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Department of Diplomacy and International Studies

**The Role of Environmental Diplomacy in the Conservation of the
African Elephant-A Case Study of the Convention on International
Trade in Endangered Species of Fauna and Flora in Kenya**

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DECLARATION

I, Stephen M. Manegene hereby declare that this research project is my original work and has not been presented for a degree in any other university.

Signature.......... Date..........

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This research project has been submitted for examinations with my approval as the university supervisor.

Signed.......... Date..........

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DEDICATION

This study is dedicated to my daughter Eva Nyawira Muriithi.

ABSTRACT

Biodiversity is important to humans for many reasons including economic, ecological, recreational, scientific and cultural among many others. Despite these values, human activities have continued to adversely impact both flora and fauna leading to loss (extinction) and deterioration in the condition and a corresponding loss of the values and services therein. These challenges on biodiversity protection, conservation and management usually transcend national boundaries, and therefore require transnational and international cooperation to resolve. The objective of this study is to analyze the role of diplomacy in the conservation of the African elephant, focusing on the Convention on International Trade on Endangered Species of Flora and Fauna (CITES) in Kenya. The study has established that despite certain challenges in negotiations, capacity, interplay of national, regional and global politics among others, CITES has played a crucial role in the protection of the African elephants in Kenya. The CITES trade ban in ivory in 1989 led to a dramatic drop in ivory prices globally which consequently reduced pressure from poaching. This allowed for legal and institutional re-organization aimed at building capacity for wildlife management including enhanced wildlife protection capability. Through rigorous environmental diplomacy, the ban on international ivory trading has been sustained and extended to include domestic ivory markets. The study acknowledges that the most of the African elephant populations are trans-frontier and therefore requires trans-boundary protection and management strategies. The study further notes that the sharp differences between the Southern block of African elephant range countries and the African Elephant Coalition is inimical to the long-term protection and management the African Elephant. The study therefore recommends a re-think of our country approach and strategy in environmental diplomacy to enhance inclusivity and regional cooperation, taking account of the inter-linkages with other economic interests.

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ACRONYMS

ABTs	Aichi Biodiversity Targets
AEAP	African Elephant Action Plan
AEWA	African-Eurasian Migratory Waterbird Agreement
AfESG	African Elephant Specialist Group
AMCEN	African Ministerial Conference on the Environment
AU	African Union
EAC	East African Community
CBD	Convention of Biological Diversity
CITES	Convention on International Trade in Endangered Species
CMS	Convention on Migratory Species
COP	Conference of Parties
DMM	Decision Making Mechanism
DRC	Democratic Republic of Congo
GDP	Gross Domestic Product
GHG	Green House Gases
HEC	Human Elephant Conflict
ICCWC	International Consortium on Combating Wildlife Crime
INTERPOL	International Police
IUCN	International Union for Conservation of Nature
KFS	Kenya Forest Service
KWS	Kenya Wildlife Service
LATF	Lusaka Agreement Task Force

MEAs	Multilateral Environmental Agreements
MFA	Ministry of Foreign Affairs
NGO	Non-Governmental Organizations
NMK	National Museums of Kenya
PAS	Protected Area System
PAWS	Protected Areas and Wildlife Service
SADC	Southern African Development Cooperation
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNCHE	United Nations Conference on the Human Environment
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
USA	United States of America
USD	United States Dollar
WAP	W-Arly-Pendjari
WHC	World Heritage Convention
WWF	World Wide Fund for Nature

CHAPTER ONE: INTRODUCTION TO THE STUDY

1.1 Introduction

Biological resources provide services and products that are critically important for human livelihoods. These include food, human health, clean air and water and aesthetics among many others. Biodiversity resources support to the social economic development of countries like Kenya, as in other African countries is more pronounced because of our reliance on nature-based economic activities¹ Despite the enormous value of biological resources to humanity, anthropogenic activities such as agriculture, industries, transportation infrastructure, urbanization, tourism have continued to exert pressure and degrade nature and biodiversity, causing their decline². Thee human-induced pressures leading to higher risks of species extinction, degradation and loss of natural habitats, soil erosion, pollution of waters, the spread of invasive alien species and over exploitation of genetic resources are some of the indicators that raise national and global concerns about the future of our environment.

The cornerstone of Kenya's biodiversity conservation policy and strategy has been the establishment of national parks, national reserves and forest reserves as refuge for conservation and protection of biodiversity and as representative samples of Kenya's diverse natural regions. Today Kenya's protected area system (PAS) includes national parks, national reserves, local sanctuaries, forest reserves, County Council forests and national monuments managed collectively by Kenya Wildlife Service (KWS), Kenya Forest Service (KFS), National Museums of Kenya (NMK) and County Governments. The parks and reserves system currently consists of 29 national parks, 31 national reserves and 6 sanctuaries covering roughly 8% of Kenya's land area in both marine and terrestrial areas. Additionally, natural and plantation forests cover an

¹ CBD, 2009; MEA, 2005.

² UNEP, 2012a.

area of about 3.1 % of Kenya's land mass ranging from mangrove and coastal forests, highland dry and moist forests and remnants of the guinea-congolean forest found in Western Kenya³. A significant proportion of the country's biodiversity is located outside the government protected area system on private and community conservancies that are estimated to harbor over 60% of Kenya's wildlife.

These protected areas and the wildlife contained therein have played an important role in Kenya's economy because of the wildlife-based tourism industry. Tourism has been a major source of foreign exchange to the Kenyan economy and contributed 11% of the Country's total GDP and about 12% of the total employment as at 2017⁴. There are also many other economic benefits derived from wildlife conservation such as protection of critical water catchment areas and conservation of genetic resources⁵.

The African elephant is the world's largest terrestrial mammal and a species of considerable economic, ecological, cultural and aesthetic value to many people. Elephants are a keystone species and they therefore play a pivotal role in providing ecosystem services that balance and sustain natural ecosystems. It is also a key anchor of the nature-based tourism industry in Kenya which for so long marketed the "Big Five" that included the elephant, lion, rhinoceros, leopard and buffalo as major attractions. However, the African elephant has over the last few decades faced various severe threats key among them being illegal killing for ivory, loss of habitat and human/wildlife conflicts. The magnitude of these threats, for some elephant

³ Peter Wass, (1994).Kenya's Indigenous Forests: Status, Management and Conservation.

⁴ Government of Kenya, Ministry of Tourism and Wildlife, (2017). Kenya's Tourism Agenda - 2018 -2022.

⁵ Kenya Wildlife Service, 1990: Kenya Wildlife Service: A Policy and Development Programme 1991-1996.

populations in Africa is so severe that some analysts predict that some of these populations may be lost entirely in the near future⁶.

1.2 Background to the Study

Formal Government intervention in wildlife conservation and management in Kenya can be traced to 1898 when what is currently called Kenya, was declared a part of the British East Africa Protectorate, comprising present day Uganda and Kenya. The colonial government proclaimed wildlife regulations which were aimed at controlling indiscriminate hunting of wildlife including subsistence hunting. The Game Department was established in 1907 with the mandate to regulate hunting and deal with human wildlife conflicts. Increased pressure on wildlife despite these early interventions prompted the Government to proclaim in 1945, the National Parks Ordinance which provided for the establishment of national parks for strict protection of wildlife. Subsequently, Nairobi National Park was established as the first national park in Kenya on 16th December, 1946 and was closely followed by the Tsavo National Park in 1948 and Mount Kenya National Park in 1949. Parks were managed by the Royal National Parks Trustees which also advised Native Councils on the establishment of national reserves.

During the 1970s and 1980s, populations of elephants in Kenya and other African countries suffered massive declines from poaching, drought and loss of critical habitats.⁷ In Kenya, the World Bank-financed Wildlife and Tourism project implemented between 1979 and 1983 failed to reverse the sector's continuing decline. Between 1973 and 1989 elephant poaching combined with severe droughts in 1973-1974 is estimated to have reduced Kenya's elephant population by 85% from 160,000 to about 16,000, while the rhino population was reduced by 98% from 20,000 to about 350 over the same period.

⁶ IUCN/African Elephant Specialist Group, 2006. African Elephant Status Report

⁷ World Bank, (1992): Staff Appraisal Report for Kenya Protected Areas and Wildlife Service Project (PAWS).

Towards the end of 1989, the Government of Kenya alarmed by the rapid decline of the Country's wildlife populations amended the 1976 Wildlife Conservation and Management Act to pave way for the establishment of Kenya Wildlife Service (KWS). KWS was created as a semi-autonomous government agency having flexibility in terms of wildlife policy, operations and resource mobilization. It was envisaged that establishment of KWS would enhance effectiveness with regard to containing the elephant and rhino poaching crisis as well as improving overall management of wildlife conservation and management in Kenya. During the same year, Kenya played a lead role in the campaign to shut down ivory trade through the CITES. To further demonstrate its commitment towards a ban on ivory trade, Kenya burned its ivory stocks in July of 1989. Since 1989, Kenya has actively participated in CITES and continued to play a prominent role in campaigning against trade in ivory.

A significant decline in the poaching of the African elephant that followed is attributed to the ban on ivory trading by CITES through the listing of the African Elephant in Appendix 1 (Endangered Species). In addition, establishment of the KWS with greater autonomy in terms of decision making and operations, additional funding through the Protected Areas and Wildlife Service (PAWS) project implemented between 1991-1996; and which injected about 143.5 million USD from various development Partners coordinated by the World Bank⁸ had a major impact in terms of enhanced wildlife protection and surveillance and reduced poaching significantly.

At the global level, the trigger for environmental diplomacy can be attributed to the environmental crisis facing many European countries from the middle of the 20th century. The key problem that exemplified this crisis was severe pollution of air, water and land, which was a

⁸ Kenya Wildlife Service, 1990. KWS Policy Framework and 5 Year Development Programme, 1991-1996.

direct consequence of Europe's industrial activities which were pursued without conforming to sound environmental management practices. Faced with complicated environmental challenges with impacts beyond their boundaries, a concerted global effort was required to redress the declining environmental conditions. This growing concern gave birth to the 1972 United Nations Conference on the Human Environment (UNCHE) held in Stockholm, Sweden. The conference is largely acknowledged as the beginning of modern international environmental governance and brought together leaders from 113 countries. The key outcome of the Conference was the *Stockholm Declaration*. The declaration contained a plan of action to collaborate and redress some of the pressing environmental issues and challenges facing the world.

The Stockholm Conference also recommended establishment of the United Nations Environment Programme (UNEP) and for the first time, the global community explicitly pronounced itself on the need to safeguard wildlife and natural resources. As a follow up to this conference, a number of key environmental treaties were established in the form of Multilateral Environmental Agreements (MEAs). The first set of MEAs were single issue treaties that were intended to address sector-specific problems, for example, trade in endangered species or migratory species.

The purpose of this study is to examine the role of the CITES as one of the international conventions in the protection and management of the African Elephant. The African Elephant has been listed as endangered under the CITES, as a means of mitigating against poaching pressure arising from ivory trade.

1.3 Statement of the Research Problem

Historically, Kenya and other African elephant range states have experienced episodes of unsustainable elephant harvesting through poaching for illicit ivory trade. This together with other factors such as drought, diseases, loss of space and human/elephant conflict have combined to significantly reduce elephant populations in most African countries, to near local extinction in some countries. Poaching and illicit ivory trade has taken an international dimension and the debate on poaching and illicit wildlife trade has now been escalated to the highest international forums including the United Nations General Assembly (UNGA), African Union (AU) and the East African Community (EAC) among others. There has also been numerous international conferences and declarations all aimed at addressing poaching and illicit ivory trade in the last thirty years. This situation has also elicited many strategies to deal with the threats including the establishment and deployment of highly equipped anti-poaching units and the mobilization of multi-agency entities that include the national police, national defense forces and customs to deal with the poaching and illegal transit of ivory.

At the international level, the use of the existing international legal instruments such as the CITES has been seen as the antidote for the poaching and illicit ivory trade. Kenya has been at the forefront of lobbying for a ban in ivory trade and is credited with galvanizing and persuading the international community through CITES to ban trade in ivory during the 7th Conference of Parties (COP 7) CITES meeting held in Lausanne, Switzerland in 1989. This ban led to a significant decline in elephant poaching of elephants in the 1980's and early 1990's in some countries while other populations remained stable or increased.

