

# **ENVIRONMENTAL LAW AND POLICY IN TANZANIA: REFLECTIONS ON THE ENFORCEMENT OF THE ENVIRONMENTAL MANAGEMENT ACT**

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## **Abstract:**

Tanzania is a vast country with adverse environment that needs to be protected for the good of current and future generations. The government has adopted environmental policies and enacted laws in order to protect the environment. The leading legislation in this effort is the Environmental Management Act which contains relatively comprehensive provisions which, if properly enforced, can help to protect and conserve the environment of the country. This article argues that the Act is not fully enforced not only by individual citizens but also relevant government institutions and as a result the intended objectives for its enactment are not fully realized. Using all the available avenues of enforcement, public education and collaboration among state organs will help to protect the environment.

**Key Words:** Environment, policy, biological diversity, enforcement

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## 1. INTRODUCTION

The world population is increasing and this has an effect on the environment. Human activities normally put pressure on the environment. As a result, environmental degradation is on the increase in the world. Tanzania has not escaped that phenomenon. The country is facing a number of environmental problems which are the result of increased population. To protect and preserve her environment the government has ratified environmental treaties, put in place policies and enacted laws. However, adopting policies and enacting laws alone do not ensure safety of the environment. Policies and corresponding laws must consistently and effectively be enforced to ensure that the intended results are obtained.

This article is intended to outline the relevant environmental policies and laws meant to protect the environment and examine their enforcement.

However, as the country has many sector legislation providing, partly but variably, for the protection of the environment the article focuses basically on the Environment Management Act and the National Environmental Policy. It explores the enforcement avenues provided in the Act and the policy and the extent to which the same have been utilized to preserve and protect the environment in the country.

## 2. BASIC CONCEPTS USED IN THE ARTICLE

The first important concept used in this article is 'environment'. This word originates from a French word *environner* which means

to encircle.<sup>1</sup> In this article, the term ‘environment’ is taken to mean the totality of the natural world which includes the land, water, air, atmosphere, plants, animals, mineral resources, biodiversity and the ecosystem. It is the interaction among these that constitute the environment.<sup>2</sup> Another key concept used extensively in this work is ‘enforcing’. This term is used in its wider sense. It is taken to mean the act or process of ensuring compliance. It entails the taking of administrative, civil or criminal action against violators of environmental law. A United Nations Environmental Program (UNEP) document once amplified the wider context of the term ‘enforcing’ in the following words:

The range of procedures and actions employed by the state, its competent authorities and agencies to ensure that organizations or persons potentially failing to comply with environmental laws or regulations can be brought or returned into compliance and/or punished through civil, administrative or criminal action.<sup>3</sup>

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<sup>1</sup> Shelton, D., and Kiss, A., *Judicial Handbook on Environmental Law*, Hertfordshire, UNEP, 2005, p.4., also available at <http://www.unep.org/delc/Portals/119/publications/Judicial-Handbook-Environmental-Law.pdf> accessed on 8<sup>th</sup> September 2015.

<sup>2</sup> Massawe, E. S, “Environmental Rights, Protection and Management in Tanzania: Justification for Their Inclusion in the Would-be New Constitution”[LEAT] at p. v found at <http://www.policyforum-tz.org/files/EnvironmentalRights.pdf> accessed on 3rd September 2015.

<sup>3</sup> UNEP: “Enforcement of Environmental Law Good Practices from Africa, Central Asia and ASEAN Countries” at page 1 found at <http://www.unep.org/environmentalgovernance/Portals/8/documents/enforcement-environmental-laws.pdf> (accessed on 8th September 2015).

In the case of Tanzania, the powers to enforce environmental law violations are extended to individual persons.<sup>4</sup>

Another important concept used in this work is 'policy'. According to the Oxford dictionary a policy is a course or principle of action adopted or proposed by an organization or individual.<sup>5</sup> Cambridge Dictionary further amplifies the term and defines a policy to be:

A set of ideas or a plan of what to do in particular situations that have been agreed to officially by a group of people, a business organization, a government, or a political party.<sup>6</sup>

In this context a policy on any area of governance indicates the thinking and direction the government has adopted.

### **3. AN OVERVIEW OF THE GEOGRAPHY AND ENVIRONMENTAL PROBLEMS OF TANZANIA**

Tanzania, situated in the East coast of the Indian Ocean, has a total area of 945, 087 square kilometers (364,900 square miles) and home to three big lakes located in the East African region i.e., Lake Victoria, Lake Tanganyika and Lake Nyasa. There are a number of large rivers,<sup>7</sup> national parks<sup>8</sup> and mountains including

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<sup>4</sup> Section 5 of the Environment Management Act gives even private persons the right to bring an action for environmental law breaches.

<sup>5</sup> *Oxford Dictionaries* at <http://www.oxforddictionaries.com/definition/english/policy> (accessed on 2nd November 2018).

<sup>6</sup> *Cambridge Dictionaries Online* at <http://dictionary.cambridge.org/dictionary/english/policy> (accessed on 1st November 2018).

<sup>7</sup> The main rivers include Ruvuma, Rufiji, Pangani and Malagarasi.

