

THE LAWS GOVERNING CONSERVATION OF THE WILDLIFE GAME ANIMAL RESOURCES IN TANZANIA

Written by Jackson Bulashi

2nd Year L.L.M Student at St Augustine University of Tanzania

ABSTRACT

One of the greatest threats to wildlife resources is poaching and trafficking of the wildlife product, the role of the law in addressing the problem of poaching cannot be ignored if meaningfully result towards elimination of the vice can be achieved. The aim of the law is to provide basic modern principle and better way and strengthening the framework for the fighting Wildlife crime.

But the law alone is not cornerstone for the elimination poaching. There is also need to strengthen by enhancing capacity of the law enforcement of the game warden, judiciary, investigator, prosecutor and ensuring effective patrol in the game conservation areas, investigation of the crime, prosecution and sentencing are deterrent enough to discourage criminals from committing crime.

This paper seeks to highlight the legal regime in place in Tanzania and the existing legislations in place to address the problem of poaching.

INTRODUCTION

Wildlife crime continues to pose danger towards existence of the wildlife resources in terms of flora and fauna. Wildlife poaching not only affects large iconic and important animal in biodiversity and ecosystem balance like rhino and elephant, but also wide range of other wildlife species.

Up to 1980 for example rhino had disappeared from large part of the country including many part where they were abundant, elephant population also crashed due to poaching, in 1970s and 1980 declining from the estimated 370,000 to only 55,000 by 1990sⁱ

This necessitated the government to act by initiating various measure so as to mitigate the problem before the wildlife resources decline beyond recovery.

In October 2016 the Ministry of Natural resources launched the National strategy to combat poaching and illegal wildlife trade. This was an important step response to the rapid rise of the wildlife crime including poaching. The aim of the National strategy was significantly to reduce wildlife poaching and trafficking due to combination of high risk of severe penalty and reduction of demand.

MEANING OF THE LAW

Law is the branch of legal science which can be defined as laid down, ordained or established rule or method according to which phenomenon or actions co-exist or followed by each other, that which must be obeyed and followed by the citizen subject to the sanctions or legal consequences.ⁱⁱ However law can be defined differently in different context of importance, the evolution of law has long history, albeit law is the regulatory organ of the society, is not only regulatory framework other value that regulate society include morals, religion and ethics.

At the beginning of legal order in Greek society which was perceived among early civilized society, King decided cause by divine inspiration since at the initial stage of the development of legal order law was the divine domainⁱⁱⁱ Also law and morals were largely undifferentiated. Literally law is the frameworks of principles that spells out what cannot be done and what can and should be done in the society.^{iv} It subjects every person and institution to given acceptable standard.

Law depicts either Legal order or the whole body of legal sacrosanct obtained in the social politically organized society or the instrumental social control, it usually defines the obligation

of the individual and provide for its enforcement mechanisms and well as sanction of certain action including illegal hunting or poaching.

In the positivistic view is the body of command of sovereign authority in politically organized society as how men and of course women should conduct themselves.

In general law entails the body of agreement of Men in the politically organized society, as to their relationship with each other, it also refers to the philosophical discovered system of principle which express the nature of things to which man conduct, ought to abide.^v In the view of Professor Fuller Law should contain inner morality and have proper procedures. Thomas of Aquinas attempted to define law as rational order for common good enacted by legitimate power, in his view life in the society lies in the correct order and that law unites people together only when it reflects true reasons^{vi}

Historically the relationship between law and animal it involved murder trials in ancient Greek^{vii} and trials before ecclesiastical court in medieval and early modern Europe, from Mole in Italy and DO in Switzerland, there are studies which suggests that at least 191 trials occurred in Europe involving animal between 824 and 1906^{viii}

GAME ANIMAL

Game animal is the collective term for any non-domesticated animal or plant in common usages. However the term is generally applied in non-domesticated vertebrate and non-vertebrate animal. Typically terrestrial one, within this more restrictive definition animal may be classified as either game or non-game species^{ix}

Wildlife Conservation Act section 3^x defines game animal to mean mammal, amphibian, bird and reptilian, insect and include eggs and young of the aforementioned.

