

THE LEGALITY OF TIGER FARMING, TROPHY HUNTING AND CANNED HUNTING UNDER INTERNATIONAL LAW



Cecil the Lion, Hwange National Park, Zimbabwe, 2013

Yann Prisner-Levyne

WILD FAUNA= NATURAL RESOURCES UNDER INTERNATIONAL LAW

- Principle of permanent sovereignty applies.
- No international instrument regulates those activities.
- CITES only regulates the international trade of trophy hunted endangered species not the activity.
- CMS may prevent the taking under any form of Appendix I listed species (few species concerned and matches CITES exceptions: i.e. cheetah).



Cheetah, Masai Mara, Kenya

DEFINITIONS

- **Trophy hunting:** «activity which involves the payment of a fee by a foreign or local hunter for a hunting experience, usually guided, for one or more individuals of a particular species with a specific desired characteristics” (IUCN).
- **Canned hunting:** “a practice in which hunters pay fees to shoot and kill exotic animals in a confined area from which they are unable to escape”.
- **Tiger farming:** activity which involves the breeding of tigers in a confined environment for either commercial or non-commercial purposes.

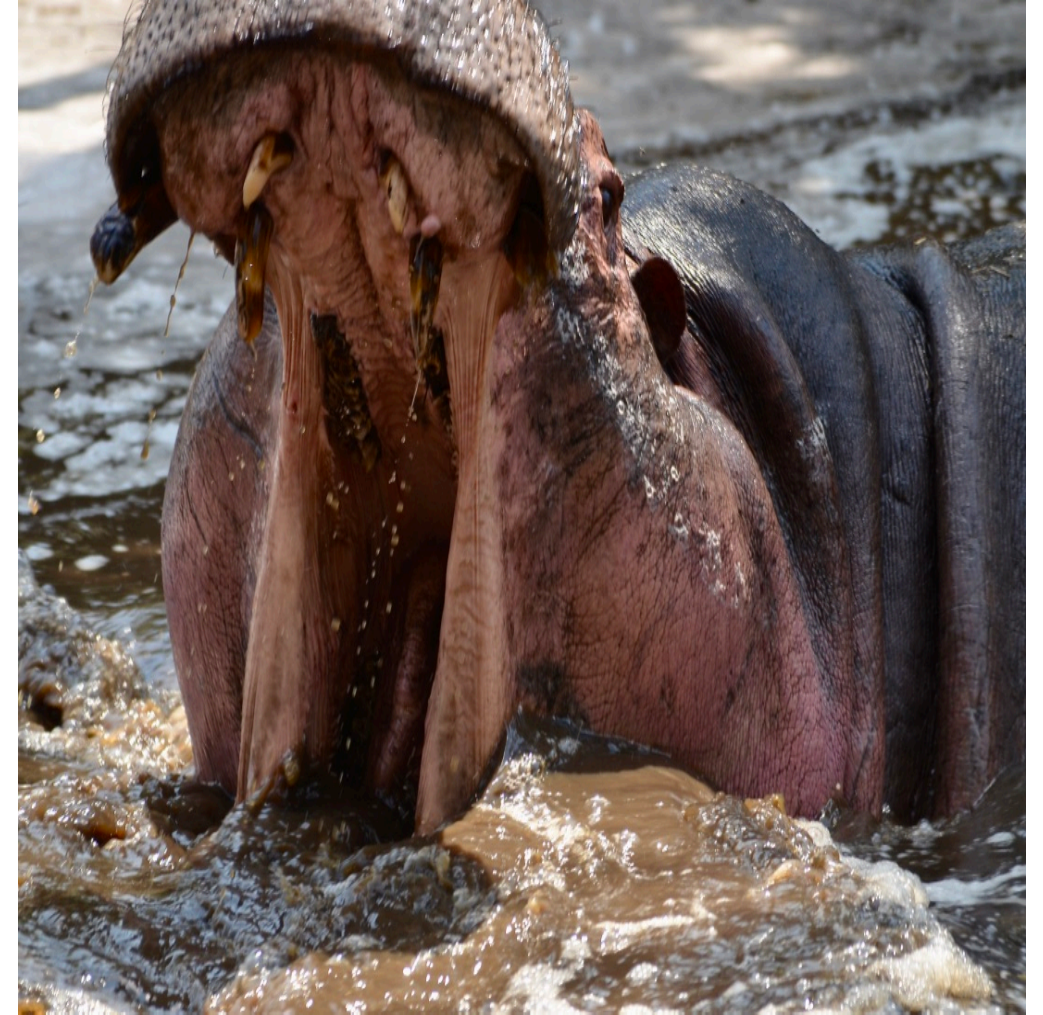


White rhino, Sabi Sand, South Africa Yann Prisner-Levyne

CITES SYSTEM IN A NUTSHELL

PRINCIPLES: ARTICLES III and IV

- **Appendix I** species (under threat of extinction) strictly regulated by export and import permits after non-detriment findings from scientific authorities.
- **Appendix II** species (which might be threatened with extinction if their international trade is not strictly regulated) only requires an export permit after scientific non-detriment finding.



Common Hippopotamus, Grumeti river, Serengeti, Tanzania

GENERAL EXEMPTIONS UNDER CITES

ARTICLE VII(3): PERSONAL OR HOUSEHOLD EFFECTS = TROPHIES QUALIFY BUT...

Exemption does not apply to Appendix I species, acquired by the owner outside his State of usual residence, and are being imported into that State (Article VII(3)(a)).

Exemption does not apply in the case of species included in Appendix II where removal from the wild occurred outside the State of usual residence and if they are imported there and if the State where removal occurred requires the prior grant of an export permit. (Article VII(3)(b))

See also Resolution Conf. 2.11 and Resolution Conf. 13.7.