<sup>8</sup> Main national parks include Ngorongoro, Serengeti, Ruaha, Katavi, Mikumi and Lake Manyara National Park.

the highest mountain in Africa, the Kilimanjaro. The country is endowed with rich biodiversity and natural resources. The richness in biological diversity was ably summarized by Melisa Thaxton in the following words:

Biologically, Tanzania is one of the wealthiest nations on Earth and is a globally recognized heritage site. Its diverse terrestrial, marine and freshwater ecosystems provide habitat for a wide array of plant and animal species. Home to the fifth-largest number of species in Africa, Tanzania is a 'megadiversity' country – one of a few nations that together account for a disproportionately large percentage of global diversity.<sup>9</sup>

Records indicate that the country is one of the fourteen biodiversity-hotspots in the world.<sup>10</sup>

At the time the country got its independence in 1961 there were only 10 million people and, by then, there were relatively a few environmental problems. Currently she is estimated to have about 59.6 million people.<sup>11</sup> People living in the rural areas, who are the majority, directly depend on the environment for income generating activities and provision of basic needs such as food, fuel wood, building materials and related needs. In addition increases of population coupled with urbanization and related

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<sup>9</sup>Thaxton, M., "Integrating Population, Health and Environment in Tanzania" at <http://www.prb.org/pdf07/phe-tanzania.pdf>, p. 4 (accessed on 2<sup>nd</sup> October 2018).

<sup>10</sup> United Republic of Tanzania: Fourth National Report on Implementation of Convention on Biological Diversity (CBD) at <https://www.cbd.int/doc/world/tz/tz-nr-04-en.pdf>, p. 5 (accessed on 2<sup>nd</sup> November 2018).

<sup>11</sup> World Population Review, "Tanzania Population 2018" at <http://worldpopulationreview.com/countries/tanzania-population/> (accessed on 2<sup>nd</sup> November 2018).

human activities, like industries, have added pressure on the environment. These have resulted in complex problems that touch almost every area of the environment.

Technically environmental problems arise for two main reasons namely the use of resources at unsustainable levels and contaminating the environment through pollution.<sup>12</sup> The effect of these is the damage to the environment. As regards Tanzania its National Environmental Policy<sup>13</sup> enumerates about six major problems. The first problem is land degradation which is more common in rural areas than urban areas. It is argued that poor agricultural practices and the effects of overgrazing are the major causes of land degradation. The second problem is the lack of accessible and quality water for rural and urban populations. The third is environmental pollution which is more common in the urban areas. The major cause of this problem is lack or improper treatment of solid and liquid wastes from households, industries and other entities. The fourth major problem is loss of wildlife habitats and biodiversity. As indicated above the majority of people in the rural areas depend on the environment for their livelihood. Improper agricultural methods used coupled with unsustainable use of natural resources and unscientific mining practices have adversely affected wildlife habitats and biodiversity. The fifth problem is the deterioration of aquatic systems. The unsustainable use and the extensive conduct of human activities near rivers, lakes, the ocean and other aquatic bodies have threatened the existence of the water bodies. The sixth problem is

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<sup>12</sup> Shelton, D., and Kiss, A., *Judicial Handbook on Environmental Law*, above note 1, p. 3.

<sup>13</sup> National Environmental Policy, promulgated in December 1997.

deforestation which is common in both rural and urban areas but more prevalent in the former.<sup>14</sup>

The government, gradually and at varying times, upon realizing the seriousness of these problems, adopted policies, enacted or amended laws to deal with the situation. Such policies and laws were both sector and cross-sector based.<sup>15</sup>

#### **4. KEY ENVIRONMENTAL POLICIES OF TANZANIA**

After realizing the growing threat to the country's environment the government gradually adopted different policies that gave guidance on what was to be done in specific situations. Different sectors adopted policies with a view to ensuring that environmental concerns were properly addressed. In 1977 the National Environmental Policy was promulgated. There, however, are other relevant sector policies which we propose to examine before exploring the National Environmental Policy.

The National Land Policy of 1997 is one of the most important environment related sector policies because, in our view, land is one of the basic components of the environment. The policy has a number of statements that deal with the protection of the environment. It prohibits, first, the allocation of land along river

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<sup>14</sup> Ibid. Paragraph 11. For more detailed elaboration see also MAZINGIRA: "Causes of Environmental Problems in Tanzania" December 5, 2008, at file:///C:/Users/user/Documents/Environment%20in%20Tanzania/CAUSES%20OF%20ENVIRONMENTAL%20PROBLEMS%20IN%20TANZANIA.htm (accessed on 4<sup>th</sup> September 2015).

<sup>15</sup> Examples of cross- sector Policies include National Land Policy of 1997 and National Environmental Policy of 1997 while sector policies include National Forest Policy of 1998. Examples of laws passed include the Land Act of 1999, the Village Land Act of 1999, the Environment Management Act of 2004 and the Forest Act of 2004.

banks, catchment areas, wetlands, hazardous lands, mangrove swamps or any fragile environment for the purpose of protecting the environment.<sup>16</sup> The policy notes the existence of some urban agricultural activities and contends that some of them are conducted in hazardous areas leading to land degradation and water pollution. It adds that some of the agricultural activities are done in areas affected by industrial pollution thereby affecting the health of consumers of their produce. On this aspect the policy directs that urban agriculture should be regulated and monitored to ensure that the environment and health of the people are not affected.<sup>17</sup> Apart from this, the policy document provides that where coastlines are to be used for building hotels and residential buildings then Environmental Impact Assessment (EIA) must be conducted first.<sup>18</sup> Fishing, it has directed, must be done sustainably and with proper regard to environmental considerations.<sup>19</sup>

Another sector policy is the National Forest Policy of 1998. This is also a key environment related policy document which expressly predicates itself on the National Environmental Policy of 1997. Its environment related objectives are promoting the sustainable use of forests and forest products; ecosystem conservation and management.<sup>20</sup> Chapter four of the policy document gives details on how that can be achieved.

