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Critical analysis of compensation laws to human toward wildlife harms in Tanzania.

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Abstract

This study has thoroughly analysis the compensation to human toward wildlife harms whereby has critical elaborates the legal framework and the engagement of the governments to conciliate harms that arose from human loss including killing of human being, wounded and lose property. The study has analyses the international legal framework instruments on compensation to human toward wildlife harms in Tanzania and in this vein has analysis the Universal Declaration of Human Rights of 1948, The Convention on Biological Diversity adopted 22 May 1992. International covenant on Economic, social and cultural rights Adopted 16 December 1966 by General Assembly Resolution 2200A and African Charter on Human and Peoples' Rights (Banjul Charter) Adopted June 27, 1981 and on its entirely the listed international instruments has not specifically address directly the issue of compensation to human toward wildlife harms though has set standards to the state to make legislation to address issue of compensation to human, while at the Domestic Laws Including ;The Constitution of the United Republic of Tanzania of 1977 The Wildlife Conservation Act [Cap 283 R:E 2023], The Wildlife Conservation (Dangerous Animals Damage Consolation) Regulations, 2011 and The wildlife conservation (dangerous animals damage consolation) (amendment) regulations of 2024 ,all this laws has set standards on human compensation, but after the intensive analyses the study reveals that the domestic laws are not adequate on compensation by sense that has set trivial rates for human compensation in this regard the implementation of the compensation to human became the harmonization tools on negative impact on wildlife to human.

1.0 An Overview

The compensation to human toward wildlife harms; it is referred as a monetary payment used by the governments to conciliate the society that live with wildlife when people are killed, wounded or lose property to wildlifeⁱ. All are aimed to rise damage patience levels among the affected communities and prevent them taking direct action themselves, such as hunting down and killing the elephants, lions or other species involved, access to compensation is critical to ensure that communities tolerate the burden of human and wildlife conflict carry on the support wildlife conservation.ⁱⁱ Also it seek to reduce disputes between protected area and communitiesⁱⁱⁱ

Wildlife; means any wild and indigenous animals and plants, and their constituent habitats and ecosystems found on and, or in land or water, as well as exotic species that have been introduced in Tanzania and established in the wild and includes wild animals on

transit, temporarily maintained in captivity or have become established in the wild^{iv} Wildlife is a valuable gift of God to this planet. The term 'Wildlife' not only caters to wild animals but it include all undomesticated birds, , plants, fungi, insects and even microscopic organisms.

Important to note here in regard to that legal definition is that, wildlife resources entails as wild plant or animal or microorganism species (not domestic or human) that may either be in their natural habitats (*in situ*) or outside their natural habitats (*ex situ*). The wildlife is attributed to animal species. It should however be noted that, even plant or microorganisms and their parts form part of wildlife. The determinant factor is the nature of the species, they should be wild and indigenous species.

The concept of compensation to human toward wildlife harms in Tanzania is governed by three major laws including's: The Constitution of the United Republic of Tanzania of 1977, Wildlife Conservation (Dangerous Animals Damage Consolation)



Regulations, 2011 and The wildlife conservation (dangerous animals damage consolation) (amendment) regulations of 2024. All this laws has tried to address the issues concerning human compensation toward wildlife harms in Tanzania.

2.0 Causative factor for claims of compensation to human toward wildlife harms.

In order for claims of compensation to human toward wildlife there must be a Human and wildlife conflict, The conflict occurs when the needs and behavior of wildlife impact negatively on the goals of humans or when the goals of humans negatively impact the needs of wildlife^v. This includes negative impacts of wildlife on human social, economic or cultural life and negative impacts of humans on the conservation of wildlife populations.^{vi} However, it is important to recognize that human-wildlife conflicts do not result solely from the direct impacts of wildlife on people or vice versa but may often involve disagreements between stakeholders over conservation objectives.^{vii} Human and Wildlife Conflict (HWC) is a key obstacle in linking conservation and poverty alleviation, as the costs of living with wildlife negatively impact on rural livelihoods and erode community support for conservation.^{viii}

3.0 International Legal Framework on compensation to human toward wildlife harms in Tanzania

There are international laws regulating the area of compensation of people toward wildlife harms in Tanzania. Their applicability come as a result of Tanzania to be a member to different international organizations such as United Nations and many other organizations.^{ix} At this sense Tanzania has subscribed various international instruments that touches the area of compensation of people toward wildlife harms.

