Management of Natural Resources in Tanzania: Is the Public Trust Doctrine of Any Relevance?

By Rugemeleza Nshala

Tanzania is a country that is endowed with a lot of natural resources. It boosts of having a long coastline and attractive beaches, famous wildlife parks and reserves, minerals, forests, and the three greatest lakes in the African continent and the Indian ocean form most of its borders. For example, Tanzania has about 33.5 million hectares of forests and woodlands with approximately 13 million hectares of this total forests cover protected under the forests reserve regime (Tanzania: 1998,7). It has 730,000 metric tons of fishery resources that could be harvested annually without any harm to their re-generational capability. (Tanzania: 1998;106). These resources if well managed and utilized could uplift the lives of the people of this natural resources dependent country.

The overall management of these resources has since colonial time to the present been placed in different departments of the government. For example, wildlife resources are in the Department of Wildlife, with the National Parks being managed by a parastatal body known as the Tanzania National Parks Authority (TANAPA). Forests are under the forest department, Mining under the commissioner for mining, and fisheries under the fisheries department. One cannot utilize these resources without any form of state approval. It is prohibited for example to conduct any mining, hunting and human settlement activities in the National Parks.

It is not accidental that the state legislated and placed upon itself the power to oversee the management of these natural resources. There are political and economic reasons to that. At the time of independence the ruling class in Tanzania was very weak both economically and politically. In order to strengthen itself and exert control on the society it embarked on gradual concentration of powers to itself so as to muzzle any source of opposition. In 1962 and 1964 it banned free and independent civil society organizations and started the process of controlling the cooperative movement, that represented the peasants in Tanzania. In 1967 it embraced the socialist ideology popularly known as the *Ujamaa* and there was massive nationalization of private properties. In 1973-75 it carried out the villagization program which led to the resettlement of about 80% of the population into villages under the pretext of bringing them closer to social services. The latter led to the alienation of the people from natural resources that had before then been part and parcel of their livelihood (Kabudi,1985, Nshala, 1997).

While allocating itself the authority to oversee the management of natural resources in the country the government used the argument that it was administering the natural resources on trust and for the benefit of the people of Tanzania. What has happened, however, is a different story. The legal regime over natural resources management in Tanzania gives the government departments unlimited powers over these resources to the extent that the heads of departments believe that the natural resources are **owned** by the government and not so held in trust for the benefit of the people of Tanzania. As a result

there has been mismanagement of natural resources, corruption and the exclusion of local communities in the use of natural resources.

This paper analyses the doctrine of public trusts in relation to the natural resources management in Tanzania. It argues that the public trust doctrine demands that the government act as a trustee over natural resources in the country for the benefit of the beneficiaries who are the Tanzanians. But since the government has not cherished or embraced this concept and sees itself as the owner and not the trustee, the natural resources in Tanzania have been misused for the benefit of the people entrusted with their management. The paper calls for the entrenchment of the public trust doctrine in the legal regime governing natural resources in Tanzania. This is because the doctrine would give the public the right to challenge government decisions pertaining to natural resources management and also puts the bureaucrats on alert to justify each and every decision over the natural resources. The wildlife sector is used in this paper as a case in point but the findings therein gives a true picture of other natural resources management regime in the country.

The public Trust Doctrine

The Public Trust Doctrine was put in the public forum by the ancient Roman Empire. It rests primarily on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. These resources are, so to speak, the gift of nature and as a result they should be freely available to the members of the public irrespective of their social status. The doctrine requires the government to protect these resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The Supreme Court of India in the case of *M.C Mehta v. Kamal Nath and others* stated the following on the public trust doctrine

> Our legal system-based on English common law includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

The court also ruled that there is no any justifiable reason to rule out the application of the public trust doctrine in all ecosystems in India.

In private and charitable trust the trustee as a fiduciary is held to an unusually high standard of ethical or moral conduct (Restatement (Second) of Trusts,1959). It is stated that:

> "The most fundamental duty that a Trustee has is the duty of loyalty- the obligation to act solely in the interest of the beneficiaries. The trustee also has a duty to use care and skill to preserve the trust property (including the duty to protect against "invasion of the trust"). In addition, the trustee has a duty to

> furnish information to the beneficiaries, a duty to make the trust productive, and a duty to deal impartially with beneficiaries. In meeting its duties, the trustee must act prudently, diligently, and in good faith." (Paul; 1996, 9).

