

# Legal Protection of the Marine Environment from Vessel-Source Oil Pollution: Progress and Challenges in Tanzania

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## Abstract

The United Republic of Tanzania, also called Tanzania, is a country composed of Mainland Tanzania and the islands of Zanzibar. Tanzania's domestic laws promote sustainable development of the marine environment; however, since the beginning of the 21st century, the country has been importing large quantities of oil, resulting in an increased risk of vessel-source oil pollution damage. Through a comparative analysis, this article examines the laws addressing this issue in Mainland Tanzania and Zanzibar, the progress that has been made in the legal environment and the challenges that remain, and it discusses possible solutions and improvements. The article reveals that weak implementation of domestic laws for marine environment conservation, a lack of harmonization between domestic laws regarding this issue, and weak domestication of relevant ratified international conventions are among the challenges currently hindering the sustainability of Tanzania's marine environment.

## Keywords

Marine environment, vessel-source, oil pollution, Tanzania, sustainable development

## INTRODUCTION

With the rapid development of many economies and the growth of the world's population, the global demand for oil has greatly increased since the beginning of the century. Oil has become the world's most important source of energy as its products underpin modern society by supplying energy to the power industry, to heat homes and to provide fuel for vehicles and aeroplanes carrying goods and people all over the world.<sup>1</sup> Seas and oceans cover more than 70 per cent of the Earth's surface,<sup>2</sup> and crude oil is primarily

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1 "Why Oil is Important" UKOG, available at: <<https://www.ukogplc.com/page.php?pid=74>> (last accessed 22 March 2020).

2 P Di Donato et al "Exploring marine environments for the identification of extremophiles and their enzymes for sustainable and green bioprocesses" (2019) 11/149 *Sustainability* 1.

transported across these using very large tankers.<sup>3</sup> Maritime transportation is therefore the main method used by countries to import and export oil. However, the abundant quantity of oil transported by sea brings with it serious risks, such as oil spills in the marine environment. To date, numerous oil spills have occurred in the world affecting several continents. These oil spills have shown the world not only that countries are exposed to the risk of vessel-source oil pollution damage, but also how disastrous the consequences of such incidents are on the marine environment. These oil spills also serve as a reminder that such disasters can occur in any sea region in the world, and can cause severe damage to ecosystems and human society.<sup>4</sup>

Located on the eastern coast of Africa between the great lakes of the African Rift Valley system and the Indian Ocean,<sup>5</sup> the United Republic of Tanzania (URT) was formed from the unification of Tanganyika and Zanzibar in 1964 and covers a total area of 947,300 square kilometres. Tanganyika, now called Mainland Tanzania, has a higher population and a larger surface area compared to Zanzibar. Located in the Indian Ocean and composed of many islands, Zanzibar is semi-autonomous and thus has decision-makers' power on certain matters, including maritime matters, as prescribed by the Constitution of the United Republic of Tanzania, 1977. Regarding maritime matters, the URT can thus be considered as one country with two separate legal systems. The URT has two governments: the Government of URT and the Revolutionary Government of Zanzibar. As a result, Mainland Tanzania and Zanzibar each have their own constitutions, laws, regulations and judiciary systems. However, the Government of URT has governing power over the whole URT territory, while the Revolutionary Government of Zanzibar only has governing power over the government of Zanzibar.

According to article 4.1 of the Mainland Tanzania Environmental Management Act (No 20 of 2004), in the URT, "every person shall have right to clean, safe and healthy environment". In this case, the word "environment" also refers to the marine environment. Through its Blueprint 2050 programme,<sup>6</sup> the URT promotes sustainable use of its coastal and marine resources, with the objective of protecting and ensuring the sustainability of the marine environment. Plans for sustainable development of the marine environment consist of effectively protecting the marine environment from pollution and incidents that may occur at sea, while promoting stable

3 A Siddiqui, M Verma and D Tulett "A periodic planning model for maritime transportation of crude oil" (2013) 2 *EURO Journal on Transportation and Logistics* 1.

4 SE Chang et al "Consequences of oil spills: a review and framework for informing planning" (2014) 19 *Ecology and Society* 1.

5 "United Nations Environment Nairobi Convention" URT, available at: <<https://www.unenvironment.org/nairobiconvention/who-we-are/contracting-parties/united-republic-tanzania>> (last accessed 22 March 2020).

6 "Marine protected area action agenda" *Blueprint 2050 for Sustaining the Marine Environment in Tanzania*, available at: <<https://www.mpaaction.org/resource/blueprint-2050-sustaining-marine-environment-tanzania>> (last accessed 22 March 2020).

economic activities in the seas and oceans and mitigating negative effects on the lives of the people and marine species that live in and depend on the marine environment. Although the URT does not produce oil, the large quantity of oil that it imports yearly threatens the marine environment. During the financial year 2014–15, the URT imported a total of 4.6 billion tons of petroleum products.<sup>7</sup> Moreover, the URT has recently embarked on domestic oil exploration and aims to discover oil within the next five years.<sup>8</sup> If any oil is discovered, it will allow the country to be included among the oil producing countries of the world.

The United Nations 2030 Agenda for Sustainable Development considers the seas and oceans as important elements or keys to achieve sustainable development. Goal 14 of the Agenda focuses on conserving and sustainably using the oceans, seas and marine resources for sustainable development, and has an objective to significantly reduce marine pollution by 2025.<sup>9</sup> Considering this Agenda, to which the URT is signatory, there are only a few years left for Tanzania to accomplish its goals and commitments to sustainable marine development.

This article uses a comparative analysis method. It aims to assess whether the laws of Mainland Tanzania and Zanzibar conform with the international conventions ratified by the URT regarding the protection of the marine environment from vessel-source oil pollution, and also to assess the implementation by both authorities of the provisions of these conventions. The article first introduces the vessel-source oil pollution incidents that have already occurred in the URT. Secondly, it introduces the international conventions related to this issue, then reviews and compares the laws and regulations of Mainland Tanzania and Zanzibar regarding this issue. Thirdly, it examines the progress already made by the URT regarding this issue and analyses the challenges that still exist. Finally, the article provides recommendations for achieving the URT's objectives of promoting sustainable development of the marine environment.

## VESSEL-SOURCE OIL POLLUTION INCIDENTS IN THE UNITED REPUBLIC OF TANZANIA

Since the year 2000, the quantity of oil imported by the URT has increased. At the same time, the population has increased from 34.18 million people in

7 "Oil" *Tanzania Invest*, available at: <<https://www.tanzaniainvest.com/oil>> (last accessed 22 March 2020).

8 "Tanzania: TPDC embarks on ambitious 2bn/-oil exploration project" (9 October 2019) *All Africa*, available at: <<https://allafrica.com/stories/201910090103.html>> (last accessed 31 March 2020).

9 "Transforming our world: The 2030 agenda for sustainable development" UN, available at: <<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>> (last accessed 31 March 2020).

2000 to more than 59 million people in 2020.<sup>10</sup> This increase in population is among the factors that explain the increase of the domestic demand for oil. Population growth, which is an indicator of an expanding local market size, appears to be an important driver of crude oil import demand.<sup>11</sup> Oil imports have thus continued to take the largest share in foreign procurement, accounting for 39 per cent of the total value of goods bought outside the URT in 2013.<sup>12</sup> It is important to note that the URT also serves as a gateway of access to the sea for several landlocked countries, such as Zambia, Malawi, Uganda, Rwanda, the Eastern part of the Democratic Republic of Congo and Burundi. Some of these countries import oil through URT and, thus, it is a great importer of oil and welcomes the large number of tankers that transport it. However, to date, Tanzanian authorities prefer to remain silent on the exact quantity of oil that the country imports annually: such information seems to be considered confidential.

