

REVOLUTIONARY GOVERNMENT OF ZANZIBAR
MINISTRY OF AGRICULTURE AND NATURAL RESOURCES

Consultancy Final Report on

REVIEW OF NATIONAL PROTECTED AREA BOARD (NPAB) RECONSTITUTED WITH CAPACITY TO PROVIDE OVERSIGHT AND LEADERSHIP

DEPARTMENT OF FORESTRY & NON RENEWABLE NATURAL RESOURCES, ZANZIBAR

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@ JULY, 2011



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REVIEW OF THE NATIONAL PROTECTION AREAS BOARD OF ZANZIBAR

PART ONE

1.0 THEORY OF ENVIRONMENTAL PROTECTION IN ZANZIBAR

1.1 Zanzibar History

Zanzibar is comprised of two main islands, Unguja and Pemba. It was colonized by Arabs around 1840, and from 1890 – 1963 the Sultanate of Zanzibar existed as a British Protectorate. It was granted independence by Britain in December 1963, and in January 1964, a Revolution took place. The Sultan's government was overthrown and replaced by a People's Republic of Zanzibar under an executive President. The most significant historical event in 1964 is the union of the two countries called Tanganyika and Zanzibar to form one sovereign Republic, the United Republic of Tanzania. Under the United Republic of Tanzania Constitution 1977, Tanzania is a State of two Governments. The Union Government which has power over all Union matters as listed in the First Schedule to the Constitution, and also in respect to Non-Union matters within the mainland Tanzania. The Revolutionary Government of Zanzibar, on the other hand, exercises its powers within Zanzibar over non-union matters. Issues concerning environment in Zanzibar are amongst non-union matters that fall within the powers of the Revolutionary Government of Zanzibar. Thus, Zanzibar has its own laws governing environmental issues as enacted by the Zanzibar House of Representatives of Zanzibar.

1.2 Environmental challenges

Population growth in Zanzibar is putting pressure on the environment, especially in the coastal zones and urban areas. The growth is causing a rapid change in coral rag vegetation as a result of increased cultivation and resources demand from Zanzibar town. The main environmental challenges in Zanzibar include rapid degradation of the coral rag, regulating and monitoring water supply and quality, regulating the use, storage and disposal of chemicals, unplanned urban expansion, and reducing the environmental impacts of supplying poles, lime and sand for construction.

Other challenges are bringing coastal zone areas under integrated management, combining rational use, tourism and resource conservation; monitoring key coastal ecosystems, such as coral reefs and mangroves; limiting the threat of environmental degradation by unplanned tourism development, stimulated by the Economic Recovery Programme; and incorporating environmental factors into development planning and project assessment.

1.2 Environmental Protection in Zanzibar

Efforts of environmental protection in Zanzibar started since 1980's by establishing several authorities which inter alia dealt with environmental issues. These efforts may be categorised into administrative and legislative measures. Administrative measures include the establishment of Departments of Environment, Forestry and non-renewable resources, Fisheries Development, and Archives. The Department of Environment has a key role in achieving the national goal of sustainable development set out in the National Development Vision 2020. It is responsible for assessing and monitoring the quality of the Environment, as well as providing technical arbitration in the course of significant environmental impacts to the society and enforcing the environmental legislation. Its vision is "Sustainable and Sound Environment Management attained in Zanzibar". The

mission is to promote protection and conservation of the environment through environmental education, natural resources management, mainstreaming of environmental management principle in the development project, assessing and monitoring the quality of the environment and enforcing the environmental policy, legislation, regulation, standards and guidelines. Other administrative measures include awareness campaign, environmental education and skills development which complemented on various issues of environmental conservation and management.

Under legislative measures, several laws have been enacted to deal with environmental issues. These include the enactment of the Commission for Lands and Environment Act 1989¹, The enactment of The Environmental Management for Sustainable Development Act no.2 of 1996²; and enactment of Zanzibar Nature Conservation Areas Management Act 1999³. Another enacted law is the Forest and Resources Management and Conservation Act no. 10 of 1999⁴:

The National Protected Areas Board was established under section 80 of the Environmental Management for Sustainable Development Act no. 2 of 1996. Its functions include to formulate, advise and coordinate the implementation of the policies of the Government on protected areas; to recommend to the Minister responsible for the national protected areas system those areas which are suitable for national protected area status; to approve management plans for national protected areas and to designate the appropriate lead institution to manage a national protected areas.

Other functions of the Board as enumerated under Zanzibar Nature Conservation Areas Management Act 1999 are to receive from the Chief Conservator proposed long term plan, annual budget, progress reports and audited financial statements from the previous year for approval; to approve contracts for the management by the Unit of areas for nature conservation; to give such advise, guidance or instructions to the Chief Conservator be necessary for the better achievement of the Unit's objectives; and to adopt such rules of

¹ . The Commission was a body corporate and had perpetual succession and official seal; capable of suing and be sued; capable of holding, purchasing or acquiring in any other way any movable or immovable property and of disposing any of its property for the purpose of carrying out the functions conferred on the commission. It was a principal advisory organ of the government on all matters relating to land use and conservation of environment and for that purpose had inter alia, to formulate policy on land use planning and to recommend its implementation by the Government; and encouraging public institutions and private individuals in projects related to land use to be utilized for the national interest. In discharging its duties, the Commission was working through the land Advisory Committees established in the districts and regions for the overall supervision of all activities pertaining to land use in the respective districts and regions. The Commission had powers to issue orders, directions, notes or other documents to the district and Regional land Advisory Committees and all such orders, directions and notices were binding.

² . The main objective of the Act is to manage the environment for the sustainable development of Zanzibar. Section 80 of the Act established a National Protected Areas Board assigned with several functions including formulation of policies, advising and coordinating the implementation of the policies of government on protected areas and to recommend to the Minister responsible for the national protected areas status.

³ . It established the Zanzibar Nature Conservation Areas Management Unit as a semi-autonomous body corporate. It empowers the National Protected Areas Board to be responsible for the carrying out the implementation of the Zanzibar Nature Conservation Areas Management Act 1999. Thus, the Board is assigned with several functions under the Environmental Management for Sustainable Development Act no. 2 of 1996 as well as under the Zanzibar Nature Conservation Act no.10 of 1999.

⁴ . whose objective if for sustainable management and conservation of Zanzibar's forest resources. It provides for the appointment of the Forest Administrator who shall be responsible for implementation of the Act. ⁴ Section 15 of the Act empowers the Minister responsible for the management and conservation of forest resources to declare any land in Zanzibar as a Forest Reserve⁴. The establishes a sub-category of Forest Reserve called Nature Forest Reserve which may be designated by the minister.

procedure for its meetings and activities as it shall deem necessary⁵. The Board is equipped with all powers necessary to fulfil its functions.

The Board is composed of eleven permanent and rotating members. These are the Principal Secretary responsible for forest resources; the Principal Secretary responsible for fisheries and marine resources; the Principal Secretary responsible for environment; the Principal Secretary responsible for tourism; and the Principal Secretary responsible for finance. The Minister responsible for natural resources and the Minister responsible for the environment each has to appoint three additional persons with sound background and experience in community development; resource management; or environmental affairs, as the six rotating members of the National Protected Areas Board, at least two of them be women who serve the Board for three-year terms.

However, it is alleged that in undertaking its duties, the Board is seriously constrained by the lack of appropriate expertise, facilities and equipment within Zanzibar. It has also hampered with inadequate experience and insufficient linkages with other regional and international networks. The above factors has resulted the Board to suspend functional operations. Consequently, the integration and coordination of protected areas biological diversity protection efforts between marine and terrestrial resources become unachievable. There is the need now to review and reformulate functional National Protected Area Board specific for terrestrial Zanzibar Protected Forest Areas that will strengthen and harmonize networking of Zanzibar protected Forest Areas in and outside Zanzibar, of national and international interest. Therefore, the existing National Protected Area Board is not being functional more likely with some reasons behind. In view of the stated situation, a detailed assessment of appropriate Board is urgently needed.

