

THE RIGHT TO A HEALTHY ENVIRONMENT IN EXTRACTIVE INDUSTRIES

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ABSTRACT

In Tanzania, there is a constitutional gap in recognizing healthy environment as part of human rights. Consequently, this has led to many judges adopting a conservative approach, leaving the rights of litigants in some state of uncertainty. Therefore, there is a need for people to be aware of their right to a clean and healthy environment. The right to a dirt free and healthy environment is the right to be exercised by Tanzanians both at the individual and society level. This is evident by the incorporation of the Bill of Rights in the Constitution of Tanzania. Thus it is a duty of the government to respect this right in order to guarantee that its resident is sheltered from a hazardous and an unsafe environment. Therefore; the Government has formulated policies and enacted legislation to make certain the safety and realization of the accurate sanitary surrounding in Tanzania. Regardless of these efforts there are unanswered question like, can claims for right be instituted as a normal case or as a human right case especially when the right is not part of the Bill of Rights incorporated in the Constitution of Tanzania. After a thorough examination of the above issues, what seem to attract more attention is that the issues above create a great threat to the implementation of this important right in Tanzania.

INTRODUCTION

In the introductory chapter to her book *The Challenge for Africa*, Wangari Maathai laments the fact that she has spent over three decades working earnestly in pursuit of finding ‘a route out of poverty, ignorance, ill health and early death, violations of basic rights, corruption, environmental degradation, and many other problems associated with Africa’,ⁱ seemingly without much success. The lack of political will on the part of many African governments is arguably one of the major stumbling blocks.ⁱⁱ Based simply on the example that Tanzania withdrew its Article 34(6) Declaration permitting individual complaints to the African Court of Justice and Human Rights on 14 November 2019, the loud and clear message conveyed is that Tanzania is also struggling to mobilize the requisite political will to ensure genuine respect for human rights protection.ⁱⁱⁱ Fortunately, Tanzania is a signatory to most international and regional human rights treaties, such as the African Charter on Human and Peoples’ Rights,^{iv} which is unequivocal as it relates to the protection of the environment. Buttressing these international obligations is the Constitution of the United Republic of Tanzania^v which stipulates in Article 63(3)(e) that the legislature shall deliberate upon and ratify all treaties and agreements to which the United Republic is a party and the provisions of which require ratification. The logical extension of this provision is that ratification alone is insufficient. Indeed, as Viljoen remarks: ‘the incorporation of international law into domestic law determines the ability of international human rights norms and standards to flourish in the soil of states and bear fruit in the lives of the people’.^{vi}

The purpose of this article is therefore to evaluate and assess whether Tanzania is making any significant progress regarding the protection of the environment while simultaneously promoting development through permitting extractive industries to mine for precious gold and gemstones. Accordingly, this article has four distinct parts. This Introduction (Part One) establishes the methodological foundation of the study by highlighting that states are destined to fail if they do not ensure that they facilitate economic development, but not at the expense of the health and well-being of the population. Part Two articulates Tanzania’s long history relating to the adoption of the Constitution in 1977; subsequent amendments to the Constitution; and the more recent (but as yet incomplete) process of adopting an entirely new Constitution. Specific reference is made to the right to a healthy environment in the constitutional provisions. Part Three then examines case law and empirical studies that reveal

flagrant violations of the right to a healthy environment in extractive industries. Finally, Part Four concludes the article by highlighting the dominant findings identified in Part Two and then advancing implementable recommendations as to what the Tanzanian government can conceivably do to guarantee development by encouraging investment in extractive industries while at the same time protecting the right to a healthy environment.

Before proceeding to the substantive analysis, a brief discussion of the methodological approach is pertinent. In this article, we have adopted the methodology of ‘New Governance’^{vii}. This methodology will be applied alongside the “warnings” issued in the seminal study by Acemoglu and Robinson in their book *Why Nations Fail*.^{viii} There is clear synergy between New Governance as a methodology – both in the research and practical contexts – and the need to align developmental objectives with the fundamental right to a healthy environment for the present and future generations. The interplay between the selected methodology and the reasons why nations fail will be fleshed out as the article progresses, but for present purposes, a few words to provide context are necessary. New Governance is described as ‘a construct which has been developed to explain a range of processes and practices that have a normative dimension’^{ix} but are event-sensitive for them to have impact. Likewise, Acemoglu and Robinson employ the term ‘critical juncture’^x to express that oftentimes, some tangible action on the part of the state is required to achieve particular normative objectives. It is to the application of this methodology in the context of Tanzania’s history and present that we now turn our attention.

