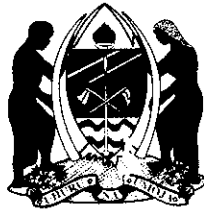


**THE UNITED REPUBLIC OF TANZANIA
THE LAW REFORM COMMISSION OF TANZANIA**



**REPORT ON THE LEGAL FRAMEWORK
OF THE TOURISM INDUSTRY**

**PRESENTED TO THE MINISTER FOR
JUSTICE AND CONSTITUTIONAL AFFAIRS,
DAR ES SALAAM, TANZANIA**

July 2004

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We would also like to extend our sincere thanks to The Royal Danish Government for the funding assistance it provided from the inception of this project to the final report. We appreciate this spirit and look forward to future cooperation in other projects. We would however like to state that all views contained in this report are the Commission 's sole responsibility.

LIST OF ABBREVIATIONS

| | | |
|--------|---|---|
| EAC | - | East African Community |
| AICC | - | Arusha International Conference Centre |
| Cap | - | Chapter |
| CCC | - | Customs Co-operation Council |
| CITES | - | Convention on International Trade in Endangered Species |
| DPP | - | Director of Public Prosecutions |
| EIA | - | Environmental Impact Assessment |
| GDP | - | Gross Domestic Product |
| KINAPA | - | Kilimanjaro National Park |
| MIT | - | Ministry of Industry and Trade |
| MNRT | - | Ministry of Natural Resources and Tourism |
| NCA | - | Ngorongoro Conservation Area |
| NCAA | - | Ngorongoro Conservation Area Authority |
| NTP | - | National Tourism Policy |
| NPES | - | National Poverty Eradication Strategy |
| NEP | - | National Environmental Policy |
| PA | - | Protected Area |
| PTC | - | Permanent Technical Committee |
| SADC | - | Southern African Development Community |
| TACTO | - | Tanzania Association of Cultural Tourism Organisers |
| TALA | - | Tourists Agents Licensing Authority |
| TANAPA | - | Tanzania National Parks |
| TRA | - | Tanzania Revenue Authority |
| TTB | - | Tanzania Tourists Board |
| VAT | - | Value Added Tax |
| VETA | - | The Vocational and Education Training Authority |
| WTO | - | World Tourism Organisation |

EXECUTIVE SUMMARY

This report emanates from the Commission's own initiative aiming at creating a legal framework for the implementation of the National Tourism Policy, which was set to achieve the objectives of the National Development Vision 2025.

The laws, which were subject to review, include those dealing with tourism, taxation, licensing and others relating to conservation of fauna and flora.

The report attempts to present an alternative legal framework to the existing one that in the Commission's opinion will be able to guarantee the proper and optimal utilisation and management of the tourism industry in the country. Concomitantly, the framework should be able to facilitate the implementation of strategic and consequent action plans, as well as the attainment of National Tourism Policy objectives.

The report further gives a discourse on tourism and eco-tourism focusing on the review of the tourism industry related legislation in juxtaposition to the policy regime obtaining in the country, and the place of such legislation in developing the industry. The report further delves into examining specifically the legal regime and implementation aspects of the National Tourism policy.

Recommendations are then made for the need to reform the tourism industry legislation and regulations with the purpose of providing a new legal framework to govern the industry so as to meet the current national economic development objectives as propounded in the National development Vision 2025. Most importantly the legal framework to be developed should have a structure that is designed in such a way that it will be flexible and malleable enough so as to be able to cope with the fast changing socio-economic and political circumstances. A legal structure that will be able to adapt itself to the changing modes so to speak.

This report is divided into five chapters, with the first chapter giving background information. Chapter two deals with the analysis of the National Tourism Policy and other policies impacting on it and their effect on both the National Tourism Policy and the existing legal framework. Chapter three analyses the legal framework of the industry and all legislation related to it. The chapter looks at the various international conventions that deal with tourism and in particular those that Tanzania has ratified. Chapter Four deals with the research findings whereby the basis for the commission's recommendations is laid. Conclusions and recommendations are made in chapter five. These are based on research findings and the Commission's own brainstorming sessions.

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**TRANSMITTAL LETTER ON THE REPORT ON THE LEGAL FRAME WORK
FOR THE TOURISM INDUSTRY**

This report emanates from the Law Reform Commission of Tanzania's own initiative aiming at creating a legal framework for the implementation of the National Tourism Policy.

The Tourism Industry in Tanzania is facing constraints and limitations in achieving its goals. The following are such constants.

- (i) Inadequacy of awareness and appreciation of tourism and importance of setting aside and preserving tourist's attractions;
- (ii) Inadequacy of basic infrastructure (e.g. water and power supplies, transport, communication and accommodation facilities;
- (iii) Poor coordination and inadequate land management for the development of tourism;
- (iv) Inadequate regional and international capabilities and coordination among various ministries, private sector, non governmental organization and other organizations involved in tourism development.
- (v) Deficiency in the investment opportunities and limited indigenous and community participation in investment activities. .

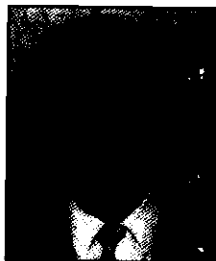
Considering the above constraints the Commission's main objective of this project is two fold. At National level the review is aimed at outlining the role that tourism can play in the nations endeavour towards poverty alleviation.

The second objective is to facilitate the codification of legislation governing the numerous activities related to the tourism industry. This is necessary because legislation governing the tourism industry is manifold and scattered thus making inaccessible and hard to find.

The Commission has completed this project through extensive research and public hearings country wide. By virtue of S.14 ss (1) of the Law Reform Commission of Tanzania, 1980, The Commission has honour to submit this report on the subject under reference.



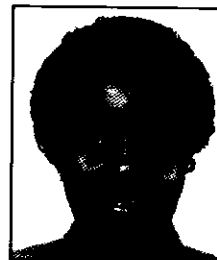
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CHAPTER ONE

1.0 Some Background Information

1.1 MANDATE

The Law Reform Commission Act, 1980¹, established the Law Reform Commission¹. Under that law the commission is mandated to take and keep under review all the law of the United Republic of Tanzania with a view to its systematic development and reform. In order to undertake this mammoth task the Commission has come up with a strategic plan, which is largely based on the Public Service Mission and Vision as well as the Nation's Development Vision 2025. In line with this vision and government's decision to give priority to Tourism, Mining, Agriculture and Industry as the basic industries driving the economic development engine of the country, the Commission decided to undertake this research to be followed by researches on the legal frameworks of the Mining Industry and finally that of Agriculture and that of Industry and Trade. The objective being to create level legal playing fields in those sectors so that the stakeholders involved may attain their objectives with a minimum of hindrance from the law.

- 1.2 The basis for the decision to undertake this review is in line with the Commission's Strategic Plan for the next three years. In that plan the Commission is to play a pivotal role in the sphere of economic development by providing legal frameworks that will support economic policies as they will be prescribed by government. The main purpose being that the country is governed in accordance with the rule of law. Thus it is prudent to start this process by providing legal frameworks for those industries that have already been identified as driving engines of our economic growth and those that have specific sector policies.
- 1.3 Effective legislation is essential in creating a conducive and competitive standard in any development sector. The tourist sector is by no means an exception given the fact that it is the world's largest and most diverse industry. In 1998 international tourism receipts topped USD 445 billion accounting for just over 8% of the world's total export of goods and almost 34% of the world's export in services. In the same year tourism accounted for 11 % of the world's workforce and it is anticipated that by the year 2005, tourism output will reach USD 75 trillion while there will be 125 million more jobs added to the existing 212million.²
- 1.4 Tanzania like all other developing countries is operating in a competitive sphere both at regional and international levels. Given the large number and diverse nature of tourist attractions and destinations on offer in the world today, Tanzania needs to upgrade and consolidate its tourism industry to withstand the international competitive onslaught. Competition in tourism enhances efficiency, increases accessibility and the provision of quality tourism products and services. However competition needs to be regularised and supported by a firm and strong legal framework.
- 1.5 This report is a culmination of an intensive and extended desk study supported by field research in selected areas in Tanzania. Although the Commission had intended to undertake a comparison study by actually visiting and researching in a few selected countries that are either competitors to Tanzania, or leaders in the tourism industry in the area, this was not possible due to budgetary constraints. Resort was thus had to secondary sources, which proved quite invaluable.

¹Act no. 11 of 1980

²World Tourism Publication - 1998

- 1.6 The report addresses the issue of land for tourism as being a function of the existence of the land policy and clearly defined mechanism and procedures for the setting aside and better management of land for tourism and related investments essential for increasing the overall quality of tourism products and services. Conflicts involving conservation/ tourism interest vis a vis other land uses such as agriculture and pastoralist interests are discussed and recommendations made.³
- 1.7 Cultural tourism and domestic tourism are further issues that are discussed in this report. It is submitted that for Tanzania to have sustainable tourism it must encourage, on a systematic and permanent basis domestic tourism. In a country like China there is a large number of domestic tourists than there are foreign ones. In the year 2000 there were 740 million domestic tourists in China, which is half the population of that country and the largest figure of domestic tourists in the world. This figure is bound to increase, as Hong Kong is fast becoming the most popular destination for domestic tourists from Mainland China. In the same year slightly more than 40 million tourists entered China, hardly 15% of the domestic tourists.⁴ Tourism must be encouraged in schools, among families and at work places where visits to nearby tourist attractions can be arranged for a nominal fee particularly during the low tourist season. This way tourism will belong to the people and will therefore have greater potential for sustainability even when international tourists have found other alternative destinations.

So while all efforts must be made to withstand competition from outside, there is need to strategise on encouraging and strengthening internal tourism for self-preservation. Understandably, tourism has been seen to be the domain for the rich and foreign. Substantial change of the mindset of the people, the institutions and the government is essential in providing an impetus to the promotion of domestic tourism. The largest market is not only close to home, but also sustainable. Where a sense of ownership⁵ is inculcated in the people the sustainability of the tourism industry and its economic and social contribution is to a large extent guaranteed.

- 1.8 Cultural tourism is also an important category that offers a window for benefit to villages adjacent to tourist attractions. Efforts in some modules that have already embarked on cultural tourism must be encouraged and spread to other areas. By the year 2000 there were at least sixteen cultural tribal tours in about eleven regions. Trained local people guide these tours and they charge a fee that would normally be put to the use of the entire village and not just individuals. The uses range from promoting energy saving stoves, building schools to building cattle dips for tick control.⁶
- 1.9 It can be said generally that cultural tourism in Tanzania is becoming very popular. Between 2000 and 2001 there has been an increase of one thousand tourists who visited these established cultural tourism modules. Over 10 million shillings were spent for development in these modules. This is considered to be a major event; particularly for an area of tourism that is considered to be in its infancy. This shows that community service providers are giving quality service to tourists. Furthermore, the whole business is conducted in a very transparent manner whereby tourists and other visitors are invited to see the use and development of projects for which they have contributed. It is submitted that local governments can and should play a major role in the development of the cultural tourism sub-sector.

³ Lekengere Faru Parutu Kamunyu And 52 Others vi/s/ Minister for Tourism, Natural Resources and Environment, 2 The Director, Wildlife Divisions Ministry of Tourism, Natural Resources and Environment, 3. Project Manager, Mkomazi Game Reserve. 4. The Attorney General, CA 1990-Unreported.

⁴ China National Tourism Administration [CNTA] June 2000

⁵ A sense of ownership can only obtain where the people of Tanzania are made to appreciate benefits derived from the existence of tourist attractions in their areas. So far the benefits envisaged are financial or materials in the form of social services directly seen by them. The other economic and social benefits that accrue but are not really perceived, such as growth of national economy and its spill-over effects and the psychological satisfaction resulting from appreciation of nature and its offerings, needs to be inculcated in them so as to enlist their support in conservation and preservation efforts.

⁶ This programme is managed by the Tanzania Cultural Tourism Co-ordination Office

- 1.10 Currently this sub-sector is being pioneered by the Tanzania Association of Cultural Tourism Organisers [TACTO], itself a positive result of the five year-old project on community based tourism initiated by the Dutch Development Organisation [SNV] in collaboration with the Tanzania Tourist Board- The Cultural Tourism Programme Co-ordination Office; This project came to an end in December 2001 landhence the formation of TACTO.

It is our view that the most viable way to promote cultural tourism should be through local governments and not through an association. Cultural tourism covers too large a sphere for one small organisation to manage and provides all the required expertise and support. Tourist attractions do exist in almost every village and local governments are therefore well placed to encourage the formation and development of their areas' cultural tourist attractions. This can be achieved through provision of basic legal frameworks for the demarcation, development and protection of the designated areas and or activities by enacting by-laws. Local governments could even provide the initial capital for the start up of these village projects and or activities. Such course would go a long way towards poverty alleviation among the villagers involved.

- 1.11 Eco-tourism as an integral part of tourism is also discussed in this report. An ecologically sustainable Development Working Group on Tourism stated: "Eco-tourism is a situation where "symbiotic relationship between tourism and environment becomes more apparent", and that tourism facilities and services exist in a continuum, from those which natural resources depend for the operation, through those which are independent of natural resources."⁷
- 1.12 In 1987 Hector Ceballos Lascurain defined eco tourism as *"traveling to relatively undisturbed or uncontaminated natural areas with the specific objective of studying, admiring and enjoying the scenery and its wild plants arid animals as well as any existing cultural manifestation."* Hirji goes a bit further and defines eco-tourism as *"responsible travel for the purpose of holiday making, study or both, the natural areas which conserve the environment or is within the limits of acceptable change and improves the economic well being and protects the socio-cultural values of the local people."*⁸
- 1.13 It is undoubtedly clear therefore that eco-tourism is about providing employment to local people, respecting their culture and customs, involving local people in the decision-making and planning of eco-tourism in their areas and most importantly, eco-tourism must participate in the protection of the environment and the conservation of natural species. An underlying principle in the symbiotic relationship is the bio-diversity that hinges on the interdependence of a myriad species and factors. Eco-tourism development must above all give satisfaction to tourists while providing eco-friendly tour products and promoting public consciousness of travel-related environmental protection.
- 1.14 Admittedly eco-tourism means different things to different people. To government, eco-tourism means new areas for sustainable development and utilisation of natural resources, as well as a source of income to the exchequer. While the environmentalist might consider eco-tourism as strongly linked to the conservation of natural resources and the protection of their habitat, the tourist planner's view would be closely linked to sustainable tourism development. For the business community eco-tourism means new markets for expanded and extended tourism, and for the local community eco-tourism is expected to improve their economic wellbeing and preserve their cherished socio-cultural values, not to mention an increase in income and a promise of a better life.

⁷Biodiversity Conservation and Eco-tourism: *An investigation of linkages, mutual benefits and future opportunities*-1996.

⁸ Lilla Lyogello-The essence of eco-tourism-Kakuona issue no 17 April -June 2000

- 1.15 Like tourism proper, eco-tourism offers several advantages for economic advancement and expansion. As an example, Kenya's game parks and other Protected areas provide revenues of nearly US\$ 500M, representing about 30% of the country's foreign exchange earnings⁹ Eco-tourism provide economic benefits to local people who live close to, or within the vicinity of natural tourist attractions. When properly educated, the people come to realise the economic value of wildlife and value of its conservation to generate income through service charges, entrance *fees*, and concession taxes. Therefore the importance of eco-tourism in economic development cannot be over emphasised. The other side of eco-tourism is that it deals in preservation of culture and all that is natural and authentic, caters for tourist as well as locals. Eco-tourism demands therefore that its ground rules and regulations are developed locally and they need to be extensively based on conservation and not on exploitation as a basic goal. Since eco-tourism concentrates on integration of economic; development into conservation and protection of natural resources it sustains economic development. It remains harmless to the environment unlike other economic activities such as Mining, logging, intensive agriculture etc. The thoughts of Foehr might be relevant here; "*Take only photographs leave only footprints*"¹⁰. The aspect of tourism, as a major factor in poverty reduction is also addressed in this report. Needless to say; the tourism industry contributes significantly to the national income basket. It also provides much-needed jobs to a sizeable Tanzanian population, in both urban and rural, and in this way its role in poverty reduction merits emphasis. Tourist game hunting, hotels, tour operations, handicrafts such as Carving, pottery, weaving and art, all these are areas in which Tanzanians earn the tourist dollar and in this way contribute to the country's poverty alleviation efforts

1.16 Tourism: A Historical Perspective

The history of tourism in Tanzania can be traced to the German period when the colonial government then adopted policies that encouraged protection of animals and preservation of the environment. Before that time, Arab slave trade and hunting for the ivory trade were the most dominant activities in the then wildlife rich Tanganyika. After the Berlin scramble for Africa in 1885., as Tanganyika was being given away to the Kaizer, the slaughter of elephants was well advanced. Commercial hunters of different nationalities hunted not only for ivory, skins or horns but also for meat to sell to villagers. Local Africans were often contracted by these hunters to shoot elephants and other valuable game.

- 1.17 Detailed trade statistics that were kept from 1903 showed that between 1903 and 1911 a total of 256 tons of ivory were exported. This represented a total of approximately 1,200 to 1,500 elephants slaughtered a year, which actually is not very many compared to the 19th century plunder or even the poaching of the 1980's in Tanzania. These relatively low figures are due to a lot of ivory being discreetly smuggled in dhows from along the long ungarded coastline and thus evading tax to the Imperial authorities that collected the taxes and kept these records. At the same time an amazing 53 tons of rhino horn was exported representing perhaps 2,000 or 3,000 rhinos shot per year. This eight-year period also saw a large number of live animals being taken to the motherland as well as 50 tons of antelope horns and 2.7 tons of-valuable bird feathers.¹¹
- 1.18 From 1891 the Governor had started to issue shooting restrictions, by declaring the first hunting regulations in Moshi district only six years after the country, was declared a protectorate. The first General Wildlife Ordinance came into being in 1896. Imperial Governor Herman von Wissmann who decreed it, made its objective clear in the following words:

"I felt obliged to issue this Ordinance in order to conserve wildlife and to avoid that many species become extinct which can be expected for not all that distant future, if the

⁹US Department of Commerce (1993) *Nature Tourism in Asia: Opportunities and Constraints for Conservation and Economic Development* -US forest Service, Washington DC, USA.

¹⁰ Ibidem., *Nature Tourism in Asia*

¹¹Dr. Rolf D Baldus- Wildlife Conservation between 1885 and 1914. Kakakuona Tanzania Wildlife Magazine April-June 2000.

*present conditions prevail....We are obliged to think also of future generations and we should secure them the chance to find leisure and recreation in African hunting in future times. I am also planning to create Hunting Reserves in game rich areas in order that wildlife can find their refuge and recovery. In such areas hunting of game will be permitted only with the explicit prior permission of the Imperial Government. Their establishment should also serve science, in order to conserve such species which have already become rare in East Africa."*¹²

- 1.19 Further decrees and implementing regulations were issued in 1898, 1900, 1903, 1905 and 1911. It was in fact in 1911 that the Hunting Ordinance was promulgated in which commercial culling was stopped altogether and all hunting regulated. The Imperial Government issued hunting licenses, and their set fees differed from those applicable to indigenous Tanganyikans, to non-indigenous residents, visiting non-residents etc. According to this edict, the shooting of elephants, Chimpanzees and birds such as ostriches, secretary birds and vultures, was strictly prohibited. Shooting permits were given on the basis of controlled licenses for specific animals. Harmful animals such as lions, leopards, wild dogs, or crocodiles could be hunted freely and sometimes even for a price! The imperial government as well as the British colonial government were stern in supervising the implementation of this ordinance as government records show. In 1933 for instance there were thirty-six game cases involving over two hundred offenders at Banagi hill alone.¹³ As far back as 1927 government correspondence was dominated by the concern for unrestricted killing of game and the attitude of the British Government was to allow limited hunting to only those tribe's who customarily supplemented their diet with game meat.¹⁴

- 1.20 The establishment of game reserves beginning in 1905 strengthened this conservationist policy. By 1911 there were fifteen areas officially declared as "protected areas" totaling approximately 5% of Tanganyika or 30,000 sq. km. These were called "hunting reserves" although ironically all hunting was prohibited in these areas.