Nevertheless, since its formation, the URT has not witnessed a large vessel-source oil pollution damage incident. Small to medium vessel-source oil spill incidents have, however, occurred in the past.<sup>13</sup> Oil discharge from ocean-going vessels and oil spills from tankers during the offloading of crude oil have also occurred at the port city of Dar es Salaam in Mainland Tanzania.<sup>14</sup> Moreover, URT is located in the East African region, which was determined to have a medium-level risk of vessel-source oil pollution by a 2003 study conducted by the International Tanker Owners Pollution Federation.<sup>15</sup> Despite significant efforts to improve environmental safety in marine oil transportation, the risk of a major accident with devastating oil spills has most likely increased.<sup>16</sup> There are now a larger number of tankers sailing close to the East African coast than in 2003, and it is likely that the level of risk for vessel-source oil pollution in this region has increased. There is also a relatively high chance of transiting tankers discharging oil while passing through this region. Its geographical position on a major transit-way for tankers in this region of the world exposes the URT to the risk of vessel-source oil pollution damage.

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10 “Tanzania population live” *Worldometer*, available at: <<https://www.worldometers.info/world-population/tanzania-population/>> (last accessed 3 April 2020).

11 G Marbuah “Understanding crude oil import demand behavior in Africa: The Ghana case” (2018) 4 *Journal of African Trade* 75 at 85.

12 “Tanzania: Oil continues to dominate import Bill” (30 December 2013) *All Africa*, available at: <<https://allafrica.com/stories/201312300157.html>> (last accessed 3 April 2020).

13 “United Republic of Tanzania” *Sea Alarm*, available at: <[https://www.sea-alarm.org/country\\_profile/tanzania/](https://www.sea-alarm.org/country_profile/tanzania/)> (last accessed 3 April 2020).

14 JP Msangi “The integrated utilization of the sea off the coast of Tanzania” in H Smith and A Vallega *The Development of Integrated Sea Use Management* (1991, Routledge) at 230.

15 TH Moller, FC Molloy and HM Thomas “Oil spill risks and the state of preparedness in the regional seas” (2003) 2003/1 *IOSC Proceedings* 919 at 921.

16 B Hassler “Global regimes, regional adaptation; environmental safety in Baltic Sea oil transportation” (2010) 37 *Maritime Policy and Management* 489.

## INTERNATIONAL LAW GOVERNING PROTECTION OF THE MARINE ENVIRONMENT FROM VESSEL-SOURCE OIL POLLUTION

To address issues regarding the protection of the marine environment from vessel-source oil pollution, a number of international conventions have been adopted. One such convention is the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78). The issue of oil pollution is covered in its first annex.<sup>17</sup> This convention recommends that oil tankers and other ships be subjected to surveys and are required to obtain an International Oil Pollution Prevention (IOPP) Certificate.

The United Nations Convention on the Law of the Sea of 1982 (UNCLOS) is another international convention that promotes the protection of the marine environment through the prevention and control of pollution. Article 192 of UNCLOS obligates states to “protect and preserve the marine environment”, and article 194 requires that “states shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source”.

The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 (Intervention Convention) regulates responses to damage from vessel-source oil pollution and recommends that states “take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil; following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences” (article 1(1)).

Additionally, the International Convention on Oil Pollution Preparedness, Response, and Cooperation 1990 (OPRC Convention) addresses all issues of preparedness and responses to vessel-source oil pollution incidents. This convention recommends that ships have an oil pollution emergency plan, provides for oil pollution reporting procedures, requires states and regions to have systems of response and preparedness, and promotes the bilateral and multilateral cooperation in preparedness and response as well as in research and development programmes.

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention) addresses civil liability and compensation issues arising from vessel-source bunker oil spills.<sup>18</sup> It imposes strict liability on the ship owner whose ship causes pollution damage, imposes compulsory insurance against leakages of bunker oil and also provides a path of direct action for claimants filing a claim directly with the insurer.

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17 OI Akpama “An examination of the effectiveness of implementation of the MARPOL 73/78 Convention in Nigeria” (master’s thesis, World Maritime University, Malmö, Sweden, 2017) at 11.

18 L. Zhu “Compensation issues under the Bunkers Convention” (2008) 7 *WMU Journal of Maritime Affairs* 303.

Other conventions that address civil liability and compensation include the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage 1969 (1992 CLC), the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (1992 Fund Convention), and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (Supplementary Fund Protocol). The 1992 CLC applies to any persistent hydrocarbon mineral oil and imposes strict liability on the ship owner whose ship causes oil pollution damage, although it also provides few exemption clauses. It provides for the limitation of liability of the ship owner and requires a ship to be insured. The scope of application of the 1992 Fund Convention is the same as that of the 1992 CLC. The 1992 Fund Convention established the International Oil Pollution Compensation (IOPC) Funds that provide compensation for pollution damage resulting from persistent spills of oil from tankers in situations in which the protection afforded by the 1992 CLC is inadequate.<sup>19</sup> Annual contributions that aim to finance the Funds are paid by the states that ratified the 1992 Fund Convention and imported a quantity of more than 150,000 tons of oil within a calendar year. Under this convention, the maximum amount of compensation for an incident is 203 million Special Drawing Rights (SDR). Although the scope of application of the 2003 Supplementary Fund Protocol is the same as that of the 1992 Fund Convention and the 1992 CLC, it functions to provide compensation in cases in which the protection afforded by the 1992 Fund Convention is inadequate. Under the Supplementary Fund Protocol, the maximum amount of compensation for an incident is 750 million SDR.

## DOMESTIC LAWS GOVERNING PROTECTION OF THE MARINE ENVIRONMENT FROM VESSEL-SOURCE OIL POLLUTION IN TANZANIA

The URT acceded to the MARPOL 73/78 Convention in 2008 and ratified UNCLOS. It also acceded to both the 1969 Intervention Convention and the 1990 OPRC Convention in 2006. Moreover, it has acceded to the 1992 CLC and the 1992 Fund Convention. However, the URT has not yet acceded to the Bunker Convention and the Supplementary Fund Protocol.

Given that URT is a dualist state, mere ratification of international conventions is not enough to make these conventions legally enforceable in a court of law.<sup>20</sup> Lawmaking power in the URT is vested in parliament by the

19 KX Li, B Dong and L Zhu "Legal system of compensation for marine oil pollution in China" (2013) 40 *Maritime Policy and Management* 404 at 411.

20 E Laltaika "Tanzania: Should nation opt to embrace monism?" (17 May 2011) *All Africa*, available at: <<https://allafrica.com/stories/201105171074.html>> (last accessed 3 April 2020).

doctrine of supremacy of parliament in Tanzania.<sup>21</sup> In Zanzibar, domestication of the international conventions ratified by the URT is done by power of the house of representatives, which is the equivalent of the national assembly in Mainland Tanzania.

The following sections compare and analyse the laws and regulations of Mainland Tanzania and Zanzibar regarding the issues of prevention, response and compensation for vessel-source oil pollution incidents. The comparative analysis determines the extent to which, and how well, the provisions of the relevant international conventions ratified by the URT have been legislated and implemented in Mainland Tanzania and Zanzibar.

### **Comparison of the laws and regulations of Mainland Tanzania and Zanzibar on the prevention of vessel-source oil pollution damage**

Both Mainland Tanzania and Zanzibar have laws and regulations to prevent incidence of vessel-source oil pollution damage in Tanzanian waters. These laws include the Mainland Tanzania Merchant Shipping Act (No 21 of 2003) (MTMSA) and Zanzibar's Maritime Transport Act (No 5 of 2006) (ZMTA). These two Acts represent the main legal frameworks preventing vessel-source oil pollution incidents in both Mainland Tanzania and Zanzibar. Part XIX of MTMSA and part XIV of ZMTA focus on the issue of prevention of vessel-source oil pollution incidents in both Mainland Tanzania and Zanzibar. Both Acts are accompanied by supporting regulations that provide further details on the prevention measures provided within them. In particular, MTMSA is accompanied by the Mainland Tanzania Merchant Shipping (Prevention of Oil Pollution) Regulations of 2012 (Tanzania Regulations), while ZMTA is accompanied by the Zanzibar Regulations for Prevention of Marine Oil Pollution of 2019 (Zanzibar Regulations). The similarities and differences between MTMSA and ZMTA, as well as between their accompanying Regulations, are analysed in the following sections.

