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The Use of Law in Wildlife Management

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Abstract

This paper is a commentary on the suitability of using law in wildlife management, and on the role that the law can play in conservation and management of wildlife and wildlife resources. It is based on the hypothesis that law is an important tool for regulating social conduct and enforcing policy, and can play an important role in achieving sustainable wildlife management. The author holds the view that having no law at all, or having irrelevant, unsuitable, inappropriate and ineffective laws is unhelpful, and will in the end be counter-productive and a liability to the conservation agenda. The paper has critically addressed these concerns. Being a commentary, it presents the author's personal views and opinion(s), but also draws from documented research and diverse views of other researchers, scholars, and commentators on the subject. It has also drawn from literature survey and arm-chair study, as well as views and information gathered by the author in previous research whose data and findings have been published. Virtually all societies, from the primitive society to the modern society, have had some form of law or legal ordering; with informal legal ordering in the former and more formalized laws in the latter. The enterprise of law (legal ordering) is so crucial that it has permeated all sectors of society and aspects of life, in such a way that a society without law is unfathomable. Laws have been used from time immemorial including the antecedent biblical times for: Societal ordering; defining rights and duties; prescribing standards for actions and conduct; proscribing harmful and undesirable conduct; punishing undesirable and prohibited conduct; addressing society's problems; establishing mechanisms for dispute adjudication and dispute resolution; as well as reconciling and mitigating competing (and often conflicting) interests. Admittedly, law has permeated all sectors of society, including the wildlife sector; such that there are rules, regulations and laws on wildlife. This is to the extent that there has even developed a genre of law that may be described as wildlife management law, or simply wildlife law; with its own professionals, its own textbooks, and its own jurisprudence. This law has provisions: On wildlife ownership and use; for establishing wildlife agencies and spelling out their respective duties; for protecting wildlife from

harm, especially that arising from human conduct and activities; for protecting wildlife habitats from encroachment by humans; and for mitigating the negative costs of wildlife such as competition for resources as well as wildlife predation and depredation. While law has some advantages that make it suitable for that purpose, it also has certain limitations. There are also several factors that determine or affect the effectiveness of laws (determinants)—mainly institutional ones. In that even with properly formulated laws, for law to be effective and play its intended role, there is need for those factors (determinants) to be addressed. They include: The relevance and suitability of the particular laws to the local circumstances of the locality in which they are applied; the acceptability of such laws to stakeholders and the general public; whether those laws set up effective mechanisms for dispute adjudication and dispute settlement; whether those laws are backed with appropriate policy frameworks and effective institutional arrangements.

Keywords

Use of Law, Wildlife, Wildlife Management, Wildlife Management Law, Suitability of Law, Limitations of Law, Effectiveness of Laws

1. General Introduction, Research Methodology and Conceptual Framework

1.1. General Introduction

This paper is a commentary on the suitability of using law in wildlife management, and on the role that the law can play in conservation and management of wildlife and wildlife resources. It is based on the hypothesis that law is an important tool for regulating social conduct and enforcing policy, and can play an important role in achieving sustainable wildlife management. Being a commentary, it presents the author's personal views and opinion(s), but also draws from documented research and diverse views of other researchers, scholars, and commentators on the subject. It has also drawn from literature survey and arm-chair study, as well as views and information gathered by the author in previous research whose data and findings have been published. It is divided into five parts. This Part One is the introduction and conceptual framework, that describes the lay-out of the paper, then proceeds to provide the conceptual framework for the discourse in the subsequent parts of the paper. In the conceptual framework, the author defines the key terms and concepts, then discusses the functions of law in society, as well as the importance and benefits of wildlife. Part Two discusses the suitability and limitations of law, as well as the major determinants of the effectiveness of law. In Part Three, the author discusses the role of law in wildlife management, as well as the attributes of wildlife management laws, and the strategies that these laws employ in their noble task of conserving and managing wildlife and wildlife resources. Part Four is the conclusion part that summarizes

the discussion in the preceding parts, and then makes recommendations on the use of law for wildlife management. Being a commentary, it presents the author's personal views and opinion(s), but also draws from documented research and diverse views of other researchers, scholars, and commentators on the subject. It has also drawn from literature survey and arm-chair reading that lasted over one year, as well as views and information gathered by the author in previous studies whose data and findings have been published.

1.2. The Conceptual Framework

1) Definition of Key Terms and Concepts

The author has identified three key terms used in this paper. They are: Law, wildlife, and wildlife management. The term law has been described variously, even satirically, but more particularly as a set of rules or as a judicial process. The legend satirist Dickens (1941) in his book "Oliver Twist". When one of the characters in that book Mr. Bumble, the unhappy spouse of a domineering wife, is told in court "the law supposes that your wife acts under your direction", he in reply quipped "if the law supposes that", "the law is an ass—an idiot" (at Page 489). Fuller (1964) in his treatise "The Morality of Law" described law as an enterprise of subjecting human conduct to the governance of rules. Be that as it may, the term "law" as used in this paper can be defined as a set of rules and regulations for controlling social behaviour, promoting public welfare, and enforcing government policy. Currie and Waal (2001) for their part say law is concerned with advancing the welfare of the public, with resolving disputes, maintaining social control, planning and development, conferring and controlling power, the protection of rights, and the regulation of politics and the economy; and sometimes law is also concerned with justice. In the context of this paper, law comprises constitutional provisions, legislative provisions, judicial decisions (in jurisdictions where these are recognized as a source of law), by-laws and other subsidiary regulations, legal principles and custom. As for the term "wildlife", it in common parlance is taken to mean both wild animals and wild birds generally. In the context of this paper, the term is similarly used to refer to non-domestic animals and non-domestic birds, while the term "wildlife management" is used in this paper to refer to the sum total of measures and strategies adopted to conserve and manage wildlife.

2) The Functions of Law in Society

Virtually all societies, from the primitive society to the modern society, have had law; informal legal systems in the former and more formalized ones in the latter. Law is so crucial in society and has permeated all aspects of life and sectors of society, including wildlife, in such a way that a society without law is unfathomable. The importance and function of law in society therefore need not be over-emphasized. Funk (1972) has observed that there has been more concern on the definition and sources of law rather than on its role, purpose, function and utility. Law has been an integral part of society, at each stage of civilization

from medieval era to modern times. It has been used from time immemorial for: Societal ordering; defining rights and duties; prescribing standards for acts and conduct; proscribing harmful and undesirable conduct; punishing undesirable and prohibited conduct; addressing society's problems; establishing mechanisms for dispute adjudication and resolution; as well as reconciling and mitigating competing (and often conflicting) interests.

