

**WORLD WIDE FUND FOR NATURE**  
EARPO EASTERN AFRICA COASTAL FOREST ECOREGION PROGRAMME

**REVIEW OF THE LEGAL FRAMEWORK FOR MANAGEMENT OF  
TANZANIA'S COASTAL FORESTS**

by

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## PART I: BACKGROUND AND INTRODUCTION

The Tanzania coastline is estimated to be of about 800 kilometres<sup>1</sup> and it is estimated that the coastal population grows at the rate of 3 to 6% and could double in a period of twelve years.<sup>2</sup> The once pristine coastal ecosystems have been under pressure for some years now. Destructive practices on coastal ecosystems were on the rise in the 1980s and the 1990s as incidences of dynamite fishing were frequent and almost unchecked; beach seining and coral destruction were common. Unplanned tourism and coastal construction have also contributed to coral destruction and illicit mangroves cutting<sup>3</sup>.

Large tracts of coastal forests are within the protected status having been gazetted under the forest laws. These forests are characterized by having small fragmented patches most less than 500ha in size, surrounded by relatively impoverished rural communities with a high and growing demand for forest resources, individually distinctive, with a significant level of local forest endemism, and great variety vegetation lacking resources such as timber or water catchment, values that would allow species biodiversity values to be incorporated in their continuation<sup>4</sup>. In describing coast forest ecosystems, FAO concluded:

In each of the climatic regions of the world, inland forests and woodlands may extend to the sea and thus form part of the coastal area. In addition to such formations, controlled by climatic factors, special forest communities, primarily controlled by edaphic factors and an extreme water regime, are found in coastal areas and along inland rivers. Such forest communities include: mangroves, beach forests, peat swamps, periodic swamps (tidal and flood plain forests), permanent freshwater swamps and riparian forests. Of these, the first three types are confined to the coastal area, whereas the remaining types can also be found further inland... Many of the natural coastal forests are under severe threat. Most of the lowland rain forests have vanished as a result of the ease with which commercial trees, standing on slopes facing the sea or other accessible coastal waters, could be harvested merely by cutting them down and letting them fall into the nearby water. As a consequence, most coastal dry forests and savannah woodlands have been seriously degraded by overexploitation for fuelwood and construction poles, and conversion to agriculture or to grazing lands through the practice of repeated burning.

Quoted from [www.fao.org/forestry/site/4360/en](http://www.fao.org/forestry/site/4360/en)

Loss of coastal forests is caused by inadequate policies and regulatory frameworks exacerbated by other socio-economic factors such as; population increase, inadequate tenure, non sustainable collection of firewood and other natural resources from the

<sup>1</sup> URT, Integrated Coastal Environment Management Strategy , 2003 p.1

<sup>2</sup> The World Bank (1996) Tanzania, The challenges of Reforms: Growth, Income and Welfare, Report No 14982 – TA, Vol. 1

<sup>3</sup> Shauri, V (2003) Study on the Legal and Institutional Framework for Marine Conservation Areas of the United Republic of Tanzania, Report submitted to MPA Project, WB, Tanzania Office p.1

<sup>4</sup> The description of coastal forests in Tanzania has been adopted from Rodgers, W.A & Burgess, N- “Coastal Forest Conservation Problems” in Burgess, N & Clarke, G (2002) *Coastal Forests of Eastern Africa*, IUCN Forest Conservation Program, (Nairobi, IUCN, )

forests, fire and encroachment. Others are lack of alternative employment/source of income and need for arable land as well as the need of wood for timber and firewood.

Tanzania's coastal forests includes; Kamba; Segoma, Manga, Kwagumi forest reserve managed by the East Usambara Catchment Forest Project and Mzimbazi, Magogo and North Bombo forest reserves which fall outside the project support. Others are Rondo, Lindi, Pugu in Coast Region, Litipo in Lindi Region, Pemba Island (including Ngezi and Msitu Mkuu), Unguja Island including (including Jozani and Kiwengwa), and Gendagenda in Tanga region, Pande in Dar es Salaam region Kazimzumbwi in Coastal region, Kisiju and Amboni. Some coastal forests are facing more threat of being degraded than others.

**Rodgers, W.A and Bugress, N compiled case studies of the most degraded coastal forests as follows:**

**(a) Pande,**

This is an ocean Forest Reserve just north of Dar es salaam with several valuable plant and bird species, it was gazetted as a private zoo. The process failed and the area was subsequently subjected to extreme high level of charcoal collection and poles. It was regazetted as game reserve but no resources were allotted for its management.

**(b) Vikindu**

A closed evergreen costs forest reserve in south of Dar es Salaam. Its destruction started from the early days of the British colonial government. Although the edges and valleys were left untouched, the Dar es Salaam Regional Forest Officer allowed encroachment of the forest for settlement.

**(c) Mafia Island**

This is a tall evergreen forest, it was cleared recently for coconut estate expansion. A part of coral rag forest is now in the marine National Park but plan to gazette the rest as Forest Reserve have stalled

**(d) Kisiju/Dendene**

Some 200 hectares with closes canopy and black and white monkeys. It has been cleared for cassava. Coastal Region Forestry stated the gazettelement process with GEF funding in 1994 but the process has ceased.

**(e) Pugu/Kazimzumbwi**

This has been a controversial place with government trying to re-establish its reserve status by evicting local residents who have settled in the area. But the area still faces severe encroachment.

**(f) Rando plateau**

This Lindi region Forest Reserve was largely felled by the British for commercial softwood plantations and some *Malicia excelsa*. The periphery remains as good forest, and the new mvule has importance for rare birds, however there is little management input.

SEE: Burgess, N & Clarke, G (2002) *Coastal Forests of Eastern Africa*, IUCN Forest Conservation Program, (Nairobi, IUCN, ) p. 306

The growth trend of the coastal population is faster than that of the hinterland mainly because the cities and towns along the coast are more attractive to immigrants from the hinterland because of business opportunities and employment. The increase of coastal population in the country has major negative influence on coastal forests.

Coastal communities are directly dependent on the coastal resources in conducting economic activities such as; forestry, artisanal fisheries, lime and salt production, seaweed farming and subsistence farming. Increasing economic exploitation of coastal resources especially mangrove trees and fisheries has led to a rapid deterioration of the status of the coastal ecosystems. The absence of alternative livelihood and economic activities to generate income and the poor infrastructure of the coastal economic base, are also among the causes of forestry destruction. Intense human exploitation of the coastal resources was for a long time not subjected to normative action and hence led to wanton destruction of the resources.

## **PART II: REVIEW OF COASTAL FOREST POLICIES AND LAWS IN TANZANIA AND INTERNATIONAL CONVENTIONS**

### **Introduction**

The Tanzania government has enacted several laws in order to manage and conserve coastal forests. These laws includes; the Forest Act, (2002), The Local Government (District Authorities) Act (1982, the Wildlife Conservation Act (1974), Land Act (1999) and the Village Land Act (1999). There are also other laws that impact on coastal forests such as; the Mining Act, 1998, the Town and Country Planning Ordinance, Cap. 378, the Fisheries Act, 2003 and the Water (Utilization and Regulation) Act, 1974.

Although Tanzania is a unitary state, composed of Tanzania mainland and Zanzibar, the two sides of the union have different legal systems, legislative and governmental structures. This is well elaborated in the United Republic of Tanzania Constitution, 1977. The Constitution prescribes a list of Union Matters.<sup>5</sup> Forestry is not among the union matters. Zanzibar has its own forest legislation, namely; The Environmental Management for Sustainable Management Act, 1996, The Establishment of Zanzibar Nature Conservation Areas Management Unit Act, 1999 , and the Forest Resources Management and Conservation Act, 1996.

The objective of this study therefore, is to review the existing legal and institutional framework governing coastal forest and to identify feasible legal and institutional options for the sustainable utilization of coastal forest.

### **A. POLICIES .**

#### **1. The National Forest Policies**

Tanzania National forest policies set forth directives for sustainable use of forest biodiversity, the most important element of the Forest Policies of 1995 & 1998 is that they encourage participatory forest management and set up an institutional framework for forest management in Tanzania. This is done through setting up a framework for joint forest management within forest reserves and for community-based forest management outside the reserves. By doing this, the policies attempt to incorporate environmental and biodiversity values of forests into forest management and utilisation.

The Policies also promise that benefit sharing mechanisms will be established to enable communities to benefit from revenue accruing from forest products and services. This is based upon recognition that collaboration with local populations will promote conservation of areas with unique environmental values.

