



RESEARCH ARTICLE

LEGAL REFLECTION ON SPURRING WILDLIFE INVESTMENTS WHILST EMBRACING WILD ANIMALS CONSERVATION IN TANZANIA

Mectrida Bonephace

Manuscript Info

Manuscript History

Received: 05 May 2023

Final Accepted: 09 June 2023

Published: July 2023

Key words:-

Law, Wild Animals' Conservation,
Wildlife Investments, Ecosystem
Disruption, the Role of Conservators

Abstract

Tanzania is diversifying wildlife investments. The Special Wildlife Investment Concession Area, (the SWICA) is set aside. The regulations to achieve the purpose are in place. The regulations enlighten on the procedures of carrying out investments within the SWICA. This paper reviews on this new investment scheme; whether it will spare the ecosystem, specifically, the safety and survival of wild animals. The invited investments activities connote disturbance on the lives of wild animals. This paper observes that, the cumulative promulgation of the regulations threatens the life of wild animals. The apprehension of ecosystem disturbances in the SWICA is too wide to connote probable security on the lives of wild animals. Moreover, the avenues for some actors to excise "their wisdom," aside of the regulations may invite unnecessary difficulties between the investors and the authority. Lastly, wild animals are likely to suffer a significant prejudice if investments in the SWICAs get through.

Copy Right, IJAR, 2023., All rights reserved.

Introduction:-

Conservation of wild animals is a phenomenon that entails a number of issues: protection of the creatures and their habitats in one hand and sustainable utilization of the same on another hand.¹ The manner this conservation is directed by the law to be achieved includes refraining from inserting fear and disturbance on the lives of wild animals. Disturbance and fear on the lives of wild animals refers to changes in conditions which may interfere the normal functioning of their biological systems. Ecologically, the said disturbance is an event or force of biological or non-biological nature that may bring changes in the spatial patterns in the habitats or mortality to wild animals.² Disturbances; either minor or major can be man-made, meaning that, they can be prompted by humans' frequent practices or may be naturally occurring. However, it is scientifically observed that, where the disturbance has naturally occurred, wild animals will undergo quick adaptations and recovery, they will survive in their habitats as natural occurring disturbances persist on a short period of time and may affect a small area of their habitats. However, it is scientifically discovered further that, if the disturbances occur multiple times in a particular habitat, it may create a recovery resistant community of wild animals and disruption of natural ecological processes. Once ecosystem is disrupted, it gives room for poor production, growth, survival, animal welfare, quality of wild animals and eventually wild animals' extinction.³

¹ Wildlife Conservation Act, Cap 283 [R.E. 2022] s.3.

² Andel, J., Disturbance in Grasslands: Causes, Effects and Processes, Dordrecht: Junk, 1987, pp. 316-19.

³ Ibid.

Conservators' today's confusion towards their roles on wildlife conservation is the mixture of both protection and sustainable utilization of wildlife and wildlife habitats.⁴ Whilst the law requires wildlife and their habitats to be protected, the same law allows sustainable utilization of the same.⁵ The conservators are unable to strike the balance between protection and sustainable utilization.⁶ The two roles may seem complementing each other but "sustainable utilization" is evidently taking huge precedent and is affecting the "protection."

Following the point on "sustainable utilization," on 21st May, 2021, the regulations in respect of new form of wildlife investment was published. By virtue of these regulations, the call is extended to prospective investors to come and invest in the wildlife sector. It is a concessional type of investment where Special Wildlife Investment Concession Areas, (the SWICAs) are set aside for the investments. The authority in charge of wildlife conservation assures to have developed either General Management Plan, (the GMP) of the SWICA or Resource Management Zone Plan, (the RMZP); depending on the circumstances,⁷ ready for allotting the SWICAs for investments. However, despite the calling for investments in the SWICA, the regulations are silent on what will be the contents of both the GMP and the RMZP for purposes of investments within the SWICAs.

This article focuses on the protection of wild animals as a matter of law and whether the investments being called for in the wild animals' environment have regards to continuous welfare of wild animals.

Understanding Wildlife versus Wild Animals

The law in Tanzania defines wildlife to include flora and fauna. This means that, according to the law, wildlife entails wild-indigenous animals and plants, their constituent habitats and ecosystem found on land and water.⁸ Considerately, the law, in defining "wildlife," has accommodated both the creatures and their natural habitats. Wildlife, in its broad sense therefore embeds both the creatures themselves and their environment. Wild animals therefore, are properly wildlife in a narrow approach. Some definitions explain further that, wild animals are all animals, found in their natural environment and which are not domesticated. As such, they cannot be controlled and are not the subjects of tame.⁹ However, along with the developments made in the wildlife conservation regime in Tanzania, this existing legal definition of wildlife is not free from challenges. The law itself has allowed the "taming" of wild animals in the meaning of establishment of wildlife captive facility.¹⁰ This constitutes the challenges as to whether the tamed animals according to the law properly exist in their natural habitats to maintain the legal definitions availed to wild animals? Nevertheless, this challenge is not the subject of this article. This article intends to shed the light on the clear line between wildlife and wild animals in order to enable the reader to keep track of the discussion herein under.

