THE CONTROL AND REGULATION OF ELEPHANT SPORT

HUNTING IN ZAMBIA.

SIMBWALANGA ZHUNGA A.

(29091144)

An Obligatory Essay submitted to the school of Law of the University of Zambia in partial fulfillment of the requirements for the award of the Degree of Bachelor of Laws (LLB).

The University of Zambia

School of Law

P.O.Box 32379

Lusaka.

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DECLARATION

I Simbwalanga Zhunga A., of computer number 29091144, do hereby declare that the contents of this Dissertation are entirely based on my own findings and that I have not in any respect used any person’s work without acknowledging the same to be so.

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Abstract

This dissertation considers the control and regulation of elephant sport hunting in Zambia. In approaching the subject matter of the research, the essay starts by examining the reasons surrounding the justification for the control and regulation of elephant sport hunting. Moreover, the essay enquires roles played by various agencies and legislation in Zambia and makes an observation whether the objectives of employing the current regulation are realized.

The Zambia Wildlife Authority faces problems of over hunting and illegal hunting through none adherence to weak regulations that have been set. Through desk research and interviews conducted in this field it was discovered that licensing was inadequate and hence needs re-enforcement through the incorporation of other agencies such as the Zambia Environmental Management Agency. The gradual loss of elephants in their habitats through such sport activities if not checked can cause the depletion of the natural resource thereby affecting foreign exchange and the eco-system as a whole in an adverse manner.

Lack of enforcement of the regulation and controls has caused the perpetration of the over hunting since people hunt with the view that once caught the penalty may be something sufferable. Lack of enforcement can be attributed to lack of strength on the part of the legislation and in fact there are no pronounced requirements for one to follow when engaging in elephant sport hunting.

As such, this essay recommends the cultivation of political will by government which will eventually result in an effectual legislation aimed at the proper control and regulation of sport hunting. Once control and regulation of sport hunting properly and effectively employed, its role, in the tourism and trade will become more pronounced and recognized.
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DEDICATION

To my father and mother Mr. and Mrs. Z.E. Simbwalanga, brothers and sisters, I say thank you for always teaching and believing in me that I can achieve all things I want in life through hard work. I can never thank you enough, but whole-heartedly wish you God’s blessings. To my friends Kelly Kapianga, Raphael Chilala, and my roommates I say it would have been hard without you. Lastly and in a very special way, Mr. & Mrs. K. Kaunda, you are great.
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LIST OF ABBREVIATIONS AND ACCRONYMS


2. **HC**- High Court for Zambia.

3. **SC**- Supreme Court of Zambia.

4. **ZAWA**-Zambia Wildlife Authority.

5. **ZEMA**-Zambia Environmental Management Agency
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CHAPTER ONE

1.1 Introduction.

Sport hunting is the art of pursuing and killing wild game animals simply for the thrill of the chase, or for the enjoyment of outdoor life or in order to provide food. Elephant Sport Hunting in Zambia is regulated according to the standard set by both the local and international laws and regulations. Zambia Wildlife Authority (ZAWA) and safari hunting operators held a meeting in 2007 where ZAWA expressed their wish to make changes to the Statutory Instrument\(^1\) so that parts of the elephants, other than their tusks, could be exported. Some of the other issues that were discussed and enabled change of the regulation are that elephants needed to be killed so as to provide income for communities, and that the more than hundred elephants shot to protect crops should be sport hunted so as to provide additional benefits.

1.2 Problem Statement.

The Zambia Wildlife Authority (ZAWA) has had problems on the illegal killing of elephants by poachers. There has been no proper regulation and enforcement of the regulation on elephant hunting for the safari hunters and other hunters. The current problem with the Zambian Wildlife (Elephant Sport Hunting) Regulations seems to be that sport hunting has been cited to be a major cause of elephants deaths\(^2\) in the world and Zambia is not an exception and yet this regulation lack enforcement and mandate in the Zambian jurisdiction. Zambia risks losing a great number of elephants with time because the regulation does not have a proper enforcement mechanism that addresses real issues of licensing and control of Elephant Sport Hunting. There is a need to review the controls and regulation that governs the Elephant sport hunting in Zambia.

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\(^1\) No. 40 of 2005, The Zambian Wildlife (Elephant Sport Hunting) Regulations

1.3 Objectives.

1. The main objective of this research is to carry out an assessment of the controls and regulations of The Zambia Wildlife (Elephant Sport Hunting) Regulation No. 107 of 2010.

2. To measure the effectiveness and adherence of the provisions of the regulations to local and international instruments.

3. To analyze the impact the regulations have on the preservation and protection of the wild fauna of elephants.

4. To provide recommendations on the control and regulation of elephant sport hunting.

1.4 Research Questions

The following research questions will be used in order to meet the objectives of the study;

1. Is the Zambia Wildlife (Elephant Sport Hunting) Regulation serving its purpose in Zambia with respect to curbing poaching?

2. Does the regulation empower the officers and the courts to deal with the intended protection and control of the Elephant Sport hunting and how do courts deal with cases violating the regulation and the Zambia Wildlife Act?

3. Has government and ZAWA enacted a deliberate law and/or provision intended to improve the monitoring of elephant sport hunting, is it being achieved and are the provisions of the regulation being implemented or are they merely counterfeit?

4. How has the regulation or the main Act covered the aspect of international Sport hunters as they compare to the local hunters?
1.5 Significance of the Study.

The research seeks to explore the elephant sport regulation that was enacted in 2010\textsuperscript{3} for the purposes of making some serious theoretical contribution to the law of hunting and regulations of the same. This research work should also be able to yield practical results by ensuring that natural resources are preserved through able regulations. Finally, this should lead to zero poaching, controlled and licensed sport hunting.

1.6 Research Methodology

This research is a desk research. Descriptive research will be used because the data is qualitative in nature. The data will be collected through qualitative research methods or statistics which will eventually be analyzed and completed by descriptive analysis. Data will be collected through simple interviews and questionnaires to the policy makers at the Ministry of Tourism, Information and Broadcasting and the Zambia Wildlife Authority officers.

1.7 Reasons for Control of Elephant Sport Hunting.

Unfortunately many experienced hunters feel that the ultimate experience for trophy hunting is to go after elephants. In most parts of the world including Zambia, elephants are a protected game. While the hunter may get a trophy to mount on their wall, they are also destroying a very valuable part of the environment and its history.\textsuperscript{4} Each one of these animals that is senselessly killed out there brings them one step closer to extinction.\textsuperscript{5} Due to this major reason, the international instrument\textsuperscript{6} was enacted in furthering protection of some wild species.\textsuperscript{7}

\textsuperscript{3} The Zambia Wildlife (Elephant Sport Hunting) Regulation
\textsuperscript{5} MacKenzie, "African countries get together to save wildlife."
\textsuperscript{6} Convention on international trade on Endangered Species of Flora and Fauna (CITES)
\textsuperscript{7} Clover, "African Ban on Ivory Trade."
According to Clover,⁸ the main reason that elephants have been hunted is for their ivory. This is worth a lot of money leading to huge numbers of elephants to be slaughtered in order to be able to cash in on such a business. Early attempts to enact laws in some jurisdiction⁹ to remove ivory tusks and to leave the elephants alive didn’t work because elephants were simply too aggressive for this type of process and it was too dangerous for humans to take part in.¹⁰

1.8 Zambian’s Polities of Wildlife Legislation

The wildlife legislation that was in existence in British-controlled Northern Rhodesia laid the foundation for a national conservation policy that effectively alienated the one group of individuals with the greatest power to reduce the future desecration of wildlife, including elephants. In Zambia, for example, many activities of the British colonial government in Northern Rhodesia, such as implementing hunting quotas and license fees, restricting access to guns and ammunition, and establishing protected areas, effectively excluded Africans from most legal uses of and control over wildlife.¹¹

In many ways, the emergence of wildlife policy in colonial Zambia excluded the local residents from participating in the wildlife economy, thereby encouraging the establishment of illegal activities. A number of conservationists have argued that unless revenues from wildlife tourism are returned to local communities, there will be little to no incentive for local residents to conserve potentially endangered species.¹² The effectiveness of regional agreements has also

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⁸ Clover, "African Ban on Ivory Trade," P. 115
¹⁰ Gibson, "Killing animals with guns and ballots". P.32
¹¹ No. 40 of 2005, The Zambian Wildlife (Elephant Sport Hunting) Regulations
¹² Cohn, R., "The people’s war on poaching." (India: Audubon Printers, 1994) at pp.70-85.
been limited because of disagreements on implementation, trans-national political issues, and lack of adequate financial support for implementation.\textsuperscript{13}

In January 2011, Zambia held talks with Malawi and Namibia on establishing an extradition treaty to enable the countries to punish cross-border poachers; however, the treaty remains unsigned as specific negotiations continue. The treaty does not seem to take effect in the light of the current Republican President’s naturalist’s view that animals are not to be more important than people.\textsuperscript{14} In 1995, Zambia, Kenya, Tanzania, Uganda, South Africa, and Swaziland signed the Lusaka Agreement which shall "set up a unit to fight poaching and smuggling of endangered wildlife on the continent.\textsuperscript{15} These international agreements have been less effective due to different state’s wildlife ideologies and policies. For example, a report by the African Elephant Specialist Group, which is responsible for monitoring the conservation of the elephants, concludes that elephant poaching has increased despite the 1989 international ban on ivory trading.\textsuperscript{16}

In 1992, Zambia launched an anti-poaching drive that led to the arrest of over 1,500 people and the confiscation of nearly 1,200 weapons used to poach elephants. Although the poaching has been reduced in Zambia, a report released in early 1994 concluded that despite these arrests, poaching is on the rise in Zambia.\textsuperscript{17} Other policies aimed at curbing elephant poaching involved making the animals less valuable for poachers. Others have argued that it is corrupt government

