

# **ENVIRONMENTAL IMPACT ASSESSMENT OF FOREIGN INVESTMENT PROJECTS**

## **A Study in the Law, Policy and Governmental Decision-making in Tanzania\***

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### **INTRODUCTION**

The concept of Environmental Impact Assessment (EIA) refers to the examination, analysis and assessment of planned activities with a view to ensuring their environmental soundness and sustainable development. It is said to be a valuable means of promoting the integration of environmental and natural resource issues into planning and program implementation (see UNEP, 1987 as discussed by Lissu and Magabe, 1994:18-20). The purpose of incorporating EIA approaches has been described as subjecting a proposed action to an examination of what the possible environmental impacts of that action would be and to find ways to mitigate any negative long term impacts.

EIA may also be a process which brings the proposed action into the public forum and provides an opportunity for comment and feedback (MTNRE, 1994:42). In this sense, and depending on the nature and extent of that participation, EIA processes are seen as mechanisms for public participation and the democratization of decision-making processes in matters of environmental governance and natural resource allocation and use. As such, EIA processes may result in a proposed project being abandoned, but in most cases they result in a better project more in harmony with longterm needs and with little negative environmental impact (MTNRE, loc. cit.)

This brief intends to examine environmental law and policy in Tanzania particularly in respect of foreign investment in Tanzania with a view to showing the manner in which social and environmental considerations have been integrated in the decision-making processes regarding foreign investment and the regulation thereof. The taste of the pudding is, as a saying goes, in the eating and one cannot judge the efficacy of the law without examining what goes on in the world of practice. The brief honours this tradition by examining the practice which has evolved in recent years as regards the EIA processes.

The central argument that is pursued herein is to the effect that in the current climate of economic liberalization and re-regulation of the state, policy pronouncements and legal provisions in respect of environmental protection may in fact count for little. That in an all pervasive neo-liberal, neo-corporate paradigm which is bent on securing and protecting the interests of - largely foreign - investors and the bureaucratic interests of those in the positions of power and influence within the Tanzanian state, the ends of the law may actually be sabotaged or selectively and cynically manipulated to serve other ends.

These are all very important questions given the nature and character of Tanzania's economy, which is basically rural and predicated on the exploitation of natural resources. Foreign investment which is flowing into the country is also based on the exploitation of the finite natural resources such as minerals, wildlife/forestry and coastal and marine resources. Therefore, the nature and character of the regulatory system for this investment

has significant impacts not only on the management and ultimate sustainability of the natural resources but also on the livelihood of various rural communities who depend on the natural resource bases for both their physical and cultural survival. It also has significant impacts in the political sphere as economic deregulation in Tanzania also seems to have gone hand in hand with the 'deregulation' of the political morals of public officials and public institutions.

Running through the analysis like a red thread is a realization that issues of environmental management are not just legal or technical issues to be left to the bureaucrats and "experts". They can only be properly understood in the light of the ongoing socio-economic and political processes; and in the current dispensation they must be seen against the background of the deregulation and re-regulation of the state to serve capital and 'the market'. These issues represent the central questions of politics and exercise of state power in the allocation and distribution of resources to various social groups in the country. These points are illustrated in Part Two by examples of foreign investment projects which have gone through EIA processes and were approved for implementation in the country.

\* This policy brief is partly based on an unpublished research report titled 'The Mad Rush for "Pink Gold": A Socio-Legal Study of the Rufiji Delta Prawn Farming Project, Tanzania', prepared by the author for LEAT and SRDA.

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## **LAWYERS' ENVIRONMENTAL ACTION TEAM**

The Lawyers' Environmental Action Team is the first public interest environmental law organization in Tanzania. It was established in 1994 and formally registered in 1995 under the Societies Ordinance. Its mission is to ensure sound natural resource management and environmental protection in Tanzania. It is also involved in issues related to the establishment of an enabling policy environment for civil society, including civil liberties and human rights. LEAT carries out policy research, advocacy, and selected public interest litigation. Its membership largely includes lawyers concerned with environmental management and democratic governance in Tanzania.

## **LIST OF STATUTES**

1. National Environment Management Council Act, 1983, No. 19 of 1983.
2. National Investment (Promotion and Protection) Act, 1990, No. 10 of 1990.
3. Marine Parks and Reserves Act, 1994, No. 29 of 1994.
4. National Investment Act, 1997, No. 26 of 1997.

5. Financial Laws (Miscellaneous Amendments) Act, 1997, No. 27 of 1997.

6. Mining Act, 1998, No. 5 of 1998.

## **LIST OF CASES**

1. *S. Jagganathan versus The Union of India and Others*

## **ACRONYMS**

AFC	African Fishing Company Limited
DoE	Division of Environment
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
GATT	General Agreement on Tariffs and Trade
MAC	Ministry of Agriculture and Cooperatives
MEM	Ministry of Energy and Minerals
MNRT	Ministry of Natural Resources and Tourism
MTNRE	Ministry of Tourism, Natural Resources and Environment
NCSSD	National Conservation Strategy for Sustainable Development
NEAP	National Environmental Action Plan
NEP	National Environmental Policy
VPO	Vice President's Office

## **PART I. EIA IN TANZANIA'S ENVIRONMENTAL LAW AND POLICY**

Tanzania does not have and has never had a comprehensive environmental law with mandatory requirements for environmental impact assessment (EIA). This omission may be explained in part as due to the marginal place that environmental matters played in the period preceding the Rio Conference in 1992. In the post-Rio period, the reluctance to integrate EIA requirements in legislation may be seen in the context of the liberalization and deregulation policies in force since mid 1980s whose centrepiece has been privatization of the common wealth and promotion of private foreign investment. This has created fears that putting investors to rigorous and public scrutiny of their projects on environmental grounds may scare them away thus depriving the economy of the badly needed foreign direct investment.

The main reason for such fears is that attention to environmental matters is generally perceived by business and corporate interests and neo-liberal states as only adding to production costs, making countries less efficient and less competitive. It is perceived therefore, that any outlays devoted to environmental control would be at the expense of development and poverty alleviation objectives.

As Nicholas Hildyard has written in his seminal study on the World Bank and the rise of the neo-liberal and neo-corporate state of the 1980s and 1990s, in this age of deregulation characterized by the dismantling of legal and administrative controls deemed to interfere with the operation of the market "limitations on the free movement of capital between countries have been stripped away through international agreements and governments have sought to attract inward investment by creating as attractive a 'policy environment' for business as possible. To do so they have dismantled many social and environmental controls that might add to business costs" (1998: 7-8; emphasis supplied).

This has been a worldwide phenomenon affecting not only the Third World but the industrialized world as well. In the Southern countries, however, this deregulation is now being extended throughout the wider national economy: "Workers' rights to organize and strike have been restricted; environmental regulations weakened; foreign ownership restrictions watered down or abolished; and TNCs (transnational corporations) granted freedom from planning and environmental controls and given permission to repatriate profits without restriction. Since ratification of the latest General Agreement on Tariffs and Trade (GATT) in 1994, these deregulated regimes ... have the protection of international law" (Hildyard, *op. cit.*, 8; also see Lissu, 1996: Ch. 2).

Tanzania has not escaped this juggernaut of globalization. The perception discussed above has led to corporate interests in alliance with the liberalizing state to seek to 'deregulate' by avoiding to include stringent environmental provisions in statutes and regulations in respect of foreign investment in Tanzania. In other words, the overriding desire to create "conducive environment" for investors explains the omission of EIA requirements in our national investment law as well as the politico-bureaucratic control of the EIA processes in other legislation which regulate investment in the country. The effect has been that even where statute requires compliance with environmental considerations, in practice this is either totally ignored or its spirit subverted while keeping intact the veneer of legality.

### **Expansive Policy Rhetoric**

The need for more effective environmental management mechanisms in Tanzania has been widely acknowledged. No wonder, therefore, that the omission of EIA requirements in various environmental and natural resource management legislation has been a source of considerable criticism in both the official and academic literature on natural resource management in the country. Much of this criticism has centred on the need to have effective regulatory controls in place in view of the growing importance of foreign investment in Tanzania. For instance, a 1993 analysis of the now repealed National Investment (Promotion and Protection) Act, 1990<sup>1</sup>, - which, according to a prominent legal scholar, had given investors "very generous incentives and guarantees" - showed that the Act placed very minor obligations on the investor (Peter, 1993: 57). No obligation was, for example, placed on the investor to clean up the environment if his venture were to be found to have caused environmental degradation or pollution (*loc. cit.*).

Likewise, commenting on the impact of macro-economic policies adopted by the Government of Tanzania since mid 1980s, a National Conservation Strategy for Sustainable Development (NCSSD) prepared by the National Environment Management Council (NEMC) singled out privatization and encouragement of foreign investors as

having substantial, if indirect, impact on the environment (NEMC, 1995:22). It noted, taking leaf from the Report of the Presidential Commission of Inquiry into Land Matters (Tanzania, 1994) that one of the tendencies which have gathered considerable momentum in recent years is the alienation and allocation of rural and village lands to outsiders, thus subjecting the lands to intensive uses for short-term gain.

The NCSSD document further observed that the trend away from direct state involvement in economic activity which has obviously stimulated economic growth has, however, not been replaced with effective regulatory framework which could allow market forces to work effectively while safeguarding certain national interests such as environmental quality and equitable income distribution (op. cit., 22-3). It further observed that the absence of a legal regime for EIA in the planning processes was one of the "legal issues of national concern", noting that "without a mandatory EIA process, no obligation exists to assess and monitor the effects of projects and government activities on the environment" (op. cit., 26). It, therefore, urged the promotion of EIA methodology in the planning and implementation processes of all relevant ministries regulating government activities as well as private investment, especially the Investment Promotion Centre (IPC, now known as TIC) "where most investment projects are scrutinized" (op. cit., 41). In addition, it proposed the creation of a legal regime requiring mandatory EIA of major development projects with significant impacts on the environment, with the EIA procedures requiring cross-sectoral consultation in specific cases of government decision-making (op.cit., 42).

