



LAW
ENVIRONMENT AND
DEVELOPMENT
JOURNAL

LEAD

AN ASSESSMENT OF THE FRAMEWORK
ENVIRONMENTAL LAW OF ZANZIBAR

Hamudi I. Majamba



VOLUME
1/1



LEAD Journal (Law, Environment and Development Journal)
is a peer-reviewed academic publication based in New Delhi and London and jointly managed by the
School of Law, School of Oriental and African Studies (SOAS) – University of London
and the International Environmental Law Research Centre (IELRC).

LEAD is published at www.lead-journal.org

ISSN 1746-5893

*The Managing Editor, LEAD Journal, c/o International Environmental Law Research Centre (IELRC), International Environment
House II, 1F, 7 Chemin de Balexert, 1219 Châtelaïne-Geneva, Switzerland, Tel/fax: + 41 (0)22 79 72 623, info@lead-journal.org*

AN ASSESSMENT OF THE FRAMEWORK ENVIRONMENTAL LAW OF ZANZIBAR

Hamudi I. Majamba

*This document can be cited as
H. I. Majamba, 'An Assessment of the Framework Environmental Law of Zanzibar',
1/1 Law, Environment and Development Journal (2005), p.18,
available at <http://www.lead-journal.org/content/05018.pdf>*

Dr Hamudi I. Majamba, Senior Lecturer,
Faculty of Law, University of Dar-es-Salaam, PO Box 35093, Dar-es-Salaam, Tanzania, hmajamba@ucc.ac.tz

Published under a Creative Commons Attribution-NonCommercial-NoDerivs 2.0 License

TABLE OF CONTENT

1	Introduction	20
	1.1 Environmental Profile of Zanzibar	21
	1.2 The Genesis of the Framework Law	22
2	An Overview of the Framework Law	23
	2.1 International Obligations	24
	2.2 Stakeholders' Participation	25
	2.3 Institutional Arrangements	27
	2.4 Environmental Impact Assessment	29
	2.5 Enforcement	30
	2.6 Dispute Settlement	31
3	Conclusions and Recommendations	31

1

INTRODUCTION

In order to fully comprehend the application of the corpus of laws in Tanzania in general, and the legislation regulating environmental conservation and management in particular, it is important to highlight some of the important events of the country's history. Our brief narrative commences at the point when Germany claimed direct control and administration of a territory known as Tanganyika from the German East Africa Company. The control of the territory was handed over to Britain under the League of Nations mandate after the defeat of Germany in World War I. After World War II, Tanganyika became a UN trust territory under British control before being granted independence by Britain in 1961. A year later it became a Republic.

At the time of independence in Tanganyika, about thirty-seven kilometres east of the Tanganyika territory, across the Indian Ocean, lay Zanzibar, an island comprised of two main isles, Pemba and Zanzibar.¹ Zanzibar was a British protectorate with an Arab Sultan. Like Tanganyika, Zanzibar was granted independence by Britain in December 1963. On 12th January 1964, a revolution took place and overthrew the government, establishing a Peoples' Republic of Zanzibar under an executive President, Sheikh Abeid Amani Karume. On 22nd April 1964, Nyerere and Karume signed Articles of the Union, to unite their countries and formed one sovereign republic, the United Republic of Tanzania. The Union was born on 26th April 1964.

In the agreement to become one sovereign Republic, it was categorically stated that in principle Zanzibar would retain autonomy over certain issues, referred to as 'non-Union' matters. The list of union matters is provided for in the

Constitution of the United Republic of Tanzania.² Matters relating to environmental conservation and management are not in the list of union matters. They are therefore considered non-Union matters. It is against this backdrop that Tanzania Mainland and Tanzania Zanzibar have different and distinct legal regimes regulating environmental management and protection at the domestic level.³ The focus of this paper is on the framework environmental law of Zanzibar, a piece of legislation which seeks to regulate, among other things, activities that may have adverse effects on the environment in the wake of the increase in private sector investment on the island.⁴

It is sufficient to point out at this juncture that under the framework of the Constitution of the United Republic of Tanzania, issues of international relations fall under the ambit of union matters.⁵ Therefore, international legal instruments that have a bearing on the conservation and management of environmental resources are a Union matter. It is the Union government which has the mandate to ratify them.⁶ Since Tanzania applies the 'dualist' approach in incorporating provisions of international legal instruments into the domestic arena, the provisions of such agreements are implemented by an executive act as distinct from a legislative one. In other words, an agreement that is ratified by the government does not generally have a binding effect except where the National Assembly on the part of the Mainland, and the House of Representatives on the part of Zanzibar, have explicitly adopted or incorporated

[1] Zanzibar is eighty-five kilometres wide and occupying an area of slightly over one-thousand-six-hundred square kilometres. Pemba is about seventy kilometres long and twenty kilometres wide, covering an area of about nine-hundred-and-eighty square kilometres.

[2] First Schedule of the Constitution of the United Republic of Tanzania, 1977 (as amended).

[3] The Environmental Management for Sustainable Development Act, N° 2 of 1996 (Tanzania Zanzibar) and the Environmental Management Act, N° 20 of 2004 (Tanzania Mainland).

[4] Investors had been lured to the island since 1986 when the government enacted the Investments Protection Act, N° 2 of 1986.

[5] Item 2 of the 1st Schedule to the Constitution of the United Republic of Tanzania, 1977 (as amended).

[6] Article 63(3)e of the Constitution of the United Republic, 1977 (as amended). It is most likely in the spirit of this Article that paragraphs 15(b) and 20(a) of the National Environmental Policy of Zanzibar lay emphasis on the need for institutions to link with counterparts on the Mainland.

it, or its relevant provisions, by way of a local enactment.⁷ The procedure for incorporating international agreements generally into domestic law in Tanzania applies equally to multilateral environmental agreements.⁸

It is equally important to note at the outset, that the body of environmental laws on the island, including the framework law is unfamiliar to people and accessible to very few.⁹ Indeed, few people have the requisite knowledge of environmental law in Tanzania generally. One of the main factors for this state of affairs is that the curriculum of most law schools and training institutions in the country did not reflect this important subject until very recently. The Department of International Law at the Faculty of Law of the University of Dar-es-Salaam, for instance, started offering environmental law as a fully-fledged optional course in 2004. Prior to this, the subject was being sporadically undertaken by a handful of undergraduate and post-graduate students conducting research in the area under supervision of members of staff who have some background on the subject. The course is now being offered by some of the legal training institutions in Zanzibar but the curriculum and course content need to be re-designed in the light of developments on the subject at the national and international levels.

It is partly due to the lack of adequate knowledge and awareness of environmental law that some of the investment projects and development activities that were potentially detrimental to the environment were implemented on the island.¹⁰ We should also point out that the governments' initiative to enact the sectoral environmental laws was generally not backed by a serious follow-up to ensure the realisation of the laws, their enforcement and compliance.

