

3.1 ~~Wildlife Conservation & National Parks Act (1992)~~
sections 17, and section 61-72; 6th Schedule

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WILDLIFE CONSERVATION AND NATIONAL PARKS ACT, 1992

No. 28



of 1992

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An Act to make further and better provision for the conservation and management of the wildlife of Botswana, giving effect to CITES and any other international convention for the protection of fauna and flora to which Botswana is, from time to time, a party; to provide for the establishment, control and management of national parks and game reserves, and for matters incidental thereto or connected therewith.

Date of Assent: 10th November, 1992.

Date of Commencement: 11th December, 1992.

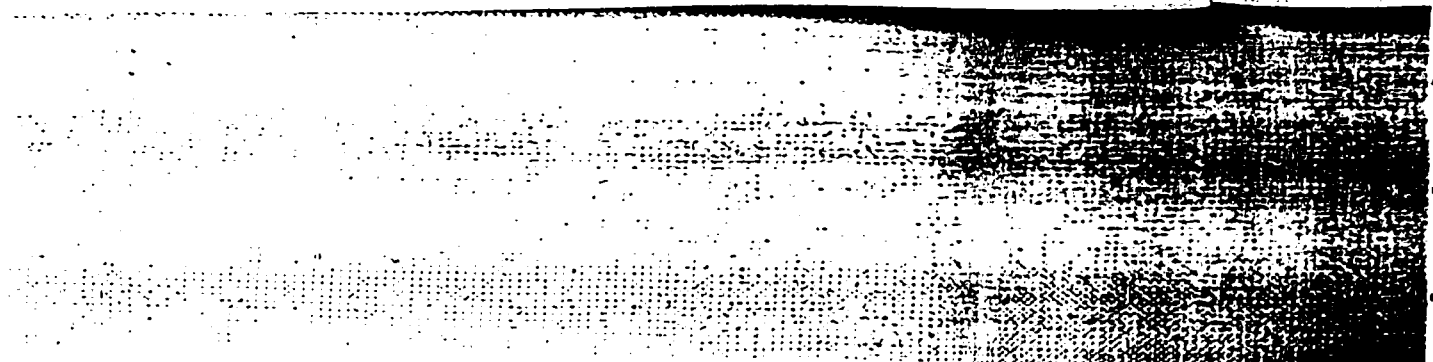
ENACTED by the Parliament of Botswana

PART I — *Preliminary*

Short title

- 1. This Act may be cited as the Wildlife Conservation and National Parks Act, 1992.

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- (e) the cultivation of any land therein, the conditions under which persons may cultivate, and the allocation of land for cultivation;
- (f) conditions governing the drilling, allocation and use of boreholes;
- (g) conditions governing the use therein of vehicles, aeroplanes, microlight aircraft and boats;
- (h) the entry or the presence therein of persons other than residents thereof; and
- (i) the culling of animals therein in accordance with any approved game animal utilization scheme.

(4) In his duties relating to the development of wildlife management areas, their management plans and their administration, the Director shall consult with the land boards and district councils responsible for the areas concerned.

16. (1) The areas specified in the Fourth Schedule are hereby declared to be controlled hunting areas. Controlled
hunting areas

(2) The Minister may, by order published in the Gazette, declare any area of land in Botswana to be a controlled hunting area, and may, in like manner, abolish declared controlled hunting areas or amend the boundaries of declared controlled hunting areas by adding other areas thereto or by deleting areas therefrom.

(3) Except for persons authorized therefor under sections 30, 39 and 40, and notwithstanding the issue of any licence to hunt under this Act, no person shall hunt or capture any animal in a controlled hunting area without such authority to hunt in that area as shall be endorsed on his licence, and without paying such fee, as may be prescribed.

(4) The Minister may, by order published in the Gazette, direct that any fees collected in accordance with subsection (3), shall be paid to such district council or councils as may be specified in the order.

(5) Any person hunting in a controlled hunting area shall, as soon as possible and in any event within 7 days of the completion of such hunting, unless otherwise authorized by a licensing officer and endorsed on his licence, report such completion to a wildlife officer, and any person who fails to comply with the provisions of this subsection shall be guilty of an offence and liable to a fine of P500 and imprisonment for 6 months.

(6) Any person hunting or capturing any animal in a controlled hunting area without such authority and paying such fee as may be prescribed in accordance with subsection (3), or contrary to the terms of such authority, shall be guilty of an offence and, without derogation from his liability under any other provision of this Act, shall be liable to a fine of P2 000 and to imprisonment for 2 years.

