Recht in Afrika

Law in Africa · Droit en Afrique

Zeitschrift der Gesellschaft für afrikanisches Recht

2012 · Heft 2

15. Jahrgang

Rüdiger Köppe Verlag • Köln

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Rüdiger Köppe Verlag Köln

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"Recht in Afrika / Law in Africa / Droit en Afrique" is a double peer reviewed academic journal published by the Gesellschaft für afrikanisches Recht e.V. / African Law Association (Germany).

Views or opinions expressed in this journal are attributable to the respective authors and do not necessarily reflect those of the editors.

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available in the internet at http://dnb.d-nb.de.

© 2012
RÜDIGER KÖPPE VERLAG
Postfach 45 06 43
50881 Köln
Deutschland

www.koeppe.de

Herstellung: Klever GmbH, Bergisch Gladbach / Deutschland

ISSN 1435-0963
ISBN 978-3-89645-811-7

Gedruckt auf säurefreiem und alterungsbeständigem Papier.
♾ Printed on acid-free paper which falls within the guidelines of the ANSI to ensure permanence and durability.

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*Hamudi Ismael Majamba**

Tanzania's Legislative Framework in the Context of Reducing Emissions from Deforestation and Forest Degradation Plus (REDD+) Safeguards

Abstract

The degradation of the world's forests which contributes significantly to emissions from forest ecosystems has raised alarm due to its role in global warming. To address the concern, the concept of Reducing Emissions from Deforestation and Forest Degradation (REDD)** was designed as a world-wide scheme, aimed at reimbursing countries for protecting their forests and reducing emissions of greenhouse pollutants, especially carbon dioxide. Under the scheme, developed countries seek to purchase carbon credits from developing countries' concerted efforts in conserving and managing forests in their jurisdictions.

The government of Tanzania has participated fully in the REDD initiative by, among other things, directing efforts in implementing international multilateral agreements aimed at conserving and managing forest resources, including the United Nations Framework Convention on Climate Change (UNFCCC). Since the UNFCCC entered into force in 1997, the government has promulgated a number of legislation and policies that have a bearing on conservation and management of forest resources in the light of the REDD initiative. Some of the legislation and policies have inbuilt safeguards to ensure potential harms are curtailed while at the same time seeking to capitalize on the safeguards' positive impacts. The provisions of some of the policies and legislation specifically provide for the need to have safeguards such as Environmental Impact Assessment (EIA) for certain activities and developments. Others have more general provisions. This article provides insights on the extent to which REDD initiatives are reflected in selected policies and laws in Tanzania and associated challenges with a bias on EIA.

1. Background

The rate at which the world's forests have been degraded has increasingly gained international attention especially with the realization that degradation of forests contributes significantly to emissions from forest ecosystems which are responsible for global warming.[1] The earth usually loses its capacity to maintain safe levels of greenhouse gases when forests are unable to remove carbon dioxide from the atmosphere. It has been observed that the rapid loss of forests contributes to about seven-

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** A list of all acronyms used in this article can be found at the end of the article. see p. 207.

1 Environmental Defense Fund: http://www.edf.org.

teen per cent of the total global emissions annually, and that the greenhouse ga emissions from deforestation and degradation of forests contribute up to 20 per cen of global emissions.[2] To address this concern, the concept of Reducing Emission from Deforestation and Forest Degradation (REDD) was designed as a world-wide scheme, aimed at reimbursing countries for protecting their forests and reducing emissions of greenhouse pollutants, especially carbon dioxide. Under the scheme, developed countries may purchase carbon credits (carbon offsets) from developing countries which seek to conserve and manage forests in a sustainable manner in their jurisdictions.

The term 'REDD plus' or 'REDD+' is now also used frequently to refer to REDD. REDD+ is similar to REDD, but instead of just covering deforestation and degradation, it includes other activities, such as the sustainable management of forests and the enhancement of forest carbon stocks. The aim of REDD has since been redefined to include halting and reversing forest loss. The REDD initiative is currently still at the level of pilot stages within select countries among the members of the United Nations. In some cases, initiatives have also been undertaken by private enterprises.[3]

Efforts to address the rate of depletion of forests at the international level in the context of REDD culminated in the signing of the United Nations Framework Convention on Climate Change (UNFCCC) by many countries in June 1992 at the Earth Summit in Rio de Janeiro, Brazil. The UNFCCC came into force in March 1994.[4]

1.1 REDD+ Safeguards

The world-wide implementation of REDD programmes has raised some concerns on the potential negative impacts of implementing the programmes among stakeholders at the international level. The need arose for discussion among the stakeholders on the kind of safeguards (safety valves) to ensure that potential harms of REDD programmes are minimized and their positive impacts maximized. Some of the safeguards that have been adopted include Strategic Environmental Impact Assessment (SESA), UN-REDD safeguards and Social and Environmental Safeguards (SES). In addition to the international safeguards, national safeguards that are to be incorporated in legislation and policies have also been recognized. One of the three main REDD-related safeguards are the social and environmental principles and criteria which include risk identification and mitigation tools. In this respect, the Environmental Impact Assessment (EIA) is essentially built in the international safeguards and therefore forms part and parcel of the national safeguards that have been recognized.

Tanzania is one of the five countries that are participating in the REDD+ SES initiative. The others are Brazil, Ecuador, Indonesia and Nepal.[5] The government of Tanzania has since fully participated in the REDD+ SES initiative including the development of standards, the governance of the REDD+ SES initiative and the using of the standards. The country is also in the process of developing a National REDD

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2 See http://redd-net.org/themes/redd-backrounder-whatisredd, accessed 25 July 2011

3 See: http://www.recofte.org/site/What-is-REDD-, accessed 25 July 2012.

4 See http://unfccc.int/essential_background/convention/items/2627.php, accessed 25 July 2012.

5 See http://www.redd-standards.org, accessed 25 July 2012.

Strategy and has already started to implement a key component of the strategy by way of establishing REDD pilot projects that are being implemented in collaboration with NGO partners. REDD+ SES is also being applied to the National REDD Strategy. It is projected that by the end of 2011, the REDD+ SES will be used to assess the social and environmental quality of the design phase.

