

Environmental Rights, Protection and Management in Tanzania

Justification for their Inclusion in the
Would-Be New Constitution



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List of Abbreviations

ACTS	African Centre for Technology Studies
AIR	All India Reports
Cap	Chapter
Eds	Editors
EMA	Environmental Management Act
NEMC	National Environment Management Council
SC	Supreme Court
UN	The United Nations
UNCED	United Nations Conference on Environment and Development
USA	United States of America

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Lawyers' Environmental Action Team

The Lawyers' Environmental Action Team (LEAT) is the first public interest environmental law organization in Tanzania. Its mission is to ensure sound natural resource management and environmental protection in Tanzania. LEAT carries out policy research, advocacy, and selected public interest litigation. Its membership largely includes lawyers concerned with environmental management and democratic governance in Tanzania.

Policy Forum

Policy Forum is a network of over 100 Tanzanian civil society organization's drawn together by their specific interest in influencing policy processes to enhance poverty reduction, equity and democratization with a specific focus on public money and accountability.

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The Constitution is above all, it is the fundamental law which guarantees individual and collective rights and liberties, protects the principle of the people's free choice and gives the legitimacy to the exercise of powers. It helps to ensure the legal protection and the control of the public authorities in a society in which lawfulness and man's progress prevail in all its dimensions.

- Preamble, Constitution of Algeria¹ (1996)

1.0 Background

This paper seeks to provoke discussion and provide input into the ongoing initiatives to enact a new constitution of the United Republic of Tanzania. It gives a synthesis of the review of the current constitution of the United Republic of Tanzania and constitutions of selected countries which provide for environmental rights, protection and management of the environment. The review highlights on the inclusion of provisions providing for environmental rights, protection and management in the would-be new constitution. This paper provides a review and recommendations on what should be done to ensure that sound provisions are entrenched in the would-be new constitution.

The main objectives of this paper are two-fold. Firstly, is to inform stakeholders and raise their awareness on the aspects of the theme of the paper to enable them to contribute more effectively in on-going constitution making processes and related deliberations. Secondly, this paper seeks to establish for the legal basis for the inclusion of provisions that will adequately address matters pertaining to environmental rights, protection and management in the would-be new constitution of the United Republic of Tanzania.

In line with the foregoing, it is expected that national stakeholders' engagements will provide a platform for a wider audience to participate in the discussions to include environmental rights, protection and management of the environment in the would-be new constitution. This review is expected to inform the citizens on important issues on environmental rights, protection and management of the environment to enable them make informed opinions and contributions in the on-going constitution making processes.

¹ *The Constitution of the People's Democratic Republic of Algeria, 1989* (amended by the constitutional revision of 1996).

2.0 Introduction

Tanzania is a country with, by and large, a pristine environment and has a landscape of about 945,000 square kilometres². This landscape is made up of ocean, lakes, arable and non-arable land mass, hills and mountains. In this paper the term environment means the surroundings which include: land, air, atmosphere, water, biodiversity, wildlife, forests, mineral resources, human beings and ecosystem in their totality. It is the relationship between all the foregoing which makes up the environment.

The management of the environment can be traced back to the beginning of humankind. Systems, good practices and institutions were put in place to be in charge and oversee the management of the environment in various parts of the world, not least in Tanzania. However, prior to 1972 United Nations Conference on Human Environment, environmental management was not highly regarded and was put at the periphery³. It was the first international conference organized to address global environmental problems. From this time environmental management was made a global agenda and aligned with development. This international conference laid the basis of environmental management and foundations of sustainable development.

Twenty years later (in 1992), the United Nations Conference on Environment and Development (UNCED) was convened in Rio de Janeiro, Brazil. During UNCED, the United Nations (UN) sought to help Governments rethink economic development and find ways to halt the destruction of irreplaceable natural resources, environment and pollution of the planet⁴. These international conferences on environment have been platforms of making international decisions on environmental management globally. The international decisions reached during these Earth Summits have affected greatly the management of the environment in the UN member countries.

² SEE, <http://www.state.gov/r/pa/ei/bgn/2843.htm>, accessed on 22/12/2011.

