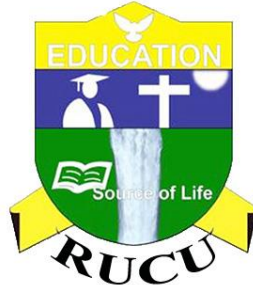


RUAHA CATHOLIC UNIVERSITY



Faculty of Law

**LEGAL ANALYSIS ON THE LAWS GOVERNING WATER POLLUTION IN TANZANIA: A
case study of Mchuchuma Coal Mine Mbinga-Ruvuma.**

**A Research Paper Submitted in Partial Fulfilment of the Requirements for the award of
the Bachelor of Laws Degree (LL.B) of Ruaha Catholic University.**

BY

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RU/LLB/2020/249

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At Faculty of Law

JULY, 2024

VERIFICATION

The Undersigned certifies that, he has read and hereby recommends for acceptance by Ruaha Catholic University, a research paper titled: Water Pollution in Tanzania: Mchuchuma Coal Mine in partial fulfillment of the requirement for award of Bachelor of Laws (LLB) Degree Ruaha Catholic University.

.....

Mr.Ross Kinemo

(Supervisor)

.....

DECLARATION

I, Mapunda, Phares Christian, do hereby declared that this research is my own work resulted from personal efforts and that is has never submitted anywhere by any person in either whole or part of it for the Bachelor Degree in law or in any other filed related to this.

.....

Signature

(Researcher)

.....

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Lastly, I give my special thanks to my fellow student for their cooperation throughout of my studies both from Ruaha Catholic University and other University from Tanzania and out of Tanzania.

DEDICATION

This research paper is essential dedicated to the whole community of Mbinga District and Tanzania in general as purpose of realization of the environmental laws, water pollution and consumers protection also enhancement of the sustainable development.

ABSTRACT

This research paper with the objective of examination of environmental and other related laws, policies and any other problem associated with water pollution in mining areas as the case study of Mchuchuma Coal Mine-Mbinga District, Ruvuma-Tanzania.

This study comprise of five chapters as chapter one provide for the background of the problem, research objectives and its significance of the research , the second chapter provides for the concept of the research , third chapter contains the legal frameworks as both international, regional and domestic legal instruments , fourth chapter is about the research findings and analysis and the last chapter provides for the recommendations of the stud ,as include the following laws ,Constitution of the United Republic of Tanzania, the Environmental Management Act,2004 , The Local District Authorities Act and other relevant laws also the National Environmental Policy ,and the study is complimenting by outlining the conclusion and recommendations for comprehensive and need to curb pollution for sustainable development.

LEGAL INSTRUMENTS

INTERNATIONAL LEGAL INSTRUMENTS

The Convention on the Rights of the Child 1989

The International Covenant on Economic, Social and Cultural Rights 1966

Rio Declarations 1992

The Stockholm Declarations of 1972

The Universal Declaration of Human Rights 1948

REGIONAL LEGAL INSTRUMENTS

The African Charter on Human and Peoples Rights 1981

The Protocol on Environmental Management for Sustainable Development of the South African Community

The Treaty for the Establishment of the East Africa Community 1999

CONSTITUTION

The Constitution of the Republic of Kenya, 2010

The Constitution of the Republic of South Africa, 1996

The Constitution of the United Republic of Tanzania 1977

The Constitution of Uganda, 2005

ACTS OF PARLIAMENTS

The Environmental Management Act, 2004

The Local Government (Urban Authorities) Act [288.R.E 2010]

The Mining Act [Cap.123 R.E 2018]

The Penal Code [Cap.16 R.E 2022]

The Water Ordinance 1948[Cap.257]

The Water Resources Management Act, 2010

POLICY

The Environmental Policy 1997

The National Water Policy, 2002

LIST OF CASES

- Amooti Godfrey Nyakaana v. National Environmental Management Authority and others* (2011), Supreme Court of Uganda-Kampala, Constitution Appeal No.05
- Festo Balegele and 794 Others v. Dar es Salaam City Council* (1991) Civ.APP.No.90
- Konkola Copper Mines PLC v. James Nyasulu and 2000 Others*, Supreme Court of Zambia Appeal No.1 /2012
- Modesta Mahando Matiko & 27 Others v. North Mara Gold Mine Limited* (2023) TZHC ,Musoma-Sub-Registry Land Case No.4
- Mazibuko and Others v. The City of Johannesburg*, Constitutional Case No.1 of 2012
- Penina Mherere Wangwe and 31 Others v. North Mara Gold Mine*, Misc. Land Case No.43 of 2022
- Sudan Human Rights Organization and Center on Housing Rights and Evictions (COHRE) v.Sudan* , Communication No. 296 (2005) [2009]ACHPR 100.

LIST OF ABBRIVATION

ACHPR	The African Charter on Human and Peoples Rights, 1986
CRC	The Convention on Rights of the Child, 1990
EAC	The East Africa Community
EIA	The Environmental Impact Assessment
EMA	The Environmental Management Act, 2004
GGM	Geita Gold Mine
ICCPR	The International Covenant on Civil and Political Rights
NEMC	The National Environmental Management Council (NEMC)
NEP	The National Environmental Policy
SADC	The South African Development Community
TLR	The Tanzania Law Reports
UDHR	The Universal Declaration of Human Rights
UN	The United Nations

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CHAPTER ONE

WATER POLLUTION IN TANZANIA: MCHUMCHUMA COAL MINE

1.1 General Introduction

The Rio Declaration on environmental and development (1992) as recognize the importance of economic development in relation to the environmental protection (Sustainable Development). The provision of Article 1 provides that “Human beings are at the center of concerns for sustainable development. They are entitled to healthy and productive life in harmony with nature”¹.

This study is purposely examine the environmental and other related laws and policies on the protection of the environmental from water pollution and the health of consumers as the case study of Mchuchuma Coal Mine as opposing the provision of principles of environmental protection such the principle of sustainable development, environmental standard management objectives and the principle of state sovereignty for the purpose of protection of environment from pollution and good health consumers .

1.2 Historical Background of the Problem

1.2.1 Pre-Colonial Period (1800s)

During this period where by man African Societies lived in communal life based on hunting and gathering , the indigenous groups like Maasai and Hadzabe had sustainable practices and strong cultural protection for environment ,water resources and its

¹ The Rio Declaration on Environmental and Development 1992

consumers . The environment includes water, air and land was communally managed and ecosystems were largely intact.

1.2.2 The period of colonialism 1880s-1960s

German and British Colonizers imposed the different economic activities in Tanganyika (Tanzania) such as the extraction of minerals, agriculture and industries but because of the targeting the economic advantages to their mother countries put little oversight on environmental protection on water source and land resource. Generally the colonial authorities mainly protected resources for economic interests rather than ecological and public health².

1.2.3 During Independence (1961)

After the independence, pollution increased due to growing population, urbanization, industrialization and agriculture (ujamaa village) intensified the environmental and water pollution without sufficient laws to regulate , between 1970 - 1990s different laws were legislated include the Constitution of the United Republic of Tanzania,1977, the Water Utilization Act 1974 and the Environment Management Council 1983 aimed to regulate the environmental protection ,water resources and consumes but the enforcement of the laws were too weak.

1.2.4 Post Independence period to Recent Development (1961 to date).

This period experienced the massive increase of the human activities such as agriculture ,transport , industries and mining activities in the area such as Geita(Geita

² Section 4 of the Water Ordinance 1948 Cap.257

Gold Mine), Manyara (North Mara Gold Mine) , Shinyanga (Bulynuhullu) ,Mererani , Kiwila(Kiwila Coal Mine) and Mchuchuma Coal Mine which at large these activities leads to the environmental pollution in water,land and air and the Government of Tanzania introduced different laws and policies to regulate the situation such as the adoption of the Rio Declaration on Environmental Development 1992, the National Environmental Policy 1997, the Environmental Management Act ,2004 and the Water Resources Management Act ,2009.

