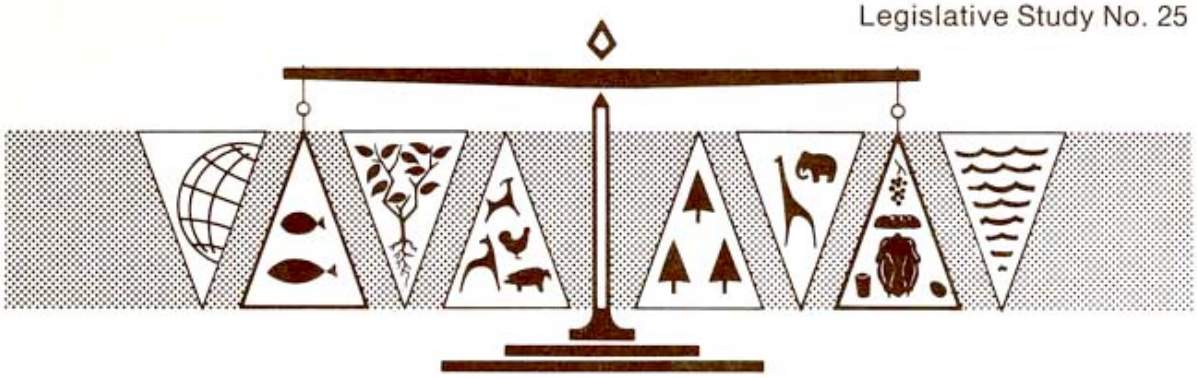
Legislative Study No. 25



LEGISLATION ON WILDLIFE AND PROTECTED AREAS IN AFRICA

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Legislative Study No. 25

LEGISLATION ON WILDLIFE AND PROTECTED AREAS IN AFRICA

by

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for

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Legal Office

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FOREWORD

The present study seeks to offer a broad survey of trends observable in the wildlife laws of African countries. It is based on a sample chosen with two considerations in view. First, that the provisions in question should belong to one or other of the great legal traditions present in Africa, respectively in the English-speaking and the French-speaking countries of that continent. It is to be regretted that it was not possible to accord the Portuguese-speaking countries the place that is their due because their wildlife laws are so far only of a highly provisional nature. At the same time, wherever possible, such information as there is to hand has been included on laws now in the drafting stage in Mozambique, which, it seems, are further forward in that process than those of Angola.

The second criterion governing the selection made here has been the date of the respective enactments. A survey of these brings out as it were two “generations” of laws which, if followed in their course, illustrate the evolution of positive law in the countries concerned. A first “generation” belongs to the 'sixties, and comprises the enactments of Botswans (1961 Proclamation, as amended in 1967), Madagascar, whose earliest text dates from 1960, Ghana (Act, 1961, though with the enforcing regulations appearing only in 1971), Senegal (Act, 1967), Mali (Act, 1969), Somalia (Act, 1969, as amended in 1978). A second “generation” consists of the enactments introduced in the 1970s. The countries concerned include Sudan (1974), The Gambia (1977), and Kenya (1976). No clear-cut division separates the two groups, but one may note how in the second group the concepts of wildlife management and utilization, which were absent from the first group, now make their appearance.

The study first appeared in this Series in the original French in 1981.

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PART ONE

WILDLIFE LEGISLATION IN AFRICA

The abundance and diversity of wild fauna in Africa south of the Sahara is in some way the resultant of human attitudes over the centuries. In pre-colonial times the wild animals were not overexploited. There was no desire to eliminate them or even to domesticate them1. It was only with the development of the ivory trade by the Arabs and, above all, with the impact of European colonization that the degradation of African wildlife set in and the problem of its survival came to the fore. Reaction against this state of affairs came from the colonial powers, no less, with their introduction of protection measures in their territories long before they evinced similar preoccupations in their metropolitan provinces. Thus, a body of law came into being which was prior in time to the different systems of law in Europe on such matters, the most noteworthy act of this kind being the 1933 London Convention relative to the Preservation of Wild Fauna and Flora in their Natural State, which was of virtually exclusive application to Africa.

This law came to be enshrined, together with emendations on technical points, in the African Convention on the Conservation of Nature and Natural Resources, adopted at Algiers in 1968, as well as in most legal systems of that continent.

The original inspiration was basically protectionist. The general attitude at the beginning of the century could hardly be said to be favourable to wildlife, for the latter offered no economic interest. To be sure, there were the ivory, the ostrich feathers and the skins of various mammals and crocodiles but it seemed that the source of supply was destined to be inexhaustible, and attention focused on the working up of products that were collected. Hunting, with no rapid means of transport or organized safaris, had yet to become a source of foreign exchange. As for the potential source of food represented by wild animals, this was looked on as negligible beside the hopes placed in acclimatizing European or Asian domestic breeds. Meanwhile, the damage caused by wild animals was there for practically all to see. Wild animals - maneaters, actual or potential - were a perennial menace to the safety of human beings. They must therefore be hunted down without quarter. The protection of a village or its taking revenge on some over-enterprising lion offered the frequently encountered justification in the tales of the hunt in the times we are speaking of.

The presence of herbivores destroying or raiding crops conflicted with a spreading monoculture and the large agricultural estates that were to bring wealth to Africa. Here were undesirable competition and a standing danger of the spread of disease among domestic herds. Wildlife, in other words, was seen as a hindrance to progress and one that must be removed.

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1 With the exception of the donkey, all tame species in Africa were imported.

In such a state of affairs, the very idea of protecting wildlife must perforce seem no more than an ethical stance. The juridical measures implied by it were conceived as so many concessions that progress accorded to nature - a matter of preserving forms of life by providing them with “reserves” or by ensuring, by means of regulations on hunting, that the most attractive animals should not become extinct. With the passage of several decades, the protection concept came to be overtaken by its own inherent dynamics. People became aware of the potentialities offered by wildlife - from a strictly utilitarian standpoint. Governments set out to develop tourism involving visits to national parks and large-scale sport hunting and would bend every effort to organize on sound lines the market for ivory and skins and the export of live specimens, as well as striving to augment the consumption of game meat for food. It became clear, notably with the raising of animals in controlled environments and similar procedures, that the assigning of certain lands to wildlife was the best economic solution for the land in question. Nor have people concerned with the protection of animals remained outside these developments. There was even the risk that protection might indeed be seen as a luxury for the industrialized countries but as something unreasonable for Africa. And so the protectionists addressed themselves to pointing out the benefits that wildlife might provide. From their point of view it would be a good thing to exploit wildlife - precisely as a means to its preservation.

The validity of this view was put to the test when certain African countries introduced a complete ban on hunting, the net result of which was the recrudescence of poaching and a corresponding depletion in wild animal populations.

Present trends would seem to suggest the converse: Wildlife can have a multiplying effect on economic development. Therefore, let us protect wildlife the better to exploit it. It is significant in this connexion that the old “nature protection” has given way, in many enactments, to “management of renewable natural resources”.

Nor is the phenomenon peculiar to Africa. It has its place in a vast movement in attitudes, worldwide, where the environment is concerned. But here it takes on a particular importance, when one considers the wealth of wildlife and the ever more important place that wildlife can come to occupy among a nation's resources.

As a parallel process, the better understanding that we have acquired of the rôles of the different species within natural equilibria and the interactions among these rôles has led to animals whose existence had been until then ignored or which had been the object of attack benefitting from the new-found concern for protection or for management. This has made for a more accurate conception of wildlife embracing the entire range of its constituent elements and no longer merely its more spectacular examples.

This twofold evolution has also made for changes in the law. The various countries' legal systems originally resting on these two distinct elements protected areas and regulation of hunting - are now set fair to making up a veritable corpus of wildlife law.

Now, the study of this law (and it is still undergoing formation) must not be confused with the subjective conceptions of what that law ought to be. It is not the intention here to propose de jure condendo novel institutions or to

extrapolate a hypothetical development of one or other rule of positive law. Rather, the attempt will be made, on the basis of the materials to be found in positive law, to distinguish those lines of thought and the hierarchies of rules along and within which this law will be organized. In more concrete terms one might say that, while wildlife law was long identified with hunting regulations, the evolution now under way points toward a hallowing of wildlife law as something autonomous and as going beyond hunting matters and toward the subordinating of hunting matters to wildlife law. To illustrate this, one may cite the example of the classification of animals into protected species, game animals and harmful animals or vermin. These classifications were laid down in the hunting laws: There were animals that were not to be hunted, those that might be hunted, subject to the observance of the hunting regulations, and those that might be hunted without restriction. Now, the sets of legal rules applicable to these categories have expanded to such an extent that it is no longer possible to distinguish a protected animal from a game animal simply by the unlawfulness of firing a gun at one or the other. Protected species are those for whose benefit certain biotopes are maintained in being, such as special nature reserves or those enjoying protection through the control of international trade introduced by the 1973 Washington Convention.

With the new juridical context before us, wildlife law will be expected to lay down categories to be distinguished between and the set of legal rules applying to each. The hunting regulations will be expected to specify in what manner and within what limits animals deemed to be game under that wildlife law may be hunted.

Since this is a branch of law defined by its subject matter, the first question posed by the fact that such subject matter is deemed to subsist concerns the very concept of wildlife. African legal systems do not define wildlife1. Of course, a distinction between wild species and wild animal needs to be made, since an individual belonging to the former may be living in captivity and be “domestic”. The concept of domesticated animal is dealt with in the hunting regulations in order that such an animal shall be excluded from their scope. One will find it stated that “wild species” covers all wild animals, i.e. animals which have not undergone selective breeding by man. This criterion, which will be found in French law2, does not remove all possible doubts. For, one might ask, does not the propensity of certain huntsmen to go for the record in their trophies in effect mean that they are operating a sort of “reverse selection”? Or, conversely, does not selective aiming in order to eliminate the less attractive specimens lead to an upgrading of the species concerned? But these are extreme examples, which in no way invalidate the distinction between wild and domestic species. At all events, there is every reason to suppose that wildlife law by definition has to do with animals making up such wildlife. Everywhere in African - and other - legal systems there are vast categories of species on which the law is silent. Nor should this surprise, if the species in question are not threatened by, or do not constitute a threat to, man and his interests.

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1 Clearly, the distinction needs to be made between wild species and wild animal. The individual belonging to a wild species may perfectly well be living in captivity and be “domesticated”. The domesticated animal will be mentioned in the regulations to make it clear that it does not come within their purview.

2 Decree No. 77-1295, of 25 November 1977, Art. 1.

Yet it is important that the authorities responsible for determining classifications and, by that token, for deciding where the rules are enforceable shall be able to include a given species in one or other of the lists, once the need arises, without hesitation on zoological grounds. In other words, wildlife law is just as able to have within its scope insects or batrachians as it is to have the larger mammals. Juridically, the possibility for so doing is provided for by the usual clauses governing amendments. At the same time the laws of some countries expressly exclude the extension of these provisions to stated categories of species. Thus, the Gambian Act provides only for animals of the order Vertebrata. Again, not many laws concern themselves with the amphibians or invertebrates, though examples may be found in a decree of Madagascar "prescribing rules governing butterfly catching"1 and in the Algiers and Washington Conventions2.

The question is whether wildlife law will continue to be silent, as are most national laws, on agricultural species. Logically, the answer must be No. What differentiates hunting from fishing are the conditions in which the "prey" is taken; but the essential problems are the same. On land as in water it is a matter of adjusting the volumes taken to the population (or "stocks", in the sea fisheries context). Similarly, it may be thought preferable to have institutions specific to marine parks and reserves even if the ends pursued there are basically the same as those of protected areas on dry land. If it is accepted that the juridical principles underlying wildlife law govern hunting law - itself a sort of set of enforcement regulations under that law - it is difficult to see why the same reasoning should not apply in the law governing fishing. Only historical reasons and the dead hand of habit explain the compartmentalizing of wildlife on the one hand and its counterparts in the aquatic milieu on the other. However, even here, changes are making their appearance. The legislation of Madagascar classes among protected species a certain number of freshwater and sea fishes, and the Algiers and Washington Conventions do likewise.

Obviously, if one considers the object pursued by these two Conventions and also, be it noted, by the London Convention, it is natural to ask why the law governing wild fauna and that governing the flora should be distinct, and whether they should remain so; and, again, whether they should be brought together at least as regards their presiding principles in a body of law catering for living entities of nature (or, if the expression is preferred, for living renewable natural resources). Such a body of law, moreover, would simply be a domain of the law of natural resources or, in more general terms, of the environment and nature protection. The fundamental identity of the problems arising in the conservation of the fauna and the flora and the ecological interdependencies linking the one to the other argue for a single law comprehending both. The respective legal systems in Africa have yet to

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1 Decree No. 69-085, of 25 February 1969.

2 The evolution pointed up by the 1968 Algiers Convention will be noted. The Convention includes under its Class A List of protected species a number of reptiles and two amphibians, whereas the 1933 London Convention was limited to mammals and a few birds. Here again, a phenomenon that cuts both ways: Progress in law, or a retreat from conditions more favourable to the survival of the fauna? It may be noted that the 1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora extends to mollusks and one lepidopter.

take this step, as international law has done1. This, in any case, is due to the fact that the various countries there have felt no need for concern over the protection of the wild flora, their laws having focused almost exclusively on the fauna.

Turning, now, from considerations on the scope of, and the place assigned to, wildlife law to an examination of the object of such law, one finds a multiplicity of objects at times in conflict with one another. The first of these, understandably, is the conservation of the various species and the achievement of an optimum density for each. The reasons for protecting the fauna are sufficiently well known, so that a brief recall will suffice here. To begin with there are the reasons grounded in considerations circumscribed by a definable period of time. For we have inherited a gift of God (or, if preferred, a capital) in the diversity of wildlife, and it behoves us as stewards of these goods not to hand on a diminished patrimony to future generations and to ensure that these will not be left with an environment reduced to merely the domesticated species. The second reason stems from the need to prevent ecological disorders, which, one suspects, may be due to the disappearance of certain species. The third reason concerns our husbanding for the future fresh potentialities for the domestication or utilization of wildlife and maintaining a reservoir of animal protein to which it would be possible to have recourse in times of shortage2. Clearly, wildlife conservation is possible only if present-day generations are able to derive advantages from balancing the social and economic implications of such a policy. The fourth reason, accordingly, concerns the need for an efficient management of a natural resource in the immediate interest, namely, that of “making wildlife pay”. Here emerges the second object of wildlife law, which is called upon not only to protect but to offer some countervailing advantage to those present-day generations. Accordingly, any study of the component elements making up wildlife law can be ordered around these three subject matters: Protection of wildlife, obtaining an economic advantage from it, and the provision of the institutions necessary for achieving these purposes.

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1 Apart from this example of protected areas, mention will be made here simply of Madagascar's Act No. 71-006, of 30 June 1971, “to establish export duty on wild animals and orchids”. Elsewhere in the world the juridical principles applicable to the fauna and the flora have been brought under a single head as in the case of France, with its Nature Protection Act of 10 July 1976.

2 Given the difficulties encountered in raising domestic species imported into Africa, a start has been made with the experimental domestication of indigenous species of antelope capable of providing meat and draft power. See Unasylva, Vol. 29, No. 116 (FAO, Rome).

CHAPTER I - The constituent elements of wildlife protection

The constituent elements of wildlife protection have multiplied, in an empirical fashion, pari passu with the various amendments to or revision of the laws on this subject, from the hunting regulations to those governing wildlife protection areas. The degree of development that these have gone through calls for an orderly approach to their study. Accordingly, a distinction will be made here between the principles underlying protection and the specific procedures designed to achieve its purposes, for there exists a whole panoply of measures applicable, albeit with discrimination, to all wild species. Positive law offers a range of solutions geared to the needs of this or that species; and their enforcement presupposes that the needs in question are understood. In this way, an appreciation of the evolution of animal populations and of the danger to which they might be exposed and, again, the organization of procedures designed to bring into play the response of the law together make up a train of reasoning that is logically anterior to any resort to protection as such. In what follows, the considerations underlying wildlife protection and the actual means employed to that end will be discussed separately.

SECTION I - Considerations underlying the protection of the wild fauna

Wildlife protection is grounded in two considerations, one entailing the evaluation of the causes of the decline in any species and the other the adaptation of the law to the actual situation in which given species or groups of species find themselves.

Subsection 1 - Evaluation of the causes of decline in numbers; surveillance of animal populations

The causes of depopulation among the wild fauna are fairly well known. Scientific publications concern themselves in detail with one or more of these but usually within a restricted context. The hunting and shooting press from time to time denounces those among such causes which have nothing to do with huntsmen and gunfirers, which the conservationist journals frequently accuse of these very evils. A perusal of the laws, moreover, reveals an indication of the causes responsible for such depopulation, the effects of which the public authorities have sought to gain control over or at least attenuate.

Specifically, the catalogue of causes comprises first and foremost the various examples of man helping himself to the wildlife, by removing an animal from its normal milieu whether by killing or merely by capture. Next, reference must be made to the impairment, rarefaction and disappearance of biotopes - which can happen in a variety of ways. If the upheaval caused in natural environments by building development, the opening up of highways or industrialization systematically has a deleterious effect, the same is not necessarily true of agriculture, which varies in its effects on wild fauna, depending on the crops grown and the species of fauna concerned.

In the third place consideration will need to be given to the impact of practices in terms of, say, the poisonings caused by the ever wider use and the diversity of pesticides or other toxic products, to mortality due to

certain installations such as lighthouses, roads and the use of agricultural machinery, and (since we are speaking of Africa) bush fires.

The fourth and last cause of depopulation is the ecological imbalance that may follow upon the introduction of an animal or plant species into a given environment.

It is in any case possible to follow the evolution of populations of a number of different species. On the most favourable assumption one can, by scientifically developed methods of counting, obtain quantitative data with a narrow margin of error. Usually, however, one cannot expect more than approximations or pointers suggesting whether a species is in decline or has disappeared altogether in a given region.

On the other hand, it is most difficult to assess the relative importance of the causes of depopulation or, to put it another way, to ascertain to what extent the respective causes contribute to the rarefaction of the fauna. Comparative responsibilities can indeed be assigned at the local level. Thus, if a marsh has dried out, such a destruction of the biotope will alone have wiped out the fauna settled there. But the same will not be true of a region or an entire country. Clearly, with a precise evaluation to hand it would be possible for the legal instruments to be better adapted to their purpose, but since this is impossible reliance will often have to be placed on assessments of an empirical kind.

Whatever the methods employed in order to monitor the evolution of animal populations and to reveal the dangers besetting them, it is important that, at the institutional level, there should be a central clearing house for intelligence in these matters in order that the public authorities may make informed decisions when it is a question of amending the law or issuing the various permits where wildlife is concerned.

This “intelligence” will be made up of statistics compiled from bag returns, authorizations to take animals (hunting licence; licence for scientific purposes), export permits issued and any censuses that may be carried out. It will also comprise information obtained from a variety of sources1, where crosschecking will help in apprising one of certain problems.

An information service of this kind has its logical collocation within the ministry responsible for wildlife affairs, and its raw material will normally consist of the reports and observations sent in to it by the ministry's agents. However, the complexity of the task makes it imperative that other potential sources of documentation and material for reflexion shall not be neglected. A worthwhile contribution may be had from the scientific bodies and private entities interested in wildlife.

An understanding of the exact situation of the various species is a precondition for any planned wildlife management. It is all the more necessary whenever it is proposed actively to “work” this wildlife; and in its default there is no other way of maintaining optimum animal population densities or of determining the total bag compatible with that desideratum. It also provides a means whereby the law may be adapted to take into account the needs of the wildlife itself.

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1 e.g., reports sent in by safari operators and records of scientific studies.

Subsection 2 - Adaptation of laws to the situation where animal species are concerned

There is no question of making rules particular to each and every species with which the law is concerned. All legal systems proceed by establishing categories to which specific sets of provisions will apply. The question, then, is to know if these categories are compatible with the needs of the wildlife and whether the procedures for placing it in one or other category make it possible for the evolution of animal populations to be followed.

A. Categories of animal species

The categories of animal species are defined as a general rule by the relevant enactments, and are set out either following the specific clause creating the category or in a schedule.

These lists are compiled species by species, though some countries' laws supplement these with reference to the sex or age of the animals1. By following this procedure it is possible to institute an integral protection regime for females of the species and their young, while the males remain at a level of partial protection. Clearly, an exactly similar result can be achieved by specifying in the provisions dealing with game that only male specimens of this or that species may be hunted.

Both in the species covered in each of these categories and in the name given to them there is a measure of similarity between one country's legislation and another's, for the respective national laws in this matter take over, with very few changes, the rules set out in the international agreements, notably those of London (1933) and Algiers (1968)2. There are five types of these categories: wholly protected species, partly protected species, ordinary game, harmful animals/vermin, unclassified species.

1. Wholly protected species

Wholly protected species are provided for in all the legislation studied either under this or similarly worded headings. In the positive law of African countries this category is defined mainly by the prohibition placed on taking or destroying animals included under it. This principle which obtains

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1 In the case of elephants it is usual to specify the minimum weight of the tusks for individuals which it is permitted to hunt. Depending on the country this weight may be anything between 5 and 8 kg.

2 This refers to the categories that the various international conventions recommend that the signatory countries adopt. In any event there are categories proper to international law that distinguish seriously threatened species from less threatened species. Examples will be found in the Bonn Convention of 1979 on the Conservation of Migratory Species of Wild Animals and the Washington Convention of 1973 on International Trade in Endangered Species.

in all cases1, is sometimes supplemented by a further prohibition on the taking of the eggs - in any event, this prohibition is implicit in that placed on hunting and capturing.

The protection of these species, where their taking is concerned, can be rendered effective at three levels.

The first of these levels concerns the possibility or otherwise of granting waivers of the protection rules. It is superfluous, here, to discuss the protection of persons or property which would make it legitimate to kill a dangerous animal even of the wholly protected kind. Apart from this special case, most enactments provide for exceptions to be granted under special authorizations2. The most frequently encountered reason is the needs of scientific research, which are also contemplated in the international conventions3. Mali's Act permits further exceptions in the interest of safeguarding the very existence of the species in question. The Bonn Convention of 1979 uses a similar wording when it provides for exceptions to the prohibitions where “the taking is for the purpose of enhancing the propagation or survival of the affected species”. Botswana's Proclamation, which is one of the most flexible in this regard, provides for licences authorizing the killing or capturing of an animal for the purposes of education, scientific research, domestication, breeding or farming.

Clearly, the breaches thus made in the system of protection risk undermining its efficacy. Some laws, in fact (Sudan, Ghana), contemplate no such derogations. Without needing to adopt such a radical position, one may say that capturing animals for scientific purposes needs to be strictly regulated if it is not to serve as a legal cloak for traffic in these animals, which, precisely, is viewed as one of the most serious threats hanging over tropical fauna4. It is also important to forestall the abuses which scientists of little scruple might resort to irrespective of any desire for gain that they might have. Two possibilities present themselves. One of these is to hedge in any permit for scientific capture with all the conditions5 under which such capture may be made and to check that these are observed; the other, which is applied in The Gambia, consists in assigning the task of capturing animals for scientific purposes to members of the wildlife

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1 Two particular cases may be cited: Mali's Act defining wholly protected species by reference to the text of the convention developed by FAO in 1967, and Kenya's Act which simply relegates to the Third Schedule the list of Protected Animals, yet gives no definition of their statutory position, while hunting is limited to Game Animals and Game Birds listed in the First and Second Schedules.

2 For example, Madagascar's “permis de capture scientifique” in Madagascar.

3 London Convention, 1933, art. 8; Algiers Convention, 1968, art. VIII; Bonn Convention, 1979, art. III(5);

4 See the confessions of a repentant trafficker in animals in J.Y. Domalain, Adieu aux bêtes, Paris, 1975

5 i.e., the name of the person responsible, dates of operations, locations, specification of animals, intended use of animals, and research or experiment justifying their capture.

service. It is difficult to discern any advantage in the levying of a very high export duty, exemplified in the laws of Madagascar, on scientific captures. Almost by definition these should be of very rare occurrence, so that the tax receipts from this source are likely to be of little significance, unless the intention is to create a source of revenue for the State in the frequent issuance of authorizations for a large number of specimens.

At the second level, the effectiveness of protection will be assured by providing that none of the animals covered by it and their remains shall enter any commercial channels. Madagascar, for example, prohibits the serving of the meat of protected animals in restaurants1 and the holding of lemurines in captivity. One might go further, as does the law of Senegal, and forbid anybody to appropriate the remains of wholly protected animals when these are found dead. By the same token, the export of such animals and their remains is in principle prohibited and in any case is covered by machinery for bilateral control provided for in the Washington Convention of 1973, even if the list of wholly protected species of a given country is not necessarily identical with the list annexed to that Convention. Even the exclusion from commercial channels gives rise to problems where there is concern that wildlife should bring in returns, inter alia, where fur ranching is contemplated. It will not always be possible to enforce such a radical prohibition, and control procedures will have to be introduced in order to distinguish wildlife products taken in the natural environment and those obtained from ranches.

The third and final level at which it is possible to provide a back-up to the prohibition on the taking of wholly protected animals is that of sanctions. Offences involving these species must, though this is not always the case, entail the visiting of the severest civil penalties on the offender.

The wholly protected species concept has been discussed up to this point in terms of the taking of animals. But there are other elements needing to be considered. In the first place there is the protection of biotopes. For it would be of little avail to prohibit hunting or international trade in endangered species if at the same time their natural habitats were to disappear. Yet positive law has done very little in this connection. One may note in certain national enactments the provision for a category of nature reserves for the benefit of one or more species of animals and referred to as “special reserves”. The London Convention of 1933 and, subsequently, the Algiers Convention of 1968 made a timid attempt to establish a link between these reserves and the protected species, by recommending that the former be established with special reference to the species mentioned in the Annex2. The Bonn Convention of 1979 takes up a clearer position in providing among the measures designed to secure the preservation of an endangered migratory species that steps should be taken “to conserve and where feasible and appropriate restore those habitats of the species which are of importance in removing the species from danger of extinction.”3 No such link, however,

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1 The prohibition in actual fact is of even wider application in that it covers all animals illicitly hunted.

2 London Convention, 1933, art. 7(3). A similar concern is evidenced in art. X(1), ii) of the Algiers Convention, 1968.

3 Bonn Convention, 1979, art. III(4), a).

is provided for in any of these national laws. To be sure, these remarks are not to claim that the preservation of the biotopes of protected species should be incumbent on the authorities as a compulsory measure, with the inevitable classification of the reserves that this implies. It is simply a matter of recognizing the primary purpose served by protecting their biotopes as being a constituent element in any system of law applying to these species. Nor is this purpose served only by establishing parks and reserves. As well as these expedients, the scale of which inevitably limits their practical realization, one can mention much less ambitious, ad hoc protection measures concerning, for example, water-holes, salt-licks, or certain plant formations. The laws of European countries offer models1 where these measures are concerned, and the latter can be decided on either unilaterally by the administering authorities or be governed by agreements entered into with those using the land in question.

In conclusion it will be useful here to note the additional provision enacted by European countries for the protection of wildlife and affecting techniques associated with economic development. The protected species still benefit from a priority claim over farming techniques and the application of pesticides and other toxic substances. Obviously, these measures are more necessary in highly industrialized countries than in Africa, but the economic development of that continent need not repeat the mistakes made in the economic development of Europe, so that concern should be shown here and now for the impact of techniques applied on the African fauna. This is the sense of the invitation to governments expressed in the Bonn Convention of 1979 “to prevent, eliminate, compensate or minimize... the negative effects of activities or obstacles which constitute a serious hindrance to the migration...” of endangered species2.

In the final analysis, wholly protected species are those which the positive law of the respective countries removes in more, or less, absolute terms from the possibility of being taken and to which it accords, or should accord, a priority claim over all other measures of protection afforded by that law.

In economic terms, to enter an animal in a list of wholly protected species implies making a choice, namely that of bearing the cost of preserving the species in question and forgoing the advantages that its exploitation might bring in its train. This consideration leads on to the further question of the equitable sharing of the cost of protecting species of worldwide interest. A number of animal species have their distribution area limited to a single country or a few countries only3. The country that protects these species accordingly is acting in the interests of all. It may be seen as only just that the world community should contribute to the charges borne by the country in question. As a matter of fact, this is already the guiding principle of the activities of certain international organizations, the World Wildlife Fund in particular. Most of all it is the governing idea of the

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1 e.g., the French Nature Protection Act of 10 July 1976 and its enforcement regulations.

2 Bonn Convention, 1979, art. III(4), b).

3 This is the case with the lemurines of Madagascar and coelocanths in the waters off the Comoros.

Convention concerning the Protection of the World Cultural and Natural Heritage, adopted under the aegis of UNESCO at Paris in 1972, which embodies a formula for providing financial and technical assistance for the preservation of component elements of world heritage identified according to the criteria and procedures there defined. These comprise in particular "... precisely delimitated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation".1

2. Partly protected species

The category of partly protected species corresponds in its underlying principle to a set of strictly limitative hunting regulations. It may be noted in the first place that this category is not present in the laws of all the countries (for example it is not to be found in the laws of Kenya and Botswana). Secondly, it may entail enforcing a wide variety of measures.

The law of Ghana, when it deals with "partly protected" animals, simply prohibits the hunting of the species concerned between 1 August and 1 December, and the hunting of the young or of adults accompanied by their young at any time.

A different conception prevails in the laws of Mali, Senegal and Sudan, namely that of securing a very strict control over the hunting of partly protected species. The control operates by requiring the issuance of special licences in which bag limits are prescribed. The holder must keep a hunting passbook which he forwards to the Ministry and must have the officers of the latter annotate therein any trophies and other remains that may not further circulate unless accompanied by a certificate of origin.

If the authorities have sufficient statistics to hand in order to rationalize the granting of hunting licences, then the system can be said to approximate to a hunting plan. Among other things this is required in order to establish the number of animals that may be taken in a hunting season without compromising the maintenance and development of a given species. In actual fact, it is possible to achieve the same result without expressly providing for a partly protected species. It is sufficient, at least for certain species of game, for the licence to authorize the hunting of only a limited number of animals. Thus the Botswana Proclamation limits to one, under the Game Animals list, the number of elephants or crocodiles that may be killed during the season.

Here one again finds the problems considered under the wholly protected category, so that the matter of exceptions for scientific purposes, of imposing heavier penalties for offences or of protecting biotopes need not be taken up again. What is true of the former category applies mutatis mutandis to partly protected animals.

3. Ordinary game

The category of game - without further qualification - receives protection from the generality of measures regulating the practice of hunting. It differs from the partly protected category by the fact that there is no control over trophies and the remains of animals which in this case are

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1 Paris Convention, 1972, art. 2.

of no great economic value, coupled with a less severe penalizing of offences, and in a much looser control over killings. The situation as it affects game not otherwise qualified can be seen as very similar to that of partly protected animals. Several countries extend bag limits to ordinary game, as does Botswana [“unscheduled animal”] or, again, Sudan. The latter country's ordinance at the present time places the list of ordinary game under the significant title of “protected animals”, the other categories being “completely protected” and “specially protected” animals.

Yet another procedure consists in imposing reduced bag limits or tableaux de chasse. Thus, in Senegal, to take one example, the small game licence allows the bagging of not more than one warthog per week and not more than 15 birds or small mammals in any day. A further expedient might be to empower the authorities to prohibit temporarily the hunting of specified game1 and so, for example, reduce the pressure on any animal population with dwindling numbers or otherwise in difficulty. The results achieved in this way will be similar to those obtained through prohibitions on the taking of wholly protected species, but the approach will be a more flexible one.

The Gambia's Act offers a solution which in practice comes to the same thing as that just described but modifies the notion of game. In this case there is no permanent list of game: the Minister reponsible for wildlife matters may declare an open hunting season during which it will be lawful to take the species which he names. In other words “game” is no longer a series of species that can be hunted, under law, provided the hunting regulations are complied with, but connotes those animals that the Government, without being bound to an enactment or to decisions taken in previous years, deems it opportune that they may be hunted.

Most legislative systems list ordinary game in a schedule. But these lists are not always exhaustive, so that they perpetuate the same indeterminateness, where game is concerned, as would the absence of such lists. It is sometimes difficult in the latter case to know which animals constitute game whose hunting is regulated. This is exemplified in the law of Madagascar where “animals shall be deemed to be game... which are not classified either unter protected animals or under harmful animals”.2 The two categories in question between them contain 26 names - which warrants the question: does this really mean that all other species are game species? It is preferable to have a list containing all species that the legislator deems to be game so that there will be no possible doubt in the matter.

4. Harmful animals/vermin

The fact of instituting a juridical category of harmful animals, or vermin, should not be confused with the provisions which wildlife law devotes to the protection of persons and property. In the case of property, it is a matter of fending off individual animals by reason of the immediate danger that their behaviour represents. In the case of persons entire species of animals will be concerned. The label “harmful" attaches to each and every individual of the species by reason of the potential danger that the mere existence of their kind represents, and that irrespective of their behaviour at any given moment.

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1 Such a measure could apply to the entire national territory or to specified areas.

2 Decree No. 61-096, 16 February 1961, art. 3.

Nor will all animals deemed to be harmful by the law be actually harmful. Where most harmful specimens of wildlife - insects, for instance - are concerned, the law is silent. In strict logic, one is forced to define harmful animals as those reputed to be such by the lawgiver. And yet the juridical concept of “harmful” is not as arbitrary as it might seem at first sight. Broadly it refers to animals which are “hunted down” - hunted, therefore, and by that token amenable to the description of “game”.

In principle the inclusion of a species in a list of harmful animals is tantamount to the law inciting people to hunt it down and destroy it, in that it implies authorization so to hunt it without a licence being necessary and without restriction as to season. The laws studied here hardly ever take logic to its uttermost conclusion in order to ensure that the pursuit of harmful animals does not encourage poaching, namely by authorizing all otherwise prohibited hunting procedures. And yet, Senegal's Act is explicit: “the destruction of poisonous snakes... shall not be deemed to be an act of hunting”, which is tantamount to permitting resort to all means whatsoever. Similarly, Ghana has a provision empowering the President to order the destruction of the eggs of crocodiles, poisonous snakes and pythons. In any event, when prescribing for the hunting of harmful animals without restriction as to place, legislators are careful to specify that this may not be done in parks and nature reserves.1

As considered here, the juridical concept of harmful animal or vermin is coming to be abandoned in modern wildlife law. It may indeed be found in the laws of Botswana or Ghana but not in the most recent enactments. For the manichaean view of an animal world divisible into “good and bad”, and “friend or foe” of man, has been given the lie by progress in science. People have become aware of the rôle of each species in the diversity of nature's processes. There is no longer that systematic eradication of certain species, save for insects that are vectors of disease. Explanations are even forthcoming for the damage-causing behaviour of animals in terms of disturbance in the equilibrium on which their existence depends or of the rarefaction of their sources of food. In short, is has become clear that “harmful” animals are not necessarily so and that, if anything, protected species themselves might in certain situations cause serious havoc.

That being so, wildlife law is moving away from the very principle of having a harmful animals category. Thus Senegal's Act lays down that “no vertebrates except poisonous snakes shall be declared in general and permanent terms to be harmful”. Similarly, Kenya and Mali have no “harmful lists. The latter country provides that “where certain animals, whether protected or not, constitute a danger or cause damage, the head of the forest services may allow them to be hunted or destroyed following a field inspection by a member of the waters and forests service or by a game warden”. This provision, which has a substantially similar formulation in the law of Senegal, does not leave it to the discretion of each and everyone to deal with animals turning harmful but places the mattter under the control of the Government.

5. Unclassified species

There is very little that need be said about unclassified species because by definition positive law is silent in their regard save to protect those

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1 Thus Madagascar, Senegal, Sudan and The Gambia.

individuals that happen to be in parks or nature reserves. These animals form a left-over category by exclusion after the mammals, the birds and certain reptiles, such as snakes, crocodiles, varanids and turtles. And yet this “residual” group comprises the largest number of animal species. There is no point in asking oneself if the law should remain silent in regard to all these creatures: it cannot; while, at the same time, it is difficult to see the benefit - or even the practical possibility - for legislating for all of them. However, among these reptiles, batrachians or arthropods, certain species are clearly endangered. That being so, it should be possible to put them in a category affording them the protection of the law. As things stand in African legislation this is - formally - possible since, as will be seen, the texts empower the authorities to add further animals to the lists. The difficulty, if any, lies in the fact that wildlife law or the law of natural resources remain inadequately distinguished from the laws on hunting. It might seem strange in a law on hunting to lump together these humble creatures with the magnificent specimens once game and now protected, or to make rules governing their capture.

Apart from the special case of harmful animals, the fact of having categories of species may be seen in the final analysis as a gradation in the different measures designed to protect wildlife. A certain flexibility in assigning animals to categories and a certain play in the legal rules are called for in adapting these measures to specific situations.

B. Classification of animals

As a general rule the lists of animals coming under the protected categories (wholly protected, partly protected, game) are prescribed by the legislator and, furthermore, entail the relevant rules becoming enforceable immediately. On occasion, these lists are in the nature of regulations rather than deriving their status from the principal Act itself. This is so in Senegal, where the Hunting and Nature Protection Code is divided into a legislative part and a regulatory part, the categories and lists of animals being placed in the latter.

Gambia's Act offers an unusual model both as regards categories and as regards classification procedures. Classification is grounded in the principle that any wild vertebrate animal found in the country is protected. The Minister responsible for wildlife matters may withdraw certain species from this generic protection and declare open seasons in their regard, with variations according to region and species. He may also declare other wild animals to be vermin for a specified area or period. This formula has its attraction by reason of the primacy it assigns to protection, its flexibility and the possibilities that it offers for adaptation. And yet, it may be asked, does not this extension of the protected species concept to all vertebrates dilute somewhat the connotation of protection?

The first problem, then, concerns the amendments to the lists. This procedure is always feasible under the general law of a country. But where these lists themselves derive their status from the principal Act their modification under the usual lawmaking procedure may prove difficult. For this reason provision is best be made in the Act itself for vesting limited amending powers in the head of State, head of government or the minister responsible for wildlife. Botswana empowers the Minister to alter the relevant schedules. More restrictively, one could create powers only to add a

new species to a list or to transfer a species from a less fully protected category to a more protected category, while removals from lists would be hedged round by the formalities requiring an act of parliament.

And yet, one should not endow the category system with undue scope for modification, for fear of diminishing its efficacy. To list a species under a category is a serious step, with implications for the future of that species and possibly for economic and social interests. Moreover, classifications usually apply throughout a national territory, which may be vast in extent, so that it may be appropriate sometimes to discriminate between regions. There is some utility to be seen, too, in extending protection measures in an ad hoc fashion, and for a limited time, to certain species without entailing their listing under the statutory categories. This is the procedure followed by Senegal, where "the Minister responsible for Water and Forests may by Order declare an animal species to be wholly or partly protected in a given area for periods which may be extended but not beyond five years."1

Ghana's Act, which is less precise in this respect, vests powers in the President to prohibit the "hunting and destruction of animals whose preservation, whether owing to their rarity or threatened extermination, may be considered necessary".2

It is intuitively preferable to decentralize certain aspects of the ministry's competence where wildlife protection is concerned to the regional authorities, who normally have a more immediate grasp of local problems and who could be empowered to suspend hunting in their area or take measures for biotope protection. Provided there is no danger of conflict with higher authority, they could be able to act within their delegated powers or powers vested in them in their own right, while remaining subject to the axiomatic rule that lower echelon enforcement authorities may add to but never subtract from the rules prescribed by higher authority. Clearly, the feasibility of this approach will depend on the situation at the local authority level and the ability of that authority to shoulder the tasks of wildlife management.

Once species have been assigned to their respective statutory categories, a sort of register is thereby brought into existence by reference to which it is possible to formulate a consistent policy where the wild fauna is concerned. Such a policy can be guided by serious planning such as that embodied in law of, among other countries, The Gambia. Here a wildlife management plan must be adhered to whenever the administering authority declares hunting seasons open or prescribes the species and number of specimens that may be hunted.

Now, wildlife policy finds expression in a certain number of objectives that the protection formula is intended to pursue.

SECTION II - Forms of wildlife protection

The different forms of wildlife protection are the logical answer to the factors responsible for the rarefaction of species - answers deriving from

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1 Hunting Code, art. D. 19.

2 Wild Animals Preservation Act, 1961, section 11(d).

the law and from technical considerations. They can be discussed under three headings: control over the taking of animals, habitat maintenance and restocking.

Subsection 1 - Control over the taking of animals

"Taking" an animal, as defined on an earlier page here, in the sense of removing it from its normal environment is of current usage in the environment protection context and it is beginning to make its appearance in the wildlife rules. The term is used in the 1979 Bonn Convention on the Conservation of Migratory Species but it has yet to be adopted into the nomenclature of the national laws of Africa, where one finds "hunting" and "capture", rather. Here, however, with the evolution that wildlife legislation has undergone, connotations have become ambiguous and no longer satisfy the exigencies of juridical precision. Some purpose will be served, therefore, in defining first the forms that "taking an animal" may assume before the regulations in their regard are examined here.

A. The different forms of taking an animal

There are several ways in which an animal can be taken out of its natural environment. One form is the accurate shot of the solitary marksman, which is quite different from the mass slaughter of a herd of buffaloes to provide a community with a supply of meat. It is one thing for a specimen to be caught by a team of scientific workers, and another where there is organized traffic in exotic animals. Such activities, so diverse both socially and in economic terms, are lumped together by positive law under "hunting". Now, hunting, as currently defined, has an imprecise connotation on the one hand and, on the other, fails to reflect social realities.

A first source of ambiguity lies in the fact that the legislators embody in their hunting laws provisions having to do with the "capture" and the "destruction" of animals. The former term is associated with scientific pursuits, the latter with the control of harmful animals. But are they distinct from hunting? The answer is not always an easy one. Usage reflects a transitional situation in law where an autonomy of certain forms of taking animals has yet to be affirmed for as long as they are covered by savings in the law. In the same way one finds photo safaris dealt with in hunting laws. Photographing animals, just as simply watching them, offers a form of "exploitation" of wildlife which it were well to regulate both for its economic interest and for the disturbance it can represent for certain species. And yet it cannot be brought under the same juridical heading as hunting because in itself it strikes no blow against the liberty or the integrity of the animals. That it should appear in hunting enactments is explained by considerations of convenience and by the absence of legislation on nature protection of a higher order than the hunting regulations.