Almost a year earlier, the Government had come up with a National Environmental Action Plan (NEAP) which was touted as 'a first step' in making the fundamental changes needed to bring environmental considerations into the mainstream of decision-making in our country (see foreword by Minister of Tourism, Natural Resources and Environment, MTNRE, 1994:iv). The NEAP, dubbed as the outcome of "distillation of lessons and thoughts on environment and development from a national perspective", gave recognition to environmental impact assessment as one of the "priority instruments" of environmental policy (op. cit., 25). In surprisingly candid and forthright terms, this document condemned environmental legislation in Tanzania as being "obsolete", with few statutes containing requirements for public participation in environmental management, public right to enforce the laws, legal requirements for management planning with an emphasis on long-term sustainability of resources, environmental impact assessment and standards and licensing schemes for appropriate behaviour (op. cit., 30). The NEAP also urged the incorporation of EIA approaches into all aspects of planning and decision-making. Arguing that successful implementation of the environmental policy and action plan required finding the right balance between the environmental constraints and the need for human action, this document proposed the incorporation of EIA requirements "for all major projects with a significant impact on the natural and human environment" (ibid., 42).

The foregoing concerns are reflected in the National Environmental Policy which was passed in December 1997 (Tanzania, 1997a). The latter has recognized the importance of EIA as a planning tool to integrate environmental considerations in decision-making process in order to ensure that unnecessary damage to the environment is avoided (op. cit., para. 65). It has, furthermore, proclaimed the need for making EIA processes a mandatory requirement "to ensure that environmental concerns receive due and balanced consideration in reconciling urgent development needs and long-term sustainability" (op. cit., para. 65). The policy has, in addition, promised the formulation of requisite guidelines

and specific criteria for conducting EIA processes as part of the strategies to implement the policy (op. cit., para. 66). The cornerstone of these processes, according to the Policy, will be the institution of the mechanisms for public consultations and public hearings in the EIA procedures (op. cit., para. 66).

### **...and Legislative Foot-dragging**

A closer scrutiny would reveal, however, that the official rhetoric on the need for incorporating EIA into law has not been matched by concrete deeds. Legislative developments reveal a rather disturbing continuity with the past practice which has been characterized by sectoralism in environmental and natural resource management despite the deafening rhetoric about the need for cross-sectoral, multidisciplinary approaches in that respect. The Government has also so far resisted enacting a comprehensive framework environmental legislation despite policy promises (op. cit., para. 70) and repeated calls in publicist literature and the submission of two draft proposals in the early<sup>2</sup>.

It is, however, in relation to foreign investment that the continuity in past policies is even more striking and disturbing. As I have shown, there was no obligation on investors to mitigate the negative impacts of their ventures on the environment under the 1990 legislation. That legislation was repealed and replaced by the National Investment Act, 1997<sup>3</sup>, which was enacted - according to its preamble - "to provide for more favourable conditions for investors...." This it has done admirably, as it gives investors extraordinarily generous incentives in the form of tax reliefs and concessional tax rates (op. cit., §19, 20)<sup>4</sup>; and guarantees and protections in the form of unconditional transfer of capital, profits, etc. and guarantees against expropriation, nationalization or compulsory acquisition (op. cit., §21, 22). Investors are even entitled to an initial automatic immigration quota of up to five persons during the start up period which quota may be raised under certain circumstances (op. cit., §24(1)(2)).

In addition to these generous incentives, the Government also seems to have resisted calls to subject foreign investors to any standards of responsible environmental behaviour by not making any mandatory or voluntary EIA requirements in all investment projects, foreign or local. In fact, under this law, there is absolutely no mention of the word 'environment' anywhere and no environmental obligations whatsoever are imposed upon investors. A recent study commissioned by the Vice President's Office (VPO) had this to say as regards the Act:

"The fact that the Tanzania Investment Act imposes no specific requirements for investors to comply with any environmental conditions would appear to be a significant step backwards, as the original Bill for the Act which was submitted to Parliament (in 1997) had a provision requiring the TIC to "liaise with appropriate bodies or agencies to ensure that investment projects use environmentally viable technology to restore, preserve and protect the environment."<sup>5</sup> This provision was deleted in the final version of the Bill which was enacted into law. It was an important provision that could have ensured that the TIC vets, at the application stage, investors who are out to maximize short-term profits at the expense of the environment. That it was removed from the final Bill suggests that the various political statements and "pledges" about the Government's strong commitment to

environmental issues is (sic!) empty rhetoric which cannot stand up to rigorous scrutiny" (LEAT, 1999: 23).

This is in sharp contrast with the considerable lengths taken to attract these new economic 'messiahs' as shown above; as well as by the fact that such mundane and elementary matters as incorporation and registration of companies, filling in of VAT, investment registration and immigration forms and the obtaining of necessary approvals, licenses, facilities or services will be done or 'facilitated' for them by the Tanzania Investment Centre! (op. cit., §18(1). They need not even apply for their own immigration permits as this will be done on their behalf by the TIC!<sup>6</sup>

### **The Section Proposes...**

To be sure, there have been other legislative developments which have tried to chart a different course as regards EIA requirements in Tanzanian law over the last few years. The Marine Parks and Reserves Act, 1994<sup>7</sup>, for instance, requires EIA processes to be conducted for proposed activities in marine parks or reserves pursuant to legal requirements, policy, practice or general management plans or regulations (§13(3). The Act puts further restrictions on certain land allocations or uses without a proper EIA being undertaken. Under section 16(2)(a), for instance, "no authority shall allocate land and put to new use any area within a buffer zone unless an assessment of the environmental impact of the proposed activity is conducted pursuant to legal requirements, policy, practice or pursuant to any applicable general management plan or regulations made under this Act."

In addition, the Act requires a written notification of the proposed allocation of land or new use to be submitted to the Warden or Unit Manager at least thirty days before the preparation of the environmental impact assessment (§16(2)(b); and where it is apparent that the proposed activity has negative effect on fish, animals, water, aquatic flora, vegetation or aquatic substrate, the advice of the Board shall be sought (§16(3).

In addition to the requirements for EIA set forth above, there are other activities which are considerably restricted or outright prohibited presumably because of their potentially disastrous environmental ramifications. For instance, under section 24(1), all commercial activity is prohibited unless it is specifically permitted under the general management plan or regulations adopted for that marine park or reserve. Likewise restricted are uses of marine parks or reserves or buffer zones and adjacent areas thereof having impacts on the parks or reserves, as dumping grounds for depositing or discharging sewage, litter, rubbish, or other articles or substances. Furthermore, mining and installation of heavy industry within a marine park or reserve; or outside their boundaries in a manner which negatively affects them; depositing or discharging of oil, chemicals or other hazardous substances within parks or reserves, or buffer zones or adjacent areas having an impact on the parks or reserves are outright prohibited. Contravention of these restrictions or prohibitions attracts criminal sanctions (§24(2).

The Act, however, suffers from several weaknesses. Firstly, it would appear that the EIA provisions in the Act were not envisaged as a mechanism for public participation. The reason for this that the Act provides neither the procedure nor opportunity for stakeholders such as NGOs, local communities or their representatives to participate in the EIA processes. Secondly, apart from the notice requirements, the Act makes no provisions to

compel the various levels of the management organs of marine parks or reserves to make relevant information available stakeholders such as villagers or NGOs and other interested parties in order to facilitate their informed participation in decision-making processes concerning the marine resources.

Thirdly, although the Act makes mandatory requirements for EIA in Marine Parks or reserves in accordance with "legal requirements, policy, practice..." etc., this provision would appear to be purely hortatory. The reason for this is that prior to the enactment of this law, there were no other legal requirements or administrative rules, regulations or guidelines for EIA in respect of coastal and marine areas and none have been promulgated ever since its enactment.

### **EIA Regime under the Mining Act, 1998**

It is perhaps under the newly enacted Mining Act, 1998<sup>8</sup>, that a much more serious attempt has been made to incorporate EIA requirements into planning and decision-making processes in the mining sector which has assumed a prominent place in the Government's drive to attract investors in the country. This legislation makes extensive provisions for environmental matters in relation to mining activities, introducing - for the first time - mandatory EIA requirements as a condition for granting various categories of mining licenses. Under section 38(4)(c), every application for a special mining license must include or be accompanied by the applicant's environmental management plan (EMP), including his proposals for the prevention of pollution, waste treatment, protection and reclamation of land and water resources and for eliminating or minimizing adverse effects on the environment of mining operations. This requirement is also applicable in cases of application for renewals of the special mining license (op. cit., §42(2)(d).

In addition, the Act requires every applicant for the special mining license to commission and produce to the Minister responsible for mining an environmental impact assessment on proposed mining operations from independent consultants of international standing short-listed by the applicant and approved by the Government (op. cit., §38(5). Applications under this section are required to be submitted to the Mining Advisory Committee (MAC) created under section 20 of the Act to advise the Minister (op. cit., §38(6). This applies to applications for renewals as well (op. cit., §42(3). A special mining license has a maximum life span of twenty five years or may be granted for the estimated life span of the mineral ores to be mined whichever is the shorter (op. cit., §40(a).

Failure to comply with these requirements is apparently fatal, for the Minister shall grant the special mining license to the entitled applicant only if "... the applicant's environmental management plan takes proper account of the environmental impact assessment commissioned under section 38(5) and conforms to the Regulations and to established international standards and practice and meets reasonable standards established by the Government for the management of mining operations" (op. cit., §39(1)(d). An application for the renewal of a special mining license may also be rejected if the EMP does not satisfy the requirements of section 39(1)(d). This applies to application for renewals of the gemstone mining license as well (op. cit., §55(3)(d). It is not sufficient that applicants for mining licenses must submit EMPs and EIAs alone. They must also comply with those plans and EIAs. It is a condition under the Act that a holder of a special mining license must develop the mining area and carry on mining operations in substantial compliance

with his environmental management plan (op. cit., §44(a); or else provide for the posting of a rehabilitation bond to finance the costs of rehabilitating and making safe the mining area on termination of the mining operations where the holder of the license has failed to meet his obligations in this respect (op. cit., §44(d)<sup>9</sup>.

