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# LUSAKA AGREEMENT AS A MECHANISM FOR ENFORCEMENT OF CITES

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## SUMMARY

This paper reviews some of the crucial provisions of Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES) which are relevant to the Lusaka Agreement in order to assess whether the Lusaka Agreement, which deals with similar species but at regional level, will succeed to strengthen and address some of the CITES flaws and thus serve as a model for other Regions. Effective implementation of the Lusaka Agreement will depend on the appropriate measures taken by the Parties at national level to incorporate the provisions of the Agreement in national legal systems. This paper will highlight discussions of the required measures needed to be taken at national level.

## 1 INTRODUCTION

The rate at which wildlife populations are declining, in most of their historical ranges, continues to intensify. It has been widely proven that poaching, unauthorized or illegal international trade, rapid degradation of habitats, and man and animal conflict at the point of interface are driving certain species of wildlife to the verge of extinction. Illegal trade in wild fauna and flora in many parts of Africa has been going on unabated, notwithstanding the existence of international instruments such as Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES).

The transboundary character and threats created by cross-border illegal dealers has made several States realize that individual efforts and the traditional enforcement methods are no longer capable of providing effective protection to the African species from illegal trade arranged by international organized crime syndicates. Consequently, States feel there is a critical need for closer co-operation among

designated national law enforcement agencies to save the precious African wild fauna and flora. That need has led to more rigorous and concerted efforts at regional levels to complement the already existing global mechanisms or instruments. The development and adoption of the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (hereinafter referred to as the Lusaka Agreement), is one of the attempts by African (the Eastern and Southern) countries to adopt stricter measures to reduce, and eliminate illegal trade in wild fauna and flora. It will also implement and enforce CITES at a regional level. The Agreement aims at easing the administrative difficulties currently hampering cross-border efforts to restrict trade.

The paper reviews some of the crucial provisions of CITES which are relevant to the Lusaka Agreement in order to assess whether the Lusaka Agreement, which deals with similar species but at regional level, will succeed to strengthen and address some of the CITES flaws and thus serve as a model for other Regions.

Effective implementation of the Lusaka Agreement will depend on the appropriate measures taken by the Parties at national level to incorporate the provisions of the Agreement in national legal systems. This paper will highlight discussions of the required measures needed to be taken at national level.

## 2 CITES AND HOW IT WORKS

At the global level, CITES has established a legal framework to regulate international trade in endangered species of wild animals and plants listed in the appendices. In spite that the text of the CITES does not expressly state its objective, it is clear that the Convention intends to ensure, that international trade in specimens of endangered wild fauna and flora is regulated and does not threaten conservation status of declining species. The Convention does this by controlling and regulating international trade in three ways.

First, it prohibits, with only few exceptions, international commercial trade in species listed in Appendix I; that is, those threatened with extinction. (Articles II (1) and III) The species listed, as at March 2004, in Appendix I include well over 800 endangered species (827 species, 52 sub-species and 19 populations).

Second, it gives the responsibility to the exporting State to regulate, through the issuance of permit, trade in specimen of species listed in Appendix II that is not already threatened with extinction to warrant inclusion in Appendix I but which may become so if not controlled. (Articles II (2) and III). Over 30,000 species (32,540 species, 49 sub species and 25 populations) are listed in Appendix II.

Third, CITES gives an option to the Parties to gain other nations' cooperation, by enforcing their domestic legislation, which regulate export of species not listed in either Appendix I or II by listing them under Appendix III. (Articles II (3) and V) Over 200 species (291 species, 12 sub species and 2 populations) are listed under Appendix III.

Notwithstanding its potential value

to enforce domestic legislation, only about 21 States have listed a total of about 240 species (229 species, 11 subspecies and 1 population) in Appendix III. Where trade is permitted in exceptional circumstances under Appendix I or under Appendices II and III, the regulation of such international trade is performed through the issuance of permits and certificates which go with any specimen of endangered species listed in those appendices. (Article VI).

Each Party is required to designate one or more Management Authorities to issue permits and certificates and as well as Scientific Authorities for consultation, in specific cases, prior to the issuance of permits and certificates. Nonetheless, the practical aspects of the control trade has been left to the Parties which are required to take appropriate measures at national level to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof. Measures to be taken at national level include penalizing trade that violates the provisions of the Convention, confiscating illegally traded specimens, designating special ports of exit and entry points of wildlife, and maintaining records of exports and imports of specimens of the listed species. Other measures include submission of annual reports to the Secretariat summarizing the trade, biennial reports on the legislative, and regulatory and administrative measures that have been taken to enforce the provisions of CITES. CITES further permits its Parties to adopt stricter domestic measures to regulate international trade of species. Its provisions shall in no way affect any domestic measure or obligations of the Parties derived from any international instrument relating to other aspects of trade in species. In fact, many Parties have taken such measures for different reasons which are not limited under CITES. For instance, Venezuela and Brazil have been implementing CITES laws that prohibit the export of virtually all wildlife.