Even in its narrow connotation, the term "hunting" is not beyond criticism. A comparison of the definitions to be found in the various enactments shows how it revolves round two elements: the action of hunting, and the object of that action.

As regards the action, a law will at least consider the action of "killing" or "capturing alive", as one finds in Senegal. But if the intention

is to facilitate the prevention of poaching and the bringing of offenders to book, it is best to list the various attitudes or activities involved in the operation of hunting. Thus Botswana's Proclamation lays down that “hunt” means a) kill, injure, shoot at or follow, pursue; b) wilfully disturb or molest by any method; c) lie in wait for or search for with intent to kill, injure, shoot at... etc. Between these two positions there is a gradation of possible legislative draftings. Often “hunting” may cover collecting or destroying eggs and nests. Clearly, this first element in the definition is conceived entirely in terms of the penalties that need to be visited on offenders. As such the definition tends to lump hunting together with activities with which it has nothing in common. It would be better (and developments will no doubt be in that direction) to use the expression “unlawful taking" instead of referring to hunting as an offence in all those cases where what is being done is not hunting strictly so called.

Coming, next, to the second element characterizing hunting - the quarry, the target, the object - one finds that this, again, is not always clearly defined. Obviously, the fact of killing no matter what animal cannot be considered per se an act of hunting and thus as coming under the hunting rules. First of all, domestic animals should be treated quite separately. The laws of Senegal, Sudan and Kenya so provide, the lastmentioned even adding that “animal” within the meaning of the Act “does not include a human being”.1 Similarly, one should exclude animals belonging to wild species that are held in captivity. Captivity itself can be regulated under wildlife legislation insofar as it presupposes a capture in the first place and in order to secure control over trafficking in animals. But to kill a captive wild animal is still not an act of hunting, for all that the texts studied here are silent as to this distinction.

Again, it is necessary to exclude fish from among the objects of hunting. Only Sudan's Act does so. On the other hand, Ghana's Act expressly includes non-edible fish. Does that mean then that the taking of edible fish constitutes hunting? Similarly, Madagascar's Hunting Act lists certain fish among the protected species and levies a duty on exports of others. Provisions of this nature are in fact to be found in wildlife law, yet it is not entirely logical to bring them within the scope of laws on hunting - i.e. on one mode of taking among several.

Once these considerations have been catered for expressly or by implication, there remains the question as to which among those that are wild and are living free and are not fish are the animals the hunting of which must be provided for in law.

Here the various legal systems in Africa offer two sorts of answer. The first consists in listing species that are hunted. Mali defines hunting as “the action of pursuing, killing or capturing game”, and goes on to give in schedules lists of species deemed to be game; and Ghana similarly regulates the hunting of species listed in the Schedule. These laws also provide for the prohibition on the hunting of species referred to as completely protected, and violation of this prohibition ipso facto constitutes illicit hunting. In this way one arrives at a definition of hunting in terms of game or wholly protected species as listed under the Act, while the taking or destruction of other animals is not deemed to be hunting under its terms. This approach

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1 The Wildlife (Conservation and Management) Act 1976, sec. 2.

has the obvious advantage of clearly delimiting the connotation of hunting and the scope of hunting regulations.

Much less precise, the second possibility consists in defining the object of hunting as "any wild animal" (Senegal) or "any vertebrate other than domestic animals or fish" (Sudan)1. Here the fact of having lists of game or species that are treated separately contributes nothing to defining hunting since there will still be species that do not appear in the lists and come under the general category of wild fauna or that of the vertebrates. Rather is it to be supposed that the legislator did not intend that the laws on hunting should include within their scope the capture and destruction of insects, small rodents or batrachians. One is thus forced to the conclusion that there is an implicit exclusion of species that are not customarily considered to be game. This kind of definition gives rise to confusion because there is no means of knowing exactly what are game animals and thus the limits to the scope of the hunting regulations.

Following this critique of positive law it is appropriate to recommend another approach, which consists in defining the different forms of taking an animal. Hunting, as so conceived, is not only the activity designed to secure the capture or the killing of game but also an activity engaged in individually and non-commercially. To be sure, several huntsmen can operate together in a coordinated fashion, and this will be called a battue. A huntsman may have the assistance of trackers or guides. For all that, the activity is in no sense a collective one but individual. This is what is referred to as sport hunting, to which should be added hunting for food purposes - engaged in conceivably under traditional laws or, if preferred, under customary rights. It must also be recognized that the activity does not become commercial as long as there is no habitual practice of selling the game. Under certain laws a hunting licence holder may employ another to hunt in his stead and supply his table with game meat or, again, a huntsman may sell the products of his hunting from time to time. But these are occasional, and not commercial, activities.

The second form of taking wildlife is to be seen in mass killings – "controlled killing" being the expression used. Several African countries have engaged in operations of this kind, and some still do so. The primary characteristic here is that the operations are decided on by the public authorities, and it matters little whether they are carried out by government servants or by a firm of contractors2, since it is a public service that is being provided in which manpower and material means are brought to bear to a far greater degree than in mere hunting. The purpose, to judge from the experience of Tanzania or Mozambique, for example, is to secure an efficient management of the wildlife geared to providing meat, hides and skins, ivory, horns and all the artefacts it is possible to obtain from animal sources. Mass culls are not legislated for at the present time and, if anything, their

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1 Cf. also Botswana: Fauna Conservation Proclamation, 1961, secs. 2 and 15 and Kenya: Wild Animals Protection Act 1951, art. 2.

2 Mozambique has a public undertaking, EMOFAUNA, with special responsibility for these "controlled killings" and the marketing of the products obtained by this means.

appearance on the scene is due to certain lacunae in the texts or, at any rate, to waivers of the rules.

The next form of taking wildlife is that done for scientific purposes, where the profit motive is absent and which is characterized also by the waivers contemplated in the law in their regard.

The fourth form of taking wildlife is the commercial capture. Whether organized on a small scale or on a large scale, since what is of interest is the meat and other remains or live specimens, these capturess are so described because the products typically, and not merely occasionally, enter commercial channels.

To complete this list mention must be made of, on the one hand, the need to protect persons and property in so far as doing so entails the killing of animals and, on the other hand, poaching, which on the premises defended here constitutes an illicit taking of animals - a violation of the wildlife laws and not simply a hunting offence.

B. Taking of animals regulated

The regulation of the taking of animals reveals several constants. In the first place, an authorization is needed before one may take an animal. A person may do so either by virtue of the law itself, as in the case of the protection of persons, or by virtue of customary hunting rights or, again, under licence from the authorities. Next, an important rule - for the species where control is deemed necessary - is that captures should be in all cases declared to the authorities for statistical purposes. In positive law there will be hunting regulations with various derogations corresponding to other forms of taking wildlife. An attempt will now be made to discern these.

1. Hunting regulations

There are two aspects to regulating hunting: The right to hunt and the actual engaging in this activity.

(a) The right to hunt

African customs on which the right to hunt was originally based received recognition in the earliest hunting regulations. It was thought neither just nor feasible to submit to latter-day regulation the hunting done by people living on the fringes of technical society for whom this activity constituted an essential source of food. Only later was it realized that the keeping on of traditional hunting in an Africa receptive of innovation was not without its problems.

In the first place, even the most distant tribes came into possession of firearms and modern materials such as steel and nylon with which to fashion traps which no longer had anything traditional about them. Next, thanks to progress in transport and the opening up of communications, there developed a traffic in meat going to supply the markets in the towns: under the cloak of customary hunting a twofold poaching activity had come into being, as evidenced by the methods of capture and by the destination of the products of this hunting.

Accordingly, the legislator tended to do away with traditional hunting rights, and these are hardly any longer to be found save as odd survivals in the texts. Sudan provides for a special licence which will be issued to a local tribal chief and will permit hunting by derogation from the general law of the country (sec. 46 of the Act). Mali's Ordinance lays down that "no person shall be authorized under the pretext of any customary right to engage in hunting otherwise than subject to the conditions prescribed by this Ordinance" (art. 2). The same enactment, however, authorizes "farmers in possession of spears, bows and arrows and similar hand missiles" to hunt certain categories of game without a licence being required. As an illustration of the ambiguity in the expression "traditional hunting", the legislator has felt obliged to add "This authorization shall not confer on such farmers any right to hunt with improved weapons unless they are in possession of a hunting licence" (art. 3). Other texts - the laws of most of the English-speaking countries1, for instance, make no reference to customary rights.

A further question concerns the importation into Africa of the private ownership of land and the links between such ownership and hunting rights.

Botswana seems to have established the principle of the subordination of hunting rights to property rights, with the requirement that in order to hunt on land belonging to another the written permission of the owner is needed. The landowner is authorized to search any premises or vehicle on his land and to destroy any dogs found hunting there, while it places criminal liability on his shoulders if he permits persons other than those holding a game licence to hunt in his private game reserve. Under the expression "landholder's privileges" the law authorizes this person to hunt on his own land, and without a licence, any animals except conserved animals, protected game and elephants. A supplementary licence is available to him in the case of these animals, including those of wholly conserved or protected species.

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1 That positive law should countenance the persistence of customary hunting currently gives rise to problems that the enactments themselves are hard put to it to solve. To begin with, the question arises as to who can claim customary rights. In Madagascar, for example, the law provides that these rights are recognized "solely with a view to supplying the personal needs of the population...." But this provision is clearly too wide: any resident in Madagascar, it seems, can go in for "customary hunting". The institution, rather, is designed to allow communities lying at a distance from commercial channels to obtain their supplies of meat. Accordingly, it would be better if the authorities were to determine the rural areas where customary hunting continues to be lawful. Again, it is agreed that customary hunting is characterized by two considerations - the gear used, which should be of local fabrication, and the prohibition on any selling of the game outside the community concerned. Madagascar lays down that such game may not be traded in any way. As long as hunting gear consists of assegais, bows and arrows and blowguns the "local fabrication" clause is a healthy restriction; but with firearms fashioned or reconditioned locally the provision will be a source of accidents for the users and will cease to have any raison d'être. In this case it is better to issue a controlled hunting licence to the village headman and encourage the use of guns to which no such danger attaches.

Kenya's Act also reserves the right to hunt on private land to the owner and those he allows to do so. At the same time the owner may declare his land open to hunting. The declaration may carry with it conditions relative to the animals that may be hunted subject to the obligation of prior notice to the owner whenever hunting parties are to be organized. In this case a proportion of the hunting licence revenue is payable to the landowner.

The other enactments make no reference to a special right vested in private owners (beyond, of course, that to protect his property), so that hunting rights are in no way linked to private ownership rights, and are vested exclusively in the person.

With the exception of Botswana's "landholders's privileges", the various laws consider hunting rights to be those where their exercise is subject to prior licensing by the administrative authorities. The latter, as a general principle, are empowered, and required, to grant applications for licences - required, in the sense that they cannot refuse if the applicant meets all the statutory conditions for eligibility. Also as a general principle, a hunting licence confers on the holder all rights contemplated in the law.

However, one finds in Ghana's Wildlife Regulations a provision whereby the administrative authorities have discretion not only as to whether the application meets those statutory requirements but also as to whether it is expedient to grant the licence. Issuance here is subject to a discretionery power therefore, by virtue of which the authorities may refuse if they judge the grant to be "undesirable" having regard to the conservation of the species in question concerned. In The Gambia, too, not only are the administrative authorities not obliged to declare open seasons but may they refuse to issue or suspend a licence without having to assign reasons for the decision.

A new trend may be discerned thanks to the example set by Ghana and The Gambia, and hunting is ceasing to be a sort of public liberty which all and sundry may lay claim to provided they otherwise satisfy the requirements of the law. An administrative authorization is now required, which is not an acquired right but something that can be withdrawn. This implies that game is looked upon as a res communis or national property, or at least that the State undertakes to manage it in the common interest.

One is liable to be disconcerted at first, when comparing the different types of hunting permits or licences, by the variety of systems and names in use. Yet this is highly instructive, since it brings out the multiple purposes of hunting in Africa (or, rather, shows up the ambiguity of texts seeking to regulate at one and the same time hunting and the forms of taking animals). The most substantial difference to be noted might best be expressed by distinguishing between, for want of a better term, "ordinary" licences and "special" licences.

(i) Ordinary licences

This expression refers to those licences that are available under the general law of a country. In some countries these will be called "sporting licences", a valid expression where the leisure element predominates. Now, the proportion of people who hunt under these licences, to obtain food or food for others, seems to be greater in Africa than elsewhere, and the sporting element is not always discernible. These licences can suitably be analysed

via a twofold approach by looking first at the conditions attaching to the grant and then at the content of the authorization itself.

The conditions governing the granting of licences take their origin in the first place in the legislation on firearms. A constant rule is that these licences are issued only to persons already holding a gun licence for hunting purposes; and there is often the further condition that this or that species may be hunted only with guns of a stated calibre. A certain latitude may be provided for in the case of foreigners in relation to the temporary importation, or hiring, of guns.

These “ordinary” licences are issued only to individuals, and only one per category of animals, and are not transferable. Their validity is limited to one year or to short periods in the case of foreigners. Issuance, moreover, entails the levying of a fee, the rate being determined in relation to the species which it is authorized to hunt and by the status of the prospective holder. The fees levied on short-term licences thus correspond to tourist hunting and as a general rule are much higher than those paid by the nationals or permanent residents of a country.

The content of a licence is determined by three variables. The first of these concerns the area of territory. A licence may be issued for the entire national territory or in terms of an administrative district. In the former case it is to be noted that several national laws channel hunters, by category of prey, to the appropriate hunting grounds. With a view to managing the wildlife resources necessary in order to attract foreign huntsmen, the latter will be assigned sectors, usually where game most abounds and where the management is more often than not contracted out to safari operators, the remaining sectors being reserved to residents and nationals or closed to hunting from time to time. It goes without saying that licences covering the whole of a national territory will never authorize hunting in national parks or nature reserves, military zones or built-up areas. Among the conditions on which the grant of a licence depends there is nowhere to be found the requirement that the appplicant undergo a test in hunting matters. Ghana's Regulations simply lay down that the issuing officer may refuse a licence if he is not satisfied as to the competence of the applicant to use a firearm for hunting firearm or to recognize the species in respect of which the licence is applied for (reg. 9).

The second variable concerns the animals which it will be permitted to hunt. Here several considerations need to be made. In the first place there is the desideratum of husbanding wildlife, so that a limit will need to be placed on the number of licences issued for certain species. Next, there are the financial concerns of the State, which will suggest higher fees to be exacted in respect of the more highly prized animals or will counsel allowing for tourist demand. Lastly, there will be the settled administrative customs of the country envisaging an aggregate allowable bag or licensing system. Broadly, it is possible to distinguish three groups of animals - the first consisting of small game, which is relatively abundant where the licence will impose no restrictions other than those set out in the published limits required under the general regulations; the second encompassing big game, where numbers are abundant (though these may comprise partly protected species and the enforcement of numerical limits), while the third group covers partially protected animals of the most highly prized kind such as the elephant and the western giant eland. With this last group the bag limits are very strict - usually as low as one specimen in each case.

In practice these three groups can be combined among themselves in all sorts of ways. Some countries have a single licence with varying degrees of flexibility. Others have a two- or three-stage system, geared to small, medium-sized, and big game. In all cases the huntsman must state which type of game he intends to shoot. The laws of the English-speaking countries make a further distinction in their licence for birds, which thus concerns one group within the small game category.

Licensing systems also retain the distinction between resident huntsmen and those from abroad and take into account the use by either of camps or their resort to safari operators. Additional opportunities for shooting can be offered to those who bring in foreign exchange or business to the safari organizations.

Hunting methods are in the normal way regulated by the provisions of the basic law on hunting, though there will sometimes be further provisions enabling the administering authority to impose additional requirements at the time of issuing licences.

(ii) Special licences

Mention has already been made of special licences permitting a person to hunt conserved animals or protected game on his own land in Botswana, the matter being dealt with, in more general terms, in connection with the discussion on the various forms of taking animals.

The point of these special licences is that hunting is authorized by way of a derogation from the general law as regards the species affected, the means employed or the hunting season. If one analyses these licences from the standpoint of the respective purposes, three broad types emerge.

In the first place there are the licences that confer privileges on the owner of the land. These are peculiar to Botswana.

Secondly, there are those that one may describe as “regalian”, whereby a government authority, duly vested with the prerogative, may grant licences in respect of which certain requirements of the law will be waived. Botswana also provides an example, with its “Minister's Licence” - i.e. one issued by the Minister responsible for wildlife, which “Notwithstanding anything in this Proclamation,.... may authorize the hunting of any animal other than a conserved animal, in any area of Botswana, whether such area is an area in which the hunting of animals is prohibited or restricted or not, and in any season whether such season is the open season in respect of such animal and area or not”.

A third type of licence is to be found in the authorization to kill wild animals for their meat. In the normal way, this is not a case of habitual trade but of victualling a team, a community, or an isolated military detachment. Once again in Botswana, the licensing officer may issue such licences for victualling purposes, for epizootics control, and for the protection of crop and animal husbandry activities. This type of licence is not intended to open up the way to trafficking in meat or the organization of heavy slaughterings of the sort met with in Mozambique or Tanzania

Three types of special licence therefore, to which must be added those which the laws contemplate for scientific and commercial purposes. These will

be considered separately, in keeping with the distinction followed in this study between the various forms of taking animals.

(b) Hunting

The sort of hunting considered here is that engaged in under ordinary licences or, if preferred, sport hunting. (Special types of hunting are alien to this group, being by definition exempt from conditions prescribed by the general law of a country and constituting so many special cases.) The problems arising in the practice of sport hunting can be dealt with under the aspects of the organization of this activity and the regulations governing it.

(i) Organization of hunting

The hunting conditions peculiar to Africa are such that it is necessary to to seek the services of professional hunters to conduct one to the hunting grounds and to help flush the animals. In this way there has come into being the profession of the hunting guide, or game scout or the equivalent legislated for in all countries studied. Given the shortage of personnel “in the field”, there was an attraction in assigning special responsibilities to these auxiliaries. Among other things it has often been made incumbent upon them to see that their clients observe the hunting laws. The law of Mali, in fact, makes them criminally liable. In Kenya one is obliged, as a general principle, to be accompanied by a licensed hunting guide. And then, hunting in Africa calls for physical facilities - camps, and transport (often airborne) to keep these supplied. Safari operators have come into being in order to cater for these needs. Sometimes the hunting guides organize their own safaris, at other times they are employed by a company. In several cases the government has been at pains to create a network of camps, run by the ministry, as in Mali, but more often than not it contracts the work out to hunting organizations to which it assigns a sector, where only their clients may hunt.

The need for fixed installations and the policy of developing the safari sector has led to the African countries assigning certain areas more particularly to this activity. In the French-speaking countries, the safari sectors are grouped within zones d'intérêt cynégétique, and it would be difficult to express the purpose of these zones more precisely than to call them, as does the Senegalese legislator, “portions of the territory where game and hunting are of major scientific or economic interest or where the wild fauna is susceptible, without jeopardizing other sectors of the economy, of being developed as fully as possible for the purposes of scientific study or their rational exploitation for tourist of sport purposes”. The English-speaking countries have their similar “controlled hunting areas”.

(ii) The rules governing hunting

The practice of hunting is regulated in terms of a positive prescription - the intending hunter must be in possession of a hunting passbook or game register - and of a series of restrictions, in the sense that various limits hedging in this activity must be respected.

The passbook or game register is always prescribed where partly protected species are concerned and may be extended to cover all game. Entries are made each day. These documents are stamped by the authorities issuing certificates

of origin for trophies and must be returned to the wildlife authority at the end of the season. If this procedure is properly adhered to, the information obtained can be statistically processed, and the evolution in populations can be kept under observation, thus permitting bag quotas for the following season to be determined on sound principles.

The limits applying to hunting refer to the game, the place, the season, and the hunting techniques employed.

In a sense there is always a limit where game is concerned since licences are issued in terms of named species, with indications as to sex, age, and bag limits. These provisions do not, however, cater for all possible situations, particularly in the case of small game, so that it will serve some purpose to have general rules supplementing the prescriptions attaching to a licence. These prohibit firing at females and their young and restrict the maximum number which it will be permitted to hunt to a stated period - for example one day or one week.

Limits as to hunting grounds derive from consideratons both of public order and of wildlife management. Here the primary concerns are the built-up areas, enclosed properties and military ranges. Wildlife protection, next, calls for a prohibition on hunting in parks and nature reserves. Also coming unter this heading are the sectors closed to hunting pursuant to the policy of wildlife management - sectors thus constituting hunting reserves with natural restocking as the aim but where, in addition, it is possible to organize animal watching or safaris.

Limits as to season are established in a homogeneous fashion - in the sense that they are not determined by region or by species. The laws of all the countries studied provide for a season of the year where the dates are established by reference to the climatic inevitability of the rainy season, at which time most hunting grounds are impervious. Yet this is not without its problems, since the dry season, which is the only period when hunting can be declared open, also coincides with the mating season and the time when the young are reared. Clearly, the hunting seasons in Africa cannot be decided as they are in other parts of the world - Europe say - on overriding considerations of climate that are inimical to the game or to the breeding season. And yet The Gambia's Wildlife Conservation Act opens up the way for adaptations in these terms. There, as mentioned earlier, the Minister responsible for wildlife matters has powers to declare open seasons for any species he may indicate. By implication, then, he is not obliged by law to fix a uniform season for all game whatsoever. The very text of the law enables him, moreover, when issuing licences, to prescribe conditions concerning the areas where they will be valid. Differentiating between regions and seasons is bound to be conducive to wildlife management and improved statistics, but it has the disadvantage that it complicates the task of the game wardens and that of keeping down poaching.

The technical limits placed on hunting consist in the prohibition on resort to certain procedures, and are to be found, with the occasional editorial variant, in all laws. In every case the purpose is to prohibit those means of hunting that make for easy or massive capture, hunting by night with lighting devices, the use of poisons, the laying of traps, nets or snares, the use of automatic rifles which can fire in bursts, and resort to motorized transport, aircraft or boats.

2. Rules governing other forms of taking animals

Leaving aside the question of massive killings of game, which have not been covered by any provision of law, and the protection of life and property, which belong to another area of wildlife legislation, one finds two subjects dealt with in positive law in terms of derogations from the general rules on hunting. These are the scientific licences and commercial licences.

(a) Licences for scientific purposes

These are to be found provided for in all national laws except that of The Gambia, where it is the authorized wildlife officers who do the hunting and taking. The point has already been made to the effect that if it is necessary to cater for the needs of scientific research or for wildlife management, care must be taken not to open the door to wholesale trafficking in animals. As an example of the possible connection between science and commerce may be cited Mali's Act, where section 9 provides for a "scientific licence for the purposes of hunting and capturing". This licence is issued by the head of the Waters and Forests Service upon notification by the Minister, and when it covers wholly protected animals, it "specifies the rights conferred on the holder and the area where they may be exercised", and is issued without charge. "However [sec. 10], if a commercial interest is present besides that of scientific research (zoological gardens, manufacturing pharmaceutical laboratories, etc.), it shall come within the purview of the provisions... governing licences for commercial captures". The matters to be specified in scientific licences need to be noted: they concern the identity of the person responsible for the operation in question, the species and the number of individuals for which capture is authorized, the place and date of the operation, and the obligation to report the operation. There are no generic regulations governing captures for scientific purposes, such rules as are to be observed being stated among the conditions attaching to the issuance of the licence.

(b) Commercial licences

Commercial licences are those which authorize the capture of live animals with a view to their resale or, as the case may be, the hunting of certain animals in order to trade their skins. Thus, Senegal has a special licence in respect of the crocodile, which may be hunted with hook or spear even in general close seasons and at night. The only limitation consists in the prohibition on the taking of specimens where the width of the skin measured between the horny scales of both flanks is 19 cm or less. The same country has a fowling licence which may be issued to an individual or a company and authorizes the taking of birds, by means of nets or other devices and traps normally prohibited, in lots of 5 000 brace. To complete this description, several licences may be issued to one and the same applicant, and for one and the same season, when he may employ others to hunt for him. Senegal and Mali also have a "general" licence for commercial captures which can be granted even in respect of protected species and authorize the taking of live animals by means of procedures otherwise prohibited under the general law of these countries. Commercial hunting licences also imply permission to hold specimens and to trade in them. In Madagascar, they exclude protected animals. A fee is levied for these licences, and they carry with them the obligation to keep a register of captures effected and to accept inspection. They are issued for five years to individuals or companies, though the use of firearms implies that the practitioner is also in possession of a normal hunting licence.

It will be obvious that this category of licences is ill-assorted with developments in opinion on trafficking in animals and with the principles that have found expression in the Washington Convention in particular. However, the problem arising in their connection ceases to be a simple one the more these licences reflect a genuine need that wildlife shall produce returns. What is important - as it is for other types of licence - is that the authorities shall be in a position to keep track of the licences that they grant and to assess the impact of these and to see that the conditions attaching to them are complied with.

The monitoring of the number of animals taken can also be supplemented indirectly by the rules applying to the products obtained from this source. Rules such as these are very important in order to limit poaching, particularly in the case of products of great economic value. But control has its place within the general context of obtaining returns from wildlife and will accordingly be examined in due course.

Subsection 2 - Habitat maintenance and restocking - Biotope protection

As things stand in African law, biotope protection is provided for exclusively by the institution of national parks or nature reserves. At the most one could add the limitations attaching to the photo safaris, as they are called, which are a partial answer to the need not to disturb the animals, in particular when they are nesting and might otherwise abandon their young as a result of the clumsiness of photo hunters.

The development of reserves and nature parks in Africa began much earlier than in Europe. Africa possesses the greatest wealth of wildlife and the most spectacular wildlife at that. The large mammals that elsewhere have become extinct have survived here, and the metropolitan powers administering their territories in the dark continent took care to protect these species long before they were to do so at home. Upon obtaining independence the African states, despite political, administrative and economic crises, not only kept on the protected areas handed down by the departing powers but gave a fresh impulse to the policy of protecting nature. This trend is illustrated by the Conventions of London (1933) and Algiers (1968), which bear witness to the two main stages in the development of reserves and nature parks in Africa. And it is a fact that the countries of this continent have found in the growth of international tourism one of the most felicitous of economic incentives. Moreover, the population density in Africa has until relatively recently been very low. Such a state of affairs has permitted the survival of the large mammals that have disappeared in Europe and Asia under the pressure of the human population, and has left in being vast tracts of country where parks and reserves could be created. Lastly, the centralizing traditions of the administrative machinery that African countries have inherited have greatly simplified the task of the legislator in bringing protected areas into being. Conditions such as these explain both the brevity of the provisions that African laws devote to this matter and, when all is said and done, the very small number of juridical formulas resorted to in comparison with the many differentiations contemplated for the areas one finds in Europe. Inevitably, a comparison of the laws of several countries yields a number of variants on the name given to these protected areas - wildlife reserve, national reserve, special reserve, and so on - but the combination of possibilities contemplated by any given country will be fairly limited and in many cases will be catered for in a single act of constitution. Ghana, for instance,

provides for nature reserves, to be called variously “national park”, “game production reserve”, “strict nature reserve”, “wildlife sanctuary”, but the same rules apply to all of them; and Mali has taken over the nomenclature of the Algiers Convention but has retained a single classification procedure.

All protected areas are so declared by the government. Neither local communities nor private persons have a part in the declaration process, an exception being found in the Botswana Proclamation, where provision is made for an owner to request the classification of his land as a private game reserve. Administration is always of the centralized kind, so that no provision is needed for self-governing institutions or supervisory and control measures. Lastly, combined-purpose areas bringing together nature protection with a major leisure component and economic development, such as one encounters in Europe, are not to be found in Africa.

The criteria distinguishing protected areas among themselves in Africa are few in number. These are: purpose; classification procedure of a more or less solemn kind; and the dimensions of the respective areas. The purposes discernible from a perusal of the texts are the protection of nature in general, or of wildlife, or of particular species. The last-mentioned group of purposes, which is associated with the notion of “reserve” as contemplated by the London Convention of 1933, sometimes comprises local refuges. Thus, in The Gambian Act “local sanctuaries” are designed to provide “protection of characteristic wildlife and especially bird communities, or... of particularly threatened animal or plant species, together with the habitats essential for their survival”. Local refuges are a borderline example of a reserve; and their wider adoption would be a first step in the direction of biotope preservation - i.e. as distinct from protected areas in the accepted sense of the word.

A. Creation of parks and reserves

Setting up a park or reserve involves two sets of considerations: the procedures for the creation or modification of an area, and the conditions determining the procedures for obtaining control over the land upon which the achieving of the purpose of that area will depend.

1. Establishment procedures

The procedures for setting up parks and reserves comprise rules governing classification and declassification. The two actions are in effect intimately linked insofar as declassification - the opposite of classification - normally requires the same formalities as the latter. In addition, the rules governing classification are often prescribed in such a way as to guarantee the perpetuity of the area - i.e., to render declassification impossible, or at least difficult.

(i) Classification procedures

It is appropriate to consider, in connection with classification procedures, which authority shall be competent to classify and whether the decisions to classify are to be preceded by any form of consultation.

The necessity of determining the authority to be vested with powers to declare a park or reserve is important by reason of the consequences it will

have on the juridical force of the declaration, and on the possibilities of amending the relevant decision at a later date. Where national parks are concerned insistence has been laid, in the international fora, on the view that competence for their declaration should be vested in the highest rule-making authority - the legislative itself. And in fact, a number of countries provide for the intervention of the legislator, though not always in the form of a law. In Botswana, declaration takes place by Order of the President confirmed by a decision of Parliament. In Kenya, the approval of the National Assembly is called for only in the event of conflict between the Minister responsible for wildlife and the local authority. In Mali alone is an act of parliament, or an equivalent enactment (ordinance), mandatorily required for the creation of national parks or strict reserves. In Senegal and in Ghana a decree of the President is sufficient. Otherwise, where a country's legislation contemplates several kinds of areas it may assign powers to the legislator to act in the case of the most important areas and to the executive organ in the case of the others. This is the procedure in Mali, where the creation of any reserves other than national parks and strict reserves is a matter for a decree issued by the Council of Ministers.

The decision to create a protected area of any kind is usually preceded by consultations, a stage of the proceedings designed to assess the interests that might be jeopardized. Consulted indeed are private persons, but also public administrative bodies. In this connection the various laws illustrate two possible approaches. In one the consultation of the public is immediate, in the sense that each and every person may address objections to the authority that proposes to make the declaration. An example is to be seen in Botswana, where any proposal of this nature must be made a matter of public notice through the press; also, the time limit for submitting written objections, and the forwarding address for these, must be stated at the same time as the text of the project. Again, when placed before Parliament the relevant bill must also be accompanied by the file containing any objections received. Under the other approach local authorities are consulted and thus indirectly the public. In Senegal and Mali a local committee consisting of local officers of the various ministries concerned receive the representatives of the communities or any persons wishing to raise objections. The opinion given by these committees must give expression to the views of both the public services and private interests. In Kenya the competent local authority alone has to be consulted, and if it does not consent to the proposed declaration the matter must be brought before the National Assembly.

(ii) Declassification procedures

Where the law is silent the recognized rules of interpretation require that any act modifying a juridical situation shall be done by the same authority and following the same procedures as those presiding over the original situation. Most legislators, however, have felt it necessary to prescribe a declassification procedure along similar lines to those for classification. Kenya, in fact, requires the approval of the National Assembly even if the latter has had no part in the original declaration. Apparently, then, the declassification procedure is in its barest essentials identical with that for classification and, if anything, more difficult.

The guarantee of perpetuity for a protected area does not depend only on the intervention of the legislator or on the degree of solemnity required for any enactment declassifying such an area. For the declaration process itself

is heavily conditioned by the time taken and by procedural complexity. Where several entities - such as any local communities that may be affected, or any national-level bodies - have to be consulted, the procedure will inevitably be time-consuming and call for a certain amount of publicity. Groups and organizations objecting to the declassification will thus have the time to induce others to think whether the decision is the right one. Thus, too, precipitous decisions will be avoided. Whereas the declassification procedure is exactly similar to that for classification - i.e. entailing consultations in the same way - it is, on the contrary, a much harder undertaking because it will have to overcome local opposition, which is sure to itself felt.

2. Settlement of conflicts of interests

Conflicts of interests must be resolved whenever a protected area is being declared so as to ensure that users and landowners who feel aggrieved as a result shall not seek to obstruct its due functioning. Moreover it is a question of justice, for whenever private land is included within an area to be protected a loss, which can in some cases be a very heavy one, will be sustained. Protection measures prohibit a number of activities and constitute so many law enforcement rules applying to third parties or visitors and servitudes on the private land affected. At the extreme, where strict protection is the rule, servitudes will be tantamount to expropriation. But the matter does not end here. It is also necessary, especially in Africa, to take into account use rights enforceable on such land even where this belongs to the State. The creation of a protected area necessarily entails restricting or even abolishing use rights which once constituted a community's livelihood.

The solutions adduced for these problems differ substantially in the legislation of the English-speaking countries from that of the French-speaking ones. In the former, emphasis is placed on private property and every attempt is made to prevent any conflict with it from arising. Botswana's National Parks Act provides that parks may be constituted only on State land or land bequeathed or donated for the purpose, and provided, moreover, that the declaring authority is satisfied as to the consent of persons so bequeathing or donating. In Kenya, no private land may be included within an area unless first acquired by agreement or by expropriation. In The Gambia these areas are created on land belonging to the State, and any extension of them will give cause for expropriation or agreed acquisition of the area required. In the laws of the French-speaking countries emphasis is placed, rather, on use rights. Senegal's Act provides that these may be abolished in the event of a national park or integral reserve being declared but leaves it to the rulemaking authority to specify what use rights may be maintained in being in the remaining cases. It also lays down the principle whereby compensation shall be granted against rights so abolished. At the same time compensation must be sought in the creation of alternative resources for the communities concerned rather than in money payments. Mali's Act empowers local commissions to come to an agreed settlement for the making good of rights injured. Failing agreement the complainant is referred to the courts. In concrete terms, the communities will have certain use rights maintained in being - except in the context of “strict” protection - and these will concern for the most part the gathering of wood and fruits and other plants and honey, and fishing, while hunting as such is abolished. The broad trend discernible in the evolution of laws - at least to judge from the letter of the enactments - is toward the disappearance of use rights. It is no surprise that the presence of populations on the edges of a park or reserve

constitutes the principal obstacle to the full efficacy of any protection system.

B. The operation of parks and reserves

Operation will be taken in the present study as referring not so much to official administration, which being centralized presents relatively few problems, but rather to the protection measures and the tourist management aspects.

1. Protection

The protection measures employed are prescribed by law, and may merely be supplemented by provisions specific to each protected area. Their first concern will be the direct harm that may arise for wildlife and the biotopes. Thus, it will be prohibited to hunt1, to molest the animals, remove plant specimens, and so on. In the second place, they will restrict or prohibit any acts of man that are incompatible with nature protection. Accordingly, mining, overburning, agricultural activities, etc., will be prohibited.

The enactments studied are silent on the matter of zoning, which is an administrative concern. However, the principle of establishing buffer zones is met with in the Kenyan legislation, whereby certain activities may be restricted in the vicinity of a protected area. Experience worldwide confirms the usefulness of such a measure whenever a protected ecosystem is exposed to some influence external to itself. In such cases - in matters affecting, for example, water points and water management facilities or waste disposal into watercourses - provisions should preferably be made in the authorization process for approval by the park manager.

2. Tourism

Management where the tourist - including hotel - trade is concerned can be approached by grouping together matters of concern to law enforcement and access by the public and, on the other hand, the economic aspects and the tourist and hotel facilities themselves.

(i) Access by the public

It is normal for the public to have access to national parks - this indeed being one of the criteria presiding over the institution as hallowed by the terminology used in international law. The public may also have access to reserves though, by definition, not to strict reserves. This does not mean, however, that the public may have access to all parts of a protected area whatsoever or may enter without paying. Access and circulation are generally covered by rules determining the points of access - the “park gates” - and laying down that persons may not leave the prescribed paths or routes. Where it is permitted to set up tent for the night this must be at specially prepared sites. All enactments studied authorize the charging of an entrance fee. Nor is this practice purely financial in object, for it also provides a means of monitoring the numbers of visitors and limiting them if need be. In

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1 Occasionally this gives rise to problems in the case of parks “suffering” from their success, as exemplified by the elephants of the Tsavo Park.

any event the fee is not a means of moneymaking, for this would go counter to the social and educational role of national parks. Kenya levies a tax on commercial filming, for which the authorization of the director of the park is in any case required.

(ii) Hotels and related facilities

These facilities can in fact be provided and run by the government authorities, though the latter are not normally thought to be best fitted for the task. Accordingly, it is usual for provision to be made for the hotels and related facilities to be placed under concession in the hands of private operators - with exclusively private capital, perhaps - or companies in which the State is a shareholder. Whatever the formula adopted, the companies awarded concessions are likely to have solutions to offer for guaranteeing the livelihood of the surrounding communities. Priority for employment as staff is one such solution but there are other possibilities that can readily be imagined, such as the provision of services. There are limits to what can be done, however, since park camps cannot be allowed to become so many points of attraction or settlement. Again, concession contracts should be so framed as to obviate any difficulty for the management of the park itself - there can be no sharing of it with the concession holder - but other measures may commend themselves, particularly those relating to certain types of plant cover, slash and burn practices, and the protection of such features as salt-licks and bodies of water.

Subsection 3 - Other objectives pursued in wildlife protection

As well as controlling the capture of animals and securing the protection of biotopes, the quest for wildlife protection can be pursued by the use of chemicals, technical facilities and machinery. Measures of the kind have found their way into the laws of European countries. No African laws contemplate them, however, and it is difficult to form a judgement as to the advisability of introducing similar regulations in that continent. On the other hand, in Africa one does meet with provisions for the protection of indigenous species against the risks inherent in the introduction of exotic species there. Thus, in Madagascar prior authorization is required before any live animal or its eggs may be imported. (In order to attenuate the bureaucracy that this might entail, it is provided that the Minister shall publish, by order, a list of species in respect of which the authorization is not required.) Similar considerations have led, in Ghana, to the vesting of powers in the President to prescribe measures designed to prevent contamination of wildlife by contagious diseases striking domestic animals.

The whole complex of measures and services entailed in wildlife maintenance constitutes a social and economic burden were not protection policy balanced by certain countervailing considerations.

CHAPTER II - Compensating the burdens imposed by wildlife protection

The considerations now needing to be discussed concern in the first place the communities expected to live in proximity to animals that may be dangerous or the cause of major damage to their crops and livestock. They also affect social groups and the State itself, either or both being expected to bear the

costs of wildlife management and to forgo for the benefit of such wildlife the use of land or certain natural resources. In juridical terms, these countervailing considerations come, on the one hand, within the purview of the protection of persons and property and, on the other, within that of ensuring that such wildlife shall be a source for the creation of wealth - this last aspect leading to the necessity of introducing rules governing wildlife products.

SECTION I - Protection of persons and property

Three degrees of protection need to be distinguished here. First, the simplest and the most ancient is the defence of human life. Self-defence should be hedged about by fairly strict conditions so as to obviate abuses. Next there is the defence of the community organized under the control of the administrative authorities. Third and last, the view should command assent that any wildlife protection policy, to the extent that it entails risk for the population or restrictions on the right of self-defence, should carry with it a system of compensation for damage caused by wild animals.

Subsection 1 - Individual self-defence

The defence of human life is provided for in all laws in terms of removing the criminal character of an act otherwise constituting an offence. As a principle (though it will be shown that this is not always the case) it will allow a person to kill an animal, even a protected animal, and by means otherwise prohibited, and yet remain within the law. By this token, therefore, the traditional principle of self-defence is applied to wildlife law.

The institution takes on a very different physiognomy from one country to the next. Some countries contemplate a single, uniform rule while others make a distinction between the protection of persons and the protection of property. Whatever the approach, it is permitted for the individual to act in self-defence and the defence of others but only for that of the individual's own property or of that in his safekeeping. The protection of property, however, is sometimes accompanied by even more restrictive conditions. In Ghana, the rule cannot be invoked against protected species. Elsewhere, one is surprised to find the contrary rule applying. In Somalia, for example, the defence of persons may be invoked only in situations involving animals classified as dangerous, whereas to protect property, crops and dwellings one may repulse or destroy any animal (except protected game) whether or not it is actually causing damage or is merely on the point of doing so.

The rules governing self-defence are the resultant of a complex of conditions posed by the legislator for exoneration from a criminal offence. The first among such conditions concerns the animals that it will be lawful to kill. Logically, there is no raison d'être for such a rule, and the “exoneration” comes into effect whenever an animal takes up a threatening attitude endangering life or property. Nevertheless, several enactments contain this condition, while some, as in Ghana, impose it where property only is at risk; and others, again, extend the principle to the protection of persons. Somalia has a list of “dangerous animals”, comprising seven species in all, with respect to which only legitimate self-defence is allowed. Similarly in Madagascar the criminal exoneration principle operates only in

cases of “attacks by birds or other harmful animals”. Far more in accord with practical needs are the Acts of Kenya and The Gambia, for example, which contemplate legitimate defence against any animal. Prevention of abuses of the principle can be sought through the agency of other conditions - the animal in question must have constituted an immediate danger without having been provoked in any way. The legitimate defence excuse cannot be invoked where the person concerned has done the provoking or is in an irregular posture vis-à-vis the wildlife laws. The Gambia's Act, which has the fullest treatment of this matter, adds the requirement that shooting the animal must be the only possible defence. In criminal law terms, there must have been a prior attack and a response proportionate thereto. The text just cited also (again on criminal law reasoning) places the burden of proof of direct and immediate attack on whoever claims legitimate defence. A third condition applies to the requisite follow-up of the act: this must be reported without delay to the nearest authorities. The animal's remains, moreover, are deemed to be the property of the State and must be handed over to the authorities. Not all laws have incorporated these precautions - those of Madagascar and Mali are silent here - and yet these appear to be the most effective as a means of establishing the bona fides of the person who has killed the animal and of discouraging poaching.

Subsection 2 - Protection of the community

By protection of the community is meant protection organized by the public authorities. Three kinds of measure are contemplated in the various enactments.