The stringent requirements that we have seen above in relation to special mining licenses apply as well to the shorter duration concessions such as the mining license and the gemstone mining license, whose maximum life span is ten years. For example, applicants for these licenses must include a feasibility study which would set out measures the applicants propose to take in relation to any adverse impacts on the environment (op. cit., §47(2)(e)(i) and 51(3)(e). If the application for any of these licenses falls under section 64 it must include the EIA on the proposed mining operations by independent consultants of international standing as well as an EMP (op. cit., ss. 47(2)(h) and 51(3)(f). Section 64 requires applicants for licenses to commission and submit EIAs and EMPs as set out in the Regulations where mining operations to be carried out fall within the scale of mining operations set out in the Regulations<sup>10</sup>.

In the event the environmental management plan fails to take proper account of the environmental impact assessment or the Regulations as per section 64(1) established by international standards and practice or reasonable standards established by the Government, the Minister shall not grant the application for the license (op. cit., §48(e) and 52(1)(g). Holders of these licenses have a further duty to take all appropriate measures for environmental protection (op. cit., §49(2)(c) and 53(2)(c). And although holders of the various categories of licenses under this Act have the option to surrender their licenses to avoid being bound by the strict rigours of these provisions, the Minister is nevertheless empowered to refuse the surrender of the license if he is satisfied that the applicant will not leave the land to be surrendered in a condition which is safe and conforms to the requirements of the EMP or of the applicable Regulations relating to the safety and environmental management (op. cit., §56(3)(c).

The Mining Act further grants the Minister considerable law-making powers to make regulations for the avoidance of the pollution of air, surface and ground waters and soils and for regulation of all matters relating to the protection of the environment and for minimization of all adverse impacts to environment including the restoration of land on which mining operations have been conducted (op. cit., §110(2)(j)<sup>11</sup>.

### **...and the Proviso Disposes**

The legislative developments examined in this part should not, however, be taken at their face value as they reveal, at best a half-hearted attempt at introducing EIA into the corpus of law, and at worst a cynical public relations charade and a manipulation of the philosophy and principles underlying EIA. The Marine Parks and Reserves Act, 1994, does not, as we have seen, provide any guidance as to how its EIA requirements will be put to effect and by which institution. And as we have seen, there is not much precedent, legal or otherwise, in other legislation, which may shed light as to how, these provisions will be made effective.

The Mining Act, 1998, on the other hand, contains provisions which seriously water down and may - given Tanzania's politico-administrative context and historical experience -

render useless the rigorous environmental management and protection provisions examined above. This relates to omission of requirements for public participation in the EIA processes and the wide discretionary powers, which the Minister enjoys under the Act. The fact that ministerial discretion in public decision-making processes in Tanzania has been widely abused for personal gain has been widely documented. The verdict of the Presidential Commission of Inquiry Against Corruption (the Warioba Commission) published in November 1996 was unequivocal in this respect: "... (T)he country has witnessed the disappearance of transparency in transacting public business at all levels. Discretionary powers have been used in a manner that has created loopholes for favouritism and discrimination.... The basis on which decisions are taken has not been clear. This situation has created big loopholes for corruption and has generated more corruption" (Tanzania, 1996, Vol. 1:63-4).

Abuses of tax exemption powers, imports support schemes, awards of Government contracts, grants of hunting concessions, land allocations, overseas medical treatment, etc. involving high state officials and senior politicians were also extensively documented and acknowledged by the Warioba Commission which, in its stinging report, denounced the "grand corruption involving high level leaders and public servants whose involvement in corruptive practices is a result of excessive greed for wealth accumulation and money" (ibid., Vol. 1:5; original emphasis). These widespread abuses were made possible by the overbearing concentration of powers and authority in the executive organs of the state as exemplified by wide discretion with little or no meaningful 'checks and balances' and accountability of the rulers to the ruled.

That wide ministerial discretion has been a running theme in Tanzania's legal and constitutional history also finds ample proof in the Mining Act, 1998. Under section 10(1), for instance, the Minister may enter into a development agreement not inconsistent with the Act with a holder or an applicant for a mineral right relating to the grant of mineral rights, the conduct of mining operations under the special mining license or the financing of any mining operations under the special mining license. This agreement may contain provisions which are binding on the Government relating to the special mining license or the mining operations to be conducted under the said license which guarantee fiscal stability of a long term mining project and for that purpose make special provisions for payment of royalties, taxes, fees, etc. (op. cit., s. 10(2)(a)).

The effect of this provision is that where, say, the holder of a special mining license informs the Minister that payment of royalties, taxes or mining fees in respect of his mining operations will cause 'fiscal instability' to his project the Minister may enter into an agreement with the holder of the license to waive or defer the payment of the royalties, taxes or fees, thus restoring the mining project to 'fiscal stability'! Given the often secretive, usually technocratic and generally unaccountable ministerial decision-making processes in this country, the opportunities for "grand corruption", favouritism and malpractice abound in the exercise of discretion under this section.

The agreement between the Minister and the holder or applicant of a mineral right may also contain provisions relating to the circumstances or manner in which the Minister or the Commissioner of Mines (another licensing authority under the Act) may exercise discretion conferred upon them by the Act or the Regulations (op. cit., s. 10(2)(b)). Here the Minister or the Commissioner may agree to defer the payment of the said royalties,

taxes or fees or reduce the rate thereof. Indeed under section 64(2), the Minister may exempt an applicant for a mineral right from the Regulations after the particular applicant has submitted to the Minister a requirement for the consideration of environmental information!

The agreement between the Minister and the holder or applicant for a mineral right may also contain provisions relating to environmental matters including in respect of matters which are project specific and are not covered by regulations of general application, provisions intended to define the scope and limit the extent of obligations or liabilities of the holder of a special mining license (op. cit., s. 10(2)(c). Here the Minister may choose to overlook the requirements for the commission and submission to him of an EIA or an EMP for a specific project. Indeed, under the proposed regulations for environmental management and protection, the Minister may direct that a particular application is exempt from the Regulations or it requires consideration of environmental information and is, therefore, subject to the Regulations (see reg. 3). Again the result is likely not to be the elimination of corruption and inefficiency but the creation of new networks of patronage that encourage their own forms of political corruption and cronyism. Tanzania is not likely to be an exception in this respect as these processes have also been observed by scholars and publicists in other countries (see, for instance, Hildyard, *passim*.)

Compared to the wide latitude that the Minister and other functionaries within the Ministry of Minerals enjoy, opportunities for public participation in decision-making processes concerning such matters as granting of mining licenses and the negotiation of the terms and conditions under which the grantees shall operate are conspicuous by their absence. The role of the general public in such important and public processes as preparation, review and approval of EIA studies in respect of mining projects has also not been provided for. As we shall see with examples of what is happening in the mining areas, this want of public participation has serious implications on the various rights and interests of stakeholders such as local communities in mineral rich areas.

### **NEMC's EIA Guidelines and Procedures**

The National Environment Management Act, 1983<sup>12</sup> established the National Environment Management Council (NEMC) and bestowed upon it the functions of advising the Government on all matters relating to the environment. In particular, the Council is enjoined to formulate policy on environmental management; coordinating the activities of all institutions concerned with environmental matters; evaluating existing and proposed policies and activities on pollution control and enhancement of environmental quality; recommending measures to ensure Government policies take adequate account of environmental effects; etc<sup>13</sup>. It may also be involved in initiating legislative processes as its other function is to "formulate proposals for legislation in the area of environmental issues and recommend their implementation by the Government (§4(j)).

In addition, the Act establishes the office of the Director General of the Council who is the Chief Executive Officer (§6) with wide ranging duties in environmental matters. He is, for instance duty-bound "to consider means and initiate steps for the protection of the environment and for preventing, controlling, abating or mitigating pollution; and investigate problems of environmental management, among others (§7(a-f). It is on the basis of these statutory functions that NEMC has been reviewing various development

projects in the country in order to ensure that they conform to requisite environmental standards.

It is also on this basis that NEMC prepared Environmental Impact Assessment Guidelines and Procedures in 1997 to guide developers carry out development projects in an environmentally responsible way. These Guidelines and Procedures hold particular importance in so far as they have sought to incorporate issues of public participation and access to information in environmental decision-making processes in respect of projects with likely environmental impacts.

### **Public Participation under the Guidelines and Procedures**

There are numerous stages which are required to be fulfilled before a particular project is implemented. There is, for instance, a classification exercise or the preparation of a preliminary environmental report to show whether a proposed project will cause significant adverse environmental impacts. As in the United States<sup>14</sup>, the report is used as an aid by an agency in determining whether an EIS must be prepared when the impacts of a project are unknown or the need for a more detailed EIS is uncertain. If the project is shown to be likely to have environmental impacts, then the project proponent will be required to prepare and submit an Environmental Impact Statement (EIS) to NEMC.

Three stages are involved in this exercise at the centre of which are public participation and access to information provisions. These are scoping, preparation of Terms of Reference and preparation of the EIS (NEMC, 1997a). Scoping is done by the project proponent or by his consultants in order to identify the main issues of concern in consultation with NEMC and the relevant sectoral authorities as well as the affected and interested persons. It is the responsibility of the project proponent to make sure that all the concerned parties are given adequate opportunity to participate in the scoping exercise. The objective of their inclusion is to determine how their concerns will be addressed in the ToR for the EIA study. (ibid., Vol. 1, para. 2.3.1.)

The EIA Procedures and Guidelines also insist that in order to ensure satisfactory public involvement, the project proponent should initiate a public information campaign in the area likely to be affected by the proposed project and that any concerns raised by the members of the public are recorded and addressed in the EIS (ibid., Vol. 1, loc. cit.) These requirements have been implemented with success in the United States whose NEPA and its associated regulations require federal agencies to respond to stakeholders concerns and comments on EIS in the form of additions to, or modifications of, a proposed action; a correction of inaccurate factual information; or an explanation of why the comments do not warrant an action on the part of the agency (Stevenson, 1999: 4)

The scoping requirements are set out in clearer terms in volume two of the EIA Procedures which provides for "Screening and Scoping Guidelines" (NEMC, 1997b). The latter insist, in no uncertain terms, that the project proponent and his consultants "will have final responsibility for scoping." A scoping program, according to this document, should indicate the following matters:

- The authorities and members of the public, i.e. stakeholders, who are likely to be affected by the proposed project.

