

# **RUAHA CATHOLIC UNIVERSITY**

**(RUCU)**



## **Insufficient Legal Protection of Wildlife Conservation in Tanzania: Comparative Analysis of Tanzania and Kenya Regulations**

**A Research Submitted In Partial Fulfillment of the Requirement for the Award of the  
Bachelor of Laws Degree (LL.B) of the Ruaha Catholic University.**

By

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**342|LLB|T|2013**

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MAY 2017

## **CERTIFICATION**

The undersigned certifies that he has read and hereby recommends for acceptance by the Ruaha catholic University, a dissertation paper titled: Insufficient Legal Protection of Wildlife Conservation in Tanzania: Comparative Analysis of Tanzania and Kenya Regulations. In Partial Fulfillment of the Requirement for the Award of the Degree of Bachelor of Laws (LLB).

I certify that I have read this paper and I approve

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Supervisor

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Signed at Iringa on this.....Day of .....2017.

## **DECLARATION**

I, ABDALLAH HUSSEIN HASHIM, do hereby declare that this dissertation is my own original work and that it has not been submitted or is currently being submitted to any other University for a similar or any other degree.

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Finally, I would like to be responsible for any mistake and opinion contained in this work. Henceforth, any liability should be directed to me and not any person mentioned in this work.

## **DEDICATION**

I do hereby dedicate this research to my lovely family: my brother Engineer Abdallah Hashim Abdallah, my sister Mwanahawa Hashim Abdallah. Also to my children Hashim Abdallah, Hamud Abdallah, Hafidh Abdallah and Hawa Abdallah, My Uncles Hashim Abdallah, Hafsa Abdallah and Hanifa Abdallah, also to Salha Abdallah and Samiah Abdallah Whose care, support and encouragement to me are immense. Most importantly I would like to dedicate this work to my late Father Hashim Abdallah and my loving Mother.

## **LIST OF LEGISLATIONS**

### Domestic Laws

The college of Africa Wildlife Management Act, 1964

The Constitution of the United Republic of Tanzania 1997 (as amended from time to time)

The Environmental Management Act, 2004

The Land Act, No. 4, 1999.

The National Parks Act, [Cap 282 R.E 2002]

The Ngorongoro Conservation Areas Authority Act.

The Penal Code, Cap 16

The Serengeti Wildlife Research Institute Act, 1980.

The Village Land Act, No. 5 [Cap 114 R.E 2002]

The Wildlife Conservation Act, No. 5, 2009.

The Kenya Wildlife Conservation and Management Act, No. 47, 2013

### Regional Instruments

African Convention on Conservation of nature and natural resources Algiers, 15 September 1968

The East Africa Treaty, 2000

Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Flora and Fauna, 1994.

### International Instruments

The Convention on Biological Diversity, 1992

The convention of international Trade in endangered species of wild Fauna and Flora 1973,

The convention on the conservation of migratory species of wild animals 1979

Paris Convention to Combat Desertification, 17 June 1994

The Convention on Wetlands (Ramsar, Iran) 1971



## LIST OF CASES

*Faru Farutu Kamungu & 52 Others vs. Minister of Tourism Natural Resources & Envi &30*

*Others* [1998] Court of Appeal at Arusha, civil appeal no.53 (unreported)

*Mwinyimadi Ramadhan vs. Republic*, Criminal Appeal No. 150, High Court at Dar es Salaam.

*Ochoro Ongira vs. Republic* (1998) TLR 74

*Republic vs. Athumani Rajabu*, Criminal case no. 83 of 2007 (Unreported)

*Republic vs. Omari s/o Kindamba and others* (1960) EACA 407

*Sickman and Others vs. United States*, 184 f.2d611 [1950]

## **ABSTRACT**

The work explains the legal protection of wildlife conservation in Tanzania. It looks on the comparative analysis between Tanzania and Kenya laws which govern wildlife conservation. It based on the laws, policies and institutions involved in wildlife conservation. The work covers on the issues of how wildlife conservation protected and the weakness of the specific Legislation which govern the wildlife conservation. Also have discussed on the recommendations that can be helpful for making better conditions of the wildlife in the country. This work is divided into five chapters.

Chapter one which talks mainly on how the whole work is going to be done, it shows how the activities of wildlife conservation was in pre-colonial era, colonial era and post colonial era in the days after independency. The part also talks on different authors who has written about wildlife conservation in different aspects.

Under chapter two the work has elaborated more on history of conservation in Tanzania, as well as the short history of wildlife conservation in Kenya, and the concepts of wildlife conservation.

Chapter three of the work talks about the Legal frame of wildlife conservation, it has identified and elaborated on different laws and policies that speak about wildlife. It gives the general view on how laws, policies, conventions and regulations aim to manage wildlife resources in Tanzania

The major efforts of this work can be found under chapter four which elaborates much on the legal protection of wildlife conservation, showing the major findings in different books, laws, cases, journals and internet which were very helpful in proving hypotheses.

The last chapter of the study on conclusion and recommendations, talks in general on the outcome of the research, shows what should be done in order to resolve the existing weakness in the laws and recommends different measures to be taken by the Government, local community and other stakeholder's in order to insure success in the conservation and management of wildlife.

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background of the problem

Many of African countries before independence, the land wildlife resources and other natural resources were owned communally. This is because during that time the system of ownership were based locally<sup>1</sup>. Many human activities had a conservation effect, respecting sacred areas can create zone that form biologically diverse and all modern techniques for resources conservation which include wildlife<sup>2</sup>. The colonizers like British set aside lands in Africa in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries for hunting. The new ideas about wildlife management come with colonial rule and some species like large predators were designated as pests and their population reduces to protect colonial ranchers and farmers<sup>3</sup>.

In Europe the colonial powers decreed certain areas to have special status that protected wildlife and other type of ecosystem, there were of indigenous communities traditionally managed wild resources. People were disposed their land and wild life resources and left with no power over the all resources around. The colonial government forgot that even the wildlife outside the protected areas needed to be protected<sup>4</sup>. The colonial land labour policies changed, people environment relationship and communities become more sedentary. Communal and

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<sup>1</sup> H. Magome, *land use and wildlife conservation*, (1996), 4.

<sup>2</sup> *Supra*, note 1.

<sup>3</sup> J.Koponen, *People and production in late pre-colonial Tanzania: history and structures*, Scandinavian institute of international studies (1988).

<sup>4</sup> M. Matemba, *Colonialism and disentanglement of communities. Dept. of National parks and wildlife*, Lilongwe (1996), 10.

customary rights were weakened and increasing privatization of land, mass relocations had a twofold effect like to free the most productive lands for use by white settlers and for game parks<sup>5</sup>. Conservation during colonial rule rarely includes respecting ancestral grounds, but become associated with fines and imprisonment for hunting. In 1990's many countries in Africa were looking for more people-friendly approaches to resources and wildlife management<sup>6</sup>. In the early 21<sup>st</sup> century wildlife conservation challenges have focused on how to move beyond community management rhetoric to more genuine and meaningful involvement of local people.

Also there are some laws which govern wildlife matters during the German colonialism and the Governor during this era had issued a decree, and the first Ordinance for the German East Africa was made by Hermann Von Wissman. But also there is the commercial ivory trade. Ivory price at Tabora in western Tanzania increased ten-fold between 1886- 1888 as local elephant population became depleted and the sources of the ivory trade moved west into the Congo basin<sup>7</sup>. As a result of depletion of animal population, the German implemented regulation to control wildlife use in order to maintain resources values in terms of both recreational hunting as well as commercial product like ivory. In 1896, there is the wildlife legislation which required the license be purchased of all hunting<sup>8</sup>. But British took a more holistic legislative approach by enacting a succession of major game ordinance in 1921, 1940 and 1959, which are the Game Preservation Ordinance<sup>9</sup>, Fauna Conservation Ordinance<sup>10</sup> and Ngorongoro Conservation Ordinance<sup>11</sup>.

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<sup>5</sup> [www.oxfordbibliographies.com](http://www.oxfordbibliographies.com) (Accessed on 20<sup>th</sup> may 2016).

<sup>6</sup> *Idem*.

<sup>7</sup> *Supra*, note 1.

<sup>8</sup> Wildlife Preservation Ordinance of 1896.

<sup>9</sup> The Ordinance of 1921.

<sup>10</sup> The Ordinance of 1940

<sup>11</sup> The Ordinance of 1959



The British also was continued to develop the game reserves which was established by the Germans, and that areas defined as complete game reserves, where no hunting was allowed and Governor could prohibit or restrict entry, settlement and cultivation in the area which are reserved (game reserve). The restricted land and wildlife such as Serengeti, Ngorongoro crater, mount meru, mount Kilimanjaro and the Selous. For the purpose of protecting wildlife in Africa there was the convention for the protection of Flora and Fauna of Africa<sup>12</sup> which propagated in London 1933 mandate that colonial administrations move towards establishing National parks where wildlife would be protected. After establishment of Flora and Fauna in Africa, in 1950 the tension between wildlife and people were growing and the same time there was the independence movement in East Africa<sup>13</sup>. There are some foundation which protect the wildlife conservation, one of the foundation is African wildlife foundation (AWF) it is forty years now this foundation (AWF) conducted programs and activities it have been exclusively concerned with the protection and conservation of some of African's rarest and treasured species such as the elephant, rhinoceros and cheetah, also there are scientific study and research that has significantly contributed to greater understanding of African's extraordinary wildlife and ecosystem<sup>14</sup>.

## 1.2 Statement of the problem

The laws in Tanzania which governing the wildlife management does not insure the safety of wildlife since the large amount of wildlife is not protected well compared to Kenya. This is because the law provides many powers to the director of wildlife and also the discretionary power to the president concerning the wildlife conservation. For example there are some

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<sup>12</sup> Flora and Fauna Africa Convention, 1933.

<sup>13</sup> H. Magome, *land use and wildlife conservation*, (1996), 20.

