



IMO
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**AN ACT TO IMPLEMENT THE
INTERNATIONAL CONVENTION ON OIL
POLLUTION PREPAREDNESS, RESPONSE
AND COOPERATION (OPRC 1990) AND THE
PROTOCOL ON OIL POLLUTION,
PREPAREDNESS, RESPONSE AND
COOPERATION ON HAZARDOUS AND
NOXIOUS SUBSTANCES (OPRC-HNS 2000)
INTO THE LAWS OF TANZANIA**

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EXPLANATORY NOTE

1. INTRODUCTION

The high Sea is the world’s largest expanse of the common Maritime space. They have been freely used for maritime commerce, exploitation of the living resources, extraction of oil and gas and as disposal area for the waste products of industry, agriculture,

domestic life and war. The pressure of International competition for living resources led to the conclusion of the first multilateral treaties on seals, fisheries and whaling in the early twentieth century.¹

The emergence of serious environmental problems was evident as early as 1926, when a draft convention on pollution from ships was drawn up at a conference in Washington, but not opened for signature. After the Second World War problems of over exploitation of resources and the steady increase in the volume and effects of pollution from land and sea borne sources reach an intensity that required concerted international action. Regulation of marine pollution was somewhat slower to develop, reflecting the more limited interest of states in this problem and the limitations of scientific understanding of the oceanic processes.²

By the late 1960's awareness of the impact of pollution on coastal environments, fisheries, and human populations had become widespread. The *Torrey Canyon* disaster in 1967, involving the contamination of large areas of coastline by oil, exemplified the risk posed by the daily transport of large quantities of toxic and hazardous substances at sea. By the 1990's real problems of over-fishing, loss of marine biological diversity, and degradation of marine ecosystems had also become more apparent. For all these reasons protection of the marine environment and sustainable use of its resources have been significant issues in the modernization of the law of the sea.³

Due to considerable attention being devoted, since 1954 to the control of oil pollution from ships and dumping of waste at sea, there are today relatively minor components of marine pollution.

By far the major input into the marine environment comes from land based sources and airborne depositions. Sewage, industrial waste, and agricultural run-off are the most common types of pollutants which enter the sea from land, mostly through rivers.

¹ Patricia W Birnie, Alan E Boyle and Catherine Redgwell, *International law and the environment* (3rd, Oxford

University Press 2009) 379-380.

² *ibid* 379.

³ *ibid* 380.

Some of the substances these sources generate are directly toxic to marine life and humans and spread disease. Others contribute to eutrophication and oxygen depletion, resulting in loss of marine biodiversity and altering sensitive ecosystems. Further harmful impacts on the marine ecosystems are caused by the incidental transport of alien invasive species in ships ballast water and their discharge many thousands of miles distant from their natural habitat.⁴

Thus effective pollution control is important not only for the general health of the marine environment but particularly for its impact on the conservation on fish stocks and coastal ecology. Climate change has also began to affect marine ecosystems, resulting in loss of coral reefs, alterations in the distribution of marine species, melting ice shelves in the polar seas, and ultimately sea level rise.⁵

The influence of the United Nations Convention on the Law of the Sea (UNCLOS)⁶ is especially pertinent in respect of marine environmental protection. The Convention is the first major undertaking among states to protect the world's oceans in their entirety against all potentially polluting maritime activities. According to Article 192 of the Convention, states have an obligation to protect and preserve the marine environment.

This obligation is supplemented by Article 194 which provides that states are to take all necessary measures to prevent, reduce and control all sources of pollution of the marine environment and Tanzania being a party to it, has an obligation to implement its provisions.

Article 237 (2) provides that, specific obligation assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of the Convention.⁷

⁴ Birnie PW, Boyle AE and Redgwell C (n.1) 380.

⁵ *ibid.*

⁶ United Nations Convention on Law of the Sea adopted on 10 December 1982, entered into force on 16 November (1994) UNTS 516.

⁷ United Nations Convention on Law of the Sea (n.6).

Tanzania is a member of the International Maritime Organization (IMO)⁸ and has been actively involved in the development and implementation of the IMO conventions.

Tanzania has ratified the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 (OPRC Convention)⁹ but the Protocol relating thereto on Hazardous and Noxious Substances (OPRC-HNS Protocol) of 2000¹⁰ has not yet been ratified.

The proposed Preparedness, Response and Cooperation on Oil Pollution Incidents by Oil, Hazardous and Noxious Substances Act (“the Act”) therefore, is aimed at providing the requisite comprehensive legislative framework to facilitate and enable the implementation of the OPRC Convention and OPRC-HNS Protocol thereto in Tanzania.

The Act will be dealing with issues that would ensure that Tanzania establishes structures that would enable her to deal with various situations that may arise especially at this time when there are a number of ongoing oil and gas projects in the Country, including offshore explorations and operations as well as pipelines building from Uganda to Tanzania (Tanga port).

This Act proposes the establishment of a special Agency under the Surface and Marine Transport Regulatory Authority (SUMATRA) that will be vested with the role of Preparedness, Response and Cooperation on Oil Pollution Incidents by Oil, Hazardous and Noxious Substances other than oil as a required institutional framework for enforcing and implementing the Act.

The Act contemplated will be in the form of a Primary Legislation.

2. THE HISTORICAL BACKGROUND OF THE OPRC CONVENTION

⁸ The International Maritime Organization is the United Nations Specialized agency with responsibility to develop and maintain a comprehensive regulatory framework for the safety and security of shipping and the prevention of marine pollution by ships. See, www.imo.org (accessed, on 06 December, 2016).

⁹ International Convention on Oil Pollution Preparedness, Response and Cooperation adopted on 30 November

1990 entered into force on 13 May (1995) UNTS 51.

¹⁰ *OPRC-HNS Protocol: Protocol on Preparedness, Response and Co-operation to Pollution Incidents by hazardous and noxious substances, 2000* (IMO 2002).

In general, prior to 1967 there were in general only few differences between the law governing claims for oil pollution damage and that relating to any other claim in tort against a ship or her owners.¹¹

The main differences were to be found in the laws of the United States where statutes such as Oil Pollution Act of 1924, dealt specifically with liability for oil pollution from ships.¹² In the main however, the relevant enforcement provisions were penal in nature and were of only limited assistance to a party seeking to recover damages in a civil lawsuit.¹³

By 1952, oil was rapidly replacing coal as the main source of energy in the industrialized world. The normal route for supplies from the Middle East to Western Europe and United States was via the Suez Canal, but with the Suez crisis of 1956 came the realization that some safer alternative was needed. The much longer route around the Cape of Good Hope would not be economical unless much bigger ships could be built.¹⁴

Only three years after the Suez Crisis the world's first 100,000 deadweight tonnage tanker came into service, and by 1966 Very Large Crude Carriers of over 200,000 deadweight tonnage were afloat. It was then only a matter of time before one of the breed of super tankers would unleash pollution on a scale not previously seen from a ship. This incident stimulated International demand for comprehensive changes in the law governing claims for oil pollution damage.¹⁵

On 18 March 1967, the Liberian tanker *Torrey Canyon* oil spill disaster caused a great furor in the International Maritime Community on the coast of England, France and Spain due to negligence in navigation. On her fateful last voyage *Torrey Canyon* carried a cargo of 120,000 tons of crude oil from Kuwait for discharge at Milford Haven in Wales, United Kingdom. The vessel struck the pollard rock on the seven stones reef, midway between Land's End and the Isles of Scilly, at the speed of over 15 knots. Soon

¹¹ Colin M de La Rue and Charles B Anderson, *Shipping and the Environment: Law and Practice* (LLP Limited

1998) 8.

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid* 10-11.

it was apparent that thousands of tons of oil were escaping from her ruptured tanks, and that the scale of pollution was to be without precedent anywhere in the world.¹⁶

Prompted by the *Torrey Canyon* disaster, in April 1967 the British Government submitted a Note to the Inter-Governmental Maritime Consultative Organization (IMCO), calling for changes in International Law governing Liability for pollution by oil, and possibly other hazardous and noxious substances. The IMCO Council agreed to study the subject and referred the matter to its legal committee, from which the working Groups I and II were appointed.¹⁷

As a result, preliminary Convention draft was drawn up for essence for consideration at the CMI Conference in Tokyo in March-April 1969. The draft provided in essence for the shipowner to be liable for losses (including the cost of preventive measures) caused by the escape of persistent oils carried in bulk in a seagoing vessel; for such liability to be based upon fault but with the burden of proof reversed; and for shipowner to be entitled to limit such liability.¹⁸

Recognizing that the United States was not immune to disasters like *Torrey Canyon*, the US Congress took steps to remedy the inadequacy of the existing laws governing marine pollution by ratifying International Convention Relating to the Intervention on the High Seas in cases of Oil Pollution Casualties.¹⁹ This authorized coastal States to take preventive measures when pollution damage was threatened by maritime casualties occurring outside their territorial waters.²⁰

On 16th March 1978, another disaster was witnessed when the very large crude carrier *Amoco Cadiz* ran aground off the coast of Brittany in France spilling about 220,000 tons of crude oil from the Persian Gulf and intended to be discharged at Rotterdam, Netherlands.²¹

¹⁶ La Rue CM de and Anderson CB (n.11) 11.

¹⁷ *ibid* 13-14.

¹⁸ *ibid* 14.

¹⁹ *ibid* 21.

²⁰ *ibid*.

²¹ La Rue CM de and Anderson CB (n.11) 31.

This accident was caused by failure of her hydraulic steering gear. Despite all the efforts made by the crew of the ship and salvage operations failed and the entire cargo escaped, polluting over 180 miles of coastline in Brittany, in one of the most important tourist and fishing regions of France.²² The clean-up of the oil took more than six months and the claim for the cost of these operations totalled nearly French Francs (FFr) 800 million which was equivalent to USD 100 million.²³

The devastating effects of these incidents and other oil spills of similar magnitude resulted in the recognition of the need for national contingency plans and regional agreements for co-operation between states in responding to oil spills in specific areas.