In case the trustee goes contrary to his or her obligations the beneficiaries are not helpless as they have, for example, the right to take the trustee to court and challenge any action that infringes upon their rights. If the trustee acts on his or her own benefit without informing the beneficiaries and obtaining their consent the action is "voidable even if it was taken in good faith and was otherwise fair and reasonable" (Paul: ibid). Translating this private realm concept into the public one, one can confidently state that:

> "the state as a trustee holds legal title to the public trust land and resources-the trust "property" or "corpus" for the interest of the public as beneficiaries. As in private and charitable trust law, the state as trustee owes a high fiduciary duty to the beneficiaries. The state thus has a duty of loyalty to exercise its right and authorities over public land for the benefit of the benefit of the beneficiaries. Accordingly, absent express constitutional or statutory directive to the contrary, the state is prohibited from exercising its authority over public land and resources to benefit the state itself (such as selling trust land simply to raise revenues) or to benefit any one individual or group of individuals. (Archer et. Al,1994; Paul Ibid.)

From the above it is evident that the state is not the owner of the natural resources in the country but a trustee who holds fiduciary relationship with the people. By accepting this task the government is expected to be loyal to the interests of its citizens and to discharge its duty with the interest of the citizens at heart and involve them in decision-making process concerning the management of natural resources in the country.

Public Trust Doctrine in Tanzania

The concept of public trust in Tanzania finds itself in both legal and policy statements. In 1923 while enacting the Land Ordinance the colonial government stated that all land in the country was public land (s.3) and could only be disposed off with the requisite consent of the Governor and later on the President. This requirement only applied when the transfer of land involved natives with non-natives, as the transfer of land between natives did not require such consent. Section 4 of the Ordinance is relevant when it stated:

> ". .all public lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the President and shall be held and administered for the use and common benefit, direct or indirect, of the natives of Tanganyika…"

The Court of Appeal of Tanzania in the case of *A.G v. Lohay Akoonay and Joseph Lohay* when interpreting the powers of the President over the public land stated:

> …the President holds public land on trust for the indigenous inhabitants of that land. From this legal position, two important things follow. Firstly, as trustee of public land, the President's power is limited in that he cannot deal with public land in manner in which he wishes or which is detrimental to the beneficiaries of

> public land. In the words of s.6(1) of the Ordinance, the President may deal with public land only "where it appears to him to be in the general interests of Tanganyika". Secondly as trustee, the President cannot be the beneficiary of the public land. In other words, he is excluded from the beneficial interest.

The Court of Appeal position was ultimately enacted into law by the Tanzania Parliament when the Land Ordinance was repealed and replaced by the Land Act. Section 4 of the Land Act 1999, not only incorporates the doctrine but goes on to require officials exercising the powers of administering land on behalf of the president to perform them as the trustee and not otherwise. It states:

> "4(1) All land in Tanzania shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania
>
> (2) The President and the every person to whom the President may delegate any of his functions under this Act, shall at all times exercise those functions powers and discharge duties as trustee of the land in Tanzania so as to advance the economic and social welfare of the citizens.

The doctrine has also the constitutional basis. Article 9 (1) (c) of the Constitution of the United Republic of Tanzania places an obligation on the part of the state and its agencies to "… ensure that the national resources and heritage are harnessed, preserved and applied toward the common good…"

The public is also called upon by Article 27 of the Constitution to ensure that the natural resources of the country are managed properly when it states:

"(1)Every person is obliged to safeguard and protect the natural resources of the United Republic, state property and all property jointly owned by the people…

(2) All persons shall by the law be required to safeguard state and communal property, to combat all forms of misappropriation and wastage and to run the economy of the nation assiduously, with the attitude of people who are masters of the fate of their nation."