The Meaning of Wildlife Conservation

The definition of wildlife conservation has taken diversified approaches. This diversification on the meaning of "wildlife conservation" does not only surface among lay-persons but also conservators. Some conservators opine that conservation ought to be total protection and thus preservation of wildlife for sustainable abundance,¹¹ while some of them believe conservation to be sustainable utilization of wildlife. This sustainable management entails all the processes of keeping certain wild animals' population at a desirable level whilst balancing ecological, economic and social interests.¹² In an endeavor of balancing the concerns, the law attempts to embrace both views in respect to conservation. The law declares conservation to include: protection, management and sustainable utilization of wildlife.¹³ The law further declares that, conservation would also mean protection, management and sustainable

⁴Minteer, B., "Ecological Ethics: Building a New Tool kit for Ecologists and Biodiversity Managers," 19(2) Conservation Biology, 2015, pp. 1803 – 12.

⁵Wildlife Conservation Act, Cap 283 [R.E. 2022] s.4.

⁶Minter, 2015, p. 1824.

⁷Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r. 3.

⁸ Wildlife Conservation Act, Cap 283, [R.E 2022] s.2.

⁹Palmer, C. "Animal Ethics in Context", New York, NY: Columbia University Press, 2010.

¹⁰The Wildlife Conservation (Management of Captive Facilities) Regulations, 2020 (GN.83 of 2020) r. 4.

¹¹ Norton, B. "Caring for nature: A broader look at animal stewardship in Ethics on the Ark: Zoos, Animal Welfare and Wildlife Conservation", Washington, DC: Smithsonian Institution Press, 1995, pp. 102 – 22.

¹² Ibid.

¹³ Wildlife Conservation Act, Cap 283 [R.E. 2022] s.3.

utilization of wildlife habitats.¹⁴ Analytically, if both the creatures and their habitats are “sustainably consumed,” the protection is uncertain. It is against this legal dilemma the review paper considers that; the meaning of “conservation” is not yet clear in Tanzania. This may be the reasons today’s conservation is tainted with both legality and illegality; for which one of them is likely to take primacy.

Importance of Wildlife Conservation and Laws

The importance of wildlife conservation cannot be under estimated. Firstly, wildlife is unable to speak for themselves. Unlike humans, wildlife can never raise voices when humans are being unjust and when human acts and / omission put them in jeopardy.¹⁵ Nonetheless; wild animals and plants do not live for their own sake. They underscore the importance of complex ecological interactions as they provide food, shelter and water in support of ecology.¹⁶ The ultimate goal for wildlife conservation is therefore to ensure future generations have the same access and invaluable wildlife resources as current generation. More importantly, it is settled views that conservation of wildlife also ensures the survival of humans in many aspects.¹⁷ In this respect, compelling humans towards protecting wildlife should not on be perceived as legal requirement but sensibly ethical requirement towards nature. Besides, it is scientifically determined that, in order to restore the world and its habitats, there is an innate need for adequate and efficient environmental laws to fetter down harmful practice of human activities against ecosystem.¹⁸ Therefore, for the future generations to be able to enjoy the “mother nature” whilst recognizing the unshaken importance of wildlife, there has to be in place adequate and sufficient laws in respect of protection of wildlife.

The Meaning of Investment

Investment means the act of putting money, effort and time into a venture with a view of making profit and / get an advantage.¹⁹ It entails outlaying money for the purposes of earning more income and associated profits.²⁰ Observing into the nature and meaning of the investments, the underlying influence by the investors are expectations for “profits.” As it is properly argued, investors would look into chances for profits accumulation irrespective of the hardships on the other party. It is worth attention that, it is not the investors’ duty to alert the rivals on the possibility of “money leak” or other avenue triggering loss as long as the investor is not affected.²¹

Tanzania’s Pledge on Spurring Wildlife Investment

In an endeavor to diversify wildlife investment, Tanzania has established a new venture approach in the wildlife sector. The said new investment approach in the wildlife sector has triggered setting aside Special Wildlife Investment Concession Areas, (the SWICA). The SWICA means an area within the game reserve and game-controlled area, set aside for purposes of carrying out allowable special tourism activities.²² The SWICA is open for investments by both the citizens and non-citizens as long as the minimum investment capital is not less than US dollars ten million and fifty million dollars respectively.²³ The regulations to achieve the diversification purposes are effective since 2021. The regulations are made under the parent Act, purportedly to enable effective conservation of wildlife.²⁴ The regulations require the prospective investors to be able to provide a variety of tourism services, be innovative in tourism investments whilst maintaining the quality of the protected area.²⁵ It is also guaranteed that, those investors will be granted concession contract tenure of up to thirty years.²⁶ However, despite the notable

¹⁴ Ibid.

¹⁵ Rolston, H. “Environmental Ethics: Duties to and Values in the Natural World”, Philadelphia, PA: Temple University Press, 1988, 99. 3 – 9.

