

**LAWYERS' ENVIRONMENTAL ACTION TEAM
(LEAT)
ELEMENTS
OF
A BILL
FOR
A TANZANIAN ENVIRONMENTAL PROTECTION ACT**

Arrangement of the Draft Bill

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SCHEDULES

Proposals for

A BILL

for

An Act to provide for the prevention of pollution and the management and protection of the environment and for matters connected therewith.

[.....]

Enacted by the Parliament of the United Republic of Tanzania.

**PART I
PRELIMINARY PROVISIONS**

Short Title and Commencement Date

1. This Act may be cited as the **Environmental Protection Act**, (EPA) [...], and shall come into operation on such date as the minister may by notice in the Gazette appoint.¹

Interpretation

2. In this Act, unless the context otherwise requires:-

“air” includes air within a building, a vehicle, or within any enclosure or structure;

“air pollution” means a condition of the air, arising wholly or partly from the presence in the air of any substance, that directly or indirectly

- (a) endangers the health, safety or welfare of humans;
- (b) interferes with the normal enjoyment of life or property;
- (c) endangers the health of animal life;
- (d) causes damage to plant life or to property; or
- (e) degrades or alters, or forms part of a process of degradation or alteration of, an ecosystem to an extent that is detrimental to its use by humans, animals or plants.

“air quality” means the concentration, prescribed in standards and regulations issued pursuant to this Act, of pollutants in then atmosphere at the point of measurement;

“ambient air” means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;

“Authority” means the institution responsible for the management of the environment to be established under the relevant provisions of the Act. It could be designated as an “Agency”, “Authority”, “Board” or “Council.”

“biological diversity” means the variability among living organisms from all sources including, without limiting the generality of the foregoing, terrestrial and marine and other aquatic ecosystems and the ecological complexes of which they form a part and includes the diversity within and between species and of ecosystems;

“biological resources” include genetic resources, organisms or parts thereof, populations, or any other biotic component or ecosystems with actual or potential use or value for humanity;

“bioregional management” means managing biological diversity on a regional basis, using natural boundaries to facilitate integrating sustainable development and biodiversity conservation;

¹ This Act shall apply to Tanzania Mainland only. Tanzania Zanzibar has its own legislation and institutional framework for environmental management.

“biotechnology” means the application of science and engineering in the direct or indirect use of living organisms or parts or products of living organisms in their natural or modified forms;

“building” means any building, erection or other structure created or made on, in or under any land and includes the land on, in or under which the building is situated; operations and the making of roads, railways, water works, sewage disposal works, electrical or telephonic installations and any road works or earthworks preliminary or incidental to the erection of buildings;

“chemical” means a chemical substance in any form, whether by itself or in a mixture or preparation, whether manufactured or derived from nature, and for the purposes of this Act includes industrial chemicals, pesticides, fertilizers and drugs;

“Coastal Zone” means all coastal and marine areas under national jurisdiction and control, including the Exclusive Economic Zone as defined in the *Territorial Sea and Exclusive Economic Zone Act, 1979* and the Integrated Coastal Zone Management Strategy²;

“Committee” means the relevant Committee for Environmental Coordination to be established under the provisions of the proposed legislation;

“Competent Court” means a District Court, Resident Magistrate Court or the High Court;

“developer” means a person who is developing a project which is subject to an environmental impact assessment process under the proposed legislation;

“[Director General]” or “[Executive Director]” as the case may be, means the person who is to be appointed to lead the environmental management institution established under the Act;

“District Environment Action Plan” means the District Environment Plan to be prepared under the relevant section of the Act;

District Environment Committee” means the District Environment Committee to be appointed under the relevant section of the Act;

“ecological balance” means the complex, dynamic ability of ecosystems to maintain their functions by auto-regulative mechanism;

“ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

“effluent” means gaseous waste, water or liquid or other fluid of domestic, agricultural, trade or industrial origin treated or untreated and discharged directly or indirectly into the environment;

“element” in relation to the environment means any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;

“Enforcement Officer” means a person or a member of a class of persons designated as an enforcement officer under section [...] of this Act;

“environment” means the components of the Earth and includes

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and

² This Strategy was prepared under the auspices Tanzania Coastal Zone Management Programme (TCMP) of the National Environment Management Council (NEMC) and has already been approved by the Government as a strategy to implement the National Environment Policy of 1997

(d) the interacting natural systems that include components referred to in paragraph (a) to (c)

“environmental audit” means the systematic, documented, periodic and objective appraisal of the situation of the environment and its resources showing the extent to which policies and activities during the previous reporting period have diminished or improved the environment and optimised the sustainable use of natural resources and biodiversity and its components;

“Environmental Impact Assessment”³ means a process and procedure of assessing adverse environmental, economical, social and cultural impact of a proposed policy, project, plan or programme and to plan appropriate measures to reduce, mitigate or eliminate its negative effects;

“Environmental Inspector” means any environmental inspector to be appointed or designated under section [...] of this Act;

“environmental management” includes the protection, conservation and sustainable use of the various elements or components of the environment;

“Environmental Management Plan” means a plan that outlines the activities to be undertaken to prevent and control adverse effects to health and the environment;

“environmental monitoring” means the continuous and/or periodic determination of actual and potential effects of any activity or phenomenon on the environment whether short-term and long-term;

“environmental planning” means both the long-term and short-term planning that takes into account environmental exigencies;

“environmental quality” includes the health of ecosystems;

“Environmental Registry” means the registry established under section [...] of this Act;

“environmental resources” includes the resources of the air, land, flora, fauna and water together with the aesthetical qualities;

“environmental restoration order” means an order to be issued under section [...] of this Act;

“focal point” means the individual or unit designated by a lead ministry to be responsible for coordinating with the Environmental Management Institution;

“fuel” means any form of matter that is combusted or oxidized for the generation of energy;

“The Fund” means the National Environment Fund to be established under section [...] of this Act;

“Government” means the government of the United Republic of Tanzania;

“hazardous substance” means any chemical, waste, gas, medicine, drug, plant, animal or micro-organism which is likely to be injurious to human or animal health or the environment;

“Integrated Environmental Management” means a coordinated process of defining objectives, compiling, analysing and synthesizing data, planning, implementing, monitoring, evaluating and enforcing measures to integrate environmental protection, conservation and sustainable utilization of natural resources into all aspects, levels and stages of planning for socio-economic development;

³ The NEMC has already issued some EIA guidelines and procedures.

“Land” has the meaning assigned to it in the *Land Act* No.4 of 1999⁴ and the *Village Land Act* No.5 of 1999;

“lead ministry” means any Government ministry, department, parastatal, state corporation, public authority or local authority, in which any law vests functions of control or management of any element of the environment or natural resources;

“Local authority” has the meaning assigned to it in the *Local Government (District Authorities) Act*, No.7 of 1982⁵ and the *Local Government (Urban Authorities) Act*, No.8 of 1982.⁶

“Minister” means the Minister responsible for the environment;

“natural resources” include resources of the air, land, water, animals and plants including their aesthetic qualities;

“pollution” means any direct or indirect modification or alteration of the physical, thermal, chemical, biological, or radioactive properties of any part of the environment by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause contravention of any condition, limitation, or restriction which is subject to a licence under this Act;

“pollutant” means any substance, solid, liquid, or gaseous discharge, any waste, odour, heat, sound, vibration, radiation or a combination of these, likely to provoke pollution;

“pollution prevention” means the use of processes, practices, materials, products, substances or energy that avoid or minimize the creation of pollutants and waste and reduce the overall risk to the environment or human health;

“plan” means the National Environment Action Plan to be prepared in accordance with section [...] of this Act;

“project” means any development activity, proposal or undertaking, including a plan or program;

“proponent” means a person proposing or executing a project, programme or an undertaking specified in the relevant Schedule to the proposed legislation;

“protected area” means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives;

“radiation” has the meaning assigned to it in the *Atomic Energy Act, 2002*.⁷

⁴ Under section 2 of the *Land Act* No.4 of 1999, “land” includes the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land.

⁵ Under section 3(1) of the *Local Government (District Authorities) Act* No.7 of 1982, “local government authority” means a district authority or an urban authority. “District authority” means a district council, a township authority or a village council or *Kitongoji*. Urban authority means a city council, a municipal council or a town council. “*Kitongoji*” means a [art of a division of a village and includes a part of a division of a township situated in an area under the jurisdiction of a District Council.

⁶ Under section 3(1) of the *Local Government (Urban Authorities) Act* No.8 of 1982 “urban authority” means a town council, a municipal council, a city council or a *mtaa*. “*Mtaa*” means a part or a division of a ward and includes a part or a division of a township situated within an area under the jurisdiction of an urban authority.

⁷ Under section 2(1) of the *Atomic Energy Act, 2002*, “radiation” means and includes both ionising and non-ionizing radiation.” “Ionizing radiation” means the radiation of gamma rays and x-rays or corpuscular radiation, capable of producing ions directly or indirectly in its passage through matter. “Non-ionizing

“release” includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, emit, empty, throw, dump, place and exhaust;

“sell” includes to offer for sale or lease, have in possession for sale or lease or deliver for sale or lease;

“soil” includes earth, sand, rock, shells, minerals, vegetation and the flora and fauna in the soil and derivatives thereof;

“standard” means the limits of discharge or emissions to be established under the proposed legislation or under regulations made pursuant to this Act or any other written law;

“substance” means any distinguishable kind of organic or inorganic, whether animate or inanimate, and includes:

- (a) any matter that is capable of being dispersed in the environment or of being transformed in the environment into matter that is capable of being so dispersed or that is capable of causing such transformations in the environment,
- (b) any element of free radical,
- (c) any combination of elements of a particular molecular identity that occurs in nature or as a result of a chemical reaction, and
- (d) complex combinations of different molecules that originate in nature or are the result of chemical reactions but that could not practicably be formed by simply combining individual constituents,

and except for the purposes where the Minister maintain a list of Domestic Substances List, substances and activities new to Tanzania, and animate products and biotechnology, including:

- (e) any mixture that is a combination of substances and does not itself produce a substance that is different from the substances that were combined,
- (f) any manufactured item that is formed into a specify physical shape or design during manufacture and has, for its final use, a function or functions dependent in whole or in part on its shape or design, and
- (g) any animate matter that is, or any complex mixtures of different molecules that are, contained in effluents, emissions or wastes that result from any work, undertaking or activity;

“sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs;

“Village Environment Committee” means a committee established pursuant to section 107 of the Local Government (District Authorities) Act No.7 of 1982,⁸

“water” includes drinking water, sea-water, river, stream, spring, watercourse reservoir, well, dam, canal, channel, lake, swamp, open drain or underground water;

“water quality” means the concentration, prescribed in standards and regulations issued pursuant to this Act, of pollutants in water at the point of measurement;

“water pollution” means a condition of water, arising wholly or partly from the presence in water of any substance, that directly or indirectly,

- (a) endangers the health, safety or welfare of humans;

radiation” means optical radiation, radio frequency radiation, low-frequency electric and magnetic fields, ultrasonic radiation and any other radiation with similar biological effects.

⁸ Section 107 of the *Local Government (District Authorities) Act No.7 of 1982* provides that “A village council may establish such permanent committees, and appoint such special committees, as it may deem necessary or expedient for the efficient and effective discharge of its functions.

- (b) interferes with the normal enjoyment of life or property;
- (c) causes damage to plant life or to property; or
- (d) degrades or alters, or forms part of a process of degrading or altering, an ecosystem to an extent that is detrimental to its use by humans, animals or plants.

“waste” includes any matter prescribed to be waste and any matter whether liquid, solid, gaseous, or radioactive, which is discharged, emitted, or deposited in the environment in such volume, accumulation, composition or manner likely to cause an alteration of the environment;⁹

3. This Act shall be binding on the Government.

PART II

ENVIRONMENTAL OBJECTIVES AND ADMINISTRATIVE DUTIES

Objectives

4. The protection of the environment is essential to the well-being of Tanzanians and the primary objectives of this Act are:

- (a) To lay down the general legal framework for environmental management in the United Republic of Tanzania and to provide the basic instruments for implementing, managing, monitoring and enforcing it;
- (b) To establish the institutions responsible for integrating environmental protection and sustainable development in the United Republic of Tanzania and define their respective powers;
- (c) To provide for implementation of the National Environment Policy of 1997 as may be revised from time to time;
- (d) To provide for the coordination of environmental policies and their integration into macroeconomic development decisions; and
- (e) To establish the basis for the Government of the United Republic of Tanzania to make an effective contribution to international cooperation related to environment and sustainable development.

Administrative Duties

5.-(1) In the administration of the Act, the Government shall, having regard to the Constitution of the United Republic of Tanzania¹⁰ and other laws of the country,¹¹

⁹ The *Atomic Energy Act, 2002* make provision for the management of radioactive waste and establishes the **Tanzania Atomic Energy Commission (TAEC)** as a regulatory body as well as a **Central Radioactive Waste Management Facility (CFRWM)** to serve as the National Centre for the collection, characterization, conditioning, segregation and generally the safe management of radioactive waste. Radioactivity in foodstuffs is controlled under the *Tanzania Food, Drugs and Cosmetics Act, 2002*, which establishes the **Tanzania Food and Drugs Authority (TFDA)**. TFDA and TAEC are supposed to work closely.

¹⁰ Environmental rights are not expressly incorporated in the Constitution of the United Republic of Tanzania of 1977, as amended, (the Union Constitution). However, the right of every person to take legal action to ensure the protection of the Constitution and the laws of the land is, enshrined in article 26(2) of the Union Constitution. And according to Article 27(1) of the Union Constitution, every person has a general duty to among other things, “protect the natural resources of the United Republic.” Whether the express duty to protect natural resources implies also a general duty to protect the “environment” is highly debatable.

¹¹ The laws of the land envisaged here include all the natural resource laws and environmentally related sectoral legislations currently in force.

- (a) exercise its powers in a manner that protects the environment and human health, applies the precautionary principle that, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, and promotes and reinforces enforceable pollution prevention approaches;
- (b) take preventive and remedial measures to protect, enhance and restore the environment;
- (c) take the necessity of protecting the environment into account in making social and economic decisions;
- (d) implement an ecosystem approach that considers the unique and fundamental characteristics of ecosystems;
- (e) endeavour to act in cooperation with other states to protect the environment;
- (f) encourage the participation of the people of Tanzania in the making of decisions that affect the environment;
- (g) facilitate the protection of the environment by the people of Tanzania;
- (h) establish nationally consistent standards of environmental quality;
- (i) provide information to the people of Tanzania on the state of the Tanzanian environment;
- (j) apply knowledge, including traditional ecological knowledge, science and technology, to identify and resolve environmental problems;
- (k) protect the environment, including its biological diversity, and human health, from the risk of any adverse effects of the use and release of toxic substances, pollutants and wastes;
- (l) protect the environment, including its biological diversity, and human health, by ensuring the safe and effective use of biotechnology;
- (m) endeavour to act expeditiously and diligently to assess whether existing substances or those new to Tanzania are toxic or capable of becoming toxic and assess the risk that such substances pose to the environment and human life and health;
- (n) endeavour to act with regard to the intent of international and regional arrangements entered into for the purpose of achieving the highest level of environmental quality throughout Tanzania;
- (o) ensure, to the extent that is reasonably possible, that all areas of national regulation for the protection of the environment and human health are addressed in a complimentary manner in order to avoid duplication and to provide effective and comprehensive protection;
- (p) endeavour to exercise its powers to require the provision of information in a coordinated manner; and
- (q) apply and enforce the proposed legislation in a fair, predictable and consistent manner.

(2) In fulfilling the duties mentioned in subsection (1), the Government of the United Republic of Tanzania shall consider the following before taking any measure:

- (a) the short and long term human and ecological benefits arising from the environmental protection measure;
- (b) the positive economic, social and cultural impacts arising from the measure, including those cost-savings arising from health, environmental and technological advances and innovation, among others; and
- (c) any other benefits accruing from the measure.

(3) None of the things in subsection (2) shall be construed so as to prevent the taking of any action to protect the environment or human health for the purposes of the proposed legislation.

PART III

ADMINISTRATION AND ESTABLISHMENT OF INSTITUTIONS

Responsibility of the Minister

6.-(1) For the purpose of enabling national action to be carried out and taking cooperative action in matters affecting the environment and for the purpose of avoiding duplication in regulatory activity among government ministries and departments, there is established a **National Environmental Advisory Committee** – “the Committee.”

Functions of the Committee

(2) The functions of the Committee shall be:

- (a) to advise the Minister on regulations proposed to be made under this Act;
- (b) to advise the Minister on a cooperative, coordinated inter-ministerial and departmental approach for the management of toxic and hazardous substances and the environment; and
- (c) to advise the Minister on other environmental matters that are of mutual interest to the Government and other states and to which the proposed legislation relates.

Precautionary Principle

(3) In giving its advice and recommendations, the Committee shall use the precautionary principle.

Composition of the Committee

7.- (1) The Committee shall consist of the following members:

[the composition of the Committee is subject to debate]

(2) The Committee may co-opt persons who are involved in environmental affairs at national level and who in the opinion of the Committee can make a contribution to the activities of the Committee.

(3) The Committee may call on the environmental management institution, lead ministries, other governmental entities, and the private sector for scientific and technical advice as needed.

10.(1) The Minister shall table every annual report on the state of the environment prepared under section [...] of this Act before the National Assembly as soon as reasonably practicable after its publication where the National Assembly is in session, or where not in session, within **[at least] [twenty-one days?] [before]** the day the National Assembly next sits after such publication.

PART IV

PUBLIC PARTICIPATION

11. In this part, “environmental protection action” means an action under the relevant section of the Act.

Environmental Registry

12.- (1) The Minister shall establish a registry, to be called the **Environmental Registry**, for the purpose of facilitating access to documents relating to matters under this Act.

Contents of Environmental Registry

(2) The Environmental Registry shall contain notices and other documents published or made publicly available by the Minister, and shall also include, subject to the *National Security Act, 1970*,

- (a) notices of objection and of any approval granted under the proposed legislation,
- (b) a copy of every policy and of every proposed regulation or order made under the proposed legislation, and
- (c) copies of documents submitted to a court by the Minister relating to any environmental protection action

Form and manner of Environmental Registry

(3) The Minister may determine the form of the Environmental Registry, how it is to be kept and how access to it is to be provided.

Protection from civil proceeding or prosecution

13. Despite any other Act of Parliament, no civil or criminal proceedings may be brought against the Government, the Minister and any other person acting on behalf of or under the direction of the Minister for the full or partial disclosure in good faith of any notice or other document through the Environmental Registry or any consequences of its disclosure.

The Right to a Clean Environment

14.-(1) Every person in Tanzania is entitled to a clean and healthy environment and the corresponding duty to maintain, contribute to, safeguard and enhance the environment and natural resources individually and collectively.

(2) The entitlement to a clean and healthy environment includes the access by any person in Tanzania to the various public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.

(3) If a person alleges that the conferred entitlement has been, is being or is likely to be contravened in relation to that person, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the competent court for redress and the competent court may make such orders, issue such writs or give such directions as it may deem appropriate to-

- (a) prevent, stop or discontinue any act or omission deleterious to the environment;
- (b) compel any public officer to take measures to prevent or discontinue any act or omission deleterious to the environment;
- (c) require that any on-going activity be subjected to an environmental audit in accordance with the provisions of this Act;
- (d) compel the person responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage; and
- (e) provide compensation for any victim of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.

(4) A person proceeding under subsection (3) shall have the capacity to bring an action notwithstanding that such person cannot show that the defendant's act or omission has caused or is likely to cause that person any personal loss or injury provided that such action – is not frivolous or vexatious; or; is not an abuse of the court process.

(5) An action under this Act may be brought by any individual or a body of persons whether corporate or unincorporated.

- (6) An action under this Act may be brought by,
- (a) the Environmental Management Institution on its own initiative;
 - (b) an aggrieved person acting in such person's own interest;
 - (c) a body of persons or association in the interests of its members; or
 - (d) a person acting in the interest of a group or class of persons.

Voluntary Reports

15.-(1) Where a person has knowledge of the commission or reasonable likelihood of the commission of an offence under this Act, but is not required to report the matter under this Act, the person may report any information relating to the offence or likely offence to an enforcement officer or any person to whom a report may be made under this Act.

Request for confidentiality

(2) The person making the report under subsection (1) may request that their identity, any information that could reasonably be expected to reveal their identity, not be disclosed.

Requirement for confidentiality

(3) No person shall disclose or cause to be disclosed the identity of a person who makes a request for confidentiality or any information that could reasonably be expected to reveal their identity unless the person authorizes the disclosure in writing.

Employee protection

16.-(1) Despite any other Act of Parliament, no employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that:-

- (a) the employee has made a report relating to an offence or likely offence
- (b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention of refusing to do anything that is an offence under the proposed legislation, or
- (c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done by or under the proposed legislation.

Investigation of Offences

17.-(1) An individual who is resident in Tanzania and at least 18 years of age may apply to the Minister for an investigation of any offence under this Act that the individual alleges has occurred.

(2) The application made under subsection (1) shall include a solemn affirmation, oath or declaration:-

- (a) stating the name and address of the applicant,
- (b) stating that the applicant is at least 18 years old and a resident of Tanzania,
- (c) stating the nature of the alleged offence and the name of each person alleged to have contravened, or to have done something in contravention of, the proposed legislation or the regulations, and

- (d) containing a concise statement of the evidence supporting the allegations of the applicant.

Form

- (3) The Minister may prescribe the form in which an application under this section may be made.

Investigation by Minister

- (4) The Minister shall acknowledge receipt of the application within [20] days of the receipt and shall investigate all matters that the Minister considers necessary to determine the facts relating to the alleged offence.

Progress Reports

- (5) After acknowledging receipt of the application, the Minister shall report to the applicant every [60] days on the progress of the investigation and the action, if any, that the Minister has taken or proposes to take, and the Minister shall include in the report an estimate of the time required to complete the investigation or to implement the action, but a report is not required if the investigation is discontinued before the end of the [60] days.

Minister may send evidence to Attorney General

- (6) At any stage of an investigation, the Minister may send any documents or other evidence to the Attorney General for consideration of whether an offence has been or is about to be committed under this Act and for any action that the Attorney General may wish to take.

Discontinuation of investigation

- (7) The Minister may discontinue the investigation if the Minister is of the opinion that,
 - (a) the alleged offence does not require further investigation, or
 - (b) the investigation does not substantiate the alleged offence.

Report

- (8) If the investigation is discontinued, the Minister shall,
 - (a) prepare a report in writing describing the information obtained during the investigation and stating the reasons for its discontinuation, and
 - (b) send a copy of the report to the applicant and to any person whose conduct was investigated.
- (9) A copy of the report sent to a person whose conduct was investigated must not disclose the name or address of the applicant or any other personal information about them.

Environmental Protection Action

- 18.-(1)** An individual who has applied for an investigation may bring an environmental protection action if
 - (a) the Minister failed to conduct an investigation and report within a reasonable time, or
 - (b) the Minister's response to the investigation was unreasonable.

Nature of action

(2) The action may be brought in any court of competent jurisdiction against a person who committed an offence under the proposed legislation that,

- (a) was alleged in the application for the investigation
- (b)** caused significant harm to the environment

Relief that may be claimed in the action

(3) The individual may claim any or all of the following:

- (a) a declaratory order,
- (b) an order, including an interlocutory order, requiring the defendant to refrain from doing anything that, in the opinion of the court may constitute an offence under the proposed legislation
- (c) an order, including an interlocutory order, requiring the defendant to do anything that, in the opinion of the court, may prevent the continuation of an offence under the proposed legislation,
- (d) an order to the parties to negotiate a plan to correct or mitigate the harm to the environment or to human, animal or plant life or health, and to report to the court on the negotiations within a time set by the court, and
- (e) any other appropriate relief, including costs of the action, but not including damages.