- How will these stakeholders be notified.
- What methods are to be used to inform them of the project proposal and solicit their comments.
- At what stage of the assessment process will opportunities be provided for public participation and input.

Public consultation is, according to this document, mandatory when undertaking environmental impact assessment. At the minimum the proponent must meet with the principal stakeholders to inform them about the proposed activity and to solicit their views about it. Furthermore, more problematic activities should involve more extensive consultations. The results of these consultations must be documented in the EIA report.

### **Access to Information**

To comply with the public participation requirements analysed above, the project proponent is further required to give background information on the nature of the proposed project, i.e. purpose and need for the project, proposed actions, location, timing, method of operation of likely impacts, etc. This is required "in order to assist interested and affected parties to comment constructively and from an informed position during the scoping process." (NEMC, 1997b, *ibid.*, para. 2.3.1.) The Guidelines also require the project proponent to "establish a list of interested and affected parties" as well as develop the methods of notifying them about the project proposal. They also require the consultation process to record the fears, interests and aspirations of the community so that these can be addressed in the subsequent EIA study. (*ibid.*, para. 2.3.3.)

It is a measure of the effectiveness of these procedures and regulations that when they were used for the first time during the EIA processes for the controversial Rufiji Delta Prawn Farming Project in southern Tanzania, the level of participation and the informedness of the contributions from various stakeholders was unprecedented. Local communities, NGOs, government departments and the press were all galvanized into a debate which ultimately led to a recommendation by NEMC that the implementation of the project be stopped on socio-economic and environmental grounds. But this will be dealt with in more detail later.

The Guidelines and Procedures suffer from a serious disability, though. Ever since they were prepared and adopted by NEMC, which recommended that they be adopted by the Government in order to give them legislative 'teeth', they have not been passed by the Government as subsidiary legislation. Their effectiveness has, therefore, depended solely on administrative practice and the goodwill of investors who feel that NEMC's stamp of approval is important for them to secure finance for project implementation. However, this state of affairs leaves the door wide open for judicial challenge of the legality of the Guidelines and Procedures by a well informed and stubborn project developer.

It is clear from the foregoing analysis, therefore, that the EIA regime in Tanzania is not only founded on shaky legal foundations, it also has to operate in a suffocating socio-economic and political environment brought on by the convergence of factors such as an apparent unwillingness on the part of the Government of Tanzania to promulgate stringent EIA regime and the powerful corporate interests keen on investing in the exploitation of the country's natural resources with minimum attention to environmental

considerations. Indeed, an examination of the emerging practice shows a growing pattern of paying lip service to the requirements for EIA while sabotaging its effectiveness as a planning tool as well as a mechanism for democratizing environmental decision-making through public participation, access to information and justice. This is a subject of the next section.

## **PART II. POWER POLITICS AND EIA IN PRACTICE**

### **Introduction**

In Part One we saw that environmental impact assessment as an environmental management tool is a recent phenomenon in Tanzania's environmental management regime. Likewise, the development of the legal regime in respect of EIA is still in its early stages and evolving. It may, therefore, be too early to make a fair judgment of the laws given the relatively short experience that we, as a country, have had on this subject. It is, however, important to draw some tentative lessons and conclusions on the general direction that EIA regime seems to be taking in practice and what that portends to the future of environmental management in Tanzania.

One of the most prominent findings that the Presidential Commission of Inquiry Against Corruption (the Warioba Commission) documented was the apparent convergence of interests between powerful politicians and foreign corporate interests keen on investing in the exploitation of the country's natural resources at minimal cost. The Commission characterized this phenomenon as "closeness between leaders and corrupt businessmen" which has led to political leaders "interfering in taking executive decisions which were not their responsibility in order to please their business friends." These decisions do not often consider national interest but are "for personal interest (of the leaders) and that of the businessmen" (*ibid.*, Vol. 1:63). In this part, we will show instances of decision-making processes in respect of EIA processes for foreign investment in the natural resources sectors.

### **Case Study 1: LESSONS FROM RUFJI DELTA**

In 1996, African Fishing Company (AFC) - a Dar es Salaam based company owned by an Irish investor by the name of Reginald John Nolan - applied to be allocated some 10,000 hectares in the Rufiji River Delta to undertake industrial prawn farming. The Rufiji River Delta is located in southern Tanzania. It is by far the largest delta in Eastern Africa and contains the largest estuarine mangrove forest on the eastern seaboard of the African continent and is of considerable conservation and economic significance (Semesi, 1992; Francis, 1992). More importantly, the Delta region is home to over thirty thousand people who live, farm and fish in its fertile agricultural lands and rich fishing grounds (Fottland and Sorensen, 1997). The latter produce over 80 per cent of Tanzania's prawn exports with the entire catch being wild prawns (Gibbon, 1996).

Prawn farming has become a major industry in many tropical coastal states of the Third World. Its expansion has been propelled by the promise of enormous foreign exchange earnings from prawn exports and as a result many governments in the foreign exchange-starved countries of Asia and Latin America have been compelled to take measures in order to facilitate the growth of the industry (Kurien, 1997; Singh, 1997).

Prawn farming is considered one of the most resource intensive forms of food production. It depends on capture of post-larvae shrimp which are then transferred into prawn ponds which are often sited in mangrove areas. This is considered to be very destructive and the expansion of the industry has led to a tremendous pressure on wild stocks of post-larvae shrimp whilst destroying its breeding and feeding grounds by the conversion of the mangroves into ponds (Larsson, et al., 1994; Clay, 1997 & 1998). Mangroves also serve a variety of other important functions such as prevention of coastal erosion by encouraging soil deposition; providing food, shelter and sanctuary to aquatic organisms, birds and animals; as well as supporting important coastal and nearshore fisheries. They also supply herbal medicine, fuelwood and timber to local communities (Semesi, 1992).

As a form of production which requires huge capital inputs, prawn farming is mostly carried out by big corporate interests with the resources and necessary political clout to get state support in the form of land acquisition, technical support and financial incentives. Local communities of peasants and fisher-folks, on the contrary, have had neither the requisite resources nor the political leverage over the state and as a result have often been displaced from their lands by the powerful corporate prawn farming interests (Bailey, 1988; Gujja and Fingerstich, 1996).

Another major problem associated with industrial prawn farming is pollution. Investments in prawn farming are often characterized by absence of waste water treatment facilities; and as a result waste water effluents are often discharged into 'clean' water bodies from which the industry depends for fresh intakes of water. Rivers, estuaries and oceans thus serve simultaneously as sources of 'clean' water and as waste water 'sinks' and once these dual services are exhausted, the industry comes face to face with the negative 'feedback' costs in the form of outbreak of viral diseases and consequent production crashes.

The intake of saline sea water into the inland prawn ponds causes pollution of underground fresh water sources through seepage as well as affecting the productivity of neighbouring agricultural lands (Pullin et al., 1992; Vivekanandan and Kurien, 1997). In countries such as Thailand, according to a recent study, the industry - having all but destroyed the coastal mangrove areas - is now rapidly moving further inland and taking over the country's 'rice bowl' and intensifying pressure on agricultural and domestic water sources. It is thus not only spreading its destructive consequences over a much larger area, it is also exacerbating food insecurity among the country's rural population (Flaherty, et al., 1998).

It is not, therefore, surprising that corporate prawn farming has become a veritable battleground as it has attracted considerable controversy and opposition from social movements of the local people and environmental groups in many countries (Raj and Dharmaraj, 1996; Kurien, passim.) In India, for instance, the struggles against corporate prawn farming finally made it to the Supreme Court of India which is known for its innovative approach to issues of legal action and social/class justice. In its landmark decision in *S. Jaganathan vrs. Union of India & others*<sup>15</sup>, the Supreme Court of India ordered a ban of industrial prawn farming in the entire country. This decision is particularly relevant for Tanzania in that the decisions of Indian superior courts and other common law jurisdictions, though not binding upon Tanzanian courts, are of high

persuasive value and our courts frequently seek guidance and assistance therefrom in cases in *pari materia*.

The result of these developments have led to attempts by the industrial shrimp farming interests to try and relocate their activities in the coastal states of Africa which, as a rule, have not had any experience of the industry and are more vulnerable economically and politically. This is the context within which the Rufiji Delta Prawn Farming Project in Tanzania came into being and against which it is examined in this brief.

### **The Rufiji Delta Prawn Farming Project<sup>16</sup>**

Full details of the project came into the public domain for the first time in May 1996, when the AFC submitted an environmental impact statement (EIS) report for discussion at a seminar held at Sheraton Hotel in Dar es Salaam. The report was prepared by Professor Clive E. Boyd, an American aquaculture expert who also works for WWF US. Those invited included Government institutions such as NEMC, environmental groups, academics and the chairmen of several villages in the Rufiji Delta, whose travel expenses were met by the AFC.

The seminar was fiercely critical of the EIS, which was quickly revealed to be seriously flawed. For example, whereas the EIS had claimed that there would not be displacement of people as a result of implementation of the project, a counter study prepared by two Norwegian academics working for the Rufiji Delta Mangrove Management Project showed that on the contrary, up to six thousand people would be displaced as a result of implementation of the project (Fottland and Sorensen, *passim*.) The latter study also revealed that considerable amounts of mangroves will have to be cleared to make room for the project, contrary to claims made in Professor Boyd's EIS. AFC was thus required to undertake a more thorough environmental impact assessment, a report of which was submitted to the Government in April 1997.

