PROTECTION OF THE PEOPLES' RIGHT TO PARTICIPATE IN NATURAL RESOURCE GOVERNANCE IN TANZANIA: CHALLENGES AND OPPORTUNITIES

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ABSTRACT

Participation of people in management of resources is one indicator of good governance. Traditionally, citizen engagement in the decision making process has been limited to participation in general election in which representatives are selected to join various decision making organs. Moreover, the modern approach is to actively involve people in making decisions that affect their lives through equal participation of every person in the decision making forum, providing people with reasonable information in order to make informed decision and guaranteeing administrative and judicial remedies to people whose right to participate in the decision making process has been infringed. This paper looks into the laws governing natural resource governance in Tanzania and critically identifies challenges which hinder effective citizen participation in the natural resource governance.

Keywords**:** Self Determination, Public Participation, Natural Resource Governance, Access to Information, Access to Administrative and Judicial Remedies.

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AN OVERVIEW OF PUBLIC PARTICIPATION

Participation in natural resource governance is an important part of the right to self-determination which is guaranteed under various international instruments.[i] Tanzania accommodates participation of people through representatives and/or direct citizen participation. The overall purpose is to achieve maximum participation of people in the decision making process. Principally, right to public participation is built on three inseparable pillars. First, it covers participation of all stakeholders (individuals, civil society organizations, companies, indigenous persons) in the decision making process. Secondly, it deals with access to information including unfettered disclosure of relevant data to participants. Thirdly, it concerns with access to justice which entails legal provisions on access to administrative and judicial review and provision of prompt, adequate and effective compensation to the victims.[ii]

These three aspects are provided for under various binding and non binding international and regional instruments. The list of binding human instruments include**:** Universal Declaration of Human Rights (UDHR) of 1948;[iii] International Covenant on Civil and Political Rights (ICCPR) of 1966;[iv] the American Convention on Human Rights (ACHR);[v] and the African Charter on Human and Peoples Rights of 1981(ACHPR).[vi] On the other hand, public participation is expressed in various non binding environmental instruments, including: the Rio Declaration on Environment and Development of 1992;[vii] *the Agenda 21;*[viii] the Draft International Covenant on Environment and Development;[ix] the Declaration on the Right to Development;[x] *and the* Paris Agreement under the United Nations Framework Convention on Climate Change (hereinafter referred to as 'Paris Agreement').[xi]

Nevertheless, public participation is one of the binding principles of environmental law under various international environmental instruments, including: the Convention on Biological Diversity (referred to as CBD) of 1992;[xii] the World Charter for Nature 1982;[xiii] the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereinafter referred to as Desertification Convention).[xiv] Other binding instruments include: the East Africa Community *Protocol on Environment and Natural Resources Management of 2006* [xv] which governs the Partner States [xvi] in the management of environment and natural resources over areas within their jurisdiction, including transboundary environment and natural resources;[xvii] and the UNECE Convention on

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Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, commonly known as the Aarhus Convention.

Basically, the Aarhus Convention is the only international instrument providing for all three aspects of public participation in the management of environmental resources. It was prepared under the umbrella of the United Nations, but ratified by almost all European countries and some Central Asian states Azerbaijan and Kazakhstan. It is open to all members of the United Nations; hence it is regarded as a model law for assessment of public participation law in environmental resource management. Thus, this article applies standards in the Aarhus Convention to assess public participation law in Mainland Tanzania.

INTERNATIONAL PUBLIC PARTICIPATION STANDARDS UNDER THE AARHUS CONVENTION

Basically, public participation in environmental resources management surrounds on participation of people in the decision-making process, access to information and access to judicial and administrative remedies. The Aarhus Convention provide that each state party is obliged to take necessary legislative, regulatory and other measures to ensure public participation and access-to-justice provisions; provide proper enforcement measures; establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention. [xviii] Similarly, states must ensure that officials and authorities assist and provide guidance to the public[xix] in seeking access to information; facilitating participation in decision-making and in seeking access to justice in environmental related matters.

States should also promote environmental education and environmental awareness among the public; provide for appropriate recognition of and support to associations, organizations or groups; promote environmental protection;[xx] and provides for public access to environmental information,[xxi] without imposing unreasonable charges or disclosure of any interest, and within reasonable time (not later than two months).[xxii] However, information may be refused if it is disclosure would be unreasonable or constitute privileged and confidential information under national law, e.g., issues of national defence and public security, criminal justice, trade secrets and intellectual property rights.[xxiii] In so doing state parties are obliged to collect, store and

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disseminate information through use of registers, files, reports, and electronic information systems which should be easily accessible to members of the public.[xxiv]

Furthermore, state must facilitate public participation in the drafting of 'plans, programmes and policies relating to the environment' and during the preparation of 'executive regulations' and/or 'generally applicable legally binding normative instruments.'[xxv] The government should publish proposed enactments within reasonable time and the 'public concerned'[xxvi] should be able to make comments directly or through representative consultative bodies. Furthermore, state parties must guarantee access to and provide judicial review for matters that fall within the scope of the convention before a court or 'another independent and impartial body established by law.'[xxvii]

Similarly, the state is required to adopt laws which prescribe procedures to challenge illegal decisions and provide adequate, equitable and effective remedies, including appropriate injunctive relief.[xxviii] This is an important provision which seeks to protect other participatory rights. Thus, for effective protection and promotion of public participation in environmental resource management, states must guarantee participation of all stakeholders in the decision-making process, provide adequate information to participants and prescribe remedies for violation of participatory rights.

LEGISLATIVE FRAMEWORK GOVERNING PUBLIC PARTICIPATION IN THE NATURAL RESOURCE GOVERNANCE IN MAINLAND TANZANIA: CHALLENGES AND OPPORTUNITIES

Peoples' participation in the decision making process is proclaimed in various laws of Tanzania. The Constitution of the United Republic of Tanzania, 1977 (CURT)[xxix] entrenches various provisions on peoples' participation. First, it requires each citizen and state organs to take reasonable and lawful actions to safeguard the state's economic independence by protecting the natural resources of the United Republic including property of the state authority and all property collectively owned by the people and by combating all forms of waste and squander of public property. [xxx] Secondly, it provides for right to seek, receive and disseminate information regardless of national boundaries; and a right to be informed of various important events of life

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and activities of importance to the society.[xxxi] These rights are enforced through the Basic Rights and Duties (enforcement) Act 1992 (as revised).

Thirdly, it provides for access to justice through provisions on equality of the people and right to be heard.[xxxii] Moreover, the above rights may be limited by state law on prescribed reasons, e.g., protection of reputation of others; public peace, morality, health and safety; national interest, rural and urban development, and so forth.[xxxiii] Nevertheless, these limitations imposed under the state authority have not been defined, a gap that may be cured by referring to interpretations by international courts, international instruments and distinguished scholarly works.