PART IV — *Protected Game Animals*

17. (1) The animals specified in the Sixth Schedule shall be protected game animals throughout Botswana. Protected
game animals

(2) No person shall, except only under and in accordance with the terms and conditions of a permit issued by the Director under section 39 or section 40, hunt or capture any protected game animal, and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P10 000 and to imprisonment for 7 years:

Provided that, where the animal in respect of which the offence is committed is a rhinoceros, the offender shall be liable to a fine of P100 000, and to imprisonment for 15 years.

PART V — *Hunting and Capturing of Animals*

Partially
protected
game animals

18. The animals specified in Part I of the Seventh Schedule shall be partially protected game animals throughout Botswana, and no person shall, except under and in accordance with the terms and conditions of a licence or permit issued under this Act, hunt or capture any partially protected game animal.

Hunting and
capturing of
animals
generally

19. (1) Except as, or to such extent as may be, specially provided in this Act no person shall hunt or capture any animal (other than a non-designated invertebrate animal outside of a national park or a game reserve) otherwise than under and in accordance with the terms and conditions of a licence issued, or a permit granted, under this Act:

Provided that a citizen of Botswana may hunt any non-designated animal, other than in a national park or a game reserve, for consumption by himself or his dependants, without a licence or permit.

(2) The animals specified in Parts II and III of the Seventh Schedule are animals that may be hunted under and in accordance with the terms and conditions of a licence issued under this Act:

Provided that where an area is or areas are specified in relation to a particular animal, that animal may only be hunted in that area or in those areas, as the case may be.

(3) Any person who contravenes the provisions of section 18 or subsection (1) of this section shall be guilty of an offence and shall be liable —

(a) if the contravention is in respect of a partially protected game animal, to a fine of P5 000 and to imprisonment for 5 years:

Provided that where the animal in respect of which the offence is committed is an elephant, the offender shall be liable to a fine of P50 000, and to imprisonment for 10 years;

(b) if the contravention is in respect of any animal specified in Part II of the Seventh Schedule, to a fine of P2 000 and to imprisonment for 2 years;

(c) if the contravention is in respect of a bird specified in Part III of the Seventh Schedule, to a fine of P1 000 and to imprisonment for 1 year;

(d) if the contravention is in respect of any non-designated animal, or in respect of any term or condition of any licence or permit issued to that person, to a fine of P500 and to imprisonment for 6 months.

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approval of the Director, of any game animal or the meat, eggs or trophy of any game animal lawfully killed on that land by such person; or

- (iii) the sale of a trophy where a single game licence pertaining to that trophy is handed over with the trophy, or to the sale of a trophy obtained in accordance with the terms of a small game licence, or to the sale of a trophy obtained outside a national park or a game reserve by the holder of a special game licence, where the buyer records and retains the number of the licence and the name and address of the holder of such licence.

(2) Any game animal or non-designated animal, or the meat, eggs or trophy of any such animal found in any shop, store or other place of business, shall be presumed to have been acquired for the purpose of sale, and the person in whose possession it is found shall be presumed to have dealt therewith in contravention of the provisions of this section unless he is the holder of a valid permit granted to him in terms of section 39 (1) (c) or unless he proves to the contrary.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for 1 year.

61. (1) No person shall purchase from another person any game animal or non-designated animal or the meat, eggs or trophy thereof without satisfying himself, by reasonable evidence, that such other person is the holder of a valid permit granted to him in terms of section 39 (1) (c) authorizing him to sell such animal, meat, eggs or trophy, or that he is entitled to do so in accordance with the provisions of section 60 or by virtue of regulations made under section 30, and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

Purchases of animals or parts or eggs thereof

(2) Notwithstanding the provisions of subsection (1), a person shall not be guilty of an offence under that subsection if he purchases such animal, meat, eggs or trophy —

- (a) from a stall at any fete, bazaar or other like function which is open to the public;
- (b) from any person who lawfully exhibits his goods for sale in any road, street or other public place; or
- (c) in the ordinary course of business from a person who carries on business in a shop, store or other fixed place of business.

PART X — Export and Import of Animals, Trophies and Meat, and Sale and Manufacture of Articles from Trophies

62. (1) No person shall, except under and in accordance with the terms and conditions of a permit granted to him by the Director under subsection (2), export from or import into or transport through or re-export from Botswana any animal, or trophy, meat or eggs thereof.

Export and import of animals etc.

