develop is that of **relations between environmental and wildlife authorities**. The issue does not arise where a single institution is in place, as in Swaziland where the Environmental Authority and National Trust Commission's responsibilities regarding the environment include wildlife. In most other cases, however, institutions responsible for wildlife – which in turn may or may not be responsible also for forestry – are separate from environmental authorities, and a division of functions is not always clearly designed. Provisions which envisage the creation of an **inter-ministerial body** on all environmental matters, as is done in Mauritius, may facilitate coordination between environmental and wildlife authorities. Here, in addition to the National Environment Commission that is made up of ministers, an Environment Coordination Committee further promotes cooperation, coordination and information sharing among agencies and departments dealing with environment protection.

Most SADC countries require the **representation of various sectors of society in some wildlife-related institution**. This form of participation strengthens the “empowerment” of society at large, and although the most disadvantaged people may rarely be directly represented, the increased participation of diverse actors (e.g. non-governmental organizations and international donors) may indirectly contribute to support of their interests.

In a limited number of cases, the legislation requires that the management entities of administrative authorities include representatives of various interests. In Zambia, for example, representatives of the farming community and chiefs of local communities must be members of the Forestry Commission.

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 wildlife authorities in decision-making. 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, but more recent legislation 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.

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 those bodies, rather than empowering government officials to appoint members in a top-down manner. Provisions of this type are a means of promoting **equitable access to multi-stakeholder bodies and a bottom-up approach** in the selection of representatives.

Public participation may in practice be very limited if the **number of representatives of non-governmental actors** is much smaller compared to that of government officials. This happened in the Interdepartmental Committee on Environment, Nature Conservation and Tourism of the Democratic Republic of Congo, established by legislation of 1975, in which in addition to delegates of numerous government departments only two representatives of travel agencies were required to participate. In the same country, more recent legislation, in the form of a 2008 decree, is more supportive of public participation, establishing that members of the Forestry Advisory Council, besides some twenty representatives of ministries, include two academics, experts in forestry law, four representatives of professional associations, four representatives of NGOs and one representative of local communities from each Provincial Council. Provincial Forestry Advisory Councils with a similar membership are also created. An adequate representation of the private sector is required for the Wildlife and National Parks Advisory Council of Mauritius, which, in addition to the ten members from various environment-related government agencies, must include two members of the public with wide knowledge of the natural resources of Mauritius, one person involved in tourism or outdoor recreation in Mauritius and three persons actively involved in wildlife conservation or environmental protection.

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.

2.2.2 Funds

In several SADC countries, legislation has been passed to create funds for wildlife management. These funds may facilitate the channelling of financial resources to the wildlife sector, in line with international standards pointing to the need to re-invest wildlife management-generated revenues to wildlife protection and sustainable use. Relevant legislation, however, tends not to specify to what extent wildlife revenues be appropriated by these funds – usually generally listing appropriations from government budgets among the sources of these funds. The funds may in any case be useful instruments for the

management of money actually allocated to the wildlife sector. Their adequate operation, with transparent governance structures, can play a significant role in providing benefits to the people, for example by supporting community-based initiatives.

In the majority of cases, funds are only allocated to environmental protection and sustainable forest management, rather than specifically allocated to wildlife. 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. In Mauritius, several funds have been established which directly and indirectly provide for the conservation of wildlife (namely, a National Parks and Conservation Fund, the National Environment Fund, and the National Heritage Fund – the latter financing safeguard of habitat of animals considered to be of outstanding value).

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). The Board of Trustees of Swaziland's Environmental Fund must have two members from non-governmental organizations that promote the conservation of the environment. Mauritius' National Environment Fund may be utilized to support non-governmental organizations engaged in environment protection and to encourage local environmental initiatives.

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 funds' operations. The law or the funds' operational rules could also make funding available to assist communities, particularly disadvantaged people, in the formulation of proposals to be funded; assisting those disadvantaged persons that would otherwise be unlikely to independently submit a proposal. This type of funding could thus provide further opportunities to strengthen people's empowerment in wildlife management.

2.3 Wildlife tenure and use rights

The laws that have been examined in SADC countries 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 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, ownership of wildlife

may be reserved to the state, although private landowners may decide whether or not to allow access onto their land by hunters. In Mauritius, where wildlife is declared to be state property if found on state land, the consent of the owner or occupier is necessary to hunt on any other land. Even on leased state land, the lessee has a right to the ownership of hunted animals, but must take certain measures to prevent illegal hunting. In Swaziland, the permission of the landowner is required to hunt wildlife found on private forest lands.

The grant of hunting and other management rights to landowners 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 landowners. 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.

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

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 wildlife management **licences and permits should be subject to the requirements of the management plans**, thus making the plans legally binding. Similar requirements are not systematically provided for in the legislation examined here, although examples of provisions foreseeing one or more of the above mentioned planning steps exist.

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 the carrying out of inventories of all natural resources. Another is the biodiversity legislation of South Africa, which requires the Biodiversity Institute to report to the relevant minister on 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, including both factual information that may feed into wildlife information-gathering processes as well as suggestions on management measures that may feed into planning. Similar requirements

apply to hunters in the Democratic Republic of Congo: there too hunters are required to provide detailed information regarding animals hunted. Along the same lines, in Botswana, landholders should provide yearly reports on hunted animals. These provisions could facilitate the contribution of valuable information towards wildlife surveys, but are probably difficult to implement adequately.

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 and Zimbabwe. Alternatively, **forest management plans** may also include wildlife-specific provisions, as in the case of the Democratic Republic of Congo, where management plans for forestry concessions must also envisage measures for the protection of wildlife. Obviously wildlife management planning is not the specific focus of the environmental or forestry 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, Mauritius, South Africa, Tanzania and Zambia – or for forest areas (as in Malawi and Namibia). These protected area or forest management plans may consider also 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 and Zanzibar's forest management plans. In Mauritius, the Director of the National Parks and Conservation Service, in preparing management plans for reserved land, must publish them in two local newspapers and for sixty days consider any persons' written comments and the plans are then subject to review by the National Parks Advisory Council. 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 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 allow consideration of communities' needs in the plan as interpreted by public authorities or by those required to develop plans, but do not go as far as allowing communities themselves to participate in the process and represent their interests more directly. 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 provide due consideration of communities' concerns and may not even be considered acceptable by communities.

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.

The analysis of legislation in SADC countries 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 all basic steps leading to the adoption of plans were clearly and specifically required in a logical sequence, 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 that 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, and 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.

Among emerging weaknesses is the lack of clear legal frameworks for management planning, 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 on larger areas that also include migration paths and other critical areas. There may also be 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 that 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, environmental authorities may declare a "protected natural environment" 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 and Seychelles, a thorough consultative process is set out.

The draft wildlife legislation of Angola takes a more comprehensive approach to the issues that may arise with regard to local people, specifically addressing communities' presence and involvement in protected areas. The draft legislation aims at the protection of human settlements in protected areas, providing guarantees for the relocation of people that needs to be justified by environmental necessity, and creates a series of incentives, benefits and rights for local communities to participate in planning.

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) are usually included in general environmental legislation, but are sometimes found in wildlife-specific legislation. EIAs may be required to assess impacts on wildlife by the use of specific arms, hunting methods, or commercial exploitation; for projects that may affect migratory routes or protected areas (as in Seychelles); for the proposed introduction of new species into the environment; or for 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).

Legislation on EIAs or specific wildlife impact assessments usually incorporate adequate participatory requirements. In the Democratic Republic of Congo, however, there seems to be an exception to this trend, as the responsibility to carry out EIAs is entrusted to a “group of environmental studies” without any input from the public.

Most countries **classify animal species** for the purpose of granting them various degrees of protection. Some, such as Mauritius, include lists in principal legislation. Others, as the Democratic Republic of Congo, also include lists in the principal legislation, but allow revisions by subsidiary legislation. Seychelles has various regulations for the protection of specific species. Legal obligations to **involve concerned people in the adoption of conservation rules** of this type are regrettably rarer than participatory requirements in the declaration and management of protected areas. One of the few examples is legislation in Zimbabwe, which requires 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 that do not provide for the involvement of concerned communities in the designation and management of protected areas or in the setting up of other conservation measures 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) that have always been perceived as belonging to the local communities, regardless of legal definitions of land 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 and other activities

Most countries require an authorization (whether 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 clear **criteria are set out for the issue of such authorizations** and also for their suspension or withdrawal. For example, hunting in national parks or wildlife reserves in Malawi is subject to the requirement that harvest does not exceed the sustainable yield. In the Democratic Republic of Congo, applicants for hunting permits must undergo a test on applicants’ ability to hunt, and hunting permits may be withdrawn in case of violations of applicable laws. Grounds for refusal or withdrawal of licences and permits are clearly spelt out also in Mauritius, basically including previous convictions for wildlife law violations.

In other cases, although criteria for rejection of applications for some permits are very general, the reasons for rejection must be expressly stated. In Zambia, for example, it is sufficient for the applicant not to be considered a “fit and proper person.”

In most of the other SADC countries (for example particularly in Zimbabwe), clear criteria for issuing authorizations are not given. A useful means to promote sustainability would be to subject the issuing 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 similar formulations). Therefore, discretionary powers given to the administration for the issuance of authorizations, licences or permits are quite extensive. This inevitably limits guarantees of transparency in the permitting process, 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, at the same time causing a threat to conservation. These considerations apply to hunting permits but also to all types of authorizations, licences or permits envisaged in wildlife legislation, such as licences for professional hunters, professional guides or trophy dealers.