From the above, it is clear that even at the time of negotiating the CITES, States realized that it was difficult to adopt similar measures to regulate international

trade in endangered wild species which could be uniformly implemented or applied. Thus, the Convention gave room for stricter measures to control such trade to be adopted at national and regional levels or through other global arrangements. In any case, an international treaty, which aims at the participation of all states will, more often than not be drafted in general terms. In this way, the agreement will be able to deal with all needed situations in the world and be covered by the respective instrument and in softer terms so as to obtain the greater number of Parties. Since the effectiveness of the Convention is related to the overall membership, the number of Parties to the Convention continues to increase and the increasing external pressure will continue to encourage non-members to become parties to it. CITES currently has 164 Parties, as at 6 March 2004 and is generally regarded as one of the most successful of the international conservation treaties.

### 3 EFFECTIVENESS OF CITES

Opinions seem to be divided on the issue whether or not the CITES has achieved its objectives after three decades of its existence. While a few are of the opinion that tangible progress has been made under the CITES, others think that only limited success can be seen and are worried that CITES may have even promoted over-exploitative trade. Writers like Lyster and Birnie and Boyle argue that real progress has been made in the over two decades of the Convention's existence. The progress could effectively be measured by the increasing number of Parties to it (over 145) and the improving level of its enforcement. That the Convention provides a highly practical mechanism with structures to deal with complex issues on the international trade of wildlife species is one indicator. And the existence of a permanent Secretariat and administrative obligations imposed on the Parties to set up Management and Scientific Authorities to enforce the CITES as well as the requirement of the Parties to meet regularly to review the

implementation of the Convention are additional critical factors guarding the Convention from becoming a "sleeping treaty".

Nevertheless, writers such as Huxley, Gakahu and Favre argue that implementation of CITES, though working well, has still met with several drawbacks, both nationally and internationally. For instance, they argue that Management and Scientific Authorities are mostly understaffed and with inadequately trained staff; communication between Management Authorities of different Parties in exporting and importing countries, and between those authorities and the Secretariat are still very poor. Annual and biennial reports continue to be submitted long after the deadlines and, even when submitted, most of them are incomplete and inaccurate. National legislation and administrative procedures of many Parties to enforce the Convention are still inadequate. Furthermore, many Parties continue to have problems to effectively comply with and monitor the thousands of species listed in the appendices coupled with the changing list of species protected after each Conference of the Parties. Corruption, use of fraudulent documents, movement of specimens without CITES documentation, failure to notify the Secretariat of shipments, and acceptance of shipments by importers without confirmation by the Secretariat have all made it difficult for the CITES to effectively regulate, monitor and control trade in endangered species.

Fitzgerald on the other hand argues that too many exemptions under the Convention which allow trade in listed species without the issuance of usual permits have created several weak points in the enforcement of CITES. Much as she agrees that these exemptions were designed to make CITES more effective and acceptable to many States, they also expose the Convention to deficiencies in the process. Article VII of the Convention, for instance, exempts wildlife trade related to circuses, or wildlife for noncommercial purposes (in museums, research centers, zoos, etc.). The article also exempts wildlife for personal items (such as pet yellow-

naped amazon, stuffed tortoise, fur coats etc.), or wildlife shipments in transit from one country to another, or captive-bred animals and artificially propagated plants, or ranched wildlife which have qualified to be transferred from Appendix I to II. The decision at the tenth Conference of the Parties to CITES to downlist African elephants from no trade at all in Appendix I to regulated trade in Appendix II further aggravated the situation. Notwithstanding the good intentions CITES had to exempt the above species from the permit requirements, the practical effect has been the creation of loopholes for illegal trade in wild fauna and flora.