In the pre-historic society, there was no need for law. However, with the advent of the modern society human populations increased and humans started competing for scarce natural resources such as land, wildlife, forestry and other natural resources. With further expansion and the advent of modern civilizations there arose competition between different forms of land use. There also arose other competing and often conflicting interests some of which are irreconcilable, e.g. in the political arena. There therefore arose the urgent need to attempt to reconcile these interests or balance them or to merely create harmony in their co-existence. With modernization and industrialization, a complex web of human relationships was engendered, and the magnitude and array of conflicts had expanded remarkably. In the pre-historic and pre-civilization era, humans stayed in bands of clans and families, but later with western type of civilization that de-emphasizes communes and promotes individualization and selfishness, there arose remarkable inequalities that resulted in an overly stratified society on the basis especially of socio-economic classes, with each class having its own interests hence more conflicts. The law had to come in for purposes of regulating those competing and often conflicting interests and mitigating the conflicts arising therefrom. One of the means used by the law for this purpose was through prescription and proscription. Given that humans are by nature deviant and selfish, there arose need for the law to adopt penalties and sanctions to ensure compliance with its prescriptions and proscriptions, as well as its other edicts. In sum therefore, the need for law was principally for purposes of providing a formal means for dispute (actually conflict) adjudication and resolution, while also prescribing standards of acceptable conduct and proscribing harmful conduct.

Nevertheless, having policies and political will alone without the enabling laws is not enough, as it is akin to having a toothless dog that barks but cannot bite. Law indeed gives policy positions and political will the requisite "teeth" to bite, hence without it these two remain mere "paper tigers". However, having irrelevant, unsuitable, inappropriate and ineffective laws is unhelpful, and will in the end be counter-productive. Even with good laws, there has to be the supporting institutional framework and effective enforcement; as enforcement is one of the key determinants of the effectiveness of laws.

3) Importance and Benefits of Wildlife

Wildlife is as old as humanity, and there has from pre-historic era to modern times existed an inextricable relationship between the human society and wildlife. Like many other resources, wildlife needs to be of some value or use to hu-

mans; as the term "resource" refers to anything for human use and benefit (Wantrup, 1952). However, unlike minerals which are by law vested in the government and can only be extracted by it and not the citizenry, wildlife is a resource that the citizens may utilize in their day to day lives to meet their needs. While wildlife has a wide array of benefits to society, economic benefits in many cases are perhaps the most emphasized as compared to the other benefits and uses (Sifuna, 2012). Its importance and benefits comprise its consumptive uses, non-consumptive uses and its intrinsic value; and may be summarized as follows: Its ecological role in biodiversity as a gene bank, as well as its significance as an integral part of the ecosystem, and component of the food chain; its use as a source of food and nutrition for humankind; its cultural and socio-economic uses; its use in modern medicine and in folk medicine; its use for educational study and scientific research; as well as its intrinsic beauty and recreational use for viewing and photography. Wildlife therefore is a valuable resource, with numerous benefits to society in terms of its contribution to the economy, ecosystem, nutrition, medicine, recreation, socio-cultural purposes, educational and scientific development. Despite these benefits however, it also imposes negative costs to societal life and livelihoods in terms of competition for resources (such as land and space), disruption of normal life, as well as direct damage to people and their property (predation and depredation) (Sifuna, 2010). There are dangerous wild animals that are known to attack humans and cause them deaths and bodily harm, or attack livestock (sometimes fatally), damage crops and other property (movable and immovable) as well as public infrastructure. The menace of damage by these problem animals (nuisance wildlife) as well as its solutions have been extensively discussed by this author in previous studies whose findings are published (e.g., Sifuna, 2006; Sifuna, 2009a; Sifuna 2009b; Sifuna, 2010).

2. Suitability, Limitations and Effectiveness of Law

2.1. Suitability of Law

While wildlife conservation can be pursued through appropriate policies, there is need to back up such policies with appropriate laws. This is because one of the fundamental functions of law is to implement policies. The formulation of a policy always needs to be followed by the enactment of corresponding enabling laws to validate that policy to enable its implementation. Without the subsequent enactment of a corresponding enabling law, a policy will remain a toothless dog that barks but cannot bite, or a mere "paper tiger". Given the existence of wildlife management policies, law has a crucial role to play in the conservation and management of wildlife, especially the implementation of wildlife policy. Advantages of backing conservation efforts with attendant legal provisioning are many, and include the following:

Certainty

Unlike policies, which are general or generalized statements of object, laws are specific and certain; hence legal provisioning brings about certainty as opposed

to leaving important issues and sectors such as wildlife to mere policies, or executive whims which may be largely erratic and therefore uncertain. A law that is laden with ambiguities or ambiguity is bad law, as one of the rules of legal draftsmanship is that a law need be certain. Fuller (1964) in his treatise "The Morality of law" cited clarity (certainty) as one of the requirements of a law.

Creation of Justiciable Rights and Mechanisms for Addressing Infringement of these Rights

Law creates justiciable rights and corresponding obligations that can be enforced through the courts as opposed to choice by the executive. It creates rights that can be litigated or enforced, and whose infringement can be litigated in courts of law, rather than leaving them to the mercy of the executive and the political class. Litigating such rights or enforcing them through the judicial system is advantageous because the judicature is the vanguard of justice, and no one with a genuine grievance will be turned away from the seat of justice. These rights can be litigated in courts of law for instance by way of constitutional petitions, or through the ordinary adjudication of disputes for instance in civil suits. It is encouraging that apart from creating justiciable rights, the law also sets up institutions and processes for settling disputes that arise from denial or infringement of these rights.

Ignorance of the Law is No Excuse

The operation of the legal principle "ignorantia juris non excusat" (whose English translation is "ignorance of the law is no excuse") provides a water-tight regulatory regime because ignorance of the law cannot afford a transgressor an excuse for not observing its edicts on the claim that they were not aware of that law. This is plausible because without this principle, people will just break the law and feign ignorance to escape liability and punishment. This scapegoating has no room in Kenya, because the enactment of any statute or regulations is preceded by public participation where the public is invited to submit views at its initial stage as a parliamentary Bill, before promulgation. Later after promulgation, the statute or regulations is/are published in the Government's official publication called the Kenya Gazette for all and sundry to not only know about it, but also read the content. Moreover, every such promulgated statute or regulations have a preambular part that states the legislative objective, as well as the date of commencement.

Equality of All before the Law

Another cardinal principle of law is that all people are equal before the law. Ideally, the law is applied to everyone equally and treats everyone equally without bias or preferential treatment. All are expected to comply with and obey the edicts of the law, irrespective of race, tribe, gender, sexual orientation, creed, or station in life. By treating all as equal before it, law obviates impunity and discrimination; and acquires universal application (not in the international sense, but connotes all).

Law's Objective is Doing Justice

One of the prime objectives or goals of law is to do justice, as opposed to injustice. This is a cardinal tenet of law, that is the thread that runs through the

entire corpus of law. It is law's irreducible minimum or the foundation stone. For Kenya, the goal of justice (in fact substantive justice) is even enshrined in Article 159 of her Constitution (The Constitution of Kenya, 2010), which Constitution is the supreme law of the land; from which all laws derive their legitimacy, such that any law that is inconsistent with it, is null and void, to the extent of that inconsistency (Article 2). Indeed the virtue of all virtues is justice. Whereas it is not easy to define justice, justice like light, is only noticeable when it is absent. It is easier to notice an injustice—which term translates to lack of justice.

