

Access to Justice on Promotion of Public Participation Agenda in Tanzania's Extractive Industries –Part Three

By

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The notion of access to justice with regard to public participation deals with how laws in a particular country safeguard the right of the people to seek for judicial and administrative remedies. Basically, it refers to the ability of state and non state actors to file a suit in respect of violation of any legal or contractual rights. The World Community under Goal 16 of the Sustainable Development Goals 2030 have set an agenda to promote peaceful and inclusive societies for sustainable development, access to justice for all and build effective , accountable and inclusive institutions at all levels. This seeks to reduce all forms of violence and promote partnership between governments and other stakeholders in order to end conflicts for sustainable development and inclusive growth. Indeed, access to justice means equal opportunity to the state, investor, special groups, and the people of Tanzania to encroach the doors of the courts and tribunals for effective remedies.

Basically, access to justice is one of the inalienable rights recognized and protected in various international instruments. Article 8 of the Universal Declaration of Human Rights 1948 provides that 'everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law.' Related to this is article 7 which provides that all persons are equal before the law and are entitled to equal protection by the law. Further, article 14 of the International Covenant on Civil and Political Rights 1966 and articles 3 and 4 of the African Charter on Human and Peoples' Rights 1981 provide for equal protection of all persons and access to justice. These three instruments are part and parcel of the law of Tanzania. On the other hand, article 13 read together with article 30(3) of the Constitution of United Republic of Tanzania, 1977 provide for equality of all people before the law and access to courts respectively. Thus, people of Tanzania have been guaranteed of the right of access to justice, an important attribute of the public participation agenda.

The main concern of most stakeholders is on how the government of Tanzania has protected peoples' access to justice in the laws governing extractive industries. Being one of the democratic countries, Tanzania has zealously protected access to justice in the extractive laws. First, the Mining Act 2018 gives any person who is aggrieved by the amount of compensation paid by the investor for loss of land to institute the claim before the Mining Commission. The

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latter is vested with powers to determine fair and reasonable compensation depending on the market value of the land. It means where people are not involved in the valuation process by the mineral right holder, they may challenge decision to the Commission. The same applies to other situations where citizen's rights are affected by the operations of the mineral right holder. The orders of the Commission can be enforced in the courts presided over by the Resident Magistrate. However, where one is aggrieved by the decision of the Mining Commission, there is a chance for appeal before the High Court of Tanzania.

Similarly, the Mining Act 2018 permits victims of pollution from mining operations to institute claim in the ordinary courts, subject to principles of pecuniary jurisdiction and cause of action. Generally, license holders would be strictly liable for pollution except where harm occurs due to act of God or where the license holder has taken reasonable and prudent measures to avert the problem. This means that investors must conduct their operations with due diligence and observe conditions prescribed in their mining licenses. Hence, I can argue that through the Mining Act 2018 the government of Tanzania has protected peoples' access to justice.

On the other hand, the Petroleum Act 2015 gives room to any person who has conflict with regulated service providers to take the matter to either PURA or EWURA for determination. However, these two organs have discretionary powers to admit or reject the claim which they think is not within their mandate, in which case matter may be lodged to ordinary courts. Basically, PURA may also determine claims for compensation if the license holder interferes with the rights of the lawful occupier of any land or cause damage to crops, trees, building, stocks or any works. This means that dispute in the mining sector are addressed by the Mining Commission whereas dispute in the petroleum sector are addressed by PURA or EWURA. Last but not least, the Access to Information Act 2016 permits any person aggrieved by the decision of the information holder to refer the matter to the head of the department, and later to the Minister of Legal Affairs whose decision is final and conclusive. But, where the decision challenged originates from the office of the Minister of Legal Affairs, then such decision can be challenged before the High Court of Tanzania.

Finally, the Arbitration Act 2020 gives autonomy to the government organs and investors to conclude a binding arbitration agreement. By so doing, parties may refer the dispute to international arbitration. This is an important avenue which accommodates Alternative Dispute Resolutions (ADR) in the settlement of disputes whereby mediators, conciliators and arbitrators may be used to resolve a dispute. Moreover, provisions of the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 clearly provide that disputes which arise from exercise of sovereign rights over natural resources shall only be determined by tribunals or courts established in accordance with the laws of Tanzania. This could mean that international dispute settlement framework cannot be used to resolve state-investor disputes. Nevertheless, using mischief and purposive approaches of statutory interpretation, the Arbitration Act 2020 being a specific law reintegrates ADR processes including international arbitration. It is valid for parties to resolve dispute through international mechanisms so long as fundamental laws of Tanzania are

not violated. The bottom line is we must apply amicable means of conflict resolution such as mediation, conciliation, and arbitration in order to avoid technicalities involved in litigations.

Therefore, it could be submitted that Tanzania has taken positive steps in promoting public participation agenda through various laws which require state organs to consult citizens and other stakeholders during decision making process, failure of which may give rise to compensation claim. Further, the government has promoted public participation in the development process through provisions on compulsory disclosure of information. Lastly, the government has effectively guaranteed public participation agenda by permitting an aggrieved citizen to challenge decisions before tribunals or courts as the case may be. My submission to all stakeholders in the extractive industries is that we should strive to resolve conflicts in amicable ways so as not to affect production. Strikes, boycotts or force should never be used by the local people of Tanzania to solve disputes between them and investors. Stealing or attempt to steal minerals from the mining sites by local people is not acceptable under any circumstance.

It is true that people of Tanzania have sovereign right over natural resources. It is true that people of Tanzania have a right to participate in the decision making process. It is not proper to do acts which are likely to cause disruption of peace or adversely affect interests of investors. The best way to exercise sovereign right to natural resources is to actively participate in the meetings, workshops or conferences convened by the government to deliberate on development plans. Further, Tanzanians must communicate their wishes to their political representatives in their areas so that their interests are fully taken on board by the highest state organs. To the local and artisanal miners there is need to observe directives and rules provided by the government so as to avert possible collisions with investors. While the government is working hard towards sustainable collection and distribution of revenue from extractives, we need to show support by preserving peace and harmony in all areas where mining and petroleum operations are taking place.

Remember most resource rich African countries such as DRC and Angola have not been able to benefit from endowed resources due to conflicts and struggle for resources leading to a resource curse. The secret why Canada, Chile, Norway and Botswana have been able to beat the resource curse is peace and stability which provides the governments with an opportunity to oversee production, diversify revenues in order to make the economy less prone to global markets, and reinvest surplus revenues to social services. There is always an opportunity cost if we lose one of the investors in the mining sector for our reckless behaviours. Let everyone of us be a good ambassador of peace and tranquility built on hard work. Let us trust our leaders who have vowed to serve the people and the nation. Above all, we pray for involvement of non state actors in the natural resource governance for fully realization of peoples' sovereignty over natural resources. We, being the people of Tanzania have great confidence in the government leaders. Remember the future and destiny of our children and grand children rests on our hands. Together we build our nation.