1.3 Objectives of the Study

The overall objective of the study is to undertake a comprehensive review of the Zanzibar National Protected Areas Board and recommend for the institutional structure, composition of the Board and tenure of the Board. Apart from undertaking a comprehensive review of the Board, recommendations have to be drafted for the composition that describing the type or titles of the individuals who will serve on the Board and any qualifications they are expected to have, including the total number as well as representation, by whom they are appointed, when and length of term. The report was also expected to contain recommendations on the communication pattern; the person who keeps the Board up-to-date on the work of various stakeholder including private sector as well as recommendations for specific areas of responsibilities, specific objectives or tasks the Board is expected to achieve during the term or time- period given in terms of reference.

⁵ . Section 10 of the Zanzibar Nature Conservation Areas Management Act 1999.

1.4 Methodology

The Study essentially used a library and participatory method and field research in the course of gathering relevant information from different published materials, both legal and non legal documents and views from different persons conversant with Board. Desk research involved looking at some relevant Zanzibar policies and legislation with a bearing on environment. The Consultant had also access to various and relevant reports to see how they could be applied in Zanzibar and also to ascertain if there are any best practices which may be encompassed in the new proposed amendments.

In relation to the field research, the study involved seeking views from institutions dealing with environment on what should be done to improve performance of the Board. This involved use of both structured and unstructured interviews in order to accommodate all relevant stakeholders and their respective views. Structured interviews were guided by questionnaires in which the respondents were asked direct questions by the interviewer and then fill in the questionnaires. Unstructured interviews involved the making use of open ended questions to solicit information which may result from the responses offered by the interviewees.

1.5 Limitations

The study has covered the laws governing National Environmental Protected Areas Board of Zanzibar, and laws of some foreign States regulating environmental protected areas board which are assigned with like functions to that of Zanzibar. Failure to cover more issues of environment was due to poor accessibility of some important officials of Government due to National Budget, financial and time constraints.

1.6 Chapterization

Reporting of the study is divided into five chapters. The first chapter is a presentation on theory of environmental protection in Zanzibar. It presents environmental challenges, protection measures, purpose of the study, methodology, limitations and chapterization. In Chapter two of the study is about a concept of the protected areas. Chapter three has covered in detail a narration of National Protected Areas Board of Zanzibar, its composition and functions. Laws governing the same have been analysed.

Chapter four is the best practice in Environmental Protection Boards. These countries have been looked. These are Tanzania Mainland, Uganda and Ghana. Chapter five is the last one that deals with summary, gaps, challenges, conclusions and recommendations.

CHAPTER TWO

LAWS GOVERNING PROTECTED AREAS

2.1 The Environmental Management for Sustainable Development Act No. 2 of 1996

Section 70 of the Environmental Management for Sustainable Development Act 1996 provides for the establishment of a national protected areas system in Zanzibar comprising terrestrial, aquatic and mixed terrestrial and aquatic ecosystem. Existing reserves, sanctuaries, controlled areas and other areas protected wholly or in part by a lead institution⁶ shall be eligible for inclusion in the national protected areas system by action of the Board. This infers that the Act recognises the existence of several protected areas in Zanzibar under the management and control of different institutions.. These include Chumbe Marine Park⁷, Jazani Chwaka Bay National Park⁸, Menai Bay Conservation Area⁹ and Ngezi Forest Reserve¹⁰. Such protected areas and others may be included

⁶ According to section 2 of the Environmental Management for Sustainable Development Act 1996, “lead institution” means any ministry, department, parastatal, agency, commission, authority or public officer in which or in whom any law vests responsibilities for an environmental matter.

⁷ . The **Chumbe Marine Park**, officially recognized officially as **Chumbe Reef Sanctuary** since 1994, is a privately managed marine park in [Chumbe Island, Zanzibar](#). It is successful as a [ecotourism](#) project. The objective of this sanctuary is to preserve and develop the rich biodiversity of the coral. Set up after controversial debate over a period of 3 years between the private developer of the park, the government and the local fishermen, the sanctuary has received funds from [European Union](#), [Gesellschaft für Technische Zusammenarbeit](#) (the German aid agency) and many other donors including the initial developer. The sanctuary offers a terrestrial Nature Trail and an “Eco-lodge” for accommodation as well as an education centre.

⁸ . The **Jozani Chwaka Bay National Park** is a 50 square kilometer national park of [Tanzania](#) located on the island of [Zanzibar](#). It is the only national park in Zanzibar. The red colobus (its population count is about 1000^[1]) found in the park, a rain forest species (unlike the black and white colobus found in other regions of Africa), is also known as Kirk's red colobus, named after [Sir John Kirk](#) (1832-1922), the [British Resident](#) of Zanzibar who had first brought it to the attention of [zoological](#) science.^{[2][3]} It is now adopted as the [flagship species](#) for [conservation](#) in Zanzibar, from the mid-1990s.^[4] Other species of fauna found in the park are the [Sykes monkey](#), [bush babies](#), more than 50 species of [butterfly](#) and 40 species of birds.^[2] The nocturnal Zanzibar [tree hyrax](#), which has four ‘toes’ on its front feet and three on its back, is said to be the first hyrax species that has acclimatized to the forest.^[5] As part of the tourism circuit, the park attracts 10% of the over 100,000 visitors to Zanzibar every year. Wild life attractions of Zanzibar also include [dolphins](#) apart from deep sea fishing for [tuna](#), [marlin](#), and [shark](#).^[6]

⁹ . The **Menai Bay Conservation Area (MBCA)** is located in [Menai Bay, Zanzibar Tanzania](#). At 470 square kilometres (180 sq mi), it is [Zanzibar](#)'s largest marine [protected area](#). It was officially established as a conservation area in August 1997 in the traditional fishing area, known as [Unguja Island](#), covering the tropical marine environment comprising extensive [coral reefs](#), [tropical fish](#), [sea grasses](#), and [mangrove forests](#). In addition to controlling illegal fishing, MBCA's alternative initiatives have included bee keeping, [mangrove](#) replanting, tree nurseries and tourism.^{[1][2]} The management of the MBCA falls upon the Fisheries Department and the bay's local villages. It is rated by the [IUCN](#) as Category VI Managed Resource Protected Area.^[3]

The conservation project started operating one year after it was formally established. The project was initiated by [WWF](#) and has been fully supported with funds by [USAID](#), the [British Government](#) and [Switzerland](#). It is a participatory project with community of 19 villages in the project area actively involved in pursuing the conservation efforts, and to this end they have set up village level Conservation Committees to restrain illegal fishing using circular nets and blasting techniques. Of all the villages, the villagers of [Kizimkazi](#) on the eastern part of the project area have been successful in their conservation efforts largely because of good network of paved roads and financial support from WWF. These efforts have attracted 200 [bottlenose](#) and [humpback dolphins](#) to the shores of their village. The villagers who were earlier killing these animals for food are now deriving economic benefits working with their boats as guides to show the dolphins to visitors. About 20,000 tourists have visited the area in 1998. Marine Reserves were designated in 1975 but were not legislated. However, as the legislation of the Marine Parks and Reserves Act 1994 came into effect, five marine reserves and two marine parks came to be established. The new marine protected area that came to be established in 1997 was named the Marine Bay Conservation Area. It is situated on the south coast of Zanzibar. It administratively includes the islands of Unguja (also known as Zanzibar Island) and [Pemba Island](#), with operation and management responsibility decreed as a joint effort of the local government and village community.^[4]

within the National Protected area system by action of the Board.

Section 75 of the Act empowers the Minister responsible for national protected area system to declare national protected area upon recommendation of the Board. Among the national protected area declared under the provision of 75 of the Act is the *Jozani Chwaka Bay National Park as per Legal Notice no. 13 of 2004*.¹¹

Section 71 of the Environmental Management for Sustainable Development Act 1996 provides for purposes of national protected areas system. These are preservation, sustainable utilization by residents in and near the protected areas, propagation of genetic resources for conservation in other areas, education, management of biological diversity, scientific research and environmentally sound tourism and recreations. These purposes are being accomplished by the existing protected areas.

The Board is required to classify an area recommended for declaration or zoning of the national protected area as one or more of the following categories: controlled area, reserve area, sanctuary, park, conservation area, or other category defined in rules made by the Board. The Board is empowered to make rules prescribing the activities to be permitted or restricted in areas or zones corresponding to the categories designated above.¹² These rules must be published in the Gazette by the Minister.

