

# **An Appraisal of the Legal Framework for the Management and Conservation of Tanzania's Wetlands**

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## ***ABSTRACT***

*This paper examines Tanzania's legal framework for the conservation and management of wetlands. Its underlying thesis is that the existing laws do not echo the obligations of the Ramsar Convention to which the government has acceded.*

*The paper argues that wetland conservation and management has basically not risen on the list of priorities of the natural resources conservation and management legal framework. It recommends that there is a need to develop a comprehensive law to deal with wetland conservation and management.*

## **1.0 INTRODUCTION**

Wetlands are basically water-based ecosystems at the interface between aquatic and terrestrial habitats and support a wide variety of plant and animal life. They usually comprise of areas of marsh, streams, lakes, rivers, swamps, flood plains, ponds, mangroves, deltas and estuaries and are important natural resources that support components of the hydrological cycle in breeding, rearing and feeding habitats for diverse species of fauna and flora.

Wetlands can serve as fish spawning areas and herbivore pastures and also as ground water discharge and recharge areas. They also serve as mechanisms for flood control, shoreline stabilization, erosion control, storm protection, water-transport, recreation and tourism attraction. During the rainy seasons, the sponge-like characteristic of wetlands often helps to protect houses and farmland from serious flooding.

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If wetlands were significantly disturbed there would be serious damage to the ecological and bio-diversity systems that support human, plant and animal life.

Today, wetlands ecosystems are considered to be one of the most threatened of all environmental resources. Being concerned about the increasing rate of deterioration of wetlands, the international community promulgated the Convention on Wetlands of International Importance Especially as Waterfowl Habitats in Ramsar, Iran (The Ramsar Convention) in 1971. The Convention's primary mission is to ensure conservation and wise use of wetlands at both the national and international levels. It calls upon Contracting Party States to designate wetland sites for inclusion in the list of wetlands of international importance and to establish nature reserves in wetlands and promote their wise use. The Convention also calls upon the Party States to integrate wetland restoration into their national nature conservation and management legal frameworks.

This paper examines the extent to which Tanzania, as a Party to the Ramsar Convention, has adhered to the Convention's call. It makes an analysis of the legislation that seek to safeguard wetlands and then provides recommendations on how to effectively employ law in order to conserve and manage the country's wetland resources.

## **2.0 AN OVERVIEW OF TANZANIA'S WETLANDS**

Tanzania's wetland area covers about 10% of the total land area.<sup>1</sup> These consist mainly of inland flood plains and rivers (for example the Kilombero, Lower Rufiji, Usangu, Pangani, Wami and Ruvuma floodplains), coastal and marine areas, (for example mangroves, estuary swamps, coral reefs, seaweed and grass), artificial wetlands comprising mainly of manmade lakes and ponds. (Examples include Mtera, Nyumba ya Mungu, Pangani, Hombolo and Kidatu), and inland wetland systems (For example the Rift valley lakes comprising of Lakes – Natron, Eyasi, Nyasa, Rukwa, Victoria, Tanganyika and Balangida).

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<sup>1</sup> See speech delivered by Hon. Zakia Meghji, Minister for Natural Resources and Tourism on World's Wetlands Day 2-2-2001.

Tanzania's marine and coastal wetlands are threatened by destructive human activities, with the common ones being industrial and domestic pollution, over-exploitation of marine resources such as mangroves, shrimps and lobsters. This had led to the destruction of coral reefs that are essential habitats to a variety of species.

Taking cognizance of the abundance of its unique wetland sites and the dangers that may befall them in the absence of strategies to effectively conserve and protect them, the government of Tanzania ratified the Ramsar Convention in August 2000. The government has made some efforts to implement the obligations of the Ramsar Convention and the resolutions passed by Contracting Party States to the Convention.

Efforts to conserve marine and coastal wetlands have been initiated by the government in the Rufiji Delta where integrated mangrove conservation programs have been developed with the setting up of an area comprising of mangroves as a forest reserve. In Tanga, seven islands have been declared as marine reserves under the Fisheries Act. Some areas in the region have also been developed under the integrated coastal zone management plan to involve local communities in conservation of fisheries resources.

