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# LIBERALIZATION AND POLITICS OF ENVIRONMENTAL MANAGEMENT IN TANZANIA

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*University of Georgia School of Law*

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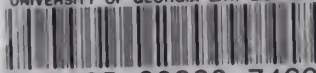
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LIBERALIZATION AND POLITICS OF ENVIRONMENTAL MANAGEMENT IN  
TANZANIA

by

ALICIA BOSENSERA MAGABE

LL.B UNIVERSITY OF DAR ES SALAAM, TANZANIA, 1994

A Thesis Submitted to the Graduate Faculty of The University of Georgia in Partial  
Fulfillment of the Requirements for the Degree

MASTER OF LAW

ATHENS, GEORGIA

2001

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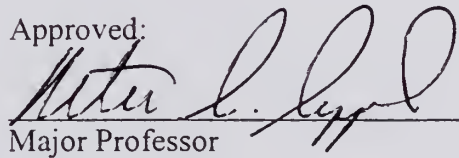
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LIBERALIZATION AND THE POLITICS OF ENVIRONMENTAL MANAGEMENT  
IN TANZANIA

by

ALICIA BOSENSERA MAGABE


Approved:

  
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2 MAY 2001

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May 7, 2001  
Date





## **DEDICATION**

To my sister Jane Gati Magabe and brother-in-law Jim Gilsenan, the courage and perseverance with which you face challenging life experiences have been my source of hope and inspiration.

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# **CHAPTER I**

## **INTRODUCTION**

### **A. Purpose of the Thesis**

This thesis examines the factors that have prevented the development of an environmental protection legal and institutional regime in Tanzania. It argues that the central focus of economic reforms has been to kick-start the economy by increasing growth through the maximization of resource exploitation. As a result, concerns for environmental sustainability have been relegated to the periphery of the development agenda. Secondly, as a result of domestic resource scarcity brought on by the economic crisis, environmental policy-making has been held hostage to the influence of foreign donors whose agendas have often been at cross-purpose to environmental protection. Thirdly, the nature of mandates of the environmental management institutions in Tanzania has bred institutional rivalry and competition for resources that, in turn, have led to a stalemate in the processes of institutional and legal reforms.

Chapter two examines the economic crisis, which led to the adoption of economic liberalization policies in the mid 1980s and throughout the 1990s. This period also witnessed the intensification of environmental problems as a result of both the economic crisis as well as of the policy packages adopted to address it. The chapter shows a disconnect between efforts to address the economic crisis and those of environmental crisis that emerged during this period.

Chapter three investigates the role played by international organizations and foreign donors in environmental policy reform processes. It shows the efforts of these players as being characterized by duplication, lacking coordination as well as running along parallel and fragmented lines. Chapter four illustrates the institutional rivalry and competition that has characterized the main institutions in Tanzania with primary, even though limited, environmental mandates. Chapter five ties together the major findings of the preceding chapters in order to draw conclusions.

## **B. Research Methodology**

A combination of methods has been employed to collect data for this thesis. Library research was conducted at the University of Georgia (UGA), University of Dar es Salaam (UDSM), the National Environment Management Council (NEMC), a government body under the Vice President's Office (VPO) of Tanzania, and the World Resources Institute (WRI), an American non-governmental organization. All these institutions provided valuable literature on the subject matter. Primary sources of information have included official documents such as official correspondence, reports, administrative orders, and directives. In addition, official declarations and pronouncements, policy and legislative instruments have been relied upon. The author also conducted open-ended interviews with government officials, academics, and researchers conversant with issues relevant to the thesis. They too provided valuable information and additional literature.

## **C. Economic Importance of Environmental Resources**

Tanzania's economy depends primarily on the development and export of natural resources based products. About 84% of the country's 30 million population is engaged in agriculture. The agriculture sector produces nearly 61% of the Gross Domestic Product

(GDP). Food production constitutes 55% of the total agricultural GDP while livestock contributes 30%. Traditional cash crops such as coffee, cotton, tea, tobacco, sisal and cashew nuts accounts for 8%. Non-traditional resource produce such as fisheries, wildlife forestry, and mineral products, contributes the remaining 7% of the agricultural GDP.<sup>1</sup>

Agriculture is predominantly rainfed and thus greatly affected by the vagaries of weather. Only one fifth of the country has secured rainfall of more than 750 mm annually, an amount that is sufficient to support rain fed agriculture. Cultivated land constitutes 5% of the total land area. Population increase has added to pressure on land. Areas with comparatively favorable weather conditions have population density of up to 200 people per square km.<sup>2</sup>

Tanzania's economy has generally remained weak despite rigorous implementation of the World Bank and International Monetary Fund (IMF) driven economic liberalization reform measures for over fifteen years. As of 1996, the country's outstanding debt stood at 7.4 billion dollars, which equaled 130% of the Gross Domestic Product (GDP) and 536% of the total exports. In 1997 donor aid contributed about 14% of the GDP.<sup>3</sup> And as it will be shown, a fragile economy is the underlying source of substantial external influence in domestic economic policy.

#### **D. Emerging Environmental Threats**

The country's national report to the 1992 United Nations Conference on Environment and Development (UNCED) that took place in Rio de Janeiro, Brazil concluded that the natural resource base, on which the nation's development depended,

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<sup>1</sup> Development Challenges for Tanzania: An Agenda for the 21<sup>st</sup> Century (Lucian A. Msambichaka *et al.* eds., 1994) at 91, Structural Adjustment and Sustainable Development in Tanzania (Mboya S.D. Bagachwa *et al.*, eds., 1995) at 3.

<sup>2</sup> Bagachwa *et al.*, *supra* note 1.



was deteriorating at a rate that required urgent government intervention to reverse the negative trend.<sup>4</sup> For instance it estimated the depletion of forest cover and woodland to be in the range of 300,000 to 400,000 hectares per year at which rate the country's entire forest resource base would be lost in a little over a 100 years.<sup>5</sup>

The forest resources account for nearly half of the country's land cover, 97% of domestic fuel consumption and is the source of 92% of the total energy.<sup>6</sup> Soil erosion, which is interrelated to deforestation, is reported to have reached the rate of up to 55 tonnes of productive soil per hectare per year for some parts of the country.<sup>7</sup> To illustrate the severity of the loss of wildlife records shows that elephant population declined from around 316,000 in 1979 to 85,000 in 1987 and to 52,400 in 1991 - an average loss of 60 elephants per day while the black rhino population fell by 98 % in ten years from 1978 to 1988.<sup>8</sup> Impoverishment both in terms of species numbers and diversity is threatening wildlife and genetic resource ecosystems.<sup>9</sup>

Depletion of fisheries resources and the destruction of the coastal habitat are posing a threat to the marine ecosystem. Dynamite fishing, international fish trawling, coral mining, unplanned settlements, uncontrolled use of mangrove forests and beach erosion are some of causes.<sup>10</sup> The latter is reported to have reached the rate of 5 meters

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<sup>3</sup> Ole Thirkildsen, Public Sector Reform in a Poor, Aid Dependent Country (April 27, 1999) (unpublished conference paper on file with Oxford University St. Anne's College) at 3.

<sup>4</sup> Ministry of Tourism, Natural Resources and Environment, United Republic of Tanzania (1991) (unpublished national report to the United Nations Conference on Environment and Development) (on file with Vice President's Office) at 3.4. The former President Ali Hassan Mwinyi headed the Tanzania delegation to UNCED.

<sup>5</sup> *Id.* at 9.

<sup>6</sup> Idris Kikula & Kerstin Pfliegner, Road from Rio: Tanzania, Series 1.2 (1998) at 1.

<sup>7</sup> Bagachwa *et al.*, *supra* note 1.

<sup>8</sup> *Id.* at 44.

<sup>9</sup> *Id.*

<sup>10</sup> National Environment Management Council *et al.*, Options for a National Integrated Coastal Management Policy, Working Document No. TCMP 5026 (November 2000) (unpublished manuscript, on file with National Environment Management Council) at 3.

per year in some areas of Dar es Salaam washing away huge tourist and recreational investments.<sup>11</sup>

Poorly planned urban areas with expansion rate of up to 10% per annum face problems of solid and liquid waste disposal. For instance Dar es Salaam City, which alone commands an estimated number of nearly 3 million residents, generated about 1,500 tonnes of solid waste daily in 1989. Only one-third of that waste was actually collected by the responsible local authorities and this collected amount could not be properly disposed of. The rest was left to be acted upon by the elements of weather. The same state of affair faces the remaining 19 major towns all over the country.<sup>12</sup> To sum up, there is ample evidence to show that there exists natural resources depletion and environmental degradation in Tanzania.

### **E. Current Approach to Environmental Management**

Tanzania does not have a comprehensive legal and institutional set up that spells out and implements broad based environmental management vision and values. Instead various central, regional and local government departments and agencies have varying degrees of mandates on certain environmental related areas. Such mandate involves environmental resources development and utilization. This approach is also referred to as “departmentalism” whereby each government ministry or independent department enjoys a good deal of autonomy over its own policies relative to other ministries or departments with minimal inter-departmental coordination and cooperation even in situations where joint action is necessary for successful implementation of government activities.<sup>13</sup>

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<sup>11</sup> Bagachwa *et al.*, *supra* note 1, at 45.

<sup>12</sup> *Id.*

<sup>13</sup> Louis A. Picard & Michele Garrity, *Policy Reform for Sustainable Development in Africa: The Institutional Imperative* (1994) at 94.



In Tanzania there exist over 80 outmoded pieces of legislation that mostly targets specific environmental components including land, water, wildlife, forestry, fisheries and minerals.<sup>14</sup> This expansive body of environmental related legislation is accompanied with an equally large number of institutions, none of which exercises final supervisory or regulatory authority over decisions and actions affecting the environment. It should be pointed out that even in instances where implementation of these outmoded laws, would to a limited extent protect the environment, there is general laxity to do so<sup>15</sup> because of the low priority accorded to environmental protection values.

The highly fragmented approach to natural resources and environmental protection has evolved in an incremental fashion beginning with colonialism and remains essentially intact forty years after independence. In recent years, however, the approach has increasingly come under worldwide attack for its failure to deal with intensifying national as well as international environmental problems.<sup>16</sup> As a result of these general criticisms in Tanzania environmental related policies, legal, and institutional structures

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<sup>14</sup> See Laura Hichcock, United Republic of Tanzania, Division of Environment, Ministry of Natural Resources Tourism and Environment, Report on Existing Legislation Pertaining to Environment (May 1994) (unpublished manuscript on file with the National Environment Management Council); National Environment Management Council of Tanzania [NEMC] National Conservation Strategy for Sustainable Development App. 1 (revised proposal May 1995) (unpublished manuscript on file with NEMC) [hereinafter NCS or NCSSD]; United Republic of Tanzania, Ministry of Natural Resources, Tourism and Environment, National Environmental Action Plan: A First Step 42 (June 1994)(unpublished manuscript on file with NEMC) [hereinafter NEAP]; For most recent analysis of statutes and respective administering institutions, See Lawyers' Environmental Action Team, Report on Institutional Mandates and Legal Framework for Environmental Management in Tanzania (July 1999) (on file with Lawyers' Environmental Action Team).