The minister responsible for environment is empowered to declare any area in Zanzibar as an area of international significance under international agreements.¹³ Such areas may be terrestrial, aquatic or mixed aquatic and terrestrial ecosystems. The minister may also upon recommendation of the Board declare a national protected area.¹⁴ An individual person may petition to the Board and nominate an area for protection and the Board is

required to consider all petitions made.

Procedure for declaring national protected areas whether of international significance or other national protected area shall be in accordance with rules made by the Board. These rules shall at a minimum specify notice to the affected persons of not less 45 days; require consultation with the concerned lead institution, the lead institution's minister and other concerned persons, particularly those living in and around the proposed area. The rule should also set out procedures to identify and settle existing rights in such an area, and be published in the Gazette by the Minister.¹⁵

Where an area has been declared as a national protected area under the Act, the only authority having power to declare removal of such status of an area is the President. However, such a removal shall be made only upon prior unanimous recommendation of the Board, and prior approval of the committee based on a completed Environmental Impact Assessment.¹⁶ The status of existing rights upon declaration of national protected area is also protected. Every effort has to be made through planning process to identify and accommodate existing rights to the extent that they are compatible with the purposes

¹⁰ . The **Ngezi Forest Reserve** is a [forest reserve](#) located in [Pemba](#) island ([Tanzania](#)). It covers an area of 1440 [hectars](#), mostly comprising [primary forest](#). The reserve was established in [1959](#).

¹¹ The term “purported” is used in the sense that there is no evidence that recommendations of the institution responsible for the national protected areas system (the Board) was obtained as required under the relevant provision.

¹² . Section 73 of the Environmental Management for Sustainable Development Act 1996.

¹³ Ibid. Section 74.

¹⁴ Ibid. Section 75.

¹⁵ Ibid. Section 76.

¹⁶ . Ibid. Section 77.

for which the national protected area is being established. Where the existing right cannot be identified or accommodated through the planning process, they shall be extinguished and adequate compensation must be paid to the holders of those rights.¹⁷

Distribution, alienation or leasing land in national protected area is restricted unless it is directed to do so by the Board. The Board may decide to distribute, alienate or lease land in national protected area only in accordance with alienation procedures under the existing law and with prior consent of the institution responsible for lands and with super majority consent of the Board.¹⁸

2.2 Fisheries Act no. 7 of 2010

In 2010, the House of Representatives passed a new fisheries legislation known as the Fisheries Act no. 7 of 2010. Section 4 of the Act re-established a Department of Fisheries whose functions include to promote, develop, control and monitor for the purpose of proper management of all fisheries and related activities in artisanal and semi industries. The act provides for the executive officer of the department who must be a professional officer in fisheries.¹⁹ It empowers the director to impose management measures for proper management of fish and fishing industries such as close seasons for designated areas, and establishment of marine parks, sanctuaries for any purpose whatsoever.²⁰ The same powers were given to the Director under the repealed Fisheries Act 1988 and in exercise of such powers the following Rules had been passed:

- Establishment of Chumbe Reef Sanctuary, Order 1994, Legal Notice no. 12 of 1994, under section 6(1)(e) and (2) Fisheries Act no. 8 of 1988.
- Chwaka Bay Fishing Nets Prohibition Order 2001, under section 6(1) of Fisheries Act 1988;

The above Rules are still in force since section 36 of the Fisheries Act 2010 which repealed the Fisheries Act 1988 provides specifically that any act lawfully done under the provision of the repealed Act shall be deemed to be done under the provisions of this new Act.

Section 10 of the Fisheries Act 2010 empowers the Minister responsible for fisheries to declare any area in the internal waters, territorial waters or exclusive Economic Zone to be a controlled area in relation to all fish, fish products or aquatic flora, or in relation to any species or kinds of fish, fish product or aquatic flora. The like provision contained under section 7(1) of the repealed Act and in exercise of such powers the following rules had been made:

- The Menai Bay Conservation Area (Establishment Order) 1997, under section 7(1) of Fisheries Act no. 8 of 1988.
- The Establishment of Misali Island Marine Conservation Area Order, 1998, Legal Notice no. 48 of 1998, Under section 7(1) and 32 of the Fisheries Act 1988;
- Declaration of Kiwengwa Controlled Area Order, 2000, under section 7(1) of Fisheries Act 1988; and

¹⁷ . Ibid. Section 78.

¹⁸ . Ibid. Section 79.

¹⁹ Section 6 of the Fisheries Act 2010.

²⁰ Ibid. Section 9

- Mnemba Island Marine Conservation Area Order, 2002, under section 7(1) and 32 of Fisheries Act 1988.

Section 19 of the of the Fisheries Act 2010 establishes a marine conservation unit within the department of fisheries which is responsible for the coordination towards sustainable management of controlled areas established under the Act.

2.3 The Forest Reserve Management and Conservation Act no. 10 of 1996.

Section 15 of the Act empowers the Minister responsible for forestry to declare any land in Zanzibar as a forest reserve. The declaration must be made subject to applicable national land use plans, Reserves and after consultation with relevant government institutions. The Act also provides for the sub-category of Forest Reserve called Nature Forest Reserve. The Minister may designate any Forest Reserve or any part thereof as a Nature Forest Reserve, either at the same time as initial creation of the Forest Reserve, or at any time thereafter.²¹ Forest Reserves, other than Nature Forest Reserves, shall be managed as permanent forest areas for the purpose of providing the optimum combination of benefits of protection and production of which they are capable.

Nature Forest Reserves are managed as permanent forest areas exclusively for the purpose of the permanent preservation of their environment, including flora, fauna, biodiversity, soil, water and scenic beauty; and for scientific, educational, social or recreational uses compatible with the purpose.²² The Minister is required to initiate the process of creating a Forest Reserve by publishing a notice of intent in the Official Gazette. On or about the date of publication of the notice of intent in the Official Gazette, the Forest Administrator has to publish the notice of intent in a newspaper of general circulation, followed by a second publication seven to ten days later; and deliver copies of the notice of intent to the shehas or other appropriate representatives of persons living in or near the proposed Forest Reserve, with instructions to post the notice in conspicuous places and to inform local residents of its contents.²³

The Minister may at any time designate any Forest Reserve as a Nature Forest Reserve by order published in the Official Gazette, provided that if any such designation results in the disturbance of rights recognized under the final Forest Reserve order, fair and adequate compensation for the disturbance of such rights is given to any holder thereof.²⁴ Each Forest Reserve shall be managed and administered by the Forest Administrator in accordance with the applicable forest area management plan, and consistent with the purposes described in section 17.²⁵

Section 39 of the Act allows the community management group and the Forest Administrator to reach preliminary agreement on the creation of a Community Forest

²¹ See Section 16 of The Forest Reserve Management and Conservation Act no. 10 of 1996.

²² Ibid. Section 17.

²³ . Ibid. Section 18. According to section 19 of the Act, the notice of intent to create a Forest Notice of Intent Reserve shall include a map and description of the area; a brief description of the purposes for which the Forest Reserve is being created; procedures to be followed during the public review period described in section 20, including instructions for filing claims, complaints or comments with the Forest Administrator; the date on which the public review period will end, which shall be at least 90 days after the notice of intent; and a statement that failure to file claims regarding existing rights within the public comment period shall result in the extinguishment of those rights.

²⁴ Ibid. Section 29.

²⁵ Ibid. Section 30(4).

Management Area, which shall inter alia include rules concerning access to and use of the area. In exercise of such powers the following rules concerning community protected areas have been made:

- Cheju Hunting Rules, 1998, Legal Notice no.1 of 1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Bwejuu Hunting Rules 1998, Legal Notice no. 2 of 1999 under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Unguja Ukuu Hunting Rules, Legal Notice no. 3 of 1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Ukongoroni Hunting Rules , Legal Notice no. 4 of 1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Charawe Hunting Rules, Legal Notice no. 5 of 1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Kibuteni Hunting Rules, Legal Notice no. 6 of 1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Mtende Hunting Rules Legal Notice no. 7 of 1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Jozani Hunting Rules, Legal Notice no. 8/1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Muungoni Hunting Rules, Legal Notice no. 10 of 1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Dimbani Hunting Rules, Legal Notice no.11 of 1999, under section 39(e) and (f) of the Forest Resources Management and Conservation Act no. 10 of 1996.
- Kizimkazi Mkunguni Hunting Hunting Rules, Legal Notice no.12 of 1999, and
- The Protection of the Wild Animals Rules, Legal Notice no, 7 of 2001.