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<sup>5</sup> First Schedule

The policies adopt several key strategies in tackling biodiversity conservation and management. These include, establishing special category of forest reserves, (such as nature reserves) in areas of high biodiversity value, incorporation of biodiversity conservation and management in management plans of all protection forests, strengthening of biodiversity research and information dissemination, incorporation of biodiversity conservation in the management regimes of natural production forests and plantations and minimisation of the replacement of natural forest cover with exotic species, soil water as a driving engine for agriculture development in the coastal area.

## **2. The National Land Policy**

The National Land Policies (1995) entail considerable changes to the manner of acquisition, holding and transfer of land. A distinction is made between land held upon the authority of central government and land under the authority of village governments. Adjudication and registration of village land (including forestlands) are vested in Village Councils who are the sole managers in their respective areas. The Land Policies advocate for conservation of sensitive lands and areas of ecological importance.

Despite the promulgation of the policy, the tenor of land ownership and tenure remained the same. The radical title to land is still vested into the President with the citizens entitled to tenures of a limited period. Customary tenures have also remained to be susceptible to acquisitions without adequate or no compensation at all. Such factors discourage investments in tree planting and forest conservation in general.

## **3. The National Environmental Policy**

The National Environmental Policies (1997) specifically recognise the need for taking actions or measures that will promote sustainable use of biological resources for the benefit of both the present and future generations. The policies identify loss of forest cover as one the critical environmental problems facing the country. They emphasise on the collection and generation of information on biodiversity, and implementation of programmes that will forestall biodiversity loss.

In recognition of the crosscutting nature of biodiversity issues, the policy documents stipulate, “policies, strategies and programmes for the conservation of biological diversity and sustainable use of biological and genetic resources shall be integrated into relevant sectoral/cross-sectoral policies, strategies and programmes.”<sup>6</sup> However, Tanzania mainland does not have an environmental law while in Zanzibar the environmental policy has been implemented through Environment Act No. 2 of 1996. Such umbrella laws are indispensable as there are critical for the coordination of crosscutting environmental mandates<sup>7</sup>.

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<sup>6</sup> The National Environmental Policy, 1998, United Republic of Tanzania, Para 33

<sup>7</sup> However, steps are being taken by the Vice President’s Office towards enacting the Framework law on Environment for Tanzania Mainland

#### **4. National Biodiversity Strategy and Action Plan**

The Environment Division in the Vice President's Office has developed the National Biodiversity Strategy and Action Plan (NBSAP). Providing a coordinating framework for sectoral policy, this strategy and action plan is a response to the requirement under the Article 6 of Convention on Biological Diversity. Briefly, Article 6 requires Contracting Parties to develop appropriate national strategies, action plans and programmes for the conservation and sustainable utilization of its biological resources. The Article also includes a requirement for the integration of these strategies, plans and programmes into relevant sectoral or cross-sectoral plans, programmes and policies.

The NBSAP sets to build a society that values all 'biodiversity richness.' This must be done through applying ten guiding principles, which include the principle that 'the protection of biological diversity is the responsibility of each and every Tanzanian,' and that 'all life forms have intrinsic value and their use should be sustainable.' A number of cross-sectoral objectives are enumerated as well. These include the need to develop and strengthen sectoral and cross-sectoral institutional coordination for harmonization and mainstreaming of biodiversity concerns in planning and management. One of the strategic choices the NBSAP makes is providing cross-sectoral co-ordination between sectors responsible for biodiversity management and administrations at all levels.

The NBSAP is especially important in integrating biodiversity in development planning because mainstreaming is the 'follow-on' challenge arising from the NBSAP itself. However, despite that the NBSAP seems to be well articulated, the challenge seems to be how the document's objectives will be realized. Mainstreaming of biodiversity concerns will definitely be a gradual process and will also depend on a number of factors including presence or absence of the political will on the part of the leadership at the local and national levels.

#### **5. Tanzania Development Visions 2020 and 2025**

The Governments of Tanzania have adopted a multi-sectoral approach addressing poverty issues in the Development Visions. The main target of these visions are to reduce the widespread poverty in the Tanzanian society by improving socio-economic opportunities, good governance, transparency, and improved and redefined public sector performance. An appropriate balance between private and public institutions is emphasised.

Although it seems that the gist of the Visions are of economic imperatives, they also include social challenges ranging from health, education, and the environment. They clearly envisage the need to attain a sustainable level of development of the people. However, the Visions are not explicitly articulate strategies that will ensure implementation of different roles for conservation and sustainable use of biodiversity so as to achieve the intended vision of having sustainable development by the year 2020 and 2025. Given the importance of biodiversity to the income and consumption patterns of

the people of Tanzania, it is expected that such strategies should have been incorporated in the blueprint of such mega-policy.

## **6 Poverty Reduction Strategy Paper**

The Poverty Reduction Strategy Paper (PRSP, 2000), prepared as a part of the Heavy Indebted Poor countries (HIPC) initiative, is a concretisation of Vision 2025. Although acknowledging that poverty is largely a rural phenomenon concentrated in the 'subsistence farming,' this paper does not specifically address biodiversity issues.

Poverty in coastal areas is also major source of forest destruction. This is because the more poor people are, the more they are dependent on woodland and natural resources and environmental resources for consumption. This concept is subtly discussed in Poverty Reduction Strategy Paper (PRSP) that, the poor in Tanzania are heavily dependent on environmental resources for income generation.

However, the PRSP creates a course for promotion and facilitation of a partnership between the Government, the private sector and the civil society for purposes of poverty reduction. Arguably, any gains in poverty reduction might lead to a corresponding decrease in pressure on biological diversity, especially because most Tanzanians directly depend upon biodiversity for income generation and consumption. As it was noted by UNDP " ...for growth to be sustainable and equitable, issues of access to land resources and their management, water and solid conservation and other environmental factors are of crucial importance"<sup>8</sup>.

Apart from the feeble treatment of environment and biodiversity objectives in the PRSP, strategies to attain those objectives have not yet been articulated. However, it is hoped that a revised PRSP will address this shortcoming, and a new strategy to link environment and biodiversity to the PRSP process will developed by the Vice President's Office. PRSP should entail actions that will be taken to ensure that forests resources are sustainably utilized to enhance the livelihoods of rural populations in Tanzania.

## **7. The National Integrated Coastal Environment Management Strategy, 2003**

This strategy comprehensively provides useful linkages between environment and poverty and the coastal resources. It strongly advocates for integrated and participatory approach to coastal zone management. The strategy admits, " the only remnants of the once extensive ancient forests of East Africa remain in Tanzania, occurring as isolated patches on hilltops and offshore islands. Extensive mangrove stands still remain, occupying about 115,000 ha of the coast. Apart from their biodiversity richness, they are important and valuable resources to local communities by providing food, fuel and building materials both for home use and sale, as well as playing a vital environmental

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<sup>8</sup> UNDP (2003) Integrating Environment into the Poverty Reduction Strategy Process, Programme Support Document URT/03/004

role in the rich coastal ecosystem” The strategy proposed to be adopted to arrest the rapid deterioration of coastal ecosystems include:

- Supporting environmental planning and integrated management of coastal resources and activities at the local level and provide mechanisms to harmonize national interests with local needs- including the adoption of district coastal management action plans.
- Promoting integrated, sustainable and environmentally friendly approached to the development of major economic uses of the coastal resources to optimize benefits

## **B. LEGISLATION**

### **1. Forest Act, 2002**

The policy was followed up with the enactment of the Forest Act in April 2002. The Act was enacted to fulfill various objectives including; promoting, enhancing the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of natural resources for the benefit of the present and future generations. In addition, the Act is aimed at encouraging and facilitating the active participation of the citizens in the sustainable planning, management, use and conservation of forest resources and ensuring ecosystem stability through conservation of forest biodiversity, water catchments and soil fertility<sup>9</sup>. To do this, the law creates a scheme of rights and responsibilities to use and manage resources. Local communities are empowered under the law to declare their areas as forest reserves, which could be village, group or private forest reserves.

Thus, the vision for Community-Based Forest Management anticipates three categories of reserves: (i) Village Land Forest Reserve (VLFR) managed by the entire community; (ii) Community Forest Reserves (CFR) managed by a particular designated group in the community; and (iii) Private Forests (PF) managed by individual designated households.

Additionally, the Act envisages the possibility of villages, groups or individuals securing tracts of forests or taking on management functions in public reserves within the framework of Joint Forest Management (JFM) Agreements with the Government. However, despite the law having enacted provisions for registration and other procedures in this respect, no regulations for implementing the relevant provisions of the Act have been published. As a matter of fact, the success (or failure) of this policy and legislative innovation will depend on how the general public responds to these management arrangements and whether they will actually alleviate some of the problems like deforestation or unsustainable harvesting of forests.