The United Nations Convention on the Law of the Sea (UNCLOS) specifically addresses marine environmental protection under part XII. States have obligations to protect and preserve the marine environment,²⁴ and are obliged to take all necessary measures to prevent, reduce and control all sources of pollution from the marine environment to the limits of their capabilities.²⁵

Regarding offshore activities, UNCLOS aims to minimize to the fullest extent possible, pollution from installations and devices used in the exploration and exploitation of natural resources.²⁶

Due to the fact that marine pollution frequently has transboundary implications, States are encouraged to co-operate in formulating rules, standards and recommended practices and procedures consistent with UNCLOS to protect the marine environment.²⁷

In addition, UNCLOS requires a State which is aware of a pollution incident to notify other States likely to suffer damage and for States to co-operate with each other in developing and promoting oil pollution contingency plans.²⁸

In March, 1989, the *Exxon Valdez* oil spill occurred depositing a large quantity of crude oil on the beaches in *Prince William Sound* and along the shoreline of the *Gulf of Alaska*

²² *ibid.*

²³ *ibid.*

²⁴ United Nations Convention on Law of the Sea (n 6) art 192.

²⁵ *ibid* art 194.

²⁶ *ibid* art 194 (3).

²⁷ *ibid* art 197.

²⁸ United Nations Convention on Law of the Sea (n.6) art 197-206.

on the South Coast of the United States of America. This refocused the attention of the World to the devastating environmental consequences of a major oil spill and the need for an adequate and timely response. It also once again demonstrated the difficulty in the cleaning up of coastlines which have been covered in oil. The major industrial nations convened a meeting with the view to developing a Convention on oil pollution preparedness and response and to ensure that future incidents would be tackled as efficiently and quickly as possible.

The IMO General Assembly in October 1989 passed a resolution to convene a diplomatic conference to consider the subject.²⁹

The resolution recalled in its pre amble, article 15(j) of the Convention on the IMO relating to regulations and guidelines concerning maritime safety, prevention and control of marine pollution from ships which reads;

“To recommend to Members for adoption regulations and guidelines concerning maritime safety, the prevention and control of marine pollution from ships and other matters concerning the effect of shipping on the marine environment assigned to the Organization by or under international instruments, or amendments to such regulations and guidelines which have been referred to it”

In addition, the resolution recognized the severity of recent marine pollution accidents resulting from tankers and offshore installations. The IMO’s successes in developing multilateral approaches to pollution were also indicated.

The aforementioned disasters led to the adoption of many International Conventions including International Convention on Civil Liability for Oil Pollution Damage 1969,³⁰ (which imposed strict Liability on ship owners without the need to prove negligence), the International Convention for the Prevention of Pollution from ships 1973,³¹ International Convention relating to Intervention on the High Seas in cases of Oil

²⁹ IMO Resolution A.674 (16) –(*International Co-operation on Oil Pollution Preparedness and Response*) 19 October 1989.

³⁰ International Convention on Civil Liability for Oil Pollution Damage adopted on 29 November 1969, entered into force on 19 June (1975) UNTS 3.

³¹ Protocol of 1978 to the International Convention for the Prevention of Pollution from ships of 1973 adopted on 17 February 1978, entered into force on 02 October (1983) 17 ILM 546.

Pollution 1969,³² and International Convention on the establishment of an International fund for Compensation for Oil Pollution Damage of 1971.³³

The preparatory work which took place in London in November 1990 was a marked success and at the Diplomatic Conference, the 1990 Convention on Oil Pollution Preparedness Response and Cooperation was adopted together with a series of ancillary resolutions. The convention entered into force on 13 May, 1995.

Currently, approximately 103 Countries representing 69.58% of the world's tonnage are parties to the Convention.³⁴ The OPRC Convention 1990 and the OPRC-HNS Protocol of 2000, in extended detail, requires State Parties to take appropriate measures for the prevention of oil pollution and pollution from substances other than oil including hazardous and noxious substances.

2.1. THE AIMS AND OBJECTIVE OF THE OPRC CONVENTION

The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) of 1990 aims to help and encourage states to develop an adequate capability in combating major oil pollution incidents as well as to provide a global framework for international cooperation in preparing for and responding to pollution incidents.

Parties to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) are required to establish measures for dealing with pollution incidents, either nationally or in co-operation with other countries.³⁵

2.1.1. THE SCOPE OF ITS APPLICATION

The Convention applies to offshore units, seaports and oil handling facilities.³⁶

³² International Convention relating to Intervention on the High Seas in cases of Oil Pollution 1969 (Intervention 1969), adopted on 29 November 1969 adopted on 29 November 1969, entered into force 6 May, (1975) 9 ILM 25.

³³ International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) 1971 adopted on 18 December, 1971 entered into force on 16 October (1978).

³⁴ OPRC (n 9).

³⁵ OPRC (n.9) art 1.

2.1.2. THE CONTENT OF THE CONVENTION

The Convention sets out requirements for onboard and land based pollution emergency plans that tankers and other vessels, offshore units, seaports and oil handling facilities must have. These emergency plans must be coordinated with national systems for combating quickly and effectively any oil pollution incident.³⁷

The Convention states that contracting States should establish and develop national and regional systems for responding effectively to oil pollution incidents. In other words, States have to designate a body or an entity that will be responsible for the preparation and combating oil pollution incidents, the national operational contact point and an authority responsible for requesting assistance or to decide to render assistance requested by other contracting states.³⁸

The Convention establishes the importance of International cooperation³⁹ in different matters including the exchange of information relating to the capabilities of states to respond to oil pollution incidents, the preparation of oil pollution emergency, exchange of reports on pollution and research and development in combating oil pollution.⁴⁰

2.2. AIMS AND OBJECTIVES OF OPRC-HNS PROTOCOL OF 2000

The Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol), follows the principles of the OPRC Convention and was formally adopted by States already Party to the OPRC Convention at a Diplomatic Conference held at IMO headquarters in London in March 2000.

Together with the OPRC Convention, the OPRC-HNS Protocol aims to establish national systems for preparedness and response and to provide a global framework for International Co-operation in combating major incidents or threats of marine pollution.

³⁶ *ibid* art.2.

³⁷ *ibid* art 3.

³⁸ *ibid* art 6.

³⁹ *ibid* art 10.

⁴⁰ *ibid* art 8.

Parties to the OPRC-HNS Protocol are required to establish measures for dealing with pollution incidents, either nationally or in co-operation with other countries. Ships are required to carry a shipboard pollution emergency plan to deal specifically with incidents involving hazardous and noxious substances.

The OPRC-HNS Protocol ensures that ships carrying hazardous and noxious substances are covered by preparedness and response regimes.

2.2.1. THE SCOPE OF APPLICATION

The OPRC-HNS Protocol was adopted to expand the scope of the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention 1990). It applies in whole or in part, to pollution incidents by hazardous substances other than oil. The OPRC-HNS Protocol was formally adopted in March 2000 by States already Party to the OPRC Convention and entered into force on 14 June 2007.⁴¹

2.2.2. THE CONTENT OF OPRC-HNS PROTOCOL

The OPRC-HNS Protocol sets out requirements for onboard and land based pollution emergency plans that ship, offshore units, seaports and hazardous and noxious substances handling facilities must have.⁴² These emergency plans must be coordinated with national systems for combating effectively the pollution incidents caused by HNS.

The OPRC-HNS Protocol aims to provide a framework for international co-operation in establishing systems for preparedness and response at the national, regional and global

⁴¹International Maritime Organization (IMO), *List of IMO Conventions*, <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx> (Accessed 2 January, 2017).

⁴²OPRC (n 9) art 3.

level, in improving scientific and technological understanding and knowledge, promoting technical co-operation in response technique and in developing specialized training programmes.

The Contracting States to OPRC-HNS Protocol should establish national and regional systems for responding effectively to pollution incidents.⁴³ Thus, the state should also designate the entity that will be responsible for the preparation and combating of pollution incidents, the national operation contact point as well as an authority entitled to request assistance from other contacting States during an incident.

The OPRC-HNS Protocol states the importance of mutual assistance and international cooperation or the purpose of responding to the pollution incident.⁴⁴ The Protocol establishes the importance mutual assistance and international cooperation in different modes, including exchange of information relating to the capabilities to respond to oil pollution incidents and research development on combating oil pollution.⁴⁵

3. GENERAL OVERVIEW OF BOTH OPRC-CONVENTION AND THE OPRC-HNS PROTOCOL

3.1.GENERAL PROVISIONS

Article 1 which provides for General Provisions; reads as follows for both the Convention⁴⁶ and the Protocol⁴⁷;

Article 1(1), requires parties to undertake, individually or jointly, to take all appropriate measures in accordance with the provisions of the Convention and the Protocol and the annex thereto to prepare for and respond to an oil pollution incident or to a pollution incident by hazardous and noxious substances.⁴⁸

⁴³ *ibid* art 4.

⁴⁴ *ibid* art.5.

⁴⁵ *ibid* art 6.

⁴⁶ OPRC (n 9).

⁴⁷ *ibid*.

⁴⁸ OPRC (n.9) art 1 (1) and OPRC-HNS (n.10) art 1(1).

Article 1(2), provides that, the Annex to the Convention and Protocol shall constitute an integral part of the Convention and a reference to the convention constitutes at the same time a reference to the Annex.⁴⁹

Article 1(3), outlines the kind of ships which the Convention and the Protocol shall not apply to. The provision categorically states that, the Convention and the Protocol shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

However, each party shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with the Convention and the Protocol.⁵⁰

3.2. DEFINITIONS

Article 2 of OPRC Convention gives seven key definitions of important terms used throughout the Convention, and the OPRC-HNS Protocol has six key definitions. The said definitions are as follows;

The term “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse, and refined products.⁵¹

“Oil Pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more states, and which requires emergency action or other immediate response.⁵²

⁴⁹ *ibid* art 1(2) and art 1(2).

⁵⁰ *ibid* art 1(3) and art 1(2).

⁵¹ OPRC (n 9) art 2(1).

⁵² *ibid* art 2(2).

A “ship” means any vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft of any type.⁵³

“Offshore unit” means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil.⁵⁴

“Sea ports and oil handling facilities” means those facilities which present a risk of an oil pollution incident and includes, inter alia, sea ports, oil terminals, pipelines and other oil handling facilities.⁵⁵

“Pollution incident by hazardous and noxious substances” referred to as “pollution incident” means any occurrence or series of occurrences having the same origin, including the fire or explosion, which results or may result in a discharge, release or emission of hazardous and noxious substances and which poses and may pose a threat to the marine environment, or to the coastline or related interests of one or more states, and which requires emergency action or immediate response.⁵⁶

“Hazardous and noxious substances” means any substance other than oil which, if introduced to the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.⁵⁷

“Sea ports and hazardous and noxious substances handling facilities” means those ports or facilities where such substances are loaded into or unloaded from ships.⁵⁸

“Organization” means the International Maritime Organization.⁵⁹

⁵³ ibid art 2(3).

