

THE RIGHT TO PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING IN CAMEROON: AN APPRAISAL ON THE LEGAL FRAMEWORK

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ABSTRACT

It is a commonplace that environmental degradations is alarming and keeps rising at a high pace in the contemporary and digitalized world and constitutes a threat not only to human health but slowing down economic growth and development. Developing countries in general and Cameroon in particular is not freed from this global and common problem and will likely persist and even intensify unless there is a change in the political will to fully involve the population in environmental decision-making processes at every level. This therefore means that the role of the citizens in protecting the environment stretches far beyond designing effective environmental standards, since the timid and discriminate involvement of the populations in environmental decision-making process and coupled with the overall ineffective and corrupt government practices appears to undermine citizens' involvement for critical environmental policymaking. In effect, the right to public participation in environmental decision making in Cameroon as contained in international instruments and national legislations seems to remain on papers. In this present circumstance, a much needed reform is required for a proper implementation of the right to public participation in environmental decision making process in Cameroon.

Keywords: Environment, Environmental Rights, Environmental Democracy, Public Participation, Decision-Making, Legal Framework, Cameroon

INTRODUCTION

The participation of the citizens in environmental decision-making is often considered as a condition for the democratic legitimacy of decisions, as well as an important opportunity to improve the quality and effectiveness of those decisions.ⁱ It has been revealed that the space for such participation is repeatedly constrained by technical risk assessment, cost-benefit analysis and the idea that the public lacks expertise and misunderstands science.ⁱⁱ Notwithstanding the current position, citizen involvement has recently taken on a new thrust especially in the area of decisions related to environmental quality wherein members of the public have lobbied for, and in many states have been granted participation in the decision-making process which is much more direct and immediate than that which has been available through traditional means.ⁱⁱⁱ

It has been proven that transition to democracy cannot be achieved without taking into account the interests of all groups.^{iv} Citizens' right to timely and reliable information needs to be safeguarded; environmental rights of the public should be protected including legal protection in courts. In a complex area such as environmental protection, which concerns all the sectors of the society, provisions should be made for every citizen to have their say.^v

It should be noted that public participation in environmental decision making is one of the procedural environmental rights which form part of the human rights mechanisms for environmental protection around the world generally and in Cameroon in particular. Its effective respect and implementation could be useful in enhancing environmental protection and fostering the human right to a healthy environment. The importance of procedural environmental rights is currently widely recognized. They serve not only as a guarantee of the right to environment and a tool to increase participatory democracy and active involvement of the public in environmental protection but also an effective instrument of monitoring compliance with and enforcement of environmental law.

Following the recognition of their importance, procedural environmental rights have increasingly been acknowledged in legal frameworks at the national, supranational and international level.^{vi} It is an important instrument to force public authorities to be transparent and accountable in environmental decision-making with the aim of improving the quality of environmental choices and therefore better environmental quality.^{vii}

It is against this backdrop that we purport as an aim of this article, to examine the existing legal frameworks recognizing the right to public participation in environmental decision making in Cameroon. Also, this article from an in-depth analysis unveiled the constraints undermining the practice of the right to public participation in environmental decision making in Cameroon. In attaining the said objectives, the article has adopted both doctrinal and analytical methods of research. This article, therefore, concludes with some robust recommendations and the need for the reinforcement of the right to public participation in environmental decision making in Cameroon. This article begins discussion with an examination of the legal framework supporting the right to public participation in environmental decision making in Cameroon (I). The second part of this article discusses the challenges to the effective realization of the right to public participation in environmental decision making and the ways forward in Cameroon.

EXAMINING THE LEGAL FRAMEWORKS SUPPORTING THE RIGHT TO PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING IN CAMEROON

There are a good number of legal instruments on citizen's right to public participation in environmental decision-making processes. These instruments are different both in content and in scope. On the one hand, there are international legal instruments ratified by Cameroon that recognizes the right to public participation in environmental decision making thereby placing an obligation on the government of Cameroon to ensure its application at the domestic level. Relatedly, an analysis of the government's efforts at the national level recognizing the right to public participation in environmental decision-making process will pave the way for the identification of the weaknesses of the legal frameworks supporting citizens' rights to public participation in environmental decision-making in Cameroon.

