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Legislative Frameworks for Implementing REDD: The Case of Forest Governance and Management in Tanzania

Hamudi I. Majamba*

1. Background

The creation of forest protected areas and reserves, often by use of law, to address the increasing loss of the world's biodiversity have been challenged, raising a number of issues.[1] One of the main concerns of this approach is that it has significantly placed local community members at the periphery, denying them access to resources they used and depended on for generations. To address such concerns, among many others, a number of strategies have been designed to address the rapid loss of the world's biodiversity. Further efforts to address and check the degradation of the world's biodiversity have been intensified with the realization that the degradation of forests contributes significantly to emissions from forest ecosystems which are responsible for global warming.[2]

It has been noted that the Earth usually loses its capacity to sustain safe levels of greenhouses gases, when forests are not capable of eliminating carbon dioxide from the atmosphere. It has been observed further that the rate of forest loss contributes to about 17 percent of total global emissions per year. And that the greenhouse gas emissions from deforestation and degradation of forests contribute up to 20 percent of global emissions.[3] To address this apprehension, and avoid the 'fences and fines' approach which has been the main focus in the creation of

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1 See: United Nations University, "Ongoing global biodiversity loss unstoppable with protected areas alone," *Science Daily*, (29 July 2011) http://www.sciencedaily.com/releases/2011/07/110728123059.htm, (accessed 12 October 2011).

2 Environment Defense Fund: http://www.edf.org/page.cfm?tagID=35215=ggadgw35325&gclid=CPC6pp2zgKICFZdl5QodFiY.

3 See http://redd-net.org/themes/redd-backrounder-what is redd.

must be focused on both due to the relationship of the bionetwork that supports the natural resources and the surrounding communities. Despite the legislative provisions, there still exist cases of conflicts among local communities and the Central government on, among other issues, those relating to access resources and boundaries in forest reserves.[8] These conflicts have been manifested in increased rates in deforestation and plundering of forest resources at alarming rates in the forest reserves, making it difficult to meet REDD objectives.[9]

We should point out at the outset that this article does not seek to provide an analysis of the whole body of laws that have some bearing on REDD. Such would be a Herculean task. In this regard, we have confined ourselves to selected legislative enactments whose provisions have a comparatively closer bearing on the implementation of REDD in Tanzania. The laws that have purposefully been selected in view of the caveat are the Environmental Management Act (EMA), 2004, the Land Acts, 1999, the Local Governments Acts, 1982 and the Forest Act, 2002. The selective focus of these legislative enactments also has an inherent *bias* since there is comparatively more emphasis on provisions that address conservation and management of forests, the key ingredient of REDD, due to the relationship between forest degradation and climate change. We should point out here that this prejudice has taken into account the fact that laws ought to be construed in the context of other legislative enactments, which may *prima facie* appear unrelated.

2. Governance and Natural Resources Management: An Overview

Issues of governance have an intertwined relationship with the smooth operation of the supporting legislative framework. This is equally true with regard to the management of natural resource regimes in general and forests in particular. The genesis of governance and its relationship to law generally, and conservation and management law in

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8 See generally S.E. Mchome, *"The Problem of Using Law by Government Officials in Support of the Course of Development: A Case Study of the Mkomazi Game Reserve and Kazimzumbwi Forest Reserve,"* Ph.D. dissertation, University of Dar-es-Salaam 2001.

9 See generally J. Tang'are, *"Local Community Perceptions of the Forest Management Regime in Kazimzumbwi Forest Reserve, Coast Region, Tanzania,"* MA (Geography and Environmental Management), University of Dar-es-Salaam, (2008), Chapter One; and generally Ndumbaru, (1999) *"Resource Use Conflicts: The Case of Kazimzumbwi Forest Reserve,"* University of Science and Technology, Norway.