<sup>15</sup> *Id.* Laura Hichcock.

<sup>16</sup> At the international level the criticism to the sectoral approach is for instance reflected by Principle 13 of the Stockholm Conference of 1972 which requires nations to "adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the and improve [the] environment for the benefit of their population." See the Report of the United Nations Conference on the Human Environment 1, 4, U. N. Doc. A/CONF. 48/14/Rev. (1973), reprinted in 11 I.L.M. 1416 (1972).

are being re-examined with a view to developing legal and institutional frameworks that would deal with the multi-facets nature of environmental problems more effectively.<sup>17</sup>

After more than a decade of policy reform oriented initiatives by government agencies, however, little has thus far been achieved by way of developing an up to date body of environmental law and complimentary institutional set up for its effective administration as well as enforcement. If anything, environment protection continues to be accorded low priority and the fragmented approach remains the basic norm. The next chapter highlights the economic crisis of the 1980s, the subsequent economic transformation programs that were adopted to revert economic decline, and the negative environmental effects thereof.

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<sup>17</sup>These recent reviews have been carried out in areas such as Lands, Wildlife, Forestry, Fisheries, Mining and Fresh Water.

## **CHAPTER II**

### **ECONOMIC CRISIS, LIBERALIZATION AND THE ENVIRONMENT**

During the period beginning in the late 1970s, Tanzania entered into a phase of deep economic crisis. The country's inability to quickly recover from the crisis eventually forced the government to adopt economic liberalization policies *a la* Bretton Woods institutions more intensively from the mid 1980s, throughout the 1990s and into the present time. This period has also witnessed the intensification of environmental problems, as a direct effect of both the economic crisis and the prevailing macro-economic policy framework, which places emphasis on the maximization of environmental resource exploitation to meet short-term economic growth targets at the expense of long-term environmental resource productivity and sustainability. In Tanzania, there has been a consistent disconnect between the economic policy and environmental protection reform initiatives, and these two inter-related and inter-dependent issues have essentially, been pursued as unrelated agendas.

#### **A. Economic Crisis of the Eighties**

The economic crisis that begun in the late 70s was triggered mainly by a sharp rise in international oil prices and a drastic fall in the prices of Tanzania's major export commodities. The war with Uganda in 1978-79 further exacerbated the already worsening economic situation. According to Semboja, the war's direct costs amounted to more than one year's total exports.<sup>18</sup> As a result, domestic investment rates declined due

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<sup>18</sup> Joseph J. Semboja, *Restarting and Sustaining Growth and Development in Tanzania: Tanzania Country Study*, (visited Oct. 18. 2000) <http://www.eagerproject.com/FinalRep.htm> at 1.

to decline in domestic savings and export earnings dropped due to the worsening terms of trade at the international market. For instance, whereas export earnings had financed about 75% of the import bill in the 1970s, in the early 1980s the proportion dropped to about 50%.<sup>19</sup>

The dwindling of foreign resource inflows led to the increase of debt service burden and rise of foreign interests. The fiscal deficit also widened since revenue could not match expenditures. The economy and infrastructures deteriorated as the government failed to maintain the existing ones or invest in new ones. The economy's capacity to produce and hence to grow was seriously hampered. The real GDP growth rate fell from 2.8% of 1976-1980 to 0.7% in 1981-1985, less than the rate of population growth of 2.8%. The largest decline in GDP ever recorded thus far was in 1983 at negative 2.4%.<sup>20</sup> The section that follows examines the measures adopted to revert the negative economic trend and the extent to which environmental resource protection issues were ignored.

## **B. Economic Liberalization Policies**

The economic decline mentioned above at first forced the government to initiate what have been termed "home grown" recovery measures in an attempt to improve economic performance. These measures were to a certain degree internally designed and less drastic than those suggested by IMF at the time. These initial economic revival measures are basically two, namely the National Economic Survival Program (NESP) and the Structural Adjustment Program (SAP) of 1981 and 1983 respectively. The latter was implemented up to the mid-1980s. Both NESP and SAP focused on reducing the

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<sup>19</sup> Ministry of Natural Resources Tourism and Environment, *supra* note 4, at 2.4.

<sup>20</sup> For comprehensive economic review See Bagachwa *et al.* & Msambichaka *et al.*, *supra* note 1.



central government's development expenditures growth and monetary expansion,<sup>21</sup> reviving exports, increasing industrial output and partially liberalizing imports in an effort to kick-start economic growth.<sup>22</sup> These reform measures depended on external assistance, which, at this point in time, was not forthcoming.

Although severity of government's bankruptcy made environmental protection the least important item on government's agenda under the home grown economic rival measure,<sup>23</sup> it was during this very period of unprecedented resource scarcity that Parliament enacted the National Environment Management Act (NEMA) which established the National Environment Management Council (NEMC) to *inter alia* advise the government on all matters relating to the environment.<sup>24</sup> It is no accident therefore that NEMA did not become effective immediately after its enactment. It was three years later that NEMA became effective coinciding with the 1986 government's accepted the second wave economic reform shifts *a la* Bretton Woods institutions.

The International Monetary Fund (IMF) and the World Bank (WB) have been the leading proponents, designers and sponsors of the second wave of economic reform measures that have been implemented under several programs.<sup>25</sup> Other international supporters have included the European Union (EU), the United Nations Development Programme (UNDP), Sweden, Britain, Germany, Netherlands, Denmark, Norway, and several other bilateral donors.<sup>26</sup>

The central objective of the second wave of economic reform measures has been to transform the economy into a free-market one further integrating it into the global

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<sup>21</sup> Msambichaka *et al.*, *supra* note 1, at 8.

<sup>22</sup> Semboja, *supra* note 18, at 2.

<sup>23</sup> Bagachwa *et al.*, *supra* note 1, at 54.

<sup>24</sup> Act No. 19 (1983) (Tz.). Its detailed discussion is made in chapter IV herein below.

economy. This marks in Tanzania the era of “adjustment with growth” with far reaching economic, social and environmental impacts. The first of these economic reform measures is the Economic Recovery Program (ERP I) that covered 1986/87, 1987/88, 1988/89 and 1989/90 financial periods. ERP I’s main objective has been to increase efficiency and restore economic growth; increase food and export crop production, re-establish macroeconomic stability and realign the exchange rate. Other objectives have been to rehabilitate physical infrastructure, raise the industrial capacity utilization rate and improve the quality of social services.<sup>27</sup>

ERP I was succeeded by ERP II also known as the Economic and Social Action Program (ESAP) covering the period from 1989/90 to 1991/92. Its major objectives have been to continue with policies introduced under ERP I and to address social service sector essentially ignored by ERP I. However, these donor-funded prescriptions to the ailing economy have also failed to produce projected economic results. This time an inadequate and ineffective institutional and organizational infrastructure has been identified by donors and local politician as the culprit thereby justifying the need to further expand structural reforms<sup>28</sup> that had begun back in 1985 with the World Bank as the key financier then.<sup>29</sup> The need to balance the above economic aspirations with environmental sustainability was not featured in neither ERP I nor ERP II.<sup>30</sup>

The Structural Adjustment Support Program (SASP), and Enhanced Structural Adjustment Facility (ESAF) of 1993 and 1996 respectively were similarly failures from an environmental perspective. Measures under these related programs have focused on

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<sup>25</sup> Semboja, *supra* note 18, at 4.

<sup>26</sup> Ole Therkildsen, *supra* note 3, at 2.

<sup>27</sup> Semboja, *supra* note 25.

<sup>28</sup> *Id.* at 6.

liberalizing the banking sector and foreign investment as well as introducing domestic resources mobilization through capital market formation. Other structural reform measures included the privatization of public companies, reforming tax regime and the government's budget, planning and financial management; and the civil service and local government.<sup>31</sup>

The current Policy Framework on Enhanced Structural Adjustment Facility (PFESAF) for the period 1998/99-2000/01 also does not represent a policy departure from its predecessors in so far the environment is concerned. It provides that “[o]ver the next three years, Tanzania intends to continue with stabilization efforts, reducing inflation to a minimal levels, and increase foreign exchange reserves to a level sufficient to provide good protection against external shocks.” The PFESAF further states that “[a]ttaining of these objectives will facilitate the maintenance of a growth-oriented economic environment” and that the continuing structural reforms and infrastructure development should be able to sustain high growth rates.<sup>32</sup>

Although the framework makes reference to environmental protection issues,<sup>33</sup> they are treated as separate and unrelated to the overall economic objectives and to that extent the reference is of little value if any.

The persistent neglect of environmental concerns demonstrates that, the enactment of NEMA has not been able to wedge influence over this second wave of donor sponsored and designed economic reform measures. A similar argument is made in

<sup>29</sup> Ole Therkildsen, *supra* note 3, at 4.

<sup>30</sup> Bagachwa *et al.*, *supra* note 23.

<sup>31</sup> *Id.* & Semboja, *supra* note 25.

<sup>32</sup> International Monetary Fund & United Republic of Tanzania, Tanzania Enhanced Structural Adjustment Facility Policy Framework Paper for 1998/99-2000/01 (visited January 19, 2000) <<http://www.imf.org/external/np/pfp/1999/Tanzania>> at 2.

<sup>33</sup> *Id.* at 15.

respect of environmental policy initiatives that have been undertaken in the last 15 years. These initiatives are: the National Conservation Strategy for Sustainable Development (NCSSD), formulation of which begun in the mid 1980s, the National Environment Action Plan (NEAP) of 1994, and the National Environmental Policy (NEP) adopted by the government in 1997.

Economic reform and environmental protection initiatives remain parallel and unrelated agendas in Tanzania. The central focus of donor driven economic reform programs remains unchanged, donors wish to speed up economic growth without balancing the long-term sustainability of environmental resources and integrity. The next section highlights incidences of negative environmental effects of the economic crisis and accompanying prescriptions.

### **C. Effects of Economic Crisis and Liberalization on the Environment**

The economic reform measures undertaken under the auspices of the above outlined adjustment programs to curb the economic crisis that had befallen Tanzania are numerous, varied and complex.<sup>34</sup> In broad terms they have included measures such as liberalizing external trade, freeing internal trade from a trade regime under central command and exchange control, removing exchange control restrictions, and the realignment of economic incentive structures so as to increase the volume of natural resource based exports in a bid to reduce resource gaps.<sup>35</sup> The negative environmental effects of the crisis and the adopted measures can be seen in areas such as agriculture-which is the bedrock of the country's economy, forestry, wildlife, fisheries and mining.

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<sup>34</sup> For a comprehensive list of these programs See Ole Thirkildsen, *supra* note 3, at 4.

<sup>35</sup> See Bagachwa et al., Msambichaka et al., & Semboja for a comprehensive discussion of these measures.