¹⁶ Norton, 1995, p.28.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Bonephace, M., “Why Should Tanzania Engulf its Natural Wealth? A History worth Attention and Lessons Learnt from Economic Hurdles”, 8(1) Journal of Policy and Leadership 2019, pp. 67 – 86.

²⁰ Ibid.

²¹ Ibid.

²² Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.3.

²³ Id, r. 9.

²⁴ Wildlife Conservation Act, Cap 283 [R.E. 2022] s.121(a& f)

²⁵ Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.5.

²⁶ Id s. 33.

sufficient investment tenure, the user rights under the said tenure are not transferrable; unless the transfer is being consented by the authority.²⁷

THE DILEMMA ON INVESTMENTS IN THE SWICA

Apparently, the SWICA regulations are enacted to furthering the implementation of the parent Act,²⁸ which are, among others, to achieve conservation, management and utilization of wildlife; the cumulative of which being to enable better carrying out of the provisions of the parent Act. Further, an observation on the primary purposes of the parent Act reveals that, wildlife and their habitats are to be protected.²⁹ However, when it comes to investing in the SWICA, there are absolute factual dilemma issues on whether such investments would enhance the aforementioned primary role behind the enactment of the parent Act. The analytical review on the totality of investment activities called upon in the SWICA discovers that, all of the allowable investment ventures within the SWICA³⁰ are likely to cause various disturbances and / harassments on the lives of wild animals. As it is properly observed further that, wild animals are likely to suffer harassment irrespective of environmental precautions that would be carried out to implement the investment operations. The discussion hereunder explains the incidents in a wide spectrum.

Available Investment Opportunities and / Activities

The regulations declare to designate the SWICA within the Game Reserves, (the GR) and Game Controlled Areas, (the GCA).³¹ Moreover, the available investment opportunities likely to be available in the SWICA, within the GR and the GCA, must be those of which would enable the provision of consumptive and non-consumptive tourism activities, innovative and diversification of tourism by developing appropriate tourism infrastructure.³² However, the basic protection accorded in the protection of wild animals and their habitats within the GR and the GCA includes a prohibition of any activities within the GR and the GCA which are likely to cause any scare and terror on both the wild animals and their habitats.³³ Analytically, the regulations do not explain how the investments in the SWICA will be carried out whilst taking care of security affairs of the wild animals and their habitats. This prompts the observations that, although the authority is up to maximizing the exploitation of revenues from wildlife resources, sufficient accord to wild animals' security is not embraced in the process.

Permissible Investment Ventures and Associated Disturbances on Wild Animals

The regulations provide for wide investment choices.³⁴ And for the investor to be considered for investment in the SWICA, he must be able to provide for diversified tourism investments, develop tourism infrastructure and be able to offer multiple forms of wildlife utilization activities.³⁵ Combinations of the permissible investment ventures within the SWICA have negative impacts on the lives of wild animals. These negative impacts include disruption and pollution of wild animals' habitats, destruction of wild animals' breeding sites and abilities and loss of wild animals' forage. Moreover, the movements within the SWICA are likely to cause wild animals' roadkill. Therefore, the totality of everything likely to enable landing and operating investments within the SWICA cause great "disturbance" in the lives of wild animals.

Although the term "disturbance" to wild animals is neither defined by the parent Act nor the regulations, some conservationists have given it the meaning in respect of wild animals' conservation. Disturbances are referred to as any interference with the naturally occurring conditions. This interference is also estimated to bring changes in the spatial patterns in the wild animals' habitats and eventually leading to unhealthy ecosystem. Unhealthy ecosystem squarely results into poor reproduction by wild animals, poor growth and survival of wild animals, uncertain wild animals' welfare and safety of wild animals.³⁶ The conservationists opine further that, the disturbances to wild

²⁷Id s. 40.

²⁸Wildlife Conservation Act, Cap 283 [R.E. 2022] s.121(a & f).

²⁹Id, s.3.

³⁰Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.6.

³¹Id. s.4.

³²Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.5.

³³Wildlife Conservation Act, Cap 283 [R.E. 2022] ss. (15 – 21).

³⁴Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.6.

³⁵Ibid.

³⁶Andel, 1987, pp. 322 – 8.

animals may be man-made or naturally occurring.³⁷ The motivating part of it is that, wild animals always recover from the disturbance but the recovery depends on some factors as will be discussed in the next paragraph.