3.1 Universal Declaration of Human Rights^x

The Universal Declaration of Human Rights, 1948 is a remarkable document that was adopted by the United Nations General Assembly on 10th December 1948. Tanzania has unified the Bill of rights in the constitution of United Republic of Tanzania, through Act 15 of 1984^{xi} the bill of rights became justifiable on 1st march 1988 after a grace period to the government.

The said declaration has outline on its preamble on the issue of recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, The provision of has put forward that Everyone has the right to life, liberty and the security of person.^{xii} The same has provide everyone has the right to own property alone as well as in association with others.^{xiii} No one shall be arbitrarily deprived of his property, though the declaration has not specifically address the issue of compensation to human from wildlife harms but has laid the foundation that touches the area of compensation to people toward wildlife harms, because compensating human being from loss suffered it enhance inherent human dignity also it safeguard the right to own property.

3.2 The Convention on Biological Diversity.

The convention has define the term Biological diversity as means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.^{xiv} The relevancy of this convention cut across the human being, domestic animals and plant that are cultivated human being and in this sense the convention seek to safeguard to enhance the sustainable development.

The convention has set standards that need to be adopted with countries in regard to compensation to human toward wildlife harms however has being addressed in indirect way, in this sense it imposes the obligation to compensate human who suffer the loss from wildlife, whereby each Contracting Party bring out in accordance with its abilities, financial support and incentives in respect of those national activities which are intended to attain the objectives of this Convention, in accordance with its national plans, priorities and programs^{xv} the objectives of the convention is also rooted on compensation of human toward wildlife loss that emanates from destruction of crops and injury of human being.

The convention has indirect set international standards concerning compensation and protection of human being, the convention on its preamble has put to emphasize that, the Mindful of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components^{xvi}, The convention is upholding that the conservation of biological diversity is a common concern of humankind,^{xvii} the concept of human kind rooted on humanity and dignity in this sense the obligation of compensation to human toward wildlife harms is essential components of humanity and dignity in the same vein the States which are subscriber of the convention are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner.

3.3 International covenant on Economic, social and cultural rights^{xviii}

The covenant has set the standard on the enjoyment of social and economic rights to people,^{xix} by the sense that the economic right is linked on area compensation then this perspective goes further to the area of compensation to human toward wildlife harms, the compensation it recover the human economic loss, the covenant it imposes the obligation to the States Parties to the present Covenant to undertake and to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.^{xx} the obligation that state has been given by the covenant it imposes the default responsibilities of the state making the suitable legislation that seek to protect and enhance enjoyment of social and economic rights to all men and women, in broad sense the said provision it emphasize the state in enacting proper legislations that deals with human compensation that arose from wildlife harms.

3.4 African Charter on Human and Peoples' Rights (Banjul Charter)^{xxi}

This charter has provide that All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.^{xxii} The same charter has provide the States shall have the duty, individually or collectively, to ensure the exercise of the right to development.^{xxiii} The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.^{xxiv}

The charter has duly enhance the need of compensation to human toward wild life harms, it lay the foundation of the states particularly on issue of compensation as it provide that, All peoples shall freely dispose of their wealth and natural resources.^{xxv} This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.^{xxvi} In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.^{xxvii} The implication of this clause cut across in any loss arose from wildlife harms to human and the position of the charter it demand the lawful recovery of the property and that recovery should be adequate compensation.

