

# Regulating the Hunting Industry in Tanzania

## Reflections on the Legislative, Institutional and Policy-Making Frameworks

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### INTRODUCTION

This work critically analyze the operations of the hunting industry of Tanzania in the light of existing institutions, the law and policy-making frameworks. The study is essentially a follow up to one of LEAT's Policy Briefs that focused on [the granting of hunting blocks in Tanzania](#) as one aspect of the hunting industry<sup>1</sup>. This study provides a comparatively more holistic approach in analyzing the operation, activities and features of the hunting industry of Tanzania from a legislative and policy-making perspective.

Chapter One traces the history and development of hunting in Tanzania from the pre-colonial era to the present from a social-legal perspective. Here, I point out that the nature and form of the hunting industry prevalent today must be located in this epoch. The main features of the hunting industry in this era are found, in among other things, the institutional set-ups, rules, cultures, rituals and general customs of most local hunting community members.

The traditional hunting features of the local communities were disturbed with the arrival of foreign traders and hunters, first by the Arabs and Persians along the East Coast and then the colonial regimes. The effects of the imposition of colonial hunting laws and polices onto local community members' hunting practices is discussed in this chapter. The subsequent adoption of the colonial hunting laws and the implication for the industry at independence is also delved onto.

Chapter Two explores the extent to which the government of Tanzania has complied with the provisions of major international legal instruments relating to hunting. Chapter Three reviews the legislative and policy framework regulating the industry and points out some of the major weaknesses and constraints.

Chapter Four sets out to explore some of the salient features inherent in the institutional and legal framework that may operate to the detriment of the industry. This chapter also delves onto the perception of the hunting industry from the point of view of local community members to that of the private hunters as well as local governments in areas where hunting activities are conducted.

Chapter Five sets out the conclusions and recommendations.

### List of Abbreviations

A.D	Anno Domino (After Christ)
Cap.	Chapter
CITES	Convention on International Trade in Endangered Species of Flora and Fauna
Epiq	Environmental Policy and Institutional Strengthening Indefinite Quality Contract

FAO	Food and Agricultural Organization
GN	Government Notice
Ibid.	Ibidem, in the work(s) immediately cited
IUCN	International Nature Conservation Union
LEAT	Lawyers Environmental Action Team
LL.M	Masters Degree in Law
L.N.T.S	League of Nations Treaty Series
No.(s)	Number(s)
Op.cit	Opere Citato. In the works previously cited
SADC	Southern Africa Development Community
TAHOA	Tanzania Hunters Association
TAWICO	Tanzania Wildlife Corporation
TWPF	Tanzania Wildlife Protection Fund
USAID	United States Agency for International Development
Vol.	Volume
WD	Wildlife Division
WPU	Wildlife Protection Unit
WRI	Wildlife Resources Institute (Washington, D.C)

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## **I. THE DEVELOPMENT OF THE HUNTING INDUSTRY IN TANZANIA: A HISTORICAL PERSPECTIVE**

### **1.1 Introduction**

Frequently referred to as the cradle of mankind and the reference point for the evolution of humankind and culture development, Tanzania's fascinating history stretches to about 2 million years ago. The land forming the country is situated between 1 degree and 11 degrees south of the Equator on the eastern coast of Africa. To the north, the country borders Kenya and Uganda. In total, the country covers a massive land of 938,676 sq.km. Out of this, 936,062 comprise of Mainland Tanzania while the remaining 2,614 sq.km. is made up by the Islands of Pemba, Mafia and Zanzibar. These Islands are surrounded by the azure waters of the Indian Ocean and form the country's largest offshore islands. The Democratic Republic of Congo (former Zaire), Rwanda and Burundi are its neighbors on the west, while Zambia, Malawi and Mozambique border it in the south.

The combination of Tanzania's precipitous forested mountains and great inland lakes, rivers and streams are probably some of the unique features of Africa's most varied and scenic landscape. Able to boast of Africa's highest mountain in the snow capped Kilimanjaro, the continent's biggest Lake Victoria, some of the largest parks and reserves harboring a variety of abundant wild animals, Tanzania is unquestionably one of the best tourist destinations of the world. The country's lands have time immemorial been the hunting place for humankind where trade in wildlife products (especially ivory and rhinoceros horn) along the East Coast commenced as early as 100.A.D.

The wildlife of Tanzania comprises of a unique natural heritage and a resource that is of great importance both nationally and internationally. The rich and diverse spectrum of fauna that consist of a wide variety of unique species and sub-species are found in the savanna grasslands. The unique and abundant wildlife species found in Tanzania have attracted a multitude of zoologists, conservationists, ecologists and anthropologists, among many others. The country's wildlife resource has also been the driving force behind the evolution of the hunting industry - the main focus of this paper.

Tanzania's hunting industry has gone through diverse social, economic, political and cultural epochs. The history and evolution of the industry, therefore, has been shaped by a number of transformations. These developed at various paces depending on a number of factors. In their varying degrees of development, the transformations have shaped the main framework regulating the country's hunting industry today. An analysis of the various epochs through which the hunting industry of Tanzania can be traced would now be undertaken. This exploration would shed light on some of the salient features in the historical development of the hunting industry. The analysis will also set a more solid foundation for a better understanding of the pertinent issues and intricacies in the law and institutional framework governing the industry.

### **1.2 Hunting in the Pre-Colonial Era**

Most society members who were predominantly hunters during the pre-colonial era in Tanzania maintained cultures, traditions and taboos that contained hidden features which to some extent ensured a close relationship between humankind and wildlife. There were established mechanisms to punish those who violated the revered rules.

The earliest known hunting people, considered as the last living remnants of the late Stone Age Man, are still found in Tanzania today. These include the Sandawe who hail from near the main rock paintings in central Tanzania and the Hadza (also referred to as the Tindinga), who live as hunter-gatherers around Lake Eyasi in the northern part of the country. The latter still live in

underground shelters and speak in 'click' tongue.

The historical and anthropological accounts of most of the hunting community members' practices during this epoch ensured conservation of wildlife resources through cultural and social bonds. Some critics have argued that the accounts often romanticize the human-wildlife resources. Most of these critics, however, have failed to provide concrete evidence to support their claims. The historical records indicate that in some communities, sacred beliefs and fictions centered on certain species of wild animals. This ensured that conservation principles became enshrined in the culture. It has been noted that these beliefs have proved to be well-tested axioms for transmitting conservation ethics and knowledge from one generation to another<sup>2</sup>.

Hunting was considered as an important social function by most of the pre-colonial societies of Tanzania. Subsistence hunting in some of these communities was a skill and profession in which gradations were locally organized. Selection and avoidance of certain species of wild animals was also common among such community members. In some communities it was the lineage elders who managed and controlled the number of hunts in each generation. The business of conducting tribal hunts and ceremonies was usually confined to local leaders and chiefs.

In most communities, every member was in one way or another involved in the hunting processes. Due to the prevailing social economic condition and relations of production being at a rather embryonic stage, the "hunting industry" in the pre-colonial era in Tanzania could be located, albeit remotely, within the framework of a communal-based activity. The activity was founded on traditional rituals, rites and norms and structured in a way that ensured a tranquil co-existence between wild animals and community members.

The pre-colonial format of state and law of most communities that practiced hunting was structured in a way that gave enormous powers to the enforcement machinery of the chief and local clan leaders. The "industry" was regulated by prescribed hunting norms that sought to control the number of species of wild animals killed in hunts. Most of the norms provided for both community needs as well as conservation. The rules were well known, fair, properly enforced and relatively effective in the prevention of over-exploitation of wild animals in the pre-colonial period<sup>3</sup>.

Most historical accounts that have attempted to locate the history of hunting in Tanzania have often linked the genesis of the industry with abundant game species and classical hunting safaris/expeditions conducted by ivory hunters of European and Arabic origins. People such as Selous, Theodore Roosevelt, Jim Sanderland and Arthur Newman, to mention just a few, who made hunting expeditions in the pre-colonial era, have since become household names in the history of the country's hunting.

The genesis of the hunting industry in Tanzania has also usually been traced to the early hunting initiatives commenced as a result of expeditions by Arabs from Zanzibar into the interior of East Africa in search of slaves and ivory. The early part of the second half of the 19th century witnessed the emergence of British safari expeditions and hunting was part of the expedition. These are also often made reference to while locating the history of country's hunting industry.