Another protected area under the Forest Reserve Management and Conservation Act 1996 is the Closing for Cutting Misali Island Forest Order, 1996, Legal Notice no. 47 of 1998.²⁶

2.4 Establishment of Zanzibar Nature Conservation Areas Management Unit Act, no. 10 of 1999

The Establishment of Zanzibar Nature Conservation Areas Management Unit Act, 1999 established a semi-autonomous body corporate known as the Zanzibar Nature Conservation Areas Management Unit²⁷. Chief executive of the Unit is the Chief Conservator who is appointed by the President. The functions of the Unit include to

²⁶ As made under section 100(1)(i) of the Forest Reserve Management and Conservation Act no. 10 of 1996.

²⁷ Section 4 of the Establishment of Zanzibar Nature Conservation Areas Management Unit Act, 1999.

manage nature conservation areas as advised by the Minister; to act as the management authority to manage any national protected area where designated as such by the Board; to manage areas for nature conservation in ways that benefit local communities and facilitate their active participation in management; to support, and where appropriate participate in, other projects to conserve the natural ecosystems of Zanzibar, especially those projects which facilitate conservation by local communities; and to build, alone or in co-operation with other institutions, the capacity in Zanzibar for nature conservation and management of nature conservation areas.

The Unit has also a role of generating and collecting revenues such as entry fees and service charge from nature conservation areas managed by the Unit and to retain such proportion of such revenues for furthering the objectives of the Unit as the Minister shall by regulations permit after consultation with the Minister of Finance as well as to advise the Minister in matters related to nature conservation; to advise, and educate and promote the private sector, local communities, government departments and other institutions on issues concerning nature conservation; to educate the public on the importance of nature conservation; and to promote awareness of the Zanzibar nature conservation areas locally and Internationally.²⁸ The National Protected Areas Board established under section 80 of the Environmental Management for Sustainable Development Act, 1996 shall be responsible for the carrying out the implementation of this Act.²⁹

2.5 Stone Town Conservation and Development Authority Act no. 4 of 2010

Section 3 of the Act re-establishes the Stone Town Conservation and Development Authority as a body corporate whose objective is to protect and enhance the Stone Town's cultural heritage and preserve the heritage site as a sustainable human settlement supportive of its cultural diversity and maintain its outstanding universal values³⁰.

Duties of the Authority include conserving, protecting, developing and managing the World Heritage Site in compliance with heritage management plan, to safeguard the outstanding universal value of the Zanzibar Stone Town, and to protect and preserve the environment within the conservation area in collaboration with other concerned institutions.³¹

2.6 The Ancient Monuments Preservation Act no. 11/2002

Section 3 of the Act empowers the Minister responsible for ancient monuments by notice in the Gazette, to declare any monument³² or antiquity to be a protected monument or antiquity within the meaning of this Act. Such notice shall state that objections to the declaration of the monument or antiquity as a protected monument or antiquity may be lodged with the Chief Secretary within two months from the date of the publication of the notice. He is also empowered to establish the Authority to manage and supervise the ancient moments or antiquity as he deems necessary.³³

²⁸ Ibid. Section 6.

²⁹ Ibid. Section 9.

³⁰ Section 4 of the Stone Town Conservation and Development Authority Act no.4 of 2010.

³¹ Ibid. Section 6.

³² According to section 2 of the Ancient Monuments Act no. 11 of 2002, "monument" means any structure, erection, or memorial, or any tumulus or place of interment, or any cave, rock-sculpture, inscription of monolith, which is of archaeological, historical or artistic interest, or any remains thereof, and includes the site of monument; such portion of land adjoining the site of monument as may be required for fencing or covering in or otherwise preserving such monument; and the means of access to and convenient inspection of monument;

³³ Ibid. Section 4.

The Minister may also enter into a written agreement with the owner of any protected monument or antiquity for the protection or preservation of such monument or antiquity which inter alia may provide for the maintenance of the monument or antiquity; the restriction of the owner's right to destroy, remove, alter or deface the monument or antiquity or to build on or near the site of the monument or antiquity; the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Authority to inspect or to maintain the monument or antiquity; the notice to be given to the Authority in case the land on which the monument or antiquity is situated is offered for sale by the owner, and the right to be reserved to the Authority to purchase such land or any specified portion of such land at its market value; the payment of any expenses incurred by the owner or by the Authority in connection with the protection or preservation of the monument or antiquity; and the procedure relating to the settlement of any dispute arising out of the agreement; and any matter connected with the preservation of the monument or antiquity which is a proper subject of agreement between the owner and the Authority.³⁴

³⁴ Ibid. Section 5.

CHAPTER THREE

NATIONAL PROTECTED AREAS BOARD OF ZANZIBAR

3.1 Establishment, Composition and Functions of the Board

The National Protected Areas Board of Zanzibar was established under section 80 of the Environmental Management for Sustainable Development Act 1996.³⁵ The functions of the Board are provided under two legislation. These are the Environmental Management for Sustainable Development Act 1996, and the Establishment of Zanzibar Nature Conservation Areas Management Act 1999.

Under the Environmental Management for Sustainable Development Act 1996, the Board is assigned with the following functions:

- (i) To formulate, advise and coordinate the implementation of the policies of the Government on protected areas;
- (ii) To recommend to the Minister responsible for the national protected areas system those areas which are suitable for national protected area status;
- (iii)
- (iv) To approve management plans for national protected areas under section 86; and
- (v) To designate the appropriate lead institution to manage a national protected area under section 85.

Under the Establishment of Zanzibar Nature Conservation Areas Management Act 1999, the Board is given responsibilities of carrying out the implementation the said Act.³⁶ Other functions are:³⁷

- (i) To receive from the Chief Conservator proposed long term plan, annual budget, progress reports and audited financial statements from the previous year for approval;
- (ii) To approve contracts for the management by the Unit of areas for nature conservation;
- (iii) To give such advise, guidance or instructions to the Chief Conservator be necessary for the better achievement of the Unit's objectives; and
- (iv) To adopt such rules of procedure for its meetings and activities as it shall deem necessary.

The Board shall have all powers necessary to fulfil its functions. The Chairperson may with the approval of the National Protected Areas Board, delegate in writing any of the

³⁵ Act no. 2 of 1996.

³⁶ See section 9 of the Establishment of Zanzibar Nature Conservation Areas Management Act 1999.

³⁷ Ibid. Section 10.

National Protected Areas Board's powers except its power to recommend national protected area status to the Minister responsible for the national protected areas system³⁸.

The National Protected Areas Board is comprised of eleven permanent and rotating members. The permanent members are:³⁹

- (a) the Principal Secretary responsible for forest resources;
- (b) the Principal Secretary responsible for fish and marine resources;
- (c) the Principal Secretary responsible for environment;
- (d) the Principal Secretary responsible for tourism; and
- (e) the Principal Secretary responsible for finance.

Other six members of the Board who are rotating members are appointed by the ministers responsible for natural resources and minister responsible for environment. Each of these two ministers has to appoint three persons with sound background and experience in community development, resource management or environmental affairs two of them be women.⁴⁰ These rotating members will serve for three years terms.

The quorum for the Board's decision depends on the nature of the matter to be decided. A decision to recommend the removal of national protected area status for an area is made only by unanimous consent of all permanent and rotating members of the National Protected Areas Board.⁴¹ A decision to recommend the alienation of land within a national protected area; or to designate a management authority other than a lead institution which, under existing laws of Zanzibar, is managing part or all of an area declared to be a national protected area shall be made only by a supermajority of three-fourths of all the permanent and rotating members of the National Protected Areas Board.⁴²

The Chairperson of the Board is designated by the Minister responsible for the national protected areas system among the permanent members who serves for three year term.⁴³ The Board has to regulate all other proceedings through standing orders which may permit permanent members to designate representatives at meetings. Provisions of Schedule three may only be amended or repealed by the Minister responsible for the national protected areas system with the consent of the Board.⁴⁴

Section 85 of the Act empowers the Board to designate one or more lead institutions or other qualified persons as the management authority for each national protected area for that particular protected area which shall have primary responsibility for managing the national protected area, preparing a management plan for the area under section 86; and implementing administrative measures specified in the management plan.