It means undomesticated animal species that live in its own, they live in nature as distinguished from common domesticated animal, and wild animal finds food, shelter, water and its other needs in specific natural habitat which can be in the field, woods, forest, pond, wetland and

park, normally depends with the relevant jurisdiction, it cannot be hunted except with the permission from the lawfully authority, it can include other species categorized under the law in a certain jurisdiction, or part product egg or offspring of them or dead body part of them^{xi}

Under the common law wild animal are nullius object which are not owned by anybody, but are capable of being owned^{xii} Wild animal are un owned until one take possession of them, possession of the wild animal is universal and the main condition is the land ownership, implicitly land owners are regarded the owner of anything in the land including the wild animal thereof. He has preferential right and the custodial of the wild animal and even though they are not generally the owner of the animal technically^{xiii}

The above position is reflected in South Africa section 2 of the Game theft Act^{xiv} where the law categorically provides that the ownership of the wild animal is established by taking control of the anima with the intention of being the owner which are normally manifested in animal being in someone land.

The same provision protects the rights of ownership of the game when it escapes, or lured away from the owner land. This illustration show that definition of the game animal may vary depending with the jurisdiction, due regard being law which are usually enacted out of the social, political, environmental and economic background of the given society.

POACHING

Poaching refers to hunting, killing or capturing animal illegally in contravention of the laws protecting wildlife (in Tanzania these laws are Wildlife conservation,^{xv} National Park,^{xvi} Ngorongoro Conservation Area Act^{xvii}) It may involve hunting without permit in protected areas such as in the National park and hunting endangered species. Is taking any kind of the wildlife including fish in such a way that violates domestic law and international wildlife laws^{xviii}

Poaching of wildlife animal involves use of traditional hunting method such as bow, arrows and snares, but also illegal use of fire arm, explosives, poison and more recently aircraft aided techniques and immobilization drugs^{xix}

There are no single reasons which has augmented the problems of poaching rather it ranges from economical, traditional and cultural reasons as in Tanzania, Africa and the World at large, as the motive might be employment as the poachers rely in these natural resources for their survival and generating income through selling bush meat to their fellow villagers and in the urban centres and areas. Which usually attract good prices, body parts are also in demand for traditional medicinal and ceremonies^{xx}

Poaching ensures constant supplies of bush meat through the sale and purchase of the same regardless of the laws which conserve and protects them. Many families in the rural Tanzania particularly around the game reserve, National Park and game protected areas consume bush meat for protein satisfaction if there is no alternative protein like fish and meat from domestic animal like cow, sheep, goat, chicken and pig. Further away the family from the park, game reserve or game protected areas the less likely to conduct poaching for bush meat, also they were likely to hunt for wild animal right before the harvest season, there is not much agricultural work and heavy rainfall obscure game track in terms of surveillance and patrol by game officers making easier for the poachers to do away with their crime^{xxi}

Poverty seems to be impetus for the poachers; there are anecdotal accounts from the violators of wildlife laws desire to satisfy family basic needs through engaging in poaching which drives them to take the risk of poaching at the expenses of this rear wildlife resources^{xxii}

Human population growth have profoundly direct and indirect effect on consumption pattern on land and wild life resources, and is one of the major challenges facing rich wildlife areas in Africa Tanzania in particular. This is where population led to habitat destruction particularly where high population close to the protected areas case need of the bush meat to satisfy them.^{xxiii} It lead to more search for new land for settlement and other human activities in terms of livestock rearing and farming, which in turn come in conflict with wildlife conservation by encroaching the animal habitat, the human start to hunt so as to clear for the settlement and

doing away with herbivore like lion, Leopold, hyena and wild dog which also hunt for the domesticated animal.