Four such areas were situated along the Rufiji and Ruaha rivers near Liwale and Lindi. These were later expanded during the British rule and became what is now known as the Selous, named after the Victorian adventurer, hunter and writer, Frederick Courtney Selous who was killed in action within this area during the First World War. These areas were chosen neither for their tourist attractions nor their biological diversity, but rather for their concentration in numbers of big game.

- 1.21 In 1921 The British Government established the Game Department and followed it up with the instant gazetting of the first game reserve, the Selous Game Reserve in the following year under the fauna conservation Ordinance Cap 302¹⁶. The roles of the Game Department were to administer the game reserves, enforce hunting regulations and protect people and crops from marauding animals.
Later on the then Ngorongoro Crater which had been left open for hunting closed and became a game reserve together with the Serengeti Game Reserve in 1928 and 1929 respectively.
- 1.22 Tanganyika was always famous for its variety of big game, wildlife numbers and diversity of landscapes and in those early days, attracted a steady stream of wealthy hunters. The tourism industry began with the tourist hunting industry way back in 1946 when game controlled areas were established and divided into hunting blocks, where professional hunters and their clients could hunt trophy animals.¹⁷

¹²Dr. Rolf D Baldus-op.cit. pg. 8

¹³National Archives of Tanzania

¹⁴This culminated in The Confidential Circular no 1 of 1935 signed by the Acting Chief Secretary to Government titled "The Killing of Game by Natives."

¹⁵Dr. Rolf D. Baldus "Wildlife Conservation between 1885 and 1914"

¹⁶The present Selous Game Reserve was established by GN no. 265 and 275 of 1974

¹⁷The Fauna Conservation Ordinance Cap 302, 1964 Supplement.

1.23 The current framework for wildlife-protected areas comprising National Parks,¹⁸ Game Reserves and Game Controlled Areas was set up after the Second World War. In 1959 the Serengeti National Parks and the Ngorongoro Conservation Area¹⁹ were established. This was followed by the gazetting of eleven Game Reserves.²⁰ Supervision of these reserves was, with the exception of mount Kilimanjaro and mount Meru parks, in the hands of local chiefs assisted by one or two local game scouts.

1.24 At independence the new national government continued with the policies of creating National Parks whereby three National Parks were established and gazetted,²¹ while nine game reserves were gazetted²². The first independence president showed his commitment to wildlife conservation when he released the *Arusha Manifesto*, which declared:

"The survival of our wildlife is a matter of grave concern to all of us in Africa. These wild creatures amid the wild places they inhabit are not only important as a source of wonder and inspiration but are an integral part of our natural resources and of our future livelihood and well being.

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 conservation of wildlife and wild places calls for specialist knowledge, trained manpower, and money, and we look to other nations to co-operate with us in this important task the success or failure of which not only affects the continent of Africa but the rest of the world as well."*²³

1.25 The Arusha manifesto has been used to guide wildlife conservation in Tanzania ever since. All policies having to do with conservation of wildlife as well as tourism have the Arusha manifesto as its basis.

1.26 The Advent of Tourism

The German government realised that wildlife conservation needed money and had to be a self-sustaining programme; Carl Georg Schilling a keen German hunter, conservationist and photographer around the turn of the last century noted:

*"Without any doubt it would be good to bring as many wealthy Hunters from abroad into the German colony as possible. Such hunters would not only pay considerable fees for their hunting permits but through their safaris they would also bring business to the colony"*²⁴

1.27 From that time on German, British and the new Tanganyika government policies revolved around making wildlife conservation becoming a business that paid for itself.

1.28 The first National Tourism Policy came off the drawing board in 1991 to provide the overall objectives and strategies necessary to ensure sustainable tourism development in the country. It is under this policy that the monopolistic Tanzania Tourist Corporation was disestablished and in its place the supervisory and enabling Tanzania Tourist Board was re-established²⁵; and as a result the improvement of private sector participation in the industry was undertaken, and the approval of many new tourist related projects in collaboration with the Tanzania Investment Centre were made.

¹⁸ National Parks Ordinance Cap 421-1" July 1959 [Section 5(1)]

¹⁹ Ngorongoro Conservation Area Cap 413 I" July 1959 [Section 3(1)]

²⁰ Under the Fauna Ordinance Cap 302 Schedule I eleven such game reserves were established throughout the country

²¹ The Mikumi, Ruaha and Ngurdoto Crater extension National Parks were established by the National Parks Proclamation 1964 made under Section 3 of the National Parks Ordinance Cap 412 22

²² Fauna Conservation Ordinance op.cit.

²³ Mwalimu J.K. Nyerere - 1961

²⁴ Carl Georg Schilling- With Flashlight and Rifle-1905

²⁵ Act no. 25 of 1962 established the Tanganyika National Tourist Board. This was replaced in 1969 by The Tanzania Tourist Corporation and on the 28th December 1993, the Tanzania Tourist Board was re-established by

- 1.29 Changes on the political, economic and social fronts in the country, the shift in the tourism paradigm at international level, as well as the 1992 Rio Declaration on Environment and Development, and the agenda 21 for the tourism Industry have led to the revision of the 1991 National Tourism Policy. Collaborative efforts between the government and various stakeholders have resulted in the more comprehensive National Tourism Policy (NTP) of May 1999.

1.30 Statement of The Problem

Tourism is one of the fastest growing key sectors in the national economy. Macroeconomic changes ushered in during the mid-eighties led to the disengagement of the government from ownership and operation of tourism business and facilities.

In its stead stepped the private sector as having a central role in a market-oriented economy with the government's role being one of creating an enabling environment for investment and regulation of the sector. As such tourism and its related facilities, services and operational environment need to be transformed to realise its full economic potential.²⁶ In addition, there is an increasing competition globally in the tourism industry due to the fast growth in the information technological sector, whereby consumers are well informed of a choice of tourist destinations and facilities. These factors dictate that there be established a new synergised or codified legal and regulatory framework to govern this vital and fast growing industry, a framework that can give the Tanzania tourism a competitive edge.

- 1.31 Needless to say, the tourism industry in Tanzania is facing constraints and limitations in achieving its goals. Among such constraints are:

- Inadequacy of awareness and appreciation especially of tourism and importance of setting aside and preserving tourist attractions. Local communities are not involved in the decision-making, development and sharing of the proceeds from the tourism resources and tourist trade;
- The basic infrastructure is inadequate (e.g. water and power supplies, transport, communication and accommodation facilities);
- Poor co-ordination and inadequate land management for the development of tourism;
- Poor institutional and technical capabilities and co-ordination among various ministries the private sector, Non-Governmental Organizations (NGOs) and other organizations involved in tourism development;
- Inadequate regional and international tourist linkages. The existing and excellent bilateral and multilateral relations are not fully capitalized upon for the development of the sector; Deficiency in the investment opportunities and limited indigenous and community participation in investment activities within the tourist sector;

- 1.32 When the Commission initially decided to undertake this project and before commencement of field research, its main objective was to make recommendations so that the Ministry concerned puts in place an effective legislation that would be conducive to the creation of a competitive environment by merely reforming and updating the existing tourist legislation and regulations and others that impact on the tourism industry. After field research this view has shifted and now the Commission is of the view that there is need to harmonise and codify all legislation relating to the sector so as to provide for an environment in which activities related to the tourism industry are carried out within the framework of the law, without limiting the freedoms of actions of operators. Further, research has revealed the great need for collaboration with other Ministries such as the Ministry of Education so that tourism may be incorporated in the curriculum for purposes of making nationals aware of tourism as well as for encouraging domestic tourism, which is the basis for sustainable tourism in any country.

²⁶George McIntyre 993-Sustainable Tourism Development: Guide for Planners pg. 5

1.33 Objectives of the Project

The main objectives of the project are two - fold. At the national level the review is aimed at outlining the role that tourism can play in the nation's endeavour towards poverty alleviation as one of the key sectors in the economy. The National Development Vision 2025 and the Poverty Reduction Strategy Paper as well as the National Poverty Alleviation Strategy will be the central focal points in the discussion of this paper.

- 1.34 The second objective is to facilitate the codification of legislation governing the numerous activities related to the tourism industry with a view to making the law accessible and, therefore, cost-effective. This is necessary because legislation governing the tourism industry is manifold and scattered thus making them inaccessible and hard to find. There exists a need for such legislation to be written in plain language so that the stakeholders and consumers, as it were, are able to understand them and thereby encourage compliance.

1.35 Objectives of the study

Achievement of objectives of the project largely hinge on the study the main objective of which is to collect and analyse empirical information pertinent to the establishment of a legal and regulatory framework conducive for the regulation and development of the tourism industry, to enable it to contribute towards national poverty alleviation efforts. The intended framework is one that will cover the various sub-sectors of the tourism industry while laying a level legal playing field so that all stakeholders in the industry may be able to attain their objectives-a synergy of legislation and policy if you like. In essence, this project aims at creating a legal framework for the tourism industry that is properly aligned with the National Tourism Development Policy so that objectives of the latter may be easily attained while all the time focusing on the objectives of the National Development Vision 2025.

1.36 Rationale And Justification Of The Project

The importance of the tourism industry to economic development of Tanzania is not a matter of speculation. In 1999 tourism alone contributed at least 14% to the GDP.²⁷ In 1998 more than 400,000 tourists visited the country. The tourism industry is one of the fastest growing in the country and as an industry it has great potential to contribute even more to the national economy than it does at the moment. In fact all indicators suggest that the sector is poised to become the leading economic engine for growth.²⁸ Given a conducive environment, the wealth created through proper development and management of the sector could play a significant role in the alleviation of poverty in the country. However, since tourism links people, travel modes, accommodation facilities, and a variety of other things serving the traveler both here and abroad, its related facilities and services and its operational environment need to be transformed to enable it realise its full potential²⁹

- 1.37 Economic growth is the target for every country in the world. Each country, be it developed or developing, maps out strategies and action plans geared at enhancing the standard of living of its people. Most of the strategies and plans aim at the eradication of the poverty of its citizens. The developed world has innovated very sophisticated techniques that will enable its citizens to take advantage of natural resources more aggressively. Tourism in particular appears to be the world's largest and most lucrative industry in terms of economic development. In recent years tourism has become an important factor in world trade and a major element in the balance of payments of many countries, having grown faster than trade in other products.

²⁷ See Daily Newspaper of June 12th 2000

²⁸ Ibidem

²⁹ Lundberg, Donald E. The Tourist Business, CBI publishing Company, USA 4th 1980 pg. 1.

- 1.38 Likewise, the role of the Tanzania government is to ensure the formulation and implementation of articulated sectoral development policies, strategies, and action plans as well as to stimulate and promote investment in the sector. The core business of the Government is therefore, to regulate, promote and facilitate smooth running of, and investment in the sector, while at the same time retaining its position of a service provider to investors. It must therefore work to ensure that public investment in human resource and infrastructure development is worthwhile.³⁰
- 1.39 In undertaking this core business, one of the tasks the government must perform is to come up with appropriate policies and a matching legal framework that will ensure proper and successful implementation of the policies. Since tourism is a series of interrelated businesses targeting the tourist, there are equally a series of laws each catering for a particular tourist area. Need, therefore exists for the codification of legal provisions and arrive at a legal framework catering for the entire tourism industry. This is necessary not only because there is need to have such legislation codified, but also because the process will ensure that there is no conflict between one sub-sectoral legislation and another. Furthermore, codification of sectoral legislation will greatly assist in the creation of a consistent tax regime that will be fair to the taxpayer as well as the exchequer.
- 1.40 It is from realising this need that the Law Reform Commission, after consultation with the Ministry responsible for tourism and stakeholders in the industry, decided to undertake, this project.

1.41 **Research Methodology**

This discussion paper is a result of extensive literature view and field research undertaken in fifteen regions. The Commission undertook field re search in Kilimanjaro, Arusha, Tanga, Dodoma, Coast, Mbeya, Iringa, Morogoro, Rukwa, Lindi, Mtwara, Mara, Mwanza, Shinyanga, Tabora, Ruvuma and Dares Salaam regions where data was collected and extensive interviews were conducted with stakeholders in the tourism industry as well as the common people. Chair guided discussions were used. Limited use of questionnaires was made in this research.

- 1.42 In every region where the commission visited, researchers organised interviews with the regional management teams, stakeholders in the industry, and held public meetings. These meetings had a two-fold purpose; one was to collect views of the public in the relevant research. Secondly, to fulfill the Commission's mandate of providing public legal education. The team of researchers would educate the public on the laws they were researching on before they began to collect views of the public who are the main consumers of the laws.
- 1.43 The research confirmed the Commission's initial feeling that there is need for a total harmonisation of all legislation governing the tourism industry; from laws that govern and regulate the management of national parks to those that set regulations for the proper management of the environment. From laws that regulate the entry into the country of tourists to those that govern the allocation of hunting blocks. From land laws to the tax regime governing the tourism industry. It not only makes the management of the sector more efficient, but it also allows for quick amendments when need arises.

³⁰ The National Tourism policy pg. 23

1.44 Constraints of Research

Field research in some areas was made difficult due to the fact that a lot of the leaders who were contacted for interviews were not ready in spite of the prior notice sent out by the Commission. There was apathy on the part of some regional leaders. In most cases researchers found that the regional leaders had not done their homework so that researchers had to spend a lot of time making contact with stakeholders. This had the effect of shortening the interview time and reducing the number of interviewees.

- 1.45 The contribution of most interviewees was in some cases not serious due to the fact that there had been too many other commissions that had approached them whose work had borne no results at all. So there was a tendency of looking at the Commission's work just as 'another one of those other commissions'. This resulted in interviewees giving flimsy and sometimes careless or irrelevant answers.
- 1.46 It must be stated ab initio, however, that the Commission is fully responsible for the results of this work and all the consequent recommendations.

CHAPTER TWO

THE NATURE AND SCOPE OF THE POLICY FRAMEWORK FOR THE TOURISM IN TANZANIA

- 2.1 The National Tourism Policy 1999 (NTP) is the official sectoral policy for the tourism industry but as this paper shall show later, it is not the only policy that has a direct relationship with the industry. The nature of the policy framework is constituted by a constellation of sectoral policies that in one way or another form part of the big picture.
- 2.2 In this chapter an attempt will be made to outline the provisions of the NTP and other such sectoral policies with the view to identifying the points of convergence and divergence of the policies in so far as they relate to the tourism industry, and examine whether or not such work for or against the smooth development of the tourism industry. This is carried out against the backdrop of the National Development Vision 2025 (Vision 2025), a vision of economic and social objectives to be attained by the year 2025. It is around this vision that the National Poverty Eradication Strategy (NPES) outlining the national strategy of economic and social development for poverty eradication efforts through year 2010 was formulated³¹. It, therefore, follows that sectoral policies should and must be consonant with the overall national vision and development goals. Any discordance between sectoral policies themselves and between them and the national development objectives and aspirations will definitely put the development process in jeopardy. The need to synchronize and not compartmentalize policies is more than a choice: it is a necessity.
- 2.3 And finally, this chapter will attempt a synthesis of the myriad policies impacting on the tourism sector in order to suggest the best alternative to the present situation. There can be no gainsaying that multiple provisions in different sectoral policies having a bearing on one sector, identified as one of the four key sectors (the others being agriculture, mining and industries) in the country's poverty alleviation drive, administered by multiple authorities may amount to the proverbial cooks and the broth and this is more so given administrative experiences in Tanzania where lack of co-ordination, as we shall show in the coming chapters, seems to be a growing administrative culture.

2.4 The National Tourism Policy 1999

The NTP was formulated against the background of the recognition of the fact that Tanzania's tourism has great potential ranging from natural resources to a diversity of cultures and numerous archaeological sites³². However, none of these had been optimally exploited to make Tanzania a favoured tourist destination. Various constraints were identified as standing in the way of making tourism contribute to the national economy more and assist in the nation's quest for poverty alleviation. Studies carried out in the early 1990³³ revealed the potential that tourism has for the development of the nation as well as the constraint and limitation that hindered the tourism industry from contributing to the country's economic growth. Such constraints included poor infrastructure and inadequate marketing strategies. Other identified constraints and limitations were the perception that put tourism before sustainable environmental protection; underdevelopment of culture as a resourceful tourist attraction; inadequate regional and international tourist linkages; and poor co-ordination and inadequacy in land management for tourism development.

³¹ Tanzania, Poverty Reduction Strategy Paper (PRSP) 2000

³² NTP 1999

³³ Tourism Master plan.....

- 2.5 Furthermore, the human resource base requisite for manning the industry in a progressive and sustainable way was found to be wanting, as was comprehensive planning for human resources development and investment in the sector. The sidelining of the local communities in the decision-making process, development and sharing of proceeds from the tourism and the tourism trade, as well as lack of awareness and appreciation on their part of not only the importance of tourism, but tourism itself, and thus the importance of setting aside and preserving tourist attractions were also listed among the constraints and limitations providing the backdrop to the need for formulation of a tourism policy. Lack of investment opportunities, limited indigenous and community participation in investment activities; poor institutional and technical capabilities and coordination among the public and private sectors, as well as the civil society; and limited sources of finance and financial institutions to cater for the development of the sector were also realized to be among the major setback in the development of the sector.
- 2.6 The general objective of the NTP is to “assist in effort (sic!) to promote the economy and livelihood of the people, essentially poverty alleviation, through encouraging the development of sustainable and quality tourism that is culturally and socially acceptable, *ecologically friendly, environmentally sustainable, and economically viable*” (Emphasis supplied). Moreover, the policy seeks “to market Tanzania as a favoured tourist destination for touring and adventure...in a country renowned for its cultural diversity and numerous beaches”.
- 2.7 The specific objectives of the policy are four-fold, namely, Economic, Social, Environmental and Cultural. The economic objectives of the policy revolve around ensuring that tourism increases government revenue and makes massive contribution to foreign currency earning and the Gross Domestic Product (GDP); creates employment while promoting human resource development and investment opportunities through the development of private entrepreneurship in the sector; stimulates infrastructural development and that of support institutions while at the same time creating linkages among tourism-related institutions; stimulates technology transfer and local industries development producing goods and services for tourism; and enhancing regional and international tourist linkages boosting the national economy.
- 2.8 Social objectives of the policy address the encouragement of cross-cultural exchange and the enhancement of local and international understanding; creation of awareness among the public of the importance and role of tourism; provision of recreational opportunities for the local and international tourist; and the establishment and maintenance of a competitive, transparent and effective legal and regulatory framework for the sector.
- 2.9 Central to the environmental objectives is the promotion and development of tourism that is ecologically friendly and environmentally sustainable, and the promotion and development of land for tourism in a co-ordinated manner to attract private investment and ensure sustainable tourism development.
- 2.10 The cultural objectives comprise the development of cultural values, creation of cultural awareness and promotion of community participation as a form of product diversification in the industry; development and strengthening of tourism related industries whose products portray the country’s rich and diverse cultural and artistic heritage so as to increase benefits accruing from the sector; preservation and better management of the cultural and natural heritage as tourist attractions for present and future generations benefit; development and maintenance of museums, theatres and other cultural exhibition centres; encouragement of the further development of a national identity and maintenance of pride in own culture; and provision of an opportunity for sustainable cross-cultural exchange between local communities and tourists through promotion of rural tourism and rural development in general and specifically promoting service provision in the country’s remote areas.
- 2.11 To achieve these objectives, the policy sets out the following specific strategies:

2.12 Product Development and Marketing

- 2.13 Recognizing the importance of realizing the full potential of the existing tourism potential, the products have to be enhanced and new ones developed. The infrastructure needs to be developed and accessibility to tourist products be increased and improved. Legal and regulatory protection and enhancement of quality control mechanisms for products and services is stipulated as a strategy for product development and measures must be taken to ensure that through community involvement, the benefits of tourism reach the local communities as a way of guaranteeing protection of products and services.