THE CONSTITUTION OF UNITED REPUBLIC OF TANZANIA 1977 AS AMENDED TIME TO TIME

In a number of cases before 1984 constitutional amendment to the provision that has some impact on the environment was introduced by the Bill of Rights in Article 14 of the Constitution of United Republic of Tanzania^{xi} which stipulates that everyone has the right to life through society in protecting and adjudicating sound environmental rights. Before this amendment in 1984 the courts in Tanzania have had to look for guidance from other Commonwealth countries in seeking justification for granting remedies in environmental disputes in Tanzania. It was difficult to adopt the constitutional provisions of other countries, and it was difficult to interpret

the provisions of the Constitution of United Republic of Tanzania^{xii} to justify their decisions in favor of litigants whose environmental rights had been trumped. Therefore, to fill the constitutional loophole the author of the Environmental Management Act^{xiii} introduced a provision on the right to a clean and healthy environment. This is good news, but it has not yet taken root in the Constitution of the United Republic of Tanzania, leaving the judiciary quite confused as to the legal basis of the provision.^{xiv}

Under the Constitution of United Republic of Tanzania in Article 25 to 28 imposes duties on every individual to respect the rights of others and society. Article 29^{xv} covers the right of “every person in the United Republic of Tanzania to have a right to enjoy fundamental human rights and to enjoy the benefits accruing from the fulfillment by every person of this duty to society, as stipulated under Article 12 to 28 of the Constitution.”^{xvi} Article 30 of the Constitution of United Republic of Tanzania 1977 as amended time to time limits the application of these rights subject to law but also allows any person to challenge any law or act/omission, which contravenes his or her right, or the Constitution.

The Tanzania Constitution provides fundamental human rights but does not expressly guarantee a right to a healthy environment. Moreover, the Constitution does not regulate the procedural rights on how to implement and enforce the right to a healthy environment for example on extractive industries as one among the key drivers of economic growth in Tanzania.

Under article 9 of the Constitution of United Republic of Tanzania^{xvii} as amended time to time obliges the government to ensure that national resources with the include of natural resources are used, preserved and used for the common good. This article is one of the non-judicial basic goals and guiding principles of the state-political provisions of the constitution^{xviii} it portrays the commitment of the Government to ensure sustainable development. For example, the Tanzania Investment Act^{xix} states that one of the functions of the Investment Promotion Center (IPC) is to work with appropriate authorities to ensure that investment projects use green technology and restore, conserve and protect the environment. All this is not taken into account by the extractive industry due to the presence of gas flares from the wells, dust from mining sites, and the use of mercury to extract pure gold from the ore, and the occurrence of serious industrial accidents.

Therefore, there is a need of the Tanzania Constitution to take into consideration on the matter of a healthy environment in extractive industries because some treaties which they have ratify they do emphasis state parties to consider the protection of environment and maintain a sustainable development of their natural resources.

COMPARISON BETWEEN THE CONSTITUTION OF UNITED REPUBLIC OF TANZANIA AND CONSTITUTION OF KENYA

The Constitution of the Republic of Kenya,^{xx} it does elaborate on the issues pertaining to environment. The Kenyans have inserted in their Constitution a separate chapter which is Chapter V addressing matters relating to Land and Environment. This Chapter has been divided into two parts. Part one covers matters on Land and Part two addresses matters pertaining to environment and natural resources. On matters relating to environment which are provided under part two of Chapter Five and other Articles of the Constitution of the Republic of Kenya, the environmental issues are clearly articulated in length.

Under Article 42^{xxi} the right to a clean and healthy environment is underscored. It is provided that “every person has the right to a clean and healthy environment, which includes the right – first to have the environment protected for the benefit of present and future generations through legislative and other measures; and second to have obligations relating to the environment fulfilled.” The Constitution of the Republic of Kenya^{xxii} goes a step further by providing the obligations to be complied with, places a duty in respect of the environment and the right to enforce environmental rights which are recognized and protected by the Constitution, in case they are being or are likely to be, denied, violated, infringed or threatened.