All countries that allow **hunting** subject it to permit requirements. Permits are usually different for recreational hunting as opposed to traditional hunting, while in some cases (as in Swaziland) permits are required for recreational hunting, but not for some or all types of traditional hunting. Specific rules may apply to hunting tourism enterprises, as reported in section 2.6.4 regarding the involvement of the private sector in wildlife management. For example, in the Democratic Republic of Congo, they must have qualified staff and must enter into an appropriate contract with the responsible institutions.

There are also 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 subsistence, or the resident licences of Tanzania. These are presumably a means to grant local people some preferential treatment vis-à-vis foreigners engaging in hunting tourism. This distinction does not necessarily result in a privilege for local populations, however, and may even become a burden if licences are required for activities that had long been carried out freely by rural people.

Customary usage rights to hunt or otherwise use wildlife were addressed in older legislation of Botswana, which presumably is now superseded. As frequently happens in colonial-type legislation, provisions applicable to traditional rights tended to phase them out rather than protect them when they entail sustainable use. 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 customary usage rights. Furthermore, hunting with traditional weapons is allowed as a customary right, if limited to personal needs. In Malawi, forest produce, which is defined as including wildlife, may be collected without a permit for domestic needs. In Angola, the right of rural communities to use wildlife 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 to be concluded by traditional users and the protected area management entity, with the exercise of traditional rights being subject to the protected area 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 **over-regulate**, setting out rules which are not strictly necessary. Examples may be found in requirements for

permits for activities that people have long practiced without the need for such permits. They may also be found in provisions granting hunting privileges to landowners (as in Botswana), which are implemented by regulations setting out strict requirements for registration, thereby making the exercise of privileges rather more difficult. Where compliance becomes excessively burdensome, it is unlikely that rural people are willing or able to abide by the law, and this may lead to unacceptable consequences such 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”, depriving those who end up living outside the rule of law of the security and opportunities the law can afford them.

Wildlife use rights may also be granted over 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 goal of preventing and mitigating cumulative effects on wildlife and ensuring protection of internationally protected species, particularly migratory ones.

2.6.2 Sharing of benefits

Provisions regarding the sharing of money or other benefits derived from wildlife management between the administration and other stakeholders have been expressly included in the wildlife legislation of a few of the SADC countries. These provisions are often 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 their participation 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% of licence fee revenues to community resources boards, as well as part of the meat of hunted elephants to the local community. In Angola, local communities have a right to 15% of protected area entrance fees. In Mozambique, 20% of any fees related to wildlife use should be allocated to local communities residing in the area in which the use took place.

It is interesting to note that certain countries prefer to channel financial **benefits to local administrations**, which are expected to 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).

The legislation may also envisage **other benefits**, such as priority in the allocation of rights to manage areas for eco-tourism 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 rural people may vary depending on how money is spent or other advantages are distributed. Furthermore, even where the share of benefits allocated to people happens 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 or government policies. These types of conflicts should be addressed and equitable arrangements set out in legislation.

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

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 SADC countries, 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 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 a requirement to include community representatives in state-owned companies that directly manage wildlife resorts (Namibia).

Some of the legislation analyzed in this study includes 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 all members of society to 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 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 and applicable conditions 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, where all rules have been complied with, 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) that would otherwise apply under general law
- consequences for violations (grounds for suspension and termination, compensation) must be set out
- procedures for effective settlement of disputes must exist or 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 laws of various SADC countries, 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 (that of Malawi, for instance). Countries that do not yet have in place such a framework or whose legislation

addresses only some of the above-mentioned 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. However, 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 more detailed, allowing for the lease of land to third parties for hunting purposes, whether or not by public auctions. This 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 provisions spelt out in **agreements between the administration and the concerned communities**. Some flexibility in the contents of these agreements is desirable, as this will allow parties to adapt the respective rights and obligations in accordance with the realities of a specific area or resource. 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 benefits 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, which 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

Certain 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 the conclusion of 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, for purposes which may include production and marketing of forest produce. This legislation appropriately specifies that derivative revenues belong to the landholders.

Legal provisions concerning arrangements 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 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 the Democratic Republic of Congo, hunting tourism enterprises must have qualified staff and must enter into an appropriate contract with the institutions responsible for managing the concerned hunting area. In Mauritius, the minister may grant or auction land leases under which the lessee is granted rights to hunt. The lessee is subject to limitations regarding the clearing of land and must employ one person at all times to prevent poaching on the land. The example provided by the law of a country outside the boundaries of SADC, Uganda, is also interesting; 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 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 unfair to disadvantaged sectors 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, 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 in the wildlife sector 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. Usually legal tools are limited to requiring **authorizations** for organizing wildlife-watching activities (seldom providing for certain conditions or limitations to these activities), and requiring the use of professional **guides**. In Mauritius, eco-tourism activities (nature-based tourism activities or adventure-related tourism activities, or both) must be licensed by the Tourism Authority; however, there are no specific provisions governing wildlife-watching in the Tourism Authority Act. In Zambia, 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 area 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 eco-tourism.

2.6.6 Ranching and breeding

Few laws address ranching or breeding of wild animals. One example is the law of Malawi, which sets out some requirements for inspection, record keeping and prohibitions related to ranching. In Mauritius, breeding and trade of wildlife are subject to a licence, but there are no specific criteria to guide the issuance of such licence. In the draft legislation of Angola, the developer is required to formulate a management and exploitation plan, including issues of infrastructure and fire prevention, and take into account the needs of neighbouring communities, which are also involved in the evaluation of proposals. An environmental impact assessment may be required for large-scale operations.

Botswana subjects ranching to some requirements and waives the applicability of limits to the number of animals that may be taken. This is a useful **incentive** that is not often provided for in the legislation of other countries. However, at the same time, the legislation of Botswana on game reserves 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 setup 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.

The legislation of Mozambique provides for planning requirements for ranching and regular inspection of facilities. It is among the few providing some incentive to ranching or breeding – particularly by stating that animals introduced by a concessionaire are the property of the developer.

With the aim of encouraging private initiative, incentives should be used more widely. Specific exemptions from general conditions of wildlife use should therefore be provided explicitly and be coupled with certain minimum requirements to ensure the environmental and social sustainability of ranching and breeding. In particular, the possibility of introducing social requirements as a possible means to contribute to the support of rural livelihoods could be explored: requesting or favouring preference for recruitment of local staff by ranchers may, for instance, significantly contribute to the empowerment of the poor.

2.7 Human-wildlife conflicts

Killing wild animals in **self-defence**, in defence of another person, or sometimes also to protect property, is often not considered an offence in the legislation of SADC countries. Frequently, a report of the killing must be made to authorities within a certain deadline or at least for certain protected species. Sometimes these provisions are qualified by the need to take reasonable measures, or by limiting lawful killings to absolute necessity. Measures such as the listing of protected animals, “problem animals” or “dangerous animals” are also common.

In some places, limitations set out by the legislation to the right of self-defence are considered unjustified. 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).

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. Compensation schemes have been experimented with by other SADC countries, such as Namibia and Zimbabwe (Lamarque *et al.*), as well as in Kenya, another country of the region, although not a member of SADC. In the latter country, where any person is injured or killed by an animal his/her dependants may apply to a district committee established for the purpose of providing compensation, unless the person was committing an offence, or the injury or death occurred “in the course of normal wildlife utilization activities”. The committee must include some specified officials of the district and county level and three other members appointed by the minister to “represent the general public” of the district.

Although a compensation scheme for damage caused by wild animals may provide some relief in human-wildlife conflicts, the difficulties that 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 its 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).

In some instances, authorities are called upon to take **measures to prevent or reduce human-wildlife conflicts**. In Swaziland, the Minister of Agriculture can direct the owner of any holding (including Swazi Nation indigenous peoples) to reduce any species of game that the minister deems to constitute a danger to stock, crops, grazing, or other natural resources. If the owner fails to reduce said species of game within one month, the minister may undertake measures to perform such reduction and expenses incurred by the minister may be offset by the sale of carcasses of any destroyed game.

2.8 Law enforcement and access to justice

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 local communities in wildlife management.

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 specific users (for example, hunting guides in Mozambique) to do so.

Sometimes **communities** or other entities at the local level are formally given the opportunity or are under the obligation to appoint their own enforcement officers. The community law enforcement officers of Angola and Mozambique even have a right to receive a percentage of the penalties for violations detected by them. Similar arrangements are optional in Tanzania, 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 Malawi, village natural resource management committees have the power to enforce their own rules by seizing produce taken in violation thereof.

Hunters may themselves be called upon to contribute to enforcement. In some places, they may ask any other hunter to produce evidence of his or her right to hunt.

Legal provisions that 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 support the law enforcement efforts of public authorities. In Swaziland, game rangers and park wardens who provide information leading to the arrest and conviction of a person who has violated the Game Act receive an award.

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. This is also an aspect that is emphasized for the empowerment of the poor. In Lesotho and Tanzania, special environmental tribunals have been created to handle appeals of decisions related to natural resources management, which may impact upon wildlife management. In Mauritius, an Environmental Appeal Tribunal hears appeals of decisions regarding environmental impact assessments, licences, and injunction orders. A country of the region, Kenya, although not a member of SADC, has established a Wildlife Tribunal 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 other instances, legislation may **empower citizens** to submit a complaint or request an injunction for violations of wildlife laws. This is the case in Swaziland, where any person may request the authority to investigate alleged violations of environmental legislation, or sue for damages, an injunction, or protective order with regard to violations of environmental laws, whether or not that person has been affected by the violations. However, no costs or damages will be awarded if the court finds that the motivation for the filing of an action was other than for the protection of the environment. 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, where such rights are provided for in other legislation, or should be inserted in wildlife laws.