It is further argued by Fitzgerald, an opinion also shared by Gakahu, that pre-Convention specimens have been used to legalize illegal trade under CITES. For instance, CITES exempts species listed in the Appendices which were acquired by a country before CITES came into effect or before the country became a Party. In practice it has been difficult to enforce this provision, thus providing loopholes for illegal trade in endangered species. It is no surprise that in 1983 Burundi, then a non-Party to CITES, had twelve tons of ivory with only one elephant in a zoo. This ivory apparently originated from Tanzania and Zaire. When CITES adopted the ivory quota system in 1986 as a measure to curb poaching and illegal ivory trade, Burundi joined CITES to be able to export the ivory. Similarly, in 1989, Somalia had stockpiled eight thousand elephant tusks, while its elephant population was less than five hundred. The ivory originated from elephants poached in Kenya. In this scenario, therefore, CITES could be criticized for legalizing poached ivory.

Furthermore, Article XXIII permits Parties to grant themselves exceptions to CITES controls by entering reservations, when acceding to it, on individual species listed in the Appendices I and II. The provision thus permits Parties to act as though they are not Parties to CITES when importing or exporting those species once they have entered a reservation. Such an exemption weakens the ability of CITES to

regulate and control endangered wildlife especially on Appendix I species since such Parties are kept on an equal footing with the non-parties with whom trade is permitted, thus avoiding CITES controls.

Notwithstanding the criticisms, most of which are accepted by the defenders of CITES, it must be appreciated that in today's world of better equipped and organized poachers, CITES Secretariat has succeeded to effectively implement the Convention. It monitors wildlife trade and acts as a switchboard for passage of information between enforcement agencies. Resolutions passed by the Conferences of the Parties, no matter their numbers and complexity, indicate positively how the Parties are trying to improve enforcement mechanisms of the Convention while the increase in the number of the Parties demonstrates commitment that cannot, whatever the criticism, be ignored.

The adoption of the Lusaka Agreement should be seen as a complementary effort to implement, enforce and strengthen CITES by adopting stricter enforcement measures at regional level to curb illegal trade in wildlife species. The Parties' national law enforcement officers to be seconded to the established Task Force, and who will retain their national law enforcement powers in their countries, will go along way to address some of the CITES identified flaws and in particular on cross-border issues. Attention will now be focused on the Lusaka Agreement.

#### **4 REASONS BEHIND THE DEVELOPMENT OF THE LUSAKA AGREEMENT**

Lusaka Agreement was conceptualized during the first African Wildlife Law Enforcement Co-operation Conference held under the auspices of CITES and the Zambian Ministry of Tourism in Lusaka from 9-11 December 1992, by senior wildlife law enforcement officers as a mechanism to deal with the problems faced by national law enforcement agencies in attempting to combat international wildlife smuggling syndicates and in particular lack

of formal means to enable cross-border cooperation. Other problems identified include: difficulties associated with investigations, cross-border poaching, customs and the size and fluidity of the borders between many African countries, such as Tanzania's Selous Game Reserve, which makes cross-border smuggling between Lindi, Iringa, and Coast region an attractive business for poachers. Ill-equipped wildlife technicians, limited helicopters to conduct surveillance and field patrols, lack of trained law enforcement officers to conduct undercover intelligence operations coupled with lack of administrative capacity, made it difficult for countries to adequately respond to sophisticated and well resourced cross-border smugglers.

Furthermore, cooperation between national law enforcement agencies such as the police, customs and wildlife service and coordination between relevant CITES management authorities and enforcement officials was found lacking. The failure of domestic entities to cooperate effectively at national level is also duplicated at interstate level because of lack of cross border relationships with the law enforcement agencies in neighboring countries. Inadequate cooperation between national law enforcement officers and their colleagues in neighboring countries to prevent illegal trade has been exploited by international crime syndicates who, at times, receive considerable support from the local communities in committing crimes related to poaching and smuggling of wildlife species.

Poor or inadequate laws were also considered as impeding factors to the national efforts to combat illegal trade or smuggling of wildlife species. For instance, the powers of enforcement officers are limited and restricted to their national jurisdictions and the officers are powerless across borders while in hot pursuit or to institute legal proceedings against known poachers, unless legal mechanisms, such as extradition agreements, exist. Even where extradition arrangements exist, rules of evidence which differ from country to country make it difficult for the prosecution cases to succeed as they could be knocked down on

technical grounds. Additionally, the extradition procedures do not necessarily allow for swift action to be taken. Besides low penalties and unevenness in the severity of the penalties imposed by most African countries against illegal smugglers of wildlife species compared to the value of the specimen poached or smuggled has always been a discouraging factor in undertaking legal processes against the offenders and, hence, fail to deter people from engaging in such lucrative business.

