
PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION – LEGAL AND PRACTICAL PROBLEMS: A CASE STUDY OF TANZANIA

RINGIA, DEOGRATIAS WILLIAM

Advocate, Legal Counsel Lawyers, Environmental Action Team, P .O Box 12605 Dar es salaam, Tanzania.

1 INTRODUCTION

The right to receive and give information is a symbol of a civilized and Democratic society. This principle applies across the board and at all levels of the society especially the Government regardless of the nature of that information which is a crucial tool in accountability, compliance and enforcement. Thus the need for the government to give and receiving information freely to the public becomes indispensable.

Tanzania being one of the many developing countries in the world with a developing economy characterized by Government's lack of responsibility and accountability to its people, poverty, mass corruption, embezzlement of public funds and ignorance. In their efforts to fight the said miseries Governments in these developing countries have resorted to opening up of their economies to foreign investment. This opening up of the economy unaccompanied by technological advancement and know-how gives a leeway way to importation of inferior and outdated technologies. This trend poses great environmental hazards and creates great potential for natural resource management and utilization conflicts between foreign investors and the government on one hand and resource dependent communities on the other.

It is a fact that without the masses being given environmental information the task of monitoring compliance to environmental standards becomes an uphill battle.

2 LEGALITY OF ACCESS TO ENVIRONMENTAL INFORMATION

In a situation like this, in order to strike a balance between these different stakeholders the right to give and release information becomes indispensable. This issue becomes volatile as governments in developing countries, Tanzania being a living example, do enter in agreement to establish projects which have clearly seen negative impacts on the lives of its people without the public being informed. Often this is done under the umbrella of "national interest". The question commonly asked is who is a nation as between government officials and the general public?

In Tanzania the right to give and receive information is enshrined in the Constitution of the United Republic of Tanzania. This is in conformity, only in spirit, with a number of international instruments to which Tanzania has ratified including the Universal Declaration of Human Rights¹ and the African charter on Human and Peoples Rights². This right according to the Tanzanian constitution is given in its broader sense to include rights to give and receive information on environment and natural resource management.³

Article 18(1) of the said constitution provides inter-alia "Subject to the laws of the land", every person is entitled to freedom of opinion and expression that is to say, the right to freely hold and express opinions and seek, receive and impart information and ideas through any media and regardless of frontiers, and freedom from interference with his correspondence. Article 18(2) states further that every citizen has a right to be kept informed of developments

in the country and in the world which are of concern to the life of the people and their work and of questions of concern to the community⁴. Sustainable use of natural resources for the benefit of the citizens of Tanzania is of paramount importance as envisaged by Article 27 (1) of the Constitution of the United Republic of Tanzania which provides inter-alia that every person is obliged to safeguard and protect the natural resources of the United Republic, state property and all property jointly owned by the people, as well as to respect another person's property. Article 27(2) provides further that all persons shall be by law required to safeguard state and communal property, to combat all forms of misappropriation and wastage and to run the economy as the nation assiduously with the attitude of people who are masters of the fate of their own nation.

However despite the constitutional provisions, practically there have been acts committed by the Government prejudicial to the interests of many Tanzanians while the public remained uninformed or at times misled. When the public later learned of these deeds either through leakage of the information beforehand or at the time the decision was implemented, all inquiries by the public over the particular project fell in the deaf ears of the Government. Article 18, if read together with Article 27 of the Constitution, comes out clearly that the right to receive and give information on environment and natural resource management is constitutional. Further the act of not involving the public or presenting contents of the agreements remains a mystery and the public remains ignorant of the hazards and benefits if any, involved in the said project. This includes the public ignorance of the Environmental Impact Statement concerning the projects.⁵

A living example is the Songosongo gas to Electricity Project.⁶ This is a project being undertaken in the Songosongo area in southern Tanzania of extracting natural gas from the Songosongo area and transporting the gas and converting the gas to electricity at Dare es Salaam which is 345 kilometers. The natives of the Songosongo area in particular and Tanzania in general, had no idea of the existence of the project neither were they involved in any way. The natives of the Southern Regions came to learn of the existence of this project when project implementation began, i.e. when surveying commenced.⁷ By the manifest non-involvement of the people of Songosongo, it means that they have been denied information on a project which involves exploitation of natural resource existing within their community. The natives have also been denied an opportunity to participate and utilize the resource for their benefit. The electricity will be generated in Dar es Salaam thus the southern Regions will continue to fall short of electricity. Among the arguments of the natives include the generation of the electricity at the source so that areas around and along the source of the gas benefits. The natives also argue that since they are the ones living around the source and along the transporting pipeline they are the ones who will suffer most of any environmental hazards which will emanate from the project. Further that the project will lead to massive displacement of the natives and they are left in the dark as to what compensation, if any, they are entitled.⁸

From the aforementioned grievances the natives of the Southern Regions through their local SRDA, a local NGO, decided to institute a Civil Case⁹ before the High Court of Tanzania against the Government of the United Republic of Tanzania, the Tanzania Petroleum Development Corporation, and two foreign companies carrying out the Project Trascanada Pipelines and Ocelet Tanzania Inc.