Fourth, it directs state organs to ensure that sovereignty of the people prevails in its actions, by promoting public participation in the affairs of the government; ensuring welfare of the people and accountability to the people;[xxxiv] ensuring equal treatment of all people without discrimination; promoting principles of justice, democracy and socialism; and ensuring that natural wealth is exploited for national development and welfare of the people. Last but one, people are given power to select their own representatives, including members of national assembly and President, who make laws and policies on their behalf. Finally, it entrenches a principle of sovereignty of the people by declaring that people will be the source of state power, government will be accountable to the people and that people shall participate in government affairs.[xxxv]

Thus, CURT recognizes public participation in the state governance which must be reflected in various laws. The government of Tanzania through the Parliament adopted significant laws which enforce principle of public participation in natural resource governance in various ways. The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 and its regulations[xxxvi] proclaim sovereignty of the people of Tanzania over natural resources and implement the principle of PSNR as expressed in various United Nations General Assembly (UNGA) Resolutions.[xxxvii] It declares natural resources to be inalienable and belong to the people and the state, but controlled by the government, on behalf of the people and state.[xxxviii]Administratively, natural resources remain the state property, but vested in the President as a trustee.[xxxix]

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This Act provides for public participation in different ways. First, it obliges the government to secure the interest of the people and ensure equitable share in every agreement or arrangement for benefit of the people.[xl] This duty binds both judicial and administrative bodies when exercising their functions.[xli] Consequently, the law establishes two control mechanisms: it limits disputes concerning natural resources from being determined by foreign courts or tribunals; instead, it subjects disputes to only judicial bodies and other organs in Tanzania using the local law.[xlii] This is guaranteed through adoption of a dispute settlement arbitration clause which incorporates domestic adjudication of disputes and Tanzania as the applicable law.[xliii]

Thus, international tribunals of which Tanzania is a member do not have jurisdiction to determine investment disputes between the United Republic of Tanzania and investors. Instead, these disputes should be resolved through arbitration Proceedings as provided under the Arbitration Act, No.2 of 2020, whereby parties are allowed to constitute their own tribunal. The law regards arbitration agreement as a distinct and separable agreement from the substantive agreement,[xliv]provided it is made in writing,[xlv] and arbitration is subjected to certain minimum requirements which are considered to be necessary for public interest.[xlvi] Basically, state-investor disputes may be resolved by Tanzania Arbitration Centre (TAC);[xlvii] or by other party-constituted ad hoc arbitrators, provided the seat of arbitration is Tanzania and the law applicable is the law of Tanzania.[xlviii]

Secondly, the Minister responsible for legal affairs is given mandate to make regulations for securing public interest. For example, the investors' code of conduct regulations,[xlix] prescribe investors' obligation to comply with laws, policies, and regulations.[l] For example, duty to conduct businesses in good faith, transparently, in the general interest and welfare of the people of Tanzania;[li] duty to conduct business diligently by not engaging in acts or omissions likely to result into corruption, unfair trade practices, conflict of interest, human rights and workers' rights violations, including non discrimination and occupational health and safety provisions.[lii] Further, the investor has duty to respect child rights, environmental law and environmental standards, competition rules and fair business practice;[liii] duty to conduct periodic reviews for purposes of determining compliance with the code of conduct, investment agreements and laws.[liv]T

The state ensures the above through three basic mechanisms. One, it proclaims that the code of conduct shall be implied in every arrangement or agreement with investors, and shall be

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disclosed by the investor on conspicuous place.[lv] Two, the law entrenches a principle of presumption of knowledge of the law whereby it is clearly stated that every investor together with its affiliate, employee or a third party is presumed to know the code at the beginning of engagement or employment.[lvi] This precludes investors and their authorized agents from claiming ignorance of the law as a defence for violation of the provisions of the code of conduct. Three, it requires every investor to sign an integrity pledge as a commitment to abide with ethical business practice for best interest of the people.[lvii]This means that investors would be liable for damages in case of breach of ethical rules leading to loss on the part of government.

Thus, it can be concluded that the Permanent Sovereignty Act devises different measures to promote welfare of the people in its plans, policies and decisions. Where the investor is unable to safeguard welfare of the people in their undertakings, the government may take measures including termination of agreement. On the other hand, this legislation must be read together with the Natural Wealth and Resources Contracts (Review and Renegotiation of unconscionable Terms) Act, 2017 and its regulations[lviii] which provides for review and renegotiation of natural resource development agreements or arrangements.

The National Assembly exercising its authority under article 63(2) of the CURT and s.5 (2) of Act No.6 of 2017, has power to pass resolution for review or renegotiation of natural resource agreements or arrangements (old and new) containing unconscionable provisions which hinders sovereign right to regulate, manage and control natural resource exploitation.[lix] However, it appears that the National Assembly is not legally obliged to pass resolution for renegotiation or review of unconscionable terms, because it applies the word 'may' which signifies discretion on the National Assembly to pass a resolution for review or renegotiation process. This has a legal implication since the body vested with authority to make a decision is given freedom to decide any particular question based on their own opinions.

Principally, discretion entails power to make decisions that 'cannot be determined to be right or wrong in any objective way.'[lx] This may give rise to issues such as: legitimacy and legality of decisions due to high possibility of arbitrary decisions likely to be passed on irrelevant factors; procedural unfairness and lack of clear guidance which affect certainty and predictability of rules, regulations and government plans.[lxi] Unfortunately, bona fide exercise of discretionary powers by the National Assembly can hardly be challenged by courts since the legislature has

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discretion in implementing its functions. [lxii] Furthermore, instituting a case on violation of constitutional rights in Tanzania is quite demanding since the law requires an applicant to show how his or her rights have been specifically affected by the said resolution.[lxiii] As a solution, s.5(2) of Act No.6 of 2017 must apply the word 'shall' instead of 'will' in order to impose an obligation on the National Assembly to exercise its role of advising the government taking into account safeguards set in the law.

Notwithstanding, this law provides for specific negotiation procedures in which people of Tanzania participate in the review process. First, people participate through the national assembly in which the government must disclose all agreements or arrangements before renegotiation.[lxiv] Then within 30 days of the resolution, the government must commence negotiation exercise by issuing an investor a notice of intention to renegotiate the agreements through NWR Form-N.3 as prescribed in the Third Schedule.[lxv]

Secondly, people with requisite knowledge, skills and good character may be appointed to join renegotiation team appointed by the government.[lxvi] The team must renegotiate agreements within 90 days, unless it is extended by mutual agreement, subject to approval by the Minister.[lxvii] Thirdly, people participate in the deliberation of the draft report of negotiated terms during stakeholders' meeting convened by the Permanent Secretary of the Ministry responsible for arrangement or agreement as per regulation 12 of GN No.57 of 2017. Basically, this is an opportunity for different civil societies, professional associations, religious institutions and other interested groups, to participate in the review and renegotiation of agreements.[lxviii]

However, both Permanent Sovereignty Act and the Natural Wealth and Resources Contracts (Review and Renegotiation of unconscionable Terms) Act are silent on fundamental issues of public participation. For example, the laws do not provide for composition of stakeholders, appointment process, stakeholders meeting procedures, duties and roles of stakeholders, mandate of stakeholders meeting and the nature of information concerning renegotiated agreement which should be disclosed to the public. These issues need to be prescribed by the law if stakeholders' meeting has to be meaningful and productive.

Apart from the above two legislations, the government adopted the Tanzania Extractive Industries (Transparency and Accountability) Act, 2015 and its regulations,[lxix] which

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establishes the Tanzania Extractive Industries (Transparency and Accountability) Committee (hereinafter referred to as TEITA Committee) responsible for promoting and enhancing transparency and accountability in the extractive sector.[lxx] It's composed of different people including Chairperson (appointed by the President of the URT) and other fifteen (15) members appointed by the Minister responsible for mining, oil and gas from government entities (5), industry companies (5) and civil societies (5).[lxxi] Basically, representatives from extractive industry companies and civil societies are appointed by the respective organizations and submitted to the Minister for announcement.