The Duration of the Concession Contracts

Having observed the level of disturbances created by investments within the SWICA, the duration or the investment tenure is not free from quest. Investment tenure means the period of time the investment is allowed to exist in the SWICA. As it is established by the conservationists, time may enable the wild animals to recover from the disturbance. However, the recovery depends on various factors. Some of the said recovery factors are the intensity of the disturbance, frequency of the disturbance and the size of the disturbed habitats.³⁸ On the intensity of the disturbance, it is said that, the more intense the activities are inflicted in the habitats, the lesser recovery of wild animals in their habitats. About the frequency of the disturbance, it is said that, if the disturbances occur multiple times in a particular habitat, it may result into a recovery resistant by wild animals on their habitats. And about the size of the disturbed area, it is said that, the smaller the disturbed area, the easier it is for wild animals to inhabit the areas and therefore shorter recovery period.³⁹ Considering the nature of the investments called upon by the authority; and the tenure for each prospective investor in the SWICA, which is not less than thirty years, all of the factors enabling the recovery of the disturbance on the wild animals and their habitats are not feasible. It has to be noted also that, the improbable recovery of the wild animals and their habitats may result into habitat loss and eventually total extinction of wild animals.⁴⁰ In the proper future proximity on the persistence of human-wildlife conflicts, it may be speculated endlessly because of competition of resources between the wild animals and human beings which is pressed right on “having no options” by wild animals.

OBLIGATION OF THE AUTHORITY VIZ A VIZ THE CONSERVATION ROLE

The regulations mention the covenants by the authority to the prospective investors in the enabling the implementation of investments in the SWICA.⁴¹ These covenants are discussed herein under this section on whether, in the cause of their implementation, they are likely to pave the way toward embracing the primary conservation commitments established by the parent Act.

Providing Wide Investment Choices

The authority has guaranteed to set aside the SWICA which enables the investor to provide wide options to clients with regard to consumptive and non-consumptive tourism activities.⁴² It is worth to remember: non-consumptive tourism activities, in one hand, include the use of scenery, cultural and natural resources, which does not involve taking any spacemen of any wild from the scene.⁴³ Consumptive tourism activities, in the other hand, include taking, capturing and hunting of wild animals.⁴⁴ A combination of all the activities expected to be carried out within the SWICA explains the extent of exploitation on the “natives” of the areas, which are the wild animals. Much as it is well established by the regulations that the tenure of the investment is not less than thirty years, it not established on how the security of wild animals within the SWICA will be ensured throughout the entire tenure. Thirty years of wild animals’ continuous disturbances signals little about the desire to carry out their “sustainable” conservation. Therefore, whereas the investments can bring economic revolution in the country through tourism, the investors should not be given any benefit of doubt that they would undertake conservation roles. As it is advised, the investors’ major role is to maximize their profits in every available opportunity.⁴⁵ Therefore, with or without any other agreement between the authorities and the investors in the SWICA, the role of securing the lives of wild animals should not be delegated to the investors.

Enabling Diversified Tourism Investments

Apart from the fact that the authority has guaranteed to set aside the SWICA which enables the investor to provide wide options to clients with regard to consumptive and non-consumptive tourism activities, the authority is also to

³⁷Ibid.

³⁸Ibid.

³⁹Ibid.

⁴⁰Ibid.

⁴¹Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.5.

⁴²Ibid r. 5(a).

⁴³Wildlife Conservation (Non-Consumptive Wildlife Utilization) Regulations, 2016 (GN.181 of 2016), r.3.

⁴⁴Wildlife Conservation Act, Cap 283 [R.E. 2022] s.3.

⁴⁵Bonephace, 2019, pp.68 – 70.

enable the investors practice innovative tourism investment and diversification of tourism investments.⁴⁶ Although the regulations have neither defined nor set the extent of innovative tourism investments and diversification, United Nations World Trade Organization, (UNWTO) have given it the meaning. According to UNWTO, innovative tourism means the introduction of a new and improved component in the tourism industry which intends to bring tangible and intangible benefits to tourism stakeholders, to improve the value of the tourism experience and the core competencies of the tourism sector and thus enhance tourism competitiveness and sustainability.⁴⁷ In order to achieve the UNWTO is suggesting, one has to consider that the investor has brought in new skills, new business models, and new technologies, to mention but a few.⁴⁸ It is unfortunate that the regulations have not captured the extent the investors may fonder to diversify tourism and the impacts thereon. The consequence is estimated to be borne by the wild animals because it is their habitats which are the subject of all the planned tourism investments. This fact needs urgent attention.

Enabling the Development of Tourism Infrastructure

Moreover, the authority is also expected to enable the investor develop appropriate tourism infrastructure.⁴⁹ However, the clause “appropriate infrastructure” is not clarified by the regulations. Therefore, the standard and purpose of “appropriateness” of the required infrastructure is not explained. In the absence of statutory definition of the said clause, infrastructure is defined as a physical system providing transportation, buildings, drainage systems and associated facilities that facilitate the basic needs of human beings.⁵⁰ The totality of the meaning of “infrastructure” suggests what is to be expected in the development of the called upon tourism infrastructure within the SWICA. It is properly observed that, none of the “to be” fixed infrastructure will spare wild animals from disturbances.

CONFLICTS RED LIGHTS ON THE SWICA

A conflict means a disagreement in opinion or attitude which may raise the prolonged incompatibility between the opposing blocks of ideas and/opinions. Several researches have indicated that, well-designed contractual processes and documentations are likely to prevent some of the imaginable expectations and distresses that may unnecessarily trigger conflicts.⁵¹ Conflicts prevention therefore may be planned from the entire proceeding of preparing the concession agreement. Therefore, conflict prevention is not only the procedures for preventing arbitration and / litigation, but also the entire spectrum of the likelihood of conflicts occurrences, escalation and management. This is likely especially when the nature of the intended venture is obvious and thus the beginning of which ought to start by the identification and elimination of the root causes of conflicts.⁵² Whilst acknowledging that the intended ventures within the SWICA are well planned, the review herein under examines the extent to which measures against conflicts emergences are considered and given weight.