Another policy document, with similar framework, is the National Wildlife Policy of 1998. Its environment related objectives are to

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<sup>16</sup> Paragraphs 4.2.9; 4.2.10; 7.9.0 and 7.9.1 of the National Land Policy of 1997.

<sup>17</sup> *Ibid.* Para 6.7.0 and 6.7.1.

<sup>18</sup> *Id.* Para 7.7.0; and 7.7.1.

<sup>19</sup> *Id.* Para 7.8.0.

<sup>20</sup> Chapter three of the National Forests Policy of 1998.



promote sustainable utilization of wildlife resources and promote the conservation of biological diversity.<sup>21</sup> Other relevant policies such as the Water Policy of 2002, Agricultural and Livestock Policy of 1997 and a number of others have, variably, environment related policy provisions.<sup>22</sup>

At the centre of the policy related efforts to protect the environment in Tanzania is the adoption of the National Environmental Policy of 1997. This is the basic policy providing extensively on environmental issues in the country. It has five chapters<sup>23</sup> but the most relevant, for this discussion, are chapters three and four which provide for the basic policy objectives and actual policy statements on various areas of human life activities and the surrounding environment. The main objectives of the policy are:

- (a) to ensure sustainability, security and equitable use of resources....;
- (b) to prevent and control the degradation of land, water, vegetation and air....;
- (c) to conserve and enhance our natural and manmade heritage including the biological diversity....;
- (d) to improve the condition and productivity of degraded areas including rural and urban settlements....;
- (e) to raise public awareness and understanding of the essential linkages between environment and

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<sup>21</sup> See for example paragraphs 3.3.1; 3.3.3; and 3.3.6 of the National Wildlife Policy of 1998.

<sup>22</sup> See paragraph 4.2 and 4.3 of the Water Policy of 2002 and Paragraphs 2.4.2 and 3.3.2 of the Agricultural and Livestock Policy of 1997.

<sup>23</sup> Chapters one and two cover the introduction and a summary of the state of the environment respectively. Chapter three deals with the main objectives of the policy sector and cross sector policies while chapter four focuses on instruments of the environmental policy. Chapter five, which is the last one, deals with institutional arrangements.

development...; (f) to promote international cooperation on the environment agenda ...including implementation of treaties.<sup>24</sup>

It is apparent from the above that the policy objectives focus on the key areas of environmental protection and the important aspect of international cooperation.

The policy, *inter alia*, provides guidance to other sectors which are the actual actors on the ground. It emphasizes the need to consider the environment while addressing poverty issues;<sup>25</sup> land use;<sup>26</sup> employment of technology;<sup>27</sup> utilization of biological diversity;<sup>28</sup> and even dealing with demographic dynamics in the country.<sup>29</sup> The policy also expounds the importance of public participation and education;<sup>30</sup> the role of the private sector and NGO's;<sup>31</sup> and the role of women.<sup>32</sup> The various sectors in the country are guided not only to incorporate and internalize environmental considerations in their sector policies but also to ensure their efforts to achieve sustainable development are coordinated.<sup>33</sup> Chapter four of the policy document deals with instruments for environmental policy. It is the position in the policy that in order to achieve the policy objectives there is need to have specific tools for that purpose. The list includes environmental impact assessment; environmental legislation; economic

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<sup>24</sup> Paragraph 18 of the National Environmental Policy of 1997.

<sup>25</sup> *Ibid.* Paragraphs 20 -21.

<sup>26</sup> *Id.* Paragraph 26.

<sup>27</sup> *Id.* Para 29.

<sup>28</sup> *Id.* Para 32.

<sup>29</sup> *Id.* Para 24.

<sup>30</sup> *Id.* Para 35.

<sup>31</sup> *Id.* Para 42.

<sup>32</sup> *Id.* Para 44.

<sup>33</sup> *Id.* Para 45.

instruments; environmental standards and indicators and finally international cooperation.<sup>34</sup> Chapter five of the policy deals with institutional arrangements. It outlines the key institutions from the lead ministry to the lowest organ at the local government level.<sup>35</sup>

## **5. ENACTMENT AND ENFORCEMENT OF THE ENVIRONMENTAL MANAGEMENT ACT**

The legal regime governing the environment starts with a provision in the Constitution of Tanzania which lays a firm foundation for the sustainable use and management of the environment of the country.<sup>36</sup> For a long time, apart from the constitution, the environment legal regime relied on different sector legislation to deal with the various problems arising in the country. There was no specific law for holistic management of the environment. Available environment related provisions, then, were found in different sector legislation thereby making enforcement complex and sometimes erratic. It was only in 2004, when the Environment Management Act<sup>37</sup> (hereinafter to be referred to as the EMA) was passed, that the situation began to improve. It is in this light that the long title to the Act uses the following elaborative words:

An Act to provide for legal and administrative framework for sustainable management of the environments; to outline principles for management; impact and risk assessment; prevention and control of pollution; waste management; environmental

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<sup>34</sup> Id. Paragraphs 63 – 85.

<sup>35</sup> Id. Paragraphs 86 – 104.

<sup>36</sup> Article 27 (1) of the constitution obligates every person to safeguard and protect the natural resources of the country, state property and property of other people.

<sup>37</sup> CAP 191, R.E. 2002 of the laws.

quality standards; .....to provide for the implementation of the National Environmental Policy...and to provide for other related matters.<sup>38</sup>

The EMA provides a framework for environmental management in mainland Tanzania. It is relatively comprehensive and provides for mechanisms and forums for coordination and tools of environmental management.<sup>39</sup> It has been set out in twenty parts the main ones covering general principles,<sup>40</sup> administration and institutional arrangement,<sup>41</sup> environmental planning,<sup>42</sup> environmental management,<sup>43</sup> environmental impact assessment and other assessments,<sup>44</sup> pollution prevention and control,<sup>45</sup> waste management,<sup>46</sup> environmental quality standards,<sup>47</sup> environmental restoration, easements and conservation orders,<sup>48</sup> environmental information, education and research,<sup>49</sup> compliance and enforcement.<sup>50</sup>

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<sup>38</sup>Id. Long title to the Environment Management Act.