Another example is the Rufiji River Delta prawn plantation project. The Rufiji Delta is East Africa's largest contiguous area of mangroves. It covers an area of 53,255 hectares. The Delta supports a large number of people who depend on that natural resource base. It supports a traditionally sustainable way of life.¹⁰ A private company known as African Fishing Company has been permitted to establish what is termed the world's largest prawn farm. In this project, though the process seemed to have involved the public, information fed to the public was later

proved wrong when a Review Team formed by the Government found out the Investors' Environmental Impact Assessment was flawed by 50% on the project benefit side and environmental risks overlooked. Upon pursuit by Journalists environmental NGO¹¹ did the government publicly admitted of the existence of the said project.

This state of affairs is a manifest of several limits towards the achievement of freedom and access to information in general and environmental information in particular. These limits are multifaceted. Some emanate from the legal angle while others are institutional (practical) and ignorance on the other.

3 LEGAL SETBACKS

As our Constitution provides for freedom of information on the one hand, the same Constitution limits freedom on the other hand in the form of "claw back" clauses and its being subjected to other inferior laws contrary to world known constitutional principles. Though there are court decisions which have greatly ignored the "claw back" clauses, but the fact that these clauses remain in the Constitution remains mainly a matter of interpretation of the Judge(s).

Article 18(1) of our constitution begins by providing inter-alia "subject to the laws of the land". This type of subjugation waters down the whole concept of freedom of information. In Tanzania the government has resorted to the use of the barbaric National Security Act¹². This Act gives the government discretionary powers to classify information. It further provides that once information is declared classified its only accessible to authorized officers¹³. This mere provision in this piece of legislation excludes almost the entire public and a large number of Government officers from access to this type of information.

Another legal limit is the subjugation of this right to what is normally termed an "interest of the nation" and the question posed here is who is a Nation if not the general public? This phrase has always been used as an umbrella by government officers to cover their personal interests in these projects.

It has often been the practice of our government to operate in as secretive a manner as possible and this has led to the complete misuse of the National Security Act. In research I conducted within the Government, a senior officer working for the agency¹⁴ complained of this problem, in that almost every document they receive from within the government is classified. This has led to a situation in which an officer who is supposed to work on a document within the agency is not an authorized officer as provided for in the National Security Act. Thus to minimize the rigors of this tendency most of the documents have to be di-classified at the agency otherwise the agency cannot perform its duties.

Another piece of legislation that hinders freedom of information in Tanzania is the Newspapers Act.¹⁵ This Act introduces the crime of sedition. The Act further defines sedition as an intention to bring into hatred or contempt or to excite disaffection against the lawful authority of the United Republic or the Government¹⁶ Thus any publication of any document that is not in favour of the government can easily be declared seditious. The Act further provides that even if the publication intends to show that the Government has been mislead or mistaken in any of its measures or to point out errors or defects in the government or constitution or any law, or aims to persuade inhabitants to attempt to procure by any lawful means the alteration of any matter in Tanzania as the law establishes is notwithstanding seditious.¹⁷ Intention according to this Act is determined by the consequences which would follow from his conduct¹⁸ The Act further imposes a punishment of imprisonment for a term not exceeding two years or to a fine not exceeding Tanzanian Shillings 2000 or both for the publisher and anybody in whose possession the publication is found.¹⁹

4 INSTITUTIONAL/PRACTICAL PROBLEMS

The whole issue of environmental monitoring and compliance on the part of the government and its agencies is not clear. This has caused overlapping and open conflicts between and within government departments²⁰. The National Environmental Management Council herein after referred to as NEMC is established by an act of Parliament²¹ as a corporate body vested with the functions of, among others:

- a. Formulating policy on environmental management and recommendations for implementation by the government²².
- b. Co-ordinating the activities of all bodies concerned with environmental matters
- c. Serving as a channel of communication between these bodies and the government.²³
- d. Stimulating public and private participation in programs and activities for the national benefit in natural resources management.²⁴
- e. Establishing and operating a system of documentation and dissemination of information related to the environment.²⁵
- f. Lastly, undertaking or promoting general environmental education programs for the creation of an enlightened public opinion regarding the environment.²⁶

Later we saw the creation of a Division of Environment (Hereinafter referred to as the Division) under the Office of the Vice President responsible for the day to day supervision of environmental matters. The setting up of the Division without clear cut guidelines has set in motion overlapping and serious power struggles among these institutions as to who is the overseer of environmental issues in Tanzania.