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 information regarding appeals to be clearly indicated in any administrative decision— for example, in a fine, or in a decision rejecting an application or providing for the suspension or cancellation of a licence.

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

2.9 Gender and food security

References to **gender 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 Mozambique and South Africa, for instance, general principles embodied in the environmental law (which are also applicable to wildlife management) call for guarantees 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, legislation expressly states that membership in wildlife advisory bodies should ensure “equitable gender participation.”

Specific 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. 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.

In Angola, the Democratic Republic of Congo, Mozambique and Zambia, nevertheless, several specific provisions require free distribution of meat to local communities when wild animals are killed in self-defence, or for scientific purposes, or are seized by law enforcement officers or abandoned by hunters.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1 The importance of harmonization

There are many reasons to pursue the harmonization of wildlife legislation at the regional level. The first is intrinsic to the nature of the resource being addressed, which frequently straddles across countries’ borders. Some measures are thus bound to be effective only if adopted by all concerned countries.

Furthermore, especially in the case of SADC countries which have already formed a “Community” and have institutionalized cooperation in numerous sectors, the approximation of some laws is an essential instrument to implement the Community’s objectives. National laws resulting in disparities of treatment among the communities or private entrepreneurs acting in different countries, for example by establishing uneven limitations on wildlife exploitation and trade, would not be in line with the purpose of creating a common market with fair competition.

Regional cooperation is also important for the punctual implementation of international global or regional agreements. In the case of CITES, for example, the adoption of uniform domestic provisions regarding permits is essential to facilitate customs operations in line with the Convention. The imposition of uniform penalties by neighbouring countries will also prevent the bypassing of CITES rules, which could result from choosing to trade wildlife in certain countries rather than others.

In the case of the Bonn Convention on Migratory Species, cooperation among range states is expressly called for, and the adoption of appropriately harmonized provisions for the

concerned species is an obvious related requirement. The efforts required by the Convention to maintain or restore species “in a favourable conservation status” are much more likely to be successful if cooperation is not limited to general statements to conserve (whether embodied in regional agreements or less formal memoranda of understanding), but further extends to the drafting of uniform provisions of domestic legislation.

Similarly, protected areas established under international conventions such as the Ramsar Convention or the World Heritage Convention and the protected area system called for by the Biodiversity Convention are much more likely to be adequately slated and sustainably managed, in accordance with the spirit of these conventions, if applicable domestic provisions are reciprocally screened by state parties and a common course of action is taken, especially at the regional level. Common provisions among two or more countries are also obviously required for the proper management of transboundary protected areas.

One other reason to seek cooperation among countries of a region is the innovative nature of some of the some legal trends which are now widely accepted at the international level – for example as regards requirements for public participation in wildlife decision-making. The adoption of appropriate rules is a challenge which is best tackled by exchanging information on legal options, whether in force or to be adopted. The process is to be particularly encouraged at the regional level, where the experience of one country is more likely to be useful to another towards the formulation of effective legislative reforms. Exchanging good practices could thus be an additional instrument to strengthen the effectiveness of participation and facilitate empowerment of the poor.

The parties to SADC have already undertaken an important process of cooperation in wildlife management, including legal aspects, particularly with the Protocol on Wildlife Conservation and Law Enforcement to the SADC Treaty.

By listing the various measures to be standardized, the Protocol represents one of the most advanced efforts towards regional harmonization of wildlife legislation that is being experimented with around the world. In other experiences, such as that of the European Community, for example, wildlife legislation is required to be harmonized to a more limited extent –through the Habitat Directive and the Birds Directive.

Further acceptance of the Protocol by other SADC countries and increased efforts towards its implementation therefore remain challenging and worthwhile objectives to be pursued.

Efforts towards harmonization of wildlife legislation should not necessarily lead to the adoption of identical texts. Negotiations should identify general provisions on objectives, principles and approaches that should necessarily be common, leaving certain flexibility to states to adopt more detailed measures adapting to the specific context of each country.

3.2 The legal empowerment of the poor

Appropriate wildlife legislation can give an effective contribution to the legal empowerment of the poor. According to the Commission on the Legal Empowerment of the Poor, established under the aegis of the United Nations in 2005,³ four pillars sustain the concept of legal empowerment of the poor: access to justice and the rule of law; property rights;

³ The Commission completed its mandate in 2008. See <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.

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 wildlife utilization so that opportunities are available for all.

In particular, ownership of wildlife resources or other management rights over wildlife resources, and their tenure security, are key legal tools for the empowerment of the poor identified in the FAO/CIC studies. 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 rarely been detected in the legislation of some of the Sub-Saharan countries covered by the FAO/CIC studies. 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.

3.3 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 that has been analyzed, 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 that 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 the rule of law altogether.

3.4 Participation of stakeholders in institutions and decision-making processes

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

Multi-stakeholder participation is currently already realized, and could be further extended, in some advisory bodies. Providing for the representation of various stakeholders in decision-making or management bodies should also be considered. Transparency in appointments, or even better bottom-up selection procedures, for stakeholder representatives in these bodies should also be encouraged. Overall, participation should be provided at all levels (law and policy-making, management planning and licensing) and should be provided both at the central and at the local level.

Where funds are established to support conservation and sustainable use of wildlife, sustainable management of forest or environmental protection, legal provisions should be specifically devised to facilitate 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.

3.5 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 arising from sustainable wildlife management, whether such benefits are monetary, or in the form of other material or moral advantages.

The analysis of national legislation in SADC countries shows that statements on wildlife ownership are less important than substantive provisions clearly allocating benefits from wildlife management. The grant of hunting and other management rights to landowners 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 landowners. The security of rights being granted, and therefore the clarity and stability of the legal provisions granting them, should be guaranteed in 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 these cases, 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 law and customs governing land tenure and use 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. 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.

3.6 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, prepare one or more management plans based on the surveys’ findings, and update them regularly. The issuance of licences and permits for wildlife management should then be made explicitly subject to the respect of relevant management plans.

Law should clearly and specifically require the adoption of plans, following the above-outlined basic steps. Provisions should ensure coordination with other existing planning processes and focus on comprehensively addressing a country’s wildlife, as well as those species that 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: local communities should be actively involved in the preparation of plans, rather than simply requesting consideration of their needs by authorities drawing the plans in a top-down fashion. 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 poor can serve to strengthen their role as actors in sustainable 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.

3.7 Wildlife conservation

Legal provisions requiring the involvement of concerned stakeholders in decision-making are essential also in the context of rules focusing on conservation. Participatory approaches should be required in the process of creation and management of protected areas, as well as

in the adoption of conservation rules, such as classification of species for conservation or other purposes.

Legislation should at least require:

- an adequate process of divulging information, prior to: (a) proposed declarations of a protected area, (b) the adoption or revision of protected area management plans, and (c) the adoption of lists of protected animals or “problem” animals
- 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 ongoing provision of information to the public and, when needed, extension on the objectives and needs of any protected area. Ideally, support to local communities in adequately representing their interests in this context could also be required by law.

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 understanding of the rule of law, protection of assets and security of initiatives. Additional benefits would generally develop from improved conservation, which could bring about opportunities for sustainable utilization to the benefit of concerned communities. Improved procedures for land use planning would also facilitate enhancement of the position of communities who are normally put under pressure (if not compulsorily moved or impoverished) by the creation of protected areas or by some conservation provisions.

3.8 Wildlife use

3.8.1 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 issuance of authorizations, licenses, permits or concessions to use wildlife. A basic minimum requirement should be to subject the issuance of these instruments to the respect of applicable management plans.

General prohibitions applying only “unless otherwise authorized” should be avoided, while transparent procedures should increasingly be set out in legislation to limit 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. 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. In the alternative, simplified procedures and requirements may be put in place to the advantage of local communities, with a concurrent obligation for the administration to provide technical

support to local communities in their gradual assumption of wildlife management responsibilities.

Customary and other traditional use rights should be carefully investigated before general rules are set out that could seriously impact upon long-standing, sustainable practices by indigenous and local communities. This type of practices should be generally authorized to continue or be subjected to a specialized, more favourable and flexible legal regime. This would be 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 in sustainable wildlife management.

3.8.2 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 channelled back to sustainable wildlife management and to compensate local communities that are affected by wildlife management, or reward their conservation efforts. Provisions establishing that certain benefits, such as a share of revenues from wildlife use, must be allocated to communities, 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 channelled 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 – such as training and employment opportunities, as well as recognition of merit – may also be critical and should be considered alongside monetary ones by legislators and the administration.

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.

3.8.3 Legal frameworks for community-based natural resource management

The national legislation of SADC countries includes numerous useful provisions for community-based wildlife management. Countries should consider systematic inclusion of

all the provisions described in section 2.6.3 into their legislation, adapting them as may be necessary to their domestic contexts. Initiatives for community-based 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 covered by this study 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 as to the contents of these agreements is desirable, the conditions set out in the law should provide some minimum guarantees, 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 of the agreement, dispute settlement mechanisms, etc.).

Community-based wildlife management is an obvious, essential contributor to legal empowerment of the poor. Special efforts should 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-based 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 verify whether any members of a community are being marginalized for any reason.

3.8.4 Legal frameworks for the private sector’s wildlife management

Some SADC countries regulate concessions or other initiatives involving the private sector, 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 that 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.

Provisions specifically targeting 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 that should most urgently be addressed through such social obligations.