⁵⁴ ibid art 2(4).

⁵⁵ ibid art 2(5).

⁵⁶ ibid art 2(1).

⁵⁷ OPRC-HNS (n.10) art 2(2).

⁵⁸ ibid art 2(3).

“Secretary-General” means the Secretary-General of the Organization.⁶⁰

“OPRC Convention” means the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.⁶¹

3.3. OIL POLLUTION EMERGENCY PLANS AND REPORTING

Both the OPRC and OPRC-HNS Protocol have provisions on Oil Pollution Emergency Plans and Reporting categorized in three Sub-Articles as follows;

Flag states are required by the Convention to make sure that all their ships have onboard a shipboard oil pollution incident emergency plan in accordance with the agreed standards.⁶² A ship required to have onboard an oil pollution emergency plan is subject to inspection by a duly authorized officers by that party while in a port or offshore terminal.⁶³

However, the operators of offshore units within the jurisdiction of a party to the OPRC Convention must also have an oil pollution emergency plan which must be approved by the competent national authority.⁶⁴

Also, each party shall require that authorities or operators in charge of seaports and hazardous and noxious substances handling oil facilities under its jurisdiction as it deems appropriate to have pollution emergency plans or similar arrangements which are coordinated with the national system established in accordance with article 6 and

⁵⁹ *ibid* art 2(4).

⁶⁰ *ibid* art 2(5).

⁶¹ *ibid* art 2(6).

⁶² OPRC (n.9) art 3(1) (a) and OPRC-HNS (n.10) art 3(1).

⁶³ *ibid* art 3(1) (b).

⁶⁴ OPRC-HNS (n.10) art 3(2).

approved in accordance with the procedures established by the competent national authority.⁶⁵

3.4. OIL POLLUTION REPORTING PROCEDURES

Both the Convention and the Protocol provides for the uniform reporting procedures and mandatory reports. The reports are made in accordance with the guidelines adopted by the organization for such ship reports. The procedure is extended to offshore units, and also to any observed event at sea involving oil pollution whether or not the event occurs on the ship or unit making the report.⁶⁶

Parties must also instruct their maritime inspection services, naval forces and other relevant bodies or officials to make such reports either to their competent national authority or to the nearest coastal state.⁶⁷

Pilots of civil aircrafts are also requested to report without delay any observed event at sea involving a discharge of oil or the presence of oil to the nearest coastal state.⁶⁸

3.5. ACTION ON RECEIVING OIL POLLUTION REPORT

The OPRC Convention provides for the action to be taken upon the receipt of an oil pollution incident. The State parties to the Convention must assess the event to determine whether or not it is an oil pollution incident;⁶⁹ assess the nature, extent and possible consequences of the oil pollution incident,⁷⁰ then without delay, inform all states whose interests are affected or are likely to be affected by such oil pollution incident.⁷¹

The states should provide the Organization (IMO) with the appropriate information including other affected states, concerning the severity of oil pollution incidents⁷² and

⁶⁵ OPRC (n.9) art 3(3) and OPRC-HNS (n.10) art 3(2).

⁶⁶ *ibid* art 4(1) and art 3(1).

⁶⁷ *ibid* art 4(1) (d) and art 3(2).

⁶⁸ OPRC (n. 9) art 4 (1) (e).

⁶⁹ OPRC (n.9) art 5(1) (a).

⁷⁰ *ibid* art 5(1) (b).

⁷¹ *ibid* art 5(1) (c).

⁷² *ibid* art 5(2).

the assessment of the extent of threat of their interests and any action taken or intended.⁷³

The oil pollution reporting system developed by the organization when exchanging information and communicating with other states and with the organization should be used by states where appropriate.⁷⁴

3.6. NATIONAL AND REGIONAL SYSTEMS FOR PREPAREDNESS AND RESPONSE

One of the basic obligations under the Convention and the Protocol is the establishment of a national system for responding promptly and effectively to oil pollution incidents. Each State party is required to establish a national system for responding promptly and effectively to oil pollution incidents.⁷⁵

Each State party is also required to design and put in place a national contingency plan for preparedness and response which includes the organizational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the organization.⁷⁶

Article 6(2) requires each state party within its capabilities either individually or through bilateral or multi-lateral co-operation and, as appropriate, in cooperation with the shipping industries and industries dealing with hazardous and noxious substances, port authorities and other relevant entities shall establish a minimum level of pre-positioned equipment for responding to oil pollution incidents, commensurate with the risk involved.⁷⁷ States Parties as per the above article are required to establish;

- (a) A minimum level of pre-positioned equipment for responding to pollution incidents commensurate with the risk involved, and programmes for its use;

⁷³ *ibid* art 5(3).

⁷⁴ *ibid* art 5(4).

⁷⁵ OPRC (n.9) art 6(1) (a) and OPRC-HNS (n.10) art 4(1) (a).

⁷⁶ *ibid* art 6 (1) (b) and art 4(1) (b).

⁷⁷ OPRC (n.9) art 6(2) (a) and OPRC-HNS (n.10) art 4(2).

- (b) A programme of exercises for pollution incident response organizations and training of relevant personnel;
- (c) Detailed plans and communication capabilities for responding to a pollution incident. Such capabilities should be continuously available; and
- (d) A mechanism or arrangement to co-ordinate the response to a pollution incident with, if appropriate, the capabilities to mobilize the necessary resources.

It is the duty of State Parties to provide the organization either directly or through the relevant regional organization or arrangements, concerning location, telecommunication data, information concerning pollution response equipment and expertise in disciplines related to oil pollution response and marine salvage which may be made available to other states upon request.⁷⁸

3.7. INTERNATIONAL CO-OPERATION IN POLLUTION RESPONSE

Both the Convention and the Protocol refers to International Co-operation and stipulates that a Party may ask the Organization to assist in identifying sources of provisional financing of the costs.

Parties agree that, subject to their capabilities and the availability of relevant resources, they will co-operate and provide advisory services, technical support and equipment for the purposes of responding to an oil pollution incident, when the severity of such incident so justifies, upon the request of any party affected or likely to be affected.⁷⁹

A party requesting assistance may ask the Organization to assist in identifying sources of provisional financing of the costs.⁸⁰

⁷⁸ *ibid* art 6 (3) and art 4(3).

⁷⁹ OPRC (n.9) art 7(1) and OPRC-HNS (n.10) art 5(1).

⁸⁰ *ibid* art 7(2) and art 5(2).

Parties must take the necessary measures to facilitate the passage of personnel, cargoes, materials and equipment to deal with an incident into or through their territories, for assistance to be provided with minimum delay.⁸¹

3.8. RESEARCH AND DEVELOPMENT

Both the Convention and the Protocol underlines the consent of States Parties to cooperate directly, bilaterally, regionally or through the organization or relevant regional organization or arrangement in a bid to promote and exchange results of research and development programmes relating to enhancing the state-of- the- art oil pollution and preparedness.⁸²

These include technologies and techniques for the surveillance, containment, recovery, dispersion, clean-up and otherwise minimizing or mitigating the effects of oil pollution and for restoration.

Parties also undertakes under this provision to establish directly or as appropriate, through the organization necessary links between the parties research institutions.⁸³

State parties must also set up research institutions and hold regular symposia on relevant subjects and to encourage the development of standards for compatible oil pollution combating techniques and equipment. ⁸⁴States parties to develop compatible oil pollution, hazardous and noxious substances pollution combating techniques and equipment.⁸⁵

3.9. TECHNICAL CO-OPERATION

Under Article 9, parties undertakes directly or through the organization and other International bodies, as appropriate, in respect of oil pollution preparedness and response, to provide support for those parties which request technical assistance, by

⁸¹ *ibid* art 7(3) and art 5(3).

⁸² *Ibid* art 8(1) and art 6(1).

⁸³ OPRC (n.9) art 8(2) and OPRC-HNS (n.10) art 6(2).

⁸⁴ *ibid* art 8(3) and art 6(3).

⁸⁵ *ibid* art 8(4) and art 6(4).

training personnel, ensure availability of relevant technology, equipment and facilities, facilitation, and initiation of joint research and development programme.⁸⁶

Parties further undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of preparedness for and response to oil pollution incidents.⁸⁷

3.10 PROMOTION OF BILATERAL AND MULTI-LATERAL CO-OPERATION IN PREPAREDNESS AND RESPONSE

Both the Convention and the Protocol provides that, states parties are to conclude bilateral or multilateral agreements for oil pollution preparedness and response, and deposit copies of such agreements to that effect to the IMO which should make them available on request to the parties.⁸⁸

3.11. RELATION TO OTHER CONVENTIONS AND INTERNATIONAL AGREEMENTS

Both the Convention and the Protocol provides expressly that, no provision in the Convention shall be construed as altering the rights or obligations of any party under any other convention or international agreement.⁸⁹

3.12. INSTITUTIONAL ARRANGEMENTS

Both the Convention and the Protocol designates the organization, subject to its agreements and the availability of adequate resources to sustain the activity, to perform various functions, including provision of education and training, information services and technical assistance.⁹⁰

⁸⁶ *ibid* art 9(1) and art 7(1).

⁸⁷ *ibid* art 9(2) and art 7(2).

⁸⁸ *ibid* art 10 and art 8.

⁸⁹ OPRC (n.9) art 11 and OPRC-HNS (n.10) art 9.

⁹⁰ *ibid* art 12(1) and art 10(1).

The organization in carrying out these activities must endeavour to strengthen the ability of States to prepare for and combat oil pollution incidents, drawing upon the experience of states, regional agreements and industry arrangements and paying particular attention to the needs of developing countries.⁹¹

The provisions of this Article for both the Convention and the Protocol shall be implemented in accordance with a programme developed and kept under review by the organization.⁹²

3.13. EVALUATION OF THE CONVENTION AND PROTOCOL

Both the Convention and the Protocol, ensures their effectiveness in light of their objectives, particularly with respect to the principles underlying Co-operation and assistance.⁹³

3.14. ANNEX

The annex to the Convention and the Protocol sets out the arrangements for financing the costs for assistance rendered to states. It provides that, unless an agreement concerning the financial arrangements governing actions of parties to deal with oil pollution incidents has been concluded on a bilateral or multilateral basis prior to the oil pollution incident, parties shall bear the costs of their respective actions. If the action was taken by one party at the express request of another party, the requesting shall reimburse to the assisting party the costs of its action.⁹⁴

The need for reimbursement of the costs to be fairly calculated according to the law and current practice of the assisting State is also given emphasize.⁹⁵

The provisions of this convention shall not be interpreted as in any way prejudicing the rights of the parties to recover from third parties the costs of actions to deal with

⁹¹ *ibid* art 12 (2) and art 10(2).