One such measure is that of subjecting individual self-defence to prior authorization by the appropriate government agency. The authorization may be hedged in with conditions. In Madagascar, for example, the principle may be invoked only in the case of: “animals, whether or not protected... which may be said to constitute a danger or cause harm to crops, to domestic animals or to persons”. Since the same Act restricts legitimate self-defence to dealing with attacks from “birds or other harmful animals”, the prior authorization will be mandatory. Even so, it would seem that the legislator is concerned more with threats to crops and livestock than with danger to persons.

With the second type of measure, the administrative authorities are not content with permitting, but themselves organize, protection; and they may, or must, take unsolicited action in order to preserve public safety. Thus they will take the initiative in dealing with animals that are harmful to persons, or to crops, livestock or other property. Their intervention may likewise be invoked in circumstances where the law does not empower private persons to act of their own accord. Thus, to refer once again to the example of The Gambia, legitimate defence is limited to cases of immediate and direct threat. Nevertheless, wherever animals constitute a potential danger the private individual may not ward them off of his own accord but must call on the wildlife service, and the latter is obliged to take action. Where wildlife protection is concerned, invervention by the authorities offers an advantage in that it does not necessarily entail the putting down of the animal. Since the authorities have wider means at their disposal than does the individual they can more easily capture the animal and remove it to where it will no longer constitute a danger. And so it is preferable that the law should leave to the public authorities the task of deciding what measures are appropriate

rather than it should make provision only for official kills - battues administratives - as one finds in the earliest texts. In this way, moreover, it is possible to obviate the abuses to which the protection of property may give rise when it is the hunters who do the protecting.

The third measure that can be adopted offers a supplement to government action, in that it is grounded in the consideration that a wounded animal is often a dangerous animal and given to attacking for no apparent reason. This is why certain laws have made provision against the danger represented by wandering wounded animals. In The Gambia and Kenya a hunter is required by law to finish off a wounded animal or to call in the nearest administrative authorities. In The Gambia this obligation extends to persons who happen to notice a wounded animal.

Subsection 3 - Compensation for damage caused by wildlife

The principle of compensation for damage caused by wildlife, for which provision is made in Europe, has been introduced into Africa by Kenya (though this is a single instance, at least to judge from the laws studied here).

The principle, however, is indisputably the just corollary of protection policy. In maintaining animal densities at high levels and by restricting possibilities for self-defence, the government places the population, particularly the population of rural areas, at enormous risk. It is a matter of justice that the disturbance thus brought about in equality in terms of public burdens shall be made good and on the principle of strict liability on the part of the public authorities. In any case, psychologically this provides an incentive for the local population to collaborate in wildlife protection policy.

Kenya has statutory bodies to decide on claims for compensation and lay down conditions attaching to the award. In each district there is a committee consisting of the District Commissioner, the divisional officers of the wildlife services and the police, the district medical officer and another qualified person appointed by the Minister. The committee may co-opt any person likely to be able to assist it in considering particular cases. The committee's decisions may be appealed to the special court of appeal for wildlife matters. Compensation is payable to any person suffering bodily injury or damage to his property or to his dependents if he dies as a result of harm caused by a wild animal. It is not payable if the harm results from circumstances where the victim was committing an offence under the wildlife laws or in the course of activities involved in wildlife exploitation or management. The only other limitations concern the amount of the compensation, which is assessed by reference to the harm sustained.

Those European countries which have adopted the principle of compensation for damage caused by game have attached thereto fairly strict conditions requiring, for example, the absence of provocation and measures to be taken by the victim to protect his property. The “victim's fault” concept has much to be said in its favour for its incentive aspect; for a consistent case-law policy should encourage farmers to take all precautions to prevent damage being done to their crops or livestock, and would in addition promote the co-existence of wildlife and farming activities.

The costs of making good damage done by wildlife in Kenya are borne by the State, and are covered by budgetary allocations voted by the National Assembly, to the charge of a special wildlife fund into which would be paid the proceeds of dues levied on the various forms of wildlife working.

SECTION II - Making wildlife pay

The profitability of wildlife is an economic reality with a long history behind it, and the conservationist movement has in recent years led to a revival of interest in this aspect. For it is no new thing for people to hope to make gain out of ivory obtained from elephants, the skins of the great cats or the organization of safaris. Accordingly, it is not a question of inventing novel ways of exploiting wildlife. The main problems are to understand how best to organize wildlife in order, in the first place, to secure the highest possible returns while at the same time contributing to the maintenance in being of this natural resource and, in the second place, to ensure that profits are fairly shared.

Here the questions to be answered arise in different terms according to whether the "exploitation" of wildlife consists basically in watching the animals or in taking them in their natural environment or, again, in game ranching.

Subsection 1 - Animal watching

Under the generic heading of "watching" must first be placed the pastime connoted by that term in the strict sense and the taking of pictures or recording of sounds1. Interest here has grown in recent years; and it has the obvious advantage of not destroying the fauna that is the object of contemplation. To ensure that it is entirely innocuous it is sufficient to have rules governing how close a person may approach the animals - this in order to obviate hurt to persons and molestation of the animals themselves. Animal watching is of course the obvious thing in national parks and indeed one of their raisons d'être. Some laws also provide for "viewing safaris" or "photo safaris" to be assigned, under concession, to private enterprise. This is one means of turning to profit any sector that has been closed to hunting under wildlife zoning arrangements. An area where hunting has been carried on for a certain time, where the animal population may therefore be dwindling, will be placed under reserve in order to allow ranks to be made good. There is much to be said for turning even such an area to profit by means of organized observation tours. At the practical level, however, allowance must be made for the reactions of the animals, for these when hunted become apprehensive and flee any approach of a human being. So that observation tours need precisely those animals that are trusting and are easy to approach. Animal watching in areas previously open to hunting cannot therefore be organized immediately following closure to that activity.

The economic implications of animal watching include the provision of services not unlike those needed for hunting - guides, accommodation, car

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1 Mozambique's text speaks of "contemplative safaris".

hire, etc. For making a gainful occupation out of wildlife this activity, it seems, must remain a supplementary one. Not so, however, at the national level, where it constitutes a powerful tourist attraction.

Subsection 2 - Taking of animals in their natural environment

If wildlife represents a natural resource belonging to the community as a whole (except where it is enclosed on private property), a parallel can be discerned between State forest working and State exploitation of wildlife.

A portion of the wildlife taken will go directly, and without entering commercial channels, to victualling rural communities through customary hunting (where this institution obtains). This is a historical survival, and is disappearing, at least to judge from the texts. Some countries have abolished customary hunting altogether. To be sure, it does nothing to facilitate wildlife management; it eludes statistics and offers a loophole for poaching. It brings in neither foreign exchange nor revenue for the public purse. And yet it has undoubted social advantages. By allowing local communities to obtain their sustenance from wildlife one has the most equitable means of turning it to “profit”. And here, those who are directly burdened by reason of the wildlife can compensate by finding in it their resources. Again, the very principle whereby rural communities “live off” their wildlife should rightly be maintained in being. Where there is competition with other “uses” of wildlife, such as the safaris, equity should find for this form of hunting. At the same time, the principle could perfectly well be respected, while customary hunting could be made to evolve in terms of the techniques employed or as regards administrative control over it. What is important is that there should be free, or nearly free, access to a wildlife where this is sufficiently varied and abundant.

From the standpoint that is of interest here, the most important distinction is that between hunting on the one hand and commercial captures and mass kills on the other. In all cases the government - and this is the crucial point - must be in a position to determine the volume of takings: what differs will be the form of the taking as well as the varying degrees of efficiency attained in making use of the products of such takings.

With hunting, the State in effect sells to the hunter the actual operation of taking an animal, i.e. the right to take so many head of game. And it also sells him the product of the taking since, as a general rule, the game belongs to the hunter, who will dispose of it as he thinks fit. Thus hunting is made to appear as a privileged form of exploitation. By means of the fees chargeable on the issuing of licences and those payable on the bag the government makes a profit on an operation which, if there were no huntsmen, it would have to perform, or to have performed, itself. Secondly, hunting generates a series of employment opportunities and sources of income in such “externalities” as the gun and ammunition trade, hunting and safari guides organizations, hotel accommodation, and taxidermy. Thirdly, with foreign visitors coming to hunt, there is the added attraction of a tourist activity bringing in foreign exchange without the disadvantages of other forms of tourism, since safaris and the like do not call for costly roads or hotel facilities; and their impact on the local population is normally slight. In particular, they offer a lesser temptation than do other forms of tourist activities for cheating the short-stay guest or for betraying national virtues. On the other hand, where it is a question of the use to which a

product of hunting will be put, it is legitimate to ask whether hunting is any guarantee that that use will be the best one. The laws seek to prevent wastage of meat but there is no certainty that this can always be achieved. The hunter does not have a refrigerated van following him. And in any case he has, in theory, become the owner of the game he has takaen and may dispose of it at will. An expedient such as bag fees might offer an incentive to him to take steps (or to make use of facilities that could be put at his disposal) to avoid waste. Fees of the kind could be reduced in exchange for the handing over of the game in a good condition to the appropriate service.

On the face of it, mass kills or commercial hunting should make for rational and intensive use of all products obtained from the animals so taken. In several countries the law does not allow commercial hunting; and where it is permitted within the specialized context of capturing live specimens for export it is the target of severe criticism. Yet other formulas are possible. For example, the government may entrust to a firm the killing, under contract, of a prescribed quota of animals, at the same time determining the volume and destination of the products obtained. In other words, the government is acting within its powers where it provides for the rational exploitation of wildlife by organizing it in the form of a public service concession.

Exports of the animal remains or live specimens will be in conflict with the 1973 Washington Convention, where the Appendices list several species of high commercial value. Being conceived in terms of discouraging big-time poaching by seeking to undermine the economic attraction of this activity, the Convention works (in the case of species listed in Appendix I) in the sense of making the importing country judge, along with the exporting country, of the desirability of an international transaction. In this way the exporting country sees its markets being closed to it and loses its export opportunities. Now, some countries point out that the threats to a given species do not necessarily materialize to the same degree throughout the area of distribution of that species, which may be endangered at one point yet thrive elsewhere. No doubt it will be objected that the restrictions thus introduced by the Washington Convention are not blindly absolutist. It will still be open to the exporter to convince the government authorities responsible for deciding on the imports that the intended operation does not jeopardize the survival of the species. Recourse might even be had to some international organization, such as the Secretariat of the Washington Convention, by means of reports or recommendations, to lend support to the claims of certain countries. Yet this was not the way the problem was envisaged at the Third Conference of the Parties to the Convention1, where it was proposed that species no longer considered by the Parties as being endangered should be removed from the list. Another solution might be to allow countries desirous of exporting live specimens belonging to endangered species yet abundant in their territories to proceed provided the aims of protection of the species concerned are not jeopardized. Specimens would be transferred to the territory of the State comprised within the area of natural distribution of the species, but where that species is for the moment endangered. This procedure is followed in Europe in the case of game for restocking, but the transposition to Africa is not necessarily a realistic one, at least from the economic standpoint.

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1 New Delhi, 25 February to 8 March 1981.

Subsection 3 - Wildlife raising

Where animals grow in a controlled environment an element of the artificial is present. The expression wildlife raising encompasses several possible situations - from the upkeep of favourable biotopes to activities akin to stock-raising. The closest to natural conditions is land use planning of the simplest kind pursued in such a way that the animal populations can thrive. Man's intervention in such a context is limited to the upkeep of the plant cover, growing the necessary crops, ensuring a supply of water or salt-licks, and game ranging to keep down poaching or incompatible crop or animal husbandry practices.

1. Wildlife raising in a controlled environment

Game raising in a controlled environment may offer a paying activity for a landowner or for the holder of a concession over a given tract of country. The animals will be turned to profit by the owner or concession holder either himself under one or other formula of controlled kills or by admitting guns to his land or organizing animal watching excursions. The activity will have as its end product such items as meat, hides and skins, materials that can be worked up into artefacts, and trophies. Many benefits can accrue to the community by this means.

In economic terms, meat production will be facilitated in parts where stock-raising is not otherwise feasible. Tsetse-infested areas and regions where the climate is hostile to imported domestic species can profitably be “colonized” with indigenous fauna. Similar considerations hold good where crop husbandry is out of the question because only insufficient yields can be expected from the land for want of topsoil or by reason of relief or climate.

Controlled environment production of game, because it offers a fairly wide range of species not competing with each other, has been shown to promise higher yield per unit area without exhausting the soil or degrading the plant cover. It can be carried on side by side, within one and the same enterprise, with domestic stock-raising and certain lines of crop growing; and it is clearly one form of land use supplementary to farming offering returns that will be the greater the lower these are on crop and animal husbandry side.

If one next considers its impact on wildlife management one notes that controlled environment game raising should result in an overall benefit to the fauna populations. There is much to be said in favour of instituting an obligation at law for the farmer to release prescribed quotas of this or that species outside his land. In any event, the animals will spontaneously seek out fresh territories. For this reason emphasis needs to be placed on a cardinal element in the rules applying to controlled environment raising, namely the fact that this form of production cannot be pursued in complete isolation. In the first place, extensive tracts of country are called for; otherwise one is dealing with straightforward stock-raising, with the logical need for fencing in the animals and entailing costs so excessive as to preclude any profit from the operation. Nor can one be sure at the present time of finding an enclosure system capable of resisting onslaught from the larger mammals - an expedient, moreover, that would constitute a hindrance to the migrations characteristic of certain species such as elephants. From all that has been said, then, controlled environment situations are determined by the natural attachment of the animals to their territory but are also in a perpetual state of osmosis with the outside.

From the juridical standpoint it is astounding to note that while there are countries that have for decades been practising this form of production, only Kenya has a law - among those examined in these pages - encouraging this activity. In that country hunting on private land is reserved to the owner or to persons authorized by him. On the other hand, the owner may register with the wildlife service his intention to open up his land for hunting by the public at large. The registration will indicate the animals which may be hunted and any particular conditions to be observed, such as the obligation of notifying the owner before a hunting expedition. In return, the latter receives a portion of the hunting licence fees as agreed with the wildlife service. The owner might also organize photo safaris and similar tours or obtain profit from the animals by organizing controlled kills that will yield meat and other products. The Minister responsible for wildlife is empowered to prescribe rules governing these forms of exploiting wildlife and any waivers of the limitations on hunting.

It would be better if regulations governing this kind of wildlife exploitation could be introduced by other countries (though allowance should be made for what was said earlier, to the effect that it is impossible to install enclosures), since with such regulations wildlife in a controlled environment will not be considered as being distinct from wildlife in general. Since trading goes on, it must be taken into account in national and regional wildlife management plans. The animal populations concerned must be monitored by the authorities, who will follow up the developments in their numbers and issue licences in the light of these. The conditions attaching to the taking of animals can be regulated differently, as is done in Kenya, according to whether one is dealing with controlled hunting or controlled kills. In the former case, the huntsmen continue to come under the general laws governing hunting, to which the owner may add particular conditions by way of contract. In the latter case, it is perhaps wiser to authorize ways and means of harvesting the animals at the least cost and of permitting trade in them. This consideration provides a justification, for example, for shooting from a vehicle, or capturing animals at night-time by means of lights. Similarly, the aim of obtaining meat calls for plans governing the taking of the animals - and taking them at optimum weight. Killings, of course, must take second place to the demands of reproduction and of population dynamics.

The legal rules should also provide for sanitary control of meat offered for human consumption. Thought could be given, in order to favour the development of controlled environment production, to extending to this activity certain fiscal and economic advantages contemplated in measures introduced for the benefit of farming and stock-raising;

2. Wildlife production side by side with stockraising or under semi-managed conditions

Here one touches on the problem raised at New Delhi, concerning animals where the eggs or their young are taken in the natural environment and their growth is controlled, similarly to what is done in the lobster hatcheries in Europe. This formula can be resorted to with crocodiles, for example. The death rate with this species in very high in the first weeks following hatching, so that there is something to be gained by collecting the eggs and hatching them somewhere out of reach of predators and to raise the animals until commercial quality skins can be obtained. Some of the animals reaching maturity under these conditions will be released into the natural

environment. In this way not only can withdrawals be made good but restocking could be helped forward without resort being made to controlled environment production.

Now the results of artificial “stock” raising of this kind pose legal and environmental problems.

From the legal standpoint, animals thus “raised” are in principle outside the scope of the hunting laws. Though they belong to wild species, i.e. having characteristics that have not been modified by the action of man, they are animals in captivity, and killing them is not an act of hunting. The problems are mainly those of identifying them in order to distinguish them, or their remains, from the products of hunting. They also concern the application of the Washington Convention, which provides, as it were, for declassifying “specimens of animal species included in Appendix I bred in captivity” and their inclusion in Appendix II, i.e. for the exporting state alone to be judge of whether sales of animals abroad should proceed. There remains the situation (for which a solution has yet to be found) of animals raised from collected eggs or from young removed from their natural environment. At New Delhi the proposal was made that they should also be included in Appendix II subject to the twofold proviso that the operation should contribute to the conservation of a species within its natural environment (i.e. by releasing adults or by other means), and that the products should be sufficiently identifiable in order to avoid any confusion with those obtained from direct takings.

Where ecology is concerned, several questions can be raised as regards both the technique of enclosure and animal raising in its broadest sense.

Simple arithmetic argues to the possibility of augmenting a wildlife population by means of enclosures and adult releases. But will these adults, being used to artificial feeding in a protective environment, be able to secure their own survival once released? Will they find their food and elude their predators? Will it be possible to keep the activities of huntsmen and poachers under control, when these will be tempted to make the released adults their target? The answer to such questions depends, obviously, on the degree of complexity associated with the animal. All things being equal, a relatively simple type such as the crocodile should encounter fewer problems than a mammal. The mortality rate among the young indeed explains the importance of this type of operation and it is clear that the species concerned will benefit from it. But the further question arises concerning the difficulties thus created for the predators that feed off the eggs and young of these species.

As regards the repercussions of the measure proposed at New Delhi concerning trade in animals, the first stages of its implementation will be decisive, it seems. If skins obtained from enclosed animals are placed on the market quickly and in sufficient number, it may be hoped that their commercial value will decline and, with it, the prospect of gain for the poachers. In this way the conservation of the species will have been favoured. If, on the contrary, the level of production in the early stages remains low and has no significant impact on the market, what may happen is that international control of the traffic in wildlife has been made more difficult and a freer rein given to the poacher by this new-found legal cover.

When one considers the raising of these animals in its broadest sense it is difficult not to draw a parallel between it and the domestication of species as historically practised. With few exceptions the species in question have disappeared in their original form to make way for new forms resulting from man-induced selection. What, then, will be the outcome of this “stock-raising” with wild species? Will the aim not be to improve the quality of skins and enhance animals yields, and to have, say, crocodiles undergo an evolution such as we have seen with the bovine species? The plants have their gene pools: there are no gene banks for animals.

Concluding this review of the different forms of exploitation of wild species, one may note that these forms may affect animals that are the private property of the person so working them and animals belonging to the community or placed under its care (even if the distinction is not always as clearcut in practice it does govern the solutions needing to be adopted as regards the sharing of the profits that accrue). With privately-owned animals, the only conceivable course is to apply to them the taxation system in operating under the general law of the country - specifically, the rules applying to the farming sector. In the other case, the cost price of the “product” is added to the cost representing the tax element. What are - improperly - referred to as licence fees and fees for the killing of animals are in reality the price at which the government sells the entitlement to hunt and to sell the prey. Taxation in the true sense reappears in the taxes payable by professional hunters and in the levying of duty on exports. If the truth were known, revenues from the exploitation of wildlife are much higher than from hunting and the taking of animals in general; and they are to be had also from the entire industry or artisan community working up and marketing wildlife products. To these must be added the various services preparing for or accompanying the actual taking - the supply of firearms and munitions and the provision of hotel facilities. Accordingly, the concern to achieve a fair sharing of the proceeds from the activities having to do with wildlife points to the desirability of inventorying the proceeds from animal sales and the levying of fees on activities related thereto. Some of these proceeds could go toward a “wildlife fund”, although governments in Africa do not view kindly the setting up of self-governing funds and are loth to have matters withdrawn from their national budgets. In any event, the government has an instrument here for redistributing profits and one that should enable it to see that the benefits obtainable from wildlife activities should also accrue to those communities that are most subject to constraints by the very presence nearby of wildlife. In theory, direct intervention by the State in indemnifying persons who have sustained loss or injury from wild animals or in financing local public services offers similar benefits to those obtainable through redistribution of proceeds through the local communities or to a self-governing wildlife fund. Conceivably State intervention could even pave the way for investment and the bringing to bear of more appropriately conceived aid. Psychologically, however, it is better if a portion at least of this redistribution can be channelled through those communities and that a link can be established in the mind of the public between the sort of development thus undertaken and the turning of the wildlife to profit. But the most immediate and fairest form of redistribuion of the proceeds from wildlife remains that whereby the people in rural areas can hunt their own food without having to pay to do so.

SECTION III - Wildlife products

Wildlife products consist of meat, the remains of animals and animal trophies, as well as animals taken alive. Rules governing them are essential if the pressure on the resource is to be contained - and the rules are directed at one of the chief causes of the pressure, namely, the economic gain to be had from hunting and poaching.

Subsection 1 - Game meat

The question of meat needs to be approached under two aspects - waste and marketing.

Appreciable quantities of food-grade meat become available when big game are killed which it would be unconscionable to leave to putrify where the animal fell. As a general rule, the hunter is interested in the trophies that he will remove from the carcase, and will have neither the inclination to make use of it as meat nor even the means of doing so. Yet the meat is his property now and he is still entitled to take it for his own nourishment and that of this companions. There are enactments - that of Senegal, for example providing that what is left over shall be made available to the people using the land where the kill has taken place. One could go further, as does the Central African Republic, and create an obligation for the hunter to notify the community closest to the place of the kill. However, the population is at times so sparse and the distances so great as to make it difficult to fulfil such a requirement. If the surplus meat is to be left to the local people, by implication it will be prohibited to sell it. There is some point, however, in laying down, as is done in certain texts, the principle of prohibiting the selling of meat obtained through hunting. This discourages hunting as a livelihood and poaching, with a view to supplying population centres. Moreover, control in this case will be relatively easy since it can be carried out at retail premises and restaurants. If the restraint thus placed on all trafficking in meat is to be fully effective, the prohibition must extend to exports, the warehousing in cold stores and the practice of meat jerking that is frequently encountered in Africa.

Subsection 2 - Animal remains and trophies

These terms refer to any part of a dead animal. Problems arise mainly in connection with certain skins and trophies which, like rhinoceros horns and elephant tusks, fetch a high price. This is why the regulations go into greater detail with regard to the remains and trophies of partly protected animals and, within this context, ivory, crocodile skins and rhinoceros horn. In order to facilitate enforcement, it is important to specify in the law at what stage of their processing an animal's remains or trophies still answer to that description. The best solution here is to reserve the term for items manufactured from skins or ivory and thereafter to subject these items to export control and to procedures attesting to their lawful provenance. In Senegal these terms cover any object made from these remains save where it has ceased to have its original identity as a result of a lawful process of transformation.

There are three elements in the regulations governing remains and trophies, namely the making out of a certificate of origin, domestic circulation and the export and import trade.

The certificate of origin is an administrative document accompanying the item in question and attesting to its having been obtained lawfully. It must contain a sufficiently precise description in order to preclude any fraud whatsoever. For certain trophies - elephants' tusks and rhinoceros' horn - registration has been introduced, with a record thereof entered on the certificate and, indelibly, on the item itself. The certificate of origin is normally drawn up, on the basis of the hunting passbook and huntsmen's declarations, by the wildlife authority. A copy is also left with the frontier port at the time trophies are imported in accordance with the rules. Trophies and the remains of animals found dead or killed in legitimate defence or in protecting property and persons and, again, animals that have been confiscated belong to the State. Several countries, among them Mali and Senegal, reward with a percentage of their market value anyone handing over to the authorities elephant tusks that he has found. Provisions of this kind are grounded in the consideration that since elephant tusks have a high market value it is preferable not to have them go to waste but to market them for the State's profit. Hence the incentive offered by the reward described. However, care must be taken that the reward, however modest, does not itself constitute an incentive to kill elephants.

Kenya relies on the principle of the certificate of origin (“certificate of ownership”) for all trophies and remains. However, the Minister responsible for matters relating to wildlife may waive this procedure for certain specimens. Other countries are content with requiring certificates in the case of partially protected species - where Botswana is concerned, the elephant and the rhinoceros. Flexibility is desirable in these matters. The formality of the certificate of origin must be required whenever the item has a certain market value and is involved in commercial dealings. Here the law of Kenya appears to be the most satisfactory, though the same object could be achieved by having the minister responsible for wildlife vested with powers to determine the list of trophies and animal remains for which a certificate of origin will be required.

The effectiveness of the control made possible by the certificate of origin requirement is conditional on the system having no loopholes that the traffickers will exploit for the cover-up that they may offer. Accordingly, the requirement of demonstrating lawful provenance needs to be enforced at each stage of the item's progress.

Now the various intermediate stages making up this progress are finite in number. First the item will circulate within the country. It may be made over to a person other than the original possessor; and the certificate of origin must be made over with it (Kenya requires any transfer of the item to be recorded on the certificate). Regrettably, there are two exceptions to this rule - inherited trophies and those made over to creditors following upon bankruptcy of the owner. In addition to its renting out or its handing over otherwise than by way of trade, a trophy may undergo transformation at the hands of a craftsman. The various countries' laws provide for control over taxidermy and ivory carving, which are the trades concerned.

The most delicate stage - by reason of the economic interests involved - is without any doubt the export stage. Sometimes export has been prohibited

tout court. But governments are loth to resort to this radical solution, since it deprives them of a source of foreign exchange. The expedient usually adopted is that of subjecting exports to an administrative licence which will be issued on production of the certificate of origin. In the case of ivories there is also a minimum weight per tusk, the aim being to discourage the killing of young elephants. An export licence, or a certificate of origin at least, must also be required for ivory artefacts in order not to create a loophole through which an illicit traffic might develop.

Subsection 3 - Live animals

Some of the animals taken out of their natural environment will be held in captivity. Of these a further proportion will be marked for export. And this is without question where the chief threat to wildlife lies. Demand for exotic animals is quite heavy, and these fetch very high prices on the European markets[1]. The mortality rate among animals entering the export trade is fairly high at all stages of the trading process. Capturing them (and it sometimes takes the killing of several specimens before the one that can be sold at a profit is captured), holding them under unsatisfactory conditions of hygiene and promiscuity whether at the place where they are taken upon capture or at the establishments where they are sold, and transporting them followed by their acclimatization - all entail considerable wastage. Yet the problems inherent in the export of live animals are dealt with comprehensively in international law - specifically by the 1973 Washington Convention - and in the legislation of the various countries together with matters concerning international traffic in animals, live or dead. The peculiarity where live animals are concerned is that the law imposes additional exigencies in respect of the manner in which they are held or transported, and ambient conditions and their acclimatization.

A further portion of animals captured alive will go toward stocking public or private zoos or providing entertainment for the private fancy within the country where they are so captured. It is still necessary, even though these animals represent only a minor fraction of the fauna removed from their natural milieu, to keep these forms of holding them in captivity under control. Quite apart from humane considerations or those of public safety, it is important to ensure that such forms of holding animals shall not offer a legal cover-up for poaching or other illicit traffic in them. The various laws have accordingly made it obligatory to declare animals held in captivity and to accept inspection.

The regulations governing wildlife products are the direct consequence of the obligation here referred to. Their complexity and rigour will be all the more pronounced the greater the diversity and volume of the wildlife exploited. If a given country is to obtain the highest profit from the fact that wild animals are to be found in its territory, then a suitable legislative framework and sufficiently developed enforcement institutions are called for.

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1 The Belgian periodical L'homme et l'oiseau for 1980 cites the case of 10 000 francs paid for a chimpanzee.

CHAPTER III - Institutions responsible for the protection of wildlife

Wildlife protection illustrates the symbiosis obtaining between the conservation of Africa's natural wealth and the ecomonic development of that continent. For wildlife, thanks to the foreign exchange earnings that it brings in, is looked to in order to pay for imports. Wildlife management should make for an improved diet for the local people and favour the economic activities of a nation: a factor of development, in short. At the same time, there can be no wildlife policy without a minimum of administrative machinery and a sufficiency of competent persons, which is tantamount to saying that conservation itself presupposes a certain level of development. And this is one of the difficulties here and now facing African states, in that they are obliged to mobilize their natural resources without always having the necessary facilities for control. The avenues of development which these countries have chosen to follow make it all the more essential that they should have the right sort of institutions in order to guarantee the survival of their wildlife, i.e. institutions both in terms of administative structure and in terms of penal deterrents for enforcement.

SECTION I - Administrative institutions

In their simplest form the administrative institutions are those that have the responsibility of wildlife management. They may be flanked by financial organs and policy advisory bodies.

Subsection 1 - Management

The first question arising in connection with the agencies responsible for management relates to the ministry to which they will be reporting. In the countries of the civil law tradition the task is entrusted to the waters and forests services, themselves often attached to the ministry of agriculture, and hightly centralized[1]. The countries of the common law tradition seem to prefer the further distinction between wildlife and agriculture, since they provide for a “Game Branch” (Ghana) or for “Wildlife Conservation and Management” (The Gambia, Kenya), whose chief officers have powers vested in them by the respective Acts. A greater degree of autonomy is allowed for in Kenya and Somalia, the former having a Ministry of Wildlife and Tourism and the latter a National Parks and Wildlife Agency reporting directly to the Supreme Council of the Revolution[2]. It would be pointless to try to compare the merits of these different solutions in the absence of information as to the administrative realities in the respective countries. Here two generic observations can be made in this connection. In the first place, it is

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1 The Ministère de l'économie rurale in Senegal, Ministère du développement rural in Madagascar, Ministério da Agricultura in Mozambique. In Somalia, having originally been part of the Department of Rural Development, the Wildlife Services were subsequently attached to the Ministry of Livestock, Forestry and Range, and, later still, given completely self-governing status. In the Central African Republic wildlife is the resonsibility of the Ministry of Waters and Forests, Hunting, Fisheries and Tourism.

2 Act No. 79 of 12 April 1975.

clearly undesirable to isolate administration where wildlife is concerned from that of other renewable natural resources. The problems associated with this sector of administration are intimately linked to those arising in connection with the plant cover, water resources or soil conservation. It would be better, therefore, to organize an integrated management of the areas and the natural assets involved. In many countries the task is entrusted to the waters and forests service. Legislative systems in Africa have long accepted an extensive connotation of the forest domain, which, in the legal traditions deriving from Portugal or France, goes beyond that of the forest in the narrow sense to encompass, in effect, the entire nature sector. Such a conception reflects a mode of forest working that is very close to a fruit-gathering economy. Evolution in techniques and the obligation to adopt a “gardening” approach to the forests of Africa inevitably impose a clear-cut distinction between forest services and services for the protection of nature. Even now one may note an evolution in the draft laws being produced in Mozambique toward separate Acts of the legislative for the forest domain in the strict sense and for the wild fauna and flora. In future, therefore, a relative autonomy in these respective services is likely to emerge.

Whether the administrative authority responsible for wildlife and nature has a distinct collocation within a ministry of agriculture or is transferred to a ministry of the environment or, again, is raised to a ministry in its own right, it is clearly essential that it should have its own operational staff and be adequately structured. For wildlife management demands specific competence; and it is desirable that side by side with the corps of foresters there shall be brought into being an analogous corps of nature wardens. The founding of several schools of wildlife management in Africa should help to ensure that the recruitment demand is met. The government department responsible for wildlife should be substantial enough to measure up to the tasks incumbent on it but also to carry sufficient weight in representing the interests of nature protection vis-à-vis other government departments. For not all the powers of decision for settling the entire range of problems having to do directly or indirectly with wildlife can be concentrated in the hands of a single minister or head of department. Many of these problems will always and inevitably come within the purview of other authorities as well. An example may be seen in industrial or major works projects or in agriculture or, again, in pollution and chemical spills. Nature protection generally, and the protection of wildlife in particular, presuppose coordination with the activities of other ministries whose terms of reference impinge on projects or interests of the kind mentioned - coordination that will be all the more effective the greater the representative weight asssigned to such protection within the government organizational arrangements; and this is a principle that applies just as much to the give and take within a council of ministers as to that within interministerial commissions.

In Africa practically all government departments administering wildlife are centralized. Even where they are organized as an agency distinct from the ministry to which they report they do not normally have autonomous regional agencies of their own (parks and reserves are not endowed with corporate status); they have their place in the organizational arrangements of a service as having general responsibility in all subject matters, from hunting to protected areas. Centralizing seems to be the formula best fitted to the administrative and social contexts of Africa, since it permits a greater concentrtion of facilities, and thus makes for greater efficiency. Because

compartmentalizing in the assignment of staff can be avoided, this facilitates career development, with effective prospects, and thus helps to build up a cohesive corps of nature wardens.

Subsection 2 - Finance

Where financing is concerned there is to be noted in African countries a repugnance to constituting self-governing funds. (Under these revenue from specified sources is allocated to covering specified costs - this by way of derogation from the rule whereby there should be one national budget and one only - and the formula has found considerable favour in Europe and America.) Self-governing funds are generally looked on as an instrument of budget rationalization accommodating novel purposes or special financial effort in a given sector. They can also facilitate policy implementation by giving a financial fillip to projects that it is proposed to favour. This explains the emergence of "forest funds" and "nature funds". Among the countries studied here, only one, Kenya, has set up a Wildlife Fund for financing wildlife conservation and management. The assets of this fund consist of donations and loans, sums provided by Parliament and public revenue accruing from wildlife exploitation. The hesitancy of other countries in following suit seems to be due to several considerations. There is the fear lest administrative fiefs should come into being, and there is the anxiety to forestall any possible embezzlement. The former objection is more important than the latter since it is always possible to organize, from the technical standpoint, a self-governing fund or a special budget account in such a way as not to open the way to additional expenditures or the risk of embezzlement or improper use of public money.

Subsection 3 - Policy advisory bodies

Bodies charged with the task of thinking out wildlife policy are as rare as those with financial autonomy. In fact only one such body is to be encountered in the countries studied here, namely the Conseil supérieur de la protection de la nature, in Madagascar. This is a collegiate entity, with a membership representing the ministries concerned and including the Director of the Waters and Forests Service, the Head of the Domain Land Service, together with representatives of the universities and of nature conservancy institutions. Its role is purely consultative, and in certain cases the Government is required by law to seek its advice, though without being under an obligation to follow it when given. The Council may also demand information on any matter coming within its terms of reference. The formula has already attracted attention for the means it offers of keeping the decision-making bodies informed and, more generally, of formulating policy. The fact that it has hardly been adopted at all in Africa is doubtless explained by the administrative difficulties that the different countries have had to face in recent years. Bringing together a group of "givers of advice" may have seemed an impossible task either for want of qualified persons or as a luxury that could well be forgone in view of the urgency of tasks. Nevertheless, the experiment is worth making, with an empirical approach adapting the composition and the terms of reference of these bodies to the possibilities of the respective countries.

SECTION II - Penalties

All enactments contain penalty provisions peculiar to offences involving wildlife. The rules applied in the various countries differ in matters of detail but the basic questions dealt with are the same - reporting offences and bringing the offender to trial.

Subsection 1 - Reporting of offences

Provisions governing the detection and reporting of offences have to take two factors into account: who is to be vested with powers for the purpose, and what shall those powers consist of. The list of authorized persons is, in principle, conceived in the broadest possible terms but will be limited by the fact that it is necessary to have officials specially empowered to take particulars, with all the necessary authority, of offences. In countries of the civil law tradition these persons can be sworn officials whose reports will constitute prima facie evidence in court. Broadly speaking, three kinds of staff answer to this need. In the first place there are the game wardens or those of the waters and forests service if that service is responsible for wildlife. Next there are the police and customs officers. Both these and the wardens just mentioned have authority ex officio to report offences. Then, thirdly, there are the specially commissioned private auxiliaries. In one country one finds hunting guides, in another, “lieutenants de chasse”, in another, “honorary game officers”. Then, again, there are the game wardens employed by private landowners.

A distinction must be made in the powers of these officials/auxiliaries according to whether they authorize them actively to seek out offences or merely to report them. For the active detection of offences, these officers will have powers to question suspects and to make searches. The several enactments go into varying degrees of detail as regards searches. These may be performed on personal luggage, on vehicles or in premises, though not in dwellings without the consent of the occupants or without a specific warrant issued pursuant to the criminal law rules. Some laws provide for systematic highway checks.

Powers to detain in the event of an offence being detected are intended as a means of both punishing the offender and of ensuring that the animals involved will not be lost. In these cases, the enforcement officer may place the presumed offenders under detention if he has reason to believe that they will elude justice, and he may also seize anything that has served in the commission of the offence - firearms, vehicles - or the thing taken by means of that offence. The enactments studied mostly prescribe the measures that the official must take as regards animals seized, namely the release of live specimens that have a chance of surviving, the putting down of those unlikely to do so, the distribution of meat that will not keep and the confiscation of trophies of any value for the benefit of the State. Some laws create presumptions to streamline the process of establishing whether an offence has been committed. There will be a presumption, for example, that items found in the immediate vicinity of a camp belong to the persons using the latter, or that anyone transporting in his vehicle an animal that has been killed “knowingly” does so. The advantage of these presumptions is to shift the burden of proof - the presumed author of the offence or his accomplice having to show that he was unaware of the nature of the things he was transporting or that, for example, a trap found close to his camp did not belong to him. At

the same time there must be no losing sight of the principle that the accuser must demonstrate the guilt of the accused. Presumption, with this effect of shifting the burden of proof, is acceptable only when it is grounded in virtually incontrovertible facts: it must never be an easy way out; and it is better to allow offences against wildlife to go unpunished than that a crime should be committed against justice itself.

Subsection 2 - Jurisdiction

Offences are amenable to the ordinary courts - it is simply a question of vesting foresters and game wardens with competence as public prosecutor[1].

The various enactments define the principal and ancillary penalties. The former are fines and prison sentences, minimum and maximum terms normally being specified. But not all legal systems follow this approach, some prescribing fixed sums, others only “not less than...” or “not more than...” a stated sum.

Fines are problematical where the offender is insolvent and owns no property, so that the possibility might be envisaged of commuting the fine in terms of so many days' labour. This is acceptable provided there are guarantees that payment in kind in this way will not lead to abuses. Specifically, the value of a day's labour must be determined in the text of the law. In Madagascar, for example, it is set as being equivalent to the minimum daily average wage. Likewise, the law must be explicit as to the conditions governing “payment in kind” of fines and as to what officials are to be in charge of the labour performed under these arrangements.

Ancillary penalties are of two kinds. Sometimes they mandatorily accompany the principal penalty, while at other times they are left to the discretion of the court. In the latter cases generally what is involved is the confiscation of vehicles when this might be too severe in proportion to the offence. Apart from confiscation of vehicles, weapons or other gear, these ancillary penalties include withdrawal of hunting licences and ineligibility to obtain new licences for a given period.

Conclusion

In presenting wildlife law in terms of the twin concerns of protection and the compensatory benefits that should go hand in hand with it, the present study has adopted a protectionist stand. This, it seems, is warranted by the tenor of the various countries' laws as presently framed. Yet it is possible that protectionism may soon yield in the legislator's hands to utilitarian concerns, for what has come about, in the successive refinements brought to wildlife law, is the forging of an instrument of economic policy grounded in the utilization of this natural resource.

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1 The laws of some countries in any case provide for compounding out of court whereby the payment of a given fine to the public authority concerned can obviate prosecution.

That being so, the improvements that it is desirable to incorporate into positive law should be geared in the first place to developing the resource or, to put it in other terms, to augmenting a capital that can be made to yield returns and, secondly, to securing a fairer distribution of the benefits to be expected from this source. The realization of this twofold aim, which, when all is said and done, means achieving a better life for the communities concerned thanks to the wild fauna, will be possible only if there is a change in man's attitudes vis-à-vis his natural environment. This does not imply an abandonment of acquired technology or the preaching of some sort of return to a pre-farming stage but to ensure that a new, more harmonious and more intelligent quality shall inform man's domination over nature.

PART TWO

ANALYSIS OF LEGISLATION ON WILDLIFE AND PROTECTED AREAS IN SELECTED AFRICAN COUNTRIES

BOTSWANA

I. LEGISLATION; INSTITUTIONS

Botswana's legislation in this field consists of the Fauna Conservation Proclamation, 1961, as amended by the National Parks Act, 1967. It is administered by the Minister of Commerce, Industry and Water Affairs.

II. HUNTING

1. Legal definition of hunting

The 1961 Proclamation (sec. 2) gives a threefold definition of "hunt" as being to (a) kill, injure, shoot at or follow, (b) wilfully disturb or molest by any method, and (c) lie in wait for or search for with intent to kill, injure or shoot at. A licence or permit is required (sec. 15) in order to hunt any animal irrespective of whether it is listed in the schedules. Since the Proclamation confines the definition of animal to vertebrates, hunting accordingly implies the hunting of these only.

2. Legal system as referred to wildlife

(a) Categories

Four categories of animals are contemplated in the schedules. These the Minister may vary, with the exception of the first category ("conserved animals"), to which the highest degree of protection is accorded (sec. 13).

Conserved animals may not be hunted or captured except under special permit for scientific or wildlife management purposes (sec. 34). The Proclamation is silent as to the protection of habitats and species. The fact of being a conserved animal applies throughout the country, unless a specific area is singled out in this connection.

The category of protected game (sec. 14) is somewhat difficult to distinguish from that of conserved animals, since neither may be hunted except under a special permit. The difference appears to be that the lists of the former may be varied by the Minister and those of the latter only by the legislator.

Game, or game animals, may be hunted by persons holding a permit or a licence. A difficulty arises here because the relevant list does not exhaust the vertebrates. And there is a further provision requiring a hunting permit for any vertebrate. The Third Schedule contains three such lists (Parts A, B and C), relating to fees, penalties, and the control of hunting. These lists indicate the numbers of head, by species and by sex, of animals that may be hunted in a given season, together with the fees payable in each case.

Vermin are dealt with in a list (which may be varied by the Minister) and may be hunted throughout the country (but not in game reserves) without a licence being necessary (sec. 58).

(b) Protection against animals

- Protection of property (sec. 41)

Owners and occupiers of land and persons authorized by them may destroy any animal causing harm there. If a conserved animal is involved, the fact must be reported to the authorities. In the case of animals where the tusks, hides, etc., are to be delivered to the nearest district office, these items are deemed to be Government trophies. However, the Minister may award such trophies to the person who destroyed the animal. The carcase may be used for consumption but not sold.