<sup>39</sup>The United Republic of Tanzania: State of the Environment Report 2006 P. 22, available at [http://www.tzdp.org.or.tz/fileadmin/\\_migrated/content\\_uploads/State\\_of\\_Environment\\_Report\\_final\\_PDF\\_2006.pdf](http://www.tzdp.org.or.tz/fileadmin/_migrated/content_uploads/State_of_Environment_Report_final_PDF_2006.pdf) (accessed on 30<sup>th</sup> October 2018).

<sup>40</sup>Sections 4 – 10 of the Environment Management Act, CAP 191, R.E. 2002 of the laws.

<sup>41</sup>Ibid. Sections 11 – 41.

<sup>42</sup>Id. Sections 42 – 46.

<sup>43</sup>Id. Sections 47 – 80.

<sup>44</sup>Id. Sections 81 – 103.

<sup>45</sup>Id. Sections 106 – 113.

<sup>46</sup>Id. Sections 114 – 149.

<sup>47</sup>Id. Sections 140 – 150.

<sup>48</sup>Id. Section 151 – 161.

<sup>49</sup>Id. Sections 172 – 177.

<sup>50</sup>Id. Sections 182 – 203.

### **5.1 The Right and Power to Enforce Environmental Law**

Depending on the framework of the law, enforcement of environmental law may be done by government institutions, private institutions or individual persons. Ordinarily the state gives itself the right and power to enforce any law including environmental law. As for individual persons the right to enforce environmental law is just one of a number of rights related not only to the environmental realm but also the wider family of human rights. Some of the internationally recognized rights are the right to information; public participation; the right to safe and healthy environment and access to justice.<sup>51</sup> Indeed each of these rights is important in ensuring that people live in a reasonably good environment.

One of the key rights on whose basis the need to enforce environmental law arises is the right to clean and healthy environment. The EMA starts by giving every person living in Tanzania the right to clean, safe and healthy environment<sup>52</sup> and then goes on to spell the power to enforce the same. Apparently, the drafters of the Act used a two pronged approach in dealing with individual powers of enforcement. First, it was envisioned to deal with enforcement when there is an apprehension of an environmental problem. In that regard an administrative remedy was contemplated. To this end the Act gives a duty and power to persons to report to the relevant authorities any phenomenon that may affect their environment significantly.<sup>53</sup> In order to ensure that there are adequate environmental management structures at all

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<sup>51</sup> Shelton, D., and Kiss, A., *Judicial Handbook on Environmental Law*, note 1 above, Chapter 3.

<sup>52</sup> Section 4(1) of the Environment Management Act, CAP 191. R.E. 2002 of the Laws.

<sup>53</sup> *Ibid.* Section 6.

levels the Act also designates and empowers various authorities spanning from the national to the lowest village level.<sup>54</sup>

The second enforcement method for an individual person is through litigation in the relevant avenues. The relevant part provides as follows:

Every person may, where a right in section 4 is threatened...bring an action against the person whose act or omission is likely to cause harm to human health or environment.<sup>55</sup>

In law the term 'action' means a judicial proceeding brought by one party against another.<sup>56</sup> The EMA also elaborates the various courses of action open to a person and the list includes taking action to stop or prevent any activity that may cause harm to human health or the environment; to compel a public officer to take measures to prevent any action or omission that may harm human health or the environment; to require an ongoing activity be subjected to EIA; to compel persons responsible for environmental degradation restore it to its original form; seek to provide compensations to victims for harm or loss of benefits as a result of an activity that caused the harm.<sup>57</sup>

Apart from individual persons the Act empowers the Environment Management Council (hereinafter referred to as NEMC) to

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<sup>54</sup> Id. Sections 30 -33 at sector level (Ministry); sections 34 – 35 at regional level, sections 36 – 40 for all levels of the local governments down to even the lowest units in township and village.

<sup>55</sup> Id. Section 5(1).

<sup>56</sup> *The Free Dictionary* at <http://www.thefreedictionary.com/action+at+law> (accessed on 30<sup>th</sup> October 2018).

<sup>57</sup> Section 5(2) of the Environment Management Act, CAP 191, R. E. 2002 of the laws.

undertake enforcement, compliance, review, monitoring of environmental impact assessment and coordinate environmental management activities in the country.<sup>58</sup> In other words the NEMC is the overall environment watch dog of Tanzania. The Act elaborates, in detail, powers given to the NEMC.<sup>59</sup> Apart from NEMC as an entity the law also empowers Environment Management Officers at City, Municipal, Town/District levels to enforce environmental law at their respective levels.<sup>60</sup> In addition, it establishes and empowers Environment Management Committees at township, ward, village, *mtaa* (street in urban area), and *Kitongoji* (small cluster of houses at village level) to enforce the Act and other environmental laws by instituting proceeding of civil or criminal nature where any person, company, institution fails or refuses to comply with environment related directives given by the committee.<sup>61</sup>

In view of the power to enforce the Environment Management Act is adequately provide for.