One very peculiar feature of most existing historical accounts on hunting in Tanzania is their failure or omission to acknowledge the fact that different historical and social epochs relating to hunting played a significant role in shaping the country's hunting industry. The history also fails to point out that the changes in the industry that have been influenced by diverse cultural, social and economic conditions. These have often been sidelined. Maybe for being considered insignificant, maybe for other reasons. Maybe because it is "his-story, " and not "our-story."

All in all, there are plenty of vacuums, and in some case misconceptions, in recorded historical accounts portraying the state of affairs of the hunting industry in this era. This work cannot

purport to address all these. Pointing to some of the important areas that have been left out in recounting the history of hunting in Tanzania will at least shade some light on the topic of and hopefully rekindle some thinking with a view to rectifying this anomaly.

The contribution of pre-colonial hunting community members in shaping and molding Tanzania's hunting industry has not been given coverage. In view of their immense contribution to the development of the hunting industry, these folks should not be left at the periphery in discussing the history of the industry in a country that boasts of a particular scenic splendor comprising of a true wilderness of unique wild animal species.

Were it not for some of these communities, the expeditions that have been given much publicity in the history of hunting in this part of the world would not have been in historical records. The input and effort of local community members, in varying degrees, facilitated and enabled the missions of the expeditions. They served as guides and porters, directing safari-hunting expeditions to wild animal sites and saved the foreigners from deadly beasts of the wild in the long and winding terrain. The knowledge that the local people employed while leading the hunting expeditions through the gruesome terrain was an art that they treasured and guarded zealously.

Also, most local community members' cultures and traditions reflected various tenets that regulated and governed hunting. Clans and tribes in different parts of Tanzania, for example, had well known and revered rules relating to hunts. Some community members observed certain rites, rituals and taboos that ensured that wild animal species were not depleted during hunts. Accordingly, in some of these communities, it was only chiefs and heads of clans who were allowed to hunt or authorize hunting. These authorities were required to abide to certain rituals and procedures pertaining to hunts. In some cases, they had to perform traditional pre-hunting sacrifices and rituals to seek the blessings of ancestors and wild animal gods before embarking on hunts or allowing parties to proceed with hunts.

Hunting seasons were common in most societies in this era and some species of animals, usually considered sacred or of totemic significance, were not to be hunted. Where they had to be hunted, very strict procedures, rules and rituals were to be adhered to. Most communities believed that some bad omen would befall hunters if the norms were not properly followed. Furthermore, most community members maintained hunting practices and rules that ensured their continued existence with wild animals. The rules were aimed at regulating and governing social behavior in hunting and were enforced by recognized traditional institutional structures. These structures formed the foundation upon which the country's hunting industry is based. This foundation, however, crumbled with the arrival of foreign influence and culture.

Prior to the arrival of the British colonial regime, Arab traders had ventured into the interior of Tanzania and exercised direct and indirect authority over some local hunting tribes. These traders sized large amounts of ivory and other wild animal products and transported them to the coast via Tabora<sup>4</sup>. The expansion of this trade fundamentally altered the main tenets of the pre-colonial "hunting industry" as some local hunting community members, who had hitherto abided to traditional rituals that prohibited killing game, started hunting wild animals with the specific objective of supplying the market. The hunting industry was slowly transformed from one that sustained the cultural and social fabric of local hunting community members' to one that echoed embryonic features of a capitalist market-oriented economy. These features became more and more pronounced during colonial rule and eventually fully blown towards the end of the colonial era.

### **1.3 The Hunting Industry in the Colonial Period**

The advent of colonialism on the African continent had a profound impact on, among other things, traditional hunting rituals of most pre-colonial societies in the region. Local hunting communities of Tanzania were not an exception to this general rule. The pre-colonial hunting industry that had hitherto maintained an equilibrium between the human-wild animal relationship during that era was adversely affected by policies and legislation governing wildlife and land that

were designed by the colonial powers. The hunting industry during the colonial period was radically transformed. In essence the colonial regime devised strategies that favored colonial settlers who indiscriminately shot wild animal populations occasionally as a sport but mainly to supply the international trophy trade with wild animal products.

The German colonial administration introduced the first legislative provisions to control hunting in 1891. The legislative provisions were basically in the form of regulations that provided for, among other things, procedures for permitting hunting activities and methods of hunting. Another development in regulating the hunting industry during the Kaiser years was the enactment of the Wildlife Decree in 1896. This was amended periodically to control the hunting of certain species of wild animals and to cater for changes in the running of the hunting industry in 1898, 1900, 1903, 1905, 1908 and 1911.

Most of the German legislation and rules regulating the hunting industry were generally segmented and uncoordinated until the British took control of the colony. Indeed, for the thirty-five years that the country was under German rule, no comprehensive statutory instrument was ever made to govern the wildlife sector (hunting industry) except for the fragmented 1907 Decree that sought to regulate hunting in the Serengeti-Ngorongoro Wildlife Area.

By the time the British took control, Tanganyika (as Tanzania was referred to then) was already famous for the variety of big game. This attracted a steady stream of wealthy hunters who, like the German colonial settlers, hunted various wild animal species for both trade and sport. The British colonial administration established a Game Department and other supportive institutions that were charged with controlling and regulating the hunting of wild animal species. Despite these efforts, the overall institutional mechanism that the colonial regime put in place to regulate the hunting industry was not effective in controlling the indiscriminate slaughter of wild animals.

Although most colonial governments of Africa had ratified major international agreements that sought to regulate hunting of endangered wild animal species, the wanton destruction of wild animals in the region continued unabated.<sup>5</sup> British colonial settlers in Tanganyika, like elsewhere, mercilessly slaughtered wild animal species, including endangered ones, to supply the international trophy market. Realizing the impending danger, the international community put pressure on colonial regimes to stop the wanton destruction of the region's wildlife resources. This led to the promulgation of a number of wildlife legislation by the British colonial government after ratifying wildlife conservation-related international conventions.

Partly due to the international pressure, the colonial government in Tanganyika enacted the Game Preservation Ordinance in 1921. The Game Ordinance of 1940 followed this. These were the main pieces of legislation that sought to regulate the hunting industry at the inception of British colonial rule in Tanzania.<sup>6</sup> The Game Ordinance was later repealed and replaced by the Fauna Conservation Ordinance of 1951.<sup>7</sup> It should be emphasized here that the colonial hunting laws were enacted basically to reflect the colonial government's "compliance" with the obligations under the international wildlife conservation and management agreements it had assented to or ratified and not local peoples' interests. Most of the provisions of the laws developed to reflect the colonial governments' commitment to the international agreements were generally gauged in a manner that ensured a continued exploitation of the country's wildlife resources. However, it should be acknowledged that there existed provisions that sought to control the depletion of wild animal species through controlling the hunting industry. At the end of the day, however, it was the colonial regime and not local people who benefited from these.

Some of the provisions, for example, prohibited hunting with the use of guns in national parks. On the other hand, hunting in game reserves was permitted only where the Governor had issued a license. Such license only permitted people to hunt for purposes of research and for the collection of specimen for scientific research. Also, the law generally prohibited settlement and hunting in parks and reserves.

Contrary to general criticisms leveled against the colonial legislation for not taking into account

local people interests, the British colonial hunting laws, to some extent, took on board local hunting communities' interests. The underlying objectives of the colonial administration in taking into account the interests of local community members could be the subject of another voluminous report by itself. It would, however, suffice to point out that some provisions of the colonial hunting laws permitted local community members to hunt any animals for purposes of acquiring food supplies. The very provisions, however, prohibited the local communities from using arms of precision and they had to get special permits to hunt certain wild animal species. Also, the provisions did not take into account the fact that some community members had to hunt specific species to fulfil cultural and traditional rituals.<sup>8</sup>

The provisions of other laws permitted specific local hunting tribes to hunt without the requirement of licenses. These could hunt those animals that ordinarily required licenses. The tribes in this category comprised of the Tindiga, the Bahi and the Wanderobo who lived with wild animals and were predominantly hunters.<sup>9</sup> There existed numerous other tribes in Tanganyika that were predominantly hunters but the law did not apply to them. The selectivity in having in place legal provisions that permitted some community members to practice their cultural and traditional rituals pertaining to hunting while denying others reflects the application of the "divide and rule" concept. This strategy was constantly applied by colonial administrative regimes to divide local inhabitants in order to ensure their continued control while using their labor to plunder the economies for the benefit of the Metropolis.