- Self-defence (sec. 43)

It is lawful for a person to kill or injure an animal in his own defence or that of another person if this is "immediately and absolutely necessary". The fact of doing so must be reported, and the remains delivered, to the authorities. The burden of proof that the animal was killed to protect property or in self-defence lies with the person who killed the animal.

- Movement of animals

Express provision is made for the authorities to move wild animals elsewhere with a view to controlling epizootics and to ensuring the safety of persons and property or, again, for wildlife management purposes.

3. Legal system as referred to hunting

(a) Hunting rights

Hunting rights are bound up with two factors: ownership of the land and authorization by the authorities.

- Hunting rights and ownership of land

No hunting right subsists to hunt on land belonging to others. To enter such land requires the authorization of the owner or occupier (sec. 45). On private land, the owner or occupier may hunt, without a licence, all animals except conserved animals, protected game, and elephants. A licence or a permit is required on State or tribal land.

- Kinds of licences and permits

(i) Licences

These are of three kinds, providing progressively wider scope for the hunter.

The bird licence entitles the holder to hunt the species appearing in Part A of the Third Schedule, without limitation as to number. It is valid for one year for residents and for seven days, one month or one year for non-residents, different scales of fees being payable.

The general game licence entitles the holder to hunt the animals appearing in Part B of the Third Schedule, of the kind and in the number, during the open season, there specified. Where this licence is issued for seven days, only three kinds of protected game animals may be hunted - to be chosen from the list in Part C.

General licences may be issued with validity for specified land only.

There is also a supplementary game licence, which is issued only to persons holding a valid general game licence, the purpose being to allow them to hunt a greater number of animals among those listed in Part B.

(ii) Special licences and permits

A so-called package licence is also contemplated, under which conserved game may be hunted. However, the section (20A) so providing is not immediately applicable, since the matter is conditional upon a regulation being issued to that effect.

The supplementary game licence allows a person entitled to landholder's privileges to hunt on his land conserved or protected animals, and elephants (sec. 21).

A Minister's licence is a complimentary licence entitling the holder to hunt any animals other than conserved animals, at any time and on any land, even where hunting is otherwise prohibited (sec. 31).

Permits which may be granted by the Chief Game Warden authorize the capturing or killing of any animal for scientific purposes, for domestication and for wildlife management. The authorization extends to the sale of animals so killed or captured and the meat and other products obtained from these animals, in which case the permit is granted subject to the condition that the sale is in the interests of wildlife conservation and the proper regulation of commerce connected with wildlife (sec. 34).

The permit which a licensing officer may grant authorizes the killing of any animal otherwise than in a game reserve or sanctuary in order to provide meat when supplies are not otherwise obtainable, for the control of disease and for the protection of livestock and man's installations.

The licences and permits here described are granted only to those already in possession of a gun licence.

No customary hunting rights are contemplated that do not also require administrative authorization.

(b) Hunting

(i) Territorial organization

Controlled hunting areas are instituted by section 10 of the Proclamation. Regulations may be prescribed for each of these areas as regards the requirement to hold a permit or special licence and the payment of fees. The proceeds of these fees may be made over to the District Council. In this

way the local community can be encouraged to have an interest in the conservation of its wildlife. Botswana has forty controlled hunting areas. The best of these are leased for four years at a time to safari companies. The others are open for hunting by residents and safari companies for a week at a time. Not more than six sport hunters per week are allowed in any area. Residents and members of local tribes do not pay the fees applying to the areas where they reside.

(ii) Professional hunters and related occupations

Professional guides and professional hunters are required to possess a licence (sees. 28 to 31), which, however, authorizes them to shoot only in order to kill a wounded animal or when necessary for self-defence.

(iii) Register of animals killed

These registers must be kept by licence holders and produced for inspection by the authorities (sec. 39).

(iv) Limitations on hunting

- Limitations as to place

The Minister may (sec. 38) prohibit the hunting or disturbance of any animals or species for a period not exceeding one year at a time in any area defined by him - i.e. in addition to the controlled hunting areas.

- Limitations as to methods

There are the usual prohibitions concerning hunting at night (sec. 54), the use of fire, vehicles, nets, traps, poisons (sec. 57), etc.

- Limitations as to time

The Minister is empowered to declare open seasons governed by different provisions according to the area, the species and the sex of the animals in question (sec. 27).

(c) Animal products

For the sale of any wildlife products a permit by the Chief Game Warden is required (sees. 60 and 61). A permit is also required for the import and export of animals, trophies and meat (sees. 62 to 64); and any dealing in trophies, which must in any case have been lawfully obtained (secs. 65 to 67), while ivories and rhinoceros horn are subject to registration even when imported (secs. 68 to 73).

III. PARKS AND NATURE RESERVES

1. Types of protected areas

Protected areas are provided for in the 1961 Proclamation and the National Parks Act, 1967.

The former enactment provides for the declaration of game reserves and sanctuaries, in which it is prohibited, without a special permit, to hunt or capture animals. The prohibition may be general or apply to certain species contemplated in the relevant declaration. Thus there are “bird sanctuaries” (Mogobane and Bathoen) where the sole purpose is to protect birds not classed as game birds.

The protection regime afforded by these reserves and sanctuaries can be supplemented by regulation. Section 93 of the 1961 Proclamation gives a lengthy list of matters where the Minister may make provisions - including prohibitions, which may extend the prohibition on on entry, even into these reserves and sanctuaries. Thus these areas have an extremely flexible status, ranging from the partial to the strict reserve.

The National Parks Act, 1967 institutes these parks “for the preservation of wild animal and fish life; vegetation and objects of geological, ethnological, historical, archaeological, or other scientific interest for the benefit, advantage and enjoyment of the inhabitants of Botswana”.

As a general principle, there is a prohibition on any act likely to damage natural or other (archaeological, ethnological, etc.) features (sec. 11). Among the actions prohibited are those of introducing any animals or vegetation into a park or the working of mining claims there (the latter activity, however, may be carried on with the permission of the Minister of Commerce, Industry and Water Affairs (sec. 16)). The Proclamation does not itself prescribe regulations governing access to, and sojourn by the public in, parks, but empowers the Minister to do so. Similarly, the Minister is competent to authorize the construction of the necessary roads and tourist and hotel facilities within parks.

The Proclamation provides for the payment of fees by visitors to parks.

2. Constitution of reserves

Reserves and sanctuaries provided for in the 1961 Proclamation are constituted by the President of the Republic, who also determines the object of the park in question, may vary its boundaries, and may abolish it (sec. 6).

The President may also declare an area of private land to be a private game reserve upon written application by the owner (sec. 8).

In the case of national parks, the 1967 Act provides that these are to be constituted on State land or on land bequeathed or donated for this purpose - even to persons other than the State, provided, in this case, that the legatee or the beneficiary of the donation expressly consents (sec. 3). A public hearing is required whenever it is proposed to declare a reserve or park, and a notice to that effect must be published in the press indicating a time limit within which objections may be made and with whom these are to be lodged.

Objections must be lodged with the President before he issues any order constituting a national park, such order in any case requiring confirmation by resolution of Parliament before the end of the session during which notice of the proposal is published. Failing such confirmation, the order lapses as from the date of conclusion of the session in question.

The same provisions regarding procedure, consultation of the public and parliamentary approval apply whenever it is proposed to declare any land as ceasing to form part of a park or to abolish such park altogether.

IV. CONTROL; PENALTIES

1. Persons vested with control powers

The 1961 Proclamation vests control powers in the police, and in game officers and game scouts and, again, (sec. 89) honorary game officers, who enjoy the same authority for these purposes.

2. Control powers

(a) Enforcement procedures

A game officer may erect road barriers for the purposes of inspecting vehicles, though in such a manner as to ensure that road users shall not be endangered thereby (sec. 84).

(b) Detection and reporting of offences

Where game officers have reasonable grounds for believing that an offence has been committed, they may:

- interrogate any suspect person and inspect any animal, meat, trophy or weapon or licence or other document issued to him that are in his possession;
- enter upon land, building, tent, vehicle, aircraft or boat and search any baggage or other thing. Dwelling houses may be entered without a warrant only by a policeman or game officer.

(c) Action to be taken whenever an offence is detected

Upon detecting an offence, game officers may:

- seize vehicles or weapons used in the commission of the offence and any animal, meat or trophy involved in that offence; - arrest and detain the ostensible offender unless they are satisfied that he will appear and answer the charge;
- destroy, where their removal is difficult, prohibited devices, such as nets or traps set in such a way as to capture animals.

(d) Presumptions

The 1961 Proclamation creates several presumptions - e.g. by placing the burden of proof to the contrary on the accused (sec. 80), possession of a game animal or the meat or trophy of it constituting prima facie evidence against him. Similarly, the possession of game animals in excess of the numbers specified on the licence or permit creates a presumption that they were hunted illegally. Any animal, meat or trophy found found in a vehicle or at a

camping place is presumed to have been hunted by the owner of the vehicle or any person in any way associated with it or with the camp in question. Again, where the flesh or other remains of an animal have been rendered unidentifiable, the animal will be presumed, unless the contrary is proved, to belong to the species determined by the game officer.

The system of presumptions is fairly exhaustive, no less than fourteen being created by this same section 80.

3. Penalties

The main penalties consist of fines and imprisonment, together with additional sanctions.

Where the principal penalty incurred consists of a fine of less than 200 rand, the court may also cancel the licence or the permit issued to the offender; and if it is over that figure, the cancellation is automatic, though the judge may waive this provision if he thinks fit.

If the offence has been to hunt an animal without due authorization or to resort to prohibited methods of hunting, incurring a fine of over 200 rand, the court may declare the vehicle used for the purpose of or in connection with the offence forfeit to the State. However, the vehicle may be returned to the owner provided he is not the offender or his accomplice (sec. 85).

ETHIOPIA

I. LEGISLATION AND ADMINISTRATION

Until recently, Ethiopia's legislation included two basic texts, the Game Proclamation of 1944 and the Wildlife Conservation Order of 1970, which was supplemented by the Wildlife Conservation Regulations of 1972, themselves amended in 1974.

In 1980 the newly installed Ethiopian Government issued the Forest and Wildlife Conservation and Development Proclamation[1], a relatively short enactment instituting in general terms the powers of a national-level Forest and Wildlife Conservation and Development Authority. The regulations made under the earlier enactments continue in force pending the introduction of regualtions in harmony with the 1980 Proclamation. At the time of writing a text of draft regulations is being examined by the Government.

The Authority created by the 1980 Proclamation reports to the Ministry of Agriculture. The Chairman is the Minister himself. The formula of a national-level agency having corporate status is no novelty in Ethiopia but its adoption in 1980 was accompanied by the merger of the former Wildlife Conservation Organization and the State Forest Development Agency. The former, however, continues as a department of, and enjoys a measure of autonomy within, the Authority newly created by the the 1980 Proclamation.

The Authority has a Council, a General Manager and a staff numbering some 4 000, including fifteen holders of university degrees and 150 technical assistants. In practice the Council resembles an inner cabinet, its composition bringing together the Minister of Agriculture (who, as noted, is also Chairman) and the Ministers of Domestic Trade, of Mines, Energy and Water Resources, of Industry, of the Interior, and of Urban Development and Housing, together with a Commissioner of the Ethiopian Tourism Commission, the Chairman of the All-Ethiopia Peasant Association and the General Manager of the Authority (art. 14).

The Council initiates the Authority's policy guidelines, approves programmes of work, reports and budgets, and recommends the General Manager for appointment by the Government (arts. 15 and 18 (1)). The Chairman, who is Minister of Agriculture, is vested with powers to issue, on the decisions of the Council, “regulations necessary for the proper implementation of this Proclamation" (art. 25).

The Authority's budget consists of Government subsidies, proceeds from its activities and any donations and aids it may receive (art. 20).

The objectives of the Authority are to:

“(1) to ensure the proper protection, development, rational utilization and management of forest and wildlife resources of the country;

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1 Negarit Gazeta No. 17, 5 September 1980.

(2) to establish and administer national parks, game reserves and other conservation areas;

(3) to agitate the broad masses to have better and greater participation in the development, protection, rational utilization and management of forest and wildlife"(art. 11).

The Proclamation vests in the Authority "all powers necessary for the achievement of its objectives (art. 12), and, without limitations as to their generality, lists these in no less than 31 points covering such matters as management programmes, the acquisition of property, and powers to enter into contracts, seize illegally taken items and regulate hunting.

II. HUNTING

1. Legal definition of hunting

The 1972 Regulations define "Hunting or hunt" as meaning "to kill, capture, shoot at, wound a game animal or search for a game animal with the intent to kill or capture [it] and shall include the taking of an egg or nest of any bird". The Schedules to these Regulations indicate protected species and species that may be hunted.

2. The law governing wildlife

(a) Categories

The 1980 Proclamation makes no provision for categories of animals coming under distinct rules; simply the Schedules to the 1972 Regulations (amended in 1974) list species which may be hunted.

From the lists in question the different categories of Ethiopian fauna may be distinguished. These comprise first of all the game animals, in respect of which several types of licence apply, each licence indicating the number of animals which may be killed.

This licence-based indication appears, for game birds, in Schedules II and III and, for other species of animals, in Schedules I and IV. Thus there is no distinction here between ordinary game and specially protected animals, since all species come under the latter regime.

A further category consists of game animals that may be hunted only under special permit (Schedule V). The permit in this case is issued scientific, zoological or educational institutions, and for their use only. It would seem, therefore, that the capture for export or sale within the country is excluded. The category corresponding to what are more usually referred to as protected animals is further divided into two sublists, animals appearing in the second of these enjoying a greater degree of protection since they may not be hunted... except for important scientific research or to protect their survival (Schedule VI).

A third and last category comprises vermin, which may be hunted by any person without a licence or permit being required, though outside protected areas (Schedule VII). However, a capitation fee is payable in the case of hunting vermin for gain.

The classification here referred to is established by the Minister of Agriculture and has the force of a regulation. It may be varied by the same authority.

(b) Defence of life and property

Article 44 of the 1972 Regulations places the duty on anyone who has wounded an animal to follow it and kill it unless it has taken refuge in a wildlife conservation area. If a buffalo, elephant, hippopotamus, lion or leopard is involved, the circumstances must be reported to the authorities at the earliest opportunity.

The killing of a game animal in self-defence where attack is imminent is deemed to be legitimate. The protection of property requires that notice first be given to the Authority, so that it may disallow the measures proposed by the interested person and take any other course in protecting the property thus endangered.

In any event, the killing or wounding of an animal in the context of self-defence or the protection of property must be reported to the Authority. Trophies belong to the latter unless they come within the purview of kills allowed under hunting licences. There is no restriction on the disposal of the meat (arts. 36 to 39).

(c) Wild animal raising

The Forest and Wildlife Conservation and Development Proclamation of 1980 emphasizes the economic implications of wildlife and provides that one of the functions of the Authority shall be to "agitate and assist the broad masses to... rationally utilize... wildlife". The Draft Regulations now under consideration by the Government contain provisions going into greater detail regarding such utilization of wildlife.

3. The law governing hunting

(a) Hunting rights

Hunting rights are not bound up with landownership or with custom but derive exclusively from authorization by the General Manager of the Authority. Even "rights" are, strictly speaking, a misnomer. The General Manager may refuse applications for licences from any persons who have committed an offence under the wildlife laws yet also from "any persons... for any other valid reason" (1972 Regulations, art. 13). The applicant thus refused may appeal to the Minister.

There are seven types of licences and permits (arts. 21 to 24).

The General Game Licence is valid for one year and authorizes the hunting of a limited number of animals (from the five species listed in Schedule I).

Where birds are concerned there is a distinction (Schedules II and III) between the Game Bird Licence and the Snipe Licence, both being issued for two months.

A Supplementary Game Licence may be issued to the holder of a General Game Licence, allowing him to hunt animals, and in the numbers specified, in Schedule V.

The first series of licences described here have to do with hunting as a sport and entail the payment of a fee for their granting. In addition there are the Special Permit for hunting game animals for scientific purposes and the Game Capture Permit, the former indicating the animals and the numbers of each that may be hunted, together with the stated locality and the purpose specified. The Game Capture Permit entitles the holder to take live game animals of the species and in the numbers there specified but prohibits him from using poison or from shooting any animal save with a capture gun (i.e. with an anaesthetizing charge). In any event animals killed count against the Game Capture Permit.

(b) Hunting

(i) Organization

- Hunting areas

The 1972 Regulations create Controlled Hunting Areas, within which hunting is reserved to holders of licences and permits granted by the General Manager (arts. 9 and 23). There are restrictions, in these areas, on residence, cultivation and livestock grazing (art. 23).

- Game register

All holders of licences and permits must maintain a Game Register (art. 17), in which the appropriate entry is to be made “before removing the game animal from the spot where killed or captured”. The Register is attached to the licence or permit and must be surrendered as soon as either is fully utilized, or upon their expiry, or, in the case of visiting foreigners, when these leave Ethiopia.

(ii) Restrictions on hunting

- Restrictions as to place

Hunting is prohibited in Game Reserves save under a Special Permit or Game Capture Permit issued with respect to a given locality. Additionally hunting is prohibitied with a radius of 75 km of Addis Ababa

- Restrictions as to time

Open seasons are indicated in the Schedules dealing with Game Bird Licences and General Game Licences.

- Restrictions on methods of hunting

Prohibited methods are listed in article 26 of the 1972 Regulations. They include, as ususal, hunting at night, and the use of fire, poisons, nets, motor vehicles, etc. Traps are authorized provided the jaws are less than 8 cm long and also snares, provided these are not made of wire.

(iii) Products of hunting

The 1972 Regulations bring trophies, remains and whole animals under the same legal rules. The main object of these is to prevent poaching, and they accordingly place the burden of proof as to lawful possession on the possessor.

The wildlife authorities issue certificates attesting that the holder is the lawful owner. The occasion of so doing enables them to verify the lawful origin of the various items, among other things by checking these against game registers and licences.

It is prohibited to have in one's possession a trophy or game animal unless these are accompanied by a Certificate of Lawful Possession; and any sale or transfer of the animal or trophy entails the transfer of the certificate, endorsed to that effect, to the purchaser or other transferee (art. 29).

Ivory must be registered, a procedure also entailing the marking of the item itself with the name of the place, the licence number, weight, etc. (Art. 34).

The importation and exportation of game animals and trophies require a permit. In the former case the intending importer must furnish proof that the item was lawfully exported from the country of origin and, in the latter case, must hold a Certificate of Lawful Possession (arts. 31 and 32).

To trade, or engage in craft activities, in game animals and trophies a Dealer's Permit is necessary. Holders are required to keep registers and records of their dealings and produce them for inspection by the Authority (art. 30).

III. PARKS AND RESERVES

Strange as it may be, the 1980 Proclamation deals with wildlife protection areas only in a very incidental fashion. Article 11 merely provides that the Authority shall have powers among its objectives “to establish and administer national parks, game reserves and other conservation areas”. The powers vested by the following article include powers to... “demarcate, register and administer national parks, game reserves, sanctuaries and areas... for controlled hunting”; also “to notify the appropriate Government office to resettle persons who have settled in... conservation areas;... to cooperate with the appropriate Government offices and mass organizations in the construction of roads” in such areas; and to “grant permission for the establishment of any hotel, camp or other facilities within... national parks, game reserves or other conservation areas...”.

Three kinds of wildlife conservation area are contemplated in the 1972 Regulations: national park, game reserve and sanctuary. The first-mentioned is defined as “a wildlife conservation area... designated as such for the purpose of conservingand protecting wildlife and objects of aesthetic, ecological and scientific interest”, and may include a marine park. National parks are designated as game reserves but merely, it would seem, to bring them under the rulemaking powers vested in the Minister by the 1944 Game Proclamation, where only game reserves are contemplated.

In national parks, residence, hunting, cultivation, pasturing and any other form of exploitation of natural resources are prohibited unless for the development and management of the park. Residence in game resrves in the strict sense is also prohibited without the written authority of the General Manager, which, however, is not required for persons residing there on the date of the declaration of the reserve. Persons authorized to reside in game reserves and sanctuaries may cultivate their land and pasture their domestic animals there. Hunting is prohibited in game reserves and sanctuaries save under a Special Permit or a Game Capture Permit issued with respect to the reserve or sanctuary in question.

Restrictions also apply to the carrying of weapons in game reserves and sanctuaries. The General Manager may add to these restrictions.

Prior to 1980, the establishment of any national park was enacted by ministerial Order. Since the Proclamation of that year power to declare national parks, game reserves and sanctuaries would appear to be vested in the Authority, even though procedures for so declaring have yet to be prescribed - draft procedures being under consideration by the Government at the time of writing.

IV. ENFORCEMENT; PENALTIES

1. Enforcement

The 1980 Proclamation vests general powers in the Authority to secure enforcement in matters affecting forests and wildlife, to require persons in possession of forest or wildlife products to produce the relevant certificate, and to seize any vehicle or animal carrying those products for which this certificate cannot be produced, and to sell any product that is perishable.

Draft regulations specifying the powers of game wardens are currently under consideration.

2. Penalties

Fines and terms of imprisonment are provided for under the 1980 Forest and Wildlife Conservation and Development Proclamation (art. 24), but also under the Penal Code (arts. 364, 803, 804 and 740 of the 1957 Proclamation issuing this Code).

Additional penalties may be imposed. Thus, the Government may confiscate weapons, devices and vehicles (1980 Proclamation, art. 24 (1)), while the 1972 Regulations (art. 20) empower the issuing authority to suspend and cancel licences and permits - these administrative penalties being available independently of any court decision.

THE GAMBIA

I. INTRODUCTION

1. Current legislation

The Gambia's legislation consists of a single Act of Parliament dealing with both parks and reserves, namely the Wildlife Conservation Act, 1977, which is notable for its comprehensive conception of problems affecting wildlife. It prescribes in turn for protected areas (national parks, national reserves, local sanctuaries), hunting, sale (domestic) of wild animals and the import and export of these and their products.

This 1977 Act repeals the Wild Animals, Birds and Fish Preservation Act, 1916 but not the Regulations thereunder, which remain in force until superseded. Accordingly, positive law also comprises the Wild Animals, Birds and Fish Preservation Regulations, the Wild Birds Preservation Regulations and the Wild Animals and Birds (Export) Regulations. The first and third of these enactments have undergone several amendments.

2. Institutions

The three types of protected areas mentioned come within the jurisdiction of the Wildlife Conservation and Management Service, with a Director at its head and a corps of Wildlife Officers.

The Act seems to endow this Service with a certain individual character but does not state to which Ministry it reports. In line with usage in the enactments of English-speaking countries the Minister is named without his department being specified. Section 2 - Interpretation - is content to refer to the Minister for the time being responsible for wildlife matters, which is tantamount to saying that wildlife does not necessarily come within the purview of a forests department.

The Minister is empowered to make regulations and to give directions to the Director of Wildlife Conservation and Management. Section 3 of the Act gives the latter general powers for all questions affecting wildlife, while, under section 9, he is to control, manage, and maintain all national parks, etc., and may prescribe rules in their regard as well as exercising powers of decision as to the granting and refusal of the various kinds of hunting licences.

Section 4 of the Act enjoins upon the Director to develop and keep under review plans for the management of wildlife. This officer, accordingly, is responsible for developing, though under the responsibility of the Government, national wildlife policy.

Given the multiplicity of tasks entrusted to him, the Director may delegate any powers he thinks fit to Wildlife Officers (sec. 3 (2)).

Basically there is a precise policy governing the activities of the Wildlife Conservation and Management Service. This policy finds expression in wildlife management plans provided for in section 4. Here the wording is

somewhat ambiguous in that, to the extent that the plural is used, it is legitimate to ask whether a succession of national plans is meant extending over time or operating simultaneously in the former several provincial plans. The fact that no reference is made to the territorial scope other than "The Gambia" lends weight to the former hypothesis. In any event, these plans are to be conceived so as "to yield to The Gambia, in general, and to individual areas in particular, optimum returns in terms of ecological, cultural, aesthetic and scientific gains". They are to take into account national, regional and international aspects of wildlife management.

Under law, then, such plans are not simply indicative but have a mandatory force for the determination of the species that may be hunted and as to number, area and open season (sec. 13).

II. HUNTING

1. Legal definition of hunting

Hunting is defined very comprehensively in section 2, where "hunt" means:

- kill, wound, capture, or shoot at;
- wilfully disturb, molest, or take by any method a nest of eggs of any wild animal;
- follow, lie in wait for, or search for weith the intent to kill, wound, capture, or shoot at;
- doing any other act immediately directed at killing, wounding, or capturing any wild animal.

Likewise "wild animal" means any animal that is not a domesticated animal or an animal belonging to the vertebrates, except fish.

The nomenclature for the activities which may come under the connotation of hunting is useful since by reference to it an enforcement officer may challenge a person whether before he has fired at an animal or after he has done so. The object of hunting has a similarly broad connotation, though it may be noted that the 1977 Act retreats somewhat from the 1916 Act and, therefore, from the regulations thereunder, which are still in effect and apply to "any wild animal" (reg. 2).

2. The law on wildlife

(a) Categories of wildlife

The earlier Act contemplated a somewhat complex system, of five lists of animals, enjoying a greater, or lesser, degree of protection. The first such list covered absolutely protected birds as well as their nests, eggs and feathers; the second, absolutely protected animals and birds; the third, large game - here the young and females accompanied by their young are absolutely protected; the fourth, small game protected between 16 June and 31 December; the fifth, birds protected between 1 July and 31 December, their eggs being protected at all times.

Here one has an example of the empirical classification met with in the laws of the English-speaking countries in force during the 1960s.

The new text is much simpler, and is interesting first and foremost for its approach. Instead of prescribing classifications with varying degrees of flexibility and offering a greater or lesser degree of protection, it lays down the principle that “any wild animal found in The Gambia, whether or not originating in The Gambia, shall be a protected animal” (sec. 12). Note that, within the meaning of the Act, “unless the context otherwise requires, the term “animal” means any vertebrate animal”. These provisions cover both game and vermin - again emerging as exceptions to the generic protection afforded to vertebrates, neither sort, however, making up immutable categories.

Where game is concerned, section 13 provides that “the Minister may, where he is satisfied that pursuant to any wildlife management plan... it is desirable so to do, declare an open season during which it may be lawful to hunt any species of wild animal specified in the declaration”.

The declaration of an open season may have several conditions attaching to it, among them conditions governing the number, species and sex of animals that may be hunted (sec. 16).

Vermin are covered by a similar provision, section 27 enabling the Director to declare any wild animal to be vermin either generally or in a specified area or for any specified period of time.

The powers thus vested in the Director are equally vested in the Minister, since the definitions refer to vermin as “any animal which is declared by the Minister to be vermin” (there is surely an oversight on the part of the draftsman here). Also, section 58 enables the Minister to make regulations for “the declaration of vermin in respect of any specified period or area”.

Whenever a species is declared to be vermin, the Director may make provision regarding procedures which may legally be resorted to against the animals in question. The effect of the declaration is to allow hunting without a licence, provided any conditions otherwise specified are complied with. Neither the Minister nor the Director may authorize the hunting of game or vermin in a protected area such as a national park or a national reserve (Wildlife Conservation Act, sec. 2) or protected forest or forest park within the meaning of the Forest Act, 1977 (sec. 35 (j)), where hunting and fishing are prohibited.

The Gambia's system is attractive in that it emphasizes wildlife protection and rational management; and, also, for its noteworthy simplicity - at least in its underlying principle. Again, if the authorities in this country have the means for doing so, and the will to enforce, it should succeed, thanks to the severity of the rules, in inculcating respect for living things - an urchin amusing himself by throwing stones at a toad is liable to a year's imprisonment and a fine of 750 dalasis (sec. 28).

It should also be noted that there is no provision for waivers of the protection rules in the form of licences for capture for scientific purposes or of other special authorizations. The needs of scientific research and wildlife management are not ignored by the law. But the hunting and the capturing engaged in for these purposes may be done only by the Director or

his duly authorized officers, who, however, may do so without restriction as to area (protected areas not excepted) or method used (sec. 26). The section here quoted similarly provides that these officers may put down an animal in order to prevent it from suffering unduly.

(b) Defence

The 1977 Act makes no distinction between self-defence and lawful resort to the protection of property. Under section 23 it is allowable "for any person to take such measures as may be reasonably necessary to defend his person or any other persons, or to protect any livestock, crops, or other property which he has a duty to protect or a legitimate interest in protecting, from a direct and immediate attack by any wild animal". Further conditions for lawfulness here are that there shall be no alternative to shooting the animal, that at the time of the attack there was no deliberate provocation of it and that the person so claiming self-defence was not committing an offence under the Act.

Next, whenever a person kills an animal in self-defence, the circumstance must be reported immediately to the nearest authorized offficer. The burden of proof of legitimate self-defence lies with that person who has so killed or has wounded the animal. The remains of the animal become the property of the Government and accordingly must be handed over to this officer.

The above provisions markedly approach criminal law principles - immediate attack, proportionate response, burden of proof on the person killing - just as in cases where human life is involved.

If one prescinds from situations of imminent threat, the Director or authorized officers are required to take all necessary measures, including that of killing any animal constituting a threat to public safety, livestock, crops or other property. In these cases the private person may not take action when faced with merely a threat but must notify the wildlife officer, who is required by law to afford assistance (sees. 24 and 26 (c)).

The legislator is also aware of the danger represented by wounded animals at large; and any person who has done the wounding, in whatever circumstances, or observes a wounded animal which could become dangerous, must notify the nearest authorized officer (sec. 25).

3. Legal regime in respect of hunting

(a) Hunting rights

The Gambia's law has no provision for customary hunting or for landowner's privileges, nor does the 1977 Act prohibit hunters from entering private land.

Even if other enactments, such as those having to do with landed property, assign hunting rights to the private owner, it is reasonable to suppose that these rights attach exclusively to the possession of a hunting licence, the principle governing which is laid down in section 14.

Again it needs to be emphasized that the Act recognizes no true right to hunt; and this is not simply because, as pointed out earlier, the authorities are under no obligation to declare an open season but principally becasue

their powers to grant licences are not bound in any way. A licensing officer may refuse applications “if he thinks fit and without assigning any reason therefore” (sec. 18 (1)). The applicant in such cases has a month in which to appeal to the Minister (sec. 19). The Director may likewise cancel or suspend a licence without having to assign a reason for his decision. Here again, the aggrieved person may appeal in the same way as in cases of a refusal to grant (sees. 20 and 21). The least, then, that can be said is that hunting rights come under the description of “revocable rights” and are not among the public liberties to be found in many European laws.

Whether or not it is appropriate in a given case, the granting of a licence is also governed by conditions imposed by law. The applicant must be in possession of a firearms licence; and the officer may refuse to issue the licence if he is not satisfied that the applicant is competent to use a firearm, and may require him to undergo shooting and related tests (sec. 18 (2) and (3)). It is to be regretted that the legislator's concerns go no farther than those for public safety and have not extended to the requirement of a test, however simple, of the applicant's knowledge of animal and ecological matters.

A hunting licence is strictly personal and may not be transferred to others. It must be kept on the holder's person to be produced for inspection upon request by an authorized officer (sec. 22).

The Act prescribes no duration for the validity of licences since, given the timing of open seasons, this cannot be predetermined by the legislator. The latter accordingly requires simply that the period of validity be entered on the licence. Under the system operating in The Gambia, this will correspond to the time of the year when any open season applies (sec. 16 (3) (e)). For similar reasons the Act leaves open the possibility of restricting validity to areas specified on the licence itself (sec. 16 (3) (d)).

The Act (sec. 58 (j)) makes fees payable upon the grant of a licence a matter for the regulations.

Hunting methods, except those that are expressly prohibited, may also be made a matter for prescription by the authorities. They must be indicated on the hunting licence for it is this, and not the general legislation, that specifies the precise extent of the hunter's rights. The holder is thus given permission to hunt under conditions regarding:

- species that may be hunted;
- the number of animals by species, variety of species, or sex;
- hunting methods that may be used;
- area or areas for which the licence is valid;
- season or seasons for which the licence is valid;
- fees payable.

In order to guarantee a measure of administrative regularity in matters affecting licences, the legislator distinguishes between two categories of these according to whether they are “general licences” or “bird licences” - and thus restricted. No commercial, complimentary or other licences are provided for. Nor, again, is tourist hunting contemplated.

(b) Hunting

The organization of the hunting sector, the question of hunting areas, and safari undertakings or those for tourist hunting have no place in the Wildlife Conservation Act, 1977, which is concerned solely with limitations on the activity of hunting as such.

Mention need only be made of the restrictions as to season and area referred to in the section on licences for one to note that, under powers vested by section 59 (k), the Minister may make regulations for "the prohibition, regulation or control of the hunting of wild animals in or near any municipality, residence, factory, quarry, mine, protected area, or... road...".

Limitations having to do with game prohibit the hunting of "any wild animal that is obviously immature or is a female accompanied by its young".

Limitations governing methods of hunting are to be found in Part V of the Act, where a number of prohibited procedures are defined. However, it must be remembered that the rulemaking authorities may at any time require that one or other method shall be specified on the licence. Thus no person may have about him or use:

- any repeater firearm;
- explosives or explosives missiles;
- set-guns, pitfalls, game-pits, enclosures, nets;
- snares or stunning devices;
- drugs, poisons, poisoned weapons or poisoned baits,

or resort to:

- the use of fire (this is given a very wide connotation - surrounding, but also any use "in connection with hunting");
- hunting in the hours of darkness (i.e. the period between half an hour after sunset and half an hour before sunrise) and the use of dazzling light;
- driving any animal into water for the purpose of hunting it;
- the use of a motor vehicle, aircraft, boat or other craft for the purpose of hunting any wild animal. Section 33 adds that it is prohibited to fire at an animal within 200 yards of any of such conveyances. Firearms placed in any of these must be unloaded and put in a case. The provisions here cited bring out the distinction between the use of vehicles for transport to the hunting grounds - which continues to be lawful - and their use for actual hunting.

4. The products of hunting

The legislator begins his treatment of this subject by introducing a safeguard to ensure observance of the law on hunting. Thus, section 35 (2) provides that "any person who receives ... any wild animal knowing or having reasonable cause to believe that such animal was taken in contravention of the provisions [relating to prohibited methods of hunting] shall, unless the contrary is proved, be guilty of an offence".

Parts VI and VII, which prescribe for sales within The Gambia and imports and exports, give the rules governing the products of hunting - meat, trophies and the wild animals themselves.

(a) Domestic trade

The sale of wild animals, their meat and their trophies within The Gambia is in principle prohibited (sec. 36). A first waiver of this rule allows the meat or trophy of bush pigs to be traded on condition that the animal has been legally hunted[1]. The Minister, in consultation with the Director, may also suspend the operation of the rule in regard to other species for specified periods.

(b) Imports and exports

For imports and exports of wild animals, their meat or trophies a permit is required. This is issued by the Director (sees. 37 and 39).

Trophies are defined in such a way as to offer the widest possible control over exports. In addition to the animal itself, the term connotes “any durable portion, whether processed, added to or changed, which is recognizable as a durable portion, and any nest, egg or eggshell”. By this token, curios and jewellery-type items made from ivory or bone or leather come under the heading of trophies.

Permits entail the payment of fees. Their period of validity is marked on each. Personal effects are exempt from the requirement of a permit (sec. 42).

The rules governing permits are modelled on the provisions of the 1973 Washington Convention on the International Trade in Endangered Species of Wild Fauna and Flora.

- Import permits

Import permits are issued on condition that (sec. 38):

- the import will be for purposes which are not detrimental to the survival of the species involved;
- the intended recipient of any living animal is suitably equipped to house and care for the animal;
- the wild animal, meat or trophy has been lawfully exported from the country of export.

- Export permits

Export permits are issued on condition that (sec. 40):

- the export will not be detrimental to the survival of the species;

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1 The prohibition on the sale of meat of wild animals was subsequently reaffirmed by the Wildlife Conservation (Sale) Regulations, 1977, which, however, authorize such sale among local inhabitants (citizens of The Gambia, members of a tribe, and living in a village), and only these, for the needs of personal consumption.

- the wild animal, meat or trophy has been lawfully obtained;
- the risks of injury, damage to health, or cruel treatment in the course of transport of a living animal are reduced to a minimum;
- an import permit has been granted by the importing state.

III. PARKS AND NATURE RESERVES

1. Types of protected areas

The 1977 Act contemplates three types of protected area - national parks, national reserves and local sanctuaries. The differences between them have to do, in the first place, with the rules governing their establishment. For national parks the approval of Parliament is required; for the other two areas an order of the Minister is sufficient. But chiefly it is their purpose, as set out in the definitions, that is their distinguishing feature.

Thus a national park is “land set aside... for the propagation, protection, conservation and management of vegetation and wild animals as well as for the protection of sites, land-scapes or geological formations of particular scientific or aesthetic value, for the benefit and enjoyment of the public...”.

A national reserve is “land set aside... for the propagation, protection, conservation and management of vegetation or wild animals, and the associated habitats...”. A national reserve is not necessarily open to the public.

A local sanctuary is “land set aside... for the protection of characteristic wildlife and especially bird communities, or for the protection of particularly threatened animal or plant species, together with the habitats essential for their survival”.

2. Establishment of parks and nature reserves

(a) Establishment procedures

Whichever kind of area is being considered, the initiative for establishing it rests with the Minister responsible for wildlife matters. In the case of national parks, the legislator has invited this Minister to adopt a rational classification policy. Thus, section 5 provides that “The Minister may undertake surveys of areas of great natural beauty or of major importance for wildlife resources, and may... propose the establishment of national parks in such areas”. The procedure calls for a ministerial order, which in turn requires the approval of Parliament.

For the alienation or disestablishment of a national park or part of one, or any alteration of its boundaries, the approval of Parliament is likewise required.

The declaration of national reserves and local sanctuaries, or their abolition, is a matter for an order of the Minister (sec. 6).

(b) Conflict of interests

The 1977 Act scarcely touches upon this question. Protected areas, it is to be noted, are established on State land, and their establishment and extension are deemed to be a public purpose warranting the agreed purchase or expropriation of the necessary areas. Yet not all problems are solved by these provisions. There may be human communities living in a protected area, and the Act makes no exception in their favour to the protection measures but simply empowers the Minister to prescribe the "prohibition of human settlements and certain other human activities disruptive of wildlife and the natural environment" in such areas.

2. Operation of parks and nature reserves

(a) Protection measures

The text of the Act specifies only one protection measure, namely the prohibition of hunting. On the other hand it empowers the Minister and, under him, the Director to prohibit or control numerous other activities.

- Protection against direct interference

Section 7 prohibits the hunting of any animal in any national park or national reserve and in any area adjacent thereto designated by the Director.

The Minister may extend the prohibition on hunting or exercise strict control over this activity in and near local sanctuaries (sec. 8 (c)).

There would seem to be a gap in the formulation of this enactment. Under section 2 - Interpretation - vertebrates and fish are not animals within the meaning of the Act. Failing any mention of them, and any provision that could be applied in their case, the only possible conclusion is that they are not protected in parks and reserves.

It is also prohibited to bring into any national park or reserve any weapon, ammunition, explosive, trap, snare or poison that can be used for hunting (sec. 7 (2)). Logically, the same prohibition applies to local sanctuaries, where hunting is completely prohibited.

The protection of plants is left to the discretion of the Minister, who may impose a "prohibition or control on cutting, clearing, burning, or otherwise damaging or removing any tree, bush, plant, or other vegetation" (sec. 8 (d)).

- Restrictions on human activities

The Minister may make regulations governing access by the public to protected areas and the circulation there of motor vehicles, boats, aircraft, and domestic animals.

It was noted above that the Minister may also prohibit human settlements and any human activities disruptive of the fauna or the natural environment. One such activity is taken up by the Act but not prohibited in absolute terms, namely the practice of setting fires, which may be prohibited or controlled.

To be sure, it is not possible to judge, in the light of these few provisions, as to the effective protection afforded parks and reserves in The Gambia, since this purpose is intended to be achieved mainly through the regulations to be issued. One cannot help noticing, however, the difference in the degree of precision used by the legislator according to whether he is dealing with hunting or with protected areas. It is also a matter of regret that a place has not been found in the rules governing parks and reserves, for the simple and, one would suppose, foolproof mechanism of declaring all animals to be protected, saving express contrary provision, in management plans and in considering hunting as a derogation which can be withdrawn and which is always under control.

(b) Management of parks and reserves

It will be noted that in the 1977 Act there is only one provision regarding management. This is section 8 (b), which empowers the Minister to prescribe the fees to be paid for entry into protected areas and for any services or amenities provided there.

IV. ENFORCEMENT; PENALTIES

1. Enforcement staff

Authorized officers (wildlife officers, police officers, forestry inspectorate officers and any other officers authorized by the Director (sec. 2)) are vested with enforcement powers. They must at all times in the exercise of these powers have in their possession documentary evidence of their status.

2. Enforcement powers

(a) Powers which may be exercised whether or not an offence is suspected

Whenever a person is doing, or who an authorized officer has reasonable grounds for believing has done, any act for which a licence or permit is required under law, the officer may require the person concerned to produce for inspection his licence, permit and any wild animal, meat or trophy and his firearm or other hunting devices in his possession.

(b) Powers actively to ascertain suspective offences and to report established offences

If an authorized officer has reasonable grounds for believing that an offence has been committed he may, without a warrant:

- enter and search any land, building, or other premises in the occupation of the suspected person and open and search any baggage or other thing in his possession. However, no dwelling may be entered or searched without a warrant;
- stop, detain and search any vehicle used in the commission of any offence and inspect the documents of any passengers in that vehicle.

3. Action to be taken whenever an offence is detected

The Act prescribes penalties for offenders but these measures are also directed toward wildlife protection. Penalties include the seizing of vehicles, firearms and other hunting devices, animals, meat and trophies involved in any suspected offence. A receipt must whenever possible be given against anything so seized. The officer who has seized a live animal may release it or put it down if he judges this to be necessary or he may, if so instructed by the Director, dispose by sale of any perishable products which it is not possible to conserve.

The enforcement provisions also allow the officer to arrest a suspect, if necessary by force, with the obligation, however, of bringing him as soon as possible before a court (sec. 46).