This Act was enacted for purposes of providing for the Management of forests, to repeal certain laws relating to forests and for related matters. The Act was also enacted to fulfill various objectives including; promoting, enhancing the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of

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<sup>9</sup> See Section 3 of the Forest Act, 2002

natural resources for the benefit of the present and future generations. Furthermore, the Act is aimed at encouraging and facilitating the active participation of the citizens in the sustainable planning, management, use and conservation of forest resources and ensuring ecosystem stability through conservation of forest, biodiversity, water catchments and soil fertility.<sup>10</sup>

The Act divides forest in four types<sup>11</sup>. The first type is national forest reserve which consists of; forest reserves and nature forest reserves. The second type is the local authority which consist of; local authority forest reserves, forests on general land, the third type consists of village forests which consist of village land forest reserves, community forest reserves created out of village forests and forests which are not reserved which are on village land and of which the management is vested in the village council. The fourth type is private forests which are; forests on village land held by one or more individuals under a customary right of occupancy and forests on general or village land of which the rights of occupancy or a lease has been granted to a person or persons or partnership or a corporate body or a Non-governmental Organisation for the purpose of managing the forest which is required to be carried out in accordance with the Act.

The Act creates the position of the Director of Forests who is appointed by the President.<sup>12</sup> The Director is the advisor to the Government on all matters of forests.<sup>13</sup> The Director of Forests who is in charge of implementing the Act is required to ensure that local government authorities, association of local authorities and other Forest management authorities are consulted and kept informed about the management of forest under the Act and other written laws related to the management of forest<sup>14</sup>.

Section 11 provides guidelines for formulating and implementation Forest Management plans . Such plans have to be prepared for areas declared by the Minister responsible for forest to be a national or local authority forest reserve pursuant to section 22 of the Act. Section 13 provides detailed forest reserve management plans. Management plans have also to be adopted for village lands and private forests. In preparation of a village land forest management plan, village councils are required to undertake consultations with the village community so as to assist it to prepare the plan with a broad and general support from the users. Section 14 requires the Village council to submit the proposed village land forest management plans to the district council having jurisdiction on that area.

The law also provides a framework for joint forest management agreements between private and public parties.<sup>15</sup> The agreement have to include among other things; description of forest reserve, description of matters which are the subject to the agreement; a statement of the objectives of the agreement; description of management

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<sup>10</sup> Section 3 of the Forest Act, 2002

<sup>11</sup> Section 4 of the Forest Act,2002

<sup>12</sup> ibid section5(2)

<sup>13</sup> ibid section 5(3)

<sup>14</sup> Section 8 of the Act

<sup>15</sup> ibid Section 16

authority agreed to be undertaken by the manager; rules governing resolving any disputes between them.

The Forest Act incorporates the Environmental Impact Assessment (EIA) provision which requires all developments to be subjected to EIA before being undertaken. EIA has to be completed to the satisfaction of the Director<sup>16</sup>. Section 22 gives Minister powers to declare a forest reserve. An area of land may be declared as a national forest reserve, local authority reserve or community forest reserve. A national reserve may consist of a production forest reserve, protection forest reserve or a nature forest reserve<sup>17</sup>.

The Act provides for management responsibilities in respect of forest reserves, that functions of managing a national forest reserve may be undertaken by either; the Divisional, Executive Agency, a local authority, a community group, a person holding a concession of the whole part of the forest reserve; a company, co-operative or other organization in private sector or a non-governmental organization.<sup>18</sup>

The use of forest produce is subject to a permit system. Section 49 provides for permits which may be granted for fell or extract timbers, gather or take away specified forest produce, erect building or structure, enter to hunt or fish allows domestic animals to enter and graze in forest reserve.

The law gives powers to the Minister to declare certain trees to be categorized as reserved trees.<sup>19</sup> Such reserved trees may include mangrove trees and other important coastal tree species. Under Section 67 the Minister after consultation with such persons and organizations within public and private sectors who are experts on the subject and taking account of any international agreements which contain provisions on the matter, are required to prepare and publish in the gazette one or more list of wild plants so as to preserve and maintain biodiversity and genetic resources within the country and thereafter from time to time, by notice published in the gazette amend, vary, add to or delete from any such published list. The sovereignty of Government of Tanzania over biological resources is declared under Section 69 of the Act.

The Act prohibit any person from burning vegetation on any land outside cartilage of his own house or compound or willfully or negligently kindle or cause to be kindled any fire which he has reasonable cause to believe may spread so as to destroy or damage property of any other person or the state.<sup>20</sup> Section 77 of the Act provides that the Minister responsible for forests may determine and prescribe, the services and permits for which fees shall be charged by forest managers and their corresponding charged by forest managers and their corresponding charge rates.

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<sup>16</sup> Section 18 of the Act

<sup>17</sup> Section 70 of the Act

<sup>18</sup> *ibid* Section 27

<sup>19</sup> Section 65 of the Act

<sup>20</sup> Section 70 of the Act

Offences and penalties for violations of the Act are provided for under Sections 84 to 100. For instance, Section 84 provides that any persons who without an existing right, permit or other lawful authority under the Act enters into the forest reserve, performs any act which is prohibited is guilty of an offence against this Act. Upon conviction she/he is liable to a fine not less than thirty thousand shillings and not exceeding one million shilling or to imprisonment for a term not exceeding two years or both such fine and imprisonment.

The Act is important for the protection and regulated use of coastal forests. It provides for a variety of institutional arrangements that could be used to manage forests including Coastal forests.

## **2. Zanzibar Forest Act 1996**

The Zanzibar Forest Resources Management and Conservation Act No. 10 of 1996<sup>21</sup> aims to promote the protection, conservation and development of forest resources for the social, economic and environmental benefit of present and future generations of the people of Zanzibar. With this, the act is objected to encourage and facilitate the active involvement of local people in the sustainable planning, management, use and conservation of forest resources; preserve and enhance the environmental functions of forest resources; and meet Zanzibar's demands for forest produce within the framework of sustainable forest management.

## **3. Land Act, 1999 and The Villages Land Act, 1999**

Following the National Land Policy, two pieces of legislation were enacted in 1999. These are the Land Act and the Village Land Act. The Land Act establishes three categories of land: general land, reserved land and village land. The Land Act was enacted to make provisions with regard to management of reserved land and general land in line with conservation laws in which those reserved lands are established while the village land act make provisions for the management of village lands.

One feature of these Acts and related regulations made thereunder is the fact they recognize customary rights in land and allow for their registration. This innovation has the potential to directly affect the position of millions of hectares of unreserved or "general" forestlands. More relevant to biodiversity concerns, the new land laws have broadened the definition of "customary rights" to include the right of household owners, groups, or communities to hold commons (such as forests) as registered common property.

Most of the land in Tanzania is village land and given the breadth of village lands that traverses throughout the country, it is certain that some of the important biodiversity ecosystems are mainly found within village lands. However, it is unlikely that ordinary villagers or village groups will be able to obtain certificates. So far, there are no

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<sup>21</sup> GoZ (1997) The Forest Resources Management and Conservation Act No. 10 of 1996. Legal supplement (Part I) to the Government Gazette Vol. No. 5769 of 6<sup>th</sup> December 1997. Government Printer. pp 167-264

indications that the nagging problem of titling is near being fully tackled. Thus, it remains to be seen if the new land laws could have any considerable impact on management and use of biological resources. So far experience has shown that even under the new laws, customary land rights remain to be fluid and tenuous as evidenced in the massive evictions that carried out by the Government to create way for conservation or direct foreign investments.

Before enactment of Land Act 1999 and The Village Land Act,1999, Tanzania's land tenure was regulated by Land Ordinance, 1923. The Land Act establishes three categories of land; general land, reserved land and village land. The Land Act was enacted to make provisions with regards to management of reserved land and general land in line with conservation laws in which those reserved lands are established while the Village Land Act make provisions for the management of village lands.

The Tanzania's coastline cuts across through different lands under the jurisdiction of local government authorities and the latter has direct management mandates over those lands. It is evident that village land includes a lot of land and may give the village government a big area to manage. The legal procedure for determining the boundaries of village land is through process of adjudication and demarcation that were previously being carried administratively through the village-titling programme. Given the breadth of village lands that traverses throughout the coastline, it is certain that some reserved lands, including most marine parks and reserves are mainly found within village lands. The use of the land in those areas will have to be in conformity with the restrictions imposed by the Marine Parks and Reserves Act, 1994 which to some extent take away the rights of the villagers and the Village Councils to utilize lands and resources found therein.