3.8.5 Eco-tourism

Many of the countries that have been examined in this study have introduced provisions regarding eco-tourism. These provisions usually require the issuance of licences or concessions, and may provide 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, while at the same time avoiding over-regulation. For example, reasonable 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 in addressing eco-tourism.

A further significant contribution to legal empowerment of the poor would be to promote community-based initiatives specifically promoting the involvement of local people in eco-tourism.

3.8.6 Ranching and breeding

Legislation should be designed with the intent to promote ranching and breeding of wildlife, which may provide a significant contribution to sustainable wildlife management and the improvement of rural livelihoods. 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 by law. Consideration of food security and traditional practices of neighbouring communities should also be requested, possibly with the option of involving members of these communities in ranching and breeding activities.

In addition to any available financial incentives, legislation could clearly recognize the rights to own (or dispose of) and harvest bred and ranched animals. Clearly, such provisions should include exemptions from rules otherwise generally applicable to the utilization of wild animals, as appropriate.

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, exemptions 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.

3.9 Human-wildlife conflicts

Legislation can also contribute to the reduction of human-wildlife conflicts, thus, alleviating the position of some of the less advantaged people in rural communities. Provisions addressing “problem animals” could be improved by requiring some consultation over the adoption of relevant measures, while also obtaining people’s support of any necessary restrictions.

Relevant literature tends to underline 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 interests. In addition, this could facilitate private or community-based wildlife management initiatives.

3.10 Law enforcement

As some SADC countries are already doing, some innovative solutions to strengthen enforcement by involving communities in the detection, prevention and sometimes repression of violations of wildlife law should be experimented. 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 their licences. In addition, the public could be more directly involved in investigations and offered a portion of fines 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 resource, thereby, allowing them to enjoy firsthand the benefits derived from the rule of law.

Access to justice – one of the pillars of legal empowerment – is a key complementary aspect to ensure meaningful participation of stakeholders in sustainable wildlife management. In addition to access to courts of law, alternative dispute resolution mechanisms should be devised. 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.

3.11 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.⁴

References to food security are not very common, except for a few provisions reserving to local communities wild animal meat derived from certain activities, such as scientific research, sport hunting or self-defence, or encouraging wildlife ranching. Wildlife management legislation could contribute to food security and improvement of the conditions of the poor 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.

⁴ Inspired by “Gender”, in FAO, “Law and Sustainable Development since Rio”, FAO Legislative Study # 73 (2002), at 257.

3.12 Coordination among different national laws affecting wildlife

An effort should be made at the time of drafting national legislation to prevent problems of coordination 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 consequences in interpretation.

Other problems of coordination among related laws tend to emerge in the provisions governing advisory bodies. The choice of having more than one body in place with functions of coordination and advice 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 to meet 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 SADC countries. 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.⁵ It should be noted from the 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

⁵ 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 produced by these projects, and are on file with the authors.

to recurrent institutional restructuring of the central administration which have caused 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. Landowners 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 into 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 their 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.

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, PA staff and for the control of fauna populations. Eco-tourism 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% 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 eco-tourism 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 eco-tourism). 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 eco-tourism 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.

Also according to the draft wildlife law, **subsistence hunting** – which is defined as hunting practised 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 Human-wildlife conflicts

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 notified 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.

1.8 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% 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 (Wildlife Conservation and National Parks Act, 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).

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 (Wildlife Conservation and National Parks Act, 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 customary land is vested, comprising an equal number of representatives of ministries and of local people. In addition to national parks, the Wildlife Conservation and National Parks Act 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 (Wildlife Conservation and National Parks Act, 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 ranches 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.

2.7 Human-wildlife conflicts

Botswana recognizes a right of owners or occupiers of land to kill animals that threaten persons or crops or other property on their land (Wildlife Conservation and National Parks Act, 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.

The state is exempted from general liability for damage caused by wild animals (sec. 87), but in specified cases compensation may be paid to any person who has suffered damage from the action of an animal (sec. 46 (4)), as further specified in the Fauna Conservation (Compensation for destruction of livestock and other property) Order, adopted under the wildlife legislation previously in force. At present compensation is provided mainly for damage to crops.

2.8 Law enforcement

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 DEMOCRATIC REPUBLIC OF CONGO

3.1 Overview of the legal framework

The legislation of the Democratic Republic of Congo that most directly affects wildlife is the **Hunting Law** of 1982. With a formulation that is commonly used, the law repeals “all previous legislation contrary to it” (art. 89), without further specifications. This is a debatable approach as in the preamble of the 1982 Law, reference is made to the inadequacy of a **Decree on Hunting and Fishing** dating back to colonial times (1937) and the need to “fill gaps” left by it (without referring to the need to repeal it), leaving some uncertainty on the status of that Decree. In any case, the contents of the Decree are in substance superseded, as basically the same issues are addressed in both pieces of legislation (mainly permits and rules on hunting methods, seasons and areas). It is also interesting to note that both pieces of legislation, respectively in a report introducing the Decree and in the preamble of the Law, point to the need of limiting traditional hunting by local population, as being the cause of wildlife depletion. The 1982 Law is implemented mainly through an order of 2004, as well as by numerous other orders on fees (2006), protected species (2006), capture of “*perroquets gris*” (2001), and specifically on the implementation of CITES (2000). An order on permits to keep animals (1980) that was issued before the 1982 Law presumably remains in force, as it is not in conflict with it. Other legislation (for example regarding hunting guides) is superseded by the 2004 order. There is also a brief Law on “*sécteurs sauvegardés*” – areas covered by plans for urban development where hunting may be prohibited. This, however, is not very significant.

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

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

3.2 Institutional setup and role of stakeholders

A 2008 ordinance sets forth the functions of all ministries. The ordinance lists among the functions of the Ministry of Environment, Conservation of Nature and Tourism, the sustainable development of forests, water, fauna and the environment and the protection of same (Ordinance No. 08/74, art. 1, item 12). Earlier legislation (two ordinances of 1975), not expressly repealed by the 2008 ordinance, set out the responsibilities of the **Department of Environment, Nature Conservation and Tourism** and create an **Interdepartmental Committee on Environment, Nature Conservation and Tourism**. The Department is responsible, among other tasks, to create and manage protected areas, protect wildlife, promote tourism and address environmental issues in urban areas

(Ordinance 75-2331, art. 1). The Committee is to advise on policy and legal environmental matters, development proposals and tourism. It includes delegates of numerous government departments and two representatives of travel agencies (Ordinance No. 75-232, arts. 2–3).

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

3.3 Wildlife tenure and use rights

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

3.4 Wildlife management planning

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

3.5 Wildlife conservation

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

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

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

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

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

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

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

In addition to wildlife reserves, the *Commissaire d'Etat* responsible for hunting, upon proposal of the regional Governor, may declare hunting areas ("*domaines de chasse*") (Hunting Law, art. 8). Numerous **permits to hunt or take wild animals** are provided for under the law and include a sport hunting permit and tourist hunting permit (depending on whether they are issued to residents or tourists), which may both be used either for "small-scale hunting" or "large-scale hunting" (depending on the species which may be targeted, as may be specified by subsidiary legislation). In addition to the aforementioned permits, rural hunting permits, collective hunting permits, commercial capture permits, scientific permits, and permits for administrative purposes are provided for pursuant to the law (Hunting Law, art. 5). Furthermore, any photography or filming of game in wildlife reserves and hunting areas requires an "authorization" (art. 34). Applicants for hunting permits must undergo a test on their ability to hunt and must already legally possess a weapon (art. 37). Hunting permits may be withdrawn in case of violation of the law or its regulations (art. 39).

Rural hunting permits, along with collective hunting permits, are a way of regulating customary hunting rights, as they may be issued to nationals of Congo who are in possession of a single, specified type of firearm, exclusively used to hunt listed non-protected animals in their region of residence (Hunting Law, art. 53; and Order n° 014/CAB/MIN/ENV/2004, art. 17). Hunting of partly protected species under these permits may be authorized from time to time (Hunting Law, art. 58). **Collective hunting permits** authorize hunting of non-protected animals, by groups of indigenous people, within the limits of subsistence needs, under the responsibility of the local chief. Only traditional hunting gear may be used

and quantity limits must be established yearly by the local wildlife administration depending on local availability of wildlife. They authorize hunting only within the limits of subsistence needs (Hunting Law, art. 54; and Order n° 014/CAB/MIN/ENV/2004, arts. 18 and 19). Holders of rural or collective hunting permits may be exempted from the payment of annual fees, particularly where they have little or no resources (Hunting Law, art. 59).

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

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

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

3.7 Human-wildlife conflicts

Any **defence** action may be taken against animals which threaten a person's life or property, as long as they have not been provoked (Hunting Law, art. 83). Killing or injuring animals in cases of self-defence must be reported within eight days to the authorities and efforts must be made to provide adequate information for investigations (art. 84). Meat of animals killed in self-defence may not be sold and must be delivered to local populations (Hunting Law, art. 37).

4 LESOTHO

4.1 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). 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.

4.2 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. 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 co-ordination with all line Ministries” (sec. 10).

A National Environment **Fund** is created for the protection, enhancement and management of the environment and natural resources (Environment Act, 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 Environment Act is also established (secs. 109-112). Regulatory powers of the 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 (Environment Act, sec. 95).

4.3 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 they recognize an ownership right on trees planted and grown on land lawfully held to the person or other entity that planted them (Forestry Act, sec. 3).

4.4 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).

4.5 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” (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).

4.6 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 (Forestry Act, 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.

5 MADAGASCAR

5.1 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.

5.2 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.

5.3 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).

5.4 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.

5.5 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).

