

RUAHA CATHOLIC UNIVERSITY



FACULTY OF LAW

**Title: Examination of the Laws Governing the Protection of Wildlife Resources against
Poaching.**

**A Research Paper Submitted in Partial Fulfillment of the Requirements for the Award of
Bachelor of Laws Degree (LLB) of Ruaha Catholic University**

By

Matunda Mpogole

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Prepared Under Supervision of

Ms. Caroline Ruvuga

At The Faculty of Law

2021

CERTIFICATION

I certify that I have read and recommend for acceptance by the Ruaha Catholic University a research paper titled: **The examination of laws governs the protection of Wildlife Resources against poaching**. In partial fulfillment of the requirement for the award of Bachelor Degree of Law (L.L.B) of Ruaha Catholic University

Signed on.....day of.....2021

.....

Supervisor

Ms. Caroline Ruvuga

DECLARATION

I, Matunda Mpogole, do hereby declare that this research is my original work and where other people's textbooks and materials have been used, I have acknowledge them, and this research has not been and it is not currently been submitted in any other university.

Signature:

Matunda Mpogole

(Researcher)

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First and foremost I would like to thanks Almighty God for the strength and protection mentally and physically in all of my presence, also who gave me and my family good health which enabled me to work without stress. Also, I would like to express my deep gratitude to those who in one way or another helped me to accomplish in writing this report.

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DEDICATION

I would like to dedicate this work to my mother Hellena Mpogole, to my sister Maua, to my young sisters Waridi, Mzabibu, and Vanilla also to my young brothers Tango and Innocent, Also to my father and my friend Mr A. Bukuku, who always support and encourage me in my studies, also by their daily prayer for me.

“May almighty God bless them; and give them a long, happy and successful life”

LIST OF LEGAL INSTRUMENTS

DOMESTIC LAWS

Constitution of United Republic of Tanzania, Cap 2 of 1977

The Economic and Organized Crime Control Act, 1984, [Re. 2016],

The Environmental Management Act No 20 of 2004

The Firearms and Ammunition Control Act No.2 Of 2015

The Forest Resources Management and Conservation Act

The National Park Act [Cap.282 Re.2002]

The Wildlife Conservations Act of 2009,

INTERNATIONAL LAWS

Convention on International Trade in Endangered Species of Wild Fauna and Flora 1975,

Convention on the Conservation of Migratory Species of Wild Animals 1983

The Convention on Biological Diversity 1992

REGIONAL LAWS

The Treaty for the Establishment of the East African Community

LIST OF CASES

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Republic V Charles Mzungu No 5 of 2013

Republic v Deodatus Joseph No. 26 of 2014

Republic v Katabi Boniface @ Savery

Republic V Phares Christopher No 1 of 2013

Republic V Salehe Makwawa and another No. 16 of 2015

Republic V Salemani Ally Magaga and others No. 18 of 2015

Republic v Stivin Simba No. 07 of 2009

LIST OF ABBREVIATIONS

CAP	Chapter
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CURT	Constitution of United Republic of Tanzania
EAC	East African Community
EMA	Environmental Management Act
EOCCA	Economic and Organized Crime Control Act
FRMCA	Forest Resources Management and Conservation Act
NPA	National Park Act
STEP	Southern Tanzania Elephant Program
TANAPA	Tanzania National Park Authority
UNODC	United Nation Office on Drugs and Crime
Vs.	Versus
WCA	Wildlife Conservations Act

WCS

Wildlife

Conservation

Society

ABSTRACT

Tanzania's wildlife is an invaluable resource to the country not only in terms of national pride and cultural heritage, but also socially, ecologically and economically as it fuels a powerful tourism sector contributing to 17% of the national GDP sadly, this prized wildlife faces a worsening fate due to the strength of the illegal trade of ivory and rhino horns. Illegal poaching threatens wildlife across Africa. Historically and even today, conservationists have lobbied local and national governments to create and better manage protected lands to reduce this threat. Laws are been made to ensure that the problem of poaching comes to an end, but sadly the diversity of law and inadequate of punishment encourages the act to keep on.

Wildlife poaching has undergone qualitative changes in the age of globalization fuelled by global demand and supplied by criminal networks. To adopt this challenge a coordinated and comprehensive strategy is needed so as to reduces demand for illegal product and enhances enforcement capacities laws has to be reversed and ensure the protection of wildlife resources against poaching. Laws have to be deterrent in nature so as to ensure poaching is abolished to large extent. Also a law which deals with wildlife protections has to be updated so as to ensure that they go together with new methods used by people in poaching.

The aim of this research is to examine laws that govern wildlife resources and see whether those laws are deterrent enough to stop offenders from reoffending and discourage the public from committing the same offence. The research shows on impact of having diversity of laws which contradict one another in ensuring the protection of wildlife resources.

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CHAPTER ONE

GENERAL INTRODUCTION

Wildlife is something which man cannot construct. Once it is gone, it is gone forever. Man can rebuild a pyramid, but he can't rebuild ecology, or a giraffe. Joy Adamson¹

1.1 Introduction

Wildlife in Tanzania has been property and responsibility of the state since the colonial period. In 1974, the independent government of Tanzania passed the Wildlife Conservation Act, which re-emphasized that wildlife is State property, further restricted access to and use of wildlife by local people, and gave the government greater control over commercial uses of wildlife. Under this chapter the researcher addresses the problem, the objective of the research as well as the hypothesis of the research.

1.2 Background of the problem

Wildlife is the crucial to Tanzania economy as it sustains millions of country rural population. It is also the keystone to the tourism industry a sector that accounts about 17% of the country gross domestic product and is the source of foreign exchange. The country has sixteen national parks that cover an area of forty-two thousand square kilometer. About 40% of the country is designated as protected estate.² When we talk about the wildlife conservation we trace back from pre-colonial period, colonial era, and post-colonial era.

¹ <https://www.reuters.com> Accessed on 4 June 2021 at 6:34 PM

² www.loc.gov/la Accessed on 28 October 2020 at 11:30 AM

1.2.1 Pre-Colonial Era

During pre-colonial era wildlife resources and natural resources were owned communally. The use and access to wildlife resources was governed by a multitude and intricate social mechanism that worked contrary to tendencies and overuse.³ These social mechanisms relied upon ceremonial processes and economic systems. Many of communities of pre-colonial era flourished and thrived.⁴ During pre-colonial era members of various tribes were not allowed to hunt, kill, or even eat meat of specified animals. Killing and eating meat of certain animal amount to violation of customary rule and people were punished for it.⁵

1.2.2 Colonial Era

In 1884, Tanganyika was under the Germany administration, all property including land and wildlife were declared crown property. They did not consider any taboos and customs which serve flora and fauna. Later there is exploitation of wild animal resources like skin, and ivory, which lead to depletion of animal populations, the German implemented regulations to control wildlife use in order to maintain the resources like ivory. The first hunting Regulation was introduced into the colony's law in 1891,⁶ by 1896; comprehensive wildlife legislation required a license be purchased for all hunting carried out in the territory. Colonial regulations also banned customary hunting practices such as the use of nets, pits and snares. The result of these measures was to convert, within the first decade of colonial rule, wildlife from a locally used and customarily managed component of the natural resource base, to a resource which Europeans largely possessed exclusive legal access to.

³ F.Nelson, R.Nshala and W.Rodger, *The Evolution And Reform of Tanzanian Wildlife Management*, Arusha. 2007

⁴ M. Matemba, Colonialism and the Disentitlement of the communities, Dept. of National Park and wildlife, Malawi, (1996) pg 6

⁵ *Ibid*

⁶ H.I. Majamba, 2001. Regulating the Hunting Industry in Tanzania: Reflections on the Legislative, Institutional and Policy-making Frameworks. Lawyers' Environmental Action Team Research Report No. 4. LEAT, Dar es Salaam, Tanzania

After World War I, the British took over control of Tanganyika from the Germans as a League of Nations Protectorate. The British built upon the Germans' framework of centralizing control over wildlife by regulating utilization. However, while the German regulatory approach had been rather piecemeal, with the 1891 and 1896 legislation followed by additional regulations in 1898, 1900, 1903, 1905, 1908 and 1911; the British took a more holistic legislative approach by enacting a succession of major game ordinances in 1921, 1940 and 1951⁷. The British re-gazette game reserves established by the Germans, which now included areas defined as 'complete' game reserves where no hunting was allowed and the Governor could prohibit or restrict entry, settlement and cultivation of the land. By 1930, game reserves with varying levels of restricted land and wildlife use had been established in places such as the Serengeti, Ngorongoro Crater, Mount Meru and Mount Kilimanjaro and the Selous.⁸

1.2.3 Post- Colonial Era

Tanzania after independence in 1961 recognized the issue of wildlife protection therefore matters relating to wildlife were adopted, The Wildlife Conservation Act of 1974 (WCA) repealed the Fauna Conservation Ordinance of 1951, but was by no means a departure from the colonial wildlife management framework. The WCA, which remains in force as the main wildlife legislation continued and intensified the colonial practices of restricting local wildlife use and consolidating state authority. The WCA did not seek to reinstate traditional use rights to wildlife or enable local management and access to the resource. It provides no explicit exceptions for hunter-gatherer tribes to continue using wildlife as were made in the British wildlife laws. The WCA does provide the Director of Wildlife with discretionary authority to

⁷H.I Majamba, *Regulating the Hunting Industry in Tanzania: Reflections on the Legislative, Institutional and Policy-making Frameworks*. Lawyers' Environmental Action Team Research Report No. 4. LEAT, Dar es Salaam, Tanzania. 2001.

⁸ S.E. Mchome, *Evictions and the Rights of People in Conservation Areas in Tanzania*. Faculty of Law, University of Dar es Salaam, Dar es Salaam, Tanzania. 2002.

allocate hunting rights or licenses to an Authorized Association, which can include a local village, but this provision has rarely been used to allow rural communities access to wildlife.

Despite the fact that laws were there but the problem of poaching still existed at that time the number of animals like elephants and rhinos declined. The government realized the problem and created other laws for protection of wildlife so as to ensure protection of wildlife resources in Tanzania.

1.3 Statement of the problem

There are different laws in Tanzania which prohibit offences against wildlife resources like poaching in one way or the other, but those laws provide for different punishment whereby due to that it results in inadequate protection of wildlife resources against poaching. This happens because some of those laws provide high punishment while others low punishment, some treat all animals the same when it comes to punishment while some treat those animals differently when it comes to punishment against poaching, some discourage the society from committing the same crime and discourage offenders to reoffend while others provide punishment which does not discourage them, therefore because of that the problem of poaching never comes to an end despite there is a lot of laws, and also it results in inadequate protection of wildlife resources against poaching.

The Wildlife Conservation Act under section 47 provides penalty to any person unlawfully hunt animal which is poaching to be imprisoned for term not less than 1 year and not more than 10 years or fine of not less than 500,000 Tsh not more than 20,000,000 Tsh depends on the kind of animal involved, or the court can impose the fine of not less than twice the value of the animal hunted or killed. The National Park Act under section 16 provides for punishment to anyone who engages in poaching, which is imprisonment for not less than 3 years and not more

than 5 years or fine of not less than 20,000 Tsh and not more than 500,000 Tsh.⁹ While the Economic and Organized Crime Control Act under section 14¹⁰ provide punishment to any person who will engage in poaching to a fine of 20 million or 30 million, and if person convicted by economic offence (which includes poaching) will be imprisonment for 15 years as provided under section 60 (1).¹¹ Therefore diversity laws results to inadequate protection of wildlife resources against poaching and make the problem of poaching to never end.

Generally this study base on examination of the laws governing protection of wildlife resources against poaching, and shows how the diversity of laws has impact on protection of wildlife resources against poaching.