Law Creates and Designates Enforcement Agencies

As already stated in this paper, policies require the enactment of corresponding enabling laws to implement them. They also require the creation and/or designation of the agencies vested with the duty of implementing them (implementing agencies). While such agencies can be created or designated by such policies, it is better when they are created or designated by the law rather than administratively or by executive whim. Just the way a policy will designate a particular agency and charge it with its (the policy's) implementation, a law will likewise create or designate a specific institution or entity to enforce it (the law). This is acknowledgement of the fact that without enforcement, the law and all its prescriptions and proscriptions will remain mere words and "paper tigers". The law in creating or designating these enforcement agencies, also spells out their functions and responsibilities. The prescription of duties and functions for such agencies is usually accompanied with spelling out penalties and sanctions for abdication of duty; whether the abdication be willful or negligent. Legal creation or designation agencies makes them legal entities, gives them juristic legitimacy, as well as clothes them with legal authority in the sense that they have legal backing for their roles and are legally liable for their actions. Indeed such agencies function well when they have been created (or designated) by the law, rather than administratively or by policy only, or by executive whim.

Laws are Enforced by Public Entities

Enforcement of laws is invariably vested in public entities, usually public institutions, public offices, public officers or other public actors. The advantage of vesting enforcement in public entities is that they being part of government they enjoy governmental authority and have the coercive power of the state at their disposal, especially the executive arm of government; hence have pride of place compared with private entities or private actors. For this reason, enforcement is usually backed by and superintended by executive authority and has the blessing of the executive arm of government which is some kind of "big brother" in public affairs and even in private affairs of the citizenry.

Laws are Couched in Mandatory Terms

Laws are couched in mandatory terms (never as a request) rather than in permissive form, and compliance with it is a duty and obligation rather than a choice. Everyone has a duty to, without discretion or preference, obey the law. Those that choose to or happen to disobey or fail to comply with it, are usually punished by being visited with the set of penalties and sanctions prescribed by it

for infraction. In other words, the law is the law, must be obeyed, and compliance with it is a duty and obligation, rather than a discretion. This standpoint has given rise to habitual obedience of law; where people are in the habit of obeying the law of the land. Such that obedience to law is not only a requirement, but has become a routine, and even a lifestyle. In the social contract between the government and its subjects, there is an undertaking by the subjects that they will obey the laws promulgated by the government; with the resultant legitimate expectation on their part that so long as they are obeying these laws, the government will let them enjoy their peace and not hound them. This is because laws are made by government (the legislature or the executive) and not private entities or private citizens. Such laws (state made laws) are called positive laws and are backed by governmental authority and sanctions to secure compliance with them. One of the tools of governmental authority is coercion—usually referred to as the coercive power of the state. This power in itself has the potential to secure from the citizenry, voluntary obedience and even involuntary obedience to law.

Law's Prescriptions and Prohibitions are Backed by Sanctions for Non-Compliance

Law, unlike a policy, creates legal sanctions for breach of its edicts and non-compliance with it. A law that criminalizes or characterizes particular actions and conduct as offences, will also usually prescribe penalties and sanctions for breach and non-compliance. By so doing, law insulates itself from indifference and disregard, and also enhances compliance with its edicts. As already stated, law is usually backed by penalties and sanctions to ensure and secure compliance, in that it spells them out to punish those as willfully or negligently break or disobey it, or simply fail to comply with it. Under Kenyan law these penalties and sanctions include: imprisonment, fines, surcharge, restitution, restoration, as well as payment of compensatory damages. These are intended as punishment rather than a reward. Admittedly, the legal duty to obey the law has the effect of not only discouraging non-compliance, but also ensuring and even increasing compliance with laws. While some people will comply with a law without knowing about its existence or edict, or for reason of its edict (content) being acceptable to them and them agreeing with the same, many others (if not more) comply with laws or refrain from violating them, for fear of the penalties and sanctions prescribed for infraction or non-compliance, or disobedience; i.e. for fear of the legal consequences for breach. These, as already observed in this paper, are usually punitive and undesirable. The fear of these penalties and sanctions being visited upon one, is one of the major drivers of people obeying the law; as without them, the law will be like the proverbial toothless dog that barks but cannot bite. In other words, penalties and sanctions give the law "the teeth" to bite, hence making it a reality and securing the compliance and obedience contemplated by it.

2.2. Limitations of Law

Despite its suitability as a regulatory tool, law has some limitations that pose a

challenge to its use generally, and even more specifically in the context of this paper, to its use in wildlife management. These limitations need to be taken into account in deciding to use law to pursue policy goals or to meet certain standards. Such weaknesses can curtail its function in the conservation and management of wildlife. The author has identified the following six as being the law's main limitations:

Law is Rigid

Law is essentially rigid, as it has elaborate processes and procedures for amendment. For this reason, it lacks the flexibility necessary for prompt response to new circumstances, situations and issues. This means the law will always lag behind even when the need for change is clear. Provisions in an Act of Parliament, for instance, will only be amended by Parliament itself. Amendments to constitutional provisions mostly for instance require to be passed by a special majority. In Kenya, constitutional amendment requires a two thirds majority, while amendments that affect the basic-structure of the Constitution require approval at a national referendum organized by the national electoral body—The Independent Electoral and Boundaries Commission (IEBC). Therefore, unlike a policy which can be abandoned and another adopted in its place, the amendment of the law can be a complex and laborious process to undertake. This is a major challenge to the use of law in wildlife management, as the wildlife sector is a considerably dynamic one, that has to be responsive to changing circumstances as well as to new and emergent concepts and phenomena. As such wildlife law would be expected to keep changing to keep abreast with these changes, which is a tall order for law as it is by its character neither very fluid nor easily mutable.

Law is Not Self-executing, Hence Relies on External Actors for Enforcement

Law is not self-executing, hence relies on some external agency or personnel or office to enforce it. For the most part its usefulness will depend on the conduct of these enforcers. The assumption that the law is a pure science that is neither influenced nor affected by other disciplines or factors that are not law, is misplaced. The truth is that laws and their functionality are often influenced by non-juridical factors such as politics, social transformations, commerce, science, religion, ethnicity, corruption, and even geographical factors. Such drivers would invariably be manifest in the actions of the actors entrusted with law enforcement (enforcement agencies and personnel). Notably therefore, understanding the diverse interests that inform the formulation and enforcement of laws is very important. Sometimes the influence may be so great that a particular law may end up being a hindrance to its own functionality, application and effectiveness. This dilemma is further compounded by the fact that almost every legal rule has an exception. The availability of exceptions sometimes poses a challenge to the smooth operation of the law, since such exceptions can be used by people to circumvent its noble objectives. Related to this, is the fact that law cannot satisfy the interests of all in society. This is because society is not a ho-

mogeneous unit, but one with diverse and often divergent and sometimes conflicting interests. Like other sectors of society, the wildlife sector has diverse interests. Which interests, are as varied as the segments of society, and are often conflicting and sometimes irreconcilable despite the coercive character of law. There are also private as well as societal and public interests.