This CITES international ban on ivory trade was however strongly contested by African elephants range states from Southern Africa Region including Botswana, Namibia, Zambia, Zimbabwe and South Africa, whose elephant populations had not been severely affected by the poaching crisis of the 1970's and 1980's. These countries pointed that their elephant populations were stable and increasing over the same period. They therefore would have preferred a decision that allowed for trade in ivory through split-listing of their elephant populations in Appendix II and Appendix I. This debate has persisted up-to-date with the Southern African countries arguing that use of international agreements will not fix the problem of illegal wildlife trade. These countries argue that the focus on regulation through CITES without incentives to invest in elephant protection have only made things worse and therefore not sustainable.

Murphree M. (2018)⁹, a prominent proponent of sustainable use, notes that opponents of ivory trade fail to appreciate the differences in status and circumstances of elephant's among the range states in Africa. He observes that the impression given by proponents of the ivory ban that elephants face extinction in the whole of Africa is not varied because most elephant populations from Southern Africa have been growing. Murphree further observes that the decline in elephants over many years, in Central and Western Africa have occurred in countries associated with political instability and poor governance during the entire period of the ivory trade ban. He therefore argues that the differences in threats from poaching in the regions should be factored in making decisions on trade in ivory.

On the other hand, Kenya and some other African elephant range states from East, West and Central Africa argue that legal ivory trade undermines elephant conservation because it fuels illegal killing of elephants and no mechanisms exist globally to distinguish between legal and

⁹Murphree, M. (2018). CITES, Animal Rights, Sustainable Use and Conservation in Africa

illegal ivory trade. The two contested views have dominated African elephant conservation debate for a long time and consensus on the matter has been difficult to attain.

1.4 Research Questions

To help understand the role of environmental diplomacy in the conservation of the African elephant, the following four research questions have been formulated:

1. What are the global, and regional environmental regimes to conserve the African Elephant?
2. Has CITES positively contributed to conservation of Kenya's African elephants population?
3. What are the strengths and weaknesses of global environmental diplomacy (based on the CITES experience)?
4. What are the major prospects and challenges of the CITES in protecting the African Elephant in Kenya?

1.5 Objectives of the study

The overall goal of the study was to analyze the role of environmental diplomacy in the conservation of the African Elephant. This role will be examined in the context of Kenya's membership to CITES, paying special attention to how diplomacy has led to decisions or outcomes that either positively or negatively affected the conservation status of the African elephant since 1989. It will also critically analyze the effectiveness and sustainability of CITES in promoting the conservation of elephants in Kenya and other African elephant range states through regulation of ivory trade. The specific objectives of the study are to;

1. Examine major strengths and weaknesses of environmental diplomacy and especially with regard to CITES.

2. Evaluate global, and regional environmental regimes to conserve the African elephant.
3. Appraise major prospects and challenges of the Convention on International Trade of endangered flora and fauna (CITES) in protecting the African Elephant in Kenya?

1.6 Literature Review

This section highlights the international political theories articulated by various scholars and analysts to explain what motivates states to act in a particular manner in the global arena. The literature review focuses on past experience in the use of diplomacy and other international cooperative arrangements for promoting the conservation of endangered species of fauna and flora paying special attention to the conservation of the African elephant in Kenya.

1.6.1 Theories in the International Political System

Different international relations theories perceive the motivation for states to act in the international political arena differently. This section presents an overview of theories in international relations relevant to environmental diplomacy.

The first theory to be for consideration is idealism. Idealism is seen by some scholars as the deep believe in compliance with rules and legal norms set to guide conduct among nations in order to avoid conflict and war. Idealists believe in the idea of progress and the evolution of international relations that would lead to a more peaceful world through the establishment of international organizations as a way to promote peace and security among states. The immediate origins of this theory stem from the experience of World War I and the belief that such a war should be avoided in the future. This paradigm main believe is that by using reason, humans could overcome problems such as conflict and war. Idealists view human beings as good in nature and have a common interest. Because of this, it is possible to create a system of peace. The 28th

United States President Woodrow Wilson¹⁰ is considered as one of the intellectual forces behind this paradigm. According to Woodrow Wilson, democracy is the cause of peace and dictatorship is the cause of war. Woodrow believed that ‘the institution that prevented violence at the domestic level could be replicated and created at the global level to resolve disputes through peaceful means’. These ideals were embodied in the League of Nations. Idealists emphasize that inter-state relations are not all about balance of power, but rather foreign policy should also consider cooperative arrangements with emphasis on international institutions and international law. Idealist do not emphasize military force and focus more on international norms as well as cultural, economic and ecological considerations.

Realism is also a key theory in international relations guiding nations in their pursuit of foreign policy. Some scholars trace the origins of realism to the ancient world where they detected similar patterns of behavior as evident in contemporary world. Realism however gained momentum during the Second World War because it appeared to explain how and why the biggest conflict in the world history that is, the Second World War originated after a period of supposed peace and optimism. The inability of international law and organizations such as The League of Nations to prevent World War II made idealists theory of international politics to lose ground. Critics began to discredit it by calling it the normative (prescriptive) notion which emphasize on how things should be, as opposed to how they really are. Many scholars argued that idealists had ignored the central element of power in its consideration of international politics. Realist critique the notion of common interest, because according to them, states have different interests and not all states desire peace. Realists view the state as sovereign and main actor in international politics, and insist that security of the state is the primary and non-

¹⁰United States. President (1913-1921: Wilson). (1918). *Address of the President of the United States: delivered at a joint session of the two houses of Congress, January 8, 1918*. Washington: [Govt. print. off.].

negotiable objective of any head of state. Realists also emphasize on states' national interests and consider the interest of other nation-states including international institutions as secondary or tertiary. National interest is central to the realist theory, and power is the main national interest and international politics is therefore a struggle for power.

Hans Morgenthau¹¹, a prominent realist, is known for his famous statement 'all politics is a struggle for power'. This demonstrates the typical realist view that politics is primarily about domination as opposed to cooperation between states. The dominant principle of realism is that the international system is without order and nations are guided by national interest based on power politics. Realists argue that states do not have motivation to work cooperatively, as they are driven by competition and the pursuit of absolute power, conditioned by a history of conflict¹² To a realist, moral values and justice have no place in international politics. However, realist while checking their national interests may show increasing concerns with global poverty, conflicts, health and environmental hazards arising from environmental degradation because of the view that this may increase security threats. At the same time, to a realist, states are the central actors and will support environmental laws that serve their natural interests such as environmental resources, their use and protection.

Liberalism on the other hand, is based on the theory that ensuring the right of an individual person to life, freedom and property should be the ultimate aspiration of government. Liberals observe that a world with more liberal democratic capitalist's states will be more peaceful, prosperous and respectful of human rights. The theory was developed in the late 18th Century by Immanuel Kant who postulated that nations who shared liberal values should have no reason for

¹¹ Morgenthau, H.J. (1948) *Politics among Nations: The Struggle for Power and Peace*. New York.

¹²Fauto Angelica (2019). *Environmentalism in International Relations Theory*. Academy, International Relations, International Trade and Development

going to war against one another. He contrasted this with the rule by non-elected leaders such as kings and dictatorships who he observed are more likely to lead a nation into war motivated by selfish desires which are out of touch with the aspirations of the ordinary citizen.

Deudrey and Ikenberry¹³ further elaborates that we live in a global system anchored by the liberal world order that emerged after the end of the Second World War. Under this system, norms, ideals and international institutions are built on principles similar to national liberal institutions and norms including the desire to limit the tendencies for eliciting conflict by states. In 1999, Ikenberry and Deudney described three interlinked views on liberalism. In the first account, the two observed that international laws are usually accompanied by international institutions to create an international over-arching systems such as the United Nations. Such a system provides a platform for states to practice diplomacy between friends and enemies alike. This kind of arrangement also facilitates all member states to have a voice in the international community. In the second account, it is observed that liberal norms promote the rule of law, international cooperation, democracy and human rights. States who undertake actions contrary to norms are subjected to various types of liabilities. The third account highlights that spread of free trade and capitalism through the efforts of such international organizations such as the World Trade Organization, International Monetary Fund and the World Bank has led to the creation of an open market-based global economic system. The two scholars assert that because trade between nations is mutually beneficial, it decreases conflicts and makes war unlikely because it would cancel the benefit derived from trade.

¹³ Deudrey, D., Ikenberry G. J. (1998)

Constructivism theory highlights a shift away from realists and liberal accounts shaping positions adopted by nation-states by considering the role of knowledge, norms and values. Constructivists view cooperation among nations is guided by discursive power and ideational elements (Hass et.al 1993¹⁴; Okereke, 2010)¹⁵. Constructivism gained popularity in the 1990's after the end of the cold war. Constructivists believe that reality is always under constant construction. Situations are what states make of them, and therefore a situations meaning will depend on the state that is analyzing it.

Constructivist scholars focus more on the length and interrelated procedures by which international governance develops, Ruggie,¹⁶ Alexander Wendt¹⁷, prominent constructivists describes the relationship between structures (such as states) and agents (individuals) as one in which structures not only restraints agents, but also constraints their identities and interests.

1.6.2 Overview of Environmental Diplomacy

Environmental diplomacy is recent compared to other kinds of diplomacy and has developed cautiously from the 14th century in the European Continent in the form of bilateral agreements to guide sharing of transboundary natural resources such as water and fisheries¹⁸. Over time, these bilateral agreements were considered inadequate in managing environmental issues involving more than two countries.

¹⁴Speth, J., Haas P, (2007). Global Environmental Governance. Washington D.C., Island Press

¹⁵Okereke, C.(2010):Climate Justice and the International Regime

¹⁷Ruggie J, 1988. International regimes, transactions and change: embedded liberalism in in the post war economic order.

¹⁷Wendt, Alexander (1992) 'Anarchy is What States Make of It: The Social Construction of Power Politics'. *International Organization* 2, 391-425.

¹⁸ Carrol, J.E. (1990). International Environmental Diplomacy: The Management and Restoration of Trans frontier Environmental Problems. London CUP Archive.

The United Nations Conference on Human Environment (UNCHE) held in Stockholm, Sweden in 1972 is considered as the first global environmental summit. This summit recognized and highlighted the nexus between environment and development. This conference established the global framework for the management of the human environment through the Stockholm Declaration and an Action Plan with over 100 recommendations. Catalyzed by the UNCHE, the 1970's experienced enormous growth in the number of multilateral environmental agreements to address environmental problems which culminated in the United Nations Conference on Environment and Development (UNCED) which was held in Rio de Janeiro in 1992.

The conference re-affirmed the ties between environment and development and brought together 108 Heads of States, 187 delegations, and over 1400 officially accredited non-governmental organizations (NGO's). "The Future We Want", adopted at Rio+20 and endorsed by consensus of the UN General Assembly (UNGA), "recognized the economic, social and environmental impacts of illicit trafficking in wildlife, where firm and strengthened action needs to be taken on both the supply and demand sides.

UNCED gave birth to what is commonly referred to as the second generation of MEAS including the Convention of Biological Diversity (CBD), The United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Convention to Combat Desertification (UNCCD). The CBD covers all ecosystems, species and genetic resources and its objectives are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising from commercial and other use of genetic resources.