1.4 Literature Review

Kideghesho¹², in this chapter the author provide on the contribution of the research in combating wildlife poaching in Tanzania whereby he provide for the reasons as to why people engage in poaching and also it provide on the effects and also measures to be followed so as to combat poaching in Tanzania basing on review of existing literatures. The author provide the good idea which is useful in conserving wildlife resources as far as the community in general will be able to know what are the causes and effect of poor protection of wildlife resources through contribution of research. But this study will go further to explain on how laws have to be clear so as to avoid inadequate protection which endanger the whole practice relating to protection of wildlife resources.

⁹ Section 16 of the National Park Act Cap. 282 R.E. 2002

¹⁰ The Economic and Organized Crime Act [Cap 200. 2019]

¹¹ *ibid*

¹²J.R.Kideghesho, *The Contribution Of Research in Combating Wildlife Poaching in Tanzania, Review of Existing Literature*, Moshi Tanzania. 2019.

Sykes and Matza¹³, authors are to the opinion that people engage in poaching due to different association whereby people learn illegal hunting behavior from the family member and friends who practice such crime also the society around help the person to engage into poaching practice. In Tanzania people engage in poaching to get money, once a person see his fellow has money because of that activities it encourage him to engage. Authors has a very profitable idea whereby they explain on how other factors like money encourage people to engage in illegal hunting which endanger wildlife resources, this study will go much further and explain on how the diversity of laws that govern protection of wildlife resources against poaching it paves a way for people to engage in poaching and encourage others to engage in poaching.

Nelson, Nshala and Rodgers¹⁴, the authors in their article explain on the issue of Tanzania wildlife management, community based conservation, policy reforms, devolution and decentralization. This article is in the opinion that people in the community are supposed to be engaged in the issue of wildlife conservation in one way or the other. Also the article explains on the evolution of wildlife conservation and management laws. The article has a very fruitful idea which shows on how participation of community in protection of wildlife resource will help in conservation of wildlife resources this study will go depth and explain on how it is important to harmonize laws governing protection of wildlife resources against poaching.

Shantthakumar's,¹⁵ the author explain on the reason as to why people engage in poaching which is due to demand of wildlife resources in international market, the author also explain on the legal consequences for those who will engage to endanger animals, the author idea is very useful since it tries to explain on the consequences of engaging in poaching activities whereby in

¹³G.Sykes& D, Matza,*Technique of Neutralization a theory of Delinquency*, American Sociological Review, America. 1957.

¹⁴F.Nelson, R.Nshala and W.Rodger,*The Evolution And Reform of Tanzanian Wildlife Management*, Arusha. 2007.

¹⁵ S. Shantthakumar, *Introduction to Environment Law Wadhwa and Company Nagpur*, New Delhi- India 2007.

one way or the other it will help people to know the effect of engaging in activity which endanger wildlife resources, this study will continue and explain on how the diversity of laws result to inadequacy protection of wildlife resources against poaching.

1.5 Hypothesis

It appears that there is need to harmonize laws governing the protection of wildlife resources against poaching.

1.6 Objective of the re search

1.6.1 General Objective

The main objective of the research is examination of laws that governs the protection of wildlife resources against poaching.

1.6.2 Specific Objectives

- i. To examine whether laws that governs protection of wildlife resources are deterrent in nature.
- ii. To examine the impact of diversity and inconsistency of laws governing the protection of wildlife resources against poaching

1.7 Significance of the research

This work is important firstly because it provide to authorities and readers a precise understanding on the impact of the inconsistency of laws against poaching on protection of wildlife resources. It will help the legislators to identify the need to harmonize laws that governs protection of wildlife resources against poaching.

Secondly this study is useful to academicians, law students and students in related fields of study because it will be used as a literature review to other researchers who will conduct on the examination of laws govern protection of wildlife resources against poaching.

1.8 Research Methodology

The researcher has relied on two sources of data collection namely secondary source (Library research) and primary sources (field research). It's through this data collection; the research problem is addressed and approached.

1.8.1 Source of Data

Primary source of data¹⁶ this includes data from the field, related to protection of wildlife resources against poaching. Secondary source of data¹⁷ includes laws, case laws, guideline, and articles in the relation to protection of wildlife resources against poaching.

1.8.2 Primary Data Collection.

It is from the field research where the researcher gets primary data, during the collection of primary data number of tools have been employed, like interview and focus group discussion.

1.8.2.1 Field Research

Researcher use primary source of information, whereby during the collection of primary data researcher employ the interview method of data collection to collect data. Interview has been employed to assist researcher to get first-hand information concerning the study other than the ones in the documentary review.

¹⁶ See H. Kara, *Collection Primary data*, Policy press, 2013, 6.

¹⁷ See J. Goodwin, "SAGE Secondary Data Analysis," SAGE Amazon, 2012, 8.

The mode of interview which the researcher uses in the research is unstructured whereby it involves a face to face conversation also telephone conversation to various targeted respondents. Researcher have 30 participant whereby it involve workers from STEP (Southern Tanzania Elephant Program), WCS (Wildlife Conservation Society), Park rangers, Advocates, officers from TANAPA (Tanzania National Park) and people from the public whereby 96% of the respondent has knowledge on wildlife conservation and management. Also the large number of respondents agreed with the fact that there is need to harmonize laws governing protection of wildlife resources against poaching.

1.8.3 Secondary Data Collection.

1.8.3.1 Library Research

Under library research, researcher base on primary and secondary source of data this include Domestic laws, International laws, related to wildlife Conservation and Management include case laws, guideline, and articles in relation to wildlife conservation and management. Researcher gets information from Ruaha catholic university library (Benjamin Mkapa learning Resources Centre). Also researcher use Online Library and website which has relevant information relating to laws governing protection of wildlife resources against poaching.

1.9 Research Design

The research design is employed so as to examine laws governing protection of wildlife resources against poaching, and find out whether the diversity and inconsistency of laws has impacts on protection of wildlife resources against poaching.

1.10 Sampling and Sampling Design

In snowball sampling, one or more key individuals are identified and asked to name others who might be candidates for this specified research. Since poaching is a sensitive issue that may carry significant penalties upon arrest, respondents were selected with a snowball sampling technique that is regularly used in studies of difficult to find populations.

1.11 Scope and limitation of the study

1.11.1 Scope of the study

Due to financial constraints and time limit, the scope of this study was confined to Tanzania mainland specifically IRINGA, and focus on examination of laws that governs protection of wildlife resources against poaching in Tanzania.

1.11.2 Limitations of the Study

The researcher is encountered with some obstacles during the collection of the relevant data. Those obstacles included the following; first the lack of sufficient funds and time to meet interviewees and second the researcher faced inadequacy of response due to some of the respondents being with no knowledge of the law at all. The work was intended to have a wider coverage of interviews from experienced people like judges, magistrates and advocates. However, it was not easy to interview many of those professional people due to the fact that most of them stated that they had other commitments to attend to, and could barely have time for an interview. Nevertheless the researcher managed to achieve the completion of the research although it was not quite easy.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

Humans were once a part of the nature too. Respect your root by conservation, because conservation is life. Kedar Dhepe¹⁸

2.1 Introduction

The protection of wildlife resources against poaching is covered by number of concepts, under this chapter the researcher explains in details the concepts connected to the research, whereby it involves concept and sub concepts like wildlife, wildlife resources, poaching, trophy illegal hunting, illegal weapon, illegal animal trafficking, illegal wildlife trade, wildlife conservation, wildlife management, and Economic crime.

2.2 Wildlife

Wildlife means any wild and indigenous animals and plants, and their constituent habitants and ecosystem found on and/or in land or water as well as exotic species that have been introduced in Tanzania and established in the wild, and includes wild animals on transit, temporary in captivity or has become established in the wild.¹⁹ According to Collins English Dictionary wildlife refers to the animals and other living things that live in the wild.²⁰

Wildlife is the animals that live wild in a country. Animals include amphibians, reptiles, fish, mammals, birds, and invertebrates. Only animal's native to the Country are usually considered wildlife and domesticated animals that have become wild, or feral, are usually not

¹⁸ <https://www.reuters.com> Accessed on 4 June 2021 at 6:34 PM

¹⁹ Section 3 of Wildlife Conservation Act no 5 2009

²⁰ <https://www.collinsdictionary.com/dictionary/english/wildlife> Accessed on 09 December 2020 at 12:29 PM

included. Wildlife is the wild animals and vegetation, especially animals living in a natural undomesticated state.²¹ Wildlife traditionally refers to undomesticated animal species, but has come to include all organisms that grow or live wild in an area without being introduced by humans.²²

2.2.1 Types of Wildlife

There are several kinds of wildlife whereby they are divided into groups which are as follows; Birds, Mammals, Reptiles, Amphibians, Fish, Invertebrates, Plants and Fungi.²³

2.2.2 Importance of Wildlife

Ecological importance, wildlife helps in maintaining the balance of nature. Example the killing of carnivores leads to an increase in the number of herbivores which in turn affect the forest vegetation, thus due to lack of food in the forest animals may run away from the parks and then they come out from the forest to agriculture land and destroy our crops.²⁴

Economic importance, the wildlife can be used to earn money. Wild plant products like food, medicine, timber, fibres, etc. are of economic value and the wild animal products such as meat, medicines, hide, ivory, lac, silk, etc. are of notable economic value.²⁵

²¹<https://www.newcollegedictionary.com> Accessed on 09 December 2020 at 12:35 PM

²² M. B, Usher. Wildlife Conservation Evolution: attributes, Criteria and Values, New York: Chapman and Hall. London, (1986) Wildlife can be found in all ecosystems. deserts, forests, rainforest, plains, grassland, and other areas, including the most developed urban areas, all have distinct forms of wildlife. Wildlife comprises different groups of animal including Bird, Mammals, Reptiles, Amphibians, Fish, Invertebrates, Plants and Fungi.

²³<https://www.nwf.org/Educational-Resources/Wildlife-Guide> Accessed on 9th December 2020 at 1:10 PM

²⁴<https://www.wildlifeworld.org> Accessed on 9th December 2020 at 1:01 PM Carnivores control the growth of vegetarian animals by eating vegetarian animals. Vegetarian animals control the increase in the number of unusable vegetation by eating vegetation etc. This keeps a balance in nature and does not cause unexpected increase in the number of herbivorous animals, carnivorous animals or flora.

²⁵K. Abdalla, *wildlife resources in Tanzania benefits in the societies and economic of the country*, 2019, Arusha. "Wildlife has the great importance in economic since the certain amount of government expenditure come from tourism activities which takes place in different area, also their different types of product which come from wildlife example there some medicines which are made from many types of wild plants also many useful products like meat, medicines, and lace, silk are obtained from wildlife."<https://www.nwf.org/Educational-Resources/Wildlife-Guide> Accessed on 9th December 2020 at 1:10 PM

Investigatory importance, some wild organisms are used for scientific experiments such as to test effect of medicine. Example monkey, chimpanzee is used for scientific experiment.

Recreation, a visit to the parks and sanctuaries is an enjoyable offer for children as well as adult. Thus, wildlife is best means of leisure. And this is done through tourism activities.

Importance in agriculture, wildlife organisms are very important for modern agriculture. Importance of wildlife in agriculture field is as follows, Production of new hybrid variety using wild plants, Production of better hybrid variety of animals used for agriculture using wild animals, and new species of plants and animals can be produced by them.

