

Public Participation Agenda in the Laws Governing Extractive Industries in Tanzania-Part One

By

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Civil Society Organizations (CSOs) play a great contribution to national development. Their main thematic areas include *inter alia*: advocating for good governance, rule of law, respect for human rights, accountability and public participation in the decision making process. Every year various CSOs and the government usually meet and deliberate on specific agenda during the CSOs week. This Year's CSO Week is planned to take place from 23rd October to 29th October 2021. As part of preparations for launching the CSOs Week, Publish What You Pay, a global movement of CSOs released its report on 24th August 2021 with a theme of increasing women participation in the extractive governance in Tanzania, Mozambique and Uganda. Basically, the report shows that women and girls, who are most victims of mining projects, are less involved in the creation of local projects, resource allocation and monitoring of development projects. The Report recommends for involvement of women and girls in the resource allocation and related development matters.

I quite agree with the demand for women involvement in the decision making as shown earlier. However, I believe the discussion should not only focus on women participation in the natural resource governance. The debate should be on increasing participation of the people of Tanzania in the natural resource governance. As a matter of fact, public participation in the decision making appears to be the problem of all the people-men, women, girls, youths, children and elderly. Principally, public participation is a legal concept which refers to practice of consulting and involving members of the public, including interested and affected individuals, organizations and government entities, in the setting of the agenda, decision making and policy –forming activities of the nation. It involves systems structured to provide members of the public with a forum to state their preferences and ensure that government leaders know and consider relevant facts in order to achieve qualitative sound decisions. Generally, public participation serves a number of purposes in the administration of the state: it plays democratic function of representing people in the decision making processes; ensures equal opportunity of every citizen to influence legal and

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policy formulations; engenders public trust towards the government; enhances accountability and transparency, and ensures redistribution of resources and wealth between the state and the people.

Basically, every citizen in Tanzania-male or female, young or old, is guaranteed a right to participate in the decision making process. Various binding international human rights and environmental rights instruments provide for participatory rights. For example, article 1(2) of both International Covenant on Civil and Political Rights 1966 and International Covenant on Economic, Social and Cultural Rights 1966 and article 13(1) of the African Charter on Human and Peoples' Rights 1981. Other instruments binding on Tanzania include: Convention on the Law of the Sea 1982, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, and the East Africa Community Protocol on Environment and Natural Resources Management of 2006.

Further, Tanzanian laws provide for public participation under various principal legislations including: the Constitution of the United Republic of Tanzania 1977; the Natural Wealth and Resources (Permanent Sovereignty) Act 2017; the Natural Wealth and Resources (Review and Renegotiation of Unconscionable Terms) Act 2017; the Environmental Management Act 2006; the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act; the Tanzania Extractive Industries (Transparency and Accountability) Act 2015; the Petroleum Act 2015; the Mining Act 2018; the Standing Orders of the Parliament of the United Republic of Tanzania 2016; and many other laws. Generally, the above laws vest sovereign powers to the people of Tanzania to participate in the management of resources individually and collectively. Specifically, they empower National Assembly to approve all natural resource agreements or arrangements and passing resolution to require government to renegotiate agreements for best interest of the people. Similarly, NGOs, CSOs and other professional associations are also allowed to participate in the review of agreements during public hearing before the renegotiation report is submitted to the Cabinet. These reforms were adopted following domestication of the principle of Permanent Sovereignty over Natural Resources in 2017.

Not only that, the civil society organizations and mining companies also form part of the TEITA Committee which plays an oversight role to the government and extractive companies. Furthermore, it is a mandatory requirement that people and other stakeholders participate in the preparation of the local content plan and corporate social responsibility plan. On the other hand, local governments are legally required to hold public meetings in which people and their representatives at the district, regional and village levels participate in making bylaws and development plans. Another important area is participation of the people and other stakeholders in the Environment Impact Assessment (EIA) before commencement of any mining project, and during legislative drafting. The last but not least is that people of Tanzania who have attained the

age of majority are allowed to participate in the election of government leaders in the General Elections. Therefore I can confidently say that the laws of Tanzania positively protect the right of the people including women to participate in the decision making process. I commend the government of Tanzania for continued legal reforms in the extractive industry which seek to ensure that people of Tanzania participate in the governance process.

For quite some time, various CSO have been advocating for participation of people in the decision making. A number of capacity building projects have been conducted throughout the country. Unfortunately, the efforts appear to be addressing only one aspect of public participation which is actually participating in the meetings convened by the administrative authorities. These trainings advocate for citizen engagement in various decision making fora such as public hearing, opinion polls, referendum and workshops convened by the government authorities. However, a report published by Haki Rasilimali in October 2019 showed that few people usually attend the meetings due to ignorance of the subject matter under the discussion, limited time set for the hearing, non attendance due to cultural barriers, language barriers and economic activities such as cultivation of crops and livestock keeping. The Report recommended for awareness rising in order to encourage participation of people in the resource governance.

Unfortunately, to date we still see that people around the mining sites are not aware of the laws governing extractive industries. This means that minimal efforts have been taken by the stakeholders in addressing the problem. I commend the good work done by various NGOs such as Haki Rasilimali Tanzania, Haki Madini, Policy Forum, Tanzania Relief Initiative (TRI), TGNP, TAWLA, TLS, UNA-Tanzania, TGNP and many others for various projects seeking to empower people of Tanzania in actively participating in the development agenda. Moreover, I call upon them to devise other mechanisms to ensure that people of Tanzania are made aware of the laws governing extractive industries. Further, they should advocate for the participatory model which is inclusive of both state and non state actors. I submit towards adoption of pluralism and deliberative models which ensure that all groups in the society participate in the decision making process. Furthermore, the stakeholders must seek to understand laws and policies that govern extractive industries for easy dissemination of information. Quite interestingly, some officers from CSOs are completely ignorant of vital laws governing mining and petroleum operations. This raises a doubt if an ignorant person could effectively conduct an awareness campaign.

On the other hand, the stakeholders must advocate for reforms of the laws so as to compel administrative authorities to convene public hearings. The existing laws vest discretionary powers to the government authorities to convene meetings. Similarly, they should advocate for special binding rules which stipulate for procedures for conducting meetings and the binding nature of the public opinion. There is need for common approach towards effective citizen involvement of the people of Tanzania –male, female, youths and children in the natural resource governance. This is so because the law proclaims sovereignty over natural resources to reside into the people of Tanzania.

Finally, I challenge the CSOs and other people-centred organizations for making fewer advocacies in other areas of public participation. The international standards governing public participation provide for other two aspects of public participation namely: access to relevant

information and access to justice. For effective citizen engagement, participants must have access to relevant information prior the meetings; and if at all any participatory right is denied then one must be able to challenge the decision to the courts of law. These two aspects and how they have been provided in the laws of Tanzania are reserved for the next issue. Once again I commend the government of Tanzania for good reforms that have been made in the extractive sector which place the people of Tanzania at the centre of every administrative and judicial decision. Let each of us take the opportunity of the existing laws to propagate for the participation of the people in the decision making for the best interest of the present and future generation. Together we build Tanzania-the Island of Peace.