On the marketing aspect, direct accessibility to tourist attractions need to be enhanced with emphasis being placed on understanding customer needs, and delivering products as desired by the customers in a professional way as well as through utilization of information technology as a marketing tool.

Policy strategies for marketing include the identification and locating of the target market for purposes of putting in place cost-effective means of communication and influencing identified market segments; promoting Tanzania's image and of its attractions and especially the cutting edge of wildlife viewing and hunting expeditions; supporting promotional activities of operators in the industry; and providing support for customer satisfaction.

2.14 Eco-tourism

- 2.15 Expanding the categories of tourist products, the policy has taken on board areas of great bio-diversity the continued existence of which hinges on proper conservation and sustainable management of the environment. Strategies to achieve include designing environmentally friendly tourism programs and putting in place mechanisms that will ensure that tourist activities have due respect for bio-diversity use and wildlife conservation among other things. The use of Environmental Impact Assessment for tourism activities and projects and creation of conservation awareness among tourists and the local population also form part of the policy strategy for the workability of eco-tourism.

2.16 Cultural Aspects of Tourism

- 2.17 In promoting cross-cultural exchange, the policy strategies include enhancing and developing cultural aspects of tourism through various means including festivals and visits; encouraging documentation, publicizing and dissemination of information on cultural attractions by various authorities and institutions; and encouraging institutions in the field of performing arts and other such institutions to prepare programmes for wider circulation.
- Other strategies include the inclusion of local communities and local cultural performances as well as products manufactured by local industries as tourist products. Emphasis is placed on ensuring that the cross-cultural exchange is not inimical to the promotion of national culture and identity. The need to ensure that cultural impact assessments are conducted prior to approval to develop tourism projects and investment is granted also forms part of the strategies.

2.18 Domestic Tourism

- 2.19 The overall policy strategy for domestic tourism is against the backdrop of enabling Tanzanians to participate in domestic tourism and be able to sample the same tourist attractions. The strategy is to facilitate preferential tariffs to citizens; introduction of, and encourage students to undertake, tourism studies; encouraging institutions to hold their annual meetings in areas with tourist attractions and to encourage tailor-made programmes for the purpose of optimal utilization of capacities and services during the low tourist season.

2.20 International and Regional Co-operation

- 2.21 Tanzania, having committed itself to membership in various international and regional organizations such as the World Tourism Organization (WTO), the Regional Tourism Organization of Southern Africa (RETOSA), East African Community (EAC) etc., need exists for emphasis to be placed, on the enhancement of regional and international tourist linkages that boost the Tanzanian economy in a sustainable manner.

The policy sets out various strategies which include acquiring, maintaining and making use of Tanzania's membership in the organizations for the benefit of the country's tourism industry; enhancing standing bilateral and multilateral relations while forging new ones; and optimising the utilization of international markets and marketing systems of the industry. Strategies also extend to cooperation in international and regional information on tourism as well as putting in place a mechanism to ensure entry of private foreign investment, its co-ordination and protection in accordance with investment policies and legislation.

2.22 Land for Tourism

- 2.23 The policy recognizes land as a major resource on which the tourism industry is based and therefore underscores the need for, among other things, a land policy that is responsive to the quest for increasing the overall quality of the tourist products and services, having clearly defined mechanisms and procedures for setting aside and better management of land for tourism-related investment. The desired course is to give priority to tourist projects that benefit local communities and ensure environmental protection. The strategies for realizing this revolve around collaboration between stakeholders in identifying and setting aside specific areas for tourism development and investment; drawing development plans for such areas and subjecting them to EIA, issuing licences post - EIA approval and allocation and ensuring that the areas are developed, protected and conserved. Another important aspect of the strategies in respect of land for tourism is the putting in place of mechanisms for ensuring that developers and investors in the industry enter into written agreements with local authorities and communities where investment is intended, which agreements should stipulate the benefits to be obtained by the local communities and mechanisms for dispute settlement in the event of conflict of interest.

2.24 Infrastructure Development

To have a competitive edge, the tourism industry needs a sound and well functioning infrastructure. Telecommunication systems that function well, reliable transportation services, and adequate and up-to-standard accommodation facilities are of great quintessential for accessibility efficiency and quality. Need, therefore, exists for the establishment of quality information networks, by promoting and putting to greater use information technology in the industry and development of business networks. .

Realisation of this entails upgrading and maintaining a multi-modal transport system in a rational network of complementary grids and feeders; enhancing the provision of national infrastructure networks through the maintenance links between national entry and exit points as well as international networks; and providing points of access into the country and new tourist routes leading to tourist attractions. It is also imperative to encourage adequate, high quality, efficient and environmentally friendly communication services, provide support and assistance for quality accommodation facilities while ensuring that, in all cases, EIA is undertaken for intended infrastructure development.

2.25 Employment and Human Resources Development

- 2.26 Tanzania's expanding tourism industry, apart from having a high employment creation potential, needs appropriate and specialized skills and this constitutes the basis for building capacities through human resources development. Consequently, training becomes an important driving force in capacity building and the private sector has a role to play in this. Strategies designed for the task include developing and investing in training of qualified local personnel at all levels, with more emphasis on management positions, and developing comprehensive skills and training programmes; setting up more training facilities for the industry; and developing a competent workforce, encouraging labour efficiency and devising cost-effective measures; and devising means to ensure that academic and professional demands are met and maintained.

2.27 Community Participation

- 2.28 The fact that most tourist attractions lie within local communities or within their vicinities, and are at times sources of livelihood or spiritual significance to them, it is imperative that the communities be fully involved in the development and management of these attractions and get a share of the income generated from tourist attractions in their areas.
- 2.29 To this end, strategies for community participation comprise education and sensitisation of individuals, communities private and public institutions to identify, value, understand, appreciate, protect and develop tourist attractions and national heritage; involvement of communities in management of tourist attractions within their localities and in preparing development plans where their livelihood and well being may be affected as a direct result of the plans; and giving priority to members of the communities in training, employment and access to social and economic benefits accruing from tourist activities or investments in their areas.
- 2.30 The strategies also extend to the institution of a mechanism for ensuring that the striking of a balance between community interests and those of the tourist industry so as to promote and enhance social harmony; educating and sensitising developers and investor to value and have respect for community rights, traditions and customs; and involving local institutions in the management of tourism areas, land and revenue collection.

2.31 Investment

For its development, Tanzania's tourism industry needs massive investment, as this will allow optimal exploitation of the potential in this sector. The policy underscores the need to promote tourism through private enterprise development and by making tourism one of the top priorities. The investment and financing sought should have the capacity to develop and promote quality tourism and the accompanying products; facilitate improvement of existing and development of additional infrastructure facilities; and generate employment, promote human resources development and facilitate transfer of technology. Investors in the sector should be given incentives and more so to those who re-invest the financial benefits of their investments in the industry and the Tanzanian economy.

- 2.32 This, the policy stipulates, is achievable if tourism is promoted as a priority sector for development, investment procedures are streamlined and fiscal and non-fiscal incentives are provided to investors; dissemination is made of information on investment opportunities available in the industry to potential investors; incentives that promote tourist ventures are set up; and vertical integration in tourism investment is discouraged.

2.33 Finance

- 2.34 Development of the tourism industry need finance and as such, deliberate efforts need to be made for the provision of sufficient financial and technical assistance for the development and promotion of Tanzania's tourism industry.

Policy strategies for financing include the establishing of a favourable fiscal, legal and regulatory framework able to attract finance; allocation of public funds for effective promotion, development and marketing of tourism; and soliciting for and providing mechanisms for micro-financing and provision of technical assistance to small enterprises engaged in tourism related undertakings to improve efficiency and product quality.

Additional strategies include soliciting for financing from international capital markets to finance development and promotion of the industry; participating in stock exchange and capital markets; and encouraging domestic savings and reinvestment of the proceeds accruing from tourist activities in the tourism sector.

2.35 Competition and Legislation

- 2.36 The essence of competition lies in its ability to enhance efficiency, increase accessibility and provision of quality tourism products and services. The existence of an effective legislation is an essential element in creating a conducive and competitive environment.

The primary strategy is the provision of an environment in which tourism-related activities are conducted within the framework of the law, without imposing limitations of the freedom of action of operators and local communities whose Livelihood depend upon or are affected by tourist activities. Such a framework should also make provision for dispute resolution in the event of disagreement and provide for quality control mechanisms for tourist products and services while providing for consumer protection as well as ensuring health and safety.

A review has to be conducted of the existing legislation and regulation relevant to the tourism industry and to streamline, simplify and make them transparent, fair and enforceable, and to put in place a Tourism Act to guide and regulate the development of the tourism sector. It is further necessary to facilitate entry and easy access to the country without compromising national sovereignty; promote the provision of information on the tourism industry and tourist products to all interested parties; and provision of smooth entry into exit from the industry and market-oriented pricing systems for tourist products.

2.37 Environmental Protection

- 2.38 Protection of the environment is a necessary pre-requisite for the development of sustainable tourism. It is upon the government to ensure that tourism development is based on careful assessment of the carrying capacities of tourism products and ensure enhancement and improvement of special environmental features to put in check any potential conflict between tourism development and the environment.

- 2.39 The major policy strategies to achieve this are three fold: First Development of EIA guidelines and ensure that EIA is carried out and strictly adhered to in all tourism development projects; Secondly, Monitoring and revision of environmental protection measures in tourism; and, thirdly Ensuring that laws and regulations governing land use along the coast, rivers and lakes are strictly observed in all tourism development projects and recreational activities.

2.40 Institutional Participation

- 2.41 The economics of liberalisation have led to the government giving way to the private sector to manage the sector and has necessitated a strategic alliance between the public sector, the private sector and the civil society. Such alliance among the stakeholders should be for the stimulation of investment and resources mobilised so as to promote the efficient delivery of quality tourist products and services: promotion of tourist productions should be the responsibility to be shared by all institutions.
- 2.42 The multitude of institutions charged with this responsibility has necessitated multifarious strategies for carrying out what is required of them couched as roles³⁴. The institutions for which roles have been assigned by the policy are:

- ⟨ The Central Government and Local Authorities.
- ⟨ The Ministry responsible for Tourism and its specified institutions.
- ⟨ The Private Sector.
- ⟨ Non-governmental organizations.
- ⟨ Women groups.
- ⟨ Business Associations.

2.43 Point Of Convergence: The NTP And Other Sectoral /Non Sectoral Policies And The Tourism Development

- 2.44 Whereas the NTP is the sectoral policy, there are policies governing sectors other than tourism that have great bearing on the management, regulation and development of the tourism industry. In considering matters of tourism, it is imprudent not to take into consideration these other policies for they impact on the industry, and having total disregard for them is tantamount to an unfair treatment of the policy regime on tourism. The impact is at different levels and degrees, but there are those policies that are pivotal for the development and management of tourism in Tanzania.
- 2.45 Having made a commitment to the development of sustainable and quality tourism that is culturally and socially acceptable, environmentally sustainable, ecologically friendly and economically viable, policies relating to land, environment, culture and investment claim a place in the policy regime for tourism.
- 2.46 The National Land Policy is one such sectoral policy that forms part of the tourism policy regime. Obvious is the fact that the approach constitutes a major departure from the narrow conception of land for tourism. The traditional approach has been to see the aspect of land for tourism as being those tracts of land set-aside for wildlife conservation. This was based on the premise that confined tourism to wildlife and safaris only. But the concept of tourism is broader than that; it, encompasses land for all such activities that may and do fill under tourism. Land for national parks, game reserves, nature reserves, hunting blocks, conservation areas and investment in the infrastructure for the tourism industry fall under the land aspect for tourism. Marine parks are included in this definition. It also encompasses the larger issues of land management and development insofar as the tourism industry is concerned.

³⁴This chapter will not dwell much on the roles, which are set out in extenso in the policy document. A discussion of the roles will be conducted as part of the assessment of the operationalisation of the policy vis-a-vis the legal framework.

Tourism's supply side is constituted by attractions (such as wildlife, historical sites, nature reserves etc.); facilities (such as hotels, campsites etc.); transport; services and infrastructure. Land is the lifeline and this is what underscores the essence of considering the land policy a part and parcel of the tourism policy regime. Land use is a function of the Land Policy and its inadequacies may and do affect tourism. It has been observed, for instance, that wildlife migration corridors and dispersal areas, which are central to the health of the wildlife inside the national parks "are being lost or cut off as a result of changing land use practices."³⁵

- 2.47 The wildlife policy regime is relevant as wildlife-based tourism has, for a long time, been the hub of the industry, and it remains to be a significant factor in the management and development of the tourism industry in the country. As noted, wildlife is of critical importance since it forms the basis for securing a competitive advantage in the international marketplace.³⁶

The Wildlife Policy deals with, among other things the administration of wildlife; conservation and management of protected areas; wildlife outside protected areas; wildlife utilization; trade in wildlife products; and the conservation and management of species. Studies have shown that all is not well in the management of wildlife. Shauri and Hitchcock³⁷ note that "(t)he crisis in wildlife management in Tanzania and its debilitating effects are caused by many factors which include 'contradictory policies', weak law enforcement and poor performance of institutions with wildlife management responsibilities." One of the major identified shortcomings of the wildlife conservation policy is its failure "to effectively address the issue of competition for land use in wildlife areas, and particularly buffer zones and migration corridors." Given the momentous position of wildlife in Tanzania's tourism industry, policy inadequacies form the basis for inappropriate management and regulation of wildlife, and wildlife as a tourist product suffers adversely.

- 2.48 Another undoubtedly important policy having much bearing on the attainment of the NTP is the National Environmental Policy of 1997 (hereinafter "the NEP"). The overall policy objectives of the NEP include, inter-alia, the conservation and enhancement of "our natural and manmade heritage, including the biological diversity of the unique ecosystems of Tanzania" and raising "public awareness and understanding of the essential linkages between the environment and development, and to promote individual and community participation in environmental action". The NEP specifically provides for its scope as regards tourism in the following manner.

*"Tourism development will be promoted based on careful assessment of the carrying capacity and prior Environmental Impact Assessment application. Environmentally friendly tourism (ecotourism) and diversification of tourism activities will be promoted, e.g. conservation and promotion of cultural heritage sites, in order to decrease pressures on heavily impacted areas. Financial benefits from non-tourism activities shall accrue in part to the local community to motivate them in conservation of tourism resources".*⁴⁰

- 2.49 The policy further addresses the protection and utilization "in a sustainable manner on the basis of careful assessment of natural heritage in flora and fauna fragile ecosystems" but it seeks, through EIA studies to minimize environmental "adverse impacts of development projects in wildlife conservation areas (e.g. tourist hotels, rail construction)."⁴¹

³⁵ Shauri, V., and Hitchcock, L. Wildlife Corridors and Buffer Zones in Tanzania Political Willpower and Wildlife Management in Tanzania, LEAF, 1999, p.2

³⁶ Tourism infrastructure Project (T.I.P) Feasibility Study, Tanzania mainland, Final Report part I, Tanzania, 1995

³⁷ Shauri and Hitchcock, op. cit, p.1

³⁸ Ibid. p. 1

⁴⁰ Ibid

⁴¹ Ibid

- 2.50 The thrust of the NEP insofar as the tourism sector is concerned, is the use of EIA's in tourism related development projects to reduce environmentally adverse impact of such endeavours and the involvement of the community in conservation efforts. Diversification of tourist products features not as an end in itself, but as a means for promotion and development of environmentally sustainable tourism. On the flip side, the NEP advocates the need to strike a balance between the benefits of developing the tourism sector vis-a-vis guarding against environmental degradation, and particularly so in the wildlife conservation areas. Save for the machinery for enforcement of the good intentions set out in the NEP which will be discussed elsewhere in this paper, it cannot be gainsaid that the policy is supportive of the NTP to the extent that it deals with the promotion of environmentally friendly and ecologically sustainable tourism.
- 2.51 The development of the tourism sector, after years of being owned and operated, by and large by the state, and owing to the macro-economic changes ushered in to a great extent hinges on investment, both local and foreign.

The National Investment Policy of 1996⁴² has specific objectives for the tourism sector that are set out hereunder in extenso:

- (i) Expanding and diversifying the tourist industry by improving supportive infrastructure support services, the quality and efficiency of service delivery, and preservation of the natural environment.*
- (ii) Encouraging local and foreign investment in tourist services and infrastructure.*
- (iii) Engaging in more active tourist publicity and marketing arrangements both domestically and internationally.*
- (iv) Strengthening tourism institutions and enhancing coordination among tourist service delivery participants⁴³.*

- 2.52 This specific reference to the sector notwithstanding, tourism, like other types of business, is covered by the Investment Policy. These are matters relating to investment incentives, tax incentives, non-fiscal incentives, protection and guarantees to investors, arbitration of investment disputes etc. The investment paradigm is so wide and complex to be dealt with in this paper given the scope of work and the deliverables, but suffice it to say that the specific policy objectives of the Investment Policy for the tourist industry are congruent with those of the NTP to the extent that they relate to investment in the sector.
- 2.53 At the institutional level, the most notable, and perhaps the only policy that has been reduced into writing, is the Tanzania National Parks Policy of 1994. Tanzania National Parks Authority (TANAPA) is one of the specified institutions under the NTP categorized as a conservation institution. Its policy covers park planning; natural resources management; cultural resource management; wilderness preservation and management; public information, interpretation and education; outreach, extension and benefit sharing; use of parks; park facilities; and tourism and concessions. TANAPA being a national institution, its policy is important and has great bearing on the tourism industry.
- 2.54 Essentially, the policy regime must be looked at within the context of the complexity of managing tourism and its development. It is apparent that "... (the) exceptional number and diversity of operations that make up the supply side of tourism means that there is a high level of interdependence between all providers and that the tourism system is difficult to manage. ..." Tourism is a fragmented sector.

⁴² President's Office, Planning Commission, Tanzania, 1996

⁴³ Ibid. p. 21

⁴⁴ T.I.P. Feasibility Study, op. cit., p. 31

*“...There is, in reality, no ‘tourist industry’ as such but an activity that draws on almost every aspect of the economy. Successful tourism in Tanzania, therefore, calls for understanding the interdependence between various sectors that contribute to the tourism sector”.*⁴⁵

- 2.55 Translated into the policy regime, this means that it is also fragmented and an appraisal of the same must take cognisance of all the policy aspects that may in one way or another impact the tourism industry. The challenge is, therefore, in the enactment of a legal and regulatory regime that takes on board the diversities and mould them into a coherent, efficacious and efficient regulatory system with a view to give effect to the policy intentions, do away with contradictions and propel the industry into a position that will enhance its contribution to the national economy.

⁴⁵Integrated Tourism Masterplan (enabling framework for a National Tourism Development Programme), Final Report Volume II, 1996

CHAPTER THREE

THE EXISTING LEGAL AND REGULATORY FRAMEWORK FOR THE TOURISM INDUSTRY

3.0 Introduction

- 3.1 The previous Chapter set out to discuss the policy regime relating to the development of the tourism sector in the country by looking at the NTP and other non-sectoral institutional policies. Policies chart out the way but the vehicle for implementation is constituted in an efficacious legal framework. A sound legal framework can facilitate exchange and therefore development. An unsound framework increases the transactions costs and therefore impedes exchange putting the development of the sector in harm's way. Such a framework is inimical to any efforts, however concerted, to attain a competitive edge. The legal regime as a concept is not confined to rules and regulations only. It goes beyond that. In this context the legal regime is used to include legislation, both principal and subsidiary, and judicial decisions having a bearing on the industry. The concept also includes those institutions established by law to deal with matters of tourism, directly or indirectly. Such institutions range from licensing and other regulatory authorities to dispute settlement entities.
- 3.2 Legislation on tourism has not been reduced to a single piece. Identification of the body of law that can be referred to as "tourism law" entails a process of delving into various branches of the law and identifies specific provisions that impact tourism activities. As stated elsewhere in this paper, tourism is a function of a wide range of activities; to understand and appreciate the legal regime entails the examination of the various provisions.
- 3.3 At the national level the most notable serious and coherent effort to carry out a thorough review of the law on tourism in Tanzania can only be traced to a study on The Wildlife Conservation Act, 1974.⁴⁶ What has been done in most cases is a descriptive analysis of the legislation from a commercial point of view the tremendous transformation that the industry has undergone notwithstanding.⁴⁷ This, coupled with the time lapse in reviewing the legal regime, has not augured well for the development and management of the industry. The need for the law to keep abreast with developments in a transformed tourism must be emphasized.
- 3.4 At the international level, there are a number of international legal instruments dealing with the regulation of tourism. On the one hand, tourism, by its very nature, is characterized by travel of nationals of one country to another. On the other, tourism is trade between countries. The national legal regime is but a microcosm of the international tourism framework with necessary, salient features; international interaction includes the international legal regime which, among other things, creates obligations on the receiving state through conventions, treaties and other international legal instruments and arrangements like the case of membership in regional and international organizations. It is essential to bear in mind that the multiplicity of activities in tourism and tourist attractions means multiple obligations of varying forms and degrees.
- 3.5 The latter part of this chapter attempts to look into various instruments that create legal obligations at the international level.