Tanzania, in particular, has been traced to the colonial era with the enactment of laws such as the Native Authority Ordinance in 1926 and the Local Government Ordinance in 1953. These colonial pieces of legislation were intended to introduce an electoral system at the local level and give political legitimacy to the local leaders.[10] A background of the local government scheme is important in laying down a foundation for the discussion of the legislative regime governing local community members and their relationship with governance and management of resources in the context of REDD.

The independence government adopted the local government system that was put in place by the colonial regime. In the early 1970s the government reorganized its administrative system through the Decentralization of Government Administration (Interim Provisions) Act of 1972. This Act abolished local government authorities and created much larger District and Regional Development Councils. Local representative councils were also shelved and replaced by organs of the ruling party. Max notes that this approach to decentralization turned the District Councils into *"rapid bureaucratic organizations dominated by officials..."*[11]

Local governments resurfaced in Tanzania in 1982 through the Local Government Acts (discussed in greater detail below) and the Decentralization of Local Government Administration (Interim Provisions) [Amendment] Act. Authorities in local governance issues attribute the resurgence of the local governments to poor administrative systems and mismanagement. Local government authorities were constitutionally recognized in 1984 when the Constitution of the United Republic of Tanzania, 1977 was amended particularly for this purpose.[12] In 1997 the Regional Administration Act effectively activated the decentralization process by trimming down the roles and duties at the regional level. The law permitted urban and district authorities to network openly and directly with the central government on a number of issues within their areas of jurisdiction. Matters related to the environment in general, and forests in particular were among those which were placed in the jurisdiction of the local government authorities.

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10 See M.A.O Max, The Development of Local Government in Tanzania, Education Publishers and Distributors Ltd, Dar-es-Salaam 1991, 24.

11 *Ibid.*, 88.

12 See Art. s 145 and 146 of the Constitution of the United Republic of Tanzania, 1977 (Cap. 2 [R.E. 2002]).

The introduction of the Local Government Reform Programme (LGRP) in the 1990s provided a catalyst to the decentralization process in Tanzania.[13] The Programme basically lays emphasis on the need to shift management responsibilities and the provision of services from the central to the local authorities and increasing efficiency at the District level. The main aim of the Programme is to increase accountability and responsibility in managing and directing development schemes. The Programme also places emphasis on the need to devolve matters related to management of environmental resources, including forests, whose conservation as noted above has a direct bearing on implementing REDD, unto local government authorities. The local governance structure therefore sets a foundation for legislative enactments that focus on the management and conservation of environmental and natural resources at the level of local communities. It is expected that such legislation would make provision for consultation and full involvement of local community members living in proximity to natural resources, to wit, forests, in order to effectively implement REDD initiatives. A review of such legislative provisions would now be in order.

3. Review of Selected Legislation

Various natural resources sector legislation directly or indirectly provide for the regulation of forest activities and the management of forest resources by the central and local government authorities. The forest management related provisions of some of these laws are comparatively more pronounced than others. In this part, we undertake an examination of selected laws which in our view have a comparatively closer bearing and relationship to forest related activities, good governance and the process of decentralization by devolution with respect to forest management than others. As noted above, the Constitution of the United Republic of Tanzania, the fundamental law of the land directs every region, municipality, town and village to establish local government authorities. The Constitution also has provisions that place a duty on citizens to protect natural resources.[14] In this regard therefore, to the extent of focusing on local government authorities' role

13 Decentralization as used in this context refers to the transfer of legal and political authority from the central government and its agencies to organizations and institutions in the field. The authority transferred includes the planning and management of public affairs as well as decision-making.

14 See Art. 27 (1) of the Constitution, Cap. 2 [R.E. 2002].

in forest management as a key component of good governance, the laws analyzed below reflect the spirit behind the fundamental law of the land.