It should be noted that the provisions of both the Game Ordinance of 1940 and the subsequent Fauna Conservation Ordinance permitted hunting, albeit controlled, outside Game Reserves in settled areas. These were referred to as Controlled Areas under the provisions of the Fauna Conservation Ordinance. It should also be pointed out here that in a move to generate revenue in otherwise isolated areas, the colonial regime had introduced tourist hunting on a formal basis in 1946. This kind of hunting was generally allowed under permit from any administrative officer of the Game Department or the Governor in Council.<sup>10</sup> Save for minor changes, the laws and institutional frameworks governing the hunting industry that were laid down by the colonial regime were adopted wholesale by the independence government.

#### **1.4. The Status of the Hunting Industry in the Post-Colonial Era**

The independence government generally retained most colonial wildlife laws and institutional set-ups. The bulk of these included those relating to hunting. The wholesale adoption of the corpus of the laws and institutions regulating the hunting industry had two main implications for the independence government. On the one part, this involved the adoption of a mechanism that had been put in place to ensure the continued exploitation of the hunting industry for the benefit and interests of the international trophy market, with the government being the conduit pipe.

Secondly, inheriting the colonial laws and policies meant the inheritance of the hostility between the government and local community members. The latter were often denied access to resources in areas designated as National parks or Game reserves. During the colonial era, in most cases where national parks and game reserves were declared, local community members were forced to re-locate, sometimes by compulsion, leaving their ancestral lands and abandoning their age-old hunting practices.

In adopting the colonial hunting laws and policies, the independence government retained a policy that was primarily based on alienating and marginalizing local community members from the hunting industry. This set a base for the continued resentment of efforts to develop the hunting industry by community members living in areas where hunting activities are conducted and regulated by government organs. After independence most local people felt that their interests were still not considered paramount by government agencies charged with the implementation of hunting laws and policies. They did not see any benefits both in terms of the objectives of the industry and its relevance as a conduit for generating revenue in order to improve their (local peoples') living standards.

During the hey days of colonialism, the administration of the hunting industry was centralized. The views, interests and wishes of the central government on matters relating to the control of the hunting industry were transmitted directly to the lower levels of personnel who were appointees of the central government itself. After independence, the Fauna Conservation Ordinance was repealed and replaced by the Wildlife Conservation Act (1974) but this institutional set up was retained with slight modifications. The Director of Wildlife's overall power in the issuing of hunting licenses and permits, for example, was reinstated. Under the colonial laws, it was administrative officers who were charged with the issuance of hunting licenses.

The government's control of the hunting industry after independence was concretized with the promulgation of the Ujamaa policy of socialism and self-reliance in 1967. This policy was full of ideals on human dignity and public control of major economic activities. The policy's objective was to build a society of citizens where all were to have equal rights and opportunities, without any individual living in luxury at the expense of another. In an effort to implement this policy, the government appropriated all the major means of production and held them in trust of the people. Most privately owned properties, including business, commercial and residential premises were nationalized. The demise of private ownership of the means of production also affected the operations of the hunting industry.

The main objectives of the Ujamaa policy were, however, not effectively realized in terms of economic prosperity. Contrary to expectations of the proponents of the policy, the country's economy gradually moved from bad to worse. The main cause of the government's failure to achieve the objectives of the Ujamaa policy may be attributed to poor implementation of development projects and mismanagement and misappropriation of public funds. External factors such as the breakdown of the East African Community in 1977 followed by the 1978/79 war with Uganda and the unfavorable loan conditions granted to poor African countries by the West, aggravated the problems facing Tanzania's staggering economy.

The economic slap down in the early 70's and late 80's had major implications on the tourism industry as it failed to break even. The overall impact trickled down to the hunting industry. The industry's main activities were concentrated in neighboring Kenya. Although some hunting Safaris still operated in Tanzania, they almost always took off from Nairobi. Poaching along the Kenyan-Tanzanian borders increased tremendously leading to a drastic decline in wild animal species. The elephant population was the most affected of them all. Realizing the impending danger, the Tanzania government imposed a ban on hunting for the period between 1973 and 1978.<sup>11</sup>

Despite the ban in Tanzania, trade in wild animal species and products at the international market was still a lucrative business. Illicit hunting to supply the international market continued through dubious channels. Corruption became the order of the day in almost all sectors of the industry. The government decided to lift the ban with the hope that this action would salvage the crisis-ridden industry. When the hunting ban was lifted, the Tanzania Wildlife Corporation (TAWICO) was charged with the overall management of the hunting industry.<sup>12</sup>

The management of TAWICO is vested in a Board of Directors which is composed of a Chairperson appointed by the President, and other members appointed by the Minister responsible for wildlife. The qualifications or criteria for appointment to membership to the board are, however, not stipulated. With the lifting of the hunting ban, the power of the Director of Wildlife to allocate hunting blocks was suspended. The power to allocate these and determine hunting quotas was vested onto the Game Division but supervised by TAWICO. TAWICO also became the designated organization for purposes of controlling hunting licenses, monitor issuance of, among other licenses, those dealing with hunting, live capture of animals and hunting expeditions. The corporation was also vested with the power to hire firearms and ammunition and set requirements to govern the type of weapons to be used in hunts.<sup>13</sup>

In further efforts to curb poaching activities, the government also amended the Wildlife Conservation Act, introducing two new structures. First, the Wildlife Protection Unit (WPU) (also

referred to as the Anti-Poaching Unit) was established.<sup>14</sup> The WPU is placed under the administration of the Director of wildlife. It is charged with the task of protecting wildlife against unlawful hunters and to enforce the provisions of the Act relating to hunting, capturing and securing of game trophies. The amendment also creates the Tanzania Wildlife Protection Fund (TWPF). The TWPF is essentially a retention fund and it receives its revenue from among others sources, fees derived from hunting and handling of trophies.

The beginning of the 1980's witnessed a shift in the government's approach to economic reform. Although in principle Ujamaa still prevailed, the government started to encourage businesspersons to invest in various spheres of the economy including those that were nationalized. Indeed, by 1985 the government had devised policies and charted out economic development plans and strategies designed to encourage greater private participation. Trade was liberalized in a move to enable the government collect more revenue from sales tax and customs duty. In an effort to revamp the tourism sector and enable it inject more capital into the government coffers the government streamlined the state-owned Tanzania Tourist Corporation with a view to increasing its efficiency.

Together with these reform strategies, the government also set up an infrastructure that would foster improved relations with the private sector in order to boost its revenue collection derived from the hunting industry. The private sector responded positively to the government's initiative by forming and registering a hunter's body - the Tanzania Hunters Association (TAHOA).

With the change in the government's approach to opening up to the private sector in the hunting industry, TAWICO's role in regulating hunting increasingly became insignificant. It was therefore not a surprise when the government stripped off TAWICO's representative role in matters related to wildlife in 1988. Today TAWICO remains an ordinary private company seriously riled with financial problems. With the demise of TAWICO, the Director of Wildlife's power to regulate the hunting industry and specifically to control the allocation of hunting blocks, permits and licenses was restored.

The government's efforts to reform the hunting industry with a view to bolstering the industry have been made at both the local and international levels. One of the strategies that the government has made at the international level has been to make every effort to conform to hunting standards, norms and practices that are recognized by international legal instruments that it has either ratified or acceded. The government's initiative to implement and respond to international legal norms and standards relating to the hunting industry will be the subject of the next chapter.

## **II. IMPLEMENTATION OF INTERNATIONAL LEGAL INSTRUMENTS RELATING TO HUNTING**

### **2.1 Introduction**

Tanzania is a party to a number of international and regional legal instruments relating to the sustainable use of wildlife resources and the conservation and management of wild animals. It is a party to the Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System and the Protocol Concerning Protected Areas and Wildlife Forming the Eastern Africa Region (Nairobi 1985). The government has also ratified the Lusaka Agreement on Cooperative Enforcement Operation Directed at Illegal Trade in Wild Fauna and Flora (Lusaka, 1994) and the SADC Protocol on Wildlife Conservation and Law Enforcement (Maputo, 1999). Other instruments that the government is a signatory to are the Convention on Biological Diversity (Rio-de Janeiro, 1992), the Southern Africa Convention for Wildlife Management (1990) and the Master Plan for the Security of Rhino and Elephant in Southern Africa, (1996).