LAWS GOVERNING THE CONSERVATION OF THE WILDLIFE IN TANZANIA

In Tanzania laws in terms of the laws enacted by parliament, regulation and rules aimed to prevent illegal hunting and preserve wildlife animal. These laws can be differentiated into three categories these are domestic laws, regional and international laws. For purposes of this paper I shall focus on the domestic laws which are discussed here under.

(i)The Constitution of the United Republic of Tanzania

The constitution of the United Republic of Tanzania^{xxiv} stems from the then Tanganyika, it is the fundamental law of the country, it overrides all other laws and any provision of law goes against the constitution or in conflict with it will be declared unconstitutional.^{xxv} The constitutional clearly provide in the need for the responsibility of each and every citizen of Tanzania to manage and conserve natural resource wildlife animal inclusive^{xxvi}

It provides for the opportunities for the public involvement in conservation and management of the natural resources, this article clearly imposes duties for each and every citizen to protect and manage natural resources. Under the provision all Tanzanians are responsible for the natural resources protection and conservation and fight any form of abuse and mismanagement, and shuna way from illegal hunting of the wild animal.

More over the constitutional requires the government to ensure the natural resource is harnessed. Preserved and applied towards common good.^{xxvii} This portray government commitment to ensure sustainable development of fauna and flora^{xxviii}

Having in mind the role of conservation of flora and fauna, Tanzania through the parliament has enacted law to cover general aspect of wildlife animal protection and conservation, geared

towards elimination of poaching. The law enacted also establishes the institutions which manage the wildlife animal resources.

Tanzania laws which provides for natural resources conservation and management can be categorized into three main categories. These are natural resources conservation laws, land use laws and environmental conservation legislation^{xxix}

(ii) Ngorongoro Conservation Authority Act^{xxx}

This is the exceptional law designated in Ngorongoro Conservation Area.^{xxxi} The conservation area was established in 1959 by the Ngorongoro Conservation area Ordinance No; 413 of 1959.

It is the semi-autonomous authority where by consent of the Minister may make rules restricting and controlling in entering in the conservation area. The conservator may issue permit, permitting persons to reside within the conservation area^{xxxii} the area these rules apply subject to any terms and condition which the authority deem fit.

The authority may promulgate and issue rules prohibiting, restricting or controlling the use of land for any purposes. Prohibiting, restricting, limiting or controlling.

- (i) The introduction, grazing, watering or movements of stocks
- (ii) The firing, clearing or destruction of vegetation including stubble
- (iii) The use of wells, bore hole-water courses, streams, rivers or lakes
- (iv) Gathering of honey or forest produce
- (v) The exercise of any right in relation to forest produce determined under the provision of the Forest Act^{xxxiii}
- (vi) Introduction or removal of flora and fauna
- (vii) The use of agricultural implement and machines^{xxxiv}

The use of land in the area are required to use customary conservation of natural resources, livestock production, agro pastoralist, small scale cultivation and tourism^{xxxv}

The Act establishes the board of directors to manage the function and oversee the daily activities of the conservation area^{xxxvi}

The law creates an offence for any person who fails to comply with orders issued under section 23. 24. Or 26 and upon conviction the person shall be liable to fine not exceeding twenty thousand shilling or to a term not exceeding two years or both^{xxxvii}

(iii)The National Park Act^{xxxviii}

The National Park in Tanzania is regulated by the Tanzania National Park Act, the Law provide for the framework for the establishment of the National Park in the country, It establish the board of trustee which is the body corporate to manage, control and maintain the affair of the National park in the country^{xxxix}

The Act allows the president with the approval of the legislature to declare an area to be a National park.^{xl} It also authorizes the president to alter boundaries of the National park.^{xli} Departing from other laws that allows the president to act unilaterally. This statute is different in terms of putting mechanisms where the president is subjected to the parliament approval.^{xlii}

The daily activities of management and administration of the National park are entrusted to TANAPA^{xliii} which is the Independent organization, an agency of the government tasked with the conservation of the National park. TANAPA is governed with the numbers of laws namely the National Park Act and the Wildlife Conservation Act.^{xliv} The primary objectives and core business is the conservation of the natural resources.