In September 1961 during the Symposium on the Conservation of Nature and Natural Resources in Modern African State held in Arusha, Tanzania's (then Tanganyika) Julius Kambarage Nyerere, the country's First Prime Minister, made a speech famously known as the Arusha Manifesto. In that speech Nyerere clearly stated that the state held the wildlife resources in trust when he said:

> In accepting the trusteeship of our wildlife we solemnly declare that we will do everything in our power to make sure that our children's grandchildren will be able to enjoy this rich and precious inheritance.
> .

The above provisions of the law and policy statements clearly prove the existence of the public trust doctrine in Tanzania. They unambiguously show that the government and its agencies are not the owners of natural resources in Tanzania but rather hold them in trust

on behalf and for the benefit of the people of Tanzania. The people of Tanzania are the beneficiaries of the natural resources and therefore have the right to be informed and involved by their government on decisions pertaining to natural resources management. The government is also supposed to discharge its trusteeship obligation honestly and in the best interests of the beneficiaries.

Public Trust and Wildlife Conservation in Tanzania

Tanzania is a country that is endowed with a lot of wildlife resources. It boosts of having famous national parks like Serengeti, Lake Manyara, Mikumi, Ruaha, Tarangire, and the Ngorongoro to mention but a few. It also has the Selous Game Reserve and many other reserves and game controlled areas. No any human activity, save photographic tourism, is allowed to take place in the national parks. The national parks are under the management of Tanzania National Parks Authority (TANAPA) a parastatal organization that derives its mandate from the National Parks Ordinance Cap 389.

The wildlife department is the main government department charged with the management of wildlife in areas outside the national parks and in particular the game reserve, game controlled areas and partial game reserves. The main law entrusting these powers to the wildlife department is the Wildlife Conservation Act No12 of 1974. The Act establishes three layers of authority in the wildlife management regime in the country. These are the president, the minister responsible with wildlife, and the director of wildlife. A closer look at the structure of this legislation reveals that these officials have been given immense powers with little or no checks and balances mechanisms in place. In short, the "*angelic belief" tow*ards these officials underlies the whole scheme of the Act. As these officials are deemed to be loyal to the people of Tanzania and know what is in the best interests for the people of Tanzania and hence no need of requiring them to be accountable to them. For example, the president is given power to appoint the director of wildlife (s.3), to establish Game reserves (s.5), modify restrictions imposed on hunting of animals in game reserves, game controlled areas, and partial game reserves (s.19); and to impose a ban on any category of persons from being given a game license (s.22).

The minister on the other hand is given immense powers in regulating the management of wildlife and especially hunting activities. She is empowered to declare an area to be a game controlled area and prohibit the capture and hunting of animals in a closed season. She is also empowered to amend the first and second schedule to the Act specifying the categories of animals that can be hunted (s. 24) and allow the hunting of scheduled and specified animals without a license (s. 23). She has power to designate a body corporate or unincoporate to be an authorized association, which in turn entitles it to be allocated hunting licence (ss.26 and 28). The minister is also given powers to make regulations pertaining to the issuance of hunting licences of scheduled and specified animals, the mode of hunting of scheduled animals, prescribe the functions of the designated organization and prescribe the maximum number that any guarantee of a license may hunt (s.29). She also has the power to make regulations for the better application of the Act in improving wildlife conservation in the country. Lastly, she has appellate powers in

case any person who had applied for the license and his or her application was refused or whose hunting license has been canceled by the director (s.55.2).

The director of wildlife is not different either. He has got powers of issuing hunting licenses and allowing hunting activity to take place in game reserves and game controlled areas. To issue grazing permit in game reserves, power to issue licenses for the capture of animals for providing specimen for zoological garden, educational, or scientific purposes or for any purposes he deems in the national interest. Perhaps the most eyes raising provision is section 41 which gives the director powers to issue presidential licence allowing the hunting, capturing and photographing of animals on conditions put forth by the Director whether or not such animals are protected by any provision of the Act or any other written law. The director has also prosecutorial powers to try offenses under the Act (s.81).