Most of these instruments contain provisions that require Contracting Parties to take all necessary measures to ensure that the hunting industry in their jurisdictions is adequately

regulated and controlled to enable sustainable utilization of wild game. We cannot undertake the task of reviewing the provisions of all these instruments here. An in depth examination of the hunting-related provisions of some of them should suffice to illustrate the extent to which the Tanzania's government has complied with standards and norms regulating the hunting industry at the international and regional arena.

## **2.2 The African Convention on the Conservation of Nature and Natural Resources, 1968**

One of the instruments that most governments in Africa have ratified is the African Convention on the Conservation of Nature and Natural Resources, 1968. (Hereinafter referred to as "The African Convention").<sup>15</sup> This is the main regional instrument that focuses specifically on wildlife conservation in the region. Tanzania ratified the African Convention in 1974, the same year when the Wildlife Conservation Act was promulgated.<sup>16</sup> Most of the provisions of the Convention that seek to regulate and control hunting have been re-echoed in the Wildlife Conservation Act. An analysis of some of the hunting-related provisions of the Convention and the extent to which they have been taken on board by the law regulating hunting in Tanzania will be made now.

Article VII of the African Convention calls upon Contracting Party States to formulate effective legislation on hunting and capture of wild animals in order to ensure that the issuance of permits is properly regulated. The Article also lays emphasis on the need to enact legislation that would ban unauthorized methods of hunting. It prohibits the use of fire, mechanically propelled vehicles and hunting at night. This Article also prohibits the abandonment of carcasses of wild animals by hunters.

The provisions of Article VIII generally require Parties to provide special protection to those wild animal species that are threatened with extinction, or those, which may become so threatened, and the habitat necessary for their survival.

Article XI urges Contracting Party States to reconcile the provisions of hunting laws with customary rights of local community members living in proximity to areas set aside for wildlife conservation and management. In what may be construed as a complimentary to the requirements of Article XI, Article VIII (8) requires the Parties to have in place legislation that seeks to protect indigenous species of wild animal populations. This latter requirement has not adequately been taken into account by the provisions of the Wildlife Conservation Act. However, as will be discussed later, the spirit behind the Wildlife Policy reflects the necessity of reconciling indigenous hunting systems with the provisions of the law.

With an effective enforcement and monitoring mechanism, the provisions of the African Convention that seek to regulate hunting would certainly be useful guiding tools in regulating and controlling hunting in the jurisdictions of Party States. Indeed the Wildlife Conservation Act reflects most of the requirements and demands of the hunting-related provisions of African Convention. However, there exist some provisions of the African Convention whose implementation may prove to be a stumbling block to the proper regulation of the hunting industry.

One of these provisions is that which permits the creation of "competent authorities" in contracting Parties jurisdictions to control and regulate wildlife management activities. A careful reading of the intendment of these provisions reveal that these authorities be vested with sufficient powers that would allow them to do almost anything under the law in order to safeguard the interest of people and wild animals, in among other things matters related to the hunting industry. Sadly the comparable provisions of the Wildlife Conservation Act also reflect this discretionary vesting of powers to authorities charged with the control and regulation of the hunting industry.

## 2.3 The Convention on International Trade in Endangered Species, 1973

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is another international wildlife conservation and management instrument whose scope extends to the hunting industry.<sup>17</sup> The main objectives of this Convention are focused at preventing international trade from threatening the survival of species of wild fauna and flora from extinction. The Preamble to the Convention provides, in part, that Contracting Parties seek to protect certain species of wild animals against over-exploitation through international trade. In the process of regulating hunting of endangered species of wild animals, Contracting Parties to the CITES inevitably have to encroach upon the hunting industries in their respective jurisdictions.

Like the African Convention, the CITES calls upon Contracting Party States to enact legislation to implement its objectives. Tanzania became a signatory to the CITES in 1979. The regulations made under the country's principle wildlife legislation reiterate and reflect, in all aspects, an intention on the part of the government to regulate the hunting industry in accordance with the underlying objectives of the CITES.

The schedules to the Wildlife Conservation Act also reiterate the requirements stipulated by the CITES. These list down categories of endangered wild animal species that cannot be hunted.<sup>18</sup> The Wildlife Conservation (Hunting of Animals) Regulations of 1974 as amended and the Wildlife Conservation (Capture of Animals) Regulations of the same year, also reflect the objectives of the CITES.<sup>19</sup> They prescribe, among other things, conditions that are in many respects relevant to the general control of the hunting industry. Also, the eight schedule to the Wildlife Regulations (Dealings in Trophies) Amended Regulations of 1989 makes specific reference of the CITES. The regulation provides for conditions to determine the validity of certificates issued to persons who want to export wild animal species or their products. It provides that:

*[A] trophy export certificate in respect of any animal or trophy made from any part of an animal.....which is protected by the 1973 Convention on International Trade in Endangered Species of Wild Flora and Fauna...shall be valid only if issued and signed both by the Director of wildlife and the Game Research Officer...<sup>20</sup>*

It is clear from the foregoing that the regulations made under Tanzania's main wildlife law re-echo the directives of the CITES by controlling, regulating and restricting the hunting of endangered wild animal species for purposes of engaging in their trade.

## 2.4 The Southern African Development Community Protocol on Wildlife Conservation and Law Enforcement, 1999

Tanzania is also a Party to the Southern African Development Community Protocol on Wildlife Conservation and Law Enforcement signed by Southern African States in Maputo, Mozambique in 1999, (the SADC Protocol).<sup>21</sup> The Protocol contains provisions that are relevant for hunting industries in the Contracting Party States. Most of these are reflected in Tanzania's principal wildlife legislation and the new wildlife policy. The hunting-related objectives of the SADC Protocol are provided for in Articles 3, 4, 6 and 7.

Articles 3(a) and 4 of the Protocol call upon Party States to take legislative measures to ensure the sustainable use of wildlife resources. Regulating the hunting of species of wild animals seeks to ensure sustainable use of the wild animal population and squarely fits in this objective. Article 6(2) on the other hand urges Parties to penalize the taking away of wild animals or their products for purposes of trade. Article 7(2) and (3) obliges the Parties to control activities that may significantly affect conservation and sustainable use of wildlife in order to avoid or minimize negative impacts, and to take measures to prevent over-exploitation and extinction of wildlife.

The analysis of the hunting-related provisions of the African Convention, the SADC Protocol and

the CITES serves to illustrate the effort made by the Tanzanian government to comply with international and regional standards and obligations in regulating the hunting industry. On the face of it, the provisions of the main wildlife law and the policy strategies on hunting promulgated by the government have also attempted to reflect this compliance. A review of the extent to which these laws and policies reflect the government's intent is delved onto in the following chapter.

### **III. A REVIEW OF LEGISLATION AND POLICY REGULATING THE HUNTING INDUSTRY**

#### **3.1 Introduction**

Towards the end of 1984 and early 1985, Tanzania experienced an invasion of the hunting industry by both local and foreign investors. The cause of the invasion was primarily due to the liberalization and free trade policy that the government introduced in an attempt to revamp the dwindling economy. The sudden upsurge of investors in the hunting business witnessed an emanation of violations of hunting conventions, norms, rules, regulations and legislative provisions.

Incidents and allegations of corruption and bribery within most of the government organs charged with overseeing the control and regulation of hunting became the order of the day with the emergence of private investment in the industry. The launching of strong anti-poaching campaigns by the government and the revision of hunting regulations in 1989 did little to alleviate the situation. A Commission appointed by the government to investigate and advise the government on the state of and allegations of corrupt practices in all sectors of the economy attests to this assertion.<sup>22</sup>

There are admittedly a number of factors that may explain the causes of the problems that have persistently plagued the hunting industry. One of the areas in which irregularities abound in the hunting industry has been discussed at length.<sup>23</sup> An analysis of the provisions of the legislative and policy frameworks in view of the recurring controversies regarding the legal and policy regimes governing the hunting industry has, however, not been given the treatment it deserves. A commentary on this, it is hoped, will provoke more thoughts to call for a reform to improve the performance of the industry.

#### **3.2 Policy**

Policies are governments' main tools for implementing development plans, strategies and above all, legislation. They usually set out broad instructions and procedures for implementing them. Most of them specify and stipulate procedures and set criteria intended to provide guidance to those charged with implementing and executing government directives and plans. The strategies are often set out in guidelines and thereafter transformed into law.