Limitation of period of two years

19.- (1) An environmental protection action may be brought only within a limitation period of **[two years]** beginning when a plaintiff becomes aware of the conduct on which the action is based, or should have become aware of it.

Time during investigation not included

(2) The limitation period does not include any time following the plaintiff's application for an investigation, but before the plaintiff receives a report under subsection [...].

No action for remedial conduct

(3) An environmental protection action may not be brought if the alleged conduct,

- (a) was taken
 - (i) to correct or mitigate harm or risk of harm to the environment or to human, animal or plant life or health,
 - (ii) to protect national security, support humanitarian relief efforts, participate in multilateral military or peace-keeping activities under the auspices of international or regional organizations or defend a member state of the African Union, and
- (b) was reasonable and consistent with public safety.

Exception

(4) An environmental protection may not be brought against a person if the person was convicted of an offence under this Act, or environmental protection alternative measures within the meaning of Part ... were used to deal with the person, in respect of the alleged conduct on which the action is based.

Notice of the action

20.- (1) The plaintiff in an environmental protection action shall give notice of the action to the Minister no later than **[10]** days after the document originating the action is first served on a defendant, and the Minister shall give notice of the action in the **Environmental Registry** as soon as possible after receipt of the plaintiff's notice.

Notice of other matters

(2) In an environmental protection action,

- (a) a court may order any party to the action to give notice to the Minister of any matter relating to the action, within the time specified by the court, and
- (b) the Minister shall give notice of that matter in the **Environmental Registry** as soon as possible after receipt of the party's notice.

Attorney General to be served

(3) A plaintiff shall serve the Attorney General with a copy of the document originating an environmental protection action within **[20]** days after first serving the document on a defendant.

Attorney General may participate

(4) The Attorney General is entitled to participate in the action, either as a party or otherwise. Notice of the Attorney General's decision to participate shall be given to the plaintiff and be included in the **Environmental Registry** within **[45]** days after the copy of the originating document is served on the Attorney General.

Right of appeal

(5) The Attorney General is entitled to appeal from a judgment in the action and to make submissions and present evidence in an appeal.

Other participants

21.- (1) A competent court may allow any person to participate in an environmental protection action in order to provide fair and adequate representation of the private and public interests involved.

Manner and terms of participation

(2) The competent court may determine the manner and terms of the person's participation, including the payment of costs.

Burden of proof

22.- (1) The offence alleged in an environmental protection action and the resulting significant harm are to be proved on a balance of probabilities.

Defences

(2) The following defences are available in an environmental protection action:

- (a) the defence of due diligence in complying with this Act and the regulations
- (b) the defence that the alleged conduct is authorized by or under an Act of Parliament,

- (c) except with respect to a Government source, the defence that the alleged conduct is authorized by or under a law of a government that is subject of an order that the provisions of a particular regulation do not apply in an area under the jurisdiction of the government,
- (d) the defence of officially induced mistake of law

Other defences not excluded

(3) Subsection (2) does not limit the availability of any other defences.

Undertakings to pay damages

23.-(1) In deciding whether to dispense with an undertaking to pay damages caused by an interlocutory order in an environmental protection action, the competent court may consider any special circumstances, including whether the action is a test case or raises a novel point of law.

Stay or dismissal

24.-(1) A competent court may stay or dismiss an environmental protection action if it is in the public interest to do so.

Factors to be considered

(2) In deciding whether to stay or dismiss the action, the court may consider

- (a) environmental, health, safety, economic, social and cultural concerns,
- (b) whether the issues raised in the action would be better resolved in some other way,
- (c) whether the Minister has an adequate plan to correct or mitigate the harm to the environment or human, animal or plant life or health or otherwise to address the issues raised in the action, and
- (d) any other relevant matter.

Remedies

(3) If a competent court finds that the plaintiff is entitled to judgment in an environmental protection action, it may grant any relief mentioned in the [*section on relief that may be claimed*].

Orders to negotiate plans

25.-(1) A competent court order to negotiate a plan to correct or mitigate the harm to the environment or human, animal or plant life or health may, to the extent that is reasonable, practicable and ecologically sound, require the plan to provide for:-

- (a) the prevention, reduction or elimination of the harm,
- (b) the restoration of the environment,
- (c) the restoration of all uses, including enjoyment, of the environment affected by the offence,
- (d) the payment of money by the defendant as the court may direct to achieve the plan's purposes, and
- (e) monitoring the implementation of the plan and the progress made in achieving its purposes.

(2) Before making the order, the competent court must take into account any efforts that the defendant has already made to deal with the harm.

Other orders

(3) The competent court may also make interlocutory or ancillary orders to ensure that the negotiation of the plan runs smoothly, including orders:-

- (a) for the payment of the costs of negotiation,
- (b) requiring the plaintiff or the defendant to prepare a draft of the plan, and
- (c) setting a time limit for the negotiations.

Appointment of other person to prepare plan

26.-(1) The competent court may appoint a person who is not a party to prepare a draft plan if the parties cannot agree on the plan or the competent court is not satisfied with the plan that they negotiate.

Order to prepare another plan

(2) The competent court may order the parties to prepare another plan if it is not satisfied with the plan that they negotiate

Approval and effective date

(3) The competent court may approve a plan that the parties negotiate or a plan prepared by a person appointed under the relevant subsection of this section and the approved plan comes into effect on a day determined by the court

Restriction on orders to negotiate plans

(4) A competent court may not order the negotiation of a plan to correct or mitigate the harm to the environment or human, animal or plant life or health if it determines that:-

- (a) the harm has already been corrected or mitigated,
- (b) adequate measures to correct or mitigate the harm have already been ordered under the proposed legislation or any other law in force in Tanzania.

Settlement or discontinuance

27.-(1) An environmental protection action may be settled or discontinued only with the approval of the competent court and on terms that it considers appropriate.

Settlements and orders

(2) If an environmental protection action results in an order of a competent court or a settlement approved by a competent court,

- (a) the resolution of any question of fact by the order or settlement is binding on a court in any other environmental protection action in which that question arises, and
- (b) no other environmental protection action may be brought with respect to the offence or alleged offence dealt with by the order or settlement.

Costs

28. In deciding whether to award costs in an environmental protection action, the competent court may consider any special circumstances, including whether the action is a test case or raises a novel point of law.

Action to Prevent or Compensate Loss

Injunction

29. (1) Any person who suffers, or is about to suffer, loss or damage as a result of conduct that contravenes any provision of this Act or the regulations may seek an injunction from a court of competent jurisdiction ordering the person engaging in the conduct:-

- (a) to refrain from doing anything that it appears to the court causes or will cause the loss or damage,
- (b) to do anything that it appears to the court prevents or will prevent the loss or damage.

Civil cause of action

(2) Any person who has suffered loss or damage as a result of conduct that contravenes any provision of the proposed legislation or the regulations may, in any court of competent jurisdiction, bring an action to recover from the person who engaged in the conduct

- (a) an amount equal to the loss or damage proved to have been suffered by the person, and
- (b) an amount to compensate for the costs that the person incurs in connection with the matter and proceedings under this section.

Other Matters

Evidence of offence

30. (1) In an action under this part, the record of proceedings in any court in which a defendant was convicted of an offence under the proposed legislation is evidence that the defendant committed the offence.

Certificate evidence of conviction

(2) In the action, evidence that a defendant was convicted of an offence under the proposed legislation may be given by a certificate stating with reasonable particularity the conviction and sentence of the defendant

Signature of certificate

(3) The Certificate shall be signed by

- (a) the person who made the conviction, or
- (b) the clerk of the court in which the conviction was made

(4) Once it is proved that the defendant is the offender mentioned in the certificate, it is evidence without proof of the signature or the official character of the person appearing to have signed it.

Civil remedies not affected

31. No civil remedy for any conduct is suspended or affected by reason only that the conduct is an offence under this Act.

Remedies not repealed, etc.

32. Nothing in this Act shall be interpreted so as to repeal, remove or reduce any remedy available to any person under any law in force in Tanzania.

Damages caused by a ship

33. No claim for damage caused by a ship may be made under the proposed legislation to the extent that a claim for that damage may be made under the

Establishment of Environment Authority

33. (1) There is established an autonomous and independent environmental management institution to be known as [...].¹²

(2) The Environmental Management Institution shall be a body corporate, capable of suing and being sued in its own name and shall have perpetual succession.

Board of the proposed Environmental Management Institution (EMI)

34. (1) The EMI shall be managed by a Board, which shall consist of:-

- (a) Chairperson to be appointed by the President;
- (b) Permanent Secretary of the Ministry for the time being responsible for matters relating to the EMI or an officer of that Ministry designated in writing by the Permanent Secretary;
- (c) The Director-General or Executive Director of the EMI
- (d) Three members being officers of the EMI
- (e) Two members of the public not being public officials appointed by the Minister in consultation with the Committee; and
- (f) The Secretary to the Board, who shall be appointed by the EMI.

General powers of the proposed Environmental Management Institution

35. (1) The EMI shall have all powers necessary for the proper performance of its functions under this Act and do all other functions a body corporate is capable of doing under any other written law, including but not limited to:

- (a) advise the Minister on the formulation of policies on all aspects of the environment and in particular make recommendations for the protection of the environment;
- (b) coordinate the activities of bodies concerned with the technical or practical aspects of the environment and serve as a channel of communication between such bodies and the Ministry;
- (c) coordinate the activities of such bodies as it considers appropriate for the purposes of controlling the generation, treatment, storage, transportation and disposal of industrial waste;
- (d) secure in collaboration with such persons as it may determine the control and prevention of discharge of waste into the environment and the protection and improvement of the quality of the environment;
- (e) collaborate with such foreign and international agencies as the EMI considers necessary for the purposes of this Act;
- (f) establish, promote or adopt EIA guidelines and procedures and review EIS;
- (g) carry out regulatory environmental inspections including taking necessary enforcement action in the event of violation of environmental standards;
- (h) formulate and implement environmental programmes and plans;

¹² The title of the institution is to be determined latter. It could be an Agency, Authority, Council etc

- (i) promote national and international cooperation or collaboration;
- (j) liaise with ministries and appropriate institutions;
- (k) issue environmental permits and pollution abatement notices for controlling the volume, types, constituents and effects of waste discharges, emissions, deposits or other source of pollutants and of substances which are hazardous or potentially dangerous to the quality of the environment or any segment of the environment;
- (l) issue notice in the form of directives, procedures or warnings to such bodies as it may determine for the purpose of controlling the volume, intensity and quality of noise in the environment;
- (m) prescribe, establish or adopt in consultation with other competent bodies standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances;
- (n) ensure compliance with any laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects;
- (o) act in liaison and cooperation with government agencies, departments, Local Government Authorities and other bodies and institutions to control pollution and generally protect the environment;
- (p) conduct investigations into environmental issues and advise the Minister thereon;
- (q) promote studies, research, surveys and analyses for the improvement and protection of the environment and the maintenance of sound ecological systems in Tanzania;
- (r) initiate and pursue formal and non-formal education programmes for the creation of public awareness of the environment and its importance to the economic and social life of the country;
- (s) develop a comprehensive database on the environment and environmental protection for the information of the public;
- (t) conduct seminars, workshops, symposia, conferences and training programmes and gather and publish reports and information relating to the environment;
- (u) foster and facilitate the exchange of environmental information;
- (v) impose and collect environmental protection levies in accordance with this Act or regulations made under this Act;
- (w) coordinate with such international agencies as the EMI considers necessary for the purposes of this Act;
- (x) perform any other functions conferred on it under this Act.

Powers in respect to lead agencies

(2) The EMI may, after giving reasonable notice of its intention so to do, direct any lead agency to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the lead agency by or under the proposed legislation or any other written law, in the field of environment.

Procedure

(3) Subject to this Act, the EMI shall regulate its own procedure.

Conduct of business and affairs of the EMI

36. (1) The EMI shall be lead by a [Director-General or an Executive Director] who shall be appointed by the President in accordance with the provisions of this Act.

(2) The Director-General or Executive Director shall be appointed from among persons ...

Responsibility of the Director-General/Executive Director

(3) The Director-General or Executive Director shall be its chief executive and subject to this Act, be responsible for the day-to-day management of the affairs of the EMI.

General fund

37. (1) There is established a general fund for the EMI, which shall vest in the EMI.

(2) The funds for the general fund shall be sourced from the following–

- (a) such monies or assets as may accrue to or vest in the EMI in the course of the exercise of its powers or the performance of its functions under the proposed legislation;
- (b) such sums as may be granted to the EMI by the Minister pursuant to the relevant section of the proposed legislation; and
- (c) all monies from any other source provided for or donated or lent to the EMI.

(3) There shall be made to the EMI funds out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the EMI in the exercise of its power or the performance of its functions under this Act.

Annual estimates

38. (1) The EMI shall prepare its own budget estimates every financial year.

(2) The annual estimates of the EMI shall be approved by the EMI's Board before the commencement of the financial year to which they relate.

Accounts and audit

(3) The EMI shall keep all proper books and records of accounts of the income, expenditure and assets.

(4) Within a period of six months from the end of each financial year, the EMI shall submit to the Auditor and Controller General or to an auditor appointed under this Act, the accounts of the EMI together with –

- (a) a statement of its income and expenditure during that year; and
- (b) a statement of its assets and liabilities on the last day of that year.

(5) The accounts of the EMI shall be audited and reported upon in accordance with the relevant provisions of the Exchequer and Audit Act by the Auditor and Controller General, or by an auditor appointed by the EMI with the approval of the Auditor and Controller General.

Establishment of National Environment Restoration Fund

39. (1) There is established a **National Environment Restoration Fund**, consisting of the funds of:-

- (a) such proportion of fees or deposit bonds as may be determined by the Authority from time to time;
- (b) such sums as may be donated or levied from industries and other projects proponents as a contribution towards the Restoration Fund.

(2) The Fund shall vest in the EMI and, subject to the proposed legislation be administered by the Director-General/Executive Director.

(3) The object of the Fund is to act as a supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the EMI to intervene towards the control or mitigation of environmental degradation.

(4) The Minister may, by notice in the Gazette, issue orders for the levying of funds from project proponents towards the Restoration Fund.

Annual Financial Report

40. (1) As soon as practicable but not later than three months after the expiry of the financial year, the Director-General or Executive Director shall submit to the Board a financial report concerning the activities of the EMI during such financial year.

(2) The Report must contain information on the activities and financial affairs of the EMI including an appendage of:-

- (a) an audited statement of income and expenditure of the previous financial year;
- (b) estimates of income and expenditure of the EMI for the next financial year.

(3) The Board shall submit the Report to the Minister.

(4) Not later than fourteen days after the sitting of the National Assembly next after receipt of the Report, the Minister shall table the Report before the National Assembly for debate.

PART V

POLLUTION PREVENTION

Pollution Prevention Plans

Requirement for pollution prevention plans

41. (1) The Minister may, at any time, publish in the Government *Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person or class of persons described in the notice to prepare and implement a pollution prevention plan in respect of a substance or group of substances specified on the List of Toxic Substances in Schedule 1, or to which subsection [...] or [...] applies.

Contents of notice

(2) The notice may specify:-

- (a) the substance or group of substances in relation to which the plan is to be prepared;
- (b) the commercial, manufacturing, processing or other activity in relation to which the plan is to be prepared;
- (c) the factors to be considered in preparing the plan;
- (d) the period within which the plan is to be prepared;
- (e) the period within which the plan is to be implemented; and
- (f) any administrative matter necessary for the purposes of this Part.

Extension of time

(3) Where the Minister is of the opinion that further time is necessary to prepare or implement the plan, the Minister may extend the period for a person who submits a written request before the expiry of the period referred to in the notice or of any extended period.

Publication of notice of extension

(4) The Minister shall publish in the Government *Gazette* and in any other manner that the Minister considers appropriate a notice stating the name of any person for whom an extension is granted, whether the extension is for the preparation or implementation of the plan, and the duration of the period of the extension.

Application for waiver

(5) On a written request submitted by any person to whom a notice under subsection (1) is directed, the Minister may waive the requirement for that person to consider a factor specified under paragraph (2)(c) where the Minister is of the opinion that it is not reasonable or practicable to consider the factor on the basis of reasons provided in the request.

Plan prepared or implemented for another purpose

42. (1) Subject to subsection (2), where a person who is required to prepare or implement a pollution prevention plan under a notice published under section [...] has prepared or implemented a plan in respect of pollution prevention on a voluntary basis or for another government or under another Act of Parliament that meets all or some of the requirements of the notice, the person may use that plan for the purposes of meeting the requirements of this Part and, in that case, the plan shall be considered to be a pollution prevention plan that has been prepared or implemented under this Part.

Where partial requirements met

(2) Where a person uses a plan under subsection (1) that does not meet all of the requirements of the notice, the person shall,
(a) amend the plan so that it meets all of those requirements; or
(b) prepare an additional pollution prevention plan that meets the remainder of those requirements.

Declaration of preparation

43. (1) Every person who is required to prepare a pollution prevention plan under section [...] or [...] or under an agreement in respect of environmental protection alternative measures shall file, within **30** days after the end of the period for the preparation of the plan specified in the notice referred to in subsection [...]1) or extended under subsection [...]3), or specified by the court under section [...] or in the agreement, as the case may be, a written declaration to the Minister that the plan has been prepared and is being implemented.

Declaration of implementation

(2) Every person who is required to implement a pollution prevention plan under section [...] or [...] or under an agreement in respect of environmental protection alternative measures shall file, within **30** days after the completion of the implementation of the plan, a written declaration to the Minister that the implementation of the plan has been completed.

Filing of amended declaration

(3) Where a person has filed a declaration under subsection (1) or (2) and the declaration contains information that, at any time after the filing, has become false or misleading, that person shall file an amended declaration to the Minister within **30** days after that time.

Form of declaration

(4) A declaration referred to in subsection (1), (2) or (3) shall be filed in the form and manner and contain the information specified by the Minister.

Requirement to keep plan

44. Every person who is required to prepare a pollution prevention plan under section [...] or [...] or under an agreement in respect of environmental protection alternative measures shall keep a copy of the plan at the place in Tanzania in relation to which the plan is prepared.

Requirement to submit certain plans

45. (1) The Minister may publish in the *Government Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person or class of persons described in the notice who are required to prepare and implement a pollution prevention plan under section [...] to submit, within the period specified by the Minister, the plan or any part of the plan for the purpose of determining and assessing preventive or control actions in respect of a substance or group of substances.

Submission of plans required by court or agreement

(2) The Minister may publish in the *Government Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person or class of persons described in the notice who are required to prepare and implement a pollution prevention plan under section [...] or under an agreement in respect of environmental protection alternative measures to submit, within the period specified by the Minister, the plan or any part of the plan.

Model Plans and Guidelines

Model plans

46. For the purpose of providing guidance in the preparation of a pollution prevention plan, the Minister may publish in the *Government Gazette* or in any other manner that the Minister considers appropriate a model pollution prevention plan or a notice stating where a copy of the plan may be obtained.

Guidelines

47. (1) The Minister shall, with particular consideration of paragraph 2(1)(m), develop guidelines respecting the circumstances in which and the conditions under which pollution prevention planning is appropriate.

Consultation

(2) In carrying out the duties under subsection (1), the Minister shall offer to consult with the members of the Committee and may consult with a government department or agency, representatives of industry and labour and local government authorities or with persons interested in the quality of the environment.

Other Initiatives

Information clearing-house

48. (1) The Minister may, for the purposes of encouraging and facilitating pollution prevention, establish and maintain a national pollution prevention information clearing-house in order to collect, exchange and distribute information relating to pollution prevention.

Recognition program

(2) The Minister may establish a program to publicly recognize significant achievements in the area of pollution prevention.

Cooperation with other bodies

(3) The Minister may, in exercising the powers conferred by subsections (1) and (2), act alone or in cooperation with any government in Tanzania or government of a foreign state or any of its institutions or any person.

PART VI

CONTROLLING TOXIC SUBSTANCES

Interpretation

Toxic substances

49. For the purposes of this Part and Part VIII, except where the expression “inherently toxic” appears, a substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions that

- (a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity;
- (b) constitute or may constitute a danger to the environment on which life depends; or
- (c) constitute or may constitute a danger in Tanzania to human life or health.

Definition of “virtual elimination”

50. (1) In this Part, “virtual elimination” means, in respect of a toxic substance released into the environment as a result of human activity, the ultimate reduction of the quantity or concentration of the substance in the release below the level of quantification specified by the Minister in the List referred to in subsection [...].

Virtual Elimination List

(2) The Minister shall, after consultation with the EMI and any other competent authority,¹³ compile a list to be known as the Virtual Elimination List, and the List shall specify the level of quantification for each substance on the List.

Implementing virtual elimination

(3) When the level of quantification for a substance has been specified on the List referred to in subsection (...), the Minister shall prescribe the quantity or concentration of the substance that may be released into the environment either alone or in combination with any other substance from any source or type of source, and, in doing so, shall take into account any factor or information provided for in section [...], including, but not limited to, environmental or health risks and any other relevant social, economic or technical matters.

Definition of “level of quantification”

(4) In section [...], “level of quantification” means, in respect of a substance, the lowest concentration that can be accurately measured using sensitive but routine sampling and analytical methods.

General

Domestic Substances List

51-(1) The Minister shall for the purposes of sections [Categorization of substances on [Domestic Substances List], [Screening level risk assessment], [Manufacture or import of

¹³ Competent authority here include the Tanzania Pesticides Research Institute (TPRI), Tanzania Atomic Energy Commission (TAEC), Chief Government Chemist Agency (CGCA), Government Chemist Laboratory Agency (GCLA), Tanzania Food, Drugs and Cosmetics Authority (TFDA), Tanzania Bureau of Standards (TBS)

substances], maintain a list to be known as the **Domestic Substances List**, and the List shall specify all substances that the EMI/Minister is satisfied were, between [date] and [date]

- (a) manufactured in or imported into Tanzania by any person in a quantity of not less than 100 kg in any one calendar year; or
- (b) in Tanzanian commerce or used for commercial manufacturing purposes in Tanzania.

Non-domestic Substances

(2) The Minister shall, for the purpose of section [Manufacture or import of substances], maintain a list to be known as the Non-domestic Substances List and the List shall specify substances, other than

- (a) the substances referred to in subsection (1); and
- (b) living organisms within the meaning of Part VIII

Amendment of Lists

(3) Where a substance was not included on the Domestic Substances List and the EMI/Minister subsequently learns that, between [date/year] and [date/year], the requirements set out in paragraph (1)(a) or (b) were met in respect of the substance, the Minister shall add the substance to the List and, where necessary, delete it from the Non-domestic Substances List.

Amendments of Lists

(4) Where the Minister includes a substance on the Domestic Substances List and subsequently learns that, between [date/year] and [date/year], the requirements set out in paragraph (1)(a) or (b) were not met in respect of the substance, the EMI/Minister shall delete the substance from the List and may add it to the Non-domestic Substances List.

Publication of List

(5) The Minister shall publish in the Government Gazette and in any other manner that the Minister considers appropriate the Domestic Substances List, the Non-domestic Substances List and any amendments to those Lists.

Designation

(6) The Minister may, by order, designate any person or class of persons to exercise the powers and perform the duties and functions set out in this section.

Regulation of criteria

52-(1) The Minister may, on the recommendation of the EMI and after consultation with any other competent authority, make regulations

- (a) respecting a property or characteristic of a substance, including, without limiting the generality of the foregoing, persistence and bioaccumulation;
- (b) prescribing the substances or groups of substances in respect of which the property or characteristic may be applicable;
- (c) prescribing the conditions under which and the circumstances in which the property or characteristic may be applicable; and
- (d) respecting the conditions, test procedures and laboratory practices to be followed for analyzing, testing or measuring the property or characteristic.

Condition

(2) No regulation that is applicable to a mineral or metal may be made under subsection (1) unless, in the opinion of the Minister, the natural occurrence, properties and characteristics of that mineral or metal in the environment have been taken into consideration.