³ <http://www.worldsummit2002.org/index.htm?http://www.worldsummit2002.org/guide/stockholm.htm>, accessed on 26/12/2011.

⁴ SEE, UN Conference on Environment and Development, at: <http://www.un.org/geninfo/bp/enviro.html>, accessed on 26/12/2011.

In the last decade, we have witnessed a wind of change globally and nationally, putting pressure on governments to put more emphasis on environmental management and taking concerted efforts on addressing environmental problems. These global and national efforts are very commendable in the sense that they culminated into massive legal and institutional reforms which have had an impact on ground. In line with this and building on the current constitutional review processes which have been initiated in Tanzania, conservationists and environmentalists are forging partnerships, sharing resources and expertise in campaigning and advocating for entrenchment of matters relating to environmental rights, protection and management in the constitution of the United Republic of Tanzania.

It is against this background that, people, institutions and organizations working on environment are taking positive initiatives to critically discuss, raise people's awareness and conduct campaigns in order to build a critical mass and enable the citizenry to own the process and actively participate in the ongoing constitutional review and making processes.

3.0 Rationale for Constitutional Environmental Protection

Given the many existing and developing environmental laws, regulations and standards in many African countries, it is worth considering resorting to constitutional provisions to protect and manage the environment. With increasing environmental awareness in recent decades, the environment has become a higher political priority and many constitutions now expressly guarantee a 'right to a healthy environment', as well as the procedural rights necessary to implement and enforce the substantive rights granted⁵. Constitutional provisions that enumerate the substantive rights of citizens have not always been directly enforceable by citizens, and do not always create an affirmative right. However, the consistent and increasingly universal trend is toward giving force to these provisions ⁶.

⁵ Bruch, C., et al, (2001), "Breathing Life into Fundamental Principles: Implementing Constitutional Environmental Protections in Africa", in Ribot, J. C. and Veit, P. G., *Environmental Governance in Africa, Working Paper Series*, World Resources Institute, Washington D.C., USA, p.5, accessed at http://pdf.wri.org/eea_bruch.pdf. Also in "Call to include Environmental Rights in the Constitution", *The Citizen Newspaper*, 22 June 2011, at p. 22.

⁶ Ibid.,

Constitutional provisions can greatly strengthen the ability of advocates to use the law to protect environmental rights in a number of ways. Firstly, they can expand the scope of environmental legislative and regulatory regimes that are often insufficiently elaborated to provide comprehensive protection. Even countries with advanced protection systems find that their laws do not address all environmental concerns. Constitutional environmental provisions can provide a safety net for resolving environmental problems that existing legislative and regulatory systems do not address⁷.

Secondly, constitutional provisions can raise the relative status of environmental rights, which are often viewed as secondary to other priorities, such as economic development. By referring to the environmental protections enshrined in the constitution, advocates can elevate environmental cases to the level of constitutional cases addressing fundamental human rights⁸. Moreover, constitutional entrenchment of environmental rights, protection and management of the environment provides a firm basis for environmental protection that is less susceptible to political interference. As a result, environmental values are more likely to endure since constitutional reforms are usually laborious, complicated and require super-majority approval⁹.

Lastly, constitutions are frequently the source of procedural rights that are necessary for environmental and other citizen organizations to pursue their advocacy work. Giving force to constitutional provisions which guarantee access to information, public participation and judicial standing in environmental matters, is important in ensuring that peoples' substantive rights to life and healthy environment are protected¹⁰.

⁷ *Ibid.*,

⁸ Tumushabe, G.W., (1999), "Environmental Governance, Political Change and Constitutional Development" in Uganda in Okoth-Ogendo, H. W. O. and Tumushabe, G.W., (Eds), *Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa*, African Centre for Technology Studies (ACTS), Nairobi, Kenya, pp. 63-88, at p. 78. Also in, Bruch, C., et al, (2001), "Breathing Life into Fundamental Principles: Implementing Constitutional Environmental Protections in Africa", in Ribot, J. C. and Veit, P. G., (Eds) *Environmental Governance in Africa, Working Paper Series*, World Resources Institute, Washington D.C., USA, p.5.