The analysis also shows that the failure and laxity in enacting enabling regulations to implement provisions of the framework legislation aimed at addressing environmental problems has also not been addressed. Also, some of the

institutional structures, which the framework law establishes or calls for their establishment, are yet to be put in place. It should also be pointed out here that since the framework environmental law came into force, there has been no significant authoritative case brought before an authoritative court by authorities charged with its enforcement or by aggrieved individuals or organisations.

We also note that although ostensibly unrelated to the Mainland, very few scholars, researchers and stakeholders on the Mainland are aware of the existence and implications of the framework law of Zanzibar, a part of the country they may find themselves living in or conducting business with that has environmental law implications. One of the objectives of this article is to fill this knowledge gap.¹¹

1.1 Environmental Profile of Zanzibar

The island of Zanzibar is blessed with a number of faunal and floral resources. It has a variety of species of fish and birds, mountain tortoises, crocodiles and sea animals. These include the rare Zanzibar Red Colobus Monkey. The island's vegetation comprises beautiful mangrove forests and vegetation cover supporting marine organisms.

The island is, however, faced with a number of environmental problems. These range from land alienation, loss of fishing grounds and agricultural lands, sea pollution and over-exploitation of shells and other marine organisms that depend on the marine environment. Removal of sea grass and coral from the sea, loss of historical buildings and a rapid increase in beach hotels without proper environmental audits are other problems of an environmental dimension. The National Environmental Policy for Zanzibar observes that there is massive destruction of the marine environment as a result of erosion in Northeast Zanzibar in areas surrounding Mtoni, Nungwi, Mkokotoni and Kiwengwa and Uroa villages in the eastern coast of the island. It attributes the erosion mainly to develop-

[7] For a more in-depth coverage of this issue, see B.T. Mapunda, 'Treaty Making and Incorporation in Tanzania', 28-30 *Eastern Africa L. Rev.* 156 (2003).

[8] See, e.g., Part II of the schedule to the Territorial Sea and Exclusive Economic Zone Act, N° 3 of 1989 which reproduces the Law of the Sea Convention, 1982. This Act also applies to Zanzibar.

[9] R.I. Msellem, *Legal Aspects of Environmental Impact Assessment: Case Study of the Zanzibar Investment Promotion Centre at 13 and 37* (University of Dar-es-Salaam: LL.B Dissertation, 2003).

[10] Msellem, note 9 above at p. 12, 25, 26 and 46.

[11] The author donated copies of the legislation to the most resourceful library in the country (the University of Dar-es-Salaam) only this year - almost a decade after the law was enacted.

ment along the coast.¹² The 1998 Zanzibar Environmental Profile and Sustainable Programme highlights on its part the negative impacts of development on the coastal and marine environment and coral reefs.

The House of Representatives has also noted that the island's environment has been depleted as a result of tree-felling at alarming rates and development of industries and small-scale factories whose residues are not controlled. Sand-mining and haphazard construction of residential houses were also mentioned as factors that have contributed to the worsening state of affairs in environmental protection and management.¹³

1.2 The Genesis of the Framework Law

1.2.1 Policy Considerations

The government of Zanzibar has made some efforts to ensure that its natural resources, which comprise a unique environment, are sustainably utilised for its present and future generations. In ensuring that the environment is not sidelined in the list of priority areas, the government promulgated a National Environmental Policy as early as 1992.¹⁴ The focus of the Policy is on the conservation and development of environmental resources with a view to utilising them in a manner that will improve the welfare of the present and future generations of the island.

The Policy lays emphasis on the need to ensure that biological and ecological principles that are important for the development of lives and resources are complied with. The document also places emphasis on the importance of improving institutional and personnel capacity in the conservation and management of the environment.¹⁵ It echoes the intergenerational and intra generational equity principles of environmental protection and calls for the conservation and development of environmental resources, laying emphasis on the need to protect them in

a sustainable manner that will advance the well-being of the present generation without affecting the ability of future generations of Zanzibar to make the most of the resources.

When the national environmental policy was promulgated, there was already in place legislation focusing on various aspects of the environment.¹⁶ Since then the Zanzibar government has introduced diverse legislation to take into account the policy's objectives.¹⁷ These acts are, however, generally sectoral in scope and segmented. Realising that there is a need for comprehensive legislation to remove the sectoral barriers, the government drafted the Environmental Management for Sustainable Development Act, 1996 (the framework environmental law). The enactment of the framework environmental law reflects the fact that governments usually use legislation as their main tool for effectively implementing policies.¹⁸

The enactment of this legislation echoes the efforts by the government to honour its international obligations with regard to issues related to the conservation and management of environmental resources. Indeed the Convention on Biological Diversity of 1992 calls upon Party States to enact comprehensive laws in their jurisdictions that would cater for environmental management at a holistic level.¹⁹ The United Republic of Tanzania is a party to the Convention.²⁰

[12] *See generally* Zanzibar's Environmental Profile, Zanzibar's Sustainable Program, 1998 and the preamble to the National Environmental Policy of 1992 and Zanzibar's Integrated Land and Environmental Management Project Document (1990-1993), Commission for Lands and Environment.

[13] Hansard Report, 2nd – 4th April, 1996, p. 92.

[14] National Environmental Policy for Zanzibar, 1992.

[15] *Id.*

[16] *See, e.g.*, Fisheries Act, N° 8 of 1988, Fruit Protection Decree N°17 of 1964, Land Tenure Act, N° 9 of 1990, Registered Land Act, N° 10 of 1990 and Commission for Lands and Environment Act, N°6 of 1989.

[17] *See, e.g.*, Zanzibar Municipal Council Act, N° 3 of 1995, District and Town Council Act, N° 4 of 1995, Forest Conservation and its Natural Resources Act, N° 10 of 1996, Plant Protection Act, N° 9 of 1997 and Protection and Nature Conservation Act, N° 10 of 1999.

[18] Paragraph 22 of the National Environmental Policy calls for enactment of legislation to implement it.

[19] Article 4, Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, 31 *Int'l Leg. Mat.* 818 (1992).

[20] The United Republic of Tanzania signed the Convention on 12th June 1992 and ratified it on 8th March 1996. *See also* the speech by the Chief Minister when deliberating the Bill in the Hansard - Taarifa Rasmii (Hansard) Baraza la Tano (Mkutano wa Tatu) 2 - 4 Aprili 1996 (Official communiqué) 5th Session (3rd Meeting) 2nd – 4th April 1996 at page 89.