Under Article 69 (1) of the Constitution of Kenya,^{xxiii} obligations in respect of environmental management and conservation are provided. This overall obligation is assigned to the State. The Constitution provides that, the State shall first ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; second work to achieve and maintain a tree cover of at least ten percent of the land area of Kenya; third protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;

forth encourage public participation in the management, protection and conservation of the environment; fifth protect genetic resources and biological diversity; sixth establish systems of environmental impact assessment, environmental audit and monitoring of the environment; seventh eliminate processes and activities that are likely to endanger the environment; and eighth utilize the environment and natural resources for the benefit of the people of Kenya.

The citizens' duty to protect, conserve and manage the environment is provided under of Article 69(2).^{xxiv} This states that every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. The Constitution of Kenya it has also provide guidance if a person alleges the right to a clean and healthy environment when is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter. And thus help the judiciary the judiciary not to be confused as to the legal basis of the provision. If the Constitution of Tanzania could recognize a healthy environment as part of human rights by stating in the constitution and how it should be enforced, then it would help the judiciary not to be confused about the legal basis for granting this right to all the people who's right have been violated as well as to workers who live and work in unsafe environment in extractive industry.

COMPARISON BETWEEN THE CONSTITUTION OF UNITED REPUBLIC OF TANZANIA AND THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

The Constitution of the Republic of South Africa 1996^{xxv} contains provisions which provide for the environmental rights and obligation to protect and manage the environment. It states that, everyone has the right^{xxvi} to an environment that is not harmful to their health or well-being; and second to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that- (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development".

The Constitution goes a step further in chapter seven of the Constitution of South Africa to state that among the objects of the local government is to promote a safe and healthy environment.^{xxvii} As we can see the Constitution of South Africa it does recognize a healthy environment as a right that needs to be protected by every person. Therefore, there is a need of Tanzania in their Constitution to do the same in recognizing a healthy environment as part of human rights.

LESSONS DRAWN FROM OTHER STATES

Right to Clean and Healthy Environment in Kenya

The right to clean and healthy environment is the right declared and pronounced under Article 42 of the Kenyan Constitution of 2010. The right to clean and healthy environment is guaranteed under Article 69^{xxviii} while the obligations are set under Article 70 of the same Constitution.^{xxix} This is a two-fold right. First, it is a right to have the environment protected for the benefit of present and future generations and, secondly, it is a right to have obligations relating to the environment fulfilled. Constitution broadens the scope of this right to include 'the right to adequate remedy' for environmental rights breaches.^{xxx} Article 70, thus, provides for the enforcement of environmental rights and one does not need to demonstrate the *locus standi*.^{xxxi} The provision of Article 42^{xxxii} provides that;

Every person has the right to a clean and healthy environment, which includes the right-

(a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and

(b) to have obligations relating to the environment fulfilled under Article 70.

These provisions of the Kenyan Constitution do not clearly define what constitutes the right to clean and healthy environment. But under the right to clean and health environment was defined by the Environmental Management and Coordination Act^{xxxiii} which provides as the entitlement to a clean and healthy environment to include access by any person in Kenya to the

various public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes’.

The definition provided is broad and wide as it may present a challenge in determining the mode of its enforcement. This is because of its main focus seems to be on access to the environment as against concentration on the status of the environment.

The realization and enjoyment of the right to a clean and healthy environment have the same standard as other fundamental rights that any attempt to classify it as an inferior right sabotages the realization of all the other basic rights, including life, health, livelihood and well-being, amongst others.^{xxxiv} The right to clean and healthy environment advocates for a healthy human habitat, including clean water, air and soil that are free from toxins or hazards that threaten human health.^{xxxv}

Human rights and the environmental right are said to be inherently interlinked, as the life and the personal integrity of each human being depends on protecting the environment as the resource base for all life.^{xxxvi} It is noteworthy that the environment is the main reservoir for most of the resources necessary for realization of economic and social rights.

Therefore, efforts towards addressing threats to a clean and healthy environment must adopt an integrated approach that brings on board all actors, drawn from all the sectors especially those that address socio-economic needs of the society. For example when discuss about the right to health, it is rightly observed that the scope for creating a healthy environment is clearly not limited to hospitals and doctor’s surgeries, but includes the myriad factors that influence health, agriculture and food, education, housing, employment status and working environment, water and sanitation, and health care services.^{xxxvii}

Thus clean environment propagates freedom from dirt, noise, sound pollution, pollution, garbage, insanitary toilets, and improper disposal of animal waste, improper solid waste management systems.^{xxxviii} These issues normally fall under the mandates of different authorities, as defined by law. This therefore calls for concerted efforts from various sectors to address the potential challenges that may arise in actualizing the right to clean and healthy environment.