In view of the important role of policies in setting a foundation for enacting law, it is considered necessary to explore Tanzania's hunting policy before delving onto the law that governs this industry. As noted earlier, Tanzania's hunting industry dates back to 1946 when the Game Controlled Areas were established and divided into hunting blocks through legislative enactment. The colonial government did not have any comprehensive wildlife policy. Its guiding "policy" on hunting was generally ad hoc and uncoordinated to allow professional hunters and settlers to hunt trophy animals. By and large, it reflected the international market's demand for game trophy.

The independence government's adoption of the colonial legacy meant the adoption of the lacuna in respect to a hunting policy. Its main policy guide, though not written, was to encourage hunting as a way of attracting foreign exchange earnings. It extended Game Reserves, National Parks and Game Controlled Areas and issued guidelines to control the industry. The policy of Ujamaa and Self Reliance that was grounded on public (government) ownership of the major

means of production adopted by the government in the late 1960's, as intimated earlier, was certainly not conducive for private sector involvement in the hunting industry. From the investor's perspective, there was no guarantee that the government would not revert back to the nationalization policy. These fears were founded upon, among other things, the lack of a policy document charting out the government's commitment. This weighed heavily on the hunting industry and subsequently on the government's efforts to revamp the ailing economy.

In a move to show its commitment to encourage private investment in the hunting industry, the government decided to break new ground in wildlife conservation and management by promulgating a comprehensive wildlife policy that covers the industry.<sup>24</sup> The policy document recognizes tourist and resident hunting as forming the basis of Tanzania's wildlife utilization industry. It categorically provides that it is the government's intention to retain ownership of and overall responsibility for management of the hunting industry to ensure that national priorities are addressed and abuses are controlled.

The policy encourages private investment in various forms of consumptive and non-consumptive uses of wildlife resources. It calls for a sound international and domestic tourism industry that depends largely on, among other things, hunting of wildlife. One of the strategies the policy sets forth for achieving this objective is for the government to ensure that companies involved in the hunting industry are registered and that they conduct all their business in accordance with the law. The policy also seeks to recognize the role and position of local community members and the use of indigenous knowledge systems of hunting. It provides that:

"While there is a thriving resident hunting industry in open areas, it is now recognized that this serves the richer urban dwelling Tanzanians and non-citizen residents, and that the industry as presently structured poses many problems of management. On the one hand villagers are neither able to afford the resident licensing fees nor the use of traditional weapons under the current legislation. On the other hand, richer urban dwelling Tanzanians apply to shoot a number of animals at well below market prices and at considerable opportunity cost to those of rural communities on whose land they hunt."<sup>25</sup>

The policy also sets out a number of strategies to foster improved hunting by tourists. It seeks to facilitate open and fair allocation of hunting blocks through a system that is transparent and acceptable to all stakeholders, set sustainable hunting quotas, conduct examinations for professional hunters and monitor their competence in hunting. The policy also calls for effective enforcement of hunting regulations in order to ensure a high standard of hunting with a view to creating an enabling environment for promoting both local and foreign hunters.

As is already evident, most of the policy aspirations introduce a new paradigm in the hunting industry. Realizing this, the policy calls for the revising of the wildlife legislation to take on board a number of new concepts and developments it introduces. The process of revising the law will certainly have to take into account the policy's implication on the hunting industry as we have already noted earlier that law is the government's main tool for enforcing policy. An examination of the legislative provisions governing the hunting industry would suffice at this juncture.

### **3.3 Legislation**

As has already been pointed elsewhere, the Wildlife Conservation Act is the principal law regulating wildlife in Tanzania. The Act places the control and regulation of the hunting industry to three main authorities. These are the Director of Wildlife, the Minister Responsible for wildlife and the President of the United Republic. An exploration of the provisions of the principle wildlife law reveal that the nature and extent of the powers vested in the authorities manning the hunting industry do not provide for, nor guarantee a level playing ground - a vital ingredient in the operations of an effective hunting industry. An exploration of the provisions will help in expounding this assertion.

The Act vests the Director of Wildlife with the power to oversee the overall management of wildlife in the country. The office of the Director is established under the provisions of section 3 of the Act. The Director is a Presidential appointee. His/her powers extend to matters relating to hunting and generally to those that are either direct or incidental to the control and regulation of the hunting industry in the country.

The provisions of the law define "hunting" to mean an "*act directed or incidental to the killing of any (wild) animal.*"<sup>26</sup> Hunting of any wild animal is, therefore, generally prohibited unless authorized by the law.<sup>27</sup> In order to hunt, therefore, one has to apply for a license under section 25 of the Act. Relevant authorities issue such licenses to persons who meet the criterion provided by section 25. Accordingly, for one to be entitled to a game license under the provisions of section 25, he/she has to be above the age of fourteen and in possession of a valid firearm license in respect of the firearm that he/she intends to use for hunting. Licenses for hunting specified animals can only be issued to citizens of the United Republic of Tanzania, or persons who have been ordinarily citizens for a period of at least twelve months immediately preceding the date of application.

A licensing officer has the power to summon an applicant to appear in person before him/her to answer any queries or produce any document relevant to the application.<sup>28</sup>

Some of the conditions that would disentitle one to a hunting license are provided for by section 56 of the Act. Accordingly, persons who have been convicted of an offense under the Act or any other law in any country that is designed to protect wildlife would generally not qualify for a grant of license. Also, those persons who, at one point in time had their licenses cancelled or suspended under the wildlife laws of Tanzania fall in this category. Non-disclosure of prior conviction of a wildlife-related offense/s and or the suspension or cancellation of a license under wildlife laws when applying for a license under the Act amounts to an offense. We should hasten to point out here that the Director of Wildlife has been vested with power to grant a license or permit to any person who falls under this category. The law, however, does not provide for the criterion for invoking the Director's power to lift the disqualification. The only safe assumption is that the Director would use his/her discretion wisely.

Section 10 of the Act prohibits hunting in game reserves or game controlled areas without the written permission of the Director of Wildlife. The Director is also empowered to issue licenses for hunting wild animals found in partial game reserves and even those declared as national game.<sup>29</sup>

The Act permits the Director of Wildlife to issue general licenses to authorized associations and designated organizations declared as such by the Minister responsible for wildlife.<sup>30</sup> Once an authorized association has been issued with a license, it may undertake hunting activities by itself or sub-lease its license to an individual or group of individual to do the hunting on its behalf.<sup>31</sup>

A scrutiny of the provisions of the principal wildlife conservation law that regulates hunting reveals that there are a number of restrictions that may be used to regulate the hunting industry. The law contains provisions that regulate the timing of hunting by establishing a category of closed seasons. Accordingly, the Minister responsible for wildlife is vested with the power to prohibit, restrict or otherwise regulate the hunting of any animal in any area during a period he/she may specify. The period so specified is referred to as a "*closed season.*"<sup>32</sup>

Other provisions of the Act that have a direct bearing to the subject are those that require different types of licenses for hunting/capturing any animals and those that place restrictions on taking of trophies from animals, except by permit or special permission. There are circumstances where particular exceptions to the restrictions can be made. Among these is the general power of the Minister responsible for wildlife to exempt any person or group of persons from the requirements of permits, at his/her discretion.

The provisions of section 32 of the Act, empowers the Director to grant licenses for the capture of wild animals in order to undertake certain activities related to culture, scientific and educational purposes and for any purpose which "*in the opinion of the Director*" is in the national interest. Again, unfettered discretion is granted to the office of the Director.

Section 40 of the Wildlife Conservation Act prohibits hunting wild animals that are found on private lands unless one has a license to do so or where the owner of a private land gives consent. At the same time, however, where the Director of Wildlife is of the opinion that it is in the public interest that an animal on private land be hunted, he/she may, under the provisions of the same law, authorize the hunting of such animal irrespective of the owner's consent.

Section 41 of the Act gives discretion to the Director of Wildlife, upon getting the consent of the Minister, to grant a President's license. Such license would enable the grantee to hunt any wild animal whether or not there is a law protecting such animal. The implication of this is that there is no guarantee that wild animal species that are placed in the endangered category will be spared. This is contrary to the spirit of the Convention on International Trade in Endangered Species of Flora and Fauna (CITES) that Tanzania has ratified.