Technology Call within the SWICA

Technology means the application of scientific knowledge for practical purposes aimed at achieving certain goals. It may also mean machinery and equipment applied in a certain field with an intention of accomplishing a certain activity.⁵³ That being the connotation of technology, it can be observed that, the regulations invite the prospective investors to apply the desired technology within the SWICA.⁵⁴ The only available challenge under this prospect is that, whilst the investments urge for innovation, it is not agreed on the limit of technology needed within the

⁴⁶Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.5.

⁴⁷ UNWTO, Tourism Competitiveness Annual Report 2013, UNWTO, 2016, pp.43 – 9.

⁴⁸Booyens, I., “Innovation in tourism: A new focus of research and policy development in South Africa”, 42(2)Africa Institute of South Africa, 2012, pp. 112-126.

⁴⁹Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.5(d).

⁵⁰Zehrer ,A., “Innovation in tourism firms : Competence- based innovation in hospitality and tourism” New York: Routledge, 2016, pp. 81 – 94.

⁵¹Lunenburg, F., “Self-efficacy in the workplace: Implications for motivation and performance”, 14(1) International Journal of Management, Business, and Administration, 2017, pp. 1– 6.

⁵²Ibid.

⁵³Catherine, S., and Angus, S. in “Concise English Oxford Dictionary” (eds), Oxford University Press, 2011, p. 1520.

⁵⁴Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.5(b).

SWICA. What type and/ level of technology to be used is at the disposal of the investors. The questions arise: what happens if the investors decide to invest expensive technology which may not have yielded investments' good return by the expiry of investment tenure? OR what happens if the investors decide to apply low technology which is less likely to yield loss on the part of the investors by the end of their investment tenure but does not deliver the expected outcome on the part of the authority? The answers to both questions are the conflict openers. In the first question, the investors will not be happy to calculate loss at the end of their tenure and in the second question the authority will not sit back and witness their goals failing. Therefore, failure to figure out and strike the balance between the two intended achievements by both investors and the authority is likely to compromise the investor-authority relationships.

Technology Transfer and Intellectual Property Rights

The meaning of technology is already disclosed above. As it is pointed out above, the choice of the type of technology to be invested within the SWICA lies on the investors. The meaning of technology suffices to predict the likelihood of accompanied "knowledge" in the application of a certain technology which may not be obvious to someone else but investor himself. The art of obscuring knowledge is a matter of right; legally recognizable and protected as Intellectual Property Right, (IPR.) In this era of technological advancement, it is imprudent to ignore the fact that IPR accompanies some of the technological workouts. It is to be remembered that the regulations do not require the investors to disclose the accompanying IPR, (if any), during surrendering the immovable assets to the authority at the end of expiry of their tenure. This pertinent omission may render the acquired assets by the authority useless or trigger conflicts between the investors and the authority. There should be a certain agreement in that regards especially where need arises

Infrastructure Design Criteria

Infrastructure is referred to as the physical and organizational structures such as roads, buildings and power supplies, to mention but a few; which may be needed for the operations of the enterprise.⁵⁵ The regulations require the prospective investors to "use their capital" to develop "appropriate" infrastructure for enhancing conservation; whilst enhancing socio-economic benefits and generating substantial revenue.⁵⁶ In the absence of ancillary agreements and in the absence of the standard and agreed type of the preferred infrastructure, it is a misperception on the exactly roles of the prospective investors: conservation or enhancing conservation? It is a misnomer to rest assured that the investor will convey their capital for both targets: revenue generation and onsetting the infrastructure; without forgetting the fact that their investment tenure is also limited in terms of time.

Hand Back Assets Procedures

Asset means a total of all valuable items, regarded as property, owned by an individual or a company, which are regarded as available and capable of meeting debts, commitments or legacies.⁵⁷ The regulations expressly require the prospective investors to hand back all the immovable assets after the expiry of their tenure.⁵⁸ This is without due regard to the types and value of the said assets. In the absence of other agreements, the investor is likely to invest with substandard assets which will not negatively cast on his invested capital. Apparently, it may also not be the intention of the authority to acquire the substandard assets at the expiry of the investors' tenure. Therefore, failure to agree on the hand back procedures may result into disappointments between the authority and the parties at the end of the investment tenure.

Information Disclosure and Procedures

Information disclosure refers to formal and / obvious means for making certain facts or knowledge accessible to interested and affected parties. In the interest of this article, information disclosure rests on the role of actors in the SWICA investment issues. The regulations have entrusted the Conservation Commissioner, (the CC) to act on behalf of the authority in procuring the investors within the SWICA.⁵⁹ The regulations require the CC to submit the report to the board for either approval or denial.⁶⁰ In the circumstance the CC's report is rejected by the board, it will

⁵⁵Catherine, S., and Angus, S., 2011, p. 766.