\textsuperscript{13} No. 40 of 2005, The Zambian Wildlife (Elephant Sport Hunting) Regulations
\textsuperscript{14} No. 40 of 2005, The Zambian Wildlife (Elephant Sport Hunting) Regulations.
\textsuperscript{15} Clover, "African Ban on Ivory Trade."
\textsuperscript{16} No. 40 of 2005, The Zambian Wildlife (Elephant Sport Hunting) Regulations
officials, often themselves involved in illegal poaching activity, that undermine the efficacy of anti-poaching laws.\textsuperscript{18}

1.9 Effects of the Regulations.

The development of many synthetic materials that hid to the cry of environmental legalists, ivory is not longer used to make many forms of art or even piano keys. However, there is still a huge use for it in other western countries on the black market. The ivory that is now taken from the elephants draws a huge price due to the limited supply of the commodity on the market. This means that illegal poaching of these elephants for the above reason continues to take place and most states have regulated against sport hunting although it has not yielded much on reduction of poaching or illegal hunting by offensive safaris.\textsuperscript{19}

There simply isn’t enough manpower or ability to enforce laws well enough to protect the elephants. It is important that the public report any acts of elephant poaching that they are aware of.\textsuperscript{20} There also needs to put pressure on law enforcement to place stricter fines and jail sentences on those caught with the ivory. When that occurs they will be less likely to take the risk of transporting ivory for someone else.\textsuperscript{21}

The governments in Africa need to see the significance of protecting all remaining elephants as well. These governments need to put an end to the availability of legal hunts for elephants, and this does affect the regulation\textsuperscript{22} that was enacted in Zambia. However, governments are making a

\textsuperscript{18} Williams, "Illegal exploitation of black rhinoceros and elephant populations.
\textsuperscript{19} Williams, "Illegal exploitation of black rhinoceros and elephant populations
\textsuperscript{20} Williams, "Illegal exploitation of black rhinoceros and elephant populations
\textsuperscript{22} Clover, "African Ban on Ivory Trade."
lot of money off of it as revenue due to people traveling from all over the world to take part in such adventures but they still need to put up measures to regulate the sport.\textsuperscript{23}

1.10 Elephant Sport Hunting Regulation in Zambia.

Zambia Wildlife Authority is regulated by the Act\textsuperscript{24} which gives the minister power to make regulations as they relate to wildlife. Apart from this main Act, Zambia’s Wildlife is regulated by many other statutes such as the Wildlife Hunting regulation, the Wildlife (fire arms hunting) regulations and many more. The control of the hunting of elephants in Zambia, therefore, was brought into effect through the enactment of the Elephant Sport Hunting Regulation. Zambian elephants have faced rapid decline since the 1970’s amid escalating ivory hunting from the time this regulation was enacted.\textsuperscript{25}

In 2002, Zambia made an application to a Convention on International Trade in Endangered Species (CITES) panel which declined an application filed to drop the elephants in its level of protection which would facilitate sport hunting of the animals by foreign travelers.\textsuperscript{26} Animals offered such protection are declared highly endangered so as not to allow them to be hunted and traded of themselves and their respective products whilst those less protected are allowed to be hunted at a very minimal level. The protection of elephants was discussed in \textit{U.S. Secretary of Interior & Department of Fisheries and Wildlife v. Clarkson \& three others}.\textsuperscript{27} This is an American case in which four Americans were given a concession to sport hunt elephants in Zambia but they were refused to import them into America because the African elephant is listed

\begin{footnotes}
\item[26] Zambia Wildlife Act, Cap 316 of the Laws of Zambia.
\item[27] (2008) 101 US 99
\end{footnotes}
in the restrictive appendix of CITES, which entrusts the U.S. government to decide whether proposed importation of a species would hurt that species’ survival.

The puzzle has been how Zambia has managed to enact such regulations in defiance with the international regulation. A study has shown that this is the more reason why there is little litigation on this matter because the interest forwarded has been on money rather than the protection of natural resources. This has led to the exposure of the Act not being so forceful on foreign hunters and yet very tough on locals as shown in the following case.

In Storebough Steven v. The People expert Siame, a Zambian case where a Russian got a concession for sport hunting of one elephant. He was later discovered with an elephant and antelope together for which he had no permission to hunt such trophy. The High court found the appellant to have abrogated the Wildlife Act and was ordered to pay some penalty units according to the provision of the Act. This case demonstrates that there has been very loose enforcement of wildlife laws. Firstly the penalty is simply a fine and any person with money can manage to take a risk knowing that when caught he can pay the penalty units. Wildlife research data has shown that it is very easy now to get away with it when you abrogate the wildlife laws especially if you are an international sport hunter.

There are very few cases that have reached court under the Wildlife Act for the reason that the Act and its regulation does not provide for equivalent consequences for having destroyed wild fauna. Some animals take so long to grow, yet a sport hunter only destroys such game in a short of a bullet. Realistically, it takes more than a hundred years for an elephant to reach an age that it

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28 Convention on International Trade of Endangered Species of fauna and flora (CITES)
is able to have the ivory fit for sport. Despite all this period, the sport hunter who is interested in the ivory will purchase a concession at a fee not even close to the proportionate number of years the elephant lived for the ivory, sometimes leaves that animal without people to eat.

The Zambia Elephant Times, recorded that some safari hunters who claim to be conservators gun down most of the game which include the elephants. It is even disheartening sometimes to find a very old elephant struggling for life if it is not yet dead just for the sake of the ivory. The perpetrators to this cause are usually not the locals due to the fact that their interest does not only end at the ivory but also the meat for food. Majority of the Safari hunters are interested in the ivory illegally hunt the elephants when they have been given concessions due to poor laws and lack of proper enforcement mechanisms to control and regulate elephant sport hunting. In fact, elephants are classified as highly endangered and trading in ivory should be prohibited. The rate Zambia is moving on issuing sport hunting concessions is alarming.\textsuperscript{32}

More than 12,000 elephants in the North Luangwa National Park in Zambia since the 1970s have been killed. Both the Zambian government, with support from other countries and international agencies have attempted to halt the continued poaching of rhinos and elephants. There has been some success in reducing the demand for ivory, especially through the 1989 ban on ivory sales and strengthened wildlife legislation, including punishment for poaching offenses. In 1994, nine countries (including Zambia) signed a poaching agreement to boost cross-border liaison by providing a legal framework for a multinational task force of African wildlife law enforcement officers to investigate international smuggling and poaching of Africa's wildlife animals.\textsuperscript{33}

\textsuperscript{33} MacKenzie, "African countries get together to save wildlife."
CHAPTER TWO

2.0 INTERNATIONAL ASPECTS OF ELEPHANT SPORT HUNTING

2.1 Introduction

The control of elephants at national level shows adherence both to the local regulations and International Instruments concerned with the control and regulation of elephants. Having discussed the domestic control of elephant sport hunting, regard must be had to the international regulations of the elephants. The international trade in wildlife is regulated by the Convention on the International Trade in Endangered Species (C.I.T.E.S.) [a multinational protégé (charge) of the United Nations]. The aim of C.I.T.E.S. is to establish worldwide controls over wildlife that require protecting due to declining populations. Headquartered in Switzerland, C.I.T.E.S., delegates meet every two years to review and increase, decrease or maintain the level of protection on individual species. C.I.T.E.S. regulations do not control a country's internal commerce and measures, only the international trade and deliberations between member nations.

2.2 International Regulations on Elephant Sport Hunting

The world continues to face social problems resulting from increasing population growth that has seen a doubling of the globe’s human population over the last two decades. At the same time, the continent continues to get poorer due to a limited industrial and tertiary industry base, and the ability to create formal wage employment.¹ Within this socio-economic context, many countries

¹Bulte EH, van Kooten GC. 'Economics of Antipoaching Enforcement and the Ivory Trade Ban'. American Journal of Agricultural Economics (1999); PP. 453-466.
are endowed with abundant natural resources that have traditionally sustained the livelihoods of many of the population especially the Southern African region’s people.²

Governments have long recognized the importance of natural resources and wildlife populations in generating substantial revenues to the national economy through wildlife-based tourism.³ As human populations and poverty levels have grown, however, the interests of people struggling to eke out a living, and those of government, have increasingly come into conflict.⁴ In desperation, people have increasingly exploited a fast disappearing resource due to the absence of alternatives in the form of formal wage employment or informal micro-enterprise activities. In many cases this has been exacerbated by inappropriate wildlife policy and land tenure laws, which have alienated local people from the wildlife resource and its wise management.⁵

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an agreement between member nations, or parties, to regulate the international trade of wildlife. Currently, there are 173 parties to the Convention who have agreed to help protect more than 30,000 species of plants and animals. Parties fulfill their obligations through the following provisions;⁶

a. by passing national legislation that provides the legal framework and funding necessary to implement the Convention's recommendations,

b. by ensuring the appropriate agencies are involved with data collection and law enforcement, and,

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²Bulte, "American Journal of Agricultural Economics", at pp. 453-466
⁴Bulte, "American Journal of Agricultural Economics" at pp. 81:453-66
⁶Bulte, "American Journal of Agricultural Economics"
c. by reporting annually to the CITES Secretariat on measures taken to fulfill international obligations and on the number of specimens traded.7

The power of CITES rests in its ability to impose restrictive sanctions on the trade of protected species by countries who are not complying with the Convention. Essentially, these sanctions can hurt the ability of non-compliant countries to profit from the regulated wildlife market.