³⁸ See Section 83 of the Environmental Management for Sustainable Development Act 1996.

³⁹ Ibid. Rule 2 of the Schedule 3.

⁴⁰ Ibid. Rule 3 of schedule 3.

⁴¹ Ibid. Rule 5.

⁴² Ibid. Rule 6.

⁴³ Ibid. Rule 7.

⁴⁴ Ibid. Section84(2).

The Act establishes a special Fund for the management of the National Protected Areas which shall comprise amounts appropriated by the House of Representatives; that collected from administrative measures imposed under sections 70-86; 50% of amount collected from penal fines; voluntary contributions and donations to the National protected areas management.⁴⁵ The money is to be used for the implementation of the provisions of the Act for protecting, enhancing and managing the national protected areas system in Zanzibar.⁴⁶ Within six months after each financial year has ended, the National Protected Areas Board is required to submit to the Minister responsible for the national protected areas system a report concerning the activities of the National Fund for Protected Areas Management during the financial year.⁴⁷

3.2 Analysis of the Board

According to section 9 of the Establishment of Zanzibar Nature Conservation Areas Management Act 1999, the Board is responsible for the carrying out of the implementation of the said Act. However, section 19 of the Act empowers the Minister responsible for natural resources to make regulations for better carrying out the provisions of the very Act. The phrase “for better carrying out the provisions of the Act” has the same meaning with “for carrying out the implementation of the Act. This means that according to sections 9 and 19, implementation of the Establishment of Zanzibar Nature Conservation Areas Management Act 1999 is under the two distinct institutions. These are the Board (which is under the Minister responsible for environment) and the Minister responsible for natural resources.

Another contradiction is on the powers of the Zanzibar Nature Conservation Areas Management Unit. According to section 2 of the Establishment of Zanzibar Nature Conservation Areas Management Act 1999, a definition of the term “Nature Conservation Area” includes any area of land or water designated for nature conservation, any national protected area, any controlled fishing area designated under the Fisheries Act, and any marine sanctuary or other nature reserve established under the laws of Zanzibar. Bearing in mind wide functions of the Zanzibar Nature Conservation Areas Management Unit as enumerated under section 6 of the Act, it is obvious that there are duplication of functions among several institutions dealing with environmental issues. This interference of functions of other institutions might result lack of cooperation among the responsible institutions.

According to section 81 of the Environmental Management for Sustainable Development Act 1996, the functions of the National Protected Areas Board include formulation, advising and coordinating the implementation of the policies of the Government on protected areas. However, the existing protected areas are under several ministries and institutions which are assigned with the same functions. This leads to duplication of functions between several ministries.

Section 10 of the Zanzibar Nature Conservation Areas Management Act 1999 requires the Chief Conservator to submit to the Board proposed long term plan, annual budget, progress reports and audited financial statements for approval. This seems to take over powers of the Ministry responsible for Forests to the Board. Generally, according to functions and powers of the Board as enumerated under the Zanzibar Nature Conservation Areas Management Act 1999 and the Environmental Management for Sustainable

⁴⁵ Ibid. Section 87.

⁴⁶ Ibid. Section 88.

⁴⁷ Ibid. Section 89(2).

Development Act 1996, most powers of the Ministries responsible for forests, natural resources and fisheries development have been taken over by the Board.

According to Director of Fisheries Development Department⁴⁸, most functions of the Board are performed by the responsible ministries. For instance, a function of formulating, advising and coordinating the implementation of the policies of the Government on protected areas as well as approving management plans for national protected areas are the functions of responsible ministries. Again it is improper for the proposed long term plan, annual budget, progress reports and audited financial statements of the Zanzibar Nature Conservation Areas Management Unit to be approved by the Board instead of the Minister responsible. It is also impracticable for the Board to adopt rules of procedure for meetings of the Zanzibar Nature Conservation Areas Management Unit instead of the Minister responsible for Zanzibar Nature Conservation Areas Management Unit. It is therefore suggested that functions of the Board be reviewed and be left with the function of conducting researches in National protected areas as well as lobbying for funds of running those protected areas and sharing information.

In respect to institutional frame work of the Board, many interviewees were of the view that the frame work has contributed to failure of the Board to perform its functions. Since environment is a cross cutting issue, it is impracticable for the Board to be in the existing frame work. Environmental conservation is under several institutions or environmental components. The roles of these components within the Board's function are not clearly defined. It is proposed that the protected areas to continue to be under the lined ministries and the Board to act as a watch dog to ensure that such components are performing there functions. Thus an independent Board is required to be in place not for the taking powers of these components but to supervise day to day activities of these components by ensuring that each institution is performing its functions properly.

Another factor contributing to the failure of the Board is lack of fund. The study has revealed that since the inauguration of the Board in 2003, no single cent was contributed to the Fund. The government had never granted money to the Board for running its business. Therefore only two or three meetings of the Board were conducted under the sponsorship of Department of Forestry⁴⁹. This resulted the Board to be not only an orphan but a street child. However, according to Dr. Bakar, failure of the Board to perform its functions is due to personal interests of responsible institutions which in this paper are termed departments responsible for environmental issues.⁵⁰

The existing composition of the Board is also blamed to lack some important representatives of private sector and that public-private partnership was not taken into consideration in the conservation of environment. However, Mr. Mussa Jumbe views that representation of the private sector must be purely concerned with protected areas and that the representation may be through the responsible department. It is therefore commented that for better functioning of the Board private sector should be associated.

The Board has established a secretariat for the purpose of execution of its functions. Since established, the secretariat has met four times under the chairmanship of Dr. Bakar Asseid. Currently, the Board has no chairman, no secretary and the secretariat has no chairperson.

⁴⁸ Mr.Mussa Jumbe in an interview conducted in his office on 30th June 2011.

⁴⁹ Interview with Dr. Bakar Asseid, former secretary to the Board and form chairman of the Secretariat of the Board as conducted in his office at Darajani. However, According to Mr. Mussa Jumbe, director of Fisheries Development, by that time it was practicable because all these components were under the same Ministry and it was easy for the Principal Secretary to rule out that such a fund be allocated to the Board.

⁵⁰ These are Departments of Environment, fisheries, natural resources, lands and archive.

The Act is however silent on the establishment of the secretariat as well as secretary to the Board. The only provisions which are deemed to empower the Board to establish a secretariat is section 82 and rule 8 of schedule 3 of the Environmental Management for Sustainable Development Act 1996. According to section 82 of the Act the National Protected Areas Board has all powers necessary to fulfil its functions, while rule 8 of schedule 3 empowers the Board to regulate all other proceedings through standing orders. There is no document that could be obtained to verify that the secretariat was established through standing orders. A part from the above general provisions there is no specific section which regulates establishment and functioning of the secretariat. For effective secretariat and effective Board such a specific provision is needed.

According to Dr. Bakar, the establishment of the secretariat was for the purpose of assisting the Board to function properly. However, since its establishment it could sit only four times due to common problem of lack of fund and personal interests of the departments responsible for environmental protection. Common interest is needed for better implementation of the functions of the Board.

The Board has no infrastructure and permanent management committee. All four conducted meetings had been conducted in rented halls. It has no transport facilities and the secretariat had been using the office of the Director of natural resources to conduct its meeting. There is no permanent management committee to execute day to day activities of the Board. Generally, the Board has no annual plan, annual budget and vision. An effective and functional Board cannot stand if it has no permanent management unit and a vision.

Composition of the Board is also questionable. The secretariat is composed of directors of tourism, environment, fisheries and regional administration. Again public-private partnership is not reflected in the structure of the secretariat. The composition does not even reflect regional representation of Zanzibar. No representative from Pemba Island to represent environmental conservations from Pemba. However, Mr. Mussa Jumbe commented that they are represented by the responsible departments.

Finally, section 87 of the Environmental Management for Sustainable Development Act has established a fund to be comprised of several sources. This has been a theoretical fund hence no single cent has been contributed to the fund since the coming into force of the Act. Generally, no commitment has been taken to ensure that the Board is functioning as intended by the House of Representatives.