1.2.2 Legislative Considerations

Like all enactments of the House of Representatives, the framework environmental law was first introduced in the House as a Bill for members to deliberate, raise issues if any in the form of contributions to enhance the law and seek clarifications if any. The process through which the framework Bill went through was rather peculiar. Neither the members of the public nor Members of the House of Representatives discussed the Bill.²¹ The statement by the Minister responsible for the environment indicating that some stakeholders had been involved in reviewing how the island's environment could be managed essentially refers to deliberations on the pre-policy stages and not on the Bill.²²

In presenting the Bill to the House, the Minister responsible for the environment introduced it by noting that Zanzibar needed a comprehensive law with specific provisions dealing with environmental protection instead of relying on bylaws and regulations, which had proved to be ineffective. He pointed out that the proposed legislation provided power to institutions to manage the environment.

After the presentation, no member of the House contributed to the Bill. It was passed without discussion. Each provision was read to the Members of the House of Representatives and passed without any change. The relevant part of the Hansard provides that:

*This Bill has been passed without any deliberations whatsoever. It means that the Honourable Members of the House of Representatives are satisfied with everything contained in the Bill.*²³

One possible factor that may explain the 'fast tracking' in the House of Representatives is external pressure exerted on the government to enact a framework environmental statute, by donors who require environmental audit reports and impact statements. This observation of the behaviour of Members of the House may be confirmed from the Chief Minister's closing remarks on the Bill when he acknowledged the efforts by the donor community in mak-

ing the framework environmental legislation a reality.²⁴ He singled out the Food and Agricultural Organization (FAO), who provided technical assistance and the United Nations Environmental Program (UNEP), for editing sections of the Bill.²⁵ It may be that the Bill was so perfect and clear in the minds of the Honourable Members who had perhaps skimmed through it before it was presented to the House, that it did not need any further debate or discussion. Be it as it may, the general lack of contribution to the debate on a Bill that touches the lives of all people and living organisms of Zanzibar by the House of Representatives cannot escape being noticed.

In winding up the 'debate' on the Bill, the Chief Minister informed Members of the House that the passing of the Bill did not necessarily mean that the state of the environment in Zanzibar was so bad. On the contrary, he noted that the legislation came at an opportune moment, as it would enable the government to comply with international obligations, which required Contracting Parties to enact environmental protection legislation at the domestic level. He also pointed out that the law would enable the government to coordinate sectoral activities in environmental protection.²⁶ The Chief Minister also emphasised that the law recognises the important role of citizens and makes an attempt to ensure that communities are involved in environmental conservation and management.

The above exploration provides a quick view of some of the salient features encountered in the process of passing Zanzibar's environmental Bill that was later transformed into law. This is now followed by an examination of the contents of this law.

2

AN OVERVIEW OF THE FRAMEWORK LAW

The Environmental Management for Sustainable Development Act, 1996 contains 124 sections, nine parts and five schedules. Part I of the Act comprises the customary preliminary provisions in legislative drafting, setting out the title and providing for a part on interpretation

[21] In contrast, the Bill to the Framework Law of the Mainland was discussed at several workshops and at public hearings which were announced well in advance in the local daily newspapers. See, e.g., Mwanza (a local daily newspaper) of October 17th 2004 at page 4.

[22] Page 3 of the Policy document.

[23] Free translation from the original Kiswahili text which reads as follows: 'Mwada huu umepitishwa bila ya majadala wowote. Kwamba waheshimiwa wabunge wameridhika na yote yaliyomo', Hansard, page 23.

[24] Hansard, page 91.

[25] Hansard, page 91.

[26] Hansard, page 89.

of some of the technical phrases and words used in the Act. Part II sets out the general environmental obligations and Part III provides for issues relating to the administration of the legislation.

Part IV provides for matters related to planning with regard to environmental management. Part V introduces a relatively new concept in environmental management in Zanzibar – the environmental impact assessment process and Part VI contains provisions dealing with the control and management of specific environmental threats. Part VII of the Act deals with protected areas and biological diversity. It also provides for general offences for the violation of environmental management standards and conditions provided for in other parts of the Act. Part IX contains general provisions relating to prosecution, litigation and powers to make regulations.

Our analysis of the provisions of the framework legislation will be presented along selected themes that, in our considered opinion, are crucial to implementing it effectively.

2.1 International Obligations

As pointed out earlier, the Act came into being partly as a result of the influence of developments in international environmental law and environmental rights enshrined in legal instruments such as conventions and treaties. Indeed, the Act substantially reflects developments in environmental law and sustainable development at the international level. This can be derived from, among other things, the definitions adopted in the Act, which are also applied in most universal environmental legal instruments. For example, although the Act defines the phrase ‘environment’ simply as ‘the natural resources surrounding human beings and the interactions among and between them,’ its coverage of features of the environment is holistic.²⁷ This is because it also covers ecosystems – the overall complex system of living organisms and communities interacting with their surroundings – and natural resources – living organisms, micro-organisms and non-living physical elements. The Act also seeks to protect renewable resources such as soil, water, plants, trees, animals, fish, coral and other or-

ganisms and physical elements which have a sustainable replacement rate and non-renewable resources such as stone, gravel, sand, lime and other non-living physical elements which do not have a sustainable replacement rate.²⁸

The Act defines sustainable development as ‘development that meets the needs of the present generation without compromising the ability of the future generations to meet their needs’.²⁹ Reference to future generations in the conservation of environmental resources is also a relatively new development in modern international environmental law instruments. The reference to this principle by the Act is therefore laudable.³⁰

The influence of the international environmental law instruments and the subsequent commitment by the government to comply with the instruments, as emphasised by the Chief Minister is echoed by the provisions of the Act. A good example is section 74(1) and (2) which deals with the category of protected areas of significant importance. Generally, the Act does not specifically mention any single international legal instrument whose requirements it seeks to comply with. However, the wording of some of the provisions may provide some guidance. For example, section 74 seems to make reference to the Convention on Wetlands of International Importance Especially as Waterfowl Habitats,³¹ when it provides that the areas declared by the Minister as protected areas of international significance may be terrestrial, aquatic ecosystems or a combination of both. Another example is section 90(3) of the Act, which makes reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora by empowering the institution responsible for the environment to regulate international trade, in endangered species or those that are threatened with extinction, in compliance with international standards.³²

The Act also reflects the principle of State sovereignty over environmental resources. It seeks to protect the island’s environmental resources against bio-piracy, which at the level of international law is governed and regulated by the Convention of Biological Diversity and the Trade-Related

[27] Section 2.

[28] Section 2.

[29] Section 2.

[30] See also sections 4(b), 7(d) and 8(d).

[31] Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 2 February 1971, 11 *Int’l Leg. Mat.* 963 (1972).

[32] Preamble, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 3 March 1973, 12 *Int’l Leg. Mat.* 1085 (1973).