The Convention on International Trade in Endangered Species (C.I.T.E.S) secured an agreement in 1989 among its member states to ban the international trade in ivory. This disruption of the international ivory market was intended to reverse a sharp decline in the African elephant population, which resulted from widespread poaching for ivory in the previous decade. This is reflected in Article III, IV and V of the CITES which has described the trade in ivory at international level illegal except for countries that have been allowed and listed in the schedule of the convention of which Zambia was not part of until after recently in 2004.8

Sport hunting has played an integral role in the reduction of the presence of elephants in most countries in the globe.9 Whilst non-consumptive wildlife viewing has certainly played a role in securing the future of wildlife, sport hunting, as a high-return, low-impact wildlife use, has been responsible for providing incentives to sustainably manage and conserve wildlife throughout larger, more remote, areas of the region.10

The sport hunting industry is also extremely competitive within the globe, with considerable numbers of safari operators vying for a small and finite number of hunting concessions.11 The pressure to provide quality trophies to hunting clients who only have a few days to hunt in such a competitive environment often leads safari operators to step over the mark with regards to

7 Bulte, “American Journal of Agricultural Economics.”
securing the better hunting concessions, and in ethically hunting trophy animals. Indeed, the industry has suffered in the past from such abuses and mismanagement, which led to southern Africa region banning the sport, with Tanzania banning sport hunting between 1973 and 1977, Kenya banning the industry in 1978, and, more recently, Zambia imposing a moratorium on sport hunting in 2000.\footnote{Reeve R. "Wildlife Trade Sanctions and Compliance: Lessons from the CITES Regime". International Affairs 2006;82:881-97}

\section*{2.3 CITES resolutions on Elephant Sport Hunting}

By definition, CITES does not specifically prohibit trade in ivory within the borders of a country. According to Article XIV, fundamental Policies and law enforcement practices governing the domestic control of elephants and sale of ivory are determined at a national level. This means that each country is responsible for the presence or absence of an ‘unregulated’ market within its borders. These unregulated markets serve international tourists looking for souvenirs and the small numbers of local people wanting ivory for their personal use.\footnote{Schneider JL. "Reducing the Illicit Trade in Wildlife: The Market Reduction Approach". Journal of Contemporary Criminal Justice 2008;24:274-95} More problematic is that the thrill of the hunt in these markets by hunters looking for raw ivory for re-sale in other markets throughout Africa and Asia is escalating.\footnote{Schneider JL. Journal of Contemporary Criminal Justice 2008; 24:274-95.} Using Zambia for a study, researchers concluded that the ban on sport hunting was helping to conserve elephants, but that for many countries, current elephant populations are higher than economically optimal.\footnote{Reeve R. "Lessons from the CITES Regime." at pp 881-97}

\subsection*{2.3.1 The shift of Elephants to most endangered species}

The species covered by CITES are listed in three Appendices, according to the degree of protection they need.
a. Appendix I include species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.

b. Appendix II include species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.

c. Appendix III contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade.

This shift and listing of the elephant in to appendix I did not favor some nations. The government of Zambia has proposed that the elephant be down-listed from Appendix I to Appendix II within their countries, as the population of elephants no longer meets the biological criteria for listing in Appendix I. That is:

i. The wild populations are not small.

ii. The distribution is not restricted to an area and

iii. The populations in the wild have increased considerably in the last two decades and continue to increase.

2.4 CITES and the Law on Elephant Sport Hunting

The CITES regulation was intended to protest the wild flora and fauna. This means that any adherence will result in such benefits as having increased biodiversity. Therefore, any act against the agreement is treated as illegal trade in wildlife. The agreement has gone to extents that it describes any conduct that is likely to reduce the wild flora and fauna as a precarious activity. Examples of such activities include elephant sport hunting because it presents a threat to this rare

\[16\text{Bulte, "American Journal of Agricultural Economics"}
\]

species and thus to biodiversity and, for that reason, has increasingly attracted the attention of conservation agencies.\textsuperscript{18}

During the late twentieth century, these agencies have exerted pressure on national governments and international agencies to tighten laws and increase legal penalties for wildlife crimes. Many countries employ forestry and fisheries officers to enforce the laws and have created specialized law enforcement and customs units to arrest traffickers and confiscate the plants and animals they hold. These efforts sometimes lead to violence. For example, national park rangers in some African countries have engaged in armed conflict with poachers, with many killed on either side, in order to protect the animals and safeguard tourism. Statistics show that out of sixty-seven foreign concessionaires in sport hunting in 2009, eleven were deported to countries of origin because of having contravened the agreement and were involved in an illegal act classified by the rangers as similar to poaching. The statistics further show that the number of such offences is increasing each year and hence the need to tighten the law regulating the sport hunting of elephants.\textsuperscript{19}

Until the recent emergence of ‘green criminology’ at international level, much of this activity has gone unexamined by criminologists. In fact, criminology has much to offer the study and prevention of wildlife crime. It can draw on a fund of relevant knowledge about the effectiveness of legal sanctions, deterrence and prevention, and it has a wealth of experience in developing and evaluating solutions to specific forms of crime.\textsuperscript{20}

\textsuperscript{18}Stiles D. "Environmental Conservation" at pp309-21.


The present chapter, which examines the effectiveness of the CITES ban on the international trading of ivory and activities that endanger wild flora and fauna such as sport hunting, is conceived within the framework of situational crime prevention—an approach that seeks to reduce opportunities for specific forms of crime. More than 200 evaluations of situational crime prevention projects have been published, many showing large reductions in the specific forms of crimes addressed with only limited displacement.\textsuperscript{21}

The wider application of situational prevention has resulted in successive expansions of a classification of opportunity-reducing techniques developed to assist practice and 25 techniques have now been identified. One of these, ‘disrupting markets’ for stolen goods, is of particular relevance to the present study because the ban on ivory sales was intended to disrupt the international market for ivory and thereby reduce the rewards of activities that endanger wild species.\textsuperscript{22}

This is rather distant from the problem of elephant poaching and hunting, but Schneider\textsuperscript{23} has argued that disrupting markets has considerable promise for dealing with the illicit trade in wildlife. To anticipate the results of the ban on activities endangering wildlife, it was found that the CITES action as provided in Articles III, IV and V to disrupt the international ivory and sport hunting market was partly successful. The overall number of elephants in the continent increased, but there was considerable variation among the thirty-seven affected countries. Poaching declined sharply in some, but was little changed, or even increased in others. It further

\textsuperscript{23}Schneider JL, "Reducing the Illicit Trade in Wildlife: The Market Reduction Approach". Journal of Contemporary Criminal Justice 2008;24:274-95
found that this variation in the effects of the ban can be partly explained by the differential access of countries to unregulated, domestic markets for ivory.\textsuperscript{24}

2.4.1 CITES and the ban on the international trade in ivory

Article III, IV and V of the CITES list different Species under its protection and are listed in the three appendices to the CITES convention respectively. Appendix I list species threatened with extinction. Commercial trade in these specimens is strictly prohibited, whilst other trade largely in the form of hunting trophies or for scientific and educational purposes is tightly controlled. Appendix II lists species not necessarily threatened with extinction, but in which trade must be controlled in order to ensure their survival.\textsuperscript{25}

It is possible to argue that eco-tourism brings the most direct benefits to a handful of wealthy people from the developed world and some indirect benefits to the world at large through the maintenance of bio-diversity. These benefits are subsidized by poor people in the destination countries whose livelihoods are constrained through controls on farming, grazing and the taking of bush meat, and whose crops are sometime destroyed by the animals tourists come to see. It is not simply enough, therefore, to promote tourism to African countries, desirable as this may be. Ways must also be found of bringing some tangible benefits of tourism to local people. This is a topic that goes well beyond the scope of this research but to the extent of wildlife science and natural resources, which is concerned with situational measures to prevent poaching and other activities.\textsuperscript{26}

\textsuperscript{24} Schneider JL, Journal of Contemporary Criminal Justice. (2008);24:274-95

\textsuperscript{25} Bulte, American Journal of Agricultural Economics 1999a;81:453-66

2.4.2. Domestication of the CITES

CITES is an international, voluntarily agreement between countries (or parties) the aims of which are to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Although legally binding on the parties it does not take the place of national laws. Instead it provides a framework to be respected by each Party, which has to adopt its own domestic legislation to ensure that CITES is implemented at the national level as stipulated in Article XIV of the convention. CITES works by subjecting international trade in specimens of selected species to certain controls. These require that all import, export, re-export and introduction from the sea of species covered by the Convention has to be authorized through a licensing system.

CITES has been ratified by Zambia though there is an ongoing debate to domesticate the convention. However, some provisions have been adopted in a number of regulations. For instance, Sport hunting of elephant works under a quota system following the provision of CITES resolutions in Article VIII which provides that, The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade and activities endangering wild species in specimens in violation thereof. These shall include measures such as sport hunting. The tusks are stamped and exported for personal use only, in accordance with Article III of the Convention. CITES sanctioned sport hunting quotas are less than the 0.5% of standing population guideline, which could be 500 animals per annum at the current elephant population in Zambia thereby adhering to the convention’s Article VIII.