As neither the National Environmental Management Council nor the Division is vested with implementation /enforcement powers apart from advising the government there has been a tendency of other government ministries and/or departments to disregard these institutions. No ministry, government department or private institution or citizen is obliged to report or inform these bodies on any environmental issue.

There has of late existed a great difference between these institutions as to which one was responsible for the formulation of a national environmental policy. This power struggle contributed greatly to the delay in the coming in force of the Tanzania National Environmental Policy herein after referred to as TNEP. However the policy version of the Division of Environment was adopted in 1997.

It is from the foregoing that the issue of availability and access to environmental information has been left sectorial and uncoordinated in practice. Every respective ministry within the government can negotiate any project falling under that respective ministry without informing either of the two institution in matters related to the environment. An example of this is the Songosongo gas to electricity project, the Rufiji Prawn farming project, the granting of hunting concessions as well as the issue of privatizing land-owning parastatals. The Parastatal Sector Reform Commission hereinafter referred to as PSRC can privatize a parastatal organization that owns land within which a wild life immigration route passes without informing either of the two institutions even though this decision has negative effects to wildlife resources of the country. It is the also that the PSRC does not exactly know to which institution it should inform.

This institutional setup creates a loophole for environmental related matters to be dealt with directly by each ministry concerned without efforts of coordination between ministries and these institutions. This makes the task of seeking information not only confusing but also uphill

in that one does not know where to seek particular information. This problem is serious not only to public access to information but also for the institutions themselves and officers within them. In my research an officer of NEMC admitted to not knowing who and/or which institution is the custodian government for environmental information or where to get this information.

Another big problem towards access to environmental information is ignorance on the part of the public. Most people see poverty as their paramount problem thus they tend to neglect or give less priority to issues on environment and natural resources management and utilization. Though the TNEP recognizes the importance of involving the public in environmental matters²⁷ it does not provide mechanisms through which the public can have access to information, prevent or enforce sanctions against any violation.

From the foregoing problems there is a strong need to put the house in order to live up to the spirit of freedom of and access to information according to the constitution and all international instruments to which Tanzania has ratified. Hereunder are my recommendations:

5 RECOMMENDATIONS ON LEGAL PROBLEMS

I strongly advocate for the making of a new constitution rather than amending the existing 1977 constitution. In the new constitution I strongly advocate for the removal of all claw back and subjection clauses which are obstacles towards the attainment of freedom and easy access to information.

Also this constitution should have a component specifically dealing with environmental and natural resource management issues rather than in the present constitution in which this issues have just been mentioned. This will make the constitution practically conform to the Universal Declaration of human Rights and the African Charter on Human and Peoples' Rights.

I join hands with the Nyalali commission²⁸ that called for the repeal of the National Security Act for among other grounds making the government function in a transparent manner. This will also bring to the end the abuse of the powers vested with the government of classifying almost every document where even some are personal memos directing the doing of business other than government business. This is the spirit of a Tanzanian High Court decision in the case of Adam Mwaibabile v. Republic²⁹

I also join hands with the National environmental Management Counsel³⁰ recommending the repeal of the National Environmental Management Counsel Act. In the proposal which aims at giving NEMC powers to implement the Act rather than advising the government. Also in the draft NEMC is asking to be given the powers to prosecute any person and/or institution believed to have committed an offense under any environmental legislation or regulations made thereunder. Unfortunately the Tanzanian National Environmental Policy overlooked this and sidelined NEMC to a mere binding advisory Body to the Government .³¹

6 RECOMMENDED SOLUTIONS ON INSTITUTIONAL PROBLEMS

I strongly advocate for the creation of a single government agency vested with powers to manage, direct and enforce all matters related to environment and natural resource management as has been the case with EPA in USA which has given positive results. It should be made mandatory that the agency be informed by any ministry or government department on any environmental and natural resource management with which the ministry is involved or is about to be involved and be the custodian of all related information. This will make the whole

issue of access to environmental information a reality thus monitoring compliance will be easier and speedier. This will also remove the sectarian nature of environmental information, as all information will be within the same institution.