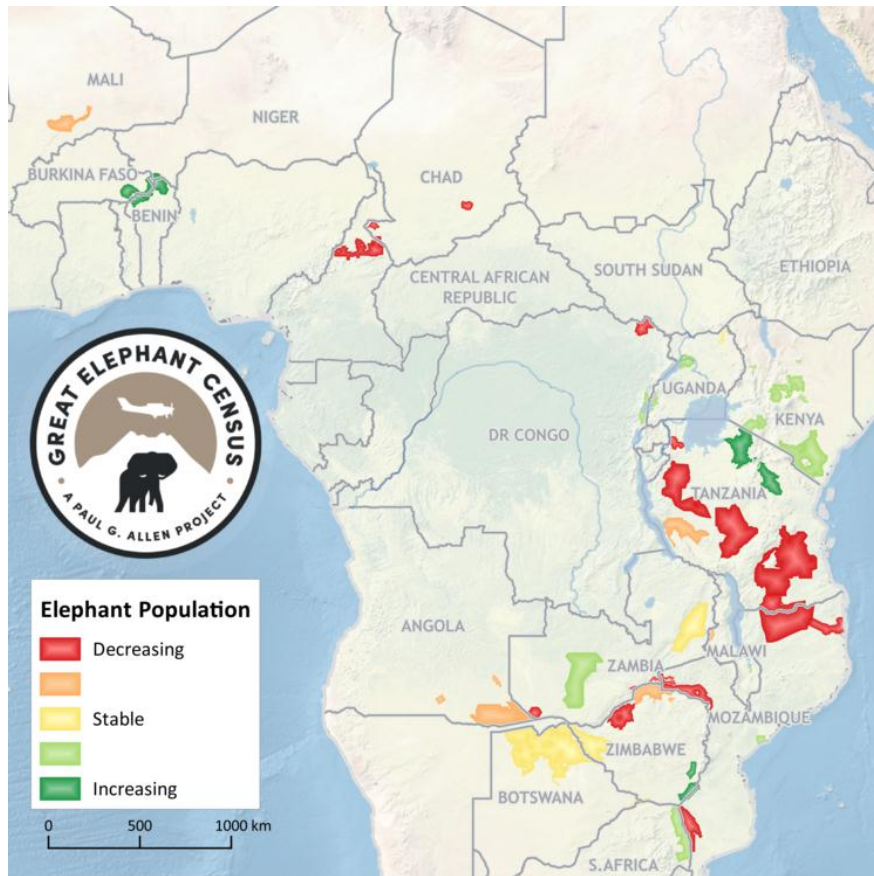
1.6.3 Status of the African Elephants in Africa

The latest comprehensive report on the *Status of African Elephant* was launched during the 16th CITES Conference of Parties Meeting that took place in Johannesburg, South Africa in 2016. For the first time, the report categorized the African elephant into two sub-species following what the report noted was ‘the emergence of new genetic evidence’¹⁹. These sub-species are the Savannah elephants *Loxodonta africana* and the Forest elephants *Loxodonta cyclotis*. The savanna (or bush) elephants are larger than the forest elephants and their tusks curve outwards while the forest elephants are smaller, darker and their tusks are straighter and point downwards.

The International Union for Conservation of Nature (IUCN) and African Elephant Specialist Group (AfESG) report categorizes the numbers and distribution of the African elephant population across the 37 range states in sub-Saharan Africa into four geographical regions of Southern, Eastern, Central and Western as depicted in the Map below.

¹⁹IUCN (2016). African Elephant Status Report

Figure 1: Map of African Elephant Range States



Source: IUCN, AfESG, 2016.

The total number of African elephants in the 37 range states was estimated to be 415, 000 elephants, down by almost 200,000 from the previous estimate of about 600,000 animals by IUCN and the African Elephant Specialist Group in 2006. The report notes that there has been a surge in poaching especially since 2009 and the worst poaching episode since the 1970's and 1980's poaching crisis. The report also reckons that besides poaching for ivory, habitat loss and increasing levels of human elephant conflict (HEC) possesses an increasingly serious long-term threat.

Southern African range states currently harbor over 70% of the estimated African elephants which are predominantly the Savanna elephants and the only regional population which is growing. The Eastern Africa region holds the second biggest elephant population of about 86,000 animals, representing about 20% of the African elephants, all of which are savanna. Interestingly, the savannah elephants in East Africa also occupy forested areas especially in the high altitude areas of such as Mount Kilimanjaro, Mount Kenya, The Aberdare Ranges, Mount Elgon and the Rwenzori's Mountains among others. During this ten-year report period, the elephant population in Kenya, Rwanda and Uganda recorded an increase, while the elephant population in Tanzania recorded a catastrophic decline which represents over 50% of the regional population loss.

The Central African region is prime home to the African forest sub-species with an estimated population of 24,000 animals representing 6% of the total African elephant population. This population has suffered from massive poaching especially in the Democratic Republic of Congo (DRC) which previously hosted the biggest forest elephant population in Africa. According to the Census report, the DRC population has been reduced to tiny remnants of its former size. Gabon and Congo now host Africa's biggest population of forest elephants. The elephant status report further notes that the West African Region elephant populations are found in highly fragmented small habitats spread across twelve different zones. The report also noted that local extinctions has been recorded since 2006 in Cote' d'voire, Ghana, Guinea Bissau, Sierra Leone, Togo, Guinea and Nigeria. The report further recorded that the trans-frontier elephant "WAP" complex that straddles the border between Benin, Burkina Faso and Niger remains as the stronghold of the West Africa elephant population.

1.6.4 Elephant Conservation in Kenya

The region known as Kenya today was declared part of the British East Africa Protectorate in 1895 following the Berlin Conference of 1884-85 when major European powers negotiated and formalized claims to territory in Africa. A formal government “Game Department” was created in Kenya in 1907 with three sets of responsibilities²⁰. One was control of pest species, seen as detrimental to agricultural production (elephants, buffalo, pigs, monkeys etc.). The second was to regulate hunting activities by resident and tourist sportsmen. This necessitated legislation through hunting regulations. The third activity was the management of game reserves, created both as reservoirs for valuable species and for the protection of species that had already been over-exploited, such as the elephant. There is little evidence of hard policies on wildlife issues until the 1930’s following several international and regional conferences. Most emphasis was on regulating colonial hunting and preventing local hunting until 1945 when the colonial government proclaimed the National Parks Ordinance, which paved the way for the establishment of National Parks in Kenya. Nairobi National Park was Kenya’s first national park established in 1946 and was closely followed by Tsavo and Mount Kenya in 1948 and 1949 respectively.

Policy for parks management as refuge for wildlife and centers of biodiversity conservation has remained unchanged since the colonial era. Kenya’s founding President, Jomo Kenyatta on September 18, 1963, provided a clear policy on government commitment to natural resources conservation when he declared that, “....*the government of Kenya, fully realizing the value of its natural resources, pledges itself to conserve them for posterity with all the means at its disposal.*”

²⁰ Rodgers, W.A. The Conservation of Biodiversity in East Africa: The approaches of forestry and wildlife sectors compared. In Conservation of Biodiversity in Africa-Local Initiatives and Institutional Roles. Ed. Bennun, L.A. Aman and Crafter, S.A, 1992. National Museums of Kenya

We are confident of the cooperation of other governments of East Africa in this important task, but at present, e unable, unaided, to provide the specialist staff and money that are necessary. We, therefore, invite other nations and lovers of nature throughout the world to assist us in honouring this solemn pledge"²¹. The statement by the President pledge underscored the need for international cooperation in this endeavor.

The first post-colonial policy on elephant conservation in Kenya was embodied in the Kenya Wildlife Service Policy Framework and Five-Year Development Programme, 1991-96²². The Policy Framework noted that elephant population in Kenya had reduced from a high of 130,000 individuals to a low of 16,000 between 1973 and 1989. The huge reduction in elephant was largely attributed to poaching, which had escalated to such an extent that negative international press began to threaten the tourism industry. The new government policy therefore emphasized *on intensification of an international campaign to ban ivory trade and establishment of a well-equipped and trained wildlife protection unit as a means of securing the long-term survival of the important elephant populations that are of great value for conservation and tourism*. The policy also called on efforts to find solutions to the problems confronting the conservation and management of elephants within and outside the parks and reserves, especially in regard to human-elephant conflict.

Kenya conducted the first national wildlife census in 2021²³ which confirmed an elephant population of 36,280 individuals. Tsavo Ecosystem accounts for 37% of elephant habitat in Kenya. It is a trans-frontier elephant habitat which is contiguous with Mkomazi National Park in Tanzania. The Laikipia-Samburu Ecosystem hosts the second largest elephant population in

²¹IUCN, 1964: Declaration by the Government of Kenya on Conservation of Natural Resources. Proceedings of the Eighth General Assembly of the IUCN

²² KWS Policy Framework and Five Year Development Programme (1991).

Kenya and one of the few habitats which are not trans-frontier in nature. Mount Kenya and Aberdare ecosystems are also important elephant habitats in the Central Kenya highlands. Masai Mara is contiguous with the Serengeti to form the world famous Mara-Serengeti ecosystem and hosts the third largest population of elephants in Kenya.

Many people in Kenya believe that the decline in elephant poaching can be attributed to enhanced elephant protection measures locally and buttressed by the CITES ban in ivory trade in 1989. Dublin, et al²⁴ assert that, the illegal ivory trade has been increasing since the mid-1990s in some African regions. This increase is closely linked with increases in elephant poaching in range states with inadequate capacity for law enforcement, corruption and political instability. Another eminent view in Kenya and its team of supporters is that spikes in elephant poaching experienced since 1989 are associated with the down-listing of four Southern African elephant populations in 1997, along with two legal ‘one-off sales’ of ivory in 1999 and 2008, which led to a recent dramatic resurgence of poaching and illegal trade.

1.7 Hypothesis of the Study

A hypothesis is a researcher’s prediction or basically an assumption regarding the outcomes of the study. This dissertation is guided by the following three hypothesis:

H₁. Environmental diplomacy has not played any positive role in the conservation of the African Elephant.

H₂. Environmental diplomacy has played a key role in the conservation of the African Elephant.

H₃. The CITES has been challenged in protecting the African elephant especially in Kenya

²⁴ Dublin, H. T., Milliken, et al (1995). Four Years After the CITES Ban: Illegal Killing of Elephants, Ivory Trade and Stockpiles. IUCN

1.8 Justification of the Study

The issue of trade in elephant ivory and its role in the conservation of the African elephant has dominated elephant conservation debates and the CITES conference of parties meetings since the 1980's. This debate has caused a great divide between the elephant range countries of Southern Africa on one hand, and the countries of East, Central and West Africa on the other hand.

A common feature of the argument from the Southern Africa range states is that legal ivory trade is possible in a sustainable way and revenues generated are a critical incentive for conservation of the African elephant. The other African elephant range states from East, Central and West Africa led by Kenya and supported by civil society organizations and from the north and western developed countries argue that sustainable legal ivory trade is not possible because of various factors that include insecurity in the region, inadequate protection measures for the species especially for a high value product; weak surveillance and monitoring capability of elephant populations and therefore lack of current scientifically collected data, corruption in the public service; and over-abundance of small arms in the region. Political instability in some of the elephant range states and indirectly weak governments has also created a vacuum that is exploited by those behind illegal trade in ivory.

This study therefore sought to interrogate the extent to which environmental diplomacy had contributed to the conservation of the African elephant; in addition to exploring weaknesses, challenges and constraints encountered during the negotiation processes in the COPs and other inter-sessional meetings, with a view to making recommendations about how this can be improved and thereby deliver better results in the future. Kenya has severally championed the listing of all the African elephant in Appendix 1 during the COPs to curtail legal trade in ivory with mixed success. This study has therefore reviewed literature containing arguments for

and against trade bans as a key elephant conservation strategy with a view to assessing the extent they had contributed towards the conservation of the species in Kenya. The literature review was complemented by interviews with experts on elephant conservation and the CITES process.

1.9 Research Methodology

This study relied on the review of secondary data sources complimented by primary data gathered from key informants who had at some point in time participated during the CITES COP meetings. The methodological model employed in this study included: Definition of the study area and target population; design of how the study was to be undertaken including the time frame; target population of the study; sample size used and sampling methods; data collection instruments; data analyses procedures; and finally the conclusions and recommendations.

1.9.1 Study Location

The study location is Kenya, a country with a population of about 48 million people as per the population census of 2019²⁵, and covers an area of about 580,367 sq. Km. It is situated on the eastern coast of Africa. Kenya is a sovereign state and member of the United Nations, African Union, and the East African Community and has signed and ratified numerous bilateral, regional and international treaties and conventions on trade, security and environment among others. It is a middle income country practicing a multi-party democracy with a mixed economic model anchored on a free-market system and a state and private driven corporate regime.

²⁵ Kenya National Bureau of Statistics, 2019. Kenya population Census.

Kenya is a mega diverse country and currently hosts the 4th largest population of the African elephant of about 36, 200 animals²⁶. The country's social economic development is largely dependent on her natural resources base²⁷, and nature-based tourism has a growing importance in the economy through generation of foreign exchange, job creation and the support to many service sectors. This resource base is increasingly under pressure from expanding human activities and effects of climate change, resulting in environmental degradation and depletion. The nature-based tourism contributes about 10% of Kenya's Gross Domestic Product (GDP²⁸). The country's development and livelihood of her people is fundamentally dependent on her natural resources base²⁹, and nature-based tourism has a growing importance in the economy through generation of foreign exchange, job creation and the support to many service sectors. The nature-based tourism contributes about 10% of the GDP. This resource base is increasingly under pressure from expanding human activities and effects of climate change, resulting in environmental degradation and depletion.

1.9.2 Study Design

Mugenda and Mugenda (1999)³⁰ defined research design “*as the general plan that shows the key processes and procedures that must be followed throughout the study*”. Chandrian, (2004)³¹ further notes that the plan is beneficial in terms of completing the study's objectives through empirical evidence in the most cost effective manner. In summary, the research was designed to review existing literature first so as to appreciate the context of the subject of investigation, i.e.:

- i) the status of the African elephant in Africa and in Kenya in particular as well as mechanisms

²⁶ Ministry of Tourism and Wildlife, 2021. National Wildlife Census 2021 Report. Published by WRTI and KWS.