2.3 Wildlife Resources

The legal definition of wildlife resources means all wild animals, wild birds, and aquatic animal life.²⁶ Wildlife resources include resources which comprise wild mammals, wild birds, fish, and all other categories of wild creatures of any kind, and all types of aquatic and land vegetation upon which such wildlife resources are dependent. Wildlife resources include all species of wild animals with their supporting habitats.²⁷

2.3.1 Things which harm wildlife resources

There several activities which endanger wildlife resources, there are natural and physical acts which endanger wildlife resources which are as follows;

- a) Natural factors like climatic change this interferes and harms wildlife resources in one way or the other.

²⁶www.lawinsider.com Accessed on 10 December 2020 at 12:43 PM

²⁷H.H.Roth and G. Merz, *Wildlife Resources a Global Account of Economic Use*, Springer Publisher, New York. 1997. Wildlife is recognized to be complex natural resources that have positive as well as negative effect in relation to human needs, wildlife includes the specific environmental features on which each species depends.

- b) Human activities, there some human activities which harm wildlife resources in one way or the other like poaching/ illegal hunting, use of illegal weapon, illegal wildlife resources trade, illegal dealing with trophies, illegal capturing of animals

2.4 Poaching

Poaching is the illegal hunting, capturing, and often killing of wild animals.²⁸ The person who engage in poaching is known as poacher, poacher usually engage in poaching because of different motives but the motives for animal poaching is the money a person can make from selling one of their “trophies,” like pelts, horns, and tusks, on the black market.²⁹ Some poach for the thrill of the hunt, especially when they capture and kill an animal that is rare. These individuals tend to keep their trophies as proof of their skill, rather than selling the trophy, no matter how valuable.³⁰

Poaching is the act of illegally hunting and capturing animal’s often endangered species.³¹ Poaching is any act that intentionally contravenes the laws and regulations established to protect wildlife and renewable resource.³² Refer to illegal shooting, trapping, or taking of

²⁸<https://www.conserve-energy-future.com/causes-effects-solutions-poaching.php> Accessed on 10 December 2020 at 1:24 PM “It has been done for a number of reasons, including claiming the land for human use, but recently, the illegal act is being done for other ridiculous motives, especially the desire for rare animal products such as ivory, fur, organs, skin, bones, or teeth”.

²⁹ *ibid*

³⁰ A. Brian, *penal sanctions on illegal hunting in Tanzania* <https://www.researchgate.com> Accessed on 10 December 2020 at 1:35 PM

³¹ <https://legaldictionary.net/animal-poaching> Accessed on 10 December 2020 at 1:30 PM. Usually, this practice leads to the killing of endangered animals, which leads to their eventual extinction. Poachers go after endangered species because the rarer the animal, the more valuable the trophy. Poachers usually kill animals for things like their horns or tusks, and then sell these items for thousands of dollars on the black market.

³² Andrew M Lemieux, ed, *Situational Prevention of Poaching New York*: Rutledge, March 5, 2014) “Poaching for illegal wildlife trading is a major threat to certain species, particularly endangered ones whose status makes them economically valuable. Such species include many large mammals like African elephants, tigers, and rhinoceros. (Traded for their tusks, skins, and horns respectively). Less well-known targets of poaching include the harvest of protected plants and animals for souvenirs, food, skins, pets, and more; because poachers tend to target threatened and endangered species, poaching causes already small populations to decline even further”

game or fish from its area of origin.³³ Illegal hunting is hunting without legal permission from whoever controls the land³⁴ illegal hunting is the same as poaching whereby one word whether poaching or illegal hunting may be used to mean the same thing but the difference is that poaching may involve alive or dead wildlife resources but illegal hunting is based on the killing of wildlife animals.³⁵ Hunting is referred to as any act directed or incidental to the killing of any animal³⁶ so if killing is not directed it is illegal hunting.

2.4.1 Why people engage in poaching (Reasons of poaching)

There are several reasons which encourage and motivate people to engage in poaching activities as follows;

Inadequacy of penalty, there are a number of laws whereby both laws impose punishments, but those kinds of punishment are not adequate enough to stop offenders from reoffending and encourage others from committing the same offence. Kind of penalty cannot be effective to deter the problem of poaching since they are too small. Penalties are not adequate enough to stop people from poaching, and because of the inadequacy of punishment people do engage in poaching, and take poaching like any other employment since they are benefitted from it, they do believe that poaching is bad but they are not scared since the punishment is not severe enough.³⁷

Inconsistency of laws, each law provides for its own punishment for the same offence. This confusion undermines the war against poaching in Tanzania. Therefore since both laws

³³<https://legal-dictionary.thefreedictionary.com/Illegal+hunting> Accessed on 15 December 2020 at 6:05 PM

³⁴<https://www.indiatoday.in> Accessed on 15 December 2020 at 5:28 PM. "Hunting is defined as the act of pursuing animals for food or for recreation. Hunting becomes illegal hunting when hunting animals when not in season and not during legal hours, hunters don't have permits and use illegal weapons, spotlights, stun guns, or are hunting from a moving vehicle, hunters are using bait which is not suitable for the animal's health.

³⁵<https://www.indiatoday.in> Accessed on 15 December 2020 at 5:28 PM.

³⁶ Wildlife conservation Act of 2009 section 3

³⁷ <https://www.researchgate.com> Accessed on 10 December 2020 at 1:35 PM

have intention to protect wildlife resources against poaching therefore it is better to harmonize laws on punishment.

High economic returns from poaching, it is believe that there is high economic return in poaching that is why people engage in it since most of animal products in black market have a very high return. This has been proved by the report of UNODC on World Wildlife Crime Report Trafficking in Protected Species where it is stated that the “annual illicit income generated from ivory and rhino horn trafficking between 2016 and 2018 was estimated at US\$400 (310 – 570) million for ivory and US\$230 (170 – 280) million for rhino horn trafficking. The largest shares of income are generated at the retail level, where rhino horn and ivory are processed and sold to end consumers.”³⁸

Household poverty and unemployment; poverty and unemployment encourage people to engage in wildlife poaching for monetary gain which help to obtain basic needs. Also wildlife crime is one form of property crime occurring in Tanzania. Numerous research findings indicate that illegal hunting in Tanzanian protected areas is pursued as a coping strategy against poverty and as an employment opportunity for a growing population of youth.³⁹

Political interference; it cause people to engage in poaching activities since most of poachers are being assured to be protected by some government officers like members of Parliament.⁴⁰ This cause to low employee morale in protection of wildlife because it appears

³⁸UNODC (United Nation Office on Drugs and Crime), World Wildlife Crime Report Trafficking in Protected Species 2020 New York.

³⁹ R. Fyumagwa, JR. Kideghesho, et al, *Road as a Treat to Serengeti Ecosystem, Conserve boil, Morogoro Tanzania*, 2013

⁴⁰J.R. Kideghesho, *Reversing the trend of wildlife crime in Tanzania: Challenges and Opportunities*, Springer, Tanzania. 2019. “Parliamentary Committee on Land, Environment and Natural Resources Report on Ant poaching Operation code-named Operation Tokomeza Ujangili (URT 2013). According to Report, some Members of Parliament (MPs) and government officials protected poachers whom they had close ties with. The Operation was prematurely terminated following allegations from politicians who decried gross violation of human rights.

that park rangers are been killed by poachers and the government is silent but when it happen that they do something the government interfere and they lose their jobs that is why they lose the morale of protecting wildlife.⁴¹

Traditional beliefs and HIV/AIDS pandemic, due to existence of traditional beliefs, people believe that some of animal organs can be used to cure HIV/ AIDS therefore they engage in poaching so as to obtain those animal organs. For example, between 2004 and 2008, mass poaching of giraffes was reported in Monduli District and the West Kilimanjaro Wildlife Corridor—striding between Arusha and Kilimanjaro National Parks following emerged belief that the brains and bone marrow of the species could treat HIVAIDS⁴² This occurs most because people have been affected by traditional believes and since they are believers of those traditions they end up engaging in activity which are prohibited, because if they were taught that a certain part of animal is medicine for disease it is possible for them to ensure that they acquire the part of that animal in which always they acquire those parties illegally.⁴³

⁴¹ J.R. Kideghesho, *Reversing the trend of wildlife crime in Tanzania: Challenges and Opportunities*, Springer, Tanzania. 2019. “Wildlife rangers are brutally being killed or wounded by poachers and trespassers who graze livestock illegally in the Reserve. Our politicians remain silent, no sympathy. When rangers are unfairly implicated with false and unfounded allegations such as raping, robbery, bribery and killings, the politicians shout and call for our dismissal from the job (A ranger in Burigi-Biharamulo Game Reserve, 2013).”

⁴² J.R. Kideghesho, *Reversing the trend of wildlife crime in Tanzania: Challenges and Opportunities*, Springer, Tanzania. 2019.

⁴³ *ibid*

2.4.2 Impact of poaching in tourism market

Poaching activity has impact in tourism market since the tourism market depends on wildlife resources therefore if wildlife resources are being poached then they will decline and due to that there will be no tourism market in the country and if the country economic depends on tourism activities that means there will be loss in economic.

Decline of number of tourist, for the tourism market to work there must be tourist from different part of the world. Tourist visits some countries for their variety of wild animals. If they go extinct or reduce in number, there would be no tourism.⁴⁴

2.4.3 Impact of poaching in the economic

Loss of government revenue, in most of countries where there is poaching the government revenue reduce because most of African countries depends on tourism as one of the activity that increase the government revenue. Poaching results to decline of animal population which later cause tourist to not come to visit, therefore if the country economy depends on tourism it will begin to crumble⁴⁵

Loss of natural resources, due to poaching the animal population is harmed therefore the whole ecosystem is affected; this means that everything from animals to plant are negatively affected. Grassland and other plants that relay on the nutrients brought by essential animals will have trouble finding enough nutrients to grow. Therefore as the result of poaching animal population decline and cause loss of natural resources.⁴⁶

⁴⁴“Causes and effects of poaching” Penn State university. Accessed from <https://www.personal> April 11,2021 at 01:51 PM

⁴⁵ *ibid*

⁴⁶ *ibid*

Unemployment, the moment animal population decline the number of tourist decline. Therefore poaching cause unemployment because those who deal with escorting tourist will not be able to do that since there will be no tourist.⁴⁷

2.4.4 How can poaching be stopped by law?

Enacting stringent anti- poaching laws that encourage poachers to halt their activities. It will become risky for anyone to indulge themselves in poaching being aware of the existing laws. For example, the law may indicate a life sentence for poachers. Otherwise, there should be extremely high bond amounts which will not give poachers an option to get away with their evil acts. Moreover, international laws should incorporate laws that ban the sale of wildlife products as illegal. It means that the world will have a standard way to deal with poaching.⁴⁸

Presence of laws which imposes high penalties it will helps to reduce poaching in Tanzania since it will prevent offenders from poaching activities and also offender will be used as an example to stop offenders from the activities. Example Botswana has enacted severe laws on poaching as a result poaching is abolished to large extent and it is presumed as one of the country in Africa which succeeds to abolish poaching.⁴⁹

2.4.5 What kind of punishment is needed?

There has to be severe punishment which has the deterrent effect so as to ensure that poaching is eliminated from the wild areas since wildlife is under a grave threat of either being slaughtered or captured alive. Ideally poaching should be stopped at the site level whereby there has to be effective control of wildlife also community participation in protection of wildlife resources against poaching, this is one of the essential deterrence. Since poaching is one of the

⁴⁷ On 10 November 2020, at 12: 00 PM up to 12:30 PM, Respondent from STEP

⁴⁸ <https://www.rifiuticampania.org> Accessed on June 27, 2021 at 03:54 PM

⁴⁹ <https://www.voanews.com> Accessed on June 27, 2021 at 05:19 PM

grave offence therefore there has to be severe punishment like life imprisonment, there should be no bail for poaching cases, and also the penalty of fines which has too be imposed has to be severe enough to stop the offenders also poachers can be subjected to death penalty as well. Example in Kenya there is a proposed bill which requires the imposition of death penalty to poachers,⁵⁰ also in Botswana they successes to abolish poaching by introducing severe punishment to poachers.⁵¹ Also the minister of Natural resources and tourism of Tanzania in one of his interview stated that if poachers are been caught they have to be killed there is no reason for them to live.