⁹² *ibid* art 12(3) and art 10(3).

⁹³ *ibid* art 13 and art 11.

⁹⁴ OPRC (n.9) annex paragraph (1) (a) and OPRC-HNS (n.10) paragraph (1) (a).

⁹⁵ *ibid* Para (2).

pollution or the threat of pollution under other applicable provisions and the rules of national and international law.⁹⁶

4. LEGISLATIVE GAP IN TANZANIA ON OIL POLLUTION, HAZARDOUS AND NOXIOUS SUBSTANCES; PREPAREDNESS, RESPONSE AND CO-OPERATION

Tanzania recently ratified the Convention on Oil Pollution Preparedness Response and Cooperation (OPRC Convention) of 1990 but has not ratified the Protocol on Hazardous and Noxious Substances (OPRC/HNS Protocol) of 2000, a situation which makes the plan for preparedness, response and cooperation to lack effectiveness. The OPRC-HNS Protocol needs to be ratified as well since both the Convention and the Protocol have similar goals towards protecting and preserving marine environment through preparedness, response and cooperation in incidents involving oil pollution, noxious and hazardous substances.

Tanzania Oil and Gas extractive industry is one of the rapidly growing industries in the Country and has attracted a number of investors as well as enactment of numerous legislation by the government to create favourable environment for investors in Oil and Gas.

The primary Institution established for environmental protection in Tanzania is the National Environmental Management Council (NEMC), established under the Environmental Management Act of 2004.

As a matter of urgency, the Parliament of Tanzania passed three legislative Acts in July 2015: the *Petroleum Act 2015*, the *Tanzania Extractive Industry (Transparency and Accountability) Act 2015*, and the *Oil and Gas Revenues Management Act 2015*.

The President assented to these Acts on 4 August 2015. The Acts update and consolidate existing legislation for the Oil and Gas sector. The objectives of the Acts, among others, are to repeal two Acts, namely the *Petroleum (Exploration and Production) Act 1980*,

⁹⁶ *ibid* Para (4).

covering upstream petroleum operations, and the *Petroleum Act 2008*, covering mid and downstream petroleum supply operations.

There is a specific government policy on all environmental matters including concerns associated with energy operations (National Environmental Policy 1997). The policy focuses on ensuring sound practices and proper management of the environment.

It contains a section that touches on environmental concerns in economic activities, which include mining and gas/oil exploration, production and the associated operations. The policy requires these operations to be carried out in a way that effectively minimizes risks to the environment. It also emphasises appropriate and safe disposal of hazardous wastes and emission produced by oil and gas activities.

The National Environmental Policy outlines mechanisms aimed at ensuring sound environmental practices are maintained. These mechanisms include regular audits and the requirement to undertake Environmental Impact Assessment during the planning state of prospective activity. The policy encourages the use of retorts that serve to encourage the exploration of shale oil.

It also provides for economical principles that encourage efficient environmental management of natural resources, such as adoption of the "polluter pays" principle.

The National Marine Oil Spill Response Contingency Plan was adopted by the government of Tanzania aiming at protecting marine environment.

The plan intends to identify national capabilities and resources and establish an organizational structure and coordinating authority and national operational contact points identified within each relevant agency.

It includes the assignment of responsibilities to relevant government and non governmental agencies for the operational response to marine incidents which could result in spillage of oil and other noxious substances to Tanzania's territorial waters.⁹⁷

The plan however aims at ensuring prompt response to either prevent pollution or restrict or minimize the spread of contaminants, adequate protection of public health and welfare and marine environment, appropriate response techniques to clean up the pollutants and disposal of recovered material in an environmentally accepted manner.⁹⁸

However having a well drafted Contingency plan in place without incorporating the OPRC Convention is one of the big gaps that should be covered by making OPRC operational as well as ratifying the OPRC-HNS protocol for purposes of preparedness, response and cooperation in hazardous and noxious substances. The two cannot be separated for the effective and proper and prompt response as pointed above.

However it can be noted that there is a big gap in as far as Preparedness, Response and International Co-operation is concerned because most of the mentioned documents above are based at the National level and mostly at Policy level which can have no any legal effects whatsoever in case of any emergency when oil spill occurs.

5. A NEED TO INCORPORATE AND IMPLEMENT THE OPRC CONVENTION

AND ITS 2000 OPRC-HNS PROTOCOL INTO TANZANIAN LAWS

In the present case the legislation would be in the form of an Act to be referred to as the Preparedness, Response and Cooperation on Pollution by Oil and Hazardous and Noxious Substances (PRC) Act, 2017.

⁹⁷ The United Republic of Tanzania National Marine Oil Spill Response Contingency Plan, (2003) p 2.

⁹⁸ *ibid* p 4.

The draft is motivated by the concern for the need to protect the marine environment from oil pollution as well as pollution from hazardous and noxious substances other than oil that has been an ecological nightmare for many decades.

The incorporation would reflect Tanzania's commitment to protection and preservation of the marine environment. There is indeed a need for a legal mechanism for a proper response in cases of oil pollution in Tanzanian waters since Tanzania currently lacks the requisite provisions under the current domestic legislation dealing with the preparedness, response and International Co-operation in the protection of the Marine environment against pollution arising from the offshore activities. The act if enacted would give legal impetus to the obligations of the operators in the oil industry, which would compel them to put in place the necessary equipments and mechanisms for response to oil pollution incidents when they occur.

Due to various oil spill catastrophes that the world has witnessed, including the deepwater Horizon Oil Spill⁹⁹ which has been characterized as the worst the history of the United States of America, many lessons have been learnt. Due to the fact that United States have strong legislative and industrial arrangements to deter incidents like these, one can imagine as to how the situation can be when it happens in a nation like Tanzania.

As a result, the United States adopted the Oil Pollution Act,¹⁰⁰ which was passed in 1990 in the aftermath of the *Exxon Valdez* oil spill,¹⁰¹ which revealed certain weaknesses in

⁹⁹ Referred to as the BP oil spill, the Gulf of Mexico oil spill or the Macondo blowout is an oil spill which flowed unabated for three months in 2011.

¹⁰⁰ An Act passed by the 101st United States Congress and signed into Law in August 1990 largely in response to the rising concern following the *Exxon Valdez* incident. United States lacked adequate resources, to respond to spills amongst others. See http://www.uscg.mil/npfc/About_NPFC/opa.asp (Accessed 09 January 2017).

international response and preparedness when a major oil spill occurs, and informed many nations on the need to improve their national legislation on oil spill prevention and response.

A successful combating operation of a marine oil spill is, however, highly dependent on national legislations and rapid response from the time the oil spill is reported until when it has been fully combated. As an anonymous expert once said “where there is oil, there is spill.” Unfortunately, prevention is not always successful and accidents will inevitably continue to occur.

Therefore preparedness and co-operation to tackle any eventuality must be of primary concern to any nation in the business of oil production to ensure that pollution is dealt with properly thus minimizing damage to the marine environment.

It is worthy to note that Tanzania can be a victim of oil pollution like other states, since the oil spill incidents as a matter of fact are always unexpected. Experience from other places indicates that response to accidental spillages of oil require very careful advance planning, preparedness, response and co-operation.

Tanzania is a party to the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 and as such it has an obligation to protect and preserve the marine environment as evidenced in part XII of UNCLOS.

Under the OPRC Convention and the OPRC-HNS Protocol, States parties are under obligations to undertake a number of activities including putting in place and effective oil spill contingency plan, co-operate to provide assistance to other parties to the Convention in case of oil pollution accidents, and to ensure that oil pollution incidents are reported to competent authorities amongst others.

¹⁰¹ On 24th March 1989, the *Exxon Valdez* oil spill occurred depositing a large quantity of crude oil on the beaches in Prince William Sound and along the shoreline of the Gulf of Alaska. It was the largest ever in the United States until the 2010 Deepwater Horizon oil spill.

If member states are to implement the requirements of the Convention and the Protocol and put contingency plans in place with a complementary programme of training and exercises, it would ensure a highly pragmatic and confident approach to handling an oil spill catastrophe. It would recognize the duty of care that the Governments has for their citizens and the obligations they have for implementing the strategies identified in the Convention and the Protocol.

A large percentage of the Tanzania population lives and depends on the sea for their livelihood. It is therefore crucial that Tanzania in this case should put in place mechanisms to ensure that the lives and livelihood of these people are not jeopardized in any way.

The Act would in a large extent deal with different issues that would ensure that Tanzania has in place various structures that would enable her cope with situations as and when they occur. A country like Tanzania undoubtedly with its limited resources and equipments cannot control a major oil spill, hazardous and noxious substances and hence the vital element of cooperation with other states.

Though the Minister responsible for Environment has powers under Section 376 of the Merchant Shipping Act of 2003, to make regulations with lieu to protect the environment, the question of Oil Pollution, hazardous and noxious substances preparedness, response and cooperation remain vital and of peculiar nature which needs a separate Law in order to operate promptly.

6. A NEED FOR AN INDEPENDENT AGENCY TO OVERSEE OIL POLLUTION, PREPAREDNESS, RESPONSE AND CO-OPERATION

To ensure that the OPRC Convention and HNS Protocol are properly implemented in Tanzania after incorporation of the Convention and subsequent adoption of the Protocol, there is a need to set up an independent agency within the upcoming established Petroleum Upstream Regulatory Authority (PURA) that will oversee and co-ordinate the

implementation and administration of the Act through inter alia formulating the requisite plans for avoiding and combating an oil spill, hazardous and noxious substances.

The proposed organ will serve as the competent oil spill, hazardous and noxious substances Preparedness, Response and Co-operation Agency as indicated in the OPRC Convention.¹⁰²

The organ will be responsible for the formulation of detailed framework for combating and responding to major incidents or threats of marine pollution in Tanzania.

The movement of oil and other related products from one part of the country to other countries could threaten the marine environment of the country in the unfortunate event of any major oil spill, hazardous and noxious substances.

The need to therefore establish an organ to tackle these kinds of situations in case they happen in Tanzania is therefore of paramount importance and should be given priority.