Despite of the laws and policies enacted the problem remain on constitutional recognition, too restrictive (penal one laws) , enforcement problems , budget constraints balancing development and protection, promoting sustainable industrial practices ,access of clean water in rural areas ,and the regional cooperation on trans boundary water challenges. While the progress has been made, ongoing legal efforts still needed to reserve degradation from historical overexploitation, support sustainable development and safeguard these vital resources and health of Tanzanians as reported that-;

“Residents of Ruanda Village in Mbinga District of Ruvuma are living with fears of health risks after it was discovered they consume water from rivers surrounding the coal mines and has been complained about diseases such as diarrhea and miscarriages as result of consuming contaminated water”³

³ <https://www.thecitizen.co.tz> The Downside of Coal Mining For Villagers In Ruvuma Accessed On 19th May 2023.

1.3 Statement of the Problem

The right to life working together with the right to safe, health and clean environment as the Constitution of the United Republic of Tanzania grant and protect this right⁴also the Universal Declaration of Human Right of 1948⁵.

The Government of Tanzania by recognizing this right enacting the legislations which protect the water resources (environment and its consumers) as in 2004 introduce the environmental management Act⁶ and in 2010 introduce the Water Resource Management Act of 2010⁷ purposely is protecting the environment including water from being polluted and also protecting general environment and its consumers.

Despite of the existing of the water pollution laws, the laws seen to be insufficient and makes the water to be unsafe for consumption. In Ruanda village there is a problem of water pollution through chemicals and dust wastes from Mchuchuma Coal Mine and the polluted water leads to the effects to the water consumers such as the diseases as include diarrhea, typhoid, women miscarriages, and children born with various problems and sometimes causing death to both human and animals⁸.

The purpose of this research is to examine the water pollution law and find out the nature and extent in which can protect the water resources for its consumers in Tanzania as focused in Ruanda village Mbinga-Ruvuama .

⁴ Article 14 of the Constitution of the United Republic of Tanzania of 1977

⁵ Article 2 of the Universal Declaration of Human Right of 1948

⁶ The Environmental Management Act Of 2004

⁷ The Water Resources Management Act Of 2010

⁸ Supra Note.9

1.4 Literature Review

Mkuula ⁹, addresses the problem of water pollution as the results of mining activities in areas such as Lake Victoria, Mpanda, Chunya, and Coal Mining in Kiwira, limestone in Dar es salaaman and tin mining in Korogwe. the all mining activities takes place in those areas leads to the problem water affect the human life ,animals ,crops and environment in general .through the book the author has provide the way of improving the environment from pollution(water) like the review of environmental legislation so as to fit the current situation and should be enforced ,administrative and institutional support(establishing the Water Pollution Boards with enough man power), improving information, environmental education and public awareness and also encouraging for environmental research and technology.

Sengupta¹⁰, the mining activities influenced on a larger amount in pollution of underground water since the chemical used during the extraction of mineral leads to the water contamination which brought about the negative impact to the environment as affect the public health since the public loses their rights to safe and clean water and leads to diseases such as tuberculosis ,asthma, chronic bronchitis and gastrointestinal diseases and other side leads to the acidic rain which affects the production of crops and vegetation in general affect life .the author proposed that under international and national laws all people are equal before the law but the Environmental Impact Assessment (EIA) always underestimates the impact of public health due to the environmental project what they considered is economic development without

⁹ S.Mkuula, *Pollution Of Wetland In Tanzania, National Environment Management Council –Dar Es Salaam, 1993.85-93.*

¹⁰ M .Sengupta, *Environmental Impacts Of Mining*, Boca Raton, 2nd Edition .28th April 2021.25-29.

considering the life of public .and with the goals of industrialization policy we requires the Environmental Audits so as to review the law and taking measures on the protection of the threat of industry to environment and consumers¹¹.

Shelton¹², addressed the basic principle of environmental protection as include prevention, precaution, polluter pay principle and environment justice and equity also the issue of environmental rights and access to justices and remedies and enforcement of the environmental rights. Apart from those also the author describe that the environmental pollution include water is because of administration system which we have in our jurisdiction.

Added that the water pollution and environment pollution attract both tortious liability either through negligence and strict liability and the same attract the crime. Those all are in accordance to the law so as to ensure the right of safe and heath environment and compensation resulted to the violation of this right since the pollution leads to injuries, diseases and medical expenses and the public and community should be aware that the safe and clean water is right not privileges.

Majamba¹³, among the issues addressed by the author and those things are act as a roots to the problem of environmental pollution including water in Tanzania Zanzibar (Tanzania) among the other thing was the issue of failure by the government to recognize the environmental protection (safe and clean environment) as constitutional right or the

¹¹ Ibid

¹² D .Shelton *Environmental Law*, United Nations Environment Program .2005.1-127.

¹³ H.Majamba ,*An Assessment of Environmental Law of Tanzania Zanzibar* ,University of Dar Es Salaam ,2005 .22-32

basic human right instead is enforced through the right to life¹⁴. This is quite different from the other countries which the safe and clean environment is constitutional rights example Kenya¹⁵ and also in the constitution of South Africa¹⁶. Other issue was the how to establish the Locus Standi and the cost of instituting the case of environmental nature. Through these challenges in our environmental laws contributing much to the problem of water pollution which generally affect the environment and its consumers.

Mwalyosi¹⁷, acknowledges that among of the factors influencing the problem of water pollution and environmental pollution in Tanzania is the lack of specific laws to govern the Environmental Impact Assessment in Tanzania he believed that the environmental impact assessment requires the separate legislation out from what is now both have been putting together under the environmental management act of 2004. Since there are some sector are very complicated and needs sensitive mechanism so as to prevent the established or proposed project from affecting the environment among that sector is mining sector¹⁸.

Kaniaru¹⁹, describes that in the currently world where by the poor nations struggle to raise up her economic power the problem of environmental pollution seen to be common. And those who affected by the results of pollution faces challenges to enforce their rights in court of law since the economic activities which causing the pollution the government or State has interest on it either through taxation or whatever. So becoming

¹⁴ Supra Note.6

¹⁵ Article 42 of the Constitution of Kenya 2010

¹⁶ Section 24 of the Constitution of South Africa of 1996

¹⁷ R. Mwalyosi, *Impact Assessment and The Mining Industry on Tanzania*, University of Da Es Salaam .2004.

¹⁸ A. Kitula, The Environment And Socio-Economic Impacts of Mining on Local Livelihoods in Tanzania: Geita District, *Journal of Cleaner Production* 2006.

¹⁹ D. Kaniaru, *Environmental Law and Diplomacy*, Strathmore University Press. 1st Edition 20223

difficult to an individual to force his or her rights the same to Non-government Organization by believing that government has a wider hand. Therefore its duty of United Nations and other international organization stand and raise voice to fight the problem of environmental pollution as including water. Through that we will able to protect the environment and consumers or the life as the call of United Nations for the right to life through the Universal Declaration of Human Right of 1948.

Pallangyo²⁰, addresses the importance of incorporating the environmental rights in the constitution but also the present laws of environmental protection lacking the enforceable mechanism and working tools. Through that had increased the problem of water pollution and environmental in general.

1.5 Hypothesis

It appears that, the weakness of environment, water pollution laws and policies cause the water pollution and health problems to the consumers.

1.6 Objectives

1.6.1 General Objective

The primary objective of the study is to examine the water pollution laws in Tanzania and find out the nature and extent in which they can enhance or retard the protection of water pollution for consumers.

²⁰ D. Pallengyo ,*Environmental Law In Tanzania* ,Tanzania .2007

1.6.2 Specific Objectives

- i. To examine Environmental Management Law and other relevant laws and find out the nature and extent in which they can enhance or retard the protection of the water pollution for consumers.
- ii. To examine the Water Pollution Policies on the protection of water pollution for consumers.
- iii. To examine other water pollution problems and find out the nature and extent they can enhance or retard the protection of water pollution for its consumers.