The recognition of the right to public participation in international instruments: an obligation for Cameroon to cooperate

The obligation incumbent on the government of Cameroon to recognize and enforce the right to public participation in environmental decision-making is well fair in the regimes of international environmental law (1) and international human rights law (2).

1- The right to public participation in the regime of international environmental law

At international level, there are a number of international environmental law instruments recognizing and supporting citizens' rights to public participation in environmental decision making. The context within which the right to public participation in environmental decision-making has emerged under multilateral environmental law can be traced back to the 1972 Stockholm Declaration. It is the first international non-binding instruments to have laid the foundation of the right to public participation in environmental decision-making. The Convention specifies that the protection and preservation of the environment is the responsibility of everybody.^{viii} The 1992 United Nations Conference on Environment and Development equally known as the Rio Declaration has a rationale guaranteeing the right to public participation in environmental decision making. This framework law provides that:

"Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceeding, including redress and remedy, shall be provided."^{ix}

Linked to the above principle, the Rio Declaration has equally recognized the participative rights of the women^x, youth^{xi}, and indigenous peoples and local communities^{xii} in environmental decision-making processes.

Commentators have submitted that the importance of the above principles stems from "access rights" that empower citizens, namely: access to information, opportunities to participate in decision-making and awareness for seeking redress and remedy.^{xiii} More importantly, when citizens are availed with information about the quality of their environment, they can become active participants in identifying and resolving issues at all levels. Public

participation renders decision-makers more accountable and environmental decision-making more transparent, thereby improving the quality of decision-making. Individuals should be given the opportunity to express their concerns and opinions, and public authorities should take due account of these.^{xiv} However, a commitment to Principle 10 alone falls short of making these rights a reality in people's daily lives. As such, the realization of the above principles requires effective implementation of policies and systems that support access rights.^{xv}

From an analytical standpoint, it should be noted that the above principles laid down in the Rio Declaration is not part of customary international law and as such not binding upon State parties. Notwithstanding, as per the Cameroonian positive law which provides that the authorities shall duly approve or ratify treaties and international agreements^{xvi}, Rio principle 10 constitutes a sort of orientation or guideline as well as action for the Cameroonian environmental policy frameworks.

More importantly, the right to public participation can as well be invoked under the 1992 United Nations Framework Convention on Climate Change (UNFCCC). This convention endorses the need for the promotion and cooperation in education; training and public awareness related to climate change and encourage the widest participation in this process, including non-governmental organizations.^{xvii} The nature and the effects of climate change are such that governments alone cannot combat it without the involvement of all stakeholders especially those communities exposed to. In this circumstance the participation of these stakeholders are indispensable in climate adaptation and mitigation policies adoption. More importantly, it has been recommended that the provision of Article of the UNFCCC is a vital resource for governments, civil society and many other stakeholders in the sense that it encourages people to take lead and cooperate in creative climate change education and training.

It has been revealed that Cameroon is not an exception to the impacts of climate change, as the country is already facing an abnormal recurrence of extreme weather phenomena such as violent winds, high temperatures, and heavy rainfall, which endanger communities' ecosystems and the services they provide. The consequences of climate change may undermine Cameroon's efforts to reduce poverty, develop a strong, diversified, and competitive economy, and strengthen national unity and consolidate the democratic process.^{xviii}

There is equally guidance relating to the recognition of citizens' rights to public participation recognized by the 1992 Convention on Biological Diversity. It strongly advocates

for public participation particularly in Environmental Impact Assessment (EIA) processes of proposed projects likely to affect the quality of the environment.^{xix} This therefore account for the vital role the citizens or public play in the conservation and sustainable use of biological diversity and affirms the need for the full participation of the citizens at all levels of policy-making and implementation for biological diversity conservation.

Increasingly, the right to public participation in environmental decision-making has been recognized in Agenda 21. It provides that:

One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. Furthermore, in the more specific context of environment and development, the needs for new forms of participation have emerged. This includes the need of individuals, groups, and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those that potentially affect the communities in which they live and work. Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures^{xx}.