Law is not a self-contained enterprise. It is dependent on institutions with regard to its promulgation, interpretation, and enforcement; the absence of which, laws become abstract formulations or mere "paper tigers". Without enforcement, the law is dead, or at best just a "toothless dog" that barks but cannot bite. It is the enforcement work of these enforcement institutions, personnel and agencies that gives the law teeth. It is their efficiency in enforcement that gives laws meaning and the legal force, such that if these actors abdicate their enforcement roles, then the law fails. Law demands supervision and unless infractions are brought to its attention, they go unpunished. That is why acts that are done in complete privacy and secrecy, however illegal, are likely to go unnoticed and unpunished.

Not Every Problem Can Be Solved Through Law

Law is not a panacea to every problem, and not every problem can be solved through the instrumentality of law. Not every problem requires a legal solution. Some problems require social solutions, while others require spiritual solutions, economic solutions and even political solutions. The law can neither solve every problem nor address every issue or aspect. Sometimes it creates problems that were not anticipated by the authorities while promulgating it. This can be a major hindrance to its effectiveness, as some of the legal solutions may even be such as undermine certain policy objectives. Even when it punishes an infraction by for instance meting out punishment in the form of imprisonment and compensation, it may not necessarily have solved the root cause of the infraction or other underlying forces of the dispute, such as long-standing bad blood between the disputants or history of family conflict. Except where the dispute is resolved through an alternative dispute resolution (ADR) process such as arbitration, mediation or conciliation, the verdict of the court hardly resolves the dispute and polemics of the disputants. Even when a judgment is handed out at the end of a prosecution or litigation, it may convolute the disagreements or conflicts between the parties, rather than resolving them or providing a solution to the problem. In many cases a reconciliation of the parties may be preferrable to punishing the infraction.

Its Failure to Provide Alternatives For Proscribed Actions and Conduct

Law merely proscribes and prohibits actions and conduct, without providing alternatives. A law prohibiting hunting, for instance, only prohibits hunting but does not provide or suggest alternatives sources or means of livelihood for subsistence hunters for instance, who rely on hunting for food. Proscribing and prohibiting an act or conduct without providing alternatives to it, is practically unhelpful. This approach makes the law abstract and often unrealistic, rather

than pragmatic. Some laws and legal provisions are merely academic and of no practical value in real life. For instance law only proscribes and prescribes conduct but does not provide for nor propose alternatives. A law prohibiting hunting would, for instance, reasonably be expected to state or suggest what else, or what other lawful activities, the former and potential hunters can engage in to earn a living.

Law Deals With Overt Acts Rather Than Character of an Individual

Law deals with the outside and not the inside of humans; their overt acts and not their thoughts and mental schemes (Cotterrell, 1984). It tackles overt acts, leaving attitudes which are the main determinants of conduct/actions. It is said that not even the devil knows what is in a person's mind. While only those who are caught for killing or wounding wildlife are apprehended to face the law, there are many people in the local communities interviewed by the author in previous studies particularly in Kenya, who wished that wildlife would be extinct some day. They wished they would wake up one morning and find all wild animals dead, and that if they had the power they would exterminate wildlife. This was their response to the question: "Would you support the idea of wildlife being eradicated?"

Law is Concerned with Proof Rather Than the Truth

Law seems to be obsessed with proof and evidence rather than the truth. This is true especially in litigation and prosecutorial processes, where courts of law decide cases on the basis of the evidence provided rather than the truth of the facts. Even when one has a good and winnable case, they may lose it if they fail to provide evidence that meets the conventional legal threshold; which is, beyond reasonable doubt in a criminal trial (e.g. where one is charged with committing a crime, e.g. a wildlife crime), and a balance of probability (preponderance of doubt) if it is a civil case (e.g. a claim for compensation for damage caused by wildlife). This is as opposed to the use of lie detectors. This limitation can pose a real challenge for law, especially in adversarial systems of adjudication, that is applied in common law jurisdictions such as Kenya. In this system, a court is an impartial umpire who plays a passive role in the proceedings; of just recording the evidence and waiting to deliver the judgement or ruling later. This is unlike the inquisitorial system of adjudication, where the court plays an active role and participates actively in the proceedings through probing, interjections, argumentation, casting doubt, and inquiry; rather than quietly recording the proceedings and waiting to deliver a verdict in the end.

2.3. Some Determinants of the Effectiveness of Laws

Having laws is one thing and whether or not they are effective is a totally different issue all together. There are factors that affect or determine the efficiency and efficacy of laws. These are the actual drivers of law. On the effectiveness of laws, Allot (1980) observes that "…laws are often ineffective, doomed to stultification almost at birth, doomed by the over-ambitions of the legislator and the

under-provision of the necessary requirements for an effective law, such as adequate preliminary survey, communication, acceptance, and enforcement machinery". For a law to be of practical use, it requires effectiveness in enforcement. In the wildlife sector for instance, it requires efficient enforcement in order that it can play its intended role in the success of wildlife conservation policies and programmes, as well as the conservation of wildlife and wildlife resources. This author in a related study identified the major factors that affect the effectiveness of wildlife laws (Sifuna, 2009a; Sifuna, 2009b), as follows:

1) *Relevance and Suitability to Local Circumstances*

For a law to be effective for the purpose for which it was promulgated and apply smoothly, it has to be relevant and suitable to the local circumstances of the locality (or jurisdiction) in which it is applied and to its inhabitants. Laws which are out of context for being either irrelevant or unsuitable for the local circumstances do not usually work well, for instance those that were imported by the colonialists and have been retained by the post-independence governments. Laws of this nature are often unsuitable because first of all the circumstances under which they were adopted have since changed, and secondly, they are fashioned on foreign ideologies, concepts, values and perceptions which are inappropriate to the indigenous African circumstances. Such laws abound in many countries in Africa and Asia especially. Incidentally, these are also the regions in which traditional practices and cultures still play a key role in society's lifestyles, including law. Sifuna & Mogere (2002) have observed that some cultural orientation makes people resist even the edicts of law despite the presence of sanctions for violations, and reported that in Africa, most government programmes and policies have failed because of their being insensitive to the cultural values of the people. This setback is compounded by the fact that in most countries in Africa, traditional African customary law is one of the sources of law. The neglect for traditional customary values is well summarized by Miller in the following poetic words when commenting on the Kenyan scenario: "The historic tragedy in Kenya is not the slaughter of so many animals…as most of the species could still rebuild their numbers. The tragedy is that African interests, particularly farmers, were not taken into account when formulating policies [and laws] governing wildlife management. Herein lies the seed of wildlife destruction" (Miller, 1982).

2) *Acceptance by Stakeholders*

The success of any law will depend on whether or not it is acceptable to and accepted by the stakeholders. In the wildlife sector these stakeholders comprise the local people as well as diverse wildlife interest groups such as expatriate researchers, local researchers, conservationists, wildlife enthusiasts, amateur naturalists, the international community, financial donors, non-governmental organizations, as well as governmental and state authorities. For a law to apply smoothly it ought to be acceptable to the stakeholders and the public generally, lest it will not operate effectively. This acceptability is also known as the persuasive power of the

law and it is very crucial in the operation of law. Wildlife laws therefore, should embrace the interests of conservationists and those of the local communities. Their enactment should be preceded by wide consultations between the law-making authorities and key stakeholders such as the general public. This is because laws that are imposed without adequate consultation with the stakeholders do not work well as they are likely to be resisted by them. Unfortunately, whereas the local communities are key stakeholders in wildlife management, conservation laws in most parts of the world generally tend to favour wildlife interests over those of the local communities and the welfare of wild animals over that of humans. In fact in others, wildlife legislation alienates wildlife to the state, thereby annulling, limiting or restricting traditional user rights such as subsistence hunting. This tends to foment tension between state agencies and local communities especially in jurisdictions where wildlife is state-managed, it tends to be exclusively a state affair with the people having very little say if any in its management. This tension often results in decreased co-operation between local communities and state agencies (Sifuna, 2009a; Sifuna, 2009b).