#### *Similarities*

There are notable similarities between MTMSA and ZMTA and Mainland Tanzania's Environmental Management Act and Zanzibar's Environmental Management Act (No 3 of 2015), such as the prohibition of pollution of the marine environment by discharge of oil and oily mixtures. Both the Tanzania Regulations and the Zanzibar Regulations provide options for equivalent or alternative fittings, materials and appliances for tankers. Both Regulations also outline requirements for initial, renewable, intermediate and annual surveys, as well as mandate that the owner or master of a ship is responsible for ensuring the condition of the ship after the surveys have been concluded. Both Regulations provide the same measures and content

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21 HI Majamba "The paradox of the legislative drafting process in Tanzania" (2017) 40 *Statute Law Review* 1.

regarding the procedure to be adopted when corrective action is necessary. Furthermore, both Regulations provide the same requirement for oil filtering equipment, oil discharge monitoring and control system, retention of oil on board, as well as for the segregation of cargo.

The Tanzania Regulations and the Zanzibar Regulations both require every ship of 400 gross tonnage and above, as well as every oil tanker of 150 gross tonnage and above, to carry on board an Oil Record Book, and both Regulations provide the same requirements for use and completion of the Book. Both Regulations provide very similar requirements for minimizing oil pollution from oil tankers resulting from side and bottom damage and similar requirements regarding offshore installations. Importantly, the two Regulations provide the same requirements and guidance on the prevention of oil pollution incidents from oil tankers and other ships. They also provide the same regulations on the power of inspection authorities to inspect ships. Furthermore, the requirements of MTMSA and ZMTA regarding the contravention by foreign ships, as well as the articles regarding oil reception facilities, are similar.

The above findings illustrate the numerous similarities between MTMSA and ZMTA, as well as between the Tanzania Regulations and the Zanzibar Regulations. This signals that both Mainland Tanzania and Zanzibar are committed to the objectives set by the URT regarding the prevention of vessel-source oil pollution in Tanzanian waters.

### *Differences*

This research has identified two main categories of differences between MTMSA and ZMTA, and also between the Tanzania Regulations and Zanzibar Regulations. The first category concerns content included in both MTMSA and ZMTA, or in the two Regulations, but with different wording or slightly different specifications. The second type of difference concerns content that is included in only one of the two Acts, or one of the two Regulations.

There are a number of differences in wording between MTMSA and ZMTA. For example, while article 3(1)(b) of MTMSA stipulates that the Act applies to “all Tanzanian ships wherever they may be, and to all other ships while in a port or place in, or within the territorial sea, lakes, rivers, and cause ways under the jurisdiction of the United Republic of Tanzania”, article 2 of ZMTA describes MTMSA as “governing shipping activities in Tanzania Mainland” only. The definition of oil in MTMSA includes crude oil, fuel oil, marine diesel oil and lubricating oil, while ZMTA defines oil only as crude oil and fuel oil. While ZMTA provides for two conditions under which ships shall be allowed to discharge oil at sea, MTMSA provides for four conditions. The Zanzibar Regulations only provide for surveys of oil tankers, not of other types of ships, while the Tanzania Regulations stipulate surveys of both Tanzanian oil tankers and other Tanzanian ships. Moreover, article 6(2)(a) of the Tanzania Regulations stipulates an intermedicate survey to be conducted “within three months before or after the second



or third anniversary date of an IOPP Certificate”, while article 7(1) of the Zanzibar Regulations stipulates the intermediate survey to be conducted “not earlier than six months before and not later than six months after the half-way date of the period of validity of the Certificate”. The Tanzania Regulations of 2012 allow for the Tanzania Oil Pollution Prevention Certificate to be issued at the same time as the IOPP Certificate, while the Zanzibar Regulations require issuance of the IOPP certificate to be supplemented by a Record of Construction and Equipment. Furthermore, there are some differences between the content regarding improved requirements for the design and construction of oil tankers to reduce the risk of oil pollution in the event of collision or stranding provided by the Tanzania Regulations and the Zanzibar Regulations. The content regarding ship inspections differs between MTMSA and ZMTA. There are also differences in the content of the Tanzania Regulations and the Zanzibar Regulations in defining authority and power to deny entry or detain ships, the penalties for failing to comply with requirements, and the proceedings for pollution offences committed outside Tanzanian waters. Other notable differences in the content of the two Acts, regarding the prevention of vessel-source oil pollution damage, have been identified (see [Table 1](#)).

There are several instances in which provisions are included in only one of the Acts, or Regulations, but not in the other. For example, ZMTA requires masters of vessels to report any allowable discharge of oil to the relevant authority and states that failure to do so is subject to a fine; however, MTMSA does not provide such a provision.

As well, the Tanzania Regulations provide options for additional surveys, while the Zanzibar Regulations do not. Article 280(2) of ZMTA states that “if any ship is found with fitted an equipment which is not specified for the purpose of preventing or reducing discharge of oil and oily mixture, or is found with a connection when in use may result unlawful discharge, the owner and the master of the ship shall be guilty of offence and upon conviction shall be liable to a fine not less than the equivalent of thirty thousand Dollars in Shillings”, while MTMSA does not provide for such a fine. The Tanzania Regulations provide guidelines for the construction of product carriers of 40,000 tons deadweight, while the Zanzibar Regulations do not offer such guidelines. ZMTA allows the minister responsible for shipping and seafarers to establish regulations on the use of oil reception facilities, while MTMSA does not include this provision. As illustrated by the above findings, there are still numerous differences between both MTMSA and ZMTA, as well as the Tanzania Regulations and the Zanzibar Regulations. In comparison to Mainland Tanzania, Zanzibar’s laws and regulations regarding the prevention of vessel-source oil pollution damage are much closer to international standards. Nevertheless, both Mainland Tanzania and Zanzibar have done well to implement the provisions of the MARPOL 73/78 Convention into their laws and regulations, establishing the URT as a country with a strong legal framework for preventing vessel-source oil pollution damage.

**Table 1. Differences between MTMSA and ZMTA on the prevention of vessel-source oil pollution in the URT (author's italics).**

<b>Mainland Tanzania Merchant Shipping Act (No 21 of 2003) Part XIX Prevention of pollution</b>	<b>Zanzibar Maritime Transport Act (No 5 of 2006) Part XIV Prevention of pollution from ships</b>	<b>Details</b>
Article 367(2) This Part shall apply to: (a) tankers of one hundred and fifty tons gross or more; (b) <i>other ships of four hundred tons gross or more, and</i> ; (c) offshore installations.	Article 277. This part shall apply to: (a) tankers of one hundred and fifty tons gross or more; (b) <i>other ships of five hundred tons or more, and</i> ; (c) offshore installations.	Application of the Act
Article 372 Every Tanzanian tanker and every other Tanzanian ship which uses oil as fuel <i>shall maintain on board</i> the tanker or such other ship an oil record book.	Article 281 the Minister <i>may make regulations</i> requiring oil record books to be carried in Tanzania Zanzibar ships.	Oil record book
Article 375(4) The Minister may, by notice in the Gazette, <i>specify the ports in Tanzania having oil reception facilities</i> in accordance with the requirements of this part.	Article 286(4) The Minister may, by notice in the Gazette, <i>specify the locations in Zanzibar where oil reception facilities can be installed</i> in accordance with the requirements of the provisions and regulations made under this part.	Oil reception facilities
Article 377(1) If any oil or oily mixture is discharged from (b) a Tanzanian ship into the sea within 100 nautical miles of any land, the owner or master of the ship shall be liable to a fine of not less than the equivalent in Tanzanian shillings of the <i>United States dollars fifty thousand</i> or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.	Article 288(1) If any oil or oily mixture or harmful chemicals is discharged from a Zanzibar ship into the sea within 100 miles of any nearest land, the owner or master of the ship shall be guilty of an offence and is liable to a fine not less than the equivalent of <i>forty five thousand Dollars</i> in Shillings or five years imprisonment.	Pollution at sea

### **Comparison of the laws and regulations of mainland Tanzania and Zanzibar on the response to vessel-source oil pollution damage**