(2) The export, import, transport through and re-export of animals listed under the Appendices to CITES, and any trophy, meat or eggs thereof shall be permitted only in accordance with the provisions of CITES, and before any permit is issued under subsection (1), the Director, as Management Authority in accordance with the terms of CITES, shall require to be satisfied that —

- (a) the animal, trophy, meat or eggs has or have been lawfully acquired;
- (b) the issue of the permit will not in any way be detrimental to the survival of the species;
- (c) where required, the Management Authority of the importing country has granted an import permit in respect of the animal, trophy, meat or eggs; and
- (d) in the case of a live animal, all necessary steps have been taken to minimize the risk of injury, cruelty or damage to its health during transport or transshipment of the animal to its destination.

(3) Subject to compliance with the provisions of any other written law relating to the export or import of goods, to the provisions of subsections (2) and (4), and to any regulations made or directions given, or terms and conditions imposed by the Minister in respect of certain or specified animals, a licensing officer may, on application being made in such form and on payment of such fee as may be prescribed, grant permits for the export from or import into or re-export from Botswana of any animal, or trophy, meat or eggs thereof.

(4) Where, subject to the provisions of subsection (2), a permit for the export of any elephant tusk is granted, the weight thereof and the distinctive mark and number placed thereon in terms of section 67 (2) shall be endorsed on the permit.

(5) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P10 000 and to imprisonment for 7 years:

Provided that —

- (a) where the contravention is in respect of a rhinoceros or any trophy thereof, the penalty shall be a fine of P100 000, and imprisonment for 10 years; or
- (b) where the contravention is in respect of an elephant or any trophy thereof, the penalty shall be a fine of P50 000, and imprisonment for 10 years.

Export duty
to be paid

63. Export duty at such rate as the Minister may, by order in the Gazette, from time to time determine, shall be paid to the licensing officer to whom application is made for an export permit, on all animals, or trophies, meat, hide, skins or eggs thereof exported from Botswana:

Provided that —

- (a) the provisions of this section shall not apply in respect of any animal, or trophy, meat, hide, skin or eggs thereof acquired by the holder of a Minister's licence issued in accordance with the

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provisions of section 89, by virtue of such licence, or lawfully imported into Botswana and then re-exported; and

- (b) no order by the Minister that has the effect of imposing such a duty, or of increasing the existing rate of duty, in respect of any animal or item, shall have force or effect until the expiration of a period of two months from the date of publication of the order in the Gazette.

64. No person shall sell or otherwise deal in, or manufacture any article from, any trophy that has not been lawfully imported into, or which has not been obtained from an animal lawfully killed or captured in, Botswana, and any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years: Dealing in trophies

Provided that where the offence is in respect of a trophy from a rhinoceros or an elephant, the penalties shall be as provided respectively in paragraphs (a) and (b) of the proviso to section 62 (5).

65. (1) No person shall carry on the business of a trophy dealer except under the authority of and in accordance with the terms and conditions of a trophy dealer's licence, and no person other than the holder of a trophy dealer's licence shall employ or engage any other person to manufacture any article from any trophy. Trophy dealer's licence

(2) Application for a trophy dealer's licence shall be made to the Director in such form as may be prescribed, and the Director may, at his discretion, where the circumstances so warrant, and on payment of such fee as may be prescribed, issue the licence in the prescribed form, subject to such terms and conditions as he may determine, and as shall be endorsed on the licence.

(3) A trophy dealer's licence may be issued in respect of certain classes of trophy only, as may be endorsed on the licence, and the holder thereof shall not deal in trophies other than those so endorsed.

(4) A trophy dealer's licence shall not be transferable, and no person other than the person to whom it is issued shall make use of such licence.

(5) A trophy dealer's licence shall be valid for one year from the date on which it is issued:

Provided that the Director may forthwith cancel the licence of any trophy dealer convicted of an offence under this Act.

(6) Any person aggrieved by the refusal of the Director to issue a licence under this section, or by any terms and conditions subject to which such licence is issued, or by the cancellation of a licence by the Director, may appeal therefrom to the Minister whose decision thereon shall be final.

(7) Any person who contravenes or fails to comply with the provisions of this section or with the terms and conditions subject to which his licence was issued, shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years.

Records and
returns by
trophy
dealers

66. (1) A trophy dealer shall keep and maintain a register in such form and shall make such returns as may be prescribed, and any trophy dealer who contravenes or fails to comply with the provisions of this section shall be guilty of an offence and liable to a fine of P2 000 and to imprisonment for 2 years.