3.1 The Forest Act, No. 14 of 2002[15]

In 2002, the government introduced reforms with a view to improving forest management in Tanzania. It did this by repealing the colonial Forest Ordinance and replacing it with the Forest Act, 2002. The colonial piece of law was premised on a 'command and control' and 'fences and fines' approaches to the management of forest resources. The Forest Act is the principle legislation that provides for the general framework for the body of laws that have a bearing on the conservation and management of forests. It contains provisions that seek to improve forest governance at the level of local communities in an attempt to do away with the 'command and control' and 'fences and fines' approaches. In an apparent effort to reflect the Forest Policy (1998) and the concept of decentralization, the Forest Act seeks to devolve powers to local government authorities and local communities. Section 22 (1) of this law empowers the Minister to declare, by Order published in the *gazette*, any area rich in biodiversity to be a local authority reserve.

It is also important to note here that two of the main objectives of this Act have a direct bearing to the implementation of REDD activities. The first being:

> "to delegate responsibility for management of forest resources to the lowest possible level of local management consistent with the furtherance of national policies" [16]

and the second:

> "to promote coordination and cooperation between the forest sector and other agencies and bodies in the public and private sector in respect of the management of natural resources." [17]

The first objective reflects the spirit of devolution of power to local government authorities and the second seeks to address situations

15 Cap 323 [R.E. 2002].

16 Sect. 3 (d) of the Forest Act.

17 Sect. 3 (g).

where potential conflicts may arise in the course of implementing cross-sector natural resources management processes or activities. The Act also lays emphasis on consultation amongst institutions in order to reconcile and resolve conflicts over the management plans and policies relating to forest reserves at the local level.[18]

The Act also makes, albeit indirectly, some cross-reference to the provisions of other natural resources sector legislation with a view to avoiding conflicts in the management of forest resources. For example, section 14 makes reference to the need for Village Councils established under the Local Government (District Authorities) Act to consult in preparing village land forest management plans and manage forests in accordance with the plans. Cross reference of the Act to the Environmental Management Act, 2004 is also implied in section 18 (1) which requires conducting environmental impact assessment in any proposed development project in forest areas. Sections 68 and 87 of the Act make direct reference to the provisions of the Wildlife Conservation Act in relation to forest issues that have a bearing on wildlife.

Also, in an apparent move to avoid conflicts, the Act makes provision for the establishment of Joint Management Agreements between District Councils and Village Councils on the one hand and Village Councils and Community Groups formed under sections 42 and recognized under section 43 of the Act, on the other.[19]

The Director of Forestry, the principal advisor to the Government on all matters related to the management of forests, is charged with the task of ensuring that all local government authorities and associations of local authorities and other forest management authorities are consulted and kept informed about the management of forests.[20]

The by-law making powers of local authorities (district and urban), provided for under the Local Government (District and Urban) Authorities Acts, have been subjected to conditions in the event the proposed by-laws relate to the management of forest reserves. Draft copies of proposed by-laws on forest management must be submitted to the Director of Forestry for scrutiny, guidance and recommendations.[21] Unlike the requirement for uniform by-laws made under the provisions of the Local Government (Urban and District) Authorities Acts, the village by-laws for forest management need not be routed through

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18 Sect. 8 (2) – (5) of the Forest Act.

19 *Ibid.*, Sect. 16.

20 *Ibid.*, Sect. 8 (1).

21 See sect. 31 of the Forest Act.

District Councils where they follow the format prescribed by the Director of Forestry.[22] The Director of Forestry may also prepare and publish model by-laws for forest reserves to be managed by local authorities. The incentive to adopt such model by-laws by local government authorities is great as this will make them avoid the stringent requirements of submitting proposals of by-laws to the Director of Forestry and thereafter having to comply with directions, recommendations and comments issued by him.[23]

Where a village forms a Village Land Forest Committee, then the Committee automatically becomes the principal village body for matters related to any village land forest reserve.[24] Section 34 (4) (e) provides that Village Land Forest Reserves shall be governed by customary rules and practices applicable to forest use and management within the area. It may be important to emphasize here that this provision is mandatory. The phrase used is "shall" not "may." The provision does not provide for what would happen where a customary rule or practice is inconsistent or does not augur well with the objectives of the Act. This leaves room for potential conflicts, especially where a local authority decides to enact by-laws to give effect to such customary practice or rule. This does not augur well with the efforts to implement REDD initiatives.