²⁷ KNBS, Economic Survey, 2020

²⁸ KNBS, Economic Survey, 2020

²⁹ KNBS, Economic Survey, 2020

³⁰ Mugenda, O.M. & Mugenda, A.G. (1999) Research Methods. Quantitative, Qualitative & Mixed Methods Approaches

³¹ Chandrian, (2004)

that have evolved over time geared towards the conservation of this species, ii) Meaning and definition of environmental diplomacy, its evolution over time and mechanisms that exist to facilitate common actions to protect and conserve species of wild fauna and flora, and more specifically the African elephant; actions and roles that Kenya and other African elephant range states have taken at the diplomatic level to conserve the species as well as the strengths and weaknesses of the mechanisms that exist such as CITES. Other aspects that were to be explored were the strengths and weaknesses of environmental diplomacy and especially with regard to CITES.

The other aspect of this study was to collect information from persons who have actively participated in CITES COP meetings. This was intended to shed more light as to what has transpired during such meetings as well as the pre and post CITES meetings actions/activities that have produced or have the potential to produce favorable outcomes in terms of conserving the African elephant.

Literature Review: This study was designed to gather most of the information required from literature review of reports derived from past analyses of successes and failures of environmental diplomacy in conserving biodiversity/wildlife resources. Other important sources of information were Conference of Parties (COP) reports; and especially those of CITES. Information/data gathered from literature review was complimented by views gathered from purposive sampling of persons who had directly and actively participated previously in the COP meetings at some point in time since 1989. Mugenda & Mugenda, 2019, profess that purposive sampling allows a researcher to select respondents who will provide the required information with respect to the objectives of the study. Seven (7) respondents drawn from key technical staff were interviewed (see interview guide in Appendix 2).

Type of data/information collected: Diplomacy is largely about negotiating positions and trying to reach a solution pertaining to a particular issue. In the case of the CITES, countries present proposals for and against a proposal being put forward before a vote is taken by the respective parties. There is also a lot of lobbying among parties. In this regard, use of qualitative data/information was found most appropriate. The researcher therefore preferred using an interview guide with key blocks of issues that needed to be explored. Open ended questions that allowed the researcher to probe key important diplomatic issues concerning the CITES process at the various stages (preparatory, during the Conference of Party (COP) meetings and follow up actions after the COP). In addition, the researcher also sought to identify strengths, weaknesses (coordination, constitution of participating organizations and appropriateness, technical capacity including skills in diplomacy, levels of engagement throughout the process, level of appreciation of these participating of their roles and responsibilities among others).

Target Population of the Study: The preparations, negotiations, implementation and practice of environmental diplomacy in Kenya is dominated by high level government officials from the Ministry of Foreign Affairs and line ministries on environmental and natural resources, state corporations, scientific and research authorities, institutions of higher learning, UN Agencies including local and international non-government organizations. Kenya houses numerous non-governmental organizations and the government of Kenya has a very cordial and close working relationship with the NGO's especially with regard to the preparations for negotiations and participation in multi-lateral environmental agreements forums. These NGO's have therefore been able to influence Kenya's environmental policy and have actively participated in the lobbying for certain positions that are adopted at major international conferences. Those who

were interviewed were therefore drawn from a mix of technical staff from Government line Ministries and NGOs.

Data Analysis Techniques Since open ended questioning that helped probe issues was used, the data analysis technique employed was to seek convergence of views and thoughts of the interviewees on different questions. Similarities in responses to sample questions was taken as validation of a position or issue. The bulk of data analysis was through content analysis focusing on what the respondents said, how they said it and the message in the narratives.

Observance of COVID Protocols: Due to COVID-19 pandemic, most of the data collection was done be through telephone interviews, while face to face interviews were conducted with strict adherence to the protocols for public health in regards to the pandemic

1.9.3 Scope and Limitations of the Study

The study location is Kenya and therefore all the respondents are Kenyan. This could create a bias in that all those interviewed wore a Kenyan lens during the process. Views on elephant conservation diplomacy from the perspective of respondents from the southern African elephant range states could have enriched the study. While efforts were made to reach out to non-Kenyans living in Nairobi, none was interviewed. This can therefore bring a bias on the data collected from the majority of respondents who are Kenyan citizens.

1.10 Chapter Outline

This section provides the layout of the dissertation which is as follows:

Chapter one sets the stage for the study by giving a background to the research topic under investigation and which forms the basis for establishing the research problem and research questions. This is followed by a detailed literature review section that focuses on the role of environmental diplomacy in the protection of the African elephant, which is a variable under

investigation. The Chapter further gives a detailed account of the research methodology adopted including data collection, analysis and synthesis.

Chapter Two gives a detailed overview of the global and regional regimes that exist for the conservation of biodiversity with a focus on the African elephant. These regimes include a range of laws, institutions, international organizations, international agreements, government agencies and decision-making processes.

Chapter Three analysis the strengths and weaknesses of global environmental diplomacy from various perspectives including the north-south divide, issues of sovereignty and national interests among others.

Chapter Four analyzes the prospects and challenges of the Convention on International Trade of Endangered Species of Fauna and Flora (CITES) in protecting the African Elephant in Kenya.

Chapter Five presents the conclusions and recommendations from the study and give guidance on further areas of study to fill the gaps.

CHAPTER TWO: GLOBAL AND REGIONAL REGIMES TO PROTECT THE AFRICAN ELEPHANT

2.1 Introduction

International regime is a set of implicit or explicit principles, rules, norms, and decision making procedures, around which expectation of actors in international relations coalesce on certain issues such as international trade and arms control³². International regimes are anchored upon international law and often begins with a highly formalized agreement, which often leads to emergence of international organizations.

2.2 Global Environmental Regimes to Protect Biodiversity

Weiss et al³³ defines global governance as “the patchwork of formal and informal arrangements among states, international organizations and various public–private partnerships” Global environmental governance is vitally important in the arena of wildlife management because wildlife is a major commodity in the international trade and demand for wildlife products is driving some of the species such as elephants into extinction. The principle environmental conventions for the conservation and protection of biodiversity include the Convention on Biological Diversity (CBD), Convention on International Trade in Endangered Species of Fauna and Flora (CITES), RAMSAR on Wetlands of International Importance, World Heritage Convention and Convention on Migratory Species (CMS) among others.

³²Krasner Stephen D. (1983) International Regimes, Ithaca, NY: Cornell University

³³ Weiss, T.G., T: Thakur, R., (2010). Global Governance and the UN- UN Unfinished Journey. Indiana University Press

2.2.1 Convention on Biological Diversity (CBD)

The Convention on Biological Diversity is one of the key outcomes of the United Nations Conference on Environment and Development held in 1992. Kenya was one of the first Countries to sign the CBD in 1992 and subsequent ratification in 1994. The achievement of the CBD objectives is pegged on the three pillars of promoting the conservation, sustainable use of biodiversity as well as ensuring the fair and equitable sharing of benefits arising from the utilization of its genetic resources. The CBD recognizes that Parties to the convention have sovereign rights to their biological resources but emphasizes that the conservation of biological diversity is a common concern of humankind that requires an integrated approach in order to address the overriding priorities of economic and social development and the eradication of poverty. The convention adopts a holistic approach that includes ecosystems, species and genetic resources. The Articles of the Convention includes provisions for the establishment and implementation of funding mechanisms as well as guidelines for the operation and of the convention with its institutional arrangements.

The CBD adopted the updated Strategic Plan 2011-2020 during its tenth meeting of the Conference of Parties held in Nagoya, Aichi Prefecture in Japan in 2010. The Strategic plan provides an all-inclusive global framework on not only biological diversity-related conventions but for the entire United Nations System. The Strategic Plan importantly included twenty biodiversity targets, commonly referred to as the Aichi Biodiversity Targets (ABT) to be achieved by partners during the implementation period 2011-2020. The parties also agreed to incorporate the global biodiversity framework into their national biodiversity strategies and action plans within two years. ABT 12 is aimed at preventing the extinction of known threatened species and improving the conservation status of threatened species. The obligation by parties to

implement the ABT 12 further compliments other conventions in the conservation of endangered species. The CBD Strategic Plan expired in 2020 and will be replaced by the Post 2020 Biodiversity Framework whose Final Draft was released in July 2020. The framework will guide global actions to preserve and protect nature up to 2030.

2.2.2 The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)

The CITES³⁴ was established in 1973 and became operational in 1975 as an international agreement for the regulation of trade in wild animals and plants species to ensure that trade does not drive species to extinction. Membership to CITES is voluntary and only states can be signatories to the convention. The convention however allows for the participation of non-government organizations in the meetings to discuss and give advisory opinions without the authority to vote. The Conference of Parties (COP) is the principle decision making body for CITES and the Secretariat, based in Geneva, Switzerland handles all operational and administrative duties. Parties are obligated to designate the National Management Authority and the Scientific Authorities with their areas of jurisdiction facilitate implementation.

CITES uses a system of Appendices to regulate international trade through a permit system managed by the respective management and scientific authorities. CITES is very unique when compared to other global conventions because of its ability to impose sanctions on trade of protected species by countries who fail to comply with decisions of the convention. Any form of trade in Species listed in Appendix I is prohibited while trade in species listed in Appendix II is permitted under very strict conditions to avoid overexploitation that can lead to extinction.

³⁴Sakiyama, M. Schwarzer, C. (2018). Global Youth Biodiversity Framework. CBD in a Nutshell (2nd Edition Youth Biodiversity Network, Berlin, Germany).

In order to facilitate enforcement of CITES decisions, Parties are expected to provide an appropriate legal and administrative framework that includes the enactment of relevant national legislation and provision of funds to implement and report on CITES. In addition Parties are expected to generate accurate and up-to-date data on species and have enforcement capabilities.

2.2.3 Convention on Migratory Species (CMS)

The Convention on Migratory Species (CMS), also known as the Bonn Convention was signed in 1979 and come into operation in 1983. Kenya ratified the convention in 1999. The CMS overall purpose is promoting the conservation and management of migratory species of wild animals globally. The Convention categorizes species into Appendix I and Appendix II. Appendix I species are those considered threatened and therefore requiring exceptional interventions such strict protection of the species including conservation and restoration of their habitats. Appendix II species contains a list of migratory species which have an unfavorable conservation status and which require international cooperation for their conservation and management.

The CMS main implementation strategy is the through concluding regional agreements for conservation and management of specific species. The Agreement on the Conservation of Africa-Eurasian Migratory Birds (AEWA) and The Agreement on the Conservation of the Gorilla and their Habitats (Gorilla Agreements) are two examples regional agreements relevant to the African Region and Kenya. The convention also undertakes cooperative research and cooperative activities and establishes particular working groups and task forces to deal with emerging issues.

The CMS executes its mandate through the COP meetings as the main decision making body comprised of Parties who have the sole voting rights and NGOS who do not have voting rights but have rights to participate in meetings. The Scientific Council provides the technical and scientific guidance to the COP and Standing Committee. The CMS secretariat is provided by UNEP.

2.2.4 The RAMSAR Convention on Wetlands of International Importance

The Ramsar Convention³⁵ is one of the earliest multilateral environmental agreement aimed at conserving natural resources. The Convention derives its name from the little known city of Ramsar in Iran where the Treaty was signed in 1971. Kenya ratified the treaty in 1990 and Kenya Wildlife Service is the designated Ramsar Administrative Authority. The Convention aims to galvanize international cooperation to halt the worldwide loss of wetlands and to conserve them through wise use as well as encouraging Parties to designate wetland sites containing representative, area or unique wetlands that are important for conserving biological diversity. Five of the six designated RAMSAR Sites in Kenya are situated in the rift valley and include Lakes Naivasha, Elementaita, Nakuru and Bogoria. The Tana River Delta site is the only designated RAMSAR site in Kenya lying outside the Rift Valley.

The Convention's broad aims are to halt the worldwide loss of wetlands and to conserve through wise use and management, those that remain. This requires international cooperation in policy making, capacity building and technology transfer. Under the Ramsar Convention, a wide variety of natural and human-made habitat types ranging from rivers to coral reefs can be classified as wetlands.