The right to clean and healthy environment was evidence and upheld by Courts in Kenya in the case of *Peter K. Waweru Vs Republic*,^{xxxix} where the Court was of the view that

The right of life is not just a matter of keeping body and soul together because in this modern age, that right could be threatened by many things including the environment. The right to a clean environment is primary to all creatures including man; it is inherent from the act of creation, the recent restatement in the Statutes and the Constitutions of the world notwithstanding.

The right and the other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.^{xl} This right should be given the same weight like any other right. In Tanzania the right to clean and health environment is considered in isolation to basic rights incorporated in the Constitution.

The Right to Clean and Healthy Environment in India

Unlike Kenya, the Indian Constitution does not directly declare and realize the right to clean and healthy environment, but it is reflected under Article 21 of the Indian constitution.^{xli} The judiciary has managed to increase the ambit of Article 21 of the constitution of India, through various judicial pronouncements, to include the Right to a healthy and clean environment to be a fundamental right under the right to life.^{xlii} Article 21 of the constitution of India provides for the right to life and personal liberty, it states “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”

This Article obligates the state with the duty to protect the life and liberty of the people. The concept of the right to life has been broadened through the judicial pronouncements.^{xliii} While resolving cases relating to the environment, the judiciary considered the right to clean or the good environment as fundamental to life and upheld as a fundamental right.

The higher judiciary in India has become the protector and guardian of fundamental rights of the people in India and through its activist approach it has secured a number of other basic rights implicit but not expressly mentioned in the Constitution.^{xliv}

Article 21 is one of the most significant provisions in our Constitution as it takes within it is fold a number of other rights.^{xlv} While creatively interpreting right to life as a fundamental right in Article 21 the Supreme Court and High Courts in India have consistently recognized that

right to pollution free environment is very much implicit in Article 21. The canvass of judicial activity in the arena of environmental protection is broadening continuously.

Another case is the *Rural Litigation Entitlement Kendra vs State of Uttar Pradesh*,^{xlvi} where in this case the petitioner organization through PIL challenged extensive mining activities in limestone quarries situated in the Mussorie Hill range as it would pose serious threat to ecology and will damage the ecological balance of the region. The petitioner pleaded for closing down of large number of leases of limestone quarries hazardous to the environment.

The Supreme Court held that the right of the people to live in a healthy environment with minimum disturbance to ecological balance should be safeguarded. In the case of *Charan Lal Sahu vs. Union of India*,^{xlvii} the Supreme Court while upholding the validity of Bhopal Gas Leak Disaster Act, 1985, observed that the citizen's right to pollution-free environment is protected under Article 21 of the Constitution of India.

In an important decision of *Virender Gaur vs State of Haryana*^{xlviii} in this case the Supreme Court observed that:

Article 21 protects the right to life as a fundamental right. Enjoyment of life including the right to live with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed...

Therefore hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment.

The constitution also allows the enactment of other legislations which protects the right to clean and healthy environment in India. The laws include the Water (Prevention and Control of Pollution) Act 1974 (Water Act), the Forest (Conservation) Act 1980, The Air (Prevention and Control of Pollution) Act 1981 (Air Act) and the Environment (Protection) Act 1986 (EPA).

The Right to Clean and Healthy Environment in USA

In the United States of America there the human rights approach to sustainable is best reflected in its strong Environmental Justice movement. The movement began as part of the civil rights movement by ethnic minority groups like black, indigenous and Hispanic community groups across the USA, culminating in a direct environmental equity movement in the 1980s and

1990s.^{xlix} The main premise of this movement is to achieve equitable distribution of environmental risks across ‘racial’ and social lines. The movement has strong support and involvement from the most vulnerable in American society, in particular amongst ‘people of color’.¹ This developed out of concerns, backed up by much research, that hazardous installations such as toxic waste dumps and polluting factories were mostly sited in areas where most of the population were poor and from ethnic minority groups.^{li} As a result minority neighborhoods were suffering from the disproportionate impact of industrial and hazardous waste facilities.

