
INTERNATIONAL JOURNAL OF SCIENCE ARTS AND COMMERCE

PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING: A CRITICAL ANALYSIS OF LEGAL FRAMEWORK IN TANZANIA.

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Abstract

Public participation in environmental decision making is a key principle of environmental governance that promotes transparency, accountability, and sustainable development. This article examines the legal framework governing public participation in environmental decision making in Tanzania. It analyses relevant constitutional provisions, policies, legislation, international and regional instruments, and judicial decisions. The article also identifies legal challenges affecting effective public participation, including inadequate access to environmental information, limited public awareness, weak enforcement mechanisms, and financial constraints. Using doctrinal legal research methodology, the study relies on primary and secondary legal sources. It concludes that although Tanzania has established a legal framework for public participation, legal and institutional reforms are necessary to ensure meaningful, inclusive, and effective participation in environmental decision making.

Key words: Public participation, Environmental Decision Making; Environmental Law; Sustainable Development.

INTRODUCTION

Environmental protection has increasingly become a global priority due to the growing challenges posed by climate change, biodiversity loss, pollution, and unsustainable exploitation of natural resources. These environmental challenges have highlighted the need for decision making processes that are not only scientifically informed but also inclusive, transparent, and accountable. Consequently, public participation has emerged as a fundamental principle of environmental governance, recognizing that individuals and communities affected by environmental decisions should have an opportunity to influence the processes that shape their

environment.¹ Public participation refers to the meaningful involvement of individuals, communities, civil society organizations, and other stakeholders in environmental decision making processes. It enables the public to contribute knowledge, express concerns, and influence decisions relating to environmental policies, projects, plans and programs. Effective participation promotes democratic governance, enhance public confidence in decision making institutions, improves the quality of environmental decisions, and contributes to sustainable development by ensuring that diverse interests and adequately considered.²

The importance of public participation was firmly established under the Rio Declaration on Environment and Development, which states that environmental issues are best handled with the participation of all concerned citizens at the relevant level.³ This principle has since influenced numerous international and domestic legal frameworks by recognizing that access to information, public participation, and access to justice are essential elements of effective environmental governance. The Aarhus Convention further elaborates these procedural rights and has become a global model for promoting inclusive environmental decision making.⁴ In Tanzania, public participation is recognized in the Constitution of the United Republic of Tanzania which guarantees freedom of expression, and access to information,⁵ while the Environmental Management Act provides for observation of the principle of public participation which requires the involvement of the people in the development of policies, plans and processes for the management of the environment.⁶ Public participation can be through, education, information dissemination, advisory or review boards, public advocacy, public hearings and submissions, and even litigation.⁷ Despite these legal provisions, still there are some challenges like limited public awareness, inadequate access to environmental information, weak institutional capacity, and insufficient enforcement continue to hinder meaningful public participation. Therefore, this Article examines the legal and practical dimensions of public participation in environmental decision making, challenges affecting effective public participation, and proposes recommendations for strengthening participatory environmental governance in Tanzania in line with international best practices.

¹ United Nations Conference on Environmental and Development, *Rio Declarations on Environment and Development* (1992), Principle 10.

² Sands, P., Peel, J., *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018), p. 694-700.

³ Rio Declaration on Environment and Development, principle 10.

⁴ Aarhus Convention, Article 6,7&8

⁵ Constitution of the United Republic of Tanzania, Article 18.

⁶ Environmental Management Act, S.7(3)(e).

⁷ Onita, D., *Environmental Protection, Security and Armed Conflict: A Sustainable Development Perspective*, Edward Elgar Publishing, 2013, p35.