³⁵ www.ramsar.org

2.2.5 The World Heritage Convention (WHC)

The World Heritage Convention (WHC) was established by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1972 with a mandate to identify cultural and natural sites for designation as World Heritage Sites. Parties to the WHC commit to conserve not only the world heritage sites situated within their territories, but also to also integrate the protection of cultural and natural sites into regional planning mechanisms. Seven sites have so far been designated in Kenya including Lake Turkana Parks (Sibiloi National Park, Central National Park and South Island National Park), Mount Kenya National Park and Forest, Lamu Old Town, eleven sacred Miji Kenda Kaya Forests located along the Kenya's Coastal region, the Kenya Lake System in the Great Rift Valley (Lakes Bogoria, Nakuru and Elementaita) and the Thimlich Ohinga Archeological Site in Homa Bay County.

Sites for nomination by a Party must have outstanding universal cultural, historical, natural and archeological value. The National Museums of Kenya is the focal point for WHC in Kenya and works closely with the Ministry of Education and Kenya Wildlife Service. The WHC also has provisions for listing *World Heritage Sites in Danger* as a means to inform the international community on conditions which threaten the very characteristic for which it was inscribed in the World Heritage List. The World Heritage Sites such as Mount Kenya National Park and Forest are also important biodiversity areas³⁶.

2.3 Regional Regimes for Elephant Conservation in Africa

2.3.1 The African Ministerial Conference on the Environment (AMCEN)

The AMCEN was established under the auspices of the African Union (AU) in 1985 for purposes of advocating for the conservation of the environment in Africa. In addition, AMCEN

³⁶ UNESCO, WRI, IUCN: World Heritage Forests: Carbon Sinks under pressure, Paris, UNESCO.

was also expected to advocate for sustainable social economic development that met the needs of its people at all levels including food self-sufficiency. Since then, AMCEN has actively spearheaded the African position on matters pertaining to various environmental issues at the global arena. These include preparation of common position papers during Conference of Parties meetings on Convention under the United Nations Framework. From 1985 to date, AMCEN has also developed and implemented a number of programmes and activities geared towards achievement of its mandate at the continental level.

2.3.2 African Elephant Action Plan (AEAP)

Recognizing that the African elephant was under threat and therefore a concerted effort was needed at the continental level in order to stem off the decline of its population in all the elephant range states, development of an AEAP was proposed during the 14th CITES COP meeting. Developed through a highly consultative and participatory process and guided by African Elephant Specialist Group (AfESG) and the CITES Secretariat, the plan was completed and adopted during the 15th meeting of the COP to the CITES. In the same vein, a fund to assist with the plans' implementation was also established³⁷. The AEAP recognizes the need for greater coordination among the African elephant range states if the decline of this species is to be stemmed off owing to the fact poaching occur in populations that live across borders. The key objectives of the action plan are to reduce poaching incidents and illegal trade of elephant products; maintain elephant habitats and restore connectivity.

³⁷ www.africanelephantactionplan.org

2.3.3 African Elephant Fund (AEP)

This is a funding mechanism that implements the African Elephant Action Plan described in section 2.3.3 above; and whose goal is to ensure protection and conservation of the species. The fund was established in the year 2010 and benefits thirty eight countries from the African elephant range states. Activities funded are largely aimed at mitigating the key threats that affect the African elephant such as illegal killing of elephants as well as trade in elephant products; loss of the elephant range/habitats and in turn connectivity; human/wildlife conflicts as well as improving overall management of the species. It is governed through a Steering Committee constituted of eight of the African elephant range States and two donors. In addition, the fund also seeks to raise awareness among policy makers in the beneficiary countries, local communities and other interest groups about the threats facing elephants in an effort to enhancing cooperation and collaboration for purposes of ensuring that the AEAP is successfully implemented.

2.3.4 Lusaka Agreement on Cooperative Enforcement Operations Directed at the Illegal Trade in Wild Fauna and Flora.

The Lusaka Agreement was established in 1994 as an African regional inter-governmental treaty with the aim of promoting cooperative action to combat poaching and illegal wildlife trade in support of CITES and other biodiversity related agreements. The Lusaka Task Force (LATF), domiciled in Nairobi, Kenya, serves as the Secretariat as well as the operational arm of the Agreement³⁸. Despite the good intentions of this Agreement, only seven countries out of the 38 African elephants range states have ratified it and only five countries are represented in the LATF. The main activities undertaken by LATF are: gathering of intelligence information and

³⁸ www.latf.org

investigations pertaining to poaching and illegal trade, coordination of law enforcement activities, as well as strengthening the capacity of collaborating Party institutions and enhancing synergies.

2.3.5 East African Community (EAC)

The EAC is a regional economic integration block comprising of Kenya, Uganda, United Republic of Tanzania, Burundi, Rwanda and South Sudan. Article 114 of the EAC Treaty obliges partner states to implement measures geared towards fostering cooperation in the management of natural resources of within the Partner states for their mutual benefits.

In accordance of Article 114 of the EAC Treaty, the EAC developed the East African Community Strategy to Combat Poaching, Illegal Trade and Trafficking of Wildlife and Wildlife Products³⁹ (hereafter the strategy). The strategy proposes a raft of measures to combat poaching and illicit wildlife trade including strengthening governance and cooperative law enforcement capacity by establishing regional inter-agency mechanisms and streamlining cross-border and regional cooperation. The strategy further acknowledges that due to the transnational nature of wildlife crime wildlife crime can only be effectively tackled through interventions focusing on supply chain in source, transit and destination countries, which therefore demands a regional and international collaborative approaches to tackle. The Strategy is being implemented through the EAC Sectoral Council on Tourism and Wildlife and as Parties have an obligation to report on levels of implementation during the Sectoral Council Meetings.

³⁹ East African Community Secretariat (2018). The East African Community Strategy to Combat Poaching, Illegal Trade and Trafficking of Wildlife and Wildlife Products

CHAPTER THREE: STRENGTHS AND WEAKNESSES OF GLOBAL ENVIRONMENTAL DIPLOMACY

3.1 Importance of Environmental Diplomacy in Conservation and Protection of Biodiversity

Environmental diplomacy provides mechanisms and procedures for negotiating agreements and supervising their implementation and compliance. It therefore facilitates and promotes cooperation between and among various actors who include states, international organizations, and non-governmental organizations. In addition, it provides mechanisms for international environmental governance. Historically, international environmental diplomacy has mainly focused on relations between states including their rights, roles and responsibilities. Issues pertaining to human-rights have over the years taken a prominent position in environmental diplomacy. The participation of NGO's in international environmental diplomacy has also given a voice to non-state actors and other marginalized groups such as indigenous peoples and local peoples.

International environmental diplomacy is also largely concerned with the regulation of global environmental problems such as carbon emission to the environment, trade in endangered species of wildlife, blockade of migratory corridors for animals and birds and loss of important wetlands habitats among others issues. In addition, some international environmental agreements also seek to harmonize national laws, either globally or regionally. For example, CITES encourages Parties to prepare dedicated national legislation to support implementation of the provisions of the Convention⁴⁰

⁴⁰ CITES guidelines

Bradnee Chambers (2013)⁴¹ notes that between 1972 and 2013 there were numerous MEAs that were negotiated, signed and ratified. It was also a period for the doing lot of catching-up because this was not part of the mandate of the UN. This was however necessitated by the urgency of the deteriorating environment and the need for international cooperation in order to reverse this worrying trend. We are now in the Post Rio +20 and CBD Post 2020 period and the reality is that multilateral environmental agreements (MEA's) make up the majority of the global framework environmental policy framework. The role of MEAs is not to implement actions but to promote their implementation by the Parties themselves. It is the responsibility of the Parties to ensure that measures in response to the provisions of the MEAs are implemented and reported upon to the respective secretariats during the periodic Conference of Parties (COP) meetings. The complexity and transboundary nature of environmental issues has led some analysts to call for a review of the protocols on negotiations, implementation and enforcement of MEAS.

3.2 Weakness of Global Environmental Diplomacy

Some analysts argue that despite the existence of conventions focused on a range of global environmental concerns, the environment continues to degrade, thereby challenging survival of life on planet earth difficult. One recent alert on the eminent danger faced by species was provided in the year 2020 by IUCN through its Red List published by the International Union for Conservation of Nature (IUCN) which called attention to the global extinction crisis⁴². Ecosystems and biota across the world are threatened by the adverse effects of economic activities and climate change. For example, an estimated 35% of wetlands have been lost since

⁴¹Bradnee Chambers (2013). CMS Executive Secretary. In CMS Bulletin 2-3 2013

⁴² IUCN. The IUCN Red List of Threatened Species. Version 2020-2. Available online: <http://www.iucnredlist.org> (accessed on 16 July 2020).

1970⁴³. In 2016, the second meeting of the UN Environment Assembly (UNEA) called attention to the effects of air pollution on health, estimating that “7 million people across the world die each year due to everyday exposure to poor air quality” and 7% of these deaths are caused directly by chemical pollution⁴⁴. This kind of a report casts doubts about the effectiveness of MEAs as a mechanism for redressing global environmental challenges as well as what influences the performance of a Party for purposes of achieving success in their implementation⁴⁵. The following sections highlight some of the arguments on the weaknesses of the global biodiversity diplomacy in addressing contemporary environmental issues and challenges.

3.2.1 Anarchic Nature of the International System

One major weakness of environmental diplomacy is that sovereignty in decision making is a key principle at every stage of the process. In this regard, a state cannot be compelled to join an international Conventions or comply with the provisions contained therein. Such a process can therefore leave out states out of the loop even when the issues that are of interest in a particular Convention go beyond the boundaries of the non-cooperating state. For example, The USA Government withdrew from the Paris Climate Agreement in June 2017, and yet they are a major emitter of Green House Gases (GHG). Another example closer home is the Lusaka Agreement where majority of African elephant range states have not yet ratified the agreement and are therefore not bound in any way by its provisions. Despite the existence of international courts

⁴³ Ramsar Convention on Wetlands (Ed.). Global Wetland Outlook: State of the World’s Wetlands and Their Services to People; Ramsar Convention Secretariat: Gland, Switzerland, 2018

⁴⁴ UNEP; WHO. Health People, Healthy Environment. In Ministerial Policy Review Session/United Nations Environment Assembly 2; United Nations: Nairobi, Kenya, 2016

⁴⁵ Miles, E.L.; Underdal, A.; Andresen, S.; Wettestad, J.; Skjaereth, J.B.; Carlin, E.M. Environmental Regime Effectiveness: Confronting Theory with Evidence; MIT Press: Cambridge, MA, USA, 2002.

and tribunals, states cannot be compelled to appear before them, nor to consent to retribution for non-compliance with the provisions of various environmental treaties⁴⁶.

However, since 1971 when one of the earliest environmental conventions (Ramsar), came into force, the effects and impacts of environmental problems at the global level has come to the fore. Many countries have recognized the need to cooperate and collaborate with others for purposes of mitigating the current global environmental challenges; and are therefore willing to down play their sovereignty in order to partake of the advantages of international cooperation. Susskind (1994) observes that countries are finding themselves increasingly inter-dependent with subsequent diminishing notions of sovereignty. He further notes that *despite notions of national sovereignty being tempered as a result of technological and economic changes that have occurred globally, it still remains an impediment to effective international cooperation in environmental management.*

3.2.2 Complex Interplay of Different National Interests

Parties often come to participate in international fora guided by a foreign policy geared towards pursuing the national interest. This then affects the discourse during the negotiations and imposes limitations in terms of objectivity when serious problems affecting the world are being discussed. There is what Parties are willing to lose in support of global solidarity and what they are not willing to lose. In such a scenario, conflicts of interest manifest themselves and the negotiations often produces winners and losers (O'Neill 2009)⁴⁷. In some cases, negotiations have completely failed due to rigid national positions informed by national interest. For example, during the United Nations Conference on Environment and Development held in 1992, it was expected that the Global Forests Convention would be adopted together with the CBD and the UNFCCC.

⁴⁶Desombre Elizabeth (2005) *the Global Environment and World Politics*. New York: Continuum

⁴⁷O'Neill Kate (2009). *The Environment and International Relations*. New York: Cambridge University Press

However, this did not happen due to differences among countries about what forests to regulate as well as respect of sovereign control over forest resources. This led to the collapse of the multilateral talks⁴⁸. Since Nations are diverse in nature from a cultural, social, economic and even politically, decisions taken at the international level are likely to affect them differently; with some benefiting more than others while others lose more. In addition, participation in the COP meetings has been opened up to non-state actors who include NGOs and other stakeholders, thereby increasing the complexity of the negotiations. Other issues that come into play include national politics and interests with the negotiators feeling and rightly so that they are accountable to their countries.