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Following these provisions Zambia has in fact established a very conservative quota of only 200
trophy bulls per year, 0.2% of the total population. In addition to this, regulations further limit
the trophy off take to bull elephant with tusks that conform to a regulated weight or length.
Consequently, the harvest is always less than quota.\(^\text{30}\)

2.4.3 Reasons why Sport Hunting is Unnecessary.

Although it was a crucial part of humans’ survival 100,000 years ago, hunting is now nothing
more than a violent form of recreation that the vast majority of hunters do not need for
subsistence. Hunting has contributed to the extinction of animal species all over the world,
including the Tasmanian tiger and the great Zambian Rhinoceros.\(^\text{31}\) Less than 5 percent of the
world’s population hunts, yet hunting is permitted in many wildlife refuges, national forests, and
state parks and on other public lands. Almost 40 percent of hunters slaughter and maim millions
of animals on public land every year, and by some estimates, poachers kill just as many animals
illegally.\(^\text{32}\)

Many animals suffer prolonged, painful deaths when they are injured but not killed by sport
hunters. Research estimates that 50 percent of animals who are shot with crossbows are wounded
but not killed. A study of 80 radio-collared white-tailed antelopes (Deers) found that of the 22
deer who had been shot with “traditional archery equipment,” 11 were wounded but not
recovered by the sport hunters. A Southern Africa Development Community (SADC) study of
elephants hunting found that 11 percent of elephants who had been killed by hunters died only
after being shot two or more times and that some wounded elephants suffered for more than 15


minutes before dying. This shows how painful the sport is on animals and the more need for proper laws and regulations to achieve biodiversity protection.³³

Hunting disrupts migration and hibernation patterns and destroys families. For animals like elephants, who mate for life and live in close-knit family units, hunting can devastate entire animal communities. The stress that hunted animals suffer caused by fear and the inescapable loud noises and other commotion that sport hunters create also severely compromises their normal eating habits, making it hard for them to store the fat and energy that they need in order to survive the cold.³⁴

The delicate balance of ecosystems ensures animals’ own survival if they are left unaltered. Natural predators help maintain this balance by killing only the sickest and weakest individuals. Sport hunters, however, kill any animal especially the strong one for they make a good trophy and poachers kill any animal whose head they would like to hang over the fireplace including large, healthy animals that are needed to keep the population strong but this against the spirit of the CITES in Article VII which provides that, Where a Management Authority of the State of export or re-export is satisfied that a game was acquired as against the set requirements of the present Convention applied to that game, the provisions of Articles III, IV and V shall apply to that game where the Management Authority issue s a certificate to that effect. The said provisions above do not allow the hunting of animals in sanctuaries, the frail lactating and young ones. Elephant sport hunting is believed to have increased the number of tusk less animals in Africa, and in Canada, hunting has caused elephants’ tusk size to fall by 25 percent in the last 40

years; Nature magazine reports that “the effect on the populations’ genetics is probably deeper.”

Even when unusual natural occurrences cause overpopulation, natural processes work to stabilize the group. Starvation and disease can be tragic, but they are nature’s ways of ensuring that healthy, strong animals survive and maintain the strength level of the rest of their herd or group. Shooting an animal because he or she might starve or become sick is arbitrary and destructive and therefore laws should not condone such or at least stiffer one be put in place for proper mature regulation.

Not only does “sport” hunting jeopardize nature’s balance, it also exacerbates other problems. For example, the transfer of captive-bred animals between countries for the purpose of hunting is believed to have contributed to the epidemic spread of chronic wasting disease. As a result, countries spend millions of dollars to “manage” elephant populations. Another problem with hunting involves the introduction of exotic “game” animals that, if they’re able to escape and thrive, pose a threat to native wildlife and established ecosystems.

Hunting accidents destroy property and injure or kill other animals that were never intended which could have been found together with the targets. In some instances domestic animals such as cows, dogs, cats, and hikers have been injured. Others injure fellow hunters due to some circumstances during the thrill of the hunt. According to the International Hunter Education Association, there are dozens of deaths and hundreds of injuries attributed to hunting in the

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36 John Swinconeck, “Controlled Hunt May Be Solution to the Excess of ’Deer at Our Doorstep,” York County Coast Star 27 Jun. 2002
37 John Swinconeck, York County Coast Star, 27 Jun. 2002
developing world every year and that number only includes incidents involving humans.\textsuperscript{40} It is an ongoing problem, and one warden explained that “sport hunters seem unfamiliar with their firearms and do not have enough respect for the damage they can do. This entire problem needs to be included with tenacity in the law regulating sport hunting in domestic countries as it is reflected in the CITES in Article XII by providing that parties to the convention should endeavor to allow fires in the wilderies at the right time of the season as bush fires have the potential of depleting the natural resources. This includes elephants and it has been integrated in the elephant sport hunting regulation in Zambia.\textsuperscript{41}

Steve Best and Derrick Jenssen\textsuperscript{42} comments on sport hunting in the famous South African nature magazine as recorded below:

"If monetary value is attached to something it will be exploited until it’s gone. That’s what happens when you convert living beings to cash. That conversion, from living forests to lumber, schools of cod to fish sticks, and onward to numbers on a ledger, is the central process of our economic system."\textsuperscript{43}

South Africa is known to the world not only for its magnificent wildlife and parks, but also for the trafficking in endangered species, the huge gaming and hunting industries, and the brutal killing of elephants for ivory and body parts. Throughout the African continent, the park system

\begin{footnotes}
\item[40] International Hunter Education Association, "Hunter Incident Clearinghouse," 30 Mar. 2008
\item[41] International Hunter Education Association, 30 Mar. 2008
\end{footnotes}
and state operate within a global capitalist marketplace where the name of the game is profit and
growth.

One of the richest “resources” in South Africa’s possessions is the wildlife that roams the plains.
Yet rather than respecting the intrinsic value and rights of animals, or even adopting the
“enlightened anthropocentric” policy of “ecotourism”, South Africa has chosen to auction wild
animals such as elephants and lions to the highest bidder.\textsuperscript{44} South African government and
conservation organizations operate in an anarchistic environment, flouting the national and
international laws that ever so feebly regulate the trafficking in animals and endangered species.
Governments, conservation organizations, tourist offices, the Department of Environmental
Affairs and Tourism, and all provinces enable and support the gaming, hunting, and ivory
industries that kill tens of thousands of animals each year for “sport” and profit.\textsuperscript{45}

For a handsome fee of $20,000 to $50,000, tourists (such as stream in from Japan, the US, and
Europe) can shoot about any species they want. Most notoriously, lions and other animals are
killed in “canned hunts” that confine animals (often domesticated and semi-drugged) within
fenced enclosures. The outcome is guaranteed, and the mighty warriors go home with a trophy
to mount on the wall or decorate the floor.\textsuperscript{46} This, however, is so opposed to what is happening
in Botswana where sport hunting has been regulated to almost zero because of a strong
legislation on hunting in general and sport hunting in particular.\textsuperscript{47}

Westerners would be astonished to realize the degree to which African “wildlife management” is
a deceptive and fraudulent charade. Quite commonly, animals are not protected in the park

\textsuperscript{45} International Hunter Education Association, 30 Mar. 2008.
\textsuperscript{46} International Hunter Education Association, 30 Mar. 2008.
\textsuperscript{47} International Hunter Education Association, 30 Mar. 2008.
system, but rather are temporarily stored there as resources for future use. Most countries have a system of supplying animals such as rhinoceros, elephants, and lions to private landowners and hunting operators, while displaying complete indifference as to whether they end up in a city or roadside zoo, a circus, a laboratory, a canned hunting compound, or a slaughterhouse. The Director of Environmental Affairs and Tourism (SADC), Mohammed Valli Moosa, once said, “I see no reason why we shouldn’t be able to make an income out of these [parks].”

Within this system that serves elite interests, “conservation” organizations are fronts for animal exploiters. With the state and animal exploiters, “conservationists” advocate “sustainable use” policies that appear to be responsible “environmental management,” but in reality mask unsustainable levels of killing that are driving numerous species to the brink of extinction.

2.5 Conclusion
International control and regulation of sport hunting is regulated by the Convention on the International Trade in Endangered Species (C.I.T.E.S.) whose aim is to establish worldwide controls over wildlife that requires protection due to declining wild flora and fauna populations. The power of CITES rests in its ability to impose restrictive sanctions on the trade of protected species by countries who are not complying with the Convention. Any act against the agreement is treated as illegal trade in wildlife, the agreement has gone to extents that it describes any conduct that is likely to reduce the wild flora and fauna as a precarious activity. There has to be a proper adjustment and tightening to the local laws in individual countries so that there is able control and regulation on sport hunting.

CHAPTER THREE

3.0 THE COMPARISON OF THE REGULATION TO OTHER LEGISLATION IN ZAMBIA.

3.1 Introduction

Elephant sport hunting regulation is an instrument that is made pursuant to the provision of the Zambia Wildlife Act of Parliament. Thus, the elephant sport hunting instrument is expected to be conformed in accordance with the main Act empowering it. Furthermore, the Elephant Sport hunting regulation has to be supported by all other Acts and regulations that address the interests of this particular regulation. Apart from the Zambia Wildlife Act, some other principal regulations that are going to be discussed in this chapter that are in line with the Elephant sport hunting regulation include Hunting Firearms Regulation, General Hunting Regulation and Hunting Licenses Regulation. The main objective of this research is to carry out an assessment of the controls and regulations of The Zambia Wildlife (Elephant Sport Hunting)\(^1\) as stated in the paragraph of objectives in chapter one. In order to achieve this, we need to measure the effectiveness and adherence of the provisions of the regulations to local statutes. Furthermore, there has to be an analysis for the impact the regulations have on the preservation of elephants which is the principal aim of all the regulations.