The Village Land Act,1999, requires the Village Council to exercise the functions of the management in accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under the trust of the village land.<sup>22</sup>

Section 8(3) of the same Act requires the Village Council in its management of the village land to have regard to the following:

- (a) the principle of sustainable development in the management of village land and the relationship between land use, other natural resources and the environment in and contiguous to the village and village land;
- (b) the need to consult and take account of the views and where it is so provided, comply with any public officer or public authority having jurisdiction over any matter in the area where the village land is;
- (c) the need to consult with and take account of the views of other local authorities having jurisdiction in the area where the village land is.

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<sup>22</sup> Section 8 of the Village Land Act, 1999

It is therefore clear that the power of management of village land by the Village Council are subject to certain terms and conditions that must be complied at the and hence not absolute<sup>23</sup>. In addition, Village Councils are required to take account of and if necessary comply with public authorities with jurisdiction over areas where the village lands are situated. Such public authorities must be exercising their powers within the context of existing laws and regulations.

The Village Land Act provides that village land may be held under a customary rights of occupancy.<sup>24</sup> This provision is also relevant to community based natural resources management as it is recognizes the rights of different users of land in forest reserves as regulated by the Forest Act,2002. Section 14 (9) however, retain the powers of the relevant authorities under the Forest Act, 2002 to regulate the use of the land by the people holding their land under customary right of occupancy. These provisions are relevant to coastal forests which are being used and/or managed by village community.

#### **4. The Local Government (District) Authorities Act, 1982**

This is an Act that governs local governments at the district ward and village level. The Act contains extensive provisions relating to the establishment, composition, basic functions and legislative powers of district, township councils and village authorities.

Section 22 of the Act provides for the functions and mandates of a village council<sup>25</sup>, which is a body corporate capable of suing and being sued. Those functions include; planning and coordinating the activities and rendering assistance and advice to the residents of the village engaged in aquaculture , fishery, agriculture, horticultural forestry or other activity or industry of any kind; and to encourage the residents of the village to undertake and participate in communal enterprises.

Village council may also propose by-laws to be adopted by village assembly before being approved by the district council. Legislative powers of the of the district councils are provided for under section 150 of the Act. Section 192(1) of the same Act provides that by-laws may be made to impose special conditions and give enforcement powers to village authorities. Local government are also responsible for revenue collection and proposing biodiversity conservation areas for gazetment as protected areas. In addition, they are in charge of managing village and/or local government forest reserves. They are also involved in overall management of marine parks/reserves.

The Act is relevant to conservation of coastal forests, which are within the jurisdiction of local authorities. Section 118 (1) and (2) provides that, district councils must take all necessary measures to control soil erosion and desertification, regulate use of poisonous and noxious plant/drugs or poison, control and regulate livestock i.e. grazing, modes of husbandry, maintenance of forests, etc. These functions are further amplified in the schedule of the Act.

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<sup>23</sup> Section 8 (3) of the Village Land Act

<sup>24</sup> *ibid* Section 14

<sup>25</sup> The lowest administrative unit of the local government

## **5. Local Government (Urban Authorities) Act, No. 8 of 1982**

This Act provides for the establishment composition and legislative powers of the urban based local government authorities in Tanzania. The urban council comprises of the governing bodies of townships, municipalities and cities.

Section 42 of the Act provides for the establishment of the committees of urban authorities other than city councils. These committees are for; finance and administration; economic affairs, health and education; urban planning and environment; a city council is required to establish such committees as may be determined by the minister in the order establishing it.

The objectives and functions of the urban authorities are provided for under section 54 of the Act. These includes; to facilitate the maintenance of peace, order, good governance, promote the social welfare and economic well being of people within their areas; further suppression of crimes and protection of public and private property; regulate and improve agriculture, trade and industry, further and enhance health, education and the social, cultural and recreational life of the people and fight against poverty and distress.

The Act also contains provisions relating to environmental management and protection. These provisions include section 55(1) which provides for the general duties of the urban authorities including to take and require the taking of measures for conservation of natural resources, prevention of soil erosion and prohibition and control of cultivation; etc.

The Act under section 80(1) provides that the urban authorities may, subject to the consent of the proper officers make by-laws to be applicable in their areas. Some of these by-laws may be on environmental and natural resources management. Section 80(1) requires the authorities to give public notice to the local inhabitants of the intention to make the by-laws for the comments. After the expiry of the notice, the draft of the by-law has to be submitted to the Minister for approval. Upon being approved, the by-laws shall be gazetted and shall have full force from the date of publication or the commencement specified in the by-laws.

## **6. Local Government (Miscellaneous Amendments) Act, 1999**

The Local Government (Miscellaneous Amendments) Act has introduced several amendments to the existing laws. Section 7 of the Act empowers the Ward Development Committee the responsibility of managing environmental related activities. Section 13 of the Act provides for the establishment of Standing Committees whose number shall be not less than three and not more than six. Two of the standing committees have a direct

bearing on environmental matters. The standing committee has a direct bearing on environmental matters.

Section 17 of the Act amends section 111 of the Local Government Act by introducing a new section (s111A (2) which stipulates that it shall be the duty of local authorities in performing their functions to provide for the protection and utilization of the environment for sustainable development.

## **7. Tanzania Investment Act, 1997, No. 26 of 1997**

Coastal tourism is one of the sectors that have attracted substantial capital investment from both local and foreign companies. The Tanzania Investment Act is the principal legislation aimed at governing investments in Tanzania. The Act makes tourism one of the priority areas for investment in Tanzania. Particular areas for investment are:

- a) Operation of tourist hotels and other types of accommodation.
- b) Tourist transportation (including road transport, air charters and ocean going vessels;
- c) Provision of services related to tourism, such as tourist safaris (including licensed hunting, restaurants and photographic services).

The Act declares that one of its objectives is “to provide for more favorable conditions for investors...”. Investors are not subjected to any standards of good environmental behaviour because there are no mandatory or voluntary environmental impact assessment requirements under the Act. In fact, under this law, there is absolutely no mention of the word ‘environment’ anywhere and no environmental obligations whatsoever are imposed upon investors. This means that the grant of the TIC certificate to an investor is not subjected to prior environmental impact assessment. Given this kind of legal regime, investments in coastal areas may therefore have significant impact on coastal forests.

## **8. Town and Country Planning Ordinance Cap 378**

Development of settlements in coastal areas are regulated by the provisions of this Ordinance. Under the Ordinance, the Minister responsible for Town and Country Planning, may after consulting the urban authority concerned, declare by an order published in the gazette that an area is a planning area. Once an area is so declared “no person shall develop any land within a planning area without planning consent”<sup>26</sup>. If the owner contravenes this provision, the urban authority may serve a notice on the owner to discontinue any development started and to alter or pull down and remove any works or buildings within such time as specified in the notice.

In 1960, the **Town and Country Planning (Use Classes) Regulations**<sup>27</sup> were promulgated to facilitate the work of urban authorities. Any development in the stipulated use groups must have a planning consent. Another Town Planning Legislation

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<sup>26</sup> *Ibid* section 35

<sup>27</sup> GN 504 of 1960

which is meant to regulate planned development and environmental conservation is the **Town and Country Planning (Public Beaches) Regulations, 1992**<sup>28</sup> (hereinafter Beach Regulations). The beach regulations set 60 metres from the sea shore a minimum distance which developments should be made. The previous regulations before the 1992 amendments had set 200 metres as the minimum. These regulations have facilitated the construction of a number of beach hotels and other facilities so close to the ocean and hence degrading coastal features especially the mangrove ecosystems that are found in those areas.<sup>29</sup>

## **9. The Marine Parks and Reserves Act, No. 29 of 1994**

The Act was enacted to provide for “establishment, management and monitoring of marine parks and reserves”. Under the Act, the minister is empowered to declare any area within territorial waters or an exclusive economic zone, or island or coastal area to be a marine park. Such declaration is subject to presence of condition warranting furtherance of the objectives of the Act. The Minister may also make such declaration if the intended area to be protected is of natural, scenic, scientific, historical or other importance or value; or preservation or management of the area is necessary to properly protect, permit access to, or allow public viewing or enjoyment of the area.<sup>30</sup>

The Minister for the time being responsible for fisheries has powers under the Act to designate marine parks and reserves under Section 10 of the Act, for purposes of:

- (a) Protection, conservation and restoration of species and genetic diversity of living and non-living marine resources and the ecosystem processes of marine and coastal areas.
- (b) Stimulation of rational development of underutilized natural resources.
- (c) Management of marine and coastal areas to promote sustainability of existing resource use and the recovery of areas and resources, which have been over exploited or otherwise damaged.
- (d) Ensuring that villages and local resident users in the vicinity of, or dependent on, a marine park or reserve are involved in all phases of planning, development and management of marine parks or reserves; share in the benefits therefrom; and have priority in resource use and economic opportunity afforded by the establishment of the marine park or reserve.
- (e) Promotion of community oriented education and dissemination of information concerning conservation and sustainable use of marine parks or reserves.
- (f) Facilitation of research and monitoring of resource conditions and uses within marine parks or reserves.