1.7 Research Questions

The following research questions tested in order to give out this research paper into a meaningful study; these include.

- i. Do the Environmental and other relevant laws enhance or retard the protection of the water pollution for consumers?
- ii. What are the legal and administrative challenges contribute to the problem of water pollution in mines areas
- iii. What are the possible solutions to the problem of water pollution and other associated problem arose in mines areas and what could be measures to rectify the problem?

1.7 Significance of the Research

This research is very crucial and important to the majority of Tanzania since intend to contribute the importance of the protection of water resources from pollution which caused by economic activities including mining. Therefore it is important in the manner

that in the nation we need to balance the economic needs and life needs by having the proper laws which will protect the present life and future life without compromising the water resources for consumers. It is significant also in the manner of giving chance to the legislature to review the water pollution laws, environmental laws and mining laws and the water pollution policies and to do to assign the duty to the Local Government of Mbinga (Municipal) to make by laws on the protection of water pollution towards mining activities. Through that will help to protect the water resource together with health, safe and life of consumers in Tanzania specifically in Ruanda Mbinga Ruvuma.

1.8 Research Methodology

During collection of data of this study, the researcher has employed both primary and secondary methods of data collection. The process of collecting primary data has entailed interviews, observation and questionnaires as the method of primary data collection because they are relevant and are the data collected direct from the field. Furthermore the researcher engaged into deeply in secondary methods so as to get more liable information for this study.

1.9 Research Design

To get most relevant information the study has employing field study because it is area where the most victims and interested persons to be approached as include stakeholders, legal practitioners, magistrates, advocates, lawyers and Councilors. The alleged information was collected from magistrates (2), law school students (8), Councilors (3), stakeholders, medical officer and victims (27), lecturers (2), legal practitioners and advocates (8) and law students (25) under graduates.

1.10 Study Type

This study has employed both doctrinal and non-doctrinal legal research for the study requires wide knowledge to be employed from different relevant sources of information. Based on the topic which is not a novelty one in our jurisdiction, the researcher managed to examine the legal provision, principles, policies and other problem associated with the problem, therefore some information is extracted from the laws, case laws, journals, articles, reports and legal books and other recommendations made for the purpose of having reliable information which stand as the secondary sources of data.

1.11 Method of data collection

The study has employed the interviews, questionnaire and observation as the primary method of data collection.

1.11.1 Interviews

The researcher subjected to individual to short unconstructed interview, individuals such as councilors, stakeholders and victims, law students undergraduate and the law school students. The researcher interviewed this category of group because are the primarily concern for the matters subject to the topic and most of them are aware with the circumstance of the study and were able to provide the distinguishable relevant information in relation to the study. The researcher has employed face to face interviews because of being the first hand information because offered the chance for clarification hence for the acquisition of detailed relevant information.

1.11.2 Questionnaires

The questionnaire is another method of data collection employed in this study to the certain category of people due to the avoidance of the wastage of time and responsibilities to their other activities, the open ended and closed ended question which gives the respondents wide range of expressing their views, opinions, and recommendations , for the individuals such as lecturers ,magistrates ,advocates and legal practitioners ,this method was employed for the purpose of collect the reliable and relevant information of the study.

1.11.3 Observation

The researcher also employed the observation as the method of data collection for the period not less than 4 months. The purpose of using this method was to get the direct, accurate and reliable information on the area of study.

1.12 Collection of Secondary Data

This method of data collection of information through documented materials. The study used materials from the published and unpublished materials with the aims of collecting the reliable information of study. The materials used are those especially which covers the environmental rights include the right to free from water pollution and environment in mine areas. Both local and worldwide literatures include journals, books, reports, articles, laws, case laws and websites to access online materials based on its availability and accessibility. To access the documented materials the researcher frequently visited the Ruaha Catholic University Library Benjamini Mkapa Block.

1.13 Sampling Technique and Sample Size

In this study a selection of sample population appropriate for the study was selected in which medium size of 73 and maximum of 100 respondents, although this study managed to employ only 73 respondents.

1.14 Scope and Limitation of the Research

The geographical area of study covered is Tanzania mainland specifically Mchuchuma Coal Mine at Mbinga District-Ruvuma. The motivation behind conducting this research at Mbinga, Mchuchuma Coal Mine is due to the impact of mine towards the protection environment under the Constitution of United Republic of Tanzania, Environmental Management Act and other relevant laws and its policies.

1.14.1 Limitations of the Research

This study faced several limitations such as failure to meet the targeted number of respondents, cost of transport to the area of study, un-availability of some literatures on environmental rights. Fails to find some books from the Ruaha Catholic University Library this made the researcher to rely most on the online published sources such as books, journals, case laws, and other materials.

1.12 Conclusion

Therefore, the effect of water pollution is bigger in life of environment and its consumers, since when water polluted it affects the environment and consumers including human being whose is his or her right to life, safe, health and clean environment become

endangered by these human activities and violate the right which enriched in the Constitution of the United Republic of Tanzania.

CHAPTER TWO

CONCEPTUAL FRAMEWORK RELATING TO WATER POLLUTION IN TANZANIA: MCHUCHUMA COAL MINE.

2.1 Introduction.

This chapter is all about the conceptual framework on the water pollution in Tanzania the case study of Mchuchuma Coal Mine. The researcher focused on provides the meaning, definitions and examples based on the research title and other related matters. The chapter also focused on the other problems resulted from the mine in relation to environmental, water pollution and consumers.

2.2 Water

Water means all water flowing over the surface of the ground or contained in or flowing in or from, a spring or stream or natural lake or reservoir or swamp, or beneath a watercourse and all water from underground strata.²¹ ,The Environmental Management Act ,2004 ²² define “Water” to includes drinking water ,river ,stream,water-course,reservoir,well,dam,canal ,channel ,lake,swamp,open drain or underground water. Water means a colorless, tasteless and odorless liquid that forms rivers, lakes, rain, and oceans, the liquid which are very essential for the development of human being, plants and animals²³. Also water can be defined as a second-generation rights (red-rights) as developed through the socialist revolution which imposes the duties and obligation to the

²¹The Water Resources Management Act No.11 of 2009

²² Section 3 of Environmental Management Act ,2004

²³ <https://www.collinsdictionary.com/en/words-meanings/meaning-of-water> Accessed On 31st July 2023

government of giving the water as right to the public and the water as right include the right to sufficient food and water also right to clean and unpolluted environment²⁴. .

2.2.1 Water Resources

According to the National Water Policy hereinafter NAWAPO define water resources to include water course, surface water ,estuary water and underground water and water source to mean a river ,tributary ,estuary ,lake ,swamp,marsh,or other wetland or an aquifer or a spring ,seas waters and interface between the seawater and fresh waters and also dam ,pond or reservoir. The water resource is consumed by living organism basing on their quality which is chemical, physical, biological, and radiological characteristics of water relative to the requirements of ecosystem or to any human need or purpose the change of water quality is water referred to water pollution²⁵

2.3 Pollution

Pollution means any direct or indirect alteration of the physical ,thermal ,chemical ,biological or radio-active properties of any part of the environment by discharging ,emitting ,or depositing of wastes so as to adversely affect any beneficial use, to cause a condition which is hazardous to public health ,safety or welfare, or to animals ,birds ,wildlife ,fish or aquatic life or to plants or to cause contravention of any condition,limitation,or restriction which is subject to a license under this Act²⁶ The types of pollution include water pollution, land pollution, air pollution and noise pollution²⁷.

²⁴ J. C. Mubangizi, The Constitutional Protection of Social-Economic Rights in Selected African Countries: A Comparative Evaluation .*African Journal of Legal Studies*, 2006, 1-19.