## 5.2 Administrative Enforcement

Administrative enforcement of the EMA, as noted above, can be done by individual persons or public officers within the NEMC or other designated public bodies. Enforcement in the rural areas by institutions and individual persons is examined first. It has been estimated that about 67.68% of people in Tanzania live in rural areas.<sup>62</sup> The environment around them is the only source of their

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<sup>58</sup> *Ibid.* Section 17(1).

<sup>59</sup> *Id.* Section 18(2).

<sup>60</sup> *Id.* Sections 36(1) and 36(3)(a).

<sup>61</sup> *Id.* Section 41(a) and (f).

<sup>62</sup> Index Mundi: Tanzania – Rural Population at <http://www.indexmundi.com/facts/tanzania/rural-population>, (accessed on 12<sup>th</sup> September 2016).

livelihood and for that reason care to the environment is easily compromised. It is conceded that there are village committees dealing with land and environmental issues but their ability in enforcing the law is very limited. It is argued that even where some efforts have been made to enforce environmental law its impact has not been much. For example in a study conducted in some villages in Mkuranga District one researcher concluded as follows:

According to the findings, communities in the study area are peasantry agrarians, dependent on subsistence crop production and forest products mainly charcoal and fuel wood. About 81.7% (85% out of 104) mentioned agriculture as the leading source of income, 4.8% mentioned sale of forest produce and 11.5% mentioned others.<sup>63</sup>

Another piece of information on forests was summarized in a local newspaper as follows:

A report by a Finish-Funded National Resources Monitoring and Assessment Group (NAFORMA) shows that Tanzania is losing more than 300,000 hectares of forest annually. The amount equals to one percent of Tanzania forest area.<sup>64</sup>

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<sup>63</sup> Minja, R., "A Study on Environmental Concern in Mkuranga District, Tanzania," unpublished research report, at [http://coastalforests.tfcg.org/pubs/Char\\_Mkuranga.pdf](http://coastalforests.tfcg.org/pubs/Char_Mkuranga.pdf), p. 1. (accessed on 17 July 2019)

<sup>64</sup> Ale Malanga, "Tanzania Losing 300,000 Hectares of Forests Annually", *The Citizen*, (Dar-es-Salaam), 11, September 2015 available at file:///C:/Users/user/Documents/Environment%20in%20Tanzania/TZ%20losing%203



From the foregoing it is apparent that, apart from focusing more on livelihood needs, there is weak institutional capacity to enforce the relevant environmental laws a point which has also been conceded by the government.<sup>65</sup>

In the urban areas the position is slightly different in the sense that the majority of the people depend more on sale of labor, manufacturing or sale of commodities. The inadequate urban planning, large population, production and consumption activities attract a different set of environmental problems. It is common knowledge, for example, that only nine cities in Tanzania (Dar-es-Salaam, Tanga, Morogoro, Dodoma, Arusha, Mbeya, Mwanza, Tabora, and Moshi) have a central sewage system and even these do not extend to all their geographical boundaries.<sup>66</sup> These, coupled with poverty of the larger part of the population do complicate the handling of environmental issues. For example in a 2011 study on the situation in Dar-es-salaam it was summarized as follows:

Seventy percent of Dar-es-Salaam's population live in unplanned settlements, and over half of them live on an average income of \$ 1 a day. These settlements lack adequate infrastructure and services, and are highly prone to impacts of frequent

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00,000%20hectares%20of%20forest%20annually%20-%20News%20\_%20The%20Citizen.htm, (accessed on 12<sup>th</sup> September 2014).

<sup>65</sup> Dr. Kilahama, then Director of Forestry and Bee-Keeping Division while presenting a report of his office on causes of forest depletion said: "Inadequate institutional capacity leading to weak law enforcement, corruption: illegal logging and trade," See Dr. Kilahama, F., URT, Forest Governance Monitoring System in Tanzania, PDF, (accessed on 12<sup>th</sup> September 2015).

<sup>66</sup> Kihampa, C., "Heavy Metal Contamination in Water and Sediment Downstream of Municipal Waste Water Treatment Plants, Dar-es-Salaam, Vol. 3 No. 5, Tanzania" *International Journal of Environmental Sciences*, 2013 P. 1408.

flooding. Poor solid waste disposal and sanitation practices, combined with rainfall, result in contamination of water and spread of diseases.<sup>67</sup>

In such cases individual persons and relevant authorities at *mtaa* (street), ward, division or district/municipal or urban authorities are expected to take the relevant administrative actions under the EMA. Apart from this law, there are also urban/municipal/city authorities' legislation<sup>68</sup> that complement it by enacting by-laws dealing with keeping the urban environment in good condition. Local governments in urban centers, like Dar-es-salaam, have a number of officers who are assigned and empowered to enforce environmental health and other regulations. This also shows that there are relatively adequate provisions for ensuring that the environment is properly protected. It is common knowledge, however, that in urban areas people normally report environment problems, especially those which are health related, in their areas to relevant local government authorities but redress for the same is normally unsatisfactory. There are a number of reasons for this including negligence and lack of resources but the main reason is the non-enforcement of the laws by local government authorities.<sup>69</sup>

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<sup>67</sup> Pan-African START Secretariat, at. al, "Urban Poverty & Climate Change in Dar-es-Salaam, Tanzania: A Case Study," at p. 13 at <http://start.org/download/2011/dar-case-study.pdf>, (accessed on 12 September 2015).