INTERNATIONAL AND REGIONAL INSTRUMENTS GOVERNING THE PRINCIPLE OF PUBLIC PARTICIPATION TO ENVIRONMENTAL DECISIONS

The most relevant International Instruments are Rio Declaration on Environment and Development and Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. Rio Declarations promoting public participation in environmental governance. It provides that environmental issues are best handled with the participation of all concerned citizens, and that individuals should have access to environmental information, opportunities to participate in decision making, and access to judicial and administrative remedies.⁸ Aarhus Convention is regarded as the leading international treaty on environmental democracy. It establishes legally binding obligations concerning access to environmental information, public participation in environmental decision making, and access to justice.⁹ It provide for public participation in Decisions on specific Activities, this is the principal provisions requiring the public to be informed early, given access to relevant information, allowed to submit comments and requiring decision makers to take due account of the outcome of public participation. It applies particularly to projects and activities that may significantly affect the environment.¹⁰ Aarhus Convention also provides for public participation concerning plans, programs and policies relating to the environment.¹¹ Lastly, the Convention provides for public participation during the preparation of executive regulations and generally applicable legally binding normative instruments.¹²

Regional Legal Frame works are African Charter on Human and Peoples Rights and African Convention on the Conservation of Natural Resources (Revised Maputo Convention). The African Charter guarantees the right of peoples to a satisfactory environment favorable to their development.¹³ It also protects the rights to receive information and to participate in public affairs, which support public participation in environmental decision making.¹⁴ The revised African Convention requires State Parties to adopt measures that ensure public participation in the planning and management of natural resources and environmental conservation, promoting sustainable development across Africa.¹⁵ These four instruments provide a strong legal foundation for analyzing public participation in environmental decision making from both international and African regional perspectives.

⁸ Rio Declarations on Environment and Declarations, principle 10.

⁹ Aarhus Convention, (Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters, 1998)

¹⁰ *Ibid*, Article 6

¹¹ *Ibid*, Article 7

¹² *Ibid*, Article 8

¹³ African Charter on Human and Peoples Rights, Article 24

¹⁴ *Ibid*, Article 9

¹⁵ African Convention on the Conservation of Nature and Natural Resources (Revised Version), Article 16

TANZANIA LEGAL FRAMEWORK FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING.

Where the United Republic is a party to an international or regional agreement concerning the management of the environment, has a duty of preparing legislative for the purpose of implementing those agreements and identify appropriate measures necessary for the implementation of those agreements. Based on that public participation principle is enshrined in Tanzania legal framework as provided below; The Constitution of the United Republic of Tanzania, guarantees the right to seek, and disseminate information, which supports meaningful public participation in environmental decision making.¹⁶ It also imposes a duty on every person to protect the natural resources of Tanzania and the environment. The Constitution states that; every person has the duty to protect the natural resources of the United Republic, the property of the state authority, all property collectively owned by the people, and also to respect another person's property. All person shall be required by law to safeguard the property of the state authority and all property collectively owned by the people, to combat all forms of waste and squander, and to manage the national economy assiduously with the attitude of people who are masters of the destiny of their nation.¹⁷ The Constitution also states that; every citizen has the duty to protect, preserve and maintain the independence, sovereignty, territory and unit of the nation.¹⁸ Parliament may enact appropriate laws to enable the people to serve in the forces and in the defense of the nation¹⁹. No person shall have the right to sign an act of capitulation and surrender of the nation to the victor, nor ratify or recognize an act of occupation or division of the United Republic or of any area of the territory of the nation and, subject to the Constitution and any other laws enacted, no person shall have the right to prevent the citizens of the United Republic from waging war against any enemy who attacks the nation.²⁰ The Article concludes by explaining that treason as defined by law shall be the gravest offence against the United Republic.²¹

Basing to the explanation above it can be recommended that the Constitution of the United Republic of Tanzania, recognizes the public participation principle and not only in environmental but also in all important aspects of the country which needed public participation and that's why there are other Policies and Acts enacted under the Constitution so as to implement the principle includes; The National Environmental Policy which promotes public awareness, stakeholder engagement, transparency. And community participation in environmental planning and decision making.²² The Access to Information Act provides the public with a legal right to access information held by public authorities, including

¹⁶ The Constitution of the United Republic of Tanzania, Article 18

¹⁷ The Constitution of the United Republic of Tanzania, 1977 Article 27

¹⁸ Ibid, Article 28(1)

¹⁹ Ibid, Article 28(2)

²⁰ Ibid, Article 28(3)

²¹ Ibid, Article 28(4)

²² Vice presidents Office, National Environmental Policy, P.32&53

environmental information, thereby facilitating informed participation.²³ The Environmental Management Act which is the principal environmental law in Tanzania establishes public participation as a guiding principle of environmental management.²⁴ It requires public participation and public hearings during the Environmental Impact Assessment (EIA) process,²⁵ expressly guarantees the public the right to participate in environmental decision making, and lastly provides for public access to environmental information and participation mechanisms.²⁶ Generally, the legal framework governing public participation in environmental decision making in Tanzania demonstrates the country's commitment to promoting inclusive and sustainable environmental governance.