3.2 The Wildlife Conservation Act, 2009[25]

The preamble to this law provides that it was enacted to make provision for the conservation, management and sustainable utilization of wildlife and wildlife products. The definition of "conservation" provided for in this law covers wildlife, its habitat and ecosystems necessary for their survival in the broad sense. This may be construed to imply that even those wildlife resources found in areas where REDD programs would be carried out. This holistic approach of applying the coverage of this Act is necessary to include the protection of wildlife where REDD activities are to be undertaken to ensure the continued

22 Compare with sect. 37 (1) (a) of the Forest Act where by-laws in respect of village land forest reserves must be routed through the District Council.

23 Sect. 31(5) exempts local authorities from the conditions where they adopt the model by-laws.

24 Sect. 33 (2).

25 Act No. 5 of 2009. (Cap 283 R.E 2002).

survival of wildlife species in the vicinity of REDD related processes. This includes wildlife found in Forest Reserves.

The Act also makes provision for cross-cutting issues which have a bearing on REDD. These include taking on board local communities in Wildlife Management Areas to be established in village lands, recognizing the intrinsic relationship between wildlife and forest resources and the need to cooperate and coordinate in ensuring their sustainable utilization. Section 31 (5) of the Act provides that the activities to be undertaken in the WMAs must be conducted in conformity with the Forest, Beekeeping, Fisheries, Environmental Management Acts, and any other relevant and REDD related laws.[26]

The wildlife sector in Tanzania is managed under three major legislative regimes governing the wildlife protected areas network. These are the Wildlife Conservation Act, the Ngorongoro Conservation Area Act and Tanzania National Parks Act.[27] The Ngorongoro Conservation Area Act makes provision for the conservation and management of natural resources in the Ngorongoro Crater Highland areas.[28] Since there exists resources which have a bearing on REDD activities in the Ngorongoro, then the call for the conservation of natural resources in this area, also includes the wise use and management of forest coverage – a component of the Crater's unique resources, which is of great significance to REDD initiatives.

The National Parks Act provides for the establishment, management and control of national parks. As is the case with the Forest Act, all forest resources located in National Parks are conserved and managed under the National Parks Act by the Tanzania National Parks Authority (TANAPA). 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 forest.

The National Parks Regulations of 1970, which were promulgated under section 18 of the National Parks Act, facilitate more effective management of National Parks and consequently the forest resources found in them.[29] Regulations made under this Act have a significant bearing on implementing REDD. The promulgation of the Wildlife

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26 Sect. 31 (1) of the Act provides for the establishment of Wildlife Management Areas. These were established by GN. No 283 of 2005 and their classification are contained in these Regulations.

27 Cap. 284 and 282 [R.E. 2002], respectively.

28 See the preamble to the Act.

29 GN. No. 255 of 1970.

Management Areas (WMAs) envisaged by the Wildlife Policy has ushered in a new paradigm in the devolution of power to local communities through local government authorities. As noted earlier, the WMA Regulations came into force in 2002 after a lengthy and relatively expensive participatory process involving virtually all stakeholders.[30]

The administration of WMAs entails, among other activities, planning and managing resources found in forest areas where wildlife abounds. The activities in WMAs therefore have a significant bearing on forest management. In this respect, it is important that enforcement of the provisions of the WMAs Regulations take into account those of the law relating to the management of forest resources by devolving powers to manage forest and resources found in them to the local authorities.

The WMA Regulations have placed an important role of management of WMAs on local government structures. The Village Council is responsible for coordinating natural resources activities at the village level, formulating natural resources management by-laws and overseeing the implementation of sector policies while entering agreements in the management of or investment in a WMA.[31] District Councils also have responsibilities under the WMA Regulations. They are required to facilitate the District Natural Resources Advisory Bodies (DNRAB) in carrying out their functions, which include arbitration and conflict resolution and administering cross-sectoral issues. The DNRABs are to be established in every District and the District Forest Officers are members of the Bodies.[32] This is a progressive scheme to the extent that it seeks to guarantee that REDD activities are monitored at the local level in the governance structure.