Intellectual Property Rights Agreement.³³ It vests in the institution responsible for the environment the power to restrict any kind of trade in any component of biological diversity with a view to protecting specified national interests of Zanzibar's biological diversity.³⁴

2.2 Stakeholders' Participation

The Act imposes upon every citizen of Zanzibar a duty to ensure that the environment and natural resources of the spice island are not depleted.³⁵ The law also places an obligation on the part of the government to take into account environmental considerations in providing services to the public.³⁶ Sections 3 and 32(2)b of the Act reflect an emerging trend in the practice of legislative drafting in Tanzania. These provisions categorically provide that the legislation shall bind the government.³⁷ One of the presumptions in statutory interpretation provides that the government is generally not bound by a legislative provision unless such provision expressly provides so.³⁸ There has been a misconceived general feeling on the part of some government officials and citizens that the law cannot and should not be construed to bind the government. The express wording of these provisions makes it very clear that citizens can compel government institutions charged with protecting the environment to enforce the provisions of the Act.

Another striking feature of the Act is its unequivocal recognition of the rights of every citizen to a clean and healthy environment.³⁹ The Act also contains provisions providing citizens with rights to petition relevant authorities to protect the environment.⁴⁰ Another avenue for stakeholder participation addressed by the Act is the unequivocal

recognition of locus standi of various interest groups or persons seeking to invoke the jurisdiction of a court in environmental litigation. It will be apt quote Section 109, which is explicit on this point, in full:

109(1) Any person, whether or not assisted by an advocate or wakil, shall have the right to petition the appropriate enforcing institution or any court of law, Subject to that court's rules, to enforce any provision of this Act.

(2) Any person who institutes a proceeding under this section and who prevails in court shall have the right to recover costs of the legal proceeding from the other party.

(3) At the request of the prevailing party, the court acting upon a proceeding instituted under this section shall include in the judgement any costs of the prevailing party.

(4) For the avoidance of doubt, 'person' specifically includes any individual or group of individuals whether formally registered for the environmental purposes or not and any community which has prepared a community environmental management plan under section 35.

The recognition of this right is a significant progress in environmental rights in Tanzania. This is because there have been indications elsewhere that in the absence of express provisions in the law, environmental principles may not be easily enforceable in courts of law.⁴¹ It is also important to point out here that prior to the enactment of the Framework environmental law on Tanzania Mainland, courts had a difficult time. They had to grapple with legal principles in the process of construing the Articles of the Constitution of the United Republic to justify their rulings in favour of the right to a clean and healthy environment, in the absence of express provisions in the Constitution.⁴²

[33] Sections 90(1)c, 90(3) and 94(c) (read 'd'). See also P.J. Kabudi, 'Legal Challenges of Bioprospecting in Tanzania: Redressing the Lack of a Regulatory Framework,' 28-30 *Eastern Africa L. Rev.* 96, 100 (2003).

[34] Section 90(3)c.

[35] Section 4 and section 6(2).

[36] Section 5.

[37] This drafting style seems to be fashionable as Section 224 of the Tanzania Mainland Environmental Management Act, N° 20 of 2004 is similarly drafted.

[38] *Premchand Nathu v. Land Officer* (1962) E.A. 738 and sections 3 and 59 of the Interpretation of Laws Act, Cap. 1 Revised Edition, 2002. The Interpretation Act also applies to Zanzibar.

[39] Section 6.

[40] Sections 33(3) and 37(4).

[41] For example, *R. v. Secretary of State for Industry and Trade ex-parte Duddridge*, 7/2 JEL 224 where the court refused to apply the precautionary principle on, among other grounds, that there was no express provision of the law requiring the Secretary of State to apply the principle.

[42] See, e.g., High Court of Tanzania at Dar-es-Salaam, *Festo Balegele et al v. City Council of Dar-es-Salaam*, Misc. Civil Case N° 90 of 1990 (Unreported).

Although the doctrine of precedent is limited in its application on the United Republic, the rulings by the courts on the Mainland would certainly provide useful guides for those in Zanzibar.⁴³

The rigidity of the *locus standi* doctrine had for quite some time also acted as an impediment to citizens' rights to access courts in the East African region.⁴⁴ It is important to note that despite efforts in the East African states to water down the rigidity of the *locus standi* doctrine, in Uganda, citizens still cannot, as spirited individuals, bring an action against any other person to enforce environmental rights in a court of law. They can only do this through authorities designated under the law.⁴⁵ Therefore, the watering down of the rigidity of the *locus standi* requirement for the people of the isles is commendable. The move also enhances the enforceability of the constitutional provisions that place a duty on every citizen to protect the natural resources of Zanzibar.⁴⁶

The Act also contains provisions that take into account public and local community participation in environmental management and planning. The Act directs communities to prepare local and community environmental action plans after identifying environmental problems which require specialised and localised planning, such as those related to coastal and water catchment areas. Section 33(2) of the Act further empowers any person to petition the Director of the institution responsible for the environment upon identifying a problem that requires the preparation of a lo-

cal environmental action plan. Local environmental action plans are to be approved by the minister, while community environmental action plans are to be approved by the relevant administrator of the sector responsible for the resource.⁴⁷ This decentralisation initiative is commendable.

Acknowledging the fact that communities may not have the human resources necessary for the preparation of detailed and usually complex environmental plans, the Act makes it mandatory for the institution responsible for the environment to provide technical assistance to any community that approaches it.⁴⁸ However, the problem with implementing this mandatory requirement is that expertise is seriously lacking.

Where developments are conducted in the vicinity of areas neighbouring communities, the framework law provides, in very clear terms, that the communities in the area must be consulted where there is a likelihood of them being affected by the development. The spirit behind the provisions of section 78(1) seems to focus on accommodating the rights of local communities only where they are compatible with the provisions of the law. Where the rights are incompatible, they are to be extinguished and adequate compensation is to be provided.⁴⁹ However, in the absence of regulations to guide on compatibility with the law, conflicts on the issue of adequacy (sufficiency) of compensation are bound to occur as has been the case on the mainland.⁵⁰ We also note that by subjecting traditional rights to plans, the legislation fails to appreciate the important role played by indigenous knowledge systems or rights in the conservation of environmental resources in Zanzibar.⁵¹

The requirement that environmental impact statements be summarised in Kiswahili (a language understood by a majority of, if not all the people of Zanzibar), seems to substantiate the contention that the Act intends to safe-

[43] For more detailed analysis of case law illustration problems encountered by litigants on the issue of *locus standi*, see I.H. Juma, 'Role of the Judiciary in the Crystallisation of Environmental Principles into Enforceable Norms in Tanzania,' 31-34 *Eastern African Law Review* 56, 58 (2004).

[44] See High Court of Kenya (Nairobi) *Wangari Maathai v. Kenya Times Media Trust* 1989, in UNEP/UNDP, Compendium of Judicial Decisions on Matter Related to Environmental Law – National Decisions Vol. 1, *Rev. Mtikila v. A.G.* [1995] TLR 31 (Tanzania) and High Court (Uganda) *Byabazaire v. Mukwano Industries* [2002] 2 EA 353.

[45] Section 3(3)e of the National Environment Act, 1999, Chapter 153. Section 5(1) and (2) of the framework environmental law of the Mainland grants *locus standi* to any person, without the need for representation.