<sup>14</sup> *A practical handbook for setting up and managing a wildlife management area in Tanzania*, African wildlife foundation, 2013.

restrictions which provided in the wildlife conservation Act for the purpose of protecting wildlife but there are circumstances in which the director of wildlife has the power to grant permission in that restriction as well as in the protected areas, the director may grant a permission for certain activities<sup>15</sup>

“A person shall not, save with the permission in writing of the Director, previously sought and obtained and in the manner specified in Writing, hunt, burn, capture, kill, wound or molest any animal or fish in Any game reserve, game controlled area or wetlands reserve. Any person who contravenes the provisions of this section or any condition attached to any authority granted under subsection (1), Commits an offence and on conviction shall be liable”,

Therefore those powers to be given to one person sometimes it lead the director to be corrupted. Unlike Kenya in which the wildlife conservation and Management Act no. 47 of 2013 it prohibited any activities involving species without a permit of the service<sup>16</sup>, and the words services it means Kenya wildlife service<sup>17</sup> as well as in the second schedule of the Act it provide for the composition of the service<sup>18</sup>, therefore in Kenya the power to grant permission is different with Tanzania because this power is not given to one person but to the service.

Also the same Act it provide for the discretionary power of the president to lift the restrictions<sup>19</sup>

“The President may, in the public interest, and by order in the Gazette; modify any of the restrictions imposed by this Part in relation to a game reserve, game controlled area or a wetlands reserve and where any such order is made; the provisions of this Part shall take effect subject to the provisions of the order”.

For example in the incidence of Kihansi Gorge toads, in which TANESCO was in the process of planning and executing a project which aim at producing hydroelectric power. It was

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<sup>15</sup> Section 19.

<sup>16</sup> Section 48(1) “A person may not carry out any activity involving a specimen of a listed species without a permit from the Service”.

<sup>17</sup> *Ibid*, Section 3 & Section 6. “Means the Kenya Wildlife Service established under section 6 of this Act”.

<sup>18</sup> *Ibid*, Section 1(1) (2) of the second schedule

<sup>19</sup> Section 29 of the Wildlife Conservation Act.

discovered that there were unique toads which are endemic to that area only in the whole world, the toads is the unique because of not only their miniature size but also because reproduce themselves like mammals-they never hatch eggs<sup>20</sup>. It is claimed that initially TANESCO in the quest to produce more electricity wanted to destroy the toad's habitat and President Jakaya Mrisho Kikwete allows TANESCO to continue to produce electricity even though there is that toads, but the world community rejected such undertaking whether the United Republic of Tanzania was a signatory and state party to the Convention on Biological Diversity (CBD) or not. In preserving the toads, some of them were flown to the Bronx Zoo in New York, USA for preserving<sup>21</sup>. The challenge here appears that, the president to have that discretion it destroys the wildlife and out of his discretion he might fail to consider the protection of wildlife like that toads.

Also the Wildlife conservation Act in Tanzania does not provide clear and sufficient penalties of the offences concerning wildlife rather than stating that "the imposed fine amount should not less than twice the value of the animal" there are various provisions which provide that statements<sup>22</sup>

“ A person shall not without the written authority of the Director previously sought and obtained, hunt, kill or wound any animal regardless of the fact that the animal is not specified in any of the Schedules to the Act. Any person who contravenes the provisions of this section commits an offence and on conviction shall be liable to a fine of an amount not less than twice the value of the animal hunted, killed or wounded or to imprisonment for a term not less than one year but not exceeding five years or to both”.

There are some offences which is specified the penalty but not sufficient<sup>23</sup>. Unlike Kenya in which the wildlife conservation and Management Act no. 47 of 2013 provide clearly the

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<sup>20</sup> <http://www.internationalrivers.org>, (Accessed on 24<sup>th</sup> December 2016).

<sup>21</sup> *Idem*

<sup>22</sup> Section 55.

<sup>23</sup> Section 26 (2) (a)

penalties as well as the penalties is sufficient<sup>24</sup>. The challenge or the problem here is that there is no clear and sufficient amount of the price of each animal in the wildlife conservation Act or any other written laws. Unlike Kenya which specify the amount of the penalties of the wildlife offences.

### 1.3 Literature Review

Many scholars have written on wildlife management. The following writers wrote on the wildlife management, but they did not give the comprehensive legal mitigation solution on the explained legal opinion. This literature review it includes text books and articles in different journals.

The first work is the Policy and Legal Issues on Wildlife management in Tanzania's Pastoral Lands: the case of Ngorongoro Conservation<sup>25</sup> by Tundu Lissu. He said that the wildlife conservation policies and laws which have been pursued over the years in Ngorongoro conservation area have not only undermined the security of land and resources tenure of Maasai pastoralists, which also threaten the future of wildlife itself. Policies and institutions for wildlife conservation dominated by old orthodoxy, they are conforming to tradition of colonial period, which separates man from his nature of environment.

Also the writer explained about land tenure conflicts that have emerged in the Ngorongoro conservation area in the assumption; the policies, laws, institutions and practice in wildlife conservation in the area<sup>26</sup>. It re-examine the impact of these conservation policies and practice on wildlife conservation. Therefore the writer (Tundu Lissu) he did not explain the limitation of the

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<sup>24</sup> Section 91.

<sup>25</sup> Law, Social Justice and Global Development (LGD), 2000-2001

<sup>26</sup> *Idem*.

power which provided by the law to the person who has the duty to protect wildlife and also he does not explain the punishment of the person who commit the offences concerning wildlife

Another writer is Majamba.H, in the Legal Aspect of the draft Guidelines for wildlife management areas<sup>27</sup>, the author analyzes the context of wildlife management areas draft guidelines and legal implication of the guidelines in terms of process of establishing wildlife management areas, this deals with laws available hence act as the base where by my legal problem, showing the insufficient of the law in protection of wildlife as well as the clear and insufficient penalties of the offences concerning wildlife.

Also in the Wildlife Corridors and Buffer Zones in Tanzania: Political Willpower and Wildlife Management in Tanzania Article by Shauri V. and Hitchcock .L, this article also is relevant, the article examine the Government policy, wildlife conservation and competing land users. Therefore the writer in this article he didn't explain about the clear and sufficient punishment of the wildlife offences as well as the director of the wildlife conservation to have the many powers concerning wildlife management in the wildlife conservation Act.

Another prominent scholar is Helen Suich and Brian child in their work analyses about evolution and innovation in wildlife conservation. They describe the evolution of state protected areas using case study from four countries including Tanzania<sup>28</sup>. They stated that, the period 1930 to 1970<sup>29</sup> was one of the energetic parks building resulting in globally important parks like Kruger, Serengeti and Tsavo.

Also Rosaleen Duffy on his book titled killing for conservation<sup>30</sup>, explain about the role of state in wildlife conservation on criticizing the weakness of Government in effective

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<sup>27</sup> USAID/EPIQ/Ministry of natural resources and tourism, wildlife division, Tanzania, April 2000.

<sup>28</sup> H.Suich & B. Child, *Evolution and Innovation in Wildlife Conservation*, Earth Scan, USA, 2009, 3.

<sup>29</sup> *Idem*.

<sup>30</sup> R. Duffy, *Killing for conservation: Wildlife Policy in Zimbabwe*, Indiana University Press, Indiana, 2000, 23.

environmental management. On his book explained that institutional arrangements are essential for the success of environmental planning but Government are not organized in a manner that is suited to effective environmental arrangement.

Another prominent scholar is Clarck Gibson on his book titled the political economy of wildlife policy in Africa<sup>31</sup>. He explains by examining the content, continuity and change of wildlife. In his work, he challenges wildlife laws in Zambia and Zimbabwe. He said that the above countries the above countries fail to stop illegal hunting because there is no effectiveness of wildlife laws on the protection of wildlife animals<sup>32</sup>. He argues that because wildlife is an important economic and politics resources in each African countries that why laws are not effective. Gibson based about effectiveness of wildlife laws only to protection of wildlife.

Also Majamba.H in the Regulating the hunting industry in Tanzania: Reflections on the Legislative, and policy making frameworks<sup>33</sup>. It is explained the historical development of hunting industry in Tanzania from pre-colonial to post-colonial era<sup>34</sup>. Also explained the issue of implementation legal instruments relating to the hunting business, also the writer point out the review of legislation and policies regulating industry, and point out some silent features and constraints in the legal policy making and institutional framework<sup>35</sup>. Therefore also the writer he didn't touch my legal problem concerning the protection of wildlife that is not sufficient and the issue of clear and sufficient penalties of the wildlife offences.

Another author is Shivji and Kapinga Maasai rights in Ngorongoro, Tanzania (1998)<sup>36</sup>. Maasai living in Ngorongoro are entitled to right including the right to property, right to

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<sup>31</sup> C. Gibson, *The political economy of wildlife policy in Africa*.

<sup>32</sup> *Idem*.

<sup>33</sup> Lawyers Environmental Action Team (LEAT), Research Report No. 4, November 2001.

<sup>34</sup> *Idem*.

<sup>35</sup> *Idem*.

<sup>36</sup> Shivji & Kapinga, *Maasai Rights in Ngorongoro, Tanzania* IIED Haki Ardhi (1998) at page 39.

move and above all the right to life, like other Tanzania citizens. In this respect, this will help the researcher and the law governing wildlife conservation in Tanzania. They also discussed the property rights of the Maasai of Ngorongoro in the right of the Constitution of the United Republic of Tanzania<sup>37</sup>. However the authors do not discuss the property rights and indigenous knowledge system as forming part and parcel of the involvement of local communities or people living in National parks in Tanzania in the issue of wildlife conservation.

Moreover, the work of Neumann, R.P and titled “The social origins of Natural resources conflicts in Arusha National parks, Tanzania”<sup>38</sup> The author examines the landscape consumption of the National parks, customary conservation and the state seizure of natural resources control, the evolution of the national parks, patterns of conflicts in the parks, and the village moral economy and the new colonialism<sup>39</sup>. The work has several shout comings such as, it has no legal point of view on wildlife management in National parks it does not reflect the role of states in transboundary natural resources management, and does not suggest participatory mechanism for the people living in National park in managing resources. Despite these few shortcomings, the researcher will intends to record his facts and finding on the subject matter.

The last interested work is that of Mchome, S.E evictions and the rights of people in conservation areas in Tanzania, 2002<sup>40</sup>. The author analyses legal rights of people living in protected or national parks areas<sup>41</sup>. However his emphasis is the government versus citizens and judicial intervention. Much needs to be investigated on the relationship between local people living in these areas and the bodies trusted to manage such areas.