Political instability, military and civil conflicts and economic insecurity have provided major impediments to the effective enforcement of African wildlife laws. Guerilla war in Mozambique in the 1980s, in Angola, civil war in Somalia, and civil conflicts in DR Congo have devastated natural resources and facilitated cross-border incursions by poachers into game reserves and parks. Weapons from Mozambique to Swaziland and from Somalia to Kenya have been used by poachers to seriously decrease those countries' endangered species. Poaching has also provided a source of revenue for guerilla movements in strife to an African continent.

Consequently, UNEP facilitated and coordinated three expert group meetings (March, June and September, 1994) to negotiate and develop the Lusaka Agreement. The last and fourth Expert Group meeting was then followed by the Ministers meeting which adopted the Agreement on 9 September 1994 and opened it for signature with six countries (Kenya, Uganda, South Africa, United Republic of Tanzania, Swaziland and Zambia) signing immediately while Ethiopia signed later. Three resolutions, including one on implementation, were adopted unanimously. A decade later the Agreement is under evaluation and review of the experience to date of the instrument among its limited parties.

## **5 STATUS OF THE LUSAKA AGREEMENT**

Although the Agreement was closed for signature on 13 March 1995, with seven signatures on board, it is still

open for accession by any African State. (Article 12 thereof) To date six States (Zambia, Uganda, Tanzania, Kenya, Lesotho and Republic of Congo) have ratified or acceded to the Lusaka Agreement. The Agreement entered into force on 10 December 1996, that is, on the 60th day after deposit of the fourth instrument of ratification or accession.

The effective operation of the Task Force as established under the Agreement inevitably entails effective institutional set up at national level. This will ensure two-way collaborative mechanisms to effectively curb illegal wildlife trade in the region. Consequently, building the requisite capacities, particularly through the training of personnel of the national entities became *conditio sine quo non* for the Task Force to succeed in its operational activities. Subsequently the capacity building efforts of the national bureaus through the training of national enforcement officers have been emphasized.

The two weeks training courses on law enforcement conducted by national experts from Kenya and South Africa between 1996 to 1998 to sharpen enforcement officers skills in combating an ever increasing illegal trade in wild fauna and flora and also being able to effectively implement the Agreement countries that benefited include Tanzania, Uganda, Zambia, Ethiopia and Swaziland. Similar and more advanced courses have been held and continue to be organized both in the countries and outside to further strengthen the ability and capacity to net and combat environmental crime. The use of national law enforcement experts from within the participating countries to the Agreement to train and coach others clearly indicated the divergence of law enforcement capabilities in the Agreement's countries. While most of the participating countries lack technical expertise in law enforcement, intelligence and investigation capabilities to combat illegal trade in endangered species, a few, like Kenya and South Africa, have the knowledge and expertise required for the task and to facilitate effective enforcement of the Agreement. To

ensure that all participating countries were ready and prepared to work together in undertaking, where necessary, joint and undercover cross border operations when the Task Force was established, law enforcement officers from Kenya and South Africa offered to assist other countries by conducting training courses. The Task Force officers have also been exposed to operations and training outside Africa in UK and Israel, among others. All those national enforcement officers who have been trained in these programs under the Agreement continue to be useful in organizing other similar courses when they serve as resource persons.

## **6 HOW THE LUSAKA AGREEMENT WORKS**

Unlike CITES which has established a global framework to regulate and control international trade in endangered species of wild animals and plants listed in the three appendices, the Lusaka Agreement without providing any list of species, intends to reduce and ultimately to eliminate illegal trade in wild fauna and flora. It establishes, per article 5, a Task Force which, in conjunction with the National Bureaus and the Governing Council, is to make sure that this objective is achieved without compromising State Parties' national sovereignty.

Parties to the Agreement undertook in article 4 to cooperate and take action to implement the Agreement by: (a) investigating and prosecuting cases of illegal trade, (b) providing relevant information and scientific data to Task Force, (c) providing technical assistance to the Task Force, (d) encouraging public awareness campaigns, (e) paying their annual assessed contributions to the budget of the Task Force, and (f) returning to the country of original export or country of re-export any specimens or species of wild fauna and flora confiscated in the course of illegal trade.

However, to ensure effective enforcement, Parties are required and expected to adopt and enforce legislative

and administrative measures to give effect to the Agreement. In practice only Uganda has a Statute on this. It is anticipated, therefore, that as Parties implement the Agreement, efforts will also be taken to ensure that the relevant wildlife laws and regulations, criminal and penal laws are reviewed, redrafted and/or amended or strengthened and also harmonized and synchronized with each other to avoid conflicts and contradictions. Furthermore, Parties to the Lusaka Agreement are required to adopt necessary enabling legislation in their countries to incorporate the normative demands of the Lusaka Agreement into their national laws.