(2) A wildlife officer or a police officer may, at all reasonable times, enter the licensed premises of a trophy dealer and inspect the register and returns which he is required to keep or make under subsection (1).

PART XI — *Ivory and Rhinoceros Horn*

Killing of
elephant and
rhinoceros

67. (1) Any person who kills an elephant shall produce its lower jaw, its tail and its tusks to a licensing officer at such wildlife office as may be prescribed for such purpose, within 7 days immediately after the killing, or within such extended period as the licensing officer may, in any special circumstances, authorize, together with the appropriate licence or permit, and where the licence or permit holder fails to produce any one of such parts, or the licence, the licensing officer may refuse to register the tusks.

(2) The licensing officer to whom such tusks are produced shall, if satisfied after such enquiry as he may consider necessary that they have been lawfully obtained, and that possession and ownership thereof will not be contrary to the terms of CITES, weigh them and cause them to be marked with a distinctive mark and number and the name of the owner, the date and such other information as may be required in a register to be kept for that purpose, and, subject to subsection (3), return them to the person producing them together with a certificate of ownership in the prescribed form, on which shall be endorsed the registered particulars.

(3) Where a licensing officer is not satisfied that the tusks have been lawfully obtained, or that possession or ownership thereof will be in accordance with the terms of CITES, he may retain them pending further investigation:

Provided that if no criminal proceedings are instituted against the person producing the tusks within three months of their being produced, the licensing officer shall, subject to the terms of CITES, proceed to deal with the tusks in accordance with subsection (2).

(4) Where a tusk is of an immature elephant, as determined in accordance with regulations made under section 92, it shall be a Government trophy, and the licensing officer shall not register it or return it to the licence holder.

(5) Any person who fails to comply with the provisions of subsection (1), or who is found in possession of tusks which have not been registered in accordance with the provisions of subsection (2), shall be guilty of an offence and liable to a fine of P50 000 and to imprisonment for 10 years.

(6) Any person who kills a rhinoceros shall produce the horn thereof to a licensing officer, at such wildlife office as may be prescribed for that purpose, as soon as possible, and in any event within 7 days immediately after the killing, and report the circumstances of the killing, the location

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and the date and time thereof, and any person who fails to comply with the provisions of this subsection or who is found in possession of a rhinoceros horn which has not been produced in accordance with the provisions of this subsection shall be guilty of an offence and liable to a fine of P100 000 and to imprisonment for 15 years.

68. (1) Any person who imports any ivory or any tusk into Botswana, or who acquires, within Botswana, any ivory, or any tusk, without a certificate of ownership issued under section 67 (2) shall, within 7 days of so importing or acquiring it, produce such ivory or tusk to a licensing officer, at such wildlife office as may be prescribed for that purpose, for registration, together with such reasonable proof of the lawful importation or acquisition thereof as the licensing officer may require, and where appropriate the provisions of section 67 (2) or (3) shall mutatis mutandis apply in respect thereof:

Ivory or
tusks imported
into or
acquired in
Botswana

Provided that the provisions of this subsection shall not apply in respect of any tusk or ivory which is imported into Botswana by any museum or scientific or educational institution, or in respect of any ivory which is in such form, or is acquired from such source, as the Minister may, bearing in mind the terms of CITES, by regulations made under this Act, or in any particular case exempt therefrom.

(2) Any person who fails to comply with or contravenes the provisions of subsection (1), or who is found in possession of any tusk or ivory and cannot produce a certificate of ownership issued under section 67 (2) therefor, or proof of registration thereof or any reasonable proof of lawful importation or possession thereof, shall be guilty of an offence and liable to a fine of P50 000 and to imprisonment for 10 years.

69. (1) Except as otherwise specially provided in CITES, and as may be provided in regulations made under this Act, no person shall transfer to another person any tusk or any ivory which, under the provisions of this Act, is required to be registered and which has not been so registered.

Transfer of
ivory

(2) Where any tusk or ivory that has been registered under the provisions of this Act is transferred, the transferor shall hand over to the transferee the certificate of ownership in respect thereof, or proof of registration thereof, as the case may be, after he has endorsed thereon the fact of such transfer and such endorsement has been signed by both the transferor and the transferee.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of P50 000 and to imprisonment for 10 years.