### **Controversy Over EIA**

The EIA report was prepared by a team of high level experts of various disciplines and from various institutions. According to this document, the Rufiji Delta Prawn Farming Project would be financed under a credit facility extended by the European Investments Bank (EIB) and European Development Fund (EDF) to the tune of US\$ 180 million<sup>17</sup>. On the other hand, the EIA report detailed various social and economic benefits to be derived by the nation at large as well as by the local communities, chief of which was foreign exchange earnings projected at between US\$ 200 and 300 million annually throughout the entire life of the project. The EIA report also identified several negative 'externalities' which will ensue from the implementation of the project. These included clearing of mangroves, pollution arising from the disposal of wastewater effluents, contamination of fresh water sources and agricultural land from the saline seawater, possible outbreak of infectious diseases, etc. The report, therefore, proposed mitigation measures such as replanting of cleared mangroves, the use of solid waste for construction of roads and for earthwork repairs and close project monitoring to avoid the negative impacts.

The EIA report nevertheless raised more controversy especially after one of the consultants disowned it claiming that it had been falsified to suit AFC's ends. To sort these controversies out, the Government directed the National Environment Management Council (NEMC) to coordinate the review of the EIA report by a team of Government experts and submit recommendations to the Government. This was in June 1997. NEMC was required to draft experts from various Government departments and elsewhere for this task and to take into account laws and policies which regulate the sector. NEMC undertook this task by drafting a review team consisting of experts from NEMC itself and several other ministries and Government departments plus three foreign consultants. The review team submitted its report in August 1997.

NEMC's review report found that the EIA report submitted by AFC contained, among other things, substantial errors, omissions and misrepresentations. The review report attacked the conclusions of the AFC consultants and the research methodology they adopted, arguing that fieldwork had not been properly carried out. According to one member of the review team: "This lack of academic rigidity in performing the field work severely undermines the credibility of the rest of the document" (Vergne, 1997: 2-3)(Original emphasis).

The review report also found, for instance, that whereas AFC was proposing to import arms and ammunition for the Project to the tune of US\$ 570,000 per annum, there were no budgetary commitments for provision of social services that AFC had promised. There was also no budgetary allocation for compensation and resettlement of people who will be displaced by the Project. The review report also found a far higher danger of socio-economic and ecological damage than AFC had admitted in its EIA report.

On the contribution of the Project to the national economy and to the well being of the local people, the review report found the foreign exchange projections given by AFC to be grossly inflated, employment figures more than twice hiked, while potential risks and dangers for the project were downplayed or suppressed. Furthermore, the review report found that without the Project and its attendant dangers, the Rufiji Delta region was far more economically productive than with the Project. On legal and policy issues, the review report found that serious abrogation of the law will occur if the Project is approved for implementation as conceived. The review report also examined land tenure issues and found that serious land use conflicts will ensue as a result of the implementation of the Project.

On participation of, and consultation with, the local communities, the review noted with considerable dismay how high ranking Government leaders had openly campaigned for AFC and the approval of the project in the face of massive opposition from the local people and their representatives and questioned the propriety of this action. The report also noted the lack of good faith and arrogance on the part of AFC and its supporters in dealing with the genuine concerns and fears of the local people. Finally, the review report also dealt at length with the views of the representatives of the Delta communities, individuals and other institutions which were given at a public hearing for the Project. The latter had been organized by NEMC and it showed considerable opposition to the implementation of the Project. The conclusion that the review team reached in its report was that the Project should not be approved for implementation!

The report of the review team was submitted to the NEMC's Board of Directors towards the end of July 1997. The Board deliberated upon the findings and recommendations contained in the experts' report and observed, inter alia:

- "That the proposed project will have deleterious impacts on the environment and the people in the Rufiji Delta and surrounding areas.
- "That the proposed project is in contradiction to the [sic] existing legislations [sic] of forests and marine reserves";
- "That there is doubtful economic advantage to be accrued to the Government of Tanzania";
- "That the proposed project will have serious cultural and social impacts";
- "The project is to be located in an area where a license for oil exploration has been granted to another company by the Ministry of Energy and Minerals";
- "The integrity of the project is doubtful as it does not reveal all the necessary baseline information on economic, social and ecological implications";
- "The promised benefits to the local communities can not be guaranteed as they are not part of the investment plan";
- "The rehabilitation of the area after the project's economic life is estimated to be 30 years."

In view of these negative impacts, the NEMC Board resolved that "the government be accordingly advised to reject the project." The final report of the review team and a summary thereof were submitted to the government later the same month. The NEMC, which had coordinated the activities of review team, adopted the team's findings in their entirety, concluding:

"Due to these reasons and on the grounds of national interests, the Government is advised not to approve the implementation of this project until such time as a land use master plan for the Rufiji River Basin is completed and land use conflicts are resolved."

The NEMC went on to advise the Government:

- "Prawn farming 'on a commercial scale' should not be allowed until such time as the Fisheries Department has promulgated rules and guidelines to regulate these activities.
- "These activities should not be carried out in ecologically sensitive areas such as mangroves.
- "For this project to be approved, amendments to the legislation and policies which contradict with the objectives of the project must first be effected and not otherwise" (NEMC, 1997b)

The NEMC also noted that similar projects had been proposed for the coastal belt from Tanga to Lindi. Other projects have also been proposed for River Matandu, Temeke District in Dar es Salaam, Bagamoyo and Tanga. NEMC warned:

"If the 'controversial' Rufiji project is approved, there will no longer be any compelling reason not to approve similar projects in the future. And unfortunately, most of the investors are foreigners from abroad. Furthermore, because 'beach fronts are public places', granting 'exclusive rights would deny local people from these areas the freedom to carry out income-generating activities" [ibid., loc. cit.]

### **Contradictory Advice**

The Vice President's Office, to which the report of the NEMC review team was submitted and whose Cabinet paper formed the basis of the Government's decision, gave an almost verbatim endorsement of the findings of the review team and the NEMC. The VPO agreed, for instance, that implementation of the Project would destroy the Rufiji Delta ecosystem and lead to land tenure conflicts. It also noted that there were no financial commitments for mitigation measures and local community benefits promised by AFC. In addition it doubted the claims that the implementation of the Project would benefit the nation and the Delta communities. Having examined - with commendable thoroughness - the issues raised by the NEMC review, the Minister of State in the Vice President's Office who presented the Cabinet paper for discussion, concluded:

"On the basis of the above analysis, it is obvious that the implementation of this project would destroy the Rufiji Delta and Bwejuu Island ecosystem and lead to land tenure and land use conflicts as well as affecting tourist attractions. Furthermore, the project has not shown the budget commitments for the various mitigation measures it has proposed and how it will contribute to the development of the local people, district and the nation at large. Due to these inadequacies this project is not implementable." (free translation from the Swahili original; emphasis supplied)

Despite this damning indictment of the project - and in apparent defiance of his own conclusion that the project was "not implementable" - the Minister went on to recommend approval of the project, subject to a series of conditions aimed at ensuring implementation without negative environmental, social and economic consequences [ibid., para. 13]. He concluded by urging the Cabinet to "advise the President to accept the recommendations" set out in paragraphs 12 and 13 of his report [ibid., para. 14].

Others in the government also supported the project, despite endorsing the NEMC's findings. In its report to the Cabinet, for example, the Ministry of Natural Resources and Tourism adopted all the findings of the review team [MNRT, *passim*.] Nonetheless, the Minister, Zakia B. Meghji, advised the President to approve the project for implementation subject to the following conditions:

- "The project be implemented at Site No. 6 which is equivalent to 65 per cent of the proposed area. Site no. 6 has an area of some 6,000 hectares.
- "The project should not be implemented at Sites nos. 1 to 5.
- "The implementation of the project in Site no. 6 should involve the investor and experts in mangrove conservation, land tenure and land use planning, fisheries, environment and sociology in order to prepare a proper management plan for the

- project in order to minimise negative environmental impacts and prevent the destruction of the breeding grounds for prawns and other fish species.
- "The hatchery for post larvae shrimp should be situated outside the Mafia Island Marine Park.
- "Prawn culture should be semi-intensive in order to minimise environmental pollution, and modern prawn culture technologies should be put in use.
- "Legal and policy issues as set out in the Forests Ordinance cap. 389 of 1957, the Land Ordinance cap 113 and the National Land Policy should be taken into consideration.
- "There should be a clear programme to compensate the local people for loss of their property in land and resources.
- "The Government should set aside alternative areas to resettle the local people who would be affected by the implementation of the project and assist them to settle in the new settlements."
- "There should be put in place a strategy to monitor, supervise and review the project and the costs for this should be included in the project costs." [ibid., paras.7 and 8].

### **Arms for What?**

Not all those in government went along with the recommendations of the Vice-President's Office, however. In particular, the Ministry of Agriculture and Cooperatives expressed grave concerns about the fate of those who would be evicted as a result of the project, raising disturbing questions - as yet unanswered - about the intentions behind the AFC's proposed budget for the purchasing of arms: "The issue of AFC buying armaments to the tune of US\$ 570,000 per annum shows how the investor is preparing for a showdown with the local people who will be evicted from their lands should they ever try to reclaim their ancestral lands. In general the Ministry feels that granting an investor (and especially a foreign national) more than 10,000 hectares of land which is occupied and owned by the people is to violate the fundamental right of the people. In order to avoid unnecessary conflicts it is better for this project not to be approved until such time that the land use plan for the Rufiji Delta being prepared now with IUCN's support is completed" [MAC, 1997, para. 8].

The Ministry went on to argue that due to the many adverse environmental, social and economic impacts of the project, and in spite of the investor's claim that the project would benefit the local people, the project should be rejected, in line with the conclusions of the NEMC report. As the Ministry noted:

"That report did not put any conditions for the project to be approved, unlike the memorandum from the Vice President's Office (paragraph 13). Putting this recommendation in the memorandum of the Vice President's Office is to reveal that the Government lacks a clear position on the whole question of this project which concrete and expert opinion has shown to be 'disqualified' for implementation in this area." [para. 10]

For these reasons, and for reasons "of national interests and those of its people (present and future generations) especially those who live in the Rufiji Delta", the Ministry of Agriculture concluded that:

"Honourable Ministers should properly advise the President to accept the recommendations of paragraph 12 of this (i.e. VPO's) Paper to withhold the approval of the implementation of this project in the Rufiji River Delta."