The importance of Agenda 21 in the development of the right to public participation in environmental decision-making is that it calls for public participation in environmental impact assessment procedures and participation in decisions, particularly those that potentially affect the communities in which individuals and identified groups live and work.^{xxi} It also encourages governments to create policies that facilitate a direct exchange of information between the government and the public in environmental issues, suggesting the Environmental Impact Assessment (EIA) process as a potential mechanism for participation.^{xxii}

At the regional level, the new African Convention on the protection of nature and natural resources has provided for the right to public participation in environmental decision making where it directly promotes procedural environmental rights. The convention recognizes that the Parties shall adopt legislative and regulatory measures necessary to ensure timely and appropriate the dissemination of environmental information; access of the public to environmental information; participation of the public in decision-making with a potentially significant environmental impact; and access to justice in matters related to protection of

environment and natural resources.^{xxiii} We should not also forget that the African Charter on Human and Peoples' Rights of 1981 has provisions linked to human rights to environment. First of all it essentially establishes that all peoples shall freely dispose of their wealth and natural resources and shall be exercised in the exclusive interest of the people.^{xxiv}

The right to public participation in environmental decision-making has a level of playing ground in the Charter because of the relevance of Article 24 of this Charter which provides that all peoples shall have the right to a general satisfactory environment favorable to their development. It is thus of significance that, at the African regional level, environmental rights are recognized as explicit treaty norms, with normative unity with other rights and corresponding obligations.^{xxv} The fact therefore is that the African Charter on Human and Peoples' Rights is the first regional human rights instrument to clearly recognize the right of African people to a generally satisfactory environment^{xxvi} and Cameroon is one of the African countries to include such a right in its 1996 Constitution.^{xxvii}

2- The right to public participation in environmental decision making and international human rights law beneficial to Cameroon

The fortification of the right to public participation as a peoples' right would undoubtedly extend the scope of duties under International Human Rights Law (IHRL). This is because it would openly endorse the 'public good' nature of environmental protection, and hence the need for the public as a whole to have access to environmental decision making processes. Therefore, it would fit the scope of this article to analyze which rules of international human rights laws are basic enough for the recognition of the right to public participation in environmental decision making.

It is evident that International human rights instruments contain several provisions designed to promote participatory rights especially in State's affairs which cut across multitude of rights such as the right to the right to vote and the right to free elections, right to development and the right to protect and to live in a healthy environment. The International Covenant on Civil and Political Rights for example recognizes both participatory and representative models of democracy in so far as it protects the right to take part in the conduct of public affairs directly or through freely chosen representatives.^{xxviii}

Given the desire of international human rights regimes to standardize their practice, the right to public participation in environmental decision making has gained ground following the

recognition on development of procedural environmental rights in environmental law and human rights law instruments. In this respect, the rationale for recognizing the right to participate can as well be linked to the right to take part in environmental decision making will be effective if a well-functioning democracy requires an informed environmental policy framework.

At this juncture, it is safer to say that International Environmental law and International Human Rights law to which Cameroon is a signatory, have put in place measures to ensure environmental protection and conservation through the promotion of citizens' right to public participation having a direct or indirect influence in environmental decision-making process.

The domestication of the right to public participation in environmental decision making in Cameroon

Apart from the international sources recognizing public participation in environmental decision-making, Cameroon has national laws that support public participation in environmental decision-making processes. The contexts in which these procedural rights operate are diverse ranging from the constitution (1) to sectorial legislation (2).

1- Constitutional Guarantees

It is an embracing fact today that environmental rights and values are a common feature of modern constitutionalism. About half of the world's constitutions' guarantee a substantive right to a clean or quality or healthy environment explicitly or implicitly, and at the same time guaranteeing procedural rights including the right to public participation environmental matters. As a result, a greater majority of these constitutions specify that individuals have responsibilities or duties to protect the environment and others include directive principles of state policy.^{xxix}

Cameroon has not been left out of this journey; that of incorporating a human right to a healthy environment in the constitution. The Cameroonian Constitution attaches great importance to the environment. It reflects the country's ambivalence over whether the environment and natural resources are an opportunity for development or a heritage to be conserved.^{xxx} The recognition of environmental rights within the 1996 Cameroon Constitution means that environmental protection is steadily gaining support within national legal and policy circles.^{xxxi}