Presidential Licence

The powers given to these officials are so overwhelming that they allow and provide room for abuse of power, inefficiency, corruption, which goes contrary to the public trust doctrine. The abuse of powers has occurred in the wildlife industry to the extent of threatening the very existence of this resource in the country. The case of the grant of presidential licence merits a closer examination. This is, as stated above, a licence issued by the director of wildlife, with the approval of the minister, to any person allowing him or her to hunt, capture and photograph specified animals with or without a fee. The licence is given for scientific research, display in a museum, zoo, educational or cultural activity, complimentary gift and the supply of food in cases of emergency. Section 41(2) gives the power to the licensee to capture, hunt or photograph any animal whether or not any other provision of the Act or any other written law protects that animal. This power is dangerous as it derogates from the basic principles of sound wildlife management. The power also provides room for the official to allow hunting of protected animals using the pretext of the presidential licence. Because section 41(2) of the Act calls upon the disregard of other provision of the law without providing adequate guidelines on the part of the director and the minister who must approve the grant of that license. Indeed, it erodes the fiduciary duty expected of the president or his/her delegates under the Public Trust doctrine. This power has created an atmosphere of untouchableness and being above the law and is an escape route for these officials whenever they want to give and receive kickbacks from relatives, friends, and superior officials, respectively.

The Presidential Commission on Inquiry into Corruption, famously known as the Warioba Commission, that was setup by the president in January 1996 to inquire corruption in Tanzania and recommend ways to combat this dangerous social and economic malaise, came up with devastating findings on the issuance of the presidential licence. Amongst its many findings the Commission found that the licence was regularly issued to people who were friends of the director and the minister (Tanzania 1996 vol II, 410; Nshala; 1999). Surely this does not augur well with sound wildlife principles and it derogates from the public trust doctrine barring the trustee from being a beneficiary.

In addition, the law does not require the director to conduct a vigorous examination of the applicant's authenticity and credibility. One of the cardinal principles of wildlife management is ensuring that whoever is given the right to capture animals for zoological purposes has all the facilities, knowledge and expertise necessary of keeping the animal in good condition. This is to avoid giving animals to people that have no love for animals and incapable of using them for the benefit of humankind in those countries where that particular animal is shipped to. More alarming and indeed mind boggling is the whole idea of allowing the capture or hunting of these animals with or without a fee. This discretionary power creates a conducive environment for corruption and collusion between the director, minister and the applicant. Surely, a poor country like Tanzania and which its wildlife sector relies heavily on donor funding cannot afford the luxury of issuing the presidential licence without a fixed and determined fee.

Another alarming aspect of the presidential licence is the lack of the legal requirement requiring the director to satisfy him or herself of the existence of enough animals whose capture will not endanger the survival of that particular species. This does not stand alone as even in other areas Tanzania does not have a well thought mechanism of quota setting. It is an issue that we turn our attention to.

Quota Setting

It has been stated that a well-thought-out and scientifically based system of quota setting is essential in any country embracing consumptive utilization. That country must be able to state with exact certainty a number of animals that might be hunted in a particular hunting area in a given hunting period. The system should be able to tell and demand a number of animals that cannot be hunted for such reasons as low population, immaturity, pregnancy or any national or international prohibition. (Overton, 22 and Nshala,1999). Unfortunately the quota setting system in Tanzania is based on anecdotal reports from game officers in the field and hunters. That is not all the Minister who according to section 29 (e) of the Act is given powers to make regulations pertaining to quota setting in each area has not done so since the Act was enacted into law in 1974. The result has been devastating to say the least. The Warioba Commission found the following being the result of the lack of the quota system:

> Issuance of quotas sometimes does not put into consideration the population of animals in relevant areas thereby causing a shortage of some animals. For example the Royal Frontiers Company was given a quota to hunt Topi and Gerenuck in the Mkomazi areas while these animals are not available at all in the area. A former Minister issued permits for hunting 750 hippopotamuses in the Kilombero area to three companies while this area's total hippopotamuses population does not reach 750(Tanzania, 1996; 407).

As if that was not enough problems already that needed immediate response the number of animals being hunted per area is increased whenever that area is sub-divided without its quota being adjusted and reduced accordingly. An ideal and indeed a scientifically recommended system is that a hunting area should be large enough to accommodate each

specie population and to satisfy their demand for water. An area it is argued should be allow up to six hunters to hunt without intruding on each other (Tanzania, ibid;406). While the country's wildlife population has been declining over the years the number of hunting blocks has been increasing with the quota not adjusted or reduced accordingly. To the contrary, the quota for each block remains the same. In 1965, when the wildlife population was higher than it is today, the country had 47 hunting blocks only. By 1997 the number had increased to over 140 with about 33 hunting companies in business. The sub-division and the increase of the hunting areas has not been in the best interests of Tanzania because the number of animals allowed to be hunted as tripled without any scientific backing but only on very dubious reasons.