Research, investigation and evaluation

53- For the purpose of assessing whether a substance is toxic or is capable of becoming toxic, or for the purpose of assessing whether to control, or the manner in which to control, a substance, including a substance specified on the List of Toxic Substances in Schedule [...], the EMI/Minister may

- (a) collect or generate data and conduct investigations respecting any matter in relation to a substance;
- (b) correlate and evaluate any data collected or generated under paragraph (a) and publish results of any investigations carried out under that paragraph; and
- (c) provide information and make recommendations respecting any matter in relation to a substance, including, without limiting the generality of the foregoing, measures to control the presence of the substance in the environment.

Formulation of guidelines by the EMI/Minister

54-(1) The Minister may issue guidelines for the purposes of the interpretation and application of the provisions of this Part.

Consultation

(2) In exercising the powers under subsection (1), the Minister shall offer to consult with government departments or agencies, representatives of industry and labour and local government authorities or with persons interested in assessing and controlling toxic substances.

Guidelines public

(3) Guidelines issued under this section shall be made available to the public, and the Minister shall give notice of them in the Government Gazette and in any other manner that the Minister considers appropriate.

Information Gathering

Notice to the Minister

55- Where a person,

- (a) imports, manufactures, transports, processes or distributes a substance for commercial purposes, or
- (b) uses a substance in a commercial manufacturing or processing activity,

and obtains information that reasonably supports the conclusion that the substance is toxic or is capable of becoming toxic, the person shall without delay provide the information to the EMI/Minister unless the person has actual knowledge that the EMI/Minister already has the information.

Notice requiring information, samples or testing

56-(1) The Minister may, for the purpose of assessing whether a substance is toxic or is capable of becoming toxic, or for the purpose of assessing whether to control, or the manner in which to control, a substance, including a substance specified on the List of Toxic Substances in Schedule [...],

- (a) publish in the Government Gazette and in any other manner that the Minister considers appropriate a notice requiring any person who is described in the notice who is or was within the period specified in the notice engaged in any activity involving the substance to notify the [EMI/Minister] that the person is or was during that period engaged in that activity;
- (b) publish in the Government Gazette and in any other manner that the Minister considers appropriate a notice requiring any person who is described in the notice to provide the [EMI/Minister] with any information and samples referred to in subsection (2) that may be in the person's possession or to which the person may reasonably be expected to have access; and
- (c) send a written notice to any person who is described in the notice and who is or was within the period specified in the notice engaged in any activity involving the importation or manufacturing of the substance or any product containing the substance requiring the person to conduct toxicological and other tests that the Minister may specify in the notice and submit the results of the tests to the [EMI/Minister].

Contents of notice

- (2) A notice under paragraph (1)(b) may require any information and samples, including
- (a) in respect of a substance, available toxicological information, available monitoring information, samples of the substance and information on the quantities, composition, uses and distribution of the substance and products containing the substance; and
 - (b) in respect of a work, undertaking or activity, plans, specifications, studies and information on procedures.

Compliance with notice

(3) Every person to whom a notice referred to in any of paragraphs (1)(a) to (c) is directed or sent shall comply with the notice within the time specified in the notice.

Extension of time

(4) Despite subsection (3), the Minister may, on request in writing from any person to whom a notice referred to in a paragraph (1)(a), (b) or (c) has been sent, extend the time or times within which the person shall comply with the notice.

Exercise of power

(5) The Minister may not exercise the power under paragraph (1)(c) in relation to a substance unless the Minister has reason to suspect that the substance is toxic or capable of becoming toxic or it has been determined under this Act that the substance is toxic or capable of becoming toxic.

Priority Substances and Other Substances

Categorization of substances on Domestic Substances List

57-(1) The Minister shall, within [...] years from the coming into force of this Act, categorize the substances that are on the Domestic Substances List by virtue of section [...], for the purpose of indemnifying the substances on the List that, in the opinion of the Minister and on the basis of available information,

- (a) may present, to individuals in Tanzania, the greatest potential for exposure; or
- (b) are persistent or bio-accumulate in accordance with the regulations, and inherently toxic to human beings or to non-human organism, as determined by laboratory or other studies.

Screening level risk assessment

58-(1) The Minister shall conduct a screening assessment of a substance in order to determine whether the substance is toxic or capable of becoming toxic and if the Minister identify a substance on the Domestic Substances List to be a substance described in paragraph (1)(a) or (b) [*Priority Substances*] or the substance has been added to the Domestic Substances List under section [*Adding living organism to the Domestic Substance List*], shall propose one of the following measures:

- (a) taking no further action in respect of the substance;
- (b) unless the substance is already on the Priority Substances List, adding the substance to the Priority Substances List; or
- (c) recommending that the substance be added to the List of Toxic Substances Schedule (1) and, where applicable, the implementation of virtual elimination under subsection [...]

Mandatory proposal

(2) Where based on screening assessment conducted under subsection (1), the substance is determined to be toxic or capable of becoming toxic, and the Minister is satisfied that

- (a) the substance may have a long-term harmful effect on the environment and is
 - (i) persistent and bio-accumulative in accordance with the regulations
 - (ii) inherently toxic to human beings or non-human organisms, as determined by laboratory or other studies, and
 - (iii) the substance is not a naturally occurring radionuclide or a naturally occurring inorganic substance
- (b) the presence of the substance in the environment results primarily from human activity,

the Minister shall propose to take measures referred to in paragraph (1)(c).

Priority Substances List

59-(1) The Minister shall compile and may amend from time to time in accordance with subsection (5) a list, to be known as the Priority Substances List, and the List shall specify substances in respect of which the Minister is satisfied priority should be given in assessing whether they are toxic or capable of becoming toxic.

Consultation

(2) For the purposes of subsection (1), the Minister shall offer to consult with a government department or agency, representatives of industry and labour and local government authorities or with persons interested in the quality of the environment or the preservation and improvement of public health.

Request for addition to Priority Substances List

(3) Any person may file in writing with the Minister a request that a substance be added to the Priority Substances List and the request shall state the reasons for adding the substance to the List.

Consideration of request

(4) The Minister shall consider the request filed under subsection (3) and, within 90 days after the request is filed, the Minister shall inform the person who filed the request of how the Minister intends to deal with it and the reasons for dealing with it in that manner.

Amendments to Priority Substances List

(5) The Minister may amend the Priority Substances List

- (a) by adding a substance to the List where the Minister is satisfied on the basis of a determination made as a result of a screening assessment conducted under section [...], consultation under subsection [...] or a request made under subsection (3) or for any other reason that priority should be given in assessing whether the substance is toxic or capable of becoming toxic; and
- (b) by deleting a substance from the List where the Minister has determined whether the substance is toxic or capable of becoming toxic

Publication of Priority Substances List

(6) The Minister shall publish in the Government Gazette and in any other manner that the Minister considers appropriate the Priority Substances List and any amendments to the List.

Notice of objection

(7) Where the Minister make an assessment whether a substance specified on the Priority Substances List is toxic or capable of becoming toxic and decide not to recommend that the substance be added to the List of Toxic Substances in Schedule [...], any person may, within 60 days after publication of the decision in the Government Gazette, file a notice of objection with the Minister requesting that a board of review be established under section [...] and stating the reason for the objection.

(8) Where a substance is specified on the Priority List Substances for a period of five years and the Minister has not yet determined whether the substance is toxic or capable of becoming toxic, any person may file a notice of objection with the Minister requesting a board of review be established under section [...]

Weight of evidence and precautionary principle

60-(1) When the Minister is conducting and interpreting the results of:-

- (a) a screening assessment under section [...]
- (b) an assessment whether a substance specified on the Priority Substances List is toxic or capable of becoming toxic,

the Minister shall apply a weight of evidence approach and the precautionary principle.

Publication after assessment

61-(1) Where the Minister has conducted:-

- (a) a screening assessment under section [...]
- (b) an assessment whether a substance specified on the Priority Substances List is toxic or capable of becoming toxic,
- (c) has taken into consideration in an expeditious manner the comments filed under subsection (2)

the Minister shall publish in the Government *Gazette* and in any other manner that that Minister considers appropriate,

- (i) a statement indicating one of the measures referred to in subsection (Screening level risk assessment) that the Minister proposes to take;
- (ii) a summary of the scientific considerations on the basis of which the measure is proposed.
- (iii) where the measure is that referred to in paragraph (1)(c), statement indicating the manner in which the Minister intend to develop a proposed regulation or instrument respecting preventive or control actions in relation to the substance.

Scientific consultation

(2) Any person may, within **60** days after publication of the statement referred to in subsection (1), file with the Minister written comments on the measure the Minister propose to take and the scientific considerations on the basis of which the measure is proposed.

Substances and Activities New to Tanzania

Definitions

62- The definitions in this section apply in section [...] to [...]

(1) “significant new activity” includes, in respect of a substance, any activity that results in or may result in:-

- (a) the entry or release of the substance into the environment, in a quantity or concentration that, in the Minister’s opinion, is significantly greater than the quantity or concentration of the substance that previously entered or was released into the environment; or
- (b) the entry or release of the substance into the environment or the exposure or potential exposure of the environment to the substance in a manner and circumstances that, in the Minister’s opinion, are significantly different from the manner and circumstances in which the substance previously entered or was released into the environment or of any previous exposure or potential exposure of the environment to the substance.

“substance” means a substance other than a living organism within the meaning of Part VIII

Manufacture or import of substances

63-(1) Where a substance is not specified on the Domestic Substances List and subsection (2) does not apply, no person shall manufacture or import the substance unless

- (a) the prescribed information with respect to the substance has been provided by the person to the Minister accompanied by the prescribed fee, on or before the prescribed date; and
- (b) the period of assessing the information under subsection (2) has expired.

Notification of significant new activity in respect of substance on List

(2) Where a substance is specified on the Domestic Substances List with an indication that this subsection applies with respect to the substance, no person shall use, manufacture or import the substance for a significant new activity that is indicated on the List with respect to the substance unless:-

- (a) the person has provided the Minister with the prescribed information, on or before the date that is specified by the Minister or prescribed, accompanied by the prescribed fee; and
- (b) the period for assessing the information specified by the Minister or provided under section [...] has expired.

Notification of significant new activity in respect of substance not on List

(3) Where a substance is not specified on the Domestic Substances List and the Minister publishes a notice in the *Government Gazette* indicating that this subsection applies with respect to the substance, no person shall use the substance for a significant new activity that is indicated in the notice unless,

- (a) the person has provided the Minister with the prescribed information, on or before the date that is specified by the Minister or prescribed, accompanied by the prescribed fee; and
- (b) the period of assessing the information specified by the Minister or provided under section [...] has expired.

Application

(4) Subsections (1) to (3) do not apply,

- (a) a substance that is manufactured or imported for a use that is regulated under any other Act of Parliament that provides for notice to be given before the manufacture, import or sale of the substance and for an assessment of whether it is toxic or capable of becoming toxic;
- (b) transient reaction intermediates that are not isolated and are not likely to be released into the environment;
- (c) impurities, contaminants and partially unreacted materials the formation of which is related to the preparation of a substance;
- (d) substances produced when a substance undergoes a chemical reaction that is incidental to the use to which the substance is put or that results from storage or from environmental factors; or
- (e) a substance that is manufactured, used or imported in a quantity that does not exceed the maximum quantity prescribed as exempt from this section.

Assessment of information

64-(1) The Minister shall, within the prescribed assessment period assess information provided under subsection (1) or otherwise available to the Minister in respect of a substance in order to determine whether a substance is toxic or capable of becoming toxic.

Action to be taken after assessment

(2) Where the Minister has assessed any information under subsection (1) and the Minister reasonably suspects that a substance is toxic or capable of becoming toxic, the Minister may, before the expiry of the period for assessing the information,

- (a) permit any person to manufacture or import the substance, subject to any conditions that the Minister may specify;
- (b) prohibit any person from manufacturing or importing the substance; or
- (c) request any person to provide any additional information or submit the results of any testing that the Minister considers necessary for the purpose of assessing whether the substance is toxic or capable of becoming toxic.

(3) The Minister may make regulations for the purposes of better carrying out the requirements under this section.

Regulation of Toxic Substances

Addition to List of Toxic Substances

65-(1) The Minister may, if satisfied that a substance is toxic, on the recommendation of the EMI and any other competent authority, make an order adding the substance to the List of Toxic Substances in Schedule (1).

Priority

(2) In developing proposed regulations or instruments respecting preventive or control actions in relation to substances specified on the List of Toxic Substances in Schedule [...], the Minister shall give priority to pollution prevention actions.

Deletion from List

(3) Subject to subsection (4), the Minister may, if satisfied that the inclusion of a substance specified on the List of Toxic Substances in Schedule [...] is no longer necessary, on the recommendations of the EMI, make an order,

- (a) deleting the substance from the List and deleting the type of regulations specified in the List as being applicable with respect to the substance; and
- (b) repealing the regulations made under section [...] with respect to the substance.

Suspension of time where board of review

(4) Where a board of review is established under section [...] in relation to a substance, no order may be made under subsection (1) and (3) in relation to the substance until the board's report is received by the Minister.

Regulations

66.-(1) Subject to subsection (2) and (3), the Minister may, on the recommendation of the EMI and any other competent authority, make regulations with respect to a substance specified on the List of Toxic Substances in Schedule [...]

Advice by Committee

(2) Before a regulation is made under subsection (1), the Minister shall give the Committee an opportunity to advise the Minister.

Substances regulated under other Acts of Parliament

(3) The Minister shall not make a regulation under subsection (1) in respect of a substance if, in the opinion of the Committee, the regulation regulates an aspect of the substance that is regulated by or under any other Act of Parliament in a manner that provides, in the opinion of the Committee, sufficient protection to the environment and human health.

(4) A regulation made under subsection (1) with respect to a substance may amend the List of Toxic Substances in Schedule [...] so as to specify the type of regulation that applies with respect to the substance.

PART VII

ANIMATE PRODUCTS OF BIOTECHNOLOGY¹⁴

67. The definitions in this section apply in this Part.

“living organism” means a substance that is animate product of biotechnology.

“significant new activity” includes, in respect of a living organism, any activity that results or may result in,

- (a) entry or release of the living organism into the environment in a quantity or concentration that, in the Minister's opinion, is significantly greater than the quantity or concentration of the living organism that previously entered or was released into the environment; or
- (b) the entry or release of the living organism into the environment or the exposure or potential exposure of the environment to the living organism in a manner and circumstances that, in the Minister's opinion, are significantly different from the manner and circumstances in which the living organism previously entered or was released into the environment or of any previous exposure or potential exposure of the environment to the living organism.

Adding living organisms to Domestic Substances List

68.-(1) The Minister shall, for the purposes of sections [Screening level risk assessment] and [Manufacture or import of living organism], add to the Domestic Substances List maintained under section [...] any living organism if the Minister is satisfied that, between [date/year] and [date/year], the living organism

- (a) was manufactured in or imported into Tanzania by any person; and

¹⁴ Tanzania has yet to pass Biosafety Regulations. However, the National Assembly has already passed the Protection of the *Protection of New Plant Varieties (Plant Breeders' Rights) Act, 2002*, which confers certain property rights (breeder's rights) on a person “who breed or discover and develop a variety” (sect.2)

- (b) entered or was released into the environment without being subject to conditions under this or any other Act of Parliament.

Amendment of List

(2) Where the Minister includes a living organism on the Domestic Substances List and subsequently learns that, between [date/year] and [date/year], the requirements set out in paragraphs (1)(a) and (b) were met, the Minister shall delete the substance from the List.

Publication of List

(3) The Minister shall publish in the Government *Gazette* the Domestic Substances List and any amendments to the List.

Designation

(4) The Minister may, by order, designate any person or class of persons to exercise the powers and perform the duties and functions set out in this section.

Manufacture or import of living organism

69-(1) Where a living organism is not specified on the Domestic Substances List, no person shall manufacture or import the living organism unless,

- (a) the prescribed information with respect to the living organism has been provided by the person to the Minister accompanied by the prescribed fee, on or before the prescribed date; and
- (b) the period of assessing the information under section [Assessment of information] has expired.

Notification of significant new activity in respect of living organisms on List

(2) Where a living organism is not specified on the Domestic Substances List with an indication that this subsection applies with respect to the living organism, no person shall use, manufacture or import the living organism for a significant new activity that is indicated on the List with respect to the living organism unless,

- (a) the person has provided the Minister with the prescribed information, on or before the date that is specified by the Minister or prescribed, accompanied by the prescribed fee; and
- (b) the period of assessing the information specified by the Minister or provided under section [...] has expired.

Notification of significant new activity in respect of living organisms not on List

(3) Where a living organism is not specified on the Domestic Substances List and the Minister publishes a notice in the Government *Gazette* indicating that this subsection applies with respect to the living organism, no person shall use the living organism for a significant new activity that is indicated in the notice unless,

- (a) the person has provided the Minister with the prescribed information, on or before the date that is specified by the Minister or prescribed, accompanied by the prescribed fee; and
- (b) the period of assessing the information specified by the Minister or provided under section [...] has expired.

Application

(4) Subsections (1) to (3) do not apply,

- (a) a living organism that is manufactured or imported for a use that is regulated under any other Act of Parliament that provides for notice to be given before the manufacture, import or sale of the living organism and for an assessment of whether it is toxic or capable of becoming toxic;
- (b) a living organism that is manufactured, used or imported under the conditions and in the circumstances prescribed as exempt from this section; or
- (c) impurities, contaminants related to the preparation of a living organism.

Prohibition of activity

70.-(1) Where the Minister has reasonable grounds to believe that a person has used, manufactured or imported a living organism in contravention of subsection [*Manufacture or import of living organism*], the Minister may, in writing, require the person to provide the information referred to in that subsection and prohibit any activity involving the living organism until the expiry of the period for assessing the information under section [*Assessment of information*].

Assessment of information

(2) Subject to subsection (4), the Minister shall within the prescribed assessment period assess information provided under subsection [*Assessment of information*], [*Prohibition of activity*] and [*Action to be taken after assessment*] or otherwise available to the Minister in respect of a living organism in order to determine whether it is toxic or capable of becoming toxic.

Prescribed assessment period

(3) For the purposes of sections [*Manufacture and import of living organisms*] and [*Assessment of information*], where no assessment period is prescribed or specified with respect to living organism, the prescribed assessment period is **120** days after the Minister is provided with a prescribed information.

Action to be taken after assessment

(4) Where the Minister has assessed any information under subsection (2) and the Minister reasonably suspects that a living organism is toxic or capable of becoming toxic, the Minister may, before the expiry of the period for assessing the information,

- (a) permit any person to manufacture or import the living organism, subject to any conditions that the Minister may specify;
- (b) prohibit any person from manufacturing or importing the living organism; or
- (c) request any person to provide any additional information or submit the results of any testing that the Minister considers necessary for the purpose of assessing whether the living organism is toxic or capable of becoming toxic.

Significant new activity

71.-(1) Where the Minister has assessed any information under section [*Assessment of information*] in respect of a living organism that is not on the Domestic Substances List and the Minister reasonably suspects that a significant new activity in relation to that living organism may result in the living organism becoming toxic, the Minister may, within 90 days after the expiry of the period for assessing the information, publish in the Government Gazette and in any other manner that the Minister considers appropriate a notice indicating that

subsection [Notification of significant new activity in respect of living organism not on List] applies with respect to the living organism.

Notification of persons required to comply

(2) Where a notice is published in the Government Gazette under subsection (1) in respect of a living organism, every person who transfers the physical possession or control of the living organism shall notify all persons to whom the possession or control is transferred of the obligation to comply with subsection [Notification of significant new activity in respect of living organism not on List].

Amendment of List

72.-(1) The Minister shall add a living organism to the Domestic Substances List within 120 days after the following conditions are met:

- (a) the Minister has been provided with information in respect of the living organism under section [Manufacture or import of living organisms] and [Prohibition of activity] and any additional information or test results required under section [Action to be taken after assessment];
- (b) the Minister is satisfied that the living organism has been manufactured in or imported into Tanzania by the person who provided the information prescribed for the purpose of this paragraph;
- (c) the period for assessing the information under section [Assessment of information] has expired;
- (d) no conditions specified under paragraph [Action to be taken after assessment] in respect of the living organism remain in effect.

(2) Where the Minister adds a living organism to the Domestic Substances List and subsequently learns that the living organism was not manufactured or imported as described in subsection (1), the Minister shall delete the living organism from the List.

Regulations

73.-(1) The Minister may, on the recommendations of the Committee, make regulations,

- (a) generally for out the purposes and provisions of this Part;
- (b) for the purposes of implementing an international agreement
 - (i) respecting living organisms, whether or not they are on the Domestic Substances List, and
 - (ii) respecting the safety of the environment or human health, including, but not limited to, the safe transfer, handling and uses of any living organism that is moved across a boundary; and
- (c) respecting the effective and safe use of living organism in pollution prevention.

Living organisms regulated under other Acts of Parliament

(2) The Minister shall not make a regulation under subsection (1) in respect of any living organism if the regulation regulates an aspect of the living organism that is regulated by or under any other Act of Parliament in a manner that provides, in the opinion of the Minister, sufficient protection to the environment and human health.

PART VIII
CONTROLLING POLLUTION AND MANAGING WASTES

Nutrients

Definitions

74- The definitions in this section apply in this section and in Part IX.

“cleaning product” means a phosphate compound or other substance that is intended to be used for cleaning purposes, and includes laundry detergents, dishwashing compounds, metal cleaners, degreasing compounds and household, commercial and industrial cleaners.

“nutrient” means substance or combination of substances that, if released in any waters, provides nourishment that promotes the growth of aquatic vegetation.

“water conditioner” means a substance that is intended to be used to treat water, and includes water-softening chemicals, anti-scale chemicals and corrosion inhibitors.

Prohibition

75- No person shall manufacture for use or sale in Tanzania or import a cleaning product or water conditioner that contains a prescribed nutrient in a concentration greater than the permissible concentration prescribed for that product.

Regulations

76.-(1) The Minister may, on the recommendation of the Committee, make regulations for the purpose of preventing or reducing the growth of aquatic vegetation that is caused by the release of nutrients in waters and that can interfere with the functioning of an ecosystem or degrade or alter, or form part of a process of degrading or altering, an ecosystem to an extent that is detrimental to its use by humans, animals or plants, including regulations:-

- (a) prescribing nutrients;
- (b) prescribing the permissible concentration of a prescribed nutrient in a cleaning product or water conditioner;
- (c) respecting the conditions, test procedures and laboratory practices to be followed for analyzing, testing, measuring or monitoring a nutrient, cleaning product or water conditioner, and
- (d) requiring person who manufacture for use or sale in Tanzania or import a cleaning product or water conditioner
 - (i) to maintain books and records for the proper administration of this section and the regulations
 - (ii) to submit samples of the cleaning product or water conditioner to the Minister, and
 - (iii) to submit to the Minister information regarding cleaning products, water conditioners and their ingredients.

Nutrients regulated under other Acts of Parliament

(2) The Minister shall not make a regulation under subsection (1) in respect of a nutrient to the extent that the nutrient, or a product in which the nutrient is contained, is, in the opinion of

the Committee, regulated under any other Act of Parliament in a manner that provides, in the opinion of the Committee, sufficient protection to the environment.

Remedial measures

77.-(1) Where there is a contravention of section [Prohibition] or the regulations, the Minister may, in writing, direct a manufacturer or importer of a nutrient, cleaning product or water conditioner to take any or all of the following measures in the manner and within the period directed by the Minister:

- (a) give public notice of the contravention and of any danger to the environment or to human life or health posed by the nutrient, cleaning product or water conditioner; and
 - (i) mail the notice to manufacturers, processors, distributors or retailers of the nutrient, cleaning product or water conditioner
 - (ii) mail the notice to persons to whom the nutrient, cleaning product or water conditioner is known to have been delivered
- (b) replace the nutrient, cleaning product or water conditioner with one that meets the applicable requirements;
- (c) accept the return of the nutrient, cleaning product or water conditioner from the purchaser and refund the purchase price;
- (d) take other measures for the protection of the environment or human life or health; and
- (e) report to the Minister on the steps taken in satisfaction of any direction under paragraphs (a) to (e).