4. Trial of offences; penalties

The Act assigns the trial of offences to the ordinary courts, and contemplates a system of presumptions and penalties.

Presumption of guilt implies the shifting of the burden of proof: the accused must demonstrate that he has not committed the alleged offence (sec. 50).

The fact of being in possession of meat or trophies or of animals that have just been killed or quartered implies the presumption that the possessor hunted the animal in question. A bag in excess of the limits as to the species and numbers stated on the licence entails presumption of contravention of the wildlife rules.

Any person occupying a vehicle, or a camp or other place in any way associated with it is presumed to do so for hunting purposes.

Where a person acting for a corporation is guilty of an offence every director or officer of that corporation will be held to bear joint responsibility unless they can prove that the offence was committed without their knowledge or consent.

The Act prescribes penalties. Chiefly these consist of fines ranging from 500 to 10 000 dalasis and terms of imprisonment of from nine to twelve months. A generic penalty is contemplated for all offences where no specific penalty is indicated.

It is left open to the court to apply the additional penalties provided for. These comprise the forfeiture to the Government of weapons, hunting gear, vehicles and other means of hunting, and animals, meat and trophies (sec. 53). The items so forfeited are to be disposed by the Director.

The court may also order the offender to destroy any trap, excavation or fixed installation that he has unlawfully used or have these destroyed at his expense (sec. 54).

Conviction automatically entails the cancellation of any licence or authorization held by the offender, but no periods of disqualification from holding a licence are specified.

GHANA

I. LEGISLATION

Ghana has introduced legislation dealing specifically with wildlife, the basic enactment being the Wild Animals Preservation Act, 1961. This is a very short text - of 13 sections - containing some immediately applicable provisions and schedules listing genera. The main attraction, however, lies in the fact that it vests in the President of the Republic powers to make regulations for the protection of wildlife. Under these powers, the President has issued two Regulations governing wildlife and protected areas, namely, the Wildlife Conservation Regulations and the Wildlife Reserves Regulations, both of 1971. The several amendments made to the latter Regulations are geared to defining additional protected areas, though without altering the applicable rules. The Wildlife Conservation Regulations, 1971 have been amended only by the raising of the fees payable for hunting licences.

II. ADMINISTRATION

Wildlife law administration is assigned to the Minister responsible for Forestry and Game. With the introduction of the 1961 Act, the wildlife services took the name of Game and Wildlife Branch. This is headed by the Chief Game and Wildlife Officer, who is vested under the wildlife and the reserves regulations with certain powers, among them that of granting licences and permits. He is assisted in his task by a corps of game officers. Provision is made in the 1961 Act (sec. 1) for appointing “honorary game officers”, with powers identical with those of the established officers.

III. HUNTING

1. Legal definition of hunting

There is no definition of hunting in the Act or in the Wildlife Conservation Regulations. In both texts are used the words “hunt, kill, capture or destroy an animal”, without any distinct statutory rules attaching to each or any of the actions so enumerated. Animals covered comprise all wild fauna except non-edible fish. A licence is required under law in order to hunt, capture or destroy stated genera.

2. Statutory rules governing wildlife

(a) Categories

The classification introduced by the 1961 Act contemplates as many as six categories. These are covered, respectively, by the First to the Fifth Schedules as follows: genera completely protected; genera of which the young are specifically protected; genera of which females accompanied by young are protected; genera of which only a limited number may be killed; and genera as to which measures may be taken to reduce the numbers. To these five categories section 11 (c) adds “eggs of crocodiles, poisonous snakes, and pythons”, the destruction of which may be regulated.

The foregoing nomenclature must have proved too complicated in practice and ill-adapted to the subject matter, since the 1971 (Conservation) Regulations replace it with a considerably simpler division into three categories dealt with in as many schedules, with the rules contained in the text referred to in the heading of each. Thus, completely protected animals (reg. 1, First Schedule) may not be hunted, captured or destroyed at any time; partially protected animals (reg. 2, Second Schedule) may not be hunted, captured or destroyed between 1 August and 1 December - the young and females accompanied by young being protected even during the open season; while animals protected during the close season (reg. 3, Third Schedule) are simply game animals, i.e. they may be hunted, captured or destroyed only during the open season, when even the females and their young enjoy no special protection. This last category comprises certain small game animals, including ten mammals (among them one primate and six rodents) and 16 birds.

The regulations regarding partially protected animals, it will be noted, impose no restrictions as to number, although reference to this matter is contained in reg. 8 (1) (b), where it is provided that hunting licences authorize the hunting, capture or destruction of any of the animals that are specified in the licence but in numbers not to exceed the limits also stated there. (This provision also applies to partially protected species and the game animals covered by the Third Schedule.) Again, the requirement of a licence to hunt, capture or destroy animals is limited to the animals listed in the Second and the Third Schedules.

From what has been said, therefore, any animals not specified in the rules may be hunted without a licence being necessary for the purpose and therefore fall outside the scope of the law.

Vermin, originally covered by the Fifth Schedule to the 1961 Act, no longer make their appearance following the repeal of that enactment. Only section 11 of the Act, which deals with the eggs of crocodiles, poisonous snakes and pythons, persists in positive law. Here, surely, there has been an omission on the part of the legislator in the 1971 Regulations, because crocodiles reappear in the completely protected list and pythons among the partially protected.

No provision is made for game registers, and it is difficult to see on what basis the authorities can assess the numbers of animals that have been killed in any one season or follow up changes in the game population.

Penalties for offences have to do with the completely and the partially protected species, and are identical with those incurred when the offence involves game. The regulations leave it to the discretion of the court to decide on the fine or imprisonment to be imposed (1971 (Conservation) Regulations, reg. 5).

One may note here the breach made by section 2 of the 1961 Act in the protection system, where it provides that “notwithstanding any regulation made under... section eleven of this Act [concerning protected species and the establishment of reserves], the Minister may, by permit under his hand, allow the collection of specimens for museums or zoological gardens or for any scientific purpose”.

(b) Classification of animals

At first the Schedules to the 1961 Act were not immediately enforceable. They simply contained lists of animals in regard to which the President of the Republic might "by legislative instrument make regulations for the administration of this Act" - and in particular section 11 (d), (e) and (f). Section 3 empowered the President, again by legislative instrument (to be laid before the National Assembly, in this case), to amend the Schedules.

As has been mentioned, the 1971 (Conservation) Regulations introduced a reform of the classification system, which enjoys legislative status, therefore. The President nevertheless retains the powers vested in him by the Act, which are, in the case of this section 3:

- to remove any animal from any of the Schedules.
- to declare that the name of any species, variety or sex of animal... not mentioned in any Schedule shall be added to a particular Schedule;
- to declare that the name of any species in one Schedule shall be transferred to another Schedule.

The amendments so introduced may be made to apply to the whole of Ghana or to any Region or area of a Region.

The President may also prohibit the hunting or destruction of any animals which, by reason of their rarity or threatened extermination, need to be protected, though the 1961 Act (sec. 11 (d)) apparently does not require him to add their names to the Schedule of completely protected animals.

(c) Wildlife protection

Section 11 (b) of the 1961 Act empowers the President of the Republic to apply measures for preventing the transmission of contagious diseases from domestic to wild animals.

3. The protection of life and property

The law of Ghana makes provision for self-defence and the protection of property. The former principle is dealt with in the 1971 Regulations (reg. 17), which removes the character of an offence punishable under criminal law from killing an animal in one's own defence or that of another person. If the animal in question belongs to one of the species listed in the Schedules, the person who killed it is required to notify the Chief Game and Wildlife Officer.

The protection of property is dealt with in section 6 of the 1961 Act, which recognizes the right of any occupier of land to use vehicles for the purpose of "driving away, capturing or destroying animals found on such land". No mention is made as to whether these animals must constitute a threat to crops. Yet the occupant's rights are strangely limited because the scope for protection is restricted to cases where such action "is not prohibited under any other provision of the Act". Since no exception is made here to the regime governing protected genera or game, one would have to conclude that it is impossible to defend crops against the animals in question.

4. The law governing activities involving wildlife

(a) Hunting rights

Mention has already been made of the fact that Ghana's law reserves the right to “hunt, capture or destroy” game animals or those enjoying partial protection to holders of a hunting licence. The law is silent as to customary hunting, and establishes no link between hunting and private ownership.

There is only one type of licence, which is issued by the Chief Game and Wildlife Officer to those in possession of a gun licence against the payment of a fee. The 1971 Regulations make no special provision with regard to foreigners[1].

The licence is valid for six months from the date of issue. It is personal and may not be transferred to third parties.

Despite there being only one type of licence (the model is given in the Fifth Schedule to the 1971 Regulations) several variations are possible. Thus it will specify;

- whether it authorizes the hunting, the capture or the destruction of the animal(s) concerned;
- the animals in respect of which it is issued and the numbers of each that may be killed, together with any restrictions with regard to females or their young;
- the permitted means of hunting, capturing or destroying animals, and any particular conditions that may apply.

The Chief Game and Wildlife Officer, or any person acting for him, may at his discretion:

- impose such restrictions concerning animals or methods of hunting as he thinks fit;
- refuse an application for a licence for any of the three following reasons: (l) the grant would be undesirable having regard to the conservation of the species concerned; (2) the applicant has been convicted of an offence under the 1971 Regulations; and (3) the applicant is not competent to use a firearm or is unable to recognize the species is respect of which the licence is applied for.

It is interesting to note how this third reason for refusal contemplated by the law of Ghana constitutes a first step towards testing applicants for hunting licences as to their knowledge about wildlife[2]

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1 The model illustrated in the Fifth Schedule to the 1971 (Conservation) Regulations shows that the powers of the Chief Game and Wildlife Officer are delegated to game officers and, secondly, that no gun licence is required for hunting purposes.

2 For the rules governing hunting licences (see the 1971 (Conservation) Regulations, regs. 8 and 9) the 1961 Act (sec. 11 (i)) merely institutes the licence and empowers the President to make regulations in its regard.

It is pertinent, here, to note the permit for capture for scientific purposes contemplated in the 1961 Act (sec. 2). This the Minister may grant "under his hand". It allows the taking of completely protected animals, even in reserves, for museums or zoological gardens or for any scientific purpose.

(b) Hunting

- Organization of hunting

The problems inherent in the organization of hunting such as the regulation of safari operators or the establishment of hunting areas are not touched upon in the legislation studied. However, one may note in this connection the fact that the Wildlife Reserves Regulations, 1971 instituted "Game Production Reserves" without defining them, though they seem to correspond to the idea of sport hunting areas. In a document issued by the Ministry of Forestry and Game, one reads that these are reserved for the production of meat and for public sport and for any development and utilization of the fauna and the flora[1].

- Restrictions on hunting

The hunting season is uniformly set as lasting from 1 December to 31 July, i.e. eight months (1971 Regulations). Restrictions as to place are not prescribed save as regards the Reserves, where hunting is not prohibited but subject to authorization by the Chief Game and Wildlife Officer under the Wildlife Reserves Regulations 1971 (reg. 3 (1) (a)).

Restrictions as to methods and equipment etc., used in hunting are, in contrast, stated clearly. They provide that no person shall:

- manufacture, use or be in possession of any gin trap which may be used for the purpose of hunting, capturing or destroying any animal;
- hunt any wild animal by using an artificial light or flare (though this does not appear to prohibit hunting by night without the use of such artificial light);
- hunt by using nets except in the case of fish and poisonous snakes, unless authorized in writing to do so by the Chief Game and Wildlife Officer;
- hunt by using poisoned weapons (1971 Regulations, reg. 4);
- surround animals by fires for hunting purposes (1961 Act, sec. 7);
- use any vehicle, including lighter-than-air craft, for the purpose of hunting animals but even to drive or disturb them for any purpose, including that of filming or photographing (1961 Act, sec. 6).

The last provision here cited nevertheless recognizes the rights of occupiers to use a vehicle for driving away wild animals from their land.

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1 E.O. Asibey, Chief Game and Wildlife Officer. Note on "Proposed wildlife and nature conservation policy of the Republic of Ghana", cyclostyled, Accra, 1968.

(c) Products of hunting

Mention has already been made of the fact that Ghana's legislation makes no provision for game registers; nor does it institute certificates of origin for trophies; nor, again, does it make regulations governing game meat.

If one disregards a provision to the effect that the trophies of animals killed by the game officers in the performance of their duty belong to the Government, it can be said that the 1961 Act and the 1971 Regulations are entirely silent on matters having to do with domestic trade in the products of hunting. The only rules prescribed are those governing exports and imports.

Either operation must pass through one or other of the Customs stations (1961 Act, sec. 4 (4)). The rules governing imports take over those of the 1933 London Convention, and require the production of a certificate of lawful export in cases of trophies originating in countries notified in the Gazette as being signatories to that Convention.

Exports require a permit for any animal whether live or dead, remains, skins or trophies appearing in any one of the three lists in the Schedules to the Wildlife Conservation Regulations, 1971.

The model export licence is given in the Seventh Schedule to these Regulations. The items covered are: description of these products and the amount which it is intended to export in a single consignment; and name and address of the consignee. Special conditions and restrictions may apply, for example, to the method of transport. Export permits are valid for twelve months. They are not transferable.

Export permits are issued by the Chief Game and Wildlife Officer or any game officer acting for him. There may be two reasons for refusing an application, at the discretion of the issuing officer, namely, where the grant of an export permit would be undesirable having regard to the conservation of the species concerned, and where any item to which the permit relates has not been lawfully acquired[1].

In the case of ivory, the weight must be entered on the licence and identified by marks on the tusks. Where other trophies are concerned, the licence must be annotated with a description so as to identify them “with as much certainty as possible” (1961 Act, sec. 5).

IV. RESERVES AND NATURE PARKS

1. Types of Protected Areas

The 1961 Act enabled the President of the Republic to make regulations for the establishment of “hunting reserves” where animals will be protected. The 1971 Wildlife Reserves Regulations were issued under this provision.

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1 The Sixth Schedule to the 1971 (Conservation) Regulations illustrates the model form of application for an export licence. This form has a space where the applicant must state how the items were acquired.

In keeping with their title, the 1971 Wildlife Reserves Regulations institute a (single) type of protected area – "reserve" - where the sole object is of wildlife. Yet this very enactment (reg. 1) lists such areas as established as reserves under names such as "(this or that) National Park", "... Game Production Reserve", "... Strict Nature Reserve" and "... Wildlife Sanctuary", the differences in name entailing no distinction in law. Here one notes the influence of the 1968 Algiers Convention, where article III provides that ""Conservation area means any protected natural resource area, whether it be a strict natural reserve, a national park or a special reserve". It has already been pointed out in these pages in connection with "game production reserves" that, to judge from a paper1 emanating from the Ministry responsible for Forestry and Game, these reserves were first and foremost to constitute areas where hunting was organized. The other categories may be seen as meeting the standards and objectives contemplated in the Algiers Convention, given the very exact correspondence that may be discerned between them. That being so, Ghana can boast a range of protected areas owing their existence to one and the same enactment. To render these adaptable to differing situations, the enactment needs to have a considerable degree of flexibility. In actual fact, there is very flexibility about it, for it deals merely with protection measures. Apart from section 11 of the 1961 Act empowering the President of the Republic to establish reserves, it has nothing to say regarding problems attaching to their creation or to the rules of their management and functioning.

2. Measures for the protection of the fauna and flora

(a) Protection against direct threat

The 1971 Regulations (reg. 3) make it an offence to hunt, capture or destroy any animal, or to collect or destroy any plant or to remove any animal or plant from a reserve. However, the Chief Game and Wildlife Officer may grant permission waiving these prohibitions for reasons of conservation or management. In addition, there is the permit provided for in section 2 of the 1961 Act whereby the Minister may "allow the collection of specimens... for museums, or zoological gardens or for any other scientific purpose".

Apart from these exceptions to the rules, it is prohibited, in addition, to introduce into a reserve any equipment or apparatus for the purposes of capturing, hunting or destroying an animal; and game officers are empowered to seize within reserves any such equipment or apparatus they think fit.

(b) Restrictions on human activities

In order to enter a reserve a permission of the Chief Game and Wildlife Officer is required; and the grant of it will be subject to any conditions he may prescribe. This provision caters for all possible situations - from the strict reserve to regulating access by the public to a national park and, even, to the permanent establishment there of residents. The last-mentioned eventuality is confirmed by the fact that the Chief Game and Wildlife Officer's consent is required in order to clear or cultivate land in a reserve.

Further prohibitions extend to the lighting of fires or polluting the water in a reserve or the abandonment of litter there. It is difficult to see

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1 E.O. Asibey, op.cit.

how these absolute prohibitions, in particular the first-mentioned, can be compatible with the establishment of residents whose livelihood is farming or, what is more, any prolonged sojourn there by the public.

V. ENFORCEMENT; PENALTIES

Ghana's legislation contains very few provisions given over to enforcement and penalties for offences. Apart from the definition of the various offences and the penalties they attract, powers are created, which are exercised by the game officers and by no other kinds of officials, to seize and confiscate goods, and to detain persons.

A game officer may even without a warrant arrest a person whom he suspects of having committed an offence if that person refuses to give his name and address or gives false information in their regard or, again, if the officer has reason to believe he will abscond.

Any illegal equipment or apparatus found in a person's possession or in his charge may be seized. Any articles seized are returned to the person so suspected if no prosecution is preferred against him within three months or if leave to prosecute has been refused. They are forfeited if a conviction is obtained. Firearms are to be delivered to the police, while other items will be retained by the game officer. Similar rules apply in the case of illegal weapons or equipment being found and it has not been possible to identify their owner.

The 1971 Regulations also lay down that game officers may seize and confiscate without recourse to the courts any weapons or apparatus that could be used for hunting, killing or capturing game animals whenever such items have been brought into a reserve illegally.

Penalties vary little - the fine may be of 100 or 200 cedis, while the term of imprisonment is uniformly set at six months.

KENYA

I. INTRODUCTION

1. Legislation

Up to 1976 Kenya's wildlife legislation had its basis in two main enactments, namely:

- the Royal National Parks of Kenya Ordinance, 1945, and
- the Wild Animals Protection Ordinance, 1951.

When the country attained independence, both texts were converted into Acts. Wildlife law was brought under one and the same series of provisions by the Wildlife (Conservation and Management) Act of 13 February 1976.

The Act[1] has received several amendments, notably by the Wildlife (Conservation and Management) (Revocation of Dealer's Licences) Act, 1978. An earlier Act (1977) had introduced a minor amendment to section 42 of the 1976 Act dealing with the illegal possession of trophies.

Among the regulations under the 1976 Act attention will be focussed here on the Wildlife (Conservation and Management) (Control of Raw Ivory) Regulations, 1976 (concerning external trade in ivory) and the Wildlife Conservation and Management (Prohibition on Hunting Game Animals) Regulations, 1977 (which suspended hunting activities).

2. Administration

Kenya's wildlife services have a completely centralized organization which is independent of the forest authorities. Their foundation goes back to the beginning of the century. Under the 1976 Act they took the name of “Wildlife Conservation and Managament Service”, which is in the charge of a Director and reports to the Ministry of Game and Tourism.

However, the Act leaves open the possibility of cooperation with other ministerial departments for the contribution that these may offer for wildlife management. Section 5 allows the Director to delegate certain functions to the officers of the Forest Department and the Fisheries Department.

The name “Wildlife Conservation and Management Service”, which previous to the 1976 Act was a “Game Department”, now reflects national wildlife policy and the dual character of the functions assigned to it - dual because its tasks are not limited to the conservation of animal species, but extend to promoting and exercising control over the process of making the country's wildlife pay. The Service's activities go beyond those of a conventional wildlife authority into the frankly commercial sphere. Section 3 (3) provides:

> “In order to secure optimum financial returns from the economic gains incidental but not prejudicial to proper wildlife management and conservation, the Service may engage in such commercial activities either

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1 Reference in this study to section numbers follows those of the 1976 Act.

alone or in conjunction with other persons for the effective utilization of wildlife resources as the Minister, after consultation with the Treasury, may approve."

Where financial matters are concerned one may note two interesting institutions, namely the existence of the Wildlife Fund and the fact that receipts can be made over to local communities.

The Wildlife Fund is established by sections 59 to 61 of the Act. It is operated and managed by a body of trustees consisting of public officials - the Permanent Secretary of the Ministry responsible for wildlife, a person appointed by the Minister for Finance, the Permanent Secretary of the Ministry of Natural Resources and between seven and twelve other persons appointed by the Minister responsible for wildlife.

The purpose of the Fund is to provide "sums required to launch, operate or expand projects of wildlife conservation and management", and generally any other payments recommended by the Trustees and approved by the Minister (sec. 59 (3)).

The receipts of the Fund consist of donations or loans received for the purposes of wildlife conservation and management and allocations voted by the National Assembly (sec. 59 (2)).

There is no explicit provision in the Act for the payment of a portion of the receipts from wildlife management to local communities. This is an administrative practice anterior in date to the Act. Its purpose is to make compensation for the burden borne by those communities by the fact that wild animals are maintained at a high density and to involve them in their conservation. An FAO report states that in 1969 the aggregate taxes obtained in this way by the County Councils represented 74 percent of those accruing at the national level[1].

As a last point here, reference may be made to an original institution in a special court to hear cases having to do with wildlife management. This is the Wildlife Management and Conservation Service Appeal Tribunal. The term "appeal" is used in the connotation common to the English-speaking countries and is not intended to indicate an administrative jurisdiction determining the legality or otherwise of acts done by the Wildlife Service or deciding on damages payable for ravages caused by wild animals.

The Minister appoints the members (between three and six in number) of this Tribunal. One member must be chosen for his competence in matters of wildlife management and conservation. With the Minister's approval the Tribunal may coopt an assessor, who must be an advocate of not less than five years' professional standing, to advise on questions of law (sec. 65 (6)).

The Tribunal hears appeals from decisions to refuse the grant of a licence or permit or other authorization which it is in the Wildlife Service's competence to grant and from any particular conditions other than those arising out of the enforcement of the general enactments to which these licences, permits or authorizations are subject and, lastly, from the cancellation or the suspension of any licence, permit or authorization.

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1 Wildlife Management in Kenya, FAO doc. FO:SF/Kenya/1, August 1970.

In addition, as will be mentioned again below, the Act places a liability on the Government for damage caused by wild animals. Questions relating to this liability are considered by the District Committees, whose decisions may be appealed to the Tribunal. The Act prescribes a uniform expiry date of thirty days for appeals from these decisions.

II. HUNTING

1. Legal definition of hunting

Section 2 of the Act - Interpretation - defines "hunt" as including "the doing of any act immediately directed at the killing, wounding, injuring or capture of any animal, and the taking or wilful molestation of any nest or eggs".

Hunting subsists when any of these actions are directed at any wild animal, "animal" meaning "any animal or the young or egg thereof", though the term "does not include a human being or any animal which is commonly considered a domestic animal or the young or egg thereof".

No species, therefore, is excluded from offered by the Act: simply the hunting of certain animals is regulated or prohibited, while the hunting of other animals is not subject to restriction.

2. The law governing wildlife

(a) Categories

The Act distinguishes only two categories of animals: "protected animals" and "game animals". It will be noted that there is no reference to vermin. Not only does the legislator give no permanent list of these but prescribes no specific rule in their regard. The term "vermin" appears neither in the definitions nor in any section of the text.

(i) Protected animals

Protected animals are listed in the Third Schedule, and comprise twenty mammals, two turtles and all birds other than game birds and two other genera.

The legislator, in addition, considers the following as protected animals:

- any female game animal when it is clearly pregnant or is suckling young (whether or not the young are apparent), or accompanied by immature young (whether dependent or not);
- albino and melanic animals of whatever species.

Section 22 makes it an offence to hunt any protected animal. Section 26 derogates from this rule in empowering the Director to issue, with the approval of the Minister, a "special authorization to hunt" any animal in any specified area other than a National Park. The authorization is intended to cater for the needs of scientific research or for "circumstances of an unusual or emergency nature". Special conditions may be attached to hunting done under its terms and a fee is payable for the issuance.

The special authorization here described provides an instrument which may be of service to many purposes of scientific experiment; but it may also apply to trade in live animals, and be resorted to for the purposes of culling or for mass kills. Considering the broad conditions under which it is conceived a certain laxity in enforcement may result. In any event, the formula in effect places wildlife conservation in general and that of protected animals in particular in the hands of the Minister and the Director.

(ii) Game

Game animals are those which may be hunted only under licence and provided the rules applying to hunting are observed (sec. 22). These animals are listed in the First and Second Schedules dealing, respectively, with mammals and birds.

The lists in question give no indication of restrictions as to the numbers of individuals of the different species which it is authorized to hunt. The legislator prefers to leave to the administering authorities the task of determining quotas. The limitation principle appears in the Act where reference is made to the fact that in the calculation of the number of game animals specified which may be hunted under any licence all animals shall be taken into account whether they have been killed, captured or injured. And again, section 67 (c) empowers the Minister to "classify game licences and specify the animals which may be included in any game licence, and the numbers thereof which may be hunted under such licence".

(iii) Animals not considered by the Act

Here the interest lies chiefly in reptiles, batrachians and invertebrates, which do not appear in either of the categories mentioned earlier. Yet it has been noted that they are "animals" as understood by the Act. Section 64 empowers the Minister to include non-game animals in schedules and to extend to them the rules governing hunting.

(iv) Classification procedures

The Act determines which animals are placed among the protected and the game categories. The question then arises as to how the respective lists can be amended. Mention has already been made of the fact that the Minister may add the name of new animals to the list of game. But his powers in this connection end there. He is not empowered to remove names or to move them from one schedule to another, these procedures requiring the intervention of the legislator. However, an element of indirect flexibility may be seen in the fact that the Minister may indicate which game animals may be hunted under the respective types of licence. This means that the Minister may omit the names of certain animals from licences, which is tantamount to according them at least temporarily the status of protected animals. Section 37, in any case, empowers the Minister to prohibit the hunting of any game animal that he may specify.

(b) Protection of life and property

The Act makes a distinction between the protection of human life and that of property and also institutes a system of compensation for damage caused by wild animals.

The protection of human life is covered by, on the one hand, the removal of the character of offence and, on the other hand, the obligation of killing a wounded animal. This principle is catered for by section 30.

For exemption to apply, three conditions must be met: (1) that the danger be “immediate”; (2) that the person killing the animal was not committing an offence in so doing; and (3) that he was not deliberately provoking the animal or that any such provocation was done with his knowledge. In addition, the person who has killed the animal must report the fact as early as possible to an officer of the Service.

As regards wounded animals, section 32 places a twofold obligation on the person who has done the wounding and even, where appropriate, the professional hunter accompanying him, namely to endeavour to kill or recover the animal as soon as possible. If he has failed to do so within 24 hours he must report the facts to an officer of the Service, who is then required to take any action he may consider necessary.

Failure to comply is punished severely by a fine and by a term of imprisonment not exceeding two years if the wounded animal is an elephant, leopard, lion, rhinoceros or hippopotamus.

The protection of property is another principle allowing legitimate defence whereby the occupier of any land or the owner of livestock or their servants may kill any game animal which is causing damage to crops or livestock (sec. 31). A curious point here is that there is no obligation to report the killing of an animal in self-defence to the Wildlife Service. Nor is the right to kill such an animal presented as the last resort of the owner, since he may invoke it only after he has attempted to ward off the animal without killing it.

This gap in the text is all the more marked because the legislator has himself indicated a less extreme method for fending off animals causing damage. By prohibiting the use of vehicles for hunting purposes, he has made an express reservation in the case of a vehicle being used for “driving away an animal from land under cultivation or in use for the grazing of livestock” (sec. 35 (3) (b)).

There is reason to fear that the principle of the protection of property so broadly conceived may serve as a legal cloak for poaching.

Lastly, the one and only safeguard is to be found in the rules governing trophies, which make these the property of the Government when obtained from animals killed in defence of life or property (sec. 39 (1) (c)).

There is no doubt that the Kenyan authorities are more exigent where they assign compensation for damage caused by wild animals. The very principle of compensation is the logical counterpart to a policy aiming at maintaining high densities of wild animals that can be turned to good account in the general interest.

The Nation as a whole derives advantages from its wildlife. By so doing it places the rural population at risk to a degree that would be intolerable if there were no countervailing benefits. Compensation for damage sustained is one of these, the others deriving from the fact that the local communities, or private persons, can share in the advantages represented by wildllife.

Section 62 prescribes which bodies shall assess applications for compensation and the conditions attaching thereto. Thus there is in each district a District Committee consisting of the District Commissioner, the Divisional Officer of the Service, the Officer in charge of the Police Division, the District Medical Officer and one person with representative status appointed by the Minister. The Committee may coopt any person likely to assist it in considering particular cases. The decisions of the Committee may be appealed to the Wildlife Management and Conservation Service Appeal Tribunal, as mentioned earlier.

Compensation is payable to any person who has suffered bodily injury or any damage to his property or animals and to his dependents if he has been killed by a wild animal. Compensation is not claimable where the victim was committing an offence under the Act or engaged in normal wildlife utilization activities. This last proviso is not absolute, and it is reasonable to suppose that it affects the officers of the Wildlife Service, professional hunters and persons actually engaged in hunting.

The amount of compensation is limited only by the extent of the damage as assessed. Compensation is payable out of Government moneys as provided by Parliament. Those European countries that have adopted the principle of compensation for damage caused by game animals have attached fairly strict conditions to such compensation by requiring, among other things, that there shall have been no provocation and that the victim shall have taken reasonable measures to protect his property. It would be interesting to know the decisions of the District Committees. These decisions can provide an effective encouragement to take all precautions to prevent damage to crops and livestock. In so doing, they will promote - above and beyond considerations of equity - the coexistence of wildlife and agro-pastoral activities.

(c) Measures in favour of wildlife

In one sense the rules for the protection of persons and property constitute, at least indirectly, measures in favour of wildlife. Kenya's legislation adds to these - and independently of the wildlife protection areas - an ethical prescription prohibiting the infliction of suffering on wild animals but even more so an encouragement for the development of wildlife on privately-owned land. Landowners are invited to facilitate the presence of wildlife on their property as one of the forms of economic utilization.

In terms of the law these incentives are the resultant of several different provisions. In the first place it will be noted that section 63 makes laws referring to animal husbandry applicable to lawfully undertaken wildlife utilization activities. These activities may take the form of the organization of hunting such as one finds in Europe. Section 29 provides the juridical framework for this practice in that it reserves the right to hunt on private land to the owner or persons having his consent to do so. But it also contemplates the owner opening up his land for hunting by registering his land for this purpose with the Wildlife Service. The registration will indicate which animals may be hunted and any conditions to be observed by hunters such as the obligation of notifying the owner before a hunting expedition is undertaken. The owner will receive a proportion of the proceeds from the hunting licence fees at rates agreed with the Wildlife Service.

Hunting is only one possible form of wildlife utilization for the landowner, since he can also organize photo safaris or produce meat or trophies or supply live animals.

From the legislative standpoint this game ranching (and one may question if the game remains "wild" under these circumstances) is provided for in section 47 (c), which empowers the Minister by regulation to "specify the conditions upon which game ranching and game cropping may be undertaken, and provide for the exemption of [these activities] from the provisions of this Act relating to game...". Clearly this provision permits the killing, under soundly managed procedures, of meat-producing animals.

3. The law governing hunting

Any study of hunting rights in Kenya and of the conditions that govern any engaging in that activity inevitably reveals a discrepancy with the definition, given in the text of the law, of hunting, where it connotes the act directed at killing or capturing an animal. The term covers sport hunting in the strict sense and the capture of live animals and meat harvesting. Now, the last two activities lie outside the scope of hunting law and are governed by special rules made under the terms of sections 26 or 47 (c). Accordingly, in what follows sport hunting alone will be discussed.

(a) Hunting rights

There are no customary hunting rights in Kenya. The right to hunt rests exclusively on the game licences issued by the appropriate officers and on the special authorization provided for in section 26 and covering game animals. Hunting may be freely engaged in for other animals except those in the protected category (sec. 22). There are limits to hunting on private land, as has been seen above, but the landowner enjoys no privileges himself as regards hunting.

The general rules governing licences are laid down in the Act, though without classifying these - this being a task assigned to the Minister responsible for matters relating to wildlife (section 67 (c)).

Licences are issued by the licensing officers of the Wildlife Service. They are personal and may be used by the holder only. They must be carried on his person when engaged in hunting and must be produced when required by a wildlife officer (sec. 24 (2) and (3)). On them are indicated the animals which it is authorized to hunt, the numbers that may be taken of each species, the areas and periods when hunting is permitted (sec. 23 (2)), and the period of validity. The Minister may make additional regulations governing licences and conditions upon which they may be granted.

The grant of a licence entails the payment of a fee and, in principle, the requirement of a test of the applicant's competence.

Normally the holder is required to be accompanied by a professional hunter until the Director, after a test as to his competence, is satisfied that he may hunt unaccompanied either generally or in respect of the animal actually hunted.

Game licences may be withdrawn. Their issuance does not constitute an entitlement binding the authorities but a discretionary power whereby the latter may refuse an application without having to assign a reason for the refusal (sec. 28 (2)). Similarly these licences may be suspended or cancelled at any time, when "a proportionate part of the fee paid for such licence may be refunded..." (sec. 28 (1)). At the same time, the decisions of the

authorities in these matters are subject to review by the Appeal Tribunal, created by section 65, to which an aggrieved person may defer a refusal of an application or any suspension or cancellation of a licence (sec. 65 (2)).

(b) Hunting

(i) Organization of hunting

Irrespective of the measures designed to encourage landowners to create hunting areas, Kenya organizes hunting activities by conferring on professional hunters a decidedly public service mission. For all hunters, until they have been dispensed from the rule following an examination, are required to be accopanied by a professional hunter. The latter is expected to prevent any offence being committed by his client. Here it is not a question of results but of means employed. For if his client is convicted of an offence the professional hunter accompanying him is presumed to have been his accomplice unless he can establish that he used due diligence to prevent the offence (sec. 27 (6)).

Professional hunters must be licensed in order to engage in their calling[1]. The licence is issued for one year and is renewable without limitation. The grant of the first yearly licence is conditional upon the outcome of an examination as to his competence with firearms and knowledge of game animals and of the written law pertaining thereto. When a person applies for a professional hunter's licence in continuation of one previously held he is deemed in the absence of any evidence to the contrary to be a fit and proper person (sec 27 (2)). A fee is payable for each year of issue. If the holder is convicted of an offence under the Act he automatically forfeits his licence and will not be eligible for another “for such period as the Director may determine having regard to the circumstances of the case”. Convictions can be appealed to the Appeal Tribunal created by section 65. Lastly, it should be noted that this licence authorizes the professional hunter to shoot animals only where it is necessary to finish off an animal that has been wounded by his client.

(ii) Game registers

Together with his game licence the applicant receives a register in which he is required to enter at the end of each day's hunting the animals that he has killed, captured or wounded. The register must be produced, within seven days of the expiry of the licence, to the warden, and a copy of it must be forwarded within 21 days to the Director of the Service.

(iii) Restrictions on hunting

- Restrictions as to place

Restrictions as to place derive on the one hand from prohibitions on hunting in protection areas and on private land (though without prejudice to

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1 The Act expressly distinguishes professional hunters form trackers, gun-bearers and beaters, whose activities are not prescribed for.

the landowner's rights referred to earlier) and on the other from any geographic restrictions attaching to the licence.

- Restrictions as to time

The Act itself does not prescribe close seasons but empowers the Minister to do so, with dates which may vary from area to area and in consideration of the game concerned (sec. 38).

- Restrictions as to methods and instruments of hunting

The Act considers several prohibited methods of hunting and empowers the Minister to impose additional conditions or restrictions (sec.37). Those contemplated in the Act are given in great detail in sections 34 to 36. Thus, no person shall:

- use traps, game-pits, trenches, nets, snares or set-guns. Any person found in possession of a trap with jaws exceeding four inches in size or of a snare or similar device made of wire is guilty of an offence;
- use poisons or poisoned weapons;
- use any repeater firearm or any explosive missile. Any person found away from his place of abode in possession of devices, firearms or substances that are prohibited is presumed to have used or intend to use these for hunting unless he can prove otherwise (sec. 34(3));
- use fire to encircle or otherwise hunt animals;
- hunt animals between seven o'clock in the evening and half-past five in the morning;
- drive game into water for the purpose of killing or capturing it;
- hunt with dogs except under written authorization of the warden;
- use motor vehicles. This prohibition is dealt with in great detail. Section 35 deals with motor vehicles in terms of land vehicles, while section 2 - Interpretation - includes hovercraft under this expression. Aircraft is defined there as meaning aeroplane, airship, balloon or kite, whether captive, or free, and whether controlled or directed by human agency or not. The use of mechanically propelled vessels is prohibited by section 35.

Again, no person may:

- approach in a motor vehicle or aircraft to within 500 metres any game animal for the purpose of hunting it;
- use an aircraft or radio telephone for locating a game animal for the purpose of that animal being hunted or killed within 48 hours of such use;
- use an aircraft, vehicle or mechanically propelled vessel for driving any protected animal or game animal, irrespective of one's intention to hunt it or not to hunt it. However, one may use vehicles to drive animals away from private land or from aerodromes or airfields;

- discharge a firearm in the direction of any game animal from aircraft, from a mechanically propelled vessel when its engine is in use (to be within the the letter of the law it would be sufficient to stop the engine or let out the clutch), or from a vehicle or from a point within 400 metres of that vehicle.

(iv) Products of hunting

The Act is explicit in assigning ownership of certain products of hunting to the Government, and that of other products to the hunter. To the Government belong:

- any trophy found without an owner:
- any protected animal or game animal foundndead or killed by accident;
- any protected animal or game animal killed in defence of life by a person not holding a licence to hunt the animal in question;
- any animal or trophy involved in a breach of the rules;
- any animal killed by an officer of the Service in the course of his duties.

Any person coming into possession of a Government trophy is required to report the fact and hand the trophy over to an authorized officer.

- Game meat

This subject is dealt with in section 47, where, however, widely differing situations are contemplated. In the first place, this section empowers the Minister to regulate trade in or the movement of meat obtained from hunting in the strict sense of the word. Here the legislator is interested in commercial outlets for hunting but prescribes no rules with regard to waste or any obligation to make the meat available to the lcal inhabitants. Secondly, paragraphs (c) and (d) of subsection (2) provide the statutory basis for game ranching and game cropping. The Act itself prescribes enforcement rules for neither of the cases considered though it assigns this task to the Minister.

- Trophies

Section 2 - Interpretation - deems the following to be trophies:

- “any protected animal or game animal... alive or dead”. A distinction has to be made here with regard to meat, which is covered by a separate definition and rules of its own, and live animals, to which, once they have been captured, separate rules apply;
- “any... durable portion” of a protected animal or game animal or bird or fish or other aquatic life;
- the same “durable portion” when it has been processed or changed by the work of man provided it is recognizable as such.

One can see that the legislator has set out to assign to trophies the widest possible connotation in order to facilitate law enforcement. It may be wondered, however, if this objective has been achieved. For the provisions governing trophies make no exception for such items as knife handles, jewellery or leather articles or, again, “aquatic” trophies. Logically, the only conclusion is that a child picking up a “durable portion” of a mollusk on the beach is appropriating a “Government trophy” (sec. 39 (1) (a)) and in so doing renders himself “liable to... imprisonment for a term not exceeding twelve months” (sec. 39 (3)(b)).

The rules governing trophies rely on the principle whereby a certificate is required attesting to the lawfulness of their possession. They extend to movement within the country and to exports.

In the case of animals shot under a game licence, the certificate of ownership is issued by a warden by reference to the licence so held and following inspection of the trophy.

For imported trophies the procedure is somewhat more complicated, since it requires a first certificate (“acknowledgement”) issued by the Customs for whom the trophy has been produced. Within fourteen days following importation the person importing must produce the trophy and the Customs certificate for the Director, who will then deal with the registration required under the rules and will issue a certificate of ownership. At the same time the Customs are required to check that the trophy is accompanied by evidence of lawful export from the exporting country if that country is among those to which the rule has been applied by the Minister (sec. 40). Thus, “any person who is in possession of any trophy, or of any ivory or rhinoceros horn of any description, without also being in possession of a certificate of ownership in respect thereof shall be guilty of an offence” (sec. 42), the consequences of this rule being extended by section 44 also to transfers of ownership of any trophy.

The transfer of ownership by way of gift, sale or otherwise must be accompanied by a certificate of ownership which must be endorsed by the transferor with the date and the name of the transferee.

Dealers must be in possession of a dealer's licence, which requires renewing each year. The Act does not itself prescribe the conditions governing acquisition by dealers or require them to maintain accounts of trophies and curios. Dealers nevertheless come under the provisions of section 44.

The system of control over trophies leaves certain matters unresolved. Thus:

- the provisions of section 42 governing possession of trophies and those of section 44 governing transfers do not apply to a personal representative of a deceased person or a receiver or trustee in bankruptcy (sees. 42 (2) and 44 (3));
- the Act does not specify how “Government trophies” shall be disposed of nor whether such trophies entail the drawing up of a certificate of ownership;
- section 46 empowers the Minister to exempt any class of trophy from the provisions of the Act;

- the export of trophies is governed in general terms by section 45, which is scarcely demanding in this matter because it simply requires the production of a certificate of ownership for the Customs. If that is so, then the export of trophies will be subject to no restriction. The transit through Kenya of trophies is similarly unrestricted save for the requirement that the necessary transit documents or evidence of lawfully authorized export issued by the country of origin be produced (sec. 45 (4)). The Minister may require that the export of any class of animal or trophy prescribed by him shall proceed only under his written permission (sec. 45 (3)).

The very year in which the Act entered into force a Government monopoly was created by Order of the Minister for imports and exports of raw ivory in respect of all tusks obtained otherwise than in observance of the Act (Wildlife (Conservation and Management) (Control of Raw Ivory) Regulations, 1976)[1]. The same enactment lays down that ivory for Kenya's craft sector shall be obtained by the Ivory Room, Mombasa, which is a Government agency.

- Live animals

While the concept of hunting indeed extends to the capture of live animals, the rules governing hunting methods give rise to problems affecting such capture, among other things by the fact that they prohibit the use of nets or traps. Accordingly, animals captured alive are obtained through operations performed under a special authorization or from ranching. The Act prescribes rules for the keeping of such animals in Kenya and their export.