5.6 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, film and to 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. 1-2). 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. 4-5). 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 (Law No. 96-025, art. 39). 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 (Hunting Ordinance, art. 12). 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).

6 MALAWI

6.1 Overview of the legal framework

The **National Parks and Wildlife Act** (2004) 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) considers animals and meat as “forest produce”, thus containing provisions that could be directly applicable to the management of wild animals found in the forests. There are, however, no patently conflicting rules between this law and the wildlife legislation.

6.2 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**, required to be established under the former National Parks and Wildlife Act of 1992, is to advise the minister on wildlife matters, including declaration of protected areas and import and export of wildlife (National Parks and Wildlife Act, secs. 17 and 19). The Board includes an approximately equal number of representatives of the public and private sector: besides seven representatives of concerned ministries, there must be a person with recognized qualifications, two representing the “private sector”, three representing the “general public” and two representing NGOs. (sec. 18). A Chief Wildlife Officer is responsible for the management of national parks and wildlife (secs. 5-6).

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, an 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 (National Parks and Wildlife Act, sec. 99). 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.

6.3 Wildlife tenure and use rights

Animal specimens lawfully taken belong to the concerned licensee or otherwise lawfully authorized person (National Parks and Wildlife Act, sec. 4). The statement of the former Wildlife Act of 1992, which vested **ownership of wild animals** in the President, on behalf of and for the benefit of the people, has been eliminated in the current Act, although its substance is still implied by the revised text. There is probably a typing mistake in subsection (5) of the same section, which seems to transfer (rather than “not” transfer) ownership of animals to persons who take them in contravention of the law.

Entering private land without permission is generally not allowed, even in the pursuit of wounded animals that are otherwise required to be killed. The owner has sole authority to decide whether to allow access, except in the case of wounded dangerous animals, in which a subsequent report to the owner is sufficient (secs. 78-79).

6.4 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).

6.5 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 (National Parks and Wildlife Act, sec. 23). Following such a request the minister may call upon the Board to conduct the assessment. In conducting the assessment, the Board “may” request written or oral comments from the public (sec. 24). The Board’s assessment report must include recommendations for subsequent government action (sec.25).

National parks, wildlife reserves or nature sanctuaries 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 (National Parks and Wildlife Act, 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. 26-27).

"**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.

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

Hunting is forbidden in national parks and wildlife reserves (National Parks and Wildlife Act, sec. 35). "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 that 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)
- visitor's licences
- animal captivity licences
- game farming and game ranching licences and
- professional hunter's license (sec. 48).

Grounds for refusing to issue a licence are specified, including the Director being “satisfied on reasonable grounds that the applicant is not a fit or proper person to hold such licence” (sec. 55). Decisions issued by the Director regarding licences may be appealed before the minister, whose decision is final (secs. 56, 58 and 59).

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, and 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 that 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 are an offence, unless the specimen has been lawfully taken and a certificate of ownership has been obtained (National Parks and Wildlife Act, 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).

6.7 Human-wildlife conflicts

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 (National Parks and Wildlife Act, sec. 73). Owners or their “servants” may kill any game animal which is causing damage to their property or livestock (sec. 74). Killing animals under these circumstances must be reported to the administration and does not entitle to ownership of the carcass (sec. 75).

7 MAURITIUS

7.1 Overview of the legal framework

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

The **Environment Protection Act of 2002** provides for the protection, management and sustainable development of the environmental assets of Mauritius. While the Act does not explicitly address substantive aspects of wildlife management, it is generally applicable to wildlife, given that its section 3 defines environment as including “all living organisms.” Furthermore, pollutant is defined as “a substance that may cause harm, damage or injury to the environment, to plant or animal life”, which indicates the effect of pollution on wildlife is also contemplated under the Act (art. 3).

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

7.2 Institutional setup and role of stakeholders

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

The Environment Protection Act established a **National Environment Commission** that operates under the Ministry of Environment and National Development Unit (art. 5). The Commission is headed by the Prime Minister and is solely comprised of ministers from numerous sectors of government, including agriculture, environment, fisheries and tourism (art. 5). It sets goals and policies for the environment, reviews and monitors environmental management projects undertaken by public departments and ensures coordination between public departments, local authorities, and government organizations engaged in environmental protection programmes (art. 6). In addition, the Act created: the **Department of the Environment**, responsible for day-to-day management of the Act (art.

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

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

As Mauritius does not have communities that are indigenous to the island, there are no legislative provisions promoting participation in wildlife management by indigenous groups. Limited **public participation** in decision-making is provided for in legislation concerning management plans for protected areas, as discussed in section 12.4. In addition, when reviewing a preliminary environmental impact report, the Director of Environment may request other public departments and non-governmental organizations to submit their observations on the report within 14 days of the request (Environment Protection Act, art. 16).

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

7.3 Wildlife tenure and use rights

Wildlife is the **property of the state**, if it is found on state land. Individuals can lease state forest land for shooting and fishing pursuant to the Shooting and Fishing Leases

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

7.4 Wildlife management planning

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

7.5 Wildlife conservation

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

The Wildlife and National Parks Act defines "**protected wildlife**" as all wildlife except animals listed in schedule II, which are presumably to be considered less significant, and "game", which is listed in schedule I.

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

property and the state can assist the property owner in conserving the property (arts. 13–14).

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

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

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

Hunting is further regulated in the Wildlife and National Parks Act. Hunting, rearing or trading in “protected wildlife” is subject to a “permit” issued by an “authorized officer” (art. 15). The latter are defined as those among the National Parks and Conservation Service, police, forest or fisheries officers who are authorized by the permanent secretary (art. 2). There are no particular conditions specified for the issue of the permits regarding protected wildlife. **Game licence** applications are made to the Commissioner of Police and can be issued to residents, subject to the commissioner’s discretion, and to visitors, as the superintendent of police may see fit (art. 20); nevertheless, if the applicant is a previous violator of the Act, a licence cannot be re-issued for five years (art. 21).

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

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

Pursuant to the Consumer Protection (Price and Supplies Control) Act 1991, wildlife is a controlled good and monitored by **export** permits. Exporting and importing wildlife is governed by the Wildlife Regulations 1998. The Regulations set out a framework for issuance of export permits, stating that a permit cannot be issued unless the authorizing officer is satisfied that: the export will not be detrimental to that species; that the animal was not obtained in contravention of law; in cases of species listed in schedules, that such species were imported with an import permit; and that the export was not in breach of CITES (art. 7). Similarly, importing wildlife is subject to a permit, which cannot be issued unless that import is not detrimental to species and the applicant can house and care for the specimen and it is not being used for commercial purposes (art. 8). If wildlife was imported prior to CITES, an individual can apply for a pre-convention certificate allowing the possession of the wildlife (art. 11).

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

8 MOZAMBIQUE

8.1 Overview of the legal framework

The main legal instrument on wildlife management in Mozambique is the **Forest and Wildlife 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 and is implemented by the Forests and Wildlife Regulations (Decree n. 12/200). 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.

8.2 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 Forest and 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. 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 (Wildlife Regulations, reg. 97).

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 recognizes 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 Forest and Wildlife law includes among its general principles 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 (art. 3). Furthermore, local communities should have part in the benefits arising from wildlife use (Forest and 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.

8.3 Wildlife tenure and use rights

The Forest and Wildlife Law specifies that **wildlife is the property of the state** (art. 3). Landholders 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).

8.4 Wildlife management planning

The Forest and 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 (Forest and Wildlife Law, art. 10).

8.5 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 Forest and 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 Forest and 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).

8.6 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 Forest and Wildlife law, 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) (art. 1(21)); official hunting areas (*coutadas oficiais*), i.e., pursuant to the same law, areas of state land devoted to sport hunting, hunting tourism or species protection under concession agreements (art. 1(8)); buffer zones; and areas of historic-cultural value (Forest and Wildlife Regulations, 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 (Forest and 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 Directorate 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.

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 (Forest and 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 regulations, 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% may be applied to ensure the repopulation of wildlife (Forest and Wildlife Law, art. 35; wildlife regulations, art. 101). The regulations establish that 20% of any fees related to wildlife use should be allocated to local communities residing in the area (Wildlife Regulations, 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).

8.7 Human-wildlife conflicts

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 (Forest and 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).

8.8 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 Forest and 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% 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% of the basic salary (art. 113).

9 NAMIBIA

9.1 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 patent conflicts among the provisions of these laws.

9.2 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 (1975 Ordinance, 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.

9.3 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 (Nature Conservation Ordinance, 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 destroying 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 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).

9.4 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).

9.5 Wildlife conservation (protected areas, protected species and 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). 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).

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).

9.6 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 Nature Conservation 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 that 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 sec. 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 landowners 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 (Nature Conservation Ordinance, 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 of Environment and Tourism (who is responsible for forestry) 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.

9.7 Human-wildlife conflicts

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 (Nature Conservation Ordinance, sec. 54).

However, a dangerous animal may be killed in defence of a human life or to prevent a human being from being injured (sec. 20).

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 landowners at any time or culled by the administration.