Generally, the TEITA Committee is responsible for ensuring that benefits of extractive industry are verified, accounted for and prudently used for the benefit of citizens of Tanzania.[lxxii] The extractive companies qualifying for reconciliation are required to submit to the Committee their annual reports containing information on local content, corporate social responsibility and capital expenditure.[lxxiii] The Committee in collaboration with Controller and Auditor General (CAG) prepares a report, which is then submitted by the Minister before the national assembly within 12 months.[lxxiv] This gives members of the House of Representatives a chance to deliberate on how the Committee discharges its responsibilities, including measures that the government has taken to implement disclosure of agreements and arrangements.

Nevertheless, this law appears to have loopholes that affect citizen participation as it vests discretionary powers to the government to withhold information considered as 'classified information' on lawful reasons. Even though TEITA Committee appears to have powers, upon application by any party to the contract, to determine information which need not be disclosed by extractive companies and statutory recipients,[lxxv] it is doubtful if members of the Committee would require government to disclose trade secrets contrary to the law and code of ethics binding on civil servants which sanction non-disclosure of public information.[lxxvi] Similarly, the TEITA Committee does not have mechanisms to enforce its recommendations and decisions. These two factors need to be resolved in order to promote government accountability.

On the other hand, the Mining Act of 2018 [lxxvii]and its regulations[lxxviii] contain significant provisions on public participation. It declares the entire property in all minerals (both on land and sea) to be the property of the United Republic of Tanzania but under the President as a trustee for the people.[lxxix] Basically, the government exercises control over resources through

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mining licenses, ownership of shares in the mining company,[lxxx] and renegotiation of all development's agreements concluded prior 2018.[lxxxi]

More importantly, this legislation establishes the Mining Commission which is responsible for implementation of local content plan and corporate social responsibility; auditing of quality and quantity of minerals; sorting and assessing value of minerals , and so forth.[lxxxii] It incorporates a right of the people to participate in the natural resource governance directly or through representatives in the respective local government authorities. Every mining license holder is obliged to exercise mineral rights, subject to written consent of the responsible Minister, in consultation with appropriate local government (including Village Council) and written consent of the lawful occupier of the land. This is in case the mining license covers lands lawfully occupied by citizens.[lxxxiii] Thus, every investor has a legal duty to ensure that both people (being victims and beneficiaries) and local government where the mining site is located do participate in the decision making.

Nevertheless, the above provision on consent may be dispensed by the Minister if in the opinion of the Minister and upon advice by the Commission it appears that consent was unreasonably withheld.[lxxxiv] Unfortunately, the law is silent as to what constitutes 'unreasonable withholding of consent' by local government and lawful occupiers. There are no clear guidelines to show when an authority or person may be said to have unreasonably withheld consent. Instead the Minister in collaboration with the Commission have been given discretion to determine incidences or situations where it may be adjudged that consent was unreasonably withheld, leading to uncertainty, unpredictability and conflict of interest phenomena.

For example, assume the basis for withholding consent is dissatisfaction with compensation package, and then the Commission advises the Minister to disregard consent requirement. Here the Commission will be said to have compromised their position with regard to settlement of compensation claims under provision of s.119 of the Mining Act of 2018.[lxxxv] Conversely, the holder of a license has obligation to exercise mineral right reasonably and fairly, so as not to affect rights of the occupier of land, including payment of fair and reasonable compensation in respect of disturbances and damage to crops, trees, stocks and buildings.[lxxxvi]

Moreover, where it is established that a mineral right cannot be exercised without affecting interests of land over which mineral right is extended, and then the mineral right holder must

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observe three main requirements. First, advise the occupier to vacate the area. Secondly, consult with respective local government authority for amendment of the land use plan. Thirdly, submit a proposed plan on compensation, relocation and resettlement which must be fair and reasonable according to market value of the land.[lxxxvii] Thus, the law protects a right of the people to participate in the assessment of compensation payable to the local citizen.

On the other hand, the Mining Act provides for Public Participation through the Local Content and Corporate Social Responsibility provisions under GN No.3 of 2018 and GN No.197 of 2017**.** Every investor or contractor in extractive industry (Mining and Petroleum) is required to give preference to locally produced goods or services rendered by indigenous companies or firms. [lxxxviii] Basically, local content plan is an important component of mining and petroleum activities engaged by the licensee, investor or contractor,[lxxxix] whose components are provided under regulation 12 of GN No.3 of 2018 and regulation 11 of GN No.197 of 2017. These include: preference to services locally available such as legal services and financial services; priority in employment and training of Tanzanians; preference to locally produced products which meet specified standards; technological transfer and research promotion.[xc]

As part of citizen engagement in the natural resource governance, the Minister must ensure that views of stakeholders have been sought in the course of preparation of local content plan.[xci] The mining license holder is required to prepare and submit local content plan (long term and annual plans) to the Mining Commission, which shall within 7 days submit the same to the Local Content Committee (hereinafter referred to as LCC) established under regulation 5(1) of GN No.3 of 2018.[xcii] The LCC must within 25 working days review, assess and give its reasoned recommendations to the Commission on whether to approve the plan or not.[xciii] It should be noted that under GN No.197 of 2017 the local content plan is submitted either to Petroleum Upstream Regulatory Authority (hereinafter known as PURA) or Energy and Water Utilities Regulatory Authority (hereinafter known as EWURA), which must within 28 working days review and assess the plan accordingly.[xciv]

During review or assessment of local content plans by the relevant authorities, persons involved in the mining industry or any other person who is likely to be affected by the decision, are given reasonable opportunity to be heard, and any representation provided must be taken into account by the responsible authority. Furthermore, s.105 (1) of the Mining Act, 2018 contains mandatory provision on involvement of local government authorities in the preparation of

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Corporate Social Responsibility (CSR) plan, which must reflect the environmental, social, economic and cultural demands of respective local government.[xcv] Thus, the Mining Act and its regulations provide for public participation in the natural resource governance through provisions on consent of land owners, consent of local government authorities; payment of mutually agreed compensation to the citizens, and involvement of citizens in the preparation of local content and corporate social responsibility plans. We commend the government of Tanzania for these legal reforms which place citizens of Tanzania at the centre of the decision-making process.

Apart from the above specific legislations, there are two general laws providing for public participation in the natural resource governance. First, the Environmental Management Act[xcvi] (hereinafter referred to as EMA) and its regulations.[xcvii] This is a crucial instrument providing for public participation as among principles of environmental management. It requires courts, tribunals and administrative organs to take into account principle of public participation in the development policies, plans and processes. This is complimented by other principle of access to justice and principle of access to environmental information.[xcviii]

Generally, public participation is guaranteed through Environmental Impact Assessment (EIA) and Environmental Audit provisions, and participation in the administrative and legislative environmental decisions. Every project proponent or developer is required to undertake EIA study prior to the commencement or financing of any project, including mining and petroleum activities.[xcix] Similarly, the project developer is obliged to conduct Environmental Auditing in order to determine environmental compliance levels in the course of implementation of projects.[c]These two processes are conducted through different stages in which various persons are involved, e.g., a project proponent, experts,[ci] stakeholders (individuals, groups of people and or institutions with interest or likely to be affected by an issue)[cii] and administrators (NEMC and Ministers). Both NEMC and Minister for Environment have responsibility to ensure that people participate in the EIA process.