Indeed wildlife laws fall in the province of public law hence should incorporate certain subtle public values such as participation, consultation as well as promotion of the public interest. A law relating to a public resource such as wildlife, for instance one on wildlife damage, is essentially in the domain of public law. Public law as the name suggests is concerned with public interest issues and public rights. Such a law should shift from theory to values in order to institutionalize societal values such as democracy, fairness, human rights and livelihoods. It should, for instance, attempt to strike a balance between wildlife conservation and competing human interests as well as other forms of land use, and between the different wildlife group interests such as the interests of conservationists and the state on the one part, and those of the local communities on the other part (Sifuna, 2006). Rosencranz et al. (1991) assert that 'wildlife and people are not always compatible.' Conflicts between humans and wildlife arise especially when wildlife attacks people and their property or when people attack wildlife; or when they compete for common resources such as land and water.

Sifuna and Mogere (2002) have observed that the public especially in Africa where customs are a law in themselves (African customary law), will be prepared to disobey laws of such character as described above. In order to avoid such situations, the government needs to be careful about clothing controversial wildlife policy positions in the form of law, because laws resulting from this will be resisted by the people. Undeniably, the public's acceptance of laws and their ability to comply with them are some of the most crucial determinants of the effectiveness of any law (Bolen & Robinson, 1995). As a fact, for conservation efforts to succeed they require the support of the local communities. Atiyah (1983) observes that 'Unless the mass of the public feels that there is some moral obligation to observe established law, then the law may come to be unenforceable.' Draconian and militaristic laws such as the ones that take away established

rights, established traditions or disregard human welfare and livelihoods fall in this category. Such laws will be unacceptable to the people, especially the communities living close to the resource and will therefore not operate smoothly. These people (local communities) are key stakeholders in any conservation efforts.

Notably, most legal frameworks are fashioned on the "command and control" systems that emphasize punishment as if it was the only means of enforcing policy and law. This approach is inimical to the broader goals of conservation programmes as over-emphasis on penalties without provision for incentives makes the implementation agencies unpopular to the very communities whose wildlife resources they are to conserve.

3) ***Appropriateness of the Relevant Policy Framework***

For a law to function effectively, it needs to be flanked by an appropriate policy framework. An examination of the law on a particular issue or in a particular sector such as wildlife, inevitably calls for examination of the corresponding state of policy on it. This is for the reason that law is one of the tools for implementing policy (Sifuna & Mogere, 2002). Without an appropriate policy framework to support a law (on wildlife for instance), that law cannot be effective. Policy backup gives the law the governmental good will and governmental authority that it requires in enforcement. Law and policy work like hand and glove, hence the symbiosity of mutually supporting each other. Ojwang (1988) has argued that while the state has to design and implement policy, it has to enact the relevant laws to validate such policies. Any country with a wildlife management law is logically expected to also have in place, a corresponding wildlife policy or policies, in fact preceded by it. Policies are statements of ideals adopted by a government. Being mere statements of intent and commitment to a cause, they may be likened to the proverbial toothless dog that barks but cannot bite. As already stated in this paper, it is the law "that gives policy/policies the teeth to bite", by translating policy positions into legally enforceable obligations and rights. Atiyah (1983) considers law to be an instrument of policy and a means by which goals and values can be pursued, and says "law is an instrument of policy, … a means by which goals or values can be pursued". The effectiveness or otherwise of law depends, among other things, on its response to trends in policy. This therefore makes policy a key determinant of not only the effectiveness but also the appropriateness of a law. The effectiveness and appropriateness of a wildlife management law will depend on whether there is in place related wildlife policies or policy framework. In consequence therefore, the inappropriateness or ineffectiveness of corresponding policy or policies, or the lack thereof, will like a knee-jack response essentially undermine the efficacy of the law. This is because, as noted by Ogolla (1992), law "…translates policy into specific enforceable norms, standards of behaviour and compels, by threat of sanctions, their observance…lays down to public officials, basic guidelines for implementation of demands of the normative regime".

4) ***The Presence and Effectiveness of Dispute Settlement Mechanisms***

One of the social functions of law is the settlement of disputes, hence the law ought to establish mechanisms for the peaceful settlement of disputes. In the wildlife sector, the laws ought to set up and maintain mechanisms for resolving wildlife-related disputes, such as the ones arising from conflicts related to allocation and user rights, or those arising from predation and depredation. Inappropriate or ineffective dispute settlement mechanisms, or the lack of them, will in essence undermine the effectiveness of the laws in the sector. Indeed some disputes may arise in the course of law enforcement such as those that arise as a result of the operation of undemocratic, unjust or arbitrary enforcement processes and enforcement methods.

5) ***The Effectiveness of the Institutional Arrangements***

Another factor that affects the effectiveness of a law is the effectiveness of the existing institutional arrangements—the institutions (and agencies) vested with its enforcement, as well those vested with the administration of the corresponding policy/policies. As for wildlife sector laws, their effectiveness will depend on the effectiveness of the enforcement agencies as well as effectiveness of the agencies administering wildlife policies in the sector. This is because, for laws to thrive, they require an effective institutional machinery for their implementation and enforcement. This author in a previous related research identified three common institutional problems hampering the smooth operation of wildlife laws, as follows (Sifuna, 2009a, 2009b):

Overlapping Responsibilities

Wildlife is a sector that interacts with many other sectors, for instance, land, agriculture, water, livestock, forestry and so on. For this reason, some of the policies, laws and programmes in these other sectors are likely to have and usually have impacts on wildlife. Besides, wildlife can be affected by some laws that have no direct relation with wildlife, for instance forestry, agricultural and land laws. Laws on forestry, agriculture and land tenure although for the most part are not intended to govern the wildlife sector may have implications that adversely affect wildlife resources or militate against the declared objectives of the wildlife policies. Activities on forestry for instance, are likely to affect wildlife.

In many jurisdictions, however, the management of these sectors is vested in various ministries, e.g., Agriculture, Water Resources, Livestock Development, and Environment; and are governed by various sectoral laws enforced by the respective sector agencies. This poses a great challenge on the management of the wildlife sector and to the enforcement of wildlife laws and policies because of the overlapping responsibilities among the various agencies. Overlapping responsibilities among agencies is likely to lead to inter-agency conflicts where the respective agencies take different positions on a particular issue or where the officials argue on which agency is the most suitable to act in a particular situation. It may also lead to non-action where one agency expects the other one to act in a given situation. Besides, where there is duplicity of roles among various agencies,

there is need for effective co-ordination so as to harmonize and synchronize the respective efforts of these institutions.