In agriculture, for example, the crisis of the late 1970s and early 1980s meant that more land had to be cleared to increase food as well as cash-crops yields, since farmers-especially small scale who constitute the majority-were unable to purchase the required farm implements such as fertilizers.<sup>36</sup> Population pressure further decreased the fallow periods, which reduced the capacity of land to gain fertility and regenerate vegetation cover. More and more people began moving towards marginal areas, some of which are highly ecologically sensitive and therefore susceptible to degradation. In some parts of the country land cultivation began to encroach on areas traditionally meant for cattle grazing, thus forcing cattle holders to migrate in search of grazing pastures. Cattle population had steadily increased at the rate of 2.7% up to 1978, but dropped to about 0.7% by 1984.<sup>37</sup>

With full-fledged implementation of the economic liberalization measures from the mid 1980s to the present time, environmental issues have become more problematic and complex. The focus of reforms in agriculture has been on liberalizing markets, decontrolling prices and removing subsidies. Private entities presently fully participate in the trade of traditional crops such as tea, coffee, cashew nuts and tobacco, which were previously the domain of public corporations. Grain prices have been decontrolled and thus are no longer fixed by the government.<sup>38</sup> In addition, the procurement and distribution of agriculture inputs such as fertilizers and seeds have been liberalized and government no longer provides subsidies for farm implements. Farmers must therefore

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<sup>36</sup> Bagachwa *et al.*, *supra* note 1, at 6.

<sup>37</sup> Ministry of Natural Resources, Tourism and Environment, *supra* note 4, at 2.14.

<sup>38</sup> Msambichaka *et al.*, *supra* note 1, at 99.

buy inputs at the market price from private traders with cash since credits are not easy to get given their low incomes.<sup>39</sup>

Prior to economic liberalization, the government provided up to 80% subsidies on fertilizers and implemented a policy of preferential allocation for areas that produced most of the country's food grains.<sup>40</sup> Consequently in response to these changes in agriculture, land clearing has further increased since small-scale farmers' capacity to purchase farm inputs at the market prices has diminished and their ability to get credits has become even more difficult. On the other hand large-scale farmers anxious to take advantage of the liberalized markets have expanded to marginal areas to increase yields without investing in fertilizers.

In forestry, commercial forest resource clearing has increased sharply so that timber exports rose from 2500 tonnes in 1986 to 33, 000 tonnes in 1989. This increase in production has been attributed to the increase in prices and the availability of external markets.<sup>41</sup> However, by 1992 dependence on wood as the source of energy remained at 90%. Oil fuel, electricity, coal and others contributed only 8.0%, 1.6% and 0.4% respectively to the total energy requirement.<sup>42</sup> Furthermore, with liberalization, the cultivation of tobacco, one of the country's major cash crops, increased by 13% from 1985 to 1991. Tobacco curing alone consumes up 10% of total load of wood that is felled per year.<sup>43</sup> And so the more tobacco is cultivated in response to the market forces, the more trees are cut down to process it.

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<sup>39</sup> *Id.*

<sup>40</sup> Bagachwa *et al.*, *supra* note 1, at 8.

<sup>41</sup> *Id.* at 7.

<sup>42</sup> Ministry of Natural Resources, Tourism and Environment, *supra* note 4, at 1.7.

<sup>43</sup> Bagachwa *et al.*, *supra* note 1, at 6-7.

With implementation of economic reform measures, government reforestation has ironically further decreased from 0.35% to 0.05% of the total government budget. As a result only 0.5% of the lost forest cover is recovered annually.<sup>44</sup> The national macro-economic environment has promoted two negative objectives. These are the maximization of forest resource extraction for export market on the one hand and the minimization of investment for forest resources conservation on the other. The net result is that more land is being cleared of vegetation cover, a potential for an ecological and economic disaster.<sup>45</sup>

In 1990, the country was badly hit by the *El nino* floods, which destroyed the already vulnerable environment. In 1992 there was drought that further aggravated environmental problems. Siltation of dams caused by upstream soil erosion<sup>46</sup> and water shortages led to a hydropower crisis that negatively affected industry causing the government to lose a substantial source of revenue.<sup>47</sup> During the same period, surface water levels fell due to loss of vegetation cover and changes in land-use pattern.<sup>48</sup>

There are other factors that show environmental consideration have been swept aside in the striving for economic growth. For instance, the attraction of foreign direct investment has been a key feature of the economic reform package. Indeed in 1997 the Parliament enacted the Tanzania Investment Act<sup>49</sup> (TIA) that establishes the regulatory framework for foreign investment in the country. The statute creates more favorable investment conditions by providing what has been aptly characterized as “very generous

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

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

<sup>46</sup> Ministry of Natural Resources, Tourism and Environment, *supra* note 4, at 2.21.

<sup>47</sup> Msambichaka *et al.*, *supra* note 1, at 26.

<sup>48</sup> Bagachwa *et al.*, *supra* note 1, at 115.

<sup>49</sup> Act No. 26 (1997) (Tz.).

incentives” to foreign investors.<sup>50</sup> These incentives include tax relief, guarantees and protections of transfer of capital, and profits. Additionally the Act guarantees against expropriation, nationalization or compulsory acquisition of investor’s property.<sup>51</sup>

This fairly recent statute, which implements investment policy reform with implication on national resources, however, is indeed most backward insofar as the protection of the environment is concerned. According to some analysts TIA does not impose any environmental obligations on investors foreign or local and in fact the word “environment” does not even appear in the statute. More significantly, these critics further point out that whereas the original Bill for the Act, which was submitted to Parliament for debate, had a provision requiring inter-agency consultation for the purpose of restoration, preservation, and protection of the environment, but the Parliament deleted this provision from the final Bill that was eventually enacted into law.<sup>52</sup>

Because of laxity of the investment regime, in recent years therefore, there has been considerable pressure to open up wildlife-protected areas for private corporate foreign business. In wildlife protected areas permanent structures such as tourist hotels and lodges have been constructed in ecologically sensitive wildlife areas such the Ngorongoro Crater.<sup>53</sup>

During the same period loss of wildlife has worsened. For instance, whereas the number of black rhinos in Selous Game Reserve had been estimated by a task force commission by the Ministry of Natural Resources and Tourism (MTNRE) to be well over 2000 in 1970, it fell sharply to a mere 150 in 1996. At this, rate the entire black rhino

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<sup>50</sup> Lawyers’ Environmental Action Team, Report on Institutional Mandates and Legal Framework for Environmental Management in Tanzania (July 1999) (unpublished manuscript on file with Lawyers Environmental Action Team & Vice President’s Office) at 23.

<sup>51</sup> *Supra* note 49, §§. 19, 20, 21, 22 and 24 (1) and 24 (2).



population would be wiped out in the year 2001. In 1966 there were estimated to be about 108 black rhinos in Ngorongoro Crater, but by 1988 merely 14 resident rhinos and 7 transient rhinos were identified. In 1999 there were less than 13 black rhinos in the crater.<sup>54</sup> Although loss of big game such as elephants and rhinos is mainly attributed to poaching, both human and animal population pressure is considered to have compounded the overall loss of wildlife and destruction of wildlife habitat.<sup>55</sup>

In mining, a recent study has revealed an instance of the extent of environmental implications that would be brought by just a single mining operation of less than ten years. This mining operation is to be undertaken by Ashanti Goldfields (Tanzania) Ltd., a local subsidiary of a mining giant with stocks in major financial markets of the world.<sup>56</sup>

The project activities requires the use of up to 2.5 million cubic meters of water a year to process over 4 million tonnes of ore annually in order to yield 170,000 to 180,000 oz. of gold annually, the project will produce waste rock and low grade ore of about 74 million tonnes, it will store gold tailing waste behind a side valley dam near a local river that can only hold up to 30 million tonnes of waste, and it will the use of 20,000 tonnes of sodium cyanide, a highly toxic substance, to extract the gold from the ore.<sup>57</sup> The study further found that the company had not “posted a rehabilitation bond to finance the cost

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<sup>52</sup> Lawyers’ Environmental Action Team, *supra* note 50, at 24.

<sup>53</sup> *Id.*

<sup>54</sup> Tundu A. Lissu, Rethinking Wildlife Conservation in Tanzania’s Pastoral Lands: The Case Study of the Ngorongoro Conservation Area (1999) (unpublished manuscript on file with Lawyers’ Environmental Action Team) at 19.

<sup>55</sup> Bagachwa *et al.*, *supra* note 1, at 44.

<sup>56</sup> Tundu A. Lissu, Environmental Impact Assessment of Foreign Investment Projects: A Study in Law, Policy and Governmental Decision-Making in Tanzania, LEAT Research Report Series No. 2 (August 2000) at 19.

<sup>57</sup> *Id.*

of rehabilitating and making safe the mining area on termination of their mining operations,” contrary to the Mining Act of 1998.<sup>58</sup>

Other foreign investment approvals made under TIA have received criticism for ignoring environmental considerations. These include decisions to allow hotels in and around ecologically fragile beaches, breeding of exotic birds and cultivation of exotic flower plants, granting of exclusive hunting rights for wild game,<sup>59</sup> and prawn farming in biodiversity-rich areas.<sup>60</sup> Bagachwa summarizes these bleak findings as follows:

As regards the incidents of environmental costs and benefits, it is clear that benefits accrue in the short term only: in the long run, everyone loses from overexploitation of natural resources. Short-term gainers will include large-scale producers (industrialists, farmers, and timber companies), as they can profit from internal and external markets liberalization by extracting natural resources below true costs.... leaving others to pick up the resulting indirect environmental costs.<sup>61</sup>

Indeed Tanzania continues to maintain what Rvekaza Mukandara and William Shellukindo describe as the culture of not costing or financially assessing the implications of public choices made in this era of ever increasing donor influence in domestic policy making processes.<sup>62</sup> The next chapter examines the role played by international non-governmental organizations and foreign donors in environmental protection policy reform, and the failure of moving towards implementation of these reforms.

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<sup>58</sup> *Id.* at 21.

<sup>59</sup> Issa G. Shivji, *Not Yet Democracy: Reforming Land Tenure in Tanzania* (1998) at 35.

<sup>60</sup> Lissu, *supra* note 56.

<sup>61</sup> Bagachwa *et al.*, *supra* note 1, at 1.

<sup>62</sup> Picard & Garrity, *supra* note 13, at 74, 77.

### CHAPTER III

#### THE ROLE OF DONORS IN ENVIROMENTAL MANAGEMENT POLICY REFORM

The period of liberalization has been characterized by considerable external involvement and influence in public policy and law making process in Tanzania.<sup>63</sup> This situation is attributed to the economic crisis of the last decade, continued dependence on donor assistance and the existing international structural realities that make it difficult for economically weak countries like Tanzania to resist external demands for change.<sup>64</sup>

It is important to point out that although donors have played an upper hand in economic reform that has ultimately intensified environmental problems in Tanzania, they have not played a similar role environmental protection policy reform, for in essence to do so would be to compromise the real objectives of the economic reform measures as mirrored by the structural adjustment programs. This observation is by no means to advocate for donor involvement in domestic policy-making process, but merely to point that donors have contributed in delaying environmental protection transformation not only through the exercise of their influence in economic policy sphere but also through the environmental policy area.