⁴⁶ Kabudi, P.J. and Majamba, H.I., Review of The Wildlife Conservation Act: analysis of the Law and Stakeholder's Views, Ministry of Natural Resources and Tourism, February 2001

⁴⁷ Ibid. See also Tanzania Investor's Roadmap Study Report. Thee Services Group, USAID/TCCIA, 1997

3.6 The International Tourism Legal Regime.

- 3.7 The regulation of tourism at the international level revolves around some key legal instruments, which are the subject of discussion in this chapter. It is important to note that the body of international law referred to, as “international tourism law” is constituted by provisions found in myriad legal instruments impacting tourism at the international level. The international legal regime sets minimum standards to be taken into consideration in the formulation of national policies, enactment and review of national legislation on tourism. Basically, the instruments can be classified into three main categories i.e. Travel, Trade and Protection and Conservation.

3.8 Travels and Tourism

- 3.9 Tourism involves a great deal of traveling by air, rail, road, and sea. It involves internal as well as external traveling. Legal arrangement are involved in terms of travel agreements between states (such as open-skies agreements), immigration and customs, to mention but a few. The Convention concerning Custom Facilities for Touring (as amended) 1954 together with the Additional Protocol relating to the Importation of Tourist Publicity Documents and Material is relevant in this respect.
- 3.10 The Convention concerning Custom Facilities For Touring of 1954 entered into force in September, 1957 and the spirit behind it was the desire “to facilitate the development of international touring”
- 3.11 Article 1 (b) of the Convention defines the term “tourist” to mean “any person without distinction as to race, sex, language or religion, who enters the territory of a Contracting State other than in which that person normally resides and remains there for not less than twenty-four hours and not more than six months in the course of any twelve-month period, for legitimate non-immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business”. Art. 2 required the Contracting States to admit “temporarily free of import duties and import taxes (which terms are defined under Art. 1 (a) to mean “not only Customs duties but also all duties and whatever chargeable by reason of importation”) the personal effects imported by a tourist, provided they are for the personal use of the tourists, that they are carried on the person of or in the luggage accompanying the tourist, that there is no reason to fear for abuse, and that these personal effects will be re-exported by the tourist on leaving the country”. What constitute personal effects can be found in the provisions of Art. 2 (2) and (3) and these include personal jewellery, electronic equipment such as cameras, television, firearms etc. but expressly excludes all merchandise for imported commercial purposes. Articles 3 and 4 provide for other items that may be temporarily imported without being subjected to taxation.
- 3.12 Prohibition on importation and exportation is provided for under Article 9, where it is stipulated that States may take that route on considerations other than economic in character, for example of public morality, public security, public health, hygiene, veterinary or phyto-pathological consideration”. Article 10 qualifies the exemptions and facilities provided by the Conventions as not being automatic; the limitations include where the total quantity of a commodity and to be imported by a tourist exceeds substantially the limit laid down by the Convention; in cases where a tourist who enters the country of import more than once a month, and; where the tourist is under 17 years of age. The exemptions and facilities do not apply to frontier traffic.
- 3.13 The Additional Protocol came into being with a view to facilitate circulation of tourist publicity documents and material. Such documents do constitute part of the promotion and therefore marketing function. In a sense they are commercial documents which would, in essence, not be subject to the exemptions and facilities under the Convention. Moreover, the Convention has expressly provided for what constitute personal effects and promotional materials are not in the list. But to facilitate. international touring, the attractions and

means of access must be known. Thus Article 2 (a) of the Protocol provides that such documents as folders, pamphlets, books, magazines, guides, posters framed or unframed, unframed photographs and photographs enlargements, maps whether illustrated or not, printed window transparencies for free distribution the chief purpose of which is to encourage the public to visit foreign countries, among other things, touristic meetings, provided the documents do not contain "more than 25 per cent private commercial advertising and are obviously designed for general public purposes".

3.14 International Trade, Tourism and The Law

- 3.15 Tourism is trade and this aspect is what makes it important in terms of economic development, and in the Tanzanian context this means poverty alleviation, through its contribution to the national income. By and large such contribution in Tanzania results from taxes arising from payments by foreign tourists for services rendered in the course of their visits.
- 3.16 This brings in a more interesting aspect, that of competition. Translated into commercial interaction, the rules of the game have to have a great degree of uniformity on a general plane. The international legal regime provides a guiding light by providing for the basic minimum standards. The world provides the playing ground through the realities of competition between nations in the arena of world trade. Globalisation constitutes, albeit for the moment, a wake up call; Tanzania is not alone in the game and the competition has to be played according to acceptable rules, those that can enable Tanzania achieve the desired competitive edge and attain the desired goals.
- 3.17 Regulation of international trade is done through a maze of regulations. This paper seeks not to traverse and cover the entire terrain of international trade law, but to highlight those aspects of international trade law having a direct bearing on tourism. And in this particular regard, the International Convention on the Simplification and Harmonization of Customs Procedures, 1973 becomes relevant.
- 3.18 This Convention was a result of the recognition of divergences between national Customs procedures, which may hamper international trade and other international exchanges. Consideration was also taken of the interests of all countries to promote such trade and exchanges and to foster international co-operation and that the simplification and harmonization of their Customs procedure can effectively contribute to the development of international trade and of other international exchanges.
- 3.19 The Convention revolves around the formation of a Customs Co-operation Council (CCC) and the Permanent Technical Committee (PTC). Art. 2 stipulates that the contracting states undertake to promote the simplification and harmonization of Customs procedures and, to that end, to conform, in accordance with the provisions of (the) Convention, to the Standards and Recommended Practices in the Annexes to (the) Convention". This however does not prevent a Contracting party "from granting facilities greater than those provided for. . . and each Contracting Party is recommended to grant such greater facilities as extensively as possible". Under Art. 3, the prohibitions or restrictions imposed under national legislation shall not be precluded by the provisions of the Convention. The principles set out in the Annexes are:
 - (a) An introduction summarizing the various matters dealt with in the Annex;
 - (b) Definitions of the main Customs terms used in the Annex;
 - (c) Standards, being those provisions the general application of which is recognized as necessary for the achievement of harmonization and simplification of Customs procedures;
 - (d) Recommended practices, being those provisions that are recognized as constituting progress towards the harmonization and simplification of Customs procedures;
 - (e) Notes, indicating some of the possible courses of action to be followed in applying the Standards or Recommended practices.⁴⁸

⁴⁸ Since the scope of this paper not allow to deeply examine the Conventions but rather to highlight the existent Provisions of the international legal on tourism, to appreciate the nature and extent of the Standards and Recommended Practices, it is important to look at the Annex.

- 3.20 Art 6 defines the role of the CCC and the PTC. The Council is to “supervise the administration and development” of the Convention and to “in particular, decide upon the incorporation of new Annexes in the Convention”⁴⁹. The PTC is under the succeeding sub-article, charged with the responsibility of the preparation of the new Annexes and to propose to the Council their adoption with a view of their being incorporated in the Convention. It also is responsible *for* proposing, to the CCC proposals for amendments to the Convention or its Annexes” as it may consider necessary, and in particular, proposals *for* amendments to the tests of the Standards and Recommended Practices to Standards”. Under Art. 6(2) (c), the PTC is required “to furnish opinion on any matters concerning the application of the Convention” while under (d), the PTC has to “perform such tasks as the Council may direct in relation to the provisions of the Convention”. In this light therefore, the CCC is the main policy and decision-making body with the PTC being the technical arm of the CCC.
- 3.21 The third legal instrument in this regard in the Convention on International Trade in Endangered Species of Wilde Fauna and Flora (CITES) on 1973, which generally entered into *force* on July 1, 1975.
As stated above, the Tanzania tourism industry highly depends on wildlife, and the NTP has venture into paving the way *for* expansion of the categories of tourism attractions to include nature and marines reserves. Such being the case, therefore, both wild flora and fauna are of great importance to the industry and any international legal instrument on the subject is more than relevant.
- 3.22 It is important to note that the CITES partakes of two important aspects of tourism. On the one hand the CITES deals with tourist attractions as objects of trade. On the other hand, it deals with conservation through regulating the trade in the species through recognizing that “wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come”.

The importance of the wild fauna and flora derives from its ever-growing aesthetic, scientific, cultural, recreational and economical perspectives. This Convention also recognizes in its preamble that “peoples and States are and should be the best protectors of their own wild fauna and flora” and further that “international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade”.

- 3.23 Art. VIII (1) provides for the following measures to be taken by the Parties:

- “(a) to penalize trade in, or possession of, such specimens or both; and
- (b) to provide for the confiscation or return to the State of such specimens”

- 3.24 International Legal Regime, Protection and Conservation

The tourist attractions, both animate and inanimate, where not properly protected and conserved are irreplaceable. In the foregoing section; the CITES has expressed the importance *of* the protection and conservation of the animate and particularly in relation to trade as an exterminating factor. The central theme is *interdependency*: the living need the living to continue living making protection and conservation imperative. The living also need the non-living *for* their continue existence. Protection *of* the inanimate such as mountains, hills, rocks, caves and carvings *from* which the human beings derive biological, social, economic and even spiritual needs need to be protected and conserved. This section is an attempt at a discourse *on* the legal instruments *on* protection and conservation.

⁴⁹ Art 6 (1)

- 3.25 The Convention on Biological Diversity of 1992, which generally came into force on December 29, 1993, provides a quintessential conceptual backdrop⁵⁰ and legal framework for the discussion in this section.
- 3.26 Essentially the State Parties to the Convention are conscious of the “intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components” and also “of the importance of biological diversity for evolution and for maintaining life sustaining systems” the concern for the conservation of biological diversity is the concern of humankind.
- 3.27 The international law precept of State Sovereignty over own biological resources is recognized only to the extent that it does not take away the responsibility of the States for conserving their biological diversity and for using their biological resources in a sustainable manner. Concern is raised on certain human activities in that they significantly reduce biological diversity.
- 3.28 One interesting aspect raised by the preamble to the Convention is that of poverty eradication where it is stated that “economic and social development and poverty eradication are the first and overriding priorities of developing countries”. As stated elsewhere in this paper, the NTP was developed within the context of the National 2025 Vision the aim of which is to alleviate poverty among the people of Tanzania through sustainable economic and social development, and the NTP is but one sectoral policy in that direction. The challenge therefore lies in achieving, striking and maintaining the balance between the need for poverty eradication and the essence of biological diversity. Essentially, the balance is the matter of survival based on a symbiotic relationship; giving more thought and Support to one side to the disregard of the other means putting life-sustaining system in harm’s way.
- 3.29 Article 1 sets out the main objectives of the Convention as “... the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding”.
- 3.30 The term “biological diversity” is defined to mean “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and ecosystems”⁵¹. “Ecosystem” is defined as “a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit”⁵² Another important term “sustainable use” has also been defined under the same Article as “the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations”.

⁵⁰ The conceptual framework of biological diversity as appears in this paper is drawn heavily from the Preamble to the Convention on Biological Bio-diversity 1992 and does not therefore have any legal force.

⁵¹ Convention on Biological Diversity 1992, Article 2

⁵² Ibid

- 3.31 The guiding principal in the conservation of biological diversity is provided for in Art. 3 of the Convention:

“States have, in accordance with the Charter of the United Nations and the principles of internationally, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the *responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*” (Emphasis supplied).

- 3.32 Contracting parties are required under Article. 5 to co-operate “as far as is possible and as appropriate” with other Contracting parties for the conversation and sustainable use of biological diversity directly or where appropriate through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual of mutual interest. The general measures for conservation and sustainable use to be undertaken according to particular conditions and capabilities included the development of national strategies, plans or programmes for the conservation and sustainable use of biological diversity or to adapt for the purpose existing strategies, plans or programmes which. should reflect, inter alia, measures set out in the Convention relevant to the Contracting Party concerned, and to integrate, as far as is possible and appropriate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

- 3.33 The conservation approach envisaged by the Convention is two-pronged: *In-situ* and *Ex-Situ*⁵³. *In-Situ* conservation is defined as ‘the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties”, and *Ex-Situ* conservation means “the conservation of components of biological diversity outside their natural habitats”⁵⁴. Identification and monitoring,⁵⁵ sustainable use of biological diversity,⁵⁶ incentive measures,⁵⁷ research and training,⁵⁸ and public education and awareness have also been covered under the Convention. Other relevant matters also provided for include impact assessment and minimizing adverse impacts,⁵⁹ access to genetic resources,⁶⁰ access to and transfer of technology, and exchange of information⁶² are also covered by the Convention.

- 3.34 Life, the essence of being, is undoubtedly at the core of the Convention and it thus merits special consideration as it sets the basic minimum standards while at the same time understanding the dilemma that the developing countries, Tanzania being one of them and at the bottom of the heap, have when faced with a choice between conservation and survival.

- 3.36 The Convention on the Conservation of Migratory Species of Wild Animals of 1979 is yet another international legal instrument that deals with conservation and therefore impacts tourism. The Convention which generally came into force on November 1, 1983 was built around the concept that wild animals in their innumerable forms are an irreplaceable part of the earth’s natural system and must be conserved for the good of human kind and have an ever-growing environmental, ecological, genetic, scientific, aesthetic, recreational, cultural, educational, social and economic value.

⁵³ Ibid., Articles 8 and 9 outline modalities of the In- Situ Conservation.

⁵⁴ Ibid., Art. 2

⁵⁵ Ibid., Art. 7

⁵⁶ Ibid., Art. 10

⁵⁷ Ibid., Art. 11

⁵⁸ Ibid., Art. 12

⁵⁹ Ibid., Art. 14

⁶⁰ Ibid., Art. 15

⁶¹ Ibid., Art. 16

⁶² Ibid., Art. 17

- 3.37 Concern was raised on those species of wild animals that migrate across or outside national jurisdiction boundaries and therefore States are and must be protectors of the migratory species of wild animals living in or passing through their national jurisdictional boundaries. Such species are defined under Art. 1 of the Convention to mean “the entire population of or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries.”⁶³
- 3.38 The fundamental principles in this aspect of conservation are stipulated in Art. II (1) of the Convention:
- “The Parties acknowledge the importance of migratory species being conserved and Range States ⁶⁴ agreeing to take action to this end and whenever possible and appropriate, paying special attention to migratory species that conservation status of which is unfavourable and taking individually or in co-operation appropriate and necessary steps to conserve such species and their habitat”.
- 3.39 In addition, the Parties acknowledge the existence of need to take action to avoid any migratory species becoming endangered⁶⁵ and should, in particular, promote, co-operate in and support research relating to migratory species⁶⁶ endeavour to provide immediate protection for migratory species included in Appendix I⁶⁷; and endeavour to conclude agreements covering the conservation and management of migratory species included in Appendix II. ⁶⁸
- 3.40 The relevance to Tanzania’s tourist industry of this Convention stems from the fact that there is a high profile seasonal migration of wild animals in Tanzania, which provides a wonderful attraction to tourists from foreign countries giving a boost to the industry and the national income.
- 3.41 Another important instrument is the Convention on Wetlands of International Importance of 1971 the basic tenet of which is the fundamental ecological functions of the wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, and especially waterfowl.
- 3.42 Art. 1 (1) of the Convention defines wetlands as “areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres”. Sub-article (2) of the Convention defines waterfowl as “birds ecologically dependent on wetlands”. In essence the Convention requires the Contracting Parties to designate suitable water lands within their territories for inclusion in the List of Wetlands of International Importance maintained by a bureau established under Art. 8. Such inclusion does not however prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetlands are.⁶⁹

⁶³ Convention on Conservation of Migratory Species of Wild Animals of 1979, Art. I

⁶⁴ “Range State is defined under Art. I of the Convention as any State (and where appropriate any other Party referred to under sub-paragraph (k) of this paragraph) that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species”. Paragraph (k) of sub-article defines “Party” to mean “a State or any regional economic integration organization constituted by so’ reign States which has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention for which this Convention is in force”.

⁶⁵ Ibid., Art. II (2)

⁶⁶ Ibid., Art II (3) (a)

⁶⁷ Ibid., (b) Art III (1) provides for Appendix I which lists migratory species which are endangered.

⁶⁸ Ibid., (c) Art. IV (1) provides for Appendix II which lists “migratory species which have an unfavourable conservation status and which require international agreements for their conservation and Management as well as those which have a conservation status which would significantly benefit from the international Cupertino that could be achieved by an international agreement “Conservation Status” is defined under Art I (b) to mean “the sum of the influences acting on the migratory species that may affect is long – term distribution and abundance”.

⁶⁹ Art. 2 (3)

- 3.43 A duty is bestowed upon the Contracting Parties to “formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territories.”⁷⁰ The Parties are also required to encourage research and the exchange of data and publications regarding wetlands and their flora and fauna;⁷¹ endeavour through management to increase waterfowl populations on appropriate wetlands;⁷² and promote the training of personnel competent in the field of wetland research, management and wardening.⁷³
- 3.44 It is evident that the international legal regime impacting tourism is wide. This Chapter has attempted to narrow down the scope to travel, trade and conservation and protection. It is however important to note that the wide range of activities that tourism takes on board it is imperative that this paper confine itself to those areas that are at present directly related to the development and sustainability of the industry.

⁷⁰ Art. 3 (1)

⁷¹ *Ibid.*, (3)

⁷² *Ibid.*, (4)

⁷³ *Ibid.*, (5)

CHAPTER FOUR

RESEARCH FINDINGS

4.0 General Observations:

- 4.1 Tanzania has put in place the NTP to guide it achieve objectives set out in the National Development Vision 2025. For this to be made possible there is need to institute a tourism legal framework that will level the playing field for all stakeholders industry and be more beneficial to the exchequer. There is one general purpose and two specific purposes for this research. The general purpose was to identify weaknesses in the existing legal framework governing this industry and come up with an alternative that will be acceptable by those to whom it will apply as well as those that will be charged with its implementation - a framework that will induce the desired behaviour in the stakeholders. The, specific purposes are, one, that at the national level the research was aimed at identifying the role that tourism can play in the nation's endeavour towards poverty alleviation as one of the key sectors in the economy; and two, to identify legislation governing the numerous activities related to the tourism industry that needs codification with a view to making the law accessible and, therefore, cost-effective.
- 4.2 The Commission's researchers visited fifteen regions in Tanzania Mainland and the following aspects formed the basis of their investigation:
- Land use aspects
 - Taxation and licensing
 - Legislation
 - Community participation and Cultural tourism
 - Eco-tourism and environmental protection
 - Conference tourism

In this chapter we report on the findings of the field research, which involved fieldwork observations, roundtable discussions with stakeholders, as well as a limited use of questionnaires, and we attempt an analysis of the results thereof. An the above issues are addressed with the major focus being directed at the presence or lack of legislation.