3.2.3 Inequalities among Parties

Environmental diplomacy seeks to bring nations together to address global environmental challenges, however, these countries are at different stages of social, economic and technological development. Politically, the same is the case. This has often been referred to as the North – South divide with Countries from the northern Hemisphere (also referred as the developed world) being much wealthier and the Countries from the Southern hemisphere being poor and bedeviled with many social economic problems. While each of the respective countries has a single vote when it comes to making a final decision during the COP meetings, powerful states such as the United States of America's often send large delegations with the aim of influencing outcomes either direct or indirectly. The more the influence a Party has globally in various spheres, the more they are able to impact the outcomes of such meetings. As a result of these differences, Countries from the southern hemisphere are already disadvantaged from various perspectives even as they join the global environmental governance systems. Rosaleen

⁴⁸ Davenport Deborah (2005) "An Alternative Explanation for the Failure of the UNCED Forest Negotiations" *Global Environmental Politics*, Volume 5, No. 1, PP. 105-130.

Duffy(2013)⁴⁹ is of the view that the process of international environmental diplomacy from the beginning till the end for purposes of the “*global good*” can be manipulated by the more powerful Parties owing to their influence to arrive at outcomes that perpetuate a “*business as usual*” scenario.

USA for example has not signed the CBD to date, but it has not failed to send a delegation at any one time. The decision of the USA government is informed by national interest since they would not want an imposition on them with regard to how they manage their internal affairs. This is despite the fact that the CBD had very good provisions that would have ensured the protection of biodiversity globally. USA is also considered a critical participant in these international meetings, however, they have been lukewarm in many instances or refusing to cooperate in international environmental diplomacy. For example, the USA Government refused to sign the Paris Agreement.

In addition, Susskind (1994)⁵⁰ also contends that differences in interests and priorities between the rich and poor countries will often dictate what positions are taken at the global arena and thereby jeopardizing positive debates and outcomes. A clear case in point the insistence by the rich countries of the north that stringent environmental measures geared towards curbing problems such as pollution should be implemented by the South. Countries from the developing countries (South), however, consider such proposals as being unfair and argue that even the rich north attained their current levels of economic development by extracting in an unsustainable manner; as well as cheaply natural resources from the South. Such a contention has therefore affected standardization of environmental standards globally.

⁴⁹ Duffy Rosaleen, (201) Global Environmental Governance and the North-South Dynamics. The Case of CITES. University of Sheffield

⁵⁰ Susskind Lawrence (1994) Environmental Diplomacy: Negotiating More Effective Global Environmental Agreements. New York: Oxford University Press.

3.2.4 Flaws in the Convention Protocol Approach

The standard approach in international environmental negotiations is to first negotiate and prepare a draft framework convention which focuses on the objectives and principles without agreement of specific actions, targets and timetables for implementation. Subsequent meetings prepare the detailed procedures, strategies and action plans for implementation including monitoring. A major weakness in the convention- protocol approach is that the negotiation process can be very protracted leading to delayed actions on issues needing urgent redress⁵¹. The negotiation and the coming to force of CITES is usually given as an example where despite the clear documentation of the threat situation on endangered species arising from unregulated trade, ten years lapsed before action was taken to regulate the export, transit and importation of endangered animals and plants species and their products. This led to a further loss of the species that the Convention sought to safeguard.

3.3.5 Inadequate Compliance and Enforcement

Due to the absence of a universal declaration on environmental protection and sustainable development similar to the “*United Nations Universal Declaration of Human Rights*” the “*Vienna Convention on the Law of Treaties Making*” is used to guide and govern global environmental agreements. Susskind 1994⁵² along with other analysts notes that the Vienna Convention only provides process guidelines and some ground rules while leaving many questions unanswered. He further notes that the convention-protocol approach as currently practiced has not adequately responded to requirements for monitoring and enforcement effectively. Self-reporting as a mechanism of monitoring implementation of the provisions of the MEAs also has a weakness since countries have the leeway to say what they have done

⁵¹ Susskind, 1994

⁵² Susskind, 1994 *ibid.*

which may not necessarily be the truth. Conflict with the choices of national sovereignty also come into play undermining the process. Without effective monitoring and enforcement, implementation of many agreements is difficult and can undermine the effectiveness of treaties.

CHAPTER FOUR: PROSPECTS AND CHALLENGES ON THE CITES IN CONSERVING THE AFRICAN ELEPHANT IN KENYA

4.1 Introduction

Numerous assessments on the achievements of the specific goals of global agreements indicate that there is room for improvement and that stronger collective global action is required. The concern at the core of the analysis of global environmental conventions, however, has been their *effectiveness* in the solution of global environmental problems⁵³. This chapter summarizes the observations and analysis from the interviews conducted to highlight the prospects and challenges on the CITES in protecting the African elephant in Kenya

4.2 Summary Observations and Analysis from the Interviews

4.2.1 Pre-COP Meeting Preparations

Majority of the respondents noted that preparations for the meetings is crucial for success. The scope of CITES activities warrant a continuous engagement process prior to the COP meetings and during any other inter-sessional meetings and activities for a party to be effective. One interviewee⁵⁴ noted developed countries have dedicated teams to undertake detailed studies and analysis on issues of national interest and to ensure that there is adequate understanding of issues by the delegates. Another respondent⁵⁵ noted that preparations for CITES COP meetings by Parties from SADC are thorough and include submitting the proposals for consideration by the national legislative authorities.

The observation from the majority of the respondents is that despite improvements in the preparations form meetings, there is room for enhancement especially on the involvement of

⁵³ Pemberthy N.E., (2018). Environment, States, and International Organizations: The Role of Global Environmental Conventions in Protecting the Environment

⁵⁴ Warigia, G.Pers. com (2021)

⁵⁵ Muruthi, P. Pers com

non-government actors and the legislature. It was noted that preparations for meetings for countries from the Southern African Region are more elaborate and involve a greater number of actors including the private sector and the regional economic integration bodies such as the Southern African Development Cooperation (SADC). The proposals are subjected to various processes and steps to ensure that there is broad public participation.

4.2.2 Kenyan Delegations to the CITES COP Meetings

One of the interview respondents has participated in the CITES COP Meetings in various capacities as a non-government actor since CITES COP 10 which was held in Harare Zimbabwe in 1997⁵⁶. The interviewee noted that there has been a great improvement on the capacity, skills, organization and articulation of the Kenya Position Papers from 1997 to date. This has included opening space for non-government actors to participate. The Kenyan delegation to COP 10 was strictly a government affair and non-government delegates were not given an opportunity to contribute to the Kenya's position papers in any way. The delegation was led by KWS and the impression given was that the proposals from Kenya were KWS positions, not national positions from the government of Kenya. This trend of KWS heading the Kenya delegation was carried forward until the 15th Meeting of the Conference of Parties meeting when the Kenyan delegation was headed by officials from the Ministry of Forestry and Wildlife. Despite the involvement of the Ministry officials in the Kenyan delegation, it was obvious that majority of the delegates had limited understanding of the CITES systems and rule of procedures, thus making them not fully participate. Another view from two of the respondent's⁵⁷ is that Kenyan delegates are largely technical people who are not well grounded in diplomacy and negotiations in particular⁵⁸. This

⁵⁶ Awori, P. (2021) Pers com

⁵⁷ Kiiru, W.(2012) Per com; Warinwa, F. (2021) Pers com

⁵⁸ Kiiru, W. (2021) Pers com

weaknesses in the Kenyan delegation on matters diplomacy were especially manifest during CoP 14 in 2007 during the debate on the consideration for the second one-off sale of ivory by the Republic of South Africa, Botswana and Namibia. A strong technical delegation from Southern Africa backed by experienced diplomats were able to negotiate for long hours and were able persuade the meeting to endorse their proposal.

All the respondents interviewed confirmed that the Government delegations for the CITES meetings now have a working partnership with non-government actors including NGO's, the youth and community interest groups. The leadership provide by the Ministry of Tourism and Wildlife delegates during the 18th Meeting of the COP held in Geneva was noted to have been very effective. The government delegation was able to involve non-government actors in the discussions, lobbying and gathering of intelligence during the meeting. Indeed, some of the proposals from Kenya were presented in the floor of the meetings by representatives of the Conservation Alliance of Kenya (proposal on whales) and African Conservation Centre (pan cake tortoise proposal)⁵⁹.

4.2.3 Implementation of Decisions

Two of the respondents observed that CITES process is not well understood by the Parties and Kenya is not an exception. This is largely because the implementation of CITES has not been mainstreamed in the policy and planning process. Appreciating the strategic importance of the CITES decisions on the future of elephant protection and impacts to the economy, it was observed that there should be dedicated budgets and work plans for the policy, management and scientific authorities to support a robust planning and implementation programme for all the relevant actors. The USA and Canada government approach to implementation of the CITES was

⁵⁹ Warinwa, F. (2021). Per com

given as an example of good practice⁶⁰. The two countries have CITES specific legislation and implementation of CITES related activities and collaborating in areas of common interest is pursued by the two countries on a continuous basis.

The long standing differences on policy on elephant protection and utilization should be reviewed to take account on the many things that we have in common on elephants. As noted earlier, most of the African elephant populations are trans-frontier in nature and face the same challenges on security, loss of space and human elephant conflict (HEC). As a starting point, the role of the regional economic integration blocks in conservation of biodiversity should be enhanced as it can provide a peer review mechanism at the regional level and which improves on the implementation of decisions that can benefit elephant conservation in the whole region.

The role of regional law enforcement agencies such as the Lusaka Agreement Task Force (LATF) and the independent advisory groups such as the African Elephant Specialist Group (AfESG) in enhancing elephant protection and conservation has been underrated⁶¹. The role of LATF for example in the fight against wildlife crime is critical in enhancing cooperation among African elephant range states and linking with other regional and global agencies such as the INTERPOL, United Nations Office on Drugs and Crime (UNODC) and the International Consortium on Combating Wildlife Crime (ICWC). Despite this crucial role that LATF plays, membership has been poor with only seven countries having ratified, while three others are signatories and not active participants. It was also noted that there is limited interaction between the African regions on matters of elephant conservation and protection. Over reliance on studies conducted by experts from the northern developed countries was highlighted as a weakness in building capacity for elephant conservation and protection. It was observed that south-south

⁶⁰ Winnie, K (2021). Per com

⁶¹ Winnie, K. Pers Com

dialogue especially between Asian elephant range states and African elephant range states is mutually beneficial because there are similarities in the elephant conservation challenges, and therefore, great opportunities for learning from the two continents.

4.2.4 The role of CITES Secretariat

The respondents had a favorable rating for the CITES Secretariat in its role of coordinating and facilitating dialogue on elephant protection. Despite the challenges of managing a complex international organization, CITES Secretariat has gained credibility, is democratic and transparent in its operations⁶². There was consensus from the respondents that the world needs CITES and differences on elephant conservation between the Africa regional blocks can weaken or even break the entire CITES mechanism⁶³. Giving parties an opportunity to participate, discuss and vote on critical issues such as elephant protection should be reinforced by other dispute resolution mechanisms such as mediation. The ultimate aim should be to develop an African consensus on elephant conservation where all parties own the decisions, thereby creating a win-win situation.

4.3 Prospects and Challenges for the CITES

4.3.1 Introduction

Susskind, 1994⁶⁴ observes that from an idealists' standpoint, many endangered species and habitats continue to be lost each year, and there have been very few successful efforts to replace that have been lost. The case of the African elephant in Kenya is encouraging because from a population of about 16,000 elephants at the time of the CITES ivory trade ban in 1989, the Kenya elephant population has grown to the about 36,280⁶⁵. This growth in elephant population

⁶² Muruthi, P. Pers coms

⁶³ Kyalo, S. (2021) Pers com

⁶⁴ Susskind, L.E. (1994) Environmental Diplomacy: Negotiating More Effective Global Agreements

⁶⁵ WRTI/KWS (2021). National Wildlife Census 2021 Report

can be attributed to a combination of the ban on ivory trade and enhanced wildlife protection measures by the government of Kenya and partners. However, this view has been challenged by some analysts who argue that the prescription of ivory ban as remedy to illegal wildlife trade is not sustainable and is making elephant conservation and management in some elephant range countries untenable. The liabilities to the communities living with elephants are increasing due to high levels of elephant-human conflict without a corresponding increase in benefits to communities from elephants. It is noted that the increasing hostilities towards elephants as a result of mounting human elephant conflict perhaps represents a bigger challenge to elephant conservation than even the poaching threat.