⁹ Bruch, C., et al, (2001), *Op. Cit.*, p. 6.

¹⁰ *Ibid.*,

4.0 Justification of Inclusion of Environmental Rights, Protection and Management of the Environment in the Constitution in Tanzania

Before the enactment of the Environmental Management Act in 2004, the body of laws in Tanzania that provided for a right to a clean and healthy environment was based on shaky ground. In a number of instances, courts in Tanzania had to look for guidance from other commonwealth countries in the search for justification to provide litigants with reliefs in the course of environmental litigation¹¹. In view of this, courts resorted to constitutional provisions of such jurisdiction which had clear and express provisions guaranteeing citizens the right to a clean and healthy environment.

In some cases, judges found it difficult to adopt the constitutional provisions of other countries and grappled to interpret the provisions of the constitution of the United Republic of Tanzania, 1977 to justify their rulings in favour of litigants whose environmental rights had been trumped upon¹². This was a daunting task and was complicated further since counsel provided little assistance in terms of developing the jurisprudence of environmental litigation in the Tanzanian legal system. In the absence of an express provision guaranteeing the right to a decent, clean and healthy environment, the constitutional provision that the courts relied on most was the one that provided for the right to life. Courts made every effort to give this provision a purposeful interpretation in justifying their judgments.

The typical example is the line of argument and verdict given in a case of *Festo Balegele and 794 Others v. Dar es Salaam City Council*¹³. According to this case, individuals had no *locus standi* (legal mandate) to file a case before the court of law if they were not "directly affected" or "aggrieved" by the matter in question. The High Court in this case decided in favour of the applicants (Festo Balegele and Others) by showing that the applicants were aggrieved with the dumping of waste at Kunduchi Mtongani. This provided

¹¹ *Festo Balegele and 794 Others v. Dar es Salaam City Council*, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause, No. 90 of 1991

¹² *Ibid.*,

¹³ High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause, No. 90 of 1991.

the Applicants with a *locus standi* for the court to continue litigating their matter on merit. When this case was being litigated, people had no right to bring cases on environmental matters in Tanzania and there was no any provision on the “right to live in a clean and healthy environment” provided in any piece of legislation.

It is worthwhile to note that, not all judges were innovative in taking this approach, leaving the rights of litigants in some state of uncertainty. In comparison, in jurisdictions where the right to a clean and healthy environment was entrenched in constitutions, courts had a relatively easier task and cases where citizens’ environmental rights had been violated were easily disposed off.

Though a judgment in *Festo Balegele’s* case set a foundation for litigating environmental cases by providing a *locus standi* and introducing a right to live in a clean and healthy environment in Tanzania, it only binds courts subordinate to the High Court. In event a similar case is instituted before the High Court, the respective judge who will preside over the case will be at liberty to decide whether to follow it or not. This is because based on the doctrine of *stare decisis*, once a court which is at the top of the judicial hierarchy passes a decision all courts subordinate to it are bound to follow that decision.

A provision which has some bearing on the management of the environment was introduced through the Bill of Rights provisions during the constitutional amendment passed in 1984. This is contained in Article 14, which stipulates that every person has a right to life and to protection of his life by the society. This is the provision that the High Court in Tanzania struggled to interpret in the course of adjudication of environmental rights.

In an attempt to fill the constitutional gap, the drafters of Environmental Management Act¹⁴ (EMA) of 2004, introduced a provision in the Act providing for the “right to a clean and healthy environment”. Although this is a good innovation, it does not have roots in the constitution, leaving the judiciary rather uncertain about the legal basis of this provision in the fundamental law of the land (constitution), which, in some cases may not guarantee the outcome of an individual judge’s interpretation of the matter which is before

¹⁴ Act, No. 20 of 2004

him/her. This is because courts of law may give different interpretations to the provisions. Where there are express constitutional provisions, then this would not be the case. Also, it is easier to change provisions of the specific sector law which may affect peoples' rights to access, protect and manage the environment. On the other hand, it is not easy to change the provisions of the constitution to affect the rights to access, protect and manage the environment granted to citizens. This is because the frequency of constitutional amendment is largely determined by practical exigencies than by procedural requirement.