²⁵ National Water Policy, 2002

²⁶ Supra Note .30

²⁷S.M Shafi, Environmental *Pollution*, Atlantic Publisher, 2005.

2.4 Water Pollution

Pollution in relation to water resources means the direct or indirect alteration of the physical, thermal, chemical or biological properties of the water and makes it unfit for any purposes and sometimes include the addition or introduction of chemical and toxic material in water sources²⁸. Water Pollution means the process of introducing the unwanted or harmful materials into the water resources include underground water, rivers, lakes, oceans or seas and generally threaten or harms the life of human being, animals, and plant life²⁹. The water pollution in Tanzania is an outcome of the human activities as include activities such as agriculture, mining, fishing, and industrial activities. Although the surviving of human being and other organism depends on the human activities in the fact that leads to the water pollution in Tanzania, therefore the by-laws, rules and regulations are required to regulate the human activities in a particular area apart from the traditional customs of depending on the by-laws made by the Minister.

2.5 Consumers

Consumers refers to any living organism depends from the environment in terms of food, water and any other means of surviving and they comprise of primary and secondary consumers³⁰. From the concepts of environment the term consumers can be a human being, animal such as cows, goats, sheep ,rabbits, monkeys, donkeys and elephants, fishes ,plants and insects . Always consumers and environment are dependent to each other and

²⁸ *Konkola Copper Mines PLC V. James Nyasulu and 2000 Others, Supreme Court Of Zambia Appeal No.1 /2012*.

²⁹ A. Singh Et Al, *Water Pollution and Management Practices*, ISBN, 2021.

³⁰ M. N Alam, O.Ogiemwonyi And S .Hossain, *Understanding Consumer Environmental Ethics And The Willingness To Use Green Products*, Sage Journal, January 31st 2023.

<https://www.journals.sagepub.com/doi> Accessed On 15th January 2024.

this leads to the creation of the cycle of life (ecosystem)³¹. The process of letting the environment (water, land or air) be polluted automatically affect the ecosystem (consumers).

2.6 Environment

Environment according to the Environmental Management Act ,define term environment as includes the physical factors of the surroundings of human beings including air ,land ,water, climate ,sound, light ,odour,taste,micro-organism,the biological factors of animals and plants ,cultural resources and the social economic ;factors of aesthetics and includes both the natural and the built environment and the way they interact and environment includes elements as the constituent part of the environment including water,atmosphere,soil,vegetation,climate ,sound, odour ,aesthetics ,fish and wildlife³² Environment means the total of everything that surrounds us as include living and non-living organism or the Composition fauna and flora that include air, soil ,animals ,plants ,buildings ,water and anything made part of it³³.

2.7 Environmental Laws

Broad definitions and the fact that all human activities have an impact on the environment make it difficult to establish the limits of environmental law as an independent legal field; indeed they imply the integration of environmental protection into all areas of law and policy. Environmental law springs from the understanding that the environment determines the form and survival of each organism and community;

³¹ <https://www.Tutorialspoint.Com> > Consumer Environment Theory-Tutorial Point .

³² Section 3 Of The Environmental Management Act ,2004

³³ Constitutional Environmental Law: Giving Force To Fundamental Principles In Africa ,Environmental Law Institute ,20071-14

thus national, regional, and international efforts must be taken to ensure the continued viability of the planet and the sustainability of its myriad species, through holistic approaches such as integrated or ecosystem protection³⁴

Environmental law can be grouped into two categories first is pollution control and remediation, and second resource conservation and management. Laws dealing with pollution are often media-limited that they pertain only to a single environmental medium, such as air, water soil, and control both emissions of pollutants into the medium, as well as liability for exceeding permitted emissions and responsibility for cleanup³⁵.

2.8 Environmental Effects of Mining

Environmental problem in mining can include erosion, formation of sinkholes, loss of biodiversity, and contamination of soil, groundwater and surface water by chemicals from mining processes. In some cases, additional forest logging is done in the vicinity of mines to increase the available room for the storage of the created debris and soil. Contamination resulting from leakage of chemicals can also affect the health of the local population if not properly controlled. Extreme examples of pollution from mining activities include coal fires, which can last for years or even decades, producing massive amounts of environmental damage.

³⁴ P. Matata, *Environmental Law Regulations of Pesticides Usage: Challenges of Enforcement and Compliance in the Shinyanga Region-Tanzania*, Anchor Academic Publishing, 2013

³⁵ Ibid

2. 9 Mchuchuma Coal Mine as a Case Study to Water pollution in Tanzania

2.9.1 Mine

According to section 4³⁶ define mine “verb” as intentionally to mine minerals and includes any operations directly or indirectly necessary therefore or incidental thereto including processing of minerals as may require to produce a first saleable product and mining shall construed accordingly . Tanzania there are several mine such Geita Gold, North Mara ,Mererani, Kiwila and Mchuchuma Mine but from these all mines several mineral concentrate become available such as Gold,silver,coal,ruby,diamond and tanzanite³⁷ .

2.9.2 Mchuchuma Coal Mine Mbinga-Ruvuma

This is coal mine found in Mbinga District ,Ruanda Village its where the process of extraction of coal mineral take place , despite the fact that the presence of the coal mine in this area has contributed to the economic development such as trade ,industries ,transportation and employment opportunities to the people but this grace fail to bless the inhabitants of Ruanda since the mine resulted to negative impact to them especially the water pollution and actually this problem in the area become associated with other problems such as air and land pollution. The pollution from the mine makes the life to be difficult in the area in the fact that agriculture, fishing, livestockkeeping become affected by

³⁶ Mining Act [Cap.123 R.E 2018]

³⁷ Act No.7 Of 2017

the problem of water, land and air pollution animal die ,human being suffered diseases such as miscarriage and still birth and some species become disappeared from the area³⁸.

³⁸ <https://www.thecitizen.o.tz/tanzania/news/national/the-downside-of-coal-mining-for-villagers-in-ruvuma>

CHAPTER THREE

LEGAL FRAMEWORK OF WATER POLLUTION IN TANZANIA: A CASE STUDY OF MCHUCHUMA COAL MINE

3.1 Introduction

This chapter examines the legal and institutional framework which governs the water pollution in Tanzania from international level, regional level and national level. The legal framework will consist of the Laws, Policies, Case Laws, Institutions and the Principle related to the protection of environment (water resources from pollution).

3.2 International Level

Tanzania as signatory to the different international treaties and conventions in which the water pollution is prohibited for the purpose of enhancing ,protecting and securing the health and life of human being as a part of fundamental human rights(environmental rights). The Ratification and domestication of the Universal Declaration of Human Rights of 1948,the Convention on the Rights of the Child of 1989, International Covenant on Economic, Social and Cultural Rights of 1966,The Rio Declarations of 1992 and The Stockholm Convention of 2001 .

3.2.1 The Universal Declaration of Human Rights (UDHR)

The life of human being depends in water; therefore water is fundamental right to human being d not only services³⁹. This is accorded from the provision of Article 25provides that

³⁹ *Mazibuko and Others v. The City of Johannesburg Constitutional Case No.1 of 2012* “The Constitutional Court Cite The Provision of Section 24 and 27 of the Constitution Of South Africa “

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” 25⁴⁰

3.2.2 The Convention on the Rights of the Child (CRC) of 1989

The convention is ratified in Tanzania and requires the State to take measure to ensure that there is safe, health and clean environment to child and nothing affect the growth and development of child ,article 24⁴¹ provide that -;

“States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right to such health care services”

The Case of *Sacchi Et Al v. Argentina, Brazil, France and Turkey*⁴²the facts of the case the 16 children lodged a communication before the United Nation Committee on the Rights of Child by claiming that the respondents has violate the right developed in article 24 of the Convention on the environmental protection , the Committee held that the children are entitled to safe and healthy environment and also the right to environment should be accorded with the right of expression and file the case in court of law wherever the environmental right attached to children’s are in the threat of being endangered.