This study acknowledges that due to the complex dynamics of elephant conservation, there is need to reflect and project forwards on the consequences of increasing elephant population with diminishing space and the need to enhance cooperative approaches with the neighboring countries because of the shared populations of elephants.

4.3.2 Effects of Ivory Trade Ban on Elephant Protection

Since the ban on ivory trade CITES has allowed restricted trade in ivory on two occasions in 1999 and 2009. The 2009 sale of government stockpiled ivory was to Japan from Botswana, Namibia and Zimbabwe, while the second sale was to China and Japan for ivory from Botswana, Namibia, South Africa and Zimbabwe. These two events were followed by a spike in poaching especially in East Africa, Central Africa and West Africa. The increase in poaching in both cases was attributed to the opening of the ivory markets with a corresponding hike in global prices for ivory. Some analysts argued that the two one-off sales facilitated by the split-listing⁶⁶ CITES attempt to develop a decision making mechanism (DMM) for ivory trade was rested during COP

⁶⁶ Split-listing, the categorization of African elephant population into Appendix I and II of CITES

15. In this regard, there is no universally agreed mechanism for monitoring ivory trade, raising the risk of illegal trade.

All the interview respondents were unanimous that opening the ivory trade at this moment would lead to increased poaching activities which can overwhelm even some of the best anti-poaching units in Africa. The respondents gave the spike in rhino poaching that took place in the Republic of South Africa in 2015 and 2016 as an example of how poachers can overwhelm, even one of the best wildlife protection units in Africa.

The respondents further noted that the elephant debate is a manifestation of Africa's inability to sit and dialogue on a common problem facing the continent. One respondent⁶⁷ however expressed hope that there is still an opportunity to agree on a common strategy for elephant protection despite the current stalemate. The African Union has through the African Group of negotiators have articulated common African positions during the CBD and UNFCCC COP meetings. This approach, according to the interview respondents have mitigated against bullying, manipulation and intimidation from the more powerful parties during the negotiations.

4.3.3 Negotiating Platform for African Elephant Range States

The African Union (AU) has made several attempts to bring together the 37 elephant range states to speak with one voice on elephant conservation at the CITES forums and other global environment forums such as the CBD. Significant progress has been achieved by the AU for a common African position at the CBD and at UNFCCC forums, but this has been elusive for the CITES. African elephant range states from Southern Africa have argued that the Articles of the CITES which prescribe particular procedures to be consequent on unrealistic scientific

⁶⁷ Warinwa, F. Pers. Com (2021)

determinations (Martins, R.B. (2018)⁶⁸. They argue that the problem lies not in the need for a better criteria but in the system of appendices which attach a single procedure by which the status is rectified. These countries argue that they have been successful in their elephant conservation and management and should be allowed to sell ivory to support elephant conservation and livelihoods of people living with the elephants. African Range States from the East Africa, Central Africa and West Africa on the other hand insist that ivory trade will only escalate poaching because of the difficulties in distinguishing legal and illegal ivory in the market and the low capacity for anti-poaching and surveillance especially in Central and West Africa.

Analysis by Lindsay et al⁶⁹ has shown ‘*that 76% of African Elephants occupy transboundary ranges linking countries and regions*’. Majority of the respondents emphasized on the need of promoting cooperation among the African range states considering that most of the African elephant populations are trans-frontier in nature. One respondent⁷⁰ remarked on the irony of having different positions on transboundary populations. For example, the most important elephant habitats in Kenya cuts across Kenya-Tanzania border in Tsavo/Mkomazi, Amboseli/Kilimanjaro and Masai Mara-Serengeti ecosystems. The Kenya-Uganda border has an elephant population in Mount Elgon, while the elephant was formerly widespread in Boni-Dondori Forests in Kenya, contiguous with Somalia, where political instability has led to local extinction of elephants through poaching. The transboundary nature of elephant populations in Africa are further exemplified in Southern Africa where there are several Trans-Frontier

⁶⁸ Martins R. B., (2018). Wildlife Crime and CITES Trade Bans – Applying the Principles of Gladwell (2013). In Martns M. Murphree M. CITES, Animal Rights, Sustainable Use and Conservation in Africa: A Collection of Paper. Lambert Academic Publishing (2018)

⁶⁹ Lindsay, K., Chase, M., Landen K., Nowak K.,(2017). The Shared Nature of African Elephants. Biological Conservation 2015 (2017) 260-267

⁷⁰ Muruthi, P. (2021). Per com

Conservation areas including the *'Kavango/Zambezi Trans Frontier Conservation Area situated in the Kavango and Zambezi river basin where the boundaries of Angola, Botswana, Namibia, Zambia and Zimbabwe converge, Great Limpopo Trans Frontier Park that straddles Republic of South Africa, Mozambique and Zimbabwe and the Greater Mapungumbwe Trans-Frontier Conservation Area shared by Botswana, Republic of South Africa and Zimbabwe. The Lubombo Trans frontier Conservation Area is shared between South Africa, Swaziland and Mozambique'*. This trend of shared boundaries for elephant habitat is repeated in other parts of East Africa, Central Africa and West Africa amplifying the importance the African elephant range States having a common position on elephant conservation. The declining space for elephants as a result of expansion of human activities and the effects of climate change reinforces the need for regional cooperation in the management of the transboundary populations. The situation is especially magnified along the common border of Kenya and Tanzania, emphasizing on the strategic value of cooperative management approaches and strategies.

Another observation by the respondents is that lack of a united African voice creates favorable ground for horse-trading and intimidation by rich countries to support their positions at the expense of the bigger African interest. A number of respondents gave the example of the extreme pressure from some rich countries on African delegations to support their proposals on whaling in return for reciprocal support on the debate on elephant conservation.

4.3.4 Kenya's Participation in Negotiations

‘There are several benefits that countries derive from participating in global environmental agreements including shaping international policy so that it responds to national priorities and to strike deals that will be helpful to their domestic interests latter among other benefits’⁷¹. Kenya has been an active participant in the CITES and has consistently been represented in all the biannual COP meetings and other inter-sessional meetings including the Standing Committee. Kenya together with other like-minded Parties has prepared and presented proposals for consideration by the COP meetings with varying degrees of success.

Majority of the respondents noted that there has been a progressive improvement in Kenya's participation in the CITES. The respondents noted that the proposals prepared and presented in the CITES meetings represent Kenya's foreign policy on the matter and has consequences in respect to other international engagements. There was therefore concurrence in views that there should be adequate preparations for Kenya proposals and positions, and which should involve government officials at policy level and in consultation with the MFA and Parliament.

One of the respondents⁷² noted that there has been a pre-occupation with environmental diplomacy to protect animal species to the detriment of plant species. Indeed, the Kenya Forest Service whose mandate includes conservation, development and sustainable utilization of forest and forest resources has not been very active in the CITES process. The respondent further noted a well-managed trade in plant species under the CITES framework could be beneficial to elephant conservation through sound management of habitats and enhanced collaboration between KWS and KFS.

⁷¹ Susskind, 1994

⁷² Muruthi, P. (2021) Per com

It was also noted by some of the respondents that meetings for pre-conference preparations are usually very few, are convened too late and do not include the key actors and stakeholders. There is therefore limited awareness on the Kenyan position locally and regionally. The preparatory meetings usually take place a couple of months to the COPs meeting when parties have already made their positions, hence making it difficult to negotiate for a common regional position. One of the respondents observed that a senior delegate from a neighboring country was openly complaining on non-consultation on the Kenyan proposals during Cop 18 despite the similarities and convergence in some of the proposals.

4.3.5 The Role of Government Actors

The Ministry of Foreign Affairs (MFA) is the custodian of Kenya's foreign policy and international relations. MFA is responsible for maintaining records of treaties to which Kenya is a party to and also which Kenya is in the process of becoming a party. The MFA has delegated responsibility for negotiating and coordinating sector specific environmental agreements to the line Ministries and State Departments while retaining an oversight role. Despite the mandate and role to coordinate and consolidate Kenya's national interest in the global arena, MFA has only played a passive role in the CITES process. Kenya should leverage on the skills in negotiations and diplomacy available at the MFA, MFA is also well positioned to lobby and mobilize support for Kenya's interests especially with key blocs like the European Union where Kenya is well represented. This view was expressed by all the respondents during the interviews.

The Permanent Mission of Kenya to UNEP performs diplomatic roles and acts as a link between the government and other diplomatic missions on issues related to environmental conservation, thereby providing an international link. This office works closely with Kenyan Mission to the United Nations Office in Nairobi. According to the interviewees, these two Foreign Service

institutions have not been active on the CITES, and by extension, the discourse on elephant conservation in Kenya and Africa at large.

The Ministry of Environment was first established in 1972 in compliance with the Stockholm UNCHE final declaration and is the custodian of national environmental policy. The number of State Departments of the Ministry of Environment varies from one government to another but the core mandate of providing stewardship to environmental management and coordination has persisted since its establishment. The mandate now includes the coordination and implementation of the Convention on Biological Diversity (CBD), The United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Convention to Combat Desertification among others. Majority of the respondents observed that the Ministry of Environment has not played any significant role in the CITES despite it being the national focal point for biodiversity conservation.

The State Department of Wildlife was established in 2016 for the first time and is responsible for the formulation and implementation of national policy on the conservation, management and protection of wildlife in Kenya. As the custodian of national wildlife policy, the State Department for Wildlife has an important role in coordinating matters related to the CITES conventions and provides leadership in the negotiations and implementation of the CITES decisions and resolutions. The State Department for Wildlife also has the obligation to report on status of wildlife management including the implementation of the CITES decisions to Parliament. Majority of the respondents noted that the State Department for Wildlife provided astute and disciplined leadership during CITES COP 18 in Geneva. It was also reported that the leadership CITES COP 18 ensured that the Kenyan Delegation, including non-state actor participated in the collective bargaining, lobbying and intelligence gathering for Kenya. A major

challenge that was pointed out by the respondents was inadequate pre-conference preparations. The other challenge observed was that the Kenya delegates were mainly technical officers not well grounded on diplomacy. It was noted that experts in international relations and diplomacy would strengthen Kenya's representation in the CITES Forums.

Kenya Wildlife Service (KWS) is a state corporation established through an Act of Parliament, whose mandate is the conservation, management and protection of wildlife in Kenya on public, community and private lands. For many years since 1990, KWS through its core teams of scientists has played a leading role in CITES. It was observed by the respondents that KWS has acted as the lead in the negotiations with minimal input from experts in diplomacy from the MFA. This situation can weaken Kenya's capacity to negotiate as was noted during the 10th Meeting of COP in Harare, Zimbabwe in 1997 and during the 16th Meeting of COP 16 in South Africa in 2016. All the respondents noted that there has been a progressive improvement in Kenya's participation through the current leadership provided by the Ministry of Tourism and Wildlife. It was also observed that the crucial role of the MFA on matters diplomacy is lacking in the Kenyan delegation.

4.3.6 The Role of Non-Governmental Actors

The CITES Article XI⁷³ provides for the participation of Non-Governmental Organizations to participate in the CITES activities and decisions as observers. Voting is however reserved for the Parties only. Parties have complained of undue pressure and related unacceptable activities by NGO's during the COP and other intersessional meetings. This situation has elicited calls for the establishment of a Code of Responsibility for NGO's participating in CITES. On a more positive note, it is generally accepted that NGOs' play an important role in the activities and decisions of

⁷³ www.cites.org

the CITES by providing data and information including well researched policy papers. CITES has therefore increasingly been relying on NGO's such as IUCN, WWF, WCS and others for expert opinions to inform the decision making process.

Kenya has many local and international NGOs registered to operate in the country. The majority of these NGO's have a good working relationship with the government and has in most cases supported Government positions during the debates especially on elephant conservation and the ivory trade. This partnership has grown gradually as was noted by one of the respondents who attended CITES COP 10 in 1997 when Government of Kenya delegation was highly disjointed and had no input from the NGO. The situation improved considerably in subsequent years leading to a more effective representation during the meetings.

All the respondents gave a favorable rating on the involvement and performance of the NGO's. There was however emphasis from the respondents that the role of NGO's is to facilitate decision making and the Kenyan governments should take its rightful role in articulating its national interest during these forums.