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<sup>37</sup> Article 24(1) of the Constitution.

<sup>38</sup> Neumann, R.P “The social origins of natural resources conflicts in Arusha national parks”

<sup>39</sup> *Idem*.

<sup>40</sup> Mchome, S.E Evictions and the rights in conservation areas in Tanzania, 2002.

<sup>41</sup> *Idem*.

#### **1.4 Hypothesis of the problem**

- It is an assumption that, the laws which are applied in Tanzania are not sufficient enough in conservation and protection of wildlife in Tanzania compared to Kenya.

#### **1.5 Objective of the Research**

##### **1.5.1 Main objectives**

- To compare and assess the effectiveness of Tanzania and Kenya laws and policies of wildlife conservation.

##### **1.5.2 Specific objectives**

- To add literature and material source in as far as wildlife conservation
- To provide possible recommendations pertaining to improvements on rules governing the field of wildlife conservation.
- To fulfill the requirement for the award of Bachelor of laws degree offered by the Ruaha Catholic University.

#### **1.6 Significance of the research**

The study intends to help the Government to implement and improve strategies for wildlife conservation; the study examines the weakness of existing wildlife laws and recommends measures to amend them.

The study gives awareness to people living in and around to know their duties and rights in protecting wildlife species management.



Also significance is to assist those who want to acquire legal knowledge on wildlife conservation in Tanzania

## **1.7 Research methodology**

### **1.7.1 Primary data**

The researcher used primary data. The primary data which were used by the researcher includes the statutes, case laws, administrative policies and the decree from the president or Governor. The researcher used primary data due to the correctness and accuracy of information.

### **1.7.2 Secondary data**

On the other hand, the researcher used secondary data such as books, journals, internet sources and published papers. The researcher used secondary data to accomplish this research because secondary data reduce expenses in terms of travel and other maintenances such as accommodation. The secondary data made possible to obtain reliable information especially with the modern development of technology. Furthermore, secondary data saved the researcher's time and money which would have been spent by the researcher.

### **1.7.3 Secondary data collection**

The secondary data collection was furnished through library research from Ruaha Catholic University (Mkapa learning resources center) and other Universities libraries including Iringa University and Dar es Salaam universities libraries. The secondary data collection was used by the researchers so as to overcome the limitations met in attaining information through primary data.

### **1.8 Scope of the Research.**

The research covers legal matters in the United Republic of Tanzania and the Republic of Kenya. The range of the study was categorized into the following parts, these include legal or laws and specific matters in which a researcher has dealt with. Some of the laws are the wildlife conservation Act<sup>42</sup>, as well as the wildlife conservation policies and the wildlife conservation regulation of 2002. And the wildlife conservation and Management Act<sup>43</sup> of Kenya.

### **1.9 Limitation of the Research**

The researcher faced difficulties in attaining direct information from relevant institutions and authorities like the Lawyers environmental action team, during the time of conducting the research which lead to the researcher not achieving their aim of collecting data through questioner. These problems were manifested on lack of good cooperation with the officers in charge of the aforementioned institutions covered in this study. Nevertheless financial problem was among the constraints that were faced by the researcher.

But also the researcher was tried to make an arrangement with village chairman of Idodi village for the purpose of interviewing some issues concerning the wildlife matters, but the arrangement was not fulfilled. Also the ward executive officer of Mwembe-Togwa was not show the cooperation to the researcher. The desire for adopting primary data collection is to get direct information from some Institutions and authorities. Also primary data collection methods were used because they made it possible for research to acquire information from reliable sources, hence, guaranteeing the correctness and accuracy of the formation and data that were obtained.

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<sup>42</sup> Cap 283 of 2009

<sup>43</sup> No. 47 of 20013

## **CHAPTER TWO**

### **THE CONCEPTUAL AND HISTORY OF WILDLIFE CONSERVATION**

#### **2.1 Wildlife Conservation**

The wildlife Conservation history between Tanzania and Kenya are not similar, there are some areas in which Kenya protected well their wildlife conservation. In Tanzania National Environmental Policy<sup>44</sup> seek to ensure protection and Utilisation of the wildlife resources, therefore the wildlife policy in Tanzania are the continuance and establishment of protected areas. Other policies relevant to Wildlife Conservation in Tanzania include the National Policies of National Parks and National land policy<sup>45</sup>. While in Kenya the agriculture Act<sup>46</sup> and forest Act are relevant to wildlife conservation and management respectively. The forest Act<sup>47</sup> provides the legal frame work for the conservation of forests and forest products. The killing of wildlife animal in a nature reserve is prohibited. Under the agriculture Act, the minister is authorized to make preservation rules that can play a crucial role in ensuring that the wildlife on such land is conserved.

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<sup>44</sup> The Policy of 1997.

<sup>45</sup> The Policy of 1997.

<sup>46</sup> Cap 318, R.E 2012.

<sup>47</sup> Cap 385, R.E 2012.

## THE HISTORICAL DEVELOPMENT OF WILDLIFE CONSERVATION IN TANZANIA

### 2.2 Introduction

This chapter covers the historical analysis of wildlife conservation in Tanzania and Kenya. It also point out the uniqueness of wildlife and important resources that is of great value both nationally and globally, also it explain briefly the various stages in history of laws governing wildlife conservation in Tanzania and Kenya.

#### 2.2.1 Wildlife Conservation in Pre-colonial

During this era, the wildlife resources were maintained. Most of the societies in this era had in place rules, customs, rites, rituals that to some extent ensured a symbolic relationship between human kind and wild animal<sup>48</sup>. But also due to this relationship people in the ethnic groups co existed with wildlife, hunted wild animals for good and other uses such as clothing, bedding and cultural purpose<sup>49</sup>. Also during that time the traditions and cultures to the members of the community and the mechanism to enforce the rules in the community, members of various tribes were not allowed to hunt, kill or even eat meat of specified animals. Killing or eating meant of the specified animals amounts to violation customary rules or a very serious offence, usually leading to tribal punishment<sup>50</sup>. But also many of the ethnic groups, there are some animals were believed to be scared or which could only be utilized for prayers or medicinal purposes, and due

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<sup>48</sup> *A practical handbook for setting up and managing a wildlife management area in Tanzania*, African wildlife foundation, 2013, 15.

<sup>49</sup> *Ibid*, page 21.

<sup>50</sup> Regulating the hunting industry in Tanzania reflections on the Legislative, Institution and policy making frameworks: Research Report No. 4 p.p 4.

to that it shows that during that time there are some groups of local community exchanged goods including various species of wildlife animal products and trophies<sup>51</sup>.

### 2.2.2 Wildlife Conservation in the Colonial Era

Tanzania and Kenya were colonized by German and British in different time. During the German period, German colonized East Africa, and at that time it was called German East Africa<sup>52</sup>. During that time, the German administration, all land whether occupied or not were declared Crown lands and large area were declared to German settlers. The German colonial administration did not consider the essence of tribal taboos and customs. In 1886 the German East Africa enacts the first general wildlife ordinance to serve for Fauna and Flora<sup>53</sup>. In the process of passing that ordinance, the Governor by then Herman Von Wissman was said that

“..... I felt obliged to issue this ordinance in order to conserve wildlife and to avoid that many species become extinct which can be expected for not that all distant future, if the present conditions prevails..... We are obliged to think also of future generations, we should secure them a chance to find leisure, and recreation in Africa hunting in times. I am also planning to create hunting reserve in game rich areas in order that wildlife can find the refuge and recovery. In such area, hunting will be permitted only with the explicit prior permission of the imperial Government. Their establishment should also serve science, order to conserve such game species which has become rare in East Africa.....”<sup>54</sup>.

Also in 1907 the German enacted a fragment decree in order to conserve and protecting wildlife in the Serengeti and Ngorongoro areas.

In 1919 British colonized Tanganyika. During British era there are some ordinance passes in order to protect the wildlife conservation. The British viewed wildlife resources as a source of income. In 1921 the first wildlife conservation enacted which

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<sup>51</sup> *Supra*, note 31.

<sup>52</sup> *Supra*, note 1.

<sup>53</sup> Baldus.R.D, Wildlife conservation in Tanganyika under the German Colonial rule, p.p 9

<sup>54</sup> *Idem*

was the Game preservation Ordinance, and for the purpose of protecting wildlife resources the hunting and agricultural activities was prohibited in the reserve and Serengeti\_ Ngoro Ngoro area declared a closed area.

In 1940, British Government enacted the Fauna Conservation Ordinance<sup>55</sup>. The British Government enacts this Ordinance due to the adoption of international Conservation relative to the preservation of Flora and Fauna in 1936 The aim of this convention was to preserve Flora and Fauna in world through National Parks and Reserves. Due to that Convention, in 1944 the British Government declared Serengeti-Ngoro Ngoro area a National Park.

In 1959 Ngoro Ngoro Conservation area Ordinance was enacted<sup>56</sup>. The aim of this ordinance is to control entry into and residence within the Ngoro Ngoro, and later on the Ngoro Ngoro Conservation area Act repealed the Ordinance. But also there is a case which shows the use of Fauna Conservation Ordinance of 1940, the case of *R vs. Omari s/o Kindamba and others*<sup>57</sup>, In this case ten persons were convicted of hunting animals in a controlled area without a permission of a game warden previously sought and obtain contrary to Section 11 (1) (a) of the Fauna conservation Ordinance. The trial Magistrate purporting to act under Section 53 (2) of the Ordinance, ordered that the guns and bows used by the convicted persons petitioned government for the return of their shotguns and the matters was referred to this court for consideration in its jurisdiction –Section 53 (2) – it has since been amended – read as follows. “When any person is convicted of an offence against ordinance, the court may order that any animal, meat, trophy, trap, weapon, poison, vehicle or instrument in respect of which the offence has been committed shall be forfeited to the government”.

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<sup>55</sup> Cap 302.

<sup>56</sup> Cap 413.

<sup>57</sup> (1960) EACA 407.