Tanzania is also participating in other international REDD+-related programmes namely the UN-REDD Programme, the Forest Carbon Partnership Facility and the Group on Earth Observation-Forest Carbon Tracking (GEO-FCT) initiative as a national demonstrator country. Plans are being developed for the establishment of country-level governance for the use of REDD+ SES in Tanzania, for country-specific interpretation and for the assessment of performance with respect to the standards. Issues relating to the REDD+ SES in Tanzania are coordinated by a number of players with financial backing of the Royal Norwegian Embassy in Dar-es-Salaam. The key players are the Forestry and Beekeeping Division within the Ministry of Natural Resources and Tourism, the Institute of Resource Assessment (IRA) of the University of Dar-es-Salaam, the Clinton Climate Initiative (CCI) based in Dar-es-Salaam and CARE Tanzania.[6]

2. Contextualizing the REDD Legislation of Tanzania

According to the United Nations Food and Agricultural Organization (FAO), 37.7 per cent or about 33,428,000 ha of Tanzania are forested and 240,000 ha consist of planted forest. The trend on the rate of forest depletion in Tanzania raises a number of eye-brows. It is on record that between 1990 and 2005, the country lost 14.9 per cent of its forest cover (approximately 6,184,000 ha). This is roughly 37.4 per cent of its forest and woodland habitat.[7] More recent statistics paint a gloomy picture. Between 1990 and 2010, Tanzania lost an average of 403,350 ha of forest cover or 0.97 per cent per year. This translates to a loss of 19.4 per cent of the country's forest cover, or around 8,067,000 ha during this period.[8] In an effort to address the depletion of forests and forest degradation, Tanzania signed the UNFCCC on 12 June 1992 and ratified it on 17 April 1996. The Convention entered into force in Tanzania on 16 July 1997.[9]

Since ratifying the UNFCCC Tanzania has promulgated more legislation and policies on environmental management generally and those that have a bearing on the conservation and management of forest resources in the light of the REDD initiative in particular. Some of these have inbuilt safeguards to ensure that potential harms are curtailed and to capitalize on their positive impacts. Some of the policies and legislative provisions specifically provide for the need to have safeguards such as conducting EIA, Environmental Impact Statements and Strategic Environmental Assessments for certain activities and developments. Others have more general provisions.

For more information on the use of REDD+ SES in Tanzania, see http://www.redd-standards.org/tanzania-facilitators, accessed 25 July 2012.

See http://rainforests.mongabay.com/deforestation/2000/Tanzania.htm, accessed 25 July 2012.

Ibid.

See http://unfccc.int/essential_background/convention/status_of_ratification/items/2631.php, accessed 25 July 2012.

3. A Digest of Selected Policies

3.1 Introduction

This paper does not seek to address the safeguards provided for in the corpus of po icies and laws in their entirety. It is confined to some selected policies and laws th have a comparatively closer bearing on the application of REDD+ safeguards i Tanzania with a bias on EIA. In this respect, the policies that have purposefully bee selected are the forest, land and environmental policies. The laws that have been se lected in this regard are the Environmental Management Act (EMA) 2004, the Lan Acts 1999, the Local Governments Acts 1982 and the Forest Act 2002. There is a inherent bias in the review of the laws in the sense that the focal point has beer EMA, the framework law governing environmental conservation and managemen issues. This bias, however, takes into account the reality that legislative enactments must be read in a holistic manner as provisions of laws are cross-cutting by nature. The cross-referencing cannot be avoided simply because in order to have a concrete understanding of a legislative provision, one may be required to read and have a good grasp of one or more separate and seemingly unrelated laws on the same issue.

It should also be pointed out at the outset that policies usually set the foundation for the promulgation of legislation, since legislation is the main tool for implementing policy. The specific focus on the analysis of the selected policies and legislation would be the extent to which the policy strategies and legislative provisions relating to addressing the EIA as one of the REDD+ safeguards are aimed at addressing potential negative impacts in the course of implementing REDD programmes. The focus is also on the extent to which the potentially positive impacts of the safeguards could be harnessed in the course of implementing REDD programmes in Tanzania.

3.2 Environmental Policy 1997

The National Environment Policy came into effect in the same year when the UNFCCC came into force in Tanzania. The policy articulates the framework scheme for environmental management, providing a holistic and overall coverage of environmental and natural resources covering all sectors. It provides for a general policy outlook and objectives relevant to the implementation of REDD in Tanzania. It notes that Tanzania's forest and woodland heritage is being reduced yearly through clearance for agriculture and fuel wood, among other causes. Paragraph eleven identifies six major problems that require urgent action. Among these, three are of direct relevance to REDD. These are land degradation, loss of wildlife habitats and deforestation. Some of the strategies the policy sets out to address the problems include minimizing wood fuel consumption through the development of alternatives, wood fuel energy efficiency, the promotion of sustainable renewable energy resources, and energy conservation.[10] The need to control industrial (including those related to agricultural and forest products) emissions and the application of EIA in industrial development and planning is also emphasized as a way of addresing the problems.[11]

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[10] See paragraph 52 (a) of the Policy.

[11] *Ibid.*, paragraph 56 (b) and (c).

Paragraph 59 of the policy also has a direct bearing on REDD initiatives as it relates to the forestry sector. The policy directive articulated in this paragraph calls for the development of a sustainable regime of soil conservation and forest protection by considering the interface between desertification, deforestation and climate change, among other factors.