2.5 Illegal Weapon

Refer to illegal use of weapon which may be firearm, ammunition, dart- gun, missile, explosive, poisoned, bait, spear, bow, and arrow, knife, axe, hoe, pick, club, stakes, and pitfall, net, gin, trap, snare or any combination of these and any other device, method and or technology whatsoever capable of killing or capturing an animal.⁵²

2.7 Trophy

Means any animal⁵³ alive or dead, any horn⁵⁴, ivory⁵⁵, tooth, tursh bone, claw, hoof, skin, meat, hair, feather, egg, or any other portion of any animal and includes a manufactured trophy.⁵⁶ The trophy is the animal or part of the animal kept, and usually displayed, to represent

⁵⁰ <https://www.wwf.panda.org> Accessed on 27 June 2021 at 11:40 PM

⁵¹ *ibid*

⁵² A.Brian, *penal sanctions on illegal hunting in Tanzania*. <https://www.researchgate.com> Accessed on 15 December 2020 at 7:35 PM

⁵³ Animal means any kind of vertebrate and invertebrate animal and the young and egg thereof, other than domestic animals

⁵⁴ "horn" includes rhinoceros horn

⁵⁵ "ivory" means elephant tusk

⁵⁶ Section 3 of Wildlife Conservation Act no 5 2009.

the success of the hunt. Generally, only parts of the animal are kept as a trophy (usually the head, skin, horns or antlers) and the carcass itself is used for food or donated to the local community.⁵⁷

2.7.1 Trophy Dealer

Means any person who is licensed to capture, buy, sell, keep, transport, cut, carve, polish, clean, mount, preserve or process trophies for commercial purpose.⁵⁸

2.7.2 Government Trophy

Government Trophies there is no actual definition of what Government Trophy means in the Act. However, in section 85⁵⁹ of the Act provides for what amount to government trophies.

Subject to the provisions of subsection (2) and any regulation made under this Act, the following shall be Government trophies and shall remain to be the property of the government; (a) any animal which has been killed or captured without a license, permit, written permission or written authority granted under this Act, and any part of any such animal; (b) Any animal which is found dead, and any part of any such animal; (c) Any animal which has been killed in defense of life or property and any part of any such animal; (d) Any trophy which is in the possession of any person who is unable to satisfy the Director that he lawfully acquired the same; (e) Any trophy in respect of which a breach of the provisions of this Act has been committed; (f) Any trophy which the Minister may, by order in the Gazette, declare to be Government trophy.

⁵⁷ F. kapama, *Journal of African Elephant*<https://www.indiatoday.in> Accessed on 15 December 2020 at 5:18 PM.

⁵⁸ Section 3 of Wildlife Conservation Act no 5 2009, a person who sell, buys, transfer, transports, accepts, exports or import any trophy commits an offences and shall be liable on conviction to a fine not less than twice value of the trophy or to imprisonment for a not less than two years and not exceeding five years or both, section 84(1).

⁵⁹ Wildlife Conservation Act of 2009

2. 8 Illegal animal trafficking

Wildlife trafficking involves the illegal gathering, transportation, and distribution of animals and their derivatives. This can be done either internationally or domestically. Illegal wildlife trafficking is a strong and rapidly expanding demand for a variety of products around the world: bush meat, ingredients for traditional medicine; exotic pets; jewelry, trinkets, and accessories such as chess set; furs for uses ranging from coats to traditional costumes; and trophies.⁶⁰

2.9 Illegal wildlife trade

Refer to the commerce of products that are derived from non-domestic animal or plants usually extracted from their natural environment. it can involve the trade of living or dead animals, tissues such as skins, bones or meat or other products.⁶¹ The trade contributes to increase in white collars crimes.⁶² Thousands of wildlife species are threaten by illegal trade because the business harm the animal population⁶³ illegal trade means the selling or exchange of wildlife plants and animals or products derived from them like medicine. What makes wildlife illegal trade are inadequate of laws that prohibit wildlife trading, transferring of illegal market to legal market, and huge money as return.⁶⁴

⁶⁰ G. Ege, A. Scholtenhardt and C. Schwarzenegger, *wildlife trafficking, the illicit trade in wildlife, animal parts, and derivatives*, Sui generis, Vol 9. 2020.

⁶¹ World wildlife fund, *the illegal wildlife trade across countries*, www.worldwildlife.org Accessed on 22 December 2020 at 21:48 PM

⁶² P. Daan, *The illegal wildlife Trade: inside the world of poachers, smugglers and traders*, Amazon .com, London. 2016

⁶³ <https://www.fws.gov/internationaltrade> Accessed on 31 January 2021 at 04:07 PM

⁶⁴ A. Ashwini, *Fight against the illegal wildlife trade: an attempt to save the endangered*, TUI publisher. 2018

2.10 Wildlife Conservation

Refers to the practice of protecting wild species and their habitats in order to maintain healthy wildlife species or populations and to restore, protect or enhance natural ecosystem.⁶⁵ Wildlife conservation is an activity in which humans make conscious efforts to protect plants and other animal species and their habitats. Conservation means to prevent waste of a resource. Wildlife conservation can be defined as the practice of protecting animal species and their habitats. This includes protecting both the animals and their habitat. Major threats to wildlife include habitat destruction/degradation/fragmentation, overexploitation, poaching, pollution and climate change.⁶⁶ Conservation includes the protection of species from extinction, maintaining and restoring habitats, preventing deforestation and enhancing ecosystems and protecting biological diversity.⁶⁷

2.11 Wildlife Management

Wildlife management is the management process influencing interactions among and between wildlife, its habitats and people to achieve predefined impacts.⁶⁸

2.12 Economic Crime

Economic crime, also known as financial crime, refers to illegal acts committed by an individual or a group of individuals to obtain a financial or professional advantage. The principal motive in such crimes is economic gain.⁶⁹ Economic crimes are crimes committed against property involving the unlawful conversion of the ownership of property of another or

⁶⁵A.Brian, penal sanctions on illegal hunting in Tanzania <https://www.researchgate.com> Accessed on 15 December 2020 at 6:35 PM “By conserving wildlife, we're ensuring that future generations can enjoy our natural world and the incredible species that live within it. To help protect wildlife, it's important to understand how species interact within their ecosystems, and how they're affected by environmental and human influences.”

⁶⁶A. McCleery, C.E. Moorman, et al. *Urban Wildlife Conservation Theory and Practice*, Springer, London. 2014
⁶⁷<https://www.theleap.co.uk/what-is-conservation/> Accessed on 22 December 2020 at 12:59 PM

⁶⁸G. Logsdon, *Wildlife in the Garden: How to live in harmony with deer, raccoons, rabbits, crows, and other pesky creatures*. Expanded Edition, Indiana University Press, Bloomington, IN. 1999. .

⁶⁹H.H.Roth and G. Merz, *Wildlife Resources a Global Account of Economic Use*, Springer Publisher, New York. 1997. <https://www.europol.europa.eu/crime-areas-and-trends/crime> Accessed on 15 December 2020 at 6:34 PM

government for their own benefits. Economic crimes are recognized as financial crime or white collar crimes.⁷⁰

2.12.1 Why poaching is considered as economic crime?

Poaching is considered as the economic crime since it has impact on the economy of the country since there is a certain amount of revenue comes from wildlife activities like tourism. Also poaching is considered as the economic crime because it involves the issue of interference of the government trophies. Also it is economic crime because it is considered as the crime which involves money laundering.⁷¹

2.13 Conclusion

Generally, the chapter provided the conceptual framework of the study basing on the general understanding of what is wildlife, wildlife resources, what are important of wildlife resources. Also the chapter provide for the important of protect the wildlife resources against poaching. And the chapter shows the meaning of wildlife conservation and wildlife management.

⁷⁰S.Dinitz economic crime from criminology persiperspective, Lexington Books, United State of America.1977.
<https://www.ncjrs.gov.com> accessed on 31 January 2021 at 04:49 PM

⁷¹S.Dinitz economic crime from criminology persiperspective, Lexington Books, United State of America.1977.
<https://www.ncjrs.gov.com> accessed on 31 January 2021 at 04:49 PM

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK

“Those who protect and save other animals lead the way in protecting and saving the humanity and health. One can measure the greatness and the moral progress of a Nation by looking at how it treats its animals.” Kedar Dhepe.⁷²

3.1 Introduction

The legal framework on wildlife conservation in Tanzania consists of number of laws whereby it includes International Instrument, The Regional Instruments and Domestic Instruments and also Institutions on protection of wildlife resources. Those legislations provides for a number of penalties and convictions in relation to poaching activities. These legislations may have different penalties and convictions compared to the principal legislation which is Wildlife Conservations Act of 2009. Under this chapter the researcher discusses on the legal and institutional framework on protection of wildlife resources which includes International Instrument, The Regional Instruments and Domestic Instruments and also Institutions on protection of wildlife resources.

3.2 International Legal Instruments on Protection of wildlife resources

International instrument on protection of wildlife resources which Tanzania is the member includes Convention on International Trade in Endangered Species of Wild Fauna and

⁷² <https://www.reuters.com> Accessed on 4 June 2021 at 6:26 PM

Flora 1975, Convention on the Conservation of Migratory Species of Wild Animals 1983, The Convention on Biological Diversity,

3.2.1 Convention on International Trade in Endangered Species of Wild Fauna and Flora 1975 (CITES)

This is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.⁷³ CITES is an international agreement to which States and regional economic integration organizations adhere voluntarily. The genesis of CITES is traceable in the early 1960's when uncontrolled trade in endangered wild animal species and their products was at its peak. The International Union for the Conservation of Nature (IUCN) summoned governments in 1963 with a view to deliberating measures to control and regulate the export, transit and importation of rare and endangered wild animal species. The special conference adopted the CITES which was signed in Washington on 3rd March 1973 and entered into force on 1st July 1975.

The Convention basically focused at preventing international trade from threatening the survival of wild fauna and flora for both present and future generations. Although CITES is legally binding on the Parties in other words they have to implement the Convention it does not take the place of national laws rather it provides a framework to be respected by each Party, which has to adopt its own domestic legislation to ensure that CITES is implemented at the national level.⁷⁴ Tanzania became a signatory to the CITES in 1979.

⁷³<https://cites.org/eng/disc/what.php> Accessed on 22 December 2020 at 4:55 PM

⁷⁴<https://cites.org/eng/disc/what.php> Accessed on 22 December 2020 at 5:00 PM

Under Section 64⁷⁵ re-echoes the CITES as it prohibits the general importation of trophies, although the Director of Wildlife may, however, authorize importation of trophies. Also section 63 (1)⁷⁶ prohibit the export of any trophy unless there is issued a valid trophy certificate authorizing such export. Sub-section 2 of this provision empowers the Director of Wildlife to issue trophy export certificates to any person/s entitled to export any trophy. The provision provides that the certificate be in a prescribed form. Indeed, the forms are prescribed by regulations made in pursuance of this provision. The regulations require compliance with the CITES. This convention has connection to the study since it ensures that international trade in specimens of wild animals and plants does not threaten their survival.