Whereas NEMC has mandate to review the EIA process, including project site visit whereby NEMC representatives and other stakeholders meet with members of the community for consultation purposes.[ciii] Any interested person may attend in person or through representative and make presentations which are not frivolous or vexatious.[civ] NEMC is required within 30 days of receipt of EIS statement to decide whether or not public hearing should be convened

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for review purposes.[cv] Basically, there are two circumstances under which NEMC may decide to convene public hearing: where hearing shall enable it to make fair and just decisions or where it is necessary for protection of environment.[cvi]

Where NEMC decides to convene public hearing, it has an obligation to display and make available all relevant documents, reports and written submissions (comments) during and after review process;[cvii] receive submissions and comments (written or oral) from any interested party; ask questions and answers on environmental impact of the project.[cviii] To effectively promote public participation the law clearly stipulates that all public hearings shall be non judicial; conducted in informal and in non adversarial format; and that shall not strictly adhere to the rules of law, procedure and evidence as applied by courts.[cix]

Secondly, the project proponent in collaboration with NEMC are legally obliged to provide at least one week notification (both in Kiswahili and English languages) of date and venue (convenient to participants) of intended meetings.[cx] Thirdly, NEMC is given power to appoint a presiding qualified person who will perform different roles, including: being chairperson of the meeting; determining rules of procedure; ensuring that record of public opinion is taken; preparing the report and submitting it to the Director General within 14 days after completion of the meeting.[cxi] This makes public hearing free from biases and technicalities.

Fourth, the Minister for Environmental Matters is also required to ensure that public hearing has been conducted before issuing a certificate of EIA under regulation 34. The Minister must take into account recommendations and review report of the EIS;[cxii]validity of the EIS statement; comments made by relevant ministries, institutions and other interested persons; report of the person presiding at a public hearing and NEMC recommendations.[cxiii] This means that the Minister of Environmental matters cannot exercise his powers in contravention of peoples' views, recommendations of other government institutions and expert opinions. Finally, the Minister shall proceed to make decision in writing on an EIS within 30 days and must state reasons for the decision.[cxiv]

Thus, it can be submitted that the procedure for conducting EIA guarantees public participation in the natural resource governance on five main grounds. First, the law defines clearly the roles and obligations of each recognized person/authority interested in the subject matter of EIA. Secondly, the law imposes an obligation to both NEMC and project proponent to disclose

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relevant information, including documents to the public for effective deliberation of main issues. Thirdly, the law guarantees freedom of expression of participants by making the hearing process as informal, simple, independent and open as possible through restricting the use of ordinary principles of law governing procedure and evidence.

Fourth, the law makes it mandatory for the government through NEMC to engage people and experts in the EIA process before undertaking any development project under type A, B1 and B2.[cxv] There is high possibility of increased interaction among participants (stakeholders, project proponent, experts and government officials) because of the exchange of information through questions and answers. Finally, public opinions, including opinions by experts and NEMC, appear to be binding on the Minister who is obliged to take into account presentations and recommendations put forward by people and other stakeholders. This makes the EIA process a more meaningful tool of expressing peoples' sovereignty over natural resources, which may be adopted in other areas of natural resource development.

Apart from provisions of EIA, the law provides for public Participation in the administrative and legislative environmental decisions. Basically, people have the right to be consulted in case the Government or Parliament considers making decisions that may affect the environment, particularly: designing of environmental policies, strategies, plans, and programmes; and enactment of laws and regulations. [cxvi] The responsible government organ must provide relevant information to the public before decisions are made; issue notice of intention to make decisions and invite people to make their presentations both orally or in written form, and provide access to information.[cxvii] To ensure effective participation in the administrative and legislative decision making process, the law requires NEMC and other relevant authorities to establish mechanisms for collecting and responding to public comments, concerns and questions, including public debates, public hearing and information desks.[cxviii]

The Parliament of Tanzania, in recognition of public participation in the legislative making process, adopted the Standing Orders of the Parliament of the United Republic of Tanzania of 2016 whereby Order 84(2) provides that a respective Parliamentary Committee[cxix] shall issue a public hearing notice or invitation letter to any interested person to appear and give comments on the proposed bill.[cxx] However, public participation is not extended or applied in affairs of the committee which have been initiated by the speaker, affairs under parliamentary enquiry

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(investigation), and affairs of committees formed for special purposes. [cxxi]Other affairs which are conducted under strict confidence include those of designated committees.[cxxii]

For effective implementation of the requirements under Order 84(2) and Order 117(9) of the Standing Orders, the Parliament in collaboration with UNDP issued two documents providing for public hearing procedures. These guidelines are known as: 'Mwongozo wa Kusikiliza Maoni ya Wadau, Machi 2018' (hereinafter known as Public Hearing Guidelines) and 'Mwongozo wa Uhusishwaji wa Asasi za Kiraia (AZAKI) Katika Shughuli za Kamati za Bunge, Machi 2018 (hereinafter known as Civil Society Organizations hearing in Parliamentary Activities Guidelines). These guidelines provide for procedures of public hearing namely: seeking for speaker's approval to conduct public hearing; determination of potential participants (stakeholders) taking into account their availability, knowledge and experiences in the subject matter; drafting schedule for the meeting showing the agenda, time and place for the meeting.

Thereafter, the secretariat provides notice of the intended public hearing stipulating subject matter of hearing, date and place, and ways in which participants could air their views. Finally, conducting actual hearing process whereby participants would be required to attend the meeting at their own costs, fill in the attendance register, wear descent attire and express their opinions in appropriate language. Public hearing meetings are controlled by the chairperson of the committee, who must ensure that each participant is given an opportunity to freely express his or her own ideas, within time allocated and in accordance with prescribed limits by the Standing Orders.

Despite the above provisions, engagement of people in the law-making process is not as effective as it should be due to number of factors. First, the two public participation guidelines issued by the Parliament in collaboration with UNDP are not legally enforceable since they were not made under any enabling principal or subsidiary legislation including the Standing Orders. They are instructional materials and they do not impose an obligation on the members of the committee or the Parliament to take on board views and comments received from stakeholders. Secondly, public hearing is still subjected to discretionary powers of the Speaker of the National Assembly.[cxxiii] Thirdly, the speaker is given powers to exclude certain matters from being discussed by stakeholders, as he or she deems fit. This makes public hearing at the

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will of the Speaker, who practically appears to be accountable to the highest political party leadership.