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<sup>28</sup> Government Notice No. 286 of 1992

<sup>29</sup> Lissu, T.A.M. and Magabe, A.B. (1994) ‘Coastal Erosion and the Control of Human Activities Along the Beaches: A Case Study of the Northern Beaches of Dar es Salaam’, *Research Paper Submitted in Partial Fulfillment of the Requirements of the Degree of Bachelor of Laws of the University of Dar es Salaam*, Dar es Salaam, Faculty of Law, (mimeo.)

<sup>30</sup> [s. 8(2)].

The Minister may, pursuant to the Act, authorize the carrying out of various activities within marine parks. However, such activities must be consistent with the general management plan of the park and provided that a compulsory environmental impact assessment of such activities is undertaken pursuant to the general management plan for the area of the park or reserve or regulations under this Act<sup>31</sup> or any other law. Apart from these powers, the Minister is also required to adopt a general management plan for each marine park and by regulation state the requirements for the adoption of the general management plan<sup>32</sup>.

The Minister, furthermore, may make regulations to regulate use and access of resources within a marine park or reserve. Such regulations may also prohibit fishing or capturing fish; gathering of aquatic flora and fauna; selling or transporting of fish and other aquatic fauna and flora; possession of weapons, explosives, traps or poisons; engaging in aquaculture; making salt, etc within a marine park or reserve.

## 10. The Antiquities Act, Cap 333

The Antiquities Act, Cap 333 makes provisions for the preservation and protection of sites and articles of archeological, historical or natural interest and for related matters. It regulated antiquities, monuments, ethnological objects, relics etc. The Director of Antiquities is empowered to publish a list of monuments and conservation areas ( section 2 (2)). The Minister responsible for Antiquities may also declare any place or structure of historical interest to be a monument for purposes of the Act. For example, *The Antiquities (Declaration of Areas) (Bagamoyo Township) Notice G.N 93 of 1983* declares the Bagamoyo township as an area comprising of buildings, structures, and other forms of human settlement that are valuable national heritage because of their historic, architectural and cultural value. Criteria for such declaration include: if the place or object is a valuable national heritage for its aesthetic value or contains a homogenous group of monuments, or have valuable national heritage for their historical, architectural, social or cultural value.<sup>33</sup>

The Minister may also declare any object or class of objects discovered or made in Tanzania and being of palaeontological, archaeological, historical or natural interest to be a protected object<sup>34</sup>. Under the Act, any person who discovers a relic or monument or any object or site which may reasonably be supposed to be a relic or monument must report the same to an administrative officer, the Director, the Conservator the Curator of the Museum<sup>35</sup>.

The Act restricts persons from excavating, dig or probe for monuments or relics, remove or collecting any relic for purposes other than for their protection, search for or collect any ethnographical object, without an excavation of a collectors license issued by the

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<sup>31</sup> [s. 13(2) and (3)]

<sup>32</sup> [s. 14(1) and (2)]

<sup>33</sup> Antiquities Act, (s.3).

<sup>34</sup> Ibid (s.9).

<sup>35</sup> Ibid (s.10)

Director of Antiquities<sup>36</sup>. Granting of a licence is subject to possession of relevant knowledge by the grantee and conditions may be imposed on such licences. Exports of controlled objects under the Act are also subject to a license from the Director. Local Governments are also empowered, subject to an approval by the Minister, to enact bylaws for purposes of preserving, accessing, and giving information relating to monuments.

Advisory Council of Antiquities is established under section 19 of the Act. The functions of the Council include, *inter alia*, issuing advisory and research services to the government in matters pertaining to museology or antiquities in Tanzania. Section 19B establishes the National Fund for Antiquities with contributions from various sources including the proceeds from sales of relics, casts etc.

## **C: INTERNATIONAL CONVENTIONS RELEVANT TO COASTAL FORESTS**

Recently, the International community has involved itself on issues of particular global significance or impact such as climate change, migratory species and use of biodiversity. The management of coastal forests is among the issues of global concern. International community has therefore enacted several conventions for purposes of conserving coastal forests. Tanzania has ratified several regional and international conventions related to coastal forests conservation, some of these conventions includes:

### **1. The Conventions On Biological Diversity (CBD)**

Tanzania ratified the CBD in 1996. The CBD is a framework agreement for the conservation, sustainable use of biological resources and the sharing of benefits from the use of biodiversity. It has many provisions supporting the setting aside of marine protected areas and marine conservation in general. Under the CBD, parties are obliged, among other things to develop national biodiversity strategies, to identify and monitor important components of biodiversity to establish a system of protected areas to conserve biodiversity, to promote environmentally sound and sustainable development in areas adjacent to protected areas and to rehabilitate and restore degraded ecosystem.

With the coming into force of the CBD in 1993, the subsequent conference of parties held in Jakarta in 1995 adopted the Jakarta Mandate on Marine and Biodiversity. Under that Mandate, governments re-affirmed the Coastal Biodiversity. The conference identified five thematic issues for action including Marine and Coastal Protected Areas. In addition, the conference approved two programme areas i.e research and monitoring on the values of marine and coastal protected areas and the development of criteria for the establishment and management.

### **2. The Ramsar Convention on Wetlands of International Importance, 1971**

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<sup>36</sup> Ibid (s. 11)

Tanzania ratified the Ramsar Convention in 2000. The Convention has a mission of ensuring “the conservation and wise use of wetlands by national action and international cooperation as a means of achieving sustainable development throughout the world”. Initially, the Convention focused on wetlands for migratory water birds, but now the focus has been expanded to take account of a broad range of wetland functions and values and the adoption of an integrated approach for their management.

Contracting parties are obligated under the Convention to designate sites for listing by the Ramsar Secretariat. It is the responsibility of contracting parties to ensure that these sites are managed in such a way that changes in their “ecological character” are avoided. Parties may seek the assistance of the Secretariat in implementing their commitments under the Convention.

It is estimated that about 48 percent of the Ramsar designated sites include coastal wetlands that have marine components<sup>37</sup>. The Ramsar designation therefore, provides an additional form of protection of some marine areas. Parties were recently urged by the Conference of Parties to speed up the designation of new sites from the wetland types that are currently under-represented under the list. These include the coral reefs, mangroves and sea-grass beds.

### **3. THE UNEP Convention for The Protected Management and Development of the Marine and Coastal Environment of the Eastern Africa Region.**

This Convention is one of the major sub-regional instruments of great importance to conservation of marine and coastal resources. This convention is not yet in force because the minimum number of ratification has not been reached. Tanzania is one of the state parties that have adopted the convention but not yet ratified it. One of the protocols adopted under the convention is the protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region. This protocol is the key catalyst in enhancing the conservation of coastal and marine biodiversity in Tanzania’s territorial sea and Executive Economic Zone. This convention is very relevant to conservation of coast forests because its principal objective is to establish close co-operation to protect and improve the state of wild fauna and flora and natural habitats in the region by the establishment of specially protected areas in the marine and coastal environment.

### **4. The New Partnership for Africa’s Development (NEPAD)**

The New Partnership for Africa’s Development (NEPAD) was formally launched in 2001. The long-term objectives of NEPAD are embodied in Articles 174 –188. These are poverty eradication, placing the continent on the path of sustainable development and promoting the role of women in all activities. Immediate goals of NEPAD are to: strengthen mechanisms for conflict prevention, resolution and management, promoting and protecting democracy and human rights, restoring and maintaining microeconomic stability, etc.

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<sup>37</sup> See World Commission on Protected Areas, *op cit* fn. 17.

The Environment initiative in NEPAD recognizes the need for a healthy and productive environment. Eight sub-themes of the initiative emphasized arresting of desertification, conservation of wetlands and cross-boarder areas, preservation of ecosystems, management of the coastline, global warming, environmental governance and the financing of all these [Article 141].