Under the provisions of section 42, the Director of Wildlife may direct that an applicant for a hunting license give security for compliance with the provisions of the Act or any subsidiary legislation made under the law before being issued with a license. Such security could be in the form of a bond or amount of money specified by the Director. Where a person who has given security contravenes the provisions of the law, the Director may direct that the amount deposited, or part thereof be forfeited to the government.

Not only is the law silent on the criterion for determining the amount to be deposited or forfeited, but it does not also provide any mechanism to check the powers vested onto the Director of Wildlife. For example, by providing that in exercising his/her discretion, the Director applies uniform standards for all applications in requiring a security or bond. The law also empowers the Director, again at his/her discretion, to extend the period of validity of any hunting license or permit for up to three months.<sup>33</sup> Also, the Director of wildlife, a game or licensing officer may, if in their opinion it is in the public interest to do so, refuse to issue, cancel or suspend hunting permits or licenses under the provisions of section 55 of the Act. Any person who is aggrieved by any refusal, cancellation or suspension may appeal to the Minister responsible for wildlife and the decision of the Minister on any such appeal shall be final and conclusive.

Section 53 empowers the Director to make regulations prescribing the type and class of weapons that may or may not be used for the hunting of any particular species of animals. Section 54 outlaws certain methods of hunting. These include, among many others, the use of mechanically propelled vehicles, use of poison, bait, missiles, explosives, dogs and devices intended to reduce sound made by the discharge of firearms. The Director of wildlife, yet again at his/her sole discretion, may permit the use of any of the outlawed methods of hunting.

Over and above the immense discretionary powers accorded to the Director of Wildlife, the Act further gives the Director unfettered discretion to kill or authorize the killing of any wild animal save one that is confined to a National Park or the NCA. Section 52 of the Act provides that:

"Notwithstanding anything to the contrary in this Act, the Director may kill, or authorize the killing of any animal in any place, not being a national park or the Ngorongoro Conservation Area."

As already intimated to earlier, the Minister responsible for wildlife is also given powers to regulate and control hunting under the Wildlife Act. Under the provisions of section 17, for example, the Minister may prohibit hunting during the closed season. Section 29 of the Act empowers the Minister to make regulations governing the hunting of specified animals, including limiting the numbers and wild animal species to be hunted.

The Minister may also issue permits to hunt animals that have been placed in the list of the schedule to the Act, (endangered or rare species) and also those that have been specified. It is not necessary for the Minister to issue a license to any person or category of persons who he/she permits to hunt. The Minister is not required by law to inform any person or authority the criteria applied in the exercise of his/her discretion to permit a person to hunt without a license. The proviso to section 23 of the Wildlife Conservation Act is clear on this, it states:

"Provided that the Minister may, by order, permit any person or category of persons to hunt any specified or scheduled animal without a game license." (Emphasis provided).

The use of the word "by order" in the above context implies that the Minister is not required to make public the person or category of persons he/she has permitted to hunt without licenses. If the intent of the legislature were to mandate the Minister to inform the public, the wording would have been similar to that of the section immediately following which provides that:

"The Minister may, by order in the Gazette amend, add, vary or replace the second and Third Schedules to the Act." (Emphasis provided)

The use of the words "by order published in the Gazette here imply that the Minister is duty bound to make known to the public information on the variation, addition or replacement of the schedules to the Act.

The President is another authority that is vested with power to control the hunting industry by the provisions of the Wildlife Conservation Act. Accordingly, the law vests in the President the power to modify restrictions imposed on hunting of animals.<sup>34</sup> Also, under the provisions of section 22, the President may, by order published in the Gazette, declare any category of persons as being a category of persons who shall not be granted any game license in relation to hunting any or all categories of animals specified in that order. Again, the law does not provide any guidance on how the President's power is to be exercised, once again leaving a lot of discretion in the running of the affairs of industry.

The above exploration shows the extent to which the law has accorded unchecked discretionary powers the various authorities designated by law to control and regulate the hunting industry. The next chapter shows how the employment of such power may operate to the detriment of the industry.

## **IV. Salient Features and Constraints in the Legal, Policy-Making and Institutional Frameworks**

### **4.1 Potentiality for Arbitrary Use and Abuse of Power**

The unchecked discretionary power accorded to authorities under the Wildlife Conservation Act in regulating and issuing licenses and permits was intended to ensure flexibility in the control of the hunting industry. The analysis of the provisions of the Wildlife Conservation Act shows that the Director, the Minister and the President have all been vested with enormous powers. In exercising their respective powers, these authorities can do practically anything under the guise of the law in the name of "public interest" - a term that is not defined in the Act.

The Director of Wildlife, for example, can personally shoot or authorize the shooting of any species of animal, whether endangered or not, without a license. He/she may cancel any person's license if in his/her considered opinion it is in the public interest to do so. The Minister responsible for wildlife on the other hand, may also authorize the use of outlawed methods of hunting and the President has unfettered power to decide who can and who cannot hunt in Tanzania – this Presidential discretion is not even subject to the "public interest" requirement.

Indeed, most wildlife laws in other jurisdictions have provisions that give discretionary powers to

authorities in charge of wildlife management generally. However, in most of these jurisdictions there is in place some mechanism that leaves no room for possibilities of abuses in the exercise of the discretion or arbitrary use of discretion. Botswana's principal wildlife law, for example, places some checks and balance system to control the power of authorities vested with the management of wildlife resources. For example, the law explicitly requires the Minister responsible for wildlife to exercise his/her discretion in conformity to standards that are accepted, well known and clearly spelled out.<sup>35</sup>

The concerns on the need to incorporate provisions into the hunting law to ensure that there is no room for abuse of discretion of powers vested in authorities controlling the hunting industry is practical. These concerns find support in courts that have already noted cases of abuse of powers and discretion by some authorities that have been vested with the control of the hunting industry. In the case of *Wengert Windrose*, for example, the High Court of Tanzania declared the action by the Director of Wildlife a nullity. The court was of the opinion that there was clear abuse of the powers vested in the Director of wildlife by the law.<sup>36</sup> In another case, the court was compelled to invoke its disciplinary measures by imprisoning a one time Director of Wildlife for defying a court order that sought to maintain the status quo of the Parties pending the determination of a matter relating to the granting of hunting blocks.<sup>37</sup>

The Presidential Commission of Inquiry Into Corruption, formed in early 1996 to make findings on the nature and state of corruption in the country, noted the numerous dubious transactions in the hunting industry that are not commensurate with sound management of such a vital industry. The Commission's report found that at one point, personal interests were used to regulate the country's hunting industry in a system akin to the running of some kind of family business. It observed that in most cases, personal interests overrode those of the public in the exercise of the discretion vested by the law.<sup>38</sup>

Local government officials have also been known to collude with personnel in the hunting industry to deny local people their rights to hunt. A case in point was witnessed in 1992, when the Ngorongoro District Council, with the blessing of the Wildlife Department, entered into a 10 year Agreement (instead of the usual 5 years) with one army officer from the Emirates to hunt in the Loliondo area in Ngorongoro District. This area is situated in the northern part of the country. It has been alleged that District Council officials and those of the Wildlife Division had to comply with "orders from above" as the army officer had contacts with senior government officials and was a personal friend of the President of the United Republic at that time.

The recently promulgated Tourist Hunting Regulations that seek to regulate the allocation of hunting blocs also vest a lot of discretion to the Director in permitting hunting activities in these areas.<sup>39</sup>

The foregoing analysis reveals just a tip of the iceberg in the constant abuse and arbitrary application of the provisions of the Wildlife Conservation Act in matters relating to hunting. The analysis, however, suffices to support the assertion that the present structure of the law should be reviewed in order to check the immense powers that have been granted to authorities charged with regulating the hunting industry. The mechanism to check the discretion of such authorities that is employed in Botswana may serve as a useful model for Tanzania to adopt. There is a serious need to curtail the extensive powers granted to the authorities if Tanzania's wildlife industry is to be effectively fostered and nurtured.

#### **4.2 Professionalism and the Hunting Industry**

The regulation of the hunting industry is governed by the principle of professionalism. That's is to say, hunters, just like the authorities vested with the power to regulate the industry are required to conduct their hunting business in accordance with some professional code of ethics. In fact, persons issued with hunting permits or licenses in Tanzania are usually accompanied by a government game scout whose duty is, among others, to ensure that the rules and professional ethics are abided to.