4.3 LAND FOR TOURISM

- 4.4 The National Parks Ordinance Cap412 and the Wildlife Conservation Act 1974, define areas of land for wildlife protection. However these laws have been inadequate because some of the parks do not have animal movement corridors⁷⁴, dispersal areas and buffer zones⁷⁵. These areas are not protected and therefore wild animals are exposed to poachers thus retarding conservation efforts. In addition human activities including farming and habitation are carried out in these areas and therefore wild animals stand to cause destruction to human properties, especially agricultural products, thus creating a conflict between wildlife conservation and human rights of land use.
- 4.5 Pastoral communities living in and around national parks allow grazing of their animals, collection of firewood, building materials etc, in the parks, and likewise wild animals in the park easily enter into the farms of the people living around the park and destroy crops. This is the case in the Kilimanjaro, Arusha, Mikumi, Serengeti, Manyara and Katavi National Parks. Research has revealed a conflict of interest between farmers and

⁷⁴A cirridir is a stretch land between two game reserves or parks through which wildlife pass when migrating.

⁷⁵Buffer zones are described as the land adjacent to game reserves or national parks where wild life wanders into for grazing, water, or breeding,

authorities at Ruhinda Game Sanctuary (zoo) where zebras were kept for research purposes, but due to lack of funds the sanctuary is not fenced, therefore animals easily stray into adjoining farms where they destroy crops such as maize etc. Further destruction of crops takes place due to the fact that crop farming is being carried out on a natural path used by elephants during their annual migration from Mozambique to the Selous game reserve and vice versa.⁷⁶ This kind of land use and poor game reserve management has caused people to feel that the existence of national parks and game reserves in their areas does not benefit them at all since when wild animals destroy crops in their farms, they are not compensated. Worse still 'there is no legislation that provides for compensation in such cases.

- 4.6 Reserve or National park boundary problems arise where local inhabitants are not involved in the process of demarcating the same. It was noted, for instance, that in the elevation of the Saadani game reserve to a National Park, boundaries of the former game reserve were extended to areas where people resided without consulting the people in those areas. The local community in these parts have been prohibited from carrying out agricultural activities within the area. This expansion exercise has forced those communities who had been living there for years, to move to nearby villages outside the reserve. There is no space even for the construction of residential houses for these communities as these nearby villages are full. This problem was also noted in Amani. We observed that before the formation of the Amani Nature Reserve, there were people who owned plantations and others who were undertaking forest based small-scale agriculture within the area. After the formation of Amani Nature Reserve,⁷⁷ some of these owners have been dis-empowered because they have not been compensated adequately or at all, and thus are forced to continue living adjacent to the reserve. The formation of the reserve has resulted in the "povertisation" and denial to these communities surrounding it who have depended on the forest for wood for energy, building materials medicines and a range of household goods as well as forest based agriculture, all their life. The forest has always been critical to their livelihood.⁷⁸ The result of all this is that illegal harvesting of timber from the reserve is on the increase, and population land pressures is a growing problem⁷⁹ and there is a no love lost between the communities and the reserve authorities. The inescapable question is Whose Eden is this, Man's or beast's? Is there not a way that both can share it?

4.7 Multiple Land Use.

- 4.8 In the Ngorongoro conservation area there exists a huge conflict in land use between the various competing interest groups., The Ngorongoro Conservation Area Ordinance cap 413, section 6, provides for people to reside in the area. The population of people and their livestock is increasing at an alarming rate. The increase is through birth and through influx of non-Maasai people to the conservation area.
- 4.9 When the area was being established as a conservation area, there was an assumption that the mode of life of the Maasai could not defeat the purposes of conservation. Due to day-to-day changes these people have changed their mode of life and they even eat wild animals something that was never done before. At that time there were only 5,000 Maasai with few livestock. Currently there are more than 60,000 Maasai with livestock in the Ngorongoro conservation area. They have started cultivating the land and planting permanent crops within the conservation area on the basis of political directives emanating from overzealous politicians eager to please. The former Prime Minister for example, allowed them to cultivate small plots of land (bustani) thus breaching the law (section

⁷⁶ Ibidem

⁷⁷ ANR was established in May 1997 by GM no. 151 made under Section 30(1) and No. 152 (order) under Section 5(3) and 33(b) of the The Forests Ordinance. It is managed under International Conservation status.

⁷⁸ Conservation and Poverty The case of Amani Nature Reserve-G Jambiya and Hussein Sosowele 2001 pg. 39

⁷⁹ Ibidem

⁸⁰ J S. Malecela Prime Minister in 1992

9A of the Ngorongoro conservation Ordinance cap.413). Some have started building modern permanent structures. It was observed that the Maasai cattle is rapidly increasing in number and the Maasai themselves are becoming aware of their rights and have started to believe that staying in the area is their human right since when the area was established they were there. This has led to the destruction of the biodiversity impacting negatively on tourism.

- 4.10 There is ambiguity in the ownership of The Ngorongoro Conservation area between the Maasai who are allowed to live in the area and the NCA. It was observed that tour operators who wanted to set up camps in the area had to pay fees to the NCA as well as the Maasai authorities. The problem of conflicting land use interests was also observed in the Serengeti National Park where in 1959 when that area was being declared a national park, Ibanda village was legally left to continue to exist within the park. The population of the village is now growing at an alarming rate and due to economic development the habits of the inhabitants are changing and a modern mode of life, incongruent to national parks, has now caught up with the village. This mode of life and its consequences is a cause for alarm for conservationists as it poses great danger to the flora and fauna in the park.

4.11 Land for Tourism Infrastructure Investment:

- 4.12 It has been observed that there is no land specifically allocated for tourism infrastructure such as land for the construction of hotels, lodges etc. This has led to the encroachment by unscrupulous investors of sensitive areas; which result in adverse repercussions in the proper land management and environmental protection. In the escarpment of Manyara National Park, for example, (at the area known as Miwaleni which is a watershed) there has been construction of hotels impacting negatively on the environment and the water source.
- 4.13 Land allocation along the beach in Pangani district was done with total disregard for the law. Investors allocated this land have encroached the mandatory 300 meters beach reserve. The owners of such investments have gone further and fenced this land thereby denying the local people the opportunity to use the beach for traditional activities such as swimming, fishing or simply resting along the beach to enjoy a cool breeze.
- 4.14 The issue of investors buying large chunks of land from the local landowners was observed. In Mafia at Shungimbili it was observed that a foreign investor has bought up almost the entire Island and making it private property⁸¹. The community in this part face land scarcity as a result of this move. This can cause land-based confrontations in the future.

4.15 Taxation

- 4.16 The tax regime affecting the tourism industry is, to say the least, not conducive to serious investment in the sector. The high rate of taxation is economically discouraging, while the multiplicity of taxes and the number of authorities that levy and collect them are tiresome and inimical to compliance. It is observed for example that VAT and Hotel Levy are charged at the rate of 20%. For a country that is all out to encourage investment in the industry this should be lower. India charges a mere 5 % VAT to the tourism industry.
- 4.17 It was noted that high taxation was a matter of concern to the stakeholders particularly Park and Reserve authorities. Complaints centred on taxes imposed by local authorities. It was claimed that they are numerous and their use is not apparent. An example was given of service charges of 0.3% of income being collected while roads especially to Saadani remain in disrepair and security is not guaranteed even in the form of police patrols at the beach. It was argued that the VAT at the current rate, should be able to cover

⁸¹This is a small island of the Mafia Island which is now off bounds to the local community. This trend has been observed at Mto wa Mbu in Arusha district where a large chunk of village land has been allocated to an investor who has established a large camp site without consultation with the villagers thus causing complaints from them.

all taxes related to the local authorities. Further it was contended by most interviewees that the Training Levy that is charged to the industry should not be channelled to VETA alone but rather to other institutions that provide training relevant to the industry as well.

- 4.18 It has been observed that there are numerous licences required and they are all obtained from different authorities. Examples of these are Business Licence obtained from the Ministry of Industries and Trade (MIT), Liquor Licence from the Trade Officer Municipal Council, Health Licence from the Municipal Council's Health officer, Tax Clearance from TRA, Motor Vehicle Licence from Transport Licensing Authority.
- 4.19 It is observed that there is a multiplicity of taxes that only work to drive away investors from the country and also work towards making tourism an expensive undertaking thus discouraging tourists from making Tanzania their destination. Some of the taxes whose implementation discourage investors in the tourism industry are; Business Licence, Guestroom Licence, Property Tax, Land Rent, Development Levy, Income Tax, VAT, Training Levy, with holding Tax, Payroll Tax, Liquor Licence, and contribution for education plus any number of contributions requested by the local political heavyweights where the investment is taking place. High taxation also eats into the capital of those who have invested in the industry adversely affecting their capacity to improve their services.
- 4.20 We note that some taxes charged to the industry are to say the least absurd. Payroll Tax is unreasonable as it seems to penalize employers for employing at a time when the labour market is over supplied where employment opportunities keep on shrinking daily as the country implements reform policies. Another example is when the TANAPA is taxed by TRA for constructing schools within National Parks for the Government. TANAPA does not build these schools as a business but merely lightening the burden of the government in its community development duties.

4.21 Conflicting Legislation:

- 4.22 The tourism sector, it is observed, is beleaguered by several problems with regard to legislation. It lacks a law, which coordinates its various sub-sectors.

The Ministry of Natural Resources and Tourism lacks co-ordination with TANAPA, and there are no direct linkages between TANAPA and Game and Nature Reserves. An example was given whereas the law relating to forest reserves protects forests but it does not protect wild animals, which are part and parcel of the forests. This lack of coordination with TANAPA was evident when the process of privatisation of Hotels by TAHI there was no consultations whatsoever between these two bodies-one who manages all parks and the other who wishes to invest by building hotels in them!

- 4.23 Further, legislation governing the industry are old and out of tune with the current reforms being undertaken by government. In most instances it was observed that some of the other legislation impacting on the industry has been legislated over each other.
- 4.24 It is noted for example that business license for hotels would be issued by the MIT, under the Business Licensing Act, 1972. However while this Act, prohibits tying contributions to the issuance of business licences, local government bylaws provide for their application. These by-laws require payment of several contributions before a businessman can be issued with a business licence; He is required for example to pay a 20% fee for a business licence as contribution for a secondary school, 30% of

fee for licences for development fund, Tshs. 1,000/= for health inspection. Tshs. 1,000/= to 5,000/= for business premises.⁸² Those who acquire their Business Licences from the MIT head office are not subjected to the payment of these contributions.

- 4.25 A major problem area in the tourism industry in Tanzania however, remains to be that of conflicting of legislation of some major economic industries. The most sensitive areas this conflict is in respect of Conservation and Mining, and Conservation and Road Construction. The Highway Ordinance Cap. 167 under section 15 the Minister is empowered to declare or direct the construction of a highway in any area in Tanzania. The Mining Act, Act no 5 of 1998, empowers the Commissioner for Minerals or the Minister responsible for Minerals to issue a Prospecting and Mining License in any land.
- 4.26 As stated earlier laws governing the tourism industry are outdated and their penal provisions are equally out of tune with the current economic realities. The law, for example prohibits carrying of certain activities in National Parks such as grazing, collection of firewood etc. In the Mkomazi Game Reserve it was observed that the community around the area graze large numbers of animals into the reserve knowing it is an offence to do so, but because the fine set for breaking such a law is insignificant encourages pastoralists to graze their cattle. After all they would only pay 5000 shillings as a fine for allowing 50 animals to graze in the reserve. They do this despite the ruling on the famous Mkomazi Reserve land conflict case⁸³
- 4.27 In the area of court case handling it was observed that police prosecutors were not favourably placed to prosecute cases that dealt with offences involving wildlife or flora. They would have no interest for example, in prosecuting a person who has killed a snake in a park since it is tradition that snakes ought to be killed: as they are injurious to man. On the other hand park officials would be keen, to see such a person pay a heavy fine or put behind bars for the death of a snake in a park.
- 4.28 Lack of a single law governing the whole industry. It was pointed out that scattered and segmented laws and cumbersome procedures relating to tourism was derogatory to the development of the sector as it was difficult for interested persons including prospective investors to get all the relevant laws and understand the whole legal framework of the sector.
- 4.29 The absence of provision for requiring EIA when constructing tourist hotels leaving room for environmental degradation.
- 4.30 Harassment by TRA officials when demanding payment of tax even where they owe the businessman money they do not take that into consideration. They even issue urgency notices frivolously and direct banks to deduct the tax amount from a customer's bank account without his knowledge. As a result many businessmen in Lindi, for example, do not keep their money in the bank.

⁸²Morogoro Municipal Council as well as Morogoro (Rural) District Council charge these amounts.

⁸³ Op.cit

4.31 Regulations Governing The Tourism Business:

4.32 Licensing

- 4.33 The concept of licensing in Tanzania is more of revenue collecting mechanism than a regulating or controlling one. This might explain the large number of licences and authorities issuing them and the ease with which they can be obtained. Licensing has become a great source of revenue for the Central as well as the Local governments and regulation or control of the industry is left to no one.
- 4.34 There are various licenses a Tour Operator is required to acquire. The TALA license has a requirement of having a mountain climbing license. This is on top of the usual business licence. This kind of licensing should be discouraged as it is inimical to prudent business management and instead the TALA licence should cover all tour operating activities.
- 4.35 It was observed that the existence of a regulation requiring tourists to pay park fees for every 24 hours they are in the park, instead of once upon entry, was also making tourism expensive and thus pricing Tanzania out of the world tourist business. It is suggested that Tanzania should emulate other countries, which charge park fees per entry and not per 24 hours stay. In some parks it was observed that tourist are charged a double fee. Tourists entering the Kilimanjaro National Park, for example, are obliged to pay this double fee, one for the Forest and another for the Park. It is not possible for a tourist entering the park to avoid paying for the Forest because the forest surrounds the park. This emphasises the lack of coordination of institutions in this sector that we spoke of earlier in this chapter.
- 4.36 It was observed that hotels in Tanzania are not classified to depict the standard in which they belong. This has lead to the problem of ensuring /enforcing standards of services as against the charges. The MNRT licenses only tourist hotels, whereas the non-tourist hotels are licensed at the Regional level. This requirement has forced all investors in tourist's hotels upcountry to travel to Dar es Salaam to acquire this licence. It was observed that the classification of hotels is meaningful only in big towns where there are many hotels and therefore tourist would be able to choose according to preferences. In places where there is only one hotel, the question of classification is a mere academic exercise in the face of an obvious supply and demand situation!
- 4.37 The regulation regarding liability to hotelkeeper in case of a loss of property fixes a very small amount of money as compensation. The compensation is out of tune with current monetary and property values and is of no real value to the affected tourist thus making it all seem useless. Interviewed tourists held this view.
- 4.38 Interviewed foreign tour operators who wish to enter into the country using their vehicles complained of the requirement of being in possession of TALA Licence. This requirement is inimical to regional trade co-operation like the EAC, SADC.
- 4.39 Most interviewees commented on the absence of legal provision that guide the importation of foreign animals into Tanzania. Lately there has been a tendency for people to import animals such as camels into the country without thoroughly researching the impact of such animals to the native animals.
- 4.40 Most investors complained of the investment law. They claimed that the law does not protect investors against unfair trade for instance a lodge in the park suffers unfair competition from the campsites, which are constructed around the park. The tourists go to the campsites where the services are relatively cheaper against the hotels.
- 4.41 Neither the wildlife conservation law nor the tourism law provide for compensation in cases of bodily injuries sustained by a tourist who is attacked by wild animals. Further,

both legislation are silent on the rights of a farmer whose crops have been destroyed by wild animals in communities that live within *or* adjacent to game reserves or national parks. The law however strictly prohibits killing of a wild animals unless the action is in self-defence and the trophy thereof must be handed over to game officers.

- 4.42 Crimes involving government trophies fall under the 1984 Economic and Organised Crimes Control Act. Crimes under this Act are in the jurisdiction of the High Court and subordinate courts can only try them with the express consent of the DPP. Because of the long and cumbersome procedures involved in securing this consent these cases take too long to determine. Witnesses tend to loose interest and others even die off in the process of waiting. Regulations do not help the courts much in these cases because the value of animals is not constantly reviewed so that the penalties that courts mete out are inconsistent and vary from one court to another.
- 4.43 The law establishing TANAPA empowers the Minister for MNRT to appoint board members upon the advice of TANAPA. However the Minister is not strictly bound by such advice. As a result of this the Minister may appoint anyone he/she feels like. Such appointments have fallen to politicians who have neither knowledge nor interest whatsoever in Conservation or wildlife matters.

4.44 Community Participation

- 4.45 It was observed that there is no clear law, which defines the rights of community surrounding the park. As a matter of policy TANAPA helps the community around its parks through its policy called community conservation services. The services involve the building of schools, employment opportunities like porters in Kilimanjaro National Park. All these services have neither been adequate nor satisfactory to their recipients. Complaints by the recipients has culminated into court action vide cases instituted by the district authorities surrounding the mount Kilimanjaro national park (KINAPA), each claiming 25% of the proceeds accruing from tourism citing their district by-laws as authority. The major claim is that these rights should be clearly defined and made legally binding. They should not be given to districts as if they were not entitlements and such cases abound. Since 1971 for example the Saadani game reserve promised to provide water to Saadani community but nothing has been done to date. Even in terms of employment the Saadani community has complained that they do not benefit much as most of the employees of the game reserve come from outside Saadani area.

4.46 Hunting Blocks

- 4.47 The Commission has observed that the modality of allocating hunting blocks is prone to misuse or even corruption as it is done by the Director of Wildlife alone. This power is provided under section 84(1) of the Wildlife Conservation Act 1974. Such immense powers in such a lucrative and competitive business might not be endowed on one person as one could easily fall prey to corruption ⁸⁴.

It is proposed that for purposes of ensuring community participation in the tourism business the district authorities in which such blocks exist should be empowered to allocate them.

⁸⁴In the case of Ortello Business Corporation as quoted in the "Warioba Report on Corruption," The Director under orders from those above him allocated a hunting block on dubious terms to an Arab Colonel on the basis that he was a friend.

4.48 Conference Tourism

- 4.49 On conference tourism it was observed that the Arusha International conference Centre hosts about 120 meetings and conferences per year and 40% of them are international gatherings. The foreigners who attend the meetings are classified as tourists. This category of tourists has less recognition in the Tanzania tourism business although they do visit tourist attractions close to Arusha. This is made more so by the fact that even the AICC itself is administratively under the Ministry of Foreign Affairs and International Co-operation and not MNRT. This fact does not compel the TTB to advertise the centre as a tourist destination. It is our opinion that the centre should be under the MNRT as its contribution to tourism is very significant. Like other tourist centres it too deserves to get tax incentives.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 RECOMMENDATIONS

- 5.1 Tourism as a sector has been highly placed in the list of priorities by the Government of Tanzania. Among the four priority areas, tourism has been placed as number one preceding the Mining, Agriculture and the Industry sectors. It is envisaged that the tourism industry can contribute in excess of 10% of the GDP if it is well developed and managed. Its role in the entire process of poverty alleviation is therefore crucial in that it not only involves a lot of people with diverse activities it also potentially covers an extensively large geographical area.
- 5.2 Conservation forms a nucleus in the Tanzanian tourism industry as most tourist activities depend on the conserved flora and fauna. It is therefore important to understand what gets conserved and by whom, and how social and political processes will ultimately determine this activity as much, if not more, than by scientific knowledge we bring to bear on resource management: There is no gainsaying that conservation practise is a profoundly political process because it of necessity entails the imposition of regulations over access to certain resources, with the government or its institutions laying down the rules and defining who has access to resources, and on what terms. The outcomes of negotiated access to resources are largely a reflection of power relations at the local, regional, and national levels; sometimes the entire decision may depend on what a particular donor says. The support that the government gets in conservation activities depends very much on the relationship between the state and the local community, just as much as the poacher may get the support of the community in preference to the state.
- 5.3 The importance of conservation has been reflected in this research and actually made its running theme. It is discussed extensively in Chapters one and two and is the basis for the rest of the paper. The research conducted by the Commission is aimed at coming up with proposals for a legal framework that would lay a level legal playing ground for the stakeholders in the industry; the main focus being the increase in earnings to the exchequer and poverty alleviation of Tanzanians at large. In other words the legislative orientation ought to reflect a dual approach to natural resource management, emphasizing utilization of the said resources in some areas, and conservation in others.
- 5.4 The concluding remarks in this chapter and the consequent recommendations are based on the research conducted by the Commission the methodology of which included extensive literature reviews and in-depth interviews with stakeholders in the industry tempered with experiences from countries that are either competitors in the industry or neighbours to Tanzania. It must however be admitted right at the outset that the Commission is responsible for all that is contained in this document.
- 5.5 These recommendations are divided in three parts. Part one covers general recommendation and part two covers specific legal recommendations in terms of what section of what law needs to be reviewed. Part three covers non-legal recommendations.