⁴⁰ The Universal Declaration of Human Rights of 1948

⁴¹The Convention On The Rights Of The Child (CRC) Of 1989

⁴² (2019)CRC ,Comm.No.16

3.2.3 International Covenant on Economic, Social and Cultural Rights of 1966

The Covenant entered into force in 1976 by May 2012 more 160 States ratified the covenant with the purpose of protecting the economic, social and cultural rights of the people around of the world especially the Partner State to the Conventions. The Covenant pursuant to Article 11 and 12⁴³ provide that-;

“ The States Parties to the present Covenant recognize the right of everyone to an adequate a standard of living for himself and his family ,including adequate food, clothing and housing ,and to the continuous improvement of living conditions .The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based free consent and the States parties to the present Covenant recognize the right of everyone to the enjoyment to the highest attainable standard of physical and mental health”.

From the provision evidenced that water rights and protection are essential for the adequate of standard living and highest attainable Standard as emphasized in the case of *Sudan Human Rights Organization and Center on Housing Rights and Evictions (COHRE) v.Sudan* ⁴⁴ the facts of the case resulted from the situation of the Sudanese Government after destruction of wells and poisoning of the water source Darfur region ,The Commission of Peoples and Human Rights that the process did by the Government was the violation of human rights of mental and physical since the victims exposed in health risks.

⁴³ International Covenant On Economic, Social And Cultural Rights Of 1966

⁴⁴ Communication 296 of 2005)[2009]ACHPR 100.

3.2.4 The Rio Declarations of 1992

The Rio's Declaration develop the principle of environmental protection and the proper utilization of resource by ensuring the sustainability of the environment ,The Declaration recognize the principle of States Sovereignty where by the States are free to exploit resources within her borders but during the operation should not cause the damage to the environment or area beyond its territory ,others issue is how States are supposed to make the Cooperation in order to enhance the environmental protection from the human activities and desire of development⁴⁵ .

3.3 At Regional Level

3.3.1 The African Charter on Human and Peoples Rights (ACHPR)

The Charter as a legal instrument which operate in the regional level specifically Africa it provide that “every citizen shall have the right of access to public property and services of his country and every individual shall have the right to enjoy the best attainable state of physical and mental health”⁴⁶. Water or environment should be the public property where every will be able to access so as to meet the standard living ,it's a duty of the Government ,Stakeholders and the people to protect the public property especially water from the act of pollution which arose from the human activities especially industries, agriculture and mining.

⁴⁵ The Principle 2 ,4,7 ,& 14 of the Report of the United Nations Conference On Environment and Development 1992

⁴⁶The African Charter on Human and Peoples Rights (ACHPR)

3.3.2 The Treaty for the Establishment of the East Africa Community of 1999

The purpose and objectives of the creation of the East Africa Community among other thing to have the cooperation on environmental management as developed through Chapter 19⁴⁷. The Member State to the East African Community are aware with, that the human activities in the region. Therefore the States in the East African Community have committed themselves to take measures that will help to combat the problem of pollution and environmental depletion through human activities in the Community.

3.3.3 The Protocol on Environmental Management for Sustainable Development of the South African Community

This protocol address the issue related to the environmental right to the Member States, the issue related to climatic change, waste and pollution but also the sustainable use of land without affect other human fundamental rights especially the right to health and clean environment, the Article 6⁴⁸ of the Protocol provides that-;

“States Parties shall take measures to ensure that activities within tier jurisdiction and control do not cause significant trans-boundary environment impacts, in his regard, each party shall adopt and enforce appropriate national legislation necessary to ensure prevention and control of pollution”

⁴⁷ The Treaty For The Establishment of the East Africa Community of 1999

⁴⁸ The Protocol on Environmental Management for Sustainable Development of the South African Community

From the Protocols several States have taken the measures of incorporating this duty into their constitution and their national legislation⁴⁹ .

3.4 At the National Level

3.4.1 The Constitution of the United Republic of Tanzania 1977

The Constitution grant the fundamental human rights include the right to environment although the right is not expressly as in the Constitution of South Africa ,nevertheless article 14 which define the environmental right provide that-;

“Every person has the right to life”

*0 Dar es Salaam City Council*⁵⁰The Court developed that “the disposing waste Kunduchi Mtongani was contrary to the provision of the law since was creating nuisance and putting in danger the life of the people reside around that area, also added that in the eyes of the constitution via article 14 is unlawfully to endangered peoples life .

3.4.2 The Environment Management Act of 2004

This is a Parent Act on the management and regulation of the environmental matters in Tanzania. The Purpose of its enactment is to ensure that there is balance between the utilization of resources and the sustainability of environment in aspect that no danger is created to the environment from the human activities such as agriculture, mining, tourism

⁴⁹ <https://www.Link.Springer.Com.Chapter-South-Africa> –Implementing Protocol On Environment Management of the South Africa Development Community Accessed On 20th January 2024

⁵⁰ (1991) Civ.APP.No.90

and industry. The water pollution may be resulted from the mentioned activities the section 109⁵¹ of the Act provides that -;

“any person who knowingly puts or permits to be put or to fall or to be carried into any stream, so as either singly or combination with other similar facts of the same nature or interfere with its due flow or pollute its waters, or put solid refuse of any manufactory or manufacturing process or puts any rubbish or any other waste or any putrid solid matter into stream commits and offence”.

3.4.3 The Water Resources Management Act 2009

This Act Repeal the Water Utilization (control and Regulation), and is enacted for the purpose of provide for institutional and legal framework for sustainable management and development of water resources: to outline principle for water resources management: to provide for the prevention and control of water pollution; to provide for participation of stakeholders and the general public in implementation of the National Water Policy⁵².

The provision of section 39⁵³ of the Act state that-;

“An owner or occupier of land on which any activity or process is or was performed or undertaken ,or any other situation exists which causes has caused or is likely to cause pollution of a water resources ,shall take a reasonable measures to prevent any such of pollution from occurring ,continuing or recurring”.

⁵¹ The Environment Management Act of 2004

⁵² The Water Resources Management Act 2009

⁵³ Ibid

3.4.4 The Mining Act 2009

The Act provide is enacted for the purpose of ensuring the principles of the State Sovereignty in utilization of resources, that the process should be done in the great and reasonable care that will not resulted into problems to the environment such a water resources, air and land resources. Section 107 ⁵⁴ states that -;

“The license holder and any other person exercise or Sperform functions ,duties or powers under this Act in relation to mining operations shall comply with environmental principles and safe guards prescribed in the Environmental Management Act and other relevant laws”

During the mining process the environment principles such Polluter Pay, State Sovereignty, precautionary, eco-system integrity, public participation, access to justices and the principle of common but differentiated responsibilities⁵⁵ . The observation of the Principle of Environmental management was cemented in the case of *Konkola Copper Mines PLC (KCM) v. Nyasulu and 200 others*⁵⁶ the appellant in this was the mine (KCM) alleged for the commission of tort of disregard the environmental principles and leads to the discharge of the highly toxic effluent in the stream and from the discharge resulted in water becoming harmful for human consumption and others usage like agriculture. Due to the effects the court regarded the destruction to environment is the violations of both blue and red rights so decided that the responded to be awarded for general and punitive damage from the injuries suffered.

⁵⁴ The Mining Act [Cap.134 R.E 2018]

⁵⁵ PART II of The Environmental Management Act Of 2004

⁵⁶ Case No1/2012

3.4.5 The Penal Code [Cap.16 R.E 2022]

The act of pollution to environment is an amount to nuisance since it cause the inconvenience to the public from enjoying the common rights available example the issue of environmental pollution in water resource is an amount of nuisance and its punishable through the penal laws, section 170 ⁵⁷ provides that-;

“Any person who does an act not authorized by law or omits to discharge a legal duty thereby cause any common injury to the public or danger or annoyance, or obstructs or cause inconvenience to the public in the exercise of the common right, commits the misdemeanor termed as a common nuisance and is liable to the imprisonment for one year”.