There is a pertinent need for inclusion of specific provisions relating to environmental rights, protection and management of the environment in the would-be new constitution. This will safeguard against the possibility for the enactment of sector laws or amending the existing ones in a manner that undermines the rights to access, protect and manage the environment granted to citizens. This is in line with the principle that a constitution of a country is the supreme law to which all other laws must conform.

With the emergence of the move towards the integration of the East African States, issues of access, protection and management of the environment in some States¹⁵ dominated discussions. As a result, this has made some of the States in the region entrench specific provisions in their constitution addressing the peoples' right to protect and manage the environment¹⁶.

¹⁵ This happened during Kenya's Constitution making process and is being initiated in Tanzania.

¹⁶ SEE, Chapter five of the *Constitution of the Republic of Kenya* of 2010.

5.0 Interpretation of Constitutional Provisions to Protect the Environment

As discussed in section three above, the United Republic of Tanzania Constitution of 1977 (as amended from time to time) contains provisions, which, though not providing expressly for the protection and management of the environment; have a bearing on the same. Due to lack of express provisions regarding right to access, protection and management of the environment in the constitution, courts had a difficult time rendering adequate interpretation of such rights including the right to live in a clean and healthy environment¹⁷. Overall legislation applied to regulate environmental matters were sectoral legislation used hand in hand with the National Environment Management Council Act of 1983 which established the National Environment Management Council (NEMC).

When a matter pertaining to the interpretation of the legislation in relation to the protection and management of the environment and the right to live in a clean and healthy environment was brought to court, Judges relied on the provisions of Article 14 of the Constitution. Article 14 provides for the right to life. This was interpreted to give a judgment on the right to live in a clean and healthy environment. The unabridged version of Article 14 of the Constitution in Swahili provides that:

"Kila mtu anayo haki ya kuishi na kupata kutoka kwa jamii hifadhi ya maisha yake, kwa mujibu wa sheria."

The interpretation of the provisions of the Constitution of the United Republic of Tanzania with a bearing on the protection and management of the environment could not have provided hassles to the Judges if there were clear provisions providing expressly on these matters. It is worth to note that in cases where there is no any provision in the national legislation and in the Constitution that guarantees environmental protection and management, there is no doubt that environmental degradation can be left to continue unabated and eventually endanger life of present and future generations.

¹⁷ It has to be noted that this refers to a period before 2004 when Tanzania did not have framework legislation on environmental protection and management.

In other jurisdictions the situation was not far different from that of Tanzania, where there was no an express provision in the Constitution providing for the environmental protection. In India, for example, the right to life has been used in a diversified manner. It includes, *inter alia*, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. This [in India] has been expressly recognized as a constitutional right. However, the nature and extent of this right is not similar to the self-executory and actionable right to a sound and healthy ecology prescribed in the Constitution of the Philippines¹⁸.

Article 21 of the Indian Constitution states that “No person shall be deprived of his life or personal liberty except according to procedures established by law.” The Supreme Court of India expanded this negative right in two ways. Firstly, any law affecting personal liberty should be reasonable, fair and just¹⁹. Secondly, the Court recognized several unarticulated liberties that were implied by article 21. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to a clean environment²⁰.

In India, the link between environmental quality and the right to life was first addressed by a constitutional bench of the Supreme Court in the *Charan Lal Sahu v. Union of India*²¹. In 1991, the Supreme Court interpreted the right to life guaranteed by article 21 of the Indian Constitution to include the right to a wholesome environment. In *Subash Kumar*²², the Court observed that ‘right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life²³.’

¹⁸ SEE, Human Rights and the Environment: the national experience in South Asia and Africa at: <http://www2.ohchr.org/english/issues/environment/environ/bp4.htm>, accessed on 10/01/2012.

¹⁹ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, 623-624.

²⁰ <http://www2.ohchr.org/english/issues/environment/environ/bp4.htm>, accessed on 10/01/2012.

²¹ AIR 1990 SC 1480.

²² *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420/ 1991 (1) SCC 598.