4.0 Recognition of compensation law to human toward wildlife harms in Tanzania.

The claims of compensation to human toward wildlife harms in Tanzania started long time ago Neither The wildlife conservation Act of 1974 nor Wildlife Policy of 1998 did not put to emphasize on aspect of compensation to people toward wildlife harms, the long time complains engineered the creation of legal framework for compensation of human toward wildlife harms. In regard to that position the following are legal frame work of compensation laws people toward wildlife harms in Tanzania.

4.1 The Constitution of the United Republic of Tanzania of 1977

The constitution as a supreme law of the state has encompasses the fundamental principles that cut across area of compensation of people toward wildlife harm in Tanzania, under the spirit of constitution has established the organ of the state that has mandate on issue of compensation, the constitution has provide that .All state authority in the United Republic shall be exercised and controlled by two organs vested with executive powers, two organs vested with judicial powers and two organs vested with legislative and supervisory powers over the conduct of public affairs.^{xxviii} The organs vested with executive powers shall be the Government of the United Republic and the Revolutionary Government of Zanzibar.^{xxix} in that sense the executive organ including Minister of Natural Resources and Tourism is responsible in compensation of human toward wildlife harms by setting consolation for human loss.

The government has mandate to bring the welfare of the people where by the constitutional ponders that ,The United Republic of

Tanzania is a state which adheres to the principles of democracy and social justice and accordingly (b) the primary objective of the Government shall be the welfare of the people.^{xxx}

The state has obligation to protect the human rights and at this point of view the constitution has provide that human dignity and other human rights they must be respected and cherished.^{xxxi}

The constitution has set standard on the right to life whereby it provide that every person has the right to live and to the protection of his life to the society in accordance with the law.^{xxxii} this provision touches to the people who have been killed with dangerous wildlife whereby they deserve to live hence tender to be inconsistency with the said provision, The constitution has provide on the right of owning property whereby the same constitution provide that Every person is entitled to own property, and has a right to the property protection of his property held in accordance with the law.^{xxxiii} Subject to the provisions of sub article (1) it shall be unlawful for any person to be deprived of his property for the purposes of nationalization or any other purposes without the authority of law which makes provision for fair and adequate compensation.^{xxxiv}

The said provision is relevant to the entire area of compensation to people who reside nearly conservation area on the basis that the properties that have been owned with the people must protected and once are destructed by wildlife it render inconsistency with constitutional right, then it create the need of compensation for those suffered loss from wildlife harms.

4.2 The Wildlife Conservation Act^{xxxv}

The Act in question is vital in area of conversation and at my study it has set a manner on how the world life should be managed, the Act provide on the ownership of animals and in which it provide all animals in Tanzania shall continue to be public property and remain vested in the president as a trustee for and behalf of the people of Tanzania^{xxxvi} The law has set standard on conservation of wildlife and the community and is termed as one of its objectives as it seek to enhance the conservation of wildlife and its habitats outside wildlife protected areas by establishing wildlife management Areas for the purposes of effecting community based conservation^{xxxvii}

The Act has lay the foundation of enactment of the compensation law that deals on compensating human toward wildlife harms the Act has empowered the Minister the mandate to enact the subsidiary registration whereby it provide that The minister may make regulations prescribing or stipulating any matter relating to conservation, management and utilization of wildlife;^{xxxviii} and better carrying out of provision of the Act.^{xxxix}

4.3 Wildlife Conservation (Dangerous Animals Damage Consolation) Regulations, 2011.

At the end of 2011 many initiatives were put in place, purposely was to harmonize the said conflict. After this long run The Wildlife Conservation Act has lay the foundation of enactment of the compensation law that deals on compensating human toward wildlife harms, the Act has empowered the Minister the mandate to

enact the subsidiary registration whereby it provide that, The minister may make regulations prescribing or stipulating any matter relating to conservation, management and utilization of wildlife and better carrying out of provision of the Act.

In that vein in 2011 Hon. Ezekiel M. Maige , Former Minister for Natural Resources and Tourism through The Government Notice^{xi} ,introduced the regulation that titled as The Wildlife Conservation (Dangerous Animals Damage Consolation Regulations) of 2011, this regulation was termed as the painkiller for the so long human complains of economically loss and even loss of human lives for so long that arose from wildlife harms.