Also, some of the country's wetlands have been demarcated as areas to be accorded protection under the wildlife conservation and management legislation. For example, the Pangani floodplain is recognized as a Game Controlled Area while the Ruvu, Lower Rufiji, Usangu, Kilombero and Ruvu floodplains are designated as Game Controlled Areas under the Wildlife Conservation Act. The National Parks Ordinance, on the other hand, recognizes the Tarangire and Lake Manyara as parts of a National Park.

The government has designated two wetland sites on the Convention's list of Wetlands of International Importance. The Malagarasi –Muyovozi swamp in western Tanzania was designated in 2000 as Tanzania's first wetland and placed on the list of wetlands of international importance. Lake Natron, containing the largest number of breeding Lesser flamingoes anywhere in the world was designated as the second wetland site in 2001. The Kilombero valley is in the pipeline of being designated as the third site in Tanzania.

One of the Resolutions adopted by the Conference of Parties to the Ramsar Convention calls for the promulgation of a policy to provide direction on the government's stated objectives, focus and action plans on the general management of wetlands.<sup>2</sup> It necessarily follows that the enactment of legislation to govern the management of wetlands is also implied in the resolutions because law is the government's main tool of implementing policy directives.

An examination of the relevant laws with a view to determining the extent to which Tanzania has fulfilled its obligations under the Ramsar Convention would now suffice.

### **3.0 AN OVERVIEW OF SELECTED WETLAND-RELATED LEGISLATION**

#### **3.1 The Land Act, 1999<sup>3</sup>**

This Act provides for the basic law relating to all land in Tanzania other than village land. As observed earlier, wetlands are part of land. An exploration of the provisions of the law governing land is therefore vital in an effort to have a thorough understanding of the treatment accorded to wetlands, their use and management by legislation governing general land use.

The Land Act vests all land in the President as trustee<sup>4</sup> and creates three categories of land. These are:

- General land
- Village land and
- Reserved land

The Land Act further vests in the President the power to transfer land from one of the above categories to another. That is to say, for example, the President may transfer general or reserve land into village land.<sup>5</sup>

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<sup>2</sup> See Resolution VII.17 (Which was adopted by the Conference of Contracting Parties in San Jose, Costa Rica in 1999)

<sup>3</sup> No. 4 of 1999, Laws of Tanzania

<sup>4</sup> Ibid Section 4

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 wetlands may be located. Accordingly, these are those lands that are declared to be reserved under the provisions of the following laws:

- (a) The Forests Ordinance, Cap. 389 (now repealed and replaced by the Forestry Act, No. 14 of 2002)
- (b) The National Parks Ordinance, Cap. 412
- (c) The Ngorongoro Conservation Ordinance, Cap. 413
- (d) The Wildlife Conservation Act, No. 12 of 1974
- (e) The Marine Parks and Reserves Act, No. 29 of 1994
- (f) The Town and Country Planning Ordinance, Cap. 378
- (g) The Highways Ordinance, Cap. 167
- (h) The Public Recreation Grounds Ordinance, Cap. 30 and the Land Acquisition Act, No. 47 of 1967

As noted earlier, some wetlands have already been provided with a conservation and management status by the provisions of some of the laws above. The Land Act does not explicitly direct that wetlands be recognized as reserve lands. However, the Act's recognition of these other pieces of legislation (that have a bearing on the conservation and management of wetland sites) indicates that it takes cognizance of the crucial role of wetlands.

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.<sup>6</sup> The first of these categories implies a more direct recognition of wetlands with the reference to "*natural drainage systems (lands) with water*" – one of the main features of wetlands.

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<sup>5</sup> See sections 5 and 6 (2) of the Act

<sup>6</sup> Section 6(1) (b) and (d)

The second category is that which addresses those lands that are declared to be hazardous by the Minister responsible for lands. This provides a comparatively more direct reference, indeed a specific reference to wetlands. This assertion is supported by the definition accorded to 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:*

- (a) Mangroves swamps and coral reefs;*
- (b) Wetland and offshore islands;*
- (c) Land on slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice specify; and*
- (d) Land specified by an appropriate authority as land which should not be developed on account of its fragile nature or of its environmental significance.” (Emphasis underlined)*

The above provision lucidly illustrates that the Land Act recognizes wetlands as a vital component of the land system. Wetlands could therefore be conserved and their management or use monitored under the provisions of the Land Act. This could be done by the Minister responsible for lands declaring wetlands a category of hazardous land or where there are persons who occupy the lands under a right of occupancy, recommend to the President to compulsorily acquire such lands under the provisions of the Land Acquisition Act, 1967.<sup>7</sup> Upon such acquisition, then plans and strategies for the conservation and management of such lands could be devised.