The Ministry ended its submission by raising the spectre of the Government losing credibility should the project be approved:

"Tanzania respects the rule of law and is governed by it. It seems clear, on the basis of numerous actions which the investor (AFC) has taken, that various provisions of the law have been violated. In order for this project to be implemented without legal and policy problems, the Government should first repeal or amend the laws it has enacted to protect all the areas if this project is to be implemented and not otherwise. The approval or rejection of this project is the bedrock upon which Government's respect of the rule of law shall be tested. This is a very serious matter to the people and the nation as a whole." [ibid., para. 10. All quotations have been freely translated from the Swahili original; emphasis supplied]

The Ministry of Agriculture was not alone in opposing the Rufiji Delta Project. There were others who, like the Ministry of Energy and Minerals (MEM) and the Tanzania Petroleum Development Corporation (TPDC), had - even before the NEMC's review report was released - taken positions against the implementation of the Project. Their objections were founded on the fact that they had designated Rufiji Delta as an oil exploration block and had already allocated it to two foreign oil prospecting companies for that purpose. It was thought that granting a large chunk of the Delta area to AFC would lead to future land use conflicts as had already happened in several previous cases. These two institutions also questioned AFC's motives in seeking to undertake this project in the Rufiji Delta.

### **The Cabinet Decision**

On 30th November 1997, the Cabinet decided to approve implementation of the Rufiji Delta Prawn Farming Project as proposed by AFC. The decision was not made public. Nonetheless, aware that a number of diplomatic missions and international NGOs were supporting or implementing projects within the project area, the government wrote to assure those involved that their projects would "not be affected by implementation of the prawn farming project." In its letter, the government stated:

"African Fishing Company proposed to develop prawn farming in the Rufiji Delta covering 10000 ha of land. The Government of Tanzania considered the project and approved it. The project would be implemented in sites 1-6 in the Rufiji Delta and Bwejuu Island. The areas approved for this project do not have mangroves, or any other vegetation. The Government reached this decision after being satisfied that the project will have little environmental impacts and that the African Fishing Company Ltd. will take mitigating measures to ensure minimum environmental impacts. The Government will also form a team of experts to monitor the project to ensure minimum environmental impacts."

This was patently contradictory to what the Ministry had stated in its position paper for the Cabinet debate. As we have noted above, in the Cabinet the Ministry of Tourism had recommended that the project be implemented at Site No. 6 only; that it "...*should not be implemented at Sites nos. 1 to 5*"; and that the implementation of the project in Site no. 6 "*should involve the investor and experts in mangrove conservation.*" Sites 1 to 5 had been singled out precisely because they are mangrove areas and are protected by law. Recommendation that "experts in mangrove conservation" should be involved in the implementation of the project in site 6 (which is outside the protected area) also suggested that even in site 6 there were mangroves which were likely to be affected by the project. The Ministry's Cabinet position had also recommended that the hatchery for post larvae shrimp should be situated "outside the Mafia Island Marine Park". Bwejuu Island is part of the Marine Park and here again the Ministry went against its own words.

### **Government Intransigence**

Once made public in the media, the government's approval of the prawn project was greeted with incredulity and sheer disbelief. Criticism in the mass press was strident. In choosing to ignore all the scientific studies and findings of its own experts, the government was accused of sanctioning the project in order to serve the interests of a few individuals at the expense of the national interest. The Government was also accused of misleading the public in its claim that, because the project would be semi-intensive rather than intensive, Tanzania could avoid the disastrous consequences of prawn farming elsewhere. The propriety of the Cabinet making decisions on such issues as this project was likewise questioned. For their part, local communities in the Delta decided to file a suit in the High Court to challenge the decision to approve the Project<sup>18</sup>.

In spite of such concerns, the government has maintained its support for the project. On 24th January 1998, the Minister of Natural Resources and Tourism, Zakia Meghji, told the press that the Government would not reverse its approval of the project and maintained that the project's endorsement by the Cabinet was final. However, the Minister added that the Government would take a number of measures to ensure that the project did not cause environmental destruction. In particular, the Government would require the investor to submit a programme of action with more meaningful mitigation measures than those proposed in the original EIA. Such intransigence requires an explanation. Why, for example, did the Government choose to override the recommendations of its own review team? Why did it ignore the wealth of evidence (which it agreed was valid) showing that the project was neither environmentally defensible nor socially and economically justifiable? Why did it decide to go against the express interests of the people it so often proclaims to safeguard and uphold? And why did it show so little regard for the legality of the project? These issues are dealt with in the next part.

### **The Government and the Investor**

To understand the government's intransigence, one has to try and understand the close links that Reginald John Nolan (the Irishman behind AFC) has had with the Tanzanian establishment since the 1980s. Nolan first appeared on the Tanzanian scene as a supplier of military equipment to the Ministry of Defence (MoD), in a deal that involved a local businessman as a go-between. This deal with the middleman later went sour and that led to

a marathon legal battle in the courts of law. The upshot was that Nolan lost the suit and was slapped with more than US\$ 100 million judgment which were the proceeds from sales of the military equipment. This money was still in the hands of the MoD and the High Court issued a garnishee order obliging the then Principal Secretary in the MoD to transfer the money to the accounts of the judgment creditor and not to Nolan. The MoD ignored the order and, ultimately, the then Permanent Secretary in MoD was indicted for contempt of court, while Nolan himself was committed to civil prison for failure to satisfy the judgment debt. The government never released the money notwithstanding the court order.

In the early 1990s Nolan was again involved in deal to build a thermal power plant near Dar es Salaam harbour. That deal fell through as a result of pressure from the World Bank which was then supporting another power project involving pumping natural gas from Songo Songo Island in southern Tanzania. Nolan was also mentioned in another deal under which military radar equipment were to be sold to MoD on loan and Tanzania's puny gold reserves were to be used as collateral. This, then, is the man who now wishes to become a prawn farmer. It should not come as a surprise to anybody to know, for instance, that his company has a total share capital of only TShs. 100 million (slightly less than US\$ 170,000). This company, however, wishes to undertake - in Mr. Nolan's own admission - 'the biggest single prawn farm in the world' at the cost of US\$ 180 million, which sum is more than 1000 times bigger than AFC's own share capital! No one in the Government seems to have asked themselves about AFC's capacity to raise this kind of finance and under what conditions and guarantees.

Such is the man and his influence in high places that even after the Rufiji Delta Prawn Farming Project had been so discredited in public the Vice President once again went on record, in a high level seminar on environment and poverty eradication held in Dodoma, publicly defending it and suggesting that its opponents and critics were "environmental mujahedeen"! This is the same person who told a bewildered gathering of villagers in the Delta that "*hata chungu huonjwa*" (roughly, "even that which is bitter is often tasted") when the villagers expressed their fears about the negative impacts of the project.

A former cabinet minister<sup>19</sup> is also on record as stating - in support of the project - that: 'not all of us will die if the project is accepted!' (NEMC, 1997c: 90). Can it be wrong to suggest that the Government's insistence that the project will go ahead as planned is a result of the "closeness" between senior politicians in the Government and corrupt businessmen; and that it is - as the Warioba Commission aptly put it - "for personal interests (of the leaders) and those of the businessmen"? In the next section we look at the aftermath of the decision to approve the Prawn Farming Project.

### **Picking Winners ... and Counting Losers**

There had apparently been great expectations in high circles within the Government that the NEMC coordinated review team would see where the wind was blowing and produce a report favourable to the Government. After all, NEMC comes directly under the administrative ambit of the Vice President's Office and the Vice President had, more than any other Government figure, been in the forefront in support of the prawn project. In the event, however, these expectations were dashed. Retribution came swiftly. NEMC's Director General who had, before and throughout the controversial EIA processes, been

acting in that capacity was not confirmed in that position and was later removed from NEMC altogether. But the stakes much higher.

As is well known in Tanzanian environmental management circles, the issue of perceived conflict and or overlap in powers and functions and the ensuing power struggle between NEMC and the Division of Environment (DoE) under the Vice President's Office has been the subject of great controversy ever since DoE was created in 1990. As opposed to NEMC which was created by statute<sup>20</sup>, DoE was created neither by statute nor by any presidential instrument. Rather it was created administratively as a department within the then Ministry of Tourism, Natural Resources and Environment (MTNRE), and later transferred to the Vice President's Office.

The result is that, as the LEAT study cited above reveals, "... the law has continued to be completely silent not only about the existence of the DoE, but also its powers, functions and responsibilities" (LEAT, 1999: 16). DoE has all the same been exercising substantially similar powers and functions as NEMC's, thus causing continuous institutional rivalries. Given the difficult position that NEMC found itself in after resisting attempts to have it legitimize the Rufiji Delta project, DoE tried to capitalize on this by delivering a crippling blow to NEMC's future existence. It did this by manipulating the environmental policy making processes which were then going on to position itself as the only environmental institution within the VPO.

In December 1997, barely a month after the Cabinet approval of the prawn project, the National Environmental Policy (NEP) was also approved by the Cabinet (Tanzania, 1997a, passim.) Chapter Five is particularly instructive in as far as its proposed institutional arrangements for environmental management in Tanzania seek to significantly redraw the environmental management institutional power map. It proposes an institutional set up under which environmental management powers will be concentrated within in the Division of Environment (op.cit., paras. 88 to 90). DoE shall, for instance, provide policy and technical backup; execute the oversight mandate of the Ministry (i.e., VPO); undertake policy analysis and develop policy choices for decision-making; coordinate broad-based environmental programmes, plans and projects; develop guidelines and criteria for EIA, environmental standards, national plans, strategies and programmes, etc. (op. cit., paras. 91 and 92).

There are also extensive provisions in respect of the proposed functions of unspecified 'lead ministries' and 'advisory bodies' (op. cit., paras. 94 to 99); and local authorities and 'committees on the environment' (op. cit., paras. 101 to 104). Perhaps not unexpectedly, NEP proposes - in two sentences - that NEMC "shall retain its advisory role" and "... enforce pollution control and perform the technical arbitration role in the undertaking of Environmental Impact Assessment"! (op. cit., para. 100).