## **7 ADMINISTRATIVE MECHANISMS UNDER THE LUSAKA AGREEMENT**

In order to implement its provisions, three bodies are established under the Agreement, namely, the Task Force, the National Bureau, and the Governing Council.

### **7.1 Task Force**

While CITES established the Secretariat to monitor international trade in contravention of the Convention, the Lusaka Agreement establishes, under Article 5, a unique permanent multi-national institution called the Task Force, composed of national law enforcement officers of each of the Parties capable of operating internationally against international wildlife smuggling rings. Unlike the CITES Secretariat, the Task Force has powers to:- (a) facilitate cooperative activities among the National Bureaus in carrying out investigations pertaining to illegal trade; (b) investigate violations of national laws pertaining to illegal trade, at the request of the National Bureaus or with the consent of the Parties concerned, and to present to them evidence gathered during such investigations; (c) collect, process and disseminate information on activities that pertain to illegal trade, as well as establishing and maintaining databases; (d) provide, upon request of

the Parties concerned, available information related to the return to the country of original export, or country of re-export, of confiscated wild fauna and flora; and (e) perform such other functions as may be determined by the Governing Council, (article 5 (a).)

Unlike the CITES Secretariat, the Task Force comprises of field officers, commanded by the Director appointed by the Governing Council, an Intelligence Officer and such other Officers as the Governing Council may appoint. These officers have been seconded to the Task Force by the Parties. While retaining their national law enforcement powers, they carry out cross-border operations and investigations in close cooperation with National Bureaus. It is important to underline the importance of Article 5(13) which states that, "The Task Force shall not undertake, or be involved in any intervention, or activities of a political, military, religious or racial character." Its activities are therefore to be strictly within the ambit of the Agreement.

A small Task Force, with only two field officers - the Director and the Intelligent Officer, was officially launched on 1<sup>st</sup> June 1999 and has now expanded to embrace officers from each of the parties. During the initial phase of the Task Force operations, nominated field officers were deployed at the national bureaus until when the secretariat is fully established, or when sufficient resources have been procured to run the operations of the Agreement.

### **7.2 National Bureaus**

Unlike the Management and Scientific Authorities designated or established by each Party to CITES to grant permits and certificates on behalf of that Party, the Lusaka Agreement has National Bureaus established or designated by each Party to work in close liaison with the Task Force and Uganda, Tanzania, Kenya and Zambia have done so. For the purpose of the Agreement, the functions of the National Bureaus include providing to and receiving from the Task Force information on illegal trade, and coordinating with the Task Force

on investigations that involve illegal trade.

In practical terms, the National Bureaus are expected to work hand in hand with the Task Force in undertaking cooperative enforcement measures to combat illegal trade in endangered species. The Task Force shall facilitate the collection, interpretation and dissemination of information and intelligence. For this purpose a wildlife criminal intelligence database will be established. The Task Force also facilitates the co-operative enforcement activities between National Bureaus. This is achieved through coordinating joint operations, designing, planning and investigations. On the long term, once the database is fully established and operational, the Task Force will undertake analysis of wildlife crime trends for the purpose of measuring extent of crime and determining appropriate proactive and reactive measures. The measures may include profiling of repeated offenders and criminal network operating at national, sub regional and regional levels with emphasis on international syndicates.

### 7.3 Governing Council

Just like the Conference of the Parties under CITES, the decision making body of the Lusaka Agreement is the Governing Council established under the Agreement. Each Party is a member of the Governing Council, represented at Ministerial level. The Council is, therefore, the highest policy-making organ. Parties shall be represented on the Governing Council by Ministers who would be joined by their "high ranking officials dealing with wildlife law enforcement affairs" or officers whose duties are connected with the activities of the Task Force or experts in the subjects on the agenda.

Since the entry into force of the Agreement six Governing Council meetings of the Parties have been held thus far in March 1997, March 1999, and July 2000, 2001, July 2002 and July 2003.

## 8 WILL LUSAKA AGREEMENT SUCCEED TO ADDRESS CITES FLAWS?

The Task Force, dubbed "African Interpol", commenced its activities on 1<sup>st</sup> June 1999. One can only speculate whether or not it will succeed to address some of the problems of implementation and enforcement of CITES and/or strengthen it. The Management and Scientific Authorities are designated or established by the Parties to CITES while the CITES Secretariat itself has no control in the internal affairs of those Parties apart from urging them to fulfill their obligations under the Convention. The Lusaka Agreement has gone beyond intentions and ushered in an implementation phase, starting with a few parties, and building in numbers hopefully to eventually cover the whole Africa region.