There are both similarities and differences between the laws and regulations of Mainland Tanzania and Zanzibar regarding responses to vessel-source oil pollution damage. The most notable legal framework regulating this issue in Mainland Tanzania are the Merchant Shipping (Oil Pollution Preparedness,

Response and Cooperation) Regulations of 2012 (Tanzania OPRC Regulations), which require every harbour authority, oil handling facility operator and offshore installation operator to establish an oil pollution emergency plan. The Regulations allow for these authorities and operators located within a close distance of each other to develop joint plans. Every oil pollution emergency plan for oil pollution incidents is expected to be compatible with the URT National Marine Oil Spill Response Contingency Plan of 2016 and must be adequate for dealing with oil pollution incidents. Developed by the Surface and Marine Transport Regulatory Authority (SUMATRA), the Contingency Plan regulates both Mainland Tanzania and Zanzibar under a common framework for oil spill contingency planning and response.<sup>22</sup> The Regulations require the master of a Tanzanian ship to immediately report an event of oil discharge by a ship in Tanzanian waters to SUMATRA. In the event that the master of a Tanzanian ship witnesses an oil discharge caused by another ship or an offshore installation, or an oil discharge occurring in waters outside the United Republic of Tanzania, the master of a Tanzanian ship is required to immediately report the event to the nearest coastal authority. Additionally, in the event of an oil discharge caused by a pipeline oil handling facility or an offshore installation, the operator is required to immediately report the event to SUMATRA. Moreover, article 9(1) of the Tanzania OPRC Regulations stipulates that “a harbor master, or person in charge of a harbor, or any personnel in charge of an oil handling facility who becomes aware of any event involving a discharge or probable discharge of oil, or the presence of oil in the sea shall report the event, to the SUMATRA”. Except in cases with reasonable cause, failing to report an oil pollution incident at sea in the URT is punishable by a fine of at least “one thousand United States Dollars”, as provided by article 11(2) of the Tanzania OPRC Regulations. Per the Tanzania Shipping Agencies Act (No 14 of 2017), SUMATRA was replaced as the regulating authority on marine transport for Mainland Tanzania by the Tanzania Shipping Agencies Corporation, which became operational in February 2018.

Unlike Mainland Tanzania, Zanzibar does not have any official act or regulation covering responses to vessel-source oil pollution incidents. Thus, each harbour authority, oil handling facility operator and offshore installation operator in Zanzibar is not officially required to develop oil pollution emergency plans. Without a localized act or regulation, marine transport in Zanzibar is regulated by the Zanzibar Maritime Authority. In addition to National Marine Oil Spill Response Contingency Plan, which is applicable to all of the URT, Zanzibar has also established the Zanzibar Marine Oil Spill Response Contingency Plan. Article 60(1)(b) of the Zanzibar Environmental Management Act requires owners of marine facilities and vessels to “have contingency plan to eliminate, remedy or reduce the adverse effects of oil spills”.

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22 “Oil for development 2016 annual results” *Royal Norwegian Embassy in Dar es Salaam*, available at: <<https://www.norway.no/en/tanzania/norway-tanzania/news-events/news/2/oil-for-development-2016-annual-results>> (last accessed 8 April 2020).

In Zanzibar, oil pollution incidents are reported either to the MRCC or to the Zanzibar Maritime Authority by the master of the vessel that caused the oil spill or the master of the harbour in which the incident occurred. In the event that aircraft pilots witness an oil discharge or the presence of oil at sea, they are required to inform the MRCC via the Air Traffic Control Centre. Zanzibar authorizes the MRCC to be responsible for the following: assessing oil spill incidents; assessing the nature and consequences of the incidents; informing other government departments related to the issue; and organizing the other government departments concerned to determine and implement the appropriate response measures. In the event that an appropriate response to the incident requires foreign assistance, the director of the Zanzibar Maritime Authority shall be responsible for seeking assistance.

Currently, both Mainland Tanzania and Zanzibar are united in their response to vessel-source oil pollution incidents in Tanzanian waters. This is demonstrated by the existence of the URT National Marine Oil Spill Response Contingency Plan. The MRCC, located in Dar es Salaam, is responsible for receiving oil pollution reports and serves as a point of national cooperation. This research has identified the current national framework of institutions responsible for controlling and responding to vessel-source oil pollution incidents in the URT (see [Figure 1](#)).

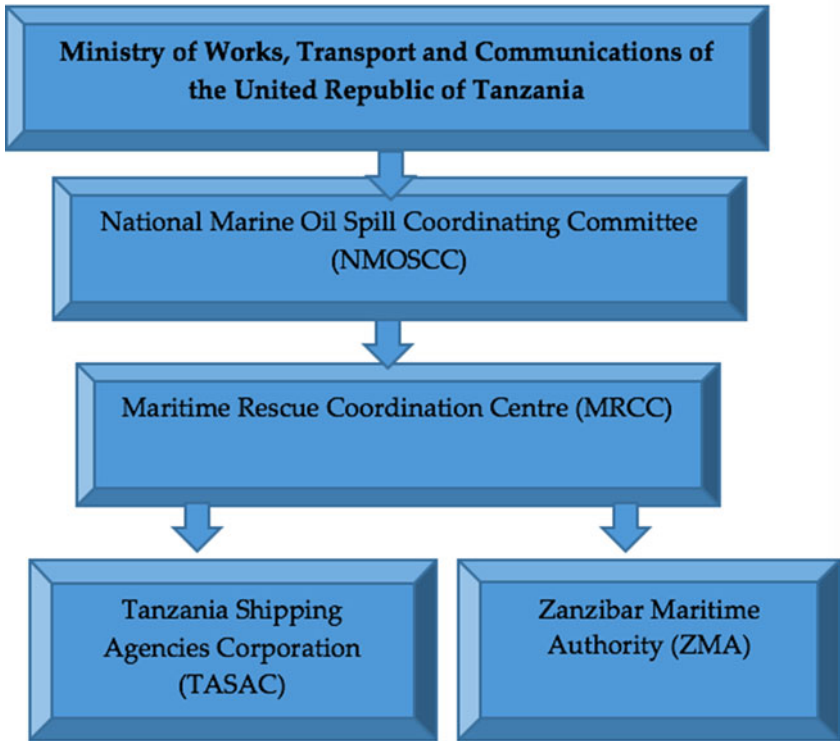
The URT has a reserve of basic oil spill response equipment consisting of 200 metres of 750-millimetre-deep self-inflating oil containment booms with skimmers, storage tanks and absorbents. This equipment will enable it to respond to a tier 1 (first tier) spill.<sup>23</sup> However, the URT organizes very few drill exercises to prepare responders for vessel-source oil pollution. In the event of a vessel-source oil pollution incident occurring in Tanzanian waters, the National Environment Management Council is responsible for assessing the impact of the incident and transmitting data on the incident to the MRCC. The Council is a legal and institutional framework for sustainable management of the environment and for the prevention and control of pollution in the environment.<sup>24</sup> Additionally, an Environment Strategy Group is mobilized to assist the MRCC, the Tanzania Shipping Agencies Corporation and the Zanzibar Maritime Authority in their response to vessel-source oil pollution incidents. The URT is a party to the Nairobi Convention, a regional convention that guarantees assistance from other party states in the event of a large vessel-source oil pollution incident. This research finds that Mainland Tanzania has more laws and regulations than Zanzibar regarding responses to vessel-source oil pollution

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23 “Implementation completion and results report, report no. ICR 2568” (18 June 2013) World Bank, available at: <<http://documents.worldbank.org/curated/en/744791468009600453/text/ICR25680P078640C0disclosed060190130.txt>> (last accessed 8 April 2020).

24 National Environment Management Council, available at: <<https://www.nemc.or.tz/pages/background>> (last accessed 8 April 2020).

**Figure 1. Current national framework of the institutions responsible for controlling and responding to vessel-source oil pollution incidents in the URT.**



Source: Created by this research.

incidents. However, both Mainland Tanzania and Zanzibar have demonstrated their commitment to cooperative responses to these incidents.