THE IMPORTANCE OF PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING

Key importance of public participation in environmental decision making including, improving the quality of decisions whereby public participation allows decision makers to obtain local knowledge, scientific information, and community perspectives, leading to better informed environmental decisions. It promotes transparency and accountability by enabling the public to monitor government actions, reducing secrecy and ensuring that authorities justify their decisions. It also builds public trust and confidence when people are involved in the decision making process, they are more likely to trust and support the final decisions. Not only that but also public participation in decision making reduces conflicts and disputes due to the fact that, early consultation helps to identify concerns before projects are implemented, minimizing objections, protests, and costly litigation. The relevant case on the importance of public participation in environmental decision making is the case of *Joseph Leboo & two others v Director of Kenya Forest and Land case*. In this case the court observed that the community had an interest in the preservation and sustainable use of forest. As such, public participation was an important component of environmental management as enshrined in the constitution.²⁷

LEGAL CHALLENGES HINDERING PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONS

The legal framework governing public participation in environmental decision making in Tanzania is dispersed across several statutes, including the Constitution of United Republic of Tanzania, Access to information Act and Environmental Management Act. While these laws collectively recognize the importance of public participation, they are not full harmonized. The absence of a unified legal framework results in inconsistencies regarding public consultation procedures, institutional responsibilities, and enforcement mechanisms. Consequently, implementation varies among public authorities, creating legal uncertainty and weakening

²³ Access to Information Act [Cap.229 R.E 2023], S.5&6

²⁴ The Environmental Management Act, [Cap.191 R.E 2023], S.7(3)(e)

²⁵ *Ibid*, S.89-90

²⁶ *Ibid*, S.179

²⁷ Environmental and Land Case No. 273 of 2013

effective public participation. The relevant case is the case of *Festo Balegele and 794 Others v Dar es Salaam City Council*.²⁸ This case affirmed the importance of protecting environmental rights and demonstrated the role of legal mechanisms in safeguarding public interests in environmental matters, reinforcing the need for an effective and coherent legal framework governing public participation. Another challenge is lack of clear procedures for public participation, the law requires public participation but does not comprehensively prescribe how consultations should be conducted, who should be consulted, or how public views should influence final decisions.²⁹ Weak enforcement of public participation laws is another legal challenge where by even if the laws require public participation, enforcement mechanisms are often weak. Authorities may ignore procedural requirements without facing meaningful sanctions, reducing compliance and undermining public confidence in environmental decision making. Also, there is absence of legal sanctions for non-compliance, in many jurisdictions environmental laws do not impose effective penalties on authorities or project developers who fail to conduct proper public participation. This weakens compliance and accountability. Another challenge is limited access to environmental information, effective public participation depends on timely access to environmental information. However, legal restrictions, confidentiality provisions, delays in disclosure, and inadequate transparency often prevent citizens from participating meaningfully. For example, Access to information Act prohibits non-citizens from getting information this is legal restriction based on information access.³⁰ The relevant case is *Media Council of Tanzania and Others v Attorney General*, where by the Court recognized the importance of access to information as a prerequisite for democratic participation.³¹ The last challenge is cost implementation or financial strain, Despite Environment Management Act to recognize public participation principle, still financial resource is the major internal challenge in public participation. Many communities may experience financial strain as a result of participating in a community engagement initiative. It may not be feasible for them to take time away from work to attend a face to face meeting, or the cost to travel could be too high especially for the people who live further away from the physical location of face to face consultations. Fund issues have also been discussed in the case of *Dr. B.L Wadhera v. Union of India*. In this case the Court has found the Government neglecting its responsibilities in protecting the environment by not implementing the laws to the optimum extent. Thus, considering the various principles and doctrines, the Court held that the Government agencies shall not plead non availability of funds, inadequacy of staff or other insufficiencies to justify nonperformance of their duties towards the strict enforcement of the environmental.³²