The six State Parties to the Lusaka Agreement are also Parties to the CITES. The Management Authorities established by the Parties to CITES are actually the same national entities designated as National Bureaus under the Lusaka Agreement. The fact that the same national entities which facilitate the implementation and enforcement of CITES are the same for the Lusaka Agreement ensures that these working modalities under the Lusaka Agreement are in harmony and thus would strengthen the effectiveness of CITES and vice versa.

The Task Force, on the other hand, is composed of field officers seconded from the Parties' designated National Bureaus and who continue to retain their national law enforcement powers. This actually means that, the Task Force field officers are also the enforcement officers of their countries' National Bureaus. When fully operational, it would be easier for the field officers to obtain any required information from their National Bureaus since either they are the information source themselves or they will know which button to press for the right information when required. The same officers could be dispatched to their country's National Bureaus to retrieve the required information and/or evidence.

These officers would also lead the Task Force to their countries in the event of joint undercover and cross-border operations to curb illegal trade of wildlife species. The problems which CITES faces in relation to communication channels, inaccurate reports etc. would not be easily felt under the Lusaka Agreement and hence will succeed to strengthen CITES. While the CITES Secretariat has to depend on the goodwill of the offices of Management and Scientific Authorities to furnish information, reports, etc., the Task Force would depend on its own seconded officers to provide the required information.

Efforts to build the capacity of the National Bureaus go hand in hand with building the capacity of the Task Force. For the Task Force to coordinate with the National Bureaus on investigations of undercover operations that involve illegal trade, it will also undertake joint training programs to ensure the same level of capacity building to conduct such intelligence activities. Once the national law enforcement officers of both the Bureaus and those seconded to the Task Force are well trained, equipped, and funded, the Lusaka Agreement will obviously receive credit for its efforts to combat cross-border illegal trade and enforce CITES at regional level. Further the enforcement officers, whether in the Task Force, or in the National Bureaus, remain colleagues in operation only from time to time alternating between national bureaus and the Task Force.

## **9 THE TASK FORCE IN ACTION**

Understandably, the Lusaka Agreement Task Force has had the usual teething problems related to lack of financial, human and technical resources necessary for its operations. However, the difficulties notwithstanding, the Unit has had several major successful operations. To mention but a few:

The Task Force in joint collaboration with the Kenya Wildlife Service recovered in June 1999, 61 elephant tusks weighing about 425 kilograms in Maralal Town of Samburu District of Kenya was

seized and two suspects arrested. The ivory was destined for export. Following a request from the Kenya Wildlife Service, the Task Force conducted a joint operation in August 1999 with the Anti-poaching Unit of Tanzania Wildlife Division. They arrested three Tanzanians suspected to be involved in cross-border poaching of elephants in Tsavo West National Park of Kenya. During the arrests at Gonja area, same district in Tanzania a .458 caliber rifle was recovered. The Task Force conducted in October 1999 a joint operation with Kenya Wildlife Service at Kakongi, Turkana District in Kenya. Twenty-eight elephant tusks weighing 247.2 kilograms were recovered and three people arrested.

At the Third Governing Council Meeting in July 2000, it was reported that in four overt operations, which were preceded by intelligence activities, the Task Force, with Tanzania's National Bureau (Wildlife Protection Unit) and Kenya's National Bureau, Kenya Wildlife Service (KWS), netted a total of 91 elephant tusks (weighing about 630 kilograms) and one 404 rifle, and 12 suspects arrested and prosecuted. In addition, in collaboration with the Task Force, four suspected poachers were arrested in Tanzania in August 1999. As a result of the arrests made at Kakong (Kenya) and Same (Tanzania), it was reported that poaching of elephants had declined in Nasalot/South Turkana National Reserves and Tsavo West National Park/Mkomazi Game Reserve. It was further reported that the Task Force also worked closely with other law enforcement and related organizations outside Africa in investigations which resulted in various seizures of specimens of ivory in Bangkok (500 kilograms), Tokyo (250 kilograms), Taipei (2189.42 kilograms), as well as, in collaboration with KWS, the seizure of assorted species of reptiles in Mombasa in May 2000.