### **3.2 The Village Land Act, 1999<sup>8</sup>**

This law provides for the management and control of village land. The most relevant provision of this piece of legislation that has a bearing on wetlands management and use

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<sup>7</sup> See sections 7 (4) and (8) of the Land Act.

<sup>8</sup> Act No. 7 of 1999

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 wetlands since it calls for ensuring that land is used productively and that any such use comply with the principles of sustainable development.

### **3.3 The Wildlife Conservation Act, 1974<sup>9</sup>**

The preamble to this law provides that it was enacted to make provision for the conservation, development and control of fauna and flora and related products. The definition of “animal” provided for in this law covers wildlife and the habitat necessary for their survival in the broad sense. This may be construed to imply that even those wildlife resources found in wetland habitats are included. This holistic approach of applying the coverage of this Act to include wetland resources is further supported by the fact that some wetland sites have been accorded a protective status by the Act.

It should be pointed out, however, that the provisions of this law places comparatively less emphasis on the conservation and management of wildlife habitats. Its provisions focus mainly on the protection of wild animals. With this inherent bias, this Act falls short of according wetlands (which have plenty of habitat) the conservation and management status they deserve.

### **3.4 The Fisheries Act, 1970<sup>10</sup>**

This legislation makes provision for the protection, conservation, development and control of most types of resources that are found in wetlands- fish and other aquatic flora and faunal resources. The definition of aquatic flora provided for by this law includes: *“...plants and other members of the aquatic vegetable kingdom and includes coral, weeds and sponges.”*

Under the provisions of this Act, the Minister responsible for fishing activities may impose restrictions to regulate and control fishing and declare any area or waters to be

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<sup>9</sup> Act No. 12 of 1974

<sup>10</sup> Act No. 6 of 1970

controlled areas in relation to all fish produce and aquatic flora. The Act is focused at protecting some of the main resources found in wetland ecosystems. It regulates fishing activities and the collecting, gathering and or manufacturing of aquatic flora. The Act does not specifically make reference to wetlands. Indeed there is no mention of the word “wetlands” in the Act. However, since the resources that it seeks to conserve, protect, control, manage and regulate are found in wetlands, then for all intents and purposes, this Act has a bearing on the conservation, use and protection of wetlands.

The regulations made under the Fisheries Act are also comprehensive and relate to wetlands conservation and management. Among other things, they prohibit the pollution of water in areas where fish and other wetland resources are located. They also prohibit polluting any solid, liquid or gaseous matter in any lake, river, dam, estuary or seawater.<sup>11</sup>

### **3.5 The Marine Parks and Reserves Act, 1994<sup>12</sup>**

Although this Act does not categorically refer to wetlands, its definition of “aquatic flora” implies that it takes into account the wetlands component. The term is defined to include plants, seaweeds, waterweeds and other aquatic vegetable kingdom and includes mangroves.

A conscientious analysis of some of the provisions of this Act reveals that some form of wetlands and resources found therein may be protected by being categorized as conservation areas under the provision empowering the Minister responsible for fisheries to establish Marine Parks and Reserves. For example, under this provision, the Minister may declare any area within territorial waters or exclusive economic zone or any island or coastal area to be Marine Reserve where the preservation or management of the area is necessary to protect access or public viewing of the area or if the area is of scientific, historical or other importance.<sup>13</sup>

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<sup>11</sup> See regulation 27 of the Fisheries Regulations, GN 317/1989

<sup>12</sup> Act No. 29 of 1994

<sup>13</sup> Ibid., See section 8

Some of the purposes for which a Marine Reserve or Park may be designated under the provisions of the Marine Parks and Reserves Act also reflect a consideration of wetland sites. Section 10 of the Act, for example, which provides for some of the purposes for which a Marine Park or Reserve may be designated, categorically mentions the protection, conservation and restoration of species and genetic diversity of living marine resources and ecosystem processes of marine and coastal areas.