<sup>68</sup> These are mostly by-laws enacted under the umbrella legislation governing urban areas namely the The Local Government (Urban Authorities) Act and The Local Government (District Authorities) Act

<sup>69</sup> In a 2014 research conducted on the city of Dar-es-Salaam by Maziku, J, D., in his degree thesis titled "Improving Solid Waste Management in Dar-es-Salaam Coastal Belt, Tanzania" he says "...it was revealed from the findings that the [Dar-es-salaam] Municipality authorities did not enforce the bylaws on waste management." at p. 79 available at <http://www.theseus.fi/bitstream/handle/10024/80139/IMPROVING%20WASTE%20MANAGEMENT%20IN%20DAR%20ES%20SALAAM%20CITY%20COASTAL%20BELT%20.pdf?sequence=1> (accessed on 16<sup>th</sup> September 2015).

In such a situation officers from NEMC are expected to take the lead in the enforcement of EMA. The NEMC has powers to take administrative and judicial measures but at this juncture only administrative powers will be examined. Under the EMA, the NEMC officers (of the specified designation) may prohibit any activity that may endanger the environment,<sup>70</sup> issue prevention,<sup>71</sup> protection,<sup>72</sup> environmental compliance order<sup>73</sup> issue an environment restoration order,<sup>74</sup> stop order,<sup>75</sup> hazardous waste compliance order,<sup>76</sup> costs order,<sup>77</sup> advise the relevant minister to issue an environmental easement and conservation order.<sup>78</sup> In addition to these, the Director General or an environment inspector of NEMC may fine anyone who has committed an offense under the EMA.<sup>79</sup>

One of the key tools in administrative enforcement is inspection and monitoring. In that regard it is expected that, with the powers given to it by the law, NEMC fully engages in ensuring that the environment is fully protected regardless of the type of problem. It is common knowledge from experience that enforcement of the EMA by NEMC officers is ostensibly focused more on broad environmental management issues and outstanding environmental problems leaving the other more common (environmental) problems among the people to the local

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<sup>70</sup> Section 113 of the Environment Management Act, CAP 191, R.E. of the Laws.

<sup>71</sup> *Ibid.* Section 195.

<sup>72</sup> *Id.* Section 196 and 197.

<sup>73</sup> *Id.* Section 198.

<sup>74</sup> *Id.* Sect 151(1).

<sup>75</sup> Regulation 27(1) of Environmental Management (Water Quality Standards) Regulations of 2007.

<sup>76</sup> Regulation 48(1) of Environmental management (Hazardous Waste Control and Management) Regulations of 2009.

<sup>77</sup> Section 199 of the Environment Management Act, CAP 191, R.E. of the Laws.

<sup>78</sup> *Ibid.* Section 156(1) and 161.

<sup>79</sup> *Id.* Section 194(1).

government authorities. Records indicate that from 2004 when the EMA came into force up to 2010 more than 211 Environmental Impact Assessment (EIA) certificates and 9 Environmental Audit (EA) certificates were issued to project proponents.<sup>80</sup> It has also been reported that from 2011 to 2013 a total of 764 EIA and EA certificates were issued.<sup>81</sup>

Apart from these certificates, NEMC has also been monitoring environmental breaches that have had adverse effect on the environment such as pollution and other types of breaches. The normal actions in such cases have been prohibition orders and compounding of offences where, say, polluters have been ordered to pay fines and restore the affected environment. Besides, NEMC has been conducting public awareness campaigns to educate people on the importance of protecting and preserving the environment. These campaigns have been conducted in schools and other public places.<sup>82</sup>

However, despite the efforts done by the NEMC officers the impact of the same has been limited for a number of reasons. First, lack of knowledge on environmental law requirements to the general public. For example one researcher who interviewed people in Dar-es-Salaam had the following assessment:

For example, in all municipalities of Dar-es-Salaam, up to 40% of those interviewed admitted to have no

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<sup>80</sup> NEMC website: "Certificates Issued since 2004" See details at [http://www.nemc.or.tz/index.php?option=com\\_content&view=article&id=106&Itemid=250](http://www.nemc.or.tz/index.php?option=com_content&view=article&id=106&Itemid=250), accessed on 1<sup>st</sup> November 2015.

<sup>81</sup> Id.

<sup>82</sup> NEMC Annual Award for Urban Environment Management – see further details at [http://www.nemc.or.tz/index.php?option=com\\_content&view=article&id=104&Itemid=233](http://www.nemc.or.tz/index.php?option=com_content&view=article&id=104&Itemid=233), (accessed on 1<sup>st</sup> November 2015).

basic knowledge of the Environmental Management Act and its requirements on EIA's for various projects.<sup>83</sup>

Second, NEMC has financial and human resource limitations. Geographically, Tanzania is relatively big and NEMC does not have offices in all regions. Internal information indicates that NEMC has about one hundred employees and these are posted in the different zonal offices in the country.<sup>84</sup> Apparently, such a thin workforce is caused by financial constraints. Linked to this is their inability to effectively enforce the EMA throughout the country. Indeed, this problem is common to most third world countries. A former head of the Legal Division of NEMC, while commenting on this problem asserted that:

...experience has shown that inadequate capacity on the part of the governments, particularly in developing countries, in terms of financial resources, manpower and equipment contribute to unsuccessful enforcement of environmental protection related legislation.<sup>85</sup>

In view of this there have been proposals that third world countries should be assisted financially and technologically to develop a

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<sup>83</sup> Sosovele, H., "Governance Challenges in Tanzania's Environmental Impacts Assessment Practice" *African Journal of Environmental Science and Technology* Vol. 5(2), 2011, at p. 129.

<sup>84</sup> These are located in the seven zonal offices namely, Central, Eastern, Southern, Northern, Lake Victoria, Western and Southern Highlands Zones.