In December 1997 - the same month that the Environmental Policy was approved - a document entitled the "Functions and Organization Structure of the Vice President's Office" prepared by the Vice President's Office was approved by the Civil Service Department of the President's Office. Apparently taking its cue from NEP, this document proposes that all environmental powers and functions within the Vice President's Office be vested in the DoE which shall henceforth be the sole environmental institution within the VPO. In the new scheme of things envisaged by this document, the latter shall be

responsible for environmental policy making; environmental coordination and monitoring; environmental planning; and policy-oriented environmental research (para. 3.1.3, p. 4).

Within these core functions, according to this document, there are "substantive areas of concern" which shall also fall under the ambit of DoE, namely environmental conservation, environmental pollution, environmental impact assessment and environmental education (para. 4.1, p. 12). The only reference about NEMC in the entire document concerns the proposed EIA Section within DoE one of whose functions shall be to evaluate and offer "professional advice" on activities undertaken by NEMC (para. 4.1.3)!

The tenor and general thrust of the NEP and the proposed functions and organizational structure of the VPO is, therefore, in the general direction of gradually phasing NEMC out and its replacement by DoE. It should not come as a surprise to learn that DoE - the chief beneficiary of the policy proposals - was also the chief architect of both the NEP and the organizational structures document. It has now come to light that the entire policy process was "usurped" by DoE contrary to law<sup>21</sup>. DoE commissioned an NGO to prepare a National Environmental Policy Workshop whose proceedings formed the basis for the drafting of the policy document. It also commissioned a local consulting firm to prepare the draft of the Policy<sup>22</sup>. It is now also known that the Director of Environment himself chose the opportunity to send the draft policy to the Cabinet for adoption when he was acting as Permanent Secretary in the Vice President's Office!

It is further known now that the institutional structures proposed in the NEP are inconsistent with the directives of the Cabinet and even the specific orders of the President. It would appear that even though NEMC found itself in an unenviable situation of having embarrassed the Government over the Rufiji Delta Prawn Farming Project, the latter was not as yet prepared to take the drastic step of consigning the former to the dustbin of history.

On 13th October 1997, Cabinet Paper No. 40 of 1997 relating to the Draft National Environmental Policy was submitted to the Cabinet for deliberation and adoption. After wide-ranging discussion on the various aspects of the Draft Policy, the Cabinet observed, in respect of institutional structures for environmental management, that "... (t)oo many committees have been enumerated to coordinate the implementation of the National Environmental Policy and this might affect the implementation of the Policy due to bureaucracy." It consequently directed that "... these committees be reexamined with a view to striking them off at the national level and thereby remain only with the National Environment Management Council (NEMC)"! (Quoted in LEAT, *ibid.*, 99). The record of the Cabinet shows that President Mkapa "accepted that advice and directed its implementation."

The Cabinet's decision was communicated to Mr. E. Mugurusi, the Director of Environment, in a letter dated 20 November 1997 which stated, among others, that "... your Department in collaboration with all others concerned should see to it that these decisions are implemented and that the final draft of the Policy is ready for formal adoption...."<sup>23</sup> Looking at the NEP as it stands, there is no doubt that the Cabinet directives were not implemented. It is also clear that the directives of the Cabinet were ignored as a result of a self-serving attempt to exploit the unfavourable situation NEMC

found itself in vis a vis the government after the Rufiji Delta Project controversy. The powers that be must have known that NEMC will probably have few, if any, defenders in the high circles of the government. They must also have banked on the possibility that the Cabinet would not make any follow up of its directives in order to see whether they have been implemented. In this they may have been correct: The NEP version that has been widely circulated by DoE is substantially the same as the draft that was sent to the Cabinet, particularly in the areas that the Cabinet had directed to be changed.

## **Case Study 2: EIA in National Parks**

In their recent study of the EIA practice in Tanzania, Mwalyosi and Hughes (1998) have underscored the ad hoc, unplanned and shoddy manner in which EIA has been undertaken in Tanzania. They reveal, for instance, that of the 50 documents "described or purporting to be environmental assessments" which they examined, only 26 were genuine. They argue that EIA has been undertaken not as an intrinsic part of the projects concerned but appear as an afterthought relevant only for purposes of public relations and as a result their contribution to project design and implementation appear to be marginal. The study carried by the two researchers covered, among other areas, the construction of tourist facilities such as hotels and lodges in the Serengeti National Park and Ngorongoro Conservation Area in Northern Tanzania. We present herein some of their findings on the EIA as practiced in these areas.

Mwalyosi and Hughes write that the EIA studies for construction of the Serengeti Serena Lodge National Park and the Ngorongoro Conservation Area (NCAA) were commissioned on very short notice when "detailed project designs had already been prepared ... and severe time constraints were imposed on the EIA team in order to minimise delays in the implementation of the project" (Mwalyosi and Hughes, 1998:59). As a result "the recommendations for (modest) design modifications ... were not considered acceptable by the lodge company on the grounds that the project design had already been completed..." Consequently, "one of the key recommendations of the EIS - the integration of adequate liquid waste treatment facilities into project design - had clearly not been implemented, and the lodge was facing a considerable problem in dealing with the disposal of such wastes. At the time of the evaluation visit, waste water overflowing from inadequate waste pits had created a new wetland microhabitat" (ibid., 61). Similar findings were also recorded in respect of the Grumeti Serena Tented Camp in the Serengeti National Park (ibid., 63-64).

As in Serengeti National Park, the construction of huge tourist facilities has been going on apace in the Ngorongoro Conservation Area which adjoins the Serengeti to the southeast. This is part of the government strategy to cash in on the tourism industry as one of the engines for economic growth in Tanzania as part of the larger economic liberalization package. One result of this policy is that in the four years leading up to 1997, four big tourist hotels had already been commissioned and a fifth was under construction. The four - Ngorongoro Serena Lodge, Ngorongoro Crater Lodge and Sopa Lodge - are dotted around, in fact stand on the rim of, the Ngorongoro Crater.

This expansion in tourist facilities has not come without a cost. The facilities are huge steel and concrete structures which are potentially more harmful to the ecological integrity of the fragile Ngorongoro ecosystem as they require huge and continuous supply of water and

waste treatment or storage facilities. But in what appears to be typical practice whenever powerful foreign investors are involved, these lodges were built against the wishes of the Ngorongoro Conservation Area Authority (NCAA) which has legal mandate to authorize construction of such facilities; and no environmental impact assessment was conducted prior to their construction.

As a result, serious environmental problems are already emerging in relation to them. Sopa Lodge has, for instance, been accused of diverting for its use the Oljoronyuki Stream which is used by both Maasai pastoralists for their cattle and by wildlife as well as of dumping solid waste from the hotel into the Crater (Lissu, 1998). This Lodge also caught the eye of the Warioba Commission which observed that the construction site for it was shifted twice due to "pressure" from the top leadership in the Ministry of Tourism after to NCAA had refused to issue construction permit on the sites chosen by the owners of the Lodge (Tanzania, 1996, Vol. 2:431).

In reviewing the evidence on the processes leading up to the construction of the tourist facilities in the National Parks and other protected areas such as public beaches, the Warioba Commission further observed that *"often the investors have been insisting to be permitted to build (hotels) inside protected areas hence endangering the environment. Pressure to facilitate such requests sometimes has been originating from the top leadership in the Department (of Tourism)"*(ibid., Vol. 2:431). The Commission gave a long list of the hotels and lodges which have been built within National Parks and other protected areas as a result of these "pressures" (See Appendix D, ibid., Vol. 2:439).

That convergence of interests - the "closeness between leaders and corrupt businessmen" - between high state officials on the one hand and powerful corporate interests on the other can be seen by looking at the corporate interests which are behind the development of the tourist facilities in the protected areas. Serena Lodge is part of H.H. the Aga Khan's business empire, and President Mkapa himself cut the tape to officially open the hotel in 1996. The Ngorongoro Crater Lodge is a subsidiary of the Conservation Corporation (Africa) Ltd., a South African conglomerate with business interests in a number of African countries; while Sopa Lodge is also owned by wealthy business interests of Asian origin with foreign connections.

## **Conclusions**

Our examination of the law and practice on environmental impact assessment in Tanzania can be broadly summed up as follows. Firstly, it is clear that EIA law is still relatively new and evolving. It is very much a legal phenomenon of the 1990s as the first statute to make mandatory provisions for EIA was enacted in 1994. Secondly, the evolution of this law is proceeding on sectoral and ad hoc manner rather than being comprehensive and multisectoral. There is no framework EIA legislation or other statute which makes provisions for EIA procedures or guidelines to cover all sectors and a broad range of activities which are normally subject of EIA studies<sup>24</sup>. Indeed there are only sectors - mining and marine resources in Marine Parks and Reserves - that have EIA provisions in their statutes. The rest are outside this legislative scheme and whatever EIA scrutiny of activities thereat has been undertaken gratuitously.

Thirdly, given the uneven development of the EIA law, practice has been equally uneven and inconsistent. EIA studies have been undertaken in sectors or on activities in which there are no legal requirements, as in the case of the Rufiji Delta Prawn Farming Project and in the National Parks; while it has not been undertaken in other areas even where there were legal requirements as in the case of the Bwejuu Island when AFC had planned to build a hatchery for its prawn farms in the Rufiji Delta. It is fair to say, therefore, that whether or not an EIA study is undertaken has depended not on the legal requirements, rather it has depended on other dynamics such as requirements of project financing. Many multilateral and bilateral financial institutions now require EIAs as part of conditionalities for project funding.

The result of the above is that EIAs - where they are undertaken - are carried out without good faith. They are not seen as genuine processes to examine the impacts of projects and their mitigation as well as examining various alternatives but as a time wasting hindrance to development and a drain on project resources. That is why in the case studies examined herein the EIA processes did not seem to make impact on the approval of the relevant projects.