Some of the activities that are restricted under the provisions of this Act also have a bearing to the preservation of wetland sites. The Act seeks to regulate, control and in certain cases prohibit certain activities related to the collection or removal of aquatic flora and vegetation or sand that are also present in wetland sites that may be located in Marine Parks or Reserves. The Minister is also empowered to prohibit, restrict or control the grading of any lands and the introduction of fish, animals or vegetation into such Parks or Reserves and the carrying on of commercial activities in or around them.<sup>14</sup>

Taking cognizance of the cross-cutting issues and the wide range of the diversity of resources that could be found in natural areas other than Marine Parks or Reserves, the Act makes cross reference to other natural resources conservation and management legislation that have a bearing on wetlands. The Act makes specific mention of the Fisheries Act (and Regulations made there under), the Wildlife Conservation Act, the National Parks Ordinance and the Land Acquisition Act.<sup>15</sup>

### **3.6 The National Environmental Management Act, 1983<sup>16</sup>**

This legislation establishes an authority to oversee the general management of Tanzania's environmental resources and provides for its duties and functions. This is the National Environmental Management Council (NEMC). The definition accorded to the term "environment" in this Act also indicates the importance it accords to the conservation and management of wetlands. The definition states that the phrase environment includes the land, water and atmosphere of the earth. All these form a crucial part of wetlands.

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<sup>14</sup> See sections 23 and 24

<sup>15</sup> See sections 41(1) and 43

<sup>16</sup> Act No. 19 of 1983

One of the functions that the NEMC has been charged with under this Act is the evaluation of existing and proposed policies directed at conserving environmental resources, formulating proposals for legislation in various areas of environmental issues and recommending strategies for their application.

The NEMC has spearheaded a number of initiatives to protect wetlands. It has coordinated and commissioned a number of studies and research for monitoring wetlands and worked with national institutions for National Wetlands Programs in neighboring Kenya and Uganda.

### **3.7 The Water Utilization (Control and Regulation) Act, 1974<sup>17</sup>**

This legislation also contains provisions that have a bearing to the management and conservation of wetlands. Section 8 of this law vests all water in Tanzania in the United Republic. The provisions of this Act take into account that wetlands are exceptionally vulnerable to changes in their water supply that result from, among other things, certain uses of surrounding land or upstream water sources. Accordingly, the Act controls the use of this important resource by providing that all grants of water rights, that is the right to use water from any source, shall be made by the water officer in accordance with the provisions of this and other relevant laws.<sup>18</sup> The Act makes it an offence for any person to divert, abstract, dam, store or use water from any source except in accordance with the procedure stipulated by its provisions.<sup>19</sup>

Like the comparable provisions of the Marine Parks and Reserves Act, the provisions of this law also makes cross-reference to other legislation that relate to wetlands. Section 13, for example, provides that the provisions of the Forests Ordinance shall have to be taken into account in the grant of water rights for forestry purposes.

The conditions implied in the use of certain water rights also have a direct bearing to the conservation and wise use of wetlands. Section 17 of the Act provides for conditions for

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<sup>17</sup> Act No. 42 of 1974

<sup>18</sup> Ibid., see section 15.

<sup>19</sup> See section 14 of the Act.

the use of water for forestry and industrial purposes or for generating power. It provides that water used for these purposes:

- “(i) Shall be returned to the body of water from which it was taken; and that it*
- (ii) Shall be substantially undiminished in quantity; and*
- (iii) Shall not be polluted ...to such extent as to cause injury either directly or indirectly to public health, livestock or fish...”*

The Act sets out conditions for the abstraction of water from any source (including wetlands) for mining activities. Section 12 of the Act provides that any person who has lawful access to abstract water from any source for prospecting purposes is duty bound to ensure that the same is returned to the source from which it was extracted.