3.2 History of the enactment of the Sport Hunting Regulation

Perhaps one of the eldest activities on the face of the planet is hunting. The history of hunting, as a result, is also one of the most diverse. Hunting for food has always been something that human

\(^1\) Regulation No. 107 of 2010
kind has had to do, dating back to the beginning of any civilizations known to man. As a result of this, there have been thousands of weapons and devices used to hunt.\textsuperscript{2} The history of hunting is far more complicated than any other history in the world, as it stretches so far into the past. In order to understand this history, one needs to study the era where hunting has been a major part of life. While there are exact time lines of when certain guns or weapons were produced, understanding the importance of hunting should be done on a far broader scale especially the regulation and legal component of hunting, which is the interest of this study.\textsuperscript{3}

Prehistoric humans constantly struggled with wild-life. Both sides were sometimes predators and sometimes prey, but humans quickly tipped the balance in their favor with two big advantages which are, superior intellect and weapons. Many of the large mammals of prehistoric times, such as mammoths, became extinct. Some archeologists, such as Dr. Brian Kooymans of the University of Calgary, believe that overhunting, in combination with climate and environmental factors, may have played a role in those extinctions. When societies became agricultural, some wild species were domesticated. These animals, such as sheep, goats, and cattle, had to be protected from wild animals.\textsuperscript{4}

As humans gained more control over nature, they began using wild animals not just as a food source but as a source of labor and entertainment. Elephants became beasts of burden. Mongooses and birds of prey were trained to be hunting assistants. Some lions, tigers, and other


\textsuperscript{3} Oldfield S. "The Trade in Wildlife: Regulation for Conservation." At p 17.

beasts were kept in cages to entertain or educate humans. Dangerous animals that could not be contained were often eliminated.\textsuperscript{5}

Other rulers restricted the hunting of the most desirable animals to the upper social classes. Under English law, wildlife was the property of royalty. Members of the lower classes were permitted to hunt only low-value animals like rabbits. Big game were reserved for the upper classes. English royalty had exclusive hunting rights until 1215, when the Magna Carta was signed. This is the trace of wildlife sport hunting on the international level.\textsuperscript{6}

3.3 Wildlife in Zambia

Problems with wildlife management plagued the first European colonists in the Northern Rhodesia. Historical records show that the colonists fought off animal predators, including wild dogs, coyotes, hyenas, and mountain lions. They also lost domesticated animals to wild predators.\textsuperscript{7} Livestock, particularly hogs, sometimes wandered away and lived in the wild. Their offspring were feral animals (animals born and living in the wild that are descendants of domesticated animals). The colonists killed wild and feral animals whenever they could because they were a threat to livestock and crops. The colonists found wild dogs to be particularly bothersome. Early governing bodies of Europeans established wildlife orders in counsel that paid people for killing wild dogs though this legislation did not last long due to the concern of local myths surrounding wild dogs.\textsuperscript{8} Southern Rhodesia had a wildlife orders in counsel which

\textsuperscript{5} Oldfield S. \textit{The Trade in Wildlife: Regulation for Conservation.} (2003) p 17
\textsuperscript{6} Oldfield S. \textit{The Trade in Wildlife: Regulation for Conservation.} (2003) p 21
persisted longer enough than the one in the Northern Rhodesia and it paid colonists and Natives for every wild dog head they presented.\textsuperscript{9}

The elephants once roamed Southern Africa in millions. Many were killed by colonists and Natives during the mid 1900s up to late twentieth century. Elephant tusks are a highly prized commodity, and the hides were valued as well for glue industries. Many elephants also died from diseases brought to this region by domestic cattle and other livestock brought by colonialists. By the beginning of the late twentieth century, fewer than 1,000 elephants were reported in some regions of National Parks in Zambia. Conservation areas established by the government protected the last remaining herds and allowed them to repopulate.\textsuperscript{10}

Late in the twentieth century people began to become aware of the value of natural resources, such as land, water, and wildlife, and worked to conserve wilderness spaces and protect them from development. Early conservationists initiated programs that helped wild animals by preserving natural habitats, but they were not always motivated by the same concerns that drove people involved in the animal welfare movement. Many prominent conservationists were avid hunters.\textsuperscript{11} For example, some enjoyed hunting big game; others also hunted and said that it gave them a deep appreciation and respect for wild animals. Many welfarists were (and are) opposed to hunting for sport. The ethical battle over hunting that began between conservationists and welfarists in the nineteenth century continues today.\textsuperscript{12}

In the late twentieth century and maiden twenty-first century dozens of wildlife laws were enacted that regulated wildlife at international and local laws have also called for amendments

\textsuperscript{9} Beine P. Ecological Economics (1999):171-81
\textsuperscript{10} Beine P. Ecological Economics (1999):171-81
and repealing. The laws established regulations regarding the importation of wildlife into the country. Many laws were designed to fund conservation efforts through hunting fees. For example, the Elephant sport hunting regulation, the Statutory Instrument\textsuperscript{13} required people to purchase a license and register the firearm and show that they were well trained in hunting before they could hunt for elephants.

This is shown in the case of \textit{Foloko Mulumbwa v. The People}\textsuperscript{14} were the applicant was convicted on counts of being in possession of a firearm and ammunition without license contrary to the Firearms Act\textsuperscript{15}, and of unlawful possession of Government trophy contrary to The National Parks and Wildlife Act\textsuperscript{16} which had the regulation on sport hunting not separated from the main Act and was later repealed and replaced by the Zambia Wildlife Act and Wildlife (Elephant Sport Hunting) Regulation No. 40 of 2005. The brief facts of this case are that a game guard testified that he was on patrol when he discovered a number of people surrounding a dead elephant. Amongst the people present was the applicant who produced to the witness an elephant license, in the name of Evans Mbwili, a rifle and two rounds of ammunition. When asked for a firearm license in his own name, the applicant was unable to produce one. The applicant gave evidence in his own defense that Evans Mbwili had asked him to act as a guide to hunt elephant for sport, and later Evans Mbwili killed one elephant and then returned to Kitwe in order to obtain a motor vehicle, leaning the elephant, the gun which was dismantled into two parts, and two rounds of ammunition wrapped in an overall.\textsuperscript{17}

\textsuperscript{13} No. 40 of 2005
\textsuperscript{14} [1981] ZR 179
\textsuperscript{15} Cap.111 of the Laws of Zambia, s.10(2)(a)
\textsuperscript{16} Cap. 316 of the Laws of Zambia. Sections. 111(1) and 142
\textsuperscript{17} \textit{Foloko Mulumbwa v. The People} (1981) ZR 179
In his judgment the trial Magistrate found that he did not believe the evidence of the applicant and his defense witness and was of the opinion that the applicant himself had killed the elephant on behalf Evans Mbwili. On appeal, it was held that the person who holds a firearm license in respect thereof may have in his possession that firearm or ammunition under instructions from and for the use of that other person for sporting purposes only without himself holding a firearm license.\(^\text{18}\)

In the twenty-first century wildlife in Zambia was fairly regulated though most of the regulations had no defined enforcement mechanisms as seen from the case of *Chisimba v. The People*\(^\text{19}\) were the appellant appealed against a sentence of forfeiture of the appellant's firearm made by a magistrate of the second class sitting at Kasempa. Counsel for the appellant submitted that there was a conflict between the forfeiture provisions under section 145 (1) and section 54 (1) of the National Parks and Wildlife Act and Firearms Act. He argued that the benefit of that conflict should be accorded to the appellant because the provisions of the Firearms Act must override the provisions of the National Parks and Wildlife Act. The court held that Section 145 (1) of the National Parks and Wildlife Act\(^\text{20}\) which provides for an order of forfeiture is discretionary while that of the Firearms Act is mandatory subject, of course, to an application by a prosecutor for such an order and therefore, there is no question of the Firearms Act overriding the National Parks and Wildlife Act. Forfeiture of arms in illegal sport hunting should be mandated by the regulation and no dependency on other Acts should be encouraged especially on such cardinal issues as unlicensed firearms.\(^\text{21}\)

\(^{18}\) *Foloko Mulumbwa v. The People* (1981) ZR 179

\(^{19}\) (2001) Z.R. 17 (H.C.)

\(^{20}\) No. 12 of 2008

\(^{21}\) *Chisimba v. The People* (2001) Z.R. 17 (H.C.)
As of 2011, many regulations and laws have been proposed dealing with the control, preservation, eradication, and management of wildlife. Some laws pertain directly to particular species such as the Wildlife (Elephant Sport Hunting) Regulation, while others address preservation of habitat and use of lands.\textsuperscript{22}

3.4 The Zambia Wildlife Act and the Elephant Sport Hunting

Prior to independence, Zambia maintained a protectionist wildlife policy that effectively separated people from wildlife through the establishment of protected area network.\textsuperscript{23} Policy was largely shaped by wildlife being owned by the State. Discriminatory legislation and heavy-handed law enforcement further alienated rural people from a resource that most relied heavily upon for maintaining their livelihoods.\textsuperscript{24} People were often dispossessed from their land for the creation of protected areas with little or no consideration given to their needs for natural resources. Further marginalization also occurred through the restructuring of land and the creation of “homelands” under the National Parks and Wildlife Commission.\textsuperscript{25} The overall result was that rural Zambians had little reason to conserve the “States” wildlife in communal areas, and numbers of elephants plummeted drastically during the 1960s due to illegal off-take for meat and trophies.

It is after the 1991 National Parks and Wildlife Act that issues of sport hunting came onto the scene of the international market because of pressure from the third world as they saw wildlife as a means of national revenue.\textsuperscript{26} There was a provision in the National Parks and Wildlife Act 1991, on section 70 which gave powers to the minister to make Statutory Instruments for the

\textsuperscript{22} Tourism Newsletter, November, 2011. P.3
\textsuperscript{23} National Hunter Education Association in Zambia, “Hunter Incident Clearinghouse,” 30 Mar. 2008
\textsuperscript{24} National Hunter Education Association in Zambia, “Hunter Incident Clearinghouse,” 30 Mar. 2008
\textsuperscript{25} National Hunter Education Association in Zambia, “Hunter Incident Clearinghouse,” 30 Mar. 2008
\textsuperscript{26} Wilberth TK. “The Status of Southern Africa Trade in Elephant and Hippo Ivory.” (Harare: TRAFFIC Southern Africa, World Wildlife Fund; 2010)
regulation of hunting of animals that are commonly a sigh of the hunters. The minister was to allow a specific number to be hunted in the particular year and this was to be monitored by the Director of National Parks.

The management became very difficult and there was a proposal that the Department of National Parks be made into a commission or an autonomous body which should look at all affairs of wildlife. In 1998, this proposal was effected when the government allowed The Department of National Parks to become an independent authority under the name of Zambia Wildlife Authority. This Body was formulated through the Zambia Wildlife Act, 1998. Section 145 of this Act repealed and replaced the three principle Acts that were regulating wildlife in Zambia and these are the National Parks and Wildlife Act, International Game Park and Wildlife Act and Plumage Birds Protection Act, Caps. 201, 202 and 203 respectively.