Also there is another case in which the Ordinance of 1940 was used, in the case of *Mwinyimadi Ramadhan vs. R*<sup>58</sup>, in this case the appellant was convicted in the district court of Dar es salaam district on his pleas to account laid under Section 49 (1) of the Fauna conservation Ordinance of Government trophies, namely I, 454 1 (b) of elephants tusks and 80 1b of Rhinoceros homes, the total value of which was Tsh. 13,742. He was sentenced to fifteen months imprisonment in default, and the trophies were forfeited to government. It is contended by the public that the offence was not committed within the game reserve or controlled area, but it is argued, it was one committed in respect of animals – elephant and Rhinoceros for which the fee for a supplementary game license as specified in the 3<sup>rd</sup> schedule to the Ordinance exceeded shilling 100, and accordingly it was within the learned magistrate power to award the term of imprisonment which he did. Mr. Fraser Murray for the appellant contends that the offence was not one committed in respect of any animal within the meaning of sub-paragraph (1) so that the appellant to be punished under sub-paragraph (ii) with the result that being a first offender he was not liable to imprisonment for a term exceeding six months.

### **2.2.3 Wildlife Conservation after Independence to present.**

Tanzania got independence in 9<sup>th</sup> December of 1961<sup>59</sup>. After independence up to now days the Government of Tanzania retained most of the colonial wildlife laws, policies and Institutions. Due to that adoption of colonial laws Fauna Conservation Ordinance<sup>60</sup>, National Parks Ordinance<sup>61</sup> and Ngorongoro Conservation Areas Ordinance<sup>62</sup> becomes the Government main point of reference in matters relating to wildlife management and protection.

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<sup>58</sup> Criminal Appeal No. 150 of 1963, HC Dar es salaam. (unreported)

<sup>59</sup> [www.sahistory.org.za/dated-event/tanzania-gains-independence](http://www.sahistory.org.za/dated-event/tanzania-gains-independence) (accessed on 20th march 2017).

<sup>60</sup> The Ordinance of 1963.

<sup>61</sup> Cap 412, 1959.

<sup>62</sup> No.14, 1959.

One of the Legislative in which the Government adopts from Colonial is the Tanganyika National Parks Ordinance<sup>63</sup>.this Ordinance establish the institution which is Tanzania National Parks (TANAPA) and Serengeti become the first National Park. Due to the adoption of the African convention on the conservation of nature and natural resources, Algiers, 1968 influenced Tanzania to review its fauna Legislation and enact the new law in 1974 the Wildlife Conservation Act<sup>64</sup> which was enacted to govern the Conservation in Tanzania and this Act allows the Government to establish protected areas, and the establishment of the protected areas was also the requirement of the London convention which emphasized the need of establishment of protected areas and the need for adoption of special conservation measures. It required the creation of National parks and reserves, and by regulation of hunting and collection of species<sup>65</sup>. After independence there were only three National Parks, nine games reserves and one Conservation area (Ngoro Ngoro), Also after Independence it was the policy of the Government to continue with extension of games reserves and National Parks, but during that extensions there were lot of disputes arose.

For example in the case of *Lekengere Faru Farutu Kamungu & 52 others vs. Minister of tourism natural resources & Envi & 30 others*<sup>66</sup> , in this case Lekengere was Masai; Respondent try to evict them without compensation in reserved area and they had the right in Mkomazi game reserve as they were inherit it from their fore father they argued – evicted result-lost of cattle destruction of family and communal life, destruction of houses and the eviction was not done according to the ordinary Act. The respondent or those Masai people had not resided in the game reserve according to the game reserve of 1974. The respondent (director of game reserve) was empowered to

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<sup>63</sup> *Supra*, note 47.

<sup>64</sup> No.12 of 1974

<sup>65</sup> Mawalla, N & Opiyo. M, Some basic and conceptual problems with the Legislation relating to wildlife conservation in Tanzania, Third year compulsory research pepar 1997|1998, 11.

<sup>66</sup> [1998] Court of Appeal at Arusha, Civil Appeal No. 53 (unreported)



revoke permit of those Masai. The court of Appeal identified two types of rights to residence and to rise cattle customary tenure is applicable to all; areas where African natives reside or settled, section 14 (5) (6) (7) (8) of the village land Act and section 14 (8) of the land Act of 1999 recognizes customary tenure, in reserved area, in preserved area, in forest areas, game reserves, in National park land regulated by authority. Due to that there were many new Parks and Game reserves now days. Also seven years after Independence the Government ratified African Conservation for the Conservation of nature and natural resources.<sup>67</sup>

#### **2.2.4 The Short History of Wildlife Conservation in Kenya.**

Kenya wildlife history went hand in hand with the emergency of the British imperial rule in the 1890s<sup>68</sup>. During British era there are several laws passed. In 1896 the British East Africa protectorate by then<sup>69</sup>, the colonial government issued a declaration set up wildlife game reserves. The south game reserve (13,000 square miles) and North game reserve (13,800 square miles) were established<sup>70</sup>. In 1945 the British protectorate passed the National park ordinance<sup>71</sup>, which paved the way for the establishment of more protected area. One year after enactment of that ordinance, in 1946 Nairobi Royal Park was established. The 1945 ordinance provided the energy with which the game department drove the establishment of protected areas in Kenya. Then Aberdare Royal Park and Mount Kenya Royal Park (in which later renamed national park) were established not only for protection of wildlife but also to offer exclusive recreation to the settlers.

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<sup>67</sup> The Convention of 1968.

<sup>68</sup> [www.countriessquest.com/africa/kenya/history/british-colonization.htm](http://www.countriessquest.com/africa/kenya/history/british-colonization.htm) (Accessed on 9th may 2017).

<sup>69</sup> <https://www.britannica.com/place/British-East-Africa> (Accessed on 9th may 2017).

<sup>70</sup> Honey.M, *Ecotourism, sustainable development: who owns paradise?* , Island press, Washington Dc, 1999.

<sup>71</sup> The Ordinance of 1959.

**2.2.5 Conclusion.**

The topic above discusses the development and laws of wildlife conservation from pre-colonial are, then Colonial era and after independence period. From the study it seems that there are some improvements on the conservation of wildlife laws from colonial time up to the present, and wildlife become the state property.

## CHAPTER THREE

### THE LEGAL FRAME WORK OF THE PROTECTION OF COMMUNITY IN RELATION TO WILDLIFE DAMAGE

#### 3.0 Introduction

Both Tanzania and Kenya there are Legislations and policies which governing wildlife conservation, the following are the Legislation and policies after independence up to now. In Tanzania the main Legislations and Policies which govern wildlife conservation are follows the wildlife Conservation Act<sup>72</sup> (This Act was amended and now we have the wildlife conservation Act<sup>73</sup>), College of African wildlife management Act<sup>74</sup>, Serengeti wildlife research institute Act<sup>75</sup>, Tanzania wildlife corporation General notice of 1974, Economic and organized crimes control Act<sup>76</sup>, and the Penal Code<sup>77</sup> and other Legislation related to this research. The main policy which governs the wildlife conservation is the “National wildlife conservation policy<sup>78</sup>”. Policies are main Governments main tools for implementing development plans, strategies and Legislation. Also they set out broad instruments and procedures for implementing them. They specify and stipulate procedures and s<sup>79</sup>et criteria intend to provide guidance to those charged with

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<sup>72</sup> No. 12 of 1974

<sup>73</sup> No. 5 of 2009

<sup>74</sup> 1964 R.E 2002

<sup>75</sup> 1980 R.E 2002

<sup>76</sup> 1984 R.E 2015

<sup>77</sup> Cap 16 R.E 2002

<sup>78</sup> The Policy of 2010.

implementing and executing Government directives and plans. The strategies set out in guidelines and then transformed into law. Also the policy provides different challenges, which needs the actions to be taken by the Government<sup>80</sup>. In Kenya the wildlife conservation and management Act<sup>81</sup> complements and amplifies other natural resource management Legislations that includes, the water Act<sup>82</sup>, the forest Act<sup>83</sup>, the environmental management and conservation Act<sup>84</sup> (EMCA), the wetland regulations<sup>85</sup>, the mining Act<sup>86</sup>, the tourist Act<sup>87</sup> and the fisheries Act<sup>88</sup>.

But also there is a regulation provides for the resident hunting license which allows hunting by payment of fees and following the proper procedures<sup>89</sup>. Moreover, on the issue relating to license the law does not allow hunting without license but the practice has been different as to the extent that people have been hunting without complying with the required procedures. Hunting which is insufficient to solve the existing problem. For example in the case of *Ochoro Ongira vs. Republic*<sup>90</sup>, in this case the appellant, one Ochoro Ongira, stood jointly charged as an accused person, under wildlife conservation Act of 1974, the hunting larger number of specified animals than that authorized by license, so the accused licensed to kill one Buffalo and one will

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<sup>80</sup> Section 3.1 of the Wildlife policy in Tanzania. Some of the challenges are: to conserve areas with great biological diversity which are representative of the major habitats in Tanzania, to increase foreign exchange earnings, to integrate wildlife conservation with rural development, to foster sustainable and legal use of wildlife resources, to ensure that wildlife conservation competes with other forms of land use, to enhance the recognition of the intrinsic value of wildlife to rural people, to minimize human wildlife conflict whatever they occur, to regulate wildlife related research to be of direct value to wildlife management, to build the capacity of the wildlife sector and foster professionalism, and to create enabling environment for international co operation in wildlife conservation.

<sup>81</sup> No. 47, 2013.

<sup>82</sup> Cap 372

<sup>83</sup> Cap 385

<sup>84</sup> Cap 387

<sup>85</sup> The regulation of 2009

<sup>86</sup> Cap 306

<sup>87</sup> Cap 114

<sup>88</sup> Cap 378

<sup>89</sup> The wildlife conservation (Resident hunting) Regulation, No. 229 (Cap 283) of 2011

<sup>90</sup> (1987) TLR 74.

beast however the accused killed an extract wild beast as substitute for the Buffalo, Section 31(b) (ii) of wildlife conservation Act of 1974.

### 3.1 International instruments

The Convention on Biological Diversity<sup>91</sup> was the response to the increased recognition of the importance of biological diversity and the loss of biodiversity due to human activities such as killing animal and cutting trees. So the conviction recognized that the people living around these ways must be participated in biological diversity resources and sustainable use of its components in affair and equitable sharing of the benefits<sup>92</sup>. The objectives of the convention on biological diversity the sustainable use of its components, and the fair and equitable sharing of the benefits arising from commercial and other utilization of genetic resources. The agreement covers all ecosystems, species and genetic resources<sup>93</sup>.