Fourthly, there are certain affairs of designated committees which cannot be subjected to public hearing because they are regarded as confidential and sensitive issues; hence preventing people from influencing decisions of the parliament. Similarly, there is a challenge of certain bills to be absolutely excluded from public hearing processes. The law permits President of the United Republic of Tanzania is given powers to present particular bills under signed certificate of urgency.[cxxiv] Such a bill is only presented to the Parliamentary Standing Committee on Leadership for deliberation in short notice.[cxxv] Such bills are not published in the government gazette as required under Order 80(1) of the Standing Orders. Hence, they are hardly subjected to public scrutiny.'[cxxvi]

Notwithstanding justification on ground of emergences, fast tracking of bills under certificate of urgency denies people of their democratic right to participate in the decision making process. Chuwa, N.P., observes that procedure of making law under certificate of urgency 'is undemocratic and it can only be justified in the case of the actual urgency' and that such laws 'lack political legitimacy because of non-participation of Members of Parliament and other stakeholders,' and that it turns the Parliament 'to be a rubber stamp of Government decisions.'[cxxvii] These observations imply that restricting participation in the policy and law making process denies people of their right to participate in the natural resource governance; hence need of legal reforms.

Another piece of legislation is the Access to Information Act, 2016 which is a law providing for access to information. It seeks to give effect to the citizen's right to information; imposes duty to information holders to disclose information to the public, and provides protection to persons who disclose information in good faith.[cxxviii] Basically, the law provides that every person has a right of access to information and every information holders has duty to disclose information subject to request by the applicant and within limits set by the law.[cxxix]

Nevertheless, this purported right of access to information appears to be watered down in other subsequent provisions providing for non disclosure of 'exempt information' or information which if disclosed may be against the 'public interest.'[cxxx] The exempt information includes information which when disclosed would undermine defence, international relations and

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national security[cxxxi]; impede due process of law or endanger safety of others; undermine lawful investigation by enforcement agency; invade privacy of an individual or infringe commercial interests.[cxxxii] Other grounds for non disclosure are when data of court proceedings is likely to be distorted or dramatized before conclusion of proceedings or when information may damage holder's position in any contemplated legal proceedings;[cxxxiii] or cause substantial harm to the government.

The information holder is obliged to give access to information within reasonable time through provision of a hard copy, soft copy in electronic means, audio, visual images or provision of a written transcript of the words recorded.[cxxxiv] However, information holder may refuse to give access to information, either partly or wholly, if disclosure would be against the provisions of the law, including the National Security Act.[cxxxv] Basically, refusal to give access must be communicated in writing and reasons for refusal clearly stated, including information on available avenue for review of the decision.[cxxxvi] On the other hand, the information holder may defer access to information pending determination of judicial or administrative action or expiry of specified period,[cxxxvii] provided the information holder gives the applicant decision and reasons for deferment.[cxxxviii] This is likely to hinder citizen participation through denial of relevant information.

Furthermore, this Act affects citizen participation through denial of opportunity to challenge administrative decisions, e.g., decisions made by the Minister of Legal Affairs are non appealable, except where the information holder is under the respective Minister. It should be noted that s.19 (3) of the Act vests into the Minister for Legal Affairs final judicial powers to resolve conflicts involving access to information which originate from information holders (except for matters within his department). This provision ousts jurisdiction of ordinary courts, particularly the High Court and Court of Appeal of Tanzania in determining suits involving human right violation contrary to article 30(3) of CURT.

Historically, ouster clauses have been declared by the High Court of Tanzania and Court of Appeal of Tanzania to be unconstitutional; hence treated as inoperative, null and void.[cxxxix] Similarly, distinguished scholars such as Wambali, M.K., argues that the High Court will always have inherent jurisdiction to try all cases involving violation of the Bill of Rights in the Constitution regardless of ouster clauses in the legislations. [cxl] He also argues that ouster clauses tend to affect independency of judiciary through establishment of quasi judicial

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administrative tribunal (also known as kangaroo courts) to adjudicate upon sensitive matters in the eyes of the executive.[cxli] On the other hand, Ruhangisa, J.E., observes that ouster clauses when used in the law would side-step the judiciary by restriction of court's jurisdiction and establishment of extra-judicial tribunals, which may affect the rule of law in a country.[cxlii] There is need to amend the provision of s.19 (3) of the Access to Information Act in order to conform to constitutional requirements.

CONCLUSIVE REMARKS AND RECOMMENDATIONS

Public participation is an important tool of good natural resource governance in any state. Peoples' right to participate in the exploitation of resources is guaranteed in various international human rights instruments, environmental law instruments and UN resolutions through principle of permanent sovereignty over natural resources. Tanzania, being a UN member and having ratified some of the international instruments, must seek to protect right to public participation in the development process by adopting laws which safeguard all three pillars of public participation: inclusive decision making process, access to information, and access to judicial and administrative proceedings.

This paper has shown that Tanzania has ratified the main UN resolutions providing for the peoples' right to self determination, giving people of Tanzania an opportunity to determine how resources should be exploited and utilized for the benefit of the people and country's economic growth. Further, it has been shown that Tanzania has various legislations which address issue of participation in decision making process, access to information and access to justice. However, these legislations have some weaknesses which go to the root of the peoples' right to self determination, e.g., lack of binding clear rules which provide for compulsory citizen engagement prior adoption of laws, policies and plans; discretionary powers vested on administrative bodies responsible for promotion and protection of participatory rights; unreasonable confidentiality provisions which hinder access to information; ouster clauses and restriction of public interest litigation which affect people's right of access to justice.

Despite various reforms in the extractive industry, there is a need to amend existing laws or otherwise adopt a new legislation in order to ensure that people, being beneficiaries and victims of mining and petroleum operations, actively participate in the natural resource governance. This may be realized by taking the following measures. First, provide for compulsory

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involvement of the people and public-accountable institutions including civil society organizations, and professional based organizations, in the decision making process. Secondly, clearly state the legal status of peoples' views and opinions, i.e., define whether people's opinions are binding on policy makers. Thirdly, provide for the participation procedures including selection criteria, hearing costs, issuance of notice, and compulsory public disclosure of vital information to the participants.

Fourth, the law governing access to information should allow unrestricted disclosure of environmental information and permit persons aggrieved by the decision of the Minister to take the matter to the High Court, which is a constitutional organ for dispensation of justice in Tanzania. Finally, the law should provide a *locus standi* to any person (natural or legal) to challenge any government act (legislation, policy, plans) which has been passed contrary to the will expressed by the people during consultation or hearing mechanisms. Nevertheless, different stakeholders must continue educating members of the public in order to strengthen their abilities to engage in public affairs. As shown in this paper, most people are reluctant to attend public meetings and local leaders are ignorant of the laws and policies governing natural resources in Tanzania. Thus, public awareness programs are unavoidable if Tanzania has to achieve maximum citizen participation.

On the other hand, there is an immediate demand of expertise in the field of international commercial arbitration due to the fact that disputes in the extractive industries must be resolved in Tanzania. Thus, there is need for capacity building in areas of contract negotiation and arbitration so as to take up oncoming opportunities. The government has discharged its duty on encouraging dispute settlement by local institutions which ultimately will improve the justice system in the country. We, Tanzanians must take up available opportunities in order to achieve desired inclusive economy. Together we can promote development of Tanzania

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ENDNOTES

[i] See article 1(2) of International Covenant on Civil and Political Rights, 1966; also article 1(2) of the International Covenant on Economic, Social and Cultural Rights 1966; article 20(1) (2) and (3) of the African Charter on Human and People's Rights, 1981; article 2(4) of the United Nations Charter, 1945.