The provisions dealing with offences in this Act also show a concern for the conservation and management of wetlands. Part VIII, for example, provides that: *“Any person who pollutes water in any water course or in any body of surface water (wetlands) shall be guilty of an offence.”*

### **3.8 The Local Government (District Authorities) Act, 1982<sup>20</sup>**

This legislation basically provides for the duties, functions and special guidelines to Local District Authorities to enable them effectively perform their administrative tasks. In executing their duties, these Authorities have been vested with the powers to make, among other things, by-laws.<sup>21</sup> Some of the by laws that may be promulgated under this legislation have a general bearing to the management of environmental resources, which by implication includes wetlands.

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 wetlands. This can be inferred from the powers to:

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<sup>20</sup> Act No. 7 of 1982 (as amended by Acts No. 8 of 1992 and No. 9 of 2000)

<sup>21</sup> Ibid., See sections 111 and 118

- Take all necessary measures for the prevention of soil erosion and the protection of crops;
- Regulate the use of agricultural land;
- Establish, preserve, maintain and improve the use of forests and forest produce; and
- Prohibit, regulate and control the hunting of any animal.

The first schedule to the Act expounds upon the powers provided for in section 118 and makes specific reference to wetlands. Accordingly, the Local Authorities may:

- Declare 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<sup>22</sup> (emphasis underlined)

The second schedule to the Act also has some significance to the control, regulation and wise use of wetlands and resources found in them. 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.<sup>23</sup>

### **3.9 The Local Government (Urban Authorities) Act, 1982<sup>24</sup>**

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 wetlands are part and parcel of natural resources. In this respect, therefore, the power of Urban Authorities to make by laws also incorporates the power to manage and control the use of wetlands.

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<sup>22</sup> Ibid., see sections 5, 91 and 95 of the 1<sup>st</sup> Schedule

<sup>23</sup> Ibid., see generally section 139 of the Act and sections 6 and 9 of the 2<sup>nd</sup> Schedule

<sup>24</sup> Act No. 8 of 1982 (as amended)

Accordingly, in exercising the power vested to them, the Act specifically provides that Urban Authorities may declare any area to be reserved land and control the use of swamps and marshland.<sup>25</sup>

Urban Authorities may also regulate and control the use of wetlands by invoking the provisions empowering them to acquire any land.<sup>26</sup>

### **3.10 The Rufiji Basin Development Authority Act, 1975<sup>27</sup>**

This law was promulgated with the sole purpose of managing, regulating and controlling an important land piece harboring a wetland and a variety of resources it contains. The legislation seeks to control and regulate the use the area of land through or along which the Rufiji River flows. It establishes an Authority (The Rufiji Basin Development Authority) and provides for its functions and duties.

Among the functions that the Authority is charged with is the controlling and regulating of industrial, forestry, fishing and hunting activities, as well as the use of water, land and related resources found in the Rufiji floodplains.<sup>28</sup> The Act vests unlimited power onto the Authority to drain (divert water) from the area for purposes of generating electricity. This unlimited power, however well intended, does not augur well for wetlands management, as there is no mechanism to check potentiality for abuse of the power by the Authority, which may have adverse long-term negative impact on the floodplains.

The Authority is also vested with powers to make by laws, with the consent of the Minister responsible for water, to, *inter alia*, regulate the use of water from rivers, dams, and other water bodies within the area.<sup>29</sup> The Authority is therefore vested with sufficient power to control the use of wetlands under this Act, albeit the provisions do not specifically mention wetlands.

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<sup>25</sup> *Ibid.*, see section 55 and the Schedule to the Act providing for functions which Urban Authorities may perform.

<sup>26</sup> Section 60 of the Act empowers them to recommend to the President to enforce the provisions of the Land Acquisition Act of 1967

<sup>27</sup> Act No. 5 of 1975

<sup>28</sup> *Ibid.*, section 6

### **3.11 The Ngorongoro Conservation Area Ordinance, Cap 413<sup>30</sup>**

This piece of legislation is one of the laws that depict elements of colonial legacy in the general management of wildlife resources and contains traces of wetland conservation and management. It makes provision for the conservation and management of natural resources in the Ngorongoro Crater Highland areas. Since there exists wetlands in the Ngorongoro, then the call for the conservation of natural resources in this area, also includes the wise use and management of wetlands – a component of the Crater’s unique resources.