### **Comparison of the laws and regulations of Mainland Tanzania and Zanzibar on compensation for vessel-source oil pollution incidents**

Liability and compensation for vessel-source oil pollution incidents is determined by a three-tier system. Provisions regarding these tiers of compensation in the URT are regulated by MTMSA and ZMTA; however, the URT currently only provides for the first and second tiers of compensation for these incidents.

#### *First-tier compensation*

There are several similarities and differences between MTMSA and ZMTA in regulating first-tier compensation. Notably, both these Acts determine strict liability for the ship owner in cases of vessel-source oil pollution incidents. Article 378 (7/b) of MTMSA and article 291 (6/b) of ZMTA both stipulate that “where more than one discharge or escape results from the same occurrence

or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape”.

The two Acts provide for joint liability in the event that pollution damage results from an incident involving two or more ships and the liability of their ship owners cannot be separated. Vessel-source oil pollution incidents occurring in the URT will be judged by the judiciary authority of Mainland Tanzania or of Zanzibar, both of which have adequate courts to resolve such a problem.

Notable differences between MTMSA and ZMTA on compensation for vessel-source oil pollution incidents can be categorized into two types. The first category includes provisions that exist in only one of the Acts and not in the other. The second category includes provisions that are found in both Acts, but with differences in wording or specifications.

There are several instances in which provisions are included in only one of the Acts, but not in the other. For example, article 308(1) of ZMTA defines damage as a “loss”, while MTMSA does not provide any definition for the term. Moreover, article 378(7)(a) of MTMSA stipulates that “liability for the discharge or escape of oil from a ship wherever it occurs shall be incurred irrespective of whether or not the ship is of oil carried in a cargo tank or of oil carried in a bunker fuel tank”; however, such a provision is not stipulated in ZMTA.

Articles 294(1) and 294(2) of ZMTA state that “no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result”. This paragraph applies to “(a) any servant or agent of the owner of the ship; (b) any person not falling within paragraph (a) above but employed or engaged in any capacity on board the ship or to perform any service for the ship; (c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship”. A similar article is not found in MTMSA.

In the URT, only ZMTA provides for the limitation of liability for vessel-source oil pollution. However, article 295(3) of this Act prohibits the ship owner from limiting their own liability in the case “where it is proved that the discharge or escape, or the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result”.

Maritime affairs are dealt with by the High Court of Tanzania in Mainland Tanzania, while affairs of this kind are dealt by the High Court of Zanzibar in Zanzibar. In Zanzibar, ship owners are expected to establish a fund to limit their liability for vessel-source oil pollution damage with the High Court of Zanzibar. The compensation payment is to be paid in US dollars directly to the High Court of Zanzibar. According to article 296(2)(b) of ZMTA, this sum will be distributed to the claimants “in proportion to their claims”; however, ZMTA also allows for subrogation in these cases. ZMTA determines the

exact amount to be paid, in US dollars, to the High Court of Zanzibar and stipulates under article 296(6) that “where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures”. Once the fund has been constituted by the ship owner, according to article 297 of ZMTA, “(a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs.”

Zanzibar requires ships carrying cargoes of 2,000 tons or more of oil to be insured and, in the event that a ship does not have a certificate of insurance, article 301(5) of ZMTA provides that “the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not less than the equivalent of seven thousand Dollars in Shillings”. The Act also provides requirements on issuance of insurance certificates in Zanzibar. It allows for claimants to make claims against the insurer of the ship owner that caused the oil pollution damage. This Act also stipulates that the insurer may limit his liability, even if the ship owner is not entitled to limit his liability. According to article 303(2) of ZMTA, in Zanzibar, the insurer may avail himself of a defence if he can prove that “the discharge or escape, or the threat of contamination, was due to the wilful misconduct of the owner himself”. Article 303(4) stipulates that “where the owner and the insurer each apply to the court for the limitation of his liability any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other”. ZMTA states that Zanzibar will recognize and enforce foreign judgments by countries party to the 1992 CLC with regard to ships that are registered and originate from Zanzibar. In Mainland Tanzania, foreign judgments may be recognized and easily enforced only if Tanzania has such a bilateral agreement with the country where the judgment was given.

Other differences between these two Acts exist in the wording and legal specifications. For example, while both Acts allow for the ship owner to be exempted from liability, there are slight differences in the conditions related to the exemption. Furthermore, ZMTA allows for a person to claim their rights of compensation for vessel-source oil pollution damage within three years of the incident; however, MTMSA requires the claim to be made within two years.

This research finds notable differences and very few similarities between the two Acts in relation to first-tier compensation for vessel-source oil pollution incidents (see [Table 2](#)). Compared to MTMSA, ZMTA provides a more complete approach and contains more detailed provisions related to this issue. Furthermore, and even more so than MTMSA, there are a number of similarities between the stipulations of ZMTA and the 1992 CLC.

**Table 2. Provisions for first-tier compensation for vessel-source oil pollution damage in URT (author's italics).**

Mainland Tanzania Merchant Shipping Act (No 21 of 2003) Part XIX Prevention of pollution	Zanzibar Maritime Transport Act (No 5 of 2006) Part XV Liability for oil pollution	Details
<p>Article 378(1) Where, as a result of any or <i>omission</i> oil is discharged or escapes from a ship, except as otherwise provided by this part, the owner of a ship shall be liable (a) for any damage caused to <i>any person, property, environment, ecosystem, or marine</i> within the United Republic by reason of contamination resulting from discharge or escape; (b) for the cost of any measures reasonably taken for the purpose of preventing or minimizing any damage so caused within the United Republic; and (c) for any damage caused within the United Republic of Tanzania by any measures taken for the purposes of preventing or minimizing the damage.</p>	<p>Article 291(1) Where, as a result of any <i>occurrence</i>, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Part) the owner of the ship shall be liable: (a) for any damage caused <i>outside the ship</i> in Zanzibar by contamination resulting from the discharge or escape; and (b) or the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimizing any damage so caused in Zanzibar by contamination resulting from the discharge or escape; and (c) for any damage caused in Zanzibar by any measures so taken.</p>	Strict liability
<p>Article 379 No liability shall be incurred by the owner of a ship under section 378 by reason of any discharge or escape of oil from a ship or imminent threat of contamination, if the owner proves that the discharge, escape, or threat of contamination (a) resulted from an act of war, hostility, insurrection or <i>an act of God</i>; or (b) <i>occurred as a result of an act done or omitted to be done by a person</i>, not being a servant or agent of the owner, with intent to do damage to the ship.</p>	<p>Article 293 No liability shall be incurred by the owner of a ship under section 291 or 292 of this Act by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination (a) resulted from an act of war, hostilities, civil war, insurrection or <i>an exceptional, inevitable and irresistible natural phenomenon</i>; or (b) <i>was due wholly to anything done or omitted to be done by another person</i>, not being a servant or agent of the owner, with intent to do damage; or (c) <i>was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible</i>.</p>	Exemption from liability



### *Second-tier compensation*

Part XVI of ZMTA and part XIX of MTMSA offer provisions for the issue of second-tier compensation for vessel-source oil pollution damage. In terms of similarities, article 312(6) of ZMTA and article 380(4) of MTMSA stipulate that “expenses reasonably incurred and sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage for the purpose of this section and the owner shall be in the same position with respect to claims against the Fund Convention as if the owner has a claim in respect of liability under the Fund Convention”. MTMSA and ZMTA also provide for similarities in the circumstances under which the IOPC Funds shall incur no obligation. Additionally, article 380(8) of MTMSA and article 312(10) of ZMTA emphasize that no exoneration from liability shall be possible for the Funds, “where the pollution damage consists of the costs of preventive measures or any damage caused by such measures”.