In the environment field, external influence has increased fragmentation, and institutional competition, thereby further complicating efforts to develop environmental protection policy, legal and institutional framework.

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<sup>63</sup> Shivji, *supra* note 59, at 72; Thirkidsen, *supra* note 3, at 1; Picard & Michele, *supra* note 13, at 78.

<sup>64</sup> Picard & Michele, *supra* note 13, at 77 and Therkildsen, *supra* note 3, at p 7, 10.

## A. Environmental Policy as Public Policy

Environmental policy is part of the wider domain of public policy. It is an area of interdisciplinary public policy where politics, science, ethics, economics, law, sociology, psychology and other fields interact.<sup>65</sup> The process of making an environmental policy is described as a “volatile mixture of politics and science that readily erupts into controversy among politicians, bureaucrats, and scientists over their appropriate roles in the process, as well as over the proper interpretation and use of scientific data in policy questions.”<sup>66</sup> A policy remains a mere statement of intention until such time as it is implemented. Essentially it is the implementation that determines the impact of a given policy towards a given set of objectives.<sup>67</sup>

In Tanzania, the need for economic and environmental policy reforms arose during the same period i.e. in the early 1980s. In the economic sphere beginning from the mid 1980s to the present time, donors have consistently provided resources and made sure that policy changes are quickly transformed from mere intentions to legal and structural changes with direct and immediate impact on the ground. The next part demonstrates the degree and extent of external influence and involvement in the emerging environmental policy, legal, and institutional reform, and how it contributed to the fragmentation of environmental protection efforts. It makes an examination of both the key players and activities surrounding the formulations of the NCSSD, and NEAP. The examination reveals how the environmental policy processes have been infested with external maneuvering, duplication, and lack of coordination.

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<sup>65</sup>Daniel J. Fiorino, *Making Environmental Policy* (1995) at 2.

<sup>66</sup> Walter A. Resenbaum, *Environmental Politics and Policy* (3rd ed. 1994) at 84.



## B. National Conservation Strategy for Sustainable Development

The players and activities surrounding the formulation of the National Conservation Strategy for Sustainable Development (hereinafter NCS or NCSSD) are instructive in the way they reveal the role played by donors in environmental protection policy process.

According to Professor Adolfo Mascarenhas in Tanzania, the idea for the NCS was brought by the International Union for Conservation of Nature and Natural Resources (IUCN).<sup>68</sup> He writes thus: “[s]ometime late in 1985, IUCN sent a consultant to interest Tanzania in a National Conservation Strategy (NCS). The consultant went to State House. The Presidential Advisor suggested that he consult with the Institute of Resource Assessment (IRA). Mr. Roger Schwass, the consultant then, then tried to interest the Principal Secretary” of the then Ministry of Lands, Natural Resources and Tourism (MLNRT)-which was at the time responsible for environmental matters “who flatly told the consultant that the matter was not of interest to the Ministry” since it did not have the human resources necessary to make it a priority.<sup>69</sup>

Mascarenhas goes on to write that thereafter some IUCN senior official approached IRA, which then proceeded to form a Steering Committee to carryout initial preparatory work on how to go about formulating the strategy with financial support from the Norwegian Agency for International Development (NORAD). These activities

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<sup>67</sup> *Id.* at 86.

<sup>68</sup> IUCN also known as the World Conservation Union is an international alliance for the conservation and wise use of natural resources. It draws members from non-governmental organization, state and government agencies. IUCN provides technical assistance to developing countries in preparing National Conservation Strategies and environmental law. It also provides training and maintains environmental law resources. The headquarters of IUCN is in Gland, Switzerland, (Visited May 3, 2001) <http://www.iucn.org>

<sup>69</sup> Letter from Prof. Adolf Mascarenhas of the Institute of Resource Assessment, to the Director General of National Environment Management Council copied to the Principal Secretary, Ministry of Lands, Natural

included a national workshop held in February 1986 to gather preliminary information on the state of the environment.<sup>70</sup>

In 1987 however IUCN initiated separate discussions on NCS with NEMC and the Swedish International Development Agency (Sida)<sup>71</sup> despite the above previous developments mainly because in 1986 NEMA, which as already mentioned established NEMC, had become effective with among others mandate for environmental policy formulation, coordination and as the chief advisor to governmental on all matters pertaining to the environment.<sup>72</sup> At this stage IUCN indicated its desire to assist Tanzania with the NCS process by providing technical expertise only if Sida agreed to provide the necessary financial resources to cover its involvement. By early 1989 an agreement was concluded between NEMC, IUCN and Sida on selected preparatory activities on the NCS whose implementation begun in June 1989.<sup>73</sup> At this very early stage of NCS process it can be concluded two similar activities had already emerged under two different national institutions with financial support from two different international organizations namely NORAD and Sida.

In November 1990, the NCS process was officially launched through a national workshop held in Dodoma. It was organized by NEMC in collaboration with IRA and substantially funded by Sida. The list of external invitees was long enough; it included

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Resources and Tourism; Director of Institute of Resource Assessment; and the Vice-Chancellor of the University of Dar es Salaam ( May 3,1990) (on file with the National Environment Management Council).

<sup>70</sup> The NCS Steering Committee had representatives from IRA, UDSM, Institute of Research [Utafiti], Ministry of Agriculture and the NEMC. It conducted a national workshop for 5 days from the 23 of February 1986 and was co-financed by IRA, UDSM and Norwegian Agency for International Development [hereinafter NORAD] Id.

<sup>71</sup> Formerly abbreviated as SIDA, and currently as Sida.

<sup>72</sup> See Government Notice No. 80 of 1986 made under § 3 of the National Environment Management Act, No. 19 (1983) (Tz.)

<sup>73</sup> Proposal from IUCN to the Director General of the National Environment Management Council (May 8, 1989) (on file with National Environment Management Council). The activities included an exploratory

IUCN, Sida, NORAD, Danish International Development Agency (DANIDA), Finish Development Agency (FINNIDA), World Bank, United Nations Environmental Programme (UNEP), Food and Agricultural Organization (FAO), United Nations Development Programme (UNDP) and International Institute for Environment and Development (IIED).<sup>74</sup> The “IUCN provided technical assistance through” inter alia “the participation of an IUCN consultant with responsibility for NCS development in the Kingdom of Jordan.”<sup>75</sup>

The national forum had three major objectives, namely: 1) to officially launch the NSC process; 2) to review issues, and problems pertaining to environmental management; and 3) to determine future steps required in the preparation of the NCS.<sup>76</sup> The exploratory and planning report, and papers presented at the workshop thus formed the basis for the debate which focused on five broad themes that were grouped as planning, policies and legislative measures; administrative, and institutional mechanisms; efficient, and rational resource uses; research, and technology; and education, and public awareness.<sup>77</sup>

The fundamental issue of process and structure for NCS was raised at the workshop. However there is no evidence to indicate that any in-depth discussions or deliberations were made on issues such as what the NCS development stages would entail, who the participants would be at each of those steps, and how it would finally be adopted and implemented. Despite the long list of donors, no financial commitments

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and planning consultancy mission to review available information on environment and natural resources management.

<sup>74</sup> See Detailed Program of the First National Workshop on Preparation of the NSC held from November 12-17, 1990 (on file with National Environment Management Council).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

were subsequently made towards funding the NCS up to the implementation stage, which is perhaps the real justification for inviting them to such a forum in the first place.

In February 1991, barely 3 months after the Dodoma workshop, IUCN submitted a detailed proposal for further involvement in the NCS process. In connection with the involvement, IUCN wrote to NEMC thus: “As you know, the contract between IUCN and Sida for support to NEMC has now expired. Consequently there are no funds to provide further assistance at this stage. We hope therefore, that the enclosed proposal will form the basis of a further agreement between IUCN and Sida, which will enable us to provide support and technical assistance to NEMC during the next two years... I understand that SIDA will be prepared to make such an agreement, subject to the approval of NEMC.”<sup>78</sup>

The following quote is even more revealing on the extent of IUCN’s desire to get involved in the NCS process: “We strongly recommend that IUCN be represented in either the Steering Committee or in the Technical Committee. This will enable NEMC to have direct access to the experience which IUCN has developed in advising on National Conservation Strategies throughout the world, and it would enable IUCN to advise on the development of the strategy in Tanzania.”<sup>79</sup> In mid-1991 Sida made it clear that it would no longer finance IUCN’s assistance on NCS and to this IUCN responded that, “Without

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* In September 1990 the Principal Secretary of the of the then Ministry of Lands, Natural Resources and Tourism who was responsible for environmental issues had made approved NEMC’s decision to form an inter-departmental Technical Committee. He also made a decision to form a Steering Committee under his own chairmanship to guide the formulation of the NCS. A similar structure was adopted by the November 1990 workshop.



the financial support [from Sida], it is very difficult for the Regional Office to provide the assistance which we wish to avail to NEMC, as we have no funds to cover our costs.”<sup>80</sup>

Elsewhere, however, IUCN was reporting to the world that developing countries including Tanzania were demanding its help and that a Trust Fund had been set up to respond to environmental and conservation related demands of such countries.

Incidentally the Trust Fund was a joint undertaking by IUNC and Sida.<sup>81</sup> In fact in a later incident where IUCN was to assist NEMC in the preparation of the NCS brochure, its Head of Project Management wrote to NEMC thus: “I assume that payment for this particular assignment will be arranged as discussed before, and I propose that this be incorporated in a request for payment of other future expenditure.”<sup>82</sup> No doubt IUCN, which purported to be assisting Tanzania in the preparation of the NCS, lacked the necessary resources, and instead relied on local institutions for its involvement in the formulation of NCS.

During the same period the World Resources Institute (WRI)<sup>83</sup> also proposed involvement in the NCS.<sup>84</sup> Subject to getting the Principal Secretary’s approval, WRI thus indicated willingness to seek (from donors) financial resources to support its involvement. This implies that like IUCN, WRI, at the material time lacked, the

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<sup>80</sup> Letter from IUNC Regional Office for Eastern Africa, to the Director General, National Environment Management Council (June 24, 1991) (on file with the National Environment Management Council).

<sup>81</sup> William Wilson, *Environmental Law as Development Assistance*, 22 *Environmental Law* 953, Spring 1992, at 16-17.

<sup>82</sup> See Letter by Head of Project Management, IUCN Regional Office for Eastern Africa to the Director General of the National Environment Management Council (February 24, 1992) (on file with the National Environment Management Council).

<sup>83</sup> WRI is an American NGO with headquarters in Washington D.C.