The policy aptly articulates the relationship between poverty and environmental degradation, and by inference, poverty and production and consumption of forest products which have a bearing on global warming. It provides that "[s]atisfaction of basic needs is therefore an environmental concern of relevance to environmental policy. Investment in development is vital for environmental protection because the environment is the first victim of acute poverty, urban overcrowding, overgrazing, shrinkage of arable land and desertification."

The need to address environmental issues generally as a global concern and Tanzania's objective of preventive diplomacy in this regard is stated in different parts of the policy. Paragraph 7, for example, lays emphasis on this approach where it provides for the government's commitment to implement Multilateral Environmental Agreements (MEAs).[12] This commitment is echoed in paragraph 72, which states that the government is committed to incorporating MEAs (including those that have a bearing on REDD+ safeguards) that it has ratified into national legislation.

A more direct reference to REDD initiatives by the policy is expressed in paragraph 84, which acknowledges the fact that the atmosphere has no geographical boundaries and its protection requires a global effort. The paragraph also specifically mentions the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol as well as the UNFCCC in the country's effort to address emissions of greenhouse gases in the earth's atmosphere, which have an impact on climate change.

The policy's concern for the urgency of addressing the adverse effects of climate change that also has direct reference to some of the REDD+ safeguards is also reflected in paragraph 84 which calls for the need to undertake climate change studies with a view to finding out mitigation options. The policy takes note of the country's vulnerability to climate change and the need to address environmental information gaps, including networks for monitoring meteorological movements for climate.[13]

In a comparatively direct bearing to the REDD+ safeguards relating to EIA, chapter 4 of the policy provides for EIA. More specifically, paragraphs 63-66 place emphasis on the need to promulgate legislation to ensure that EIA is conducted in developments or projects which could be harmful to the environment. It notes that as a planning tool, EIA needs to be integrated into decision-making processes to ensure that there is no damage to the environment. Paragraph 67 of the policy also has a direct bearing on REDD+ safeguards. This paragraph notes that in some cases poor and uncoordinated implementation of sector policies leads to problems in environmental management and calls for the need to conduct Strategic Environmental Impact Assessment to mitigate negative effects of existing and future policies on environmental management.

[12] See also paragraph 82 of the Policy.
[13] See paragraphs 85 and 108, respectively.

3.3 The National Land Policy 1995[14]

This policy takes note of the importance of land and seeks to ensure that it is p use in a manner that will benefit local communities. The policy's objectives on e ronmental concerns have a direct bearing on the use to which land is put in production of crops. The production of crops usually competes with other land practices and thereby has a direct bearing on the extent of the general manager and tenurial issues related to the management of land.[15] The land policy seek establish, support and guarantee a secure land tenure system, which will facili the sustainable use of resources found on land. The resources include forests, a factor in REDD initiatives.

The policy reflects some aspects of the REDD+ safeguards by addressing iss relating to EIA. The policy's definition of EIA echoes that which provided for in National Environmental Policy. Also, objective 2.8 of the policy is relevant in t regard as it seeks to protect land resources from degradation. The policy furtl seeks to ensure that sensitive areas, such as forests, river basins, areas of biodivers and national parks are not allocated to individuals to conduct development acti ties.[16] Any EIA process would have to ensure that these sensitive areas are not a fected by developments, including those related to the implementation of REDD.[17]

3.4 The Forestry Policy 1998[18]

The forestry policy sets out the general guidelines for managing forestry resource and these inevitably include those found in forest lands or land neighbouring forest where REDD programmes are likely to be (or already being) implemented. In thi respect, this policy has a bearing to the management of forestland where mor REDD programmes would be concentrated upon.

Like other policies whose provisions focus on aspects of REDD programmes, the forest policy calls for the need to take into account directives of the National Environmental Policy in the management and conservation of forests and the consideration of environmental tools in the process. For example, it also lays emphasis on cross-sectoral coordination among government departments whose activities relate to forest resources and the enforcement and application of environmental tools (including EIA) in the conservation and management of forests. The policy defines EIA and states that EIA in developments in forest areas should be undertaken in accordance with the directives of the National Environmental Policy, EMA and in collaboration with other sectors and stakeholders.[19] This is a positive aspect since it encourages cross-sector synergies which are in line with the REDD+ safeguards concept.

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14 United Republic of Tanzania, Ministry of Lands, Housing and Urban Development, Dar-es-Salaam, June 1995.

15 See sections 7.6.0, 7.6.1, 7.7.0, 7.9.0 and 7.9.1.

16 See paragraph 4.2.9 of the Policy.

17 See paragraph 7.9.0 of the Policy.

18 United Republic of Tanzania, Ministry of Natural Resources and Tourism, Fisheries Division, Dar-es-Salaam, March 1998.

19 See paragraphs 1.2 and 4.3.4 of the Policy.

Some of the challenges identified in the policy in achieving a sustainable forest management regime include wild fires that occur annually, unclear boundaries, low ability of institutions to deal with the growing demand for forest produce and services, lack of internalising economic and environmental values of forests in product pricing and royalties and uncontrolled settlement in forest plantations.[20] These are some of the issues that need to be addressed carefully in the course of undertaking EIA. The strategies that the policy sets out to address the identified challenges include involving all stakeholders (including local communities) in management systems, demarcation of forest reserves, devising mechanisms to ensure equitable sharing of benefits and leasing out forest reserves to private investors. The identified challenges and strategies to address them have implications for REDD programmes either directly or indirectly.