Intervention of Minister

(2) If a person fails to take any measures required under paragraph (1)(a), (b), (c) or (e), the Minister may take those measures or cause them to be taken

Recovery of costs

(3) The Government may recover the costs and expenses of and incidental to taking an measures under subsection (2) from the person referred to in that subsection.

Protection of Marine Environment from Land-based Sources of Pollution

Definitions

78.- The definitions in this section apply to this section.

“land-based sources” means point and diffuse sources on land from which substances or energy reach the sea by water, through air or directly from the coast. It includes any sources under the sea bed made accessible from land by tunnel, pipeline or other means.

“marine pollution” means the introduction by humans, directly or indirectly, of substances or energy into the sea that results, or is likely to result, in

- (a) hazards to human health;
- (b) harm to living resources or marine ecosystems;
- (c) damage to amenities; or
- (d) interference with other legitimate uses of the sea

Objectives, guidelines and codes of practice

79.(1) The Minister may, after consultation with any other affected Minister, issue environmental objectives, release guidelines and codes of practice to prevent and reduce marine pollution from land-based sources.

Consultation and conferences

(2) To carry out the functions set out in subsection (1), the Minister

- (a) shall offer to consult with any government department or agency , local government authorities or any person interested in the protection of the sea;
- (b) may organize conferences relating to the prevention or reduction of marine pollution from land-based sources; and
- (c) may meet with the representatives of international organizations and agencies and other countries to examine the rules, standards, practices and procedures recommended under the *United Nations Convention on the Law of the Sea*, signed and ratified by Tanzania and any other relevant treaty or agreement or protocol.

Minister may act

(3) At any time after the 60th day following the day on which the Minister offers to consult I accordance with paragraph (2)(a), the Minister may act under subsection (1) if the offer to consult is not accepted.

Disposal at Sea

Interpretation

Definitions

80.(1) The definitions in this section apply in this section.

“aircraft” means a machine that is used or designed for navigation in the air, but does not include an air cushion vehicle;

“Tanzanian ship” means an aircraft that is registered under an Act of Parliament;

“condition” means, in respect of a permit, any term or condition of the permit;

“contracting party” means a state that is a contracting party to the Convention or the Protocol;

“Convention” means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter signed and ratified by Tanzania on [...] as amended from time to time;

“disposal” means:-

- (a) the deliberate disposal of a substance at sea from a ship, an aircraft, a platform or another structure,
- (b) the deliberate disposal of dredged material into the sea from any source not mentioned in a paragraph (a),
- (c) the storage on the seabed, in the subsoil of the seabed or in any other area of the sea of a substance that comes from a ship, an aircraft, a platform or another structure,
- (d) the disposal of a substance by placing it on an area of the sea,

- (e) the deliberate disposal at sea of a ship or aircraft, and
- (f) the deliberate disposal or abandonment at sea of a platform or another structure,

but does not include:-

- (g) a disposal that is incidental to or derived from the normal operations of a ship, an aircraft, a platform or another structure or of any equipment on a ship, an aircraft, a platform or another structure, other than the disposal of substances operated for the purpose of disposing of such substances at sea,
- (h) the placement of a substance for a purpose other than its mere disposal if the placement is not contrary to the purposes of this section and the aims of the Convention or the Protocol,
- (i) the abandonment of any matter, such as a cable, pipeline or research device, placed on the seabed or in the subsoil of the seabed for a purpose other than its mere disposal, or
- (j) a discharge or storage directly arising from, or directly related to, the exploration for, exploitation of and associated off-shore processing of seabed mineral resources.

“incineration” means the deliberate combustion of a substance on board a ship, a platform or another structure at sea for the purpose of its thermal destruction.

“master” includes every person who has command or charge of a ship but does not include a pilot,

“owner” in relation to a ship, aircraft, platform or another structure includes the person who has possession or use, by law or contract, of the ship, aircraft, platform or another structure,

“Protocol” means the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended from time to time,

“ship” includes a vessel, boat or craft designed, used or capable of being used solely or partly for marine navigation, without regard to its method or lack of propulsion, and includes an air cushion vehicle,

“structure” means a structure that is made by a person,

“waste or other matter” means waste or other matter listed in Schedule VI to this Act,

(2) In this section and in Part [Enforcement] “sea” means

- (a) the territorial sea of Tanzania
- (b) the internal waters of Tanzania, excluding all the rivers, lakes and other fresh waters in Tanzania
- (c) any exclusive economic zone
- (d) an area of the sea adjacent to the areas referred to in paragraphs (a) to (c) that is specified under paragraph [Regulations]
- (e) an area of sea under the jurisdiction of a foreign state, other than its internal waters; and
- (f) an area of the sea, other than the internal waters of a foreign state, not included in the areas of the sea referred to in paragraphs (a) to (e)

Prohibitions

Imports for disposal in waters under Tanzanian jurisdiction

81-(1) No person shall import a substance for disposal in an area of the sea referred to in any of paragraphs (a) to (f).

Export for disposal in waters under foreign jurisdiction

(2) No person shall export a substance for disposal in an area of the sea under the jurisdiction of a foreign state or its internal waters.

(3) For the avoidance of any doubt "foreign state" include Tanzania Zanzibar.¹⁵

Loading in Tanzania for disposal at sea

82-(1) No person shall, in Tanzania, load a substance onto any ship, aircraft, platform or other structure for the purpose of disposal in an area of the sea referred to in any of paragraphs (a) to (e) and (f) unless

- (a) the substance is waste or other matter; and
- (b) the loading is done in accordance with Tanzanian permit.

Responsibility of master and pilot in Tanzania

(2) The master of a ship or a pilot in command of an aircraft shall not permit a substance to be loaded onto their ship or aircraft in Tanzania for the purpose of disposal in an area of the sea referred to in any of paragraphs (2)(a) to (e) and (f) unless

- (a) the substance is waste or other mater; and
- (b) the loading is done in accordance with a Tanzanian permit.

Responsibility of master and pilot outside Tanzania

(3) The master of a Tanzanian ship or pilot in command of a Tanzanian aircraft shall not permit a substance to be loaded onto their ship or aircraft outside Tanzania for the purpose of disposal at sea.

Exception

(4) Subsection (3) does not apply where:-

- (a) the substance is waste or other matter;
- (b) the disposal occurs in an area of the sea referred to in paragraph (2)(f) or in an area of the sea that is under the jurisdiction of the foreign state where the substance is loaded;
- (c) if the disposal occurs in an area of the sea referred to in paragraph (f) and the loading occurs in the territory of a foreign state that is a contracting party, the loading and disposal are done in accordance with a permit issued under the Convention or the Protocol by that state;
- (d) if the disposal occurs in an area of the sea referred to in paragraph (2)(f) and the loading occurs in the territory of a foreign state that is not a contracting party, the loading and disposal are done in accordance with a Tanzanian permit;
- (e) if the disposal occurs in an area of the sea under the jurisdiction of a foreign state that is a contracting party, the loading and disposal are done in accordance with a permit issued under the Convention or the Protocol by that state; and
- (f) if the disposal occurs in an area of the sea under the jurisdiction of a foreign state that is not a contracting party, the loading and disposal is done in accordance with a Tanzanian permit and the disposal is authorized by that state.

¹⁵ In accordance with the list of Union matters scheduled in the Union Constitution, environmental and related matters are "non-union" matters, hence this clarification.

Disposal in waters under Tanzania jurisdiction

83.(1) No person shall dispose of a substance in an area of the sea referred to in any of paragraphs (2)(a) to (e) unless

- (a) the substance is waste or other matter, and
- (b) the disposal is done in accordance with a Tanzanian permit.

Disposal from Tanzanian ship in waters that are not under the jurisdiction of any state

(2) No person shall dispose of a substance from a Tanzanian ship, a Tanzanian aircraft or a Tanzanian platform or other structure in an area of the sea referred to in paragraph (2)(f) unless

- (a) the substance is waste or other matter; and
- (b) the disposal is done in accordance with a Tanzania permit or, if the substance was loaded in the territory of a state that is a contracting party, a permit issued under the Convention or the Protocol by that state.

Disposal from Tanzanian ship in waters under foreign jurisdiction

(3) No person shall dispose of a substance from a Tanzanian ship, a Tanzanian aircraft or a Tanzanian platform or other structure in an area of the sea referred to in paragraph (2)(f) unless

- (a) the substance is waste or other matter;
- (b) the substance was loaded in the foreign state that has jurisdiction over that area;
- (c) if the foreign state is a contracting party, the disposal is done in accordance with a permit issued under the Convention or the Protocol by that contracting party; and
- (d) if the foreign state is not a contracting party, that state has authorized the disposal and it is done in accordance with a Tanzanian permit.

Disposal of Tanzanian ship in waters that re not under the jurisdiction of any state

(4) No person shall dispose of a Tanzanian ship, a Tanzanian aircraft or a Tanzanian platform or other structure in an area of the sea referred to in paragraph (2)(f) unless the disposal is done in accordance with a Tanzania permit.

Disposal of Tanzanian ship in waters under foreign jurisdiction

(5) No person shall dispose of a Tanzanian ship, a Tanzanian aircraft or a Tanzanian platform or other structure in an area of the sea referred to in paragraph (2)(f) unless

- (a) if the foreign state that has jurisdiction over that area is a contracting party, the disposal is done in accordance with a permit issued under the Convention or the Protocol by that contracting party; and
- (b) if the foreign state that has jurisdiction over that area is not a contracting party, that state has authorized the disposal and it is done in accordance with a Tanzanian permit.

Incineration

84.-(1) No person shall incinerate a substance on board a ship, a platform or another structure in an area of the sea referred to in any of paragraphs (2)(a) to (e) unless

- (a) the substance is waste generated on board the ship, platform or other structure during normal operations; or

- (b) the incineration is done in accordance with a permit issued under subsection [Permit for disposal]

Incineration in waters under foreign jurisdiction

(2) No person shall incinerate a substance on board a Tanzanian ship or a Tanzanian platform or other structure in an area of the sea referred to in paragraph (2)(e) or (f) unless

- (e) the substance is waste generated on board a Tanzanian ship or the Tanzanian platform or other structure during normal operations; or
- (f) the incineration is done in accordance with a permit issued under subsection [Permit for disposal].

Permits

85.(1) The Minister may, on application, issue permits authorizing the loading for disposal and disposal of waste or other matter.

(2) An application for a permit must

- (a) be in the prescribed form;
- (b) contain the information that may be prescribed or that may be required by the Minister for the purpose of complying with Schedule [...];
- (c) be accompanied by the prescribed fees; and
- (d) be accompanied by evidence that notice of the application was published in a newspaper circulating in the vicinity of the loading or disposal described in the application or in any other publication specified by the Minister.

Factors for consideration

(3) Before issuing a permit under subsection (1), the Minister shall comply with Schedule VI and shall take into account any factors that the Minister considers necessary.

Exception

86.(1) Paragraphs [*Disposal in waters under Tanzanian jurisdiction*] (1)(a), (2)(a) and (3)(a) do not apply if a permit is issued under this section [...].

Permits for emergency disposal

(2) The Minister may, on application, issue a permit to dispose or incinerate a substance if the Minister is of the opinion that

- (a) the disposal or incineration of a certain quantity of the substance is necessary to avert an emergency that poses an unacceptable risk relating to the environment or to human health; and
- (b) there is no other feasible solution.

Application

(3) An application for a permit must

- (a) be in the prescribed form;
- (b) contain the information that may be prescribed or that may be required by the Minister for the purpose of complying with Schedule [...];
- (c) be accompanied by the prescribed fees; and

- (d) subject to subsection (4), be accompanied by evidence that notice of the application was published in a newspaper circulating in the vicinity of the loading, disposal or incineration described in the application or in any other publication specified by the Minister.

Publication

- (4) The Minister may permit the publication referred to in paragraph (3)(d) to be made at any time after the application is made.

Consultation

- (5) The Minister shall
 - (a) offer to consult with any foreign state that is likely to be affected by the disposal or incineration and with the International Maritime Organization;¹⁶ and
 - (b) endeavour to follow any recommendations that are received from the International Maritime Organization.

Notice

- (6) The Minister shall inform the International Maritime Organization of an action taken under this section.

Conditions of permit

- 87.(1) A Tanzanian permit shall contain any conditions¹⁷ that the Minister considers necessary for the protection of marine life, any legitimate uses of the sea or human life.

Duration of permit

- (2) A Tanzania permit shall specify that it is valid for a particular date or dates or for a particular period that shall not exceed one year.

Powers to suspend, revoke or vary permit

- (3) The Minister may suspend or revoke a Tanzanian permit or vary its conditions where, having regard to Schedule VI or the establishment of, any report of, a board of review under section [...], the Minister considers it advisable to do so.

Exception for Safety Reasons

Exception

- 88.(1) Despite the other provisions of this Part, a person may dispose of a substance if:-
 - (a) it is necessary to avert a danger to human life or to a ship, a platform or another structure at sea in situations caused by stress of weather or in any other case that constitutes a danger to human life or a threat to a ship, an aircraft, a platform or another structure at sea;
 - (b) the disposal appears to be the only way of averting the danger or threat; and
 - (c) it is probable that the damage caused by the disposal would be less than would otherwise occur.

¹⁶ Tanzania is a member of the International Maritime Organization.

¹⁷ The conditions may be prescribed by the Minister in regulations made under this Act.

Danger to be minimized

(2) Any disposal under subsection (1) shall be carried out in a manner that minimizes, as far as possible, danger to human life and damage to the marine environment.

Negligence not a defence

(3) Subsection (1) does not apply if the danger was caused or contributed to by the person's negligent act or omission.

Duty to report

(4) If disposal takes place under subsection (1), the master of the ship, the pilot in command of the aircraft or the person in charge of the platform or other structure shall report the disposal without delay to an enforcement officer or any other person whom the Minister may, by order, designate, at the location and in the manner that may be prescribed, and the report shall contain any information that may be prescribed.

Fisheries Act not applicable

89. If a person disposes of a substance in accordance with the conditions of a Tanzanian permit or section [*Exception for safety reasons*], subsection [...] of the *Fisheries Act, 1970* is not applicable.¹⁸

Monitoring of sites

90. The EMI shall monitor sites selected by the Minister that are used for disposal or incineration at sea.

Publication

91.(1) When issuing a Tanzanian permit or varying its conditions, the Minister shall publish a copy of the permit and its conditions, or the varied conditions, in the *Government Gazette*

Publication before disposal or loading

(2) Publication under subsection (1) shall be made:-

- (a) in the case of a permit issued under subsection [*Permits for emergency disposal*], as soon as possible after the permit is issued; and
- (b) in every other case, at least **30** days before the first date on which loading, disposal or incineration is authorized by the permit or by the varied conditions.

Notice of Objection

92.(1) Any person may file with the Minister a notice of objection requesting that a board of review be established under section [...] and stating the reasons for the objection, if the Minister

- (a) issues or refuses a Tanzanian permit; or

¹⁸ The *Fisheries Act, 1970* and *Fisheries Regulations* contain some provisions on the prohibition of the use of explosives and poison in fishing. The Act and the regulations however, are not that explicit on the environmental implications of using such methods. See also the *Integrated Coastal Zone Management Strategy*, which elaborates on strategies to protect the coastal zone, marine environment and life.

- (b) suspends or revokes a Tanzanian permit or varies its conditions, otherwise than in accordance with the recommendations of a report of a board of review established under section [...] in respect of the permit.

Time of filing notice of objection

- (2) A notice of objection under subsection (1) shall be filed within **30** days after
 - (a) the date the Tanzanian permit is published in the *Government Gazette*; or
 - (b) the date the person received a notice from the Minister that the Tanzanian permit has been refused, suspended or revoked, or that its conditions have been varied.

Regulations

93.(1) The Minister may, on the recommendations of the Committee, make regulations for carrying out the purposes and provisions of this Part and Schedule [...].

- (2) The Minister may make regulations
 - (a) prescribing the form of an application for a Tanzanian permit; and
 - (b) specifying the information required to be contained in or to accompany an application for a Tanzanian permit
 - (c) prescribing the conditions for a Tanzanian permit

Amendments to Schedule [...] and [...]

- (2) The Minister may, on the recommendations of the Committee, by order, amend Schedules [...] and [...].

Costs and Expenses of the Government

94. If the Minister directs an action to be taken by or on behalf of the Government to remedy a condition or mitigate damage resulting from an offence under this Act that arises out of this Part, the costs and expenses of and incidental to taking that action, to the extent that they can be established to have been reasonably incurred in the circumstances, are recoverable by the Government from the person who committed the offence with costs in proceedings brought or taken thereof in the name of the Government in any court of competent jurisdiction.

Service of Documents

95. Any document, that for the purposes of proceedings arising out of this Part is to be served on a person may, except where otherwise provided by any other applicable rules, be served in accordance with rules applicable in the service of documents.

Fuels

Interpretation

Definitions

96. The definitions in this section apply in this section.

“engine” means a device that transforms one form of energy into another,

“national fuels marks” means a mark established by regulation for use in respect of fuels

General Requirements for Fuels

Prohibition

97.-(1) No person shall produce, import or sell a fuel that does not meet the prescribed requirements.

Exceptions

(2) A person does not contravene subsection (1) if:-

- (a) the fuel is in transit through Tanzania, from a place outside Tanzania to another place outside Tanzania, and there is written evidence establishing that the fuel is in transit;
- (b) the fuel is produced or sold for export and there is written evidence establishing that the fuel will be exported;
- (c) subject to the regulations, the fuel is being imported and there is written evidence establishing that the fuel will meet the requirements of subsection (1) before the fuel is used or sold; or
- (d) subject to the regulations, the fuel is being imported in a fuel tank that supplies the engine of a conveyance that is used for transportation by water, land or air., the

Regulations

98.(1) The Minister may, on the recommendation of the Committee, make regulations for carrying out the purposes of this Part [*General requirements for fuels*].

Variations in fuels

(2) A regulation may distinguish among fuels according to their commercial designation, source, physical; or chemical properties, class, conditions of use or place or time of year of use.

Consultation

(3) Before recommending a regulation to the Minister under subsection (1), the Committee shall offer to consult with a government department or agency, representatives of industry and labour and local government authorities or with persons interested in the quality of the environment.

National Fuels Marks

Nature of mark

99.(1) The national fuels marks are national trademarks.

Property rights

(2) The exclusive property in and, except as otherwise provided in this Part, the right to use of the national fuels marks are hereby vested in the Government of the United Republic of Tanzania.

Prohibition

100.(1) No person shall use a national fuels mark except in accordance with this Part and the regulations

Confusing mark

(2) No person shall use any other mark in such a manner that is likely to be mistaken for a national fuels mark.

Requirements for use

101. A person may use a national fuels mark in respect of a prescribed fuel if:-

- (a) the use is authorized by the Minister;
- (b) the fuel conforms to the requirements for that fuel provided for by regulations made under section [Regulations] any requirements that are applicable to that fuel and that may be provided for by regulations made under subsection [*Regulations regarding List of Toxic Substances in Schedule 1*] and [*Regulations regarding general fuels*];
- (c) evidence of such conformity has been obtained and produced in accordance with the regulations; and
- (d) prescribed information relating to the fuel has been submitted to the Minister in the prescribed manner.

Cross-boundary shipments

102.(1) No person shall import, or transport within Tanzania, a prescribed fuel if the requirements set out in paragraphs [*Requirements for use*] (a) to (d) are not met.

Exceptions

(2) Except as otherwise provided by the regulations, subsection (1) does not apply if

- (a) the requirements are met before the fuel is used or sold; or
- (b) the fuel is being used in a fuel tank that supplies the engine of a conveyance that is used for transportation by water, land or air.

Regulations

103.(1) The Minister may, on the recommendation of the Committee, make regulations for carrying out the purposes and provisions of section [*Nature of mark*] to [*Cross-boundary shipments*] and [*Temporary waiver*].

Consultation

(2) Before recommending a regulation to the Minister under subsection (1), the Committee shall offer to consult with a government department or agency, representatives of industry and labour and local government authorities or with persons interested in the quality of the environment.

Variations in fuels

104. A regulation may distinguish among fuels according to their commercial designation, source, physical; or chemical properties, class, conditions of use or place or time of year of use.

Temporary Waivers

105. The Minister may, in prescribed circumstances, grant a temporary waiver from any of the requirements of a regulation made under section [Regulations] or [Regulations] on any conditions and for any period that may be determined by the Minister.

Vehicle, Engine and Equipment Emissions

Interpretation

106. The definitions in this section apply in this Part and in Part XII as it relates to enforcement of this Part.

“company” means a person who

- (a) is engaged in the business of manufacturing vehicles, engines or equipment in Tanzania;
- (b) is engaged in the business of selling to other persons, for the purpose of resale by those persons, vehicles, engines or
- (c) equipment obtained directly from a person described in paragraph (a) of the agent of such a person; or
- (d) imports any vehicle, engine or equipment into Tanzania for the purpose of sale.

“engine” means any prescribed internal combustion engine, but does not include

- (a) an engine designed to propel an aircraft as defined in subsection [...] of the
- (b) An engine designed to propel rolling stock as defined in section [...] of the
- (c) A marine compression-ignition engine that is rated at 37 kW or more and is designed to propel a vessel.

“equipment” means any prescribed equipment that is designed for use in or on a vehicle or engine.

“manufacture” includes any process of assembling or altering any vehicle, engine or equipment before its sale to the first retail purchaser.

“national emissions mark” means a mark established by regulations for use in respect of emissions from vehicles, engines or equipment.

“standard” means a standard that governs the design, construction, functioning or marking of vehicles, engines or equipment for the purpose of controlling or monitoring their emissions.

“vehicle” means an prescribed self-propelled vehicle, but does not include

- (a) an aircraft as defined in subsection [...] of the [...]
- (b) rolling stock as defined in section [...] of the [...]
- (c) a vessel that is fitted, for the purpose of propulsion, with a marine compression-ignition engine that is rated at 37 kW or more.

“vessel” means a boat, ship or craft designed, used or capable of being used solely or partly for navigation in, on, through or immediately above water.

National Emissions Marks

Nature of marks

107.(1) The national emissions marks are national trade-marks.

Property rights

(2) The exclusive property in and, except as otherwise provided in this Part, the right to use a national emissions mark are hereby vested in the Government of the United Republic of Tanzania.

Prohibition

108.(1) No person shall use a national emissions mark except in accordance with this Part and the regulations.

Confusing mark

(2) No person shall use any other mark in such a manner that is likely to be mistaken for a national emissions mark.

Use of marks

109. A company authorized by the Minister may, subject to this Part and the regulations, apply a national emissions mark to vehicles, engines or equipment.

Transportation within Tanzania

110. No company shall transport within Tanzania a prescribed vehicle, engine or equipment that does not have a national emissions mark applied to it.

Vehicle, Engine and Equipment Standards

Compliance by companies¹⁹

111.(1) No company shall apply a national emissions mark to any vehicle, engine or equipment, sell any vehicle, engine or equipment to which a national emissions mark has been applied or import any vehicle, engine or equipment unless:-

- (a) the vehicle, engine or equipment conforms to the standards prescribed for vehicles, engines or equipment of its class at the time its main assembly or manufacture was completed;
- (b) evidence of such conformity has been obtained and produced in the prescribed form and manner or, if the regulations so provide, in a form and manner satisfactory to the Minister;²⁰
- (c) prescribed information relating to standards for emissions from the vehicle, engine or equipment has been submitted to the Minister in the prescribed manner;
- (d) information is marked on the vehicle, engine or equipment in accordance with the regulations;
- (e) if required by the regulations, prescribed documentation or accessories accompany the vehicle, engine or equipment;

¹⁹ The Tanzania Bureau of Standards (TBS) on some occasion had purported to issue “standards for imported cars”, with which companies and individuals had to comply with, when importing into the country second-hand cars from Japan, Dubai and elsewhere. However, it seems that the TBS did this without a legal backing because in principle the TBS is not an environmental protection agency. The so-called “standards” were merely goods’ importation regulations and not strictly speaking national emissions mark. At any rate TBS does not the environmental protection mandate under its founding legislation.