7. THE LEGISLATIVE PROCESS IN TANZANIA IN TRANSFORMATION OF INTERNATIONAL TREATIES AND CONVENTIONS INTO THE NATIONAL LAWS

For States with a “dualist system”, including Tanzania, international law is not directly applicable domestically. It must first be translated into national legislation before it can be applied by the national courts. For a dualist State ratification of the International Convention like the case of OPRC Convention in Tanzania is not enough, national implementation of the legislation enacted is necessary.

As stated earlier, Tanzania is not a party to the 2000 OPRC-HNS Protocol; therefore it needs to ratify it since they are both crucial and necessary for a holistic approach to preparedness, response and cooperation for oil pollution and HNS Substances.

¹⁰² OPRC (n.9) art 6 and OPRC-HNS (n.10) art 4.

The Constitution of United Republic of Tanzania of 1977 provides for procedures to be followed in transformation of International Treaties and Conventions into the national laws of Tanzania. Article 63(3) (e) reads as follows;

*“Article 63 (3) for the purposes of discharging its functions the National Assembly may-
(e) deliberate upon and ratify all treaties and agreements to which the United Republic is party and the provisions of which require ratification.”*

The draft Bill incorporating the provisions of the Convention or Treaty is initially prepared by the Chief Parliamentary Draftsman in the office of the Attorney General.

The bill to be submitted to the National Assembly is published for general information to the Public together with a statement of its objects and reasons. The present bill at hand will be introduced in the House by a Minister for Environment in the Vice President’s office. It will then be followed by general debate by the members of Parliament (First and Second Reading of the Bill).

After completion of the general debate, the Assembly immediately resolves itself into a committee of the whole house. The Clerk calls the number of each clause in succession together with any amendments which may have been made by the Minister in charge of the Bill. The Presiding Officer (who at this stage is designated Chairman, not Speaker) puts the question “that the Clause (or the clause as amended) be approved.

After that stage, what follows (third reading and passing the bill), When the clauses of the Bill have been dealt with, the Assembly resumes and the speaker returns to the Chair at the conclusion of the proceedings in the Committee of the whole House. The Minister in-charge of the Bill then reports to the Assembly that the Committee has considered the Bill, Clause by clause and approved the same.

Thereafter he requests the Assembly to concur with the findings of the Committee. At this stage the Assembly votes, and if the majority of Members of Parliament give their consent then the Bill has been passed by the House.

When a Bill has been passed by the Assembly, a printed copy of the Bill is submitted by the Clerk of the National Assembly to the President for his assent or other order if the bill is assented to, then it becomes an Act of Parliament.

8. EXPLANATION OF THE DRAFT TEXT

Objectives of the Oil Pollution Preparedness, Response and Co-operation on oil pollution incidents by oil, hazardous and noxious substances Act

The draft Act will set out in detail the various obligations, powers, rights and duties stemming from the OPRC Convention and the OPRC-HNS Protocol.

The draft Act will deal with different issues that would ensure that Tanzania has in place various structures that will ensure that in the event of an oil and HNS pollution incident, prompt and effective action can be taken. It would provide the legal authority and compel responsible State agencies and private organizations to provide the resources and to put in place the preventive and responsive measures needed to deal with an offshore pollution and other kinds of oil and HNS pollutions.

In addition, it would guide users in the implementation and administration of the Act, guide judicial officers in adjudicating over matters arising from the Convention and provide the much needed clarity, stability and intelligibility to those making reference as well as to those applying it.

SCHEME OF THE DRAFT

Part I deals with the preliminaries of the Act. It deals with the short title, and the date of entry into force of the Act. In addition, this part provides for the definitions of the main terms used under the Act and the scope and application of the Act.

Part II is connected with the administration of the Authority. It makes provision for the appointment of the Director General and his functions. In addition, provision is made for the appointment of other staff, expenses allowed, accounts and auditing amongst others.

Part III establishes the National Oil and Hazardous and Noxious substances Emergency Response Agency. This Authority would serve as the backbone of the Act as it would set out and supervise the effective and successful implementation of the Act. This part

provides for the objects and functions of the Authority, Ministerial directives. In addition, it lays down the governing body of the Authority, tenure of members, allowances of members and meetings of the Board amongst others.

Though, Surface and Marine Transport Regulatory Authority (SUMATRA) which mostly engages itself in regulating surface and Marine transport Countrywide and seems to be overwhelmed by that role, the supervision of the Agency should still remain under SUMATRA as a matter of legislation available and the nature of pollution that the proposed legislation seeks to prevent. This position is supported by the Provision of Section 5 (f) which reads;

“It shall be the duty of the Authority that in carrying out its functions it shall strive to enhance the welfare of Tanzania Society by;

(a) taking into account the need to protect and preserve the marine environment.”

It should be noted however that the Petroleum Upstream Regulatory Authority (PURA) a body corporate established by the Petroleum Act, 2015 (*Not yet in force*) which is purely dedicated to deal with the regulation of Petroleum activities in Tanzania Mainland and Zanzibar has not started operating yet, but it will be an ideal body to supervise the Agency established under this Act.

Part IV deals with the functions and management of the Agency. It also lay down the roles of other members of the Agency, consultants and experts.

Part V deals with preparedness, response and cooperation. It lays down the National preparedness and response system, national contingency plan, international arrangements and means of cooperation. Since Tanzania is a developing Country with limited resources, the importance of co-operation in the international plane is highly relevant.

Part VI provides for the oil and HNS pollution reporting procedures that have been laid down in the International Convention on Oil Pollution Preparedness, Response and Co-operation and HNS Protocol. These reporting procedures are vital importance and it is

pertinent that they are adopted as they would help forestall a lot of problems in the future.

Part VII is dedicated to establishment of the Fund for financing the National and Regional Systems for Preparedness and Response. The importance of the fund cannot be ignored since it would provide some of the requisite funds needed in the event of an oil and HNS pollution incidents and help in the running of the activities of the Agency.

Part VIII deals with general offences in contravention to the provisions of this act and the punishments for the committed offences by persons and body corporate.

Part IX provides for the funds of the Agency and general management of the funds including duty to operate the funds of the Agency on Sound principles.

Part X deals with research and development. It will allow Tanzania to take necessary steps in order to be abreast with the ongoing developments in the field.

Part XI provides for the jurisdiction for the effective enforcement of the Act.

Part XII provides for some miscellaneous acts like the supervision, review, appeals, protection of officer, time limit and regulations amongst others.

9. CONCLUSION

The critical importance to Tanzania for developing its petroleum resources and the catastrophic potential of oil escapes, or discharges or well blowout, and oil pollution from shipping activities are the competing considerations to be balanced in formulating an Act on Preparedness, Response and co-operation on Oil Pollution incidents by Oil, Hazardous and Noxious Substances. The need for ratification of the OPRC-HNS Protocol of 2000 is also very vital and will play a big role in the current Oil and Gas development regime.

The Act is primarily based on the International Convention for Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC Convention) and its 2000 HNS

Protocol. It deals with the different issues that would ensure that Tanzania have in place different structures that would enable her to deal with situations as and when they arise in, to effectively protect and preserve marine environment.

It would be impossible for a country with limited resources and equipments like Tanzania to handle major oil spills at its own capacity should they arise and hence the need to put in place other mechanisms that would be followed for requesting an assistance from neighbouring countries.

This draft Act is therefore, intended to provide the legal bases for the implementation of aforementioned Convention and it Protocol in Tanzania.

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ACT SUPPLEMENT

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**PREPAREDNESS, RESPONSE AND CO-OPERATION ON OIL POLLUTION
BY OIL, HAZARDOUS AND NOXIOUS SUBSTANCES ACT, 2017**

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Preparedness, Response and Co-operation on Pollution by Oil, Hazardous and Noxious Substances Act

THE UNITED REPUBLIC OF TANZANIA



NO. 01 OF 2017

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An Act to give effect to the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, and OPRC-HNS Protocol of 2000, and otherwise to make provisions for preventing the pollution of the sea and other navigable waters by oil and other substances and establish the National Oil Spill

Preparedness, Response and Co-operation Authority, and for matters related therewith.

[.....
.....]

ENACTED by the Parliament of the United Republic of Tanzania

**PART I
PRELIMINARY PROVISIONS**

Short title
and
commencement

1. This Act may be cited as the Preparedness, Response and Co-operation on oil pollution incidents by oil and Hazardous and Noxious Substances Act, 2017 and shall come into operation on such date, by notice published in the *Gazette*, appoint.

Preparedness, Response and Co-operation on Pollution by Oil, Hazardous and Noxious Substances Act

Scope of
application

2. (1) This Act shall, unless constitutionally required or otherwise, apply to Mainland Tanzania as well as Tanzania Zanzibar with respect to-

- a) All Tanzanian ships wherever they are;
- b) All foreign ships in the Tanzania waters;
- c) All offshore structures within Tanzania waters or ports of Tanzania;
- d) All ports with oil or HNS handling facilities in Tanzania;
- e) All national public or private entities that have a defined role in this Act;
- f) Every person who conducts any of the regulated activities.

(2) Unless otherwise expressly provided, this Act shall not apply to:

- (a) a ship belonging to or operated by a state and being engaged in public non-commercial service, which shall as far as seems reasonable and practicable, comply with the provisions of the present Act when this does not hinder or impede the operation or operational ability of the ship;

and

(a) any warship, naval auxiliary or other ship owned or operated by the Government on non-commercial service.

Interpretation

3. In this Act, unless the context requires:

“agency” means the national oil and hazardous and noxious substances emergency response agency established under section 14;

“auditor –general” includes an auditor appointed by the Auditor –General;

“board” means the governing body of the Authority provided for under section 15 of this act;

“chairman” means the chairman of the board;

“director general” means the Director General of the Agency appointed under Section 7;

“member” means a member of the Board;

“committee” means the committee provided for under Section 22 of this Act;

Preparedness, Response and Co-operation on Pollution by Oil, Hazardous and Noxious Substances Act

“convention” means the international convention on oil pollution preparedness, response and co-operation, 1990 and the protocol relating to pollution incidents by hazardous and noxious substances, 2000;

“court” means court of competent jurisdiction;

“functions” includes powers and duties;

“fund” means the fund for the national response system;

“inspection” means lawfully authorized checking of the compliance with the provisions of this act;

“inspector” means a person carrying out an inspection within the limits of the competence granted by the agency;

“ministry” means the ministries responsible for environment and disaster management and the “minister” shall construes accordingly.