The NEPAD document does not articulate how environmental resources such as land, water, wetlands and forests will be dealt with under its Environmental Initiative. There is no strategy in the NEPAD document nor a framework for enforcing environmental governance in Africa. NEPAD needs to address these shortcomings if it is to bring the desired changes in the management of environmental resources in Africa<sup>38</sup>.

## **5. Southern African Development Community (SADC) Treaty**

Under the SADC Treaty, member states may adopt protocols for the effective implementation of the Treaty. One of the protocols that were adopted by SADC in recent years in the SADC Protocol on Forestry- ratified on 3<sup>rd</sup> October 2002.

The objectives of the protocol are to promote the development, conservation, sustainable management and utilization of all types of forests and trees, generate trade in forest products and achieving long term protection of forests for the present and future generations. The protocol provides for guiding principles which states are urged to implement in their bid to enhance effective management of forest resources at country and regional levels.

Under the Protocol, state parties are directed to ensure the adoption of laws the will give sufficient security of tenure to parties managing or using forest resources by clearly delineating ownership and occupancy rights. In addition, parties are required to develop national forest policies and programmes using common criteria and indicators; conduct regular forest assessments using an agreed methodology and establish a regional database on the status and trends, management and use of forest resources.

Parties are also urged by the protocol to take measures that enhance community based forest management and women participation. Issues relating to management of transboundary forest resources are addressed under Article 14 of the Protocol.

Tanzania and Mozambique are parties to this Protocol and hence bound by its provisions. The Protocol entails close cooperation amongst parties and states that are not parties to the protocol in issues relating to forest management.

## **6. The Treaty for the Establishment of the East African Community (EAC Treaty)**

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<sup>38</sup> Omoweh, D (2003) The New Partnership for Africa's Development (NEPAD): How Does It Address the Land and Resource Rights of the Rural and Urban Poor ?" Paper Presented at the 4<sup>th</sup> PAMPLRR Network Workshop University of Western Cape, Cape Town, May 5-7, 2003.

The Treaty for the Establishment of the East Africa Community was signed on 30<sup>th</sup> November 1999. Tanzania has passed an Act of Parliament<sup>39</sup> to incorporate the treaty as

“ The Partner States recognize that development activities may have negative impacts on the environment leading to the degradation of the environment and depletion of natural resources and that a clean and healthy environment is a prerequisite for sustainable development. The Partner States therefore:

(a) agree to take concerted measures to foster co-operation in the joint and efficient management and sustainable utilization of natural resources within the Community;

(b) undertake, through environmental management strategy, to co-operate and coordinate their policies and actions for the protection and conservation of, the natural resources and environment against all forms of degradation and pollution arising from developmental activities;

(c) undertake to co-operate and adopt common policies for control of transboundary movement of toxic and hazardous waste including nuclear materials and any other undesirable materials;

(d) shall provide prior and timely notification and relevant information to each other on natural and human activities that may or are likely to have significant trans-boundary environmental impacts and shall consult with each other at an early stage; and

(e) shall develop and promote capacity building programmes for sustainable management of natural resources.

2 Action by the Community relating to the environment shall have the following objectives:

(a) to preserve, protect and enhance the quality of the environment

(b) to contribute towards the sustainability of the environment;

(c) to ensure sustainable utilization of natural resources like lakes, wetlands, forests and other aquatic and terrestrial ecosystems; and

(d) to jointly develop and adopt water resources conservation and management policies that ensure sustenance and preservation of ecosystems.

Article 112 provides for further steps to be taken in the management of the environment and ecosystems in the East Africa sub-region. . It says:

1. For purposes of Article 111 of this Treaty, the Partner States undertake to cooperate in the management of the environment and agree to:

(a) develop a common environmental management policy that would sustain the eco-systems of the Partner States, prevent, arrest and reverse the effects of environmental degradation;

(b) develop special environmental management strategies to manage fragile ecosystems, terrestrial and marine resources, noxious emissions and toxic and hazardous chemicals;

(c) ...

(d) ...

(e) integrate environmental management and, conservation measures in all developmental activities such as trade, transport, agriculture, industrial development, mining and tourism in, the Community,

2. For Purposes of paragraph I of this Article, the Partner States undertake to:

(a) adopt common environment control regulations, incentives and standards;

(b) develop capabilities and measures to undertake environmental impact assessment of all development project activities and programmes;

(c) encourage the manufacture and use of bio-degradable pesticides, herbicides and packaging materials,

(d) encourage public awareness and education on the use of agricultural and industrial chemicals and fertilizers

(e) adopt environmentally sound management techniques for the control of land degradation, such as soil erosion, desertification and forest encroachment;

(f) promote the use of non-ozone depleting substances and environment – friendly technologies;

(g) Promote and strengthen the utilization of training facilities and research institutions within the

<sup>39</sup> See Act No. 4 of 2001

Community;

- (h) adopt common environmental standards for the control of atmospheric, terrestrial and water pollution arising from urban and industrial development activities;
- (i) exchange information on atmospheric, industrial and other forms of pollution, and conservation technology;
- (j) harmonize their Policies and regulations for the sustainable and integrated management of shared natural resources and ecosystems,
- (k) adopt measures and policies to address the existing demographic profiles such as high growth rates and fertility -rates, high dependency ratio, poor social conditions and poverty in order to mitigate their adverse impact on the environment and development;
- (l) adopt community environmental management programmes-,
- (m) promote enhancement of the quality of the environment through adoption of common Measures and programmes  
of tree planting, afforestation and reforestation soil conservation and recycling of materials; and
- (n) adopt common policies for conservation of biodiversity and Common regulations for access to, Management and equitable utilization of genetic resources.”

one of its domestic laws. The Act has incorporated the Treaty in its schedule. Article 111 of the Treaty is on “Environmental Issues and Natural Resources”. The Articles lays down possible areas of cooperation. The full text of the Article is in the BOX below.

The Treaty is at various stages of implementation and by virtue of Article 111 and 112 as indicated above, partner states have a wide latitude of adopting measures that will address conservation of coastal forests.

## **7. Other International Conventions of relevance to coastal forests**

There are other numerous conventions of relevance to the management of coastal forests. These include:

- The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora adopted in Lusaka in 1994
- Convention on International Trade in Endangered Species of Fauna and Flora (CITES) , 1973
- African Convention for the Conservation of Nature and Natural Resources, 1968
- Convention on the prevention of marine pollution by dumping of wastes and other matter
- International Convention for the Prevention of Pollution by Ships
- Bonn convention on the Conservation of Migratory Species of Wild Animals
- United Nations Convention of the Laws of the Sea
- United National Framework Convention on Climate Change
- United Nations Convention to Combat Desertification

## **8. Requirements for Implementation of International Legal instruments**

For the provisions of international convention to be effectively used in the country, and regulate the country's own conducts both inside and outside, they must be domesticated through into national law. After ratifying the conventions, it is trite for the country to review the existing legislation, strategies and policies so as to ensure that they are compatible with the international obligations, repeal or amend them if inconsistent with international requirements.

Tanzania is part to many international legal instruments relevant to the protection of coastal forests. However, it is important to note that in most British ex-colonies Tanzania inclusive, international conventions, including those governing marine and coastal resources, have no direct effect within the domestic legal order unless they are adopted under domestic law. Therefore for a treaty to which Tanzania is a party to apply to the

country, it must be incorporated into municipal law of the country through an Act of Parliament.<sup>40</sup> Indeed, there will no need of further ratification by the Zanzibar House of Representatives. However, case law provides that in Tanzania, lack of incorporation does not render a signed treaty to be of no effect. This was stated in by the Court of Appeal in *Transport Equipment Limited and Reginald John Nolan V Dervam . Valambhia*<sup>41</sup>. In this case the issue was whether the International Covenant on Civil and Political Rights of 1996 which Tanzania had signed and ratified was applicable to Tanzania despite the absence of its incorporation under domestic law. The court of Appeal held that the fact that an International Agreement to which Tanzania is a party, is not incorporated into the Tanzanian laws does not absolve the government of the duty to adhere to its undertakings in that agreement. Therefore an international legal instrument on marine and coastal resource that Tanzania has so far ratified, but not incorporated under domestic law, are binding on the country.