3.3 The Land Act & the Village Land Act[33]

The Land and Village Land Acts are the two main pieces of legislation that govern land in Tanzania. The Land Act is the basic law that governs maters related to the administration of all land other than village land. The Act reflects the fundamental principles of the National Land Policy and specifically the principle that seeks to enable participation of all citizens in decision making in matters connected with

30 Government Notice No.283 of 2005.

31 See Regulation 21 (d) and (h) of the WMA Regulations.

32 See Regulations 26, 27 and 30.

33 Caps 113 and 114, respectively, [R.E. 2002].

their occupancy and use of land and resources found therein.[34] The legislation provides for three main categories of public land, namely, general, village and reserve land and empowers the President to transfer any one of these categories into another.[35] The Act also provides for the functions and roles of local government authorities in the administration and management of land. District Councils may provide advice and guidance to Village Councils in the administration of village land when requested or on its own motion.[36]

The Village Land Act on the other hand provides for the management and administration of land in villages. It also addresses land tenure issues in relation to village land, an important component in the management of forest resource in the village lands. The Act empowers the Village Councils to manage land, as trustees, on behalf of the villagers and those persons who are resident in village lands.[37] To a great extent this has brought an end to the uncertainty that surrounded the legal ability of villagers to protect and manage forests found in their lands. Forest land and other natural resources fall in the category of reserve land.[38]

In the course of managing village lands, Village Councils are required to maintain the principle of sustainable development and the relationship between land use and other natural resources and the environment in and around the village and village land. They are also required to consult with local authorities having jurisdiction in the area to avoid conflicts.[39] The Act sets up and adjudication mechanism to address land disputes. The underlying principles behind these ought to be considered in the course of making by-laws at the local government level, especially the village level.[40] These efforts are vital for effective implementation of REDD programmes.

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34 Sect. 3 (i).

35 Sect. 4 (4) and (7), respectively.

36 Sect. 14.

37 Sect. 8.

38 Sect. 6 (1) (a) (i).

39 Sect. 8 (3) (a) and (b).

40 See sect.s 48 and 60-62. The importance of reflecting gender balance is one of the principles that the Act lays emphasis on.

3.4 Local Government (Urban Authorities) Act[41]

This Act provides for the establishment, legislative powers and composition of urban based local government authorities (urban councils) which are under the jurisdiction of the Minister responsible for local government affairs. The Councils are required to furnish the Minister with information relating to their functions under the Act.[42] The urban councils are made of governing organs in charge of townships, municipalities and city councils.

Section 61 of the Act provides for the relationship between the local government authorities and the central government. Accordingly, the central government is required to recognize the autonomy of local government authorities. It is also required to coordinate and monitor the performance of urban authorities for compliance with national policies, guidelines and standards over a wide range of issues.[43] The powers and duties of urban authorities as stated in the Act also have a bearing on the management of forests. Items 5, 94 and 95 of the schedule to the Act make reference to forest related activities. These provisions provide for the powers of the authorities to declare land to be reserved for reconditioning for planting with vegetation cover, to prevent water pollution in water bodies and to control the use of areas where forest cover is required.

Also, one of the primary functions and objectives of the urban authorities is to take necessary measures to protect and enhance the environment in order to promote sustainable development in a manner that promotes and ensures democratic participation.[44] Section 47 (1) (c) compels urban authorities to establish standing committees for urban planning and environment, of which forests are part and parcel of. The urban authorities may also agree with local government authorities to form joint committees for purposes in which they are jointly interested. It is important to underscore the fact that the urban authorities are not precluded from performing any functions which is not the exclusive responsibility of the central government or of any other local government authority.[45]

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41 Local Government (Urban Authorities) Act, Cap 288 [R.E. 2002].