4.3.7 Public Participation

For many policy-makers and environmental advocates, public participation is an intrinsic good, regardless of outcome. Allowing impacted communities and other stakeholders to take part in decision-making is a basic component of democracy (Rosenbaum 1978)⁷⁴. Article 10⁷⁵ of the Constitution of Kenya (National Values and Principles of Governance) obligates government to apply democratic and participatory principles. As early noted in this dissertation, the conduct of environment diplomacy has been the undertaken by government agencies in collaboration with

⁷⁴ Rosenbaum, N. (1978). Citizen participation and democratic theory. In *Citizen Participation in America: Essays on the State of the Art*. Langton, S. (ed.). Lexington Books, Lexington, MA. 43–54

⁷⁵ Republic of Kenya (2010). Constitution of Kenya, 2010. www.kenyalaw.org

UN agencies and NGOs. It is however worth noting that there has been progressive involvement of the public through their elected leaders in the National Assembly and the Senate. The preparations for the CITES CoP 18 in Switzerland in 2019 was coordinated by the Ministry of Tourism and Wildlife and included presentation of the Kenya proposals to the National Assembly Committee on Environment and Natural Resources. It is also worth noting that the Kenyan delegation to COP 18 included members of Parliament who according to some of the respondents demonstrated a lot of interests in the proceedings at the COP and participated diligently and actively in the Kenya Delegation daily meetings in Geneva.

So far, it has not been possible to directly involve the grassroots communities who live with wildlife in the CITES decision-making process. The need to a greater role of communities in the CITES as in other biodiversity related conventions is increasingly being recognized. SADC delegates during COP 18⁷⁶ had a proposal for the inclusion of Indigenous Peoples and Local Communities as an additional criteria for the CITES appendix listing. This decision was pended and an ad hoc intersessional committee established to continue with the dialogue. Given Kenya's prominence in the community based conservation approaches, it is considered strategic for Kenya to work closely with the Kenya Wildlife Conservancies Association and the Conservation Alliance of Kenya to enrich this discussion and argue for outcomes that will support conservation with community buy-in and ownership.

4.3.8 Public Education and Awareness

One respondent during the interviews observed that diplomacy is supposed to serve the people⁷⁷, but our environmental diplomacy has adopted an elitist and silo approach. This has led to a gap between the policy pursued by the government and people's perception. This is well

⁷⁶ Warigia, G. (2021). Per com

⁷⁷ Muruthi, P.(2021) Pers. Com

demonstrated by the Kenya's seminal initiative to burn ivory and rhino horn as a strategy for galvanizing support from the international community. Kenya has burned ivory and rhino horns on three occasions since 1989 as part of its pursued policy of *putting ivory beyond economic use*.

Despite the publicity given to these events, the rationale for the ivory and rhino horns burns is still not clear to majority of Kenyans, including the media. To demonstrate the information gap, an interviewee⁷⁸ noted that after Kenya burned Ivory in 2016, one of the prominent media houses newspaper headline was "*Kenya Burns Money*", illustrating the huge gap in awareness on the policy pursued by government and the media.

4.3.9 Compliance, Enforcement and Monitoring

Environmental Conventions serve as institutional frameworks that derives on various functions such as setting global agendas, prescribe actions, raise awareness and generate policy responses. In order to achieve these objectives, Parties are required to establish structures and systems and mechanisms for implementation, enforcement and monitoring.

In order for Kenya to achieve its objectives under the CITES convention, there is need for a dedicated arrangement for the entire value-chain that includes pre-COP preparations, negotiations and implementing the decisions to improve on the performance of the CITES. The overall view of the respondent is that the CITES Secretariat has grown in strength and expertise and is not an impediment to effectiveness of the Convention. The weak link in the CITES was noted by majority of the respondents as the limited understanding of the CITES convention by many Parties, especially from the South. On a positive note Kenya's performance was rated highly by the respondents on technical aspects, albeit conducted somehow loosely between the

⁷⁸ Kiiru, W. (2021). Per com

oversight, Foreign Service, policy, management and enforcement entities. There is therefor room for improvement in these important perspectives.

CHAPTER FIVE: CONCLUSION, KEY RECOMMENDATIONS AND AREAS OF FURTHER RESEARCH

5.1 Introduction

This dissertation has explored how environment diplomacy through the CITES has been applied in Kenya to support the conservation and protection of the African Elephant through the inter-linked activities of negotiations, reporting, enforcement and monitoring within the framework provided by the Articles of the Convention and the subsequent decisions of the Conference of Parties meetings.

The study has established that the interplay of realists and idealist theories in international relations are very much alive with different blocks of countries preferring and supporting decisions that favor their interests rather than the common good of protecting the African elephant. This dichotomy has always played out at the CITES COP meetings since 1989 when the African elephant was placed in Appendix I.

5.2 Conclusion

The overall conclusion of this study is that environment diplomacy through the CITES has positively contributed in the protection and conservation of the African elephant in Kenya since the 1989 international ban on ivory trade.

5.3 Recommendations

The success in African elephant protection attributed to the 1989 CITES ban on ivory trade however is undermined by certain shortcomings in the implementation of CITES at the regional level and in Kenya. The study recommends the following interventions to enhance the effectiveness of the CITES implementation.

5.3.1 Conflict between Regional Blocks

One of the respondents observed that diplomacy should always take a long-term perspective. The current discord between the Southern African elephant range countries and the others from East, Central and West Africa does not auger well for the long term conservation of the African Elephant. The pre-occupation on the ivory trade ban obscures other opportunities for trade provided for under the CITES framework. The divide in Africa also exposes the African Nations to manipulation and undermines the advantages that Africa can derive by speaking in one voice, not only in CITES, but also other global forums. It is therefore recommended that an honest open dialogue on the future elephant conservation is initiated through the regional economic integration forums coordinated by the African Union.

5.3.2 Coordination Mechanisms

Article 2 (6) of the Constitution of Kenya⁷⁹ provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution. This provision is operationalized through an Act of parliament and complemented by regulations, guideline and standard operating procedures. Parliament enacted the Treaty Making and Ratification Act, 2012 to give effect to the provisions of Article 2 (6) of the Constitution and to provide procedures for the making and ratification of treaties. The Ministry of Foreign Affairs issued a circular on the Policy and Procedures for Treaty Making and Ratification in 2018. This study therefore recommends the issuance of regulations and standard operating procedures by MFA in collaboration with the Office of the Attorney General to ensure that the roles and responsibilities of the multiple actors are clarified to reduce overlap and conflict. This will also enhance the national reporting and accountability.

⁷⁹ The Constitution of Kenya, 2010. www.kenyalaw.org

5.3.3 Institutional and Legal Framework

In order to provide a coherent and appropriate coordination framework for effective compliance, reporting, enforcement and monitoring, the study recommends the establishment a CITES Secretariat in the State Department for Wildlife/Ministry responsible for wildlife, secured through the legislative process. The Secretariat would be responsible for preparing the work plan for the CITES and implement a collaborative framework for all key actors. The Secretariat would also serve as the think tank for the Government to strategize and conduct comparative and strategic assessments of CITES proposals from Kenya and other Parties.

The CITES Office in KWS should be strengthened to provide for education, public awareness and extension. Education and Extension is considered critical in mainstreaming and operationalizing the objective of the CITES in trade of wildlife and wildlife products. The study also recommend the establishment of a CITES office in KFS to unlock the huge potential for trade in plant and plant derivatives as provided for under CITES framework.

5.3.4 Preparation and Participation in Meetings

This study recognizes that the CITES is a process, not a step. In this regard, implementation of the CITES should be taken as a full time job, only punctuated by the COP and inter-sessional meetings which are convened to review progress and make decisions on emerging issues. This study therefore recommends that prior to any COP or standing Committee meeting, the Secretariat should prepare a comprehensive brief on the pertinent issues and a negotiation road map with clear roles and responsibilities for the government, the private sector and like-minded non –government organizations. The Country position for Kenya should reflect national priorities weighed against competing priorities from other Parties. The Kenya delegation should always incorporate experts in diplomacy and international relations. It would be ideal therefore

for the State Department of Wildlife to have home-grown diplomats domiciled in the CITES Secretariat. Close collaboration with the MFA is critical to ensure adequate coverage in lobbying, advocacy and intelligence gathering through Kenya's network of diplomatic missions.

5.3.5 Data and Information

Data is a critical decision support tool. Up to the 1980's Kenya had an enviable reputation and a research hub on wildlife and tropical ecology globally. This study has established that there is paucity of relevant, up-to-date peer reviewed data on elephants within easy reach for decision making, as contrasted with to Parties from Southern Africa, who have in-depth studies on the elephant. Notwithstanding the turbulence of the 1970s and 1980's Kenya is still home to one of the longest ecological monitoring programme and Elephant Studies, both housed in Amboseli National Park. There are also numerous studies undertaken over many years. This study also notes that the Wildlife Research and Training Institute in Naivasha has been operationalized. This study therefore recommends that the Wildlife Research Institute is capacitated to play the critical role of coordinating wildlife research and as repository for data necessary for decision making. A priority task for the Wildlife Research Institute would be to consolidate the available data with the aim of establishing a data base as a priority.

5.4 Areas of Further Research

More than thirty years of a stalemate between two blocks of elephant range countries has been energy sapping, yet the challenges facing the African elephant have only escalated in most cases. CITES exists for a bigger vision and plays a crucial role in managing sustainable trade for plants and animals. The prolonged divide weakens CITES and can even lead the break of CITES with unpredictable consequences.

These challenges are indeed a microcosm of bigger environmental problems across Africa ranging from drought and desertification, water pollution and scarcity, rangeland degradation, alien invasive species, extinction of species and many more. This sad situation has been exacerbated by the impacts of climate change and poor governance. Many lessons can be learned from the environmental diplomacy of the African elephant that could trigger a broader discussion on combating the ecological and environmental tragedies facing Africa.

Further research to advice on other mechanisms, including mediation and a peer review should be undertaken to resolve the stalemate and construct a collective vision for protection and conservation of the African Elephant and the environment at large.

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www.latf.org

APPENDICES

APPENDIX I: INTRODUCTION LETTER



UNIVERSITY OF NAIROBI
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P.O. Box 30197
Nairobi
Kenya

August 24, 2021

TO WHOM IT MAY CONCERN

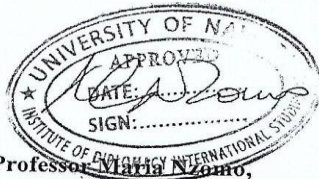
RE: STEPHEN M. MANEGENE – R51/82220/2012

This is to confirm that the above-mentioned person is a bona fide student at the Institute of Diplomacy and International Studies (IDIS), University of Nairobi pursuing a **Master of Arts Degree in Diplomacy**. He is working on a research project titled, **“THE ROLE OF ENVIRONMENTAL DIPLOMACY IN THE CONSERVATION OF THE AFRICAN ELEPHANT. THE CASE OF CITIES IN KENYA”**.

The research project is a requirement for students undertaking Masters programme at the University of Nairobi, whose results will inform policy and learning.

Any assistance given to him to facilitate data collection for his research project will be highly appreciated.

Thank you in advance for your consideration.



Professor Viatia Nzomo,
Director, IDIS
&
Professor of International Relations and Governance

Appendix II: Interview Guide Used in for Key Informant Interviews.

Research Topic

The Role of Environmental Diplomacy in the Conservation of the African Elephant. A Case Study of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) in Kenya.

Key Research Questions

1. What are the major strengths and weaknesses in global environmental diplomacy?
2. What are the prospects and challenges for the CITES in protecting the elephant in Kenya
3. What role does your institution play in implementing the CITES in Kenya?
4. What challenges does your agency/institution encounter while implementing CITES?
 - (a) How has these challenges been addressed?
 - (b) What can be done to improve the implementation of the CITES in Kenya?
5. Despite the 1989 ivory trade ban, elephants continue to be killed to harvest their tusks for ivory.
 - (a) What is the reason for this?
 - (b) What is the impact of the ivory trade ban on the conservation of the African elephant in Kenya?

APPENDIX III: LIST OF KEY INFORMANTS INTERVIEWED

1. Dr. Winnie Kiiru – Director, Government Relations. Elephant Protection Initiative
2. Patricia Awori –Director- Pan African Wildlife Conservation Network
3. Gladys Warigia- Policy Coordinator, Kenya Wildlife Conservancies Association
4. Solomon Kyalo- Head CITES, Kenya Wildlife Service
5. Fiesta Warinwa – Kenya Country Programme, African Wildlife Foundation
6. Dr. Phillip Muruthi – Vice President, Conservation Science and Species, African Wildlife Foundation
7. Polyn W. Runyenje – Director, Legal Services, Ministry of Tourism and Wildlife

APPENDIX IV: RESEARCH PERMIT


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