The policy notes that the capacity of most government organs (at both local and national levels) responsible for natural resources management to respond to future challenges generally is weak. The coordination mechanism between the natural resources and conservation sectors, as the policy observes, is also pathetic.[21] It is has also been noted that the capacity of these officials to undertake REDD+ safeguards such as EIA is weak as well.[22] This has a negative impact for REDD programmes and related safeguards.

4. A Digest of Selected Legislation

4.1 Land Act 1999

The Act vests the ownership of all land in Tanzania in the President, as a trustee, on behalf of all citizens. It vests in the Minister responsible for lands the power of allocation and enforcement. Section 6 of the Act elaborates what reserved lands mean and it is in this definition, among other provisions of the Act, where a concern for REDD activities may be located. Accordingly, some of the lands that are declared to be reserved are governed by the provisions of the Forests Act, the National Parks Act, the Ngorongoro Conservation Act, the Wildlife Conservation Act, and the Marine Parks and Reserves Act. REDD-related activities would in some cases have implications on the activities regulated under the provisions of these laws. In this respect the Land Act would need to be read in tandem with these laws when it comes to regulating REDD activities.

Other categories of reserve land contemplated by the provisions of the Land Act include "land parcel(s) within a natural drainage system from which the water resource of the concerned drainage basin originates" and land declared by the Minister responsible for lands under the provisions of the Act to be hazardous land.[23] The first of these categories may have some bearing on REDD-related activities with the reference to "natural drainage systems (lands) with water" – such systems being one

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20 See chapter 4 of the Policy.

21 See paragraph 4.4.4 ad 4.4.5 of the Policy.

22 See *Sosovele*, H., "Governance Challenges in Tanzania's Environmental Impact Assessment Practice", African Journal of Environmental Science and Technology Vol. 5(2), 2011, pp. 126-130, available online at: http://www.academicjournals.org/AJEST, accessed 25 July 2012.

23 Section 4(1) (b) and (d).

of the key production zones in some of the areas where REDD programmes w be initiated.

The second category is that which addresses those lands that are declared to be l ardous by the Minister responsible for lands. This provides a comparatively more rect reference to REDD+ safeguards and related initiatives. This assertion is s ported by the definition accorded to the phrase "hazardous lands" by the Act.

The Act defines hazardous lands as:

> [L]ands, the development of which is likely to pose a danger to life or lead to the degradation of, or environmental destruction on that or contiguous land and includes but is not limited to:
>
> Mangroves swamps and coral reefs;
>
> Wetlands and offshore islands;
>
> Land on slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice, specify; and
>
> and specified by an appropriate authority as land which should not be developed on account of its fragile nature or of its environmental significance [...]

The above provision lucidly illustrates that the Land Act suggests that REDD activities in hazardous lands or areas that are contiguous to these lands should be accorded utmost care. Any developments that may have some bearing on REDD+ programmes in such areas would therefore most likely attract an EIA process.

4.2 Village Land Act 1999

This law provides for the management and control of village land. The main purpose of this Act was to recognize and secure customary rights in land, the main target being rural community members. These community members' rights had for some time been placed at the periphery under the old land law regime. The Act places all village lands under the management and control of village governments. The transfer of ownership and control over village land is strictly regulated under the Act in order to protect the interest of local communities from unscrupulous dealers.

The most relevant provision of this piece of legislation that has a bearing on some of the REDD+ safeguards and programmes is section 6, which is a replica of section 6 of the Land Act – dealing with hazardous land. Section 3 (f) of the Act may also, albeit remotely, be construed to have a bearing on some of the REDD+ safeguards since it calls for ensuring that land is used productively and that any such use comply with the principles of sustainable development. In order to ascertain that the principles would be taken on board in any development, activity or project land that is earmarked for REDD activities may be subjected to the EIA process.

4.3 Local Government (District Authorities) Act 1982[24]

This legislation basically provides for the duties, functions and special guidelines to Local District Authorities to enable them to effectively perform their administrative tasks. In executing their duties, these authorities have been vested with the powers to

[24] Cap. 287 [R.E. 2002].

make, among other things, by-laws.[25] Some of the by-laws that may be promulgated under this legislation may have a general bearing on the management of environmental resources in areas where REDD programmes are to be located. The by-laws may also provide for the requirement of EIA and other REDD+ safeguards, directly or by implication, for certain projects and developments. For example, section 118 of this Act, which stipulates the general functions and duties vested in the authorities, provides for some of the powers that may be exercised in managing REDD-related activities. This can be inferred from the powers to "[t]ake all necessary measures for the prevention of soil erosion and the protection of crops; regulate the use of agricultural land; and establish, preserve, maintain and improve the use of forests and forest produce."

The First Schedule to the Act expounds upon the powers provided for in section 118 and makes reference to activities that would be undertaken under the REDD framework and be under the control of the authorities. Accordingly, the local authorities may "[d]eclare any area of land to be reserved for purposes of natural regeneration; prevent pollution of water and any river, stream or water way or other water supply; and regulate or control the use of swamps or marshland."[26]

The Second Schedule to the Act also has some significance with regard to the control, regulation and wise use of environmental and natural resources in the course of implementing REDD programmes. This schedule provides for functions of township authorities. It provides that these authorities may require any person or body to take measures to conserve natural resources and establish and maintain ponds.[27] The control of natural resources referred here could include forest and related resources which may require conducting EIA and thus having a direct bearing on REDD+ safeguards.