3.2.2 Convention on the Conservation of Migratory Species of Wild Animals 1983 (CCMS)

The CMS or the Bonn Convention aims to conserve global, marine and avian migratory species throughout their range. Parties to the CCMS works together to conserve migratory species⁷⁷ and their habitats by providing severe punishment to those who intends to harm the most endangered migratory species. The aim of CCMS is to protect species of wildlife which migrate outside national borders. Tanzania becomes the member in 1999. CCMS provide that the Parties have to acknowledge the need to take action to avoid any migratory species becoming endangered.⁷⁸ It has connection to work since it provides for protection of wild animals especially migratory species.

⁷⁵ Wildlife Conservation Act No 5 of 2009

⁷⁶ *ibid*

⁷⁷ Article I(1)(a) of the Convention on the Conservation of Migratory Species of Wild Animals 1983 "migratory species means the entire population or any geographically separate part of the population of any species or lower taxon of animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries.

⁷⁸ Article II (2) of the Convention on the Conservation of Migratory Species of Wild Animals 1983

3.2.3 The Convention on Biological Diversity 1992(CBD)

The CBD was adopted on 22 May 1992 and entered into force on 29 December 1993. CBD is a multilateral treaty which aims to promote conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising from genetic resources. The convention recognize that contracting states has to ensure that it provide for law which ensure that animals are been protected from killing.

3.3 Regional Instrument on Protection of Wildlife resources

Under this part regional instrument on protection of wildlife resources which Tanzania is a member will be considered. Such instrument includes the Treaty for the Establishment of the East African Community.

3.3.1The Treaty for the Establishment of the East African Community

The East African Community comprise with six partner state, which are Tanzania, Kenya, Uganda, Rwanda, Burundi, and South Sudan together they form a regional intergovernmental organization.⁷⁹ The treaty requires member states to cooperate and coordinate in protection and conservation of environmental and natural resources and the community should participate in the conservation of wildlife resources and other tourist sites in the community.⁸⁰

Also partner states shall co-ordinate efforts in controlling and monitoring encroachment and poaching activities.⁸¹ This law is connected to the study because it gives responsibility to

⁷⁹ Article 3(1) of the treaty for the Establishment of the East African Community

⁸⁰ Article 116 of the treaty for the Establishment of the East African Community

⁸¹ Article 116 (c) of the treaty for the Establishment of the East African Community

state members on protection of wildlife resources and encourages harmonization of policies for conservation of wildlife within and outside protected areas.⁸²

3.4 Domestic Instruments on Protection of Wildlife resources

There various domestic laws which provides on protection of wildlife resources which include the constitution of United Republic of Tanzania of 1977, The Wildlife Conservations Act of 2009, the Economic and Organized Crime Control Act, 1984, [RE. 2016], the National Park Act [Cap.282 RE.2002] and the Firearms and Ammunition Control Act No.2 of 2015, Forest Resources Management and Conservation Act, Environmental management Act No 20 of 2004, game meat selling Regulations of 2020.

3.4.1 The Constitution of United Republic of Tanzania of 1977 (CURT)

The constitution is the mother law in Tanzania provides some rights and duties to the citizens and authorities. CURT provides that everyone has the duty to protect 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.⁸³ Wildlife is also resources which has to be protected, and everyone has the duty to ensure that he protect natural resources in which wildlife is the part of it. This law is connected to protection of wildlife resources since it gives duty to people towards protection of natural resources.

3.4.2 The Wildlife Conservation Act of CAP 5 2009 (WCA)

The wildlife law provides for the punishment of anyone who engages in poaching, possession of poaching weapons (illegal weapon), and trophies without license such as wild

⁸² Article 116 (a) of the treaty for the Establishment of the East African Community

⁸³ Article 27(1) of the Constitution of United Republic of Tanzania of 1977 (R. E of 2002)

meat, as provided under Section 84⁸⁴ which provide that any person who sell (bush meat trade), buy, export, import, any trophy in contravention of any of the provisions of this part or CITES requirement, commits an offences and will be liable for imprisonment for a term of not less than two years but not exceeding five years.

Also Section 65 any person who possess tools for poaching commits an offence and shall be liable on conviction to a fine of an amount not less than 1 million shilling but not exceeding 2 million shilling or to imprisonment for term of not less than one year but not exceeding three years. Also section 47 of the Act provide that if any person unlawful hunt animal under part II of first schedule⁸⁵ of the Act will be imprisonment for term not less than 2 years and not more than 5 years and for part III⁸⁶ will be imprisoned for not less than 1 year and not more than 3 years and for those unscheduled animal under section 55 of the Act the person will be convicted for imprisonment of term not less than 1 year and not more than 5 years, and for other animals who did not follow under schedule two there the punishment for poaching of those animals is not enough example if you poach animals under schedule four⁸⁷ punishment is 500,000 not more than one million or imprisonment for two years. The Act also provides that the court can imposes the fine of not less than twice the value of the animal hunted or killed.

3.4.3 The Economic and Organized crime control Act [CAP 200 RE. 2016] (EOCCA)

This law has been enacted by the parliament of United Republic of Tanzania to regulate all economic offences in Tanzania. The Act prohibit people to engage in poaching activities under section 13 a person is guilty of an offence under this paragraph who (a) unlawfully

⁸⁴The Wildlife Conservation Act Cap 5 2009

⁸⁵Animal under first schedule part II are African Clawless Otter, Spotted necked Otter, Hippopotamus, Roan Antelope, Waterbuck-Common, Waterbuck-Defassa, Nile Crocodile, Ostrich, Topi, Sable Antelope, Eland, Greater kudu.

⁸⁶ All other animals who are not mention on first schedule and second schedule.

⁸⁷ Animals like Coke Hartebeest, buffalo, Topi, Warthog, Nyasa Wildebeests, puku, lion, zebra, impala and pigeons.

captures, hunts or traps of animals in a game reserve or game-controlled area; (b) unlawfully deals in trophies or in Government trophies; (c) is found in unlawful possession of weapons in certain circumstances; (d) is found in unlawful possession of a trophy, contrary to sections 13, 14, 17, 38, Part VI, sections 70 and 78 of the Wildlife Conservation Act, or contrary to section 16 of the National Parks Act.

EOCCA under section 14⁸⁸ provide punishment for any person who will engage in poaching this is fine of 20 million or 30 million also if person convicted by economic offence (which also include poaching) will be imprisonment for 15 years or as provided under section 60 (1).⁸⁹ This law has connection to the study since it provides punishment to any person who will engage in wildlife offence.

3.4.4 The National Parks Act, [Cap.282 RE.2002]

The NPA prohibits hunting within a national park of any animal or fish, with the exception of “domestic animals,” without a permit. The penalty for violation of this ban depends on the animal involved: whereby if the animals fall under part I of the first schedule⁹⁰ of WCA then the penalty is imprisonment for not less than three years and not more than five years and a possible additional penalty of up to 100,000 TSH in fines⁹¹.

If follows under part II of the first schedule⁹² then the penalty will be imprisonment from three- to five-years and a possible additional penalty of up to 100,000TZS in fines⁹³. If falls

⁸⁸ The Economic and Organized Crime Control Act (Cap 200) of 2019.

⁸⁹ *Supra*, note 70

⁹⁰ The Wildlife Conservation Act No 5 of 2009

⁹¹ Section 16 (2) (a) of the National Park Act, [Cap.282 RE. 2002]

⁹² The Wildlife Conservation Act no 5 of 2009

⁹³ Section 16 (2) (b) of the National Park Act, [Cap.282 RE. 2002]

under part III of the first schedule⁹⁴ then the penalty will be imprisonment from one to three years and possible additional fines of up to 20,000TZS.⁹⁵ This law is connected to the work since it prohibit hunting of animal without license (poaching) which is the most of thing which in danger wildlife resources.

3.4.5 Forest Resources Management and Conservation Act (FRMCA) 2002

The FRMCA prohibits hunting or fishing in a Forest Reserve and any other restricted area without a license. It also bans use of certain methods of hunting, including setting a “trap, snare or net” or using or possessing “any gun, poison or explosive substance.” Violation of these bans is an offense punishable by at least six months’ imprisonment and/or a fine in the amount of at least 50,000 TSH.⁹⁶

The FRMCA also requires the Minister to issue regulations extending further protection for certain wild animals that are “endangered or threatened with extinction.” Animals on this list can only be hunted with a special permit issued for the purpose of scientific research, conservation, culling, or control; or in defense of a human life. Violation of any such regulations is an offense for which the FRMCA stipulates a minimum prison term of six months and/or a fine in the amount of at least 50,000 TSH.⁹⁷

This law is connected to my research since it provides on protection of wildlife resources especially those in forest Reserve and any restricted area, so the law in one way or the other it protects wildlife resources against things which may harm them like poaching/ illegal hunting

⁹⁴ The Wildlife Conservation Act no 5 of 2009

⁹⁵ Section 16(2) (c) of National Park Act, [Cap.282 RE.2002]

⁹⁶ Section 89 of the Forest Resources Management and Conservation Act 2002

⁹⁷ *Ibid* Section 92

through provision of punishment for anyone who will engage in hunting without license (poaching/illegal hunting).

3.4.6 The Environmental Management Act No 20 of 2004

This act is established by the parliament of United Republic of Tanzania so use to govern all matter in relation to environmental management, EMA provide on environmental protection which also include wildlife resources protection Section 65(2) provides that wildlife resources shall be managed in accordance with the provisions of the legislation relating to wildlife matter.⁹⁸ This law has connection to the study since it provide on wildlife management.

3.4.7 The Firearms and Ammunition Control Act No.2 of 2015

The Act was enacted for the general control and management of firearms and ammunition and for licensing, possession, importation, exportation transit, dealing in, brokering and tracing of firearms and ammunition, to repeal and replace Arms and Ammunition Act and to provide for other related matters.

This legislation provides for the unlawful possession of firearms unless he has permission to possess so, or is authorized to do so by any written law. Whosoever found guilty of an offence will be imprisoned for a term of five year.⁹⁹ It also provides for the penalties for those who will be found unlawful possessing of firearms and ammunition, sentence them to 10 years imprisonment or a fine not exceeding 15 million shillings or both.¹⁰⁰ This law has connection to the study since it penalizes and incriminates a person who will be found with unlawful possession of firearm (including weapon used in illegal hunting).

⁹⁸ Section 65 (2) of the Environmental Management Act No 20 of 2004

⁹⁹ Section 20 of Firearms and Ammunition Control Act of 2015

¹⁰⁰ Section 60 of Firearms and Ammunition Control Act of 2015

3.5 Institutional framework on protection of wildlife resources

This part will consist of the institutional framework which based on the protection of wildlife resource especially those institutions which has jurisdiction in Tanzania and are established in Tanzania to ensure wildlife protection. This part consists the institution like TANAPA (Tanzania National Parks Authority)

3.5.1 Tanzania National Parks Authority (TANAPA)

TANAPA is the responsible for the management of Tanzania's national parks, TANAPA is Parastatal Corporation and all its income is reinvested into the organization. Its governed by number of instruments including the National Parks Act, Chapter 282 of the 2002 and the Wildlife Conservation Act No. 5 of 2009. TANAPA manages the nation's 22 National parks which covers approximately 15% of the land area and has the mandate to conserve and manage the wildlife in Tanzania, and to enforce the related laws and regulation in this industry, it manage the biodiversity of the country, protecting and conserving the flora and fauna.

The organization does not have the mandate over the game reserves such as the selous game reserve which is managed by the Tanzanian wildlife division and the Ngorongoro conservation area managed by the Ngorongoro conservation authority. The Arusha manifesto gave the initial foundation for the expansion of the Tanzania National park authority and an increase in protected areas in the country, as of December 2015 parks, reserves and conservation areas cover about 14% percent of the land. Currently TANAPA is governed by the National Parks ordinance chapter 282 of the 2002 and manages 22 National parks.