The convention of international Trade in endangered species of wild Fauna and Flora<sup>94</sup>, this convention was established signed in 1973, its scope extended to the hunting industry. It aims at ensuring that international trade in the specimens of wild animals and plants does not threaten their survival, and the community who living these areas should be participated, and should enjoy the natural resources<sup>95</sup>, the Government of Tanzania is the signatory of this Convention<sup>96</sup>

The convention on the conservation of migratory species of wild animals<sup>97</sup>. This convention was concluded in Bonn on 23<sup>rd</sup> June 1979. It aims at protecting migratory species. It

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<sup>91</sup> The Convention of 1992.

<sup>92</sup> *Idem*

<sup>93</sup> Patricia B. & Alan B, International Law and Environment, 2<sup>nd</sup> Ed, 2002, 559.

<sup>94</sup> The Convention of 1973.

<sup>95</sup> Article 11 of the Convention of International Trade in Endangered Species of Wild Fauna and Flora, 1973

<sup>96</sup> Ratified in 1979

<sup>97</sup> The Convention of 1979

imposes obligations on member's states to be the protectors of the migratory species of wild animals that live within or pass through their National jurisdiction boundaries<sup>98</sup>. It defines migratory species to mean the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries<sup>99</sup>. It is crystal clear that Serengeti and Kilimanjaro National Parks found in Tanzania have a considerable tract of land projecting to Kenya. Due that, there is a tendency of animals to migrate to and from the aforementioned state and some treaties and domestic laws have passed to that effect, for instance the re-establishment of the East African Community in 2000.

Paris Convention to Combat Desertification<sup>100</sup>. This Convention makes it mandatory to the member states to make such co-operations with regard to joint programmes for the sustainable management of transboundary natural resources, scientific and technical co-operation, and strengthening of relevant institutions<sup>101</sup>. The said Convention provide for regional implementation, there is annex for Africa (Annex I) stating that sub-regional action programmes shall focus on issues that are better addressed at the sub-regional level, they establish, where necessary, mechanism for the management of shared natural resources<sup>102</sup>. Such mechanism shall effectively handle transboundary problems associated with desertification or drought and shall provide support for the harmonious implementation of natural action programmes.

Priority areas for sub-regional action programmes focus on joint programmes for the sustainable management of transboundary natural resources through bilateral and multilateral

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<sup>98</sup> *Idem*.

<sup>99</sup> Article 1 of the Convention on the conservation of migratory species of wild animals, 1979.

<sup>100</sup> The Convention of 17 June 1994.

<sup>101</sup> *Ibid*, Article 4

<sup>102</sup> *Idem*.

mechanisms<sup>103</sup>. It is well settled that Tanzania entered into treaties such as re-establishment of the East African Community among other things aiming at protecting and conserving the transboundary natural resources such as plants found in Mount Kilimanjaro and Serengeti national park that spread to both countries namely Tanzania and Kenya. One of the measures is to prohibit harvesting trees for timber and other purpose<sup>104</sup>.

The Convention on Wetlands (Ramsar, Iran)<sup>105</sup>. This convention was adopted purposely to conserve the Flora and Fauna, especially waterfowl. It is clear stipulated that wetlands are areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing. Fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres<sup>106</sup>. This convention impose obligation on member states to consider its international responsibilities for the conservation, management, and wise use of migratory stocks of waterfowls (birds ecologically dependent on wetlands, both when designating entries for the list and when exercising its right to change entries in the list relating to wetlands within its territory<sup>107</sup>. Due to that, this convention also promotes the protection and conservation of waterfowl as they fall under the ambit of wildlife.

### **3.2 Regional Instruments.**

The East Africa Treaty, 2000 on the 30<sup>th</sup> day of November 1999 the Government of the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya signed a treaty re-establish the East African Community, the earlier treaty having collapsed in 1977<sup>108</sup>. The treaty deals with matters, policy and law that are intended to foster close relations between the

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<sup>103</sup> Article 11, Convention to Combat Desertification, 1994.

<sup>104</sup> *Idem*.

<sup>105</sup> The Convention of 1971.

<sup>106</sup> Article 1, Convention on wetlands, Ramsar 1971.

<sup>107</sup> *Ibid*, Article 3.

<sup>108</sup> [www.uneca.org/oria/pages/eac-east-african-community](http://www.uneca.org/oria/pages/eac-east-african-community) (Accessed on 25th April 2017)

partner states, economically, socially and politically. The treaty requires the partner states to corporate and coordinates these policies and actions for the protection and conservation of environment and natural resources and community should be participated in the conservation of wildlife resources within the states partner and take measure, to control tourism<sup>109</sup>. In case the treaty provides that the production which are available in this tourism the people or community who living in these areas should be benefit in order the wildlife resources to be sustainable and battlement for the present and future generations. Under the African Charter it is provided that all people shall freely dispose of their wealth and natural resources<sup>110</sup>. This shall be exercised in the exclusive interest of the people. In no case shall people be deprived of it. It further makes clear that, in case of spoliation, the disposed people shall have the right to the lawful recovery of its property as well as adequate compensation<sup>111</sup>.

African Convention on Conservation of nature and natural resources Algiers<sup>112</sup>. This convention impose obligations to the signatory members to adopt the measures necessary to ensure conservation, utilization, and development of soil, water, flora and fauna resources in accordance with scientific principles and due regard to the best interest of the people<sup>113</sup>. The spirit of the aforementioned convention is to ensure that natural resource, such as wild animals and their habitats are protected and conserved by particular country through enactment of municipal laws to that effect. In line with this we have the Wildlife Conservation Act<sup>114</sup>, which makes provisions for the protection, conservation, development, regulation and control of flora

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<sup>109</sup> *Idem*.

<sup>110</sup> Article 21 of the African Charter.

<sup>111</sup> The African Charter on human and people's rights of 1981.

<sup>112</sup> The Convention of 15<sup>th</sup> September 1968

<sup>113</sup> Article 2, African Convention on the conservation of nature and natural resources, 1968.

<sup>114</sup> No. 5 of 2009



and fauna product and for related matters; furthermore there are regulations and policies that have been passed to supplement that Act.

Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Flora and Fauna<sup>115</sup>. This agreement was adopted in Lusaka, Zambia on 8<sup>th</sup> September 1994. The said agreement was acceded by the following countries Republic of Congo (Brazzaville), Kenya, Uganda, Zambia, the Kingdom of Lesotho and the United Republic of Tanzania<sup>116</sup>. The republics of Ethiopia, South Africa and Kingdom of Swaziland are signatories to the agreement. Due to practical and legal challenges that were facing the national institutions mandated to fight wildlife crime, the said agreement proposed more effective measures to combat cross border illegal trade in wildlife<sup>117</sup>. One of the key recommendations made was the establishment of a task force to complement national enforcement efforts aimed at curtailing illegal trade in wild Flora and Fauna. Consequently Lusaka agreement task force (LATF) was established. LATF operates in and across member state jointly with National bureaus and other relevant National law enforcement agencies. In this regard it facilitate cooperation, collects intelligence, investigate cases, participate in arrests and supports prosecution of wildlife law offenders. The animals and plants and other species which are most adversely affected by illegal trade include chameleons.

### **3.3 Domestic Laws of Tanzania and Kenya.**

There are some laws and different provisions which covers the issues of protection of wildlife conservation and especially in case of injuries to the people by the animals around the protected areas. Both countries Tanzania and Kenya are governed by different laws for the protection of this wildlife conservation, but the main Legislation which covers the issues of Wildlife

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<sup>115</sup> The Agreement of 1994.

<sup>116</sup> *Supra*, note 30.

<sup>117</sup> *Supra*, Note 115.

Conservation is The Wildlife Conservation Act<sup>118</sup> and Kenya Wildlife Conservation and Management Act<sup>119</sup> as well as the Constitution. In this part the researcher tries to compare some provisions of the two Legislations which cover the issues of compensation to the Citizens injured by the animals around the protected areas and human wildlife conflict, as well as the provisions of the Constitutions.

Wildlife damage control is one of the major programs that the Government undertakes in addressing the human wildlife conflict. The bulk of legal mechanisms for the conservation and protection of wildlife as well as for addressing the problem of damage by wildlife are in Legislation, part viii of the Act<sup>120</sup> while these pieces of Legislation have provisions on wildlife damage, there are also other provisions which although do not directly address wildlife damage their enforcement can be Instrumental in a threatening.

The domestic Laws of the Republic of Kenya provides some provisions concerning the protection of community and natural resources in relation to Wildlife damage and in their laws, especially in the Constitution<sup>121</sup>, and the Wildlife Conservation and Management Act<sup>122</sup>, if animals injure a person or damage a person property, a person immediately report to the Kenya Wildlife Service (KWS). Call the KWS hotline 0202587435 or report to the nearest KWS office<sup>123</sup>.

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<sup>118</sup> Act No. 5 of 2009.

<sup>119</sup> Act No. 47 of 2013.

<sup>120</sup> The wildlife conservation Act of 2009, Act No. 5.

<sup>121</sup> The Constitution of the Republic of Kenya, 2010.

<sup>122</sup> Act No. 47, 2013.

<sup>123</sup> R. Kaai, B. Shah et al, *Wildlife Direct a guide to the wildlife Act of Kenya*, Nairobi 2013, 11.

### 3.3.1 Constitutional Basis

The Constitution of the United Republic of Tanzania provides for the protection of wildlife conservation, that it is the duty of every individual to protect the resources of the Country<sup>124</sup>. The wildlife resources in our country are protected by everyone so as to avoid the diminishing environmental impacts including wild animals. However environmental ethics seeks an appropriate respect for life of the wild animals so as to avoid unnecessary killing wounding animals and to avoid any suffering animal<sup>125</sup>, indeed the Government made an emphasizes on protection of natural resources in Tanzania though the problem still continue<sup>126</sup>, also through the constitution tries to protect the economy of the country by protecting their natural resources<sup>127</sup>. Although the constitution of the United Republic of Tanzania has no express provisions on wildlife conservation, but Article 27 of the constitution stands as a clause for the protection of natural resources (wildlife conservation).