42 See sect. 86 of the Act.

43 Sect. 61 (a) and (c).

44 Sect. 60(1) (d) and (f).

45 Sect. 60 (3).

The Act also empowers urban authorities to make by-laws. The by-law making power of the authorities, including regulating forest related activities is subjected to the consent of the Minister responsible for local governments. The provisions of the Act also provide for other conditions which must be complied with in order for the by-laws made by urban authorities to have the force of law. Accordingly, the by-law that is contemplated by an authority must be consistent with the provisions of the Act and any other written law and it may apply to either the whole or a part of any area under the jurisdiction of an urban authority.[46]

A by-law made by an urban authority must be published before it is made to allow members of the public who may be affected by it to air their views. After the expiration of two weeks after a notice has been duly issued, the draft by-laws must be presented to the Minister responsible for local government for approval and *gazettment*. Where there are complaints, the urban authority may be required to make a personal appearance before the Minister to make presentations of the complaints.[47] The law also allows the Minister to make uniform by-laws where he considered it desirable for purposes of, among other activities, better development of forest management.[48] The Minister has also been given the discretion to alter any by-law prior to approving it.[49] Sanctions for violation of by-laws made by an urban authority include the imposition of a fine, cancellation of permit or license and compounding.[50] Compounding as a sanction provides room for enforcement officers to fine an offender on the spot upon admission of having committed an offence. The officer is required to issue a receipt of the exact amount paid, which should not be less than the total value of the product acquired illegal. The product is confiscated. The procedure may assist in the provision of justice and is intended to overcome the problems of delays in the delivery of justice occasioned sometimes by the back log of cases in courts, which would significantly boost the implementation of REDD programmes. This is essentially because equity issues are vital in the effective implementation of REDD.[51]

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46 See sect. 89 (1) – (3).

47 Sect. 92.

48 Sect. 91.

49 Sect. 90. On the requirement of publication see also sect. 118.

50 Sect. 97.

51 See Sunderlin, W.D. *et al*, *"Rights: An Essential Precondition for Effectiveness, Efficiency and Equity in REDD,"* http://www.slideshare.net/rightsandclimate/issues-of-effectiveness-efficiency-and-equity-in-redd-implementation-presentation, (Accessed 13 October 2011).

3.5 Local Government (District Authorities) Act[52]

This Act establishes local government authorities at the level of the District. It provides for, among other things, the establishment, law making powers, functions and composition of district and township councils and those of the village. The Act directs every village to establish a Village Assembly and a Village Council.[53] While the Village Assembly is the supreme authority in relation to all matters of general policy making, the Village Council wields the executive power in relation to all other affairs and businesses of the village.[54] One of the functions of the Village Government is to plan and coordinate activities and render assistance and advice to villages engaged in forestry activities.[55] Forest management matters are to be governed by the Economic Affairs, Works and Environment Standing Committee as directed under the provisions of section 75 (c) of the Act.

The District Councils are empowered to make by-laws under the Act. The procedure and conditions that have to be adhered to are basically similar to those stipulated for urban authorities discussed above.[56] Similarly, Village Councils have also been given the mandate to make by-laws under the Act. The by-laws are to be approved by the District Council after being satisfied that all requirements provided by the law have been complied with. Also, as is the case with urban authorities, the Minister responsible for local governments may make uniform by-laws to be applied by the villages. Upon publication of the proposed uniform by-laws by the Minister, villages can only lodge complaints, if any, only through the District Council.[57] The provisions of this Act prohibit the imposition of imprisonment as penalty for violation of village by-laws. The law also places a maximum ceiling of T.Sh. 50,000/= for violation of village by-laws. This limit may provide an incentive to commit crimes as in some cases, the value of the forest produce obtained in contravention of the by-laws may exceed the maximum amount of fine that by-laws are permitted to impose.