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<sup>40</sup> Chris Maina Peter, Human Rights in Tanzania: Selected Cases and Materials (Rudiger Koppe Vdrlag, Koln, 1997)

<sup>41</sup> Court of Appeal of Tanzania at Dar es salaam, Civil Application No. 19 of 1993 (unreported)

# **PART III: REVIEW OF MAIN CHALLENGES AND THREATS TO CONSERVATION AND SUSTAINABLE MANAGEMENT OF NATIONAL COASTAL FOREST**

## **1 INSTITUTIONAL FRAMEWORK**

### **A. Institutional Conflicts**

Despite the enactment of the Forest Acts, there are still some vertical and horizontal institutional conflicts especially between central and local governments. Management of forests on public lands remains to be an issue. Village forestry has not gained the desired pace as most villagers are not aware of their legal powers to assert management of forest resources in their lands. Licencing mandates for extraction of forest products in respect to forests on public lands are still unclear as to whether it is the central government or local government who is in charge. Horizontally local governments at district and village level have been operating with unclear revenue sharing procedures on trade in forest products.

### **B. Lack of targets for law enforcement and compliance**

Institutions involved in forest law enforcement do not set any tangible targets in ensuring compliance with the law. Offenders have always operated with impunity and despite the fact that there are might be official figures indicating the percentages of forest loss ensuing from illegal harvesting. These figures should have been used by forest law enforcers to set targets for enforcement.

### **C. Forest Law enforcers are not aware of laws and policies**

Most officials in charge of forest ecosystems in many areas of the country, including coastal forests have demonstrated inadequate understanding of the provisions of the Forest Act, 2002 and the Forest Policy, 1998. This is not to mention other laws relating to Forestry. Undoubtedly, given this scenario the current trend of poor enforcement of forest laws can be imbued from a lack of understanding of the very legal provisions of lack of legal texts.

### **D. Capacity building**

Law enforcement is an exercise that entails availability of resources and skills. These include, texts of laws, ammunition, vehicles etc. It also includes the knowledge of the legal provisions and how its is implemented on the ground and in courts of law. Currently, this capacity is inadequate in the forest sector. Inadequate funding is the key factor for inadequate law enforcement and compliance monitoring. The problem may not be of adequacy of legal provisions but of inadequate human resources to police tracts of forest land and financial resources to do so. With few law enforcers (majority of who

having been retrenched), law enforcement capacity is currently at its lowest. The capacity needs to be revamped.

### **E. Access to Forest Information**

Information on the status of forest regime and the policy/legal instruments governing it are not easily available to the public. As such, planning and management of forest resources especially at local levels is constrained by lack of policy and legal direction. Information need to be accessible to make citizens government officials informed of their legal rights and duties in forest management.

### **F. Decentralization of forest law enforcement and governance**

The Forest Act, 2002 has made strides in ensuring that forest governance has been decentralized up to lower levels (village level). However, these provisions are not backed with the necessary financial and human resources. Hence the lower institutional levels lack the necessary capacity to implement their mandates. As noted above, there are inadequate sharing of costs and benefits through the decentralized process.

Decentralization of powers has resulted in the benefits to the district governments at the costs of villages who are day-to-day managers of the forests. Also because of limited sources of taxable revenue for local governments, increasingly local governments are becoming more and more dependent on levies and taxes on forest products. Most Districts governments in the coastal areas have turned coastal forest to be their priority source of revenue-through the collection of levy on timber, charcoal, poles and firewood are legally mandated to do so under the Local Government (Finance) Act, 1982. Decentralization in forest management is in transition and not well apprehended as to roles and mandates of various actors. Reform of local government laws is staggered and will take time to implement.

## **2. LEGAL FRAMEWORK**

### **A. Inconsistency of the forest related legislation**

This could be seen especially between the Forest Act and the Local Government Acts, 1982 both Act giving powers and institutional accountability to different entities. Reporting and accountability of forest officials is severed under these Acts between the Director of Forestry (on technical issues) and the Ministry responsible for local government (on administrative issues). The Forest Act, 2002 and the Tanzania Investment Act, 1997 in which case the former requires investment to ensure minimum damage to forest ecosystems while the latter does not even have requirements of EIA for investors.

## **B. Forest laws do not assume any priority in terms of law enforcement**

Other arms of state that are involved in forest law enforcement such as the police and the judiciary are not trained in forest related legislation. They therefore not quite aware of the criminal nature of forest offences. More often than not, the police and the courts are not involved in the trial of forest crimes. This is not to mention that there are also serious problems of ineptness and corruption in the police force that undermines the enforcement of forest crimes.

## **C. Forest laws do not encourage self-regulation**

Forest laws in Tanzania do not have tools that ensure self regulation and hence reduce the cost of law enforcement. In other legal regimes, the principle of 'traceability' has been employed to ensure that goods are traced and recorded from the original source. Transactions are recorded all the way as they change hands in the forest trade continuum. In this way, tracking of illegal trade could easy and monitoring more efficient.

## **D. Laws and policies with respect to transboundary issues**

As seen above, the Act for implementing the EAC Treaty does address transboundary forest management issues. In addition, the SADC Protocol on Forestry also contain detailed provisions on how state parties should cooperate in the management of transboundary forest resources. However, State parties in the SADC and EAC needs to take more frugal steps in implementing these provisions on the ground because the state of shared forests in the region is deteriorating.

# **3. SOCIO ECONOMIC FACTORS**

## **A. Impact of energy policies on forest conservation**

The increase in electricity tariffs does not take into consideration its impacts on the forest estate. In Tanzania, 90% of the energy is generated from biomass<sup>42</sup>. Few people are connected to the national grid even in urban areas meaning that more than 90% of Tanzanians depend on charcoal or fuel wood for energy production. This situation is exacerbated by the lack of inadequate law enforcement regime leading to rapid deterioration of the forest estate.

In addition to that, the Government is yet to adopt financial and economic incentives to make people adopt energy efficient technologies. The existing tax laws do not exempt energy efficiency equipment and hence diminishes the incentives and capacity of people to purchase the same.

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<sup>42</sup> URT, National Forest Policy, 1998

## **B. International Monetary Fund (IMF) and World Bank engineered Structural Adjustment Programmes (SAPs)**

SAPs are directly responsible for the failure of agriculture (through the removal of subsidies and regulated crop markets), retrenchment of civil servants (including forest law enforcers) and collapse of the public sector. As such, alternative livelihoods apart from cash crop economy had to be sought. The majoring of people had to resort to exploitation of natural resources through extraction of forest produce, small-scale mining, artisanal fishing etc. Retrenchment of forest staff means reduced capacity to enforce forest laws.

SAPs have also encouraged foreign direct investments of all sorts of types. In Tanzania, there yet to be an adequate regulatory frameworks to ensure minimal environmental impacts of these investments. Some investments are authorized to take place in areas earmarked for forest conservation or harbour critical coastal forests. A case in point is the foiled Rufiji Prawn project, which had proposed to decimate about 10,000ha of mangroves in the Rufiji District despite a review of the project EIA indicating that there will be significant environmental impacts if the project is implemented. Tanzania does not have firm EIA laws while at the same time it is approving a number of investments into the country.

## **C. High revenue targets set by FBD and district councils.**

There is no evidence that licences for extraction of forest products are issued after thorough studies of the available quota and types of species of trees and their sustainability. Instead, the Treasury, the Ministry responsible for Planning and local governments have been setting high targets in revenue collection from sectors especially resource extraction sectors such as forestry. Plans are also underway to start the new executive Agency, i.e. the Tanzania Forest Service, that will be responsible in generating revenue from forest resources.

## **D. Undervaluing the costs of forest services**

National accounting and budgeting does not adequately reflects goods and services generated by the forest sector. The utility of the sector in terms of water catchment, climate regulation, timber, charcoal, fuel wood, soil erosion controls etc are not easily traced in the national accounts hence not prioritized in government spending.

## **E. Issues of livelihoods emanating from forest resources**

As we have seen above, the PRSP which is now the driving policy for poverty reduction in Tanzania does not adequately address livelihood issues accruing from forest resources. Therefore, the PRSP provisions and many others are not facilitative in ensuring that livelihood issues of forest dependent peoples and rural populations are addressed.

Coastal tourism could have augmented livelihood levels of coastal populations. But investment policies do not adequately articulate strategies to boost locally propelled investment initiatives such as eco-tourism. In Tanzania coastal tourism grows very fast and it contributes to the national income. However, coastal tourism is largely run by foreign investors and often raises a number of environmental concerns. The activities of tourists can affect the coast forests through increasing demand for cleared land for development and construction and cutting mangrove for poles.