The Constitution of the Republic of Kenya provides for the protection of Wildlife Conservation and natural resources in general through different Articles. Under chapter five of the Constitution which covers the issues of Land and Environment, especially (Part I), provides that land in Kenya shall be held, used and managed in manner that is equitable, efficient, productive and sustainable, and in accordance with the principle of “Sound Conservation and

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<sup>124</sup> Article 27(1) which stated that every person has the duty to protect the natural resources of United Republic, the property of the state authority, all property collectively owned by the people, and also to respect another person's property

<sup>125</sup> H. Rolston, Environmental ethics: Values in and duties of natural world, the broken circle: ecology, economics, ethics, Yale University press of 1991, <http://www.ecospherics.net/.....\RolstonEnvEth> (accessed on 22nd March 2017)

<sup>126</sup> <http://www.nipashe.tz/> 18<sup>th</sup> September 2013, 6. The news pepar provides that “Kumekua na taarifa za kila wakati kuwa nyara za serikali zinakamatwa katika maeneo mbali mbali pia zikiwa katika hatua zakusafirishwa” (Accessed on 15<sup>th</sup> February 2017)

<sup>127</sup> Article 27 (2), which stated that “All persons shall be by law required to safeguard state and communal property, to combat all forms of misappropriation and wastage and to run the economy of the nation assiduously, with the attitude of people who are master s of their fate of their own nation”.

protection of ecologically sensitive areas”<sup>128</sup>. But also the Constitution gave power to the National Land Commission, to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities<sup>129</sup>. Part II of the same Chapter Supra, which covers the issues of Environment and Natural Resources, generally provides for the obligations in respect of the environment, the state has the following obligations. To ensure the sustainable exploitation, utilization, management and Conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits<sup>130</sup>, also protect and enhance intellectual property in and indigenous knowledge of biodiversity and the genetic resources of the communities<sup>131</sup>, also encourage public participation in the management, protection and conservation of the environment<sup>132</sup>, protect genetic resources and biological diversity<sup>133</sup>, and lastly utilize the environment and natural resources for the benefit of the people of Kenya<sup>134</sup>. But also it is the duty of every Kenyan to protect and conserve the environment<sup>135</sup>.

In these two Constitutions, it shows Tanzania Constitution is weak, because there is no specific provision or other provisions which backup the protections of the wildlife conservation but rather it provide for the general provision which covers the protection of natural resources.

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<sup>128</sup> Article (60) (1) (e).

<sup>129</sup> Article 67 (2) (d).

<sup>130</sup> Article 69 (1) (a).

<sup>131</sup> Article 69 (1) (c).

<sup>132</sup> Article 69 (1) (d).

<sup>133</sup> Article 69 (1) (e).

<sup>134</sup> Article 69 (1) (h).

<sup>135</sup> Article 69 (2), it provides that “Every person has a duty to cooperate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources”.

### **3.3.2 Provisions for Destruction of Wild Animals in Defence of Human Life and Property.**

Another way in which the law addresses the problem of wildlife damage is by expressly recognizing people's right to attack the animals in defence of one self, ones property or any other person. The provisions of laws permit people to attack and even kill wild animals in defence of human life, crops. Livestock and property. This is called self defence

Self defence is defined by the Black's law dictionary as "the use of force to protect oneself, one's family or ones property from real or threatened attack" Allen refers to it as private defence and define it as " the use of force to oneself, ones property or other from attack <sup>136</sup>. The right of people to attack wild animal in defence of human life and property is under section 30 of the National Parks Act<sup>137</sup>, but section 73<sup>138</sup>, provides only for defence of life and not property.

From the above provisions also the Act requires that a person killing an animal in defence of life shall immediately remove from such animal any skin, Ivory, Horn, Tooth or any other Trophy, report the facts and the circumstances of such killing to the nearest officer, hand over to such officer any trophy removed from such animal, which trophy shall be the property of the Government and where required by such officer, show him the damage caused and place of such killing, same to section 30 of the National Parks Act.

The laws make it an offence for any person fails to comply with any lawful directive, commits an offence on conviction shall be liable to fine or imprisonment. Laws expressly permit person to kill wild animals in defence of life or defence of life or property but research for this duty.

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<sup>136</sup> H.C Black, Black Law Dictionary, 7<sup>th</sup> Ed, 1999, 1364.

<sup>137</sup> M.J Allen, *Text book on criminal laws*, Oxford University, United Kingdom, 2001, 195.

<sup>138</sup> The wildlife conservation Act, No.5 of 2009.

The Kenya Wildlife Conservation and management Act (WCMA), does not provide the room for the self defence, but due to the principle of self defence in criminal cases then a person can also apply this defence. But if animals injure a person or damage a person property, a person immediately report to the Kenya Wildlife Service (KWS). Call the KWS hotline 0202587435 or report to the nearest KWS office<sup>139</sup>. Also the law requires that in case a private person kills an animal in their private land, that person within 48 hours after the event to report the circumstances of such killing and deliver the trophies of such animal to the nearest wildlife officer or police station. Also the law does not provide for the killing of a problem animal in a protected area, if an animal is dangerous, KWS officer can remove or where absolutely necessary, kill it. Also it is illegal to kill a problem animal using poison, pitfalls, or snares<sup>140</sup>.

Therefore the Kenya Legislation prohibited for a person to kill an animal by using poison, but Tanzania law is silent on that. But in the issue of the person to defend himself to the dangerous animals the law allows any person to defend himself but should be defend by using reasonable force. So simply the principle of self defence shall apply. But also it is provided that the compensation will not be paid if the victim or owner of the Livestock, crops or property failed to take reasonable measures to protect themselves or property as compatible with the ecosystem management plan for the era<sup>141</sup>.

### **3.3.3 Provisions on Compensation for Wildlife Damage**

Wildlife Conservation Act (WCA) provides for payment of consolation to victim of wildlife damage or their next kin in the case of death section 71<sup>142</sup> provide that, the minister may, in the public interest and after consultation with the minister responsible for finance, make regulations

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<sup>139</sup> *Supra*, note 99.

<sup>140</sup> *Idem*.

<sup>141</sup> *Ibid*, Section 25 (5)

<sup>142</sup> *Supra*, note 50.

specifying the amount of money to be paid as a consolation to a person or groups of persons who have suffered loss of life, livestock, crops or injury caused by dangerous animals.

The Act is only provide for consolation and not compensation, which means since consolation is taken as moral support it's enough to victims of wildlife damage as it was stated by the deputy minister for tourism "the Government had never any plans to compensating people who lose their crops because of wild animals, but because it cares, it has included small compensation amount for those affected". Honorable Amosi Gabriel Makalla in 2011 during parliament session questions and answers claimed that compensation is inadequate to the victims of wild animals attack. Also on may 14<sup>th</sup> 2013 several elephants were reportedly moved into residential area in Karatu district, attacked people and destroyed crops in farms<sup>143</sup>. Also in Southern Tanzania (Kilolo) one women (Agnes) her three-acre farm was completely destroyed by elephants<sup>144</sup>

In Kenya an individual can claims compensation for loss of life or injury or damage to property caused by a range of wildlife. If an animal injure a person or damage the property of a person that person must report to the Kenya Wildlife Service (KWS)<sup>145</sup>, The KWS will submit the claim to the County Conservation committee<sup>146</sup>, which shall review the claim and award compensation according to the regulations. But also the wildlife species for which compensation may be paid when they cause damage includes Elephants, lion, leopards, Rhino, hyena, crocodile, cheetah, buffalo, hippo, zebra, shark, eland, stonefish, wildebeest, whale, wild dog, stingray, snake, and wild pig. Section 77<sup>147</sup>, specifically provides for the problem animals, where

<sup>143</sup> [www.newsmb.com/ph/2017/02/04/150-stray-elephants-storm-villages-distroy-crops-in-tanzania](http://www.newsmb.com/ph/2017/02/04/150-stray-elephants-storm-villages-distroy-crops-in-tanzania) (Accessed on 2nd April 2017).

<sup>144</sup> [www.castweek.com/3924-Kilolo-elephants-attacks-give-hard-time-to-Tanzania-farmers.htm](http://www.castweek.com/3924-Kilolo-elephants-attacks-give-hard-time-to-Tanzania-farmers.htm) (Accessed on 19<sup>th</sup> January 2017).

<sup>145</sup> Section 25 (4) of the Wildlife Conservation and Management Act, No 47, 2013

<sup>146</sup> *Idem*.

<sup>147</sup> Wildlife conservation and management Act, No. 47, of 2013.

it necessary an authorized officer with the consent of the owner or occupier of the private land go onto any land to destroy any animal which has been deemed a problem animal. But if the animal is dangerous and it has been previously wounded or injured, the authorized officer does not need the consent of the owner or occupier to enter into the land for the intention of killing it..

Therefore the Government of Tanzania under wildlife conservation Act section 71 tries to escape liability by being silent on issue of compensation. Law does not make it mandatory for the Government through the minister responsible to enforce that amount as sympathy. There is no good reason as to why the Government is hesitating to compensate the losses caused by dangerous wildlife. In Kenya the law provides clearly that an individual can claim compensation and if proved that he or she injured, should be compensated. Also goes further by stating the amount compensated. In case of death, a person it will be paid Kenya shilling (Ksh) 5 million, Injury causing permanent disability it will be paid Ksh 3 million<sup>148</sup>. If a person crops, property or Livestock are damaged or destroyed by wildlife and dissatisfied with the compensation award by either the county committee or KWS, he or she can file an appeal within 30 days of being notified of the decision to the National Environment Tribunal. If also are still dissatisfied, he or she can file a second appeal to the environment and land Court<sup>149</sup>.

### **3.3.4 Provisions seeking to control such animals.**

These provisions give power to wildlife authorities to take measures to control harmful wildlife. They mainly comprise provisions with clauses regarding abatement and control measures such as responsibility to confine wild animals and the shooting of problem animals. WCA and NPA give express permission to wildlife authorities to destroy problem animals.

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<sup>148</sup> *Ibid*, Section 25 (3) (a) (b).

<sup>149</sup> R. Kaai, B. Shah et al, *Wildlife Direct a guide to the wildlife Act of Kenya*, Nairobi 2013, 14.