Part VII of the Act seeks to ensure that there exists a tranquil atmosphere and relationship between the central government and local government organs and officers in the course of performing their tasks.

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52 Local Government (District Authorities) Act, Cap. 287 [R.E. 2002].

53 See sect.s 24 and 25 of the Act.

54 See sect.s 146 and 147, respectively.

55 Sect. 147 (2)(c).

56 See sect.s 153 - 155.

57 See sect.s 168-170.

It empowers the Minister responsible for local government to modify development plans and transfer functions from one organ to another. In a similar move, Part VIII provides for the functions of the central government in relation to local government authorities. These efforts provide an important foundation and are critical for the effective implementation of REDD programmes at the lower level of governance.

3.6 The Environmental Management Act[58]

This law is the framework law that governs the management of all environmental affairs in Tanzania. Environment being a cross-cutting issue in all natural resources related sectors, the enactment of a framework law was long overdue.[59] The Act provides for the legal and institutional arrangement for sustainable management of the environment. It provides in very clear terms that where any law is in conflict with the Act on any matter relating to environmental management, then such law would be void to the extent of the inconsistency.

The Act provides that that the Minister responsible for environment shall be responsible for the coordination of environmental issues between the Central Government and local government authorities.[60] Further, the Minister is empowered to issue guidelines of a general nature to sector Ministries, government departments, District Environmental Committees and other local authorities.[61] The Act re-echoes the concept of devolution of powers in matters relating to the environment when it provides that the development of environmental management policies and processes should take into account the principle of public participation. It further directs local government authorities to have regard to environmental management principles and promote the National Environmental Policy.

The Act makes an attempt to address potential conflicts that may arise as a result of different sectors managing environmental resources in their jurisdiction. In this respect, section 32 of the Act requires sector

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58 The Environmental Management Act, Cap. 191 [R.E. 2002].

59 Before the enactment of this Act, environmental issues were covered in a fragmented manner creating loopholes for institutional and administrative conflicts across various natural resources sectors at the level of the central and local governments.

60 Sect. 7 (3) and (4) of the Act.

61 See sect. 13.

environmental coordinators to be appointed in every sector Ministry. These coordinators are to be the link persons and would, among other responsibilities, bringing to the attention of the Director General of the National Environment Management Council (NEMC) and the relevant sector Ministry any contradiction of an environmental law beyond the Ministry's line of responsibility.[62]

The Minister responsible for regional administration is required to appoint Regional Environmental Management Experts to advise local authorities on the implementation of the Act. These experts are to be the main link between regions and the Director of Environment and the Director General (NEMC), the main authorities charged with implementation of the Act.[63] Local government authorities, that is City, District and Town Councils are also directed to appoint or designate Environmental Management Officers. The duties of these officers include the provision of advice to environmental management committees, preparation of periodic reports on the state of local environment, review of by-laws on environmental management and on sector specific activities related to the environment.[64]

The cross-reference to the Local Government District and Urban Authorities Acts by the Environmental Management Act is commendable in some aspects. The Act provides that the Standing Committees for Urban Planning and Environment and Economic Affairs Work and Environment established under the Local Government Acts would be the District Environmental Management Committees.[65] The same applies to the Ward Development Committees which are charged with the responsibility for the management of environment in the area in which they are established. The Act's reference to Village Development Committees seems to have been an oversight, as the Local Government Acts do not make reference to these.[66] Section 39 requires every District Council to designate for each Ward, Village, *Mtaa* and *Kitongoji* a public officer to be known as an Environmental Management Officer who would coordinate functions and activities for protecting the environment.

With regard to environmental planning, section 42 the Act provides that each local government authority must prepare an environmental

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62 Sect. 32 (1) and (2).