The act allows the people who had been affected by the declaration of the head of state as far as the declaration of the National park are concerned to be compensated.^{xlv} The law also allows the president to grant any rights to any person within the National Park with Mining rights.^{xlvi}

The Act creates restrictions and criminalizes such action to wit, carrying weapon in the National park, Hunting in any form, killing, molesting any animal, digging or construction of any pitfall, net, traps or other device whatsoever capable of killing or capturing or wounding animal^{xlvii}

Any person who is found exercising the prohibited acts can be prosecuted and upon conviction can be imprisoned for two years or fines under compounding provisions for fine not exceeding one hundred thousand shilling.^{xlvi}

(iv) The Wildlife Conservation Act^{xlvi}

The Wildlife conservation Act was enacted in 200 to regulate all matters in relationship to wildlife management; it provides for the institutional arrangements of the wildlife management authorities^l

It provides for consumptive and non-consumptive use of wildlife and prohibit for wanton killing of animal.^{li} The act provide for the killing the dangerous animal threatening people lives in protecting the public interest if they are dangerous to the society which dangerous animal include flock of pest bird^{lii}

The Act provides for the mechanisms for handling trophies by ensuring that killing of wild animals are regulated by requiring license in dealing with trophy and the license shall entitle the holder to capture all articles from the trophy, buying and selling trophies but shall not entitle him to kill, hunt or photographing animal.^{liii} Exporting and importing any kind of trophy are prohibited except if the person is the holder export certificates or in case CITES Listed species, a CITES permit issued by the relevant authority of the member country.^{liv} The Act further provide mechanisms for the wildlife ranching, farming, breeding and sanctuaries^{lv}

The Act criminalize various actions attaching to poaching where it provide for the requirements of license for any person who is intending to hunt any animal in the hunting bloc, however it provide for punishment of not less than 3 years and not more than 3 years for a person who is holder of license but hunt, kills or wound animal

- (i) Specified animal or scheduled animal species category type of description other than specified in the license
- (ii) A number specified animals or scheduled animal larger than those specified in the license

- (iii) A specified animal or scheduled animal in an areas other than those specified in the license.

The Act prohibit any person from entering in the game reserve, other than the person in transit through the game reserve except with the permission from the director previous sought and obtained, and upon conviction the person shall be liable to fine not less than one hundred thousand and not exceeding five thousand thousands or in default to imprisonment to a term not less than one year but not exceeding three years or to both^{lvi}.

The law also criminalize for any person from entering I the game reserve with the weapon without the permit duly sought and obtained from the director and upon conviction in the violation of this provision it provide for the punishment of fine not exceeding two hundred thousand or to imprisonment for terms not exceeding three years or both^{lvii}

The Legislation also provides and creates an offence for negligent or neglect or willfully, for the person to cause bush fire or grassfire, fell, cut, burn or removes any standing tree, shrubs, grass, sapling, seeding or any part thereof in the game reserve except in accordance with the written permission of the director previously sought and obtained^{lviii}

The Act prohibit contact between domesticated and wild animal by prohibiting any form of grazing within the game reserve or wetland reserve and any person contravening this provision is liable upon conviction to fine of not less than two hundred thousand shilling or to imprisonment for term not less than three years, but not exceeding five years or both^{lix}

The Act prohibit except with the written permission of the director sought and obtained in the specific to kill, wound or moles any animal or fish in the game reserve, game controlled areas or wetland reserve, and any person who contravenes this provision are liable upon conviction if killing any animal specified in part 1 of the 1st Schedule to the Act an imprisonment for the term not less than five years but not exceeding 10 years, the court in addition impose a fine of hundred thousand shilling but not exceeding two million shilling^{lx}

Where the conviction relates to hunting, capture or killing an animal specified in part 2 of the first schedule of the Act imprisonment for the term of not less than two years but not exceeding

five years. In addition the court may impose fine not less than three hundred thousand shilling but not exceeding five thousand hundred thousand shilling^{lxi}