Most of the rules governing the hunting industry are clear. They provide, among other things, that the hunting period is to run for about 6 months, starting from July to December of every year. They also provide that the costs of hunting of animals is determined by the Wildlife Division but on average, it varies from 2,000 to 4500 US\$ depending on the age and species of a wild animal. It is also a general rule that a hunter is required to pay double the amount if he/she wants to hunt a young animal. The rules also generally prohibit hunting of specified species of wild game due to their endangered species status. Of course, the authorities are vested with powers to exempt the application of some of the restrictions. It is, however, not expected that hunters devise ways to influence the exemption process at the detriment of the hunting industry and risk the continued survival of wild animal species. For example, it would be going against professional hunting norms for a hunter to solicit for exemption to hunt endangered species of wild animal, merely for personal gain, without taking into account that such animal species may be extinct if all hunters acted like he/she did.<sup>40</sup>

Hunting companies have the responsibility of ensuring that the laid down rules, laws and regulations are followed. One would therefore expect to see some element of professionalism in the hunting industry by the hunters.

There are, however, cases where professional norms have been violated with the steady increase in the number of hunting companies that have joined the industry. There were initially only nine hunting companies when the government allowed them to commence business in 1984. The number had increased to thirty-three twelve years later.<sup>41</sup> Tanzania's professional hunters welcomed this trend as indicating a growth in the economy.

As the number of hunting companies increases, hunting business has continued to thrive and more hunting blocks have been allocated. This implies that the allocation process of hunting blocks has to continually be revised in order to meet the increasing demand of the market. At the same time the hunting quota allocated to each company per block remains the same. This scenario has led to a number of traitorous practices in the hunting industry leading to wild animal populations being depleted at alarming rates. This is a fact that is well known to officials of the government charged with regulating the industry, local community members and the hunters.

However, the country's professional hunters have done little to alleviate the situation. On the contrary, the professional body, TAHOA, is noted to have encouraged the government to increase the number of hunting companies. In other instances, professional hunters have used dubious ways, the loopholes in the legislation and the arbitrary clauses in the law to exceed their hunting quotas and shoot more animals than the licenses permit. Other hunting companies have opted for playing along with the existing bureaucracy, with its persistent problems that operate to their advantage, but at the disadvantage of wild animal populations and the industry as a whole.

It is also on record that during the five-year tax-free holiday system that gave a grace period to new investors, some hunting companies, again employing dubious means, changed registrations and ownership in order to qualify for the tax break. These companies were all out to maximize profits at whatever costs, irrespective of professionalism. Others secretly approached wildlife authorities and solicited, through bribery, for the de registration of their competitors or cancellation of their hunting permits and licenses for no reasonable cause. This practice still exists and has led to sharp rivalry and mistrust amongst some of the private hunting companies in the northern circuit. This is a violation of the ethical standards for hunting specified in the rules and regulations.

Evasion of tax by some professional hunting companies is also done by way of the professional hunters who have been allocated a hunting bloc, acting as middlemen and sub-leasing the bloc to another hunting company. The parties then enter into a contract whereby the company that leases pays the professional hunting company reaping non-taxable profits of over US\$1500 per day!

Another show of lack of adherence to professionalism by the hunters was witnessed when the government's invited the TAHOA at a round-table discussion to deliberate modalities of reforming the industry by removing unwanted vices. The Association surprised the government itself as it openly sought to maintain the existing framework, which is riled by corruption, arbitrary issuance of licenses and obscurity in general.<sup>42</sup>

The wildlife division is now working towards reviewing the wildlife law with a view to taking on board the developments brought into the wildlife conservation and management arena by the promulgation of the Wildlife Policy in 1998. Hopefully the new law will also focus on the pertinent issues relating, including but of course not limited, to those relating to controlling the powers vested in the authorities that regulate the hunting industry. The demise of professionalism and ethics in the industry should also be addressed in any meaningful revision of the hunting law.

### **4.3 Voices from the Local People**

Most of the local people interviewed raised concerns over their continued displacement to pave way for wildlife management and conservation projects and the government's initiative to isolate pockets of islands and reserving them for hunting. This, they alleged, is often done without them being effectively involved. Some felt that government authorities were more concerned with the benefit derived from hunting by tourist hunters rather than the wellbeing of local community members. Some villagers lamented that they could no longer practice their age-old wild-animal related rituals and rites because of the restrictions placed in areas reserved for hunting.

Some local community members, although, not well versed with the hunting law, lamented that the laws and institutional framework, unlike traditional mechanisms that regulated hunting, favored a particular class (the tourist hunter). They criticized the present set up that allowed foreigners to hunt wild animals while they were restricted from doing the same. Most of them did not seem to understand the logic behind controlled hunting that benefits foreigners while they constantly keep being evicted from their ancestral lands

Some of the local community members in the Loliondo and Simanjiro districts were agitated that some hunting companies exceeded hunting quotas and slaughtered wild animals species, including endangered ones, in great numbers. Some felt that they did not see any benefits trickling their way in government's efforts to generate revenue from the hunting industry. They alleged that some local government officials took everything that was directed towards improving their welfare. Most also condemned some officials of prominent hunting companies who did not respect their cultures nor recognize the rights of local inhabitants living in proximity to allocated hunting blocks.

As a result of the dissatisfactions, some local inhabitants engage in illegal hunting and poaching. Sometimes they took sides with personnel of private hunting companies by providing wrong information to government enforcement agencies and authorities investigating on alleged illegal activities and operations of the hunting companies in their jurisdictions.

A cross section of the local people interviewed voiced their concern on the apparent lack of transparency on the part of the government while promulgating legislation and policies that have implications on their hunting activities. In some cases, however, some community members' representatives, especially local NGO's, applauded the recent efforts by their local governments to press for the involvement of local peoples in wildlife law and policy-making processes.

Overall, the general feelings of most local communities in areas visited have the same indifference towards the underlying objectives of the hunting industry as they had during the colonial period. In some cases, some communities felt they were better off during the colonial period.

The extent of the validity of the some of the claims aired by local peoples relating to the operation of the hunting industry can be located in the present structure of the law. The

provisions of the law do not adequately cater for their interests in matters relating to hunting. Indeed most of the provisions of the Wildlife Conservation Act basically reflect the colonial concept of wildlife conservation, which was premised on the fences and fines model.

The provisions of the law, in various ways, generally prohibit hunting by local community members living in proximity to wildlife sites. Today, most of the local community members' age-old hunting practices, which also signified cultural bondage, have since been outlawed. This does not create an atmosphere that is conducive for the efforts aimed at effectively incorporating this group and solicit their support in bolstering the hunting industry.

The Wildlife Policy provides some hope in efforts to take on board and incorporate the perceptions and views of local hunting communities. The policy seeks to address this major concern by laying out strategies aimed at recognizing the intrinsic value of wildlife to rural communities. It seeks to enhance the use of indigenous knowledge systems of hunting and give special consideration to traditional hunting methods by specified rural community members. This policy initiative is, however, yet to be translated into legislation.

Even when this is realized, local community members will not automatically see the benefit of their involvement in the hunting industry if further steps are not taken. For example, more initiatives will have to be made to devise strategies in order to sensitize them so that they may be in a position to participate, as important stakeholders, in processes to promulgate laws, policy and institutions governing the hunting industry.

## **V. Conclusion and Recommendations**

This work has traced existing formal hunting legislation and policies to the pre-colonial era. It has been observed that most local hunting communities of Tanzania during this epoch practiced hunting in a manner that did not endanger the survival of wild animal species. Most hunting communities observed taboos, rituals and rites that in many aspects sought to maintain the status quo by ensuring tranquility in the human-wild animal relations.

It has been shown that it is the emergence of foreign influences, first with the arrival of Arabs on the eastern coast, followed by the Germans and later the British that had a tremendous impact on the development of the industry. It has been argued that the traditional hunting features that were practiced by local community members' were relegated to the periphery with the arrival of foreign influences. Also, some historical accounts and records have failed to acknowledge the roles played by local community members in shaping Tanzania's hunting industry.

Most of the laws regulating the hunting industry were promulgated during the British colonial era. The independence government adopted most of these laws wholesale. Despite considerable amendments and reforms, much of these generally remain rooted in the colonial legacy.

It has been pointed out that to some extent, the government of Tanzania has made progress in trying to harmonize its hunting laws with contemporary hunting practices and norms that have been developed at the international plane. A little more ought to be done in this endeavor by overhauling the colonial laws to reflect new emerging trends.