Admittedly, the lack of effective co-ordination of the responsibilities of the various agencies can greatly undermine the efficacy of these institutions in the discharge of their duties as well as their effectiveness in enforcing wildlife-related laws and policies (Sifuna, 2009a; Sifuna, 2009b). In situations where a responsibility is vested in various ministries, wildlife for instance, there is need for having an inter-ministerial committee to co-ordinate the efforts of the various ministries.

Lack of Adequate Resources

The lack of adequate resources for wildlife management in terms of personnel, infrastructure and finances is a general problem in most developing countries because of their level of development. As a result, these countries have to rely on expatriates as well as donor funding for payment of the salaries of the wildlife staff; construction of roads in wildlife areas; building schools and hospitals for the local communities in wildlife areas; carrying out wildlife damage control programmes; paying compensation for wildlife damage; and maintaining wildlife protected areas. With this scarcity, there cannot be enough funds and resources for all these activities.

Lack of Motivation Among Staff

Another factor that affects the effectiveness of wildlife institutions especially in developing countries is lack of motivation among their staff, mainly as a result of low pay and poor terms of service such as housing, allowances, transport and other fringe benefits as compared with their counterparts in the private sector. This results in lack of morale or what this author has in a previous study referred to as "the public service attitude" (Sifuna, 2009a; Sifuna, 2009b). This is an attitude of lethargy that is in most cases accompanied with corrupt or unethical practices such as collusion with poachers.

3. Towards an Ideal Wildlife Management Law

The author has identified the following as the essentials of an ideal wildlife management law (wildlife law): (a) provisions on wildlife ownership (b) provisions protecting wildlife species and wildlife habitats (c) provisions relating to allocation and use of wildlife and wildlife resources (d) provisions establishing wildlife agencies and spelling out their responsibilities (e) provisions prescribing measures for mitigating the negative costs of wildlife and (f) provisions setting up mechanisms for settling/adjudicating wildlife-related disputes. These are discussed here below.

3.1. It Should Have Provisions on Wildlife Ownership

An ideal wildlife management law should have provisions on wildlife ownership. Such provisions can be in the form of general statements on who owns wildlife or certain wildlife species, or on ownership of wildlife habitats and territory. In

conventional legal theory ownership and tenure have an inextricable correlation with user rights. On this McHenry (2012) notes that the ultimate test of ownership is the right to use wildlife and the authority to manage, and reports that there has been a tendency in recent state legislation to make wildlife state property owned by the state. This he says is a departure from the medieval standpoint where all wildlife in the natural state is no one's or everyone's property. Criticizing the appropriation of wildlife to the state, he further observes that vesting ownership and exclusive use rights to wildlife resources in the state means that individuals and communities who had traditionally utilized wildlife resources could no longer utilize them or legally derive any direct benefits from them. That this has also left government with an insupportable burden in terms of the need for centralized human and financial resources for wildlife management; and in many cases, it has served to produce an attitude of disinterest in local populations, and even antagonism between these populations and the state-run wildlife management.

In the Kenyan case of *Hassan & 4 Others V. Kenya Wildlife Service* (1996) 1 *KLR (E&L)* the High Court of Kenya (Mbito J) issued orders restraining the Defendant Kenya Wildlife Service (KWS) from removing, dislocating, translocating or in any other way moving a population of a rare and endangered animal called "the Hirola" from its natural habitat in Arawale in north eastern Kenya to the Tsavo National Park in eastern Kenya or any other place or destination, on the ground that the said animal is a gift to the local inhabitants of the area (Arawale) and it should therefore be left there. The court fell short of holding that the wildlife in a particular area, are the property of its inhabitants. Interestingly, the learned Judge in his ruling observed that his reading of Kenya's law was that it was only minerals whose ownership was reserved to the state, and not other natural resources such as wildlife. In that case, the five plaintiffs who were members of the local community of Arawale had sued Kenya's wildlife Authority (KWS) opposing its plans to relocate (translocate) the said rare antelope from Arawale to the Tsavo National Park in Eastern Kenya. In so holding, the court further held that KWS will be acting outside its powers if it were to move the animals without the express consent of those entitled to the fruits of the land which includes flora and fauna. Further that if the animals were to be moved to a new habitat, it was not known whether they would survive and return to their natural [original] habitat in the event of the suit being successful.

3.2. It Should Have Provisions Protecting Wildlife Species and Wildlife Habitats

An ideal wildlife management law ought to as of necessity have provisions on the protection of wildlife species and wildlife habitats. On protection of wildlife species, such provisions will be in relation to conservation and preservation management, as well as protection of species from harm especially arising from harmful human activities and conduct. Preservation is a "hands off" approach

denoting "no use" (for purposes of protection from harm), while conservation denotes wise use (Thomson, 1986).

Thirdly, it should have provisions protecting wildlife territory and habitats from encroachment, particularly from human enterprise and activities. Klemn (1993) observes that this legal protection may in some instances be explicit in that the law expressly provide for those species while in other instances the protection may be by implicit and by implication or incidental, such as where this protection is a secondary purpose. He gives the example of where wild species are preserved by other legal instruments that although are not specifically directed at the conservation of individual species, they nonetheless, provide protection to their habitats, for example protected area legislation.

Provisions Protecting Wildlife Species

An ideal wildlife management law should have provisions protecting wildlife species. As already stated above, there need to be provisions specifying the species to which preservation (preservation management) may be applied, and those that need to be to be merely conserved (to which conservation management is to be employed). Klemn (1993) notes that while general law governs relationships between persons or between persons and society, the key object of conservation law is to conserve wild species and ecosystems. There are two arms of wildlife management, namely conservation management and preservation management; likewise, there are two main strategies of wildlife management—namely conservation and preservation. Conservation mainly applies to renewable resources, and allows for wise use in such a way that the resource is exploited in a manner that ensures such exploitation does not exceed the regeneration capacity; while preservation entails non-use, and applies mainly to non-renewable resources, and also to renewable resources that fall in three special categories/statuses of species, namely: endangered species, vulnerable species and rare species. The International Union for the Conservation of Nature (IUCN) has defined "Endangered species" as those that are in danger of extinction and whose survival is unlikely if the causal factors continue to operate; "vulnerable species" as those although not currently "endangered species" are nevertheless moving towards that category and are likely to join it; "rare species" as those with small populations which are presently neither endangered nor vulnerable, but which may be at risk (Thomson, 1986). Therefore, just like species in the "endangered species" category, "vulnerable species" and "rare species" require special attention or special protection. This is for reason that "rare species" are small populations usually localized within defined geographical areas or scattered over a rather expansive range. "Vulnerable species" are those gradually drifting into the "endangered species" category as a result of predisposition to danger by reason of factors such as young age, pregnancy, or being nursing mothers, albino or melanic. Kumar and Asija (2000) note that this category comprises species likely to move into the endangered category in the near future, if the causative factors continue to operate. These factors include over-exploitation and extensive destruction of habitats. Unlike the two categories/statuses, the "endangered spe-

cies" category is a legal status declared by a government or international community for particular species. Such that species only become so designated, after being officially declared so. Nevertheless, species falling in these three categories require special protection; for reason of their uniqueness, endangeredness, or their being representative biomes. Their protection is therefore very useful in wildlife management.