It is from The Zambia Wildlife Act, 1998 that the first Zambia Wildlife (Elephant Sport Hunting) Regulation (SI) was made in 2005. This regulation was made in pursuit to section 74(1) of the Zambia Wildlife Act, 1998 which provide that the Minister may, on the advice of the Authority by regulations, prohibit the hunting of any wild animal, generally, or in any specified area, ... or may, impose in such regulations such conditions or restrictions as the Authority considers.

Section 41 of the Act empowers the Authority through the Director General of the Zambia Wildlife Authority to have supervisory powers of the enforcement of the Regulations which include the sports hunting regulation.

As seen in chapter one of this study, the Zambia Wildlife (Elephant Sports Hunting) Regulation of 2005 was amended by the 2010 regulation which became more specific with issues regulating

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and controlling elephant sport hunting. The old regulation was too general in its approach to regulate elephant sport hunting therefore it left many issues still to be attended to by the empowering Act. For instance, the previous regulation had no provision of the type of weapons to be used on elephants during the hunt. The current regulation has regulated on the type of weapons that ought to be used. The new regulation covers also the aspect of time to hunt and the type of the elephant to be hunted. It provides that there has to be no night hunting and proscribes against hunting elephants with calves and those that are young.

Nonetheless, the new regulation does not have the enforcement clause like the old one and it still is dependent on the empowering Act. It should have gone a step further to show how perpetrators should be dealt with rather than relying on the general enforcement provision of the main Act which is not specific to the crimes and wrongs to elephants but they are for general wildlife offences.30

The regulation should also have captured the time period when this activity should be done as opposed to letting it open throughout the year. It should have provided for the research before determining the number of elephants to be hunted for that year. This would have levels of seriousness in conservation. It seems the inspiring/motivating factor when looking at the regulation was revenue for the state as opposed to conservation of the wild fauna. To a certain level this regulation has not met the standard and spirit envisaged in the CITES as discussed in chapter two.31

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3.5 The Elephant Sport Hunting Regulation and other Wildlife Regulations

Zambia Wildlife (Elephant Sport Hunting) Regulation does not operate in a vacuum. Apart from the correspondence the regulation enjoys with the empowering Act, there are several other regulations that the Elephant Sport Hunting regulation has to work in conjunction with such as the Hunting Firearms Regulation, General Hunting Regulation, and Hunting licenses regulations.\(^{32}\) The hunting firearms regulation is concerned with the prescriptions of firearms. Some hunters use unlicensed firearms, some use wrong firearms on games and still others use firearms with faults as described in section 2(c) of the regulation. The elephant sport hunting comes in to an extent that if a hunter uses a firearm that does not meet the regulation then that hunter faces a criminal charge and a jail sentence of not more three years or fine or both upon conviction.

In the case of *Hyden Dingiswayo Banda v The People*,\(^ {33}\) the appellant was convicted on two accounts of contravening the Hunting Firearms Regulation and one count of contravening the Wildlife Act by hunting an elephant with an unlicensed firearm. On appeal to the Supreme Court his appeal was upheld and ordered that his firearm be forfeited in accordance with the regulation. The State Counsel contended that in view of the fact that the appellant was convicted under the Wildlife Act, the State was in a position to request the court to make an order for forfeiture of the firearm. The court emphasized that Under the Wildlife Act, the minister can make regulations with legal effect which if abrogated one can face sentence or fine or both and forfeiture of the firearm.

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\(^{32}\) *Tourism Newsletter. November, 2011. P.3*

\(^{33}\) *(1981) Z.R. 69 (S.C.)*
In the General Hunting Regulation there are methods of hunting that are proscribed and they are in conformity with the Elephant sport hunting. The elephant sport hunting is specific to elephants whilst the General Hunting Regulation is meant for all game without specificity to a particular game. Some of the common features that interlink these regulations are that in both regulations dogs are not allowed to pursue animals during hunting seasons and the elephant sport hunting adds that a chase with dogs is not the sport envisaged by the regulation. This is supported by the CITES in Article XII where the international convention has proscribed the hunting by dogs, wolves, foxes and any other animal that can hunt.

The High Court for Zambia had occasion to rule in the matter of Charles Banda v The People,34 where the applicant was convicted by the subordinate court of hunting with dogs contrary to general hunting regulation empowered by the Wildlife Act and the CITES provision, he was sentenced to two years imprisonment with hard labor. According to the General Hunting Regulation, It is unlawful to intentionally cripple or otherwise harm any game animal for the intent of continuing a hunt, or chase, or for the purpose of paralyzing the game. This regulation applies as if it were in the elephant sport hunting regulation.35

3.6 The Current State of Affairs

The replacement of the tribal hunting regulations, which previously varied by district, with a "unified hunting system" under the centralized administration of nascent Zambian government, was undertaken to provide some means of controlling hunting quotas. It was further intended to promote the "use of the country's wildlife resources on a rational and fair basis for the benefit of all Zambians while ensuring that rural people dependent upon wildlife were not deprived of

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34 (1981) Z.R. 26
subsistence and income from the resource." Problems in the unified hunting system have arisen over the last two decades leading to the predominant outcome that Zambians received less, rather than more, from the hunting resource, whilst the growth of the lucrative foreign sport hunting industry was confined by limited quota allocations and the availability of hunting concession areas. This created many new possibilities, especially with regard to allowing communities to manage their own wildlife quotas for citizen, resident and non-resident hunting, and for leasing greater areas in the newly established Gama management Areas to private sport hunting companies. Sport hunting by foreigners in community-managed areas and private concession areas is by far the most lucrative form of hunting in Zambia, with revenue obtained through citizen hunting hardly covering the cost of administering licenses by Zambia Wildlife Authority.

Hunting in Zambia usually occurs between April and September though there is no legal back-up and can be undertaken by citizens, residents and non-residents or foreign sport hunters. Citizen and resident hunting attempts to provide recreational hunting to all Zambians in general and subsistence hunting to the rural destitute poor in particular. All hunting occurs in Game Management Areas that may fall within State land, communal land and Traditional Land though the majority of this land is in the latter. Zambia has one hundred and twenty-eight designated Game Management Areas, of which twenty-one are reserved for citizen hunting, thirty-two for community-managed areas and the rest for private sport hunting concessions in which sport hunting by foreigners is permitted. Unfortunately all these divisions are not provided by law and they are only reflecting in the policy. It would be different if such are included in the regulation.

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As sport hunting by foreigners is by far the most lucrative form of hunting, private concessions occur in the most bio-diverse areas such as the Itezhi-tezhi and Mfuwe districts which host key trophy species. Citizen hunting Areas predominantly occur in the less bio-diverse arid districts such as Luangwa and Kabombo. To provide a framework for regulation, ZAWA issues licenses under a quota system known as the Recommended Allowable Off-take (RAO) quota. Licenses are sold or issued to citizens, residents and non-residents under differentiated fee structures and quotas. There are four types of licenses, namely the Single Game License, Small Game License (citizens only), Bird License (citizen and non-resident) and the Special Game License (eligible citizens only). Hunting quotas and licenses are also provided to foreign sport hunting clients through safari operators, to land owners under the land-holder’s privilege permit and directly to community-managed areas in selected Game Management Areas.39

3.7 Conclusion

In conclusion, elephant sport hunting regulation is an instrument that is made pursuant to the provision in the Act of Parliament called the Zambia Wildlife Act. The Zambia Wildlife Act gives guidelines and principles of hunting among other provisions. These guidelines are not exhaustive and comprehensive thereby resulting into the formulation of regulations including the elephant sport hunting regulation. Apart from the elephant sport hunting regulation, other regulations that aid the functioning of the elephant sport hunting include the Hunting Firearms Regulation, General Hunting Regulation, and Hunting licenses regulations. All these regulations are aimed at the conservation and regulation of hunting and of particular interest to this study are elephants.

CHAPTER FOUR

4.0 APPLICATION AND ENFORCEMENT OF THE REGULATION.

4.1 Introduction

The Zambia Wildlife (Elephant Sport Hunting) Regulation\(^1\) is empowered by the Zambia Wildlife\(^2\) (hereinafter called The Act). The elephant sport hunting regulation is a Statutory Instrument that was passed by the minister pursuant to section 74 of the Zambia Wildlife Act\(^3\) as mentioned in chapter one in the introduction. The Act also covers for foreign wildlife investment businesses and conservation programs\(^4\) such as Wildlife safari which in most cases deals with sport hunting. To achieve this, the study discusses the application and enforcement of the regulation and the role of legal institutions and the procedures involved in the regulation of elephant sport hunting.

4.2 Legal Procedure for Acquiring a Sport Hunting Licensing

A hunting license is a regulatory or legal mechanism to control recreational and sports hunting. Hunting may be regulated informally by firstly, unwritten law and secondly, through self restraint or morality. Finally, the restraint can be by laws enforced by government authorities.\(^5\) Self restraint or morality comes with what the individual hunters and the local members both believe concerning that kind or type of hunting. For instance, it is not morally right in sport hunting to hunt with a trench or snares. This exercise is out of morality. Offences violating this

\(^1\) No. 107 of 2010  
\(^2\) Act No. 12 of 1998  
\(^3\) Act No. 12 of 1998  
\(^4\) Section 37 and 46 of The Zambia Wildlife ACT. (ACT NO.12 OF 1998)  
regulation are enforceable with a degree of ingenuity employed by the prosecution otherwise the case may be for the defense.\textsuperscript{6}

A Zambian elephant sport hunting license is a certificate that grants its holder the exercise of hunting within legal rules and regulations.\textsuperscript{7} It is also the precondition to own hunting arms and ammunition (unlimited number of rifles/shotguns and up to two handguns) that have been prescribed by the Act and the Elephant Sport Hunting Regulation.\textsuperscript{8} This provision did not take into consideration the local ordinary Zambians who can hardly own a firearm but be able still to hunt with skill and the proficiencies of the sport hunting.