Sambar Deer, Ranthambore, Rajasthan, India

SOME APPENDIX I TROPHY-HUNTED SPECIES ARE SUBJECTED TO HUNTING QUOTAS IN SPECIFIC COUNTRIES

- **Elephant:** Resolution Conf.10.10 (Rev. CoP17)
- **Leopard:** Resolution Conf.10.14 (Rev. CoP16)
- **Markhor:** Resolution Conf.10.15 (Rev. CoP14)
- **Black rhinoceros:** Resolution Conf. 13.5 (Rev. CoP14)



African elephant calf, Okavango Delta, Botswana

CITES STANCE ON TROPHY HUNTING

Resolution Conf.17.9: "well-managed and sustainable trophy hunting is consistent with and contributes to species conservation as it provides both livelihood opportunities for rural communities and incentives for habitat conservation and generates benefits which can be invested for conservation purposes".

Resolution Conf.17.9: makes several recommendations to States to regulate trophy hunting so that it remains sustainable.

Unlisted species do not enjoy any protection.



Sable antelope, Hwange, Zimbabwe

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OBJECTIONS TO CITES ON A PURELY CONSERVATION STAND POINT

- Despite some success stories (Campfire), trophy hunting is rarely well-managed (See Loliondo case).
- Managed through quotas set on outdated scientific methodology if at all.
- Fees paid trophy hunters go through many middle men before being reinvested in conservation.
- According to some studies less than 3% of the fees reach local communities.
- Trophy hunters target reproductive elements of a given population.
- If added to other causes of biodiversity loss it can threaten a given wildlife population.
- Used for wildlife laundering (Lemthongthai case, Supreme Court of Appeals, SA)
- Trophy hunting is not sustainable according to IUCN WCEL Ethics Specialist Group.

CANNED HUNTING

- Not addressed directly by public international law.
- CITES: annotation for parts or derivatives of captive-bred SA lions traded for commercial purposes that they should be subjected to quotas. What about captive-bred lion trophies (non-commercial)?
- IUCN members have called for legislation to ban - by 2020 and particularly in South Africa- the breeding of lions in captivity for the purpose of "canned shooting" regarded by hunters as "an ethically repugnant embarrassment".
- IUCN REC 3.093: opposition to all forms of "canned hunting" on ethical grounds.