These findings show that the wildlife resource management in Tanzania is in danger, as the people entrusted with its management on behalf of the people of Tanzania do not care about the future and the survival of this resource. It is difficult to understand why Tanzania does not have a well-thought-out system of quota setting while the law, despite its many pitfalls, allows and, in fact, calls for one. The inevitable conclusion coming out of this is that the wildlife department has failed miserably in discharge of its public trust duty.

Allocation of Hunting Blocks in Tanzania

As stated above Ss.10 and 23 of the Act gives the director powers to grant hunting licenses to any person who has applied for the said licence. This power could only be exercised by director upon receiving guidelines in form of regulations from the minister outlining the mode of hunting of scheduled and specified animals; maximum number of animals that could be hunted in an area by a person and making a mechanism for the better conservation of wildlife in Tanzania. This has not been done and the director has made his own criteria to guide him during the process of allocating hunting blocks. The criteria include:

- The company, or its employees, should have experience in hunting;
- The professional hunters in the company should be conversant with the requirements of the Wildlife Conservation Act, 1974;
- The company should possess the necessary equipment for hunting, such as vehicles, radios, camping gear; office and communication facilities;
- Company be registered and hold appropriate banks accounts in Tanzanian banks;
- The company should have a program aimed at integrating conservation activities with the needs of rural communities
- The company should have credible referees and lastly it must have proof of client bookings and respective down-payments (Severre:1996, Nshala, ibid)

These criteria however good intentioned as they might be are contrary to the law in the sense that they have been made by the director who has no such powers and therefore are illegal. The minister is the only person who has powers to do so. In applying these criteria the director has most of the time been guided by his personal whim rather consistent application of the criteria. In November 1994, the director and the minister on one hand and the Tanzania Hunting Operators Association (TAHOA) on the other reached a

consensus Agreement to guide the allocation of the hunting blocks to 1999. For a company to be allocated hunting blocks it had to meet the following conditions:

a) achieve an average utilization rate of 40 percent of its allocated quotas. This should be based on monetary value rather than the number of animals killed;
b) contribute to the anti-poaching activities in cooperation with the Wildlife Department
c) Open up roads and airstrips for the continuing use of anti-poaching squads and the Wildlife Division during the hunting off-season;
d) Offer assistance to communities adjacent to hunting areas;
e) Pay all required fees by the stipulated time (April 30),and
f) Ship client trophies in timely manner

The Consensus Agreement is not saved from the legality problems leveled on the criteria promulgated by the director they too do not amount to the regulations that minister was/is supposed to make. To the contrary they are at best an agreement between the government and the hunters on how the latter could be allocated hunting blocks and the revenue to be paid to the government and just temporary arrangements that could cause a lot of legal problems when so challenged in court.

Abuse of powers

Since the Wildlife Conservation Act 1974 vests the president, the minister and the director without putting in place a mechanism of checks and balances there has been many instances of abuse of powers by these officials especially by the minister and the director. For any system to work perfectly and ensure that the public interests are at the heart of any decision that the government officials take there must be a system that is open, transparent, and where the freedom of information is guaranteed. To the contrary most government documents in Tanzania are deemed to be top secret and protected by the National Security Act, 1970. Again, the whole scheme of natural resources management in Tanzania does not envisage the indispensable role of the public in ensuring that natural resources are well managed. To the contrary, the government believes itself to be all-knowing and the public is to be told what to do by it. The Warioba Commission was not merciful on the way the government officials were discharging their public duty. It stated the following:

> The 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 for lack of transparency. The basis on which decisions are taken has not been clear. The situation has created big loopholes for corruption and has created more corruption (Tanzania, Vol.1:63-4)

The lack of public oversight and fact that the government sees itself not accountable to the public has created a loophole for the abuse of powers in the natural resources management regime in Tanzania. Despite the wildlife department and TAHOA reaching the Consensus Agreement, the wildlife department officials have whenever it personally suited them breached this Agreement to punish the companies that does not tow the line.