²⁸ Civil Case No.90 of 1991, High Court of Tanzania, Dar es Salaam, *Unreported*

²⁹ The Environmental Management Act [Cap. 191 R.E 2023], S.7(3)(e), 178

³⁰ Access to Information Act [Cap.229 R.E 2023], S.5

³¹ Reference No.2 of 2017 EACJ

³² 1996 SCC (2) 594

CONCLUSION AND RECOMENDATIONS

Public participation is a fundamental principle of environmental decision making that promotes transparency, accountability, and sustainable environmental governance. It enables individuals and communities to contribute to decisions affecting the environment, thereby improving the legitimacy and quality of environmental outcomes. Although Tanzania has established a legal framework to facilitate public participation, its effectiveness is constrained by several legal and institutional challenges. Consequently, the realization of meaningful public participation depends not only on the existence of legal provisions but also on their effective implementation and active involvement of the public throughout the environmental decision making process. Basing to those situations the study recommends the following; First, the Government of Tanzania should review and harmonize environmental legislation to establish a comprehensive legal framework that clearly guarantees public participation at every stage of environmental decision making. The law should define participation procedures, identify responsible institutions, and provide clear legal obligations for decision makers. Second, the Government should develop detailed regulations and guidelines prescribed standardized procedures for public participation in environmental decision making. This should include clear timelines for public notice, consultation methods, access to relevant documents, and mandatory consideration of public comments before decisions are made. Third, the Government should strengthen the enforcement of existing legal provisions by empowering regulatory authorities, particularly the National Environment Management Council (NEMC), to effectively monitor compliance with public participation requirements. Independent oversight mechanisms should also be established to ensure that environmental decisions comply with statutory participatory obligations. Fourth, The Environmental Management Act and related regulations should be amended to introduce clear sanctions against public authorities and project developers who fail to comply with mandatory public participatory requirements. Such sanctions may include administrative penalties, suspension or cancellation of environmental approvals, and judicial remedies to promote accountability and deter noncompliance. Fifth, public authorities should fully implement the Access to Environment Act, by ensuring that environmental information is proactively disclosed, easily accessible, accurate and available in a timely manner. Section 5 of the Act should be amended to allow all people to get information including environmental information for easy participation in environmental decision making. Also, digital information platforms should also be strengthened to improve public access, particularly for rural communities. Sixth, due to financial resources being a major internal challenge in public participation, the Government should create sources of funds or establish a special fund to manage community participation in various issues as far as the community is concerned, including environmental issues, unlike the current situation where participation has not been done properly under the pretext of lack of funds. This has been seen in the case of *Municipal Council Ratlam v. Shri Vardhichand and others 1991 SCR (1) 97*. In this case the lack of funds that caused the non – performance of duties by the Municipal Co-operation and thus, the court held that in that situation, the authorities can raise the funds from the state government itself by elitist projects, or in the form

of loans from the account of public health expenditure, but the lack of financial resources shall not stand as a reason for non – performance of obligation towards public utility and environmental purposes. This case despite being from India still is relevant in Tanzania.

REFERENCES

- Birnie, P., Redgwell, C., International Law and the Environment Oxford University Press, 2021.
- Onita, D., Environmental Protection, Security and Armed Conflict: A Sustainable Development Perspective, Edward Elgar Publishing, 2023.
- Sands, P., Peel, J., Principles of International Environmental Law, Cambridge University Press, 2018.
- African Charter on Human and Peoples Rights 21 October 1986
- Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention), 30 October 2001.
- Rio Declaration on Environment and Development (adopted 14 June 1992)
- Constitution of the United Republic of Tanzania, 1977
- Environmental Management Act, [Cap. 191 R.E 2023]
- Access to Information Act, [229 R.E 2023]