The Preamble of the Cameroon constitution affirms the commitment of the state to harness its rich natural resources to achieve development, protect and improve the environment and ensure the well-being of every citizen.^{xxxii} It provides that “*every person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment.*”^{xxxiii} The right to a healthy environment is therefore an integral part of the constitutionality bloc and acquires the same legal force as other human rights enshrined in the Cameroon Constitution.^{xxxiv} This further gives the right a binding force in the preamble as the constitution provides that the “*preamble shall be part and parcel of the Constitution*”.^{xxxv}

In Cameroon, the constitution establishes environmental protection as a right of any citizen.^{xxxvi} It therefore obliges the citizens to protect the environment thereby announcing citizens’ rights to participate in the protection of the environment. We can therefore reason from this angle that the citizens have a legal duty to protect and preserve the living and the natural environment, the duty to compensate for the damages caused to the environment, as well as the legal right to a sustainable environment, right to demand for the preservation and protection of the environment from the state and municipal authorities, and the right to demand the creation of guarantees for protection of the environment from the state.

This therefore constitutes the focal point of citizens’ involvement in environmental protection which must not be underestimated where they can enrich and strengthen the environmental enforcement process in several ways to wit, citizen participation in environmental enforcement enhances the direct, immediate connection between individuals and their environment. The common reason for the Citizens’ public participation is because of their unique knowledgeable about their own communities. Their day-to-day observations through participation give them access to information about environmental conditions. Involving citizens in environmental enforcement encourages productive use of this information. Research has proven that there is an intimate connection between individuals and their own communities thereby enabling citizens to concentrate on localized environmental problems.^{xxxvii}

2- Legislative Guarantees

The right to public participation in environmental decision-making finds a comfortable place in the 1996 Law on environmental management in Cameroon. The framework law ensures public participation by guaranteeing citizens' access to information on the environment, including information on dangerous substances and activities, the obligation to safeguard the environment and contribute to its protection, acknowledging corporate bodies and private citizens in all their activities conform to the same requirements and the decision on the environment shall be taken after consultation with the sectors of activity or groups concerned, or after a public debate when they are of a general nature.^{xxxviii}

In the same vein, the Cameroonian legislature has equally encouraged the participation of the population in environmental management, especially through free access to environmental information, consultative mechanisms to take stock of the opinion and contributions of the populations, representation of populations within environmental advisory bodies, production of environmental information, sensitization, training, research and education on the environment.^{xxxix}

To broaden citizens' knowledge on and exercise of this right, the legislature has obliged the Administration in charge of the environment and communication, as well as other Administrative units and public bodies concerned shall launch information and sensitization campaigns using the media and other means of information. To this end, they shall make use, of the traditional means of communication as well as the traditional authorities and associations working in the field of the environment and development.^{xl} The reason why the legislature has emphasized the requirement of the traditional means of communication as well as the traditional authorities stems from the fact that the local population come face to face with the local environment and the ecosystems which are located within their respective communities. At this juncture, it is safer to say that the above reasoning is in consonant with the legislature's aim of making the environment a national common heritage in the Republic of Cameroon and as an integral part of the universal heritage.^{xli}

Increasingly, the right to public participation can also find its way within the Environmental Impact Assessment (EIA) system in Cameroon. It is a matter of necessity that for any developmental project to be executed, the opinions of the concerned inhabitants should be primordial which guarantee citizens' participation in an interactive manner. Public

participation is much needed in EIA which require the assessing of the environmental and social impact of projects prior to their approval. In fact this means the concerned individuals as well as groups should be involved in the environmental decision-making prior to the project. One of the noted essentials of the Cameroonian environmental impact assessment law is to ensure that the public participate in the environmental impact process. The Cameroonian legislature has created that opportunity wherein the implementation of a project shall not start before the environmental and social impact assessment related thereto is approved.^{xlii}

Moreover, the law on EIA provides that the Conduct of the environmental and social impact assessment or the strategic environmental assessment must be made with the participation of the people concerned through consultations and public hearings, to know the opinions of the latter on the project.^{xliii} The law has acknowledged and emphasized the requirement of the participation of the people and public consultation program, it is less satisfactory. Less satisfactory because if should in case that the developer of a project may ask for an opinion of the competent authority on the scope and the level of detail of the information which is to be included in the environmental impact assessment report, such as for example the study of alternative options for the location. It is obvious that the public concerned does not participate in such scoping meetings between the developer and the authorities, though the opinion of the authority is largely decisive on the whole impact assessment process. In this presence circumstance, the right to public participation in environmental decision-making would be undermined.