The movement calls for a fair treatment: this implies that no person or group of people should shoulder a disproportionate share of the negative environmental impacts resulting from the execution of domestic and foreign policy programs.^{lii} In 1992, as a direct response to calls for laws on environmental equity, the US Environmental Protection Agency created an Office of Environmental Justice.

In February 1994 President Clinton signed Executive Order 12898, ‘Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations’. The Order recognizes that right for any one group, in particular minority and low income populations not to suffer ‘the disproportionately high and adverse human health or environmental effects of their programme’s, policies and activities’. As a result of the Order the Environmental Protection Agency has a environmental justice strategy in operation.

The right to a clean and healthy environment is fundamental and of most important as it is both dependent upon and a precondition to a number of other human rights, including civil, political, economic, social, and cultural rights.^{liii} For example, the preservation, conservation, and restoration of the environment are necessary for the enjoyment of the rights to health, to food, and to a decent, dignified life.^{liiv} The right to a clean environment is not a purely individual right. Rather, it has a collective facet, belonging equally to such groups as future generations and indigenous peoples whose cultures depend on the environment for their existence and perpetuation.

USA laws recognize the right to and healthy clean environment. The USA jurisdiction on right to clean and healthy environment is some of the world’s most comprehensive laws regarding

environmental protection, it does not officially recognize an individual's human right to a clean environment.^{lv}

The U.S. supported the adoption of the Rio Declaration on Environment and Development, which recognizes the right to a clean environment and provides over-arching principles for environmental protection and sustainable development, but the declaration is not legally binding.^{lvi} The U.S. has ratified some international environmental treaties,¹⁷ but refused to ratify the Kyoto Protocol, the key international environmental treaty requiring reduced greenhouse gas emissions by 2010.^{lvii} Meanwhile, the U.S. remains among the top polluters in the world.^{lviii} In the absence of national recognition, some states recognize the right to a clean environment.

USA recognizes and fulfills the right to clean and healthy environment through enactment of different laws like Clean Air Act in 1970, The Clean Water Act, passed in 1972, is the primary law that protects USA's water resources, In 1992, the U.S. signed on to Agenda 21 at the United Nations Conference on Environment and Development.

Acknowledging the correlation between poverty and environmental degradation, Agenda 21 seeks to bring poor countries into environmental agreements while simultaneously supporting economic development in those countries, Effective public participation is not possible without equal and open access to information. In 1990, the U.S. passed the National Environmental Education Act, establishing a policy of support for environmental education in schools and institutions of higher education.

The Right to Clean and Healthy Environment in United Kingdom

Traditionally the UK rights to a healthy environment have been protected indirectly through rules and regulations regarding private property, environmental protection and human health.^{lix} The rules and regulations enacted are provided for either through common law or acts of parliament. In the United Kingdom there is no substantive right to a healthy environment and until recently there was no law which illustrated an understanding of environmental justice.^{lx} The good example is the Environmental Protection Act,^{lxi} this piece of legislation is the cornerstone of UK environmental law but it does not provide for or recognize directly the right to clean and healthy environment.

There are two recent developments which are could play an instrumental role in developing some of the principles of the report are the Human Rights Act of 1998 and the Aarhus Convention.^{lxiii}The Human Rights Act brings into UK domestic law the ‘rights and freedoms guaranteed under the European 4 Convention on Human Rights’.^{lxiii}

So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights. Thus this evidenced that a new Convention could be brought into effect. Again the Act does not provide for expressed environmental rights it can be used to protect environment and equity in a human rights context.^{lxiv}

It is possible to use all the provisions to challenge cases of environmental injustice, but the ECHR provisions which are considered the most advantageous, in the context of environmental justice, are: the right to life (Article 2), the right to a fair trial (Article 6), and the right to respect for private and family life (Article 8), Freedom of expression (Article 10). Arguably, such existing human rights provide a multifaceted definition of environmental rights and justice, but using human rights, civil or social, to protect environmental rights is difficult for two main reasons. Firstly the rights do not relate directly to the environment and are not precise enough.^{lxv} The Human Rights Act 1998, for example does not provide for an express environmental right and a right to ‘a healthy and adequate environment’ is currently highly subjective. Secondly, using human rights to provide assistance in environmental equity depends upon a judiciary familiar with environmental and human rights law as well as experience of the issues raised when dealing with environmental rights. The use of the Human Rights Act for environmental justice cases is in its early stages. However its potential to attack environmental inequity and act as a catalyst for an environmental justice movement is recognized amongst UK NGOs and government.^{lxvi}