⁵⁶Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r.5.

⁵⁷Catherine, S., and Angus, S., 2011, p. 75.

⁵⁸Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 (GN. 397 of 2021), r. 33(2).

⁵⁹Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021, r. 7 – 15.

⁶⁰Ibid r. 15(4).

be re-assigned to the CC with instructions to work further on certain identified issues; but in the case the report is approved, the CC will be commended and allowed to finalize the “negotiation” and other investment procedures for the investors’ operations to land.⁶¹ However, the regulations are silent on how the CC should report the extended negotiations with the investors. Much as the lacunae in the regulations are evidently intended to be filled by way of negotiations, the forum to check and balance the decisions reached out of negotiation is not provided in the regulations. Much as it is necessary to have confidence in actors in their exercising their powers, the obvious lack of checks and balancing on their actions may initiate moral challenges.

Compensation Forecasts

Compensation refers to a situation where something such as money or any other considerable value is awarded in recognition for loss, injury or suffering especially for counteracting undesirable situation.⁶² Under the concession contract, compensation may be prompted by different facets. It may be impelled by either the authority or the investors. For example, in an event the investors have not been able to surrender the immovable assets at the end of investment tenure as per the regulations⁶³ or there has occasioned delay in doing so, the regulations are silent on the expectations by both parties. This is a serious omission in a concession contract. Again, the authority has assumed powers to review the concession contract and renegotiate any unconscionable terms that may seem prejudicial to the interests of the people of Tanzania.⁶⁴ It is also not expressly provided on the expectations where the reviews occasion loss or any other prejudice on the part of the investors. In a harmonious investment climate, failure to road-map such expectations impair investment relationships.

Boilerplates Disregard viz-A-Viz change of Circumstances

Boilerplates, in one hand means the use express and standardized terms in the concession which one party has put forth and the other party is expected to concede.⁶⁵ Boilerplates are explained further to mean fixed and / standardized contractual language that the proposing party considers as relatively nonnegotiable. A change of circumstances in another hand may be defined as the significant turnaround in the circumstances and conditions upon which the parties based their beliefs and decisions during entering into concessional relationship. Change in circumstances may be unforeseeable at the time of execution of the agreement or even their consequences may be uncertain during the conclusion of the concession contract. It is a prudent commercial practice to figure out the turnaround in the investment circle. For example, it is to be predetermined, where change of circumstances is due to either party’s fault, given the ceiling of investment tenure, the expectations need to be obvious. Unfortunately, the regulations are silent on that aspect. It is imprudent to allow such an obvious oversight be covered by way of negotiation where need arises.

Recommendations:-

Although the regulations are promising that the SWICA will have in place the GMP, there are avenues that the GMP will not be available and instead the RMZP will serve an interim similar purpose. The reasons for not having the GMP are not legally anticipated. The difference between the GMP and the RMZP is also not legally defined. The desperation of having RMZP instead of GMP is thus skeptical on whether it can serve the pre-determined purposes in the SWICA in favour of ecosystem and wild animals’ safety. It is necessary to direct sufficient time in preparation of the GMP in the SWICA to minimize the risks on the lives of wild animals and nothing should signify the urgency for replacing the GMP with RMZP.

The regulations have not offered to share the GMP to the prospective and potential concessionaires. Both the GMP and the said RMZP which would serve in the absence of the GMP are not known to the SWICA applicants at the time of applications. Sharing the GMP would enable SWICA applicants to lodge their applications whilst informed and thus serve as a fair guide for them to be awarded a fair verdict during evaluations of their applications. These omissions in the law may connote bias on the unsuccessful applicants which may trigger distrust towards investing in the wildlife sector. Again, the GMP should be shared as the basis for the applicants to vividly show their plans on caring for wild animals, a plan which would seem “added advantage” over their ambitions to accumulate wealth. Moreover, without prior sharing of the GMP, the legal decision to award the concession contract to the person who is

⁶¹Ibid. r. 16.

⁶²Catherine, S., and Angus, S., 2011, p. 294.

⁶³Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, r. 33(2)

⁶⁴Ibid r. 34(2).

⁶⁵Catherine, S., and Angus, S., 2011, p. 155.

proven to have capability to support wildlife conservation will be unjustly reached and hence discriminatory. The needful in respect to this matter should be justly be done so that deserving efforts be directed on planning on the survival of wild animals.

One of the required contents of the prospective bidders' business plans is the presence of the Environmental Impact Analysis, (EIA) But the regulations is not expressly indicating the point of time at which the applicant would have access in the SWICA to carry out the EIA. It is also not feasible to assume that the applicants will rely on the details advertised by Conservation Commissioner to arrive at accurate and effective EIA required to do justice on the wild animals and their habitats within the SWICA. The known fundamental stages for the EIA, which include *inter alia*: screening, scoping, baseline study, impact assessment, mitigation studies and production of Environmental Impact Statement, (EIS) would require access to the project area. However, it is not expressly provided in the regulations that the prospective bidders would have access to the area before signing the concession contract. If this is the what the regulations intend, there are so many risks to be assumed in the SWICA, and above all, the lives of the wild animals and their habitats will be at extreme risk of both, disturbances and deaths. Therefore, attention should be accorded to this matter if at all conservation is meant to be sustainable within the SWICA.