## **F. Land tenure and forest tenure issues**

In Tanzania, all land is owned by the President “in trust for the people of Tanzania”. Tenure to land is usufructuary i.e. based on use and occupancy of land. Historically, customary tenure to land has been very fragile and subject to acquisitions often without compensation. Insecure land tenure is a direct dis-incentive to long-term investment on land especially on tree plant planting activities and forest conservation. In addition, the President has almost unfettered powers of land acquisition in “public interest”, upon ‘compensation’ of unexhausted improvements on land. The compensation regime for products like trees and their values on aesthetics and conservation is still vague. Recently, the Government announced plans to form a land bank to be a collection of idle lands that could be given investors. There is nothing that can prevent village forest and woodlands from being classified as “idle lands” and hence form part of land banks to be leased out for investment. Forest tenure is still tenuous as it is made appurtenant to land.

The Village Land Act insists on obedience by village governments to *ex cathedra* orders and comply with the decisions or orders of any public officer or public authority with jurisdiction over any matter in the area where the village is; and the need to consult with and take account of the views of other local authorities with jurisdiction over the village.<sup>43</sup> Given the likelihood of continued top down approaches to forest management, these kinds of provisions may not augur well with the ongoing devolution and decentralization of management of forest resources in Tanzania.

## **G. Community Participation in the Management of Coastal Forests**

The Ministry of Natural Resource and Tourism has the overall responsibility to conserve natural resource and promote sustainable use of natural resource. This includes developing and putting in place appropriate policies and legislation that guide and rationalize the conservation of these resources and their wise and sustainable use. The Forest Act, 2002,<sup>44</sup> contains provisions for involvement of communities in management of forests. The Act provides that, local community living near or in a forest reserve and who are members of such village may form a group for purpose of managing a forest or

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<sup>43</sup> Ibid s. 8(3)

<sup>44</sup> An Act to provide for the management of forests, to repeal certain laws relating to forests and for related matters

part thereof in accordance with the provisions the Act<sup>45</sup>. The Act under section 42 (2) provides for principles to guide those groups, which will be formed for purposes of managing community forest reserve.

As noted above, decentralization of forest management has not been made effective on the ground in most of the coastal forests. While the central government has inadequate staff to manage such forests, immediate action need to be taken to salvage the ongoing rapid deterioration of these forests by bestowing ownership and management to local communities.

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<sup>45</sup> Section 42(1) of the Forest Act,2002

## **PART IV: LINKAGES, CONCLUSION AND RECOMMENDATIONS**

### **1. Linkages with other programmes**

There are possibilities of linkages between the EACFE and other ongoing programmes in the Eastern Africa coasts. For example in Tanzania there are on going programmes of relevance to EACFE. These include the Tanga Coastal Zone Development Programme and the Tanzania Coastal Management Programme. WWF also has recently launched another programme focusing on the Eastern Africa Marine Ecoregion (EAME) commencing in 2004 to 2024. EAME whose 20 years strategic framework proposes to do the following:

- Enhancing the Enabling Policy and Legal Environment – EAME programme has recognised the need for effective set of policies and laws at national, regional and international levels so as to enhance and effectively managing the marine environment which includes coastal forests and wetlands. There is therefore an area of convergence for the two programmes to work together in improving the policy and legal framework for the management of coastal resources. As seen above there is a number of gaps that need to be addressed for various institutions working to manage coastal resources to be able to exercise their mandates effectively.
- Promoting Sustainable livelihoods and Economic development – The EAME and EACFE need to explore and harmonise their interventions because the two programmes will be addressing more or less the same stakeholders (government departments, local governments, NGOs, local communities and the private sector). Since the PRSP is under review, the two programmes have an opportunity to develop policy recommendations for the review.
- Regional action to address trans-national threats and conserve wide-ranging species. EAME has identified 3 priority areas in Tanzania; Global priority sites: Mafia-Rufiji-Kilwa (complex), Mtwara and Zanzibar. Eco-regional priority sites: Pemba, Tanga and Latham Island and the Sub-regional priority is Bagomoyo. Action plans in each of these priority areas include the management of mangroves ecosystems and improving communities based management programmes. EAME plans to develop and implement management plans in those areas and EACFE should find a niche in those activities.
- Monitoring, innovating and building capacity- EACFE and EAME will be all working in marine ecosystems. One of the activities identified under EAME include management research and information on coastal resources. This kind of information is relevant to EACFE programme. Sharing of this information between the two programmes should be fostered.
- Priority seascapes and marine protected areas- The areas that could be identified include wetlands, coastal forests and marshlands. EAME programme has

proposed management planning of priority seascapes with all key stakeholders including local community. EACFE and EAME could collaborate in planning activities to manage coastal forests and wetlands.

## **2. Conclusions on the existing management of Coastal Forests**

### **2.1 Institutional constraints**

There are institutional conflicts and overlaps in the management of coastal forests. Law enforcement lacks tenacity because there are no set targets for law enforcement and compliance in the forest sector. Knowledge of legal and policy provisions for forest management remains to be inadequate amongst most forest officials. The capacity – both technical and infrastructural to implement and enforce forest policies and laws remain very low and does not adequately support law enforcement efforts. Access to forest information for planning and management purposes are difficult and hence becoming a constraint. Decentralization of forest management and benefit sharing mechanisms is still subtle and staggered and hence will take time to be implemented in all areas with coastal forests.

### **2.2 Legal Constraints**

There is an apparent inconsistency in the provisions of forest related legislation leading into weak enforcement and implementation of laws and legal mandates on the ground. Public officials and institutions other than the Forest Department do not prioritize the enforcement of forest laws *vis a vis* other laws. But more importantly, forest laws themselves do not encourage self-regulation of the timber industry, which is one of the major consumers of coastal forests. Transboundary forest management is not addressed clearly on the ground despite having some legal provisions for their management.

### **2.3 Socio-economic constraints**

There is a huge impact caused by energy policies on forest conservation. The hiking of electricity tariffs and other sources of energy has a direct impacts on forest resources though this fact is not well articulated in political decision making processes. In addition, structural adjustment programmes exacerbate dependence on forest resources for livelihoods and reduction of manpower to police the forest estate. Sometimes the Forest and Beekeeping Division and local governments do set high revenue collection targets that depend on extraction of forest products and hence encourage further exploitation without proper plans and assessments on the impacts that might have on the sustainability of the resources. Values of forests are not adequately articulated in the national accounting systems and hence the impact of forest goods and services to livelihoods and national economy is not well appreciated and considered in national and local planning. Land tenure and forest tenure issues though important have not been clearly articulated as a precursor to effective management of forests in Tanzania. Community forest management needed to be made a reality on the ground.

### **3. Recommended Actions for effective management of Coastal Forests**

#### **3.1 Institutional Recommendations**

Institutional conflicts need to be harmonized especially in respect to revenue collection/ benefit sharing and licencing of forest extraction. Law enforcers in the forest sector need to give law enforcement a priority and set enforcement targets that should ensure sustainability of the resources. EACFE programme should strive to facilitate the availability of copies of laws and legal skills needed for law enforcement. Other capacity building measures may include the provision of inputs and recommendations to the government to increase funding for forest management and additional resources (material and human) for ensuring effective forest management. Forest information need to be made more accessible and EACFE may contribute to ensuring that this objective is realized. Decentralization of forest management is critical. But the process needs to gain the desired speed and it should not only decentralize forest management functions but also the resources to do so.

#### **3.2 Legal Recommendations**

Legislation need to be harmonized so ass decisions that are made on forests or forest land should not be conflicting. All arms of state that are involved in law enforcement should also give priority to the enforcement of forest laws. Provisions that require self-regulation should be included in the forest laws so as to reduce the cost and manpower needed to police the forest estate. Laws that impinge on transboundary coastal forests need to be implemented on the ground.

#### **3.3 Socio economic issues**

Energy policies should take cognizance of need to take measures to conserve and sustain the forest estate. Electricity and other alternative energies should be made available at affordable prices so as to reduce dependence and pressure on biomass. Structural Adjustment programmes should be implemented with caution so as to ensure that the required number forest staff is maintained to manage forest resources. Targets set for revenue collection from the forest estate should be based on quantitative and qualitative studies that show the state of the resources before licencing commences. Value from forest resources should be reflected in the national and local accounting and planning systems. Issues of livelihood emanating from forest resources need to be addressed meaningfully. Land tenure is critical to effective forest management. Tenure security especially of rural populations needs to be assured both under the law and practice. Community participation is now guaranteed under the law. EACFE can held to facilitate the implementation of legal mechanisms that are needed make community forest conservation a reality on the ground.

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