### **3.12 The Game Parks (Miscellaneous) Amendments Act, 1975<sup>31</sup>**

This legislation as the name suggests came into force to amend the main legislation governing wildlife. Accordingly, it focuses on the Ngorongoro Conservation Area Ordinance, the National Parks Ordinance and the Wildlife Conservation Act. The Act amends the provisions of the Ngorongoro Conservation Ordinance that relate to the basic functions of the Ngorongoro Area Conservation Authority.

Without specifically making reference to wetlands, section 5A expounds the Authority’s functions in a manner that would facilitate the wise use and management of wetlands in the area. The section now specifically states that among the Authority’s function, there is included a duty to ensure the conservation of natural resources of the conservation area and the promotion, regulation and development of forests in the area.

Further, the amendment gives power to the Authority to regulate, restrict or control the use of lands in the area for any purposes. This of course includes the conservation and wise use of wetlands. The Authority may also prohibit or control activities related to hunting and the use of vegetation, flora and fauna - activities that could be undertaken to the detrimental of important wetlands.<sup>32</sup>

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<sup>29</sup> Se section 23

<sup>30</sup> Cap. 413 Laws of Tanganyika (as amended by the Game Parks (Miscellaneous) Amendment Act, No. 5/1975 discussed below)

<sup>31</sup> Act No. 14 of 1975

### **3.13 The National Land Use Planning Commission Act, 1984<sup>33</sup>**

This Act establishes the National Land Use Planning Commission and provides for its powers and functions. The powers and functions have a bearing to the conservation and wise use of wetlands. The Commission is charged with, among other things, the task of overseeing effective protection and enhancement of land quality and encouraging better land use plans.

The Commission is also required to recommend measures to ensure that government policies for development and conservation of land take adequate account of its effect on land use.<sup>34</sup> In performing these functions the Commission would, in certain circumstances be putting in place policies that have some significance on the wise use and management of wetlands.

### **3.14 The Mining Act, 1998<sup>35</sup>**

This law makes provision for prospecting and dealing in minerals and general mining activities that extend to and in respect to those found in the seabed, substances that could be extracted out of the continental shelf and on those found on land beneath the territorial seabed of the United Republic. The definition of “land” in this Act includes water whereas that of “mineral” includes “*any substance whether solid or liquid occurring naturally in or on the earth or in or under the seabed...*” A “mineral area” is defined as “*any area of land subject to special mining license*”.<sup>36</sup>

The definitions of land, mineral and mining areas provided for by this Act, and the fact that the natural occurring biological and geological processes on a combination of variety of substrate and vegetation found in wetlands may produce minerals, indicate that wetlands should not be lost sight of when construing the provisions of the Mining Act. It is in this respect that some of the provisions of this legislation provide for wetland-related conservation measures.

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<sup>32</sup> *Ibid.*, see section 13 (a) and (b)

<sup>33</sup> Act No. 3 Of 1984

<sup>34</sup> *Ibid.*, section 4

<sup>35</sup> Act No. 5 of 1998

The requirements for applications for special mining licenses is one of the areas of this law that reflects a concern for the conservation of environmental and natural resources occurring in among other places, wetland sites where mining could be undertaken.

Also, in order to be granted a license under the provisions of section 38 of the Act, a prospective miner is required to provide, among other things, an environmental management plan that has to include proposals for prevention of pollution, the treatment of water and the protection and reclamation of land and water sources. The prospective miner must also have conducted an EIA in accordance with EIA regulations and established international standards and practices on EIA's.<sup>37</sup>

Section 49 of the Act requires mining license holders to take all appropriate measures for the protection of the environment, including wetlands in the event that mining operations impact on these.

### **3.15 The Urban Water Supply Act, 1981<sup>38</sup>**

This Act governs matters relating to the use of water in urban areas. It establishes the National Urban Water Authority (NUWA) and provides for its functions and duties. Among these, the NUWA is charged with the task of promoting the conservation and proper use of water resources in urban areas. The Authority is also vested with the duty of educating people residing in towns, aspects of public health of water supply and water conservation.<sup>39</sup>

Since some wetlands also occur in urban areas and have a vital component in water resources, it follows therefore that they were contemplated by this legislative provision although they have not specifically been mentioned. This Act is therefore important and

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<sup>36</sup> Ibid., see section 2

<sup>37</sup> See also sections 51, 53, 57 and 64 of the Act.