The SWICA regulations has throughout negated to exhaust the needed information for proper actions to be weighed out by both the actors and the prospective bidders, allowing the Conservation Commissioner to require "additional information," where need be, in order to implement the provisions of the SWICA. This means that, the said additional information is not contemplated by the actors at all the stages of making the SWICA regulations and throughout all the processes of advertising the SWICA as per the regulations. This is a dangerous loop-hole in the management of natural resources. It is a loop which is likely to create chances to carry out the "wishes of the actors" as opposed to the interest of the State. It is also the avenue to inviting corrupt practices by unfaithful actor. It is thus argued that, there should be urgent reforms for proper and confident guidance to enable promising investment in the SWICA.

The SWICA regulations allow the investments' tenure for up to thirty years. Moreover, the regulations require the investors to surrender to the Authority all the immovable asserts in the SWICA upon the expiration of the allowed tenure. However, the regulations have not provided for what may be the terms and/considerations for the investor to surrender his invested immovable asserts. In the absence of such a mention, there is likeliol of occuring unnecessary investment disputes. Again, in the absence of such a clear agreement on the surrender of the immovable asserts, the Authority may be provoking the investor into various unfaithful acts aimed at alternative recovering some value at the end of the tenure. The danger stands where the investor may opt to erect the nature of investment immovable structures which are likely to depreciate with time, by the end of the expiry of tenure, the immovable asserts counting down to less or no value at all, OR exploit the available resources within the SWICA in order to recover the "to be surrendered" value. This aspect needs a great attention.

Moreover, the regulations vest powers with the Authority to re-negotiate the terms of the concession contract where the terms appear prejudicial to the interests of the citizens. However, the regulations are silent on whether this re-negotiating may prompt the changes in the tenure of the concession contract and ancillary investment matters. The regulations have properly foreseen the fact that some of the terms may appear unconscionable in the process of implementation. However, the regulations have not contemplated the fact that, at any point of time, re-negotiation may change the investors' plans and appear prejudicial to the investors as well. It is the views of this paper that, the Authority may need to reconsider this and direct itself to defining well the requirements and the likely constraints for the purposes of allowing smooth implementation of the investors' ventures in the SWICA.

Conclusions:-

There are so many important matters for which theregulationsare still silent, meaning that, the law has not expressly settled important issues about the SWICA. This omission in the law may be deliberate as it is suggested that the lacuna will be covered through "negotiations." It is further noted that the said negotiations are suggested to be carried out between the Authority and the concessionaire. Following the legal principle *expressio uniusestexpressioalterius* [the expression of one thing is the exclusion of the other], such a misnomer in the law invites loop-holes and paves the way for unethical practices at the scale of "acting in good faith" by the actors. The law should articulate every what it takes to carry out the investments in the SWICA, as doing so enables mapping out the implementation expectations by the actors. If the actors are not properly guided, each actor will supply his

own style of “doing things” and in this manner ending corrupt practices in wildlife resources management in Tanzania will be improbable.

Considering the provisions of the “unsolicited proposals”, it may be observed that the investments in the SWICA are determined to reap on only social and pecuniary benefits. According to the regulations, the award of the concession contract would consider the amount of capital invested, the ability of the project to deliver opportunities for a good number of employments, ability of the project to pay taxes and ability of the project to diversify tourism innovations, this is to mention but a few. The conservation role, which is the primary role under the Wildlife Conservation Act is too remote to uncertain under these investment priorities. Based on the nature of investments in the world, which is to accumulate wealth at the pace of all possible means, and where the investments in the SWICA is not objectively exceptional, it is absurd, in the absence of other incentives to the investors, to speculate that the investors would direct their efforts in the conservation roles.

The investment tenure in the SWICA is too long to assume the stability of the ecosystem. The legally allowable investments within the SWICA as explained by the regulations may include but not limited to: construction of different structures within the investment areas, supplying of power and energy within the areas, construction of roads and trails within the area and land scaping and gardening to mention but a few. All these activities constitute, not only disturbances to wild animals but also resource conflicts between the wild animals, human beings and investment needs. For example, the investment operations will need water resources within the SWICA whilst wild animals would need the same. The perseverance of this resource contest for thirty years would actually cause the weak contestant, which is obviously wild animals, to be extinguished. Therefore, the gist of wild animals’ conservation is lightly embraced in the arrangement to invest in the SWICA.

Again, all of the legally permissible investment projects in the SWICA cause certain level of disturbances to wild animals’ lives. As observed by different conservationists, wild animals’ reactions towards “disturbances” include confusion by wild animals and hence the effect on their distribution and patterns. This alone counts for vulnerable condition on the wild animals’ lives. Moreover, the continued disturbance, (estimated in the thirty years of investments in the SWICA) may result in natural extinction of wild animals.