In terms of differences, ZMTA provides for a limitation of the IOPC Fund’s liability as stipulated in paragraphs 4 and 5 of article 4 of the 1992 Fund Convention. ZMTA also recommends that payment of the compensation sum be made in US dollars and provides a method for converting special drawing rights into US dollars. ZMTA also requires that claims for compensation rights for second-tier compensation be made within three years of the incident and allows the subrogation rights for second-tier compensation. In Zanzibar, any action against the IOPC Funds for second-tier compensation related to vessel-source oil pollution damage should be brought before the High Court of Zanzibar. The Funds cannot dispute the final judgment given by the High Court of Zanzibar on claims for vessel-source oil pollution damage, whether or not the IOPC Funds intervened in the proceedings. Zanzibar allows the recognition and the enforcement of related foreign judgments from countries party to the 1992 Fund Convention with regard to ships that are registered and originate from Zanzibar. Zanzibar also provides subrogation rights to the IOPC Funds. MTMSA does not address any of the matters discussed above.

In Zanzibar, the party importing or receiving the oil involved in the incident shall pay a contribution to the IOPC Funds if the party imports or receives a quantity of more than 150,000 tons of oil within a year. In this case, the contribution amount is determined by article 12 of the 1992 Fund Convention. Liable importing or receiving parties are permitted to pay their IOPC Funds contributions in installments on dates determined by the Fund. Failing to pay the contribution on time will result in accruing interest at a rate determined by the assembly of the IOPC Funds.

The minister responsible for shipping and seafaring in Zanzibar must ensure that the liable importing or receiving party pays their contributions to the IOPC Funds in a timely manner. This minister has the power to obtain information on the liable importing or receiving party and to share this information with the IOPC Funds. MTMSA does not include such stipulations, implying that in Mainland Tanzania such contribution fees are not officially levied from parties importing or receiving more than 150,000 tons of oil within a year.

This study finds significant differences between MTMSA and ZMTA regarding the issue of second-tier compensation for vessel-source oil pollution incidents. The provisions of MTMSA are inadequate compared to those of ZMTA; however, ZMTA shares several similarities with the provisions of the 1992 Fund Convention. Overall, the provisions of ZMTA regarding the issue of compensation for vessel-source oil pollution damage seem to have been written or prepared by experts with a desire to align Zanzibar's legal framework with international standards. This study also found that part XIX of MTMSA and part XVI of ZMTA contain several errors in English grammar that could easily lead to a misunderstanding of the articles included in these parts.

## **PROGRESS MADE AND EXISTING CHALLENGES REGARDING THE PROTECTION OF THE MARINE ENVIRONMENT FROM VESSEL-SOURCE OIL POLLUTION IN TANZANIA**

Since the beginning of the 21st century, the URT has made progress in regard to the protection of the marine environment from vessel-source oil pollution damage. However, the country is still facing some challenges. In the sections below, the progress already made is highlighted and the challenges are analysed.

### **Progress**

The United Nations Conference on Environment and Development that was held in Rio de Janeiro in 1992, at which the URT was represented, emphasized the importance of protecting the marine environment. With regard to this, Tanzanian authorities decided to implement a certain number of measures. In the last 20 years, the URT has enacted many laws and regulations pertaining to the protection of the marine environment from vessel-source oil pollution damage. Among these are the MTMSA, the Mainland Tanzania Environmental Management Act, ZMTA, the Tanzania Regulations, the Tanzania OPRC Regulations, the Zanzibar Environmental Management Act, the URT National Marine Oil Spill Response Contingency Plan, the Zanzibar Marine Oil Spill Response Contingency Plan, and the Zanzibar Regulations.

The URT's commitment to environment-related issues is highlighted by a number of measures, including its establishment of committees in charge of the environment in the URT parliament and in the Zanzibar house of representatives. The URT has also established small committees in charge of the environment at ministry level, district and city authority level. It has also established the National Environment Management Council, the Maritime Rescue Coordination Centre (MRCC), and the National Environment Trust Fund. Moreover, the URT became a party to a number of international conventions related to the protection of the marine environment from vessel-source oil pollution, as mentioned in previous sections of this article. In addition, it implemented the Blueprint 2050 programme, which is a national programme for the protection of the marine environment. It is noticeable that, since the

beginning of the century, the URT, in terms of the protection of the marine environment from vessel-source oil pollution, has made progress.

## Challenges

The URT is currently facing certain challenges in regard to the protection of the marine environment from vessel-source oil pollution. These challenges, which are analysed in the sections below, hinder the URT from reaching the goal of providing its people with a sustainable marine environment.

### *Lack of harmonization of Tanzanian domestic laws*

A great number of differences in wording and content still exist between MTMSA and ZMTA in regard to protection of the marine environment from vessel-source oil pollution damage. This is proof that the laws of Mainland Tanzania and of Zanzibar regarding maritime matters have not been harmonized. Such a large difference in the content of the two Acts in regard to this issue leaves some things open to interpretation and application by the governing authorities of Mainland Tanzania and Zanzibar, although both have a common objective of achieving a sustainable marine environment. Thus, the result can only be negative, and the objective may well remain unachievable because of this lack of harmonization of the domestic laws.

### *Legal loopholes*

Both MTMSA and ZMTA contain certain legal loopholes relating to the protection of the marine environment from vessel-source oil pollution. The Tanzania OPRC Regulations also contain certain legal loopholes relating to the same issue. Indeed, some provisions of the related International Conventions ratified by the URT have not yet been incorporated into these two Acts nor into the Tanzania OPRC Regulations.

In terms of the response to vessel-source oil pollution damage, neither Mainland Tanzania nor Zanzibar has adequately addressed the provisions provided by the International OPRC Convention. Although the Tanzania Shipping Agencies Corporation is already operational, it is not yet mentioned in the Tanzania OPRC Regulations of 2012, which still refers to the Surface and Marine Transport Regulatory Authority (SUMATRA), an institution that has been replaced. The Tanzania OPRC Regulations require every harbour authority, as well as every oil handling facility and offshore installation operator, to submit their oil pollution emergency plans to SUMATRA for approval. In cases in which plans are approved, the Regulations outline that the plans should be reviewed by those harbour authorities, oil handling facilities and offshore installations operators within five years and then be resubmitted to SUMATRA for approval. Given that SUMATRA has been replaced by the Tanzania Shipping Agencies Corporation, Mainland Tanzania does not currently make it clear in its legal texts as to which institution the oil pollution emergency plans should be submitted. Moreover, the Tanzania OPRC Regulations do not require Tanzanian maritime inspection services and pilots of civil aircrafts in the URT to immediately report any observed events

involving the discharge of oil or presence of oil at sea. Although the Zanzibar Marine Oil Spill Response Contingency Plan is in line with National Marine Oil Spill Response Contingency Plan, the former is not mentioned in the latter, thus leading to possible misinterpretation.

In terms of civil liability and compensation, both MTMSA and ZMTA fail to address some of the provisions of the 1992 CLC and the 1992 Fund Convention. Neither Act defines the term “preventive measures”. Both MTMSA and ZMTA provide that, in addition to the ship owner, any other persons may also be liable for vessel-source oil pollution damage. Unfortunately, neither of the Acts provides sufficient detail about to whom the term “other persons” refers. The conditions of exemption from liability for the ship owner in the case of vessel-source oil pollution damage provided by MTMSA differ from the related conditions provided by the 1992 CLC. Moreover, both MTMSA and ZMTA fail to provide for an exemption from liability of the ship owner for oil pollution damage in an instance in which “the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person”, as stipulated in the 1992 CLC (article III(3)). Unlike ZMTA, MTMSA does not forbid any claim for compensation for vessel-source oil pollution damage against any person working for the ship, providing services to the ship or operating with the ship “unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result”, as stipulated by the 1992 CLC (article III(4)).

Additionally, MTMSA is silent on the limitation of liability from vessel-source oil pollution damage. Article 295(2) of ZMTA allows the ship owner to limit his liability in the case of vessel-source oil pollution damage to the relevant amount which is “(a) in relation to a ship not exceeding 5,000 tons, three million special drawing rights; (b) in relation to a ship exceeding 5,000 tons, three million special drawing rights together with an additional 420 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59.7 million special drawing rights”. These amounts are similar to the amounts of limitation of liability stipulated by the 1992 CLC before the amendment of 2000. Hence, the amounts of limitation of liability provided by ZMTA are different from the amounts of limitation of liability currently provided by article V of the CLC.