CHAPTER FOUR

BEST PRACTICE IN ENVIRONMENTAL PROTECTION BOARDS

In the course of conducting this study, the researcher had an opportunity to review National Protected Areas Board of four countries such as Tanzania Mainland, Uganda, Mauritius and Ghana.

4.1 Tanzania Mainland

The government of Tanzania realised the danger facing its natural resources such as clean air, fossil fuels, whales, hardwoods and endangered species by taking appropriate measures ranging from policy, legal framework and institutional arrangement which are conforming to socio-political and economic system. A number of sectoral-related environmental legislation have been formulated or reviewed. Examples: Forestry, Wildlife, Fisheries, Mining, Energy, Water, Lands, Local Authorities and Urban Authorities.

The United Republic of Tanzania is also a signatory and has acceded to a number of International/ Regional environmental treaties such as Convention on Biological Diversity ratified on 8 March, 1996; Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region and Related Protocols ratified on 1 March, 1996; United Nations Convention to Combat Desertification ratified April, 1997; United Nations Framework Convention on Climate Change ratified in April, 1996; The Vienna Convention on the Protection of Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer acceded on 7 April, 1993 and 16 April, 1993 respectively; Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal acceded on 7 April, 1993, and, Bamako Convention on Ban of the Import into Africa and the Control of Trans-boundary Movements of Hazardous Wastes within Africa, ratified on 7 April 1993.

In 1983, the National Environment Management Council (NEMC) was established by an Act of Parliament No.19 of 1983⁵¹ to perform an advisory role to the government on all matters relating to environment management. To respond to the role, NEMC's mandates subscribe to functions of promoting, catalyzing, overseeing and co-ordination of all issues pertaining to the environment. Its vision is to provide technical leadership for the application of environmental practices for sustainable development.

The National Environment Management Council (NEMC) is the leading technical advisory, co-ordinating and regulatory agency responsible for the protection of the environmental and sustainable use of the natural resources in Tanzania. It is responsible in consultation, collaboration and partnership with other entities concerned with environmental matters and the public at large, for facilitating and promoting such measures as necessary to help achieve an important quality of lives for Tanzanians.

⁵¹ See section 3 of the National Environmental Act, Chapter 191 of the revised laws of Tanzania. NEMC is a body corporate and has perpetual succession and an official seal; It is capable of suing and being sued in its corporate name, and capable of holding, purchasing or acquiring in any other way, any movable or immovable property, and of disposing of any of its property for the purpose of carrying out the functions conferred to it by the Act.

The functions of the NEMC includes advise government on all technical matters for effective environmental management; Co-ordinating the technical activities of all bodies concerned with environmental matters; Enforce environmental regulations (Norms, standards, guidelines and procedures); Assessing, monitoring and evaluating all activities that have impact on the environment. Other functions are promoting and assisting environmental information, communication and capacity building; and seeking advancement of scientific knowledge on the root causes of the changes in the environment and encouraging the development of environmental sound technologies⁵².

NEMC is composed of a Chairperson, who is appointed by the President; fifteen members appointed by the Minister, upon nomination one each by such ministries and organisations involved in matters relating to the management or protection of the environment as the Minister may determine; and three other members appointed by the Minister amongst persons who, in his opinion, have the necessary experience or qualifications to enable them to make a useful contribution to the realisation of the objectives of, and to the deliberations of the Council⁵³.

A Vice-Chairperson is elected by members among themselves, and any member elected as Vice-Chairman, subject to his continuing to be a member, holds office for a term of one year from the date of election, and is eligible for re-election. As to tenure of appointment, a member holds office for three years, unless his appointment is sooner terminated. If a member of the Council who is a member by virtue of his holding some other office is unable for any reason to attend any meeting he may nominate in writing another person from his Ministry or organisation to attend that meeting in his place. The Council ordinarily meets for the transaction of its business not less than twice during every year. The Chief Executive Officer of the NEMC is the Director General who is appointed by the President and is responsible for the implementation of all the decisions of the Council and carrying out all day to day activities of the Council⁵⁴. The functions of the Director General, subject to directions of the NEMC includes:

- (a) To consider means and initiate steps for the protection of the environment and for preventing, controlling, abating or mitigating pollution;
- (b) To carry out investigations into the problems of environmental management;
- (c) To obtain the advice of persons having special knowledge, experience, or responsibility in regard to environmental management;
- (d) To keep under review the progress made in the pursuance of the objects and purposes of the Act and to publish reports and provide information for the purpose of enhancing public awareness of such progress and of the problems and remedies that exist in relation to the management of the environment;
- (e) to promote, encourage, co-ordinate, and carry out short-term and long-term planning and projects in environmental management and protection together with or separate from other public bodies and other organs; and
- (f) Generally, to administer and give effect to the provisions of this Act and to carry out other functions as may be prescribed by the Council.

For better execution of its functions, the NEMC is given power to appoint on such terms and conditions as it may determine, such number of persons to serve as officers of the Council as it may consider National appropriate or necessary for the performance of the

⁵² Ibid. Section 4.

⁵³ See Schedule to the Act.

⁵⁴ Ibid. Section 6.

functions of the Council. It may also engage either temporarily or on such terms as it may think fit persons who are experts in matters relating to environment⁵⁵.

Lessons learnt from NEMC include the importance of having a vision, functions of NEMC, composition of the Council and having a permanent management unit with clearly defined functions.

⁵⁵ Ibid.

4.2 Ghana

In Ghana, there is established an Environmental Protection Agency as a body corporate assigned with several functions such as advising the minister on the formulation of policies on the environment and in particular to make recommendations for the protection of environment⁵⁶. Other functions of the Agency include:

- To co-ordinate the activities of bodies concerned with the technical or practical aspect of the environment and serve as a channel of communication between those bodies and the Ministry;
- To co-ordinate the activities of other bodies for the purposes of controlling the generation, treatment, storage, transportation and disposal of industrial waste;
- To secure by itself or in collaboration with any other person or body the control and prevention of discharge of waste into the environment and protection and improvement of the quality of the environment;
- To collaborate or co-ordinate with foreign and international agencies for the purpose of the Act.

Section 4 of the Act provides for the governing body of the Agency called a Board whose members are qualified and appointed by the President. In making the appointments, the President is obliged by law to have regard to the knowledge, expertise and experience of the persons in matters relating to environment. The members of the Board are:

- One person knowledgeable in environmental matters as chairman;
- The Executive Director of the Agency;
- One representative of the Council for Science and Industrial Research, not below the rank of Principal research Officer;
- One representative of the Ghana Standards Board, not below the rank of Principal Scientific Officer;
- One representative each, not below the rank of Director, from the Ministries responsible for the Environment, Local Government, Finance, Health and Education;
- One representative of the Association of Ghana industries, and
- Three other persons knowledgeable in finance or commerce at least one of whom is a woman.

The Board meets quarterly a year but the chairman has power to call a special meeting of the Board and has a casting vote. The Board may, in performance of the functions of the Agency, appoint committees comprising of members of the Board or non-members and assign to each committee the functions of the Agency that the Board may determine.

The Act also establishes a Hazardous Chemical Committee whose functions are⁵⁷:

- To monitor the use of hazardous chemicals by collecting information on the importation, exportation, manufacture, distribution, sale, use and disposal of those chemicals;

⁵⁶ See sections 1 and 2 of the Environmental Protection Agency Act 490 of 1994 of Ghana,

⁵⁷ Ibid. Section 10

- To advise the Board and Executive Director on the regulation and management of hazardous chemicals, and
- To perform any other functions relating to chemicals that the Board or the Executive Director may direct.

For better performance of its functions, the Board is required to establish a regional and district offices whose duties is to perform the functions delegated to them by the Board.