[ii] Jeroen, B., Public Participation as a General Principle in International Environmental Law: Its Current Status and Real Impact, National Taiwan University Law Review, Volume 11 Issue No.2 of 2016, pp.230-234

[iii] Article 21 of the UDHR, provide for the right of the people to take part in government affairs directly or through freely chosen representatives. Further, the will of the people shall be the basis of government authority. Whereas article 19 of UDHR provide for freedom of information and freedom of expression within prescribed reasonable, necessary and lawful limitations in a democratic society.

[iv] Article 25 of ICCPR provide for the right to take part (directly or through representatives) in the conduct of public affairs, including right to vote and be elected in genuine periodic elections which shall be by universal and equal suffrage, and shall be held by secret ballot. Further, General Comment No.25 of 12 July 1996 provides that the conduct of public affairs, referred to in article 25 of ICCPR relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers, e.g., being members of legislative bodies; holding executive office; participating in a referendum or other electoral process; and participating directly in popular assemblies which have the power to make decisions about local or national issues. Similarly, article 19 of ICCPR provides for freedom of information and article 14 of ICCPR provides for access to justice.

[v] Article 23 of ACHR provides for the right to participate in government affairs, either directly or through freely chosen representatives, who get selected vide genuine periodic elections.

[vi] Article 13 (1) of ACHPR provides for the right to participate freely in the government affairs, directly or through freely chosen representatives.

[vii] Principle 10 of Rio Declaration provides that environmental issues are best handled with the participation of all concerned citizens at the relevant level, ensuring access to information concerning the environment and access to effective judicial and administrative proceedings. Similarly, principles 20, 21and 22 of Rio Declaration *provides for participation of women, youths and indigenous people in the environmental management.*

[viii] Chapters 23, 25, 27, 28 and 29 of Agenda 21 calls for full public participation by all social groups, including: women, youth, indigenous people, local communities and civil society organizations in policy-making and decision-making.

[ix] This was prepared by the Environmental Law Programme of International Union for Conservation of Nature and Natural Resources as contribution towards the 2030 Agenda for Sustainable Development adopted by the UN General Assembly on 27th September 2015. Article 15(4), (5) and (6) of this Draft call for effective participation of *all persons in decision making processes at the local, national and international levels.*

[x] General Assembly Resolution A/RES/41/128, adopted by the United Nations General Assembly on 4th December 1986.articles 1, 2 and 3 of this Declaration require member States to formulate 'appropriate national development policies that aim at constant improvement of the well-being of the entire population and of all individuals, based on their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

[xi] The Paris Agreement under the United Nations Framework Convention on Climate Change was open for signature until April 22, 2016. While article 6(8) (b) which specifies the role of private actors in the implementation of national climate change measures, whereas articles 7(5) and 12 calls upon state parties to take appropriate measures in strengthening participation of all people including vulnerable groups, indigenous people and local communities, in the adoption and implementation of the climatic change agenda.

[xii] Article 14(1) (a) of the CBD provide for public participation in the Environmental Impact Assessment. This Convention was signed by Tanzania on 12th June 1992 and ratified on 8th March 1996.

[xiii] General Assembly Resolution A/Res/37/7 adopted by the United Nations General Assembly at the 48th Plenary meeting, 28 October 1982. Principle 23 provides that 'all persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.'

[xiv] It was adopted on 14th October 1994, and came into force on 26 December 1996. Articles 3(a), 5(d) and 19(a) provide for participation of local communities, Non-Governmental Organizations and vulnerable groups in desertification and drought mitigation measures. This Convention was signed by Tanzania in 1992 and ratified in April 1997.

[xv] EAC Protocol on Environment and Natural Resource, 3rd April 2006.

[xvi] These include: United Republic of Tanzania, Kenya, Uganda, Rwanda, Burundi and South Sudan.

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[xvii] Article 4(2) of the EAC Protocol on Environment and Natural Resource Management, 2006 provides for the principles of public participation in the development of polices, plans, processes and activities, and principle of prior informed consent in cases of activities with transboundary impacts. Furthermore, article 34(a) provides for adoption of common policies, laws and programmes relating to access to information, justice and the participation of the public in environmental and natural resource management.
[xviii] Article 3(1) of the Aarhus Convention
[xix] The term 'public' is defined under article 2(4) to mean 'one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.'
[xx] Articles 3(2), (3) and (4), ibid
[xxi] The term 'environmental information' is defined under article 2(3) of the Aarhus Convention to mean 'any information in written, visual, aural, electronic or any other material form on: (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements; (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making; (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.'
[xxii] Article 4(1) (2) and (3), ibid
[xxiii] Article 4(4), ibid
[xxiv] Article 5(1), (2) and (3), ibid
[xxv] Articles 7 and 8, ibid
[xxvi] The term 'public concerned' is defined under article 2(5) to mean the public affected or likely to be affected by, or having an interest in, the environmental decision-making, including non-governmental organizations promoting environmental protection and meeting any requirements under national law.
[xxvii] Article 9 (1), ibid
[xxviii] Article 9(2) (3) and (4), ibid
[xxix] Cap 2 R.E 2010
[xxx] CURT, article 27(1) and (2)
[xxxi] CURT, article 18 (b) and (d)
[xxxii] CURT, article 13(6)
[xxxiii] CURT, article 30(1) and (2).
[xxxiv] CURT, article 8(1)(a), (b), (c) and (d)
[xxxv] CURT, article 8(1) (a),(b), (c) and (d).
[xxxvi] The Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, GN No.58 of 2020.
[xxxvii] UNGA Resolution1803 (XVII) on Permanent Sovereignty over Natural Resources of 1962 and the UNGA Resolution 3281(XXIX) on Charter of Economic Rights and Duties of States of 1974. These two instruments are entrenched under s.4 (3) of the Natural Wealth and Resources (Permanent Sovereignty) Act, No.5 of 2017, read together with the First Schedule and the Second Schedule to the same Act; hence they form part of the law of Tanzania as per s.25(1) and (2) of Interpretation of Laws Act, Cap 1 R.E.2010.
[xxxviii] The Natural Wealth and Resources (Permanent Sovereignty) Act, No.5 of 2017, s.4(1)&(2) and s.5(3)&(4)
[xxxix] Ibid., s.5(1) and (2)
[xl] Ibid., s.6(1) &(2) and s.8.
[xli] ibid., s.7
[xlii] ibid, s.11(1) and (2)
[xliii] ibid., s.11(3)
[xliv] The Arbitration Act, No.2 of 2020, Ss.9 and 10
[xlv] S.8 of the Arbitration Act provides that an agreement would be effective if it is in writing or there is an exchange of communication in writing or there is evidence in writing.
[xlvi] Ibid., s.4(a), (b) and (c)
[xlvii] The Tanzania Arbitration Centre (TAC) is established under s.77 (1) of the Arbitration Act, No.2 of 2020.
[xlviii] The Arbitration Act, ss.5(1), (2), (3) and (5)
[xlix] The Natural Wealth and Resources (Permanent Sovereignty (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, GN No.58 of 2020
[l] GN No.58 of 2020, regulation 5(1) and (2)