The case of *Wengert Windrose Safari (T) Limited vs. the Director of Wildlife and 2 Others* is in point. In this case the former was in 1997 allocated 5 five blocks only to have its two blocks impliedly withdrawn in 15th May 1998 by a letter purportedly allocating it three blocks. The facts of the case were as follows. The wildlife department accused the company of failing to meet the 40 percent utilization quota in three of its five allocated blocks. The company responded that it was prepared to pay the money for the unutilized quota upon being told the exact amount of money it owes the department. On the 25th of April 1998 the department of wildlife sent a letter in form of a fax to the company threatening to withdraw two blocks if the company failed to pay the money fulfilling the 40 per cent utilization quota by the 27th of April 1998. Two interesting things are worth noting. First, the letter was issued and sent by fax on Saturday a non-working day in Tanzania and the deadline was also a public holiday. Thus, there was no way in which the Company would have met this impossible and malicious deadline. Second, the deadline of paying the 40 per cent utilization fee as stipulated on the Consensus Agreement was the 30th of April and not the 27th April as demanded by the wildlife department.

The company appealed to the minister who rejected its appeal and the company had no choice but to institute a case against the minister and the director of wildlife. The High Court ruled in favor of the company and had these very embarrassing remarks about the conduct of the director and the minister:

> The First Respondent, the Director of Wildlife for reasons best known to himself decided to set a deadline of his own, which decision barred the Applicant from paying the required top-up fee within the official time, and therefore his subsequent acts against Applicant's interests allegedly for failure to pay the fees were without any colour of legality and can only be a nullity for being a clear abuse of his powers. Besides, the 1str Respondent's decisions and actions of 25th, 27th, and 28th April 1998 exhibit hasty elements akin to those of a fire brigade in action, which however good intentioned they might have been cannot escape from being branded unreasonable let alone from being saved from an imputation of bias… I have also found that the Second Respondent (the Minister) acted on false information, and insufficient evidence when dismissing the Applicant's Appeal to her.

The *Wengert Windrose Safaris (T) Limited* case once again proves the assertion that the system of allocation of hunting blocks in Tanzania is flawed and gives a lot of powers to the director of wildlife and the minister to grant and cancel the blocks at will and without even abiding with the principles of natural justice. More chilling is the fact in order to victimize the company the director refused to accept the payment made by the company on the 29th April in order to find a way of withdrawing the blocks while according to the Consensus Agreement that money was supposed to be paid to the government in any case. This also proves that these officials do not care the plight of this otherwise poor nation that badly needs revenue from every source to better the lives of its impoverished population. To them self-aggrandizement and empire building is the motive behind and nothing else.

Lack of public oversight and participation

Being a resource dependent country sound management of its natural resources is important and Tanzania therefore cannot afford the luxury of allocating too much discretionary powers to the government officials without putting in place a mechanism that makes these officials accountable and answerable to the public. The public trust doctrine demands that the government in the discharge of its public trust duty in the management of naturals resources should so for the benefit of the people of Tanzania and not otherwise. In performing this duty it must involve the public in decisions pertaining to natural resources management. The public cannot do so if it has no access to information and if it is not well informed. The public role guaranteed by Article 27 of the Constitution, which demands the citizens of Tanzania to ensure that the country's natural resources are managed well. Unfortunately, the implementing legislation in Tanzania do not recognize the role of the public in the management of natural resources. The legal regime inhibits the public oversight by creating bureaucratic red-tape in accessing government documents and also by going as far as criminalizing their possession without its approval. Under the National Security Act government documents are classified by being stamped "Confidential". Once so stamped they are only accessible to authorized officers. Lamenting on this state of affairs Ringia and Porter had these to say on the National Security Act:

> "… Perhaps the most problematic legislative "loophole" is the National Security Act, 1970, which gives the government sweeping discretionary powers to classify information and thereby regulate access to it...The lack of objective criteria in the National Security Act prevents any fair determination of what is truly in the national interest. Moreover, once information is classified, it is accessible to only a few government employees, "authorized officers." This one provision excludes virtually the entire citizenry and most governmental officers from access to classified information." (Ringia and porter, 1999:10)