Provisions Protecting Wildlife from Harm

Another way in which the law promotes wildlife conservation is by protecting wildlife from being harmed, especially by humans. An ideal wildlife management law therefore, ought to have provisions that seek to protect wildlife from harm. This provisioning is done through setting measures for protecting wildlife generally or certain wildlife species from interference or harm by humans or expressly. It will also be in the form of clauses that specifically prohibit humans from engineering or occasioning direct physical harm to wildlife. They may for instance prohibit attacks on wildlife, causing physical injury to it or tormenting it. Generally, this protection may take either or a combination of these three forms, namely: creating certain categories of wild animals; controls on the killing, wounding, hunting and capture of wild animals; and regulating the introduction of weapons into wildlife protected areas. It also in some circumstances accords special protection to some animals, by reason of being vulnerable, rare or endangered. These categories have already been defined and discussed in this paper when distinguishing the preservation and conservation forms of wildlife management.

Provisions Protecting Wildlife Habitats

An ideal wildlife management law should have provisions protecting wildlife habitats, especially from being encroached by human activities and conduct. Admittedly, one of the ways of protecting wildlife, is by protecting wildlife territory. This is for instance done by creating wildlife protected areas (WPAs) and prescribing rules that restrict human access and activities in them. Virtually all jurisdictions across the world have by law, established wildlife protected areas. These include national parks; national reserves; game sanctuaries; and wildlife management areas (WMAs). In the context of this paper, a WPA is a geographically delimited land set aside for wildlife conservation and within boundaries of which human access and activity are restricted by law. These WPAs are given legal protection by legislation and their boundaries cannot be altered without the permission of the relevant state or governmental authority. The protected area system is the major approach to wildlife management in many countries. It designates some wildlife habitats as protected areas (PAs) and imposes regulations that restrict human access and activities in such areas. The activities prohibited in these protected areas include settlement, cultivation, hunting, grazing, mining, prospecting for honey, fishing and traffic. The conduct prohibited in such areas includes the following: Carrying weapons and explosives; setting of traps or poison; being in possession of game animals or their parts; introduction of domestic animals; destruction of vegetation; destruction of infrastructure such as

water installations and fences; erecting buildings or infrastructure; transiting through such areas; and, causing fires them. Klemn (1993) has noted that when it comes to the protection of wildlife habitats, emphasis should be placed on the prevention of conflicts rather than procedures for their resolution once they have occurred. An ideal wildlife management law therefore, should have provisions protecting wildlife habitats from encroachment by humans. Such provisions may for instance restrict entry into such areas by subjecting it to permit of the wildlife authorities; provide for fencing, demarcation and even titling of wildlife areas; or restrict certain activities in such areas, for instance farming and human settlement.

3.3. It Should Have Provisions Regulating the Allocation and Use of Wildlife and Wildlife Resources

One of the goals of wildlife conservation law is to ensure the rational use of wildlife and wildlife resources in a sustainable manner by allocating access and user rights as well as regulating their exploitation for sustainable development. The function of this law is therefore to provide a framework for allocation of wildlife and wildlife resources and regulate their use and management. An ideal wildlife law therefore, ought to have provisions specifically geared towards regulating the allocation and use of wildlife and wildlife resources. These include provisions on access, as well as use and user rights, for instance those providing for utilization quotas.

3.4. It Should Have Provisions Establishing Wildlife Agencies and Spelling out Their Responsibilities

Unlike other branches of law that adopt the classical regulatory and punitive approach based on the police power of the state, the approach of conservation law for its part mainly creates institutions and procedures designed to facilitate and encourage conservation and management programmes, to organize conservation as a public service, and to promote better public awareness of conservation requirements. Indeed, wildlife conservation law unlike regular law is not norm-oriented but largely administrative in nature; in that it mainly establishes institutions and vests in them certain functions relating to the conservation and management of wildlife and wildlife resources. While this law is administrative in nature, it nevertheless also creates wildlife offences and prescribes penalties for offenders. An ideal wildlife law therefore, should have provisions establishing agencies responsible for managing and conserving wildlife, and spelling out the responsibilities and functions of these agencies.

3.5. It Should Have Provisions Prescribing Measures for Mitigating the Negative Costs of Wildlife

Another way in which law promotes wildlife conservation is by controlling the negative costs of wildlife especially in terms of scarce resources such as land as well as losses resulting from injurious wildlife. The law addresses these through

land planning as well as maintaining legal arrangements on wildlife depredation. The latter is undertaken mainly by controlling pest wildlife, providing for destruction of wildlife in defence of human life and property, and providing compensation for damage caused by wildlife. With regard to the latter, the law may provide for compensation for such damage as well as setting up institutions and procedures for receiving reports and for processing claims arising from incidents of damage by animals. An ideal wildlife management law therefore, should have provisions prescribing measures for mitigating the negative costs of wildlife such as competition for resources as well as predation and depredation.

3.6. It Should Have Provisions Setting Up Mechanisms for Settling Wildlife-Related Disputes

An ideal wildlife management law, ought to have provisions setting up mechanisms for settling wildlife-related disputes, as the existence of divergent and often conflicting interests and interest groups will invariably lead to disputes. One of the social functions of law is the resolution of disputes hence an important role of wildlife conservation law should include the setting up of mechanisms and processes for the resolution of wildlife-related disputes. Roscoe Pound, an eminent legal scholar, rightly observes that the function of law is social engineering; since its work is to harmonize conflicting interests within society to ensure they exist with minimum friction and waste (Harris, 1980). Notably, the effectiveness of such a law depends in a great measure on the effectiveness of the mechanisms in place for the settlement of wildlife-related disputes. It should be noted, however, that there exist different interest groups with differing and sometimes conflicting group interests with regard to wildlife conservation. For this reason, wildlife-related disputes will always arise so long as these divergent interests continue to co-exist. Such disputes usually arise especially among people as well as between people and wildlife authorities. By maintaining dispute settlement mechanisms, the law ensures that these divergent interests co-exist with minimum friction.

Akama (1995) identifies four major interest groups, namely, (a) Local communities (small scale cultivators and pastoralists); (b) Local wildlife conservation officials (game rangers and wardens); (c) State (both the executive branch and different government departments); and (d) International wildlife conservation actors. Attitudes towards conservation are often influenced by these interests. The interests of local peasants, local politicians, wildlife officers, international wildlife agencies and donors, policy-makers, wildlife authorities, and conservationists with regard to wildlife conservation differ a great deal. There is notable variance in the perceptions and attitudes of these interest groups towards wildlife. It is these different perceptions and attitudes that are referred to in this study as group interests. Akama (1995) calls them "class interests" and notes that unless these interests are reconciled "the chances of developing a sustainable policy of wildlife conservation are not good". The interplay between the interests of conservationists and government on the one part and those of the local com-

munities on the other, are often times conflicting and antagonistic. This conflict and antagonism usually undermine conservation hence for effective wildlife management there is need to strike a balance between these divergent group interests by, among other things, maintaining appropriate and efficacious mechanisms for settling wildlife-related disputes.