²⁰ The Minister responsible for transport and communication has a major role to play in developing national emissions marks in collaboration with the EMI and other competent authorities.

- (f) prescribed information relating to the operation or use of the vehicle, engine or equipment is disseminated in the prescribed form and manner;
- (g) records are maintained and furnished in the prescribed form and manner in relation to the design, manufacture, testing and field performance of the vehicle, engine or equipment, for the purpose of
 - (i) enabling an enforcement officer to determine whether the vehicle, engine or equipment conforms to all prescribed standards applicable to it, and
 - (ii) facilitating the identification and analysis of defects referred to in subsection [Notice of defects] ((1).
- (h) in the case of engines and equipment the company maintains a registration system in the prescribed form and manner.

Exception

(2) Except as otherwise provided by the regulations, subsection (1) does not apply with respect to the application of a national emissions mark or an importation referred to in that subsection if the requirements under that subsection are met before then vehicle, engine or equipment leaves the possession or control of the company and, in the case of a vehicle, before the vehicle is presented for registration under the laws of the country.²¹

Certification by foreign agency

- (3) Any vehicle, engine or equipment is deemed to conform to a prescribed standard if:-
- (a) the regulations provide that an enactment of a foreign government corresponds to that standard; and
 - (b) a prescribed agency of that government has certified that the vehicle, engine or equipment conforms to the enactment as applied by the agency, unless the Minister determines otherwise.

(4) For the avoidance of any doubt, “fotreign government” includes the Revolutionary Government of Zanzibar.²²

Compliance on importation

112. No person shall import any vehicle, engine or equipment of a prescribed class unless the requirements of paragraphs [Compliance by companies](1)(a), (b), (d) and (e) are met in respect of the vehicle, engine or equipment.

Exceptions for certain importations

113.(1) Sections [Compliance by companies] and [Compliance on importation] do not apply in respect of the importation of any vehicle, engine or equipment if:-

- (a) the person importing the vehicle, engine or equipment makes a declaration in the prescribed form and manner that the vehicle, engine or equipment will be used in

²¹ The *Road Traffic Act* of 1973 and other laws relating to revenue are relevant.

²² According to the Union Constitution, Tanzania has two executive organs, namely the Union Government and the Revolutionary Government of Zanzibar respectively. As environmental matters are non-union matters, each government reserve to itself the competence to deal with environmental matters arising within their area of jurisdiction.

Tanzania solely for purposes of exhibition,²³ demonstration, evaluation or testing and will remain in Tanzania for no longer than one year or any other period that the Minister specifies.

- (b) The vehicle, engine or equipment is in transit through Tanzania, from a place outside Tanzania, to another place outside Tanzania and is accompanied by written evidence establishing that the vehicle, engine or equipment will not be sold or used in Tanzania; or
- (c) The vehicle, engine or equipment is being imported exclusively for use by a visitor to Tanzania or by a person passing through Tanzania to another country.

Change in standard since manufactured

(2) Sections [*Compliance by companies*] and [*Compliance on importation*] do not apply in respect of the importation of any vehicle, engine or equipment that does not conform to a standard prescribed for its class at the time of its main assembly or manufacture if, at the time of its importation, that standard is no longer in effect and

- (a) the vehicle, engine or equipment conforms to the corresponding standard prescribed for its class at that time; or
- (b) there is no corresponding standard at that time.

Imported vehicle or engine

(3) A vehicle, engine or equipment that is imported and for which there is no prescribed standard must conform to the standard prescribed for the class of equivalent vehicles or engines before presentation for registration under the laws of the United Republic of Tanzania.

Declarations binding

(4) No person who makes a declaration referred to in paragraph (1)(a) or subsection (2), or provides evidence referred to in paragraph (1)(b), in respect of any vehicle, engine or equipment shall use or dispose of the vehicle, engine or equipment in a manner contrary to the terms of that declaration or evidence.

Record keeping

(5) Every person who makes a declaration referred to in paragraph (1)(a) or subsection (2), or provides evidence referred to in paragraph (1)(b), in respect of any vehicle, engine or equipment shall keep a record of the use or disposition of the vehicle, engine or equipment in accordance with the regulations.

Vehicle or Engine Exemptions

Exemption from standards

114.(1) On application by a company in the prescribed form, supported by prescribed technical and financial information, the Minister may, by order, grant a renewable exemption for a specified period, subject to any conditions specified in the order, for any model of vehicle or engine manufactured or imported by the company from conformity with any prescribed standard applicable to that model if conformity with that standard would, in the opinion of the Minister,

- (a) create substantial financial hardship for the company;

²³ The Board of External Trade has a major role to play in this regard as well as the Minister responsible for trade and commerce.

- (b) impede the development of new features for safety, emission monitoring or emission control that are equivalent to or superior to those that conform to prescribed standards; or
- (c) impede the development of new kinds of vehicles, engines or vehicle or engine systems or components.

Conditions for granting exemption

(3) An exemption may not be granted for a model if the exemption would substantially diminish the control of emissions from it or if the company applying for the exemption has not provided evidence that satisfies the Minister that it has attempted in good faith to bring the model into conformity with all applicable prescribed standards.

Research and Testing

Powers of Environmental Management Institution

115. At request of the Minister or on its own initiative, the Environmental Management Institution may,

- (a) conduct any research, studies and evaluations that the Minister considers necessary for the administration and enforcement of this Part;
- (b) undertake research and development programs for the study of the effect of vehicles, engines or equipment or emissions on air pollution, energy conservation and the environment and for the promotion of measures to control that effect;
- (c) establish and operate facilities for the testing of vehicles, engines or equipment and components, and acquire test equipment for that purpose;
- (d) make the facilities referred to in paragraph (c) and all related material, parts and services available to any person; and
- (e) publish or otherwise disseminate information relating to the activities of the Environmental Management Institution under this section.

Emission control tests

116.(1) At the request of the Minister and subject to payment by the Minister of the cost of transportation and of rental at a prescribed rate based on capital value, a company shall make available to the Environmental Management Institution for testing any vehicle, engine, equipment or component that

- (a) was used in tests conducted by or for the company in order to establish information submitted to the Minister under paragraph [Compliance by companies](1)(c); or
- (b) for the purpose of that testing, is equivalent to a vehicle, an engine, equipment or a component referred to in paragraph (a).

Testing by Environmental Management Institution

(2) The Environmental Management Institution may examine and dismantle any vehicle, engine, equipment or component made available under subsection (1) and conduct all necessary tests to verify the accuracy of tests referred to in paragraph (1)(a).

Detention of vehicles or engines

(3) The Environmental Management Institution may detain any vehicle, engine, equipment or component for more than **30** days after completion of the tests conducted under subsection (2) unless, before that time, proceedings have been instituted in respect of an offence related to the vehicle, engine, equipment or component, in which case it may be detained until the proceedings are concluded.

Regulations

117.(1) The Minister may, on the recommendation of the Committee, make regulations for carrying out the purposes and provisions of this Part.

Progressive application

(2) Regulations prescribing a standard may be made applicable in respect of a specified proportion of vehicles, engines or equipment of a class before they are made applicable in respect of all vehicles, engines or equipment of that class, including regulations,

- (a) respecting emissions and prescribing standards;
- (b) establishing the national emissions marks;
- (c) respecting conditions that must be met for a national emissions mark to be used in relation to vehicles, engines or equipment or a class of vehicles, engines or equipment;
- (d) respecting the manner of applying national emissions marks;
- (e) respecting exemptions;
- (f) prescribing or providing for anything that by this Part is to be prescribed or provided for by the regulations.

Definition of “technical standards equipment”

118.(1) In this section “technical standards document” means a document, published in the prescribed manner by authority of the Minister, that reproduces in the official language(s) of Tanzania an enactment of a foreign government with adaptations of form and reference that will facilitate the incorporation of then enactment under this section.

Incorporation of document

(2) For greater certainty, regulations made under this Part may incorporate by reference a technical standard document as it reads on a prescribed day or as it is amended from time to time following the incorporation by reference, and may extend, qualify or exclude the application of any provision of the document so incorporated.

Publication

(3) No person is required to comply with a provision of a technical standards document incorporated by the regulations until six months after the publication of the provision in the prescribed manner, if the person continues to comply with the provision for which that provision is substituted.

Document not a regulation

(4) A technical standards document is not a regulation for the purposes of the *Interpretation of Laws Act*, 1996.

Emission credits

119.(1) Regulations that prescribe standards in relation to emissions may provide for a system of credits based on the following principles:

- (a) a company may establish that vehicles, engines or equipment conform to those standards by applying credits against emissions of the vehicles, engines or equipment in the prescribed manner and within prescribed limit;
- (b) credits may be obtained by a company in the prescribed manner

(i) by reference to emissions of the vehicles, engines or equipment that more than meet the requirements of those standards

(ii) by the payment of an amount to the Exchequer General determined at a prescribed rate in relation to emissions of the vehicle, engine or equipment; and

(c) credits obtained by reference to emissions may be transferred to or from a company in the prescribed manner.

Emission report

(2) Every company shall submit to the Minister, in the prescribed form and manner and at the prescribed time, a report setting out, with respect to a prescribed period, an account of any emission credits obtained or applied by the company and a description of each of the vehicles, engines or pieces of equipment for which credits were obtained or applied.

Evidence

120. In a prosecution under this Act, evidence that any vehicle, engine or equipment bore a name or mark purporting to be the name or mark of a company engaged in the business of manufacturing, importing or selling vehicles, engines or equipment is, in the absence of evidence to the contrary, proof that the vehicle, engine or equipment was manufactured, imported or sold, as the case may be, by the company.

. In a prosecution under this Act, evidence that any vehicle, engine or equipment bearing a national emissions was manufactured by a company is, in the absence of evidence to the contrary, proof that the national emissions mark was applied by the company.

PART IX

CONTROL OF MOVEMENT OF HAZARDOUS WASTE AND HAZARDOUS RECYCLABLE MATERIAL AND OF PRESCRIBED NON-HAZARDOUS WASTE FOR FINAL DISPOSAL

121. (1) The Minister may designate as **enforcement officers or analysts** for the purposes of this Act, or any provision of this Act,

(a) persons or classes of persons who, in the Minister's opinion, are qualified to be so designated; and

(b) with the approval of a government, persons or classes of persons employed by the government in the administration of a law respecting the protection of the environment.

Production of certificate of designation

(2) Every enforcement officer or analyst shall be furnished with a certificate of designation as an enforcement officer or analyst, as the case may be, and on entering any place under section [...] or [...], as the case may be, shall, if so requested, produce the certificate to the person in charge of the place.

Powers of enforcement

(3) For the purposes of this Act and the regulations, enforcement officers have all the powers of a police officer, but the Minister may specify limits on those powers when designating any person or class of persons.

Inspection

122. (1) Subject to subsection (2), for the purposes of this Act and the regulations, an enforcement officer may, at any reasonable time, enter and inspect any place if the enforcement officer has reasonable grounds to believe that,

- (a) there can be found in the place a substance to which this Act applies or a product containing such a substance;
 - (b) a fuel to which this Act applies is being or has been produced or can be found in the place;
 - (c) a cleaning product or water conditioner, as defined in section [...], is being or has been produced or can be found in the place;
 - (d) regulations made under section [...] apply to or in respect of the place;
 - (e) the place is a source in respect of which regulations have been made under section [...] or [...] or a place in respect of which regulations have been made under section [...];
 - (f) a substance is being loaded for the purpose of disposal at sea or is being disposed of at sea;
 - (g) any vehicle, engine or equipment of a class for which standards for emissions have been prescribed that is owned by or is on the premises of a company or a consignee of imported vehicles or engines or imported equipment can be found in the place;
 - (h) any component to be used in the manufacture of a vehicle, engine or equipment for which standards for emissions have been prescribed can be found in the place;
 - (i) any record in relation to the design, manufacture, testing and field performance of a vehicle, engine or equipment in so far as it relates to emissions can be found in the place;
- or
- (j) any books, records, electronic data or other documents relevant to the administration of this Act can be found in the place.

Private dwelling place

(2) An enforcement officer may not enter a private dwelling-place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling-place except,

- (a) with the consent of the occupant of the place; or
- (b) under the authority of a warrant issued under subsection (3).

Warrant for inspection of dwelling place

- (3) Where on *ex parte* application a magistrate/judge is satisfied by information on oath that,
- (a) the conditions for entry described in subsection (1) exist in relation to a private dwelling-place,
 - (b) entry to the dwelling-place is necessary for any purpose relating to the administration of this Act, and
 - (c) entry to the dwelling-place has been refused or there are reasonable grounds for believing that entry will be refused,

the magistrate may issue a warrant authorizing the enforcement officer named in it to conduct an inspection of the dwelling-place subject to any conditions that may be specified in the warrant, and authorizing any other person named therein to accompany the enforcement officer and exercise any power specified in the warrant.

Warrants for inspection of non-dwellings

- (4) Where on *ex parte* application a magistrate/judge is satisfied by information on oath that,
- (a) the conditions for entry described in subsection (1) exist in relation to a place other than a private dwelling-place,
 - (b) entry to that place is necessary for any purpose relating to the administration of this Act,
 - (c) entry to that place has been refused, the enforcement officer was not able to enter without the use of force or the place was abandoned, and
 - (d) subject to subsection (5), all reasonable attempts were made to notify the owner, operator or person in charge of the place,

the magistrate/judge may issue a warrant authorizing the enforcement officer named in it to conduct an inspection of the place, subject to any conditions that may be specified in the warrant, and authorizing any other person named therein to accompany the enforcement officer and exercise any power specified in the warrant.

Waiving notice

(5) The magistrate/judge may waive the requirement to give notice referred to in subsection (4) where the magistrate/judge is satisfied that attempts to give the notice would be unsuccessful because the owner, operator or person in charge is absent from the jurisdiction of the magistrate/judge or that it is not in the public interest to give the notice.

Use of force

(6) In executing a warrant issued under subsection (3) or (4), an enforcement officer shall not use force unless the use of force has been specifically authorized in the warrant.

Stopping and detaining conveyances

(7) For the purposes of this Act and the regulations, an enforcement officer may, at any reasonable time, direct that any conveyance be stopped or be moved to a place where an inspection can be carried out and may, for a reasonable time, detain any conveyance, platform or other structure.

Powers in relation to ships

(8) Subject to subsection (2), for the purposes of this Act and the regulations, an enforcement officer may, at any reasonable time,

(a) board any ship, platform or other structure anywhere in [...] or within [...] waters or any aircraft if the enforcement officer believes on reasonable grounds that the ship, platform or other structure or aircraft has on board a substance to be disposed of at sea; and

(b) travel on any ship, aircraft, platform or other structure that is loaded with a substance to be disposed of at sea.

Enforcement officer to receive accommodation

(9) An enforcement officer who travels on a ship, aircraft, platform or other structure under paragraph (8)(b) shall be carried free of charge to and from the disposal site and the person in command of the ship or aircraft or in charge of the platform or structure shall provide the enforcement officer with suitable accommodation and food.

Powers of enforcement officer

(10) In carrying out an inspection of a place under this section, an enforcement officer may, for the purposes of this Act,

(a) examine any substance, product, fuel, cleaning product or water conditioner referred to in subsection (1) or any other thing relevant to the administration of this Act that is found in the place;

(b) open and examine any receptacle or package found that the enforcement officer believes on reasonable grounds contains any substance, product, air contaminant, fuel, cleaning product or water conditioner, engine, equipment or component;

(c) examine any books, records, electronic data or other documents that the enforcement officer believes on reasonable grounds contain any information relevant to the administration of this Act and make copies of them or take extracts from them;

(d) take samples of anything relevant to the administration of this Act; and

(e) conduct any tests or take any measurements.

Disposition of samples

(11) An enforcement officer who takes a sample under subsection (10)(d) may dispose of it in any manner that the enforcement officer considers appropriate.

Analysts

(12) An analyst may, for the purposes of this Act, accompany an enforcement officer who is carrying out an inspection of a place under this section and the analyst may, when so accompanying an enforcement officer, enter the place and exercise any of the powers described in subsections (8) and (10).

Operation of computer system and copying equipment

(13) In carrying out an inspection of a place under this section, an enforcement officer may,
(a) use or cause to be used any computer system at the place to examine any data contained in or available to the computer system;
(b) reproduce any record or cause it to be reproduced from the data in the form of a printout or other intelligible output;
(c) take a printout or other output for examination or copying; and
(d) use or cause to be used any copying equipment at the place to make copies of the record.

Duty of person in possession or control

(14) Every person who is in possession or control of a place being inspected under this section shall permit the enforcement officer to do anything referred to in subsection (13).

Production of documents

124. (1) The Minister may, for the purposes of this Act and the regulations, by registered letter or by a demand served personally, require any person to produce at a place specified by the Minister anything referred to in subsection [...] or any samples referred to in subsection [...] within any reasonable time and in any reasonable manner that may be stipulated therein.

Compliance

(2) Any person who is required to produce anything under subsection (1) shall, despite any other law to the contrary, do so as required.

Search

Authority to issue warrant for search and seizure

125.(1) Where on *ex parte* application a magistrate is satisfied by information on oath that there are reasonable grounds to believe that there is in any place,
(a) anything by means of or in relation to which any provision of this Act or the regulations has been contravened, or
(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence under this Act,

the magistrate may issue a warrant authorizing an enforcement officer, or authorizing any other person named in the warrant, to enter and search the place and to seize anything referred to in subsection (1) (a) or (b) subject to any conditions that may be specified in the warrant.

Warrant for seizure of ships, etc.

(2) Where on *ex parte* application a magistrate is satisfied by information on oath that there are reasonable grounds to believe that an offence has been committed under section [...] by an owner of any ship, aircraft, platform or other structure, the magistrate may issue a warrant authorizing an enforcement officer, or authorizing any other person named in the warrant, to seize the ship, aircraft, platform or structure anywhere in Tanzania and, in the case of a ship, platform or structure, within Tanzanian waters.

Search and seizure

(3) A person authorized by a warrant issued under subsection (1) or (2) may,
(a) at any reasonable time enter and search a place referred to in the warrant;
(b) seize and detain anything referred to in the warrant; and
(c) exercise the powers described in subsection [...] or [...].

Where warrant not necessary

(4) An enforcement officer may exercise the powers described in subsection (3) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

Exigent circumstances

(5) For greater certainty, exigent circumstances include circumstances in which the delay necessary to obtain a warrant under subsection (1) or (2) would result in danger to human life or the environment or the loss or destruction of evidence.

Operation of computer system and copying equipment

(6) A person authorized under this section to search a place may,
(a) use or cause to be used any computer system at the place to search any data contained in or available to the computer system;
(b) reproduce any record or cause it to be reproduced from the data in the form of a printout or other intelligible output;
(c) seize any printout or other output for examination or copying; and
(d) use or cause to be used any copying equipment at the place to make copies of the record.

Duty of person in possession or control

(7) Every person who is in possession or control of a place in respect of which a search is carried out under this section shall permit the person carrying out the search to do anything referred to in subsection (6).

Custody

126. (1) Any thing seized under section [...] shall be delivered into the custody of any person that the Minister directs.

Discharge of cargo

(2) Where a thing seized under section [...] has cargo on board, the cargo may be discharged, under the supervision of:-
(a) the enforcement officer or other person by whom the thing was seized, or
(b) the person into whose custody the thing was delivered in accordance with subsection (1),

at the place in Tanzania that is capable of receiving the cargo and that is nearest to the place of seizure, or at any other place that is satisfactory to the enforcement officer or other person supervising the discharge of the cargo.

Sale of perishable cargo

- (3) Where a thing seized under section [...] has cargo on board that is perishable,
(a) the enforcement officer or other person by whom the thing was seized, or
(b) the person into whose custody the thing was delivered in accordance with subsection (1)
may sell the cargo or the portion of it that is perishable, as the case may be, and the proceeds of the sale shall be paid to the Exchequer General (Treasury) or shall be deposited in a bank to the credit of the Exchequer General (Treasury).

Order for delivery of cargo

(4) The owner of any cargo of anything seized under section [...] may apply to a competent court for an order requiring any person who has custody of the cargo or the proceeds of any sale thereof to deliver the cargo or the proceeds of sale to the owner, and the competent court may make such an order where it is satisfied that the applicant is the owner of the cargo to which the application relates.

Redelivery and deposit of security

127. (1) Where a thing has been seized under section [...], the competent court may, with the consent of the Minister, order redelivery of the thing or delivery of the proceeds realized from a sale of any perishable cargo under subsection [...] to the person from whom the thing was seized if security in the form of a bond in an amount and form satisfactory to the Minister is given to the Minister.

Seized ship, etc., to be returned unless proceedings instituted

(2) Anything referred to in subsection (1) that has been seized under section [...], or any security given to the Minister under subsection (1), shall be returned or paid to the person from whom the thing was seized within **[30]** days after the seizure unless, before the expiry of those **[30]** days, proceedings are instituted in respect of an offence under section [...] alleged to have been committed by the owner of the thing.

Detention

Seizure

128. (1) Whenever, during the course of an inspection or a search, an enforcement officer has reasonable grounds to believe that a provision of this Act or the regulations has been contravened, the enforcement officer may seize and detain anything,
(a) by means of or in relation to which the enforcement officer reasonably believes the contravention occurred; or
(b) that the enforcement officer reasonably believes will afford evidence of the contravention.

Limitation

(2) An enforcement officer shall not seize anything under subsection [...] unless the thing is required as evidence or for purposes of analysis or the enforcement officer is of the opinion that the seizure is necessary in the public interest.

Notice of contravention

(3) An enforcement officer who has seized and detained a thing under subsection (1) shall, as soon as is practicable, advise the person in whose possession it was at the time of the

seizure of the provision of this Act or the regulations that the enforcement officer believes has been contravened.

Detention and release

(4) Anything seized under subsection [...] or section [...], other than a ship, aircraft, platform or other structure, shall not be detained,

- (a) after the owner of the thing or the person in whose possession it was at the time of the seizure applies to the enforcement officer or to the Minister for its release and the enforcement officer or the Minister is satisfied that it is not necessary in the public interest to continue to detain the thing or that it is not required as evidence or for purposes of analysis; or
- (b) after the expiry of **[90]** days after the day of seizure, unless before that time
 - (i) the thing has been forfeited under section [...],
 - (ii) proceedings have been instituted in respect of the contravention in relation to which the thing was seized, in which case it may be detained until the proceedings are finally concluded, or
 - (iii) the Minister has served or made reasonable efforts to serve notice of an application for an order extending the time during which the thing may be detained in accordance with section [...].

Storage of seized thing

(5) A thing seized by an enforcement officer under subsection [...] or section [...], other than a ship, aircraft, platform or other structure, shall be kept or stored in the place where it was seized except if,

- (a) in the opinion of the enforcement officer,
 - (i) it is not in the public interest to do so, or
 - (ii) the thing seized, or a sample of it, is required as evidence and removal and storage of the thing seized is necessary to ensure that the thing or sample will be available as evidence in any related proceedings, or
- (b) the person in whose possession it was at the time of the seizure or the person entitled to possession of the place requests the enforcement officer to have it removed to some other place, in which case it may be removed to and stored in any other place at the direction of or with the concurrence of an enforcement officer and at the expense of the person who requested that it be so removed.