3.4.6 The Local Government (District Authorities) Act⁵⁸

Provide that the local authority may bring the proceedings for an injunction to restrain a public nuisance where they consider it expedient for the promoting or protection of the inhabitants of their area. Example a good case from the Republic of Uganda, case of *Amooti Godfrey Nyakaana v. National Environmental Management Authority and others*

⁵⁹The Court states that the Government or a Local Government as determined by law shall hold in trust for the people and protect natural lakes ,rivers ,wetlands ,forests reserves ,game reserves ,national parks and any land to be reserved for ecological and tourist purposes for the common good of all citizen and from time to time parliament shall by law provide measures to protect and preserve the environment from abuse

⁵⁷ The Penal Code [Cap.16 R.E 2022]

⁵⁸ The Local Government (District Authorities) Act [287.R.E 2010]

⁵⁹ (2011) Supreme Court of Uganda-Kampala ,Constitution Appeal No.05

,pollution and degradation, to manage the environment for sustainable development and promote environmental awareness .

3. 5 Policies

3.5.1 Environmental Policy 1997

The Policy addressed the problems to the environment which resulted from the human activities, Tanzania as developing country recognize the importance of economic activities such as mining and agriculture, these human activities contribute to the problem of water pollution and environmental in general in the meaning that become threaten the life of human being and ecology. Section 54⁶⁰ of the policy “Much of the mining done in Tanzania is artisan and large concentration of these small scale miners are found in gold-bearing. Large scale mining is also increasing the problems of the mercury which pollutes water resources and is dangerous to health on accounting its adverse effects on the human nervous system”.

3.5.2 Water Policy 2002

The Water Policy of 2002 addressed different issues in relation to the environmental management, water sources conservation and pollution control, the policy provide that the problem of water pollution can be controlled through identification, demarcation, gazettement and restoration of degraded water source. The enforcement of water and related laws and regulations, promotion of good agriculture, mining and land use

⁶⁰ Environmental Policy 1997

practices and awareness creation have to be taken in order to enhance pollution control and conserve water sources.

3.6 Institutional Framework

3.6.1 The Environmental Management Council (NEMC)

The Environmental Management Council is established for the purpose of undertaking the enforcement, compliance, review and monitoring the environmental impact assessment and in regard shall facilitate the public participation in matters related to the environmental decision and generally to be responsible for the supervision of the protection and promotion of environment in Tanzania. Among of the other function is to prepare the annual reports and presented to the Minister on how the Environmental Management Act is implemented throughout the Tanzania and the challenges faces the implementations of the Act.

CHAPTER FOUR

RESEARCH FINDINGS AND PRESENTATION

4.1 Introduction

This chapter based on the research findings, analysis and interpretation as the research title states “water pollution in Tanzania: Mchuchuma Coal Mine”. The Purpose of this chapter is to prove the research hypothesis through the established research objectives which are-;

- i. To examine Environmental Management Law and other relevant laws and find out the nature and extent in which they can enhance or retard the protection of the water pollution for consumers.
- ii. To examine the Water Pollution Policies on the protection of water pollution for consumers.
- iii. To examine other water pollution problems and find out the nature and extent they can enhance or retard the

4.2 Data Collected from Different Respondents (Groups) in the Area of Study

Mchuchuma Coal Mine, Mbinga-Tanzania.

For the purpose of this study as to obtain the relevant and reliable information, the researcher managed to collect the information (data) through interviews, questionnaire and observation from different groups around Ruanda Village in Mbinga District (Mchuchuma Coal Mine). Out of the selected sampling of total 100 sample size only 73 had knowledge with the study and respond accordingly.

4.3. Does the Environmental Laws and other related laws retard or enhance the protection of water resources?

Types of Responses (answers)	Responses	Percentages (%)
No	68	93.15
Yes	5	6.85
I don't know	0	0
Total	73	100

4.3.1 The Constitution of the United Republic of Tanzania 1977

Responding to the question that, *does the Environmental Laws and other related laws retard or enhance the protection of water resources* 93.15% of the respondents provide the answers in affirmative that the Environmental Legislations include the Constitution of the United Republic of Tanzania of 1977 does not provide for the expressly provision of environmental rights as provided under section 4 of the Environmental Management Act No.20 Of 2004⁶¹ . Due to the silent of the Constitution made difficulties to enforce the environmental rights as constitution rights (human rights) despite of the different case laws to interpret article 14 of the Constitution of the United Republic as environmental Rights⁶². The respondents with the views that the Constitution of the United Republic of Tanzania should be amended and incorporate the Articles which expressly recognized the environmental right as human right so as to give the access of enforcing as human right

⁶¹ Honorable Karumbete , A Magistrate of Bomani Primary Court at Iringa.

⁶² *Festo Balegele v.Dar es Salaam City Council, Misc. Civil Case No.90 of 1991,High Court of Tanzania ,Dar es Salaam.*

case good example Article 42 of the Constitution of Republic of Kenya, section 24 of the Republic of South African Constitution and Chapter 15 of the Constitution of Uganda.

Through introduction of the provision in the Constitution which state the expressly the right to clean and safe environment will help to ensure the proper interpretation of the laws before the court of laws. The provision of Article 14 does not confer the meaning of environmental rights (DR.Tulia Akson and Dr.D. Nangela) stated that-;

“ Kila mtu anayo haki ya kuishi na kupata hifadhi ya maisha yake kutoka kwa jamii kwa mujibu wa sheria”⁶³

The environmental provision in the constitution is very important since establishes substantive rights of citizens and not affirmative rights and will able to increase the way of enforcement through the recognition in the mother law of the land. The constitutional provision can raise the relative status of environmental rights, which often viewed as a secondary rights and it's where the advocates shall have the capacity of suing the environmental cases as constitutional cases.

4.3.2 The Environmental Management Act 2004

The Environment Management Act, as the principal legislation does include the adequate provision to enable efficient enforcement and implementation of environmental laws that is both domestic and international laws. The legal officer from Mbinga District⁶⁴ argue that despite of having the Environmental Management Act 2004 the law is not enough to protect the environmental rights so failure of parliament to ratify the International

⁶³ ⁶³ Dr. T. Akson and Dr.D.Nangela, *Environmental Rights, Protection and Management In Tanzania :Justification for the Inclusion in the Would-Be New Constitution*,2012.9

⁶⁴ Mwalukosyi ,A Legal Officer ,Mbinga District Council July 2023.

Conventional such as Convention on Biological Diversity 1996, Convention for the Protection, Management and Development of Marine and Coastal Environmental of the Eastern African Region and Related Protocols 1996 and The Convention to Combat Desertification 1997.

The Environmental Management Act also does not provide for the compulsory requirement of having the Corporate Social Responsibility (CSR) which will ensure the responsibility of the investors or mining companies in protection of environment and this can be through (i) the environmental disclosure practice by the companies (ii) have an environmental policy and (iii) environmental impact and environmental performance⁶⁵. The other issue addressed is on the importance of the compliance with the environmental impacts assessment the public most of the time are not well informed and the measures taken are not effectively so as to reduce the problems arose from the mining activities, Mining activities resulted to the displacement of peoples, destruction of crops, foods, animals, water pollution and land for agriculture and animal keeping ⁶⁶

*Modesta Mahando Matiko & 27 Others v. North Mara Gold Mine Limited*⁶⁷ the applicants to the case developed that, Mining companies especially North Mara Gold Mine has put the life of applicants in danger which interpreted as the violation of Article 14 of the Constitution of the United Republic of Tanzania as the Mining Companies leads to the destructions of crops, foods, animals, land for agriculture and other means of surviving include water sources. The applicants in their submission addressed that “there is

⁶⁵ Supra .