While MTMSA is silent on this question, article 295(4) of ZMTA provides that “a ship’s tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the minister for the time being responsible for shipping and seafarers”, a stipulation that differs from the 1992 CLC (article V(10)), which makes it clear that “the ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969”. Both MTMSA and ZMTA are silent on the recommendation of the 1992 CLC (article V(11)) about allowing the “insurer or other person providing financial security to constitute a fund on the same conditions and having

the same effect as if it were constituted by the owner; such a fund may be constituted even if the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner". Both Acts are also silent on the possibility for the insurer to "avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke; and not to avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him" as required by the 1992 CLC (article VII(8)).

Both MTMSA and ZMTA stipulate the circumstances under which any claimant of vessel-source oil pollution damage is to benefit from second-tier compensation from the IOPC Funds. The circumstances described by both Acts differ from the circumstances provided by the 1992 Fund Convention (article 4(1)), especially as neither of the Acts provides claimants with the possibility of receiving second-tier compensation from the IOPC Funds, "because no liability for the damage arises under the 1992 Liability Convention".

MTMSA is silent on many questions regarding the issue of first-tier and second-tier compensation for vessel-source oil pollution damage, making it difficult for people living in Mainland Tanzania to access first-tier compensation and leaving them unable to access second-tier compensation from the IOPC Funds. The provisions of the 1992 CLC and the 1992 Fund Convention have not been well implemented in Mainland Tanzania, in particular, and in the URT in general.

#### *Issue of ratification and implementation of international conventions*

The URT has not yet ratified the 2003 Supplementary Fund Protocol or the Bunker Convention, even though bunker oil is particularly dangerous for the marine environment. Oil tankers account for only a limited part of the world's merchant fleet, while ships in other classes are far greater in number and thus cases and risks of bunker oil pollution have been more numerous throughout the world.<sup>25</sup> There is thus a possibility that a bunker oil pollution incident could well occur in the URT. Were such an incident to occur in URT, however, on the basis of the current legislation, no compensation sum would be payable to the victims as the country has not ratified the Bunker Convention and does not provide an adequate aggregate amount of compensation in such cases.

In what concerns the implementation of the provisions of the International Conventions ratified by the URT, article 4(3) of the Constitution of URT 1977 stipulates clearly that in the URT, "there are union matters and non-union matters". Maritime matters are not considered among union matters. Although the 1997 Constitution is currently undergoing a reform process, the current draft of the new Constitution that is available online maintains

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25 "Bunker fuel pollution" *LiveBunkers*, available at: <<https://www.livebunkers.com/bunker-fuel-pollution>> (last accessed 17 April 2020).

maritime matters as non-union matters. This means that in the future such matters may still be independently dealt with by Mainland Tanzania and Zanzibar. However, while the URT has ratified a certain number of international conventions related to the protection of the marine environment from vessel-source oil pollution damage, Zanzibar is not internationally recognized as a state. In this regard, when the URT ratifies international conventions, it does so on behalf of Mainland Tanzania and Zanzibar. This creates a challenge for the implementation of the international conventions related to non-union matters. Within its current dualist legal system, the URT does not currently provide a clear legal process to guarantee easy incorporation of the provisions of the ratified international conventions related to non-union matters into law in Zanzibar.

Indeed, even the 1977 Constitution is silent on this process, and this is a very serious issue. Thus, there is currently no way to guarantee that Zanzibar will domesticate the international conventions ratified by the URT in regard to maritime matters, as the URT has no legal way to force Zanzibar to amend its maritime laws and regulations in order to incorporate those provisions. Moreover, the URT is party to the 1969 Intervention Convention but neither Mainland Tanzania nor Zanzibar have yet incorporated the provisions of this convention into their laws and regulations. Ratification of an international convention by nation states commits them to specific actions, including collecting and reporting data.<sup>26</sup> However, weak implementation in the two legal systems of the URT means that it is not able to provide the required accurate yearly report indicating that it imports the specified amount of crude oil, and consequently does not pay its annual contribution fees to the IOPC Funds. Thus, although the URT is a party to the 1992 Fund Convention, it is yet to receive monetary benefits from the IOPC Funds.<sup>27</sup>

#### *Lack of adequate oil spill response equipment*

The oil spill response equipment that the URT currently has is not adequate for use in responding to a large vessel-source oil pollution incident. It lacks aircraft for air surveillance in cases of vessel-source oil pollution, in addition to lacking modern oil spill response vessels. It also has no system for satellite surveillance in the event that such an incident were to occur.

#### *Low fines and lack of adequate compensation sum provided to the claimants of vessel-source oil pollution damage*

The different amounts provided by the laws and regulations of both Mainland Tanzania and Zanzibar for failure to prevent and respond to vessel-source oil pollution damage may not be adequate to cover the cost of cleaning the sea

26 MF Price "The reality of implementing an international convention" (1996) 6/3 *Global Environmental Change* 193.

27 "Tanzania yet to get global oil spills funds despite being a member since 2010" (1 July 2018) *The Citizen*, available at: <<https://www.thecitizen.co.tz/news/TZ-yet-to-get-global-oil-spills-funds/1840340-4640484-tt3eebz/index.html>> (last accessed 20 April 2020).

after such damage. Indeed, the penalties imposed tend not to reflect the gravity of some offences<sup>28</sup> and may result in continued oil discharge.

In regard to the compensation for vessel-source oil pollution incidents in the URT, the compensation sum currently available for the claimants is low and may therefore not be sufficient to completely compensate claimants in the case of a large vessel-source oil pollution incident. Although the URT is a party to the 1992 Fund Convention, at present, people living there may well not receive any amount of money for a second-tier compensation for vessel-source oil pollution damage from the IOPC Funds.

The fact that there is no regular cooperation between the Tanzania Shipping Agencies Corporation and the Zanzibar Maritime Authority makes it difficult for the URT to know the exact quantity of oil that is imported annually within the entire territory, thus hindering its ability to submit any official report to the IOPC Funds and to provide its annual contribution to this Fund. Unlike Zanzibar's ZMTA, Mainland Tanzania's MTMSA does not currently obligate the parties importing or receiving a quantity of more than 150,000 tons of oil in Mainland Tanzania to pay a levy as part of the URT's contribution to the IOPC Funds.

#### *Lack of public awareness*

Although article 176(2) of the Mainland Tanzania Environmental Management Act stipulates that "the director of Environment shall plan and conduct programs aimed at raising awareness of the people on sustainable development and environmental management", a great number of Tanzanians still do not know much about the issue of the protection of the marine environment from vessel-source oil pollution. Similarly, many are not aware of the environmental laws and regulations in both Mainland Tanzania and Zanzibar related to this issue.

#### *Lack of maritime law experts, trained personnel and adequate training centres*

The URT suffers from a lack of maritime law experts, having only a few within the country at the time of this research. This can explain why the country has some outdated maritime laws and regulations, and has not yet aligned itself completely on international standards regarding the protection of the marine environment from vessel-source oil pollution. Moreover, there is currently a great lack of trained personnel in oil spill response and there are no oil spill training centres in the URT.

## **SUGGESTIONS**

Based on the findings discussed above, this article has determined a number of recommendations to improve the legal system of the URT related to the protection of the marine environment from vessel-source oil pollution damage.

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28 O Lomas "The prosecution of marine oil pollution offences and the practice of insuring against fines" (1989) 1 *Journal of Environmental Law* 48 at 53.

### **Harmonize the URT domestic laws and regulations**

It is important that both the laws of Mainland Tanzania and of Zanzibar align completely with international standards regarding the protection of the marine environment from vessel-source oil pollution. Mainland Tanzania and Zanzibar should thus strengthen their cooperation on maritime matters. Merging efforts related to maritime laws and regulations, in the same way Tanganyika and Zanzibar merged in 1964 to create the URT, will be beneficial for both Mainland Tanzania and Zanzibar. Enhanced cooperation will contribute to the harmonization of domestic laws and regulations in the URT regarding this issue. This will also reduce confusion and help the URT to achieve its goals of sustainable development of the marine environment. The fact that Mainland Tanzania and Zanzibar collaborated to develop the National Marine Oil Spill Response Contingency Plan demonstrates the importance of uniting their efforts for the protection and sustainable development of the marine environment.