3.6 Conclusion

The chapter dealt with legal and institutional framework on protection of wildlife resources. The issue of protection of wildlife resources is subjected to the International, Regional

and Domestic legal institution. International, Regional and Domestic has to work together to ensure that wildlife resources are protected. And for wildlife resources to be protected those legal institution has to impose strong liability to anyone who will engage in activity which harm wildlife resources like poaching.

CHAPTER FOUR

THE EXAMINATION OF LAWS ON PROTECTION OF WILDLIFE RESOURCES AGAINST POACHING

“All creature deserving a life free from fear, the truth is that we will never save the wildlife by killing it” Steve Irwin¹⁰¹

4.1 Introduction

Chapter four presents the findings and analysis of laws govern protection of wildlife resources against poaching. The base on identifying on whether laws governing protection of wildlife resources against poaching are deterrence in nature, challenges facing laws governing protection of wildlife resources against poaching, and the impact of diversity of laws governing protection of wildlife resources against poaching. The discussion bases on response to the objective as well as the hypothesis of the research.

4.2 Determination on how diversity of laws and inadequacy of laws that governs wildlife resource against poaching encourage people to engage in poaching.

Presence of diversity of laws that govern protection of wildlife resources and presence of inadequate punishments, results to inadequacy protection of wildlife resources against poaching. Since the diversity laws that govern protection of wildlife resources creates a room for poachers to commit poaching especially when some of those laws provides for punishment which are inadequate. If there are many laws on protection of wildlife resources that means those laws should not contradict one another so as to ensure effective protection of wildlife resources also

¹⁰¹ <https://www.reuters.com> Accessed on 4 June 2021 at 6:28 PM

punishment must be adequate and not contradict one another because if it appears that one of those law pave a way for poachers to engage in poaching (through inadequate penalty) that means the issue of poaching will never end.¹⁰²

Therefore the diversity of laws governing protection of wildlife resources against poaching it gives room for poachers to commit poaching activity especially when the law which prevails on handling the matter in hand has inadequate punishment.¹⁰³

Despite of having many laws that govern protection of wildlife resources against poaching but still the problem of poaching does not come to an end, as shown in a report written by Sourx Xinhua concerning 12 elephants who are been killed in Tanzania by poacher at the end of 2020.¹⁰⁴ One of the reasons for poaching to not end is diversity and inconsistency of laws with inadequate punishments which in one way or the other pave a way for people to engage in poaching. Example the National Park Act provides for a penalty under section 16(2)¹⁰⁵ which is fine of not exceeding 500,000/= Tsh or imprisonment for a term less than 1 year and not more than 7 years, this kind of punishment will not discourage people from reoffending and if it appear that the law prevail in handling the matter concerning poaching in National park offenders to the case will not stop from committing the same offence and due to that poaching will never end.¹⁰⁶

Therefore if the law used in determining the punishment used is that with a low punishment, it will encourage people to engage in poaching and it will not stop others from reoffending, that is why until today there poaching cases in the society despite of having many

¹⁰² On 12 November 2020, at 03:15 PM up to 03:45, Respondent from Mahenge law firm.

¹⁰³ On 24 April 2021, at 11:10 AM up to 11:35 AM, Respondent from Mahenge law firm.

¹⁰⁴ Sourx Xinhua, "12 elephants killed in Tanzania by poachers". www.sourxxinhuanet.com accessed on 23 April 2021 at 2:56 PM

¹⁰⁵ National Park Act Cap. 282 R.E 2002

¹⁰⁶ On 22 April 2021, at 12: 00 PM up to 11:50 AM, Respondent from STEP

laws as proved by the report written by Sourx Xinhua concerning 12 elephants who are been killed in Tanzania by poacher at the end of 2020.¹⁰⁷ One of the respondents stated that it better to have one law which is sufficient and adequate than having number of laws which result to inadequate protection of wildlife resource.¹⁰⁸

Generally large number of respondents believed that diversity of laws that governs protection of wildlife resources against poaching as well as the inadequate punishment influences insufficient protection of wildlife resources against poaching. People do engage in poaching because the laws itself pave a way for them to do so.¹⁰⁹ Therefore as the hypothesis provide it is proved that there is a need to harmonize laws that protect wildlife resources against poaching for better protection of wildlife resources.

4.3 Deterrence of laws governing wildlife resources

Salmond considered deterrent aspects in criminal justice to be the most important for control of crime¹¹⁰. In relation to criminal offences deterrence of punishment means that the punishment will deter people from committing crime and reduce the probability and level of offending in the society.¹¹¹ Criminal deterrence theory has two possible applications the first is that punishments imposed on individual offenders will deter or prevent that particular offender from committing further crime; the second is that, public knowledge that certain offences will be punished has a generalized deterrent effect which prevents others from committing the crimes.¹¹² Also there two aspect of punishments which may have an impact on deterrence, the first being

¹⁰⁷Sourx Xinhua, “12 elephants killed in Tanzania by poachers”. www.sourxxinhuanet.com accessed on 23 April 2021 at 2:56 PM

¹⁰⁸ On 12 November 2020, at 03:15 PM up to 03:45, Respondent from Mahenge law firm.

¹⁰⁹ On 10 November 2020, at 12: 00 PM up to 12:30 PM, Respondent from STEP

¹¹⁰ J. Salmonds, *Jurisprudence*, Universal Law Publishing Co Pvt, Delhi, Fetzgerald 12th Edition 2008

¹¹¹ V.Wright, *Deterrence in Criminal Justice*, The Sentencing Project, 2010

¹¹² V.Wright, *Deterrence in Criminal Justice: Evaluating certainty vs severity of punishment*, The Sentencing Project, 2017

the *certainty of punishment*, by increasing the likelihood of apprehension and punishment, this may have a deterrent effect. The second related to the *severity of punishment*; how severe the punishment is for a particular crime may influence behavior if the potential offender concludes that the punishment is so severe.¹¹³ According to deterrence theory the object of punishment is not only prevent the wrongdoer from doing a wrong a second time, but also to make him an example to others who have criminal tendencies.¹¹⁴

4.3.1 The Wildlife Conservation Act of 2009

This is the principal legislation that governs wildlife protection and conservation. The law prohibits people from engaging in poaching activities/ illegal hunting by providing punishment of anyone who engages in poaching, possession of poaching weapons (illegal weapon), and trophies without license such as wild meat, as provided under Section 84 whereby the penalty is imprisonment for a term of not less than two years but not exceeding five years.¹¹⁵ Also Section 65 provide that any person who possess tools for poaching shall be liable on conviction to a fine of an amount not less than 1 million shilling but not exceeding 2 million shilling or to imprisonment for term of not less than one year but not exceeding three years. Also section 47 of the Act provide penalty to any person unlawful hunt animal which is poaching to be imprisonment for term not less than 1 years and not more than 10 years or fine of not less than 500,000 Tsh not more than 20,000,000 Tsh depends on the kind of animal subjected, or the court can imposes the fine of not less than twice the value of the animal hunted or killed.

Basing on what makes the punishment to be deterrent, the punishment has to be certain, severe, must stop the offender from reoffending and also must discourage others from offending.

¹¹³ V.Wright, *Deterrence in Criminal Justice: Evaluating certainty vs severity of punishment*, The Sentencing Project, 2017

¹¹⁴ *ibid*

¹¹⁵ Wildlife Conservation Act no 5 2009 (Tanzania)

The Wildlife Conservation Act is not deterrent in nature since it does not deter the offenders from the offence, also the punishment is not severe to the extent that it makes people under control, whereby according to Manu¹¹⁶, “*Penalty keeps the people under control, penalty protects them, penalty remains awake when people asleep, so the wise have regarded punishment is a source of righteousness*”. This directly shows that the penalty must be deterrent in nature so as to keep the society under the control.

Liabilities in the Wildlife Conservation Act of 2009 vary in accordance with the type or class of animal hunted, killed or poached. The most protected species, the more punishments and fines imposed. Therefore due to those animals that falls under some group of animals will not be protected much compared to those who falls under class of animal who are more protected that why poaching still exist.¹¹⁷ The respondent go further and state that it is good to provide punishment basing on group, but the law has to provide severe punishment to all groups, so as to ensure protection of wildlife resources regardless of the class where that animal follows.¹¹⁸

Large number of respondent stated that the punishments imposed by the Wildlife Conservation Act are not deterrent in nature since it does not stop the offenders from reoffending also it does not discourage others from offending the offence of poaching which in one way harm wildlife resources¹¹⁹. One of the respondent stated that the Act is very clear but the problem is that it provide for inadequate punishment as a result cases of poaching are many despite the fact that the law is there¹²⁰. Example in the case of *Republic v Anthony Chilangazi Kasuga*¹²¹ It was alleged that the accused person on 10 March 2015 Chanumba Village within Chamwino District

¹¹⁶ <https://www.srdlawnotes.com> Accessed on 4 June 2021 at 5:19 PM

¹¹⁷ On 10 November 2020, at 12: 00 PM up to 12:30 PM, Respondent from STEP

¹¹⁸ On 09 January 2021, at 10:05 AM up to 10:19 AM, Respondent the officer of TANAPA

¹¹⁹ On 10 November 2020, from 15:38 PM up to 15:47 PM, Respondent from WCS

¹²⁰ On 22 December 2020, at 03: 45 PM up to 04:00 PM, Respondent at Makifu Village at Iringa.

¹²¹ No 11 of 2015

was found in possession of honey badger skin, pangolin skin, cobra skin, python skin, hyena tail, mangore skin. The accused was found guilty and punished for a penalty of 50,000/= Tshs fine, or three years imprisonment contrary to Wildlife Conservation Act. This shows direct that it is difficult to deter the crime if the punishment is not deterrent in nature.

Since the Wildlife Conservation Act encourages others to engage in poaching because the punishment is not severe enough as a result others engage in poaching as well as some of those offenders keeps offending the offence of poaching. There number of cases that prove despite there is WCA but still people commits poaching including the case of *Republic v Phares Christopher*¹²² On 13th December, 2012 at Kishisha Village, Siha District at Kilimanjaro region, the accused was arrested by the Kinapa Park rangers on allegations of possessing government trophy which was hyrax. This was contrary to the Wildlife Conservation Act the accused was found guilty. Also the case of *Republic v Charles Mzungu*¹²³ On 24th March, 2013 at about 11:00hrs the accused was arrested at Kidodi Village in Kilosa District Morogoro region having been found in possession of the government trophies to wit were five elephant tusks. The pieces of tusks were valued collectively Tshs. 48,000,000 Tsh. The accused person was found guilty and was subjected to pay fine of 48,000,000 Tshs or five years imprisonment in default.

Also the case of *Republic v Deodatus Joseph*¹²⁴ in this case the accused was found guilty for unlawful possession of two impala meat valued at 1,248,000 Tshs and two dik-dik meats valued 800,000 Tshs. The accused was found guilty and subjected to serve 20 years imprisonment. Also the case of *Republic v Stivin Simba*¹²⁵ the accused was arraigned and found

¹²² No. 1 of 2013

¹²³ No. 5 of 2013

¹²⁴ No. 26 of 2014

¹²⁵ No. 07 of 2009

in unlawful possession of government trophies.¹²⁶ The accused person was convicted and subjected to serve 10 years imprisonment.

Also statistic shows directly show that the Wildlife Conservation Act is not deterrent in nature because from since the law has been enacted in 2009 the number of poaching activities was still large, statistics shows that between 2009 - 2011 Tanzania was the country of export for 37% of large ivory,¹²⁷ Tanzania has lost 60% of its elephants from poaching, whereby the population fell from estimated 109,051 in 2009 to just 43,330 in 2014,¹²⁸ while the rhino population fell from 10,000 in 1970 to 123 in 2014 and now believed to number just 80.¹²⁹ In Ruaha National park the census shows that nearly of the half number of elephants were killed in a one year period as the population fell from 8,800 to just 4,200 in 2004.¹³⁰ All of this shows that the Wildlife Conservation Act is not deterrent because it fails to prevent the crime that is why number of poaching cases is large despite of its presence also number of animal killed was still high.