10 SEYCHELLES

10.1 Overview of the legal framework

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

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

10.2 Institutional setup and role of stakeholders

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

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

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

Requirements for **public participation** in decision-making regarding wildlife exist with specific regard to the establishment of protected areas and environmental impact assessment (EIA). When the Commission proposes to declare an area as a natural park, reserve, or place

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

10.3 Wildlife tenure and use rights

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

10.4 Wildlife management planning

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

10.5 Wildlife conservation

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

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

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

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

In national parks and reserves, any form of hunting, disturbing animals, grazing, and introduction of new species is strictly prohibited (National Parks and Nature Conservancy Act, art. 10). Under the Wild Animals and Birds Protection Act, various regulations have been enacted to protect certain species. The regulations prohibit the taking, killing, keeping, selling, exhibiting, importing and exporting of the Giant Land Tortoise, Seychelles Pond Turtle, and other species of turtles (Wild Animals (Giant Land Tortoises) Protection Regulations, Wild Animals (Seychelles Pond Turtle) Protection Regulations, Wild Animals (Turtles) Protection Regulations). The Wild Birds Protection Regulations prohibit killing, taking, purchasing, selling, exhibiting and exporting of wild birds: exceptions regarding certain birds and establishing time periods are included in the regulation (art. 3).

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

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

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

10.7 Enforcement

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

11 SOUTH AFRICA

11.1 Overview of the legal framework

In South Africa, the **National Environmental Management Act** (1998, as amended by the National Environmental Management Amendment Act, 2008) 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 appearing or growing 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.

11.2 Institutional setup and role of stakeholders

There are numerous provisions in the legislation of South Africa requiring 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. 32-33) 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.⁶

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. 3-4).

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).

⁶ The information in this and the preceding paragraph was provided by S. Moolla.

The “national biodiversity framework”, to be adopted under the National Environmental Management Biodiversity 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 responsible for forests, is created by the 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 consultation and **public participation**, requiring 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 responsible for environmental management must consult with all concerned central and local authorities and solicit comments from the public by publishing a notice (secs. 99-100).

11.3 Wildlife tenure and use rights

The legislation that 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 (National Environmental Management Biodiversity Act, sec. 3). Although the position of landowners 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 landowner 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, 2000, 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 responsible for forests, subject to legislation that 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).

11.4 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) (National Environmental Management Act, 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 (National Environmental Management Biodiversity Act, sec. 11).

The minister responsible for environmental management must prepare and adopt a national biodiversity framework and regularly update it at least every five years (same Act, sec. 38). The minister must also adopt bioregional plans for areas that 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).

11.5 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).

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

The minister responsible for forests 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 regulating 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 (Forest Act, 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 that 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 National Environmental Management 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 responsible for environmental management 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).

12 SWAZILAND

12.1 Overview of the legal framework

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

The **Environmental Management Act**, passed in 2002, provides the framework for protection, conservation and sustainable management of the environment, which, according to the definition provided in the Act, includes living organisms other than humans (sec. 2). In fact, one of the objectives of the **Environment Authority**, created under the Act, is to ensure proper treatment of the environment that specifically includes but is not limited to fauna (www.environment.gov.sz). The **Private Forest Act**, 1951, is also relevant, as forest produce under the Act includes game. Finally, the **National Trust Commission Act**, 1972, also serves to protect wildlife in national parks and reserves in Swaziland.

12.2 Institutional setup and role of stakeholders

The Swaziland Ministry of Tourism and Environmental Affairs was established in 1996 and, among its other duties, is responsible for the protection and development of wildlife. Within the ministry are the Swaziland Environmental Authority and National Trust Commission, both of which serve to preserve wildlife. Members of the National Trust Commission are appointed by the Deputy Prime Minister, while the Commission can then elect up to four additional members with expert knowledge or experience (National Trust Commission Act, sec. 4). The issuance of licences for hunting, capture and trade in wildlife is at the discretion of the Minister of the Environment who determines the type and amount of wildlife that may be hunted in a sustainable manner (Game Act, sec. 11). All government wildlife authorities are arguably limited in their broad discretion by the general principle of sustainable management of the environment which is defined as protecting and managing the use of natural resources in a manner that maintains the life-supporting capacity and quality of ecosystems, including living organisms, to enable future generations to meet their reasonably foreseeable needs (Environmental Management Act, arts. 2 and 7). Non-governmental stakeholders are more involved in the various governing boards. The Swaziland Environmental Authority institutes measures for the implementation of the Act and ensures coordination with other government agencies to protect the environment (Environmental Management Act, sec. 12). In addition to the members of the Management Board who represent government agencies, one member with a particular knowledge of the environment must be nominated by the public and one must be from a non-governmental organization, the main purpose of which is to protect the environment (sec. 13).

The **Swaziland Environmental Fund** also must have two members of its Board of Trustees from non-governmental organizations that promote the conservation of the environment (Environmental Management Act, sec. 24). The fund is specially designed so that it may only be utilized for programmes, projects and activities that provide for and promote the

protection, conservation and enhancement of the environment and community involvement in same; however, it may not be used for operating costs of the Authority (sec. 23). Monies for the Fund are provided through a combination of funds appropriated by the state, donations from various international and non-governmental organizations and funds collected from fees and fines imposed under the Act (sec. 25).

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

With regard to **access to justice**, any person may sue for damages, an injunction, or protective order with regard to acts or omissions that contravene the Act, whether or not that person has been affected by the violations of the Act. However, no costs or damages will be awarded if the court finds that the motivation for the filing of an action was not for the protection of the environment (Environmental Management Act, sec. 58).

12. 3 Wildlife tenure and use rights

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

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

With regard to **human-wildlife conflicts**, landowners or occupiers are granted the right to kill small game causing damage to crops and is within the cultivated land of the owner or occupier (Game Act, sec. 16). The Minister of Agriculture can direct the owner of any

holding (including Swazi Nation indigenous peoples) to reduce any species of game that the minister considers to be a danger to stock, crops, grazing, or other natural resources (Game Control Act, sec. 3). If the owner fails to reduce said species of game within one month, the minister may undertake measures to perform such reduction and expenses incurred by the minister may be offset by the sale of carcasses of any destroyed game (arts. 5 and 8).

12.4 Wildlife management planning

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

12.5 Wildlife conservation

The establishment of **national parks and nature reserves** is a power of the Deputy Prime Minister, who, upon recommendation of the National Trust Commission and after consultation with the Prime Minister, may by notice proclaim any state-owned area to be a natural park. In addition, the Deputy Prime Minister can declare private or public land to be a nature reserve or be part of an existing reserve, if the Commission gives one month's notice to the owner and attempts to enter into an agreement with the landowner to manage the reserve land. However, no Swazi Nation Land can be declared a park without obtaining the written permission of the Ngwenyama who may impose restrictions as he may deem fit (National Trust Commission Act, sec. 12). The Commission manages these parks and reserves and ensures the preservation of indigenous animals in a natural state (sec. 16). It can also set aside breeding places for certain species (sec. 16). Activities, such as hunting, molesting, injuring or removing animals are prohibited in the reserves and parks (sec. 20). In addition, the Minister of Environment may, by notice in the Gazette, declare a sanctuary, prohibiting hunting of certain species or class of game (Game Act, sec. 6). Furthermore, the minister can declare prohibit hunting in a private forest even without the permission of the owner or person lawfully in control (Private Forests Act, secs. 2 and 4). Given that forest produce under the Act includes game, it is also unlawful to injure or remove wildlife from these areas (secs. 3 and 12).

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

Hunting is prohibited in national parks and reserves (National Trust Commission Act, sec. 20). Hunting without the written permission of the Ngwenyama is prohibited on Swazi

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

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

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

Eco-tourism is not explicitly addressed in current legislation. Nevertheless, camping in game reserves is permitted with written permission from a game ranger or district commissioner (Game Act, sec. 5).

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

12.7 Enforcement

Pursuant to the Game Act and National Trust Commission Act, **game rangers** and **park wardens** are appointed by the Minister of the Environment in consultation with the Swaziland National Trust Commission. Those who provide information leading to the arrest and conviction of a person who has violated the Game Act will receive an award, the amount of which is determined by the minister (Game (Amendment) Act, sec. 29).

13 TANZANIA

13.1 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** (2009). This Act has replaced the Act of 1974, which was implemented through a number of regulations concerning game reserves, game controlled areas, national game, hunting, closed 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. They were adopted mainly in the 1970s and remain in force to the extent that they do not conflict with the new principal act.

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).

13.2 Institutional setup and role of stakeholders

The Wildlife Conservation Act envisages the creation of an autonomous Authority similar to those which already exist for National Parks (Tanzania National Parks Authority (TANAPA) and the Ngorongoro Conservation Area Authority (NCAA), for wildlife living outside these areas (sec. 8). A “para-military” “Wildlife Protection Unit” is to be in place for enforcement purposes (secs. 10-13).

The Act includes among its objectives the **involvement of traditional communities** as well as of the private sector (sec. 5). Stakeholder involvement has already been a practice 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 Act 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).

The same Act provides for the continuation of the **Wildlife Protection Fund** established under the previous legislation, including among its objectives the development of communities living adjacent to protected wildlife areas (sec. 91). The Fund's Board, in addition to various public officials, is to include two persons knowledgeable in wildlife conservation (sec. 92).

Public participation is provided for in the 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 (Environmental Management Act, sec. 178).

An Environmental Appeals Tribunal, for appeals of decisions adopted under the same 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 (defined as the minister responsible for fauna conservation) (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 (Marine Parks and Reserves Act, 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.

13.3 Wildlife tenure and use rights

The Wildlife Conservation Act 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).

13.4 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 Wildlife Conservation Act requires the Director to prepare a general management plan for every wildlife management area “in a participatory manner” and to which all other plans and actions must be subject. Resource management zone plans must be prepared by authorized associations prior to being granted a resource user right as an interim measure before the general management plan is in place (sec. 34).

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 inter-sectoral 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).