The right to hunt is connected to the duty to care for all kind of animals listed by the hunting laws. For several species such as elephants, plans have to be developed by hunters and Zambia Wildlife Authority, how many elephants of a specified class and age may (or have to) be killed within a certain period of time. The purpose of the hunting license is to ensure that only well trained persons may exercise hunting.\textsuperscript{9} Applicants must fulfill the following requirements:

a. Successful graduation of a hunting exam at the instance of the Director General of Zambia Wildlife Authority. The hunting exam is a test of expertise with a high level of intellectual capability from Zambia Wildlife Authority set for the benefit that the authority should filter through real hunters from armature hunters who in most cases cause injury to either elephants or fellow human beings. To pass it, each applicant has to participate in a comprehensive,

\textsuperscript{7} Section 37 of The Zambia Wildlife ACT. (ACT NO.12 OF 1998)
\textsuperscript{8} Section 16 and 17 of The Zambia Wildlife ACT. (ACT NO.12 OF 1998)
\textsuperscript{9} Section 44 of The Zambia Wildlife ACT. (ACT NO.12 OF 1998)
symmetrical instruction course which consists largely of the areas of shooting (shotgun and rifle), theory which includes weaponry, local wildlife, habitat and practice.\textsuperscript{10}

b. Certificate by Zambia Wildlife Authority of liability insurance for hunters which should come from any credible insurance company to cover for eventualities unforeseen. Insurance that is talked about here should be able to the security of the hunter, the firearm, and the third party. It is important that the firearm should be insured because it might get lost or stolen which case the insurance company should cover the loss.\textsuperscript{11} The hunter is as well supposed to be protested because he may suffer injury as a result of the expeditious activity of sport hunting thereby attracting coverage by the insurance company. The same reasons apply to the third party\textsuperscript{12}

c. Applicants must be at least 16 years for a Youth Hunting License, otherwise 18 years is the general age limit for the issuance of the elephant sport hunting license.\textsuperscript{13} Age is very important here because minors may be finding themselves sport hunting. A minor is not in the best and right mind and is not capable of forming a mind in hunting and is likely to cause more danger to wildlife and humanity given the ability to handle guns. Nonetheless, sixteen year olds can be allowed to be a youth hunter who should hunt under the guidance of the well trained sport hunter.\textsuperscript{14}

d. Flawless Criminal record either in Zambia or abroad for noncitizens. It is usually difficulty to generally trust citizens that have a record of crime with any responsibility that requires restraint by the citizen let alone the non-citizen. Elephants are a non renewable resource but can replenish. Care must be taken because it is already an endangered resource. Regard in

\textsuperscript{10} National Hunter Education Association in Zambia, "Hunter Incident Clearinghouse," 30 Mar. 2008
\textsuperscript{11} National Hunter Education Association in Zambia, "Hunter Incident Clearinghouse," 30 Mar. 2008
\textsuperscript{12} National Hunter Education Association in Zambia, "Hunter Incident Clearinghouse," 30 Mar. 2008
\textsuperscript{13} Regulation No. 107 of 2010
\textsuperscript{14} National Hunter Education Association in Zambia, "Hunter Incident Clearinghouse," 30 Mar. 2008
this case must be had to the state of the elephants, because a criminal might just exceed the allowed concession.\textsuperscript{15}

Licenses to hunt typically go on sale once a year. Sometimes licenses are offered only during a defined single season. The offering of the licenses are discretionary by the minister in consultation with the Authority (ZAWA) upon payment of the appropriate and prescribed fees. As a general rule, hunting licenses are non-transferable. Licenses cannot be transferred from a licensee to a third party as was shown in the case of \textit{Foloko Mulumbwa v. The People}.\textsuperscript{16} When the applicant was asked for a firearm license in his own name, the applicant was unable to produce one. The applicant gave evidence in his own defense that another person had asked him to act as a guide to hunt elephant, and later the owner of the license killed one elephant and then returned to Kitwe in order to obtain a motor vehicle.\textsuperscript{17}

The court held that a person carrying a firearm or ammunition belonging to another person who holds a firearm licence in respect thereof may have in his possession that firearm or ammunition under instructions from and for the use of that other person for sporting purposes only without himself holding a firearm license. A license cannot only be sold or transferred to a third party but a sports hunter who himself has killed the game can let another person stand in to wait for transport and can transfer such game to another place provided he has that license.\textsuperscript{18}

The sport hunting license is considered to be a privilege (not a right), and does not allow trespass on private land. The government reserves to itself a right to repossess the license should it feel that

\begin{footnotesize}
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\item \textsuperscript{15} National Hunter Education Association in Zambia, \textit{"Hunter Incident Clearinghouse,"} 30 Mar. 2008
\item \textsuperscript{16} [1981] Z.R. 179 (S.C.)
\item \textsuperscript{17} \textit{Foloko Mulumbwa v. The People} (1981) Z.R. 179 (S.C.)
\item \textsuperscript{18} \textit{Foloko Mulumbwa v. The People} (1981) Z.R. 179 (S.C.)
\end{itemize}
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the offer was not well intended or that there is a danger in letting the license be operational. The sport hunter must know for a fact that the license gotten is a mere privilege and not a right.¹⁹

Sport hunting typically requires a tag for each elephant hunted. Tags must be purchased in addition to the hunting license, and the number of tags issued to an individual is typically limited. In cases where there are more prospective hunters than the quota for that species, tags are usually assigned by lottery. Tags may be further restricted to a specific area or wildlife management unit.²⁰

4.3 Challenges from Regulation No. 107 of 2010 by the Government and Zambia Wildlife Authority.

In a bid to “scale up” the management of the wildlife industry, which is an industry that has rapidly expanded and developed at rather a snail's pace or organic fashion ahead of the regulation, new national regulations have been developed with the aim of coordinating national legislation and guiding the industry in a more conservationist direction.²¹ Regulation is following the wildlife management which has sky-rocketed its advancement ahead of conservation. This has led to a number of challenges for the republic and the wildlife authority. There are five categories of challenges classified as economical, sociological, political, ecological and legal challenges and its enforcement.²²

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¹⁹ Section 58 of The Zambia Wildlife ACT. (ACT NO.12 OF 1998)
²⁰ Regulation No. 107 of 2010
4.3.1 Economical Challenges

Economical challenges have fiscal connotations which interpret into difficulties to formulate policies centered on the regulation. Monies collected from the expedition of sport hunting revolve into the government treasury and leaves the Authority claim for government funding to help in the monitoring and evaluation of the venture. The number of game guards has continued to decrease without recruitment due to poor conditions when in the actual sense government collects a lot of revenue through the activity.

4.3.2 Sociological Challenges

People and animals were known to co-exist before the declaration of certain areas to be protected areas for national parks. The government has gone further to declare that areas around the national parks are Game Management Areas where animals and people can co-exist. They are buffer zones in that most of the sport hunting activities occur here. These areas have presented sociological changes to the government and ZAWA because they have to attend to the plight of the citizens. All GMA’s are under particular chiefdoms whose chiefs partake in the royalties from the sport hunter. It is at this instance that socio problems happen because the villagers want to see their villages developing and to have a direct benefit. After the concession has been exhausted, villagers have hunted down troublesome elephants due to them trampling on their fields. the government and ZAWA has arrested such villagers and in return the sport hunters have faced a hostile reception.

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23 Wildlife (Elephant Sport Hunting) Regulation No. 107 of 2010.
4.3.3 Political Challenges
The government ratified the CITES and there has to be adherence to the convention. The government is in the process to domesticate the convention. This has brought more political pressure for the government in terms of decision making. For instance, the issue of concessions which is covered under the CITES. Zambia has found itself over allocating the heads of elephants in a particular year because of political pressure to allot a bigger number so as to have more revenue. This was the more reason why the government had to apply for the shift of elephants from appendix I to appendix II so that they should be able to trade in them.26

4.3.4 Ecological Challenges
The inter relationship of animals amongst themselves and as they relate to people is very important. The more the sport hunters in a given area, the more the destruction on the vegetation due to degradation caused by hunting safari vehicles and sporting. These degradations amount to ecological imbalance which means that there is interference by human beings in the habitats of animals. Nature’s principle is survival of the fittest but when there is human interference this concept is distorted thereby demanding for repairing measures from the government which is very costly.27

4.3.5 Legal Challenges
Legislation in Zambia takes a long period of time for it to be passed. The very brilliant ideas that the legislators may have take years to be effected into law. The enforcement of the already enacted laws also takes the snail’s pace because the courts are filled with cases and the Magistrates/Judges are busy. Some cases have taken more than ten years to be delivered. Recently, His Excellency, Mr. M. C. Sata released wildlife convicts and advised the Judiciary to

expedite the judicial process for the wildlife detainees.\(^{28}\) The regulation is in itself difficult to enforce because it relies on the empowering Act.\(^{29}\) There is no enforcement provision in the Elephant sport hunting regulation which presents a legal challenge and huddle.\(^{30}\)

4.4 Conclusion.

The application of the licenses waits for Zambia Wildlife Authority to advertise for the concessions in the public media, thereafter the sport hunter applies and later they are selected. After they have been selected, the license operates as a privilege and not a right and it comes with conditions that are to be adhered to. Applicants must fulfill the requirements of Successful graduation of a hunting exam, Certificate by Zambia Wildlife Authority of liability insurance. The criterion used to give a license is not adequate because there is need that other organizations such as ZEMA be consulted whenever concessions have been advertized. There are challenges that the republic and the wildlife authority face in elephant sport hunting in Zambia which are classified as economical, sociological, political, ecological and legal challenges and its enforcement.

\(^{28}\) The Post Newspaper, Wednesday, 11\(^{th}\) January, 2012.
CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION.