In the case hunting is relating to hunting or capturing animal specified in part 3 in the first schedule to the Act, Imprisonment for the term not less than one year but not exceeding three years and in addition the court may impose the fine, not less than on hundred thousand but not exceeding one million.^{lxii}

The Act also prohibit any human activities relating to the collecting sand and prospecting of minerals within the game reserve, wetland and in game controlled areas^{lxiii}

However the law makes exceptions under section 20(3) where it allows the person to prospect or mine in the game reserve of it is intending for the prospective of;

(a) oil

(b) gas or

(c) Uranium, except the environmental impact assessment has been conducted and prescription fees have been paid by the investor and in contravention of this provision and upon conviction by the court the accused shall be liable to fine of two hundred thousand shilling but not exceeding one million shilling or to imprisonment of term of six months and not exceeding two years or both.

The Act prohibit any person to deal in trophy manufacturing of any article from the trophy for sale or carry any business of trophy except with the condition dealer license^{lxiv}

The Act also prohibit for export or import any kind of trophy unless the person hold a trophy export certificate or in case of CITES listed species, a CITES permit issued by the relevant authority.^{lxv} And any person who violates this provision of law commits an offence and, upon conviction shall be liable to fine not less than twice the value of the trophy or to imprisonment for a term not less than two tears but not exceeding five years^{lxvi} and in addition the trophy exported or imported in contravention of the provision of CITES should be confiscated.

The Act also criminalize any dealing of trophy in contravention of the law for the requirement of license trophy duly obtained from the relevant authority , and any person who violate the law for being in possession of or buy, sell or otherwise deal in any manner with the government trophy;

If the conviction is relating to the animal specified in part one of the first schedule if the Act to and if the value of the trophy does not exceed one hundred thousand shilling to the imprisonment for term not less than five years, but not exceeding fifteen years or to fine not less than twice the value of the trophy or to both^{lxvii}

Where the trophy which is the subject matter of the charge or any part of such trophy is part of animal specified in part two of the first schedule of the Act, if the value of the trophy exceeding hundred thousand shilling to a fine of sum not less than ten times the value of the trophy or imprisonment for term not less than twenty years.^{lxviii}

(v) *The Natural Wealth Resources Permanent sovereign Act*^{lxix}

The natural wealth Resources and Permanent Sovereign Act provides for mechanisms for legal protection of Natural resources Wildlife animal inclusively, and vest permanent sovereignty over all natural resources to the people of the United Republic of Tanzania^{lxx}

The Government of the United Republic of Tanzania through the president as the trustee shall remain to be overseeing and custodian of the natural resources, but the ownership and control belongs to the people. In its mandate the government will have powers to make appropriate decisions on the natural resources for on behalf of the people^{lxxi}

The Act also provides that the ownership of the natural resources is inalienable in any manner^{lxxii} and any arrangement or agreement for extraction, exploitation or acquisition and use of natural resources that undermines the interest of the people shall be in contravention of Article 9(c)(i) of the United Republic of Tanzania constitution 1977.

In any arrangement of International or bilateral nature, permanent sovereignty of the people of Tanzania shall override and can be enforced in Tanzania court of law.^{lxxiii} The legislation

among other arrangements upholds the principles of permanent sovereignty and place review of the agreement touching natural resources to the national assembly^{lxxiv}

CONCLUSION

Tanzania has put in place efforts to combat wildlife crime, these endeavour include amendment and enforcement of the law against poaching, cooperation with neighbour countries, concurrent patrols and surveillance in the game protected areas, establishment of strategies to combat wildlife crime. It goes without mentioning here that the use of criminal sanctions as an effective deterrent requires various approach namely; legislation that provide effective identification and detection of crime, enforcement and investigation of crime, efficient and successfully prosecution of environmental crime, appropriate and deterrent sentence and order by the judiciary and public participation through awareness envisaged in the law and policy geared towards elimination of poaching.

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