<sup>85</sup> Masilingi, W. M. K. "Social – Economic Problems in Compliance and Enforcement in Tanzania" a paper presented in the Fourth International Conference on Environmental Enforcement, at page 72. Also available at <http://www.inece.org/3rdvol2/masiligi.pdf> (accessed on the 9<sup>th</sup> November 2015).

robust management and enforcement system that would enable them to enforce their environmental legislation.<sup>86</sup>

### 5.3 Judicial Enforcement

Apart from administrative methods environmental laws may be enforced by judicial action which may be by way of a civil action or a criminal case. In this part we examine the option of enforcement through a judicial action.

#### 5.3.1 Enforcement by Civil Litigation

The EMA has provisions allowing any person including the NEMC (as a legal entity) to take court action against breaches of environmental law.<sup>87</sup> Despite the fact that the EMA has empowered individual persons to institute civil actions against environmental law breaches there is no evidence that individual persons have made use of this right. However, it is conceded that before the enactment of the EMA there were some private persons who successfully sued, through class actions, local government authorities with a view to enforcing their right to clean and healthy environment.<sup>88</sup> It may be interesting to know why there is little civil action to enforce environmental rights. A number of reasons may be assigned to this. First, as noted above, is lack of knowledge among the common people on their rights and abilities to enforce the EMA. Second, is the lack of financial muscle, for the majority of the people, to successfully mount a civil

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<sup>86</sup> *Ibid.*

<sup>87</sup> Sections 5(1) and 202 of the Environment Management Act, CAP 191 of the Laws of Tanzania.

<sup>88</sup> Examples include the cases of *Joseph D. Kessy and Others v. The City Council of Dar-es-Salaam*, High Court of Tanzania at Dar-es-Salaam, Civil case No. 299 of 1988 (unreported) and *Festo Bulegere and 794 Others v. Dar-es-Salaam City Council*, High Court of Tanzania at Dar-es-Salaam, Miscellaneous Civil Cause No. 90 of 1999 (Unreported)

action in a court of law? Ordinarily civil suits are expensive to institute and, in addition, such cases take a long time to be concluded. This situation naturally discourages ordinary people to institute civil suits in courts.

Apart from individual persons the NEMC has also been empowered to institute civil suits against any person or institution which is in breach of the EMA.<sup>89</sup> However, there is no evidence that NEMC has ever used this power against any person.<sup>90</sup> An examination of the practice at NEMC shows that administrative actions have been preferred in dealing with the various breaches than instituting civil actions. Apparently, as the case is with individual persons, the problem of costs linked with civil suits and the time frame for concluding such cases seem to be the disincentives for court actions.

### *5.3.2 Enforcement Using Criminal Cases*

The EMA has penal provisions which, like other avenues for action, are intended to protect our environment. Some of the offences relate to environmental impact assessment,<sup>91</sup> records,<sup>92</sup> environmental standards,<sup>93</sup> pollution,<sup>94</sup> biological diversity,<sup>95</sup> environmental restorations, easements, environmental restorations,<sup>96</sup> litter,<sup>97</sup> and others. NEMC does not have powers of arrest and seizure. Nevertheless, it has been empowered to

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<sup>89</sup> Sections 5(1) and 2002 of the Environment Management Act, CAP 191 of the Laws of Tanzania

<sup>90</sup> Our inquiry with the NEMC officials confirmed that there has been no civil case that has been instituted so far.

<sup>91</sup> Section 184 of the Environment Management Act, CAP 191 R. E. 2002 of the laws.

<sup>92</sup> *Ibid.* Section 185.

<sup>93</sup> *Id.* Section 186.

<sup>94</sup> *Id.* Section 187.

<sup>95</sup> *Id.* Section 188.

<sup>96</sup> *Id.* Section 189.

<sup>97</sup> *Id.* Section 190.

compound offences and fine those who are also found to have committed offences under the EMA.<sup>98</sup> The law further provides that where such compounding of offences has been adopted no civil action against the perpetrator of the offence is allowed.<sup>99</sup> This is ostensibly in line with the double jeopardy rule.

The EMA has not given the NEMC powers to prosecute criminal offences falling under the Act. In that case the police, who have general powers to take action against criminal offenders, are expected to take up the responsibility to deal with the cases. However, there does not seem to be serious coordination between the police and NEMC to ensure that when environmental offences under the EMA are committed appropriate criminal action is taken.<sup>100</sup> Such a situation leaves an open door for further breaches of the law thereby jeopardizing the environment.

Apart from NEMC, the enforcement of the EMA has also been entrusted to the local government authorities. However, observation on the practices of these bodies indicate that they deal more with enforcing their own (sector) environment related provisions and other by-laws than the EMA. For example in Dar-es-Salaam there is a City Court which deals with minor environmental, health and other offences committed within their jurisdiction. Besides, the main focus areas of local government authorities are administration issues and the provision of services in their respective jurisdictions. Substantive environmental issues are normally left out as they are assumed to be taken care of by

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<sup>98</sup>Id. Section 194(1).

<sup>99</sup>Id. Section 194(2).

<sup>100</sup>Information obtained from the NEMC shows that there has been no case instituted against any offender in court.



the NEMC. The result of this is the continuation of environmental degradation at various levels.

## **6. POSITION OF THE ENVIRONMENT ON THE GROUND**

As noted above the enactment of the EMA was, *inter alia*, intended to remedy the problem of lack of a specific law for holistic management of the environment and improve environmental governance in Tanzania. It was expected that after the enactment the EMA management of the environment in the country would substantially improve. Enforcement of the Act was and is still a key component for reaching this goal. Admittedly some efforts have been made to enforce the Act but the same have been limited. Public authorities, including NEMC, from the national level to the local government levels have not effectively enforced the EMA. The same is true to individual persons.