That is not the only law that curtails the role of the public in ensuring that the country's natural resources are managed well. The Newspapers Act 1976 prohibits the publishing of any information that intends to show that the government has been misled or mistaken in any of its measures; points out errors or defects in the government, constitution, or any other law; or attempts to persuade inhabitants to procure by any lawful means the alteration in Tanzania. Publishing of any of the above prohibited information exposes one to sedition charges punishable with two years imprisonment. For all intent and purposes this provision is so draconian as it goes contrary to Article 18 of the Constitution that guarantees freedom of expression. Since its has not been so declared by the Judiciary it has been used by the government to harass the public and ultimately muzzle it. This legal regime shields government officials from the public oversight and scrutiny with catastrophic effects on natural resources management.

As if that was not enough the legal regime in Tanzania does not guarantee the public access to natural resources. The public is excluded from these resources either by wholesale eviction from the land to other places which are infertile or by imposing total ban in entering certain areas on the pretext of national parks or game reserve and banning

traditional methods of harnessing natural resources. This situation of affairs has led to tension between natural resources authorities and local communities. Commenting on this sad situation of affairs LEAT had this to say:

> "…(T)he examination of legislation pertaining to wildlife conservation illustrates the typical approach: National Parks, Game Reserves, Conservation Area or other wildlife protected areas are established, administered and the resources therein managed with little or no participation from the local communities and almost always in spite of their opposition. Their legitimate interests and concerns count for little if anything in the day to day decision-making processes by the institutions entrusted with wildlife conservation. Benefits from these resources hardly ever trickle down to the local people. As a result, the relations between local communities and conservation agencies have been characterized by a permanent state of tension and conflicts (LEAT 1999;100).

The tension has not been the only result of this neglect but wildlife resources have suffered tremendously as they are in a decline to an alarming degree. In 1995 the government commissioned the Wildlife Sector Review Task Force to review the overall performance of the sector and recommend ways to improve. The Task Force found that illegal hunting has led to the almost total elimination of the black population, loss of two third of elephant population and increasing losses of buffaloes. As if that was not enough it stated that the protected areas like the national parks and game reserves, have only partially fulfilled their objectives of conserving Tanzania's biological diversity (MTNRE, 1995:21, Nshala 1999).

The Way Forward

The review of the wildlife sector has clearly shown that Tanzanian government by its deeds mistakenly believes that it owns natural resources of the country. The said belief has led to abuse of powers, mismanagement, corruption and lack of accountability. The natural resources legal regime in Tanzania gives too much discretionary powers to the government officials without any system of checks and balances in place. These too much powers have imparted into the minds of the government officials that they are above the law or untouchables and most of the time they execute their functions according to personal whims and not in accordance with the law. Tanzania cannot afford this situation of affairs any longer since the public trust doctrine obliges the government to act in the best interests of the public in its discharge of its public trust duty. In order to ensure sound management of natural resources in Tanzania the following must be done:

- Major amendments of natural resources laws in Tanzania must be undertaken so as to entrench into these laws basic natural resources management principles and the removal of discretionary powers currently enjoyed by the natural resources management officials. These principles include public participation and accountability, environmental impact assessment, mandatory scientific based quota setting system, transparency, checks and balances and access to information.

- The public trust doctrine needs also to be expressly entrenched in each legislation and pertaining to natural resources management in Tanzania. It must be clearly and spelt

out the natural resources are held by the government in trust and for the benefit of the people of Tanzania and to which the government is accountable to. The public should therefore be involved in decisions touching on natural resources management and its access to information on natural resources must be guaranteed and simplified.

- Members of the public right to challenge any government decisions on natural resources management must be guaranteed. This means legal standing should be given to every Tanzanian and non-governmental organizations. This is important in as it will enable enlightened members of the public to come in the aid of the poor and in any part of the country to challenge any decision that they think to be contrary to the interest of the nation, the public or the environment.

- The provisions dealing with the classification of governmental information that does not touch on really national security issues under the National Security Act, 1970 and the seditious provision of the Newspapers Act must be repealed. These provisions shield government officials from public scrutiny and oversight. Their repeal will enable the public to exercise their right to information and the duty of ensuring that the country's natural resources are utilized and managed properly.