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[li] GN No.58 of 2020, regulation 6
[lii] ibid., regulations 7, 8, 9 10 and 11
[liii] ibid., regulations 12, 13 and 14
[liv] ibid., regulation 16
[lv] ibid., regulation 18(1) and (2)
[lvi] ibid., regulation 18(3)
[lvii] GN No.58 of 2020., regulation 21
[lviii] The Natural Wealth and Resources (Review and Renegotiation of Unconscionable Terms) Regulations, G.N No.57 of 2020.
[lix] Section 6(2) of the Act provides factors for determination of unconscionable terms in the agreements, e.g., provisions which restrict the right of the State to exercise full permanent sovereignty over its resources and economic activity; state authority over foreign investment and transnational corporations within the country; periodic review of long term arrangement or agreement; depriving local people the right to economic benefits, subjecting the State to the jurisdiction of foreign laws and fora and undermining the welfare of the people.
[lx] Grey. J.H., Discretion in Administrative Law, Osgood Hall Law Journal, Volume 17 No.1 of April 1979, p.107; also see *Secretary of State for Education and Science vs.Tameside Metropolitan Borough Council(*1977) A.C 1014 at 1064; Mensah, K.B., Legal Control of Discretionary Powers in Ghana: Lessons from English Administrative Law Theory, Africa Focus, Volume 14 No.2 of 1998, p.122.
[lxi] Mensah, K.B., Legal Control of Discretionary Powers in Ghana: Lessons from English Administrative Law Theory, Africa Focus, Volume 14 No.2 of 1998, pp.123-124
[lxii]Birute, P., *Legislative Discretionary Powers of the Executive Institutions in the field of Regulation of Higher Education in Lithuania*, Jurisprudence, Volume 18 Issue 2 of 2011, p.549
[lxiii] See s.4 (3) of the Basic Rights and Duties (Enforcement) Act as amended by Act No.3 of 2020 of the Written Laws (Miscellaneous Amendments) Act No.3 of 2020. This amendment looks similar to the decision made by the High Court of Tanzania in the case of *Legal and Human Rights Centre and Tanganyika Law Society vs. Hon.MizengoPinda and the A.G* , Miscellaneous Civil Cause No.24 of 2013 (Unreported)
[lxiv] S.5(1) of the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 2017
[lxv] GN No.57 of 2020, regulation 9(2) lists contents of the notice to include: the name of the responsible Ministry, Department or Agency; the specific resolution of the national assembly; date when it was passed; time within which renegotiation must be conducted; the purpose and scope of renegotiation, and finally the signature of the Minister for Legal Affairs.
[lxvi] GN No.57 of 2020, regulation 10(2), (3) and (4) provides that all terms and conditions of appointment, including renegotiation guidelines, are developed by the responsible sector Minister, except matters of allowances in which there is a requirement for approval by the Minister for Finance.
[lxvii] The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, 2017, s.6 (4) read together with GN No.57 of 2020, regulation 11(1).
[lxviii] GN No.57 of 2020, regulation 12(2)
[lxix] The Tanzania Extractive Industries (Transparency and Accountability) (General) Regulations, GN No.141 of 2019
[lxx] The Transparency and Accountability Act , s.4(1) and (2)
[lxxi] Ibid., s.5(1) and (2)
[lxxii] s.10(1) and (2) of Transparency and Accountability Act list specific functions of TEITA Committee to include: developing a framework for transparency and accountability in company reporting and disclosure; requiring accurate account of money by extractive companies and statutory recipients; and promoting effective citizen participation and awareness of matters concerning roles of extractive companies to the socio-economic development
[lxxiii] Transparency and Accountability Act, ss.14 and 15
[lxxiv] The Transparency and Accountability Act, s.19
[lxxv] The Transparency and Accountability Act, s.27 read together with the Tanzania Extractive Industries (Transparency and Accountability) (General) Regulations 2019, regulation 13.
[lxxvi] There is material evidence to show that the government is skeptical to disclosing contracts and other classified information. The TEITI Committee, Chairman Ludovick Utouh, observed that by August 2019 the government had disclosed only nine PSAs in Oil and Gas, and that it was yet to disclose mining contract documents (see Haki Rasilimali; Contract Transparency as a Drive for Extractive Sector Development, in the Extractive Insights – Transparency, Accountability and Economy, News Letter, Volume 2 of October, 2019, pp.2-.3
[lxxvii]Cap. 123 R.E 2018
[lxxviii] The Mining (Local Content) Regulations, GN No.3 of 2018 as amended by the Mining (Local Content) (Amendments) Regulations, 2019

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[lxxix] The Mining Act, s.5(1) and (2)
[lxxx] The Mining Act, ss.10 and 11 provide for two types of state shares in the extractive business: non-dilutable free carried interest shares of not less than 16% and 50% of the share capital of the mining company commensurate with total tax expenditure incurred by the government in favour of a mining company.
[lxxxi] The Mining Act, s.11(1)
[lxxxii] ibid., ss.21 and 22
[lxxxiii] The Mining Act, s.95(1)(a) and (b)
[lxxxiv] ibid., s.95(1)(b)
[lxxxv] Historically, disputes between members of local communities and mining companies surrounded issue of inadequate compensation for interfering with right to exclusive ownership of land, e.g., a report published by the Institute of Human Rights and Business in 2016 showed that about 44 members of the local community in the Southern part of Tanzania whose land was acquired for construction of gas transportation pipeline were 'grossly undercompensated. Further, it was shown that compensation 'was not based on negotiation between a willing buyer and willing seller' but based on government valuation without prior consultation (See Institute for Human Rights and Business (IHRB); Human Rights in Tanzania's Extractive Sector: Exploring the Terrain" (December 2016), available atwww.ihrb.org/focusareas/commodities/human-rights-in-tanzanias-extractive-sector-exploring-the-terrain, pp.61-62.
[lxxxvi] Cap 123 R.E 2018, ss.96(1), (2) and (3)
[lxxxvii] ibid., s.97 (1) and (2)
[lxxxviii] Ibid., s.102 read together with the Mining (Local Content) Regulations, GN No.3 of 2018, regulation 8
[lxxxix] GN No.3 of 2018, regulation 7, and the Petroleum (Local Content) Regulations, GN No.197 of 2017, regulation 6
[xc] For more details of local content provisions, refer to GN No.3 of 2018, regulation 20 (employment and training), regulation 21 (succession plan), regulation 24 (research and development), regulations 26 -29 (technology transfer), regulations 30-31 (insurance services), regulation 32-33 (legal services) and regulations 34-36 (local financial services). See also GN No.197 of 2017, regulations 8, 13, 15, 17, 21, 22, 23, 24, 26, 27, 28 and 31.
[xci]ibid., regulation 13(5) as amended by the Mining (Local Content) (Amendments) Regulations, 2019.
[xcii] Ibid., regulation 10
[xciii] ibid. regulation 11 (1), (2) and (3)
[xciv] GN No.197 of 2017, regulations 9 and 10(1)
[xcv] The Mining Act 2018, s.105(2)
[xcvi] Cap.191 R.E 2010
[xcvii] The Environmental Impact Assessment and Audit Regulations of 2005 and Environmental (Registration of Environmental Experts) Regulations, 2005as amended by Environmental Management (Environmental Impact Assessment and Audit) (Amendment) Regulations, 2018.
[xcviii] Environmental Management Act, Cap 191 R.E 2010, s.5 (3) (d) and (e), and s.7 (3) (e) (f) and (g)
[xcix] ibid., s.81(1), (2) read together with the Environmental Impact Assessment and Audit Regulations of 2005 (as amended in 2018), regulation 14 (1), (2) and (3)
[c]Environmental Impact Assessment and Audit Regulations of 2005 (as amended in 2018), regulation 46.
[ci] s.83 (1) of EMA proclaims that only experts or firms of experts registered by the National Environmental Council (NEMC) shall be competent to conduct EIA. Basically, experts are responsible for technical related activities, e.g., assisting investor to fill in environmental assessment registration form (Form No.1), preparation of project briefing (Form No.2), preparation of scoping report (Form No.4)
[cii] NEMC., Environmental Impact Assessment Training Manual in Tanzania, Revised Version 4, March 2005, p.34
[ciii] Environmental Impact Assessment and Audit Regulations of 2005 (as amended in 2018), regulation 17
[civ] Environmental Impact Assessment and Audit Regulations of 2005 (as amended in 2018), regulation 29
[cv] EMA, s.90(1) and (2) read together with EIA and Audit Regulations 2005, regulation 26(1)
[cvi] EIA and Audit Regulations 2005, regulation 26(2)
[cvii] EMA, s.90(3)
[cviii] EIA and Audit Regulations 2005, regulation 26(3)
[cix]EIA and Audit Regulations 2005, regulation 28
[cx] EIA and Audit Regulations 2005, regulation 27(3) and (4) provide that notice must be done through at least one daily newspaper with national circulation, one newspaper of local circulation, television and other means of mass communication.
[cxi] EIA and Audit Regulations 2005, regulation 27(2), (6) and (7) read together with EMA, s.90(3)
[cxii] EIA and Audit Regulations 2005, regulation 30 read together with EMA, s.90
[cxiii] EIA and Audit Regulations 2005, regulations 32 and 33
[cxiv] EIA and Audit Regulations 2005, regulation 31 read together with EMA, s.92