“national co-ordinator” means the person responsible for the national oil spill contingency plan for the country;

“organization” means international maritime organization and the abbreviation “IMO” shall be construed as the same;

“offshore installations” means any man-made structure, plant or vessel or a part of the structure, plant or vessel whether floating or fixed to the seabed and which is placed within Tanzania’s maritime jurisdiction for the purpose of exploration, appraisal or exploitation of liquid and gaseous hydrocarbons;

“oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

“hazardous and noxious substances” means any substances other than oil which, if introduced to the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea and the abbreviations “HNS” shall be construed accordingly.

Preparedness, Response and Co-operation on Pollution by Oil, Hazardous and Noxious Substances Act

“internal contingency plan” means the plan mentioned in section 31 and the abbreviation “ICP” shall be construed accordingly;

“local contingency plan” means the plan prepared and adopted under section 30 and the abbreviation “LCP” shall be construed accordingly;

“national contingency plan” means the national HNS pollution response contingency plan mentioned under section 29 and the abbreviations “NCP” shall be construed accordingly;

“national strategy” means the national oil and HNS pollution preparedness and response strategy established under section 28;

“offshore unit” means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil;

“oil and HNS pollution emergency plan” means a contingency plan other than the national oil spill contingency plan which sets out arrangements for responding to incidents which cause or may cause marine pollution by oil or HNS, with a view to preventing such pollution or reducing or minimizing its effect;

“oil or HNS pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil or HNS and which poses or may pose a threat to the marine environment, coastline or related interests of one or more States and which requires emergency action or other immediate response;

“operator” means in relation to an oil and HNS handling facility, a person responsible for the management of the oil facility in Tanzania and in

relation to an offshore installation, means a person responsible for the management of the installation;

“regional capital” means the administrative capital of the region;

“regulations” means the regulations made under this act;

“sea ports, oil and HNS handling facilities” means those ports or facilities which presents a risk of an oil pollution incident and comprises among others sea ports, oil terminals, pipelines and other handling facilities; and;

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“ship” means a vessel of any type operating in the marine environment and comprises among others of any type of hydrofoil boats, air- cushion vehicles, submersibles and floating craft of any type.

PART II
ADMINISTRATIVE PROVISIONS

Role of
the
Minister

4. (1) The minister shall provide supervisory and functional role in oil pollution, preparedness and cooperation and shall in such respect, discharge the following functions;

- (a) develop and implement policies and plans;
- (b) formulate and reviewing government policies on oil and HNS pollution incidents;
- (c) causing to be conducted studies necessary for oil pollution preparedness, response and cooperation;
- (d) cause to be conducted inquiries into accidents or disasters caused by oil pollution incidents.
- (e) Perform any other functions related to oil pollution preparedness response and cooperation and as assigned by this act.

(2) In the discharge of his functions under Subsection (1), the Minister shall have powers to intervene and take immediate and prompt reparation actions in any regulated activity under this act.

Instructions
to the
agency

5. The minister may issue policy directions to the agency in respect of formance of its functions under this act.

Division of
the agency

6. The Board shall create such departments or divisions in the Agency, the Board may consider necessary for the efficient discharge of the functions of the agency.

Director
General

7. The Director General who shall be the chief executive officer of the agency shall be appointed by the President in accordance with the advice of the board given in consultation with the Minister.

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Functions
of the
Director
General

8. (1) The Director General shall hold office on such terms and conditions as shall be specified in his letter of appointment.

(2) Subject to such general directives as the board may give, the Director General shall be responsible for the direction of the work of the agency and for the day to day administration of the agency and shall ensure the implementation of the decisions of the board.

(3) Perform the functions assigned to him by the board;

(4) Delegate such of his duties as he may determine to any office of the agency but the Director General shall not be relieved from ultimate responsibility for discharge of any delegated function;

(5) Performs any other functions deemed necessary for implementation of the provisions of this act;

(6) Act as accounting officer to the fund of the agency;

(7) Develop and oversee an operational plan to guide the agency in all oil and HNS incidents.

Appointment
of other
staff

9. (1) The agency shall have such other officers and employees as may be necessary for the proper and effective performance of its functions under this act.

(2) Other Public officers may be transferred or seconded to the agency.

(3) Appointment of officers of the agency shall be made by the President with the advice of the board given in

consultation with the Public Services Commission and upon such terms and conditions as the appointing authority shall determine.

(4) The Agency may engage the services of such experts and consultants as the board may determine.

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Expenses of
the agency

10. The Parliament shall annually provide to the agency through the ministry responsible such sums of money as may be necessary for the efficient discharge of its functions under this act.

Accounts
and audit

11. (1) The board shall keep books of account and proper records in relation to them and the accounts and records of the agency shall be in a form approved by the Auditor-General.

(2) The accounts of the agency shall be audited by the Auditor-General within six months after the end of each financial year.

(3) The financial year of the agency shall be the same as the financial year of the government.

(4) The Director General shall prepare budget estimates for each financial year and present the estimates to the board for its approval not later than two months before the end of the financial year.

Annual and
other reports

12. (1) The board shall as soon as practicable after the expiration of each financial year but within six months after the end of the year, submit to the minister an annual report covering the activities and the operations of the agency for the year to which the report relates.

(2) The annual report submitted under subsection (1) shall include the report of the Auditor-General.

(3) The Minister shall within two months after the receipt of the annual report submit a report to Parliament with such statement as he may consider necessary.

(4) The Board shall also submit to the Minister such other report as the Minister may in writing require.

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Request for information

13. The Director General or any officer of the Agency authorized by the Director General may request in writing from any person or request any person to attend at a time and place specified to give any information which the Director General considers reasonably necessary for the purpose of this Act.

PART III

ESTABLISHMENT OF NATIONAL OIL AND HAZARDOUS AND NOXIOUS SUBSTANCES EMERGENCY RESPONSE AGENCY

Establishment of the agency under PURA

14. (1) There is hereby established a body known as the National Oil and Hazardous and Noxious Substances Emergency Response Agency under the Petroleum Upstream Regulatory Authority (PURA).

(2) The agency shall be a body corporate, having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, of suing and being sued in its corporate name and subject to this act, of performing all such acts as bodies corporate may perform according to law.

(3) The agency shall have a common seal the use of which shall be authenticated by the signatures of the chairman of the board and the Director-General or any other member of the board designated in that behalf of the board.

Board of the agency

15. (1) The governing body of the agency shall be the board of directors consisting of;-

(a) a chairman who shall be a person with considerable knowledge and experience in marine environmental protection matters;

(b) the permanent secretary of the ministry;

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(c) a representative each of the following bodies;-

- (i) Ministry responsible for Environment
- (ii) Ministry of Trade and Industry
- (iii) Ministry of Tourism and Natural Resources
- (iv) Ministry of Energy and Minerals
- (v) Ministry of Health
- (vi) Ministry of Transport
- (vii) Ministry of Defence and National Service
- (viii) Tanzania Petroleum Development Corporation
- (ix) Petroleum Upstream Regulatory Authority
- (x) Tanzania Ports Authority
- (xi) Surface and Marine Transport Regulatory Authority
- (xii) National Environmental Management Council
- (xiii) National Security
- (xiv) Disaster Management Unit in the Office of the Prime Minister

(d) three persons, at least one of whom shall be a woman, with formal qualifications, extensive knowledge and experience relevant to the functions of the Agency; and

(e) the Director General who shall also act as secretary to the Board.

(2) The Chairman and other members of the Board referred to in paragraph

(d) shall be appointed by the President on the recommendation of the minister and subject to the approval of the parliament.

Tenure of
Members

16. (1) The chairman and other members of the board, except the Director General, shall hold office for five years and shall be eligible for re-appointment for not more than one term.

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(2) Where a vacancy occurs in the membership of the board, the president shall, after consultation with the minister, appoint a replacement, who shall hold office for the remainder of the term of the person replaced and shall subject to this act be eligible for re appointment.

Remuneration
of members

17. The chairman and the other members of the board shall be paid such remuneration, fees and allowances and shall be reimbursed by the agency for any expenses incurred in connection with the discharge of their functions as the board may determine.

Functions
of the board

18. (1) Subject to this act, the board shall have the control and supervision of the agency;

(2) the board shall also provide to the agency such policy guidance and advice as will ensure the efficient implementation of the functions of the agency and enhance the overall performance of the agency;

(3) oversee the operations of the agency;

(4) advice the minister on cases of oil and HNS incidents;

(5) review and approve business and operating plans, budgets, reports and financial statements of the agency;

(6) establish and approve rules and procedures for appointment, promotion, termination, discipline, terms and conditions of service of employees of the agency.

- (7) provide guidance to the Director General and employees of the agency.

Meetings
of the board

19. (1) The board shall meet for the dispatch of its business at least once every three months at such times and places as the chairman may decide.

- (2) A special meeting of the board shall be convened by the Chairman at the written request of not less than one third of the members of the board to be heard at such time and place that the chairman may decide.

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(3) In case of maritime disaster by oil and HNS the board shall meet immediately at the request of the chairman and at such a place that the chairman may decide.

(4) The chairman shall preside at meetings of the board at which he is present and in his absence a member elected by the members present from among their number shall preside.

(5) Each member shall have one vote but where there is equality of votes, the Chairman or other member presiding shall have a casting vote.

(6) All acts, matter or things authorized or required to be done by the board shall be decided at a meeting where a quorum is present and the decision is supported by the votes of the majority of the members.

(7) The quorum for a meeting of the board shall be five members.

(8) The board may co-opt any person to attend its meetings and provide technical or other advice to the board or otherwise assist at its meetings but such person shall not vote on any matter for decision by the board.

(9) Subject to this act, the board shall regulate its own proceedings as per the schedule to this act.

Disqualification
and
appointment
of members
to the board

20. A person shall not qualify to be a member of the board if;

(a) is convicted of an offence under this act or convicted of an offence involving dishonesty or fraud by a competent court in or outside Tanzania;

(b) is convicted of an offence and sentenced for imprisonment for a term of six months or more by a competent court in or outside Tanzania;

(c) is undischarged bankrupt or has made any assignment or arrangement with his creditors;

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(d) inability to perform the functions of his office by reason of his infirmity of mind or body;

(e) proven misconduct;

(f) if he fails to attend any three consecutive meetings of the board without reasonable cause;

(g) if he resigns by written notice to the minister;

(h) if he ceases to be an employee of the organization of which he is a representative;

(i) upon his death.