[46] Article 13 of the Constitution of Zanzibar, 1984 (as amended) provides that every person has the duty to protect the natural resources of Zanzibar. Article 23(2) provides that all resources in Zanzibar are jointly owned by the people of Zanzibar. Section 2 of the Act, as is the case with comparable provisions of the framework environmental legislation in the East African states, defines environment to mean natural resources.

[47] Sections 33(3) and 35(8)b, respectively.

[48] Section 35(5).

[49] Section 78(2).

[50] Court of Appeal of Tanzania (Arusha), *Lekengere Faru Paratu et al v. The Minister for Natural Resources et al*, Civil Appeal N° 53 of 1998 (Unreported). See also S. Mchome, *Evictions and Rights of People in Conservation Areas in Tanzania* (Dar-es-Salaam: Faculty of Law, 2002).

[51] Compare with section 66(2) of Mainland's Environmental Management Act, 2004, and section 3(5)b of the framework environmental law for Kenya, the Environmental Management and Coordination Act, N° 8 of 1999, which acknowledge the important role of indigenous knowledge systems in the conservation of biological resources.

guard the interests of the local people of Zanzibar, the main stakeholders.⁵² However, the only regulations issued, to simplify the understanding of the legislation, are in English and are yet to be translated into Kiswahili.

2.3 Institutional Arrangements

The Act vests the power to oversee the implementation of the provisions of the Act in seven major institutions.⁵³ The administration and final decision-making authority on environmental matters in Zanzibar has been vested onto the Special Committee of the Revolutionary Council on Environment (the Committee).⁵⁴ Headed by the Chief Minister (or a representative), members of the Committee are to be appointed by the President. The law also provides for the procedure for conducting meetings of the Committee, its powers and functions.⁵⁵ The Committee's main roles include, among other things, resolving conflicts over environmental issues between the government and other institutions, approving national environmental action plans and making final decisions on all matters related to the environment as provided for in the Act.⁵⁶ In the course of undertaking the above functions, the Committee is empowered to conduct investigations, initiate inquiries and resolve conflicts related to implementation and/or violation of the provisions of the Act.⁵⁷

One conspicuous feature of the Committee is that it is capable of being comprised of a multitude of members, drawn from all walks of life, ostensibly including those without a background on environmental issues. If this was an oversight, then it is unpardonable, as there are provisions elsewhere in the same Act, which make it mandatory to have experts in committees.⁵⁸ It is interesting to note

that the decision on the composition and qualification of members of this important Committee is left at the sole discretion of the President.⁵⁹ To make matters worse, the law does not provide for the number of members who can be appointed by the President to the Committee. It does not lay down the maximum number of members who would comprise the Committee. In this regard, the requirement that meetings are to be convened 'wherever is deemed necessary' does not sound logical.⁶⁰ In essence, therefore, the composition of the Committee, the highest decision-making organ on matters related to the environment, is not provided for by the Act. The Act only specifically mentions the Chief Minister who would be the Chair and the Principal Secretary responsible for the environment who would be the Secretary. Important lessons could be drawn from comparable provisions of the Mainland's Environment Management Act, 2004 that establish the National Environmental Advisory Committee.⁶¹ The structure of similar committees established under Uganda's environmental framework law could also provide constructive guidance for any reform of the law in this regard.⁶²

Left as it is, the structure of the Committee defeats some of the good ideals of the legislation, especially with regard to public and community participation in environmental matters. As a result of this setting, there is no guarantee that interests of the public and local communities, which seem to have been adequately addressed by some of the provisions of the Act, would be protected. This is because there is no guarantee of representation, by law, for local community and the public in the only organ empowered to approve national environmental action plans. It is recommended that the law be amended in order to specifically address this oversight.

Apart from the Committee, the Act also establishes a Department of Environment in the institution responsible for the environment.⁶³ At first glance, the Act seems to be ambiguous on the scenarios it envisages on what could comprise the institution responsible for the environment. It provides that the institution 'shall be the Ministry, Department of Commission of the Government under

[52] Section 40.

[53] These are the Special Committee of the Revolutionary Council (section 9); the Minister (section 14); Lead Institutions (section 26); Technical Environmental Units established by government (Section 27); Licensing Institutions (section 48); Institutions Responsible for National Protected Areas Systems (section 70); and the State Attorney Responsible for the environment in Zanzibar (section 115).

[54] Section 9.

[55] Sections 10-13.

[56] Section 12.

[57] Section 13.

[58] Compare with section 27(1)a which specifically provides that Technical Environmental Units of government institutions must consist of 'professional personnel with multi-disciplinary education or experience'.

[59] Section 9(2).

[60] Section 11(2).

[61] Part III of the Environmental Management Act, 2004.

[62] Part III (Sections 4 -18 and the 1st and 2nd Schedules) of the National Environmental Act, 1999, Chapter 153.

[63] The Department, as noted earlier was already established under the Commission for Lands and Environment Act, 1989. Therefore, the 1989 Act has to be amended accordingly as directed under section 123 of the Framework law, implying that the Department ceases to be established under the 1989 Act.

the Minister responsible for the environment or a corporate body.⁶⁴ Prima facie, it would appear that there are three categories of institutions being considered by the above provision, but in actual fact the provision envisages two scenarios. The scenarios envisaged are a Department under the Minister responsible for the environment or a corporate body that may be constituted by the President. Hurried drafting (lack of care in the use of commas) has caused this ambiguity.

It should also be noted that the Department of Environment has not been able to effectively commence its mandate which is to give advice on formulation of policies and conduct research on effects on the environment from activities of various sectors.⁶⁵ The main stumbling blocks have been the failure by authorities to enact enabling regulations, as required by the framework law.⁶⁶

The functions of officers of the institution responsible for the environment include advising the government and the Committee on a number of environmental concerns, for example, evaluating existing policies and laws, specifying environmental standards, promoting public awareness and reviewing environmental impact requirement procedures.⁶⁷ However, qualified officers required to undertake these tasks are few, making it difficult for the institution to effectively carry out its mandates.⁶⁸

The mandate of the Commission for Land and Environment established by the government in 1989 was too general and ambitious taking into account the inadequate human and financial resources on the island.⁶⁹ The Commission was charged with the duty of specifying environmental standards for land use, water, vegetation cover and the atmosphere. Although the Act directed that the Commission for Land and Environment be amended to reflect its objectives, the amendments were not effected. The Act establishing the Commission was in fact repealed in 2003 under an amendment to the Land Tenure Act of 1992.⁷⁰ The Commission has, however, been retained un-

der the framework environmental law. Until the time of amendment there were no fundamental changes with a view to improving the Commission's effort to implement the Act.