²³ <http://www2.ohchr.org/english/issues/environment/environ/bp4.htm>, accessed on 10/01/2012.

It goes without saying that in the absence of a strong foundation in the Constitution providing for environmental rights, protection and management of the environment, there is great likelihood that these rights would be interpreted differently by different courts in case a matter is filed in different courts of law. Providing in the Constitution clear and specific provisions on environmental rights, protection and management of the environment will help safeguarding peoples' rights and curb the degradation of the environment.

6.0 Environmental Rights, Principles and Jurisprudence in Tanzania

In order to fill the legal gap, in 2004, Tanzania enacted a framework legislation called Environmental Management Act (EMA), to regulate environmental protection and management. Apart from having express and clear provisions on the protection and management of the environment, this legislation provides for the rights and obligations of individual citizens to protect and manage the environment. EMA has laid a foundation of having legislation in place with clear and express provisions on environmental protection and management.

EMA provides legal and institutional framework for sustainable management of environment, principles for environmental management, basis for implementation of international instruments on environment and the implementation of the National Environment Policy. Above all, EMA provides environmental rights to individuals affected or with interest on any environmental matter and *locus standi* to individuals²⁴ and organizations (civil society organization) to file environmental cases on behalf of others by helping them claim their environmental rights in case they are infringed.

²⁴ SEE, section 5 of the Environmental Management Act, No. 20 of 2004.

Before enactment of EMA, environmental rights, protection and management of the environment were not well addressed in sectoral pieces of legislation. Environmental management issues were only addressed through sector-based approach and various pieces of legislation were made to regulate management of forests²⁵, wildlife²⁶, water resources²⁷, minerals²⁸ and land²⁹. Though all these are part and parcel of environment, Tanzania lacked express and elaborate provisions to provide for environmental rights, principles and sustainable environmental management. In this regard, therefore, there was a pertinent need to enact a legislation which could provide for these.

The enactment of EMA borrowed a leaf from international instruments and decisions which were made by the international community. It also took on board provisions provided in the Regional environmental instruments. Because EMA is a framework law, and basing on the fact that other sectoral legislation regulating environmental related sectors were in place, the drafters of the legislation set a provision in the legislation which makes EMA to be a superior law on environmental matters in case there is inconsistency or conflict with the provisions of other pieces of legislation³⁰.

Apart from the express and elaborate provisions on the right to bring an action³¹ on environment and duty to protect the environment³², EMA provides several principles³³ of environmental management. These principles are:-

²⁵ The Forest Act of 2002

²⁶ The Wildlife Conservation Act, Cap. 283

²⁷ Water Utilization (Control and Regulation) Act, Cap. 331, Waterworks Act, Cap. 272,

²⁸ The Mining Act, Cap. 123

²⁹ The Land Act, Cap. 113 and Village Land Act, Cap. 114

³⁰ Section 232: "Where the provision of this Act (*EMA*) is in conflict or is otherwise inconsistent with a provision of any other written law relating to environmental management, the provisions of this Act (*EMA*) shall prevail to the extent of such inconsistency."

³¹ Section 5 of the Environmental Management Act, No. 20 of 2004.

³² Section 6, *Ibid.*,

³³ Section 7, *Ibid.*,

- (a) The precautionary principle, which requires that where there is a risk of serious irreversible adverse effects occurring, a lack of scientific certainty should not prevent or impair the taking of precautionary measures to protect the environment;
- (b) Adverse effects be prevented or minimized through long-term integrated planning and coordination, integration and cooperation of efforts, which consider the entire environment as a whole entity;
- (c) The polluter pays principle, which requires that any person causing adverse effect on the environment shall be required to pay in full social and environmental costs of avoiding, mitigating and/or remedying those adverse effects;
- (d) The public participation principle, which requires the involvement of the people in the development of policies, plans and processes for the management of the environment;
- (e) Access to environmental information, which enables the citizens to make informed personal choices and encourages improved performance by industries and government;
- (f) Access to justice, which gives individuals, the public and interest groups of persons the opportunity to protect their rights to participation and to contest decisions that do not take their interests into account;
- (g) The generation of waste be minimized, wherever practicable waste should, in order of priority, be re-used, recycled, recovered and disposed of safely in a manner that avoids creating adverse effects or if this is not practicable, is least likely to cause adverse effects;
- (h) Principle of intergenerational equity, which requires that non-renewable natural resources only be used prudently, taking into account the consequences of for the present and future generations; and
- (i) Principle of sustainable use, which requires that renewable natural resources and ecosystems only be used in a manner that is sustainable and does not prejudice their viability and integrity.