<sup>84</sup> See Letter from Director of Center for International Development and Environment, WRI, to the Principal Secretary, Ministry of Natural Resources, Tourism and Environment (May 7, 1991) (on file with WRI).

necessary resources for its proposed involvement in the NCS and relied upon local institutions to access the necessary resources from donors.<sup>85</sup>

The above requests for involvement in the NCS by foreign NGO's were to be followed by one from a Canadian private company by the name of Hardy BBT Ltd. Consultancy & Environmental Services (Hardy BBT Ltd.). In October 1991 Hardy BBT Ltd. was bold enough to write to NEMC thus:

We understand that the NEMC, with funding .... from Swedish International Development Agency (SIDA), is currently in the process of preparing a National Conservation Strategy ... We feel that the private sector can play an important role in the National Conservation Strategy and Environment Action Plan...We feel that the private sector can play an important role in the preparation process by providing technical expertise on specific target areas identified by NEMC and its advisors. HBT is currently working with the government of Romania to assist them in defining and implementing the National Environment Development Program.<sup>86</sup>

The author is reliably informed that both WRI's and Hardy BBT Ltd.'s requests to participate in NCS activities were not accepted by NEMC.<sup>87</sup>

By April 1993 there were concerns that the World Bank was planning to replace NCS process with NEAP because it was not fast enough.<sup>88</sup> As it will be shown below, the World Bank was able to accomplish this objective further undermining, frustrating and complicating the formulation of environmental policy in Tanzania. A month later in May 1993 an Informal Donor Group on Environment (IDG)<sup>89</sup> comprising officials from FAO,

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<sup>85</sup> *Id.*

<sup>86</sup> See Letter from Jans S. Roukema, General Manager for Africa, to the Director General of the National Environment Management Council (October 22, 1991) (on file with the National Environment Management Council).

<sup>87</sup> Telephone Interview with Peter Veit, Regional Director for Africa, Institutions and Governance Program, World Resources Institute (November 10, 2000) & Interview with Esther Kerario, Acting Director of Environmental Impact Assessment, National Environment Management Council (June 12, 2000).

<sup>88</sup> Letter from W.A. Rogers to Director General, National Environment Management Council (April 1, 1993) (on file with the National Environment Management Council).

<sup>89</sup> The IDG is a voluntary, unofficial and informal forum that brings together donor agencies and government officials to update each other on issues relating to the environment.

the Netherlands Embassy, the German Agency for Technical Cooperation (GTZ), and FAO/Global Environmental Facility (GEF) held a meeting in Dar es Salaam. The idea for this particular meeting apparently came from the World Bank Environmental Mission to Tanzania. According to the IDG, the objective of the meeting was “not to give official comments” but only to provide NEMC with points of view to enable finalizing the NCSSD. Interestingly, however, no World Bank official attended the meeting.<sup>90</sup> The IDG meeting had the effect of mounting pressure on NEMC to conclude the NCS.

In March 1994, the Principal Secretary of MNRTE formed what he called the National Secretariat for NCSSD. The purpose of this new organ was “to assist the World Bank Consultant in reviewing the document (NCS) by ensuring that: (i) it articulates the environmental policy as the basis for the proposed strategy, (ii) it incorporates comments both from the Steering Committee meeting and the Conference of Local Government Authorities, NGOs and the private sector and (iii) it concretizes the already proposed National Environment Action Plan (NEAP).” This communication went further to state that “[t]he World Bank Consultant who arrives on 27<sup>th</sup> March, 1994 is expected to start working immediately.”<sup>91</sup>

The fact that the decision to have the National Secretariat was made barely three days prior to the arrival of the World Bank Consultant, is indicative of the sudden nature of these developments. The decision had the effect of not only unilaterally changing the structure of NCS endorsed by a national forum by adding a new organ but also of further compromising and complicating the NCS process by subjecting it to the dictates

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<sup>90</sup> Minutes of the IDG meeting (May 24, 1993) (on file with the Royal Netherlands Embassy).

<sup>91</sup> Letter from the Principal Secretary copied to the Mr. Motoo Konishi, Resident Representative, World Bank Mission, Dar es Salaam, and to Dr. Leonard Berry, World Bank Consultant (March 24, 1994) (on file with the World Bank Mission).

of the World Bank. In fact this very NCS National Secretariat was latter renamed NEAP National Team and ended up drawing up what became the World Bank imposed NEAP.<sup>92</sup>

In May 1995, amidst what by then had become, a chaotic policy process situation, NEMC formally submitted the NCSSD proposal to MNRTE.<sup>93</sup> To the best of the author's information the NCS proposal was never tabled before the Cabinet for deliberation.<sup>94</sup>

Five years after the submission of the NCS proposal, the President's Office Planning Commission<sup>95</sup> is spearheading Tanzania's participation in a developing countries-donors dialogue on National Strategies for Sustainable Development (NSSD). This recent activity is being implemented under the auspices of Organization for Economic Cooperation and Development (OECD)-Development Assistance Committee (DAC) through a Task Force co-led by the European Union and the United Kingdom. The objective behind this initiative is to produce guidance for donors on how to best assist developing countries including Tanzania with the formulation and implementation of NCSS.<sup>96</sup>

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<sup>92</sup> The NCS National Secretariat or NEAP National Team drew members from the World Bank ( Leonard Berry), DOE, NEMC, President's Office Planning Commission, Ministry of Agriculture, Ministry of Industries and Trade; US Peacecorps (Laura Hitchcock) See Minutes of NEAP National Team held on April 6, 1994 (on file the National Environment Management Council).

<sup>93</sup> See letter of formal submission with ref. NEMC/94/1/Vol.5/60 dated 12<sup>th</sup> May 1995.

<sup>94</sup> Interview with Ruzika N. Muheto, Director of Natural Resources , National Environment Management Council in Dar es Salaam (June 15, 2000).

<sup>95</sup> The President's Office Planning Commission is an independent department established by the Planning Commission Act No. 11 (1989) (Tz.). It has the general responsibility to manage the economy, formulate national economic and social and over see their implementation, which includes overseeing policies of all other departments of government. It is the highest advisory body responsible to the Cabinet on all matters relating to planning and management of the economy. See § 3, 3(2) and 5(1).



### C. National Environment Action Plan

For all intents and purpose the NEAP was designed, written and approved by the World Bank and as a unilateral imposition, it was absolutely devoid of a process. As early as 1989 IUCN had observed that the World Bank had expressed an interest in sponsoring an environmental action plan for Tanzania and that there was a scope for the integrating both the NCS and an environmental action plan even though there are different initiatives.<sup>97</sup> This observation clearly suggests that the NCS, and NEAP were not regarded as one and the same thing.

In November 1990 the President established the MNRTE and vested it with responsibility for, among other things “... Environmental Policy, Environmental, Environmental Sanitation, Beach Erosion Protection, National Environment Management Council...”<sup>98</sup> At about the same period the Division of Environment (DOE) was created as an administrative department within the new ministry and its existence was to that extent non-statutory and therefore shaky. The events that followed this development marked the high point of external influence in environmental policy-making in Tanzania as some donors (particularly the World Bank) chose to wedge their influence with the newly-formed MNRTE and therefore DOE. The influence peddling exacerbated institution rivalry and competition between NEMC and DOE, which is discussed in detail in chapter four below.

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<sup>96</sup> President’s Office Planning Commission, OECD/DAC Donor-Developing Country Dialogue on National Strategies for Sustainable Development (May 23, 2000) (unpublished workshop paper on file with the President’s Office Planning Commission).

<sup>97</sup> IUCN Regional Office Eastern Africa, Proposal to NEMC Regarding the Realization of the NCS ( May 8, 1989)(unpublished manuscript on file with National Environment Management Council).

<sup>98</sup> Government Notice No. 489 and 490 of November 30, 1990 made under the Article 55(1) of the Constitution of the United Republic of Tanzania, 1977 on the Allocation of Business to Departments and Assignment of Responsibilities to Ministers; and the Ministers (Discharge of Ministerial Functions) Act No. 10 (1980) (Tz.) respectively.

In February 1991 officials of the World Resources Institute (WRI)<sup>99</sup> visited Tanzania to indicate WRI's willingness to work with the newly-created MNRTE. In a meeting held between the Principal Secretary for MNRTE, NEMC, and WRI, the need for an environmental action plan and policy were discussed.<sup>100</sup> The author is reliably informed during this time three environmental consultants each from the World Bank, IUCN, and WRI were all in Tanzania holding discussions on NEAP, NEP and NCS with either MNRTE or NEMC.<sup>101</sup>

Following the meeting with MNRTE, WRI provided DOE with information on how "to move the Tanzania EAP forward." This included detailed steps on how to involve "local level people" in the process. A World Bank presentation on "popular participation" supplemented the information made available to DOE by WRI.<sup>102</sup>

By the end of October 1991 it was obvious that the World Bank was pressuring Tanzania to come up with a separate NEAP despite the ongoing formulation of an environmental action plan within the NCS. For instance in the letter by Hardy BBT Ltd. quoted earlier, the company said: "Our earlier discussion have confirmed.... the importance of showing significant progress towards preparing EAP [Environmental Action Plan] by 1993 in order to ensure continued funding of projects in Tanzania by the World Bank and other International Financial Institutions."<sup>103</sup> It is noted that the Informal

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<sup>99</sup> World Resource Institute is an American NGO with head quarters in Washington D.C., USA

<sup>100</sup> Letter from the Director, Center for International Development and Environment, WRI, to the Principal Secretary, Ministry of Natural Resources Tourism and Environment copied to the Director General of the National Environment Management Council (May 7, 1991) (on file with the World Resources Institute).

<sup>101</sup> Telephone Interview with Peter Veit, Regional Director for Africa, Institutions and Governance Program, World Resources Institute (November 10, 2000).

<sup>102</sup> Letter from Program Analyst, World Resources Institute, to Director of the Division of Environment, Ministry of Natural Resources, Tourism and Environment; and to the Director General, National Environment Management Council copied to the World Bank Mission in Dar-es -Salaam (July 23, 1993) (on file with the World Resources Institute).

<sup>103</sup> *Supra* note 83.

Donor Group on Environment chose to be a passive observer as the World Bank mounted pressure for the replacement of the NCS by NEAP.<sup>104</sup>

As pointed out above in March 1994 a National Secretariat that ended up becoming a NEAP National Team was formed and undertook the writing of a NEAP at the supervision of Dr. Leonard Berry, a World Bank consultant.<sup>105</sup>

In June 1994 the biggest IDG meeting on environment thus far took place and this time around the World Bank, NEMC, and DOE officials were all in attendance.<sup>106</sup>

Apparently it was triggered by lack of transparency surrounding the formulation of a National Environment Action Plan (NEAP) that was “separate and different” from the environmental action plan formulated by NEMC as part of the NCSSD mentioned above. On this issue the DOE explained thus: “NEAP contains strategies for implementing policy, an institutional framework for implementation, and targets for actions. The document was prepared rather hurriedly... for submission before the World Bank deadline. The NEAP was prepared by a National Team that completed its work in May, and it was discussed with Sharma [who worked for the World Bank Resident Mission in Tanzania] to ensure that it meets with the World Bank expectations. The National Team was composed of ten (10) experts including Dr. Berry.”<sup>107</sup>

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<sup>104</sup> Minutes of the Informer Donor Group meeting (February 15, 1994) (on file with the Royal Netherlands Embassy).

<sup>105</sup> *Supra* note 99.