The framework environmental law takes into account the fact that environmental management issues cut across various sectors of government. In this respect it provides for room for government institutions to form technical environmental units to implement the provisions of the Act and incorporate environmental criteria in the government institutions' programs, policies and related activities.⁷¹ Contemplating the likelihood of impending conflicts among the institutions in discharging their duties, the Act provides that where institutional differences arise as a result of the implementation of the environmental law, its provisions shall override those of any other government institution.⁷² It provides further that any matter in dispute shall be referred to the Committee, whose decisions shall be final.⁷³ An attempt is also made in section 107 to demarcate environmental matters with a view to reducing impending conflicting mandates among government institutions charged with enforcing the provisions of the Act. The section clearly spells out the subject matter related to environment and the mandate of the responsible government institution. To some extent, the provisions are laudable in the sense that they seek to address a crisis that has plagued institutions charged with environmental protection in most jurisdictions in the region in general and on the Mainland, in particular.⁷⁴

In order to guarantee sustainability in the management of the environment among the institutions, the Act establishes a National Environmental Fund for Sustainable Development, under the institution responsible for the environment. The sources for the Fund are to be derived from, among others, amounts appropriated by the House of Representatives and amounts derived from the enforcement of the Act.⁷⁵ Since there has been no case prosecuted under the Act, no amount has been channelled to the Fund

[64] Section 17(1) and (2). Currently it is the first scenario that is in place.

[65] Sections 7 and 8(3) of the Commission for Land and Environment Act, 1989.

[66] The process of making regulations to give legal force to some of the provisions of the framework environmental law is still ongoing. *See* Msellem, note 9 above at p. 25-26 and 41-49.

[67] Section 19.

[68] Msellem, note 9 above at p. 12.

[69] The Commission for Land and Environment Act, N° 6 of 1989. On lack of resources *see* Msellem, note 9 above at p. 12.

[70] Section 14 of the Land Tenure (Amendment) Act, 2003.

[71] Section 27.

[72] Section 26(a).

[73] Section 26(b).

[74] Lawyers of Environmental Action Team, Report on the Institutional and Legal Framework for Environmental Management in Tanzania (Dar-es-Salaam, 1999).

[75] Section 29.

from enforcement. In any event, it is difficult to re-direct monies derived from imposition of fines as the amounts derived from fines are generally supposed to go to the Treasury.⁷⁶

2.4 Environmental Impact Assessment

The Act makes it mandatory to conduct environmental impact assessments (EIA) for development activities that are likely to have significant impact on the environment.⁷⁷ After providing for this mandatory condition, the Act provides some guidance on the procedures to ensure that no environmental harm results in the process of conducting an EIA. It further outlines the procedure governing environmental impact statements, scoping and approvals.⁷⁸ It also sets out basic requirements for mitigating environmental harms, monitoring, compliance and environmental auditing.⁷⁹ The depositing of a performance bond by persons undertaking activities under EIA certificates is also addressed by the Act. It also directs that monies received from defaulters of performance bonds are to be deposited in the Fund.⁸⁰ The procedures outlined by the Act are meant to serve only as a general guide. It is in this regard that the Act directs the Minister to issue detailed regulations to govern the EIA procedure within six months after the law came into force. This directive is clearly mandatory. Unfortunately the directive was not followed in respect of the limitation of time.⁸¹ The EIA regulations, though detailed, holistic in scope and compare well with similar provisions of the framework legislation of Kenya and Uganda,⁸² were promulgated six years after the Act came into force. By this time, a number of development projects that have devastating effects on the environment on the isles had already been approved and established.⁸³

The guiding provisions on the EIA under the framework environmental law ought to be read with the Environmental Performance Bond Regulations, 2002 and the Environment Impact Assessment (Procedures) Regulations, 2002.⁸⁴ The performance bond regulations, which basically augment the provisions of section 108 of the framework law, provide that every environmental performance bond shall be 10 percent of the capital investment of the project and shall be deposited in the account of the Ministry of Agriculture, Natural Resources, Environment and Cooperatives.⁸⁵

The power to disapprove EIAs has been vested in the institution responsible for the environment. The Act provides for only one scenario where the institution responsible for the environment can disapprove activities. The institution can only disapprove an activity where the planned development or activity is likely to cause significant impact on the environment and where there are no alternatives to mitigate or remedy the harm to the environment.⁸⁶ This provision should be read with section 54, which sets out determinants of the conditions that would amount to an activity having a significant impact on the environment. A party who is dissatisfied with the disapproval of the institution responsible for the environment may appeal to the minister by lodging the application through the institution.⁸⁷

The minister may also invite public opinion in determining an appeal in the EIA process. An applicant who is dissatisfied with the decision of the minister may appeal to the Committee, which as noted earlier is the highest decision making body on environmental matters in Zanzibar, but one that would convene 'wherever [it] is deemed necessary'.⁸⁸

The Act lists the kinds of development activities that may be undertaken in Zanzibar without necessarily having to conduct an EIA. The activities in this category includes, operating small-scale businesses employing less than 10 people, tour operators, air charters and maintaining roads where the work does not entail upgrading or expansion of the roads.⁸⁹ The institution responsible for the environ-

[76] Drafters of the framework environmental law on the Mainland must have foreseen the difficulty. *See* section 213(2) of the Act.

[77] Section 38.

[78] Sections 40-50.

[79] Sections 57-59.

[80] Sections 56 and 108.

[81] Section 61.

[82] Part VI of Kenya, Environmental Management and Coordination Act, N° 8 of 1999 and sections 19-20 Uganda, National Environment Act, Chapter 153.

[83] Report by the Department of Environment, Zanzibar on Ras Nungwi and Matemwe Village Beach Hotels, 2001 and Msellem, note 9 above at p. 24, 34, 37 and 42.

[84] L.N. N° 18 and 19 respectively, of 2002.

[85] Regulation 3(1) L.N 18 of 2002.

[86] Section 49.

[87] Section 50.

[88] Sections 110 and section 11(1).

[89] Schedule 1.

ment, however, may determine otherwise, for among other reasons, on the basis of the fact that a business employing less than ten people may do more harm to the environment than one employing one hundred thousand people.⁹⁰

The EIA regulations, albeit issued late, are a welcome development. However, they do not have a provision for retrospective operation and therefore environmentally unfriendly projects that were approved before the EIA regulations came into force are not affected. A retrospective operation of the law would enable authorities, if the regulations were to be enforced, to rectify the anomalies when projects and activities were passed without assessing their impacts on the environment.⁹¹

Another notable feature of the Act is the power given to the Minister under the provisions of section 51 to overrule the Director on matters related to EIA. We submit that this also does not augur well with the otherwise well-intended objectives of the Act and the Regulations issued thereafter, which, among other things, seeks to ensure transparency in handling and controlling activities that may be detrimental to the environment.