### **Amend the domestic laws and regulations of Tanzania**

Zanzibar has proven to be faster at amending its laws and regulations in comparison to Mainland Tanzania. Both MTMSA and ZMTA should be amended. With the amendment of these two Acts, the URT will have an opportunity to incorporate missing provisions of the 1969 Intervention Convention and of other International Conventions that it has ratified related to the issue of the protection of the marine environment from vessel-source oil pollution. To this effect, the Tanzania OPRC Regulations of 2012 should also be amended.

During the amendment process of MTMSA and ZMTA, it is important for maritime law experts and parliament members from both Mainland Tanzania and Zanzibar to exchange information and collaborate in order to closely align the two Acts. This opportunity should also be used to increase the fine for violating Tanzanian rules relating to the prevention and response to vessel-source oil pollution damage.

### **Ratify other international conventions on this issue**

The URT should become a party to the Bunker Convention 2001 and the 2003 Supplementary Fund Protocol. By becoming party to these two international conventions, it will strengthen its legal framework for protecting the marine environment from vessel-source oil pollution and align itself with international standards, as well as with the goals set by the United Nations 2030 Agenda for Sustainable Development. This will also increase the compensation sum available for vessel-source oil pollution damage incidents. Ratifying these two international conventions will be highly beneficial for the URT.

### **Settle the issues with the IOPC Funds and establish a Tanzanian domestic oil pollution compensation fund**

The best way to settle the issues that currently exist between the United Republic of Tanzania and the IOPC Funds is to encourage cooperation between the maritime authorities of Mainland Tanzania (represented by Tanzania



Shipping Agencies Corporation) and the maritime authorities of Zanzibar (represented by the Zanzibar Maritime Authority). Regular cooperation between these maritime authorities will improve records on yearly imported quantities of oil and also improve accuracy of taxation on the parties importing or receiving oil in the URT. In the process of amending MTMSA, an article should be included requiring that parties importing or receiving a quantity of more than 150,000 tons of oil within a one-year period pay a levy. By including such a requirement, the URT will be able to collect accurate data on oil imports for the entire territory, in the same way that ZMTA already provides such a requirement. Furthermore, the levy collected can constitute the URT's mandatory annual contributions to the IOPC Funds. Additionally, more accurate data on oil quantities imported to the URT can be shared with the IOPC Funds to ensure Tanzanians receive adequate second-tier compensation benefits from cases of vessel-source oil pollution incidents.

Moreover, the URT can establish its own domestic oil pollution compensation fund, despite the fact that it is already party to the 1992 Fund Convention. It is not mandatory that this domestic oil pollution compensation fund provides the same amount of compensation as provided for by IOPC Funds, as multiple countries contribute to IOPC Funds. As the URT is still considered a developing country, it can levy a portion of funds from parties and companies importing or receiving a large quantity of oil as a contribution to the domestic Fund. The exact value of the required contribution from oil companies that surpass the established import threshold can be determined by URT authorities. The funds collected will be paid as second-tier compensation via the domestic Oil Pollution Compensation Fund to claimants of vessel-source oil pollution incidents while claimants wait for compensation from IOPC Funds. This hybrid, second-tier compensation system will consist of a domestic Fund while still being party to the 1992 Fund Convention.

### **Raise public awareness**

Raising public awareness of environmental issues increases understanding of the surrounding world, of changes occurring in the environment, of cause-and-effect relationships between environmental and human health, and of human responsibility for environmental preservation.<sup>29</sup> In this sense, awareness and education are very important to the effort to reduce marine pollution.<sup>30</sup> Authorities of both Mainland Tanzania and Zanzibar should raise awareness and educate their populations on the dangers and consequences caused by oil spills from large vessels, such as the impact on marine and human health. Promotion and education on marine environment protection from vessel-source oil pollution, and the potential consequences of such

29 S Apichatibutarapong "Factor affecting on public awareness concerning university environment" (2018) 2/22 *Proceedings* 1.

30 KO Odeku and BM Paulos "Prohibition of pollution of marine environments: challenges and prospects" (2017) 8/3 *Environmental Economics* 127 at 134.

incidents, can be achieved through media such as television or radio and through the national education system.<sup>31</sup>

### **Train a greater number of maritime lawyers and build oil spill response training centres**

In the short-term, the URT should continue to send students abroad, especially those majoring in law, to learn more about maritime law. In the long-term, the URT should establish structures to train people domestically on maritime law. Students who have studied abroad and majored in maritime law will be of great help in this regard, as they can share their knowledge upon returning through an official structure.

Moreover, the URT should establish oil spill response training centres in Mainland Tanzania and in Zanzibar so that oil spill response personnel can prepare for vessel-source oil pollution incidents. Foreign experts may also be invited to share their expertise at these centres, and oil spill simulators can be used to enable safe training exercises.<sup>32</sup> Training simulations aid in identifying and anticipating the challenges that may be faced during a real incident.<sup>33</sup>

### **Purchase high-quality oil spill response equipment**

To effectively respond to vessel-source oil pollution incidents, high-quality equipment is essential; therefore, the URT should purchase modern, high-quality equipment. In the event that a country is not financially able to purchase this quality equipment, it can acquire it through the numerous partnerships and international cooperation programmes available. Loans are also available for this purpose to protect human and environmental health.

## **CONCLUSIONS**

Protecting the marine environment from vessel-source oil pollution damage is an issue that requires both a legal and a technical approach. In the context of the URT, this research has mainly focused on the legal dimensions of the approach. The drafting of a new Constitution of URT is a sign that this country wants to improve its legal institutions and laws. MTMSA and ZMTA are the two foremost Acts regulating the maritime industry in the URT. However, these

31 HE Edsand and T Broich "The impact of environmental education on environmental and renewable energy technology awareness: Empirical evidence from Colombia" (2020) 18/4 *International Journal of Science and Mathematics Education* 611 at 616.

32 J Halonen, A Lanki and E Rantavuo "New learning methods for marine oil spill response training" (2017) 11 *TransNav, the International Journal on Marine Navigation and Safety of Sea Transportation* 339 at 343.

33 SN Muthike "Assessment of Kenya's capacity to effectively prepare for and respond to oil spill incidents" (master's thesis, World Maritime University, Malmö, Sweden, 18 September 2018) at 11.

Acts are not well aligned with the current risks of vessel-source oil pollution damage faced by the county.

Although these domestic laws and regulations on the protection of the marine environment from vessel-source oil pollution aim mainly at protecting Tanzanian waters, they also indirectly contribute to the protection of URT's neighbouring coastal countries. This is essential as an oil spill caused by a vessel in the waters under the URT's jurisdiction can also spread to neighbouring waters.

The URT has made some progress regarding this issue by ratifying some of the relevant international conventions, establishing a national programme and promulgating domestic laws and regulations related to protection of the marine environment. However, many challenges still exist, such as the lack of harmonization of domestic laws, the presence of legal loopholes, the issue of legislation and implementation of ratified international conventions, the lack of adequate oil spill response equipment, the low level of fines, the lack of adequate compensation payment for the claimants, the lack of public awareness and the lack of maritime law experts, trained personnel and adequate training centres. The recommendations provided in this article will improve the URT's current legal frameworks on the protection of the marine environment from vessel-source oil pollution.

The URT currently does not do enough to foster the sustainable development of the marine environment; however, its approach can be improved with efforts that are more targeted. The current legislation on this issue has been found to be outdated. Consequently, in the event of a large vessel-source oil pollution incident, the results could be disastrous. Thus, implementation of the recommendations provided in this article is necessary. Although the status of Zanzibar may mean that more time is needed to achieve the desired objective, the URT, by increasing efforts in the coming years, could become a reference for other African countries on promoting sustainable development of the marine environment.

## **CONFLICTS OF INTEREST**

None