Village by-laws that are made under the mandate of the Local Government (District) Authorities Act, among other laws that may have a bearing on REDD activities such as those related to the conservation and management of forest resources. These by-laws may seek to ensure that developments in village lands are subjected to the EIA process in order to conserve fragile ecosystems. However, the understanding of villagers on the EIA process is limited. Of course, they may seek assistance from the district authorities on EIA and related processes. This is because the district authorities are required to assist villagers in formulating village by-laws. The authorities are also required to provide guidance to villages when they encounter novel issues that need to be addressed in the by-law-making process. However, the knowledge of government officials, including district authorities, on issues related to the EIA process, as already pointed out, is seriously wanting.[28]

4.4 Local Government (Urban Authorities) Act 1982[29]

Some of the proposed REDD programmes will be situated in urban or peri-urban areas and the provisions of this law would have to be clearly understood to effec-

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25 *Ibid.*, see sections 111 and 118.

26 *Ibid.*, see sections 5, 91 and 95 of the 1st Schedule.

27 *Ibid.*, see generally section 139 of the Act and sections 6 and 9 of the 2nd Schedule.

28 See *Sosovele*, H., 2011, *op. cit.*

29 Cap. 288 [R.E. 2002].

tively implement such programmes. This legislation establishes urban authorities and provides for their functions and duties. Like the Local Government (District Authorities) Act, this Act also empowers these authorities to make by-laws to control and regulate, among other things, natural resources conservation and management activities. As pointed out earlier, REDD programmes may be located in areas where natural resources need to be protected. In this respect, therefore, the power of urban authorities to make by-laws also incorporates the power to manage and control the land and resources by issuing directives on EIA upon which REDD programmes would take place.

Accordingly, in exercising the power vested in them, the Act specifically provides that urban authorities may declare any area to be reserved land and control the use of swamps and marshland.[30] Urban authorities may also regulate and control REDD-related activities by invoking the provisions requiring the carrying of EIA or SESA.[31]

4.5 Forest Act[32]

Section 4 of the Act establishes four categories of forests. These are national forests, local authority forest reserves, village forests and private forests. National and local authority forest reserves are declared by the Minister. These comprise local authority forest reserves or forest on general land and are mainly used for sustainable production of timber or forest produce, the protection of watersheds, conservation of soil and wild plants or for any other purposes as determined by the local authority. National or local authority forest reserves could be managed by the Ministry, an executive agency, a local authority or a village council. The management of the reserves could also be vested in groups such as companies, cooperatives, private persons or NGOs.

Village forests may consist of village land forest reserves (owned and managed by one or more village governments) or community forest reserves created out of village forests (and not restricted to government ownership and management). Joint forest management, involving a combination of village government and central government or local authority stakeholders as provided for by the Forest Act, is also practiced. Unreserved forests on general land may also be classified under national forests, local authority forests or village forests. Village forests are declared by the village council after approval by the Minister. These consist of village land forest reserves, community forest reserves created out of village land and forests which are not reserved but which are on village land and of which the management is vested in the village council.

Private forests could either be forests on village land held by one or more persons under a customary right of occupancy or forests on general or village land for which a right of occupancy or lease has been granted to a person or company or NGO to manage it. Private forests may also be owned either as forestry dedication covenants (to holders of a right of occupancy) or concessions.

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30 *Ibid.*, see section 55 and the Schedule to the Act providing for functions which Urban Authorities may perform.

31 The observations on the limited knowledge of EIA among government officials by *Sosovele*, H., *op.cit* also apply to the Urban Authorities. In fact the study by *Sosovele* focuses predominately on Urban Authorities.

32 Cap. 323 [R.E. 2002].

Like other pieces of legislation, the Forest Act also makes direct and implied references to environmental concerns relating to some of the REDD+ safeguards. Section 18 of the Act requires proposed developments in forest areas to conduct an EIA in accordance with the provisions of the EMA and regulations made under it.

It should be pointed out here that a number of regulations have been made under the Forest Act. Some of these have been issued by the Minister under the auspices of the Act. Others have been made by local authorities either under the Forest Act or the respective local authorities' laws. The Minister in charge of environmental matters may also make regulations to govern the forest sector.[33] All in all the body of the regulations on forests is admittedly diverse in nature and scope. They provide more pertinent details on regulating the utilization of forest products and related resources and have a direct bearing on REDD initiatives. As will be noted in the discussion on EMA, EIA may be demanded by any regulations made under the auspices of any natural resource management or environmental legislation.[34] This may create confusion due to overlapping and conflicting mandates in the course of implementing REDD safeguards in general and EIA in particular.

The implication of the government devolving rights to the grassroots and involving other players is evidence of the emergence of co-management regimes in national forests, nature reserves, and village land forests. However, this may also complicate the EIA process given the limited knowledge of the process by local community folk who are an important stakeholder in efforts to effectively implement REDD programmes. In fact, a recent study by the Forest and Beekeeping Division established that Participatory Forest Management (PFM) was operating or being established in over 1,800 villages and on over 3.6 million hectares of forest land equivalent to approximately 11 per cent of the total forest cover and 18 per cent of all villages on mainland Tanzania.[35] The need to ensure that villagers are brought on board effectively if REDD safeguards are to be effectively implemented is therefore essential.

4.6 Environmental Management Act 2004[36]

Being the framework legislation governing environmental matters and having a more direct bearing to REDD+ in general and REDD+ safeguards in particular, the analysis of EMA as noted earlier shall be comparatively more comprehensive.

4.6.1 Background

The evolution of the EIA process in Tanzania commenced in the early 1980s. At this time, the process was not backed by any legislative enactment, however. The National Environmental Management Council (NEMC), which had been formed in 1984 under the then National Environmental Management Council Act, regulated development projects and activities that could have adverse impacts on the environment by issuing Conditional Environmental Clearances (CEC). With the promulgation of the EMA two decades later, a more comprehensive and relatively detailed

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33 See the discussion on EMA below.

34 An attempt to make an analysis of such regulations would be a Herculean task, given the limitation to which this article is confined to.

35 See Ministry of Natural Resources and Tourism, Forestry and Beekeeping Division, 2001, National Forest Programme in Tanzania 2001-2010, p. vii.