2.5 Enforcement

Compared to similar provisions in the framework environmental framework laws of Uganda, Kenya and the Mainland, the legislation of Zanzibar introduces some innovative strategies that are aimed at effectively enforcing its provisions. It provides for special environmental prosecutors appointed by the institution responsible for the environment. The prosecutors must be persons who are conversant with environmental law.⁹²

Section 22 of the framework law empowers the institution responsible for the environment to conduct legal proceedings and issue stop orders or default notices for violations of the Act. Such institutions may appoint a special advisory committee for this purpose. The wording of this provision is strange in the sense that persons who may

be appointed to the committee may not necessarily have the requisite qualifications for the assignments. The section provides that the committees would be composed of persons who are, from time to time, interested (presumably on environmental issues). Such persons would meet to address environmental emergencies under some mandate. This provision illustrates another effect of the rush in enacting the law.

Another important feature of the Act relates to the provision for the position of a State Attorney responsible for environmental matters in Zanzibar designated by the Attorney General.⁹³ One of the functions of the State Attorney responsible for the environment is to represent the interest of the public as a party to all lawsuits concerning a violation of the provisions of the Act.⁹⁴ The common trend in most commonwealth jurisdictions has been for State Attorneys to represent the interests of the state rather than those of the public, usually against public claims. The Act therefore makes an effort to depart from the common trend by introducing a 'unique' relationship between individuals and the State, where the State takes a position to defend the public in court. The State Attorney is given power under the Act to compel government institutions to comply with the provisions of the Act by commencing a process, which would lead to withholding of monies due to the violating institution from its budget.⁹⁵ Although the designation of a State Attorney responsible for the environmental matters is a mandatory requirement, the Attorney General has not yet complied with it.

The provisions for offences are not only focused on punishment but also restoration of the environment's capacity to fulfil its functions, reparation, restitution and compensation. In certain circumstances the Act empowers the court to order confiscation of items employed in the commission of environmental damage.⁹⁶ The Director of the institution responsible for the environment is also empowered to compound offences where people admit, in writing, to having committed an offence under the Act and accept to be compounded.⁹⁷

[90] Section 55.

[91] Article 78(5) of the Constitution of Zanzibar of 1984, as amended, permits retrospective operation of the law under such circumstances.

[92] On the Mainland, environmental officers appointed by the Director of Public Prosecutions appoint the prosecutors from among the environmental officers under section 182 of the framework law, while such concept is not found in the provisions of Kenya's and Uganda's laws.

[93] Sections 115 and 116. Uganda, Kenya and Tanzania Mainland, which have comparatively more qualified personnel in environmental law, may wish to emulate this strategy.

[94] Section 116(a).

[95] Section 117.

[96] Section 101.

[97] Section 105. Similar provisions exists in Kenya's, Uganda's, and Tanzania's framework legislation.

The Director may also appoint environmental officers to enforce the legislation.⁹⁸ Environmental officers have been given power of search and arrest within the limits of the Act. The environmental officers have also been accorded immunity from prosecution for acts or omission done in good faith.⁹⁹ The Act also gives power to the institution responsible for the environment to appoint special environmental prosecutors after consulting the Attorney General, who has the exclusive power to try any offence under the provisions of the Act.¹⁰⁰

2.6 Dispute Settlement

Like Uganda's environmental framework law, Zanzibar's legislation does not provide for an environmental court or tribunal but seeks to use existing mechanisms for settling environmental disputes. Given the difficulty of soliciting for resources to even maintain existing dispute settlement mechanisms the approach taken by the framers of the legislation is understandable. Kenya and Tanzania, which have provision for tribunals that are yet to be established, may wish to reconsider their options, since funding and infrastructural resources are usually difficult to come by.¹⁰¹ Donor assistance is not recommended for, among other things, lack of sustainability due to the dependence syndrome.

The Act makes some attempt to invoke a mechanism for out of court settlement by providing for alternative ways of resolving disputes. It empowers the institution responsible for the environment to appoint special environmental mediators to resolve disputes that may arise in the process of addressing environmental problems or in the preparation of community environmental management plans.¹⁰² The mediators must be persons trained in alternative dispute resolution, have experience in environmental matters and be acceptable to the parties in dispute. The legislation, however, does not provide for any guidance on the procedure that the mediators would employ in discharging their duties. Apparently, there is also some conflict, at least at the level of policy directive, on conflict resolution amongst institutions. Whereas the Policy envisages the Commission for Land and Environment to be the mediator in environ-

mental conflicts between government sectors and other stakeholders,¹⁰³ the framework law places this obligation on the Revolutionary Council on Environment whose nature and composition, as noted leaves a lot to be desired.¹⁰⁴

The legislation empowers the court to appoint special environmental assessors where it considers it necessary to do so. The special assessors must be holders of a certificate in law and have practised for at least three years, and be knowledgeable in environmental matters.¹⁰⁵ Despite the progressive development in providing for room to the court to seek assistance from persons knowledgeable in environmental matters, the Act does not provide for the manner in which the court would treat the opinion of the assessors. Also it does not provide for the extent to which the court would give weight to findings by the assessors in determining the dispute. Tanzania's framework law has provision for inviting an amicus curiae where special skills are needed, which takes care of having to provide detailed procedures for assessors who are in any event few.¹⁰⁶ The framework law of Kenya also makes a vivid attempt to avoid making it mandatory for the tribunal to employ assessors. It gives discretion to the tribunal in this regard.¹⁰⁷ Reforms directed to the framework law of Zanzibar should consider available options provided for in corresponding provisions of the laws in the neighbouring states.

3

CONCLUSIONS AND RECOMMENDATIONS

It has been observed that the promulgation of the framework environmental law reflects the government of Zanzibar's commitment to implement international obligations in general. The legislation represents a paradigm shift in environmental rights jurisprudence, especially with regard to the coverage on a range of important international law principles and sustainable development. In this way, important lessons could be learnt from it.

[98] Section 106.

[99] Section 111.

[100] Section 113.

[101] Parts XII and XVII of Kenya's and Tanzania Mainland's framework laws, respectively.

[102] Section 112.

[103] Paragraph 1(b) of the National Environmental Policy for Zanzibar, 1992.

[104] Section 12(a).

[105] Section 114.

[106] Section 204(5) of the framework legislation.

[107] Section 131 of the framework law.

It should be pointed out that the Revolutionary government of Zanzibar has generally been ahead of Mainland Tanzania in implementing important international treaties and obligations that have been acceded to by the government of the United Republic of Tanzania.¹⁰⁸ As noted, the Biodiversity Convention, which the Government of the United Republic signed in 1992, places an obligation on contracting parties to develop wide-ranging legislation on environmental conservation and management.¹⁰⁹ Tanzania Mainland has finally come up with a framework law, eight years after Zanzibar. Uganda promulgated its framework environmental law a year before Zanzibar while Kenya did the same four years after Zanzibar.¹¹⁰ The analysis has shown that governments in the region could borrow important lessons and experiences from framework environmental laws of their neighbours.