The effect of this situation is that the environment has not been effectively protected and preserved. A few examples suffice to show the seriousness of the problem. A government report issued by the Division of the Environment, while reporting on biodiversity threats in forest ecosystem, mentioned the following as the prevailing threats: overexploitation of forest resources; bush fires; environmental degradation; competition for land resources between livestock and crop cultivation and illegal hunting.<sup>101</sup> Specifically on environmental degradation the reports states:

In Tanzania's context environmental degradation is highly linked to destruction of the country's forest and woodland resource base. Uncontrolled human

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<sup>101</sup> United Republic of Tanzania: Fourth National Report on Implementation of Convention on Biological Diversity, 2009, pp. 22 – 25.

activities in most forests and woodlands have threatened the existence of valuable timber species...<sup>102</sup>

Taking into account the fact that a big portion of the country consists of forests<sup>103</sup> their degradation has a very serious effect on the environment. The EMA has very comprehensive provisions dealing with conservation and protection of the environment.<sup>104</sup> It is conceded that there are forests (sector) related environmental laws that are presumably primary in handling the situation but the enforcement of the EMA in such cases would have had an added advantage on the protection and preservation of the environment in the country.

Apart from this part eight of the EMA, comprising sections 106 – 113, has exhaustive provisions on pollution prevention and control. Nevertheless, pollution is still a big problem in Tanzania. This is another example of inadequate enforcement of the EMA. Pollution is very common in urban areas which have more industries and their population densities are high.

In a study conducted by one researcher from Ardhi University on heavy metal contamination in rivers of Dar-es-Salaam, for example, it was concluded that there was high heavy metal

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<sup>102</sup> *Ibid.* At p.24.

<sup>103</sup> *Id.* The report indicates at p. 6 that Tanzania possesses about 33.5 hectares of natural forests.

<sup>104</sup> Sections 47 – 79 of the Environmental Management Act exhaustively cover conservation and protection of the natural environment including forests and other natural resources in the country.

concentration in most of the samples of water tested.<sup>105</sup> Apparently, such metals come from industries and other production centers. The researcher also noted that the water of these rivers is used for various domestic activities related to human consumption such as fishing, washing, vegetable cultivation and irrigation which have an effect to human health.<sup>106</sup>

Besides, there are various other types of pollution problems caused by improper handling of solid and liquid wastes, industrial pollution, air pollution, water pollution and related problems. There are various research reports and other documents indicating that in Dar-es-Salaam pollution of various kinds is a very serious problem endangering the health of its inhabitants.<sup>107</sup> More examples could be given but it suffices to say that had the EMA properly been enforced the environment of the country would have been better protected.

## 7. CONCLUSION AND RECOMMENDATIONS

This article was intended to make some reflections on the environmental policies and examine the extent to which the EMA

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<sup>105</sup> Kihampa, C., "Heavy Metal Contamination in Water and Sediment Downstream of Municipal Waste Water Treatment Plants, Dar-es-Salaam, Tanzania" Vol 3, No. 5, *International Journal of Environmental Sciences*, 2013, p. 1412.

<sup>106</sup> *Ibid.* See his comments on page 1411 and 1414. See additional ideas by Mushtakova V. M., Fomina, V. A., and Rogovin, V. V., "Toxic Effect of Heavy Metals on human Blood Neutrophils" *Biological Bulletin*, 2005, PP. 276 – 278.

<sup>107</sup> See Mkuula, S., "Pollution of Wetlands in Tanzania" internal NEMC report available at <https://www.oceandocs.org/bitstream/handle/1834/529/Wetlands8593.pdf?sequence=1&isAllowed=y>, accessed on 18<sup>th</sup> June 2020; Machiwa J, F., Coastal Marine Pollution in Dar-es-Salaam (Tanzania) Relative to Recommended Environmental Quality Targets for the West Indian Ocean," Vol. 9 No. 1, *West Indian Ocean Journal of Marine Science*, 2010 available at <http://www.ajol.info/index.php/wiojms/article/view/73958> (accessed on 18<sup>th</sup> June 2020).

is enforced with a view to preserving and protecting the environment in Tanzania. It has been found that the country has relatively good policy and legal provisions for the preservation and protection of the environment. The main challenge has been the effective enforcement of the EMA. Under the Act individual persons, designated institutions and the National Environment Management Council have been given enforcement powers. However, on account of lack of knowledge, lack of coordination and financial or other constraints, enforcement of the EMA has not been effectively done. The result of this has been continued degradation of the environment of the country.

A number of things must be done to improve the situation. First, the NEMC, in collaboration with other relevant authorities, must take deliberate and sustained steps to conduct public education campaigns on the importance of protecting the environment. The content of such campaigns should include education, among others, on the rights and duties of the common people in issues relating to the environment and specifically the right to enforce the law.

Second, the government must invest extensively and expand the financial, human and technological capacity of the NEMC. Tanzania is a large country with complex environmental problems. To effectively deal with such problems strengthening the capacity of NEMC is of prime importance. It needs to be given capacity to have well equipped and resourced offices in all regions of Tanzania.

Third, there is a need to increase collaboration among the different actors dealing with environmental issues in the country.

Lack of coordination is one of the key problems in the environmental sector. On that ground synchronizing the efforts of the different actors will go a long way to reduce duplicity and improve environmental management in the country.

Finally, NEMC should take a more active role, including taking court actions, in the enforcement of the EMA. The Act has adequately empowered the NEMC to take administrative and judicial actions against those who degrade the environment. There is a need for the environment watchdog to be bold and make use all its powers in the protection of the environment in the country.