<sup>106</sup> Other officials came from Danish International Development Agency (DANIDA), Food and Agriculture Organization (FAO), FAO/Global Environmental Facility (GEF), German Organization for Technical Cooperation (GTZ), Overseas Development Agency (ODA) Swedish International Development Agency (Sida), Finish International Development Agency (FINNIDA), United Nations Development Programme (UNDP), United States Agency for International Development (USAID), Norwegian Agency for International Development (NORAD), Japan International Cooperation Agency (JICA), Canadian International Development Agency (CIDA), the World Bank, Swiss Development Cooperation (SDC) Embassies of Ireland and Royal Netherlands. See Minutes of the Informal Donor Group meeting (June 9, 1994) (on file with the Royal Netherlands Embassy).

<sup>107</sup> *Id.*

Dr. Narendra Sharma, who attended this IDG meeting, had the following to say in defense of the “cooked” NEAP: “[T]he NEAP represents a good picture of the state of the environment in Tanzania, key issues, and an idea of the overall policies...in general the government is moving in the right direction....”<sup>108</sup> He went on to further point out that “compared to other countries, Tanzania has a good donor group, and with the NCSSD, the draft NEP and the NEAP, we (donors) have enough ammunition with which to proceed.”<sup>109</sup>

From the foregoing it is clear therefore that in Tanzania NEAP was put together in less than three months on conditions imposed by the World Bank. Likewise in the neighboring state of Kenya “NEAP was produced in less than a year to meet a deadline imposed by funders.”<sup>110</sup> Tanzania’s experience with NEAP also shows that the World Bank has little regard for policy processes that entails what it describes as “popular participation.” The manner in which NEAP was prepared is also contrary to the assertion that NEAPs are meant to reverse institutional overlaps, and therefore preventing interinstitutional conflicts.<sup>111</sup>

#### **D. Implications and Conclusions**

Several conclusions are drawn from the above in so far as the role of donors and conservationists in Tanzania environmental policy-making is concerned. International Conservation Organizations have used national institutions for purposes of fund-raising in furtherance of their own interests in the name of technical assistance and support and

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<sup>108</sup> *Id.* at 2.

<sup>109</sup> *Id.* at 2-3.

<sup>110</sup> Peter Veit ed., *Africa’s Valuable Assets: A Reader in Natural Resources Management* (1998) at 52.

<sup>111</sup> *Id.* at 36.



this explains why their involvement or interest has immediately ceased with exhaustion of donor resources or where there is been no guarantee of the same.

Donors and international conservationists have directly contributed to the fragmentation of broad based environmental policy reform efforts by choosing to influence, fund and or engage in overlapping activities through different institutions. In this way they have further fuelled competition and rivalry counter-productive to environmental protection efforts. This tendency on the part of donors has been observed in connection with land policy and law making in Tanzania on which Issa Shivji has written that the process was “fragmented among at least four bodies working simultaneously and at cross purposes.... Different organs and departments of state working on similar major issues and financed by different foreign funding sources (each vying for leverage) is not an untypical scenario in Tanzania, where policy-making, particularly since liberalization, is increasingly donor driven.”<sup>112</sup> A similar trend is observed in environmental policy and law making processes.

In the area of environmental management, donors have shown preference for short-term, piece-meal, and scattered funding over long-term programmatic resource investment that is holistic, and coordinated. On the issue of short-term projects versus long-term process, Andreen argues that donors have “an interest in trying to complete single projects with more clearly defined benchmarks, more tangible results, and shorter time horizons” and further that donors are “also generally resistant to joint planning and coordination of funding efforts...”<sup>113</sup> The Informal Donor Group on Environment (IDG) has resisted change of status to a formal coordination mechanism by arguing that the

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<sup>112</sup> *Supra* note 59, at 35, 72.



informality of the group has allowed personal commitment, and dynamism that would be compromised by formalization.<sup>114</sup>

The above line of reasoning is difficult to fathom, and questions the seriousness of IDG's commitment to the sustenance of the country's economic resource base. It suffices to conclude that broad-based environmental management has not emerged as a long-term program with guaranteed resources investment to safeguard the environment from the rigors of donor influenced economic liberalization agenda.

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<sup>113</sup> William L. Andreen, Environmental Law and International Assistance: The Challenge of Strengthening Environmental Law in the Developing World, 25 Columbia Journal of Environmental Law 17, 2000, at 27.

<sup>114</sup> *Supra* note 106.

## **CHAPTER IV**

### **DOMESTIC INSTITUTIONAL COMPETITION AND LACK OF POLITICAL COMMITMENT TO ENVIRONMENTAL MANAGEMENT REFORM**

The national institutions with responsibilities for environmental protection have also contributed to the stagnation of policy, legal, and institutional reform. Competition over mandates and roles has undermined interagency cooperation and coordination key to successful multi-disciplinary policy dialogue. On the other hand policy makers have remained detached from the environmental policy making processes and have instead resorted to empty rhetoric at the expense of the environment.

The lead national institutions with cross-sector environmental responsibilities are basically two, NEMC and DOE currently under the Vice President's Office (VPO). The next section covers in more detail their history, mandate, and the incidents of frictions counter productive to environmental management policy reform.

#### **A. History and Mandate of Lead Environmental Institutions**

##### **1. National Environment Management Council (NEMC)**

The history of NEMC dates back to 1980 when an environmental protection and management section was created under the department of Town and Country Planning in the then Ministry of Lands, Natural Resources and Tourism (MLNRT).<sup>115</sup> This environmental section initiated the establishment of a national advisory on environmental matters. In 1983 the Parliament enacted into law the National Environment Management

Act thereby establishing NEMC.<sup>116</sup> The Act became operative three years later in November 1986<sup>117</sup> and NEMC replaced the predecessor environmental section in MLNRT. The first Director General of NEMC had been the head of the former environmental unit.<sup>118</sup> To date therefore NEMC has been in operation for fifteen years.

NEMC's functions are expressly and categorically stipulated to include: advising the government on all matters pertaining to environment; formulating policy on environmental management; coordinating activities of all institutions concerned with environmental related matters; evaluating the government's existing, and proposed policies and activities on pollution control and enhancement of environmental quality; and recommending measures to ensure that the government take adequate account of environmental effects.<sup>119</sup>

Additionally NEMC was mandated to foster cooperation between the government and other institutions engaged in environmental programs; stimulate public participation in sustainable programs and activities on natural resources; seek advancement of scientific knowledge on environmental change, and the development of technology for the prevention or mitigation of adverse environment effects; specify standards, norms and criteria for protection of environmental quality; establish and operate documentation and dissemination of environmental information; and liaise with national, and international organizations in respect of environmental protection, and management issues.<sup>120</sup>

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<sup>115</sup> Interview with Esther Kerario, Director of Environmental Impact Assessment, National Environment Management Council, who was amongst the first civil service employees that worked in the environmental unit in the then Ministry of Lands, Natural Resources and Tourism, in Dar es Salaam (June 12, 2000).

<sup>116</sup> Act No. 19 (1983) (Tz.).

<sup>117</sup> See Government Notice No.80 (1986) made under § 3 of NEMA.

<sup>118</sup> *Supra* note 115.

<sup>119</sup> *Supra* note 116, § 4(a-d).

<sup>120</sup> *Id.*, § 4(e-k).

Furthermore NEMC was given the mandate to formulate proposals for legislation for environmental matters and recommend their implementation by the government.<sup>121</sup>

The Act also established the office of the Director General. The Director General is a presidential appointee and chief executive of the NEMC and thus responsible for the day-to-day running of the organization.<sup>122</sup> The Director General is duty bound to consider means and initiate steps necessary for the protection of the environment, prevention, control, abatement or mitigation of pollution and the investigation of environmental management problems.<sup>123</sup> The minister<sup>124</sup> responsible for the implementation of NEMA is empowered to give general as well as specific directions to NEMC in respect of execution of its powers and functions and NEMC is under legal duty to follow such ministerial instructions.<sup>125</sup>

NEMA has never been amended and so remains as enacted nearly two decades ago. This is not to suggest that NEMA has been a perfect statute and so the need to have it amended or replaced has not arisen; or that such attempts have not been made. Indeed this issue is part of the wider question of institutional politics surrounding environmental management policy reform in Tanzania. It suffices to point out however, that NEMC of 2000 fits into more or less the description given to the pre-1976 US Council of Environmental Quality (CEQ) as being that of an “advisor and cajoler, rather than enforcer.”<sup>126</sup> Since NEMC efforts to influence policy, legal and institutional changes has produced no results thus far it has at times assumed the role of a collaborator and partner

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<sup>121</sup> *Id.* § 4(j).

<sup>122</sup> *Id.* § 6.

<sup>123</sup> *Id.* § 7(a-f).

<sup>124</sup> The word “minister” is not defined by NEMA, however in accordance with Tanzania’s administrative practice the reference to minister is understood to mean the minister who is allocated responsibilities for environmental issues by the President in accordance with the presidential instruments referred to below.

<sup>125</sup> *Supra* note 116, § 2.



with notorious environmental polluters such as Tanzania Portland Cement Co., a cement making factory whose dust emission levels have been observed by NEMC to be between 1100mg/NM3 to 19000mg/NM3 which is much higher than the comparatively less stringent limits set by the World Bank at 250 mg/NM3.<sup>127</sup> The factory which when built in the early 1960s was far away from human population, is today engulfed by residential areas.

## **2. Division of Environment (DOE)**

Unlike NEMC, the Department of Environment (DOE) does not enjoy statutory existence. It was created out of an administrative action for administrative purpose following the establishment of the Ministry of Natural Resources, Tourism and Environment (MNRTE) in 1990. The establishment of MNRTE was done in exercise of the President's discretionary powers under Article 55(1) of the Constitution<sup>128</sup> and the Ministers (Discharge of Functions) Act of 1980<sup>129</sup> to allocate business to government departments; assign and discharge ministerial responsibilities, and functions published as Government Notice No. 489 and No. 490 of November 30<sup>th</sup> 1990 respectively.

According to these legal instruments, the newly established office of the Minister for MNRTE was responsible for among other issues, environmental policy, environmental protection, environmental sanitation, beach erosion, and the National Environment Management Council. The high degree of generality on executive authority in respect of environmental matters notwithstanding, it would appear that environmental issues had henceforth been transformed to a significant public policy question.

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<sup>126</sup> See John E. Bonine and Thomas O. MacGarity, *The Law of Environmental* (1992) at 28.

<sup>127</sup> See National Environmental Management Council, *Environmental Audit Needed for a Well Conserved Environment*, Environmental Newsletter, Q. Newsletter, Issue No. 2 Vol. 4, September 1999, at 2, 3.

<sup>128</sup> Katiba [Constitution] ya Jamuhuri ya Muungano wa Tanzania, 1977.



In 1995, the President moved the executive authority of environmental matters from the MNRTE to the Vice-President's Office. The new Government Notice No. 720 made under the Presidential Instruments on the "Allocation of Business to Departments and Assignment of Responsibilities to Ministers" published on 15<sup>th</sup> December 1995, merely repeated verbatim what the previous Government Notices No. 489, and 490 of November 1990 had stipulated.