36 Cap. 191 [R.E. 2002].

process of EIA was put into the legal framework. A general overview of the EMA would be in order to lay a foundation for discussing its treatment of some of the components of the REDD+ safeguards in general and the EIA in particular.

4.6.2 An Overview of the Environmental Management Act (EMA) in the Context of REDD

Being the framework environmental law, EMA seeks to harmonize all natural resources sector laws, since the sector laws deal with various components of the environment, in a more or less distinct, i.e. isolated manner. EMA is important for REDD initiatives. First and foremost, its definitions and provisions take cognizance of important REDD components. The definitions include air, land, physical factors surrounding the environment and climate. Also, the phrase "gaseous wastes" is defined by the Act to mean gaseous emissions referred to in REDD programmes. Similarly, the phrase "hazardous substance" is defined to include gas that is likely to be injurious to human health, life or the environment, whereas "hazardous waste" includes any solid, liquid, gaseous substance.

In an effort to implement the directive of the environmental policy relating to global environmental diplomacy, section 179 (3) of EMA provides that the relevant and applicable provisions of MEAs (including those that have a bearing on REDD) would be adhered to in the course of conserving and managing the country's environmental resources. In this regard, MEAs that require the performance of EIA and other environmental safeguards such as Strategic Environmental Assessment (SEA) would have to be taken on board in the interpretation of local legislation on environmental management.

As noted earlier, environmental laws are cross-cutting. In order to have a comprehensive understanding of one law, one needs to have some knowledge of others. The fact that sector environmental and natural resources management laws are cross-cutting means that there is bound to be conflict in their application which could be detrimental to the conservation of environmental resources in general and the implementation of REDD+ safeguards in particular. This is especially true given the various sectors and institutions dealing with environmental and natural resources management.

EMA provides a framework for addressing potential conflicts among sector laws. This is important for REDD initiatives. Section 7 (2) of EMA specifically states that the "Act provides a legal framework necessary for coordinating harmonious and conflicting activities with a view to integrating such activities into an overall sustainable environmental management system by providing key technical support to Sector Ministries." To give further credence to the above provision, section 13 (1) provides that the "Minister (responsible for environment) shall be overall responsible for matters relating to the environment and shall in that respect be responsible for articulation of policy guidelines necessary for the promotion, protection and sustainable management of environment in Tanzania." And to crown it all, section 232 provides that "[i]f any law is inconsistent with EMA, EMA prevails to the extent of such inconsistency." The implication here is that in the event that there is inconsistency in the application of natural resources sector laws in the course of implementing REDD programmes, including in relation to EIA, SEA and other REDD safeguards, then the provisions of EMA shall be applicable.

EMA's coverage of the conservation of forest resources makes some important cross-referencing to the provisions of the principal legislation governing forests discussed above. Section 63 (1) of EMA states clearly that all forests shall be managed in accordance with the provisions of the Forest Act 2002 and matters relating to environment shall conform with the provisions of the forest legislation. However, EMA echoes the import of section 232 noted above where it reiterates, in section 63 (2), that "where any matter concerning management of environment undertaken according to the provisions of the Forest Act, 2002 is in conflict with this Act, the provision of this Act shall prevail."

As noted earlier, section 63 (1) mandates the Minister in charge of environment to make regulations for the management of forests. Usually it is the Minister in charge of forests who has the exclusive mandate to make such regulations. In this regard, those implementing REDD and reflecting upon REDD+ safeguards should not only focus on regulations made under the Forest Act as conclusive proof of subsidiary legislation governing forests. They should also probe into any legislative enactments that may have been made under the authority of section 63 (3) which clearly provides that "[t]he Minister (responsible for environment) shall, in relation to the making of rules on environmental management of forest resources consult the Minister responsible for forestry."

4.6.3 Environmental Impact Assessment (EIA)

As noted earlier, other natural resources sector legislation which have a bearing on REDD activities also provide for the need to carry out EIA, among other things, in certain developments.[37]

These regulations should be read with EMA (see section 4.6.2) which requires certain developments to be preceded by an EIA. Detailed regulations on how the EIA procedure is to be conducted have been promulgated under this Act.[38] Regulation 15 is specific on this requirement where it provides that EIA must be done in accordance with guidelines and steps set out in the Fourth Schedule to the regulations. Also, regulation 16 requires that EIA take into account environmental, social, cultural, economic and legal considerations. It is important to reiterate here that where there is any conflict on the procedure of conducting EIA in the course of implementing REDD, whether in principal or subsidiary legislation, the provisions of the EMA would prevail to the extent of the inconsistency.

Section 81 (1) of EMA is clear on this where it provides:

> Any person, being a proponent or a developer of a project or undertaking of a type specified in the Third Schedule to this Act, to which Environmental Impact Assessment is required to be made by the law governing such project or undertaking or in the absence of such law, by regulations made by the Minister.

An exhaustive interpretation of item 1 of the Third Schedule to EMA which provides for the types of projects, activities or developments that require EIA implies

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37 Section 3 of EMA defines EIA as systematic examination conducted to determine whether an activity or development or project will have an adverse impact on the environment.

38 See the Environmental Impact Assessment and Audit Regulations, 2005 (G.N. No. 349 of 2005).

that practically any activity may be subjected to the EIA process. The item provides "(a) Any activity out of character with its surroundings; (b) any structure of a scale not in keeping with its surroundings; and (c) major changes in land use."

It is submitted that the use of the phrases "out of character", "not keeping with its surroundings" and "major changes" leave a lot of discretion and subjectivity which could be invoked to compel the conducting of EIA to basically any development or activity. On the one hand, such discretion could be applied judiciously to ensure that negative aspects that may pose a threat to REDD+ initiatives are checked. However, the discretion could also be applied imprudently to permit potential threats to the initiatives.