4.3.2 Economic and Organized Crime Control Act.

Large number of respondent stated that the Economic and Organized Crime Control Act it has a punishment which is deterrent but the punishment is not appropriate and become difficult to implement it when it comes to cases that involve other group of animals other than animal's follow under big five. Poachers are very aware that when they get caught the punishment used will not be excessive since they do not deal with animal that falls under big five who have a adequate and sufficient punishment, most of time in cases that involves animals that follows

¹²⁶ Buffalo, Giraffe, Hippopotamus, Zebra

¹²⁷ Vanishing point: *Criminality, corruption and the devastation of Tanzania's Elephants*; EIA, November 2014.

¹²⁸ K. Mathiesen, *Tanzania elephant population decline by 60% in five year, census reveals*, The Guardian, June 2015

¹²⁹ "Tanzania calls for int'ban on Ivory, rhino trade" World Bulletin, October 2014

¹³⁰ Ruaha National Park, "Expert Africa. <https://www.expertafrica.com/tanzania/ruaha-national-park>

under big five¹³¹ the punishment used is that shown in Economic and Organized Crime Control Act as shown in the case of *Republic v Amani Rashid*¹³² the accused person was arrested and charged with two counts which includes unlawful hunting and unlawful possession of government trophies. Also was found with the consignment of elephant tusks. Charges were brought before the court against the accused person. The accused person was convicted and ordered to penalty for first count 30 years imprisonment, for the second count 20 years imprisonment and to pay to fine of Tshs. one billions and two hundred millions (TZS 1,200,000,000) contrary to the Economic and Organized Crime Control Act.

Also the case of *Republic v Selemani Ally Magaga and others*¹³³ Suleiman Ally and Rehani Magani were on 03/09/2015 at Mkuta within the Mvomero District in Morogoro Region were found in possession of Government trophies to wit fifty lug of buffalo meat valued Tshs 2,945,000 the property of the Government of United Republic of Tanzania without permit or license. Upon been charged the accused persons in this case Selemani Ally Magaga and Rehani Magani were jointly and together charged with the offence of unlawful possession of Government trophies. The accused persons pleaded not guilty to charges. To prove their case prosecution side called three witnesses. First accused was found guilty and sentenced to pay Tshs 29,045,000 or fifteen years imprisonment while second accused was found not guilty and acquitted.

Also in the case of *Republic v Katabi Boniface @ Savery*¹³⁴ in this case the accused person was charged for unlawfully possession of government trophy.¹³⁵ The accused was

¹³¹ The Lion, Leopard, Rhino, Elephant and African Buffalo.

¹³² No. 03 of 2016

¹³³ No. 18 of 2015

¹³⁴ No. 20 of 2015

¹³⁵ Hippopotamus

convicted and was subjected to serve 20 years imprisonment contrary to Economic and Organized Crime Control Act.

Therefore, despite the fact that the law provide for a pretty heavy punishment to those who will engage in poaching but still due to presence of other laws it makes the implementation of this law become difficult when the group of animal involve does not falls under big five. That is why despite of having this law still the problem of poaching does not come to an end since mostly the law used to handle cases that involves other group of animal rather than big five has inadequate punishment as shown in the case of *Republic v Anthony Chilangazi Kasuga*¹³⁶ It was alleged that the accused person on 10 March 2015 Chanumba Village within Chamwino District was found in possession of honey badger skin, pangolin skin, cobra skin, python skin, hyena tail, mangore skin. The accused was found guilty and punished for payment of fine of 50,000/= Tshs or three years imprisonment contrary to Wildlife Conservation Act.

The EOCCA is deterrent to offences that involves matters involving animals under big five and not others as shown in number of reports as follows, the president¹³⁷ said that in 2016 a prominent Chinese businesswoman dubbed the “*Ivory Queen*” was sentenced to 15 years in prison by a Tanzanian court in February for smuggling the tusks of more than 350 elephants to Asia, making a major victory for the government.¹³⁸

Also, the statistic shows that since the enactment of this law the number of poaching to animals that follows under big five reduces compare to other groups, whereby the populations of elephants have increased from 43,330 in 2014 to over 60,000 presently, also the number of

¹³⁶ No 11 of 2015

¹³⁷ The late John Pombe Magufuli, on July 2019

¹³⁸ <https://www.reuters.com> Accessed on 4 June 2021 at 6:34 PM

rhinos, an endangered species, had increased from just 15 to 167 over the past four year.¹³⁹ While number of animals who follows to other groups falls, this is shown in TAWIRI report, whereby the report shows that the population of animal called Puku presumed that it decline and might disappear because of human activities including poaching in Kilombero.¹⁴⁰

Generally, the law provides for severe punishment to those who will engage in poaching activities but its punishment is more applicable to animals that follow under big five. Therefore, due to that the punishment is deterrent when the animal involved follows under big five, but it is not deterrent to animals follows to other group.

4.3.3 National Park Act

This law prohibit poaching in National Park whereby it provide for punishment to anyone who engage in poaching whereby the penalty is imprisonment for not less than 3 years and not more than 5 years or fine of not less than 20,000 Tsh and not more than 500,000 Tsh. The punishment is not deterrent in nature because it is not adequate and therefore does not discourage others from offending the same crime as well as offenders from reoffending.¹⁴¹

The punishment is not deterrent in nature since it does not stop the offenders from reoffending as well as it does not discourage others from offending the offence of poaching which in one way harm wildlife resources. One of the respondent stated that the Act is very clear but the problem is that it provide for inadequate punishment. Example in the case of *Republic v Said Salehe Makwawa and another*¹⁴², they were accused of unlawfully entering and hunting in a National Park and having been found in possession of the government trophy which was

¹³⁹ <https://www.reuters.com> Accessed on 4 June 2021 at 6:34 PM

¹⁴⁰ TAWIRI, Aerial Wildlife Survey of large Animal and Human Activities in the Selous-Mikumi Ecosystem Dry Season, TAWIRI Aerial Survey Report. 2019.

¹⁴¹ On 10 November 2020, at 11: 15 AM up to 12:00 PM, Respondent from Mahenge law firm.

¹⁴² No. 16 of 2012

impala meat. They were found guilty and they are supposed to pay a fine of 2,454,660 Tshs or to serve two years imprisonment in default contrary to National Park Act. Also in the case of *Republic v Amos Joseph @ Maicha and another*¹⁴³ in this case the accused person was charged for unlawful entry in a national park, unlawful possession of weapons in national park, unlawful hunting in national park and unlawful possession of government trophies.¹⁴⁴ The accused was subjected to penalty whereby for the first count serve 1 year imprisonment, for the second count to serve 1 year, and for the third count to serve 3 years imprisonment contrary to National Park Act. In this situation it is difficult to stop offenders from reoffending also it encourage others to offend the same crime because the punishment is not harsh.

Despite the fact that the National Park Act exist since 2002 for the aim of controlling all matters in National Parks but still poaching exist, this directly shows that the law is not deterrent in nature, since it fails to prevent poaching activities, as well as fail to deter the offence. The statistic shows that in Ruaha National park the census shows that nearly of the half number of elephants where killed in a one year period as the population fell from 8,800 to just 4,200 in 2004.¹⁴⁵ This shows directly that the law is not deterrent in nature.

Therefore the study proves that laws that governs wildlife resources against in nature are not deterrent enough, since they fails to prevent the crime, since laws provides for punishment which are not severe enough to stop the offence. Also the minister of Natural resources and tourism of Tanzania in one of his interview stated that if poachers are been caught they have to be killed there is no reason for them to live. The statement directly shows that laws are not sufficient enough to stop poaching. Laws have to be deterrent so as to prevent the crime, and

¹⁴³ No. 84 of 2014

¹⁴⁴ Topi, Zebra

¹⁴⁵ Ruaha National Park, "Expert Africa. <https://www.expertafrica.com/tanzania/ruaha-national-park>

discourage other from the crime, a judge once said *“I don’t punish you for stealing the sheep but so that sheep may not be stolen this means that the aim of punishment is not revenge but alarm.”*

¹⁴⁶ So to punish makes others been discouraged from the act. There has to be severe punishment which has the deterrent effect so as to ensure that poaching is eliminated from the wild areas. Since poaching is one of the grave offence therefore there has to be severe punishment like life imprisonment, there should be no bail for poaching cases, and also the penalty of fines which has too be imposed has to be severe enough to stop the offenders also poachers can be subjected to death penalty as well. Tanzania has to learn a lesson from some countries so as to ensure poaching is abolished. Example in Kenya there is a proposed bill which requires the imposition of death penalty to poachers,¹⁴⁷ also in Botswana they successes to abolish poaching by introducing severe punishment to poachers because their laws are clear and adequate.¹⁴⁸

4.4 Challenge facing laws governing protection of wildlife resources against poaching

The study discover that despite the fact that there are several laws that protect wildlife resources against poaching, but still those laws have defects which affects its implementation toward wildlife resources, as follows,

4.4.1 Inconsistency of laws on punishment imposed

One of the challenges faces laws governing protection of wildlife resources is inconsistency in issue of penalty. Each law provide for its own punishment in the same offence. This confusion undermines the war against poaching in Tanzania. Therefore since both laws have intention to protect wildlife resources against poaching therefore it is better to harmonize

¹⁴⁶ <https://www.srdlawnotes.com> Accessed on 4 June 2021 at 8:40 PM

¹⁴⁷ <https://www.wwf.panda.org> Accessed on 27 June 2021 at 11:40 PM

¹⁴⁸ *ibid*

laws on punishment.¹⁴⁹ Example the Wildlife Conservation Act contradicts with the National Parks Act as well as the Economic and Organized Crime Act, and vice versa.

Therefore due to the fact that each of this law has its own punishment it results to contradiction which leads to poor protection of Wildlife resources.¹⁵⁰ One of the respondent stated that “Always I wish I could tell law makers that when they make laws that protects wildlife resources like animals they have to be more careful, and make sure that they leave no room for people who has intention to harm animals to do so. Since animals cannot speak or fight for them, therefore law makers has to fight and speak for them by ensuring that they make laws which have adequate and appropriate punishment.¹⁵¹” This statement of the respondent shows that the inconsistency of the laws in terms of punishment it gives room for people to harm wildlife resource. This shows directly that diversity of laws results to poor protection of wildlife resources against poaching.

4.4.2 Inadequacy of penalty.

Although both laws impose punishments, but those kinds of punishment are not adequate enough to stop offenders from reoffending and encourage others from committing the same offence. This kind of penalty cannot be effective to deter the problem of poaching since they are too small.¹⁵² One the respondent stated that penalty are not adequate enough to stop people from poaching, and because of the inadequate of punishment people do engage in poaching, and takes poaching like any other employment since they are benefitted from it, they do believe that poaching is bad but they are not scared since the punishment is not severe enough to make them

¹⁴⁹On 21 December 2020, at 11: 15 AM up to 12:00 PM, Respondent from officer of TANAPA

¹⁵⁰ On 10 November 2020, from 15:38 PM up to 15:47 PM, Respondent from WCS

¹⁵¹On 21 December 2020, at 11: 15 AM up to 12:00 PM, Respondent from officer of TANAPA

¹⁵² On 21 December 2020, at 11: 15 AM up to 12:00 PM, Respondent from officer of TANAPA

stop since when they get caught they give pay the amount of not less than 100,000/= Tshs that is why they are not scared of the law at all.¹⁵³

4.5 The impact of diversity and inconsistency of laws governs protection of wildlife resources against poaching

Presence of different laws governing protection of wildlife resources against poaching has impact on protection of wildlife resources, since it paves a way for poachers to commit the crime and does not discourage others from offending the same crime.¹⁵⁴ In most of poaching cases offender are been given different sentences it depends on the law which will prevail in dealing with the matter, as a result some offenders ends up in high penalties and others ends up to gets low penalties, whereby it is through that others keeps committing a poaching,¹⁵⁵ due to that the problem of poaching does not come to an end, and result some group of animals to disappear as proved by the report of TAWIRI whereby it is stated that in Tanzania poaching of elephant reduce in large number but the report shows that there some animals which are still not protected from the wildlife crime example in Kilombero the number of animal called Puku presumed that it decline and might disappear because of human activities including poaching¹⁵⁶.