70. Any rhinoceros horn shall be a Government trophy and, except only as provided in section 67 (6), no person shall have in his possession, transfer or in any way deal in rhinoceros horn, and any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of P100 000 and to imprisonment for 15 years:

Rhinoceros
horn

Provided that the provisions of this section shall not apply in respect of the possession of any duly registered rhinoceros horn by a person who acquired it lawfully prior to the commencement of this Act and who

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registers such possession with a licensing officer, at such wildlife office as may be prescribed for the purpose, within three months after the commencement of this Act.

PART XII — *Government Trophies*

Government trophies

71. (1) The following are declared to be Government trophies, in addition to any other Government trophies so declared in any other provision of this Act —

- (a) any game animal found dead, and any trophy or part thereof;
- (b) any animal killed or captured in contravention of any provision of this Act, and any trophy or part of such animal;
- (c) any trophy in respect of which a breach of this Act has been committed;
- (d) any animal or trophy which is, on reasonable grounds, suspected of being stolen or otherwise unlawfully obtained, and which is in the possession of any person who is unable to give a reasonable explanation to a licensing officer as to how he came by it; and
- (e) any other animal or trophy which may be prescribed as a Government trophy.

(2) Except as otherwise specially provided in this Act, any person who by any means obtains possession of a Government trophy, shall forthwith make a report thereof to the nearest wildlife officer or police station and shall, if so directed, deliver such trophy to such wildlife officer or police station, as the case may be.

(3) Any person who contravenes the provisions of subsection (2) or who is found in unlawful possession of a Government trophy shall be guilty of an offence and, without derogation from his liability under any other provision of this Act, shall be liable to a fine of P5 000 and to imprisonment for 5 years.

(4) Government trophies shall be disposed of in such manner as the Minister may, where relevant in accordance with the terms of CITES, direct.

PART XIII — *Evidence, Prevention and Detection of Offences and Forfeitures*

Evidence and presumptions

72. (1) The possession of any animal or the meat or trophy of a freshly killed animal shall be prima facie evidence against a person accused of contravening any provision of this Act, that he has hunted, killed or captured such animal.

(2) Any holder of a licence or permit issued or granted under this Act who is found in possession of animals, or the meat or trophies thereof, in excess of the numbers specified in such licence or permit, or of any animal or species or sex of animal not authorized therein shall be presumed, unless the contrary is proved, to have hunted, killed or captured such animal or animals in contravention of the provisions of this Act.

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(3) Where any animal, or the meat or trophy of an animal is found upon or in any vehicle, boat or aircraft, or at any camping place, every person who is upon or in or in any way associated with such vehicle, boat or aircraft, or who is at or in any way associated with such camping place, shall be presumed, unless the contrary is proved, to be in possession of such animal, meat or trophy.

(4) Any person charged with doing any act which constitutes an offence under this Act if done without a licence, permit, authority or permission, shall be presumed to have done such act without such licence, permit, authority or permission, as the case may be, unless the contrary is proved.

(5) The burden of proving any fact which would be a defence to a charge of contravening or failing to comply with any provision of this Act shall lie on the person charged with such contravention or failure.

(6) In any prosecution for an offence under this Act, whenever —

(a) the question whether any fresh, dried, unprocessed or partly processed meat is or was the meat of any animal, is relevant to the issue before the court, such meat shall be presumed to be or to have been the meat of such animal, unless the contrary is proved;

(b) the question whether any unprocessed or partly processed hide or skin, which has been rendered unidentifiable as the hide or skin of any particular animal or species or sex of animal, is or was the hide or skin of any animal or species or sex of any animal is relevant to the issue before the court, such hide or skin shall be presumed to be or to have been the hide or skin of such animal or species or sex of animal, unless the contrary is proved.

(7) Whenever, in any proceedings against any person upon a charge alleging that he committed an offence under this Act on any particular piece of land, it is proved that any act constituting or forming an element of such offence was committed in or near the locality wherein such land is situated, such act shall be presumed to have been committed on such piece of land, unless it is proved that it was committed on another piece of land.

(8) Whenever the hunting of one or other sex, or of any particular class or species of animal is unlawful, and the hunting of the other sex or any other class or species of such animal is lawful, any carcass of such animal from which the distinguishing features of sex or of such particular class or species have been removed shall be presumed to be the carcass of an animal of the sex or class or species which it is unlawful to hunt, unless the contrary is proved.

(9) Whenever, in any prosecution under this Act it is alleged that an offence was committed in connexion with or in respect of any species of animal, it shall be presumed that the offence, if committed, was committed in connexion with or in respect of such species of animal, unless the contrary is proved.