Section 16 of the Act establishes a fund to be known as the National Environment Fund consists of grants in aid from the Government for the protection or improvement of the Environment, levies collected by the Agency in the performance of its functions, and donations and gifts to the Agency. Such moneys of the Fund are applied for environmental education of the general public; research, studies and investigations relating to the functions of the Agency; human resource development; and any purpose determined by the Board in consultation with the Minister⁵⁸. The Fund is administered by the Board and the Controller and Accountant General or two representatives of the Controller and Accountant General. The moneys in the Fund are paid into a bank account opened by the Board with the approval of the Controller and Auditor General. It is the duty of the Board to formulate policies to generate money for the fund, to determine the allocations to be made towards the objects of the Fund, and to determine the annual targets of the Fund. Payments to be issued from the Fund have to be signed by the chairman, executive director and one other member of the Board⁵⁹.

Lessons learnt from Ghana include qualifications of Board members, having permanent management unit, powers of the Board to appoint technical committees, decentralization of the board in regional and district level, and establishment of National Environment Fund.

4.3 Uganda

The National Environment Management Authority (NEMA) is a semi-autonomous institution, established in May 1995 under the National Environment Act CAP 153 and became operational in December 1995, as the principal agency in Uganda, charged with the responsibility of coordinating, monitoring, regulating and supervising environmental management in the country⁶⁰. Section 7 of the Statute lists down functions of the Authority, including to co-ordinate the implementation of Government policy and the decision of the Policy Committee; to ensure the integration of environmental concerns in overall national planning through co-ordination with relevant ministries, departments and agencies of Government; and to propose environmental policies and strategies to the Policy Committee.

Other functions are to initiate legislative proposals, standards and guidelines on the environmental in accordance with the statute; to promote public awareness through formal, non-formal and informal education about environmental issues; to undertake studies and submit such reports and recommendations with respect to the environment as the Government or the Policy Committee may consider necessary. The list is long. NEMA therefore, spearheads the development of environmental policies, laws, regulations,

⁵⁸ Ibid. Section 17.

⁵⁹ Ibid. Section 19.

⁶⁰ See sections 5 and 6 of the National Environment Statute No. 4 of 1995 of Uganda.

standards and guidelines; and guides Government on sound environmental management in Uganda.

Apart from the Authority, the Statute establishes a Policy Committee on the Environment whose members are provided in the First Schedule to the Statute⁶¹. Its functions are to provide policy guidelines, formulate and co-ordinate environmental policies for the Authority; liaise with the cabinet on issues affecting the environment; identify obstacle to the implementation of environmental policy and programmes and ensure implementation of those policies and programmes.

The authority is governed by the governing board called Board of Directors whose members are appointed by the Minister with the approval of the Policy Committee. It consists of a Chairman, Vice Chairman and seven other members drawn from the bodies specified in the second schedule to the statute. The Chairman and the Executive Director of the Authority are ex-officio members of the Policy Committee as well as members of Board of Directors. Section 10 of the Statute lists down functions of the Board of Directors such as:

- To oversee the implementation and successful operation of the policy and functions of the Authority;
- To review the policy and strategic plan of the Authority;
- To provide guidance to the Executive Director and staff;
- To approve the annual budget and plans of the Authority;
- To monitor and evaluate the performance of the Authority against budgets and plans;
- To establish and approve rules and procedures for the appointment, discipline, termination and terms and conditions of service of staff, administrative matters and financial matters.

The Board on the advice of the Executive Director has to appoint technical Committees for advising it on such subjects relating to the environment. Such Committees are:

- A Technical Committee on Soil Conservation;
- A Technical Committee on the Licensing of Pollution;
- A Technical Committee on biodiversity conservation; and
- A Technical Committee on the Environmental Impact Assessment.

Part XII of the Statute provides for the financial provisions. A National Environmental Fund of the Authority is established whose sources are disbursement from Government, all fees charged under the Statute, any fee prescribed for any service offered by the Authority, fines collected and gifts, donation and other voluntary contributions to the Fund made from any source.

The lesson to be learnt from Uganda is having a permanent management unit and that the Board on the advice of the Executive Director is empowered to appoint technical committees on soil erosion, licensing of pollution, biodiversity conservation, and EIA.

⁶¹ Ibid. Section 8.

4.4 Mauritius

The objectives of Mauritius Environmental Protection Act No. 19 of 2002 is to provide for the protection and management of the environmental assets of Mauritius so that their capacity to sustain the society and its development remains unimpaired and to foster harmony between quality of life, environmental protection and sustainable development for the present and future generations; more specifically to provide for the legal framework and the mechanism to protect the natural environment, to plan for environmental management and to coordinate the inter-relations of environmental issues, and to ensure the proper implementation of governmental policies and enforcement provisions necessary for the protection of human health and the environment of Mauritius.⁶²

Section 2 of the Act provides for environmental stewardship that every person in Mauritius shall use his best endeavours to preserve and enhance the quality of life by caring responsibly for the natural environment of Mauritius. Section 5 of the Act established a National Environment Commission assigned with the following functions⁶³:

- (a) Setting national objectives and goals, and determine policies and priorities for the protection of the environment, having due regard to the recommendations of the Minister;
- (b) Reviewing progress made by public departments on any aspect of environmental management projects and programmes;
- (c) Ensuring coordination and cooperation between public departments, local authorities, and other government organisations engaged in environmental protection programmes; and
- (d) to make such recommendations and issue such directions as it may determine to public departments.

Instead of having a National Protected Areas Board like Zanzibar, Mauritius has the National Network for Sustainable Development established under section 10 which is unincorporated Board. It is composed of the Minister responsible for environment as a Chairman, Permanent Secretary, as a Vice Chairman, the Director, representatives of the Ministries dealing with environment and non-governmental organizations registered with the Ministry. It also consists of not more than two other members having competence and knowledge in relevant matters, designated by the Minister.

According to section 11 of the Act, the objects of the National Network for Sustainable Development are to act as a forum for discussions and consultations on any matter relating to;

- (a) Harmonisation of the various sectoral, economic, social and environmental policies and plans operating in the country;
- (b) Quality and state of the environment;

⁶² See preamble of the Mauritius Environmental Protection Act no. 19 of 2002.

⁶³ Ibid. Section 6(1)

- (c) Measures, plans and technologies for the improvement of the quality of the environment;
- (d) Development and implementation of an integrated approach to pollution prevention and control;
- (e) Harmonisation of the interests of proponents and promoters generally, and the aspirations of users and society in the field of built-up environment and visual pollution; and
- (f) Protection and management of the environmental assets and the national heritage of Mauritius in order to foster sustainable development.

The Minister is empowered to establish such technical advisory committee as he thinks fit to advise him on matters pertaining to the scientific and technical aspects of environmental protection and management which consists of members appointed by the Minister.

The Act also establishes Enforcing Agencies and Environmental Coordination Committee. Functions of this Committee include:⁶⁴

- (a) Ensuring the maximum cooperation and coordination among enforcing agencies and other public departments dealing with environment protection;
- (b) Developing such policies and administrative measures as are necessary to ensure prompt and effective consultation on matters relating to environment protection and management;
- (c) ensuring that information is shared among the enforcing agencies, the Department and other public departments so as to develop a better understanding of environmental issues and of problems relating to enforcement of environmental laws;
- (d) advising the Minister and, when requested, the Commission, on matters relating to environmental standards, guidelines, codes of practice and other control measures for the purpose of avoiding duplication of functions among public departments and of ensuring proper enforcement of environmental laws; and
- (e) Ensuring compliance with, implementation and enforcement of, any direction given by the Minister in relation to the coordination in the administration and enforcement of an environmental law among the various enforcing agencies.

Lessons to learn from Mauritius is that the law provides for environmental stewardship that every person in Mauritius is under obligation to use his best endeavours to preserve and enhance the quality of life by caring responsibly for the natural environment of the country. Instead of having a board like the one in Zanzibar, Mauritius has the National Network for Sustainable Development acting as a forum for discussions and consultations on matters relating to harmonisation of the various sectoral, economic, social and environmental policies and plans operating in the country; quality and state of the environment; measures, plans and technologies for the improvement of the quality of the environment; development and implementation of an integrated approach to pollution prevention and control;) harmonisation of the interests of proponents and promoters

⁶⁴ Ibid. Section 14(2)..

generally, and the aspirations of users and society in the field of built-up environment and visual pollution; and protection and management of the environmental assets and the national heritage of Mauritius in order to foster sustainable development. The Mauritius law has also established an Enforcing Agencies and Environmental Coordination Committee whose functions include ensuring the maximum cooperation and coordination among enforcing agencies and other public departments dealing with environment protection.