At the Fifth Governing Council Meeting in July 2002 it was reported that the Task Force had collected intelligence information, and also conducted successful operations in Kenya, Congo, Tanzania and Zambia. Collaborative operations between

the Task Force, the respective National Bureaus and international law enforcement agencies, had enabled the Task Force to apprehend 25 suspects in various areas of the African continent. They seized 556 pieces of raw elephant tusks weighing 6,306.38 kilograms, 40,810 pieces of polished/worked ivory, 13 raw zebra skins, various other animal skins, bush meat, nets and metallic traps. At the Sixth Governing Council Meeting, it was reported that the Task Force had successfully conducted joint operations in collaboration with the National Bureaus of Kenya, Tanzania, Congo and Uganda. These operations had resulted in seizures of wild animal trophies, predominantly skins and processed ivory.

#### **10 NEED TO HARMONIZE LAWS TO IMPLEMENT LUSAKA AGREEMENT AND ENFORCE CITES**

The work of the Task Force entirely depends on how effective the designated National Bureaus and the individual national wildlife laws and regulations facilitate the operations of the Task Force. The effectiveness of the laws and regulations is crucial and must go hand in hand with the harmonization of laws with neighboring States since the Task Force will inevitably deal with cross-border operations.

There is, therefore, an urgent need to review the existing national wildlife laws and regulations with the view to identify gaps and drawbacks that exist in the legislation and make the necessary amendments. Such review would go hand in hand with the incorporation of normative demands of the international instruments, such as the CITES and the Lusaka Agreement, into each country's national legal systems. For the Parties to the Lusaka Agreement to co-operate with one another and with the Task Force for the effective implementation of the Agreement as provided under Article 4, the Parties should inevitably take appropriate measures, individually and/or jointly, to investigate and prosecute cases of illegal trade.

Parties would only be able to fulfill

that obligation if they adopt and enforce necessary legislative and administrative measures to give effect to the CITES and the Agreement in their territories and to harmonize their relevant laws. Such harmonization would permit uniform application of, for instance, penalties and punishments, the requirement to return the confiscated species in the course of illegal trade to the country of original export, and making wildlife offences serious and extraditable. The Parties will have to ensure that special and deterrent punishments are provided to wildlife offenders. In such cases, not only should the fines be heavy, but should include mandatory long-term imprisonment to induce compliance. The mandatory forfeiture by the State of any wildlife species or specimen illegally obtained, together with any weapon and vehicles that may have been used in the commission of the crime should also be considered and provided for in the relevant laws.

Simpler mechanisms could also be sought to avoid the long process and the inconvenience of carrying out frequent amendments to the national laws in order to incorporate the contents of such international instruments and subsequent modifications thereof that the country may adopt from time to time in future. States may opt to specify under their wildlife laws that the prescribed authority may, when necessary, promulgate rules and regulations in order to give effect to the international instruments to which they are Parties.

In the alternative, the legislation may provide for the delegation of rule-making powers to the prescribed authorities. Under such vested powers, the authorities could fix license fees, terms and conditions of operating the licenses, and restrictions and obligations of visitors to the national parks and protected areas. It could also establish the procedure for disposal of seized species, and other specific aspects which would unnecessarily hamper and make the main legislation cumbersome. Such a provision would enable the detailed operation of the enactment to be more flexible as it would allow the authorities implementing the legislation to modify the provi-

sions when need arises without having to undergo the lengthy and complicated procedures of the amendment of national laws.

Furthermore, in view of the importance of the wildlife resources to the countries, there might be need for relevant laws to establish special tribunals to try wildlife offences and to train special prosecutors to prosecute wildlife cases. However, since there is a current move in the recent framework environmental laws to provide for the establishment of special tribunals to deal with environmental cases, similar mechanisms could be used to avoid proliferation of such tribunals. It might even be salutary for the legislation to provide for economic incentives, such as the payment of rewards for services rendered in connection with the detection and prosecution of wildlife offences under the law, to induce compliance. The law may provide that upon conviction, the court may direct that one-half (or an accepted percentage) of any fine recovered in wildlife cases be paid into a special fund to be maintained and operated by the Director responsible for wildlife conservation. Such funds could then be ploughed back to benefit the local communities and other wildlife activities. East African Magazine of 15-21 January 1996 reported that Tanzania has been able to recover US\$ 1.5 million realized from the sale of 9.7 tons of ivory from Tanzania impounded and sold by Belgian Government ten years ago. In a special agreement concluded with the Belgian Government, the funds were to be used in the protection of elephants in the country. The money came from the sale of 1,889 elephant tusks found hidden in two containers shipped from Tanzania and destined for Dubai. False documents indicated the content to be Beeswax. In addition, mechanisms need to be sought and agreed upon whereby all other wildlife revenue collected can be ploughed back to wildlife conservation activities so as to enable such institutions to be self-generating bodies for activities and commitments without depending too much on central governments which are also faced with meager resources.