5.6 General Recommendations:

5.7 Multiplicity of laws:

- 5.8 Having observed that there are too many legislation covering this sector, it was concluded that there is need to codify the law covering this sector so, that it becomes easily accessible. Legislation to be covered in this code should involve those covering, wildlife protection, TANAPA Acts, Marine parks, Regulation of Hunting activities, Sports and Professional fishing, Tour operators, Hotels management, and all such legislation that may be considered relevant to the development of the tourism industry. Further, a total upward review of fines and other punitive measures needs to be undertaken so as to be in tune with the current times and reflect existing monetary values.

5.9 Tax Regime:

It was observed that there are too many taxes involved in the tourism industry and this is inimical to its development of the industry. It is proposed that the tax regime be consolidated and rationalised so that the number and rates of tax are lowered. Other taxes ought to be totally removed from the taxman's book. In this category will be taxes such as the VETA and payroll taxes.

5.10 VAT

- 5.11 Apart from the VAT being very high and uncompetitive in the region, the fact that it is paid out of sales and not income makes tourism products the most expensive in the region. It would therefore be prudent to lower the VAT rate from the current 20% and base it on income rather than on sales. VAT procedures e.g. Recovery procedures by allowing deductions that should have been paid earlier.

5.12 Income Tax

- 5.13 There is arbitrariness and bureaucratic implementation and collection of this tax. TRA officials have unfettered powers including those of freezing an account, as there are no hard and fast rules as to fairness. There is lack of transparency in tax assessment. The appeal process arising from unpredictable assessment takes too long to be heard and finally resolved. It is recommended that rules should be set to avoid subjective tax assessment and to generally simplify and clarify tax appeal procedures. Withholding tax be abolished from the statute book and be replaced with other taxes.

5.14 Other Legislation

- 5.15 There is great need to review other legislation that impact on the development of the tourism industry. In this category will be legislation such as The Investment Act that deal with creating incentives and tax holidays to investors. This Act must particularly be reviewed, as it tends to discriminate between industries in its incentive schemes. While the mining industry, a non-sustainable, industry, gets the best incentives and tax relief, the tourism industry, a sustainable industry gets harsh treatment! Charging only 3% royalty for a diminishing and non-renewable resource and over 30% for a long-term highly sustainable industries to say the least incomprehensible.

5.16 Immigration Legislation

- 5.17 This law does not provide for vigorous procedures to determine the authentic nature of documents submitted by foreigners, thus allowing unnecessary and bogus experts to invade the industry. Experts are brought in without compulsory training for local replacements. The legislation is bureaucratic in nature and cumbersome thus creating

a corrupt prone environment. The law does not favour local investors. It is recommended that it should be rationalised so as to allow easy entry of tourists as well as investors into the country. At the same time it should be watertight in screening qualifications of expatriates and to limit the number of experts. There should be restrictions to eliminate entry of bogus experts and make compulsory training of local experts replacements. Corruption should be curbed by reducing bureaucracy and harassment to investors and tourists. This ought to be done with the EAC presence in mind.

5.18 Business Licensing Legislation

- 5.19 The legislation is bureaucratic and unpredictable as it is linked with other matters. There is multiplicity of licensing by both local and central government which, forces tourism products to have higher prices. This makes Tanzania an expensive destination for tourists in the region. Business fees licensing fees are too high and this is very limiting to investors. There is uncertainty, as the application has to be made annually making the entire process very expensive.
- 5.20 This law should be reviewed and rationalised so as to reduce the number of licenses involved in the tourism industry and the cumbersome procedures involved in obtaining them. It is proposed that the issuing of a business licenses should not be related to any other license. Tax clearance should not be the basis for issuing a business license. The requirement for applying for a business license annually should be removed and instead a period of at least three years be set for each tourism business license. Generally the law should be reviewed so as to cater for a conducive business environment by focusing on removing bureaucracy to increase expediency.

5.21 VETA Legislation

- 5.22 The Vocational Education Training Act sets a mandatory contribution that has no substantial advantage to the contributing investor in the industry. In the tourism industry returns from this tax are not proportional to contribution and as such becomes merely an additional cost. The institute is not accountable to contributors and thus the contribution is just another form of tax piling on to the multiplicity of taxes already complained upon. It is proposed that the fee paid to VETA should not be mandatory, because currently investor are required to pay the VETA fee and at the same time they are required to train their own staff. Investors in the industry should be left to choose when and where they want to train their staff in accordance to their training needs.

- 5.23 **Local Government Laws and by-laws:** Local governments should be empowered to make by-laws that will enable them to benefit from the social responsibility activities, which all investors in the tourism industry must undertake. The investor ought to work with the Local government authority the nature of such activities and the modus operandi to be applied in their implementation. The local authorities should be restricted on their powers to make bylaws impose taxes. It is also recommended that the three Acts namely, The Local Government (District Authorities) Act, 1982, The Local Government (Urban Authorities)Act, 1982, and The Local Government (Finances) Act, 1982 be codified so as to avoid duplication. This will also ensure that these taxes are harmonised in all Districts and Regions.

⁸⁵ As it is defined under section 2 of the National Parks Ordinance cap 412

⁸⁶ as defined under section 2 of the wildlife conservation Act 1997

⁸⁷ as defined in hotels Act 1963

5.24 The Hotels Act 1963: Section 15 of this Act provides for a limit of a hotel keeper's liability to amount of five hundred shillings in respect of anyone article or one thousand shillings in aggregate except where the property was stolen, lost or damaged through the default neglect or willful act of such hotel keeper; if the property was deposited for safe custody in a container fastened or sealed by the depositor; and if the hotel keeper refuses to receive the property for safe deposit Such rates of compensation are too low and need to be increased.

5.25 Specific Recommendations:

5.26 Tanzania National Parks Ordinance Cap 412.

5.27 This piece of legislation deals mainly with the management of national parks and conservation of flora and fauna. While there may be less conflict in the activity of park management, the issue of conservation is far too wide and attracts a lot of individuals with conflicting interests. What might appear as a simple and an unassailable goal of protecting wild animals from forces beyond their control, on closer inspection quickly dissolves into a complex tangle of conflicting issues; human rights versus the protection of animals and forests; the total exclusion of humans from PAs versus the possibility of co-existence with wildlife; exclusive state control of PAs versus increased local community participation in the management of the same. Indeed beyond the broad objective of preserving the flora and fauna, there is often little in common among the various positions adopted by conservationists as to the specifics of what is to be protected, for, by and from whom.

5.28 Questions of whether the PAs should be inviolate and managed by the state only or whether local communities should have a bigger say in such matters including access to resources. Should people be in or out? Should western science or indigenous knowledge provide the basis for resource management? These questions need to be answered before we start thinking of a legal framework for the conservation sector.

5.29 The commission has noted the high position this debate is achieving in both political and conservation circles but does not intend to take a position on it because of the very strong political nature of these questions. It would rather prefer to see the debate assume national proportions and a consensus reached and the best position achieved before it deals with them. The following recommendations therefore are based on the existing position and not necessarily the desired one.

5.30 Definitions

5.31 In different legislation there is a definition weakness that needs to be redressed. The term "animal"⁸⁵ should carry the same meaning and weight, as the term "trophy"⁸⁶. The terms "hotel"⁸⁷, "tented camp", "campsite", "buffer zone" should be defined extensively.

5.32 Buffer Zones: Protected area should have the power to establish and manage buffer zones of between 3 and 5 kilometres outside of their geographical boundaries of which the following activities will be strictly prohibited.

Hunting or fishing (in national parks), cultivation, human settlement, charcoal making, logging or carrying out any activity associated with tourism without the authorisation of the Director.

⁸⁶ *wildlife policy of Tanzania* at pg 24

⁸⁹section 15 of the Highway Ordinance Cap

5.33 Migratory Routes Corridors/Dispersal Areas/Calving Areas

5.34 PAs should have the power of protecting and managing areas identified as migratory routes, animal corridors, dispersal areas or transition zones.

5.35 Fauna Killing: Any person other than a poacher who kills fauna within National park or along a public international road passing through the same by any means, commits an offence. Such a person shall be liable to compensate the equivalent of the prescribed trophy value of that fauna. Section 51 of the wildlife conservation Act presumes that killing or wounding of an animal is a result of an intention act.

5.36 Guiding Services: In order to improve Tanzania National Park's revenue base, guiding services should be conducted only by personnel with a minimum qualification of a diploma in Eco-tourism or in related fields, and recognized by the MNRT. All Tours Guides must be licensed.

All private visitors to a park will be obliged to hire TANAPA Park Guides for security purposes and effective lingual interpretation.

5.37 Penalties and fines: There is need to generally review upwards all penalties and fines in this Ordinance. Wanton killing of animals, starting of random bush fires, illegal logging, night hunting, hunting at watering areas, illegal entry into parks, misuse of water originating from parks and PAs, and offences involving employees of TANAPA should attract severe sentences involving preferably long terms of imprisonment.

5.38 Compensation: Wild animals know no boundaries and do sometime wander beyond the official borders of PAs and in the process may attack people - their neighbours, or even cause destruction to agricultural products. The question of compensation for bodily injuries sustained from attacks by wild animals, and the issue of destruction of agricultural produce by wild animals, in communities surrounding PAs must therefore be provided for in law and the rates must be economic. The law must also provide for compensation for injuries sustained by tourists not caused by their own negligence. The wildlife policy of Tanzania⁸⁸ expressly provide that the government does not intend to introduce a compensation scheme damage occasioned by wildlife to property or tourists

5.39 Consolidation of laws: In order for the law to be accessible there is a need to consolidate The Tanzania National Tourist Board Act 1962, The Hotels Act 1963, The Hotel levy Act, 1972, and The tourist agents (licensing) Act 1969 into one Act.

There is also need to consolidate the laws that deal with conservation and management of National Parks and Wildlife and other PAs namely, The Wildlife Conservation Act number 12 of 1974, The Tanzania National Parks Ordinance Cap 412, The Ngorongoro Conservation Area Cap 413, and The Marine Parks and Reserves Act number 29 of 1994.

5.40 There is a need to harmonise the laws that establish PAs and the Highway Ordinance, which provides for the establishment of a highway at any place⁸⁹. Consultation with the relevant authorities in arriving at such decision should be made mandatory in law.

5.41 Institutional Framework: It is admitted that much as tourism legal framework reform is crucial, the need for institutional reform is equally important if the industry is to be placed in a firmer footing. During the course of the research some institutional factors have come to the fore and need to be addressed as well. In tandem with the recommendation for the consolidation of the various laws, it is necessary to single out the institution that will be responsible for the supervision of the implementation of the consolidated laws.

5.42 It is proposed that In all matters involving hotels i.e their management, their classification, licensing etc, there should be only one authority which will collect taxes and other rates and issue licenses. It is proposed that the Tanzania Tourist Board be such a body. In this connection it is proposed that the Hotels Board, TALA, be abolished and their functions be transferred to the TTB. Likewise in all matters that deal with wildlife and natural resources conservation and management should be under one authority and it is proposed that aboard be set to undertake this task.

5.43 NON-LEGAL RECOMMENDATIONS

5.44 During its research the Commission also noted some aspects of the tourism trade that may require changes that do not need changing or amending the law. These recommendations are made so that necessary changes may be effected for the betterment of the industry.

5.45 Hotels and other tourist accommodation should be classified so as to afford tourists opportunity to choose the kind of hotels they want to stay in accordance with international standards.

5.46 The Minister for Natural Resources and Tourism should set standards for hotels and tourism schools and a requirement for registration and certification of the graduates before being operative.

5.47 The provisions of the immigration and labour laws regarding the employment of foreign experts should be enforced more vigorously to avoid bogus experts.

5.48 The government should ensure that the policy where land is set aside for tourism is implemented as one of the basic initiatives for creating an enabling environment for investors in the tourism sector.

5.49 Fresh investors in the southern tourist circuit should be encouraged and should be granted favourable investment conditions even as the government creates a friendly environment for investment by offering longer grace periods for payment of taxes, introducing lower tax rates, improving the infrastructure such as roads, airports, etc.

5.50 The Tanzania Tourism Board should make concerted efforts to open a tourism office in Mtwara, which will be the centre for information on tourist attractions and generally promote tourism in the southern circuit.

5.51 Local investors should devise means for supporting themselves so that they can meet challenges from wealthy foreign investors and cope up with the high standards of services required for sustaining and developing tourism.

5.52 Investment entry and exit procedures for foreign investors are very loose and the Investment centre should tighten them so that investors do not take advantage of this looseness by enjoying tax benefits and cutting loose and disappear when their grace period end.

5.53 The power of allocating hunting blocks, which is under the director of Wildlife should be vested to the local authorities in order to enhance the aspect of community participation both in planning and sharing of proceeds from the sector.

- 5.54 The most viable way to promote cultural tourism should be through local governments and not through associations, the former could provide the initial capital for the start up of the cultural tourism projects.
- 5.55 Tourism must be encouraged in schools, among families and at work places where visits to nearby tourist attractions can be arranged at nominal fee particularly during the low tourist season.
- 5.56 It is common for sectors to have regulations and regulatory mechanism governing them, and the tourism industry is no exception. However this industry does not have a regulatory body as is in these other industries. In disciplines such as engineering, Journalism, etc. there is a regulatory body which maintains discipline in the business. In the tourism industry such a body would ensure that a tourist gets the service he pays for and if he does not he will have a place to go and present his case. It is not uncommon today for a tourist to pay for a five stars hotel to a tour operator and he is taken to a guest house instead. This tourist has nowhere to complain except to the courts of law that are abound with a lot of technicalities and cumbersome and expensive procedures.

5.57 Park Fees

- 5.58 There is a regulation that governs the payment of fees upon entry in the park. The regulations inter alia require foreigners visiting the park to pay the park fee in foreign currency and receive change in local currency. This regulation is out of touch with the times since foreign currency is as good as the legal tender in Tanzania. Secondly in the imposition of park fees the foreigner pays more than the citizens do. Because of lack of national identity cards, some foreigners masquerade as citizens so as to pay the lower fee and in local currency. The Exchequer is the final loser in this exercise.
- 5.59 Game viewer would normally be provided with an escort from armed game guides upon entry in the park. However it is a regulation of the park that the game viewers enter the park at their own risk. This risk includes among others attack by wild life, or even attack by robbers or poachers! There is no regulation providing for an insurance scheme to the victims of such attacks.

REFERENCES

LIST OF LAWS REFERRED

The Tourists Agents (Licensing) Act 1969
Hotels Act 1963
Hotel Levy Act 1972
The Wildlife Conservation Act 1974
Antiquities Act 1964
The Local Government (District Authorities) Act 1982
The Local Government (Urban Authorities) Act 1982
The Local Government (Finances) Act; 982
The Vocational and Education Training Act:
The National Parks Ordinance Cap 412
Ngorongoro Conservation Area Ordinance Cap 413

LIST OF POLICIES REFERRED

The National Tourism Policy 1999
The Land Policy
The Wildlife Policy, 1998
The Environmental Policy

INTERNATIONAL CONVENTIONS

The convention concerning Custom Facility for Touring 1954
International Convention on the Simplification and Harmonisation of Customs Procedures, 1973
Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973
Convention on Biological Diversity of 1992
Convention on the Conservation of Migratory Species of Wild Animals 1979
Convention on Wetlands and International Importance of 1971

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Kabudi, P.J. and Majamba, H.I., Review of The Wildlife Conservation Act: Analysis of the Laws and Stake holder's Views, Ministry of Natural Resources and Tourism, February 2001

Shauri, V., and Hitchcock, L., Wildlife Corridors and Buffer Zones in Tanzania: Political Willpower and Wildlife Management in Tanzania, LEAT, 1999, p. 2

Tourism Infrastructure Project (T.I.P.) Feasibility Study, Tanzania Mainland, Final Report Part I, Tanzania, 1995

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A BILL FOR AN ACT TO CONSOLIDATE TOURISM LAWS

**A Bill for an Act to provide for the consolidation of tourism laws. (Enacted by the
Parliament of the United Republic of Tanzania)**

PART I

PRELIMINARY

Short title and commencement:

1. This Act may be cited as The Tourism Act 2002 and shall come into operation on such date as the Minister may, by Notice in the *Gazette*, appoint.

Interpretation:

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

“accommodation establishment” means any place, or upon which the business of providing accommodation with or without meals is conducted for gain;

“Board” means the Tanzania Tourist Board;

“hotel” means any accommodation establishment;

“hotel keeper” means a keeper of accommodation establishment;

“insignia” in relation to any accommodation establishment, means the depictions, signs or symbols which by themselves or in conjunction with one another, and together with the emblem of the Board, indicate the grading which has been awarded;

“member” means a member of the Board;

“Minister” means the Minister responsible for tourism matters;

“Registrar” means the registrar of tourist guides;

“transporters” means any person who operates any transport services whether by sea, air, railway or road for the carriage of passengers for gain.

“tourist guide” means any person who for reward, whether monetary or otherwise, accompanies and furnish information to a tourist or any other person who travels or visits any place within the United Republic;

“tourist agent” includes a travel agent, tour operator or any other person who for gain undertakes to provide for tourists and other members of Tanzania

- (a) Transport whether by air, sea, railway or road including procurement of tickets;
- (b) Accommodation;
- (c) Professional advice on tourism and other travel matters relating to tourism; includes an agent of a transporter for purposes of soliciting customers for the transporters;

“Tourism Fund” means the Tourism Fund established pursuant to the Public Finance Act, 2001.

“Commissioner” means the Permanent Secretary to the Ministry of Finance and includes any person to whom the Principal Secretary has delegated all or any of his functions under this Act;

“day” means a period of twenty-four hours commencing immediately after midnight on any day and expiring at midnight of the following day;.

“guest” means any person who, in return for a payment of a sum of money (whether that payment is made by that person or any other person), occupies or reserves for occupation hotel accommodation in an hotel for a day or part of a day;

“hotel” means any establishment intended for the reception of travellers or visitors with a view to profit or gain, but does not include

- (a) any establishment which has accommodation for less than six guests; or
- (b) any establishment which provides sleeping accommodation only in dormitories; or
- (c) any Government rest house”

“hotel levy” or “levy” means the hotel levy payable under section 51 or section 53;

“owner” means the owner of an hotel and includes any person in charge of the management of the hotel and any employee or other person responsible for the collection from the guests of the charges due from them in respect of their stay in the hotel.

PART II

Establishment of Tanzania Tourist Board

3. There is hereby established a juristic body to be known as the Tanzania Tourist Board.

Object of the Board:

4. The object of the Board shall be, with due regard to the sustainability of environmental resources, to promote tourism by encouraging persons to undertake travels to and in Tanzania and with a view
 - (a) to advice the Minister on tourism policy, either of its own volition or when requested to do so by the Minister.
 - (b) to take measures to ensure that services which are rendered and facilities which are made available to tourist comply with the highest attainable standards;
 - (c) to manage information and conduct research relating to tourism; and

Constitution of the Board:

5.
 - (1) The Board shall consist of not less than seven and not more than eleven members, who shall be appointed by the Minister in terms of subsection (2)
 - (2) The Minister shall
 - (a) appoint not less than seven persons who are by virtue of their knowledge of present or potential active involvement in the tourism industry to serve on the Board;
 - (c) before making any appointment of members referred to in paragraph-(a) shall by notice in the Gazette invite interested persons to submit to him within the period stated in the notice, the names of persons who in their opinion are fit to be members of the Board and the grounds upon which such opinion is based;
 - (d) appoint a chairperson from amongst the members of the Board and the Board shall appoint one of their number to be the vice chairperson:

Provide that if for any reason, the, chairperson is unable to act, the vice-chairperson shall perform the functions of the chairperson.