63 Sect. 35.

64 See sect. 36 (1) and (3).

65 Sect. 37.

66 Sect. 38 (1) and (2).

action plan. The authority's plan must be in accordance with the National Environmental Management Action Plan as prepared every five years by the Director of Environment in accordance with the provisions of section 44 of the Act. Sector Ministries are also required to prepare environmental plans at sector level in accordance with rules made by the Minister responsible for environment.[67]

The management and utilization of land usually impacts on the environment. Since there are separate policies and legislation governing land matters, the Act directs that in the event of a conflict relating to the environmental aspect of land, then its provisions will prevail.[68] Similarly, forests are to be managed in accordance with the laws relating to forests but where there is a conflict the provisions of the Environmental Management Act shall prevail. The Minister responsible for environment is required to consult the Minister responsible for forestry when making rules on environmental management of natural resources.[69] The requirement for consultation with line Ministries in other natural resources sectors is evidently absent, leaving room for conflicts in the management of environmental resources in general and forests in particular.[70]

The Environmental Management Act further provides for compliance with Environmental Impact Assessment Regulations (E.I.A).[71] The Act provides for the kind of activities and developments that require E.I.A. Accordingly, any forest related activity or development must have an EIA approval.[72] The EIA process has been gauged in a manner that ensures full participation and involvement of local community members likely to be affected by developments or projects. However, it has been noted that the ability of many people charged with overseeing EIA, including local community members, to comprehend the EIA process and make informed decisions is wanting.[73]

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67 The rules are yet to be made.

68 Sect. 50.

69 Sect. 63 (3).

70 See sect. 65 which makes reference to fisheries, wildlife, tourism and Marine Parks and Reserves.

71 See The Environmental Impact Assessment and Audit Regulations, 2005, G.N No. 349 of 2005 and the Environmental (Registration of Environmental Experts) Regulations, 2005, G.N No. 348 of 2005.

72 See item 7 of the 3rd Schedule to the Act and sect.s 81 and 82.

73 See H. Sosovele, Governance Challenges in Tanzania's Environmental Impact Assessment Practice, 5 *African Journal of Environmental Science and Technology* 2, (2011), 126-130.

Conclusion

The above review reveals that the legislative framework governing the governance and management of forests in the context of REDD in Tanzania is found in segmented legislative provisions that seek to regulate environmental and natural resources conservation and management in general. These provisions are found in both principal and subsidiary legislation of the various sectors regulating resources such as land, forests and the general environment, to mention only those laws that have been analyzed in this article. To this extent, one may be tempted to conclude that the legislative framework for implementing REDD programmes provides a good foundation for ensuring good governance and sustainable management of REDD initiatives.

The diversity of the laws and the inherent complexity in construing them could provide challenges that may lead to institutional conflicts among those charged with implementing REDD and thereby put in jeopardy the foundation set by the laws. The review points out that there exists a multitude of other laws that have a bearing on environment and natural resources conservation generally and forests in particular, which have not been addressed. Although EMA makes an effort to address any potential clashes, conflicts are bound to exist. In this regard, the multitude of other legislative enactments that have a bearing on REDD should also not be lost sight of in a review of the efficacy of REDD initiatives in the country since REDD activities may have some bearing on them. Stakeholders should be trained to enable them identify the diverse and relevant laws for implementation of REDD in order to avoid conflicting mandates in the process of management and governing natural resources in general and those related to forests, in particular. The training should also focus on the lowest rank at the level of local governance to reach out to the multitude of people where REDD programmes are most likely to be based and have an impact.

The incorporation of the EIA process that came along with the enactment of EMA has also provided a good foundation for taking on board REDD initiatives 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 development projects and activities that would require EIA at the local community level generally will be established in 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 bearing on the REDD programmes, for example in relation to forest

laws. The EIA process is not generally known to many, including some professional in conservation circles. Concerted efforts are therefore needed to impart knowledge to stakeholders, especially at the local community level, on the EIA process, its relationship to REDD 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 relating to REDD in the various government institutions. This will enable local community members living in proximity to environmental and natural resources where REDD programmes are situated to feel that they are part and parcel of the whole process in initiatives to enhance sustainable forest management and governance.