An important requirement of the EIA process is that the developer or one undertaking REDD development activities which require an EIA must consult, among other stakeholders, the local community where such development is to be undertaken. Development activities in the context of EMA include those related to forests, and this is where REDD programmes are directly targeted, including the REDD+ safeguards. The Third Schedule to EMA is clear. Item 7 of this Schedule makes it mandatory for EIA to be conducted for forest-related activities undertaken, at the developer's own cost and for such developer to undertake an EIA. Other items under the schedule which have a bearing on REDD include item 8 in relation to Agriculture (Forest Farming), item 13 referring to Natural Conservation Areas, and 16 which is an omnibus item referring to "[a]ny other activity as may be prescribed in Regulations." The phrase "Regulation" in this context refers to regulations made under any other natural resources sector legislation or any other legislation for that matter that has a bearing on the conservation and management of forest resources.

The First Schedule to the regulations has a more direct bearing on REDD+ safeguards. It provides for the types of projects that must undergo EIA. Under Type A, item 3 (ii) dealing with forestry, the regulations make it mandatory to conduct EIA where a project or programme seeks to introduce a tree species or to engage in the development of forest plantations. Also, under (v) and (vii), afforestation and forestation projects for purposes of carbon sequestration and forest harvest operations, respectively, must undergo the EIA process.

NEMC has been busy dealing with EIA permits since the coming into force of EMA. Between July 2005 and May 2010, it had submitted 274 recommendations to the Minister for consideration of issuing EIA certificates to projects. Among these only 211 were approved by the Minister and hence issued with EIA certificates. This is the official number of EIA approvals by the Minister until May 2010.[39]

4.6.4 Environmental Impact Statements (EIS)

Under the provisions of Section 91 of EMA, the NEMC is required to review Environmental Impact Statements (EIS) with the assistance of the Technical Advisory Committee (TAC) before recommending to the Minister responsible for environ-

[39] See National Environmental Management Council, Environment and Development Series: Release for year 2010, Statistics of Certificates on Environmental Impact Assessment (EIA) and Environmental Audit (EA) in Tanzania, available at: http://www.nemc.or.tz/index.php?option=com_docman&task=doc...4, accessed 25 July 2012.

ment to issue or not issue an EIA certificate. An EIS is the statement that is produced at the end of the EIA process. Section 91 of EMA should be read together with Parts V, VI and VIII of the EIA Regulations which provide for, among other things, the contents, format and other pertinent issues relating to the review process of the EIS. Regulation 39 of the EIA Regulations provides for the right of members of the public to access EIS. This is a progressive provision in ensuring that some of the REDD safeguards are adhered to. However, the right to access information could be inhibited where commercial confidentiality or national security could be compromised. The regulations do not define what commercial confidentiality nor national security is or circumstances where these could be invoked to deny public access to EIS, leaving a lot of discretion to the relevant authority. Experience has shown that abuse of such provisions is not rare in institutions that have been charged with environmental and natural resources management in Tanzania.[40]

4.6.5 Environmental Audit (EA) Certificates

Under Sections 100 and 101 of EMA, the NEMC is mandated to conduct monitoring and auditing of development projects. Likewise, Regulation 46(2) of EIA and Audit Regulations of 2005 require that environmental audit be carried out on development projects which commenced prior to the coming into force of the EIA and Audit Regulation of 2005 and are likely to have adverse environmental impacts.

Between July 2005 and May 2010, the Council had reviewed a number of audit reports and submitted thirteen of them to the Minister for consideration for issuing Environmental Audit (EA) Certificates to the projects. Until May 2010 nine projects were approved by the Minister and issued with EA certificates.[41]

4.6.6 Strategic Environmental Assessment (SEA)

EIA is one of the REDD+-related safeguards provided for in EMA. The other safeguard is SEA, which is provided for by Section 104 (1) of the EMA. This provision makes it mandatory to conduct a SEA in the course of preparing legislation that has a bearing on REDD+ related activities. The provision is clear:

> It shall be a requirement when preparing a Bill for enactment of any law that is likely to have effect on – (a) the management, conservation and enhancement of the environment; or sustainable management of natural resources, to conduct and submit to the Minister a detailed statement regarding Strategic Environmental Assessment of the effect likely to be caused on the environment in the implementation of the provisions of that law.[42]

4.6.7 Experts on Environmental Impact Assessment (EIA)

The Environmental Management Act (EMA) also has provisions that seek to ensur that some of the REDD+ safeguards are undertaken in a professional manner. It is i this context that Section 83 of EMA directs that all environmental consultants oper ating in Tanzania to be registered. In this regard, the provisions of EMA relating t

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40 See generally, *Nshala*, R., Granting Hunting Blocks in Tanzania: The Need for Reform Lawyers Environmental Action Team Policy Brief No. 5, 1999.

41 *Ibid.*

42 SEA will be discussed separately in the course of the training but it would, albeit by wa of passing, suffice to point out the link between it and EMA.

the EIA process must be read together with the Registration of Environment perts Regulations 2005.[43] These regulations make it mandatory for EIAs to b ried out only by experts or firms of experts whose names and qualifications been duly registered by the National Environmental Management Council (NE The regulations address a number of key issues concerning EIA and related guards that have bearing on REDD+. The regulations set out the objectives c certification process and establish the Environmental Experts Advisory Comm They also have provision for regulating the certification and registration proc of environmental experts and provide for a code of ethical practice and discipli procedures for the experts.