To keep animals requires a permit which is additional to the certificate of ownership prescribed for trophies. This permit is issued only if the competent authorities deem the conditions under which the animals are to be held are acceptable. The game wardens may inspect cages and other enclosures in order to satisfy themselves that the animals are properly treated. Inspections can be made at any time during the period that the animal is so held. If the warden is satisfied that the animal is not being adequately cared for, the permit may be cancelled and the animal confiscated and forfeited to the Government (sec. 48).

The export of live animals is dealt with in a special clause within the section dealing with the export of trophies (sec. 45 (1)), and is conditional upon the Minister issuing a permit for this purpose. No fee is payable but the permit may be refused without the Minister having to assign any reason for the refusal.

The operation of the 1976 Wildlife Act has encountered a number of difficulties and has failed to prevent a marked decline in wildlife numbers. Hunting was completely suspended in Kenya by the Wildlife (Conservation and Management) (Prohibition on Hunting of Game Animals) Regulations, 1977. These were followed in 1978 by the Wildlife (Conservation and Management) (Revocation of Dealer's Licences) Act of that year.

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1 It is surprising to note in the preamble to this Order that it was made under section 66 of the 1976 Act, whereas this provides only for the issuance of duplicate licences, permits and authorizations.

III. PARKS AND RESERVES

1. Types

Kenya's legislation creates four types of reserve, namely national parks, national reserves, local sanctuaries and game reserves. The Act does not specify the purpose of any of these or define them. From a perusal of the provisions governing them one may conclude that they are entirely given over to the protection of wildlife and its habitats. The various kinds of reserves are to be distinguished by reference to the instrument of declaration. Broadly, the applicable rules in the case of a national park are laid down by the Act and provide for access by the public. The same rules are applicable also to national reserves, though only to the extent that the instrument of declaration so provides. In other words, a reserve has a more flexible status than a park, its content being laid down by the Minister. Local sanctuaries are designed solely to provide protection for certain animals which may not be hunted there. Moreover, the local sanctuary is limited in area. Game reserves are contemplated by the 1976 Wildlife Act in a purely incidentallly, for they do not appear in either the Arrangement of Sections or the definitions. One finds them mentioned simply in section 18 which deals with national reserves. Game reserves are an institution introduced by the Wild Animals Protection Ordinance, 1951, which prohibits the hunting of any animals there. It is difficult, from the 1976 Act, to understand the precise intention of the legislator with regard to these game reserves. In theory, the 1951 Ordinance (which subsequently became an Act) was repealed by the 1976 Wildlife Act (section 68). Accordingly, the game reserves that it created are now devoid of legal status, except that the new Act expressly provides in their regard (as it does for national parks). The fact that these game reserves are mentioned within a section given over to national reserves leaves one to suppose that the legislator in 1976 intended to consider game reserves as assimilated to national reserves - a supposition corroborated by the wording of section 18 (6): “Any area which, immediately before the appointed day, was administered by a local authority as a game reserve shall... continue to be so administered until the Minister, after consultations with the competent authority, by notice in the Gazette, otherwise directs either generally or in relation to any specified area.” Apparently the intention was to institute a transitional rule. However, this does not mean that the 1976 Act precludes the declaration of further game reserves. Section 18 (5) makes the establishment of a game reserve subject to approval by the Minister, to be given only after consultations with the competent authority, and to any conditions that may be imposed, including rules contemplated in the 1976 Act for national parks and national reserves.

These provisions show that game reserves continue to exist under law as areas which may be created under local initiative or which may be administered by local authorities, under the control of the Minister. In this sense, then, they are distinct from national reserves, which are directly administered by the Wildlife Service.

2. Establishment of parks and reserves

(a) Procedures

(i) Declaration

The procedures for declaring the three types of reserve created by the

1976 Act are essentially administrative in character and are very close to each other in their underlying principle.

The declaration of a national park proceeds by Order of the Minister following consultation with the competent authorities. Section 2 - Interpretation - lists under this description persons or bodies having rights over, or powers in respect of, the land that will be affected, i.e. in relation to Government land, the Minister responsible for matters relating to land; in relation to Trust land, the county council in which the land is vested; and, in relation to other land, the owner thereof or the person for the time being entitled to the rents and profits thereof.

Under the consultation provision the competent authorities do more than simply give an advisory opinion and may (the word can have this additional connotation in English) object to the declaration of any land owned or managed by them as a reserve; and their objections can be overruled only by a decision of the National Assembly approving the declaration, perhaps with amendments to the original proposal.

Trust lands must first have been set apart as provided under Article 118 of the Constitution, while privately owned land must have been taken over as provided by the Land Acquisition Act.

With national reserves the procedure has something of the contract about it in the sense that the proposal requires the consent of the "competent authority" (sec. 18 (1)) relating not only to the boundaries of the reserve but also to the content of the bylaws that will apply there (sec. 18 (2)). No powers are vested as of right, at least by the 1976 Act, in the Minister to impose a declaration against the will of such a competent authority; the declaration "Notice" is of a lower status than the Order provided for in the case of national parks.

With sanctuaries consultation is again required (sec. 19) though this time the Act does not state the juridical force attaching to it. Since the law is silent on this point, comparison with the provisions relating to national parks suggests that the term has a purely advisory connotation in this case and that the Minister may overrule an unfavourable opinion and by Notice declare a local sanctuary[1].

(ii) Abolition

While the declaration of a reserve is normally an administrative procedure, the declaration that an area shall cease to be a reserve requires a decision of the legislature whatever the areas concerned. A uniform procedure is contemplated (sec. 7) to ensure that abolition shall not be hastily undertaken. Four stages are envisaged. First, the Minister consults with the competent authority. Next, he publishes a Notice in the Gazette and in at least one newspaper circulating throughout Kenya inviting objections to the proposal (to be lodged within not more than 60 days). Following this, the draft of the Order is placed before the National Assembly, which will by resolution approve the Order, or disallow it (though nothing is said regarding

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1 In the Wild Animals Protection Ordinance, 1951 section 5 local sanctuaries came into being purely as a result of an act of authority without any prior consultation being required.

powers to amend it). The proposal must be laid before the National Assembly not earlier than sixty days after the last date of publication in the press. It is reasonable to suppose that the Assembly will not have received all possible objections by the time it comes to discuss the draft. As it happens, the Act does not specify that the objections must be filed with or transmitted to the Assembly. Lastly, once all procedural requirements have been satisfied, the Minister by Order declares that the area ceases to be a reserve.

The procedure here described applies also when a portion of a reserve is withdrawn from that status, and accordingly will follow the classification procedure, whenever the Minister defines or alters the boundaries (sec. 8 (b)). This rule does not seem to apply, however, where the Minister (since section 8 vests powers in him to do so) changes the name of a national park, amalgamates two or more parks, divides a park into two or more parks or transfers a part of one park to another park.

(b) Conflict of interests

The procedures for declaring an area to be a reserve provides the means for solving conflicts of interests or preventing them from arising. The case of local sanctuaries can straightaway be disposed of since these simply entail a prohibition on hunting the animals the protection of which gave rise to their declaration, and in any case may not exceed 2 600 hectares in size (sec. 19 (1) and (2)). No conflict of interests is possible here.

In the case of a national park, three possibilities are contemplated: The parties concerned have voluntarily consented the declaration, which is tantamount to their having made over their land to the Wildlife Service; or they have succeeded in halting the declaration procedure either because the Minister has abandoned his proposal or because the National Assembly has refused its refusal; or, again, because the declaration was imposed under the Land Acquisition Act. The agreement required by the Act for the declaration of national reserves is susceptible of a variety of solutions. There may be a negotiated solution on one or other of two premises: either the “acquisition” or the [voluntary] making over of the necessary land, or the maintaining in being of certain rights and exceptions in favour of owners or residents. In any event, the settlement of disputes is a matter to be dealt with at the time of declaration, when the interested parties are allowed to raise their objections.

Next, section 20 provides that the Director may enter into an agreement with a competent authority for the purpose of ensuring that animal migration patterns essential to the continued viability of a national park or reserve are maintained. An agreement of this kind may provide for compensation to be paid “in respect of rights forgone or of damage caused by animals”.

The provision here described illustrates the principle followed by the Kenyan legislator of imposing no burden without a compensating element whenever a reserve of any kind is declared.

IV. THE OPERATION OF PARKS AND RESERVES

1. Protection measures

Protection measures are defined in a peremptory fashion in the Act where

national parks are concerned - the legislator does not simply set a framework within which the Minister may make regulations, but himself prescribes the directly applicable rules[1]. On the other hand, he makes these rules a matter for the Minister to prescribe, in the case of national reserves, i.e. which rules applying to national parks the Minister may decide shall apply to national reserves.

(a) Protection of wildlife against direct interference

Wildlife is protected in national parks in the first place by the absolute prohibition on hunting there. It will be recalled that the special authorizations contemplated in section 28 on no account detract from this principle. In the same way there is no "right of pursuit" whereby a hunter may follow an animal that has taken refuge in a park even if he has wounded the animal. If he has so wounded it and in order to abide by the safety rules introduced by section 32, the person required by law to kill the animal must report the circumstances to an officer of the Service (sec. 14).

If one is to measure the consistency of the prohibition on hunting one should recall that the term covers any act directed at "the killing, wounding, injuring or capture of any animal, and the taking or wilful molestation of any nest or eggs" - and the rule extends to all wildlife.

However, the legislator has seen fit to single out fish which one may not catch or attempt to catch (sec. 13 (3)(j)).

Observance of this principle is secured through two additional rules - the prohibition on conveying into a national park any weapons, ammunition, explosive, trap or poison; and the creation of the offence of being found without lawful excuse in possession of any animal or trophy (any "durable portion" of an animal) within or without a National Park" (sec. 13 (3) (e)). By means of this provision the authorities should have power to deal with offences not only inside a park but outside its boundaries if the suspect is unable to establish the lawful provenance of the trophy. Here one has a sort of "right of pursuit" accorded to the Service for dealing with offences.

Lastly, it is prohibited voluntarily to disturb or stampede animals of whatever kind in a park (sec. 13 (3) (g)). Logically this includes (though it would have been better if stated explicitly) any frightening or provocation of the animals through shouting, the making of noise or any other behaviour in dens or resting and feeding places.

The protection of animals against direct interference is extended to plants which, where an offence is commmitted if one "cuts, injures or sets fire to" any vegetation in a park (sec. 13 (3) (b)), and to "any object of geological, prehistoric, archaeological, historic, marine or other scientific interest within a National Park" (sec. 13 (3) (d)).

The law offers two further possibilities of protecting wildlife in terms of measures applying outside these parks. The first expedient, as has been mentioned earlier, is that whereby the Director may enter into agreements

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1 The Minister has powers to authorize acts which the law otherwise prohibits in the regulations governing access by the public.

with a competent authority for ensuring that animal migration patterns essential to the viability of a park are maintained (sec. 20). The second expedient empowers the Minister to prohibit particular acts in any area adjacent to a park with a view to guaranteeing the security of the animal or vegetable life there and for preserving their habitats and ecology (sec. 15). There is no provision for making compensation for any restrictions on their rights that the residents of these areas must tolerate. Any compensation will be provided for with the approval of the Minister by agreement with the "competent authority".

(b) Restrictions on human activities

The Act lays down the principle whereby it is prohibited to reside in or enter a national park without permission. That the public should be allowed access to a park appears as a derogation from the rule that the Minister may make (sec. 13 (3) (a). To this principle are added a series of prohibitions which also indicate its scope. Thus, it is prohibited to collect honey (sec.13 (3) (c)), to clear or cultivate land (sec. 13 (3), (i), or introduce any domestic animal or vegetation (sec. 13 (e) (f).

All the same, a seriousbreach has been opened in the structure of conservation by section 10 whereby the Minister responsible for mines may consent to the search for and the winning of minerals.

To complete this list of prohibitions one may note the restrictions on flyinf at a height of less than 500 feet, except for the purpose of landing at or taking off from a recognized airfield or when necessitated by a sudden emergency endangering the safety of the aircraft (sec. 12).

2. Management of parks

The 1976 Act, which placed parks and reserves under the directed and centralized administratio of the Wildlilfe Service, deals with the management of protection areas by defining the powers to make regulations and the powers of the administering authority. Two matters receive the attention of the legislator, park management planning and access by the public.

(a) management plannning

This matter is covered by section 9, where it is made the duty of the Director to:

- "reserve or set aside any portion of the Park as a breeding place for animals or as nurseries for vegetation";
- "authorize the construction of such road, bridges, airfields, buildings and fences, the provision of such water supplies, and the carrying out of such other works, as may be necessary for the purpses of the Park";
- "let sites for the erection of hotels, or other accommodation for visitors to the Park".

Although hotel concessions are not formally contemplated in section 9, they are implicit in this provision where it is added that nothing in any document connected with any letting shall be construed as abridging the

overall control of the Park by the Service, or as preventing the Director from giving directions as to the planning of breeding places for animals or as nurseries for vegetation. In other words, hotel managements cannot object to certain areas of the park being closed to their clients or interfere with protection measures. It will be noted that even though certain areas of a park may be withdrawn from access by the public, there are no "strict reserves" in the Kenyan legislation.

(b) Access by the public

The public enjoys no right which may be exercised in respect of every national park, or portion of such park, whatsoever. The Minister responsible for wildlife may make regulations governing such access, the landing of aircraft, the carriage of goods and passengers, the points of entry and the route to follow there (sec. 16 (1) (a), (e) and (f)). He may prescribe fees to be paid for permission to enter or reside in a national park and for the various services and amenities provided by the Service for visitors (sec. 16 (1) (b) to (d)).

To complete this list the Minister prescribes the conditions under which any of the acts mentioned in section 13 may be lawfully performed and the fees to be paid therefor (sec. 16 (1) (c)). Section 13, it will be remembered, lists the various prohibitions necessary for the protection of the wildlife and vegetation, so that it is surprising to see these powers vested in the Minister by section 16. To be sure, this provision can help to reconcile the somewhat terse formulation of section 13 with visits by the public, though it is directed, at least in theory, to dealing with the possibility of less innocent activities such as the sale of trophies or floral specimens.

Any remarks on the conditions governing access by the public would be incomplete without reference to section 11, which prohibits commercial film making unless an authorization has been obtained and the prescribed fee paid.

V. ENFORCEMENT; PENALTIES

1 Enforcement officers

The Act vests enforcement powers in "authorized officers", who are officers of the Wildlife Service, forest officers and police officers. It may be noted here that persons reporting offences are awarded by the payment of a summ not exceeding half the mount of the fine imposed by the court.

2. Enforcement powers

(a) Powers to inspect in the absence of grounds for suspicion

An authorized officer may stop a person whom he sees doing any act coming within the purview of the law for which a licence or permit is required and require him to produce that licence or permit. If the person in question fails to produce the document he may be arrested unless he furnishes his name and address for the purpose of any proceedings that may be taken against him (sec. 49 (1)).

An authorized officer[1] may also erect a barrier across a road and search persons or vehicles (sec. 49 (3)).

(b) Powers to inspect when there are grounds for suspicion

Where the officer has reasonable grounds for believing that a person has committed an offence, section 49 (2) provides that he may inspect any animal, meat or trophy, firearm or other instrument or licence in the possession of the offender or suspected offender and may, in addition, "enter and search... any land, building, tent, vehicle or boat in the occupation or possession of such person, and open and search any baggage or other thing in the possession of such person". The officer may, following the search, arrest the suspect if he has reason to believe that he will not appear and answer the charge preferred against him. The person so arrested must be taken before a court (sec. 50).

(c) Enforcement measures

The enforcement measures contemplated by the 1976 Act consist exclusively of penalties. The include the seizure of an instrument that has served in the commission of an offence, of any vehicle so used, and of any animal, etc., involved in the offence (sec. 49 (2)).

If within three months of the seizure no charge has been brought or the court has not declared them forfeit the things so seized are to be returned to the person originally suspected (sec. 50 (2)). However, it is lawful for the officer who has made the seizure to destroy the things in question where it is not reasonably practicable to preserve them (sec. 50 (3)).

(d) Trial; penalties

Jurisdiction for dealing with offences under the wildlife laws vests in the ordinary courts. At the same time, wildlife wardens have the same powers as a public prosecutor, and under the direction of the Attorney-General conduct prosecutions for offences (sec. 54).

The Act provides for principal penalties and accessory penalties. The former consist of fines and terms of imprisonment which may not exceed limits laid down for the respective offences. However, this is not always the case, because a certain number of "offences" or "forfeiture offences", depending on their degree of seriousness, do not have specific penalties assigned to them. The penalties in these cases are prescribed by section 52 and are of three kinds, one for offences involving protected animals, one for "forfeiture offences" and the third for "offences" without further qualification.

Fines vary between 2000 shillings for an "offence" and 40 000 shillings for an offence involving a protected animal. Where several such animals are involved each additional animal incurs the payment of 6000 shillings or half the fine payable in respect of the first animal.

In one instance - unlawful prospection for or the winning of minerals in a national park - the Act merely indicates the mimum fine (2000 shillings) and mimimum terra of imprisonment (three years) (sec. 10 (6)).

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1 More precisely, a senior officer or subordinate officer authorized by him.

In another instance - where a wildlife warden unlawfully hunts in a national park - the penalties do not include a fine but imprisonment for a term of from six months to three years and corporal punishment (sec. 13 (1).

Where terms of imprisonment are concerned, these may vary from a maximum of six months, e.g. for unlawfully keeping a live animal (sec. 48 (5)), to a maximum of ten years for offences involving protected animals (sec. 56 (1) (a).

Imprisonment is not contemplated for the offence of unlawfully overflying a national park but a fine not to exceed 10 000 shillings (sec. 13 (2)).

The court may impose either or both penalties for a given offence.

The accessory penalties referred to can be either automatic or left to the discretion of the court. In the first place, they may consist of the (automatic) forfeiture to the Government of trophies and animals unlawfully obtained (sec. 50 (1). The forfeiture of weapons, instruments and vehicles involved in the commission of the offence will be determined by the court; or if the latter does not make an order for their forfeiture the Director may appeal to the High Court (sec. 52). A further accessory penalty consists in the court ordering the offender to bear the costs of removing or destroying traps of any fixed devices (sec. 51 (3)).

As a final point here, one may note that any licence, permit or other authorization held by the person convicted of an offence will be cancelled unless the court directs otherwise (sec. 51 (1)). Any person convicted of an offence under the wildlife laws of Kenya, Tanzania or Uganda will be disqualified from holding a licence or permit provided for under the laws of Kenya for three years. The Minister (not the judge) has power to reduce this period of disqualification. Section 51 (4) provides for the enforcement of this measure by requiring the court to notify the Director of the sentence.

MADAGASCAR

I. LEGISLATION

Wildlife legislation was introduced at quite an early date in Madagascar. The earliest enactments, going back to 1927, created the country's nature reserves but were silent as to hunting rights. Since that year it has developed in successive strata without any codification being undertaken of the many sets of regulations of which it is made up. For this reason the legislation consists of a collection of enactments falling into three discernible categories and governing, respectively, hunting, protected areas and the prevention and punishment of offences[1].

II. ADMINISTRATION

Hunting and protected areas come under the responsibility of a Waters, Forests and Soil Conservation Department, reporting to the Ministry of Rural Development. This body comprises a Flora and Fauna Protection and Domain Forests Management Service, which has a division specially responsible for nature and environment protection. At the local level wildlife management is one with that of waters and forests. Parks and reserves have no autonomous status in law, the relevant staff belonging to the provincial services of the Department here named.

Two collegiate bodies bring their contribution to policy formulation where wildlife and the environment are concerned. These are the Nature Protection Council and the Committee for Research in Science and Technology. The former was created in 1962[2], with a membership consisting of the ministers concerned, the director of the Waters and Forests Department, the head of the Domain Lands Service, members of the universities and representatives of institutions having an interest in nature protection. The Government is not obliged to act on the opinions it gives, but is required by law to consult the Council on such matters as the includion of animals in the protected category or their removal therefrom, nature reserves and national parks. The Council may of its own motion consider any matter and give an opinion and make proposals thereon.

The Committee was appointed in 1963[3]. Its terms of reference are to determine the country's requirements in terms of scientific and technological research, to draw up research programmes and to examine the reports on the proceedings of the scientific institutions. It is consulted on draft budgets for fields of activity coming within those terms of reference.

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1 The enactments in question are cited in the relevant sections here.

2 Decree No. 63-321 of 3 July 1962. The Council was originally instituted by Decree No. 60-447 under the name of “Hunting, Fishing and Nature Protection Committee”.

3 Decree No. 63-275

III. HUNTING[1]

1. Legal definition of hunting

Hunting is not defined in the enactments, whether in those specific to this activity or in the regulations governing enforcement. Yet the meaning of the term may be discerned with a fair degree of completeness in the provisions governing the different types of licence entitling the holder "to hunt... vermin, including vermin birds (les oiseaux ou autres animaux nuisibles) and game" (ordinary licence) or "to kill or capture, transport, hold, export... birds and other animals (les oiseaux et autres animaux)" (permit for capture for scientific purposes)[2].

Here one may note a lacuna which is likely to make its consequences felt where the imposition of penalties is concerned. It would appear that the legislator has not created any offence in respect of activities preparatory to the specific act that has brought about the kill or the capture. With regard to the other element characterizing hunting, namely its object, one finds that this is not provided for with the degree of rigour that one could wish, because there is an ambiguity in the first provision cited in that it seems to

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1 - Ordinance No. 60-126 prescribing rules governing hunting, fishing and wildlife protection, 3 October 1960;

- Order No. 327-MAP/FOR prescribing procedures for the enforcement of article 14 of Ordinance No. 60-126 of 3 October 1960, 8 February 1961;
- Decree No. 60-088 prescribing rules for the disposal of birds, animals and fish seized following offences under the fishing, hunting and wildlife rules, 16 February 1961;
- Decree No. 61-093 enforcing Ordinance No. 60-126 of 3 October 1960 prescribing rules governing hunting, fishing and wildlife protection (arts. 12, 13, 17 and 22), 16 February 1961;
- Decree No. 60-096 providing for the assigning to three categories of birds and other wild animals living in the territory of the Malagasy Republic, 16 February 1961;
- Order No. 1316 prescribing the level of fees for hunting licences, permits for hunting for scientific or commercial purposes and the capture of live animals whether protected or not, 13 July 1961;
- Decree No. 60-321 creating the Nature Protection Council, 3 July 1962; - Ordinance No. 62-020 relative to the keeping lemurids, 16 August 1962;
- Decree No. 69-085 prescribing rules governing the hunting of butterflies, 25 February 1969; - Order No. 2023-MAER/FIN prescribing the level of fees for the permit for hunting butterflies for commercial purposes and for the special tourist permit for hunting butterflies, 14 May 1969; - Act No. 71-006 to prescribe exit fees in respect of wild animals and orchids, 30 June 1971;
- Order No. 0220-SEHAEF/DIR/FOR formalizing the constitution of the Special Commission contemplated by the final paragraph of section 1 of Act No. 71-006 or 30 June 1971 to prescribe exit fees in respect of wild animals and orchids, 20 January 1972.

2 Ordinance No. 60-126 of 30 October 1960, arts. 19 and 20; cf. also Decree No. 61-093 of 16 February 1061, arts. 9 and 15, and Decree No. 69-085 of 25 February 1969, art. 2 relative to butterflies.

require a licence in order to hunt vermin, while regulation 9 makes mention only of “animals classified as game animals”[1].

2. The law governing hunting

(a) Categories

The distinction of the country's game into categories is laid down in article 1 of Ordinance No. 60-126, thus: “Birds and other wild animals living in the territory of the Republic... shall be assigned to one or other of the following categories:

- birds and other protected animals;
- vermin, including vermin birds;
- other birds and animals deemed to be game.

Certain preliminary observations are in order here: first, that the only criterion used for establishing these categories is hunting (the article cited appears in Title I - Hunting, Division 1 - Game); and a perusal of the articles that follow confirm this interpretation. Next, the wording of this article contains an ambiguity in the sense that it seems to encompass in these three categories the entire range of wild fauna. Indubitably it covers the aquatic and terrestrial fauna but it leaves a ghost category of animals that the legislator leaves unprovided for.

The assigning of wildlife among the categories does not form part of the Ordinance but is to be a matter for a “decree in the Council of Ministers, upon the proposal of the Minister responsible for the Administration of Waters and Forests”[2].

Again, the texts dealing with the Hunting, Fishing and Terrestrial and Ichthyological Fauna Advisory Committee prescribe that the opinion of this Committee must be sought in the matter of assigning wildlife to the respectve categories.

The removal of an animal from any of the lists and in general any amendments to the latter must follow the same procedure.

The lists for the three categories were established in one and the same decree on 16 February 1961.

- Protected animals

Protected animals are those which it is prohibited to hunt or capture by whatever means and at whatever time[3]. A further prohibition attaches to this one and it applies to the “transport, hawking, sale, purchase, offer for consumption in hotels or restaurants, export...” of animals, their remains or

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1 Decree No. 61-093 of 16 February 1961.

2 Article 1.

3 1960 Ordinance, art. 2. The list of animals comprises all lemurids, the dugong, five birds, three reptiles, blind cave fish and animals newly introduced into Madagascar, e.g. stag and deer.

their eggs[1] Article 1 of the Decree of 16 February 1961, which classifies animals, adds, though without reference to the Ordinance that it is enforcing, "the animals listed below shall be completely protected within the meaning of article 8 of the Convention relative to the Preservation of Fauna and Flora in their Natural State, done in London, 8 November 1933"[2] The procedure is curious when seen from the standpoint of legal logic, and it brings no new element to the substance of the problem. The protection regime brought in by the 1960 Ordinance meets the requirements of the London Convention, which among other things authorizes such waivers of the rule for scientific purposes as are to be found in the legislation of Madagascar, and now to be discussed.

The "hunting permit for scientific purposes" may "affect protected animals"[3], and specimens may be taken even from national parks and strict nature reserves. Coming under articles 15 to 17 of Ordinance No. 61-093 of 16 February 1961, this permit authorizes the holder to "kill, capture, keep or export... irrespective of the conditions ordinarily governing hunting"[4]. A fee is payable in an amount determined by order of the Minister for Financial Affairs[5]. The minister in question has availed himself of these powers in a highly detailed fashion in his Order No. 1316 of 13 July prescribing the level of fees for hunting licences and hunting permits for scientifc and commercial purposes[6]. Here one finds a scale of fees relating to permits for scientific purposes that mentions all but two of the protected animals, viz. blind cave fish and animals recently introduced such as stags and deer.

Another enactment (Act No. 71-006 of 30 June 1971) adds to the scale referred to a levy on specimens exported - again extending to protected animals. Comparing the different figures one has the impression that the capture and export of protected animals could bring in substantial revenue for the public purse[7]. What needs to be known is whether the rates of such fees and levies do not in fact encourage the authorities to issue these "permits for scientific purposes". It is true that no charge is demanded of "scientific bodies of the Republic of Madagascar or scientific establishments undertaking any research programmes in liaison with the programmes of the bodies first-mentioned"[8]. It is also true that the captures for scientific

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1 1960 Ordinance, art. 5.

2 The 1960 Ordinance nevertheless appears in the recitals to this Decree.

3 Art. 20. To this derogation must be added the provisions for the defence of human life and property.

4 Art. 15.

5 Art. 17.

6 Art. 2.

7 The exit fees payable for animals captured under a commercial licence range from 250 to 150 000 Malagasy francs, and from 1 000 to 150 000 francs in the case of exit fees for protected animals. The highest exit fee prescribed by the 1971 Act is 150 000 francs for one lemurid (the Aye-Aye).

8 Order No. 1316 of 13 July 1961, art. 3, and Decree No. 61-093 of 16 February 19 61, art. 17.

purposes are subject to certain conditions which should ensure that their number is not excessive. In the first place, these permits are issued "solely upon request by a scientific establishment, which may not hold more than three such permits at any one time". They prescribe the number of animals of the various species that may be taken, the region where it is intended that operations shall take place, and the method of capture. The period of validity is set at four months, renewable once only. The authorized officers of the Waters and Forests Service may inspect the animals held in scientific establishments[1].

It will be noted that no provision is made here for certificates of origin following capture. This may pave the way for fraudulent practices, and it will be all the more difficult to establish the scientific character of the foreign organizations which may also have such permits issued to them[2]. In the case of the lemurids the volume of illicit traffic has been such as to induce the Government to issue an Ordinance obliging any person holding one of these animals to report the fact and establishing for the future the principle of the requirement of a permit, which will be available only to "scientific establishments duly accredited by the Government"[3].

- Game animals

Game animals are those in respect of which "hunting or capture by whatever means... is permitted only during those periods in which hunting is declared open"[4]. Despite this not entirely felicitous formula, game animals benefit not only from this system of seasons but also from a series of rules governing hunting activities. Thus, the close season also entails the prohibition on transporting, hawking, placing on sale, purchase, export, offer for consumption in restaurants of any game, such acts thereby being created punishable offences[5].

The Minister responsible for wildlife is further empowered to place a moratorium on the hunting of certain non-protected animals and on hunting in certain areas[6].

At the same time there are nowhere to be found in enactments studied restrictions applying to eggs, the young or females accompanied by their young. Nor, apart from one or two exceptions, are there any bag limits established or distinguished in respect of partially protected game. The exceptions concern, first, hunting for commercial purposes, where "the holder of a permit for commercial hunting shall be required to furnish the Waters and Forests Service with quarterly returns of animals that he has hunted, captured

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1 Decree No. 61-093 of 16 February 1961, arts. 15 and 16.

2 There is nothing to prevent for example an importer of exotic animals from borrowing other people's names, with their consent, in order to augment his possibilities of obtaining supplies.

3 Ordinance No. 62-020 of 18 August 1962.

4 Ordinance No. 60-126, art. 4.

5 Ibid., arts. 5 and 48.

6 Ibid., art. 14.

or purchased...". And since the prohibitions on the sale, etc., of game outside open seasons does not affect this particular activity, the holder is further required, under the second exception referred to, to supply "a list of birds and game animals that he holds in stock not later than one month following the end of the open season"[1].

The formalities described do not, of course, amount to a system of bag limits. They appear, rather, to be inspired by fiscal considerations because another enactment prescribes levies applicable, at rates it also specifies, on animals taken under the comercial hunting provisions[2]. However, these same formalities offer the wildlife authorities a means of assessing to some extent at least the volume of removals from the wildlife population and, in the light of these, of declaring temporary prohibitions on hunting if necessary.

Coming, next, to butterflies, one finds that the texts[3] provide for two special hunting permits, one for "persons engaging in the butterfly trade", the other for tourists (touristes de passage). The former comes under the commercial hunting rules, while the latter is issued for periods of two months at a time and has a simple system of bag limits attaching to it, under which the holder may "keep to specimens of each species of butterfly"[4].

The wording of the provisions governing butterflies reveals, in its turn, a clearly financial motive. Thus one may read that the provincial waters and forests services catch butterflies with a view to trading them5. It also raises several unanswered questions. A commercial permit authorizes the holder to hunt, transport, sell and export "any species of butterfly the hunting of which has not been prohibited". Now, one may ask, does this prohibition apply to tourists? And may tourists, who must have a permit to hunt them "keep" them? In general terms is a butterfly a "game animal'? Again, does a national of Madagascar or a foreigner of more than two months' residence have to have a permit capture any of the lepidopters?

At the present time the legislator has not defined the game animals category or issued any enforcement regulations. The wording of article 1 of the 1960 Ordinance leaves one to expect a list of such animals. In Decree No. 61-096 (art. 3) one reads that "by the division into three categories of the wild birds and animals living in the territory of the Republic of Madagascar those birds and animals are deemed to be game which are not classified among

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1 Decree No. 61-093, art. 18.

2 Order No. 1316.

3 Decree No. 69-085 of 25 February 1969 prescribing rules governing the hunting of butterflies, and Order No. 2023-AER/FIN of 14 May 1969 prescribing the level of fees for the permit for hunting butterflies for commercial purposes and for the special tourist permit for hunting butterflies.

4 Decree No. 69-085, arts. 1 and 6.

5 Ibid., art. 3, which reads: "The holder of a butterfly hunting licence shall be required to observe all the clauses in the licence requiring him to forward returns of butterflies of each species hunted or purchased to the Waters and Forests Service of the province concerned at the end of each quarter."

the protected animals or among the vermin". Now, twenty-six names ofanimals are to be found in these two categories. Does this mean, therefore, that all other forms of life are game? Is a hunting licence required in order to swat a mosquito? An additional lead may be had from the scale of fees payable in respect of commercial hunting, which covers several fish, reptiles (crocodiles, serpents, turtles), large and small mammals, birds and frogs. Some of the species for which a fee is levied also appear in the list of vermin (crocodiles, civet cats, boars), and in any event there can be no supposing that there is an assimilation of game animals with animals in respect of which a fee is levied. The only conclusion, therefore, is that the list of game animals is a matter of common - customary - knowledge.

- Vermin

It is important here to recall first of all that the provisions governing vermin are not to be confused with measures that may be contemplated for the protection of life and property. Nor should one suppose that the existence of such a category encompasses all species that may at some time cause harm. Most vermin belong in practice to species in regard to which the law is silent. The category comprises, in principle, animals which, given the customs or criteria currently followed, must be deemed to be game.

The current list of vermin is not a long one: it contains seven birds, the crocodiles and five mammals[1].

The law applying to vermin differs little from that applying to game. The main distincion lies in the fact that vermin may be hunted at any time[2]. Also, the right do defend human life and property is recognized "against attacks from vermin, including vermin birds[3], whereas apparently it is not in the case of game and protected animals.

Leaving aside the case of legitimate defence, shooting vermin by means of firearms does not seem to be allowed without an appropriate licence. Again, with commercial hunting, it may be asked whether vermin are likened to game. Thus it is that "the hunting or capture of certain animals in the vermin or game categories when such activities are of a commercial nature... may be undertaken only under hunting right leases..."[4]. The point has already been made that the fees payable on the products of commercial hunting apply to both game as well as vermin.

(b) Defence of human life and property

This subject is dealt with in article 16 of the 1960 Ordinance and in articles 6 to 8 of its enforcing Decree No. 61-093. These provisions combined bring out three aspects of the defence of human life and property.

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1 Decree No. 61-096. The following are deemed to be vermin: falcon, vulture, kite, fody rouge, heron, magpie, parrot (grand perroquet), crocodile, wildcat, voutsira, civet-cat, and fox-bat (roussette).

2 Ordinance No. 60-126, art. 3 (list of protected species).

3 Ibid., art. 16. The lumping together here of birds with vermin, despite the fact that some of them appear in the protected list, will be noted.

4 Ibid., art. 13 and Decree No. 61-093, Division I.

Legitimate defence in the first place may be exercized without prior permission by "any person defending his own life or that of another or his domestic animals or his crops". As pointed out earlier, this does not constitute an offence when resorted to against "attacks from vermin, including vermin birds"[1]. This restriction is surprising not only in that the legislator prohibits the defence of human life against a boar, for example, but in the fact that there is a general lumping together of birds and vermin. Again, there are no precautions attaching to this provision in order to forestall fraudulent practices: there is no obligation to report a kill or to hand over the remains to the authorities.

The other two aspects of legitimate defence are the fact that an authorization is required from the Minister responsible for wildlife, who may "consent to the destruction on animals, whether protected or not, whenever these constitute a danger or cause damage to crops, domestic animals or human beings"[2]. Authorizations may be collective or individual. In either case they will be temporary and prescribe the conditions under which the animal in question may be destroyed, besides indicating which officers of the Waters and Forests Service are empowered to ensure that operations are lawfully carried out.

Certain techniques are prohibited, among them the destruction of an animal at night in which customary procedures not otherwise prohibited are resorted to, or the use of fire, poisoned bait or intoxicating drugs unless specially authorized[3].

A final point here is that no animal may be destroyed within the boundaries of strict nature reserves, special reserves, national parks or establishments of the forestry or fisheries services[4].

(c) Protection of indigenous fauna against exotic species

Provision is made for the protection of the fauna of Madagasacar against inopportune introductions of non-native species in the requirement of a prior permit for "any import of birds, fish, their eggs, or other live animals". Permits are issued by the Minister responsible for wildlife upon recommendation to that effect by the Wildlife, Fisheries and Terrestrial and Ichthyological Fauna Protection Advisory Committee. Despite this rule, the Minister may by order allow the import of certain animals where the imported will be dispensed from this prior permit requirements[5].

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1 Ordinance No. 60-126, art. 16.

2 Decree No. 61-093, art. 6.

3 Ibid., art. 7.

4 Ibid.

5 Ordinance No. 60-126, arts. 14 and 39.

IV. THE LAW GOVERNING HUNTING

(a) Hunting rights

In Madagascar hunting is in principle linked with the onwership of land in the sense that a landowner may refuse consent to third parties to hunt on his property. Article 8 of the 1960 Ordinance provides that "in the case of property that is fenced or has its boundaries visibly indicated, or on which there is a standing crop, entitlement to hunt there vests in the owner of the land and in any person he has authorized to do so".

In the case of State domain land or land belonging to communities, hunting rights vest in the State but hunting may be undertaken there without restriction save, of course, where the bylaws prohibit hunting or if there is a standing crop on such land[1]. However, the right to hunt on domain land "may be let out on lease or by public auction"[2]. The interesting point of this arrangement, as with all lettings and, generally, with all contractual procedures, is that it allows for more, and more detailed, stipulations than will be found in bylaws. Thus, leases "may be have improvement clauses attached to them, for example, to the effect that restocking shall be undertaken with certain species or that certain methods of hunting shall be prohibited or, again, imposing bag limits or requiring surveillance...". In any case a lessee will have every inducement to collaborate in hunting law enforcement. He is deemed to bear civil liablity for offences under the wildlife laws committed by his agent or clients unless he reports the offence to the competent authorities within five days of the occurrence[3].

Independently of matters relating to the ownership of land, hunting rights imply an entitlement under law. The title in question may derive from custom or be granted by the administrative authority.

Customary hunting appears in the 1960 Ordinance, where (art.14) the Minister responsible for wildlife is empowered to make regulations governing "customary means and procedures... used in the hunting or capture of certain animals...". Pursuant to this article, an Order was made on 8 February 1961 laying down that "hunting by means of locally fabricated weapons (assegais, bows and arrows, blowguns) shall be permitted under customary rights except in regions where it is prohibited to keep the said weapons. Such customary rights shall be recognized solely in the interests of catering for personal needs and those of the community. Game animals killed by these means may not be traded under any circumstances. In no case may customary rights be invoked for the killing of protected animals"[4].

The provision here cited raises several questions. In the first place, it would seem that each and every person may invoke it provided he is not using a firearm (because there is also another provision according to which "in order to use a firearm for hunting purposes a hunting licence shall be

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1 Ordinance No. 60-126, arts. 6 and 7.

2 Ibid., art. 12.

3 Decree No. 60-093, art. 1

4 Order No. 327-MAP/FO, art. 3.

required")[1]. It is difficult to see, secondly, to what extent the customary hunter is required (if at all) to comply with the general laws on hunting, in particular as regards seasons, and on prohibited techniques. For example, article 2 of the Order cited prohibits "hunting at night", whereas article 7 of Decree No. 61-093 which deals with "the destruction of animals deemed for the time being to be vermin makes their destruction lawful by night and by customary procedures not otherwise prohibited".

Administrative authorizations, if one leaves aside those for hunting for scientific purposes, are of two kinds: the hunting licence and the commercial hunting permit.

Under the terms of article 19 of Ordinance No. 60-126 "a hunting licence entitles the holder to hunt for a stated period, with a firearm, any vermin, including vermin birds, and game on any land where and at any period when it is permitted to hunt them". There are regulations governing the issuance of hunting licences but these are tantamount to constituting a definite right, since the issuing authority has no discretionary powers to determine whether or not it is expendient to issue. Once the applicant has complied with the statutory conditions the authority finds its hands tied and has no power to refuse[2].

The conditions here referred to can be listed summarily in terms of the requirement that the applicant have attained his majority, be in possession of a gun licence, be entered in the tax rolls and have had no criminal convictions[3].

One may note a certain leniency here on the part of the legislator when, for a first series of convictions for offences against public order (rebellion, distribution of war weapons, violence toward public officers, etc.) he lays down that refusal to grant a hunting licence may not be invoked "five years following the expiation of the penalty". Similarly, no licence will be issued to any convicted person who has not paid the fine or served the term of imprisonment imposed on him for any of the offences created under the hunting rules[4].

A licence is valid for one year. Provision is also made for a temporary licence (permis spécial passager) for visitors to the country, with a validity of two months from the date of issue[5].

Flat-rate fees are payable for licences. These are set, at very reasonable levels, by Order No. 1316. No game register is prescribed, nor would it be of much use, given that no bag limits are prescribed either.

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1 Ordinance No. 60-126, art. 18.

2 This does not mean that no refusal is possible. In article 3 of another Decree (No. 61-093) one may read: A hunting licence may be refused....

3 Ibid., arts. 11 and 12.

4 Ibid.

5 Ibid., art. 13.

"The permit for commercial hunting shall be additional to the hunting licence and entitle the holder during the open season... to kill or capture, transport, hold, sell or export non-protected live birds or animals or their remains whether processed or unprocessed. The numbers of species and of head per species authorized by this permit shall be limited"[1].

The fees payable for commercial licence are considerably higher than those attaching to hunting licences. They are set in terms of head of game, etc., for the several species[2]. Captures, moreover, are controlled in order to ensure the fiscal receipts referred to earlier.

A final point to note is that these permits are issued for periods of five years to individuals and bodies corporate, though a person intending to use a firearm must have a gun licence in order to do so[3].

(b) Hunting

Hunting may be engaged in only during a season each year uniformly set for all species and all areas of the national territory. The dates are prescribed by the Minister responsible for wildlfe within the limits of a period running from 1 May to the first Sunday in October inclusive[4].

It should be recalled that hunting is prohibited in national parks, strict nature reserves, special wildlife reserves, forestry stations and fishfarming establishments. It may also be prohibited termporarily in specified areas. Considerations of public order have ensured that hunting is prohibited in built-up areas[5].

As regards methods of hunting, the Minister is vested with general powers to make regulations[6]. Under them he has introduced certain prohibitions on:

- "pursuing, stalking and firing at game from mechanically propelled vehicles or boats;
- the use of searchlights, lamps and any lighting devices in hunting;
- the use of fire for battues or individual hunting;
- the use of drugs, poisoned bait, set-guns, explosives, nets, traps and trenches;

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1 Ordinance No. 60-126, art. 21.