PART FIVE

GAPS, CHALLENGES AND RECOMMENDATIONS

5.1 Gaps and Challenges

5.1.1 Duplication of Functions

The Board is abandoned with a wide range of function which results contradictions between institutions responsible for different protected areas. It interferes with powers and functions of other institutions in formulation and coordination of the implementation of policies. Each of the ministries responsible for fisheries development, non-renewable resources and environment are assigned with the same functions of formulation and coordination of the implementation of policies of the government on the protected areas under their management.

5.1.2 Roles of Related Institutions to the Board are not properly defined

Several institutions are assigned with a role of protection or conservation of several areas. These lead institutions which are under different ministries include Department of Forestry and Non-renewable resources and Fisheries development department. Assigning the Board (which is under the Ministry responsible for Environment) with same functions without defining roles of those lead institutions contributed to a large extent on the failure of the Board to perform its functions. The law does not provide for an organ assigned with ensuring the maximum cooperation and coordination among enforcing agencies and other public departments dealing with environment protection.

5.1.3 The Law does not provide for Permanent Management Unit for the Board.

A functional Board cannot stand in the absence of a permanent management unit to deal with day to day activities of its functions. Thus, in order to have an effective Board it must have a secretariat and a permanent management unit. Lack of management unit has contributed to a large extent on the failure of the Board to perform its functions. There is a need to have a competent personnel working as an executive director of the board who would be responsible for day to day activities of the Board supported by other staff of the Board. The functions of the executive secretary should be clearly defined. However, the said structure needs the Board itself be an independent one composed of qualified personnel.

5.1.4 The Law does not provide for Secretariat

The existing secretariat is not established under the law. The only provisions of law purported to empower the board to establish a secretariat is section 82 of the Act which states that the Board has all powers necessary to fulfil its functions, and rule 8 of schedule 3 which empowers the Board to regulate all other proceeding through standing orders.

5.1.5 Lack of Fund

According to section 87 of the Environmental Management for Sustainable Development Act 1996, the Board's Fund is supposed to comprise such amount appropriated by the House of Representatives for purpose of managing the national protected area system, amounts collected from administrative measures under sections 70-80 of the Act, 50% of

amounts collected from penal fines for violation of sections 70-86 of the Act, voluntary contributions to national protected areas management, amounts or assets donated and any other amount prescribed by notice in the official Gazette. Unfortunately, since the inauguration of the Board in 2003 no single cent from such sources has been contributed to the Fund and provisions of sections 70 – 86 of the Act have never been tested in court. Besides, no bank account is opened for the Board's Fund.

5.1.6 Lack of Infrastructure

The Board does not have an office, office equipments and transport. All meetings of the Board been ever conducted were in rented or borrowed halls. The secretariat had been using the office of the Director of Natural Resources. A Board cannot be functional if it performs its activities in the existing environment.

5.1.7 Lack of vision

It is a vision which describes what the Board will look in the future. A vision is more imaginary and requires a visionary leader or members with ability to think long term. A vision statement would form the framework for the Board's general philosophy, goals, strategies, ethical standards and performance criteria. Ideally, a vision statement will improve the Board's effectiveness and productivity because it will motivate and guide every one involved to work towards a certain goal. The lack of vision has contributed to the failure of the National Protection Areas Board of Zanzibar to perform its functions. Board members and secretariats are unaware of the vision of the Board and that are not working towards a particular goal.

There is therefore a need to develop a vision statement which will be general (allow it to survive even in an unstable environment like the existing ones), short, precise, and clear. The vision statement should include a promise that the Board will support its member's pursuit of the vision, clarify the Board's direction and purpose, focus on a better future and reflect high ideals in challenging ambitions.

5.1.8 Lack of experience

A Board cannot be effective if manned by members who are not experienced. Experience does not only mean having technical education on particular matter, but includes learning through visiting other Boards having similar objectives and see how they are performing their functions. The Board members of the National Protected Areas Board have never visited not only similar boards abroad but even those existing protected areas of Zanzibar they are supposed to supervise.

5.1.9 Lack of Regulations for better implementation of the Act and Board's Functions

Several provisions of the Environmental Management for Sustainable Development Act 1996 refer to rules made by the Board. But since the enactment of the Act no single rule has been made by the Board. This also hinders the Board to be effective.

5.2.0 RECOMMENDATIONS

The study has revealed that there are several challenges and gaps affecting the National Protected areas Board of Zanzibar in performing its functions. Those challenges and gaps

are in institutional framework of the Board, failure of the Government to empower the Board by financing it, lacunae in the law governing the National Protected Areas Board and lack of cooperation between the Board and institutions responsible for protected areas. For effective functions of the Board the following suggestions are made:

5.2.1 To establish an independent authority to deal with National Protected Areas. The proposed authority has to be manned with an Executive Secretary qualified in matters of environment. The Executive Secretary has to be assisted by a management team which will be responsible with day to day activities of the Authority. The National protected Areas Board to be a governing Board of the Authority.

5.2.2 The composition of the Board has to be re-structured and be composed of 12 professional members. Members of the Board should be:

- A chairperson who is a person knowledgeable in environmental matters and appointed by the President;
- The Executive Secretary of the proposed Authority be a Secretary to the Board;
- Directors of Fisheries, Environment, Forestry and non-renewable Resources, and lands. Director general of Zanzibar Water Authority (ZAWA), and Chief Conservator of the Zanzibar Nature Conservation Unit. Provided that, if the Director is not knowledgeable in environmental matters his/her immediate officer knowledgeable in environment shall represent him in the Board.
- One representative each from Academic Institutions and Zanzibar National Chamber of Commerce, Industry and Agriculture (ZNCCIA) having academic knowledge on environmental issues.
- Other two members appointed by the Minister responsible for Environment with sound background and experience in community development, resource management or environmental affairs one of them be a woman.

5.2.3 The Environmental Management for Sustainable Development Act 1996 be amended and provide for the establishment of Secretariat of the Board whose members should be five professional senior officials from the lead institutions such as Departments of Environment, Forestry and Non-renewable Resources, Fisheries, Regional Administration, and a State Attorney from Attorney General's Office of the rank of State Attorney Grade I or above. The Executive secretary to be a Chairperson of the Secretariat, and a secretary for the Secretariat to be appointed amongst the members of the secretariat.

5.2.4 Laws governing lead institutions be reviewed to provide for clearly defined role of the lead institutions to the Board so as to avoid contractions, and providing for summary punishment.

5.2.5 The Environmental Management for Sustainable Development Act 1996 be amended and functions of the Board be reviewed to avoid duplication of functions between the Board and Ministries responsible for lead institutions. The lead institutions responsible with management and control of different protected areas have to continue with their roles and the Board has to act as a watch dog to ensure that the later perform their functions as directed by their relevant law. The Board should also responsible for researches and looking for the Fund for the lead institutions. Policy issues should continue to be under the ministries concerned with the lead institutions.

5.2.6 In order to overcome a challenge of lack of fund, it is suggested that the Government has to ensure allocation of fund to the Board and the Board itself to take necessary efforts to ensure availability of funds. The lead institutions should contribute a certain percentage of their income to the Board. One of the sources of fund of the Board is stated to be 50% of amounts collected from penal fines for violation of sections 70-86 of the Environmental Management for Sustainable Development Act 1996. Experience has shown that this is impracticable particularly when a fine is imposed by the Court. It is therefore suggested that laws governing lead institutions be amended and to introduce a summary punishment of fine to which a culprit who admits in writing to have committed an offence under any of the laws governing protected areas is fined instantly without being sent to court. Such fines be paid direct to the proposed authority.

5.2.7 Rules of the Board should be put in place to enable it to perform its functions. The Ministers responsible for lead institutions should ensure that all regulations required for better implementation of their laws are made. The House of Representatives should have a tendency of discussing Bills attached with a draft Rules intended to be made by the Minister or other responsible authority.

5.3.0 CONCLUSION

For an effective National Environmental Protection Board, it must be composed with competent members knowledgeable in environmental matters and visionary leaders or members with ability to think long term. This can only be achieved if the law is amended to incorporate qualifications of members. Lead institutions must also be headed by qualified persons.