Disclosure
of interest

21. (1) Any member or employee of the agency having personal interest whether pecuniary or otherwise, direct or indirect in any matter to be considered by the board, shall disclose the fact of such interest and the nature thereof, and such disclosure shall be recorded in the minutes of the board and such member shall take no part in any deliberation or discussion of the board relating to such matter.

(2) A member who contravenes subsection (1) shall be guilty of misconduct and liable to be removed from the board.

Committees
of the board

22. (1) The board may for the discharge of its functions,

(a) appoint one or more committees to perform such functions as the board may determine;

(b) inquire into and advise the Board on any matter relating to the functions of the Board;

(2) A committee shall consist of the chairman and other members;

(3) A committee appointed under this Act may regulate its own procedure.

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PART IV
FUNCTIONS AND MANAGEMENT OF THE AGENCY

Committees
of the Board

23. The object for which the Agency is established is;

(a) to provide prompt and effective response to pollution incidents by oil and HNS;

(b) to coordinate and ensure compliance with the present act;

(c) to ensure that a national contingency plan is developed and implemented.

Deputy
Director
General

24. (1) The Director General shall be assisted by two Deputy Director Generals who shall be responsible for;

(a) local emergency planning

(b) international emergency planning

(2) A Deputy Director General shall have formal qualifications and experience in the respective department.

(3) The Deputy Director Generals shall be appointed by the board on such terms and conditions as the board may determine.

Other staff
of the
agency

25. (1) The Board shall appoint such other staff as are required for the efficient performance of the functions of the agency.

(2) The Board may delegate to the Director General power of appointment of such staff as it may determine.

Consultants
and experts

26. The agency may engage the services of such consultants or experts as it may consider necessary for the proper and efficient performance of the functions of the agency.

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PART V
PREPAREDNESS, RESPONSE AND COOPERATION

The national
preparedness
and response
system

27. (1) The national preparedness and response system shall be based on a tiered response approach, in which the following tiers of response will be distinguished;

(a) Tier 1: shall cover small operational pollution incidents of the kind which normally take place at an offshore unit or a port or HNS handling facility, and in which the operator shall be directly responsible for planning and managing the response in accordance with this act.

(b) Tier 2: shall embrace medium size pollution incidents, such as those which may be caused by a minor accident in a port or its vicinity and where the normal arrangement for the response shall be planned and managed by the local emergency response centre, in accordance with this act.

(c) Tier 3: shall include major pollution incidents, usually resulting from a serious maritime casualty and where the response shall normally be planned and managed by the national emergency response

centre, in accordance with this act and at this level the national contingency plan shall be activated.

(2) A national emergency response centre shall be established within the agency in order to direct and coordinate the tier 3 response.

(3) A minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved, shall be established, as appropriate, in collaboration with oil and HNS industries, shipping industries, port authorities and foreign resources.

(4) The system shall include a programme of exercises for pollution response organisations and training of relevant personnel.

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(5) Further, the system shall include detailed plans of communication capabilities for responding to an oil or HNS pollution incident.

(6) The system shall also include mechanisms to mobilize and draw on resources and capabilities in the whole tiered response system, if necessary.

(7) In addition, the system shall provide current information on the system to the organization, hereunder the national contingency plan.

The national strategy

28. A national oil and HNS pollution preparedness and response strategy shall be determined in the national contingency plan within the scope of this act. The national policy and strategy shall be based on an assessment of the inter alia the following elements:

- (a) the risks of type and amounts of pollution;
- (b) the probable drafting of oil and HNS;
- (c) the vulnerability of the resources to be protected;
- (d) adequate combat equipment and personnel;
- (e) the protection of resources to be prioritized; and
- (f) the organization of the preparedness and response

The national contingency plan

29. The national contingency plan for responding promptly and effectively to oil and HNS pollution incidents shall be adopted including;

(a) the designation of;

(i) the competent national authority with responsibility for pollution preparedness and response;

(ii) the national operational contact point, which shall be responsible for the receipt and transmission of pollution reports;

(iii) the agency that is entitled to the act on behalf of Tanzania to request assistance or to decide to render the assistance requested.

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(b) the organizational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the agency.

The local contingency plan

30. Local authorities, as defined in the national local plan, shall prepare and adopt local contingency plan in conformity with the present act.

Internal contingency plan

31. (1) All offshore structures , oil and HNS handling facilities and oil and HNS importers /markets which shall poses an internal contingency plan, which shall be duly co-ordinated with the NCP and shall be subject to this act.

(2) The offshore structures and handling facilities shall constitute the planning for the response in the level 1, and shall be complementary to the LCP.

(3) There shall be a separate plan for each offshore structure and handling facility except that:

(a) there may be joint plans between offshore structures and operators of oil or HNS handling facilities, within an area;

(b) there may be joint plans in respect of offshore installations and oil handling facilities which are pipelines associated with that installation.

International arrangement

32. (1) The agency shall have power to send Tanzania response teams abroad or to receive in Tanzania foreign response teams, according to relevant provisions of the international conventions and multilateral contingency plans or national contingency plan, for the purpose of preparedness and response to incidents.

(2) The national contingency plan shall be co-ordinated with regional arrangements for purpose of response.

Drills and
exercise
programs

33. (1) The agency shall prepare and carry out programs of training and exercises for the oil and HNS pollution preparedness and response organization, in order to ensure an effective implementation of the different levels of contingency planning.

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(2) The Agency shall also organize or join training and exercises, which are foreseen in the multinational regional contingency plans or which are determined for the purpose of International or regional co-operation.

(3) The oil and HNS handling facilities are obliged to ensure that all their personnel employed in the tier 3 preparedness and courses and the authority shall ensure that they attend such course whenever they are held.

(4) The requirements for the training and exercises shall be clearly defined in the National Contingency Plan.

Arrival
utilization and
departure of
foreign means
of response

34. The arrival and utilization of and departure from Tanzania territory of ships, aircrafts and other modes of transportation to be engaged in responding to an oil pollution incident or transporting personnel, cargoes, material and equipment required to deal with such an incident and the expeditious movement into, through, and out of Tanzania territory of personnel, cargoes, material and equipments for this purpose, and its facilitation, shall be subject to any written law.

Pollution reporting procedures

35. (1) Matters or other persons having charge of the ship flying the Tanzanian flag, and persons having charge of offshore units in the territorial waters of Tanzania shall report without delay any event or their ship or offshore unit, or any observed event at sea, involving a discharge or probable escape of oil or HNS;

- (a) in the case of a ship, to the nearest coastal state; and
- (b) in the case of offshore unit, to the agency.

(2) Persons having charge of ports and oil and HNS handling facilities shall report without delay any event involving a discharge, emission or release or a probability of such escape of oil or HNS to the agency.

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(3) Coastguard vessels, state owned aircrafts and other state services shall report without delay any event at sea, ports or oil or HNS handling facility involving a discharge of oil or HNS to the agency, or as the case may be or to the nearest coastal state.

(4) Reports under the present act shall be made in accordance with the requirements developed by the organization and based on the guidelines and general principles adopted by the organization.

Action on receiving oil and HNS pollution report

36. (1) Wherever the agency receives a report referred to in section 35, it shall:

(a) assess the event to determine whether it is an oil or HNS pollution incident;

and

(b) assess the nature, extent and possible consequences of oil or HNS pollution incident, together with:

(2) Then, without delay, inform all states whose interests are effected or likely to be affected by such oil or HNS pollution incident, together with:

(a) deals of its assessment and any action it has taken or intends to take, to deal with the incident, and

(b) further information as appropriate, until the action taken to respond to the incident has been concluded or until joint action has been decided by such States.

(3) When the severity of such oil or HNS pollution incident so justifies, the agency should provide directly or, as appropriate, through the relevant regional organization or arrangements with the information referred to in sub-section 2.

Inspection of offshore installations

37. Any person duly authorized by the secretary of the state may inspect any offshore installation oil handling facilities which are pipelines to which this act applies.

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**PART VII
FINANCING THE NATIONAL AND REGIONAL SYSTEMS FOR
PREPAREDNESS AND RESPONSE**

Establishment of the fund

38. (1) There is hereby established a fund for oil and HNS incidents;

(2) This fund shall be administered by the agency.

Contributions to the fund

39. (1) Ships, offshore units, oil and HNS handling facilities that are required to have oil or HNS emergency plans, shall also contribute to the national pollution preparedness system.

(2) Contributions shall be either directly (personal and resources) or indirectly via a response organization or via fees to the fund for the protection of marine environment of Tanzania.

(3) Contributions shall be commensurate to the risk of pollution.

Contributions from ships

40. (1) Contributions from domestic shipping shall be one of the following;

- (a) via response organization; or
- (b) via a fee from the ship when it calls ports in Tanzania; or
- (c) via fees directly to the fund.

(2) Contributions from foreign ships calling at ports in Tanzania shall be one of the following;

- (a) via a response organization; or
- (b) via a fee from the ship when it calls ports in Tanzania; or
- (c) via a fee from the ship directly to the fund.

(3) Contributions from ships passing through the territorial waters of Tanzania , but without calling port in Tanzania shall be;

- (a) via response organization, or
- (b) via fees from the ship directly to the fund.

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Contributions from offshore units

41. Contributions from offshore units shall be;

- (a) direct contributions from personnel and equipment, or
- (b) via a response organization, or
- (c) via a fee directly to the fund.

Contributions from oil and HNS handling facilities

42. Contributions from oil and HNS handling facilities shall be;

- (a) direct contributions of personnel and equipment, or
- (b) via response organization, or
- (c) via fee directly to the fund.

Size of contributions

43. The Director General shall set the amount of contributions based on a pollution risk assessment. Such assessments may be carried out for categories of ships, offshore units and categories of oil and HNS handling facilities.

Use of fees collected for marine environment protection

44. Fees collected to the fund shall be used exclusively for the financing of the national response system including;

- (a) purchase and maintenance of equipments,
- (b) training and exercise,
- (c) combat of pollution,
- (d) any other related activities.

PART VIII OFFENCES

General offences

45. Any person who without reasonable cause violates any of the provisions of this act shall be guilty of an offence punishable on summary conviction to a fine not less than twenty million shillings to a jail term of not less than 2 years and not exceeding 5 years or to both such fine and imprisonment.