The demise of the policy of Ujamaa and Self-Reliance, it has been argued, gradually witnessed the advent of the policy on trade and economic liberalization in the late 1980's. These developments gave rise to the emergence of private sector involvement in the hunting industry. With the invasion of private sector investment in the industry, cases of corruption and abuse of discretion amongst those charged with the regulation of the industry began to surface. Some of the hunting companies on their part have consistently been involved in activities that violate ethics and professional norms in the race to make super profits at the expense of the industry and the survival of wild animal species.

The examination of the provisions of the wildlife law governing the hunting industry reveals that authorities charged with the control of the industry have been vested with tremendous unchecked powers. It has been noted that courts of law have decried this and recommendations to trim down these powers in order to avoid arbitrary abuse and misuse of the power for self-interests have been suggested. Examples from legislative provisions of other jurisdictions that have successfully managed to place mechanisms to check possible abuse of power by wildlife authorities in the operations of the hunting industry have been elucidated. We hasten to caution here that processes to incorporate similar provisions in the legislative framework of Tanzania should take into account and reflect existing social, economic and cultural contexts. Copying models without taking these factors into account often proves disastrous.

The discussions held with local community members in the field are examples of insights of what is happening possibly in all areas where hunting activities are conducted in the country. The weaknesses in fostering involvement of local people do not hinge on laws, policies and regulations alone, but on the ability of the concerned authorities in the hunting industry to interpret the rules, regulations, laws and policies properly and in the process guide local people accordingly.

It has been reiterated that the process that is almost underway to overhaul the Wildlife Conservation Act should make every effort to reflect the policy aspirations that seek to foster improved private sector investment in the hunting industry. In doing this, the process should endeavor to ensure that local community members are taken on board. This may appear to be a difficult task to achieve at the outset. However, the task could be made simpler if there is guaranteed effective and genuine participation by all stakeholders.

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- Nshala, R. "Granting Hunting Blocks in Tanzania: The Need for Reform," Lawyers Environmental Action Team., Policy Brief No. 5, Dar-es-Salaam, 1999
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- Presidential Commission of Inquiry Against Corruption, Vol. 2, Dar-es-Salaam, 1996
- Tanzania Hunters Association, “*Consultant Report on the Hunting Industry*,” Arusha, 1998

## Legislation

- Wildlife Decrees of: 1896, 1898, 1900, 1903, 1905, 1908 and 1911
- Fauna Conservation Ordinance, Cap.302, Laws of Tanganyika
- Wildlife Conservation Act, No. 12 of 1974, Laws of Tanzania
- Wildlife Conservation (Amendment) Act, No. 21 of 1978, Laws of Tanzania
- Tanzania Wildlife Corporation Act (Establishing Order) G.N. 231/1980
- National Parks Ordinance, Cap.412, Laws of Tanganyika
- Ngorongoro Conservation Area Ordinance, Cap.413, Laws of Tanganyika
- Wildlife Conservation (Hunting of Animals) Regulations, G.N 274 of 1974
- Wildlife Conservation (Dealings in Trophies) Amendment Regulations, 1989 G.N 278/1989
- Wildlife Regulations (Capture of Animals) Regulations, G.N 278/1974
- Wildlife Conservation (Tourist Hunting) Regulations, G.N 306/2000
- Wildlife Conservation and National Parks Act, No. 28 of 1992, Laws of Botswana

## International and Regional Legal Instruments

- African Convention on the Conservation of Nature and Natural Resources, 1968
- Convention on International Trade in Endangered Species of Fauna and Flora, 1973
- London Convention Concerning the Preservation of Wild Animals, Birds and Fish in Africa, 1900
- London Convention Relative to the Preservation of Fauna and Flora in their Natural State, 1933
- Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System
- Protocol Concerning Protected Areas and Wildlife Forming the Eastern Africa Region, (Nairobi, 1985)
- Lusaka Agreement on Cooperative Enforcement Operation Directed at Illegal Trade in Wild Fauna and Flora, (Lusaka, 1994)
- SADC Protocol on Wildlife Conservation and Law Enforcement (Maputo, 1999)
- Convention on Biological Diversity (Rio-de- Janeiro, 1992)
- Southern Africa Convention for Wildlife Management, 1990
- Master Plan for the Security of the Rhino and Elephant in Southern Africa, 1996

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1. See [LEAT Policy Brief No. 5](#)
  2. See the government Task Force Report on the assessment of the wildlife sector of Tanzania, Vol. 1 of the Review of the Wildlife Sector, p. 12
  3. See Agnes Kiss, *Living With Wildlife: Wildlife Resource Management With Local Participation*. P. 93
  4. Assa Okoth, *A History of Africa, (1885-1914)*. Pp. 17-21
  5. Some of the major Conventions ratified were the 1900 London Convention Concerning the Preservation of Wild Animals, Birds and Fish in Africa and the 1933 London Convention Relative to the Preservation of Fauna and Flora in their Natural State. (94 B.F.S.P. 715 and 17 L.N.T.S 241, respectively)
  6. Nos. 41 of 1921 and Cap. 159 of the Laws of Tanganyika, respectively.
  7. Cap. 302
  8. See for example section 28 of the Game Ordinance of 1940.
  9. See for example section 12 (ii) of the Fauna Conservation Ordinance.
  10. See Part III of the Game Ordinance, Cap. 159
  11. See General Notice No. 210 of 1973
  12. See Government Notice No. 231 of 1974 - TAWICO (Establishment Order).

13. See section 17 (b) of Government Notice No. 272 of 1974, published in November, 1974.
14. Section 3 of the amending Act introduces a new section 4A (Act No. 21 of 1978)
15. 1001 U.N.T.S p. 3 (See also OAU res. CM/RES 169 (XI))
16. Act No. 12 of 1974, Laws of Tanzania.
17. U.N.T.S Vol. 993, p. 243
18. See for example the Wildlife Conservation (National Game) Order, 1974. G.N No. 274 of 8/11/1974.
19. See Government Notices 274 of 1974 *ibid.*, and 278 of 1974, respectively.
20. Regulation 6(5) of GN 278 of 1989
21. See the Preamble and page 20 of the Protocol. Both show the list of Contracting Parties.
22. See generally the Presidential Commission of Inquiry Against Corruption Report, Vol. 2 1996 pp. 338 and 410
23. See Rugemeleza Nshalla, "[Granting Hunting Blocks in Tanzania: A Case for Reform](#)" September, 1999.
24. See the Wildlife Policy of 1998
25. *Ibid.*, section 3.3.8
26. *Ibid.*, section 2
27. See section 23 and 38 of the Wildlife Conservation Act, 1974
28. *Ibid.*, section 25 (3).
29. *Ibid.*, sections 14 and 16, respectively
30. *Ibid.*, section 26 (1) and (2). See also paragraphs 6 and 7 of G.N 272 of 1974
31. See paragraphs 10, 11, 18 and 19 of G.N 272 of 1974
32. See sections 17 and 18 of the Wildlife Conservation Act, 1974
33. *Ibid.*, section 45
34. *Ibid.*, section 9
35. Sections 89 (2) and 90 of the Wildlife Conservation and National Parks Act; No. 28 of 1992, Laws of Botswana, is a good example. This provision limits the use of the Minister's discretionary power by providing that decisions made by him/her in the exercise of the discretion in regulating trade in wildlife have to conform to the CITES objectives.
36. *Wengert Windrose Safari (T) Ltd. Versus the Director of Wildlife et al*, Misc. Civil Cause No. 35 of 1998, (Unreported)
37. See *Tanzania Bundu Safaris Versus the Director of Wildlife and the A.G.* High Court of Tanzania at Dar-es-Salaam, Civil Case N. 121 of 1995 (unreported)
38. See pp. 337-338, 410 (Vol. II) of the Commission's Report.
39. See Wildlife Conservation (Tourist Hunting) Regulations, G.N 306/2000, regulation 16 (3) – Part IV of the Wildlife Conservation (Tourist Hunting) Regulations which provides that the "Director shall in his discretion set standards of quality tourist hunting trophies to all hunting companies" (Emphasis underlined)
40. Correspondences (in file with author) between some hunting companies and government departments reveal the extent to which hunting companies are prepared to go to in the strive for hunting all sorts of wild game, irrespective of the dwindling number of the species.
41. See The Report on the Presidential Commission Against Corruption, *op.cit.* p. 436
42. See Nshalla, *op.cit.* pp. 23-24

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