The National Environment Management Council and DOE were therefore transferred to the VPO. While the transfer to the VPO was express for NEMC, it was implied for DOE. In last 15 years the environmental portfolio has been place in three ministries namely: in MLNRT from 1980 to 1990, MNRTE from 1990 to 1995, and in the VPO from 1995 to date. The transfers of executive responsibilities have been described as the frequent changes in the "institutional home" of environmental institutions in search of effective institutional arrangement for environmental management.<sup>130</sup> It should be noted that since in Tanzania it is the President of the day who determines the number, nature and responsibilities of government ministries and departments, and not the Constitution, such frequent changes are common and do follow nearly every general election.<sup>131</sup> Ibrahim Juma has aptly observed that this frequent reshuffling and shifting "if not properly done is bound to affect the expertise accumulated by government officers and agencies and hence the efficacy of laws."<sup>132</sup> On the same breadth the transfers can delay policy reform processes because of the change of leadership that accompany such transfers, and hence the change of priorities as well.

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<sup>129</sup> Act No. 10 (1980) (Tz.).

<sup>130</sup> *Supra* note 110 at 31.

The creation of a statutory body, and an administrative central government division both with responsibilities for environmental protection has been a potential for institutional competition in Africa.<sup>133</sup> In Tanzania three factors have compounded institutional rivalry and competition. These factors are resource scarcity, perceived overlap of mandate, and lack of transparency and accountability for administrative action or inaction.

Because of the low priority accorded to environmental protection in Tanzania, minimal domestic resources were allocated to NEMC prior to 1990, and the bulk of its activities depended, and continues to depend on donor resources. With the creation of DOE competition for the limited resources has increased. Furthermore, the overly general Presidential instruments and the unamended status of NEMA have exacerbated jurisdictional conflicts between the two institutions because of perceived rather than real jurisdictional overlaps. Lack of accountability for administrative actions, and inactions has also added to the problem by encouraging the misuse of authority to further narrow institutional objectives at the expense of wider environmental protection goals.

Incidents of rivalry and competition between NEMC and DOE are drawn from actions in breach of the law, actions in abuse of administrative authority, and from official positions that are ridden with internal inconsistencies, and contradictions.

## **B. Manifestations of Institutional Competition and Rivalry**

The systematic disregard for the legal provision on the formulation of environmental policy is foremost in demonstrating the extent and degree of competition

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<sup>131</sup> Ibrahim H. Juma, *Protection of Marine Environment from Land Based Sources of Pollution: Matching Tanzania Domestic Law to the U. N. Convention on the Law of the Sea (1999)* (unpublished Ph.D. dissertation, University of Ghent) (on file with the University of Dar es Salaam Library) at 53.

<sup>132</sup> *Id.*

and rivalry that has engulfed NEMC and DOE ever since the latter's creation in the early 1990s. Even though, as already pointed out, the responsibility for environmental policy formulation vests in NEMC, DOE's actions have persistently shown total disregard for what the law stipulates and has instead usurped the policy formulation mandate.<sup>134</sup> For instance in 1994 MNRTE, of which DOE is a part, went ahead to commission ENV Consult (T) Ltd., a private consulting firm to draft environment policy for Tanzania. Furthermore, in 1995 DOE went ahead and commissioned the Center for Energy, Environment, Science and Technology (CEEST), an NGO, to prepare a national consultative workshop on national environmental policy.<sup>135</sup> This deliberate usurpation of NEMC's statutory mandate had the effect of fuelling mistrust, and competition between the two institutions.

The approvals or lack of approvals pertaining to policy and legislative proposals is another indication of the existence of institutional power struggle between NEMC and DOE. For instance, while the proposals for both NEAP and NEP, which were initiated by DOE, have gone as far as the Cabinet level, none of NEMC's policy and legislative proposals have gone past the ministry upon submission.

According to Tanzania's policy-making practice, for such proposals to be deliberated upon by the Inter-Ministerial Technical Committee (IMTC) and eventually the Cabinet, the Ministry responsible for environment (with DOE as its administrative unit therein) has to take additional step upon receiving NEMC's proposals. That step entails the preparation of a policy proposal in the form of a Draft Cabinet Paper for IMTC

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<sup>133</sup> *Id.*, Peter Veit ed., *supra* note 110, at 32.

<sup>134</sup> Dabana, N. and E.T. Mallya, Institutional Capacity in the Public Sector for Environmental Management (1999) (unpublished manuscript on file with the Vice President's Office) at 14.

<sup>135</sup> *Supra* note 50, at 117 & footnote 90.

consideration and deliberation. If the IMTC approves the Draft Cabinet Paper then the Ministry concerned prepares the final Cabinet Paper requesting a policy decision from the Cabinet and therefore the President.<sup>136</sup>

In an environment where within the Ministry concerned competing proposals are being made, this additional step simply does not take place and the full implementation of NEMA in respect of policy formulation responsibility compromised. This trend is observed with the Proposal for the Amendment of the NEMA, for the Environmental Protection Bill, for the National Conservation Strategy and for the Environmental Impact Assessment Procedure.<sup>137</sup> In none of these instances was a Draft Cabinet Paper written and circulated to the IMTC.

An additional manifestation of competition is demonstrated by inconsistencies and contradictions surrounding official positions over environmental management issues. A good example is in relation to the Cabinet's deliberations over the NEP proposal. Although the Cabinet had issued specific instructions in connection with institutional aspects of environmental management, the NEP document that was circulated by DOE disregarded these instructions and therefore purported to be the final Cabinet position on environmental management. Apparently the Cabinet had directed that the proposed institutional structure be streamlined to avoid bureaucracy that could compromise the implementation of NEP. The Cabinet had also decided that at the national level NEMC be responsible for environmental issues.<sup>138</sup>

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<sup>136</sup> *Supra* note 13 at 69.

<sup>137</sup> These were submitted between 1994 and 1998. Interview with Magnus K. Ngoile, Director General, National Environment Management Council in Dar es Salaam (August 2, 2000).

<sup>138</sup> *Supra* note 50 at 99-100.



The misleading information contained in NEP and failure of both DOE and NEMC to objectively work on the Cabinet's instructions wholly raises the fundamental and wider questions of policy-making system in Tanzania apart from showing the existence of institutional competition. A recent government-initiated study found that in the 1990s the "actual policy work is typically done by middle and junior level officers-often in close co-operation with donor funded national or foreign consultants" and that concerned ministries and political-administrative elites support reform initiatives that create new opportunities for themselves.<sup>139</sup> The study concluded that there exists in practices and system of policy making at the center of government "a vacuum at the apex of the policy development process" since neither the Cabinet, Ministers or Principal Secretaries are active in shaping policy reform.<sup>140</sup>

Most recently, the developments associated with the Institutional and Legal Framework for Environmental Management Project (ILFEMP)<sup>141</sup> report and the preparation of the Draft Cabinet Paper<sup>142</sup> thereof further confirms the continuing institutional power struggle between DOE, and NEMC. On 13th April last year, the Team commissioned by the VPO to undertake the study on the institutional and legal aspects of environmental management in Tanzania, submitted a preliminary report to the VPO, and

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<sup>139</sup> *Supra* note 3, at 8.

<sup>140</sup> *Id.*, at 9.

<sup>141</sup> The ILFEMP started in 1998 initially with core funding from the World Bank. Other donors that later provided resources included USAID, Sida and UNDP. ILFEMP objective was to establish an analytical basis for an informed decision-making on a future framework for environmental management. It was a result of the inability of NEMC and DOE to objectively do so. A Team comprising three nationals consultants and one foreign was commissioned by the VPO to carry out comprehensive consultation and report back to VPO. For detailed information on the process and final outcome of ILFEMP See The Vice President's Office of Tanzania, Institutional and Legal Framework for Environmental Management Project: Options for an Institutional Framework for Environmental Management, Final Report, Vol. 1(1999) (Unpublished manuscript on file with the National Environment Management Council).

<sup>142</sup> Vice President's Office, Draft Cabinet Paper on the National Institutional Framework for Environmental Management (April 30, 2000) (on file with the Vice Presidents Office) (free translation from Swahili original supplied).



within two weeks of the said submission DOE wrote a Draft Cabinet Paper on the report.<sup>143</sup> The writing of the Draft Cabinet Paper was done before the ILFEMP's Steering Committee had a chance to discuss and deliberate on the said preliminary report. Although the Steering Committee did eventually meet on the 25<sup>th</sup> May 2000, it was in effect preempted from making substantive deliberations on the ILFEMP report since the Draft Cabinet Paper had already been prepared and was listed as an agenda item for deliberation.<sup>144</sup> The premature writing of the Cabinet Paper together with proposals contained there in show that DOE opposed the ILFEMP recommendations in their entirety.

In its report ILFEMP had recommended four options for institutional arrangement at the national level. The first option recommended the establishment of a ministerial environmental responsibility either in the President's Office (PO), the Prime Minister's Office (PMO) or the VPO.<sup>145</sup> The second option recommended the creation of an independent environmental ministry, and option three basically recommended the establishment of limited ministerial responsibility in either PO, PMO or in VPO accompanied with two statutory bodies.<sup>146</sup> The last option recommended the establishment of an independent environmental ministry with limited environmental responsibilities accompanied with two statutory bodies.<sup>147</sup> Although detailed advantages and disadvantages of each of the four above options were given, one major weakness of the ILFEMP report is that it failed to identify the best option for Tanzania.

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<sup>143</sup> Interview with Magnus K. Ngoile, Director General, National Environment Management Council, in Dar es Salaam (August 3, 2000).

<sup>144</sup> *Id.*

<sup>145</sup> Vice President's Office, Executive Summary: The Options for Institutional Framework for Environmental Management (April 8, 2000) at 22.

<sup>146</sup> *Id.* 24-25.

<sup>147</sup> *Id.* at 28.

However institutional set up envisaged by DOE is that “there should be a Ministry responsible for environment under the Vice President’s Office and an agency under that ministry. The proposal to have an agency instead of two institutions has been reached having thoroughly considered the cost of running two institutions and the capacity of an agency to supervise work that would be otherwise vested to two institutions without compromising efficiency”<sup>148</sup>

The proposal for the creation of a ministry, and an agency under the VPO is not only a new option different from those identified by ILFEMP but also contrary to the set- up adopted by Cabinet in December 1997. This option would by necessary implications require two things, first the repeal of the NEMA and the abolition of NEMC (which was created by Parliament), and second the transformation of DOE into an agency by the executive arm of the government in accordance with the Executive Agencies Act (EAA) of 1997.<sup>149</sup> These changes would have the negative effect of further relegating environmental management to an unprecedented level.

The purpose of EAA is to make provisions enabling the establishment and operation of semi-autonomous executive agencies within the ambit of government ministries.<sup>150</sup> It provides that where a Minister responsible for a particular department “is of the opinion that, having regard to the provisions of this Act, it is appropriate to establish an Executive Agency for the purpose of carrying out the functions of a department of his Ministry he may, after obtaining appropriate authority, by Order published in the Gazette, establish an Agency.”<sup>151</sup>

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<sup>148</sup> *Supra* note 3 at 6.