2 An ordinary licence costs 2 000 francs. In the case of a lemurid it costs 20 000, for a dugong 30 000, and for a turtle (Testudo hyniphora) 5 000 (cf. Order No. 1316).

3 Decree No. 61-093, art. 18.

4 Order No 327-MAP/FOR, art. 1.

5 Ordinance No. 60-126, arts. 9 and 10.

6 Ibid., art. 14

- hunting at night, i.e., between sunset and sunrise. Shooting at aquatic game on the wing shall however be permitted one hour before sunrise and one hour after the official time of sunset".

(c) Products of hunting

The legislation of Madagascar prescribes in a somewhat summary fashion for the products of hunting.

From article 5 of Ordinance No. 60-126 cited earlier the principle can be deduced whereby a hunter may dispose of what he has taken, and may transport or sell it, though a commercial permit will be necessary if he habitually engages in selling.

There is no provision for the prevention of waste of the meat or for control over trophies.

With the exception of the keeping of lemurids, governing which strict rules are needed, the enactments concentrate on the external trade in the products of hunting with wildlife protection in view but also that of securing revenues for the State.

The protection function is seen in the requirement of a permit before live animals may be imported. Supplementing this measure designed for the benefit of the indigenous fauna is the prohibition on imports of animals or their remains not accompanied by a certificate of origin when they come from a country where the animal in question is protected under the terms of the 1933 London Convention.

Exports of animals or their remains require a special permit, for which very high fees are payable. These fees are set in terms of the various species without reference to the occasional or commercial nature of the operation[1].

(d) Parks and reserves

Madagascar possesses a considerable number of protected areas. These were declared at quite an early date, the first series of nature reserves being created in 1927. At the present time they are classified under the threefold system contemplated in the 1933 London Convention. Accordingly one finds strict nature reserves (twelve in number), national parks (two), and special nature reserves (twenty-one) given over to the protection of specific forms of wildlife.

All parks and reserves have been declared by Decree. The pertinent regulations refer directly to the provisions of the 1933 London Convention, and include the prohibition on hunting. A report (dating from 1975, it is true) pointed out the insufficiency of staff for surveillance in the country's

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1 Act No. 71-006 to prescribe exit fees in respect of wild animals and orchids, 30 June 1971.

protected areas and of the presence of zebu and other domestic animals quite happily grazing there[1].

V. ENFORCEMENT; PENALTIES

The enforcement measures and penalties having to do with wildlife protection in Madagascar are to be found in several enactments. The basic text is Ordinance No. 60-126, where a dozen articles are given over to the penalties[2]. On the other hand the statute book contains legislation dealing strictly with penalties which may invoked for offences under the forest. hunting, fishing and nature protection regulations[3]. To complete this list, one may note two more recent ordinances providing a rapid procedure for punishing offences of an economic nature, among which are to be considered offences involving wildlife[4].

1. Enforcement officers

Madagascar has three kinds of enforcement officer who are empowered to deal with offences under the wildlife laws and to carry out all necessary inspections. All officers are sworn officers, by which token their reports enjoy official status.

In the first place there are the officers of the Waters and Forests Service, who have the status of police officers. Secondly, there are the other police officers - the chiefs of district, station chiefs, members of the gendarmerie and Customs officers. Thirdly, there are the agents of the Animal Husbandry Service, the market inspectors and private guards (provided, in each case, that they are sworn for the purpose). The last-named may be appointed by "local communities, fishing and hunting companies, landowners or persons holding hunting or fishing leases...". Their jurisdiction is limited to the area of land belonging to their employer[5].

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1 Not having been able to consult the enactments governing parks and reserves the author has relied on information in their regard appearing in the report "Parcs nationaux et réserves naturelles intégrales. République malgache" - FAO, FO:DP/MAG/71/529, document de travail Nº 64, Rome, 1975.

2 Arts. 40 and 50 of this Ordinance and Decree No. 61-088 prescribing rules for the disposal of birds, animals, and fish seized following offences under the fishing, hunting and wildlife rules, 16 February 1961, which enforce article 42 of this same Ordinance.

3 Ordinance No. 60-128 prescribing the procedure for dealing with offences under the laws governing forests, hunting, fishing and nature protection, 3 October 1960; Decree No. 61-078 prescribing procedures for the enforcement of Ordinance No. 60-128, 3 February 1961; and Ordinance No. 60-013 relative to close arrest, 30 March 1960.

4 Ordinance No. 72-023 relative to the intensification of enforcement procedures for the prevention of offences and for accelerating prosecutions, 18 September 1972; Ordinance No. 76-019 instituting a special court in the respective provincial capitals to be competent to deal with offences directly or indirectly affecting the economic order.

5 Ordinance No. 60-126, art. 41.

2. Powers of inspection

Authorized officials "may enter, without being accompanied, any halls, kitchens, pantries and reserves given over entirely or in part to their trade belonging to hoteliers, restaurateurs and licenced game dealers or fishmongers and any public places with a view to detecting and seizing any birds or other animals or fish or the remains thereof which have been hunted or fished in contravention of the laws"[1].

No provision is made for the searching of persons or baggage, for entry into private dwellings, or for the erection of barriers across the highway or the searching of private vehicles.

In dealing with offences an authorized official may satisfy himself as to the identity of and arrest "any person who he has reason to believe has committed an offence punishable with a custodial sentence, irrespective of whether or not that person has been taken in flagrante". The person so arrested is to be taken as soon as possible before a police officer, and for the purpose authorized officials may demand police assistance[2].

3. Enforcement

These officials are also required to seize and detain "products, plants or animals giving rise to or resulting from an offence, any animal involved in an offence, an any instrument, material or vehicle used in the commission of an offence or in transporting products or items...". Vehicles providing public transport may not be seized[3].

Seizure of items entails their consigment to a "garde séquestre" designated in the report.

The presiding judge of the court vested with jurisdiction in these matters may lift the seizure against payment of a bond.

When animals are involved in any seizure they are despatched to the Scientific Research Institute of Madagascar in the case of live protected specimens, or released "in a place conducive to securing normal living conditions for them" in the case of live game, or made over to the nearest hospital or prison in the case of dead animals that can be used for food or, otherwise, destroyed[4].

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1 Ordinance No. 60-126, art. 42. The expression "public places" is clarified by articles 11 and 12 of Ordinance No. 60-128. Public domain land and public transport vehicles are mainly concerned.

2 Ibid., arts. 8, 9 and 10.

3 Ordinance No. 60-128, art. 13, and Ordinance No. 60-126, art. 43.

4 Decree No. 61-088, arts. 2 and 3. However, article 19 of Ordinance No. 60-128 provides for the sale by auction of these animals.

4. Trial and punishment of offences

In principle the ordinary courts have jurisdiction for dealing with cases of offences under the wildlife laws. The chief forest inspectors may institute proceedings there and may be associated with the court's jurisdictional rôle.

However, some offences may be deemed to be “contrary to public economic order”, in which case they will come within the jurisdiction of a special court1 instituted by Ordinance No. 76-019. Offences of the kind include those involving removal of or setting fire to the plant cover, or offences under the plant protection laws or the Customs regulations. In addition to having a membership with only one professional magistrate among its complement, this court is also special in that it may rule in first instance, with no appeal allowed[2].

The general law of the country is relatively severe in wildlife matters not only in prescribing penalties but also in assigning liability under criminal law.

In connection with this last point, mention has already been made of the fact that the holder of a hunting lease can be held civilly liable for offences committed by his “guests” unless he reports such offences within a time limits prescribed by the public authorities. Similar rules apply to any holder of a temporary right to occupy land where his agents are concerned3. Where the offender is not identified, liability is shifted to the taxpayers taken together of the local community of the place where the offence was committed.

Furthermore, “any person who without authorization transports, hawks, sells, exports... protected animals or animals which it is prohibited to hunt or during any period when it is prohibited to hunt them, shall be liable to the same penalties as any person who has killed or captured them.... Similar penalties shall apply to any hotelier or restaurateur holding such animals in his pantry, kitchen or storage room or offers or includes them in meals served before his customers”[4].

The principal penalties consist in a fines of from 10 000 to 200 000 francs or imprisonment for a term of from one month to two years or both such fine and imprisonment.

In conformity with the general rules of criminal law the court may taken extenuating circumstances into account. “Ignorance in zoological matters” is not numbered among the extenuating circumstances[5].

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1 Ordinance No. 76-019, art. 2 defines the jurisdiction of this court.

2 However, there remains the possibility of taking the matter to the court of cassation or of challenging the sentence in the case of judgement by default.

3 Ordinance No. 60-128, arts. 48 to 50.

4 Ordinance No. 60-126, art. 48.

5 Ordinance No. 60-128, arts. 48 to 50.

As a principal penalty (and no extenuating circumstances can be invoked if the offence has been committed in a park or nature reserve) a prison sentence is mandatory whenever a protected animal is involved or if the offence is other than a first offence[1].

Accessory penalties comprise, and mandatorily where pertinent, the withdrawla of commercial of scientific hunting permits and hunting licences. The confiscation of weapons, devices or vehicles that have been used in committing the offence is at the discretion of the court except in the three circumstances described. The court may also order damages or that the items be returned. The classic distinction between civil and criminal offences will entail for several concurrent offences cumulative penalties, if these consist of fines, and, in the case of prison sentences, the longer, or longest, term but not two or more consecutively.

5. Compounding of offences; service in kind in lieu

The forest authorities are empowered to compound with an offender regarding the amount of fines, items to be returned, damages, items confiscated and incidental expenses either before or after the final decision of the court. The proceedings are conducted by the Chief Forest Inspector but the settlement must be approved by the Minister[2].

An offender is also allowed to extinguish his debt by providing so many day's labour. This “payment in kind” may be resorted to as part of a compounding or following the sentence. Certain conditions attach to this formula in order to ensure that neither party shall take undue advantage.

An administrative document is drawn up by the Chief Forest Inspector setting “the conditions under which the work shall be performed, the date of commencement and of the termination of the work and, where pertinent, the schedule of such work...”.

The computation of the number of days' work is made by reference to the “guaranteed minimum inter-trade wage”, and, obviously, the number of days may not exceed the equivalent of the pecuniary penalty. The authorities may “remit” some of the labour due. Any delay, cheating or imperfect performance entitles the authorities to annul the compounding or to prosecute in the ordinary courts for the full performance of the penalty, in which case, however, allowance will be made for the work actually completed and the offender's debt reduced accordingly.

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1 Ordinance No. 60-126, arts. 46 to 51. Repetition of an offence is deemed to occur whenever the person concerned has been convicted of an offence under the wildlife laws within the previous five years.

2 Ibid., art. 31.

MALI

I. LEGISLATION AND ADMINISTRATION

Mali's legislation consists of a single enactment, namely Ordinance No. 60 CMLN of 11 November 1969 promulgating the Hunting Code, which governs both hunting and protected areas.

Wildlife management is the responsibility of the Waters and Forests Administration.

II. HUNTING

1. Legal definition of hunting

Hunting is defined as the act of pursuing, killing or capturing game..., taking eggs, disturbing or destroying birds' nests (art. 1). Game are dealt with in the lists appearing in Schedules 1 and 2 of the 1969 Ordinance.

2. The rules governing wildlife

(a) Categories of wildlife

The Ordinance is highly elliptic in that it makes no distinction between categories but simply gives these lists in schedules referring to “the list of animals wholly protected throughout the territory of the Republic of Mali” (Schedule III). Schedules I and II consist of lists of bag limits, thus: Schedule I: ordinary game (no bag limit); Schedule II: partially protected game (very strict bag limits). It is to these lists that the articles (15 and 16) governing hunting licences make reference.

Where partially protected animals are concerned, the granting of licences in respect of the elephant, hippopotamus, buffalo and western giant eland is reserved to the Head of the Forests Service and, where the other licences are concerned, to the chief inspectors and the heads of the forest sectors.

Penalties make no special reference to protected animals.

No provision is made for amendments to the Ordinance.

Two subsequent ordinances determine bag limits.

(b) Protection of life and property

It is lawful to kill an animal “constituting a danger or causing damage” irrespective of whether it is a protected animal (art.5). The authorities may of their own accord sell rights to hunt these animals to holders of sporting licences or may make over the task of killing them to an association under the control of its own officials. In the latter situation the remains become the property of the Government.

Recognition is given to the right to self-defence and to the right to protect crops and livestock whenever an “immediate necessity” arises (art. 6). It is made clear, however, that “this right applies in principle only in the case of wild animals and bands of monkeys belonging to non-protected species the hunting of which is authorized”.

3. The legal rules governing hunting

(a) Hunting rights

Hunting rights grounded in custom are abolished by article 2. However, article 3 provides that “persons living in rural areas may hunt only those animals that it is permitted to hunt under the residents' sporting licence, provided, also, that they have paid their yearly gun licence fee. This authorization shall not confer on them any right to hunt with an improved weapon unless they hold a hunting licence.”

The principle of the of a licence is stated in article 1. There are three types of licence: the licence to hunt and capture animals for scientific purposes, sporting licences and commercial capture permits (art.7).

The licence to hunt and capture animals for scientific purposes is issued by the head of the Waters and Forests Administration subject to the consent of the Minister. It may authorize the hunting or capturing of wholly protected animals, and will specify the animals that the holder may capture, the period of validity and the areas where the captures may take place. No fee is payable for the grant unless “any commercial activity is associated with scientific activities” (art. 9). Article 25, further, provides that scientific activities are placed under the protection of a game warden (lieutenant de chasse), a hunting association or an official of the forests service.

Commercial capture permits cover live animals including, on occasion, wholly protected animals (where the latter sort are involved, the consent of the Minister is required). They authorize the holder to capture, hold and export specimens (exporting entails the payment of a special fee) and also to make use, where appropriate, of nets, drugs and traps (arts. 21 and 22).

Sporting licences are issued to residents for one year and entitle the holder to hunt animals in the first list throughout the national territory. To these may be added a permit of the local authorities, which will be valid for one week at a time and add one animal from the second list (i.e, of the partially protected category) (arts. 12, 15 and 16).

When issued to tourists these sporting licences confer the same rights but are valid for one month only and in any case attract different fees.

The bags limits associated with licences are determined each year by the Minister for Waters and Forests. Tourists and residents who have reservations for hunting camps belonging to the forest services are allowed one extra unit.

(b) Hunting

(i) Game register; fees

The obligation of entering on a game register of animals killed when these belong to the partially protected category is prescribed by article 17.

Kills involving animals in this category also entail the payment of fees, the amount being prescribed by the two ordinances and not the Hunting Code.

(ii) Organization

Mali has two declared hunting areas (zones d'intérêt cynégétique), where “hunting is permitted but where the forests services or safari operators have installed camps and laid out trails. In such declared hunting areas only those holding reservations in hunting camps shall be authorized to hunt” (art. 45). A curious point here is that this provision is placed in Part II of the Parks and Reserves Ordinance.

There is no organized profession of hunting guide; indeed, it is laid down that “the fact of guiding hunting expeditions shall not be deemed to constitute the exercise of a profession” (art. 24). And yet the text at the same time places criminal liablity on guides for the acts of their clients.

Game wardens are recruited from among the members of the established staff of the crop and animal husbandry services, and are sworn officials.

(iii) Restrictions on hunting

Restrictions as to place: Article 12 prohibits hunting in reserves and on enclosed property or wherever “no entry” signs are clearly installed.

Bag limits: Game registers have limits attaching to them in the case of sporting licence holders, who may not in one and the same day kill more than two animals of the swine family and one bustard - this, obviously, without prejudice to bag limits applicable to partially protected game (art. 18). In any case it is not permitted to shoot a pregnant female or a female accompanied by its young (art. 44).

Restrictions as to time: Each year there is a general close season beginning 1 June and ending 31 October (art. 43).

Restrictions as to method of hunting: Article 42 lists, restrictively, prohibited hunting methods. These include “hunting at night, the use of flares, searchlights or other lighting devices; battues other than those specially authorized; the pursuit, stalking and shooting at game from a vehicle or motor boat or aircraft; resort to drugs, poisoned bait, set guns, explosives, nets, traps and pits; and hunting with dogs except in the case of birds”.

SENEGAL

I. LEGISLATION AND ADMINISTRATION

In 1967 Senegal enacted a Hunting and Wildlife Protection Code, with its "Legislative" part and a "Regulations" part prescribing in matters affecting hunting and protected areas[1]. The Code is also supplemented by enforcement regulations and, since protected areas are concerned, by the Forests Code.

As for the institutional aspect, wildlife management is placed under the responsibility of the Waters and Forests Service, which in turn reports to the Ministry of Rural Affairs. Under law, the Service can avail itself of the help of auxiliaries - the hunting guides and game wardens (lieutenants de chasse). Under the regulations governing the former group, guides are to see to it that their clients observe the law; and indeed they cannot exercise their calling unless they hold a licence for that purpose (the licence can be withdrawn at any time if it can be shown that the guide has engaged in hunting or allowed others to do so in contravention of the regulations (art. D.15)). The game wardens mentioned are volunteer collaborators to whom the authorities can assign any of their specific tasks, including the reporting of offences. The latter duty carries with it perquisites, in the form of a percentage of fines paid, in the same way as those received by officials on the establishment. This institution, allowing as it does for the recruitment of competent hunters, who are required to take an oath and who are duly commissioned for their assignment, should offer a helpful solution for countries where the wildlife services are below strength.

II. HUNTING

1. Legal definition of hunting

The definition of the act of hunting comprises "any action directed to killing a wild animal or to capturing it alive" (art. L.1). Now, this lacks precision: among other things, it is to be supposed that the wild animals here contemplated are those customarily hunted, to the exclusion of insects, batrachians, small mammals, etc. Here the drafting leaves something to be desired in that, under the same article, "no person may engage in hunting unless he holds a licence...". On a strictly literal interpretation, then, one would be breaking the law to take a snail unless one held a licence.

2. The law governing hunting

The Code makes a distinction between wholly protected animals (art. D.17) and partly protected animals (art. D.18). Each of the articles defining these has associated with it a list of the animals concerned. Since these lists belong the the regulatory part of the Code, they can, unless the contrary is prescribed, be amended by the administering authority. And since they come into effect by Decree, by Decree they can be revised. Yet one should note that a measure of flexibility has been introduced by article D.19, which

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1 The articles in the regulatory part have a numbering preceded by the letter D (for Decree), those in the legislative part by the letter L.

enables the Minister responsible for waters and forests matters to prescribe, by Decree, “for the strict or partial protection of any species of animal in a given area for periods that may be renewed but not beyond five years”.

(a) Wholly protected animals

Wholly protected animals are those the hunting and capture of which, including the capture of the young and the collection of eggs, are strictly prohibited save to holders of scientific permits. The relevant article (D.40) is silent as to nests, habitats and the remains of animals founds dead.

(b) Partly protected animals

The characteristic of this category of animals is the restriction on the possibility for the holders of certain types of licence to hunt them or to capture them, and the possibility of doing so subject to limitations as to the number of animals involved.

(c) Vermin

Under article D.36 “No vertebrate shall be deemed to be vermin generally and permanently with the exception of poisonous snakes, which may be destroyed at any time and in any place, save in strict nature reserves or nature parks, without such destruction being deemed to be an act of hunting...”. On the other hand, measures may be taken for the defence of life or property against any species of animal.

Article D.34 provides that “Where certain animals, whether protected or not, constitute a danger or cause damage, the President of the Republic may give authorization for them to be hunted or destroyed”. Battues organized by the administering authority are governed by detailed rules and are conducted under the control of the officials of the Forests Service and of the game wardens.

3. The right to hunt recognized

It is pertinent to mention here that the Code makes no provision for customary hunting, which accordingly appears to be completely prohibited under law. Customary rights were of a precarious character even under the 1965 Forests Code, where, they were limited to the gathering of plant products and honey, without any mention being made of hunting. Moreover, powers under law to reduce or abolish these rights were clearly enunciated by that Code (arts. D.20 to D.22). Accordingly, hunting in this country may be engaged in solely by administrative authorization, namely the hunting licence.

Seven distinct types of licence are instituted. The first three cover small, medium and big game and correspond, as is usual in these matters, to a progressively wider scope for hunting. They are issued for one year, except in the case of tourist hunting, where validity is for one month. Only one licence is issued to any hunter. The licences for medium and big game have bag limits attaching to them; and the hunter must keep up to date his game register in their regard.

The categories covered by these licences correspond to hunting as a sport. Other categories have to do with licences authorizing commercial hunting and captures for scientific purposes.

Under the commercial kind are:

(a) The commercial capture licence

The so-called commercial capture licence authorizes:

- the capture of wild animals alive, their holding, and trade in them, provided no use is made of firearms but, in their stead, traps, nets, etc., which are normally prohibited;
- the capture of partly or wholly protected animals, to be annotated in one's game register so that the animal may be identified.

The same rules contemplate the possibility of selling the animals at the place where they were captured, or of their being donated to a public zoo or, again, their export.

Where wholly protected animals are concerned, the commercial capture licence may be issued only to persons holding a licence for capture for scientific purposes. Article D.7, where this rule appears, adds simply that No wild animal, whether protected or not, may be killed or captured for scientific purposes unless the operation in question is covered by a hunting and capture licence for scientific purposes.

Here there is an ambiguous converging of commercial and scientific considerations: for who is to guarantee that wholly protected animals will not be captured under the double - commercial and scientific - licence, only to be handed over to zoos and commercial bodies outside Africa?

(b) Bird licence

These licences authorize the capture of, and trade in, non-protected birds, and are issued to individuals or bodies corporate at the rate of one or more per year. Under them, several employees can hunt. The birds may be captured by means of nets and other devices that are normally prohibited. Limits are expressed in terms of bags of 5 000 brace.

(c) Crocodile licence

The crocodile hunting licence (art. D.6) constitutes the document legalizing the trade in the skins of this animal. Under it spears and gaffs may be used, as well as lighting devices or flares, during otherwise general close seasons and at night. In order to use a firearm the person concerned must also hold a medium and big game licence. The one limitation attaching to it is that only those animals make be taken whose size corresponds “to a width of the skin greater than 19cm between the horny scales of the flanks”. In any event, the trade in, or export of, crocodile skins is subject to a special permit.

(d) Licence for hunting and capturing for scientific purposes

Mention has already been made of the fact that this type of licence can be combined with a commercial capture licence. It may, however, be used irrespective of any commercial considerations. Applications must indicate the name and the status of the beneficiary and the holder, the reasons for the

application, the number of animals of each species for which authorization to kill or capture is being sought.

(e) General remarks concerning licences

The fact of obtaining a licence for commercial or scientific purposes does not itself authorize the use of firearms, for which a sport hunting licence is first required, which in turn is conditional upon the applicant holding a gun licence.

4. Exercise of hunting rights

(a) Restrictions as to place

Hunting is prohibited in absolute terms in the strict nature reserves and national parks. The prohibition extends, though with certain derogations to special reserves and wildlife reserves. Article D.31 reads:

> Hunting in certain spcial reserves and certain wildlife reserves may proceed under informal agreements or as a result of auctions, in favour of legally constitute hunting associations whenever the Forest Service is satisfied that there is need therefor in the interests of public finance or communities living in the vicinity of any reserve in order to prevent or arrest the excessive proliferation of any vermin capable of damaging nearby crops, woodlands or any restocking schemes within the perimeters thereof.

Declared game areas (zones d'intérêt cynégétique - art. D.29) are those parts of the national territory where game and hunting are of major scientific or economic interest and where it is possible for the wild fauna to be brought to the greatest abundance possible with a view to its scientific study or its rational exploitation for tourist or sport purposes without any substantial adverse impact on other sectors of the economy.

The by-laws of the respective areas indicate the conditions attaching to hunting there. In some cases they reserve hunting to holders of certain licences. For these declared wildlife areas are tantamount to assigning land use to hunting, in particular tourist hunting, which brings in the greatest returns. Article D.20 illustrates this where it provides that: “holders of medium and big game licences (tourist category) may be authorized... to hunt in declared wildlife areas” in May and December, which are normally close seasons.

(b) Restrictions as to time

There is a general close season each year from 25 April to 23 December (art. D.20). Commercial bird licences and crocodile licences are not affected.

(c) Restrictions as to hunting methods and weapons

Articles D.21 to D.23 list prohibited procedures, including the use of vehicles, nets, traps, poisons and baits, certain weapons, lighting devices, and hunting between sunset and sunrise.

Article D.23 provides that: “In case of necessity, any hunting procedure likely to compromise the conservation of wildlife or of any any species may be prohibited or regulated by Order of the Minister responsible for wildlife”.

5. Rules governing the products of hunting

(a) Venison (art. D.37)

Venison belongs to whoever has killed the animal. Thus, “what is left over shall be made available to those using the land where the kill has taken place”, though no prior notice need be given. Trade in, and the export and cold storage of, venison are prohibited, which is tantamount to suppressing any hunting as a source of supply to the meat trade.

(b) Animal remains and trophies

This expression comprises “any article made from such remains save where these have lost their original identity as a result of any lawful process of transformation”. Remains and trophies are the property of the hunter, who may freely dispose of them. A certificate of origin is required for the remains and trophies of partly protected animals. Animals killed in the course of any officially organized battue or in self-defence or, again, found dead, are to be made over to the authorities, who may, where ivory tusks are in question, pay a bonus equal to one-third of their commercial value or return the remains or trophies to the person who has so made them over. The Code is silent, in this connection, as to any requirement of a certificate of origin.

III. WILDLIFE PROTECTION AREAS

1. Types of protected area

Protected areas are defined both by the Forests Code (arts. D.4 to D.6) in a somewhat cursory fashion, and by the Hunting and Wildlife Protection Code, this time with greater precision (arts. D.25 to D.30). Making up these areas are the strict nature reserves, the national parks, the special reserves and the wildlife reserves.

(a) Strict nature reserves

Under the terms of article D.4 of the Forests Code, “Those areas shall be deemed to be specifically suited as strict nature reserves which constitute a collection of natural habitats which are to be conserved as an integral part of the nation's patrimony”.

The Hunting Code (art. D.25) prohibits in such areas “any form whatsover of hunting or fishing, or forest, agricultural or mining working; any excavations or prospecting, drilling, levelling or building construction; any act likely to harm or disturb the fauna or the flora; and any introduction of zoological or botanical species whether of local provenance or imported, and whether or not these are wild”. The same article adds: Save by special authorization in writing of the Ministry of Rural Affairs, it shall be prohibited to enter or to circulate in, or engage in any low-level flying over, or to camp or undertake any scientific research in, strict nature reserves. Surveillance in these matters is hereby assigned to the Forests Service.

(b) National parks

National parks are “areas where total restrictions apply on hunting, the capture of animals, the exploitation of plant resources or the products of

the soil or the subsoil are necessary for nature conservation purposes. To the extent possible, national parks shall be made available for the education and recreation of the public". (Forests Code, art. D.6).

These provisions are supplemented by article D.26 of the Hunting Code in the sense that this article confirms and renders more explicit the general nature protection measures, which may be waived only by "special permission, naming the bearer, granted by the Minister responsible of waters and forests affairs and solely for scientific purposes or those for the prevention of disease among humans or among animals".

Likewise access by visitors and their sojourn in such areas are regulated. Entrance fees are payable: "Any person desirous of visiting for tourist purposes any national park must be in possession of a permit. A fee, to be determined in the light of a joint report by the Minister for Rural Affairs, the Minister for Information and Tourism and the General Secretary of the Office of the President of the Republic, shall be payable in advance for such permits. Permission to enter national parks without the payment of a fee may be granted."

The introduction of firearms is hedged in with precautions designed to ensure that these will not be used (they must be disassembled and placed in their case and declared at the control post, where, also, seals may be affixed. It is further prohibited to circulate with a loaded gun on any roads or tracks marking the limits of a park).

The foregoing provisions are of general application, and will be supplemented by the park by-laws.

(c) Special reserves

Nature protection in Senegal's special reserves is associated with a specific purpose, whether it be economic exploitation or the conservation of some natural asset. The measures geared to these ends are not uniform, since they are specified in the statutes of the individual reserves (Hunting Code, art. D.27).

Article D.5 of the Forests Code provides that: "Those areas shall be deemed to be specifically suited as special reserves where certain restrictions, whether partial or total, temporary or final, on hunting, the capture of animals, the exploitation of plant resources or the products of the soil or the subsoil, or building construction may be necessary for scientific or tourist purposes or for climatic reasons".

Under this category will be classified those areas where soil and water are placed under a given form of management calling for the intervention of the Waters and Forests Service.

It may be noted that hunting can be organized in these reserves in the form of tourist hunting.

(d) Wildlife reserves

Wildlife reserves are specialized for tourist hunting. No provision is made for them in the Hunting Code, which provides: "all classified land (Forest Domain Land) other than strict nature reserves, national parks and

special reserves shall be deemed to constitute wildlife reserves" (art. D.28). This means that they correspond more closely to the declared game areas than to true wildlife protection areas.

2. Customary rights

Hunting rights ar not to be found among the customary rights. They may be freely exercised on Forest Domain Land but "no customary rights may be invoked in national parks and strict nature reserves..." (Forests Code, art. D.22). By inference, therefore, these rights may be exercised in special reserves and wildlife reserves. However, one may also read in the same article that "the exercise of customary rights may be abolished without compensation being payable in all cases where the public interest makes this necessary. In all other cases compensation is payable whenever a customary right is abolished.

3. Declaration of protected areas; abolition

Protected areas together constitute part of the State Forest Domain. The procedures for their establishment, and disestablishment are prescribed by the Forests Code.

The Code makes no distinction between types of protected area. A single procedure for establishment is prescribed. To simplify, one may say that establishment and disestablishment require the preparation of a file and the need to seek the opinion of a regional advisory body and then of a national-level advisory body. The decision to establish (or to disestablish) is incorporated in a decree of the President of the Republic.

The regional Soils Conservation Commission has the following membership representative of the official bodies concerned:

Chairman: the Governor of the Region;
Members: the Prefects concerned;
one representative of each of the following:
Domain Service;
Waters and Forests Service;
Agriculture Service;
Rural Civil Engineering Service;
Animal Husbandry Service;
local communities concerned;
Regional Assembly.

The National Soils Conservation Commission consists of:

Chairman: the Minister for Rural Affairs;
Members: representatives of the following:
Ministry of the Interior;
Ministry of Planning and Development;
National Assembly;
Economic and Social Council;
Waters and Forests Service;
Domain Service;
Animal Husbandry Service;
Rural Civil Engineering Service;
Agriculture Service.

The file to be prepared by the Regional Commission must comprise (Forests Code art. D.12):

- "a detail map indicating the location of villages, land given over to crop growing, fallow land, land in respect of which classification or declassification has been applied for, the location of present forest reserves, population figures for the villages and variations in these over recent years, the nature and extent of different customary rights emerging from the survey and those of such rights which will be authorized to continue in being";
- "a memorandum explaining why establishment should proceed and, in the case of disestablishment, containing a list of the beneficiary communities."

IV. ENFORCEMENT; PENALTIES

1. Enforcement officers

Law enforcement is provided by "the sworn officials of the Forests Service, police officers, sworn policemen, game wardens and sworn customs officials" (Hunting Code, art. L.5).

Article L.30 of the Hunting Code provides that "one tenth of the proceeds of fines and surrendered items shall be made of the the officials of the Forests Service and game wardens..." and seven tenths for the official who gives intelligence of any offence having been committed and three tenths for the official who makes a formal report of an offence.

2. Reporting of offences

Duly authorized officials may for the purpose of establishing whether or not an offence has been committed enter any premises such as cold stores and warehouses, and inspect any vehicle. They must on these occasions be in possession of a court warrant or be accompanied by a police officer in order to enter any dwelling (Hunting Code art. L.6 and L.7). They are empowered to detain "any offender whose identity they are unable to establish" (art. L.5), with the obligation, however, of bringing the person before a court. In the case of non-sworn officials these powers are limited to in flagrante situations (art. L.8).

3. Enforcement

When the commision of an offence entails seizure of the items involved the official reporting it will himself seize those items (products, devices, weapons, vehicles) where this is physically feasible (art. 1.12).Any game or meat so seized will be handed over to one or other public institution, while confiscated animals will be given to a zoo, and any remains of trophies assigned to the University of Dakar, while nets, traps and other prohibited devices are to be destroyed. Hunting weapons are made over to the Domain Service (art. L.14).

4. Penalties

Confiscation is prescribed as an additional punishment to be imposed whenever animals are killed or captured without permission, or remains or

trophies are circulating without their certificate of origin, or venison obtained in Senegal is traded or, again, weapons and devices are illegally used in hunting.

On the other hand, the decision as to whether “vehicles used for stalking, chasing or shooting at game animals” shall be confiscated is left to the discretion of the court (art. L.13).

Provision is also made for compounding offences before or after trial. If after trial, the compounding may be resorted to only in connection with fines, items returned, costs and damages (art. L.20).

Upon the conviction of the offender, or any transaction being allowed, the authorities may decide to withdraw his hunting licence and prescribe a period, not exceeding three years, during which no new licence will be granted (art. L.29).

SOMALIA

I. LEGISLATION

The rules in force in Somalia are to be found in the Law on Fauna (Hunting) and Forest Conservation, Law No. 15, 25 January 1969. This enactment is arranged in three Books. Book I is given over to the fauna, or, more correctly, hunting, since it does not in fact institute any reserves other than controlled areas. Book II, which is considerably shorter, comprises only ten articles dealing mainly with the creation of forest reserves and with forest conservation in general. Production matters are not touched upon. Book III - General Provisions - creates powers and prescribes penalties.

This 1969 Law has been amended, and its terms extended, by several enactments. Thus:

- Decree of the Supreme Revolutionary Council No. 3 of 16 December 1969 adds provisions governing the possession of trophies;
- Law No. 68 of 31 August 1970 amends several articles relative to hunting;
- Law No. 34 of 1 March 1971 establishes the National Parks Agency;
- Law No. 65 of 13 October 1971 places a ban on hunting by suspending the effect of article 16 of the 1969 Law, thereby preventing the issue of licences;
- Law No. 79 of 12 April 1975 amends the 1969 and 1971 Laws. It converts the National Parks Agency into the Agency of National Parks and Wildlife Management and transfers to it responsibilities for wildlife;
- Law No. 43 of 1 November 1978 revises penalties provided under the 1969 Law.

II. ADMINISTRATION

The 1969 Law placed the services responsible for wildlife under the Minister of Rural Development and Self-Help Schemes. They were linked to the Ministry of Forests through the Department of Forestry and Game.

Law No. 68 of 31 August 1970 changed this arrangement. There was now a Secretariat of State responsible for forestry and game within the Ministry of Livestock, Forestry and Range.

In 1971, Law No. 34 of 31 March of that year, instituted the National Parks Agency as a self-governing body reporting directly to the President of the Supreme Revolutionary Council. Article 3 provided that “the main objective of the Agency is to establish and maintain National Parks and reserved areas”. The 1969 Law did not institute any such areas, and no law

was brought in to make good the omission, so that neither de jure nor de facto has there been any attaining of this objective by the Agency.

Subsequent vicissitudes saw the Agency attached now to the Ministry of Tourism, now to the Ministry of Livestock, Forestry and Range, before it became the Agency of National Parks and Wildlife Management by virtue of Law No. 79 of 12 April 1975. In its new form, the Agency also recovered the self-governing status that it had originally. It now reports only to the Supreme Revolutionary Council. Its powers have been enlarged to take in the entire range of wildlife management hitherto in the hands of the Secretary of State for Forestry and Game within the Ministry of Livestock, Forestry and Range.

According to an FAO report[1], from which these points in the history of the Agency have been obtained, the type of organization assigned to the latter in 1975 fails to take into account the interactions among the fauna, the forest, and range land. The author of the report takes the view that the wildlife services were better attached to the Ministry of Livestock, Foresty and Range.

Before the present study is taken further, it should be recalled that despite the fact that the Agency was set up in 1971, the country still has no protected areas nor any legal instrument for creating them2. Current legislation therefore concerns only hunting.

III. HUNTING

1. Legal definition of hunting

Hunting is defined in very brief terms in article 2 - Interpretation - as being any act directed immediately to killing or capturing an animal. The definition goes on to include disturbing or molesting an animal - which accords ill with the two acts mentioned. The same article defines animal as any vertebrate, and the eggs and the young thereof, but the term does not include a human being or any domestic animal or fish.

2. The rules applying to wildlife

(a) Categories

The 1969 Law distinguishes four categories of animals which it legislates for and assigns to the lists given in the Schedules, namely: prohibited game, protected animals, game animals, and vermin.

(i) Prohibited game

Article 12 of the 1969 Law lays down that such game, which it lists in Schedule 3, may not be hunted. Fourteen mammal species are affected.

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1 N.O.S. Abel: Strengthening of Forestry and Wildlife Management, Project: Somalia Wildlife Policy and Administration, FO:DP/SOM/72/012, Field Document No. 6, FAO, 1976.

2 This was the situation at least up to 29 May 1980.

Protection from being hunted is also extended to females and the young of game animals and to elephants with tusks weighing less than 5 kg each.

The law recognizes no excuse in the plea of failure to distinguish the sex of an animal any more than it does in the case of bird species where the females have a similar appearance to the males.

The protection afforded to prohibited game is far from being absolute, however, since the Law has an express provision to the effect that it is waived in the case of the Minister's licence.

This Minister's licence as provided for in article 20 represents a prerogative of the Minister to permit a person to hunt animals indicated by him, even if these animals come under the prohibited game category and whether or not they are to be found in an area where hunting is restricted or prohibited. In granting such a licence the Minister may require of the beneficiary that he pay a fee, or may waive this requirement, and in any case may attach conditions to the grant.

However, this prerogative may be invoked only on specific considerations listed in the Law. These are: (a) scientific research and museums; (b) complimentary hunting offered to visiting foreign dignitaries; (c) catering for food needs in emergencies where no other source of supply is available; (d) provision of specimens for zoological gardens and similar establishments; and (e) control of disease among wildlife and other populations.

As will be noted, the grounds for waiver are given in very wide terms. “Foreign dignitaries” and “food”, moreover, are considerations not usually met with in wildlife legislation, even if they refer to what is known to be the practice in several countries.

(ii) Protected animals

Protected animals enjoy the game “immunity” as prohibited game but only when found in wildlife reserves specified by law. Elsewhere they come under the category of game animals. List B in Schedule 3 names hippopotamus, elephant, cheetah, lion, ostrich and giraffe. The protection accorded them is not prescribed in the articles of the Law but is simply indicated in the heading to the list.

(iii) Game animals

Game animals are those in order to hunt which a licence is required, as prescribed by article 14 of the Law, where the principle is stated in respect of animals listed in Schedule 4.

The rules governing hunting licences also prescribe the indication of the species of animals and number of head of each species that it is permitted to hunt (art. 17). Schedule 4 is arranged in two parts covering, respectively, big game and small game. In the case of big game it indicates for each species and for each type of licence the numbers that may be killed or captured. Small game comprise several birds and three mammals. Quotas are prescribed here only for the three mammals. The young and the females of these species may not be hunted, as is laid down in article 12, which deals with prohibited game, and article 33, which reaffirms the prohibition.

The creation in this way of a category of animals thus partly protected is stultified because control over hunting licences can be exercised under the rules applicable to game animals.

Here it should be added that the protection of game animals is still at the mercy of the same waivers as that made possible under a Minister's licence; and, in any case, the Minister may declare any animal in this group to be vermin.

(iv) Vermin

Somalia's legislation relies on the two practicable expedients for determining a vermin category. The Law gives a list of vermin permanently so considered in Schedule 10, which contains the names of seven mammals and such seed-eating birds as are not classed as game. Secondly, under the terms of article 35 the Minister may declare any animal to be vermin throughout the national territory or in a given region or regions. He is also empowered to suspend for a stated period the listing of any animal in Schedule 6 and bring the hunting of it under the licence requirement just as for game animals.

As mentioned earlier, prohibited game and game animals may be declared to be vermin. However, there are no specific provisions allowing for waiver in their regard to cater for this eventuality, and so must be supposed to be implicit in the law.

Vermin may be destroyed or hunted, without a licence being required, at any time. The protection otherwise accorded by article 33 is expressly waived in regard to young and females. This same article adds that the exclusion applies equally to the monkey (Cercopithecus aldegolaris) though this animal is not in fact listed among the vermin[1]. It also enables the Minister to levy fees on the hunting of vermin - a provision, this, which suggests that pursuit of vermin might be looked on as a variety of hunting whereby the State may obtain revenue, for it certainly leaves the way open for a distortion of the law's purpose, and in any case does not follow from the premise of vermin control. If it is necessary to control vermin, then it is difficult to see why people contributing to the task in the common interest should be expected to pay fees as well. An additional point to note here is that vermin may not followed into specified reserves.

(v) Animals not contemplated in the Law

The Law is silent as to the entire class of invertebrates and, among the vertebrates, all those species not listed among the prohibited game, game animals or vermin. The Minister may include the name of any animal in any of these lists, however.

(vi) Classification procedure

The 1969 law established the lists of animals assigned to the respective categories that it created, while vesting powers in the Minister to vary these lists. Article 71, section (c) states these powers as being to amend, add to

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1 Article 33, as amended by Law No. 68 of 31 August 1970.

or withdraw from any part of the Schedules to the Law. These powers do not seem to have been exercised, however; and such amendments as have been made were in any case introduced by the legislative arm, notably in Law No. 68 of 31 August 1970.

(b) Protection of life and property

The 1969 Law creates a category of animals deemed to be dangerous, and an obligation to report any wounded animal belonging to the species mentioned. It also prescribes the conditions governing the protection of human life and property and, lastly, the powers vested in the authorities in the interests of public safety.

The animals concerned are listed in a Schedule (No. 20) "Dangerous Animals". They comprise: elephant, rhinoceros, hippopotamus, buffalo, leopard, lion and cheetah. A first requirement in their regard is that any wounded animal shall be reported - a requirement referring only to these dangerous animals. The obligation is conceived in fairly narrow terms, for it is incumbent only on the person that has done the wounding (art. 30), since no one having simply seen a wounded animal is required to report.