I strongly believe the best practical solution to achieve the above is to dissolve the Division of Environment which is under the office of the Vice President and strengthen NEMC and vest it with powers to command accountability and answerability from other government ministries and departments. This cannot be achieved if we stick to the TNEP which vests the Division of Environment, a Government department with enforcement powers. MEMC would have been in a better position to command compliance as it is an independent body created by statute and responsible to the public as opposed to the Division which is directly and the government. The Director and all supporting staff of the Division are Government employees and cannot be in a position to challenge or question any decision made by the cabinet, which is the highest organ within the Executive machinery of Tanzania, doing otherwise will jeopardize their tenure.

The new strong NEMC should have among its functions that of education the public on environmental and natural resources management issues and make the public realize its right to have and freely give information on anything touching on the environment.

Tanzanian government should live to its commitments to both its citizens as well as the international community.

ENDNOTES

1. Article 19 of the Universal Declaration of Human Rights provides that every one has a right to freedom of opinion and expression, this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
2. Article 9(1) of the African Charter on Human and peoples= Rights states that every individual shall have the right to receive information and 19(2) provides that every individual shall have the right to express and disseminate his opinions within the law
3. The constitution of the United Republic of Tanzania 1977 as amended upto 1995.
4. The said constitution is in Kiswahili, a National Language thus translation herein has been made using the previous English Constitutional version.
5. Tanzania is a country that has no EIA standards; neither does it have a law making EIA mandatory. Thereto.
6. This is a multi- million dollar gas extraction project in Songosongo area, Souther Tanzania followed by pipeline transportation of the said gas to Dar es salaam, 300 kilometers where it will be converted to electricity.
7. Per interview with the Chairman of the Southern Regions Development Association(SDRA) Mr. Mohammed Said Mannoro
8. As a reaction to this the said natives have instituted a civil case in the High Court of Tanzania challenging their non involvement and denial of the use of the said gas which would have developed them.

-
9. Civil Cause no. 36 of 1997 pending at the High Court of Tanzania, Dar es salaam District Registry. A one sided Ruling was delivered which was in favor of the government in that The Plaintiff(SRDA) has no LOCUS STANDI and SRDA have filed an Application , which is still pending, to set aside the said ruling
 10. Technical review of an EIA for an Environmental-responsible prawn farming project in the Rufiji Delta- Published by the National Environmental Management Conch (NEMC) August,1997
 11. Journalists on Environment in Tanzania,(JET)
 12. Act No. 3 of 1970.
 13. Act no.3 section 2 provides that an authorized officer in relation to this act to mean a person authorized by the minister to exercise the powers or perform the duties conferred or imposed by such provision.
 14. An interview with an officer of the National environmental Management Council(NEMC)
 15. Act no. 3 of 1976
 16. Act no 3. Section 31(1)
 17. ct no. 3 Section 31(2)
 18. Act no. 3 Section 31(3)
 19. Act no.3 section 32
 20. Article 86 of the Tanzania National Environmental policy acknowledges this sectarian nature of institutions
 21. The National Environmental Management Act, Act No. 19 of 1983
 22. Ibid. s.4 (a)
 23. Ibid s. 4 (b)
 24. Ibid. s.4(f)
 25. Ibid. s.4(l)
 26. Ibid. s.4(l)
 27. Tanzania National Environment Policy from article 34 to 39.
 28. This is a commission set up in 1992 headed by Francis Nyalali, the Chief Justice of the Tanzania Court of Appeal which called for the amendment and repeal of 40 draconian pieces of legislation.
 29. High Court of Songea Criminal Appeal No. 13 of 1997(Originating from Songea District Court Criminal Case No. 17 of 1996 whereat a Journalist one mwaibaile was alleged to have been in possession of a government classified document. The said document was a directive from a regional commissioner addressed to the Regional Trade Officer to arbitrarily deny the renewal of the journalist license in respect of the Journalists' shop. The High Court held that such a document was not a government

document as defined in the national security Act for it is not the duty of the government to refuse granting business license to its citizens. The Court condemned the tendency of senior government officers misusing powers conferred upon them.

30. A draft proposal for an Act to provide for the better and effective management of the environment and to repeal the National environmental management act, 1983.
31. Article 100 of the Tanzanian National Environmental Policy states that NEMC shall role in all environmental matters except to enforce pollution control and technical Arbitration as far as EIA's are concerned.