Interference with seized thing

(6) Unless authorized by an enforcement officer, no person shall remove, alter or interfere in any way with anything seized and detained by an enforcement officer under subsection [...] or section [...], but an enforcement officer shall, at the request of the person from whom it was seized, allow that person or any person authorized by that person to examine it and, where practicable, furnish a sample or copy of it to that person.

Application to extend period of detention

129. (1) Where proceedings have not been instituted in respect of the contravention in relation to which a thing was seized under section [...] or subsection [...], the Minister may, before the expiry of **[90]** days after the day of the seizure and on serving prior notice in accordance with subsection [...] on the owner of the thing or on the person who at the time of the seizure was in possession of it, apply to a magistrate, as defined in section [...] of the *Criminal Procedure Act*, 1985 within whose jurisdiction the seizure was made for an order extending the time during which it may be detained.

Notice

(2) A notice shall be served by personal service at least five clear days before the day on which the application is to be made to the provincial court judge or by registered mail at least seven clear days before that day and shall specify

- (a) the court in which the application is to be made;
- (b) the place where and the time when the application is to be heard;
- (c) the thing seized in respect of which the application is to be made; and
- (d) the grounds on which the Minister intends to rely to show why there should be an extension of the time during which the thing seized may be detained.

Order of extension granted

(3) Where, on the hearing of an application made under subsection (1), the magistrate is satisfied that the thing seized should continue to be detained, the magistrate shall order:-

- (a) that the thing be detained for any additional period and on any conditions relating to the detention for that additional period that the judge considers proper; and
- (b) on the expiry of the additional period, that the thing be restored to the person from whom it was seized or to any other person entitled to its possession unless, before the expiry of the additional period, an event referred to in section 128(4)(b)(i), (ii) or (iii) has occurred.

Order of extension refused

(4) Where, on the hearing of an application made under subsection (1), the magistrate is not satisfied that the thing seized should continue to be detained, the magistrate shall order that, on the expiry of **90** days after the day of the seizure, it be restored to the person from whom it was seized or to any other person entitled to its possession unless, before the expiry of the **90** days, an event referred to in section 128(4)(b)(i) or (ii) has occurred.

Detention of Ships

Detention of ships

130. (1) Where an enforcement officer has reasonable grounds to believe that the owner or master of a ship has committed an offence under section [...] and that a ship was used in connection with the commission of the offence, the enforcement officer may make a detention order in respect of the ship.

Order in writing

(2) A detention order made under subsection (1) shall be in writing and be addressed to all persons at any port in Tanzania where the ship to which the order relates is or will be who are empowered to give a clearance in respect of the ship.

Notice of detention order

(3) Notice of a detention order made under subsection (1) shall be served on the master of the ship in respect of which the order is made.

Duty of owner or master of ship

(4) Where notice of a detention order made under subsection (1) has been served on the master of the ship, the owner or master of the ship shall not give an order for the ship to go into an area of the sea referred to in [...] (2)(f) or (g) during the term of the detention order.

Duty of persons empowered to give clearance

(5) Subject to subsection (6), no person to whom a detention order made under subsection (1) is addressed shall, after notice of the order is received by the person, give clearance in respect of the ship to which the order relates.

When clearance given

(6) A person to whom a detention order made under subsection (1) is addressed and who has received notice of the order may give clearance in respect of the ship to which the order relates where

- (a) the owner or master of the ship
 - (i) has not, within **30** days after the order was made, been charged with the offence that gave rise to the making of the order, or
 - (ii) has, within **30** days after the order was made, been charged with that offence and appears in Tanzania to answer to the charge;
- (b) security for payment of the maximum fine that might be imposed as a result of a conviction of the person charged with that offence and of costs related to proceedings in connection with the charge, or payment of any lesser amount that is approved by the Minister or a person designated by the Minister for the purpose; or
- (c) proceedings in respect of the alleged offence that gave rise to the making of the detention order are discontinued.

Assistance to Enforcement Officers and Analysts

Right of passage

140. An enforcement officer or analyst or any other person may, while carrying out powers, duties or functions under this Act, enter on and pass through or over private property without being liable for trespass or without the owner of the property having the right to object to that use of the property.

Assistance

141. The owner or the person in charge of a place entered by an enforcement officer or analyst under section [...] or [...], and every person found in the place, shall

- (a) give the enforcement officer or analyst all reasonable assistance to enable them to carry out duties and functions under this Act; and
- (b) provide the enforcement officer or analyst with any information with respect to the administration of this Act and the regulations that the enforcement officer or analyst may reasonably require.

Obstruction

142. While an enforcement officer or analyst is exercising powers or carrying out duties and functions under this Act, no person shall:-

- (a) knowingly make any false or misleading statement, either orally or in writing, to them; or
- (b) otherwise obstruct or hinder them.

Forfeiture

Forfeiture and consent

143. (1) Where an enforcement officer has seized a thing under section [...] or subsection [...] and the owner or person who was in lawful possession of it at the time of the seizure consents in writing at the request of the enforcement officer to its forfeiture, it is thereupon forfeited to the Government.

Disposal or destruction

(2) The Minister may dispose of or destroy anything forfeited under subsection (1) and, if the Minister so directs, the costs of the disposal or destruction shall be paid by the owner or the person who was in lawful possession of it at the time it was seized.

Forfeiture by order of court

144. (1) Subject to sections [...] and [...] where a person is convicted of an offence under this Act and anything seized under section [...] or subsection [...] is then being detained,
(a) the thing is, on the conviction and in addition to any punishment imposed for the offence, forfeited to the Government, if the court so directs, in which case:-
(i) the Minister may dispose of or destroy the thing, and
(ii) the costs of the forfeiture and disposal or destruction shall be paid by the offender; or
(b) the thing shall, on the expiry of the time for taking an appeal from the conviction or on the final conclusion of the proceedings, as the case may be, be restored to the person from whom it was seized or to any other person entitled to its possession on any conditions that may be imposed by order of the court and that, in the opinion of the court, are necessary to avoid the commission of a further offence under this Act.

Things deemed not to have been seized

(2) For the purpose of subsection (1), anything released from detention under paragraph [...] (4)(a) or (b) is deemed not to have been seized under section [...] or subsection [...] (1).

Court may order forfeiture

145. Where the owner of any ship, aircraft, platform or other structure has been convicted of an offence under section [...], the convicting court may, if the ship, aircraft, platform or structure was seized under section [...] or subsection [...] (1), in addition to any other penalty imposed, order that the ship, aircraft, platform or structure, or any security given under subsection [...] (1), be forfeited, and on the making of such an order the ship, aircraft, platform, structure or security is forfeited to the Government.

Disposal of forfeited ship, aircraft etc.

146. (1) Where proceedings referred to in subsection [...] (2) are instituted within the time provided in that subsection and, at the final conclusion of those proceedings, any ship, aircraft, platform or other structure or any security given under subsection [...] (1) is ordered to be forfeited, it may be disposed of as the Minister directs.

Return of seized ship, etc., where no forfeiture ordered

(2) Where anything has been seized under section [...] and proceedings referred to in subsection [...] (2) are instituted, but the thing is not, at the final conclusion of the proceedings, ordered to be forfeited, it shall be returned, the proceeds of any sale of the cargo under subsection [...] (3) shall be paid or any security given to the Minister under subsection [...] (1) shall be returned to the person from whom the thing was seized.

Exception

(3) Where, at the conclusion of proceedings referred to in subsection (1), the person from whom the thing was seized is convicted of an offence arising out of a contravention of this Part, the thing and any cargo or the proceeds or security may be retained until the fine is paid or the thing and any cargo may be sold under execution in satisfaction of the fine, or the proceeds realized from the sale of the cargo or the security or any part thereof may be applied in payment of the fine.

Application by person claiming interest

147. (1) Where anything has been ordered to be forfeited under this Act, any person, other than a person who was a party to the proceedings that resulted in the order, who claims an interest in the thing as owner, mortgagee, lien holder or holder of any other claim under Tanzanian law may, within **30** days after the thing is ordered to be forfeited, apply by notice in writing to the High Court for an order under subsection (5).

Date of hearing

(2) The High Court shall fix a day for the hearing of an application made under subsection (1).

Notice

(3) An applicant for an order under subsection (5) shall, at least **30** days before the day fixed under subsection (2) for the hearing of the application, serve a notice of the application and of the hearing on the Minister and on all other persons claiming an interest in the thing that is the subject-matter of the application as owner, mortgagee, lien holder or holder of any other claim under Tanzanian law of whom the applicant has knowledge.

Notice of intervention

(4) Each person, other than the Minister, who is served with a notice under subsection (3) and who intends to appear at the hearing of the application to which the notice relates shall, at least **10** days before the day fixed for the hearing, file a notice of intervention in the Registry of the High Court and serve a copy of the notice on the Minister and on the applicant.

Order declaring nature and extent of interests

(5) Where, on the hearing of an application under this section, the High Court is satisfied that the applicant, or the intervenors, if any, or any of them,

(a) is innocent of any complicity in any conduct that caused the thing to be subject to forfeiture and of any collusion in relation to any such conduct, and

(b) exercised all reasonable care in respect of the persons permitted to obtain possession and use of the thing so as to be satisfied that it was not likely to be used contrary to the provisions of this Act or, in the case of a mortgagee or lien holder, other than the holder of a maritime lien or statutory right *in rem*, that the applicant or intervenor exercised such care with respect to the mortgagor or the lien giver,

those of the applicant and the intervenors in respect of whom the Court is so satisfied are entitled to an order declaring that their interests are not affected by the forfeiture and declaring the nature and extent of each of their interests and the priorities among them.

Additional order

(6) Where an order is made under subsection (5), the Court may, in addition, order that the thing to which the interests relate be delivered to one or more of the persons found to have an interest in it or that an amount equal to the value of each of the interests so declared be paid to the persons found to have those interests.

Environmental Protection Compliance Orders

Definition of "order"

148. For the purposes of sections [...] to [...], "order" means an environmental protection compliance order issued under section [...].

Order

149. (1) Whenever, during the course of an inspection or a search, an enforcement officer has reasonable grounds to believe that any provision of this Act or the regulations has been contravened in the circumstances described in subsection (2) by a person who is continuing the commission of the offence, or that any of those provisions will be contravened in the circumstances described in that subsection, the enforcement officer may issue an environmental protection compliance order directing any person described in subsection (3) to take any of the measures referred to in subsection (4) and, where applicable, subsection (5) that are reasonable in the circumstances and consistent with the protection of the

environment and public safety, in order to cease or refrain from committing the alleged contravention.

Circumstances

(2) For the purposes of subsection (1), the circumstances in which the alleged contravention has been or will be committed are as follows, namely,

- (a) the exportation, importation, manufacture, transportation, processing or distribution of a substance or product containing a substance;
- (b) the possession, storage, use, sale, offering for sale, advertisement or disposal of a substance or product containing a substance;
- (c) the use of a substance or product containing a substance in a commercial manufacturing or processing activity; or
- (d) an act or omission in relation to or in the absence of a notice, permit, approval, licence, certificate, allowance or other authorization or a term or condition thereof.

Application

(3) Subsection (1) applies to any person who:-

- (a) owns or has the charge, management or control of the substance or any product containing the substance to which the alleged contravention relates or the property on which the substance or product is located; or
- (b) causes or contributes to the alleged contravention.

Specific measures

(4) For the purposes of subsection (1), an order in relation to an alleged contravention of any provision of this Act or the regulations may specify that the person to whom the order is directed take any of the following measures:

- (a) refrain from doing anything in contravention of this Act or the regulations, or do anything to comply with this Act or the regulations;
- (b) stop or shut down any activity, work, undertaking or thing for a specified period;
- (c) cease the operation of any activity or any part of a work, undertaking or thing until the enforcement officer is satisfied that the activity, work, undertaking or thing will be operated in accordance with this Act and the regulations;
- (d) move any conveyance to another location including, in the case of a ship, move the ship into port or, in the case of an aircraft, land the aircraft;
- (e) unload or re-load the contents of any conveyance; and
- (f) take any other measure that the enforcement officer considers necessary to facilitate compliance with the order or to protect or restore the environment, including, but not limited to,
 - (i) maintaining records on any relevant matter,
 - (ii) reporting periodically to the enforcement officer, and
 - (iii) submitting to the enforcement officer any information, proposal or plan specified by the enforcement officer setting out any action to be taken by the person with respect to the subject-matter of the order.

Additional measures for certain alleged offences

(5) For the purposes of subsection (1), an order in relation to an alleged contravention of section [...] or [...] or any regulations made under section [...] may specify that the person to whom the order is directed, whether that person is not a permit holder or is contravening a condition of a permit, take any of the following measures, in addition to any of the measures referred to in subsection (4):

- (a) cease dumping or cease loading a substance; or
- (b) refrain from disposing of any ship, aircraft, platform or structure.

Contents of orders

(6) Subject to section [...], an order must be made in writing and must set out:-

- (a) the names of the persons to whom the order is directed;
- (b) the provision of this Act or the regulations that is alleged to have been or will be contravened;
- (c) the relevant facts surrounding the alleged contravention;
- (d) the measures to be taken and the manner in which they are to be carried out;
- (e) the period within which a measure is to begin and is to be carried out;
- (f) subject to subsection (7), the duration of the order;
- (g) a statement that a request for a review may be made to the Chief Review Officer; and
- (h) the period within which a request for a review may be made.

Duration of orders

(7) An order may not be issued for a period of more than **180** days

Exigent circumstances

150. (1) In the case of exigent circumstances, an order may be given orally, but within the period of seven days immediately after it is so given, a written order must be issued in accordance with section [...].

Definition of “exigent circumstances”

(2) For greater certainty, "exigent circumstances" includes circumstances in which the delay necessary to issue a written order that meets the requirements of subsection [...](6) would result in danger to human life or the environment.

Notice of intent

151. (1) Except in exigent circumstances, the enforcement officer shall, wherever practicable, before issuing an order,

- (a) provide an oral or a written notice of the intent of the enforcement officer to issue the order to every person who will be subject to the order; and
- (b) allow a reasonable opportunity in the circumstances for the person to make oral representations.

Contents of notice of intent

(2) A notice of intent to issue an order shall include

- (a) a statement of the purpose of the notice;
- (b) a reference to the statutory authority under which the order will be issued; and
- (c) a statement that the party notified may make oral representations to the enforcement officer within the period stated in the notice.

Compliance with the order

152. (1) A person to whom an order is directed shall, immediately on receipt of the order or a copy of it or on being directed by an enforcement officer under an order given orally under section [...], comply with the order.

No bar to proceedings

(2) The issuance of or compliance with an order in respect of a person's alleged contravention of this Act or the regulations is not a bar to any proceedings against the person under this or any other Act in relation to the alleged contravention by that person.

Intervention by enforcement officer

153. (1) Where any person fails to take any measures specified in an order, an enforcement officer may take the measures or cause them to be taken.

Access to property

(2) An enforcement officer or other person authorized or required to take measures under subsection (1) may enter and have access to any place or property and may do any reasonable things that may be necessary in the circumstances.

Personal liability

(3) Any person, other than a person described in subsection [...] (3), who provides assistance or advice in taking the measures specified in an order or who takes any measures authorized under subsection (1) is not personally liable either civilly or criminally in respect of any act or omission in the course of providing assistance or advice or taking any measures under that subsection unless it is established that the person acted in bad faith.

Recovery of reasonable costs and expenses by the Government

154. (1) The Government may recover the costs and expenses of and incidental to taking any measures under subsection [...] (1) from

- (a) any person referred to in section [...] (3)(a); and
- (b) any person referred to in section [...] (3)(b) to the extent of the person's negligence in causing or contributing to the alleged contravention.

Costs reasonably incurred

(2) The costs and expenses referred to in subsection (1) shall only be recovered to the extent that they can be established to have been reasonably incurred in the circumstances.

Liability

(3) Subject to subsection (4), the persons referred to in subsection (1) are jointly and severally liable or solidarily liable for the costs and expenses referred to in that subsection.

Limitation

(4) A person referred to in paragraph [...] (3)(b) shall not be held liable under subsection (3) to an extent greater than the extent of their negligence in causing or contributing to the alleged contravention.

Procedure

(5) A claim under this section may be sued for and recovered by the Government with costs in proceedings brought or taken therefor in the name of the Government in any court of competent jurisdiction.

Recourse or indemnity

(6) This section does not limit or restrict any right of recourse or indemnity that a person may have against any other person.

Limitation period

(7) Where events giving rise to a claim under this section occur, no proceedings in respect of the claim may be instituted after **five years** from the date on which the events occur or become evident to the Minister, whichever is later.

Minister's certificate

(8) A document purporting to have been issued by the Minister certifying the day on which the events giving rise to a claim under this section came to the knowledge of the Minister shall be received in evidence and, in the absence of any evidence to the contrary, the document shall

be considered as proof of that fact without proof of the signature or of the official character of the person appearing to have signed the document and without further proof.

Variation or cancellation of order

155. (1) At any time before a notice requesting a review of an order is received by the Chief Review Officer, the enforcement officer may, in accordance with section [...], after giving reasonable notice,

- (a) amend or suspend a term or condition of the order, or add a term or condition to, or delete a term or condition from, the order;
- (b) cancel the order;
- (c) correct a clerical error in the order; or
- (d) extend the duration of the order for a period of not more than **180** days less the number of days that have passed since the day on which the order was received by the person who is subject to the order.

Notice of intent

(2) Except in exigent circumstances, the enforcement officer shall, wherever practicable, before exercising a power under paragraph (1)(a) or (d),

- (a) provide an oral or a written notice of the intent of the enforcement officer to do so to every person who will be subject to the order; and
- (b) allow a reasonable opportunity in the circumstances for the person to make oral representations

Contents of notice of intent

(3) A notice of intent to exercise a power under paragraph (1)(a) shall include:-

- (a) a statement of the purpose of the notice;
- (b) a reference to the statutory authority under which the power will be exercised; and
- (c) a statement that the party notified may make oral representations to the enforcement officer within the period stated in the notice.

Limitations on exercise of enforcement officer's powers

(4) An enforcement officer shall not exercise any of the powers referred to in paragraph (1)(a), (b) or (d) if doing so would result in

- (a) impairment or serious risk of impairment of the quality of the environment for any use that can be made of it;
- (b) injury or damage or serious risk of injury or damage to any property or to any plant or animal life; or
- (c) danger to the health or safety of any person.

Regulations

156. The Minister may make regulations:-

- (a) prescribing the form of reporting to enforcement officers under subparagraph [...] (4) (f) (ii) and specifying the information required to be contained in or to accompany the report; and
- (b) of either particular or general application, respecting representations made to enforcement officers under subsection [...] (1) or [...] (2).

Roster of review officers

157. The Minister shall establish and maintain a roster of review officers.

Chief Review Officer²⁴

158. (1) The Minister shall appoint one of the review officers as the Chief Review Officer to perform the functions of the Chief Review Officer as and when required.

Functions of Chief Review Officer

- (2) The Chief Review Officer shall:-
- (a) perform administrative functions related to the work of review officers, including assigning review officers to conduct review hearings; and
 - (b) in certain cases, conduct review hearings.

Absence, etc., of Chief Review Officer

(3) If the Chief Review Officer is absent or unable to act or if the office is vacant, any other review officer that is designated by the Minister shall perform the functions of the Chief Review Officer.

Term of members

159. (1) Review officers shall be appointed to hold office during good behaviour for a term of not more than three years, but may be removed by the Minister at any time for cause.

Re-appointment

(2) A review officer may be re-appointed

Publication in Government Gazette

160. The Minister shall publish the roster of review officers in the *Government Gazette*.

Knowledge

161. A person is not eligible to be appointed as a review officer unless the person is knowledgeable about the Tanzanian environment, environmental and human health, administrative law or traditional ecological knowledge.

Other employment

162. Review officers shall not accept or hold any office or employment inconsistent with their functions under this Act.

Remuneration and fees

163. (1) The Chief Review Officer shall be paid such remuneration as is fixed by the Public Service Management, and each other review officer is entitled to be paid such fees for that other review officer's services as are fixed by the Public Service Management.

Expenses

- (2) Review officers are entitled to be paid:-
- (a) reasonable travel and other expenses incurred by them in the course of their duties under this Act while absent from their ordinary place of work; and
 - (b) any other reasonable expenses incurred by them in the course of their duties under this Act.

²⁴ Under the Forest Act, 2002 there is established a cadre of Investigation Officers to investigate traditional claims in forest area and advise the responsible Minister accordingly

Acting after expiry of term

164. If a person who is engaged as a review officer in respect of any matter ceases to be a review officer before rendering a decision in respect of the matter, the person may, with the authorization of the Chief Review Officer, continue, during a period of not more than **180** days, to act as a review officer in respect of the matter.

Secretary and other staff

165. The Minister may, at the request of the Chief Review Officer, make available to review officers any staff and other assistance that are necessary for the proper conduct of the business of review officers.

Government services and facilities

166. In performing their functions a review officer shall, where appropriate, make use of the services and facilities of departments, boards and agencies of the Government.

Immunity

167. No criminal or civil proceedings shall lie against a review officer for anything done or omitted to be done in good faith in performing any functions of a review officer under this Act.

Government not relieved

168. Section [...] does not, by reason of section [...] of the *Government Proceedings Act, 1967* as amended, relieve the Government of liability in respect of a tort or extra-contractual civil liability to which the Government would otherwise be subject.

Liability

169. Review officers are public servants for the purposes of the law of tort or of extra-contractual civil liability.

Reviews

Request for review

170. (1) Any person to whom an order is directed may, by notice in writing given to the Chief Review Officer within **30** days after receipt by the person of a copy of the written order or after the oral order is given, make a request to the Chief Review Officer for a review of the order.

Extension of period for request

(2) The Chief Review Officer may extend the period within which a request for a review may be made where, in the Chief Review Officer's opinion, it is in the public interest to do so.

Review

171. On receipt of a notice under subsection [...] (1), the Chief Review Officer shall conduct a review of the order, including a hearing, or cause a review and hearing of the order to be conducted by a review officer assigned by the Chief Review Officer.

No automatic stay on appeal

172. (1) Subject to subsection (2), the request for a review by a review officer does not suspend the operation of an order.

Suspension on application

(2) A review officer may, on application made by a person subject to the order before the beginning of the hearing, suspend the operation of the order if the review officer considers it appropriate in the circumstances and, in that case, impose on all the persons subject to the order conditions that are reasonable in the circumstances and consistent with the protection of the environment and public safety.

Suspension of 180 day period

(3) Where the operation of an order is suspended under subsection (2), the period for which the order is issued is suspended until the review is completed

Right to appeal

173. All parties to the review, including the Minister, may appear in person or may be represented by an advocate or by an agent.

Powers

174. (1) A review officer may summon any person to appear as a witness before the review officer and may order the witness to:-

- (a) give evidence orally or in writing; and
- (b) produce any documents and things that the review officer considers necessary or desirable for the purpose of performing any of the review officer's functions.

Fees for witnesses

(2) A witness who is served with a summons under subsection (1) is entitled to receive the fees and allowances to which persons who are summoned to appear as witnesses before the High Court are entitled.

Enforcement of summonses and orders

175. Any summons to a witness issued or order made under subsection [...] (1) by a review officer may be made a summons to a witness or an order of the High Court and is enforceable in the same manner as a summons to a witness or an order of that court.

Procedure

176. To make a summons issued or an order made under subsection [...] (1) by a review officer a summons or an order of the High Court, the usual practice and procedure of the court in such matters may be followed, or a certified copy of the summons or order may be filed with the registrar of the court and the summons or order thereupon becomes a summons or an order of the court.

Powers of review officer

177. The review officer, after reviewing the order and after giving all persons who are subject to the order, and the Minister, reasonable notice orally or in writing of a hearing and allowing a reasonable opportunity in the circumstances for those persons and the Minister to make oral representations, may:-

- (a) confirm or cancel the order;
- (b) amend or suspend a term or condition of the order, or add a term or condition to, or delete a term or condition from, the order; or
- (c) extend the duration of the order for a period of not more than 180 days less the number of days that have passed since the day on which the order was received by the person who is subject to the order, not counting the days during which the order was suspended under subsection [...] (3).