As already observed in this work, WCA designate some animals as “game animals” and “protected animals” respectively and prohibit the hunting and capture of those categories of animals except with permit from relevant wildlife authority. In deed most of the animals listed in these two categories are also those known to cause damage to people, livestock, crops, infrastructure and physical property and are essentially dangerous animals, for instance the elephant, Rhinoceros, hyena, crocodile, lion and hippopotamus. Apart from these two categories, the fourth schedule of WCA. Introduce category of wild animals namely dangerous animals although the Act does not define what a dangerous animals.

The Act makes the wounding of dangerous animals an offence punishable by imprisonment and fine. This meant to prevent human provoking such animals. In accordance with the law, a person who in any circumstances wounds an animal should make every effort to kill it and where the person fails to kill or recover the animal, he or she should report the facts to the nearest office, section 30 (2) of NAP and section 72.

In Kenya a person can be compensated in case injured by the following animals (Elephant, Lion, Leopard, Rhino, Hyena, Crocodile, Cheetah, Buffalo, Venomous Snake, Hippo, Shark, Stone fish, Whale, Stingray, Wild dog, and Wild pig<sup>150</sup>. But also it will be compensated in case of crop, Livestock and property damage destroyed by the following animals (species), Elephant, Lion, Leopard, Rhino, Hyena, Crocodile, Cheetah, Buffalo, Hippo, Zebra, Eland, Wildebeest, Wild dog, and snake<sup>151</sup>, and no compensation will be paid for losses caused by primates such as baboons or velvet Monkeys<sup>152</sup>.

Therefore the Tanzania Legislation which covers the matters of wildlife, much provide the provisions which protect animals and by providing the dangerous animals, but Kenya law

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<sup>150</sup> Section 25 (1), read together with Third Schedule, of the Wildlife Conservation and Management Act.

<sup>151</sup> *Idem*.

<sup>152</sup> *Supra*, note 72.

provide and insist that a person should be compensated, and also categorized the animals in case a person injured can be compensated

### **3.5 Conclusion**

Generally, in this chapter discuss the legal frame work (domestic laws and Conventions) of the two countries (Tanzania and Kenya), and due to that it shows that Tanzania signed and ratified many Conventions and Agreement internationally and in Regional. But in domestic laws and especially in the Constitution there is no specific provisions which provides for the protection of Wildlife Conservation but rather it provide for the general provision which covers the issues of the protection of natural resources, compares to Kenya which provides for more than one provisions which covers the issues of the protection of Wildlife protection.

## CHAPTER FOUR

### THE LEGAL PROTECTION OF WILDLIFE CONSERVATION IN TANZANIA

#### 4.1 Introduction.

This is the main chapter of the research which answers the legal problem of the research. In this chapter discusses on how the wildlife conservation is not legally protected well in Tanzania compares to other East African Countries like Kenya. Under the wildlife conservation Act of 2009, limits some areas which are protected by provided in the Act<sup>153</sup>. Wildlife animals living in natural conditions are considered to be public property belonging to people collectively with the state being vested with the power to protect and manage the resources on their behalf and for their benefits<sup>154</sup>, and due to the State (Government) given power to protect natural resources, then the public trust doctrine comes. Public Trust Doctrine means “The principle that certain natural resources are preserved for public use, and that the Government owns and must protect and maintain these resources for the public’s use. For example, under this doctrine, the Government holds title to all submerged land under navigable water. Thus, any use or sale of

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<sup>153</sup> Section 3(1) of the wildlife conservation Act of 2009. Defines Conservation areas to mean: a game reserve, a game controlled area, a corridor area, migratory route, buffer zone and dispersal area, a wildlife management area, a national park, the Ngoro Ngoro conservation area, a conservation area, a marine reserve and forest reserve. But also in the same section provides the Core protected areas which are a national park, game reserve, wetlands reserve, and the Ngoro Ngoro conservation area

<sup>154</sup> J. Shaw, *introduction of wildlife law*, Mc Grawhill book co, New York 1985, 19.

such land must be in the public interest”<sup>155</sup>. There is a case which tries to explain the duty of the Government has to protect wildlife and not to own it (wildlife), the case of *Sickman and others vs. United States*<sup>156</sup>. But also the Tanzania Government in one of its policy at independence showed her commitment to wildlife conservation<sup>157</sup>

#### **4.2 The shortcomings of the wildlife conservation regulation in Tanzania**

The law gave much power to the director of wildlife and the president discretionary power, so due to the power given by the law it lead to the one person (Director or President) not to protect well in case he or she believe in a certain side, like the issue of khansi in which the president by their own discretion was decide the Tanesco to generate electricity in the area of unique toads (species). This is the weakness of the law, compares to Kenya in which the law

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<sup>155</sup> <http://www.law.cornell.edu/wex/public-trust-doctrine> (Accessed on 15th may 2017).

<sup>156</sup> 184 f. 2d 611 [1950]. The court of appeals for 7<sup>th</sup> circuit upheld a holding by the District court that, while the Government has the duty to protect wildlife, it does not own wildlife and therefore cannot be liable for damage caused by wild animals or birds. In this case the plaintiff (Charles Sickman) and others brought action against the US Government to recover damages for the destruction of their crops by migratory fowl. The plaintiffs in their submissions had argued that liability arose from the fact that wildlife was the property of Government. The trial court dismissed the claim, and on Appeal by the plaintiffs was subsequently dismissed by the appellate court. While the court in this case ruled that the state does not own wildlife it did not say who own it.

<sup>157</sup> Mwalimu J.K Nyerere, 1961 as quoted in the wildlife policy of Tanzania (revised 2009), he stated “The survival of our wildlife is a matter of our grave concern to all of us in Africa. These wild creatures amid the wild places they inhabit are not only important as wonder and inspiration but are an integral part of our natural resources and of our wildlife we solemnly declare that we will do everything in our power to make sure that our children’s grandchildren will be able to enjoy this rich and precious inheritance. The conservation of wildlife and wild places calls for specialist knowledge, trained man power and money , and we look to other nation to cooperate with us in this important task the success or failure of which not effects the continent of Africa but the rest of the world as well”

governing wildlife conservation in Kenya<sup>158</sup>, gave power the Kenya wildlife service (KWS), and this service it include more than one person<sup>159</sup>, in deciding a matter concerning wildlife, and some of the functions of this Kenya wildlife service<sup>160</sup> are; to conserve and manage National parks, wildlife conservation areas and sanctuaries, to provide security for wildlife visitors in National parks and wildlife conservation area, develop mechanism for benefit sharing with communities living in wildlife areas, and to advise the cabinet department on matters pertaining to wildlife policy, strategy and Legislation.

Also even though Tanzania is a signatory and state party of many international convention concerning the protection of wildlife conservation and ratified those international convention but Tanzania is not yet incorporate those international instruments in her wildlife conservation law, for example one of the international convention in which Tanzania is a signatory and state party is the convention on biological diversity<sup>161</sup> (CBD). This is also one of the weaknesses.

Another weakness of the law is that there is no coordination and harmonization of the protection wildlife conservation in the natural resources laws, like the village land Act. Those laws do not provide any provisions that coordinate different environmental sectors in the country. The Act poses much power to the department of wildlife and less considers other environmental related department such as land use and planning, forestry, fisheries, water related departments and other environmental related department. Therefore in order to make this law effective, there is a need to set provisions in each environment related laws, which stipulated the requirement of coordination. But in Kenya among the issue which imposed in their wildlife conservation and management Act of 2013 is the recognition of wildlife conservation as a form

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<sup>158</sup> Section 6(1) of the wildlife conservation and management Act, 2013, No. 47

<sup>159</sup> *Ibid*, paragraph 1 (2) of the second schedule.

<sup>160</sup> *Ibid*, section 7.

<sup>161</sup> The United Nations, Convention on Biological Diversity, 1992.

of land use, increment of the compensation limits for human wildlife conflict, prescription of a structure for the establishment of a community conservancies a proposal for a benefit sharing structure for communities surrounding state and non-state protected areas<sup>162</sup>. But also the wildlife conservation and management Act<sup>163</sup>, it provide for the laws in which it apply also in matters of protection and conservation of wildlife, it includes the environmental law and Water Act.

The law (wildlife conservation Act) it protect the wild animal found in those conservation areas. Therefore the law does not protect those wild animals outside the conservation areas. Also there is no provision that talk about the protection of those species outside protected areas, and due to this, the species founded in Khansi does not recognizes, which lead the toads in Khansi to be destroyed. This is also the weakness of the law in protection of wildlife conservation (WC).

Another issue is that need clear provisions in the law, is the right of the people or villagers who lives in game controlled areas or villagers who live surround the wildlife conservation. For example Maswa game controlled areas<sup>164</sup>, the people who reside in this game are discouraged from using and conserving wildlife resources. But also some of the provisions in this law do not give power to the people who reside the controlled areas to protect those natural resources. The law shall provide specifically or give power to the villagers or people who live around the controlled areas for the purpose of protection those areas, like the Constitution of the United Republic Of Tanzania of 1977 as amended from time to time require, it give duty to individuals to protect natural resources<sup>165</sup>.

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<sup>162</sup> R.Kaai, B.Shah et al, *A guide to the wildlife Act of Kenya (WCMA 2013)*, Wildlife Direct.

<sup>163</sup> Part VI of the Act.

<sup>164</sup> [www.friedkinfund.org/where/maswa](http://www.friedkinfund.org/where/maswa) (Accessed on 17th march 2017).

<sup>165</sup> Article 27(1) which stated that “every person has the duty to protect the natural resources of United Republic, the property of the state authority, all property collectively owned by the people, and also to respect another person’s property”.

Another problem is that wildlife conservation favors foreigners. This was stated by the members of parliament in the National Assembly during the meeting which was for repealing the wildlife conservation Act of 1974. Member of Parliament argued that it will cause problem to people and the contrary if enacted<sup>166</sup> but still up to this Act of 2009 the foreigners are favored as tourist other than local people. Some of the Members who argued are Liwale MP Hassan Kingwalila, Bariadi MP John Momose Cheyo, Vunjo MP Aloyce Kimaro and special seat MP Halima Mdee. However the minister of Natural resources and tourism by that time Shamsa Mwangunga defended the bill by saying it was ment to overcome challenges such as conflicts involving wildlife conservation area and inhabited areas<sup>167</sup>.