This law is specific law that deals with the compensation issues in Tanzania, that arose from wildlife damage toward human and the existence of this law is rooted from the section 121 of the Wildlife conservation Act which has give power the Minister responsible to enact regulations and other subsidiary legislations, where by the said provision provide that the Minister may make regulations prescribing or stipulating any matter relating to conservation, management and utilization of wildlife and better carrying out of the provisions of this Act , the Act has provide on payment of consolation that any person who has suffered damage or destruction of his crops or livestock caused by a dangerous animal as prescribed under these Regulations shall, upon application and determination be eligible for consolation^{xli}

The regulation has provide the procedure on who is eligible for consolation the regulation has provide that. An applicant who is eligible for consolation in accordance with these Regulations shall: report the incidence to the nearest Village Executive Officer of the area where the incidence occurred within three days; ^{xlii} apply to the Director in a prescribed form set out in the First Schedule to these Regulations; ^{xliii} at the time application is submitted or at any subsequent time, provide the Director with any information the Director may require in order to determine the applicant's eligibility for consolation.^{xliv}

The applicant in order to be paid the consolation must fill the prescribed form the regulations has provide that All applications for consolation under these Regulations shall be made to the Director in the form set out in First and Second Schedules to these Regulations within seven days and be verified by a Wildlife Officer, Agricultural or livestock Officer, Village Executive Officer or Ward Executive Officer, two independent witnesses within the area and the case of human injury or death, a medical practitioner of a rank of clinical officer.^{xlv}

4.4 The wildlife conservation (dangerous animals damage consolation) (amendment) regulations of 2024.

This amendment of regulations read as one with the Wildlife Conservation (Dangerous Animals Damage Consolation) Regulations of 2011, In regard to the compensation rates the regulation has set that the Crops per acre (maximum 5 acres) in Tanzania the compensation rates are set in regard to distance of cultivated crops per acre from protected area , where by the regulation it provide that the Distance of cultivated crops from 0 KM -0.5 KM from protected area no any compensation shall be

granted ,Distance of cultivated crops above 0.5KM -1 KM from protected area is Tanzania shilling 37,500 , Distance of cultivated crops above 1KM- 4 KM from protected area 75,000 Distance of cultivated crops above 4 KM-5 KM from protected area is Tanzania shilling 112,500 Distance of cultivated crops above 5 KM from protected area is Tanzania shilling 150,000,^{xlvi}

Regardless of having that regulation is not effective on compensation to people toward wildlife harms, the third schedule of the regulation has listed eight (8) wildlife including Black Rhinoceros, Hyena, Hippopotamus ,Crocodile ,Buffalo, Lion ,African Elephant and has not listed many wildlife that in one way if causes harms to people then they cannot be compensated, the list of wild life that has not listed by the regulations it includes Leopard, Giraffe, Wild Dog, Monkey and others that are not found in the third schedule .

The amount of compensation is not adequate because the amount that has been provided by the regulation is not absolutely reasonable because the price of preparing the farm (shamba) at now days can cost more than five times of compensation rates that has been stipulated by the regulation also the regulation has not provide on rate of compensation considering with type of crops because the cost of preparing the farm (shamba) of Maize is not same as the cost of preparing the farm (shamba) of tomatoes they absolutely differ hence once you set the same price of compensation is not fair and reasonable

Death of human being is Tanzania shilling 2,000,000^{xlvii} , Permanent disability of human being is Tanzania shilling 1,000,000^{xlviii} Temporary injury to human being is Tanzania shilling 300,000^{xlix} Death of cattle is Tanzania shilling 75,000 Death of sheep/goat/pig/mule/donkey is Tanzania shilling 37,500 Death of other domesticated animals is Tanzania shilling 15,000^l Also in respect of compensation of Death of human being the regulation has provide only 2,000,000 which is not enough at all because the said money cannot enough even running the funeral services and also cannot be suffices in helping the widow and children of deceased.