It has been noted that a number of international instruments on environmental management and conservation call for the inclusion of local communities living in the proximity of development projects that have an effect on the environment and the community members' livelihood. We would like to re-iterate here that the law has not been translated into Kiswahili. The framework environmental legislation of the Mainland also envisages translation into Kiswahili. The failure to implement provisions such as these often reduces the confidence that communities may have in the government's initiatives of effectively engaging them in processes that affect their well-being. Community members may perceive the failure as a calculated move to divorce them from the processes, especially where the government itself has alluded to the fact that failure to translate the law into a language that they understand would leave them at a loss. Counterparts on the Mainland, as well as those in the region, could draw important lessons from Zanzibar's failure to effect the translation and avoid pitfalls.

The provisions of the Act, it has been noted, also make some attempt to involve stakeholders at all levels. However, representatives of local communities and civil society organizations engaged in environmental conservation have not been incorporated into the Special Committee of the

Revolutionary Council on Environment. NGOs and civil society organizations should also be involved in directing the environmental management processes in Zanzibar through collaboration and consultation with the institution responsible for the environment. NGOs and civil society organisations involved in environmental conservation must make an effort to engage the relevant institutions although the law provides that the consultation and collaborative process should be initiated by the institutions.¹¹¹ The provisions of the Act should fully recognise the important role that NGOs have played in conservation of environmental resources and provide for their inclusion in major decision-making organs on environmental conservation on the island. It was not by accident that the framework laws of the Mainland, Kenya and Uganda have included this important stakeholder in environmental committees.¹¹²

Also, the Act does not take into account the fact that inequalities of power make it difficult for disadvantaged groups to actively take part in environmental conservation processes on the isles. For example, the Act makes reference to incorporating gender issues in the composition of institutions/organs. This is found in the composition of the National Protected Areas Board which requires that at least two members to the Board must be women.¹¹³ Conspicuously, the requirement to have women representation in other major institutions that have been charged with regulating various aspects of environmental management is not emphasised. In this regard, the framework law has not fully implemented the policy directive of promoting participation of women by taking into account their role as users of environmental resources.¹¹⁴ The treatment of the role of women in environmental management by the provisions of the framework laws of Kenya, Uganda and the Mainland is also referred to generally. Unfortunately, there is an unjustified selectivity with regard to women representation in institutions and organs dealing with envi-

[108] A good example is the decision by the government of Zanzibar to incorporate the Bill of Rights provision in its Constitution in 1984. It took the Mainland government much longer to do the same, while the international obligation for both to incorporate the Bill was equally pressing.

[109] Article 14 of the Convention.

[110] National Environmental Act, Chapter 153 of Uganda (1995) and Kenya's Environmental Management Act, N° 8 of 1999.

[111] Section 19(2) of the Act.

[112] *See, e.g.*, sections 47 and 215 of the Mainland's Environmental Management Act, 2004, sections 29, 30, 31 and 37 of Kenya's Environmental Management Co-ordination Act, 1999 and the 1st and 2nd Schedules to Uganda's National Environment Act, 1999.

[113] Schedule 3 section 3(2).

[114] Paragraph 9(a) of the Policy.

ronmental management in the region. The framework laws in the three East African states provide for women representation in some organs and leave them out in others.¹¹⁵ This anomaly needs to be addressed.

We would also wish to note that the discretionary power granted to authorities under the framework law of Zanzibar in some cases leaves room for potential abuse and this must be addressed. For example, the law empowers the Minister to make decisions without involving the public in the course of determining whether or not to approve proposed activities, which may have adverse implications on the environment. The wording of the relevant provision is permissive.¹¹⁶ The Minister must be compelled to invite public opinion and comments. Left as it is, the provision leaves so much discretion to the Minister and undermines the spirit of taking into account views of members of the public. This discretion does not augur well with the Act's vivid attempt to emphasise transparency in planning and obtaining input from the public and environmental connoisseurs in the course of protecting the unique environmental resources of the spice island in a sustainable manner.

Also, section 62(2) of the Act leaves room for potential abuse by operators of activities that may be harmful to the environment in the course of providing annual environmental audit reports to the institution responsible for the environment. We also submit that this kind of discretion does not augur well with the attempt made by the Act to protect the isle's environment. The requirement to provide audit reports must be mandatory and should not be left at the sole discretion of the institution responsible for the environment for there to be effective and meaningful enforcement of the Act.

Again, important lessons on controlling discretion of authorities could be drawn from Part XIV of the Mainland's framework environmental law, which has concrete and detailed provisions providing mandatory directives in the process of incorporating views from the public in making executive or legislative decisions affecting the environment.¹¹⁷ The provisions of Kenya's environmental frame-

work law also do not entertain discretion by authorities on issues of stakeholder participation.¹¹⁸ It is not safe to assume that courts of law would come to the rescue and construe a statutory provision that provides wide discretion to authorities in favour of the citizen. In fact, courts in some jurisdictions have refused to interfere with provisions of environmental statutes that expressly give wide discretion to Ministers.¹¹⁹

The government must urgently devise strategies to implement the policy directive that the law is made known to citizens, stakeholders and all those who are charged with its implementation.¹²⁰ A good start to such reform would be for the government to review the curriculum of educational institutions at all levels with a view to including the teaching of environmental law.¹²¹ However, we should hasten to caution that any amendment or reform of the framework environmental law must be contextualised within the social, political, cultural and economic realities existing on the island. Also, the Bill proposing the reforms to the environmental framework law must be subjected to public discussions and scrutiny by the House of Representatives.

[115] See, e.g., 1st Schedule of Uganda's law, sections 29(3)e of Kenya's law and section 19(2)c and the 1st Schedule of Tanzania Mainland's legislation provide for women representation. Compare with sections 4(1), 11 and 4 of Kenya's, Tanzania Mainland's and Uganda's legislation, respectively which does not have provision for women representation in national environmental bodies.

[116] Section 51(2).

[117] Section 178(1-5) of the Act.

[118] See, e.g., sections 29 and 31 of the Environmental Management and Coordination Act, N° 8 of 1999.

[119] See, e.g., the decisions in the cases of *R. v. Secretary of State for the Environment Ex Parte Greenpeace* (1994) 4 All. E.R. 352, where the Minister decided to by-pass a local inquiry and *Regina v. Secretary of State Ex. Parte Rose Theater Trust Co.* (1990) QBD 504, where the court declined to limit the Minister's discretion.

[120] Environmental Policy at p. 13 paragraph 21(b).

[121] A leaf could be borrowed from Uganda, whose framework environmental law, the National Environment Act, Chapter 153 (section 87) makes this requirement mandatory.

*LEAD Journal (Law, Environment and Development Journal) is jointly managed by the
School of Law, School of Oriental and African Studies (SOAS) – University of London
<http://www.soas.ac.uk/law>
and the International Environmental Law Research Centre (IELRC)
<http://www.ielrc.org>*