<sup>38</sup> Act No. 7 of 1981 (as amended by Act No. 8 of 1997)

<sup>39</sup> Ibid., see section 5

ought to be taken into consideration in any reform process geared at improving strategies aimed at conserving and managing wetlands.

### **3.16 The Tanzania Investment Act, 1997<sup>40</sup>**

This legislation governs investment activities that may inevitably be carried out in or in areas adjacent to wetlands. However, it contains no provision that takes this factor into account. Manufacturing and industrial activities, for example, may therefore, technically be approved by the Investment Promotion Center without taking due regard to the need to conserve wetlands and resources found therein.

Although the Mineral Policy of 1997 had called for the inclusion of, among other things, a focus on natural resources management factors when revising the investment law, this issue was sadly not directly dealt with.<sup>41</sup> The investment law therefore does not reflect a serious commitment to the management and conservation of natural resources, in particular wetlands.

### **3.17 The Natural Resources Ordinance, Cap 259<sup>42</sup>**

The definition accorded to natural resources by this legislation includes components that are found in wetlands and it may safely be concluded that this law contemplated wetlands. The definition provides that natural resources include; soil, water, land and vegetation.

This law establishes a Natural Resources Board whose membership is drawn from, among others, local government authorities. The functions of the Board that have a bearing to wetlands management include the general supervision of natural resources and examining projects concerning water supply. It should also be emphasized here that in exercising its functions, the Board may also make orders for the conservation of natural

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<sup>40</sup> Act No. 26 of 1997

<sup>41</sup> See sections 3.3.3 (vii) and 3.3.7 (ii) of the Policy

<sup>42</sup> Cap. 259 of the Laws of Tanganyika (1949)

resources, preservation and protection of water sources and courses and prohibit or restrict cultivation of any land.<sup>43</sup>

### **3.18 The Forestry Act<sup>44</sup>**

Like other pieces of legislation, this Act also makes implied references to wetlands. For example, it defines "sensitive areas" to include areas of known high bio-diversity and mangrove areas<sup>45</sup>. Other provisions that make some inference to the conservation and management of wetlands in this Act are those relating to activities that are prohibited in forest reserves.<sup>46</sup> Although the Act does not specifically mention wetlands, it provides for the general framework on the law relating to the conservation and management of forests, which may also be in wetlands. It is in this respect that this law ought to be included in the list of important legislation that have a bearing to the management and conservation of wetlands. This is essentially because, as pointed out earlier, a number of forests occur in wetland areas. The provisions of this legislation have also been applied in managing the country's forests wetlands, for example, mangrove forests in the Rufiji Delta.

By virtue of the power vested by the provisions of this law, the Minister responsible for forests may declare forest reserves, restrict or prohibit the carrying out of certain activities in or around forests with a view to conserving or managing them. The Minister is also vested with the power to make rules for purposes of regulating the use or occupation of land and any other natural resources found in forest reserves. These rules have been promulgated and their application has been used to ensure effective management of wetland forests.

### **3.19 The National Parks Ordinance, Cap 412<sup>47</sup>**

The National Parks Ordinance provides for the establishment, management and control of national parks. All wetlands located in National Parks are conserved and managed under the National Parks Ordinance by the Tanzania National Parks Authority (TANAPA).

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<sup>43</sup> *Ibid.*, see sections 5 and 12

<sup>44</sup> Act No. 14 of 2002

<sup>45</sup> Section 2

<sup>46</sup> See sections 26 and 49 of the Act.

In fact, in national parks, there is total conservation of natural resources found therein because there is no consumptive utilization of the resources, including those found in wetlands. In this respect, this is one of the few pieces of legislation that provide for a relatively stricter approach in the conservation of wetlands.

The National Parks Regulations of 1970, which were promulgated under section 18 of the National Parks Ordinance, facilitate more effective management of National Parks and the wetlands found in them.<sup>48</sup>

#### **4.0 CONCLUSION**

The above analysis of the main natural resources conservation and management legislation reveals that to a great extent wetlands have been given some coverage. Most provisions of the legislation are, however, not comprehensive on their coverage and scope. In fact, some important legislation that directly or indirectly impacts on natural resources conservation and management do not even mention wetlands.