Also presence of different law with different punishment makes difficulty on protection of wildlife resources against poaching, especially if one of the laws provides for the penalty which does not stop or discourage people from offending the crime that is why despite of having laws those protect wildlife resources against poaching the problem of poaching still exist.¹⁵⁷ Example if happens that one law provides a reasonable punishment while the other does not.

¹⁵³ On 22 December 2020, from 04: 00 PM up to 04:25 PM, Respondent from the Makifu village at Iringa.

¹⁵⁴ On 21 December 2020, at 12:23 PM up to 12:41 PM, Respondent from Ruaha National Park.

¹⁵⁵ On 21 December 2020, at 11: 15 AM up to 12:00 PM, Respondent from officer of TANAPA

¹⁵⁶ TAWIRI, Aerial Wildlife Survey of large Animal and Human Activities in the Selous-Mikumi Ecosystem Dry Season, TAWIRI Aerial Survey Report. 2019.

¹⁵⁷ On 21 December 2020, at 12: 00 PM up to 12:15 PM, Respondent from Ruaha National Park.

That means one will deter while the other not. If people are judged with the wildlife conservation Act or National Park Act it easy for them to commit the same offence because the punishment imposed is not adequate while the ECOCA the punishment are adequate but the punishment imposed become difficult to implement it when it comes to other group of animal rather than big five due to that poaching will never end especially in small kind of animals.¹⁵⁸

Indeed most of respondent commented that they do not feel the impact of law on protection of wildlife resources against poaching, and many studies have pointed out that the problem of poaching still exists due to ineffectiveness of the law. Basically the study revealed that laws responsible for protection of wildlife resources against poaching have a number of defective which affects their implementation as well as effective protection of wildlife resources against poaching, therefore it is better to harmonize laws so as to fight against poaching.¹⁵⁹

Due to the above reasons 96% of the respondent stated that the law has to be harmonized so as to come up with one law which will be adequate, deterrent and also appropriate to the extent that it leave no room for offenders to offend the same crime and also to discourage others from offending the same crime. While 4% of the respondent stated that the law has to remain as it is so as they can be able to proceed with the activity since they believe that poaching is not a crime rather it is a work.

4.6 Conclusion

Generally, laws that protect wildlife resources in Tanzania against poaching fails to impose sufficient punishment to the offenders, to the extent that the wildlife crime like poaching still exist. Furthermore the due to diversity of laws governing protection of wildlife resources

¹⁵⁸ On 26 April 2021, at 12: 00 PM up to 12:30 PM, Respondent from STEP

¹⁵⁹ On 26 April 2021, at 12: 00 PM up to 12:30 PM, Respondent from STEP

results to inadequate protection of wildlife resource against poaching in Tanzania. Therefore laws have to be harmonized and punishment has to be reasonable and sufficient also must correspond with the offence for protection of wildlife resources against poaching.

CHAPTER FIVE

CONCLUSION AND RECOMENDATION

*“Never apologize for being over sensitive and emotional when defending the welfare of wildlife. Let this be a sign that you have a big heart and aren't afraid to show your true feelings. These emotions give you the strength to fight for what is right and to be the voice of those who cannot be heard.” Paul Oxtan.*¹⁶⁰

5.1 Introduction

This Chapter provide for recommendation and conclusion on examination of laws that govern wildlife resources against poaching. This final Chapter concerns conclusion and recommendation also it involves the summary of finding.

5.2 Summary of Finding

The researcher has been able to prove the hypothesis that there is need to harmonize laws governing protection of wildlife resources so as to ensure effective and sufficient protection of wildlife resources against poaching in Tanzania. The study shows that existence due to inconsistence of laws that governs protection of wildlife resources against poaching the crime of poaching does not come to an end despite the fact that there many laws.

The presence of punishment provided by the laws, which are not deterrent in nature, is proved as to be one of the reasons for poor protection of wildlife resources against poaching in

¹⁶⁰ <https://www.reuters.com> Accessed on 4 June 2021 at 6:34 PM

Tanzania. The laws that govern protection of wildlife resources against poaching are fail to adhere with the deterrent theory as the result fail to prevent the crime of poaching, as a result of inadequate of punishment.

5.3 Recommendations

Recommendation of this study relate to the examination of laws governing protection of wildlife resources against poaching, found out that the impact of diversity of laws that govern protection of wildlife resources against poaching has to be addressed for successfully fighting against wildlife crimes like poaching that tends to have impact in protection of wildlife resources in Tanzania. This study recommends the following so as to help the protection of wildlife resources against poaching;

5.3.1 To the Legislative bodies

This study recommends that there has to be harmonization of laws regarding protection of wildlife resources against poaching, so as to come up with the law which will be unblemished, appropriate and effective towards protection of wildlife resources against poaching. Harmonization of penalty levels within wildlife crime was needed to enhance the appropriateness of penalties imposed and hence their deterrent effect. The study recommends that laws that dealt with protection of wildlife resources has to be harmonized so as to ensure that there is no loopholes for offender to keep on offending. The harmonization of laws will be usefully since it will help to abolish the contradiction between laws that protects wildlife resource which has impact in protection of wildlife resources against poaching.

Also this study recommends that after harmonization of laws the punishment imposed has to be adequate and appropriate by being proportionate with the harm caused and the culpability

of the offenders, also the sentence should aim at deterrent effect so as to reduce number of wildlife crime including poaching.

Also the study recommends that laws have to be deterrent in nature, since if the law is deterrent it become easy to prevent the crime since penalties imposed will create fear to those who had the malice. According to Daniel S. Nagin "*Deterrence in the twenty- first century*" in 2013 state that "*the fear of being caught is far more dreadful than the draconian punishment, when the legal system has been successful in punishing a criminal it has shown its power in getting hold of the criminal, this alone shall act as a fear psychosis in the minds of the other criminals*". This shows that laws have to be deterrent in nature so as to ensure prevention of the crime in the society. Therefore this study recommends that, since laws governing wildlife protection against poaching in Tanzania are not deterrent in nature therefore the parliament has to consider that, when imposing punishment to those who commits crimes like poaching; those punishments have to be severe enough so as to prevent them from the offence also to discourage others from the offences, because if law are not deterrent that directly mean that the possibility of the offence to end is very slight.

Also the study recommends that laws on aspect of penalties have to be amended so as to ensure that penalties imposed to offenders are deterrent in nature and are of the ability to stop others from the offence. The severity of the punishment create fear to people from committing the crime therefore punishment imposed has to be amended and the legislative bodies has to ensure that they impose severe punishment to those who will engage themselves from poaching. Therefore changes should be made to existing legislation to allow for ancillary order for wildlife crime like banning of poaching activities.

Having many laws governing protection of wildlife resources against poaching is not a solution for fighting against poaching; rather having a law that govern protection of wildlife resources with adequate and effective penalties may stop people from poaching activities. Since wildlife resources like wild animal cannot speak or fight for their survival therefore laws has to fight and speak for the survival of wildlife resources, whereby for law to fight and speak on behalf of wildlife resources laws has to be adequate and appropriate and also has to leave no loophole for people who has intention to harm wildlife resource to do so. Therefore the study recommends that for better war against poaching laws has to be harmonized also penalties has to be harmonized and amended so as to reduce contradiction in laws also presence of inadequate punishment which has impact of protection of wildlife resources.

5.4 Conclusion

Reducing wildlife crime like poaching is not simply a question of raising penalty level, but the key issue is to ensure that the levels of penalties imposed are clear and appropriate also are deterrent in nature. Existence of laws that prohibited wildlife crimes like poaching is not enough to ensure that the offence or crime will no longer exist; rather the presence of appropriate and clear penalties helps a lot in ensuring that poaching come to an end, and wildlife resources are protected.

It is noted that wildlife crime penalties vary, depends on the law which is used to deal with the matter in question. This means that if there many laws which covers the same wildlife crime and provides different penalties toward the crime that means the penalties toward that crime will vary depending on the law used to deal with the matter in question. Therefore it is noted that if the penalty used in dealing with a wildlife crime case like poaching case is not

deterrent, that shows directly that the offence will not end though there laws which governs the offence in question.

In this study it is noted that there different laws that governs protection of wildlife resources but those laws has different penalties which in one way or the other it has impact in protection of wildlife resources. Whereby it is well-known that the penalties imposed by the Wildlife Conservation Act and National Park Act are clear but not appropriate since they are not deterrent in nature, while the penalties imposed by the Economic and Organized Crime Control Act it is not adequate per se but it is appropriate since it is deterrent in nature because it stop offenders from reoffending and discourage others from offending the crime but also the penalty is general that anyone who conduct poaching will be punished so and so which in one way or the other the penalty is not practicable in same of cases especially those which involve other species apart from big five, therefore in those matters the wildlife conservation act or the national park act prevail since though they has small penalties, that is why poaching still exist.

Therefore due to this the study identified that the wildlife crime like poaching does not come to an end as show in TAWIRI report which stated that in Kilombero the number of animal called Puku is presumed that it decline and might disappear because of human activities including poaching, the report shows that poaching is still there, though there laws which cover the matter.

The study identifies that there are impact of diversity of laws that governs the protection of wildlife resources against poaching whereby one of the impact is that, presence of many laws that protect wildlife resources against poaching has impact in protection of wildlife resources since it results to inadequate protection of wildlife resources.

Also the study identifies out that there several challenges that laws that govern protection of wildlife resources faces toward protection of wildlife resources which includes inconsistency of laws on punishment imposed also inadequate of punishment, whereby due to that protection of wildlife resources against poaching is still inadequate.

Also this study observed that laws that govern protection of wildlife resources are not deterrent in nature since they are unable to stop offenders from reoffending and also does not discourage others from committing the same offences. Laws that provide punishment against poaching are not reasonable enough to stop poaching since those penalties are not reasonable enough to the extent that poaching does not come to an end that is why cases of poaching still exist and poaching cases are still pronounced in social Medias. Generally the study observed that laws need to be harmonized for sufficient protection of wildlife resources.

Also the study identifies that laws governing protection of wildlife resources against poaching in Tanzania are not deterrent enough to prevent the crime, to discourage others from the crime also to stop the offender from reoffending as the result poaching still exist in Tanzania as shown in number of reports. The study identifies that since laws are not deterrent that means poaching will never end because law will not threaten criminals from the act. Therefore the legislature has to make sure that it harmonize laws governing wildlife resources against poaching and come up with the law which is deterrent in nature.

Generally this paper concluded that the existence of diversity of laws that governs protection of wildlife resources lead to contradiction between the penalties imposed by those laws and result to inadequate protection of wildlife resources against poaching. Also existence of many laws that govern protection of wildlife against poaching it paves a way for poachers to commit offence; also diversity of laws has impact on protection of wildlife resources against

poaching. The study come to the conclusion that laws has to be harmonized for sufficient protection of wildlife resources against poaching in Tanzania.

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