Variation or cancellation of review officer's decision

178. At any time before a notice of appeal to the High Court is filed in relation to an order, the review officer may, on the review officer's own motion, after giving reasonable notice orally or in writing and allowing a reasonable opportunity in the circumstances for the person subject to the order to make oral representations, modify the decision of the review officer in respect of the order and exercise any of the powers of the review officer under section [...] in respect of the order.

Limitations on exercise of review officer's powers

179. A review officer shall not exercise any of the powers referred to in section 263 if doing so would result in:-

- (a) impairment or serious risk of impairment of the quality of the environment for any use that can be made of it;
- (b) injury or damage or serious risk of injury or damage to any property or to any plant or animal life; or
- (c) danger to the health or safety of any person.

Decision of review officer

180. The review officer shall, within five days after the completion of the review of an order, render a decision and give written reasons for doing so within **10** days after the completion of the review, and provide a copy of the decision and those reasons to all persons to whom the order was directed and to the Minister.

Rules

181. The Chief Review Officer may make rules:-

- (a) governing the practice and procedure in respect of the review of orders;
- (b) generally, for the work of review officers; and
- (c) for preventing information described in section [...] of the *National Security Act, 1970* from being disclosed or made public as a result of their being used as evidence before a review officer, including rules providing for hearings or parts of hearings to be held in public or private.

Orders and notices

182. Every order or varied order under section [...] or [...] or a copy of one and every notice under those sections shall be provided to the Minister and every person to whom the original order is directed and, where applicable, all other persons to whom the amended order is directed, in accordance with Part [...].

High Court

Appeal to High Court

183. The Minister or any person to whom an order, as confirmed or varied by a review officer under section [...], is directed may, by filing a written notice of appeal within **30** days after the written reasons are provided by the review officer under section [...], appeal to the High Court – Environmental Division²⁵ from the decision of the review officer.

Standing on appeal to High Court

184. The Minister or the person to whom the order is directed, as the case may be, has the right, on an appeal to the High Court made under section [...], to be heard on all questions of fact and law.

²⁵ Since now there is a Land Division of the High Court it is high time now that the Chief Justice declares the establishment of an Environmental Division of the High Court.

Order not suspended

185. The filing of a notice of appeal under section 269 does not suspend the operation of an order, as confirmed or varied by a review officer.

Offences and Punishment

Contravention of the Act, the regulations or agreements

186. (1) Every person commits an offence who contravenes:-
(a) a provision of this Act or the regulations;
(b) an obligation or a prohibition arising from this Act or the regulations;
(c) an order or a direction made under this Act;
(d) an order, direction or decision of a court made under this Act; or
(e) an agreement respecting environmental protection alternative measures within the meaning of section [...].

Penalties

(2) Every person who commits an offence under subsection (1) is liable:-
(a) on conviction on indictment, to a fine of not more than 10,000,000/- Tanzanian shillings or to imprisonment for a term of not more than five years, or to both; and
(b) on summary conviction, to a fine of not more than 5,000,000/- Tanzanian shillings or to imprisonment for a term of not more than three years, or to both.

False or misleading information etc

187. (1) Every person commits an offence who, with respect to any matter related to this Act or the regulations,
(a) provides any person with any false or misleading information, results or samples; or
(b) files a document that contains false or misleading information.

Penalties

(2) Every person who commits an offence under subsection (1) is liable:-
(a) on conviction on indictment, to a fine of not more than 5,000,000/- Tanzanian shillings or to imprisonment for a term of not more than three years, or to both, if the offence is committed knowingly;
(b) on summary conviction, to a fine of not more than 2,500,000/- Tanzanian shillings or to imprisonment for a term of not more than one and half years, or to both, if the offence is committed knowingly;
(c) on conviction on indictment, to a fine of not more than 1,000,000/- Tanzanian shillings or to imprisonment for a term of not more than one year, or to both, if the offence is committed negligently; and
(d) on summary conviction, to a fine of not more than 500,000/- Tanzanian shillings or to imprisonment for a term of not more than six months, or to both, if the offence is committed negligently.

Damage to environment and risk of death or harm to persons

188. (1) Every person is guilty of an offence and liable on conviction on indictment to a fine or to imprisonment for a term of not more than five years, or to both, who, in committing an offence under subsection [...](1) or [...](1),
(a) intentionally or recklessly causes a disaster that results in a loss of the use of the environment; or
(b) shows wanton or reckless disregard for the lives or safety of other persons and thereby causes a risk of death or harm to another person.

Criminal negligence

(2) Every person who, in committing an offence under subsection [...] (1) or [...] (1), shows wanton or reckless disregard for the lives or safety of other persons and thereby causes death or bodily harm to another person is subject to prosecution and punishment under section [...] or [...] of the *Criminal Procedure Act, 1965*.

Limitation of period

189. (1) Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within, but not later than, two years after the time when the Minister became aware of the subject-matter of the proceedings.

Minister's certificate

(2) A document purporting to have been issued by the Minister, certifying the day on which the Minister became aware of the subject-matter of any proceedings, shall be received in evidence and, in the absence of any evidence to the contrary, the document shall be considered as proof of that fact without proof of the signature or of the official character of the person appearing to have signed the document and without further proof.

Continuing offence

190. Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which it is committed or continued.

Regulations

191. The Minister may make regulations prescribing the manner in which the proceeds or any part of the proceeds resulting from the payment of a fine or the execution of an order in relation to an offence under this Act shall be distributed in order to reimburse any person, government or body that has commenced the proceedings in respect of the offence for costs incurred by that person, government or body in respect of the prosecution of the offence.

Nearest court has jurisdiction for offences²⁶

192. (1) Where an offence arising out of a contravention of Part [...] is committed by a person, whether or not the person is a Tanzanian citizen, in Tanzanian waters, the offence:-
(a) is within the competence of and shall be tried by the court having jurisdiction in respect of similar offences in the area nearest to the place where the offence was committed; and
(b) shall be tried in the same manner as if it had been committed within that area.

Where offence deemed to have been committed

(2) An offence to which subsection (1) applies is, for the purpose of that subsection, deemed to have been committed either in the place where the offence was actually committed or in the place in which the accused is found.

Any court has jurisdiction

(3) Where an offence arising out of a contravention of Part [...] is committed by a person, whether or not the person is a Tanzanian citizen, in an area of the sea referred to in paragraph [...], the offence:-
(a) is within the competence of and shall be tried by any court having jurisdiction in respect of similar offences committed by persons within the limits of its ordinary jurisdiction; and
(b) shall be tried in the same manner as if it had been committed within the jurisdiction of the court before which it is tried.

²⁶ See also the provisions of the *Criminal Procedure Act, 1985* on offences committed on the high seas

Liability of directors

193. (1) Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Duties of directors

(2) Every director and officer of a corporation shall take all reasonable care to ensure that the corporation complies with:-

- (a) this Act and the regulations; and
- (b) orders and directions of, and prohibitions and requirements imposed by, the Minister and enforcement officers and review officers.

Identifying owner, master etc.

194. The owner or master of a ship, the owner or pilot in command of an aircraft or the owner or person in charge of any platform or other structure may be charged with an offence arising out of a contravention of Part[...] as owner, master, pilot in command or person in charge, as the case may be, of the ship, aircraft, platform or structure if it is adequately identified, and no such charge is invalid by reason only that it does not name the owner, master, pilot in command or person in charge, as the case may be, of the ship, aircraft, platform or structure.

Proof of offence

195. (1) In any prosecution of an offence under this Act, other than an offence under section [...] if the offence is committed knowingly or under section [...] or [...], it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or prosecuted for the offence.

(2) In any prosecution of the master of a ship, the pilot in command of an aircraft or the owner or person in charge of any platform or other structure for an offence arising out of a contravention of Part [...] it is sufficient proof of the offence to establish that it was committed by a crew member or other person on board the ship, aircraft, platform or structure, whether or not the crew member or other person is identified or prosecuted for the offence.

Defence

196. No person shall be found guilty of an offence under this Act, other than an offence under section [...] if the offence is committed knowingly or under section [...] or [...], where the person establishes that the person exercised all due diligence to prevent its commission.

Importing substances by analysts

197. Despite any other provision of this Act or the regulations, the Minister may, subject to any reasonable condition specified by the Minister, authorize in writing an analyst to import, possess and use a substance for the purpose of conducting measurements, tests and research with respect to the substance.

Certificate of analyst

198. (1) Subject to subsections (2) and (3), a certificate of an analyst stating that the analyst has analysed or examined a substance or product and stating the result of the analysis or examination is admissible in evidence in any prosecution for an offence under this Act and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

Attendance of analyst

(2) The party against whom a certificate of an analyst is produced may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(3) No certificate of an analyst shall be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate.

Safety marks and prescribed documents

199. In any prosecution for an offence under this Act, evidence that a means of containment or transport bore a safety mark or was accompanied by a prescribed document is, in the absence of evidence to the contrary, proof of the information shown or indicated by the safety mark or contained in the prescribed document.

Sentencing Criteria

Sentencing considerations

200. A court that imposes a sentence shall take into account, in addition to any other principles that it is required to consider, the following factors:-

- (a) the harm or risk of harm caused by the commission of the offence;
- (b) an estimate of the total costs to remedy or reduce any damages caused by the commission of the offence;
- (c) whether any remedial or preventive action has been taken or proposed by or on behalf of the offender, including having in place an environmental management system that meets a recognized Tanzanian or international standard or a pollution prevention plan;
- (d) whether any reporting requirements under this Act or the regulations were complied with by the offender;
- (e) whether the offender was found to have committed the offence intentionally, recklessly or inadvertently;
- (f) whether the offender was found by the court to have been negligent or incompetent or to have shown a lack of concern with respect to the commission of the offence;
- (g) any property, benefit or advantage received or receivable by the offender to which, but for the commission of the offence, the offender would not have been entitled;
- (h) any evidence from which the court may reasonably conclude that the offender has a history of non-compliance with legislation designed to prevent or minimize harm to the environment; and
- (i) all available sanctions that are reasonable in the circumstances, with particular attention to the circumstances of aboriginal offenders.

Discharge

Absolute or conditional discharge

201. (1) Where an offender has pleaded guilty to or been found guilty of an offence, the court may, instead of convicting the offender, by order direct that the offender be discharged absolutely or on conditions having any or all of the effects described in section [...].

Conditions of order

(2) Where an order is made under subsection (1) and the offender contravenes or fails to comply with it, or is convicted of an offence under this Act, including an offence under section [...], the prosecutor may apply to the court to revoke the discharge, convict the offender of the offence to which the discharge relates and impose any sentence that could have been imposed if the offender had been convicted at the time the order was made.

Suspended sentence

201. (1) Where an offender is convicted of an offence under this Act, the court may suspend the passing of sentence and may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order under section [...].

Application by prosecutor

(2) Where the passing of sentence has been suspended under subsection (1) and the offender contravenes or fails to comply with an order made under section [...], or is convicted of an offence under this Act, including an offence under section [...], the prosecutor may apply to the court to impose any sentence that could have been imposed if the passing of sentence had not been suspended.

Additional fine

202. Where an offender has been convicted of an offence under this Act, the court may, where it is satisfied that as a result of the commission of the offence the offender acquired any property, benefit or advantage or that any property, benefit or advantage accrued to the offender, order the offender to pay, despite the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of that property, benefit or advantage.

Orders of court

203. (1) Where an offender has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to take any action that the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the offender to prepare and implement a pollution prevention plan or an environmental emergency plan;
- (d) directing the offender to carry out environmental effects monitoring in the manner established by the Minister or directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of environmental effects monitoring;
- (e) directing the offender to implement an environmental management system that meets a recognized Tanzanian or international standard;
- (f) directing the offender to have an environmental audit conducted by a person of a class and at the times specified by the court and directing the offender to remedy any deficiencies revealed during the audit;
- (g) directing the offender to publish, in the manner directed by the court, the facts relating to the conviction;
- (h) directing the offender to notify, at the offender's own cost and in the manner directed by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the conviction;
- (i) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with any order made under this section;
- (j) directing the offender to submit to the Minister, on application by the Minister made within three years after the date of conviction, any information with respect to the offender's activities that the court considers appropriate and just in the circumstances;
- (k) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the act or omission that constituted the offence;
- (l) directing the offender to perform community service, subject to any reasonable conditions that may be imposed in the order;

(m) directing that the amount of any fine or other monetary award be allocated, subject to the *Criminal Procedure Act, 1985* and any regulations that may be made under section [...], in accordance with any directions of the court that are made on the basis of the harm or risk of harm caused by the commission of the offence;

(n) directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of conducting research into the ecological use and disposal of the substance in respect of which the offence was committed or research relating to the manner of carrying out environmental effects monitoring;

(o) directing the offender to pay, in the manner prescribed by the court, an amount to environmental, health or other groups to assist in their work in the community where the offence was committed;

(p) directing the offender to pay, in the manner prescribed by the court, an amount to an educational institution for scholarships for students enrolled in environmental studies or to NGOs or CBOs conducting and/or involved in environmental protection activities; and

(q) requiring the offender to comply with any other reasonable conditions that the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

Publication

(2) Where an offender fails to comply with an order made under subsection (1)(g) directing the publication of the facts relating to the offence, the Minister may publish the facts in compliance with the order and recover the costs of publication from the offender.

Debt due to the Government

(3) Where the court makes an order under subsection (1)(k) directing an offender to pay costs or the Minister incurs publication costs under subsection (2), the costs constitute a debt due to the Government and may be recovered in any court of competent jurisdiction.

Coming into force and duration of order

(4) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than **three years** after that day.

Compensation for loss of property

204. (1) Where an offender has been convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of the person aggrieved, order the offender to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

Enforcement

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

Variation of sanctions

205. (1) Subject to subsection (2), where a court has made, in relation to an offender, an order or direction under section [...], [...] or [...], the court may, on application by the offender or the Attorney General, require the offender to appear before it and, after hearing the offender and the Attorney General, vary the order in one or any combination of the following ways that is applicable and, in the opinion of the court, is rendered desirable by a change in the circumstances of the offender since the order was made:

- (a) make changes in the order or the conditions specified in it or extend the period for which the order is to remain in force for any period, not exceeding one year, that the court considers desirable; or
- (b) decrease the period for which the order is to remain in force or relieve the offender, either absolutely or partially or for any period that the court considers desirable, of compliance with any condition that is specified in the order.

Notice

(2) Before making an order under subsection (1), the court may direct that notice be given to any persons that the court considers to be interested and may hear any such person.

Subsequent applications with leave

206. Where an application made under section [...] in respect of an offender has been heard by a court, no other application may be made under that section with respect to the offender except with leave of the court.

Environmental Protection Alternative Measures

Definitions

207. The definitions in this section apply in sections [...] to [...].

"agreement" means an agreement respecting environmental protection alternative measures.

"Attorney General" means the Attorney General of the United Republic of Tanzania.

"environmental protection alternative measures" means measures, other than judicial proceedings, that are used to deal with a person who is alleged to have committed an offence under this Act.

"person" includes individuals, the Government, public corporations, bodies corporate, societies and companies.

When measures may be used

208. (1) Environmental protection alternative measures may be used to deal with a person who is alleged to have committed an offence under this Act only if it is not inconsistent with the purposes of this Act and the following conditions are met:

(a) the measures are part of a program of environmental protection alternative measures authorized by the Attorney General, after consultation with the Minister;

(b) the offence alleged to have been committed is an offence under this Act, except an offence under the following sections:

(i) Sections [...],

(c) an information has been laid in respect of the offence;

(d) the Attorney General, after consulting with the Minister, is satisfied that they would be appropriate, having regard to the nature of the offence, the circumstances surrounding its commission and the following factors, namely,

(i) the protection of the environment and of human life and health and other interests of society,

(ii) the person's history of compliance with this Act,

(iii) whether the offence is a repeated occurrence,

(iv) any allegation that information is being or was concealed or other attempts to subvert the purposes and requirements of this Act are being or have been made, and

(v) whether any remedial or preventive action has been taken by or on behalf of the person in relation to the offence;

(e) the person has been advised of the right to be represented by an advocate;

(f) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;

- (g) the person applies, in accordance with regulations made under section [...], to participate in the measures;
- (h) the person and the Attorney General have entered into an agreement within the period of 180 days after the Attorney General has provided initial disclosure of the Government's evidence to the person;
- (i) there is, in the opinion of the Attorney General/DPP, sufficient evidence to proceed with the prosecution of the offence; and
- (j) the prosecution of the offence is not barred at law.

Restriction on use

(2) Environmental protection alternative measures shall not be used to deal with a person who:-

- (a) denies participation or involvement in the commission of the alleged offence; or
- (b) expresses the wish to have any charge against the person dealt with by the court.

Admissions not admissible in evidence

(3) No admission, confession or statement accepting responsibility for a given act or omission made by a person as a condition of being dealt with by environmental protection alternative measures is admissible in evidence against the person in any civil or criminal proceedings.

Dismissal of charge

(4) Where environmental protection alternative measures have been used to deal with a person alleged to have committed an offence, the court shall dismiss the charge laid against the person in respect of that offence where the court is satisfied on a balance of probabilities that the person has complied with the agreement.

No bar to proceedings

(5) The use of environmental protection alternative measures in respect of a person who is alleged to have committed an offence is not a bar to any proceedings against the person under this Act.

Laying of information, etc.

(6) This section does not prevent any person from laying an information, obtaining the issue or confirmation of any process, or proceeding with the prosecution of any offence, in accordance with the law.

Sentencing considerations

209. Where an information in respect of an offence of contravening an agreement under section [...] has been laid and proceedings in respect of the alleged offence for which the agreement was entered into have been recommenced, the court imposing a sentence for either offence shall take into account, in addition to the factors referred to in section [...], any sentence that has previously been imposed for the other offence.

Nature of measures contained in agreement

210. (1) An agreement may contain any terms and conditions, including, but not limited to,
(a) terms and conditions having any or all of the effects set out in section [...] or any other terms and conditions having any of the effects prescribed by the regulations that the Attorney General, after consulting with the Minister, considers appropriate; and
(b) terms and conditions relating to the costs of laboratory tests and of field tests, travel and living expenses, costs of scientific analyses and other reasonable costs associated with supervising and verifying compliance with the agreement.

Supervisory bodies

(2) Any governmental or appointed non-governmental body may supervise compliance with an agreement.

Duration of agreement

211. An agreement comes into force on the day on which it is signed or on any later day that is specified in the agreement and continues in force for the period, not exceeding **three years**, specified in the agreement.

Filing in court for the purpose of public access

212. (1) Subject to subsection (5), the Attorney General shall consult with the Minister before entering into an agreement and shall cause the agreement to be filed, as part of the court record of the proceedings to which the public has access, with the court in which the information was laid, within **30** days after the agreement was entered into.

Reports

(2) A report relating to the administration of or compliance with an agreement shall, immediately after all the terms and conditions of the agreement have been complied with or the charges in respect of which the agreement was entered into have been dismissed, be filed with the court in which the agreement was filed in accordance with subsection (1).

Confidential information or material injury

(3) Subject to subsection (4), the following information that is to be part of an agreement or the report referred to in subsection (2) must be set out in a schedule to the agreement or to the report:

- (a) trade secrets of any person;
- (b) financial, commercial, scientific or technical information that is confidential information and that is treated consistently in a confidential manner by any person;
- (c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, any person; or
- (d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of any person.

Agreement on information to be in schedule

(4) The parties to an agreement must agree on which information that is to be part of an agreement or a report is information that meets the requirements of subsection (3)(a) to (d).

Manner in which schedules to be kept secret

(5) A schedule to an agreement or to the report referred to in subsection (2) is confidential and shall not be filed with the court.

Prohibition of disclosure

(6) The Minister shall not disclose any information set out in a schedule to the agreement or to the report referred to in subsection (2), except under section [...] or under the *National Security Act, 1970*.

Filing in Environment Registry

213. A copy of every agreement and report referred to in section [...] and every agreement that has been varied under section [...], or a notice that the agreement or report has been filed in court and is available to the public, shall be included in the Environmental Registry.

Stay and recommencement of proceedings

214. Despite section [...] of the *Criminal Procedure Act*,

(a) the Attorney General shall, on filing the agreement, stay the proceedings or apply to the court for an adjournment of the proceedings in respect of the offence alleged to have been committed for a period of not more than one year after the expiry of the agreement; and

(b) proceedings stayed in accordance with paragraph (a) may be recommenced, without laying a new information or preferring a new indictment, as the case may be, by the Attorney General giving notice of the recommencement to the clerk of the court in which the stay of the proceedings was entered, but where no such notice is given within one year after the expiry of the agreement, the proceedings are deemed never to have been commenced.

Application to vary agreement

215. (1) Subject to section [...], the Attorney General may, on application by the person bound by an agreement and after consulting with the Minister, vary the agreement in one or both of the following ways that, in the opinion of the Attorney General, is rendered desirable by a material change in the circumstances since the agreement was entered into or last varied:

(a) make any changes to the agreement or to its terms and conditions; or

(b) decrease the period for which the agreement is to remain in force or relieve the person, either absolutely or partially or for any period that the Attorney General considers desirable, of compliance with any condition that is specified in the agreement.

Filing of varied agreement

(2) An agreement that has been varied under subsection (1) shall be filed with the court in which the original agreement was filed in accordance with section [...].

Records of persons

216. Sections 305 to 307 apply only to persons who have entered into an agreement, regardless of the degree of their compliance with its terms and conditions.

Records of police forces and investigative bodies

217. (1) A record that relates to an offence that is alleged to have been committed by a person, including the original or a copy of any fingerprints or photographs of the person, may be kept by any police force or body responsible for, or participating in, the investigation of the offence.

Disclosure by enforcement officer or peace officer

(2) An enforcement officer or other peace officer may disclose to any person any information in a record kept under this section that it is necessary to disclose in the conduct of the investigation of an offence.

Disclosure to insurance company

(3) An enforcement officer or other peace officer may disclose to an insurance company any information in a record kept under this section that it is necessary to disclose for the purpose of investigating a claim arising out of an offence that is committed or alleged to have been committed by the person to whom the record relates.

Government records

218. (1) The Minister, enforcement officers and analysts and any department or agency of a government in Canada with which the Minister has entered into an agreement under section

[...] may keep records and use information obtained as a result of the use of environmental protection alternative measures to deal with a person

- (a) for the purposes of an inspection under this Act or an investigation of an offence under this Act that is alleged to have been committed by the person;
- (b) in proceedings against the person under this Act;
- (c) for the purpose of the administration of environmental protection alternative measures programs; or
- (d) otherwise for the purposes of the administration or enforcement of this Act.

Supervision records

(2) Any person may keep the records and use the information obtained by the person as a result of supervising compliance with an agreement that are necessary for the purpose of supervising compliance with the agreement.

Disclosure of records

- 219.** (1) Any record or information referred to in section [...] or [...] may be made available to
- (a) any judge or court for any purpose that relates to proceedings relating to offences that are committed or alleged to have been committed by the person to whom the record relates;
 - (b) any prosecutor, enforcement officer or other peace officer
 - (i) for the purpose of investigating an offence that the person is suspected on reasonable grounds of having committed, or in respect of which the person has been arrested or charged, or
 - (ii) for any purpose that relates to the administration of the case to which the record relates;
 - (c) any member of a department or agency of the government, or any agent of such a department or agency, that is
 - (i) engaged in the administration of environmental protection alternative measures in respect of the person, or
 - (ii) preparing a report in respect of the person under this Act; or
 - (d) any other person who is deemed, or any person within a class of persons that is deemed, by a magistrate/judge to have a valid interest in the record, to the extent directed by the magistrate/judge, if the magistrate/judge is satisfied that the disclosure is:-
 - (i) desirable in the public interest for research or statistical purposes, or
 - (ii) desirable in the interest of the proper administration of justice,and if that person gives a written undertaking not to subsequently disclose the information except in accordance with subsection (2).