Lion, Serengeti, Tanzania

ISSUES RAISED BY TIGER FARMING (CITES, SC65 Doc. 38)

- Limited conservation value if at all (tigers cannot be released in the wild, genes get mingled, overpopulation of captive tigers).
- Fuels demand for tiger products.
- No relief on wild tigers they are still preferred over captive ones.
- Tiger farms linked with wildlife laundering (Thai temple of tigers)
- Other Asian big cat species are then targeted and marketed as tiger products due to the scarcity of tigers in the wild (snow leopards, clouded leopards, leopards and even lions)



Tigress, Kanha, Madhya Pradesh, India

FOR TIGER FARMING TO CONTRIBUTE TO CONSERVATION (SEE L. TENSEN)

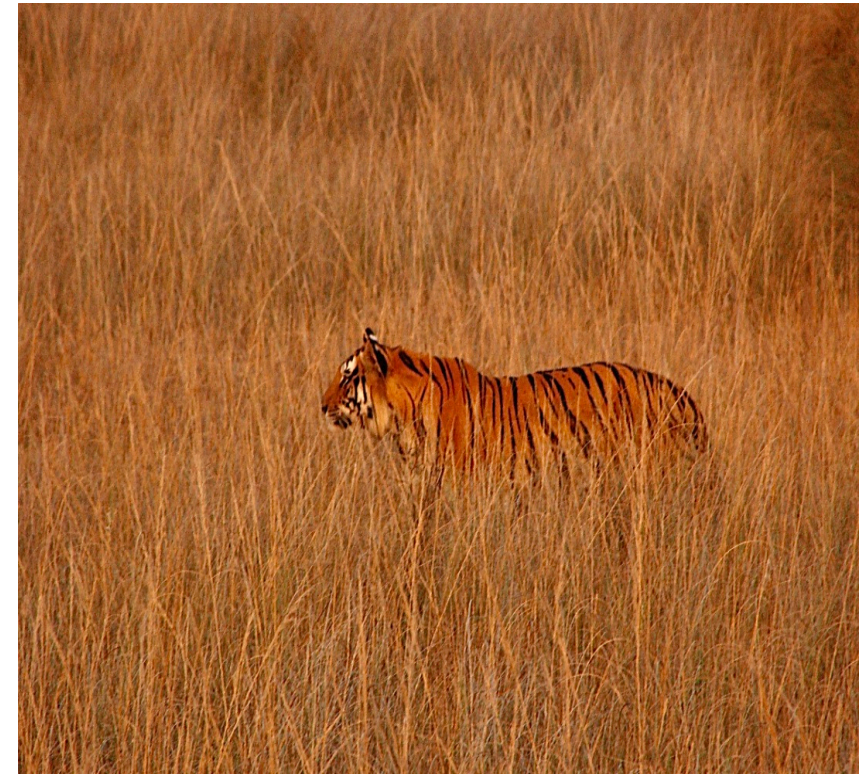
- (1) farmed products must provide a substitute for wild products,
- (2) wildlife farms do not rely on wild population for re-stocking
- (3) legalized farming is more cost-efficient than illegal poaching;
- (4) the demand for wildlife farms does not increase and
- (5) laundering of illegal products is prohibited



Tiger cubs, Bandhavgarh, Madhya Pradesh, India

TIGER FARMING UNDER CITES

- Tiger (with other Asian big cats) is on **Appendix I**.
- **Decision 14.69:** Parties with intensive operations breeding tigers on a commercial scale shall implement measures to restrict the captive population to a level supportive only to conserving wild tigers; **tigers should not be bred for trade in their parts and derivatives**.
- See also Resolution Conf.12.5
- **Decision 17.228:** makes recommendations directed to Parties with Asian big cat captive facilities (management, monitoring, fight against illegal trade, prohibition of internal trade).
- **Wildlife Protection Law of the People's Republic of China** enables the captive breeding of tigers for scientific purposes or protection (permit system) although internal trade of (wild) tiger parts is prohibited.
- See also State Council Notification No. 36 on rhino and tiger products



Male Tiger, Kanha, Madhya Pradesh, India

AT THE HEART OF THE PROBLEM

- The status of natural resources negates ecological and intrinsic worth of wild animals and more importantly their sentience.
- Reflective of the utilitarian philosophy which is at the root of current conservation policies with holistic and anthropocentric perspectives.
- The interests of the animal as an individual living being are rarely taken into account when it could actually strengthen conservation efforts through the protection of the individual animal.