13.5 Wildlife conservation (protected areas, protected species, impact assessment)

Pursuant to the Wildlife Conservation Act, **game reserves** and **game controlled areas** may be created respectively by the president and the minister responsible for wildlife, in both cases “in consultation with local authorities” (secs. 14 and 16). The minister may also declare **wildlife corridors**, dispersal areas, buffer zones and migratory routes (sec. 22) and species management areas (sec. 23) – all in consultation with local authorities. Hunting without a permit in any game reserve, game controlled area or wetland reserve is an offence, punishable with imprisonment for a minimum of one year (sec. 19). Grazing is also prohibited, unless with permission (sec. 21). The taking of national game, or game during closed seasons, except under a permit from the Director, is prohibited (secs. 25 and 27). A subsequent provision allows (but does not bind) licensing officers to refuse the issue of licences or permits for “good cause” (defined as fraud, forgery, misrepresentation or prior

conviction) (sec. 66). The same Act allows the President to lift any restrictions applicable to game reserves or game controlled areas “in the public interest” (sec. 29).

In practice, most prohibitions set out for conservation purposes do not apply if an authorization from the administration is granted. The degree of discretion left to the administration is so wide that even acts that should obviously be prohibited without exception may apparently be authorized (for example, see “molesting wild animals” in game reserves (sec. 19 of the Act)). These provisions may result in loosely binding conservation arrangements. The lack of transparency which may result from them may also 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 to regulations to determine rules for the conservation of biological diversity *in situ* and *ex situ* (Environmental Management Act, 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 responsible for marine parks and reserves 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 Maasai, but there are no particular provisions to ensure the involvement of the Maasai 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).

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

The Wildlife Conservation Act 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 responsible for wildlife 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. 31). 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 is also a debatable 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. 33).

An **environmental impact assessment**, in accordance with the Environmental Management Act, is required for every “significant development” within wildlife management areas (sec. 35). 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. 36).

Pursuant to the same Act, no hunting of specified animals or scheduled animals is allowed without a licence (sec. 40). “Written authority” of the Director is required for hunting other animals (sec. 55). Hunting licences, whether for trophy or subsistence hunting, may be issued subject to certain conditions, which include holding a licence to use firearms (sec. 43). 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. 45). 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. 48). 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. 66).

Also, pursuant to the Wildlife Conservation Act, 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 for citizens or mainly Tanzanian companies (sec. 89).

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).

13.7 Human-wildlife conflicts

Pursuant to the Wildlife Conservation Act, 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 (sec. 73).

“Dangerous animals” are listed in schedule to the Wildlife Conservation Act (sec. 70).

“Consolation” for damage caused by wild animals to persons or crops may be paid (sec. 71).

14 ZAMBIA

14.1 Overview of the legal framework

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 **Environmental Protection and Pollution Control Act** (1990) is the general environmental law for Zambia. Its focus is more on pollution than overall environmental management. The **Forest Act** (1999) does not address wild animals.

14.2 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 that 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 2009.⁷

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.

⁷ Information provided by P. Towela Sambo Chilubanama.

14.3 Wildlife tenure and use rights

Ownership of wild animals is vested in the President on behalf of the people of Zambia (Wildlife Act, 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.

14.4 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).

14.5 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).

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

Hunting of game animals or protected animals requires a **permit** (Wildlife Act, 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 that 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. 86-87).

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).

14.7 Human-wildlife conflicts

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 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 (Wildlife Act, sec. 78).

15 ZIMBABWE

15.1 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 formulation of these provisions should be improved.

15.2 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 specialized 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 (Forest Act, sec. 8). Members of the Commission are to be appointed by the minister responsible for forests 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-served areas (sec. 52).

15.3 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 significantly improved the means of implementation of CAMPFIRE, although an objective which remains to be achieved is further devolution down to the level of communities (Dhliwayo *et al.*) The Wildlife Based Land Reform Policy promotes secure and equitable tenure in the form of leasehold, freehold and communal tenure, and “indigenisation” of the wildlife sector. However, it has been argued that it is mainly elites who have managed to benefit from these provisions (Dhliwayo *et al.*).

15.4 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 (Environmental Management Act, secs. 87-88). 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.

15.5 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 (Parks and Wildlife Act, 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. 35-36). 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 responsible for wildlife 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 landowners 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).

Environment committees may serve notice on the “appropriate authority” for a land within their area (which may be a private landowner), 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).

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

The Authority, “with the concurrence of the minister” (defined as the Minister of Environment and Tourism or any other minister responsible for the administration of the Act), may **lease land** within safari areas for up to twenty-five years and grant hunting or other rights for up to ten years (Parks and Wildlife Act, 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).

15.7 Human-wildlife conflicts

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 (Minister of Environment and Tourism or other minister responsible for the implementation of the Act). 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).

15.8 Law enforcement

Members of environment committees and the Environment Board may enter land to make investigations regarding animals, giving notice to the occupier or owner (Environmental Management Act, 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).

ANNEX I - LEGISLATION REVIEWED

ANGOLA

Lei Constitucional da República de Angola, No. 23/92

Decree No. 40.040 ruling on the protection of land, flora and fauna, 1955

Regulamento de Caça, Dip.Leg. No. 2,873 of 1957, as amended by Dip. Leg. No. 86/72

Regulamento Florestal – Dec. No. 44531, 21 August 1962

Lei de Bases do Ambiente, No. 5/98

Anteprojecto de Lei de Florestas, Fauna Selvagem e Áreas de Conservação, 2006

Decreto sobre a Avaliação de Impacte Ambiental, No. 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), 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

DEMOCRATIC REPUBLIC OF CONGO

Loi n° 82-002 portant réglementation de la chasse, 28 May 1982

Décret portant régime de la chasse et de la pêche

Arrêté n° 014/CAB/MIN/ENV/2004 relatif aux mesures d'exécution de la loi n° 82-002 du 28 mai 1982 portant réglementation de la chasse, 29 April 2004

Ordonnance n° 08/74 fixant les attributions des Ministères, 24 December 2008

Arrêté interministériel n° 003/CAB/MIN/ECN-EF/2006 et n° 099/CAB/MIN/FINANCES/2006 du 13 juin 2006 portant fixation des taux des droits, taxes et redevances à percevoir, en matière de faune et de flore, à l'initiative du ministère de l'environnement, conservation de la nature, eaux et forêts, 13 June 2006

Arrêté ministériel n° 020/CAB/MIN/ECN-EF/2006 portant agrément de la liste des espèces animales protégées en République Démocratique du Congo, 20 May 2006

Arrêté ministériel n° cab/min/ec-fin/af.f-e.t/187/02 portant modification des taux des taxes en matière forestière et de faune, 20 April 2002

Arrêté ministériel n° CAB/MIN/AFF.ENV.DT/124/SS/2001 fixant les périodes de prélèvement des perroquets gris en République Démocratique du Congo, 16 March 2001

Arrêté n° 056/CAB/MIN/AFF-ECNPF/01/00 portant réglementation du commerce international des espèces de la faune et de la flore menacés d'extinction, 28 March 2000

Arrêté départemental n° 69 portant dispositions relatives à la délivrance du permis de légitime détention et du permis d'importation ou d'exportation, 4 December 1980

Arrêté départemental n° 0005/CAB/AGRI/73 réglementant la profession de guide de chasse. 1973-07-02

Ordonnance-loi n° 69-041 relative à la conservation de la nature, 22 August /08/1969.

Loi n° 75-024 relative à la création des secteurs sauvegardés, 22 July 1975

Ordonnance n° 75-231 fixant les attributions du département de l'environnement, conservation de la nature et tourisme et complétant l'ordonnance n° 69-147 du 1er août 1969, 22 July 1975

Ordonnance n° 75-232 portant création d'un comité interdépartemental pour l'environnement, conservation de la nature et le tourisme, 22 July /07/1975

Arrêté ministériel n° 043/CAB/MIN/ECN-EF/2006 portant dispositions relatives à l'obligation de l'évaluation environnementale et sociale des projets en RDC, 08 December 2006

Arrêté n° 044/CAB/MIN/ECN-EF/2006 portant creation, organization et fonctionnement du groupe d'études environnementales du Congo, 8 December 2006

Loi n° 11-2002 portant Code forestier, 29 August 2002

Décret n° 08-03 portant composition, organisation et fonctionnement du Conseil consultatif national des forêts, 26 January 2008

Arrêté ministériel n° 034/CAB/MIN/ECN-EF/2006 portant composition, organisation et fonctionnement des conseils consultatifs provinciaux des forêts, 5 October 2006

Décret n° 08/09 du 08 avril 2008 fixant la procédure d'attribution des concessions forestières, 8 April 2008

LESOTHO

Environment Act, 2001

Forestry Act, 1998 (No. 17 of 1998)

Historical Monuments, Relics, Fauna and Flora Act (No. 41 of 1967)

Land Act, 1979 (No. 17 of 1979)

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 relative à 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), 14 March 2006

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

Arrêté 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", 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 », 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 », 2006

Arrête interministériel n° 16 070/2006-minenvf/maep/mem portant protection temporaire de l'aire protégée en création dénommée « Montagne des français », 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 », 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 réglementant 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, 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 n° 2000-027 relatif aux communautés de base chargées de la gestion local des ressources naturelles renouvelables, 13 January 2000

Décret n° 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, 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

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. 15 of 2004), 3 April 2004

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 (Government Notice 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 (Government Notice No. 88 of 1994), 30 March 1994

National Parks and Wildlife (Protected Areas) Regulations, 1994 (Government Notice No. 87 of 1994), 30 March 1994

National Parks and Wildlife (Protected Species) (Declaration) Order, 1994 (Government Notice 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