Subsequent disclosure

(2) Where a record is made available to a person under subparagraph (1)(d)(i), the person may subsequently disclose information contained in the record, but shall not disclose it in any form that could reasonably be expected to identify the person to whom it relates and any other person specified by the judge.

Information, copies

(3) Any person to whom a record is authorized to be made available under this section may be given any information that is contained in the record and may be given a copy of any part of the record.

Evidence

(4) Nothing in this section authorizes the introduction into evidence of any part of a record that would not otherwise be admissible in evidence.

Exception for public access to court record

(5) For greater certainty, this section does not apply to an agreement, a varied agreement or report that is filed with the court in accordance with section [...].

Agreements respecting exchange of information

220. The Minister may enter into an agreement with a department or agency of a government in Canada respecting the exchange of information for the purpose of administering environmental protection alternative measures or preparing a report in respect of a person's compliance with an agreement.

Regulations

221. The Minister may make regulations respecting the environmental protection alternative measures that may be used for the purposes of this Act including, but not limited to, regulations

- (a) excluding specified offences under this Act from the application of those measures;
- (b) prescribing the form and manner in which and the period within which an application to participate in the measures is to be made, and the information that must be contained in or accompany the application;
- (c) respecting the manner of preparing and filing reports relating to the administration of and compliance with agreements;
- (d) respecting the types of reasonable costs and the manner of paying the costs associated with supervising and verifying compliance with an agreement; and
- (e) respecting the terms and conditions that may be provided for in an agreement and their effects.

Contraventions

Ticketing

222. (1) Despite anything in this Act, the Minister may, by regulation, on the recommendation of the Committee, designate any offence under this Act as an offence with respect to which, despite the *Criminal Procedure Act*, an enforcement officer may lay an information and issue and serve a summons by completing a ticket in the prescribed form, affixing to it the enforcement officer's signature and delivering it to the person who is alleged to have committed the offence specified in it at the time the offence is alleged to have been committed.

Regulations

- (2) Any regulations made under this section:-
- (a) shall establish a procedure for entering a plea and paying a fine in respect of each offence to which the regulations relate;
 - (b) shall prescribe the amount of the fine to be paid in respect of each offence; and
 - (c) may prescribe any other matter necessary to carry out the purposes of this section.

Failure to respond to ticket

- (3) Where a person is served with a ticket and does not enter a plea within the time prescribed by the regulations, a magistrate shall examine the ticket and:-
- (a) if the ticket is complete and regular on its face, the magistrate shall enter a conviction in the person's absence and impose a fine of the prescribed amount; or
 - (b) if the ticket is not complete and regular on its face, the magistrate shall quash the proceedings.

Other Remedies

Injunction

223. (1) Where, on the application of the Minister, it appears to a court of competent jurisdiction that a person has done or is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under this Act, the court may issue an injunction ordering any person named in the application:-

- (a) to refrain from doing any act or thing that it appears to the court may constitute or be directed toward the commission of an offence under this Act; or
- (b) to do any act or thing that it appears to the court may prevent the commission of an offence under this Act.

Notice

(2) No injunction shall be issued under subsection (1) unless **48** hours notice is given to the party or parties named in the application or the urgency of the situation is such that service of notice would not be in the public interest.

Defence

224.(1) In a prosecution for a contravention of a provision of Part [...] by a company engaged in the business of assembling or altering vehicles, it is a defence for the company to establish that the contravention occurred as a result of work previously done on a vehicle by another company engaged in the manufacture of the vehicle.

Protection from civil proceeding or prosecution

(2) Despite any other Act of Parliament, no civil or criminal proceedings lie against the Minister, or against any person acting on behalf of or under the direction of the Minister, and no proceedings lie against the Government for the disclosure in good faith of any information under this Act, for any consequences that flow from that disclosure or for the failure to give any notice required under section [...] or any other provision of the National Security Act if reasonable care is taken to give the required notice.

Economic Instruments

Guidelines, programs and other measures

225. The Minister may establish guidelines, programs and other measures for the development and use of economic instruments and market-based approaches to further the purposes of this Act, respecting systems relating to:-

- (a) deposits and refunds; and
- (b) tradeable units.

Consultation

226. (1) In carrying out the responsibilities conferred by section 225, the Minister shall offer to consult with government departments or agencies, local communities, representatives of industry and labour and local government authorities or with persons interested in quality of the environment or the preservation and improvement of public health.

Publication of guidelines and programs

227. The Minister shall publish any guidelines, programs and other measures established under section 322, or shall give notice of their availability, in the *Canada Gazette* and in any other manner that the Minister considers appropriate.

Regulations for systems relating to deposits and refunds

228. The Minister may, in the exercise of a regulation-making power under section [...], [...] or [...], make regulations respecting systems relating to deposits and refunds, including, but not limited to, regulations providing for, or imposing requirements respecting,

- (a) deposits, including the amount of any deposit and the substance, product containing a substance or activity in relation to which a deposit is required, the conditions for the use of a deposit and the conditions for and manner of paying a deposit;
- (b) the period during which a deposit may be held;
- (c) refunds, including the amount of any refund and the substance, product containing a substance or activity in relation to which a refund may be granted and the conditions for and manner of paying a refund;
- (d) the establishment of a fund for deposits, and the operation, management and administration of the fund;
- (e) the designation of a person to administer the fund for deposits and the conditions for the designation;
- (f) reports and forms related to deposits, refunds and the fund for deposits;
- (g) the maintenance of books and records for the administration of any regulation made under this section; and
- (h) the forfeiture of deposits, including unclaimed deposits and the conditions under which and the circumstances in which deposits may be forfeited.

Regulations for tradable units system

229. The Minister may, in the exercise of a regulation-making power under section [...], [...], [...], [...], [...] or [...], make regulations respecting systems relating to tradable units, including regulations providing for, or imposing requirements respecting,

- (a) the substance, product containing a substance or quantity or concentration of the substance that is released or activity in relation to which the system is established;
- (b) the methods and procedures for conducting sampling, analyses, tests, measurements or monitoring under the system;
- (c) the description and nature of a tradable unit, including allowances, credits or coupons;
- (d) the baselines to be used for comparison or control purposes in relation to the system and the maximum limits applicable to the system and the manner of determining those baselines and maximum limits;
- (e) the conditions related to the creation, distribution, exchange, sale, use, variation or cancellation of a tradable unit;
- (f) the creation, operation and management of a public registry related to the system;
- (g) the conditions for the use of and participation in the system, including environmental or temporal limits;
- (h) reports and forms related to the system; and
- (i) the maintenance of books and records for the administration of any regulation made under this section.

Ministerial orders

230. Despite any regulation made under section [...], the Minister may issue an order setting conditions in respect of the trading or suspend or cancel trading of tradable units or invalidate any trade of tradable units where the Ministers are of the opinion that the trade or use of a tradable unit:-

- (a) has or may have an immediate or long-term harmful effect on the environment;
- (b) constitutes or may constitute a danger to the environment on which human life depends; or
- (c) constitutes or may constitute a danger in Canada to human life or health.

Regulations Respecting Fees and Charges

Services and facilities

231. (1) Subject to subsection (2), the Minister may make regulations:-

- (a) prescribing the fees or a scale of fees or the manner of determining the fees to be paid for a service, the use of a facility or any right, privilege, process or approval;
- (b) prescribing the persons or classes of persons by whom or on whose behalf the fees are to be paid and requiring the fees to be paid by those persons or classes of persons;
- (c) exempting any person or class of persons from the requirement to pay any of those fees; and
- (d) generally, in respect of any condition or any other matter in relation to the payment of fees for a service, facility, right, privilege, process or approval referred to in paragraph (a).

Appropriate Minister

(2) For the purpose of subsection (1), where the Minister or Ministers or both Ministers have responsibility for a service, facility, right, privilege, process or approval referred to in paragraph (1)(a), that Minister or both Ministers, as the case may be, have the power to make the regulations under subsection (1) in relation to that service, facility, right, privilege, process or approval.

Amount not to exceed cost

(3) Fees for a service or the use of a facility that are prescribed by or under regulations made under subsection (1) may not exceed the cost to the Government of providing the service or the use of the facility.

Amount

(4) Fees for processes or approvals that are prescribed by or under regulations made under subsection (1) shall in the aggregate not exceed an amount sufficient to compensate the Government for any reasonable costs incurred by the Government for the purpose of providing the processes or approvals.

Consultation

232. The Minister making a regulation under section 231 shall do so after consulting with any persons or organizations that the Minister considers to be interested in the matter.

General Regulation-making Powers and Exemptions

Exercise of regulation-making power

233. (1) The Minister may, in the exercise of any regulation-making power under this Act in respect of a substance, prescribe:-

- (a) the minimum, average or maximum quantity or concentration of the substance; and
- (b) the method of determining such a quantity or concentration.

Incorporation by reference

(2) For greater certainty, a regulation made under this Act incorporating by reference a standard, specification, guideline, method, procedure or practice may incorporate the standard, specification, guideline, method, procedure or practice as amended from time to time.

Board of Review Proceedings

Establishment of board of review

234. (1) Where a person files a notice of objection under section [...] or [...] in respect of:-
(a) a decision or a proposed order, regulation or instrument made by the Minister, or
(b) a decision or a proposed order or instrument made by either or Ministers,
the Minister or the Ministers may establish a board of review to inquire into the nature and extent of the danger posed by the substance in respect of which the decision is made or the order, regulation or instrument is proposed.

(2) Where a person files a notice of objection under section [...] or [...] in respect of an agreement or a term or condition of the agreement, the Minister may establish a board of review to inquire into the matter.

Mandatory review for air and water

(3) Where a person files with the Minister a notice of objection under section [...] with respect to regulations proposed to be made under section [...] or [...] within the time specified in that section, the Minister shall establish a board of review to inquire into the nature and extent of the danger posed by the release into the air or water of the substance in respect of which the regulations are proposed.

Mandatory reviews for certain regulations

(4) Where a person files with the Minister a notice of objection under section [...] with respect to regulations proposed to be made under Part [...] or section [...] within the time specified in that subsection, the Minister shall establish a board of review to inquire into the matter raised by the notice.

Review for permits

(5) Where a person files with the Minister a notice of objection under section [...] within the time specified in that section, the Minister may establish a board of review to inquire into the matter raised by the notice.

Mandatory review for toxics

(6) Where a person files with the Minister a notice of objection under section [...] in respect of the failure to make a determination about whether a substance is toxic, the Minister shall establish a board of review to inquire into whether the substance is toxic or capable of becoming toxic.

Composition of board

235. (1) A board of review shall consist of not fewer than **three members**.

Knowledge requirement

(2) A person is not eligible to be appointed as a member of a board of review unless the person is knowledgeable about the Tanzanian environment, environmental and human health or traditional ecological knowledge.

Appearance before board

236. A board of review shall give any person or government a reasonable opportunity, consistent with the rules of procedural fairness and natural justice, of appearing before it, presenting evidence and making representations.

Withdrawal of notice of objection

237. Where a notice of objection referred to in section [...] is withdrawn by the person who filed it and no other notice of objection is filed in respect of the same matter, the Minister may dissolve a board of review established in respect of the notice of objection.

Powers of board

238. For the purposes of an inquiry under this Act, a board of review has all the powers of a person appointed by the President as a commissioner under *Commissions of Inquiry Ordinance*.

Costs

239. (1) A board of review may award costs of, and incidental to, any proceedings before it on a final or interim basis and those costs may be fixed at a sum certain or may be taxed.

Payment

(2) A board of review may, in accordance with the rules, direct by whom and to whom any costs are to be paid and by whom they are to be taxed and allowed.

Absent member of board

240. Where a member of a board of review is absent or unable to proceed with or complete an inquiry, the remaining members of the board may, if there is still a quorum, proceed with or complete the inquiry.

Report

241. (1) As soon as possible after the conclusion of an inquiry, a board of review shall submit a report to the Minister or the Ministers who established the board, together with its recommendations and the evidence that was presented to it.

Publication of report

(2) The report of the board of review shall be made public immediately after its receipt by the Minister, subject to section [...] or the conditions of any other Act of Parliament.

Rules for boards review

242. The Minister may, with respect to boards of review that the Minister establish, make rules of either particular or general application:-

- (a) for regulating the proceedings of the boards;
- (b) for regulating the conduct of hearings, including the presentation of evidence, the making of representations, the holding of hearings, the length of hearings and the date on or before which the boards shall report;
- (c) fixing the remuneration of board members and the travel and living expenses to which they are entitled;
- (d) prescribing the criteria to be considered by boards in directing interim or final costs to be paid, taxed and allowed and prescribing a scale under which costs are to be taxed; and
- (e) generally, for regulating the conduct and work of the boards.

Report to Parliament

Annual report

243. (1) The Minister shall, as soon as possible after the end of each fiscal year, prepare and cause to be laid before the National Assembly a report on the administration and enforcement of this Act for that year.

Research

(2) The Minister shall include in the annual report a report on the research conducted under the authority of this Act during the fiscal year being reported.

Permanent review of Act

244. (1) The administration of this Act shall, every **five years** after the coming into force of this Act, stand referred to such committee of the National Assembly established or designated for that purpose.

Review and report

(2) The committee established or designated for the purpose of subsection (1) shall, as soon as practicable, undertake a comprehensive review of the provisions and operation of this Act and shall, within one year after the review is undertaken or within such further time as the National Assembly may authorize, submit a report to the National Assembly thereon, including a statement of any changes to this Act or its administration that the committee would recommend.

PART X**CONSEQUENTIAL AMENDMENTS, REPEAL, TRANSITIONAL PROVISIONS****Consequential Amendments****245. Amendments****246. Repeal and savings****247. Transitional provisions**

SCHEDULE I

(Sections [.....])

For molecular formulae in this schedule, "n" = number of atoms.

LIST OF TOXIC SUBSTANCES

- Chlorobiphenyls that have the molecular formula $C_{12}H_{(10-n)}Cl_n$ in which "n" is greater than 2
- Dodecachloropentacyclo [5.3.0.0^{2,6}.0^{3,9}.0^{4,8}] decane
- Polybrominated Biphenyls that have the molecular formula $C_{12}H_{(10-n)}Br_n$ in which "n" is greater than 2
- Chlorofluorocarbon: totally halogenated chlorofluorocarbons that have the molecular formula $C_nCl_xF_{(2n+2-x)}$
- Polychlorinated Terphenyls that have a molecular formula $C_{18}H_{(14-n)}Cl_n$ in which "n" is greater than 2
- Asbestos
- Lead
- Mercury
- Vinyl Chloride
- Bromochlorodifluoromethane that has the molecular formula CF_2BrCl
- Bromotrifluoromethane that has the molecular formula CF_3Br
- Dibromotetrafluoroethane that has the molecular formula $C_2F_4Br_2$
- Fuel containing toxic substances that are dangerous goods within the meaning of section [...] of the legislation dealing with *transportation of dangerous goods*, and that
 - (a) are neither normal components of the fuel nor additives designed to improve the characteristics or the performance of the fuel; or
 - (b) are normal components of the fuel or additives designed to improve the characteristics or performance of the fuel, but are present in quantities or concentrations greater than those generally accepted by industry standards.
- Dibenzo-para-dioxin that has the molecular formula $C_{12}H_8O_2$
- Dibenzofuran that has the molecular formula $C_{12}H_8O$
- Polychlorinated dibenzo-para-dioxins that have the molecular formula $C_{12}H_{(8-n)}Cl_nO_2$ in which "n" is greater than 2
- Polychlorinated dibenzofurans that have the molecular formula $C_{12}H_{(8-n)}Cl_nO$ in which "n" is greater than 2
- Tetrachloromethane (carbon tetrachloride, CCl_4)
- 1,1,1-trichloroethane (methyl chloroform, CCl_3-CH_3)
- Bromofluorocarbons other than those set out in items 10 to 12
- Hydrobromofluorocarbons that have the molecular formula $C_nH_xF_yBr_{(2n+2-x-y)}$ in which $0 < n \leq 3$
- Methyl Bromide
- Bis(chloromethyl) ether that has the molecular formula $C_2H_4Cl_2O$
- Chloromethyl methyl ether that has the molecular formula C_2H_5ClO
- Hydrochlorofluorocarbons that have the molecular formula $C_nH_xF_yCl_{(2n+2-x-y)}$ in which $0 < n \leq 3$
- Benzene that has the molecular formula C_6H_6
- (4-Chlorophenyl)cyclopropylmethanone,O-[(4-nitrophenyl)methyl]oxime that has the molecular formula $C_{17}H_{15}ClN_2O_3$
- Inorganic arsenic compounds
- Benzidine
- Bis(2-ethylhexyl)phthalate
- Inorganic cadmium compounds
- Chlorinated wastewater effluents
- Hexavalent chromium compounds

- Creosote-impregnated waste materials from creosote-contaminated sites
- 3,3'-Dichlorobenzidine
- 1,2-Dichloroethane
- Dichloromethane
- Effluents from pulp mills using bleaching
- Hexachlorobenzene
- Inorganic fluorides
- Refractory ceramic fibre
- Oxidic, sulphidic and soluble inorganic nickel compounds
- Polycyclic aromatic hydrocarbons
- Tetrachloroethylene
- Trichloroethylene
- Tributyltetradecylphosphonium chloride that has the molecular formula $C_{26}H_{56}P-C1$
- Bromochloromethane, that has the molecular formula CH_2BrCl
- Acetaldehyde, which has the molecular formula C_2H_4O
- 1,3-Butadiene, which has the molecular formula C_4H_6
- Acrylonitrile, which has the molecular formula C_3H_3N
- Respirable particulate matter less than or equal to 10 microns
- Acrolein, which has the molecular formula C_3H_4O
- Ammonia dissolved in water
- Nonylphenol and its ethoxylates
- Effluents from textile mills that use wet processing
- Inorganic Chloramines, which have the molecular formula $NH_nCl_{(3-n)}$, where $n = 0, 1$ or 2

SCHEDULE II

(Subsection [...])

ACTS AND REGULATIONS

- *Pest Control Products legislation and regulations*
- *Fertilizers and other agrochemical control legislation and regulations*
- *Animal Feeds control legislation and regulations*
- *Chemicals, Food, Drugs control legislation and regulations*
- *Atomic energy control legislation and regulations*
- *Public Health legislation and regulations etc.*

SCHEDULE III

(Sections [...] to [...])

For molecular formulae in this schedule, "n" = number of atoms.

EXPORT CONTROL LIST PART 1

PROHIBITED SUBSTANCES

- Mirex (Dodecachloropentacyclo [5.3.0.0^{2,6}.0^{3,9}.0^{4,8}] decane)
- Polybrominated biphenyls that have the molecular formula $C_{12}H_{(10-n)}Br_n$ in which "n" is greater than 2
- Polychlorinated terphenyls that have the molecular formula $C_{18}H_{(14-n)}Cl_n$ in which "n" is greater than 2
- Alachlor (2-chloro-2', 6'-diethyl-N-methoxymethyl acetanilide)
- Leptophos (O-(4-bromo-2,5-dichlorophenyl) O-methyl-phenylphosphonothioate)
- Phosphamidon (2-chloro-2-diethylcarbamoyl-1-methylvinyl dimethyl phosphate)

- Cyhexatin (tricyclohexyltin hydroxide)
- 2,3,4,5-bis(2-butylene)tetrahydro-2-furfural
- Bis(chloromethyl) ether that has the molecular formula $C_2H_4Cl_2O$
- Chloromethyl methyl ether that has the molecular formula C_2H_5ClO
- (4-Chlorophenyl) cyclopropylmethanone,O-[(4-nitrophenyl)methyl] oxime that has the molecular formula $C_{17}H_{15}ClN_2O_3$

PART 2 SUBSTANCES SUBJECT TO NOTIFICATION OR CONSENT

Note: In this Part, "CAS" denotes Chemical Abstracts Service registry number.

- 2,4,5-T (CAS 93-76-5)
- Aldrin (CAS 309-00-2)
- Captafol (CAS 2425-06-1)
- Chlordane (CAS 57-74-9)
- Chlordimeform (CAS 6164-98-3)
- Chlorobenzilate (CAS 510-15-6)
- DDT (CAS 50-29-3)
- Dieldrin (CAS 60-57-1)
- Dinoseb and dinoseb salts (CAS 88-85-7)
- 1,2-dibromoethane (EDB) (CAS 106-93-4)
- Fluoroacetamide (CAS 640-19-7)
- HCH (mixed isomers) (CAS 608-73-1)
- Heptachlor (CAS 76-44-8)
- Hexachlorobenzene (CAS 118-74-1)
- Lindane (CAS 58-89-9)
- Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds
- Pentachlorophenol (CAS 87-86-5)
- Monocrotophos (Soluble liquid formulations of the substance that exceed 600 g active ingredient / L) (CAS 6923-22-4)
- Methamidophos (Soluble liquid formulations of the substance that exceed 600 g active ingredient / L) (CAS 10265-92-6)
- Methyl-parathion (emulsifiable concentrates (EC) with 19.5%, 40%, 50%, 60% active ingredient and dusts containing 1.5%, 2% and 3% active ingredient) (CAS 298-00-0)
- Parathion (all formulations -- aerosols, dustable powder (DP), emulsifiable concentrate (EC), granules (GR) and wettable powders (WP) -- of this substance are included, except capsule suspensions (CS)) (CAS 56-38-2)
- Crocidolite (CAS 12001-28-4)
- Polychlorinated biphenyls (PCB) (CAS 1336-36-3)
- Tris (2,3-dibromopropyl) phosphate (CAS 126-72-7)
- Toxaphene (CAS 8001-35-2)
- Binapacryl (CAS 485-31-4)
- Ethylene oxide (CAS 75-21-8)
- 1,2-Dichloroethane (CAS 107-06-2)

PART 3 RESTRICTED SUBSTANCES

- Chlorofluorocarbon: totally halogenated chlorofluorocarbons that have the molecular formula $C_nCl_xF_{(2n+2-x)}$
- Allyl alcohol (2-propen-1-ol)
- Carbon tetrachloride (tetrachloromethane)

- DBCP (1,2-dibromo-3-chloropropane)
- Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8, 8a-octahydro-exo-5,8-dimethanonaphthalene)
- Lead arsenate that has the molecular formula $PbHAsO_4$, and its basic form that has the molecular formula $Pb_4(PbOH)(AsO_4)_3$
- Strychnine (2,4a,5,5a,7,8,15,15a,15b,15c,decahydro-4, 6-methano-6*H*,14*H*-indolo[3,2,1-*ij*]oxepino[2,3,4-*de*] pyrrolo[2,3-*h*]quinolin-14-one)
- Bromochlorodifluoromethane that has the molecular formula CF_2BrCl
- Bromotrifluoromethane that has the molecular formula CF_3Br
- Dibromotetrafluoroethane that has the molecular formula $C_2F_4Br_2$
- Tetraethyl lead
- Tetramethyl lead
- Tributyltetradecylphosphonium chloride

SCHEDULE IV

(Subsections [...] and [...] and section [...])

WASTE OR OTHER MATTER

1. Dredged material.
2. Fish waste and other organic matter resulting from industrial fish processing operations.
3. Ships, aircraft, platforms or other structures from which all material that can create floating debris or other marine pollution has been removed to the maximum extent possible if, in the case of disposal, those substances would not pose a serious obstacle to fishing or navigation after being disposed of.
4. Inert, inorganic geological matter.
5. Uncontaminated organic matter of natural origin.
6. Bulky substances that are primarily composed of iron, steel, concrete or other similar matter that does not have a significant adverse effect, other than a physical effect, on the sea or the seabed, if those substances
 - (a) are in locations at which the disposal or incineration at sea is the only practicable manner of disposing of or thermally destroying the substances; and
 - (b) in the case of disposal, would not pose a serious obstacle to fishing or navigation after being disposed of.

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