Grey Langurs, Yala, Sri Lanka

THE NEED FOR ETHICS INTO THE DEBATE

- Wagman: “the law cannot exist outside of ethics, and the philosophical considerations of our treatments of animals logically center on the ethics of our relationship with them”.



Sri Lankan Leopard, Yala, Sri Lanka

INCONSISTENCIES: TROPHY HUNTING VS CANNED HUNTING

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| <ul style="list-style-type: none">• Trophy hunting- Objective: trophy- Rationale: conservation- CITES/IUCN stance: acknowledge contribution to conservation without consideration of ethical issues despite IUCN ethical committee concluding the opposite. | <ul style="list-style-type: none">• Canned hunting- Objective: trophy- Rationale: conservation- IUCN stance: no conservation value based on ethical arguments |
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ETHICAL AND PHILOSOPHICAL GROUNDS

- Classics (Montaigne, Bentham, Pope, Schweitzer).

Alexander Pope:

“If we kill an animal for our provision, let us do it with the meltings of compassion, and without tormenting it. Let us consider, that 'tis in its own nature cruelty to put a living creature to death; we at least destroy a soul that has sense and perception.”

- Tom Regan: animals are « subject of a life ».
- Steven Wise (animal rights), Martha Nussbaum (intrinsic value).
- Earth Jurisprudence (Thomas Berry): rights of each being limited to that of others.

THE SHIFT OF PARADIGM: INTERNATIONAL CASE LAW

- WTO case: **EC-Seals Products**: domestic laws aimed at protecting animal welfare can be compliant with WTO law. Animal welfare is encompassed in the “public morals” exception provided under Art. XX(a) of GATT.
- ECHR case law (**Friend and Countryside alliance and Others v UK**, **Ch’are Shalop v Tsedek v France**, **Chassagnou and others v France**, **Hermann v Germany**): domestic measures aimed to eliminate the hunting and killing of animals for sport in manner which the law makers deem to be morally and ethically objectionable is in compliance with ECHR.
- Separate Opinion of Judge Pinto de Albuquerque on a continuing trend in international law seeking to protect animal life and welfare.

THE SHIFT OF PARADIGM: NATIONAL LAWS

- Wildlife Protection Act of India, Section 9 imposes a complete ban on the hunting of wild animals.
- Costa Rican law on the welfare of wild animals banning all forms of hunting except subsistence hunting.
- Mexican law on the protection of animals of 1997.
- Law of the Netherlands recognizes the intrinsic value of wild animals and have been declassified as things in the civil code.

THE NEED FOR ZOOLOGY, ETHOLOGY AND OTHER SCIENTIFIC DISCIPLINES

- Ethics are subjective.
- Conservation is often used as a guise for morally questionable forms of exploitation.
- Zoology and ethology bring objectivity which can better be captured by the law.
- Provide more insights on the behaviour of species and their cognitive abilities proving that sentience and high intelligence is not reserved for great apes, elephants and cetaceans (i.e: corvids, hyenas (Mills), cephalopods) and further ground a more zoocentric ethical approach.
- Provide rationale for conservation practices by studying populations trends (trophy hunting target reproductive males), needs, etc....
- Trophy hunting is not always a success story (i.e. the Loliondo affair in Tanzania and lion trophy hunting).



Spotted hyena, Serengeti, Tanzania

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THANK YOU FOR YOUR ATTENTION!



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Sloth Bear, Yala, Sri Lanka

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