⁶⁶ Data Collected through both interviews, questionnaires, and observation from the respondents between July 2023-February 2024 on Water Pollution in Tanzania : Mchuchuma Coal Mine

⁶⁷ (2023)TZHC ,Musoma-Sub-Registry Land Case No.4

problem in our environmental laws” since the similar issue against respondent was reported in the case of *Penina Mherere Wangwe and 31 Others v. North Mara Gold Mine* ⁶⁸in this case the applicants suggested that the activities conducted by the respondent to be stopped until there is assurance of the clean and safe environment to the applicants and the community around the area and compensation to the victim should be done during the environmental impacts assessment and not after the victims suffered injuries because always becoming homeless and no any means of surviving⁶⁹.

4.3.3 The Local Government District Authorities Act [Cap.287 R.E 2010]

The another issue observed in relation to the study ,the Mbinga District Council and Ruanda Village fails to exercise the powers provided under section 153 and 168 of the Local District Authorities Act [Cap.287 R.E 2019]. From the data collected and observed the problem to legislate by-laws by the authorities in relation to the problem of water pollution resulted from the Mining activities in Mchuchuma Coal Mine is contributed buy different factors include the issue of absence of law experts, corruption, low awareness on environmental rights and absence of the movement groups (NGOs) to call for environmental rights⁷⁰.

⁶⁸ Misc. Land Case No.43 of 2022

⁶⁹ LHRC, Mara Fact Finding Mission Report and Barrick North Mara Gold Mine, Human Rights Report 2010.46-49

⁷⁰ Data Collected through observation, interviews and questionnaire from respondents between July 2023- February 2024 on the study that of Water Pollution in Tanzania: Mchuchuma Coal Mine.

4.4 Does the Environmental Policies retard or enhance the protection for water resources for the consumers?

Types of Responses	Number of Respondents	Percentages %
No	65	89
Yes	0	0
I don't know	8	10.9
Total	73	100

The 89 % of the respondent argue that the Environmental Policy does not enhance or retard the protection of water resources and its consumers despite of being the foundation of the environmental protection. One among of the respondent argues that “the National Environmental Policy fails to link the Constitutional, human and environmental rights which made the difficulties for the enforcement of the environmental rights in Tanzania”. In the Environmental Law, jurisprudence in Tanzania the only case of *Joseph Mavika and Other v. Dar es Salaam City Commission, Festo Balegele and Others v. City Council of Dar es Salaam* was reported for the violation of environment in the meaning of Article 14 of the Constitution.

The policies are not well implemented in Tanzania apart from emphasizing the importance of ratifying the international conventions which deal with the environmental issues the Government does not implement since has fails to ratify some international treaties such as International Conventional such as Convention on Biological Diversity 1996, Convention for the Protection, Management and Development of Marine and Coastal Environmental of the Eastern African Region and Related Protocols 1996 and The

Convention to Combat Desertification 1997. Also the withdraw the membership from African Court of Justice show the unwillingness of the government to protect the human rights and environmental rights when violated by the state or investors⁷¹.

The Policy fails to set the periodic review for the implementation of the environmental laws in Tanzania, fails to provide the alternatives measures when the environmental impact assessment doesn't work, on how to ensure the environmental education and awareness to the public which mechanism to be applied and also the policy does not provide for the suitable way of balancing the communities and investors interest. The Environmental Policy is silent on the *locus Standi* of enforcing the environmental issue in Tanzania based on the cost and proper forum if it's human or constitutional rights why should not be direct to the High Court? But due to the failure of not be direct expressed in the Constitution of the United Republic of Tanzania become difficult to enforce⁷².

4.5 There is any other problem associated with water pollution from the mines?

Types of responses	Number of Respondents	Percentages (%)
Yes	73	100
No	0	0
I don't know	0	0
Total	0	0

The 100% of the respondents argue that from the mining activities which take place in Tanzania specifically in Mchuchuma Coal Mine by Tanzania China International Mineral

⁷¹ Data Collected both through observation ,interviews and questionnaire between July 2023 -2024 on the Water Pollution in Tanzania : Mchuchuma Coal Mine

⁷² H. I. Majamba ,*Environmental Right Jurisprudence in Tanzania :A Review of Judicial Precedents* ,University of Dar es Salaam ,2001

Development Company and Sichuan Hongda Group Ltd, does not only pollute water which leads to the different problems to the residents of Ruanda Village and Mbinga District in general the problems such as miscarriage to women, bloated stomachs, vomiting, babies born with problems, typhoid and diarrhea⁷³ where by the majority and stake holders call for the government support through providing the measures through effective legislative mechanism and adjudication process for the compensations.

The respondent from Ruanda Village (Mbinga-Ruvuama) interviewed on 15th July 2023 with the view that -;

“Sisi kama wanakijiji wa eneo hili tumekuwa tukiathirika na haya machimbo ya makaa ya mawe lakini kutokana na athari zilizopo ukiwemo uchafuzi wa maji ambapo yanapelekea watu wakiwemo watoto na kina mama kuumwa mara kwa mara ,lakini pia mazao mashamabani yana haribika kutokana na maji yenye kemikali yanayo toka mgodini, si hivyo tu hata wanyama wamekuwa wakifa kwa kukosa marisho, sisi tunafkiri hakuna sheria ya moja kwa moja inayo wabana hawa watu kwasababu sheria kama sio imara maana yake ni kama hakuna iyo sheria”

Since the research is limited within the Tanzania main land the same problem is reported in different area where the mining activities take place example the in Manyara through North Mara Gold Mine (Barrick) ,Geita through Geita Gold Mine(GGM) in the village such as Nyamarembo and Katoma hili and Bahi- Dodoma through uranium extraction⁷⁴ .

⁷³ Data Collected both through observation,interviews and questionnaires between July 2023- February 2024 on the Water Pollution in Tanzania : Mchuchuma Coal Mine

⁷⁴Legal and Human Right Center Reports of 2010 .

4.6 There is any by-laws and administrative mechanis ofcntrolling water pollution in Mbinga Municipal?

Types of response	Number of respondents	Percentage %
Yes	13	17.8
NO	20	23.3
I Don't Know	40	54.7
TOTAL	73	100

According to the data collected from the field shows that the problem of water pollution by Mchuchuma Coal Mine is absence of the by-laws from the authority (Municipal) and the problem is contributed due to the absence or lacks of the professional lawyers and institutions deal with the environment example absence of the Village Environmental Tribunal, Ward Environment Tribunal, and District Environmental Tribunal which will ensure the enforcement of the Environmental Law and policies for the purpose of reducing the water pollution in the environment.

4.7 Conclusion

Generally, from the data findings and analysis ,the researcher succeed to prove the hypothesis that due to the weakness of the laws such the Constitution of the United Republic, Environmental Management Act and other reasons such as the lack of the awareness on the environmental rights and duties, role of the court in protection of the environmental rights and the issues of public participation has contributed to the problem of water pollution in Tanzania as Mchuchuma Coal mine ,and through the pollution leads to the violation of the right to life and other fundamental rights such as the right to properties as animal dies and crops and plants become destructed and in sometime forced migrations which affect the right to education to children.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

This chapter addresses conclusion as well as the recommendations. It highlight some measures to be taken by the central and local government so as to eliminate the problem of water pollution in Tanzania in mining areas as for the purpose of this study Mchuchuma Coal Mine is a concern.

5.2 Conclusion

This study was undertaken to examine the environmental and other relevant laws in the protection water from pollution and its consumers, the policies of water pollution and its protection to water and consumers and other problems associated with water pollution in Tanzania as the case study of Mchuchuma Coal Mine Mbinga-Ruvuma.