Appointment of Managing Director

6. The Board shall upon such terms and conditions as it may specify, appoint a Managing Director of the Board who shall be the Chief Executive Officer of the Board.

Persons who are disqualified from being members of The Board

7. No person shall be appointed as a member of the Board
 - (a) if he is an unrehabilitated insolvent;
 - (b) if he was at any time, within Tanzania or elsewhere, convicted of an offence involving moral turpitude and was sentenced to imprisonment.
 - (c) if he is not a citizen or citizens who are not residents.

of the Board, the members present shall elect one of their number to preside at that meeting.'

- (6) The person who presides at a meeting of the Board shall determine the procedure to be followed at that meeting.
- (7) The decision of a majority of the members present at a meeting of the Board shall constitute a decision of the Board, and in the event of an equality of votes on any matter, the person presiding at the meeting shall in addition to his deliberative vote have a casting vote.
- (8) No decision taken by or an act performed on the authority of the Board shall be invalid merely because of a casual vacancy on the Board or because any person who was not entitled to sit as a member of the Board, sat as such a member at the time when the decision was taken or the act was authorized:

Provided that the decision taken or the act authorized was by a majority of the members of the Board who were present.

Relationship between the Board and District Authorities:

12. (1) The chairperson of the Board shall submit a copy of the minutes of every meeting of the Board to the Minister responsible for tourism and the Minister responsible for local government administration.
- (2) The Board shall in consultation with the Minister responsible for local government administration determine procedures and programme to promote and maintain a sound working relationship between the Board and various Districts Councils where tourism activities exist.

Committees of the Board:

13. (1) The Board may establish such committees, as it may deem necessary for the exercise of its powers, the performance of its functions and the carrying out of its duties.
- (2) A committee of the Board shall consist of such number of persons as may be determined by the Board.
- (3) The Board may at any time dissolve a committee.

Delegation of powers, functions and duties:

14. (1) The Board may delegate to any committee or any employee of the Board, any power, function or duty assigned to or conferred or imposed upon it in terms of this Act.
- (2) The delegation of a power, function or duty under subsection (1) shall not preclude the exercises of that power, the performance of that function or the carrying out of that duty by the Board.

Remuneration of members of the Board or Committees:

15. A member of the Board or any committee shall be paid out of the funds of the Board such remuneration and allowances as the Minister may determine with the concurrence of the Minister responsible for finance.

Declaration of interests:

When the Board or any committee considers any matter in which a member thereof or the spouse of a member has a pecuniary interest, that member shall disclose the nature, extent and particulars of the interest if it is a direct financial interest, and that member shall not take part in the discussion while that matter is being considered by the Board or the committee.

Cessation of Board membership:

9. (1) A member of the Board shall cease to be so if
- (a) any of the circumstances referred to under section 7 becomes applicable to him;
 - (b) he is absent from three consecutive meetings of the Board, without the consent of the chairperson;
 - (c) he submits his resignation in writing to the Minister.
- (2) The Minister may at any time terminate the membership of a member upon the recommendation of the Board for any of the following reasons namely:-
- (a) inability of the member to perform functions of his office;
 - (b) misbehaviour;
 - (c) if he is convicted of a crime involving moral turpitude.
 - (d) Failure to comply with the provisions of section 8 of this Act.

Tenure of office of members of Board. and filling of vacancies

10. (1) A member of the Board shall, hold office for a period of three years from the time of his appointment.
- (2) If for any reason the office of a member of the Board becomes vacant the Minister may appoint any other person to be member for the unexpired portion of the period of office concerned.
- (3) Any person whose period of office has expired may be eligible for reappointment.

Meetings and decisions of the Board:

11. (1) The first meeting of the Board shall be held at a time and place determined by the chairperson, and thereafter the Board shall meet at such times and places as may be determined by the Board but the Board shall meet at least four times in a year.
- (2) A chairperson may at any time, either his or her own volition or at the written request of not less than five members, convene an extraordinary meeting of the Board, which shall be held at the time, and place determined by the chairperson.
- (3) Where an extraordinary meeting of the Board is convened, a notice for that meeting shall state the purpose of that meeting.
- (4) The quorum for a meeting of the Board shall be a majority of all its members.
- (5) If both the chairperson and the vice-chairperson are absent from a meeting

Remuneration and other service benefits of employees of Board:

16. The Board may pay or render available to persons in its employment such remuneration, allowances, bonuses, subsidies and pension and other service benefits as may be determined by the Board with the approval of the Minister and the concurrence of the Minister responsible for finance.

Powers of Board:

17. The Board, in order to achieve its objects under section 4 may:
- (a) with the approval of the Minister hire, purchase or acquire immovable property, and hire out, sell- or otherwise dispose of immovable property of the Board;
 - (b) negotiate or co-operate with any government, regional administration or local, government , any other Board or person, in Tanzania' or elsewhere, with regard to any matter which is directly or indirectly aimed at the achievement of the object of the Board;
 - (c) with the approval of the Minister, which may be granted either in respect of a particular case or generally, enter into agreements with a similar body, within Tanzania or elsewhere, for the promotion of tourism in the respective areas for which the Board and that body have been established;
 - (d) open and conduct offices, in Tanzania or elsewhere, which may be necessary or advisable for the effective and proper exercise of its powers, the performance of its functions and the carrying out of its duties;
 - (e) borrow money from a money-lender, in Tanzania or elsewhere;
 - (f) insure itself against any loss, damage or risk which it may suffer or incur;
 - (g) open and conduct banking accounts;
 - (h) draw up, make, publish and sell or make available, books, guides, maps, publications, photographs, films, videos and similar matters, intended to inform persons, in Tanzania or elsewhere, of the attractions in Tanzania.
 - (i) gather, evaluate and process information relating to tourism in Tanzania, and make it available to persons who are engaged in the tourism industry;
 - (j) give advice and guidance to all persons who are engaged in the tourism industry;
 - (k) with a view to the effective marketing of and the provision of information relating to any service, facility or product, offered in connection with tourism, determine such informative and distinguishing signs as the Board may deem fit, and may make such signs known by means of any of the publicity material referred to in paragraph(h);
 - (l) employ persons who are necessary for the exercise of the powers, the performance of the functions and the carrying out of the duties of the Board;
 - (m) negotiate and co-operate with any educational institution to ensure to the institution continuation or expansion of courses for the training of person so as to train them for the performance of any work relates to the tourism industry;

- (n) make provision for the payment of pecuniary benefits to employees and former employees of the Board and to their dependants in the case of the death or injury of such employees which occurs or occurred while they perform or performed their work as employees of the Board;
- (o) perform any act, which may contribute towards the achievement of the objects of the Board; and
- (p) provide for the mechanisms of arbitration to cater for disputes in the tourism industry.

Funds of Board

18. (1) The funds of the Board shall consist of
- (a) monies appropriated by Parliament for that purpose;
 - (b) income derived in terms of the provisions of this Act;
 - (c) donations or contributions received by the Board from any source;
 - (d) such sum as may be provided by the Tourism Fund.

Accounts and audit

19. (1) The Board shall
- (a) in every financial year before or on the date determined by the Minister, either generally or in respect of a particular financial year, submit a statement of its estimated income and expenditure during the ensuing Financial year; and
 - (b) in respect of additional expenses in connection with its functions in any financial year, submit a supplementary statement of its estimated expenses in respect of that financial year; to the Minister for his approval.
- (2) The Board shall not incur any expenditure, which may cause the total amount approved under paragraph (1) to be exceeded.
- (3) The Board shall as soon as possible after the end of each financial year after completion of the annual audit submit the following to the Minister namely
- (a) an audited balance sheet;
 - (b) an audited statement of income;
 - (c) an audited statement of the source and application of its funds and the Minister shall cause an annual report consisting of the documents referred to under this subsection to be laid before the National Assembly.

PART III

PROVISIONS RELATING TO TOURIST AGENTS

Licensing

21. (1) No person shall carry or hold himself out as carrying on the business of a tourist agent, or operate, or hold himself on as operating, as a tourist agent save under a licence granted to him the provisions of this Act.
- (2) No person shall take and use the title of or described himself as a tourist agent or a travel agent or any other term which might reasonably imply that he is the holder of a licence granted to him by the, Board under the provisions of this Act.
- (3) The provisions of subsection (1) shall not apply to any person who is employed by any licensed tourist agent in respect of any act or thing done, on behalf of his employer and in the course of his employment.
- (4) Any person who contravenes the provisions of subsection (1) or subsection (2) commits an offence and is liable upon conviction to a fine of not less than five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both that fine and imprisonment.

Disqualification for obtaining a licence

22. A licence to carry on the business of a tourist agent shall not be granted to any person who:-
- a) has not attained the apparent age of eighteen years; or
 - b) has been convicted of any offence under this Act or any offence involving fraud or dishonest under any other written law within five years immediately preceding the date of his application for a licence;
 - c) is undischarged bankrupt having been adjudicated bankrupt by any court of competent jurisdiction or in case of a corporation, a corporation is in liquidation or has been wound up or in respect of which a winding up order made by any court of competent jurisdiction is subsisting; or
 - d) in the case of a natural person, is not a citizen, or in case of a corporation is not a corporation incorporated under any written law except with the approval of the Minister
 - (e) does not have at his disposal the means, the resources, vehicles or other necessary facilities or equipment for the proper and efficient carrying out of the business and running of the services to which the application for the grant to a licence relates.

The Board may refuse license:

23. (1) The Board may refuse to grant a license to any person to carry on the business of a tourist agency.
- (2) Any person aggrieved by the refusal of the Board to grant a licence may appeal to the Minister and the Minister may, where he is satisfied that such a refusal was without sufficient cause, reverse the decision of the Board and direct the Board to grant a licence to person.
- (3) The Board upon refusal to grant a licence shall give reasons for the refusal.

Contents of a licence:

24. Every licence to carry on the business of a tourist agent shall be in the prescribed form and shall specify
- (a) The name and address of the person to whom it is granted;
 - (b) the premises where the business of the tourist agent may be carried on;
 - (c) the nature of the business which the licence may operate, and shall be subject to such conditions as the Board may impose, which conditions shall be specified on the licence.

Breach of condition

25. Any person who fails to comply with any of the conditions of the licence specified in the licence, or carries on the business of a tourist agent other than the business specified in his licence commits an offence.

Revocation of a licence

26. (1) The Board may revoke a licence granted to any person under of this Act, if that person
- (a) is convicted of any offence under this Act or is convicted of any offence involving fraud or dishonesty, under any other written law; or
 - (b) if, in the opinion of the Board, he has obtained the licence by fraud or by misrepresentation or non disclosure of any material fact; or
 - (c) in the opinion of the Board, has ceased to have at his disposal the means or the vehicles or other equipment necessary for the proper and efficient running of the services to which the licence relates.
- (2) Any person aggrieved by the revocation of a licence by the Board may appeal to the Minister and the Minister may where he is satisfied that the revocation was without sufficient cause, reverse the decision of the Board and set aside the revocation.
- (3) Where any person who has been granted a licence under of this Act has so conducted himself that in the opinion of the Minister it is in the public interest that such person should cease to carry on the business of a tourist agent, the Minister may revoke, his licence.

Variation of the Conditions

27. The Board may at any time vary any condition attached to a licence granted to any person under of this Act.

Licensees to be given opportunity to be heard before revocation

28. Notwithstanding the foregoing provisions of this Act the Board shall not revoke any licence or vary the conditions of any licence to be granted under this Act without first having given the licence holder an opportunity to show cause why the licence should not be revoked or why the conditions should not be varied and the license holder shall have a right to make representation to the Board in such manner as may be prescribed.

Appeals relating to conditions

29. Where any person who is or has been granted a licence is aggrieved by any condition imposed by the Board, either at the time when the licence is granted or subsequently under the provisions of section 26, he may appeal to the Minister and the Minister may vary or cancel any such condition.

Application for License:

30. Every application for a licence under of this Act shall be in the prescribed form and shall be submitted to the Board in accordance with the provisions of under this Act.

31. Power to inspect

- (1) The Board, or any other dully authorised, in the performance of his duties may
- (a) enter and inspect, at any reasonable time, any premises of a tourist agent on which he has reasonable cause to believe that the business of a tourist agent is being carried on in contravention of the provisions of this Act;
 - (b) examine and take copies cf any books, accounts documents found in those premises relating to or appearing to relate to the business of a tourist agent;
 - (c) seize any books, documents or accounts found on these premises which he has reasonable ground to believe may contain evidence for an offence committed against this Act;
 - (d) may question any person who appears to him to be engaged in, or carrying on, or employed in, the business of a tourist agent on those premises on any matter concerning the application of or compliance with any provision of this Act;
 - (e) require, by notice in writing, any person who appears to him to be engaged in, or carrying on, the business of tourist agent to produce to him at such time and place as he may specify in such notice all or any of the books, accounts and documents relating to the business of a tourist agent; and
 - (f) stop and seize or search any vehicle which he has reasonable grounds for suspecting that it is being used or contains any matter which may be used as evidence in respect of an offence committed under this Act;
- (2) No premises shall be entered except under the direction of a police officer of or above the rank of an inspector or unless the Board or a dully authorised person has reasonable cause to believe that the delay occasioned in summoning the police officer would or would tend to, defeat the purposes of this section.
- (3) Any person seizing anything by virtue of paragraph (c) of subsection (1) of this section shall at the time when that thing is seized, give a written receipt for it.

- (4) Any person who
 - (a) hinders or obstructs the Board or any duly authorised person acting in pursuance of the provisions of subsection (1), or
 - (b) fails to comply with any requirement under the provisions of subsection (1) commits an offence.

Registration of tourist guides,

- 32. (1) The Board shall designate an employee of the Board as the Registrar of Tourist Guides, who shall exercise such powers, perform such functions and carry out such duties as may be conferred upon, assigned to or imposed upon him in terms of this Act.
- (2) The Registrar shall keep a register of tourist guides and shall record the prescribed particulars with regard to tourist guides.
- (3) The Board shall for the purposes of this Act determine the different classes of tourist guides.
- (4) No person shall be registered as a tourist guide in terms of this Act unless he has knowledge as required by subsection (5),
- (5) The knowledge contemplated in subsection (4) shall relate to the history, geography, fauna, flora, climate, and availability of medical and emergency services, background and culture of the different people, infrastructure of the tourism industry and the economic circumstance in and of the geographical area in question.
- (6) In order to be registered as a specialist tourist guide in respect of any area or matter the person applying for such registration shall possess specialized knowledge, to the satisfaction of the Registrar of the area or matter to which the application relates.

Procedure relating to registration of tourist guides

- 33 (1) Any person who wishes to be registered as a tourist guide shall apply to the Registrar in the prescribed manner and the application shall be accompanied by the prescribed registration fee.
- (2) Upon receipt of such an application and the registration fee the Registrar may request the applicant to furnish such additional particulars and information, as he may deem necessary in order to consider the application properly.
- (3) An applicant referred to in subsection (1) shall upon the request of the Registrar appear before him in person and furnish such additional particulars and information as may be required by the Registrar to enable the Registrar to decide whether the application should be granted or not.
- (4) If the Registrar after considering the information and particular contemplated in subsection (2) and (3) is satisfied that the applicant complies with the prescribed requirements for registration as a tourist guide falling within any class determined under this Act, he shall register the applicant as a tourist guide or not.

- (5) When the Registrar registers any person as a tourist guide, he shall issue to him a registration certificate and badge, which shall be in the prescribed form.
- (6) A registration as a tourist guide shall be valid for a period of one year from the date of issue of the certificate of registration.
- (7) Any person who is registered as a tourist guide shall before the end of the period for which he has been registered, indicate to the Registrar whether he wishes to be registered as a tourist guide in respect of the next ensuing period of one year, and if he indicates that he wishes to be so registered he shall upon the payment of the prescribed fee be reregistered.
- (8) if a tourist guide has in the opinion of the Registrar
 - (a) failed to comply with any condition subject to which he has been registered;
 - (b) it is not in the public interest that a tourist guide should continue to be so registered; the Registrar may by notice sent by registered post, direct that tourist guide to advance within a period specified in the notice of not less than 30 days from the date of that notice, reasons why the registration of a tourist guide should not be withdrawn.
- (9) The Registrar may by notice sent by registered post suspend the registration as such of the tourist guide concerned, pending the decision of the registrar under paragraph (a).
- (10) Any person who considers himself aggrieved by any decision or action of the Registrar may appeal to the Board against the decision or action in question, and the Board may confirm, set aside or amend the decision or action.
- (11) No person who has not been registered as a tourist guide or whose registration as a tourist guide has been suspended shall for reward whether monetary or otherwise, act as a tourist guide.
- (12) A person who has been registered as a tourist guide in respect of a particular class referred to in subsection (4) shall act as a tourist guide only in respect of the area or matters determined in respect of that class, as have been set out in the certificate of registration issued to that person.
- (13) No person may for the promotion of any business undertaking conducted by him employ or continue to employ as a tourist guide a person who has not been registered as a tourist guide under subsection (5), or who has been so registered but whose registration as such has been suspended.

Exemption from this Part:

- 34. (1) Nothing in this Act shall apply or be deemed to apply to:
 - (a) the business of a tourist agent carried on by the Government;
 - (b) the proprietor of any hotel in respect of his business relating to that hotel or any employee of any such proprietors;

- (c) the business of carriage of persons by a proprietor of any tax-cab or a private hire vehicle plying for hire or reward within the area of jurisdiction of a local authority under whose by-laws "such tax-cab or vehicle is registered, or any employee of any such proprietor;
 - (d) the business of carriage of persons by a proprietor of a public service vehicle, in respect of whom the licensing authority is satisfied that he does not use the vehicle or mainly for the transport of tourists, or any employee or any such proprietors.
- (2) The Minister may, by order in the *Gazette*, exempt any person or class of persons specified in that order from all or any of the provisions of this Act.

Publication of list of tourist agents:

35. The Minister shall cause to be published in the *Gazette*, at such intervals as he may think fit, a list of all tourists agents licensed under of this Act.

PART IV
PROVISIONS RELATING TO ACCOMODATION
ESTABLISHMENT

Classification of hotels:

36. The Minister may

- (a) upon the recommendation of the Board establish a grading and classification scheme in respect of hotels with the view as to the maintenance or the enhancement of standards and quality of facilities and the services rendered or made available by persons conducting hotels.
- (b) for the purpose of the application of a scheme may.
 - (i) apply any basis of differentiation as he may deem fit; and
 - (ii) Classify hotels into different classes on the ground of the nature, extent, variety, availability and quality of facilities and services rendered or made available by those hotels.

Licence for hotel:

37. (1) Subject to the provisions of section 39 the Board may issue a licence to any person authorizing that person to carry on the business of a hotel either personally or through the agency of any other person on the premises specified in the licence.
- (2) A license issued by the Board under this section may not be transferred to any other person without the consent of the Board, which consent shall be endorsed upon the license.
- (3) Every application to the Board for the issue, renewal or transfer of a licence and every licence issued by the Board under this section shall be in such form as may be prescribed.

Offences and penalties

38. (1) No person shall carry on the business of a hotel either personally or through the agency of any other person unless he is the holder of a valid and subsisting license issued under section 37 of this Act.
- (2) Regulations made under this section may provide in respect of a breach of the provisions thereof a fine of not less than fifty thousand shillings.