In regard to compensation of domesticated cattle does not meet with the Tanzania value price because the value price of cattle today is more than Tanzania shilling 500,000/= while the regulation has only put Tanzania shilling 75,000 which is not adequate and for the sheep or goat the Tanzania price is more than 100,000/= but the regulation has put 37,500 as compensation rates in reality the said Tanzania laws are not adequate on the basis that the compensation rate are too trivial.

4.5 The responsibility of the state in compensation under the Public Trust Doctrine

The doctrine holds that certain natural resources are held by the State for and on behalf of the citizens. Under the doctrine, the people entrust the government trusteeship mandate over resources which may be unique or of cultural, social, political and economic value to the State. The doctrine is traced from the Roman empire in the 6th Century as “*res communae*”. This means that, some



resources are common to mankind such as water, air, fishing, wildlife, forestry and should be controlled by the State for the benefit of citizens.¹⁸ The doctrine imposes a high fiduciary duty of care and responsibility to the government to oversee protection, management and sustainable utilization of natural resources as a trustee on behalf of and for the benefit of the general public, current and future generations.

In that sense by virtue of the state being entrusted by its people to have mandate to oversee the protection and management of natural resources, then it automatically imposes the responsibilities to government to be responsible in any harms that can arise from wildlife impact. This fosters the strengthening of sustainable development and meets the conservation objectives.

5.0 CONCLUSION

The Wildlife Conservation Act [Cap 283 R:E 2023], it lays the foundation of enactment of the compensation regulation that deals with compensating human toward wildlife harms. The Act has empowered the Minister the mandate to enact the subsidiary registration whereby it provides that the Minister may make regulations prescribing or stipulating any matter relating to conservation, management and utilization of wildlife; and better carrying out of provision of the Act.

In that sense this law has not addressed directly the issue of compensation to people toward wildlife harms but through that clause has engineered the enactment of The Wildlife Conservation (Dangerous Animals Damage Consolation) Regulations, 2011 as only specific law that addresses compensation to people toward wildlife harms. The third schedule of the same regulation has listed seven (7) wildlife if causes damage to people then that person(s) harmed can be entitled to be compensated including Rhino, hyena, hippopotamus, crocodile, buffalo, elephant and lion.

Regardless of having that regulation is not effective on compensation to people toward wildlife harms, the third schedule has not listed many wildlife that in one way can cause harms to people then can be a cause of not being compensated, the list of wildlife that has not been listed by the regulation includes Leopard, Giraffe, Wild Dog, Monkey, and all others which have harm but have not been listed in the schedule. In regard to compensation to people toward wildlife harms, this work reveals that the compensation rate that has been encompassed in the wildlife conservation (dangerous animal's damage consolation) (amendment) regulations, are trivial, not fair and adequate on the reality of today though that regulation was amended in 2024.

Hence, the implementation on compensation to human toward wildlife harms is important because human beings play a great role in increasing human-wildlife conflict in search of lands for settlement, agriculture, and domestic animal pastures. These human needs are noted to have a negative impact on wildlife ecology. Hence the implementation of this compensation became the harmonization tool on negative impact on wildlife ecology.

6.0 RECOMMENDATIONS

This work has analyzed the compensation laws in Tanzania. Hence following are the recommendations towards Tanzania laws regarding compensation laws to human toward wildlife harms.

To Regional and International bodies.

- This work opens up a further initiative to Africa continent and the Global institutions to come with international legal framework on the protection of human toward wildlife harms, and imposing the international obligation to state to encompass the good clauses to national law that set the good rates of compensation to people upon the wildlife harms.