From the findings and analysis of this study it is undisputed that the weakness of the governing laws such the Constitution of the United Republic of Tanzania ,lack of provision in Environmental Management Act,2004 imposes the compulsory requirement for Corporate Social Responsibility ,failure of the policy to focus on harmonization of the constitutional rights ,human rights and environmental right ,geographical differences ,inconsistent of regulation ,poor public participation and enforcement of the approaches more on penalties rather than incentives or compliance assistance program also the accountability of the local government authorities act as the contributing factors to the water pollution in Tanzania (Mchuchuma Coal Mine) and the problem's such diseases to consumer become common.

5.2 Recommendations

5.2.1 The Government

Since the study observed that, the problem of water pollution is violation of the human right as decided in the Mazibuko case of Republic of South Africa, the Government should amend the Constitution of the United Republic of Tanzania and incorporate the article which recognizes the environmental rights as constitutional rights rather than depends right to life which mostly of the time used to interpret the environmental pollution cases⁷⁵. Also through the Parliaments the Government has to ratify the international treaties so as to increase the legal protection of environment especially with current policies of investment through industries which proved to be threats to the environmental resources include water and its consumer so treaties such a Treaties such as Convention on Biological Diversity 1996,Convention for the Protection ,Management and Development of Marine and Coastal Environmental of the Eastern African Region and Related Protocols 1996,UN ,Convention to Combat Desertification 1997 and Bamako Convention on Ban of the Import into Africa and the Control of Trans boundary Movements of Hazardous Waste within Africa 1993 through the ratification of these treaties will increase the enforceability wherever there is a sort of environmental pollution in Tanzania.

The National Environmental Management Council (NEMC) should make regular inspections at least every month to ensure that the mines comply with the environmental

⁷⁵ Supra.

laws and take necessary steps or measures of ensuring the sustainability of the environment and human life.

The Minister of investment and environment should be cooperated to the extent which will ensure that the investors complied with the environmental laws without causing the risks or harm to the environmental especially water resources and also to take the precautions throughout the mining process.

The Courts and Tribunals should ensure that the environmental rights as being developed under section 4 of the Environmental Management Act, 2004 is protected through determination of the cases timely and awards the compensations and remedies in respect to the harm suffered by the peoples or victims as health problems like lungs cancer, coughs, still born babies, destruction of crops and also death of the animals and fishes which are essentials for the human life. So the Court and Environmental Tribunals should grants the remedies and compensations to the victims of the environmental problems timely and in consideration on the extent of the harms suffered.

The Local Government Authority has the duty to take measures on the problems of environmental pollution as through making by laws or by imposing the injunction measures to the investors or to open the suit before the court of law in behalf the inhabitants of the particular village, district or region because the local government has the duty of protecting the environment, resources and also people of the particular area.

Generally the governments should make the reviews on the environmental laws as include the Constitution of the United Republic of Tanzania, the Environmental Management Act and the Environmental Policies so as to see if are complies with the

investment policies and what actually happen into practices because the “health of human being is asset of his/her life” so should be protected by the governments through laws and its enforcements.

5.2.2 Investors

The investors such as the Mining Companies such as Geita Gold Mine (GGM), North Mara Gold Mine (Barrick Gold Mine), Bulyanhulu Gold Mine (BGM) and Mchuchuma Coal Mine should comply with the environmental laws as specially the principle of taking precautions and ensuring the public participations⁷⁶ . The Companies should also make sure that they strive to make the land and environment to its original conditions after extracting minerals the measures like afforestation ,water treatment and the compensation to the victims be made timely without the legal force but also the companies should ensure that they incorporate the principle of Corporate Social Responsibility into their Memorandum and Articles of Association for the purpose of protecting environment and human life who affected by the mining activities such as water ,land and air pollution.

5.2.3 Non-Governmental Organization (NGO's)

The Non-Governmental Organization (NGO's) such as the Foundation for Environmental Protection in Tanzania (FEPT) ,Environmental Engineering and Pollution Control Organization(EEPCO), Tanzania Uranium Awareness Mission (TUAM) and the Legal and Human Right Centre(LHRC) should continue to report for the environment human rights violations and also take a reasonable steps like lodging the case before the

⁷⁶ Supra

Court of law in behalf of the victims and sometime to make the comments and recommendation for the introduction of environmental rights as constitutional rights since touches the life of human being which is fundamental rights⁷⁷.

5.2.4 Citizens

The protection of environment it's a duty of every Tanzanian, therefore the citizens should fully participated in the process of environmental protection especially against water, air and land pollution. Pursuant to article 18 and 27 of the Constitution of the United Republic of Tanzania that "every citizen has the right to be informed and also the freedom of expression and also the duty to safe guard and protection of the natural resources" and the Environmental Management Act through section 6 and 178 provide for the right of public participation so in the manner of environmental the public should be adequately participated and their views are very important for the purpose of environmental protection ,so citizens are of high important stakeholders in environmental protection as the matters of water ,air and land pollution is concern as its important of citizen participation developed in the following projects the Songosongo Gas Pipe Line, and Rufiji River Delta Prawn Plantation Project⁷⁸ .

5.2.5 Lawyers

The lawyers have a great duty on environmental protection since can represents individuals, organizations, and governments in environmental cases, working to protect the environmental and hold polluters accountable. Lawyers have a duty of reshaping the

⁷⁷A. Thomas & Humphreys ,*Environmental Policies and NGO's Influence* ,Rutledge-London ,2001.1-22

⁷⁸ D.W.Ringia & S .J. Porter, Access to Environmental Information in Tanzania, April 1999.<https://www.tanzaniagateway.org> accessed on 10th April 2024.

environmental laws, regulations, policies and also ensuring that the environmental laws are enforced for the benefit of present and future generation revealed through the case of *Festo Balegele and 794 Others v. Dar es Salaam City Council*⁷⁹ it's the case involves the public interest litigations on behalf of the thousands of citizen would be affected by the environmental pollution. Lawyers works for the manner of ensuring that the government is complied with the rule of law in the meaning that they are supposed to put forward the public interest and not the interest of the leaders in power such to protect the investors even though they violate the environmental law is against the

⁷⁹ Supra

RESEARCH QUESTIONNAIRE

I am Phares Christian Mapunda, RU/LLB/2020/249, Studying Bachelor of Law (LL.B) at Ruaha Catholic University (RUCU) ,Iringa –Tanzania . I am researching on Water Pollution in Tanzania: A Case Study of Mchuchuma Coal Mine.

PURPOSE: For the purpose of my research will be gratefully and thankfully if you will share the information Water Pollution in Tanzania: A Case Study of Mchuchuma Coal Mine.

The subject matter of the research will be the environmental laws and other related laws, policies and the problems of water pollution in Tanzania;Mchuchuma Coal Mine

***Note:** the information that you will provide to be kept secretly confidential and Put Tick in the brackets and you are free to leave any question and to withdraw the consent of participation.*

Questions to Villagers, Village Chairperson, Stakeholders, Lawyers and Law Students

Name of Department.....

Name (option).....

1. Do the environmental laws and other related laws enhance or retard the protection of water resources and its consumers? Yes [] No [] I Don't Know []
2. Do the mines contribute to the problem of water pollution? Yes [] No [] I Don't Know []
3. Does the local and central government responsible for environmental protection? Yes [] No [] I Don't Know [] if yes state how and if no state why?

- i.
- ii.
- iii.
- iv.

4. There is citizens and stakeholders participation in environmental projects in your area? Yes [] No [] I Don't Know []

5. Did the mining activities leads to the water pollution in your area? Yes [] No [] I don't know [] if yes mention the problems associated with water pollution in your area

- i.
- ii.
- iii.
- iv.
- v.

6. Do the environmental laws, policies and other related laws need to be amended for the purpose of enhancing or retard thee protection of water resources and its consumers? Yes [] No [] I don't know [] if yes mention the laws to be amended

- i.
- ii.
- iii.

- iv.
7. There are any difficulties in enforcement of environmental rights in Tanzania? YES
 [] NO [] I don't know [] if yes mention
- i.
- ii.
- iii.
- iv.
8. Any observation or opinion
-
-
-
-
-
-

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