<sup>149</sup> Act No. 30 (1997) (Tz.).

<sup>150</sup> *Id.*, See preamble.

<sup>151</sup> *Id.*, § 3(1).

The EAA applies only to already existing central ministries departments, which are defined to include any divisions or units of whatever names of such government ministries.<sup>152</sup> It follows therefore if the Cabinet were to adopt the proposal envisaged, only DOE would legally qualify to become an executive agency under the scheme of EAA.

The EAA further provides that the appointment and termination of appointments in respect of the Chief Executive of an Executive Agency is to be done by the concerned Minister on the advice of the Civil Service Commission (CSC).<sup>153</sup> The Minister is also empowered, upon securing the approval of the Minister responsible for Civil Service to modify the structural organization of an executive agency.<sup>154</sup> On the other hand, it is the Permanent Secretary of the concerned ministry that is responsible for the discipline and control of the Chief Executive, and for the strategic management of the Agency and the Permanent Secretary may thus issues directions to the Chief Executive.<sup>155</sup>

An environmental management executive agency would therefore essentially exist at the discretion of the Minister concerned, and would thus be lower in rank than most existing government agencies whose actions, and decisions have direct impact on the environment. Some of these institutions are NEMC, National Land Use Planning Commission, Tanzania Investment Center, National Industries Licensing Board, the Central Water Board, Tanzania Bureau of Standards and Tanzania National Parks Authority. To that extent an executive agency would further compromise interagency

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<sup>152</sup> *Id.*, § 2.

<sup>153</sup> *Id.*, §§ 9(1), 9(6).

<sup>154</sup> *Id.*, § 3(5).

<sup>155</sup> *Id.*, §§ 5(2), 5(1).

coordination and supervision of environmental activities both of which are critical for effective environmental management.

Perhaps the more serious issue is the fact that the EAA is meant to apply to government departments capable of selling its service to the general public at a price. In connection with this intention it states therefore that: “In the performance of its functions, an Executive Agency shall observe the following principles:

- (a) to provide its services to its customers and the public in the most efficient and effective manner;
- (b) to manage its affairs in a businesslike and cost-effective manner and in accordance with modern management practices and techniques and, in particular, to its operations the best standards of financial management and accounting; and
- (c) to ensure that its operations are designed for the provision of the best services to its customers and to maintaining a high degree of responsiveness to their needs.”<sup>156</sup>

To sum up, both the nature and character of EAA makes it an inadequate legal basis for environmental management institutional framework. To suggest that an environmental management executive agency be established is to invite Daniel Fiorinos’s question, “is policy making full of flaws, done by people who should do be doing better, with results that are hard to defend from any socially responsible point of view?”<sup>157</sup> The answer in this particular instance would have to be in the affirmative.

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<sup>156</sup> *Id.* § 4 (2).

<sup>157</sup> *Id. supra* note 65 at xii.



### C. Lack of Political Commitment to Environmental Reform

Tanzanian leaders beginning with the Presidents downwards have repeatedly maintained that protecting natural resources from depletion and the environment from degradations is an important social objective to be rigorously pursued. In 1992 at Rio De Janeiro, Brazil former President Ali Hassan Mwinyi is reported to have made commitments to give environment the attention it deserves by making sure that the government prepares strategies that would bring to an end the fragmented approach environmental resource planning, development, and protection.<sup>158</sup>

In 1995 in a workshop entitled “Putting the Environment on the National Agenda” which rightly implied that thus far it was not, the current President made a pledge on his own behalf and the people of Tanzania thus: “That Tanzania is fully committed to the principles of Sustainable Development, principles which we signed we signed at the Earth Summit at Rio de Janeiro in 1992. That Tanzania recognizes the fundamental role of her natural resources in underpinning sustainable environment. The environment in its totality must therefore receive greater attention and greater priority form the Government and the People of Tanzania. That the Government of Tanzania will strengthen her environmental institutions by developing compatible and environmental friendly sectoral policies that are found on social equity.”<sup>159</sup>

However an examination of developments in the area of environment indicates that these pledges have largely remained mere rhetoric despite increasing exploitation of environmental resources. Whereas policy-makers have essentially remained peripheral to

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<sup>158</sup> Hon. Anna Abdalla, the then Minister of State in the Office of the Prime Minister and First Vice President responsible for Local Governments, Speech at the NCS National Conference (February 1994) See National Environment Management Council, Proceedings of the NCS Conference (1994) at 4.



environmental reform policy debates, apart from making occasional appearances and statements in conferences and workshops, in other areas of direct and immediate contribution to the economy, they have played the leading role and have insured that the necessary policy, legal and institutional reforms have taken place without any delays. In other words the environment has been largely regarded as having no direct contribution to the economy, and has therefore failed to attract genuine political support for reform.

The country's most recent first long-term plan issued by the government in 1998 known as the "Vision 2025" is further testimony to priority accorded to environmental issues. The "Vision 2025" has the central objective of addressing issues others than economic. The plan has as its main five focus areas in the order of their importance, high quality livelihood, peace, stability and unity; good governance, a well educated and learning society; and a competitive economy capable of producing sustained growth, and shared benefits.<sup>160</sup>

It is noted that sustainable environmental resource planning, conservation, and protection is not listed amongst these top focus areas meaning that such issues are still of low priority to the government. Indeed the Cabinet, which is the most important organ insofar as the rationalization and adoption of public policy is concerned, does not have an environmental committee amongst its committees.<sup>161</sup>

There are also specific instances where the government's actions have been contrary to its pledges for environmental protection further demonstrating governments

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<sup>159</sup> His Excellency President Benjamin William Mkapa, Pledge at the Workshop on "Putting the Environment on the National Agenda" ( July 24, 1996) See Wildlife Conservation Society of Tanzania et al Proceedings of the Workshop on "Putting Environment on the National Agenda (September 1996) at 3.

<sup>160</sup> Semboja, *supra* note 18 at 2.

<sup>161</sup> There are four major Cabinet committees namely the Cabinet Committee responsible for Economy and Finance; Committee responsible for Foreign Affairs, Defense and Security; Cabinet Committee responsible

unwillingness to genuinely embrace any standards of good environmental governance. The case in point is the 1997 controversial approval by Cabinet of the Rufiji Delta Prawn Farming. In this instance a local company by the name of Africa Fishing Company (AFC) applied for the allocation of about 10,000 hectares in the Rufiji River Delta to implement an industrial prawn-farming project. According to the findings made by a researcher who closely examined the controversy surrounding this project:

The Rufiji Delta is of considerable conservation and economic importance, being by far the largest delta in Eastern Africa and containing the largest estuarine mangrove forest on the continent's eastern seaboard.... More importantly, the Delta region is home of thirty thousand people who depend for their livelihood on farming as well as fishing the rich waters of the estuary.... The Delta produces over 80 per cent of Tanzania's prawn export-with wild prawn making up the entire catch"<sup>162</sup>

The review done on the environmental impact assessment of the project under NEMC's coordination found, among other things, that the proposed AFC project would have significant impacts on the environment and the people of the delta and surrounding areas. It also found that the implementation of the project would violate statutory provisions on forest and marine reserves and that there was doubtful economic advantage to be accrued to the government. In addition it was found that the project would have serious cultural and social implications and that the promised benefits to the local communities could not be guaranteed since they were not part of the investment plan under the project. It was also found that the rehabilitation of the project area after the project's economic life would be achieved in about 30 years period.<sup>163</sup>

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for Community Development; and Cabinet Committee responsible for the Constitution and Parliament, See Ibrahim Juma, *supra* note 131 at 53.

<sup>162</sup>Tundu A. Lissu, *supra* note 56 at 11.

<sup>163</sup>*Id.* at 13.

In light of the above findings, NEMC advised that the government to reject the project. Despite similar opposition from other government ministries and agencies such as the Ministry of Agriculture and Cooperatives (MAC), Ministry of Energy and Minerals (MEM), and Tanzania Petroleum Development Cooperation (TPDC), the Cabinet approved the project for implementation.<sup>164</sup> This outcome forced the local communities to file with the High Court of Tanzania a civil suit challenging the approval decision made by Cabinet. By August 2000, the High Court had issued an order of interim injunction restraining AFC from carrying out any developments in the project area pending the determination of an application for permanent injunction.<sup>165</sup>

The Cabinet is the single most important organ in policy-making in Tanzania. However in the 1980s and 1990s the Cabinet has had a tendency to make decisions that do not necessarily reflect collectively binding political compromises, nor genuine support for reform.<sup>166</sup> The Rufiji Delta case would appear to be one such incident in view of opposition to the project both within and outside government. More significantly the case sheds light on the wider issue of political commitment to environmental management policy reform. The argument that given adequate information on the dangers posed by land-based pollution would make the Cabinet enact new pieces of legislation, orient existing laws and policies, and change administrative practice in favor of sustainable development<sup>167</sup> is therefore, not necessarily correct.

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<sup>164</sup> *Id.* at 16.

<sup>165</sup> *Id.* at 16, ft. 72, at 35.

<sup>166</sup> Ole Thirkildsen, *supra* note 3, at 10.

<sup>167</sup> Ibrahim Juma, *supra* note 131, at 53.

## CHAPTER V

### CONCLUSION

The current environmental problems facing Tanzania and especially the lack of a broad based environmental policy, legal and institutional framework in particular, have to be understood in the context of economic crisis and liberalization, and the role of external actors in domestic public policy making. From 1986 throughout the 1990s to the present times, profound economic and structural reform prescriptions have been introduced in response to the economic decline. These prescriptions have direct, and indirect implications for environmental resources. However the macro-economic policy continues to place emphasis on restoring growth without environmental safeguards to ensure long-term availability of the economic resource base.

This result is largely because, according to David Reed, donors as the “designers and sponsors of adjustment programs intended only to effect reforms on the level of national economies.”<sup>168</sup> To support this his conclusion Reed points out that the 1982 World Bank’s Operational Manual Statement expressly stated that:

Structural Adjustment Lending (SAL) is non-project lending to support programs of policy and institutional change necessary to modify the structure of an economy so that it can maintain both growth rate and the viability of its balance of payments in the medium term .... From their initial design to the present, saps [structural adjustments programs] have had no pretense or specific aim of encouraging sustainable development reforms on an international level. For example, they had no intention of strengthening the biosphere’s sustainability, reducing natural resource consumption levels, enhancing the global sink functions performance, or rebuilding the planet’s environmental infrastructure.<sup>169</sup>

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<sup>168</sup> David Reed, ed., *Structural Adjustment, The Environment, and Sustainable Development* (1996) at 41.

<sup>169</sup> *Id.*

Donors and especially the world leading lenders such as the World Bank do have an obligation to take measures that would strike a balance between environmental protection, economic development and poverty reduction objectives within sustainable livelihood framework. To continue to ignore environmental considerations in economic lending policy advice is to defeat the very essence of sustainable development as an international public agenda, and thus to compromise economic productivity of non-industrialized countries like Tanzania whose population depends on environmental resources for livelihood.



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