Local communities need to be part

and parcel of the government's efforts to protect wildlife. Communities which live amongst wildlife in the rural areas need to derive adequate and direct benefits from the use of these resources in order to make them have an interest in their conservation and protection. The relevant laws should therefore include provisions for the participation of the local communities in the enforcement measures directed at illegal trade of wildlife and for part of the revenue accrued from combating such illegal trade benefiting these communities. In fact working with the communities, the national bureaus will be able to identify intruders and follow them up to arrest and prosecution.

There are many aspects to be taken into account in the review of wildlife laws and regulations; only a few have been dealt with in this paper. The wildlife laws in most countries are many and diverse and they will all be required to be studied and revised in their totality for better analysis. However, for the East African countries of Kenya, Uganda and Tanzania, review of their national wildlife laws for harmonization purposes was made and discussed at a workshop held at Kisumu, Kenya, in February 1998. It is hoped that other Parties to the Lusaka Agreement will follow suit to ensure its effective enforcement and compliance. In any case any other African country intending to ratify or accede to the Agreement had better be on notice on this aspect.

## 11 SUMMARY AND CONCLUSION

The Lusaka Agreement and the institutional structures established for its effective implementation are designed to overcome some of the law enforcement problems which hinder increased compliance with CITES and thus assist more effective wildlife conservation and management. Hence, the ratification of or accession to the Lusaka Agreement or even CITES, is not an end in itself. Parties need to implement its provisions as is indeed desired for all such regional and global instruments. Entry into force, and even

establishing the Task Force to work with the relevant enforcement agencies (National Bureaus) in the countries will be ineffective if not coupled with the adoption, amendment or strengthening of the relevant laws and regulations in the countries and if all relevant agencies and officials do not work in a coordinated manner to curtail the common menace through concerted action. Importantly, the Parties need to harmonize the relevant laws between and among States Parties to the Agreement.

It has been underscored that the Agreement reinforces CITES which was a partner of UNEP and the States during the negotiating process, and which remains a partner in the further efforts to ensure the Agreement is effectively implemented at regional level so as to strengthen CITES. CITES has established the legal framework whereby participating States to the Convention have agreed to regulate international trade in certain species of wild animals and plants as specified in the appendices. Nevertheless, the practical aspects of creating the necessary infrastructure to control this trade is left to the Parties concerned to take appropriate measures to enforce the provisions of the Convention. If Parties to the Lusaka Agreement succeed to create the necessary environment to reduce and/or eliminate illegal trade in wildlife species, it will surely thrive and manage to address some of the criticisms or concerns which have been leveled against CITES by a number of writers, as summarized in the paper.

The Lusaka Agreement as an offshoot of CITES, therefore, seeks to implement and reinforce the provisions of CITES by conducting undercover investigations in close co-operation with designated national law enforcement agencies in different countries. However, unlike CITES which lists specific species under the appendices, the Lusaka Agreement is broad in its scope

as it deals with all species of wild fauna and flora at regional level and in this respect also reinforces the 1992 Convention on Biological Diversity as well. Consequently, Lusaka Agreement as a regional agreement, just like CITES at a global instrument, is not, in itself, a self-executing instrument. Its terms and contents need to be incorporated into national legislation of each Party to it. The ball is, therefore, in the Parties' courts to make it really work and reinforce the CITES to which most countries are Parties and are therefore committed.

The Task Force, in collaboration with relevant national bureaus, has so far succeeded to recover several elephant tusks and arrested several offenders involved in cross-borders poaching and recovered a several weapons. These are positive beginnings. It can well be ascertained that given time and adequate resources, more will be achieved in their efforts to curb illegal trade in wild fauna and flora in Africa. In fact, if the Lusaka Agreement continues to work in this spirit, it could easily serve as a blueprint and model for similar co-operative regional law enforcement mechanisms to be replicated in other parts of the world plagued with similar menace.

However for any region anticipating to initiate similar infrastructure as under the Lusaka Agreement countries, political will and commitment on the part of the members coupled with adequate human and financial resources as well as institutional capacity to handle the challenges involved will be required to support such a regional body. These elements are necessary and are sine quo non for any successful regional law enforcement mechanism intended to strengthen not only CITES, but any other environmental concern addressed.