The regulations provide that in order to undertake an EIA or an environmental a in the country, one must be certified as an environmental specialist. Applications certification must be lodged with the NEMC in a form prescribed in the First Sch ule of the Registration of Environmental Experts Regulations. The NEMC is quired to make a decision on whether or not to grant an Environmental Exp Certificate within *60 days* of the date of application. The applicant must be notif of the decision within *14 days* of the decision. Once an environmental expert h been certified and has paid the prescribed fee, his/her name will be entered onto Register of Environmental Experts.

Foreign environmental experts may also be registered under the regulations. A cordingly, the NEMC is required to register foreign consultants only where the have satisfied certain criteria. Among other things, the regulations provide that fo eign environmental experts must provide proof of certification or accreditation fro other competent certification bodies, demonstrate that they have at least 5 years ex perience in conducting EIAs and submit two abstracts of previous EIAs or audit conducted during the last 3 years. The applicants must also provide a CV and at leas 3 references, one of whom is registered in mainland Tanzania and pay the prescribed fee.

REDD programmes seeking to engage consulting firms should take note of the fact that consulting firms may apply to be registered as "Consulting Firms of Environmental Experts". To qualify, such firms must have at least one certified and registered environmental expert and two specialists from different specializations. Where such a firm wants to undertake EIAs and environmental audits, it must make two separate applications. The firm's application must be made on the form prescribed in the First Schedule of the Environmental Experts Regulations, together with a list of the names of the persons in the company who have been certified and registered, and the kinds of expertise that the firm intends to offer regarding EIAs and/or audits. The certificate granted to a firm must be renewed annually upon the payment of the prescribed fee. All certified environmental experts must comply with the Code of Practice and Professional Ethics as prescribed in the Fifth Schedule of the applicable regulations.

5. Conclusion

The legislative framework governing EIAs in the context of REDD+ safguards in Tanzania is found in segmented legislative and policy provisions that seek to regu-

[43] GN No. 348 of 2005.

late environmental and natural resources conservation and management in general. These provisions are found in the various sector policies and in both principal and subsidiary legislation regulating resources such as land, forests and the general environment, to mention only those policies and laws that have been analyzed in this article. Other policy and laws that have a bearing on REDD+ generally and the REDD+ safeguards in particular should also not be lost sight of in a review of the efficacy of REDD+ safeguards in the country since REDD+ activities may have some bearing on them. For example, forest-related activities have a close bearing on wildlife activities and vice versa. In the same vein, water courses could be diverged to enhance forest farming. The relevant provisions of the policy and laws in relation to these examples must be recognised in understanding and assessing the REDD+ safeguards in the context of Tanzania.

The incorporation of the EIA process that came along with the enactment of EMA has provided a good foundation for taking on board some of the REDD+ safeguards in Tanzania. However, having a law in place and implementing it effectively, especially at the local community level, is something else. This is partly because most of the REDD+ activities at the local community level generally will be established on village lands. This scenario could lead to complications in enforcing EIA at the level of the village where village by-laws form the corpus of the legislative framework that have a bearing on the REDD+ safeguards, for example in relation to forest laws. The EIA process is not known to local folks. Concerted efforts are therefore needed to impart knowledge to stakeholders, especially at the local community level, on the EIA process and its requirements as set out in the law. Together with the training, there must be a change in mindsets of those charged with the task of implementing the law in the various government institutions. As noted by *Sosovele*:

> [P]art of the problem, noted in the EIA process in Tanzania is the inability of the National Environment Management Council and the municipal councils to have the courage to tell investors and the Government that certain decision cannot be taken before EIAs are done for those projects. This lack of courage cannot be explained by inadequate manpower or awareness of environmental laws. It can be explained by cultural and sociological and psychological factors that define the relationship between those institutions and the central Government.[44]

It has been pointed out that most of the authorities mandated to oversee the institutional framework for environment and natural resources management in general in Tanzania do not have a good comprehension of the interplay of the corpus of laws governing the resources.[45] The same observation has been made with respect to those charged with the implementation of REDD programmes. There is a tendency of some of the authorities to refer only to the specific sector policies and legislation, without considering the implication of these at a more holistic level. This may cause institutional conflicts and mandates and in the process bog down efforts to effective-

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[44] See *Sosovele*, H., 2011, *op. cit.*

[45] See generally *Maliwasa*, E., and *Shauri*, V., Review of the Decentralization Process and its Impact on Environmental and Natural Resources Management in Tanzania (LEAT), Research Report No. 3: 2001, available at http://www.leat.or.tz/publications/decentralization, accessed 25 July 2012.

ly implement REDD programmes in general and REDD+ safeguards in particular.[46] In view of this reality, these authorities should undergo intensive training on a regular basis in order to impart to them the necessary skill and analytical tools to enable them understand the interplay between the key policies and legislative provisions that have a bearing on REDD, taking into account the fact that legislative provisions on environment and natural resources undergo amendments frequently.

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[46] See generally Institute of Resource Assessment, Research on Reducing Emissions from Deforestation and Forest Degradation (REDD) – In Depth Study: Legal and Institutional Review in the Context of REDD Intervention, University of Dar-es-Salaam, 2010.

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7. List of Acronyms

CCI	Clinton Climate Initiative
CEC	National Environmental Clearances
EA	Environmental Audit
EDF	Environmental Defense Fund
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EMA	Environmental Management Act
FAO	Food and Agricultural Organization
GEO-FCT	Group on Earth Observation – Forest Carbon Tracking
IRA	Institute of Resource Assessment
MEAs	Multilateral Environmental Agreements
NEMC	National Environmental Management Council
NGO	Non-Governmental Organization
PFM	Participatory Forest Management
REDD	Reducing Emissions from Deforestation and Forest Degradation
SEA	Strategic Environmental Assessment
SES	Social and Environmental Safeguards
SESA	Strategic Environmental Impact Assessment
TAC	Technical Advisory Committee
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change