To the government

- The government it has to allocate the sufficient budget allocation to the Ministry of Natural Resources and Tourism the funds allocated should also be channeled to scientific authorities such as TAWIRI and Higher Learning Institutions to conduct research and advise the management authorities on due management of wildlife impact to human and how to balance the interest of human and wildlife.
- To provide employment for expert particularly the livestock officer and a medical practitioner of a rank of clinical officer who has a role of verifying the application the shortage of this expert it delays the process of application for consolation for those who suffered wildlife harm.
- The Minister of natural resources and Tourism has to amend the regulation of Wildlife Conservation (Dangerous Animals Damage Consolation) (Amendment) Regulations, 2024 by increasing the rate of consolation payment as have been stipulated at the fourth schedule on the fact that the said schedule has stipulated the compensation of death of human being is Tanzania shilling 2000,000, the compensation for permanent disability of human being is Tanzania shilling 1000,000, compensation for Death of cattle Tanzania shilling 75,000, and compensation for the crops cultivated above 0.5 to 1Km from protected area is Tanzania shilling 37,500 as to which in real sense are trivial and does not meet the loss suffered.
- The Minister responsible to amend the regulations in question by allowing to extend the rate of consolation payment to immovable and movable properties because the destruction of house or hut and any movable properties are not subject for payment of consolation.
- The Minister responsible to amend the regulation because it conflicts with The Constitution of United Republic of Tanzania of 1977, because the constitution provides the court of law shall have a mandate on dispensation of justice but the regulation has provided in regard to any person suffered harms from wildlife harms and who is aggrieved by the decision of Director of wildlife then may appeal to Minister, then decision of

minister shall be binding and conclusive , this create legislation and constitution conflict.

- The government to come with initiatives of insurance scheme in insuring the people from wildlife harms which will enable compensation to be provided easily and timely. In many countries have managed to overcome these issues and are generating benefits to the individuals they serve using an insurance-based approach. For example, schemes in ,China , Canada ,Australia, Pakistan, Italy, Russia, ,Greece, Sri lanka and North America have managed the insurance schemes.
- The Ministry responsible to amend the third schedule particularly in listing other wildlife that can bring harm to human and by now the regulation has provided only seven wildlife including Hyena Hippopotamus Crocodile Buffalo Lion Elephant, Black Rhinoceros , in this vein the wild life which has not listed in third schedule and if they bring harm to people they cannot be entitled for the compensation the wild life like leopard, wild pig, giraffe ,Wild Dog and others not listed in the schedule if they bring harm to human its impossible to be compensated.
- The government has to come with intensive initiatives that will restrict wildlife harms to people than waiting harms to be occurred this it reduce the government to use much money for compensation .
- The government to provide education to people on how to deal with incursion of dangerous wildlife to human resident, the government has to give the people tactic way to restrict harms that happen in human resident also giving them necessary tools for protection of themselves.
- The government to allocate the budget at wildlife conservation area in building the ranger camp nearly human residents and when the incursions of dangerous wild life to human resident it will help the ranger to reach early and return the wildlife to their place and rescue human from wildlife loss.

To the community

- The pastoralist, they should be provided with permanent areas where they will keep their livestock and also water sources for the livestock should be constructed in those areas this will restrict wildlife harms to the cattle .
- The pastoralist should be provided with education about the minimization of the number of livestock they are having together with the ways of building strong “bomas” for keeping their livestock to prevent them from being consumed by the wildlife,ⁱⁱⁱ this will reduce the rate of harms arose from wildlife.
- The habitant reside nearly conservation area should engage in doing business and not engaging much in livestock and keeping so as to secure themselves from higher probabilities of cattle to be consumed by wildlife .

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^{xlix} *Ibid* to the fourth schedule.

^l *Ibid* to the fourth schedule.

^{li}MBOTE, K, (2007) 'The use of the Public Trust Doctrine in Environmental Law', 3(2) *Law, Environment and Development Journal*, p. 195, at pp. 197 & 198 available at <http://www.lead-journal.org/content/07195.pdf> and Para 5 of *Magna Carta* and *Gann v Free Fisheries of Whistable*. HL (1865) 11 HL,192

^{lii} M. Funk, "Carnivore Conservation", Cambridge University Press, 2001,71.