Also there is a problem in the offences concerning the wildlife matters such as the Penalties and imprisonments that are given to offenders of the laws are Light and inadequate to deter others. For example section 53 (1) (b) (iii) (dd) of the wildlife conservation Act<sup>168</sup>. The provision of the law requires that, the hunters who wounding an animal to pay fine twice to the value of the animal wounded as punishment for such offence, this punishment is inadequate to eradicate the problem of illegal hunting<sup>169</sup>.however the provision of wildlife conservation Act which provide the punishment determined by the laws relating with wounding an animal's not effectives sanction on particular crimes. In the case of *Republic vs. Athumani Rajabu*<sup>170</sup>, that the accused on that 19 September 2007 at about 03:30 hours at mbulizaga village within the District of Pangani in Tanga region was found unlawful possession 4 hippopotamus the property of the Government,

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<sup>166</sup> The guardian news pepar ISSN 0856\_ 5422 issue no. 4426 of Tuesday February 3<sup>rd</sup>, 2009.

<sup>167</sup> Shemweta D.T.K & Kideghesho J.R, *Human-wildlife conflict in Tanzania: what research and extension could offer to conflict resolution*.

<sup>168</sup> Stated that "In the case where the conviction related to the wounding an animal in the cause of capturing it to a fine of not less than twice the value of the animal wounded or to imprisonment of not less than five months but not exceeding twelve months".

<sup>169</sup> N.Zero, DSL, Animal Rights: Law relating to animal right info. [http:// www.Animalinfo.50megs.com/customs.html](http://www.Animalinfo.50megs.com/customs.html). ( Accessed on 19<sup>th</sup> March 2017)

<sup>170</sup> (2007), criminal case no. 83 (unreported)

the accused was ant-poaching who poach wild animals at Saadan National Park. In the District court of Pangani by H.R Mzonge, held that, from the evaluation of the above evidence the court is satisfied, therefore the accused was sentenced to twelve (12) months imprisonment. In Kenya one of the reason of enacting the new wildlife conservation and management of 2013 is that, the new law impose the highest penalties on the continent and if not in the world to those who decimate and threaten wildlife in Kenya, especially the endangered species<sup>171</sup>

Another problems associate with the existing Legislation, which are institutional problems. The laws have set different types of institutions manage wildlife. Each of these Institutions manages wildlife in different ways and responsibilities. Consequently, there is overlapping in wildlife management. In addition the Serengeti wildlife research Institute is weakened as an Institution because neither for the other Institutions mandates them to do their own research nor does prohibit it, the same happens to college of African wildlife, as it is not able to fulfill its mandate to teach African wildlife managers. In addition to the above, the current sector policies and Legislation do not give adequate attention to the need for essential public awareness of conservation and utilization.

Lastly, there is another serious problem with the Legislation is that most of the people are not aware of them; this causes a grave problem to the people<sup>172</sup>. Therefore the Government should educate their citizen concerning the protection of Wildlife and the non-governmental organization also they have the duty to educate people concerning that protection of wildlife conservation and there should be published many articles so as everybody can read and understand them. In Kenya before the enactment of their wildlife conservation and management Act 2013, there is several Non-governmental organizations and private institutions explain and

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<sup>171</sup> Supra, note 55.

<sup>172</sup> [www.journals.sagepub.com/doi/full/10.1177/194008291200500209](http://www.journals.sagepub.com/doi/full/10.1177/194008291200500209), (Accessed on 23<sup>rd</sup> April 2017)



provides service and guide in order the Kenya public to undertake new law, in which demonstrates ways in which the public can actively participate in protecting their wildlife<sup>173</sup>. But also there is an organization in Kenya called “Wildlife Direct”, this is an organization that is committed to leadership in conservation policy and Legislative reform in Kenya.

### **4.3 Conclusion.**

Generally, in this chapter deals with the issue of legal protection in wildlife conservation. There are some problems or weakness in which the law governing wildlife conservation does not stipulate. Therefore due that it needs the parliament to amend this law by fixing gape or weakness in which lead the law not to be functioning effectively. Compares to Kenya in which within their Legislation (Wildlife conservation and management Act 2013) due to the Act impose the highest penalties, it shows that it reflects the value that the Government has placed on the Kenyan natural heritage, because the Wildlife in Kenya it occupies more than 70 percent of Kenyans land surface. The wildlife plays a major role in Kenya’s economy, it is the major tourist attraction, and it provides more than 300,000 jobs in Kenya. All these are economic benefits to Kenya. The aim of the Kenya wildlife conservation and management Act 2013 is to create a fair and just relationship between people and wildlife by ensuring that there are opportunities for people to benefit from wildlife without threatening eco-system and habitants. The law defines roles, responsibilities, and offences and penalties for violations.

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<sup>173</sup> The message from the first Lady of the Republic of Kenya (Margaret Kenyatta) before the enactment of their Legislation of wildlife Conservation “the time has come for Kenyans to take the lead in matters of protecting our National heritage and pride. It is therefore commendable and a great step forward that Kenya has now a new that more comprehensively protects our wildlife (the wildlife conservation and management Act). I am delighted to endorse this guide book. I invite Kenyan not only join hands to protect our wildlife but also understand the new law as it concerns them in relation to wildlife”.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATION**

#### **5.1 Conclusion**

The extraction of this study has attempted to assess the Tanzania wildlife conservation laws with reflection to the protection of wildlife species. The study further traced the back ground of the wildlife conservation Act in Tanzania.

The examination has shown that internal conflict between of wildlife conservation Act and other laws of different sector has lead to a great extent of wildlife conservation problems which causing the wildlife and their habitats.

The Citizens are not aware of the issue of wildlife protection and conservation in general. It can also benefited that while existing wildlife and institution in Tanzania have at some extent Regulated management of wildlife, still more efforts must be done as there are many problems which are in need of more attention and amendment must be made for the well being of our wild species.

In Kenya have created Kenya wildlife society whose mandate is dealing with ant poaching and manage wild issues almost autonomous from the Government ministry to which it attached. The society has succeeded in ramping out the poaching activities and associated protection of wildlife species. Tanzania Government has to use this as an example and apply it in our country as report shows that the society is doing well in Kenya in protection of wildlife and their habitats

Also there is the problem of the lack of funds and lack of equipment which faces the members who deals with the protection of wildlife. Due to those lacks it lead to the members not

to run to their work effectively and makes them to have low morale. Low morale on the part of the law enforcement personnel often lead to dishonesty which makes the issue of conservation of wildlife become even tougher

It is undisputed fact that Tanzania is one of the leaders in wildlife conservation in independent Africa. However the trends in certain animal's population such as the elephants, Rhino and cheetah which falls down as time goes on seem to point to the contrary. Apart from those poaching activities which are done has seriously disrupted breeding patterns in some herds because gunmen pick of elephants with big tusk typically the older ones and more sexually active males. Hence if nothing serious is done Tanzania could lose a number of species within a few decades and the Government could be forced to surrender some important protected areas or its portions.

Tanzania ratified different international wildlife conservation instrument concerning protection and conservation of wildlife still they are not incorporated in the National laws. As a result, Tanzania cannot be held liable on the violation of the provisions of that regional and international wildlife conservation instruments. This effect will continue to give room for Tanzania to continue violation the provisions of those instruments. Also the study has pointed the conformity of domestic laws to the regional and international instruments.

## **5.2 Recommendation.**

The Government it has the duty to educate their citizens about the protection of the wildlife conservation, especially to citizens surrounding the national parks, game reserve and other conservation areas. This is because people are not aware concerning the wildlife conservation, so the Government should educate their people through public lecturers, seminars, social network as well as in the Media about the protection of wildlife conservation by stating the importance of

this wildlife conservation. Also the leaders of the Government should insist the protection of wildlife conservation in their different public meeting as well as the leaders should fulfill their responsibility and duties in order for the people in the Country to know the importance of the protection of natural resources (wildlife conservation).

Also some of the provisions in the law governing wildlife conservation should be amended<sup>174</sup>, because it gives too much discretion power to the Director as well as the President. The good example of this, Is the issue of Khansi in which I have already stated in chapter one and chapter two.

Another issue is the lack of awareness of the people about wildlife conservation in Tanzania. Most of the citizens in Tanzania do not know about wildlife conservation. Due to that lack of awareness it lead to the people not to protect the wildlife conservation, the good example In Ngoro Ngoro creater in which the law specifically include this as the one of the wildlife conservation in Tanzania, there are some groups of people (Maasai) who enter into the creater for grazing of their animals, so due to that it lead to the conservation areas not to be protected well, because the animals interfere the special areas for the protection of conservation.

Also the punishment of the offence or fine in which the person who commits the offence concerning wildlife conservation is very small (weak) compares to Kenya and sometimes the criminals win the case due to the lack of evidence, So the researcher recommending to the wildlife officers of National parks, Game reserve and other protected areas to use or cope with science and technology especially in detection and arresting the criminal. In this regard therefore, it is hereby proposed that they should use sophisticated cameras in detection process. By doing this it will help to build up the prosecution evidence and ensure that, the suspect cannot be left without punishment or reward for their wrong doing. But also the Parliament should amend the

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<sup>174</sup> Section 29 & section 30 of the wildlife conservation Act.

Act (Wildlife Conservation Act) by providing the punishment or fine of the offence concerning wildlife conservation which is very great and due to that it fear to the other persons to commits that kind of offence. So Tanzania has to learn a lot since Kenya has made some advancement in the area of wildlife management. The recent heavy punishment imposed by Kenya Government makes people even not to think about involving themselves in the crime. However there is a need to existing overlapping mandate of legal and institutional frame work on wildlife management and conservation can be prove when we look to other Nations to cooperate with us as the Nation in this important, at look for example the law governing wildlife conservation of Kenya.

Also there is a need to empower local people who lives around the protected areas and near wildlife conservation and management of these resources, for example once a person has seen any person who attempt to practice an illegal poaching must report to the authorities concerned in order to make the resources in the conservation and thus person who report should be awarded at least certain price. Failure to empower the communities will largely contributes to the ignorance of the public in wildlife management and conservation.

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