3.7. It Should Have Provisions on Participation by Local Communities

An ideal wildlife management law should allow local communities living close to wildlife areas to participate in the management of wildlife, and also in the sharing of benefits and revenue accruing from this wildlife. It should have provisions providing for local communities to not only participate in the management of wildlife, but also in the sharing of benefits and revenue accruing from wildlife and wildlife resources With regard to revenue sharing the law should make provision for such participation, and also come up with a formula for sharing, and also modalities of how the community's share will reach it—especially whether payments should be to structured entities such as community associations or to individual members of the community. Commentators such as Kiss (1990) have opined that the import of appropriating wildlife to the state and centralizing wildlife management is that individuals and communities who had traditionally utilized wildlife resources could no longer legally derive any benefit from them. That this also leaves government and public institutions with a humongous burden of the logistical outlay for wildlife management, and will invariably result in an attitude of disinterest in local populations in wildlife welfare and conservation, and even antagonism between these populations and the public authorities vested with superintending the wildlife sector.

4. Conclusion

This paper has discussed law's suitability (and advantages) as a regulatory tool, its limitations for that purpose, as well as the factors that determine or affect the effectiveness of laws (determinants). It has also discussed the role that law can play in conservation and management of wildlife; and even identified the attributes of an ideal wildlife management law. It has established that law can play an important role in conservation; and further that despite it having some advantages that make it suitable for that purpose, it also has certain limitations; and faces several factors that determine or affect the effectiveness of laws (determinants) mainly institutional ones. In that even with properly formulated laws, for law to be effective and play its intended role, there is need for those factors (determinants) to be addressed. Notably, it is not enough to just have any law; a good law needs to be suitable and appropriate, as well as effective. The author has identified the fundamental attributes of an ideal wildlife management law, and formulated the irreducible minimum of such. On the basis of the aforegoing, the way forward is first to incorporate in law the attributes of an

ideal wildlife management law already discussed in this paper. Secondly, there is need to strengthen enforcement as well as assuaging the supportive policy and institutional arrangements. Thirdly, the law needs to mainstream human welfare and participation of local communities in wildlife conservation and management. It needs to make provision for local communities to not only participate in the management of wildlife, but also in the sharing of benefits and revenue accruing from wildlife and wildlife resources. A good wildlife management law should emphasize local community involvement not just in the management but also in appropriation and sharing of the revenue and benefits accruing from wildlife. This will not only mitigate and compensate the community for the negative impact from wildlife such as those arising from wildlife predation and depredation, but will also make people feel they are appreciated by their governments, unlike the situation currently prevailing in most African counties such as Kenya where the citizenry feel their governments value wildlife more than people and promotes wildlife at the expense of human life, human welfare and human livelihoods (Sifuna, 2009a; Sifuna, 2009b).

Conflicts of Interest

There are no conflicts of interest regarding the publication of this paper.

References

Akama, J. S. (1995). *Wildlife Conservation in Kenya: A Political-Ecological Analysis of Nairobi and Tsavo Regions*. African Development Foundation Research Series.

Allot, A. (1980). *The Limits of Law*. Butterworths.

Atiyah, P. S. (1983). *Law and Modern Society*. Oxford University Press.

Bolen, E. G., & Robinson, W. L. (1995). *Wildlife Ecology and Management*. Prentice Hall.

Cotterrell, R. (1984). *The Sociology of Law: An Introduction*. Butterworths.

Currie, I., & Waal, J. (2001). *The New Constitutional and Administrative Law: Vol 1 Constitutional Law*. Juta & Company Ltd.

Dickens, C. (1941). *Oliver Twist*. Dodd, Mead & Company

Fuller, L. L. (1964). *The Morality of Law*. Yale University Press.

Funk, D. A. (1972). Major Functions of Law. *Case Western Reserve Law Review, 23,* 257-306.

Harris, J. W. (1980). *Legal Philosophies (1980) at 251*.

Hassan & 4 Others V. Kenya Wildlife Service (1996). *1 KLR (E&L)*.

Kiss, A. (Ed) (1990). *Living with Wildlife: Wildlife Resource Management with Local Participation in Africa. World Bank Technical Paper No. WTP 130.* Africa Technical Department Series. Washington DC: World Bank Group. http://documents.Worldbsnk.org/curated/en/247611468742847173/Living-with-wildlife-resource-management-with-local-participation-in-Africa

Klemn, C. (1993). *Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems. Environmental Policy and Law Paper No. 29.* World Conservation Union (IUCN).

Kumar, U., & Asija, M. J. (2000). *Biodiversity: Principles and Conservation*. Agrobios.

McHenry, T. J. P. (2012). *Policy and Legal Tools for the Management of Wildlife Resources*. http://www.fao.org/3/v1500E/v1500eOa.htm

Miller, N. N. (1982). *Wild Life-Wild Death: Kenya's Man-Anima Equation* (pp. 1-28). UFSI Reports No. 1.

Ogolla, B. D. (1992). Environmental Policy and Law. *Environmental Policy & Law, 23,* 171.

Ojwang, J. B. (1988). Law and the Public Interest: Some Introductory Remarks. In J. B. Ojwang, & J. W. Kabeberi (Eds.), *Law and the Public Interest* (p. 23). Occasional Paper No. 52. Institute of Development Studies (IDS), University of Nairobi.

Rosencranz, A., Divan, S., & Noble, M. (1991). *Environmental Law and Policy in India: Cases and Statutes*. Oxford.

Sifuna, N, & Mogere, S. (2002). Enforcing Public Health Law in Africa: Challenges and Opportunities, the Case of Kenya. *Zambia Law Journal, 34,* 148-159.

Sifuna, N. (2006). Using Eminent Domain Powers to Acquire Private Lands for Protected Area Wildlife Conservation. *Law, Environment and Development Journal, 2,* 84-105.

Sifuna, N. (2009a). *Legal and Institutional Arrangements for Wildlife Damage in Kenya and Botswana*. Unpublished PhD Thesis, University of the Witwatersrand, South Africa.

Sifuna, N. (2009b). Damage Caused by Wildlife: Legal and Institutional Arrangements in Botswana. *Environmental Policy and Law, 39,* 105-127. http://www.lead-journal.org/content/06084.pdf.m

Sifuna, N. (2010). Wildlife Damage and Its Impact on Public Attitudes towards Conservation: A Conservation Study of Kenya and Botswana, with Particular Reference to Kenya's Laikipia Region and Botswana's Okavango Delta Region. *Journal of Asian and African Studies, 45,* 274-296. https://doi.org/10.1177/0021909610364776

Sifuna, N. (2012). The Future of Traditional Customary Uses of Wildlife in Modern Africa: A Case Study of Kenya and Botswana. *Advances in Anthropology, 2,* 31-38. https://doi.org/10.4236/aa.2012.21004

The Constitution of Kenya (2010).

Thomson, R. (1986). *On Wildlife "Conservation"*. United Publishers International.

Wantrup, S. V. C. (1952). *Resource Conservation: Economics and Policies*. University of California Press. https://doi.org/10.1525/9780520349209