All the above environmental management principles are very useful for the protection, conservation and management of the environment. In this regard, it is advisable that they should be incorporated in the would-be new Constitution of the United Republic of Tanzania in order to have strong mandate during their enforcement.

Moreover, it is worth noting that the enactment of EMA and litigation of environmental cases before 2004, have contributed immensely in the development of the environmental jurisprudence in Tanzania. Tanzania had a small number of environmental law experts for quite a long time. This is because environmental law was not taught at the University as a core or optional subject. The few environmental law experts who were in Tanzania before year 2000 studied environmental law abroad.

It is in early years of 2000, when environmental law started being taught as an optional subject at the University level in Tanzania. As a result of this, the Court of Appeal, High Court and all Subordinate courts did not have judges and judicial officers who had skills on environmental law. This affected litigation of environmental cases. It is worth to note that, apart from the landmark environmental cases litigated in the 1991³⁴ and 2000³⁵, there is no substantial case law developed on environmental law in Tanzania.

All in all, elaborate and clear provisions found in the EMA which cater for the protection and management of the environment as well as the right to a clean and healthy environment need to have their roots in the would-be new Constitution of the United Republic of Tanzania.

7.0 Lessons from the Constitutions of selected Countries

Constitutions from Africa and developed countries which have provisions on environmental rights, protection and management of the environment are many. This review analyses a select sample of them in order to draw lessons for consideration for inclusion in the on-going Constitutional making processes in Tanzania. In borrowing lessons from Constitutions of

³⁴ *Festo Balegele and 794 Others v. Dar es Salaam City Council, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause, No. 90 of 1991.*

³⁵ *Felix Joseph Mavika v. Dar es Salaam City Commission, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Case No. 316 of 2000.*

other countries, consideration will be made to the existing social, economic, cultural and political diversities that exist in those countries and in Tanzania.

To start with, the Constitution of the Republic of Kenya is very elaborate on the issues pertaining to environment. The Kenyans have inserted in their Constitution a separate Chapter (chapter five) addressing matters relating to Land and Environment. This Chapter has been divided into two parts. Part one covers matters on Land and Part two addresses matters pertaining to environment and natural resources. On matters relating to environment which are provided under part two of Chapter Five and other Articles of the Constitution of the Republic of Kenya, the environmental issues are clearly articulated in length.

Under Article 42, the right to a clean and healthy environment is underscored. It is provided that "every person has the right to a clean and healthy environment, which includes the right - (a) to have the environment protected for the benefit of present and future generations through legislative and other measures; and (b) to have obligations relating to the environment fulfilled."

The Constitution of the Republic of Kenya goes a step further by providing the obligations to be complied with, places a duty in respect of the environment and the right to enforce environmental rights which are recognized and protected by the Constitution, in case they are being or are likely to be, denied, violated, infringed or threatened. Under Article 69 (1) obligations in respect of environmental management and conservation are provided. This overall obligation is assigned to the State. The Constitution provides that, the State shall (a) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; (b) work to achieve and maintain a tree cover of at least ten percent of the land area of Kenya; (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities; (d) encourage public participation in the management, protection and conservation of the environment; (e) protect genetic resources and biological diversity; (f) estab-

lish systems of environmental impact assessment, environmental audit and monitoring of the environment; (g) eliminate processes and activities that are likely to endanger the environment; and (h) utilize the environment and natural resources for the benefit of the people of Kenya.

The citizens' duty to protect, conserve and manage the environment is provided under sub-article 2 of Article 69. This states that "every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources."