Fourthly, in the context of the economic crisis that countries such as Tanzania are going through and in the context of the liberalization policies adopted ostensibly to deal with that crisis, the exploitation of natural resources is intensified by opening up key natural resource sectors of the economy to foreign capital in the form of foreign direct investment. This opening up leads directly to the intensification of conflicts over the access to and control of natural resources between rural communities on the one hand, and the state and big foreign capital on the other; as well as increased pressure on the natural resources which threatens ecological balance of key ecosystems.

Fifthly, as a result of the convergence of interests between actors within the state and its agencies and foreign investors, issues of legality and socio-economic and ecological sustainability of foreign investment projects are easily sacrificed in the altar of short term corporate profit and personal gain. Not accustomed to being bound by the law, high officials in the government are hardly ever concerned with issues of legality even though they are aware that they were breaking the law. Nor are they overly worried about the consequences of their decisions in terms of social and environmental impacts of the projects they approve for implementation. This is symptomatic of a larger political problem of the accountability of public officials and institutions which requires concerted political action.

Lastly, our examination also underscores the importance of access to information by the public, local communities and activist organizations. Access to information is one of the most important tenets of a democratic society. Secrecy deprives people of the power to decide. Without information, the public is powerless to act. With information, the public can act to make sure that illegal conduct ceases, that victims are fairly compensated, that problems are appropriately resolved, and that future injuries are prevented. Secrecy also undermines the proper functioning of government. Democracy shrivels without substantially free access to information. If government officials are kept in the dark, they are unable to perform their duty. When people do not know the facts, they cannot put

pressure on government to pass laws necessary to promote the general welfare or to enforce existing laws.

The case studies presented herein provide ample testimony. In the case of the Rufiji Delta Prawn Farming Project, it was relatively easy for the public to intervene in the debate on the viability of the project because considerable amount of information was made available to the public. As a result, the level of public participation in the debate on the project was very high. NGOs, local communities and the general public both in and out of the country were able to intervene at crucial moments and considerable pressure was brought to bear on the investor and the Government. The EIA processes were fairly open, involving - for the first time - a public hearing in which various issues in respect of the project were debated with the active participation of the Delta communities.

It was through these fairly open EIA processes that considerable amount of information was generated which enabled the Rufiji people and social and environmental activists to challenge the viability of the project and its supposed benefits, both in the courts as well as in the arena of public debate. The above is all the more significant as there were no legal requirements for EIA in respect of the project area<sup>25</sup>. Which tells us that the state, which has exhibited such undisguised disdain for legality and the rule of law, can still be made accountable through sustained and organized popular pressure. In this respect, independent organizations of the people acting in unison with social and environmental activists and organizations may be the only way forward in protecting environmental and natural resources against irresponsible exploitation for short term gain of the corporate interests and their state backers.

Another important lesson arising out of this analysis relates to the exercise of ministerial or presidential discretion. That the Cabinet approved the project in the face of massive scientific evidence and public opinion against its implementation shows once again the dangers of conferring wide discretionary powers without any significant controls or checks. That top officials in the Ministry of Tourism "pressured" the conservation agencies to issue permits for construction of tourist facilities irrespective of environmental consequences is also symptomatic of this problem.

The Rufiji Delta Prawn Farming Project also reveals the dangers of unquestioning faith in "scientific objectivity". The prawn project has shown quite clearly that, unfortunately, sciences can also be bought and compromised. This is particularly so in the context of liberalization policies which have exacerbated a crisis of our universities and research institutions through deep cuts in funding. Academics and scientists are thus forced to rely more and more on consultancies in order to survive in the face of the economic crisis. In this environment, it is very tempting for intellectuals to "toe the line" by writing investor-friendly "scientific" reports in order to assure future consultancies even if it means sacrificing the interests of the majority of the people by helping push through dubious projects such as the one under examination.

In this respect, it is mistaken to regard issues of social and ecological sustainability as just technical issues to be left for the scientists, bureaucrats and politicians to decide. They are also fundamental political issues in which the working people have a stake and their participation may be the only way they defend their interests and livelihoods. In this sense, it is equally important to subject scientific reports and analyses of projects to rigorous and

critical scrutiny to ensure that whatever their conclusions are, they are based on objectively verifiable facts and evidence.

## **Recommendations**

In view of the arguments and issues raised herein it logically follows that there is serious need for policy and legal reform along the following lines:

1. That there is need to enact a framework legislation which will provide the basic minimum standards, procedures and guidelines for EIA in Tanzania. This legislation will be applicable across all sectors and for activities with likely environmental impacts. Sectoral laws may be allowed to have their own sectoral standards, procedures and guidelines which, however, shall not be lower than the basic standards provided in the framework law.
2. That given the importance accorded foreign investment by the government and given the potential for widespread environmental abuse by investors, the present foreign investment legislation should be substantially amended to provide for obligation on investors to undertake environmental protection measures similar to, or better than, those under the mining legislation. That is to say, investors generally should be subjected to rigorous requirements for EIA and EMP and compliance thereof. Indeed, as we have seen, the draft bill for Tanzania Investment Act, 1997 had provisions for environmental protection which were however deleted in the final bill which was enacted into law. It does not make sense to exclude investors from the rigours of EIA law when their activities are liable to cause environmental harm.
3. That the Mining Act, 1998, should be similarly amended to either completely remove or seriously curtail the exercise of ministerial discretion in respect of compliance with environmental standards which should be made mandatory to all investment projects with potential for adverse environmental impacts. In similar vein the Act should also be amended to remove powers of oversight and approval of EIA and EMP from the ministry responsible for mining to avoid conflict of interests.
4. Local communities should organize to secure and defend their access to natural resources in view of the propensity of the state to secure the resources for investors and at the expense of the communities. It is only through organized power that the voice of the communities will be heard.
5. Environmental activists and NGOs should also forge closer links with local communities and seek to take joint position in matters of environmental protection and community rights.

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1. No. 10 of 1990

2. See NEMC, 1991; NEMC, 1994

3. Act No. 26 of 1997

4. These incentives were given added force by the corresponding amendments of the relevant taxation legislation such as the Income Tax Act, 1973, Customs Tariff Act, No. 12 of 1976, Sales Tax Act, No. 13 of 1976 and the Immigration Act, 1995 to bring them into conformity with the new investment regime. See Financial Laws (Miscellaneous Amendments) Act, No. 27 of 1997 which was passed by the National Assembly the day following the passing of Act No. 26/1997 and assented to by the President on the same day as the latter Act.
5. Clause 4(h) of the Tanzania Investment Act Bill published in the Gazette as Bill Supplement No. 1A dated 3rd January, 1997.
6. See Act No. 27/1997, *op. cit.*, s. 25.
7. Act No. 29 of 1994.
8. Act No. 5 of 1998.
9. See also section 49(2)(d) *ibid*
10. See Schedule 1 of the proposed Mining (Environmental Management and Protection) Regulations, 1999.
11. Pursuant to these powers, in late 1998 the Minister made proposals for the promulgation of Mining (Environmental Management and Protection) Regulations, 1999, among a string of other proposed bylaws under this Act. These proposed Regulations provide a comprehensive mechanism for putting into effect the provisions of the Act relating to environmental matters that I have examined above. However, up to the writing of this paper the proposed regulations had not been approved as law and it was not clear indication from the Ministry of Energy and Minerals as to when they be thus approved.
12. Act No. 19 of 1983.
13. *Ibid.*, s. 4
14. NEMC's Procedures and Guidelines are in many respects similar to the EIA procedures under the United States' National Environmental Policy Act, 1970, 42 U.S.C. ss 4321-4347 (1994). Also see Stevenson (1999) for analysis of the NEPA's procedural aspects.
15. 1996(9) SCALE 167-216 per Kuldip Singh and Saghir Ahmad, JJ.
16. This part is derived from Lissu (1998, *ibid.*)
17. It is now confirmed that neither the European Investment Bank nor the European Development Fund, which had also been identified as another source of funding for the project, have approved or will approve funding for it. The former is quoted as saying in a communication to the Swedish Society for Nature Conservation (SSNC) that "although the promoter of the shrimp farm in Tanzania contacted the European Investment Bank (EIB) some time ago, the EIB will not finance the project." As for the EDF, a desk officer in charge of Tanzania at the DG VIII, which is in charge of the EC development aid, informed the SSNC that Nolan and his representative (an American lawyer) had been in touch with them several times asking about funding but EDF has declined mainly because it finds the project environmentally inappropriate (Karin Gregow, e-mail comm. 18 August, 1998)
18. Up to the writing of this brief, the High Court sitting in Dar es Salaam had issued an order of interim injunction restraining AFC from carrying out any developments in the project area pending the determination of an application for temporary injunction by the petitioners.
19. Edward Barongo, former Minister of Agriculture in Mwalimu Nyerere's government.
20. National Environment Management Council Act, 1983, Act No. 19 of 1983.
21. Section 4(a) of the National Environment Management Council Act, 1983, states part of NEMC's mandate as being to "formulate policy on environmental management and recommend its implementation by the Government..."
22. The Centre for Energy, Environment, Science and Technology (CEEST) prepared the Workshop which was held between 21st and 25th November, 1995 (See, Mwandosya, et. el. 1996: xi). The consulting firm which was commissioned to draft the policy document is ENV Consult (T) Ltd. based in Dar es Salaam, who in their company profile booklet state that they were commissioned by the then Ministry of Tourism, Natural Resources and Environment in 1994 to undertake the "formulation and review of the National Environmental Policy...." The DoE was then part of that Ministry.
23. Mr. P.J. Ngumbullu, Permanent Secretary VPO, to Mr. E. Mugurusi, Director of Environment, File No. VPC/C.20/5.
24. NEMC's Procedures and Guidelines do not qualify as such since they have never been adopted by the Minister responsible for environmental matters as subsidiary legislation and are, therefore, not enforceable.

25. Ironically, no EIA was conducted at Bwejuu Island which is part of the Mafia Island Marine Park contrary to the requirements of the Marine Parks and Reserves Act, 1994, while it was conducted elsewhere in the project area without legal basis but due to public pressure.

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