It must be also emphasized here that even the legislation that provide a relatively more holistic approach on conservation of wetlands do not provide for a comprehensive coverage for wetlands management and conservation. Most of the provisions of such laws have just drawn an inference essentially based on the assumption that because the broad range of natural resources covered by its legislation also appear in wetland sites, then it necessarily follows that the resources in wetlands are also covered. This inference or approach has serious repercussions for wetland management because, as noted, some very important ecological functions only occur in wetlands and these need to be specifically addressed.

An explanation for the weakness in the kind of coverage accorded to wetlands by the provisions of the natural resources legislation may be traced to the relevant policies. This

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<sup>47</sup> Cap. 412 of 1959 (as amended by Act No. 14 of 1975)

<sup>48</sup> GN 255 of 1970

is mainly because legislation usually reflects policy objectives and strategies. However, for the case of Tanzania, most natural resources sectors were not guided by any formal policy until towards the end of the 90's. Most of the natural resources management legislation, which also delves onto the management of wetlands, were enacted before the 90s. Consequently, they do not reflect the objectives and strategies set by respective policies. The government has started a process of reviewing most of these pieces of legislation in an attempt to rectify this anomaly. The provisions of the laws to be drafted must holistically address the conservation and management of wetland resources.

The designation of wetland sites and the protection of others by natural resources legislation indicates some level of effort on the part of the government of Tanzania to implement the Ramsar Convention.

On the other hand, there still exist a number of weaknesses and gaps in the legislation that does not augur well with the government's effort to implement the Ramsar Convention. The most notable gap is the lack of comprehensive legislation that adequately and effectively takes into account the importance of wetlands and resources they support. In some of the important nature conservation legislation, whose provisions deal extensively with wetland-related issues, there is no mention of the word "wetlands."

It has also been observed that the legislative coverage of some wetland resources within the same ecosystem receives relatively more comprehensive treatment than others. For example, the hunting of wild animal species in the Wildlife Conservation Act is given more treatment than that accorded to protection of vegetation/habitat and other generic resources. In most cases, also, other seemingly unrelated legislation that have an impact on wetlands do not even recognize them. The provisions of legislation governing the use of pesticides such as locusts spraying and agro-chemicals, for example, are too general and do not explicitly focus on ensuring the protection of natural resources or wetlands at neither a general level nor a specific one. For example, the provisions of the Fertilizers and Animal Foodstuff Act are only focused at regulating the importation, manufacturing

and sale of agricultural fertilizers and animal foodstuffs.<sup>49</sup> There is no provision that address the use of other forms of herbicides and sprays that may cause damage to vegetation found in wetlands. The other legislation that deal with the production of cash crops, prevention of locusts and tsetse flies conspicuously omit addressing the potential danger posed to plants, vegetation cover and living organism in the vicinity of the areas (including wetlands) where the chemicals/fertilizers are applied/used.<sup>50</sup>

To some extent some of the provisions of the natural resources legislation provides for a framework that could supplement initiatives and strategies aimed at conserving and managing wetlands. However, since the said provisions and sections are segmented, uncoordinated and fragmented, they may be only useful in providing, in a very general form, a skeletal guide on the general management and use of Tanzania's wetlands and resources found in them. To ensure consistency with applicable national policies and related laws, it would be useful to harmonize nationally the legislation in any review process in order to reconcile possible conflicts of interest that may arise in specific cases. The legislation should unequivocally recognize wetlands as separate entities and important ecosystems worthy of special attention and require cross-sectoral coordination in planning wetland issues.

In the absence of a sound legislative framework, grounded on a holistic coverage of wetlands conservation and management in their entirety, Tanzania's wetlands and the diverse and unique resources found in them are bound to continue degenerating.

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<sup>49</sup> Act No. 19 of 1962

<sup>50</sup> See for example, the Pyrethrum Act No 1/1997; the Sisal Act, No. 2/1997; Tea Act No.3/1997, the Center for Agricultural Mechanization and Rural Technology Act N.19/1981; The Tsetse Fly Ordinance, Cap. 100 and the Locust Ordinance, Cap. 136

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