Moreover, if there is persistent disturbance on the lives of wild animals in their natural habitats, it may trigger their search for comfort. As such, wild animals will start struggling for breeding sites, water resources and space. It is in this struggle, the increased movements of wild animals in the humans’ homesteads and associated impacts are witnessed. It is by these investments that human-wildlife conflicts owe origin and thus investments’ own creation. Therefore, what is referred to as “wild animals’ invasion” on the lives of humans is in actual sense, running away from the risks by the wild animals in the search for their comfort and opportunity to survive. This situation signals the improbable end of human-wildlife conflicts.

Lastly, the Wildlife Conservation (Special Wildlife Investment Concession Areas) Regulations, 2021 were made under s.121 (a) and (f) of the parent Act, which is the Wildlife Conservation Act. To that end, the regulations are intended to provide for better provisions pertaining to conservation, management and utilization of wildlife. However, the cumulative promulgation of the regulations does not seem to fulfil the desire which the parent Act communicates. The apprehension of ecosystem disturbances in the intended investments within the SWICA is too wide to connote probable security on the lives of wild animals.

References:-

1. Anuradha, J.M.P.N., Fujimura, M., Inaoka, T., & Sakai, N. 2019. Role of Social and Human Capital in Household Resilience: Empirical Evidence from an Agricultural Village Community with Exposure to Significant Environmental Stresses in Sri Lanka. *Global Social Welfare*, 1-12.
2. Bowen-Jones, E. 2012. Tackling Human-wildlife Conflict: A prerequisite for linking conservation and poverty alleviation. *Poverty and Conservation Learning Group Discussion Paper*, 6(06), 26.
3. Bruskotter, J.T., Singh, A., Fulton, D.C., & Slagle, K. 2015. Assessing tolerance for wildlife: clarifying relations between concepts and measures. *Human Dimensions of Wildlife*, 20(3), 255-270.
4. Chang’a, A., Souza de, N., Muya, J., Keyyu, J., Mwakatobe, A., Malugu, L., & Hahn, N. 2016. Scaling- up the use of chili fences for reducing human-elephant conflict across landscapes in Tanzania. *Tropical Conservation Science*, 9(2), 921-930.

5. Chomba, C., Senzota, R., Chabwela, H., Mwitwa, J., & Nyirenda, V. 2012. Patterns of human-wildlife conflicts in Zambia, causes, consequences and management responses. *Journal of Ecology and the Natural Environment*, 4(12), 303-313.
6. MNRT 2020. National Human-Wildlife Conflict Management Strategy 2020-2024. Ministry of Natural Resources and Tourism, United Republic of Tanzania.
7. MNRT 2020. National Human-Wildlife Conflict Management Strategy 2020-2024. Ministry of Natural Resources and Tourism, United Republic of Tanzania.
8. Nyhus, P.J. 2016. Human-wildlife conflict and coexistence. *Annual Review of Environment and Resources*, 41, 143-171.
URT. 1977. Constitution of the United Republic of Tanzania. United Republic of Tanzania (URT) Government Press Dar es Salaam.
URT. 2011. Wildlife Conservation (Dangerous Animals Damage Consolation) Regulations. GN.No. 146 of 2011. Ministry of Natural Resources and Tourism. United Republic of Tanzania (URT) Government Press Dar es Salaam.
9. URT. 2012. Wildlife Conservation (Valuation of Trophies) Regulations. GN.No. 207 of 2012. Ministry of Natural Resources and Tourism. United Republic of Tanzania (URT) Government Press Dar es Salaam.
10. URT. 2019a. Economic and Organized Crimes Control Act. CAP. 200, RE..2019. Ministry of Legal Affairs. United Republic of Tanzania (URT) Government Press Dar es Salaam.
11. URT. 2019b. Mining Act. CAP 123 RE of 2019. Ministry of Minerals. United Republic of Tanzania (URT) Government Press Dar es Salaam.
12. URT. 2019c. National Parks Act. CAP 282. RE. of 2019. Ministry of Natural Resources and Tourism. United Republic of Tanzania (URT) Government Press Dar es Salaam.
13. URT. 2019d. Natural Wealth and Resources (Permanent Sovereignty) Act. CAP 449. RE.' United Republic of Tanzania (URT) Government Press Dar es Salaam.
14. URT. 2020. Wildlife Conservation (Payment of Rewards) Regulations. GN. No 629 of 2020 Ministry of Natural Resources and Tourism. United Republic of Tanzania (URT) Government Press Dar es Salaam.
15. URT. 2022a. Forest Act. CAP 323. R.E of 2022. Ministry of Natural Resources and Tourism. United Republic of Tanzania (URT) Government Press Dar es Salaam.
16. URT. 2022b. Wildlife Conservation Act. CAP 283. R.E. of 2022. Ministry of Natural Resources and Tourism. United Republic of Tanzania (URT) Government Press Dar es Salaam.