It is concluded that, environmental laws in Tanzania do not have control mechanisms sufficiently to assure effective enforcement and implementation of various environmental laws that is to say both municipal laws and international treaties accorded by Tanzania. That is, there are no enabling provisions in the Tanzania laws concern to environmental protection, which could make effective enforcement and implementation of environmental laws in Tanzania. The findings show that for environmental legislation in mining, the problems that limit effective

enforcement of the regulations are a result of the weaknesses inherent within the legislation itself, and those associated with the system responsible for its execution. Likewise, it is further concluded that, Mining Act,^{lxvii} does not put much concern on the environmental protection rather than encouraging mining activities which cause adverse impact on the environment. The Act does not include sufficient provisions to ensure that the activities of mining are not cause harm to the environment.

Further, the study proves that in Tanzania there is lack effective enforcement of environmental legislation. The administrative and political will of the enforcement agencies and the level of awareness of environmental laws to majority of Tanzanians is very poor. This unawareness is caused inter alia with the weakness of the government officials responsible in environmental matters, their fail to give public education on environmental matters, also the constitution of the country is not open to environmental rights and even environmental management is poor in term of executing its responsibilities, despite of the fact that no healthy environment no life at all as life depends on healthy environment.

RECOMMENDATIONS

Supported on field findings, literatures reviews, comments, opinion of various respondents both scholars and non scholars altogether results the conclusion of this research, thereafter, the conclusion has subsequently invites the researcher to come up with the following recommendations grouped into two categories, that is legal and general recommendations.

Legal Recommendations

- Reviewing Mining Policy and the Mining Act, 2010

Review mining policy and laws to provide for fair and equitable sharing of mining resources, this is essential in assurance commitment to all beneficiaries in the protection of the mining environment as all people has/ or will be benefited to mining resources.^{lxviii} It is recommended that the Mining Act^{lxix} should be amended to limit huge statutorily power conferred to the Minister so to avoid bias and malt practice which cause the authority and other bodies to fail either maliciously or negligently to control problem in the environment in mining areas.

- Amendment of Environmental Management Act, 2004

It is recommended that, the Environment Management Act,^{lxx} should be clearly amended to include some important enabling provisions to make practically possible in enforcement and implementation of environmental laws to ensure protection of the environment. Further as it is seen that environment is life and without health environment there could be no life, it is highly recommended to the lawmaker to rethink and make amendment to include provision which will facilitate the establishment of workable environmental division in the court of law, dealing at the highest speed in litigation, with maximum due diligence in environmental issues.

- Constitutional Amendment to include Environmental Rights.

It is recommended that the Constitution of the United Republic of Tanzania^{lxxi} to be amended to include exhausted provisions on environmental protection. The only existing provision in the constitution is not expressly to ensure protection of environment. Tanzania can use an example of Republic of South Africa Constitution which includes detailed and exhaustive environmental rights and environmental administration in generality. The constitution should include environmental rights as among the basic right to human being.

- Reshuffle of Tanzania Environmental Institutions

It is recommended that the government of Tanzania should reform environmental institutions to enable these institutions to have power for enforcing and implementing environmental law including some authority to impose sanction to environmental unfriendly activities. NEMC should be given enough resources including human resources competent to perform their duties at the highest standard. Moreover, each district to have workable and committed environmental committee with no element of politics which will be responsible for the environmental protection as provided under section 7 of mining Act.^{lxxii}

- Make Specific Provisions for Small Scale Mining

It is recommended that governments should clearly promote formalization of the mining sector. The government should make specific provisions for regulating small-scale mining in national regulations, with a special focus on environmental management. This is because in Tanzania there are also small scale mining which also contributes much on causing environmental impact, small scale mining is not only done in Tanzania but to almost all countries specifically

developing countries with resources based economy. Therefore making regulations to guide them will be essential step towards environmental management.

Making Practical Enforceable Environmental Laws

It is recommended that the policy maker should ensure that regulatory mechanisms are adapted to local realities. Those laws and regulations made should be realistic and implementable.