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[cxv]S.81(1) of EMA and its schedule, read together with Regulation 5(1) and the First Schedule to the Environmental Management (Environmental Impact Assessment and Audit) (Amendment) Regulations, 2018 lists down petroleum, mining and extractive industry among activities in which EIA is mandatory.
[cxvi] EMA, s.178 (1)and (2)
[cxvii] ibid., s.178(3) and (4)
[cxviii] ibid., s.178 (5)
[cxix] Order 1-15 of the Eighth Supplement to the Standing Orders of the Parliament of the United Republic of Tanzania (known as Nyongeza ya Nane ya Kanuni za Kudumu za Bunge) establishes four categories of parliamentary committees. These include: House Keeping Committees (comprise of Steering Committee, Standing Orders Committee, Parliamentary Privileges, Ethics and Powers Committee); Sector Committees (comprise of Agriculture, Livestock and Water Committee; Infrastructure Development Committee; Energy and Minerals Committee; Industries, Trade and Environmental Committee; Constitutional and Legal Affairs Committee; Administration and Local Government Affairs Committee; Social Services and Community Development Committee; Land, Natural Resource and Tourism Committee; Foreign Affairs, Defence and Security Committee, and Subsidiary Legislations Committee); Crosscutting Committees (comprise of Budget Committee and HIV and AIDS Committee) and Watchdog Committees (comprise of Public Accounts Committee, Local Authorities Accounts Committee and Public Investments Committee).
[cxx] This provision is reiterated under Order 117(9) of the Standing Orders which states that affairs of the committee, including public hearing shall be conducted in a transparent manner in order to collect views, opinion and advice from stakeholders for improving the matter being addressed by the committee. Thus, the Parliament is under obligation to ensure that members of the public (individually or collectively through civil societies) participate in the legislative and policy making or reforms.
[cxxi] Seventh Supplement to the Standing Orders of the Parliament of Tanzania, 2016, Order 3 (1)(a)-(f) (*in Swahili: Kanuni ya 3(1)(a)-(f) ya Nyongeza ya Saba ya Kanuni za Kudumu za Bunge 2016)*
[cxxii] Orders 3(2), 4(1), 4(2) and 4(3) (supra) stipulate committees whose affairs are confidential to be: Parliamentary Privileges, Ethics and Powers Committee; Foreign Affairs, Defence and Security Committee; Public Accounts Committee, and Local Authorities Accounts Committee.[cxxii]
[cxxiii] The Standing Orders of the Parliament of United Republic of Tanzania, Order 117(3)
[cxxiv] Standing Orders of the Parliament of United Republic of Tanzania, 2016, Order 80(4)
[cxxv] Ibid., Order 80(5) and (6)
[cxxvi]Majamba, H.I; The Paradox of the Legislative Drafting Process in Tanzania, Statute Law Review, Volume 00,No.00 of 2017, p.7 (retrieved from https://www.academia.edu/31623532/The_Paradox_of_the_Legislative_Drafting_Process_in_Tanzania, on 7th July 2020 at 10.30 am.
[cxxvii]Chuwa, N.P., Legislative Drafting in Tanzania Mainland: Problems and Challenges, LL.M Dissertation, University of Dar-es-Salaam,2012, p.46; also cited by Majamba, H.I., The Paradox of the Legislative Drafting Process in Tanzania, p.7
[cxxviii] The Access to Information Act , 2016, s.4(a)-(e)
[cxxix] Ibid., s.5(1) and (2)
[cxxx] Ibid., s.6(1)(a) and (b)
[cxxxi] See s.6(3) of the Access to Information Act , 2016 defines different types of information relating to national security including military strategy, doctrine, capacity, intelligence operations or activities, scientific or technological/economic matters relating to national security, and so forth.
[cxxxii] The Access to Information Act, s.6(2) (a)-(f)
[cxxxiii] ibid., s.6(2)(h) and (j)
[cxxxiv] ibid., s.17(1)
[cxxxv] Ibid., s.17(3) (a), (b) and (c)
[cxxxvi] Ibid., s.14 (a), (b) and (c)
[cxxxvii] Ibid., s.16(1)
[cxxxviii] ibid., s.16(2)
[cxxxix] Refer the case of *Attorney General vs. Lohay Akonaay and Joseph Lohay*, Court of Appeal of Tanzania at Arusha , Civil Appeal No.31 of 1994 (Unreported); *Attorney-General and two others vs. Aman Walid Kabourou (*1996)TLR 156; *also see Mwanza Restaurant and Catering Association vs. Mwanza Municipal Director*, High Court of Tanzania at Mwanza, Misc. Civil Cause No 3 of 1987 (unreported); *Tanzania Air Services Ltd vs. Minister for Labour* (1996)TLR 217; *OTTU (on behalf of P.P Magasha) vs. Attorney-General and another (*1997) TLR 30.
[cxl]Wambali, M.K.B., The Enforcement of Basic Rights and Freedoms and the State of Judicial Activism in Tanzania, Journal of African Law, Volume 53 No.1 of 2009, pp.37-40.

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[cxli]Wambali, M.K.B., Democracy and Human Rights in Tanzania: The Bill of Rights in the Context of Constitutional Developments and History of Institutions of Governance, PhD Thesis, University of Warwick, 1997, p.42

[cxlii]Ruhangisa, J.E., Human Rights in Tanzania: The Role of the Judiciary, PhD Thesis, School of Oriental and African Studies, School of London, 1998, pp.100-104.

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