The Constitution of the Republic of Ghana considers environmental protection and management as a pre-requisite for national economic development and improvement of welfare of the people of Ghana. It assigns responsibility to the government and citizens to take appropriate measures to protect and safeguard the environment for the current and future generations. It states that "The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek cooperation with other States and bodies for purposes of protecting the wider international environment for mankind³⁶."

The Constitution of the Republic of South Africa contains provisions which provide for the environmental rights and obligation to protect and manage the environment. It states that, 'everyone has the right³⁷ (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that- (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting

³⁶ Article 36 (9) of the *Constitution of the Republic of Ghana*.

³⁷ Article 24 of the *Constitution of Republic of South Africa*.

justifiable economic and social development'. The Constitution goes a step further to state that among the objects of the local government "is to promote a safe and healthy environment³⁸".

The Constitution of the Republic of Uganda³⁹ devotes Chapter fifteen for matters pertaining to land and environment. It provides categorically that land belongs to the people of Uganda and shall vest in them in accordance with the land tenure systems provided in the Constitution. It also provides for the formation and functions of institutions which have the mandate to regulate land management and administration. Regarding environmental protection and management, the Constitution asserts that the Parliament shall, by law, provides for measures intended to (a) protect and preserve the environment from abuse, pollution and degradation; (b) to manage the environment for sustainable development; and (c) to promote environmental awareness. The Constitution has left pertinent matters on environmental rights, protection and management of the environment in Uganda to be dealt with by the environmental legislation.

The Iraq Constitution⁴⁰ emphasizes on the right to live in a clean and health environment and the protection and preservation of biodiversity. Under Article 33 it states that "First: every individual has the right to live in safe environmental conditions. Second: The State shall undertake the protection and preservation of the environment and its biological diversity. The Constitution places a duty on federal and regional authorities to formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness, in cooperation with the regions and governorates that are not organized in a region⁴¹.

It goes without saying that, all the Constitutions reviewed above have clear provisions providing a mandate on the government and citizens to protect, conserve and manage the environment. They also provide a legal basis from which, environmental rights can be claimed and defended once they are being breached.

³⁸ Article 152, *Ibid.*,

³⁹ The Constitution of Uganda, Amended by the Constitution (Amendment) Act, Act 11/2005 and the Constitution (Amendment) (No.2) Act, 21/2005.

⁴⁰ http://www.uniraq.org/documents/iraqi_constitution.pdf

⁴¹ Article 114 of Iraq Constitution

Moreover, a critical analysis of the provisions of the cited Constitutions shows that environment and natural resources are to be exploited in Kenya, Ghana, South Africa, Uganda and Iraq, for social and economic development for the benefit of their citizens. In view of the above foreign Constitutional provisions, therefore, it is very pertinent for Tanzania to entrench in the would-be new Constitution provisions which will cater for this purpose. Tanzanians have been advocating for the sustainable and proper use of the environment and natural resources for the purpose of improving their social and economic well-being. This campaign and advocacy work on the use of natural resources for the benefit of Tanzania citizens, is yet to be won.

8.0 Conclusion and Recommendations

a) Conclusion

The mandate and obligations to protect, conserve and manage the environment for the current and future generations are very fundamental for the Tanzania's people's welfare, social and economic development. This importance calls for the entrenchment of clear provisions in the Constitution of the United Republic of Tanzania in order to provide a strong foundation of enforcing them. This being the case, it is high time now Tanzanians incorporate environmental rights, principles of environmental management and the obligation to protect, conserve and manage the environment in the Constitution.

b) Recommendations

Based on the review which has been made on the United Republic of Tanzania Constitution and the reference made from the Constitutions of selected countries, the following recommendations are proposed:-

- (i) There is need to include in the United Republic of Tanzania Constitution express, clear and elaborate provisions providing the mandate for protection, conservation and management of the environment in Tanzania to the government and citizens;
- (ii) It is recommended that issues on the right to live in a clean, safe and healthy environment, principles of sustainable environmental management, duties and obligations to protect, conserve and manage the environment should be incorporated into the Constitution of the United Republic of Tanzania; and
- (iii) It is recommended that a provision underscoring the use of environment and natural resources for the benefit of Tanzanians is inserted in the new Constitution.

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