- The allocation of hunting blocks in Tanzania must be reformed to ensure that hunting blocks are given to companies and people that will give maximum return to the country. The powers of the director of wildlife and the minister in issuing hunting licences must be severely regulated by putting a mechanism that will see auction and tenders replacing them. This will ensure that only people who value the resource highly are allowed to utilize it. The system will have in place a mechanism of purging out corrupt companies and people with no expertise in wildlife management. The system must have a minimum floor price to avoid any possibility of collusion amongst bidders.

Conclusion

Despite the public trust doctrine having a constitutional basis in Tanzania its presence is not reflected in practice in various pieces of legislation relating to natural resources management. The immense discretionary powers given to government officials entrusted with natural resources management in Tanzania derogates from the whole import of the public trust doctrine. These powers have inculcated in the minds of government officials that the government is the owner and not the trustee of natural resources. This has made these officials to become aloof to the plight of this resource dependent country. Entrenching the public trust doctrine together with sound natural resources management principles in the natural resources regime in the country cannot be further postponed. The doctrine and the principles of transparency, accountability, limited powers, access to information and public participation will ensure that Tanzania's natural resources are managed assiduously as demanded by Article 27 of the United Republic of Tanzania Constitution.

REFERENCES

Archer et.al.,1994 The Public Trust Doctrine and Management of America's Coasts 1

Court of Appeal of Tanzania at Dar es Salaam, Attonery General v. Lohay Akoonay&Joseph Lohay Civil Appeal No. 31 of 1994(Unreported)

High Court of Tanzania at Dar es Salaam,1998.Wengert Windrose Safari (T) Limited v. the Director of Wildlife and 2 Others. Miscellaneous Civil Cause No. 35 (Unreported)

LEAT, 1999 Report on Institutional Mandates and Legal Framework for Environmental Management in Tanzania, A Consultancy Report to the Voce-President Office, Dar es Salaam

Ministry of Tourism, Natural Resources and the Environment (MTNRE). 1995. A Review of the Wildlife Sector in Tanzania, Vol.1. Wildlife Sector Review Task Force, Dar es Salaam: MTRNE

Mlimuka, A.K.L.J& Kabudi P.J.A.M, 1985.,"The State and the Party"in Shivji I.G(ed), The State and the Working People in Tanzania, CODESRIA

Nshala, Rugemeleza A.K.1997., The Role of the Judiciary and Protection of Human Rights in Tanzania, LL.M Thesis, Harvard Law School, Cambridge (Unpublished)

Nshala, Rugemeleza. 1999 Granting of Hunting Blocks in Tanzania: The Need for Reform Policy Brief No.5 Dar es Salaam LEAT, Dar es Salaam

Nyerere, Julius. 1968. Freedom and Unity: Oxford: Oxford University Press

Overton, Greg. 1998. "The Good, the Bad and the Ugly," SwaraVols.20:6 and 21:1

Paul, James T, 1996 The Public Trust Doctrine; Who Has the Burden of Proof,http:www.pixi.com/~nhac/state/TrustDoc.html

Ringia, D.W & Porter, Stephen J: 1999, Access to Environmental Information in Tanzania, Dar es Salaam. LEAT

Severre, E.L.M 1996 Administration of Hunting in Tanzania," in N. Leader-Williams et al., eds. Tourist Hunting in Tanzania. Occasional Paper of the IUCN Species Survival Commission No.14

The Presidential Commission of Inquiry Against Corruption, Vol.2 1996 (The Warioba Commission").

UNEP/UNDP Dutch Government Joint Project on Environmental law and Institutions in Africa, 1998, Compendium of Judicial Decisions on Matters Related to Environment National Decisions Vol. 1. M.C Mehta vs Kamal Nath and Others,

United Republic Act of Tanzania, Wildlife Conservation Act 1974 Dar es Salaam: Government Printer

United Republic of Tanzania, 1970. National Security Act No.3 Dar es Salaam, Government Printer.

United Republic of Tanzania, 1976. Newspapers Act No.3 Dar es Salaam, Government Printer.