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Obstructing an authorized officers

46. A person who-

- (a) without reasonable excuse, obstructs, molests or hinders an authorized officer in the exercise of his powers under this act; or
- (b) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to an authorized officer engaged in carrying out his duties and functions under this act,

Commits an offence and shall be liable on conviction to a fine of not less than twenty million shillings or to imprisonment for a term of not less five years or both.

Offences by body corporate

47. (1) Where an offence under this act is committed by a body corporate-

- (a) every director, manager, secretary or other similar officer of that body shall be deemed to have committed the offence; and

(b) if the body corporate is a firm, every partner of that firm shall be deemed to have committed that offence:

(2) An individual who commits an offence under subsection (1), shall liable on conviction to a fine not less than one hundred million shillings or imprisonment for a term not less than five years or both
Provided that no such person referred in paragraph (a) or (b) shall be deemed to have committed an offence under this act if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence.

PART IX FINANCIAL PROVISIONS

Funds of the agency **48.** The activities of the agency shall be financed by funds consisting of-

- (a) moneys appropriated by parliament for the purposes of the agency;
- (b) money generated by the agency in the course of its activities;
- (c) donation and grants for its activities under this act;

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(d) regulatory levy as shall be prescribed in the regulations.

Investment of funds **49.** The agency may from time to time invest, with the approval of the board any of its funds not immediately required for meetings its obligations or in the discharge of its duties.

Sound financial principles **50.** The agency shall, in the performance of its functions under this act, have due regard to sound financial principles.

Power to open bank account **51.** The agency shall, with the approval f the board, open and maintains bank accounts as it may consider necessary for the better performance of its functions.

Estimate of income and expenditure of the agency **52.** (1) The Director General shall, not later than one month before the end of the financial year, prepare and submit to the board estimates of the income and expenditure of the agency for the next ensuing year for its approval and may at any time before the end of each year, prepare and

submit to the board for its approval any estimates supplementary to the estimates for that financial year.

(2) No expenditure shall be made out of the funds of the agency unless that expenditure is approved by the board under sub-section (1).

Borrowing
powers

53. (1) The agency may with the approval of the board, borrow money or raise capital in any currency and from any source for the purpose of performing its functions and meeting its obligations under this act.

(2) The Agency may charge its assets, undertakings and income with the repayment of any money borrowed together with interest thereon, and may issue bonds or other securities in order to secure repayment of any money so borrowed.

Accounts and
audit

54. (1) The Director General shall keep proper books of account and other records in relation to the activities, properties and finances of the agency in a form approved by the Auditor General, and shall prepare in respect of each financial year of the agency a financial statement which shall include;-

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- (a) balance sheet account;
- (b) income and expenditure accounts; and
- (c) source and application of funds

(2) The accounts of the agency kept under sub-section (1) shall, not later than two months after the end of each financial year, be audited by the Auditor General or an auditor appointed by him.

(3) For the purposes of subsection (2), the Auditor General or the auditor appointed by him, shall be entitled to have access to all books of accounts, vouchers and other financial records of the agency and to require such information and explanation thereon as he may think fit.

(4) The agency shall provide the Auditor General or the auditor appointed by him with all necessary and appropriate facilities for the examination of the accounts and records of the agency.

(5) The Auditor General or the auditor appointed by him shall submit to the Agency a report on the audited accounts and the financial statement referred to in sub-section (1) and shall, in his report draw attention to;

(a) any irregularities in the account;

(b) any matters that are likely to adversely affect the operations of the agency;

(c) any other matter which in his opinion ought to be brought to the notice of the Agency.

Annual
report

55. (1) The Agency shall within four months after the end of the financial year, submit to the Minister a report detailing the activities and operations of the Agency during that year and on its policy and programmes.

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(2) The annual report shall include the accounts and annual financial statements.

(3) The minister shall within two months after receipt of the annual report, submit the report before Parliament with any statement which the Minister considers necessary.

Financial
year

56. The financial year of the Agency shall be the same as the financial year of the Government.

PART X
RESEARCH AND DEVELOPMENT

Research and
development

57. (1) The national co-ordinator shall co-operate directly, or through relevant regional organizations or arrangements in the promotion and exchange of results of research and development programmes that relates to the enhancement of the state-of-the-art oil pollution preparedness and response including technologies and techniques for;

- (a) surveillance;
- (b) containment;
- (c) recovery;
- (d) dispersion;
- (e) clean-up;
- (f) otherwise minimizing or mitigating the effects of oil pollution; and
- (g) restoration.

(2) The agency shall, where appropriate, establish directly or through relevant regional organizations or arrangements, the necessary links between research institutions within this country and those of other state parties to the convention.

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(3) The agency shall, where appropriate, co-operate directly or through relevant regional organizations with other state parties to promote, as appropriate, the holding on a regular basis of international symposia on relevant subjects which include technological advances in oil and HNS combating techniques and equipment.

(4) The Agency with other states parties shall, where appropriate co-operate directly or through other competent international organizations for development of standards for compatible oil and HNS combating techniques and equipment

PART XI
JURISDICTION

Jurisdiction **58.** Any proceedings for offences committed under this Act may be instituted in a Court of competent jurisdiction.

PART XII
MISCELLANEOUS PROVISIONS

Supervision **59.** The Agency shall
(a) take all necessary measures to ensure that ships, offshore units and HNS handling facilities are adequately informed of the requirements of this act and that they comply with them.

(b) ensure that the formalities relating to the contributions to the system are simple and expeditious in order to remove any distinctive for contributions.

(c) make provisions for cooperation between the relevant parties in Tanzania to ensure the effective implementation of this act.

(d) adopt a plan for implementation of the system established by this act.

(e) the agency shall issue a certificate of compliance with this act.

Enforcement

60. (1) If instructions by the Director General are not complied with within the specified time, the Director General may issue compliance notice that sets out a reasonable amount and form of security that, pending compliance, must be deposited with the Director General.

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(2) If the Director General is satisfied that the compliance notice is complied with, he shall withdraw the compliance notice and the amount of security shall be refunded within a period of 20 days after compliance.

(3) The security may be forfeited to the fund if the compliance notice is not complied with within the specified time.

(4) If instructions by the Director General are not complied with within a specified time, the Director General may alternatively issue a penalty notice that identifies the contravention and specifies the period

within which, and the conditions under which, the instructions must be complied with. The penalty shall be paid to the fund.

(5) If the Director General is satisfied that the penalty notice is complied with, he shall withdraw the penalty notice and no further proceedings shall be instituted for the contravention.

(6) If a penalty notice is not complied with within the specified time, the Director General may double the amount payable as the penalty for the contravention.

(7) Any penalty imposed according to this part is recoverable by the Director General as if it were a civil debt.

Review **61.** (1) A person served with a notice referred to in Section 60 (1), may on or before the date specified in the notice, or within such period of grace as the Director General may, upon application, authorize, file a written application for review.

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(2) A review shall be conducted by a person or persons appointed from time to time by the Minister by notice in the Gazette. Such person or persons shall be neutral individuals of high integrity with appropriate experience in matters related to maritime safety, security and crewing matters.

(3) A person presiding at a review shall provide the Director General and the person who filed the application for a review with an opportunity consistent with procedural fairness and natural justice to present evidence and make representations.

(2) The burden of proof shall be on the Director General to establish that the party is responsible for committing the offence in contravention to the notice.

(3) A review shall be held within 30 days after the receipt of the application referred to in Subsection (1).

(4) The review may:

(a) confirm the Director General's decision; or

(b) determine that the party is not in contravention of this act.

(7) The findings of the review shall be recorded in writing and a copy of the findings shall be provided to each party.

(8) In the event that the Director General's decision is confirmed, the other party shall within such period as may be determined by the review to:

(a) comply with the compliance notice; or

(b) pay the penalty specified in the penalty notice.

Appeals

62. A person who is aggrieved by a decision, direction or order of the agency or an authorized officer under this act may, within fourteen days from the date of the decision, direction or order, appeal to the fair competition tribunal in accordance with the provisions of the fair competition act.

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Protection of officers

63. No person acting in pursuance of the functions conferred on him by this act shall be subject to any civil or criminal liability in respect of that act, whether on the ground of want of jurisdiction, mistake of law or fact or on any ground, unless he acted in bad faith and without reasonable cause.

- Time limit **64.** (1) In an action or suit against the agency, no execution, attachment or process thereof shall be issued against the agency unless three months notice of intention to execute or attach is given to the agency.
- (2) any sum of money, which may, by judgment of a court be awarded against the agency, shall, subject to any directions given by the court, be paid from the funds of the agency.
- Regulations **65.** The Minister may, after consultation with the agency, may make regulations providing for matters which under this act are required or permitted to be prescribed for giving effect to this act.

Passed by the National Assembly on the 1st June, 2017

Dr. Thomas Kasilillah

Preparedness, Response and Co-operation on Pollution by Oil, Hazardous and Noxious Substances Act

SCHEDULE

(Made under Section 19(9))

- Vice chairperson **1.** Members of the board shall elect from amongst themselves a vice chairperson of the board.
- Tenure of office of board members **2.**(1) The chairperson and members of the board shall hold such position for the following fixed terms;
- (a) chairman, five years;

- (b) one member of the board, four years;
 - (c) two members of the board, four years;
 - (d) one member of the board, three years
- (2) The chairperson and members of the board shall each be eligible for re-appointment for one further term of three years.

Termination of appointment

- 3.** (1) A member of the board may, at any time, resign from office by thirty days notice in writing delivered to the Minister.
- (2) The Minister may remove the member of a board;
- (a) If information relating to the conduct of a member is brought to the attention of the Minister;
 - (b) for incompetence;
 - (c) for misbehaviour or misconduct;
 - (d) failure to disclose his interest;
 - (e) inability to perform his functions;
 - (f) has been convicted and sentenced to imprisonment;
 - (g) bankruptcy or insolvency ;or
 - (h) absence without permission or prior notice to the satisfaction of the Minister.

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Remuneration of board members

- (3) Where it appears to the Minister that there is a cause to remove a member under subparagraph (2), the Minister shall notify the member concerned in writing and the member will be entitled to his benefits.

- 4.** The Chairman and other members of the board shall be paid such remuneration as may be determined by the minister.

Filling of vacancies on the board

- 5.** (1) Where a member of the board resigns, dies, is removed from office or is for any other reason unable to act as a member of the

board, the chairman shall notify the minister of the vacancy within one month after the occurrence of the vacancy.

(2) The minister shall, after being notified of the vacancy under subparagraph (1), appoint another person to hold office for the remainder of the term of the previous member.