Conditions for the renewal of a licence

39. No licence shall be issued or renewed by the Board unless the applicant satisfies the Board on the following that
- (a) the premises in respect of which the application is made are structurally suitable for use as an hotel and that proper provision has been made for the health and comfort of the guests; and

- (b) proper sanitation provisions has been made for the pre-mises; and
- (c) proper provision has been made for the storage preparation cooking and serving of food in the hotel.

Powers of the Board to require matters to be remedied:

40. (1) Where the Board is satisfied that
- (a) the premises of an hotel have ceased to be structurally suitable for use as a hotel; or
 - (b) an hotel is being kept in an unclean or in sanitary condition; or
 - (c) the provision made in a hotel for the health and comfort of the guests has ceased to be adequate; or
 - (d) an hotel is being so conducted as to constitute a nuisance or annoyance to persons in the neighbourhood the Board may after giving the hotel keeper the opportunity of being heard by notice in writing require him before the date specified in the notice to remedy the defects specified in the notice to the satisfaction of the Board.
- (2) If the hotel keeper fails to comply with the requirements of a notice under subsection (1) before the date specified therein, the Board may without prejudice to any proceedings which may be taken against that hotel keeper after calling upon the hotel- keeper to show cause why his licence should not be suspended or cancelled, suspend the licence for such period as the Board may specify or cancel the licence.

Limitation of hotel keeper's liability

41. (1) Without prejudice to any other liability incurred by the hotel keeper in limitation in respect to any property brought to the hotel, a hotel-keeper shall not be liable as an innkeeper to make good to any traveler any loss of or damage to the property except where-
- (a) at the time of the loss or damage the sleeping accommodation at the hotel had been engaged for the traveler and
 - (b) the loss or damage occurred during the period commencing with the midnight immediately preceding and ending with the mid-night immediately following a period during which the traveller was a guest at the hotel and entitled to use the accommodation so engaged
- (2) Without prejudice to any other liability or right a hotel keeper shall not as an innkeeper be liable to make good to any guest of any loss of or damage to or have any lien on any vehicle or any property left in these or any live animal or its harness or other equipment.
- (3) Where a hotel- keeper is liable under subsection (1) to make good any loss of or damage to property brought to the hotel his liability shall be commensurate to the value of the lost property except where
- (a) the property was stolen, lost or damaged through the default, neglect or willful act of the hotel- keeper or any person in his employ; or

Right of Sale

44. (1) A hotel keeper shall in addition to the ordinary lien of an innkeeper have the right absolutely to sell and dispose by public auction any goods or property deposited with him or left in his hotel or in any premises, appurtenant or belonging thereto where the person depositing or leaving those goods or property is or becomes indebted to the hotel-hotel keeper for any board or lodging:

Provided that

- (a) no such sale shall be made until after the goods or property have been in his charge or custody or in or upon his premises for a period of six weeks without the debt having been paid or satisfied.

- (b) the debt for the payment of which a sale is made under this section shall not be any other or greater debt than the debt for which the goods or other property could have been retained by the hotel keeper under his lien as an innkeeper; and

- (c) at least one month before any such sale is effected the hotel keeper shall cause to be inserted in a newspaper circulating in the district where such goods or property have been deposited or left an advertisement containing notice of the intended sale and giving a brief description of the goods or property intended to be sold together with the name if known of the owner or person who deposited or left the goods or property address of the owner or person is known the hotelkeepers shall send a copy of the notice to the owner or person.

- (2) The hotel keeper shall out of the proceeds of the sale of any goods or property sold pursuant to this section after deducting the amount of his debt and the costs and expenses of the same pay on demand to the person depositing such goods or property any surplus money remaining.

Register of guest:

45. (1) Every hotelkeeper shall keep in his hotel a register, which shall contain the name and address of every guest who lodges at such hotel, and such other particulars as may be prescribed:

Provided that where a visitor's book is kept in a hotel pursuant to Cap. 365 the provisions of section 33 of the Intoxicating Liquors Ordinance that book shall be deemed to be a register kept under the provisions of this section.

- (2) Any hotelkeeper who fails to comply with the provisions of section 46 commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings.

Power of inspection:

46. Any member of the Board or any person duly authorized for the purpose may at all reasonable times enter upon any hotel or any part thereof, for the purpose of inspecting the hotel or any part thereof, furniture and equipment or the register of guests kept in there:

Provided that nothing in this section shall authorize entry into any bedroom without the prior permission of the occupier at that time.

43. (1) Any hotel-keeper who employs in his hotel any agent, clerk, servant or any other person shall be answerable for the acts and omissions of the agent, clerk, servant or any other person in so far as the acts or omissions concern the business of the hotel-keeper.
- (2) If the agent, clerk, servant and any other person commits any act or makes any omission which is an offence under of this Act, such hotel-keeper and his agent, clerk, servant or any other person shall be jointly and severally liable to the penalties provided by this Act.
- Liability of a hotel-keeper for acts of agents**

- (4) Any hotel-keeper who is convicted of an offence under this Act or under any regulations made there under is liable in addition to any penalty, which may be imposed by court, to have his licence suspended or cancelled by the Board.
- (b) Knowingly gives to the a Board or any duly authorized person any false information in relation to any matter provided for by this Act, commits an offence and is liable on conviction to a fine of not less than seventy thousand shillings.
- (a) opposes or obstructs the Board or any duly authorised person in the exercise of any of its or his powers, duties or functions under this Act; or
- (3) Any person who
- (2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings.
- (1) Every hotel-keeper shall cause a notice in the form set out in the Schedule to this Act and printed in plain type in the Kiswahili and English languages to be conspicuously displayed at a place where it can conveniently be read by the guest and the hotel-keeper shall be entitled to the benefit of this section in respect of property brought to the hotel only while such notice is so displayed.
42. (1) Every hotel-keeper shall cause a notice in the form set out in the Schedule to this Act and printed in plain type in the Kiswahili and English languages to be conspicuously displayed at a place where it can conveniently be read by the guest and the hotel-keeper shall be entitled to the benefit of this section in respect of property brought to the hotel only while such notice is so displayed.

Notice to be displayed:

- (b) the property was deposited by or on behalf of the guest expressly for safe custody with the hotel-keeper or a person in his employ authorized or appearing to be authorized, for the purpose and if so required by the hotel-keeper or the person in his employ in a container fastened or sealed by the depositor; or
- (c) at a time after the guest had arrived at the hotel either the property in question was offered for deposit and hotel-keeper or a person in his employ refused to receive it or the guest or some other guest acting on his behalf wished so to offer the property in question but through the default of the hotel-keeper or a person in his employ was unable to do so.

Appeals:

47. (1) Any person who is aggrieved by
- (a) the refusal of a Board to grant or renew a licence;
 - (b) the refusal of a Board to consent to the transfer of a licence to another person or
 - (c) the suspension or cancellation of a licence by the Board, may within thirty days after receiving from the Board notification of the reasons for its decision appeal to the Minister whose decision shall be final.
- (2) Where the Board has suspended or cancelled a license under the of section 40 the suspension or cancellation shall not have effect until the period within which an appeal against the suspension or cancellation may be made to the Minister has elapsed or; if such appeal has been made until such appeal has been heard and determined.
- (3) The Board shall on the application of the person whose application for the issue, renewal or transfer of a licence has been refused or whose license has been suspended or cancelled inform that person in writing of the reasons for its decision.

PART V
FINANCIAL PROVISIONS

Exemption

- 48 The Minister for finance may, by order in the *Gazette* exempt
- (a) any hotel or class of hotels from the provisions of this Part;
 - (b) any hotel owner or class of hotel owners from payment of hotel levy in respect of any guest or class of guests.

Imposition of levy:

49. (1) Every owner of a hotel shall pay, in respect of every guest, a levy of twelve and half per centum of the hotel charges:
- Provided that in no case that levy shall be less than twenty thousands shillings
- (2) The levy imposed by subsection (1) shall be paid by the owner in such manner and at such intervals as may be prescribed.
 - (3) The Tanzania Tourist Board shall collect all levy paid on behalf of the Ministry responsible for finance.

Determination of hotel charges:

50. (1) For the purposes of this Section
- (a) “hotel charges” means the payment received, or deemed by subsection (2) to have been received, by the owner in consideration of the hotel accommodation occupied, or reserved for occupation, by any guest and breakfast, if any, served to that guest.
 - (b) “normal charges” means -
 - (i) in relation to any hotel which serves food to the guests or to any of the guests who may require to be served with food, the sum of money which the owner would normally require to be paid for
 - (a) the occupation of hotel accommodation for a day or part of a day by any guest; and
 - (b) breakfast served to the guest; and
 - (ii) In relation to any hotel which serves no food to any of its guests, the sum of money, which the owner would normally require to be paid for the occupation of hotel accommodation for a day or part of a day by any guest:

- (2) Where in any case the owner accepts from any guest in return of the hotel accommodation actually occupied by the guest during any period of any day a payment of a sum of money less than the normal charges, the owner shall be deemed to have received from the guest the normal charges and such normal charges shall be deemed to be the hotel charges in respect of such guest.
- (3) Where in relation to any guest the owner satisfies the Commissioner that the payment received by him in respect of the hotel accommodation occupied by a guest for any day or part of a day was less than the normal charges because of any special circumstances, the Commissioner may accept levy paid on the payment actually received by the owner in lieu of levy on normal charges

Levy where owner supplies at least two meals:

- 51 (1) Where the Commissioner is satisfied that-
- (a) that the owner of any hotel has charged or charges a guest a single payment for hotel accommodation, breakfast and any additional meal or meals or other facilities provided by the hotel; or
 - (b) any guest at an hotel was normally supplied with meals (other than breakfast) by the hotel, the Commissioner may, by notice, in writing addressed to the owner of the hotel, require him to pay in respect of the guest, hotel levy equal to ten percent of the total payment made by the guest to the owner in respect of the hotel accommodation, meals and other facilities, if any, in lieu of the levy prescribe by section 51.
- (2) Where an owner is served with a notice under this section he shall be liable to pay in respect of the guest or guests described (either by name or generally) in the notice, hotel levy calculated in accordance with the provisions of this section in lieu of levy calculated in accordance with the provisions of section 51.
- (3) Where the Commissioner is satisfied that the normal practice in the hotel or a large number of hotels in any area is to provide hotel accommodation and two or more meals a day for a single payment, the Commissioner may, by order in the *Gazette*, require all the hotels in such area, or such of them as may be described in the order to pay hotel levy calculated in accordance with the provisions of this section, and where such order is made, the owner of any hotel to which the, order applies, shall be liable to pay hotel levy so calculated in lieu of the levy prescribed by section 51.

Inspection by Commissioner:

52. The Commissioner may, for the purposes of ensuring that the provisions of this Act and of the regulations made hereunder have been complied with, at any reasonable hour enter any hotel and inspect the register of guests and any of the books of accounts and documents relating to the number of guests accommodated at the hotel during any period, the number of days each the guest was so accommodated and the hotel charges paid by each guest, and may seize any register, book or document and retain them until produced, as evidence in any court or if not so produced, for a period not exceeding sixty days.

Penalties:

- 53 (1) Where any owner of a hotel, who is, under this Part, liable to pay levy, fails to pay the whole or any part of the levy within the time and in such manner as may be prescribed by regulations made hereunder:-
- (a) An additional levy equal to twenty-five per centum of the unpaid amount of the levy shall thereupon become and be payable by way of penalty by the owner;
- (b) if such amount remains unpaid by the owner for more than thirty days after the date upon which it is, by regulations made under this Act, required to be paid, the rate of the additional levy prescribed by paragraph (a) shall be increased by ten per centum of the amount of levy remaining unpaid in respect of each period of thirty days or part thereof after the due date and such additional levy by way of penalty shall become and be payable by the owner accordingly.
- (2) Any sum payable by way of penalty under this section shall, for the purposes of this Act, be deemed to be levy and shall be collected and recoverable accordingly.
- (3) The Commissioner may remit in whole or in part any penalty payable under this section.
- (4) For the purposes of this section, payment of levy shall be deemed to have been made by the person liable to make the payment only when the Commissioner receives the payment.

Recovery of levy and penalty

54. (1) Any additional levy equal to twenty-five per centum of the unpaid amount of the levy shall thereupon become and be payable by way of penalty by the owner; Any levy or penalty payable by any owner under this Act shall be a debt due to the Government and may be recovered from the owner as a civil debt by a suit at the instance of the Commissioner or any person authorized by the Commissioner in that behalf.
- (2) Without prejudice to the method of recovery of levy and penalties prescribed by subsection (1), where any amount of levy or penalty is due from any owner of a hotel, the Commissioner may file in a court of a resident magistrate having jurisdiction over the area in which the hotel is situated, a certificate stating
- (a) the name and address of the person from whom such amount is due; and
- (b) the amount due, and upon the certificate being lodged in that court such certificate shall be deemed to be a decree passed by that court against the person named in the certificate for payment by the person to the Government of the amount stated in the certificate together with interest at ten per centum per month from the date on which the certificate is filed until the date of payment, and every such decree may be executed in the same manner as a decree passed by a court of a resident magistrate in a civil suit.

3. The provisions of subsection (2) shall apply notwithstanding that the amount involved exceeds the pecuniary jurisdiction of a court of a resident magistrate.
4. Every certificate filed in a court of a resident magistrate pursuant to the provisions of subsection (2) shall be conclusive evidence of the truth of the statements contained in the certificate.

Where offence committed by body corporate:

55. Where any offence under any regulations made under this Act is committed by a body corporate the body corporate and any other person who, at the time of the commission of the offence was concerned, as a director or an officer, with the management of the affairs of such body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly, unless he proves to the satisfaction of the court that he had no knowledge and could not by the exercise of reasonable diligence have had knowledge of the commission of the offence.

Liability of employer or principal:

56. Where any offence under any regulations made under this Act is committed by a person as an agent or employee the agent or employee, the principal or employer and shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the Court that he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge, of the omission of the offence.

Commissioner may compound offence:

57. (1) The Commissioner may, where he is satisfied that any person has committed an offence under any regulations made under this Act, by order, compound such offence by requiring that person to make payment of a sum of money:

Provided that:-

- (a) such sum of money shall not be less than one hundred thousand or more than an aggregate of one half of the maximum fine provided for that offence and the whole of the amount of any levy or penalty due from that person.
 - (b) the power conferred by this section shall only be exercised where the person admits in writing that he has committed the offence;
 - (c) the Commissioner shall give to the person from whom he receives such sum of money, a receipt for it.
- (2) Where an offence is compounded in accordance with the provisions of subsection (1) and any proceedings are brought against the offender for the same offence, it shall be a good defence for the offender if he proves to the satisfaction of the court that the offence with which he is charged has been compounded under subsection (1) .
- (3) Where any person is aggrieved by any order made under subsection (1), he may, within thirty days of such order being made, appeal against the order to the High Court and the provisions of Par X of the Criminal Procedure Act, 1985 shall apply *mutatis mutandis* to every such appeal as if it were an appeal against sentence passed by a district court in the exercise of its original jurisdiction.

PART VI

GENERAL PROVISIONS

Board not liable for acts done in good faith

58. Neither the Board nor its members thereof shall be liable for any act or default done or omitted to be done in good faith and without negligence in the exercise of any powers or duties conferred or imposed by this Act.

Transitional Provisions:

59. (1) Anything done by the Tanzania Tourist Board; The Hotels Board established by the Hotels. Act, 1963 and the Licensing Authority established by the Tourist Agents (Licensing) Act, 1969, before coming into operation of this Act, shall be deemed to have been done by the Board in terms of section 58 of this Act.
- (2) All assets, rights, obligations and liabilities of the Tanzania Tourist Board, Hotels Board and the Tanzania Tourist Agents Licensing Authority are hereby transferred to the Board.
- (3) No levy, tax, transfer duty, stamp duty or any other money imposed or levied in terms of any law in respect of the acquisition by the Board of any assets, rights, liabilities or obligations shall be payable.
- (4) All officers appointed and staff recruited to perform functions and duties in relation to the Board shall continue to perform those functions in so far as this Act relates to them unless their appointment or recruitment is cancelled.

The Minister may make Regulations:

60. The Minister may make regulations for the better carrying out of the provisions and purposes of this Act and without prejudice to the generality of the foregoing may make regulations
- (a) prescribing the fees to be charged for licence granted under this Act;
- (b) prescribing the forms to be used for the purposes of this Act;
- (c) prescribing the conditions to be attached to, or for the grant of a licence;
- (d) requiring licensed tourist agents and hotel keepers to submit returns and information relating to their business;
- (e) regulating the activities of tourist agents with respect to the issuing of air travel tickets and making of reservation of hotels;
- (f) regulating the activities of tourist agents and hotels in order to maintain a high standard of tourist industry;
- (g) prescribing anything, which under the provision of this Act, may be prescribed;
- (h) prescribing the procedure to be followed by the Board in the exercise of its powers, duties and functions under this Act;

- (i) providing for the display of tariffs in an accommodation hotel showing particulars of the maximum charges for the grades or classes of hotels and for meals in the hotel and for the giving of such notice of such charges as may be specified to the Board;
- (j) Exempting any class or description of hotel from all or any of the provisions of this act;
- (k) prescribing the duties and obligations of a hotel keeper and hotel managers in relation to the carrying on or management of the business of hotel accommodation whether generally or in respect of any class or classes of hotels and in particular the duties and obligations of such persons to person residing in or visiting the hotels; and
- (l) providing for returns to be submitted by hotelkeepers to the Board.

General Penalty:

61. Any person guilty of an offence under this Act or regulations made under this Act shall, unless some other penalty has been prescribed, be liable on conviction to a fine not exceeding fifty four thousand shillings or to imprisonment for term not exceeding one year or to both such fine and imprisonment.

Repeals and Savings

62. (1) The Tanzania Tourist Board Act, 1962; the Hotels Act, 1963; and the Hotels levy Act, 1972 are hereby repealed.
- (2) Notwithstanding the repeals of the laws referred to under subsection (1) any subsidiary legislation, licence, certificate and any other administrative order, direction or instruction made, given or issued under the respective laws, shall be deemed to have been made given or issued under this Act and shall remain in force until revoked, replaced or rescinded by any subsidiary legislation, licence, certificate or any administrative order, directions or instructions made or issued under this Act

Objective of this Bill:

This Act emanates from two folds; the tourism policy which provide for mechanism to streamline the legal framework and accommodate the new elements of the tourism trend and the research findings of the Law Reform Commission on the legal framework for the development of the tourism industry. The current legal framework encompassed by various legislation¹ which, indeed, makes difficult to access hence bureaucracy. The current tourism laws² were enacted in early sixties where tourism sector was insignificantly recognized as a potential sector in the economy. The sector, also, enters into a very profound competition in the region whereby the sector operates comparatively at a high standard.

This Act abolishes some organs³ which were dealing with, and work in isolation with each other, in the tourism sector and creates an organ⁴ which the business of tourism would operate under one roof.

¹Tanzania tourist Board Act, the hotels Act, Tanzania Tourists Agents Act, Hotels levy Act 1972

² Ibid

³ Tourist agents licensing authority, Tanzania tourists board and hotels board

⁴ Tanzania tourists board

The Act tries to remove a long existed confusion on the differences between types, classes of the tourism facility services such as a hotel, motel, restaurant, among others, under clause 36 of the Bill.

The mechanism of registering tour guides under clause 32 and 33 of the Bill would transform the tourist guide business into a profession. This reduces the problem of flycatchers and would foster and promote the tourist image of Tanzania.

The Bill also establishes a mechanism for coordination between the Tourist Board and local authorities. This would reduce the chances of multiple authorities performing duties in ignorance of the other body. This is spelt out under clause 12 of the Bill.

The Bill empowers the Board to establish a mechanism for arbitration in case of a dispute in the tourism sector.

In the contemporary legal system the ouster clauses is out of tune, therefore in this Bill unlike the tourist laws⁵, ouster clauses are discouraged.

The magnitude of punishment to the offenders against this Bill has been increased.

Most of the clauses of this Bill have been echoed from the above laws intended to be repealed and some of them from the South African Tourism Act

⁵ Op cit 1