MAURITIUS

Board of Agriculture and Natural Resources Act, 18 June 1977, as consolidated in 2002

Consumer Protection (Export Control) Regulations 2000, 12 July 2000

Environment Appeal Tribunal (Rules of Procedure) Regulations 1993, 29 December 1993

Environment Protection Act 2002, as amended by the Environment Protection (Amendment) Act 2008, 11 July 2002

Forests and Reserves Act 1983, 11 November 1983, as amended by the Forests and Reserves (Amendment) Act 2003

National Heritage Fund Act 2003, 8 November 2003

National Heritage Fund (Amendment of Schedule) Regulations 2008, 18 September 2008

National Heritage Fund (Amendment of Schedule) Regulations 2007, 2 May 2007

National Heritage Fund (Amendment of Schedule) Regulations 2005, 6 December 2005

National Parks and Reserves Regulations 1996, 3 April 1996

River Reserves (Control of Vegetation) Act, 1946, 11 July 1946

Shooting and Fishing Leases, 1 October 1982

Tourism Authority Act 2006, 27 December 2006

Wildlife and National Parks Act 1993, 1 March 1994

Wildlife Regulations 1998, 1 March 1998

MOZAMBIQUE

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

Government Decree No. 198/2005 on Environmental Impact Assessment (EIA). 28 September 2005

Decree No. 45/2004 approving the Regulation on the Environmental Impact Assessment (EIA), 29 September 2004

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

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

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

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

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

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

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

NAMIBIA

Nature Conservation Ordinance, 1975 (No. 4 of 1975), 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), 21 December 2007

Forest Act, 2001 (No. 12 of 2001), 6 December 2001

Namibia Wildlife Resorts Company Act, 1998 (No. 3 of 1998), 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

SEYCHELLES

Birds' Eggs Act. 13 May 1933, as consolidated in 1991

Birds' Eggs and Birds' Eggs Products (Exportation) Regulations, 16 April 1941, as consolidated in 1991

Birds' Eggs (Collection) Regulations, 12 June 1972, as consolidated in 1991

Environment Protection Act 1994, 28 September 1994, as consolidated in 1994

Environment Protection (Marine Parks Authority) Order, 1996

National Parks and Nature Conservancy Act, 15 December 1969, as consolidated in 1974

National Parks (Aldbara Island Special Reserve) Regulations, 21 September 1981, as consolidated in 1991

National Parks (Aride Island Special Reserve) Regulations, 16 October 1979, as consolidated in 1991

National Parks (Cousin Island Special Reserve) Regulations, 16 October 1979, as consolidated in 1991

National Parks (Curieuse Marine National Park) Regulations, 1991, as consolidated in 1991

National Parks (La Digue Veuve Special Reserve) Regulations, 1991, as consolidated in 1991

National Parks and Nature Conservancy (Procedure for Designation of Areas) Regulations, as consolidated in 1991

Order relative to quota of birds' eggs and products, 16 April 1941, as consolidated in 1991

Port Launay Marine National Park Regulations 1981, 27 January 1981

St. Anne Marine National Park Regulations, 10 July 1973, as consolidated in 1991

State Land and River Reserves Act, 06 June 1903, as consolidated in 1991

Wild Animals and Birds Protection Act, 14 April 1961, as consolidated in 1991

Wild Animals (Giant Land Tortoises) Protection Regulations, 24 June 1974, as consolidated in 1991

Wild Animals (Seychelles Pond Turtle) Protection Regulations, 19 May 1966, as consolidated in 1991

Wild Animals (Turtles) Protection Regulations, 11 July 1994, as consolidated in 1994

Wild Birds Protection (Nature Reserves) Regulations, 18 April 1966, as consolidated in 1991

Wild Birds Protection Regulations, 18 April 1966, as consolidated in 1991

SOUTH AFRICA

National Environmental Management Act (No. 107 of 1998), 19 November 1998
National Environmental Management Biodiversity Act, 2004 (No. 10 of 2004), 31 May 2004
National Environmental Management Protected Areas Act, 2003 (No. 57 of 2003), 11 February 2004
National Parks Act, 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), 20 October 1998
Sea Birds and Seals Protection Act, 1973, as consolidated in 1975

SWAZILAND

Environmental Audit, Assessment and Review Regulations, 2000, 21 April 2000
Environmental Management Act, 2002 (No. 5 of 2002),
Game Act, 1 September 1953
Game (Amendment) Act, 1991.
Game Control Act, 27 June 1947.
Forest Preservation Act, 8 April 1910.
National Trust Commission Act, 1972, as consolidated in 1973.
Private Forests Act 1951, 16 March 1961.
Safeguarding of Swazi Areas Act 1910, 25 July 1910.
Swaziland Constitution, 2005.
Swaziland Environment Authority Act 1992, 16 November 1992
Wild Birds Protection Act, 18 February 1914

TANZANIA

Environmental Management Act, 2004 (No. 20 of 2004), 8 February 2005
Marine Parks and Reserves Act, 1994 (No. 29 of 1994), 17 January 1995
Marine Parks and Reserves (Declaration) Regulations, 1999 (G.N. No. 85 of 1999), 2 March 1999
Fisheries (Marine Reserves) Regulations, 1975 (G.N. No. 137), 27 June 1975
Wildlife Conservation Act, 2009
Wildlife Protection Fund Regulations, 1981 (G.N. No. 57 of 1981), 15 April 1981
Wildlife Conservation (Game Controlled Areas) Order, 1974 (G.N. No. 269 of 1974), 1 December 1974
Wildlife Conservation (Game Reserves) Order, 1974 (G.Ns. Nos. 265 and 275 of 1974), 1 December 1974

Wildlife Conservation (National Game) Order, 1974 (G.Ns. Nos. 265 and 274 of 1974) 1 December 1974

Wildlife Conservation (Suitable Weapons) Order, 1974 (G.Ns. Nos. 265 and 267 of 1974), 1 December 1974

Wildlife Conservation (Close Season) Order, 1974 (G.Ns. Nos. 265 and 266 of 1974), 1 December 1974

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

Wildlife (Capture of Animals) Regulations, 1974 (G.Ns. Nos. 265 and 278 of 1974).

Wildlife Conservation (Authorized Officers) (Identity Cards) Regulations, 1974 (G.Ns. Nos. 265 and 270)

Wildlife Conservation (Commercial Game Photography) Regulations, 1974 (G.N.'s Nos. 265 and 277)

Wildlife Conservation (Compounding of Offences) (Forms) Regulations, 1974 (G.Ns. Nos. 265 and 270)

Wildlife Conservation (Dealings in Trophies) Regulations, 1974 (G.Ns. Nos. 265 and 268).

Wildlife Conservation (Hunting of Animals) Regulations, 1974 (G.Ns. Nos. 265 and 272).

Wildlife Conservation (President's Licence) Regulations, 1974 (G.Ns. Nos. 265 and 273).

Tanzania Wildlife Corporation (Establishment) Order, 1974 (G.N. No. 231 of 1974), 7 September 1974

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Ngorongoro Conservation Area Ordinance (No. 14 of 1959), 1 January 1959, 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), 29 May 2000

Ngorongoro Conservation Area Authority (Control of Settlement, Residence, and Prevention of Soil Erosion, Flora and Fauna) By-laws, 1992.

National Environment Management Act, 1983 (No. 18 of 1983), 10 September 1983

Forest Act, 2002 (Act No. 7 of 2002), 4 June 2002, 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), 27 October 1996

Land Tenure Act, 1992 (No. 12 of 1992) (Zanzibar), 29 January 1993

Land Act, 1999 (No. 4 of 1999), 15 May 1999

Serengeti Wildlife Research Institute Act, 1980 (No. 4 of 1980), 2 February 1980

ZAMBIA

Environment Protection and Pollution Control Act, 1990 (Act No. 12), 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), 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, as consolidated in 1997

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, as consolidated in 1997

National Parks and Wildlife (Camping Sites) Regulations, 1993, as consolidated in 1997

National Parks and Wildlife (Elephant and Rhinoceros) Regulations, 1993, as consolidated in 1997

National Parks and Wildlife (Game Animals) Order, 1993, as consolidated in 1997

National Parks and Wildlife (Licence and Fees) Regulations, 1993, as consolidated in 1997

National Parks and Wildlife (Methods of Hunting) (Restriction) Regulations, 1993, as consolidated in 1997

National Parks and Wildlife (Prescribed Trophies) Regulations, 1993, as consolidated in 1997

National Parks and Wildlife (Prohibition of Holding Both a District Game Licence and a National Game Licence) Regulations, 1993, as consolidated in 1997

National Parks and Wildlife (Sumbu National Park) (Use of Boats) Regulations, 1993, as consolidated in 1997

National Parks and Wildlife (Trophy Dealers) Regulations, 1993, as consolidated in 1997

National Parks and Wildlife (Wild Animals in Captivity) Regulations, 1993, as consolidated in 1997

Forests Act 1999 (Act No. 7 of 1999). 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], 2002, as consolidated in 2005

Rural District Councils Act [Chapter 29:13], 19 August 1988, as last amended by Act No. 13, 2002

Parks and Wild Life Act [Chapter 20:14], 11 November 1975, as amended

Trapping of Animals (Control) Act [Chapter 20:21], 1 January 1974, as consolidated in 2001

Protection of Wild Life (Indemnity) Act [Chapter 20:15], 1989

Parks and Wildlife (General) Regulations, 1981 (S.I. No. 900 of 1981) 1980, as amended in 1986

Quelea Control Act [Chapter 19:10], 1972

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Forest Act [Chapter 19:05], 1949

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