In conclusion, The Zambia Wildlife Authority (ZAWA) has had problems on illegal killing of elephants by poachers. There has been no proper regulation and enforcement of the then regulation on elephant hunting for the safari hunters and other hunters. The current problem with the elephant sport hunting regulation seems to be that sport hunting has been cited to be a major cause of wildlife deaths\(^1\) in the world and truly Zambia is not an exception. This regulation lacked enforcement and mandate thereby manifesting risks to lose a great number of elephants with time because the regulation does not have a proper enforcement mechanism that addresses real issues of licensing and control of Elephant Sport Hunting.

Elephant Sport Hunting in Zambia is regulated according to the standards set by both the local and international laws and regulations. The research explored the elephant sport hunting regulation that was enacted in 2010\(^2\) for the purposes of making some serious theoretical contribution to the law of hunting and regulations of the same elephant sport hunting regulation. Many experienced hunters feel that the ultimate experience for trophy hunting is to go after elephants. In most parts of the world including Zambia, elephants are a protected game. While the hunter may get a trophy to mount on their wall, they are also destroying a very valuable part of the environment and its history.\(^3\)

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\(^2\) The Zambia Wildlife (Elephant Sport Hunting) Regulation
The control of elephants at national level shows adherence both to the local regulations and international instruments concerned with the control and regulation of elephants. The international trade in wildlife is regulated by the Convention on the International Trade in Endangered Species (C.I.T.E.S.)\(^4\). The power of CITES rests in its ability to impose restrictive sanctions on the trade of protected species by countries who are not complying with the Convention. Sport hunting has played an integral role in the reduction of the presence of elephants in most countries in the world. The sport hunting industry is also extremely competitive within the globe, with considerable numbers of safari operators vying for a small and finite number of hunting concessions.\(^5\)

CITES does not specifically prohibit trade in ivory within the borders of a country. According to Article XIV, fundamental Policies and law enforcement practices governing the domestic control of elephants and sale of ivory are determined at a national level. This means that each country is responsible for the presence or absence of an ‘unregulated’ market within its borders. These unregulated markets serve international tourists looking for souvenirs and the small numbers of local people wanting ivory for their personal use.

Hunting has contributed to the extinction of animal species all over the world, including the Tasmanian tiger and the great Zambian Rhinoceros. When sport hunting, many animals suffer prolonged, painful deaths when they are injured but not killed by sport hunters. Research estimates that 50 percent of animals who are shot with crossbows are wounded but not killed. Hunting disrupts migration and hibernation patterns and destroys families. For animals like elephants, who mate for life and live in close-knit family units, hunting can devastate entire

\(^4\) multinational protégé (charge) of the United Nations  
animal communities. The stress that hunted animals suffer caused by fear and the inescapable loud noises and other commotion that sport hunters create also severely compromises their normal eating habits, making it hard for them to store the fat and energy that they need in order to survive the cold.

Sport hunters kill any animal especially the strong one for they make a good trophy and poachers kill any animal whose head they would like to hang over the fireplace including large, healthy animals that are needed to keep the population strong but this is against the spirit of the CITES in Article VII. Not only does “sport” hunting jeopardize nature’s balance, it also exacerbates other problems.

In the late twentieth century and maiden twenty-first century dozens of wildlife laws were enacted that regulated wildlife at international and local laws have also called for amendments and repealing. The laws established regulations regarding the importation of wildlife into the country. Many laws were designed to fund conservation efforts through hunting fees. For example, the Elephant sport hunting regulation,⁶ required people to purchase a license and register the firearm and show that they were well trained in hunting before they could hunt for elephants.

It is after the National Parks and Wildlife Act that issues of sport hunting came to the view of international market due to pressure from the third world as they saw wildlife as a means of national revenue.⁷ The Zambia Wildlife (Elephant Sports Hunting) Regulation⁸ became more specific with issues regulating and controlling sport hunting. The old regulation was too general.

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⁶ Statutory Instrument No. 40 of 2005
⁸ The regulation of 2005 was amended by the 2010 regulation
in its approach to regulate elephant sport hunting that issues were still attended to by the empowering Act.

The Zambia Wildlife (Elephant Sport Hunting)\textsuperscript{9} is empowered by the Zambia Wildlife Act\textsuperscript{10} and they operate as main Act and specific regulatory provisions. The Regulation\textsuperscript{11} provides for licenses and the procedure to be followed in the issuance of the licenses. Hunting may be regulated informally by unwritten law and secondly, through self restraint or morality.

A Zambian elephant sport hunting license is a certificate that grants its holder the exercise of hunting within legal rules and regulations.\textsuperscript{12} It is also the precondition to own hunting arms and ammunition that have been prescribed by the Act and the Elephant Sport Hunting Regulation.\textsuperscript{13} The sport hunting license is considered to be a privilege (not a right). Challenges faced by ZAWA are classified as economical, sociological, political, ecological and legal challenges and its enforcement.

5.2 RECOMMENDATIONS

For there to be effective and beneficial sport hunting, control and regulatory measures need to be adhered to with the seriousness deserved. The control and regulation of sport hunting in Zambia is cardinal to the economic, social, political and cultural development of the Nation. The following recommendations have been proposed. These recommendations are classified into international recommendations and local recommendations.

\textsuperscript{9} Regulation No. 107 of 2010
\textsuperscript{10} No. 12 of 1998
\textsuperscript{11} No. 107
\textsuperscript{12} Section 37 of The Zambia Wildlife ACT. (ACT NO.12 OF 1998)
\textsuperscript{13} Section 16 and 17 of The Zambia Wildlife ACT. (ACT NO.12 OF 1998)
INTERNATIONAL RECOMMENDATION

5.2.1 Specific Clause

The Convention on International Trade in Endangered Species of flora and fauna should provide for the specific article that should address the problem of Wildlife Sport hunting generally to enable member states to particularly deal and handle issues of sport hunting of wildlife. Currently, there is no clause in the convention dealing with sport hunting. This is a sport that attracts hunters from the international community and therefore needs a strong international backing.

5.2.2 Accessibility and Awareness

There has to be a lot of sensitization of the regulation to the local and the international sport hunters alike so that the regulation is adhered to. In some instances, especially in the local sport hunters, there has been found that some sport hunters have been given licenses before attending to the compulsory test for ascertaining capacity of the sport hunter. When the hunters are aware of the regulation there will be minimized illegality in the thrill of sport hunting. The awareness will be translated into accessibility of the regulation for the sport hunters that want to promote professionalism amongst fellow sport hunters. It is surprising that some local sport hunters are not aware of the amended elephant sport hunting regulation.  

5.2.3 Adoption of CITES

The adoption of the entire CITES will entail good international relations in as far as the international and local protection of the flora and fauna. Zambia has domesticated some of the provisions of the CITES though the reason why there is delay or adamancy to adopt some

\[14\] No. 115 of 2010
provision is simply because there is fear that some provisions will mainly promote non-consumptive wildlife as opposed to the consumptive wildlife like sport hunting. The interest of many nations including Zambia on wildlife is to exploit the industry with less interest in the conservation. This is what has led to the extinction of some species.

LOCAL RECOMMENDATIONS

5.2.4 Enforcement Mechanisms

The regulation lacks the enforcement clause thereby making it difficult for the wildlife law enforcement officers and other officers to deal with abrogates of the regulation. Those that been acting contrary to the Regulation have been charged prosecuted according to the general enforcement provision in the main Zambia Wildlife Act. This has led to some offenders being acquitted for lack of specificity in the Act.

5.2.5 Monitoring and Evaluation

It should make it mandatory for Wildlife Director General to produce an annual or concessional report which should be in consultation with the Zambia Environmental Management Agency. This will enable the Zambia Wildlife Authority make informed decisions when choosing to allocate some number of elephants for sport hunting for that particular year or concession. What currently happens is that the Director General seconds to the Minister for the allocation of the number of elephants to be sport hunted without any reference. This is quite dangerous in that the Director General feels compelled to release concessions even when there may be no need to do so simply because he is mandated. If it can be done in consultation and approval with other organizations such as the Zambia Environmental Protection Agency, there can be more authenticity for the mandate.
5.2.6 Disposal of Carcasses

The regulation seems not to be concerned with the whole elephant after the kill but only regulates how the elephant should be hunted. Some scientists’ have argued that there is need to have regard for the animals that are victims of the sport hunting because some disposals of carcasses are considered cruel. For example, in Botswana the sport hunting regulation mentions that it is the responsibility of the hunter to dispose of the carcass in a manner consistent with the national laws and customary demands of the area. In Zambia in particular, elephants after hunted and removed tusks, they are left in the wild to rot without due regard.

5.2.7 Wildlife Re-investment

There must be ploughing back for the resources that have been realized from the trade. The state realizes a lot of money from the trade of Sport hunting such that if the nation can put a deliberate policy of protection of elephants. This could be administrative through empowering rangers and wildlife police to tighten measures of protection. There could be a clause to this effect in the regulation so that it is given legal mandate.

5.2.8 Effective Period and Time of Hunting

The regulation should capture the time period when sport hunting should be conducted as opposed to letting it open throughout the year. Certainty in all aspects of life is very important as opposed to uncertainty. There has to be a period when the regulation mandates that this activity should be done with the specific time. As noted, the current regulation stipulates that sport hunting will be done between 07:00 and 17:00.
5.2.9 Methods of Hunting

Apart from reliance on the Wildlife Act, the regulation on its own must be able to provide the allowable methods of hunting, including the types of weapons. Zealous sports hunters may employ methods that are injurious and ruinous to the sport such as the use of snares and traps. Others use weapons not allowed for sport hunting such as assort riffles. This will stop the confusion demonstrated earlier where the courts refer to the Fires Arms Act for resolution on such matters when it could be easier if contained in the regulation.

5.2.10 Hunting License

There should be a provision that the license should cover a wide range of aspects as opposed to getting different licenses for the weapon, hunting, vehicle, entry into the Game Management Area and transportation of the proceeds of the sport hunt. A conclusive licenses can be devised which will capture all these elements in one license. This will make work easy and less complaints on delays thereby losing customers along the way.
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