- Improving Spirit of Cooperation between States in Implementing International Environmental Laws

It is the recommendation of the researcher that, states should adopt the spirit of cooperation so as to make practically enforcement and implementation of international law as it is seen international environmental laws regard to the right to health. It is only through co operation with the common goal of protecting environment against development activities which cause adverse impact on the environment will rescue the world be out of the danger of being diminished.

- Lesson from Other Jurisdiction on the Laws on Environmental Management

It is highly recommended that, Tanzania and other developing countries should make tour on laws regard to the right to health of other jurisdiction to see how their laws function in the environmental protection of mining areas regard to the right to health. This includes visiting constitution of other countries, for example South Africa constitution which includes expressly provision on environment.

- Provides Education on Environmental Laws to the Public

It is recommended that education creates awareness, this is very important because giving education to public on environmental laws there will be aware of the main objective of environmental laws regard to the right to health. This may invites them to see important of obeying various environmental laws regard to the right to health.

- Inclusion of Enforceable Provisions on Land Reclamation on Mining Contract

The government while concluding contract with mining industries should include provisions which requires investor to agree after mining contract lapse the owner will be due bound to do

land reclamation by giving certain percentage of the profit regardless whether the company got a profit or not to facilitate the process in the future.

- Establishment of the Special Environmental Tribunal

It is recommended that the government of Tanzania to establish workable special tribunal with well-equipped lawyers 'responsible only to environmental cases, this can be the solution on environmental problem in Tanzania. And not only could that but there be laws which are enforceable to the tribunal regard to the right to health.

General Recommendations

- Economy Concern

It is recommended that the government of Tanzania and other developing countries should recognize that their income is based on the natural resources such as minerals. Therefore, for this reason they are supposed to put much concern on the manner suitable of harvesting their natural resources. It is time for these countries to emphasis and make strict regulations which advocates on sustainable development.

- Companies Operation between Different Stakeholders

It is recommended that, government authorities, large scale miners and small scale miners and traders should work together towards effective environment protection on mining areas for the well concern that all of them get benefit from mining industries. It is good for them to value environment as from environment is where they get their profits.

- Giving Prioritizing on Training and Assistance

It is recommended to environmental organizations, environmental institutions, development organizations and researchers to design initiative that focus on proactive environmental stewardship; this means prioritizing training and assistance rather than classic enforcement of the laws. This may be among of workable solutions on the problem of enforcement and implementation of environmental laws regarding to the right to health.

- Development Programs to Be Established By the Government

It is recommended that the government and private development agencies should develop programs that assist miners in using cleaner manufacturing methods, by optimizing current production techniques, for example the uses of drilling and explosive method in extraction of gemstone.

- The Use of Researchers by the Government in Different Economic Sectors

It is recommended that the government should employ Researchers to invent simple environmental reclamation processes. Mining industry should determine ways of funding land reclamation as a result of past gemstone mining activity which caused land degradation.

- Priority to Indigenous of Tanzania in Mining Industries

It is recommended that, the government of Tanzania to think more wisely on the precious minerals and deeply focus its mind to unique mineral on the land that is Tanzanite. There is a need for the government to consider the way of make Tanzanite to be of advantages to Tanzanian as unique mineral in the World.^{lxxiii} To do so there is a need to give Tanzanians that is to say small scale miners the tasks of harvesting this mineral rather than inviting big power who harvest large quantity resulted to low price to Tanzanite. And by give Tanzanians first priority it will encourage them to see the need of protecting mining environment for the present and coming generation and consider the right to health.

CONCLUSION

Tanzania is part of various treaties and convention which they do emphasize in environmental protection and as an important matter. Although the Tanzanian Constitution, as the country's mother law, does not recognize a healthy environment as part of human rights, its other laws such as the Environmental Management Act^{lxxiv}, the Occupational Health and Safety Act^{lxxv} and other necessary laws recognize a healthy environment in the extractive industries. But the problem comes in their implementation which makes the laws of Tanzania and institution framework ineffective in regulating a healthy environmental right in Tanzania's extractive industries. And by showing this it does brought the need of the Constitution of United Republic of Tanzania to have a separate chapter that will address matters relating to a healthy environment which will help to protect the environment as well as give justice to people who were deprived of their rights.

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ENDNOTES

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