The fact of classifying animals as dangerous is tantamount to placing conditions upon the possibility of defending human life. Article 27 countenances this principle only in the case of these dangerous animals; and yet, in addition to the seven species listed, there are a vast number of animals that may at times constitute a direct threat to life and limb. In other respects Somalian law has similar rules to those found in other countries. Legitimate defence cannot be relied upon if the animal was provoked by the person who killed it or consented to the killing or, again, if that person was acting unlawfully. The wording of the text calls for a sensible interpretation if absurdity is to be avoided, for there it is stated that it shall not be an offence to kill an animal included in Schedule 20 as being dangerous. No proviso regarding the defence of human life is prescribed save in the heading where these words appear.

While legitimate defence of life is limited by law to the case of dangerous animals, the rule differs where the protection of property, crops or dwellings is concerned. Under this rule one may drive off or kill any animal whether it is in the process of causing damage or merely on the point of doing so. If the animnal belongs to the prohibited game category the owner of the property thus threatened may not take protective measures himself but must notify an authorized officer[1]. In other cases he may take any measure he thinks fit either with the prior consent of an authorized officer or on his own initiative subject to reporting the matter to that officer. Prior consent is still required in the case of protected animals within specified hunting reserves.

To complete this list one may note that authorized officers may kill or authorize the killing of any animal by whatever method in the interests of public safety or the protection of property (art. 29). Under this provision it is possible for the administrative authorities to organize battues with the collaboration of private persons, though there is no provision that the latter

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1 i.e. any member of the police, Game Service or Forests Service vested by the Minister with enforcement powers under the 1969 Law.

must hold hunting or gun licences: the Law considers only whether they shall be remunerated. The Law prescribes that the meat of animals so killed shall belong to these people and that the Minister may make provision for money payments for services rendered. Trophies of animals killed under these arrangements belong to the Government. The Minister may hand these over to a scientific establishment in Somalia or sell them and have the proceeds paid into the general revenue of the State.

3. The law governing wildlife

(a) Hunting rights

In Somalia hunting rights derive from both custom and licences. They are also limited to private property.

(i) Customary hunting

Article 26 regulates the activities of the "indigenous hunter", who is any Somali citizen who hunts animals for food to support his family (art. 2). No provision is made here for reserving the possibility of this sort of hunting to members of rural communities. Any Somali citizen may, de jure, hunt within the scope of article 26, and neither here nor in the articles governing licences is there any provision to the effect that such hunting for food can be undertaken without a licence. On the other hand, it must be assumed that, if the legislator has specified for the "indigenous hunter", it is because he intends to vest in him rights other than those conferred by hunting licences. Similar obscurities are met with in the rules governing the indigenous hunter's rights. Such a hunter may not hunt prohibited game or protected animals. If one recalls that protected animals enjoy that status only in certain hunting reserves, logically one must conclude that these are legitimate prey, provided the indigenous hunter encounters them outside reserves, where, in any case, these selfsame animals are deemed to be game. A legitimate conclusion therefore is that an indigenous hunter may kill an elephant "for food to support his family". The present writer confesses to ignorance of the size of the Somali family, the appetite of its members and any facilities it may have for preserving meat so obtained; however, the latitude thus left open, intentionally or otherwise, by the legislator has something suspicious or at the very least surprising. Similar considerations would, by this token, have to take in other protected species - hippopotamus, cheetah, lion, giraffe.

The indigenous hunter may avail himself and his family of game meat but may not appropriate trophies, since these are Government property and must be made over to the authorized officers. Finally, the Law is silent as to the methods of hunting that the indigenous hunter can resort to, though the prohibitions governing hunting, and those governing hunting on private property, should apply to him.

(ii) Hunting licences

The principle of the hunting licence in respect of all animals classified as game may be found in article 14 of the Law. However, the rights conferred by a licence are restricted by the private ownership of land, since article 32 prohibits hunting on such property where the boundaries are clearly indicated on the ground, unless one has the authorization, if possible in writing, from the owner or the occupier.

There are four kinds of hunting licence, which form a single system, and differ among themselves chiefly by the scope that they offer (art. 17)[1]. Each licence corresponds to a list of species, and the number of head within each, that may be killed. All licences are dealt with in a table accompanying the list of game in Schedule 4. Only capture permits are dealt with in a separate Schedule.

The general licence authorizes the hunting of a first series of game animals. In one and the same period of time only one general licence may be obtained. However, its possession renders the holder eligible for the grant of supplementary licences. The validity of the latter is limited by that of the general licence. There is no limit to the number of supplementary licences that may be granted to a holder of a general licence. More correctly, one should say that there are indirect limits in the sense that the aggregate number of animals that a hunter may kill under the general licence plus one or more supplementary licences is set in Schedule 4. Here one finds three columns indicating for each species the number of animals that may be killed under the general licence, under each supplementary licence, and under general licence and supplementary licences taken together. An additional column deals with fees, which are set for the different species, and are higher under the supplementary licences.

The bird licence and the capturing licence are independent of the general licence. The former entitles the holder to a series of birds (no limit as to number is set) listed in Schedule 4, together with dik-dik, hare and wart-hog (in limited numbers). Under the latter one may capture animals of the species and in the numbers indicated in Schedule 14 - one lion, two cheetahs, 1 000 monkeys, five dik-dik, three hares, two ostriches, thirty crocodiles, one rockpython and two servals. Following this list the legislator has inserted a provision to the effect that one may hunt any animal not included in the list if one pays the fees prescribed for the supplementary licences.

Again, Schedule 14 indicates for each species not a single number of head but two such numbers, the second number being the “maximum”. This two-number system is comprehensible only on the assumption of a plurality of capture permits that can be held by one and the same person. Yet no such provision appears in section (d) of article 17 which institutes this licence.

A perusal of the Law suggests several questions to which no answer is forthcoming from the text. For example, is the holder of a capturing licence entitled to take all and any of the game listed in Schedule 3? Do the limitations as to number applying under Schedule 3 to supplementary licences apply to him? And is he required, if he wishes to exceed the quotas given in Schedule 14, to obtain a general licence and supplementary licences? Must he respect the limits that the Law imposes on hunting? (In this connection the interpretative provisions of article 2 will be recalled, where capture is defined as being any action directly designed for the taking of an animal, or the nest, or the eggs or young thereof.) And, again, may the holder of a capturing licence really collect ostrich eggs or other eggs?

Licences are issued, as a general rule, for one year, commercial permits for six months at the outside, and licences for visiting foreigners for thirty days (art. 18). They are personal and may not be lent, just as weapons may not be lent, to third parties (arts. 19 and 31).

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1 The Minister's licence mentioned earlier does not enter into this system.

Authorized officers may refuse to issue, or may suspend, a licence for reasons which must be stated. The person aggrieved by such a refusal may appeal to the Minister (arts. 21 and 22). In any case, refusal and suspension are reported to the Minister, and imply disqualification from hunting until he decides otherwise. In the event of conviction for an offence under the wildlife laws, the ban on hunting counts as an accessory penalty, which the court will set at between six months and three years (arts. 23 and 66).

The machinery created by the 1969 Law warrants two observations. First, the rules governing capturing licences open up a legal avenue to traffic in animals, skins and trophies, whereas no limitations are prescribed in their regard in the rules governing wildlife products. Secondly, no provision is made in the Law for varying the lists of animals and the number of such animals which may be hunted or, again, regarding the amount of fees payable in the respective cases. The legislative authority must intervene if these elements are to be revised, yet it is precisely these elements that determine the content of a licence. This rigid system precludes any adaptation of hunting licences to developments in animal populations.

No doubt the Somali authorities were aware of the drawbacks in the legislation as it stood because they, by introducing Law No. 65 of 13 October 1971, suspended the application of article 16 of the 1969 Law. It was this article that provided that “hunting licences may be issued by...”. By so doing the 1971 Law, with this most laconic of provisions, has banned hunting in their country indefinitely.

(b) Hunting

(i) Organization

- Hunting areas

The 1969 Law provides for two kinds of area each with its peculiar statutes, namely game reserves, partial game reserves and controlled areas. The first-mentioned are wildlife protection areas. The other two areas alone may be considered areas where hunting is organized. It is these that will be discussed in what follows.

In both cases it is a question of areas where big game must live side by side with human populations. There are no restrictions here on setting up residence and cultivating the land. The only proviso is that the possibility of hunting is subject to a special authorization from the Ministry, which is additional to the hunting licence. Restrictive conditions may be attached to this authorization, and additional fees may be payable (arts. 8 to 11). The difference between controlled areas and the partial game reserves is that it is prohibited to hunt, within the boundaries of the latter, the six partially protected animals, namely hippopotamus, elephant, cheetah, lion, ostrich and giraffe. These areas, it would seem, are destined for the organization of safaris and sport hunting.

No provision is made, however, for the protection of animal habitats. Moreover, the Law is obscure on the matter of the restrictions on hunting rights that it prescribes as applicable to indigenous hunters.

- Professional hunters

Article 2 of the 1969 Law defines the professional hunter as the person who guides hunters or assists them in the course of hunting. For the exercise of this profession a special licence from the Minister is required under the terms of article 17 (e). There is no provision as to whether this licence entitles the professional hunter to shoot animals on his own account nor whether he has a special duty to ensure that his clients obey the law.

- Recording of game

Article 24 requires hunters to record "immediately" their bag in a regulation game register. This document is attached to the hunting licence. The obligation is incumbent on all irrespective of the category of the licence. Game registers must be returned to the authorities not more than fifty days following the expiry of the licence and before the holder leaves Somali territory in the case of a foreigner visiting for tourist hunting.

(ii) Restrictions

- Restrictions as to place

In addition to what was said with regard to private property and to game reserves and controlled areas, the 1969 Law enables the Minister, in the interests of guaranteeing public safety, to prohibit or regulate hunting in the vicinity of roads and human habitations (art. 25).

- Restrictions as to time

Article 13 empowers the Minister to declare seasons when it will be an offence to hunt, kill or capture any animal he specifies on the territory of the Republic or in any area thereof. In this way the mechanism of hunting seasons is put in reverse, with the principle operating that hunting is open all the time except during close seasons declared by the Minister, though the result is the same.

- Restrictions as to methods of hunting

Article 34 specifies unlawful methods of hunting. These are:

- the use of vehicles or aircraft powered by internal combustion engines. The prohibition is intended to prevent shooting from vehicles (in fact, it may not be attempted at a distance of less than 200 yards from a vehicle) and stampeding game by means of a vehicle. There is an exception whereby a vehicle may be used for driving animals away from private land or an aerodrome;
- the use of bush fires;
- the use of artificial lights and hunting by night generally, i.e. between sunset and half an hour before sunrise;
- the use of weapons firing several rounds at a time (double-barrelled guns are explicitly excluded from this prohibition);

- the use of 22-bore firearms having a muzzle velocity of less than 2650 feet/second, save when shooting at dik-dik, wart-hog, hares and birds. The point here is to prevent the hunter exposing his own life to danger and creating danger for the lives of others by wounding a big-game animal and being unable to finish it off;
- hunting with hunting dogs except for retrieving birds or animals wounded by the hunter;
- hunting animals, other than birds, at a distance of less than 500 yards from water-holes and salt-licks;
- any other method declared unlawful by regulation made under the Law (art. 34).

In the above list, it will be noted that there is no reference to traps, snares or poisoned bait or weapons.

(iii) Wildlife products

A distinction is made between game meat and trophies.

- Game meat

It is not stated whether game meat belongs to the hunter or whether it must be made over to the local population. Article 36, however, requires an authorization for the transport, sale and export of game meat. In addition, the Minister may limit the movement of this meat to certain areas or periods or quantities. These provisions are very flexible, in the sense that they should make it possible to control commercial hunting for supplying the meat trade and, de facto, impose a priority in the use of such meat for the local inhabitants. Article 2 - Interpretation - extends these provisions to both fresh meat and preserved meat.

- Trophies

Trophies are defined as being either any live or dead animal or any durable portion thereof, even when this has been processed, provided it is recognizable as a durable portion.

Despite this very broad interpretation, it is to be supposed that game meat does not come under this provision because special rules are prescribed in its regard.

All trophies must be registered and accompanied by a certificate of ownership issued by the competent authority (art. 40). In the case of elephant tusks and rhinoceros horn the trophy must be registered, with an indication as to the weight, the name of the owner, the place of registration and a registration number (art. 44).

The licensing officer checks the validity of the hunting licence at the time of this registration. In the case of elephants and rhinoceros the checking extends to all the conditions under which the animal was killed. In case of any doubt as to the lawfulness of these conditions the officer may retain the trophy pending investigation (art. 45).

The Law regulates the movement of trophies within Somalia by prohibiting the sale, donation and, generally, the possession of any trophy not accompanied by its certificate of ownership (art. 42).

The sale of trophies, stuffed animals and articles made from trophies where such sale constitutes a professional activity requires a special permit (art. 37). Any person engaging in this activity must keep a register of his supplies indicating the certificate of ownership of each piece and the name and address of the vendor (art. 39, and Schedule 12).

Where imports and exports are concerned, the Law requires that the former be conditional upon the production of a certificate of ownership and a certificate of lawful export issued for a trophy in the country of export for inspection by the Director of Customs. Exports require a permit issued by the Director of Customs on the basis of a certificate of ownership. Issuances of these permits are in any case to be notified to the Minister responsible for wildlife.

No limits are placed on exports out of considerations of the conservation of the animals concerned in Somalia or in the country of origin.

Exports of live animals are conducted under the same rules because they are deemed to be trophies: simply their capture in the case of protected animals and prohibited game is made subject, as noted earlier, to a special ministerial permit.

In order to secure observance of the trophy rules, article 48 declares all those trophies to be Government Trophies which are obtained from animals that have been killed unlawfully or in circumstances of defence of human life and property; also trophies found and stolen trophies when the legitimate owner cannot be found, and elephant tusks weighing less than 5 kg apiece.

There is a general provision (art. 48 (8)) whereby the Government monopoly may be extended to other categories of trophies.

Any person in possession of a Government Trophy is required to report the fact and hand it over to the authorities if required (art. 49).

The Minister may dispose of trophies without charge to scientific establishments or sell them, the proceeds accruing to the Treasury (art. 50).

IV. PARKS AND RESERVES

Mention has already been made of the fact that Somalia, despite the creation of a National Parks Agency, has no national park. The only current provision permitting the declaration of protected areas is to be found in the “Game Reserves” covered by articles 3 to 7 of the 1969 Law.

Game reserves are created by the legislative authority. Schedule 1 prescribes the boundaries of four such reserves. As a general rule hunting is forbidden, though the Law does not seem to facilitate enforcement, for it authorizes many persons to enter or reside there. Thus, article 5 speaks of offficials on duty and their servants; persons ordinarily resident in a reserve; travellers crossing a reserve; persons coming there for picnicking,

sightseeing, bathing or other such recreational purpose; and persons lawfully engaging in water management, forestry or mining prospection operations.

A ministerial permit is needed for any person other than those listed above to enter a reserve.

Also as a general rule, it is prohibited to be in possession, within a reserve, and without ministerial authorization, of a firearm, bow and arrow or any other instrument with which to kill or capture animals; but, in addition to officials and their servants, persons ordinarily resident there are allowed by article 6 to be in possession of arms.

The Minister's licence provided for in article 20, it should be recalled, may authorize the holder to engage in his activities in a reserve.

The protection principle extends to the vegetation, which it is prohibited to set fire to, gather, cut or otherwise damage wilfully or negligently. Here again the Minister may grant waivers, or the Head of Forest and Fauna Services may do so if the game reserve is at the same time classed as a forest reserve (art. 7).

V. ENFORCEMENT; PENALTIES

1. Enforcement officers

Those empowered to carry out inspections and make official reports on offences are (under the terms of article 62, and as article 2 defines “authorized officers”): forest officers, game officers, police officers, “Klabos” and any person authorized for the purpose by the Minister.

2. Powers

The powers vested in the officers mentioned may be exercised in systematic detection of offences and even where the officer has no grounds for suspecting that an offence has been committed, when he has erected a barrier across a road, as he is empowered to do by article 63 in order to search vehicles and baggage.

Similar rules permit the inspection of trading premises and the registers of dealers in wildlife products, though this must be done at reasonable times of the day (art. 62).

Apart from the foregoing, for inspection powers to be invoked the officer concerned must have reason to believe, or must be certain, that an offence has been committed. These powers authorize him to challenge a person, search vehicles, baggage or other items and enter any land or building. The rule requires that the officer shall have in his possession a search warrant, but this rule may be waived whenever the person suspected of the offence or the animals involved in the offence are likely to disappear. In the case of house searches, only senior (forest) officer rangers or police sergeants may act.

3. Enforcement measures

Two possibilities are contemplated in article 62. The officer may:

- seize the animal, meat or trophy involved in the offence and any weapons or devices used in its commission;
- arrest the person suspected of the offence even without warrant if he has reason to believe that he will abscond.

4. Penalties

The ordinary courts[1] try offences and impose penalties prescribed by the Law.

There are principal penalties and accessory penalties (art. 66), the former consisting of fines of from 100 to 9 000 Somali shillings and a term of imprisonment uniformly set at six months. Imprisonment is contemplated for certain offences only and never as an automatic penalty.

The accessory penalties are:

- the forfeiture of any animal or trophy, etc., and weapons, implements or vehicles that have been used in the commission of the offence. This measure is at the discretion of the court. Items forfeited are sold and the proceeds paid into the Treasury;
- cancellation (obligatory) of any current licence or authorization held by the person convicted;
- prohibition (obigatory) on the issuance to the convicted person of any fresh licence or authorization for a period to be set by the court between six months and three years from the date of the sentence. If the offence was committed by a licensed dealer in wildlife products the disqualification is obligatorily set at three years.

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1 These are the District Courts, with territorial jurisdiction whose decisions may not be appealed (amendment introduced by Law No. 68 of 31 August 1970).

SUDAN

I. LEGISLATION AND ADMINISTRATION

Originally Sudan's Legislation was conceived largely in terms of the 1933 London Convention. It consisted of a general enactment governing wildlife - The Wildlife Animals Ordinance, 1935, which was supplemented by regulations on hunting (The Game Regulations) and on protected areas (The National Parks, Sanctuaries and Reserves Regulations, 1939). Successive amendments having made inroads into the cohesiveness of this body of law, a general recasting of the legislation was decided on in 1944, to which end a single draft Wildlife and National Parks Act, together with Regulations thereunder, was proposed by an FAO consultant[1] together with its enforcement regulations. The Bill has apparently passed into law and is now enforceable in the Southern provinces and has also been under consideration by the central Government, too.

The legislation applying to Northern Sudan, pending the promulgation of revised enactments there, consists basically of the Wild Animals Ordinance, 1933, which was amended in 1970 and is supplemented by the already mentioned Game Regulations (these were amended in 1961) and The National Parks, Sanctuaries and Reserves Regulations, 1939 (amended in 1965).

Under the legislative texts cited there is a threefold classification of protected animals, implying three degrees of protection. Thus, specially protected animals may be hunted or captured only with a ministerial permit and for some genuine scientific purpose.

Animals that are partially protected may be hunted only with a special permit issued by the Director of the Game Preservation Department. Game animals may be hunted under an ordinary licence. Bag limits apply to the second and third of the categories mentioned. On the other hand, a game licence is not required in order to hunt provided firearms are not used. Waivers are also contemplated for customary (tribal) hunting.

The law deals with hunting methods by listing those that are prohibited. The enforcement provisions prescribe open seasons for the respective animals (Order declaring periods of close seasons, 1935). Also, every hunter is required to keep up to date a register of kills and return this to the Department.

A permit is required for any imports or exports of animals or animal trophies. Remains and trophies of animals unlawfully killed are forfeit to the Government.

The 1935 Ordinance empowers the Minister for Agriculture to create by regulation national parks, game reserves and sanctuaries. It is not allowed to take up residence in national parks, and a permit is required in order even to enter these. In all protected areas hunting or any activity causing harm to the fauna or flora is either prohibited or subject to authorization.

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1 Wildlife and National Parks Legislation. Report to the Government of Sudan. FAO document No. TA 3300, Rome, 1974.

Prohibitions apply in particular to cultivation, grazing, mining prospection and the introduction of domestic animals.

The legislation in force in the Southern Region and the draft Bill proposed in the FAO report will be analysed here against the background of the events described in the opening paragraphs.

The administrative organization is common to parks and wildlife. The objectives and functions of the Game Department are set out in Section 5 of the Act as being wildlife management, and the control of reserves and of hunting, but also the development of tourism based on wildlife, the development of research and the management of zoological gardens.

The Minister is empowered under the Act to make regulations, and may delegate to local authorities his powers of decision in individual cases.

Definition of hunting

Hunting is defined as being any action of, or attempt at, pursuing, disturbing, wounding or killing an animal by whatever method or means or taking, destroying or disturbing its eggs or nest.

By "animals" are to be understood vertebrates, their young and their eggs, but not domestic animals or fish (Act. Section 3).

II. THE LAW GOVERNING WILDLIFE

1. Categories of wildlife

The Act institutes three permanent categories of animals enjoying differing degrees of protection. These animals are listed in the Schedules.

(a) Completely protected species

Schedule I lists this category, which comprises eight mammals and four birds. Although the Schedule refers to "species" and not "animals", the consultant responsible for the proposed draft Bill has added here elephant (of which tusks weigh less than 6 kg each).

The rules applying to these "species" consist exclusively in an absolute prohibition on hunting them. Sections 24 and 45 contemplate no waiver for scientific purposes.

(b) Specially protected species

The animals of these species are the game animals the hunting of which is restricted. Hunting licences specify the humber of head of each species that may be killed. The hunter is required to keep a register of kills which must be returned to the Department at the expiration of the licence. Trophies and remains must be recorded. The Act does not prescribe bag limits but leaves the decision as to these to the Department. Twenty-six mammals and fourteen birds are listed in Schedule II under these specially protected species.

(c) Protected species

This expression covers the game animals. These may be hunted with firearms or with birds of prey only under an ordinary hunting licence but by other methods without resptriction beyond the requirement of compliance with the hunting rules (sec. 26). The species concerned are to be found in Schedule III and number 25 mammals, twelve birds and five reptiles, including the crocodiles.

(d) Vermin

No animal is classified irrevocably as vermin but the Director of the Game Department may declare an animal to be vermin throughout the territory or in a given area. Section 28 seems to leave him this discretionary power with regard to all vertebrates, even those in the Completely Protected category, since the words “any animal” are used, but the reference here made to Section 26 in the matter of game (alias, protected species) suggests that only these can be declared to be vermin.

Any such declaration implies that the animal may be hunted without a licence. No mention is made as to whether the hunter is also absolved from complying with the general hunting rules. The text merely states that vermin may at no time be pursued into reserves or in controlled areas unless one is in possession of the appropriate licence.

When an animal is declared it be vermin, a fee may be prescribed for each specimen killed. And in fact it would seem that vermin are looked on as animals that people are being encouraged to hunt, since no fees are payable and no licences are required in their regard.

(e) Classification of animals

The original classification prescribed by the legislator and set out in Schedules II and III may be varied by the Minister. No restrictions are placed on the latter as regards the inclusion of a given species in, or its exclusion from, a category enjoying a greater degree of protection.

2. The protection of life and property

The protection of human life and of property is covered by sections 38 to 40. The object here is to prevent accidents to people caused as a result of an animal being wounded. The obligation is placed on the person who wounded the animal to endeavour to kill it. Here one is dealing with an obligation to employ means to an end and not necessarily to achieve that end. Any person not succeeding in the attempt is required to report the matter to an authorized officer immediately. No mention is made of witnesses, so that no obligation is placed on such people to report the danger thus arising. Elsewhere in the text it is laid down that this obligation of finishing off a wounded animal does not authorize the use of prohibited hunting implements or methods or following it into a protected area.

Section 30 deals with self-defence, whereby a person otherwise killing an animal illegally has any criminal liability removed from his act. The principle may be invoked for the defence of one's own life and that of another and for the protection of property in one's care against a direct and immediate attack from any animal irrespective of whether or not it belongs to

a protected species. But killing it must be the only possible course, and the person claiming legitimate defence must not have provoked the animal. The burden of proof lies with the person who has done the killing, who must, furthermore, report the fact, or the fact of having wounded the animal, to the authorities. The remains must be handed over to the latter, and in any case become Government property

Public safety is covered in section 67, which empowers wildlife officers to hunt or capture any wild animal in any area, including a protected area. This provision extends to the protection of livestock and other property.

3. Protection of the fauna of Sudan from the introduction of exotic species

The legislator makes no mention of the problems that might arise in the way of imbalances created among the wildlife population by the introduction of animals from outside the country. He has indeed prescribed rules for imports of live animals but has done so exclusively by way of application of the 1973 Washington Convention. The titles and content of the relevant sections show clearly that the legislator was aware of the danger that such imports might create for the fauna of the exporting country[1].

III. THE LAW GOVERNING HUNTING

1. Hunting rights

The Act makes no reference to private property, whether as a foundation of any hunting rights or as a cause for limitations on these, but merely creates licences to hunt, indirectly giving legal recognition to customary rights.

These customary rights are to be seen in the “Tribal Hunting Licences” in Section 46, under the terms of which the Director of the Game Department may issue to local tribal chiefs or village headmen licences authorizing the members of their communities to hunt. The decision so to issue is taken following consultation with the local representative of the Government and the representative of the province whenever specially protected game are affected. These licences are not granted for hunting completely protected animals. Conditions are attached to them with regard to areas for which they will be valid, the numbers of animals that may be killed, or the hunting methods that may be employed.. This last-mentioned point suggests that customary hunting does not come under the general rules governing activities involving game. Yet the autonomous existence of customary hunting is not otherwise affirmed. It will also be noted that there is no provision to the effect that the products of customary hunting shall be assigned exclusively to communities in possession of a tribal licence or that they may be disposed of outside those communities. In practical terms, if the volume of kills allowed a community has been calculated in such a way that they will not exceed needs and, again, if kills are adequately controlled by the government officials, no trading outside the community should occur. In that case the silence of the law here alluded to would be less serious where wildlife protection is concerned. On the other hand, it is still difficult to obtain a conviction for illegal ales of products of customary hunting.

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1 Section 55 has the marginal title: “Imports of animals or trophies listed in Appendices I and II to the Convention”, while section 56 refers one to animals in Appendix III.

2. Hunting licences

The important point here is that these administrative authorizations in no way constitute a right. The authorities have discretionary powers to grant or refuse applications for licences without having to state reasons for the decision. The only other provision is that such a decision can be appealed to the Minister (sections 35 and 47).

The conditions imposed by the Act in order for an application to be granted have to do with the requirement of a gun licence to use a firearm and of the possession of the weapon necessary for the type of hunting it is proposed to undertake. The issuing authority may also check whether the applicant is competent to use a firearm, though no requirement is laid down as to testing his knowledge of animal or ecological matters. Fees are payable for licences and are established by regulation.

Sudan has a wide range of licences and permits. The ordinary licence entitles the holder to hunt game in numbers to be specified by regulation (Schedule to the National Parks Regulations). However, the Act vests powers to specify in the licence itself the species and quotas authorized (sec. 32).

The licence to hunt specially protected game ("Schedule II Hunting Licence") inevitably entails the specification of the species, sex and number which it is authorized to hunt. The licence is issued only to holders of an ordinary hunting licence.

The Bird Licence is obtainable on its own (sec. 34).

The abovementioned three types of licence, which correspond broadly to medium, big and small game in the laws of the French-speaking countries, are geared to what is referred to as sport hunting. There are also several special permits, viz., the commercial crocodile hunting permit (sec. 41), the complimentary licences and permits granted to distinguished guests of Sudan (sec. 44), the scientific permit and that for hunting in controlled areas.

The scientific permit, as was mentioned earlier, is not valid for hunting completely protected species, but it authorizes the hunting or capture of specified animals in specified areas. The areas in question may include the national parks "in exceptional cases only" (sec. 45). The permit is restricted to operations with a scientific or educational purpose, but may also be used for obtaining collections of specimens for zoological gardens, museums and similar institutions. The conditions governing capture may be specified, and a fee may be payable.

A controlled area permit may be issued to the holder of an ordinary hunting licence or of a bird licence. It is additional to the hunting licences, and the interesting point about it is that it permits access, and at the same time limits it, to certain hunters in areas that are managed with a view to maintaining high game densities. The controlled area - and it will be discussed again below - is the prime destination for grand-scale tourist hunting, similar to the "zone d'intérêt cynégétique" of the French-speaking countries.

All the permits and licences referred to here, with the exception of those covering scientific operations and commercial crocodile hunting, are issued for a period that may not exceed one year.

3. Hunting

(a) Organization

The organization of hunting under the law of Sudan consists of rules governing professional hunters and the institution of controlled areas, where wildlife management goes forward.

Professional hunters must obtain a licence, and this is issued for a period not exceeding one year at a time (sec. 42).

The issuing authority must be satisfied that the applicant is qualified to handle hunting weapons and is knowledgeable about the natural environment. The professional permit does not entitle the holder to engage in hunting himself, but authorizes him to shoot animals only where it is necessary to do so for the safety of his clients and the members of a hunting party or, again, to kill a wounded animal.

As mentioned earlier, the controlled areas represent a form of land use management given over to wildlife - again corresponding to the “zones d'intérêt cynégétique”.

In the interests of wildlife development in these controlled areas, the Act enables the Minister to prohibit or regulate access, settlement, cultivation, grazing, burning and any other activities that may harm wildlife or its habitat. The land required for these areas may be expropriated.

The management of these controlled areas may include the granting of concessions for hunting, for viewing and the construction of tourist, including hotel, facilities. The legislator has set out to make these concessions a means of development for his country. Any concession granted for a period in excess of one year must have attached to it conditions relative to the employment of the local population and to the procuring of supplies from Sudan - this, irrespective of the economic advantages accruing from the payment of fees (sec. 21 of the Act and reg. 23 of the Wildlife and National Parks Regulations).

Controlled areas may be divided into units and concessions granted in relation to these with a view to facilitating management.

In order to hunt in these areas a controlled area permit is required and has stricter rules attaching to it. The Director may restrict the number of persons permitted to hunt and establish quotas for the animals that may be hunted, including animals coming under the game animal category (sec. 18).

(b) Restrictions on hunting

The restrictions on hunting have to do first of all with the animals that the hunter may shoot. These animals are indicated in the licence issued to him but also under a general rule prohibiting the hunting of any animal that is obviously immature or is a female accompanied by its young (sec. 29 (a)). As a means of securing observance of these rules and making statistics possible, every hunter is required to have a register of kills, of a regulation model, whatever kind of licence he holds. This document must be returned to the Department on the expiration of the licence or when the person leaves Sudan in the case of foreigners on visits of brief duration.

Licences for hunting specially protected animals (Schedule II - Hunting Licence) have attaching to them the obligation of registering trophies with the authorities (sec. 33).

The Department is also empowered to require that persons undertaking hunting trips shall be accompanied by a game scout or other officer, and shall in any event notify the Department before undertaking such trips (sec. 36).

The Act does not prescribe hunting seasons. The latter are, as a general principle, permanently open seasons, but the authorities are empowered to declare any period of the year to be a close season (sec. 27). Close seasons may be general or made to apply to specified areas of the country and given species.

The question of hunting techniques is dealt with indirectly in that the Act makes it a condition for obtaining a licence that the applicant shall possess a suitable firearm. Prohibited methods of hunting appear in a list, including hunting by night, the use of vehicles, the use of fire for hunting, the use of dogs except for hunting birds, and the use of poison bait, lures, traps, explosives and automatic rifles. The list may be added to by Regulation (sec. 29). The Director may also allow waivers of the rules governing these prohibited methods.

(c) Products of hunting

Although there is no explicit provision to that effect, the principle of the hunter's entitlement to the products of his hunting is affirmed indirectly in Sudanese law by several provisions of the Act, in particular section 50, which deals with the possession of protected animals and trophies. Thus, no person may possess any animal, whether live or dead, or any trophy thereof unless these have been lawfully obtained. The burden of proving lawful possession lies with the possessor. The certificate of ownership (sec. 51) constitutes prima facie evidence in this sense. The sale or transfer of trophies of completely protected or protected (Schedule I or Schedule II protected) animals may not proceed unless the seller or transferor is in possession of a valid certificate of legal ownership. It is altogether surprising to find that completely protected animals may be sold or transferred, when it is prohibited to hunt these, even for scientific purposes (sec. 51 (2)).

Entitlement to dispose of products of hunting is limited by the general rules governing sales and purchases, the provisions governing game meat, the artisan crafts and imports and exports.

Possibilities for selling wildlife products are restricted by the Regulations which lay down (reg. 38) that, except with the written permission of the Director, only animals or trophies belonging to the following species may be sold: buffalo, crocodile, elephant, hippopotamus, leopard, lizard, ostrich, python and zebra. By this token other species may not be traded unless they come under categories to be determined by legislative action.

Coming, next, to meat, one may note that the Regulations (reg. 26) simply prescribe the obligation of turning over to the local inhabitants any meat that the hunter does not use.

As noted earlier, certificates of origin and certificates of ownership are required for trophies. Dealing in them is governed by section 52 of the Act and Regulations 40 to 43. A yearly licence is required for the purpose; and every dealer must maintain a register of all trophies received and processed.

Imports and exports come under provisions closely following those of the 1973 Washington Convention (arts. 53 to 62), and require a permit. An export permit will be issued only if the operation does not jeopardize the survival of the species, if the specimen has been lawfully obtained, if an import permit was issued by the authorities of the importing country and if, in the case of a live animal, the conditions governing its transport are adequate.

Sudan's legislation is geared to securing the application of the Washington Convention, but also to extend the machinery created by it to trade with non-signatory countries or involving animals not protected by the Convention. There is, however, one difference in the case of imports not covered by that Convention, namely that there is no provision for the Sudanese authorities to carry out any check on the effect that the operation might have on the survival of the species in the country of origin.

V. PARKS AND RESERVES

1. Types of protected areas

A chapter on “National Parks and other Protected Areas” prescribes for national parks, game reserves and controlled areas. The last-mentioned have something in common with game reserves, because human activities are regulated with a view to encouraging the propagation of wildlife there. In fact, some of the provisions governing them are common to both. However, controlled areas are given over to wildlife management chiefly in the form of hunting and, subsidiarily, in the form of game viewing. They thus offer a more developed form of wildlife management than does a protected area or a game reserve in the strict sense. Accordingly, only the national parks and game reserves need be discussed here.

National parks are defined as “any area set aside... for the conservation, propagation and management of wildlife and wild vegetation or for the protection of sites, landscapes and geological formations of particular scientific interest or aesthetic value”. They are instituted “for the benefit and enjoyment of the general public” (sec. 3).

Game reserves “are set aside for the conservation, propagation and management of wildlife and its habitats”. Hunting is prohibited there. Any activities likely to go counter to the purpose for which the reserve was declared are either regulated or prohibited. Despite the name, which suggests some sort of territorial organization of hunting, game reserves are really protected areas.

2. Establishment of parks and reserves

(a) Procedures

In the case of national parks, declaration is a matter for the legislator. The Schedules to the Wildlife and National Parks Act provide for a first group of these national parks, and specify the boundaries of each.

The creation of any further parks is provided for in section 5 where the Minister may propose the establishment of national parks in areas of great natural beauty or of major importance from the standpoint of wildlife resources. An Act is needed for the declaration in these cases too.

Again, an Act is required for the abolition of a national park or the alteration of its boundaries.

Game reserves, on the other hand, may be declared, by Order, by the Minister, who also determines their classification (sec. 15).

(b) Conflicts of interest

The Act contains no provision for the consultation of the local inhabitants that may be affected by the declaration of a protected area but only for the compulsory acquisition of land and, in the case of game reserves, for the maintaining in being of the entitlements of the residents there - this, in derogation of the usual rules.

The compulsory acquisition procedure, which is provided for under the general law of the country, may be resorted to both in the case of a national park (where settlement is prohibited) and in the case of a game reserve (sec. 23). In reserves the authorization of the Director is required for establishment and the activities consequent thereon. An authorization of the kind is given following consultation with the local government officer for the area concerned. It may be given to isolated individuals or to tribal communities (regs. 18 and 19), and will specify what activities are tolerated (cultivation, housing construction, etc.) and the conditions applying to these.

3. Operation of parks and reserves

(a) Protection measures

The Wildlife and National Parks Act and the Regulations thereunder prescribe in considerable detail a series of measures applying in all of Somalia's national parks. Additional measures adapted to the situations peculiar to each of these may be prescribed by the Director. The texts concerned are very concise, however, when dealing with game reserves, where (apart from the prohibition on hunting and any other activity incompatible with wildlife conservation) the protection prescriptions are largely left to the rule-making authorities or attached to such individual licences and permits as are granted.

- Protection of wildlife against direct interference

The capture of animals is not the only activity prohibited in national parks (sec. 12). The introduction there of firearms, ammunition, traps or poisons requires the authorization of the Director. Also, any person who has killed or wounded an animal must report the matter to the authorized officer.

The wording of the Act leaves one uncertain as to whether all animals are protected in national parks. The definitions given in section 3 state that the term animal, within the meaning of the Act, refers only to terrestrial vertrebrates, to the exclusion of fish, aquatic life and the invertebrates. Now, when dealing with protection measures applying in national parks, the legislator does not expressly set aside this restrictive

connotation; and yet, he includes fish because he regulates fishing. Moreover, it is difficult to see how protection supposedly extended to all vegetation will not also extend to all the animal components - integral components - of the biotopes of the vertebrate fauna.

Fish, then, are the only exception to the rule. The Director may authorize fishing with rod and line, doubtless to stimulate the tourist attraction of parks (sec. 13 (c) of the Act, and reg. 14).

It is also prohibited to provoke or disturb animals. The Regulations lists prohibited acts which may come under either of these two descriptions: approaching or following an animal, making a sudden movement or noise, flashing a light or doing anything else in such a manner as intentionally to cause an animal to change its direction of travel or to increase its pace or to become frightened (reg. 7).

- Restrictions on human activities

In national parks no right of settlement is recognized, and human activities are limited strictly to organized visits and management tasks. The Act, however, specifies several prohibitions - clearing land, building or occupying houses, huts, etc., cultivating land or grazing livestock, and the prospection or winning of minerals.

It is also prohibited to cut plants, remove minerals or stones, obstruct, divert or pollute any watercourse or lake and, generally, to do any act liable to destroy, endanger or disturb wildlife in a national park or its habitat there (sec. 13).

Regulations 10 and 13 add to these provisions by placing a prohibition on flying an aircraft at an altitude of less than 500 feet except for the purposes of landing or taking off and on a series of acts that may not be performed there without the permission of the Director.

The problem is different in game reserves because there it is one simply of exercising control over human activities and of making sure that these do not conflict with wildlife conservation. For this reason the legislator has not brought in rules that are applicable uniformly but has assigned responsibility to the Game Department for authorizing any settlement, housing construction, land clearance, cultivation, grazing and the gathering of permitted plant life (reg. 18).

(b) Management

Physical management problems are dealt with in connection with hotel concessions and access by the public.

As a general principle, Regulation 11 prohibits any commercial activity in a national park, whether it be the sale of goods, the hiring out of services or the display of advertisements. The Director of the Game Department may nevertheless permit such activities. In addition, section 20 of the Act empowers the Minister to grant concessions for the operation of lodges and hotels and other tourist facilities. The buildings erected under the concession must first be approved by the Director. Concessions are granted by the Minister and may apply to game reserves as well as national parks.

Entry into national parks is regulated in considerable detail. Thus, no person may leave the areas assigned to the public; visits must be made by vehicle, and no person may leave such vehicles or the approved routes. Camping is limited to areas set aside for this purpose; no person may be outside hotels or camps between 7 o'clock in the evening and 6 o'clock in the morning. It is prohibited to discard refuse or litter except at the facilities provided, to damage any installations or notices, or to make any noise there (regs. 10 and 12). Visitors must be accompanied by guides and are required to comply with any instructions that these may give them (reg. 15).

Entry permits are required for national parks and a fee is payable therefor (regs. 4 to 6).

VI. ENFORCEMENT; PENALTIES

1. Enforcement officers

Any game inspector, game warden, honorary game warden or game scout is ex officio empowered for law enforcement purposes and drawing up official reports on offences, as are also police officers and forest officers and guards, who together are deemed to be “authorized officers”. Customs officers may act in the case of imports and exports of animals and trophies. The Minister may vest other persons with similar powers where wildlife is concerned (sec. 9).

2. Enforcement powers

(a) Powers to inspect in the absence of grounds for suspicion

The authorized officer may stop any person and require him to produce his licence and identity card and may inspect any weapons, trophies or other articles in his possession (sec. 68).

(b) Powers to inspect when there are grounds for suspicion

Under these powers authorized officers may enter any land, premises or vehicle and search these. However, only police officers and specified game officers may enter a private dwelling without the consent of the owner.

Authorized officers may also arrest, with or without a warrant any offender and use such force as may be reasonably necessary for this purpose (sec. 69). The person so arrested must be brought before a court (sec. 73). As a general principle enforcement officers have the same powers as those vested in police officers by the Code of Criminal Procedure (sec. 74).

(c) Enforcement measures

The measures in question are taken by the enforcement officers upon establishing that an offence has been committed. These consist of the seizure of weapons, devices and vehicles that have been used for the commission of the offence and any animals or trophies or other articles involved in it. In the case of domestic animals found wandering in a protected area, these, too, will be seized (sec. 69). The offficer making the seizure gives a receipt for the items so seized.

Any live animals seized may be released or killed as the enforcement officer thinks fit. Animals that have been killed and, in general, any perishable goods may be sold or disposed of immediately, and the matter reported to the court dealing withthe case. If the court finds the person not guilty it will order that his loss be made good (sec. 72).

(d) Trial and punishment of offences

No special jursidiction is created by the Act, so that the ordinary courts are competent to deal with offences under the wildlife laws. Authorized officers, in addition to their powers to draw up official reports, may direct the prosecution, unless the Attorney General directs otherwise (sec. 78).

Principal penalties comprise fines and terms of imprisonment (sec. 76).

Accessory penalties automatically entail the confiscatiuon of items obtained by means of the offence, and any weapons, devices and animals use in the commission of it, together with the cancellation of and licences and permits issued to the convicted person under the Wildlife and National Parks Act.

A difference is made in the case of vehicles that have been used in the commmission of an offence, the court having discretionary powers as to the confiscation of these.

The proceeds of confiscations accrue to the Game Department.