CHALLENGES TO THE EFFECTIVE REALIZATION OF THE RIGHT TO PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING AND THE WAYS FORWARD IN CAMEROON

The commitments made by Cameroon in the recognition and development of the right to public participation in environmental decision-making are worth applauded. But the resurgence of criticisms has become inevitable in order to test the performance of environmental protection particularly in ensuring the realization of the right to public participation in environmental decision-making process in Cameroon. To this end, it becomes crucial to unveil some of these outstanding challenges (A) and the ways forward in Cameroon (B).

The challenges to the effective realization of the right to public participation in environmental decision making in Cameroon

There are a number of hurdles to the effective realization of the right to public participation in environmental decision-making in Cameroon. This article finds considerable weaknesses in the environmental decision making system and asserts that these weaknesses contribute to undermine environmental democracy in relation to public participation. Some of these challenges are unveiled and discussed below.

1- The absence of an enforceability provision on environmental rights within the 1996 Cameroon Constitution

Even though there are a plethora of scattered legislations and other environmental action plans recognizing the right to public participation in environmental decision-making, in the face of an absence of enforceability provision within the 1996 Cameroon Constitution, the government of Cameroon may be tempted to escape responsibility to enforce, recognize and protect the right to public participation. In this circumstance, the model of public participation in environmental decision-making becomes a problematic. Although deliberative participation is complex and contested, this article purport to argue that, by simply offering a shadow of participation, the model of public participation is problematic and makes the normative and substantive justification of the decision inevitably more fragile. It is problematic because, despite the institutionalization of procedural rights to participate in environmental decision-making, this notion tends to mislead the public with respect to what is really open for debate and the extent to which they can influence a decision by exercising that right.

2- Judicial difficulties in addressing the violation of the right to public participation in environmental decision-making

It is worthy to note that the basic tenets in bringing a legal action is to enforce an individual or collective rights of individuals that have either been violated by another person(s) or the state that ought to be the guarantor of these rights. The right to public participation in environmental decision-making being one of the components of the right to a healthy environment especially from a procedural perspective should as well be enforceable by the courts through other human rights lens such as the constitutional right to a healthy environment.

The undeniable fact is that the right to public participation in environmental decision-making will suffer from being enforceable because it has been revealed that there is no provision in the 1996 Cameroon Constitution on the enforceability of constitutional environmental rights.^{xliv} The enforceability of constitutional environmental rights is implicitly limited by the 1996 Cameroon Constitution itself. Excessive judicial activism afforded to the President of the Republic to enact laws, to make laws though in limited cases and for given Purposes and to guarantee the independence of the judiciary is weakening democracy by reallocating statutes and judge-made-law from legislators and judges to politicians. The assertion of the existence of an independent judiciary and the separation of powers is convincing in theory, although inconclusive of practical evidence of a strong democracy in Cameroon. This would undoubtedly hamper the full realization and the practice of the right to public participation in environmental decision-making process in Cameroon.

The ways forward

In facing the above discovered challenges, the article advanced some proposed fundamental ways to overcome these barriers and to make the right to public participation in environmental decision-making fully realized in Cameroon.

First and foremost, an important way to overcome some of these challenges is the need for an environmental court in Cameroon. Environmental courts mechanisms undoubtedly provide a means for facilitating public access to justice. They are institutions that have significant public participation implications. The rationale for special environment courts is that, because many environmental issues are assumed to be highly complex and technical problems, they require specialized institutions for evaluation of the claims and evidence. If environmental courts are established in Cameroon, it would also enhance the role of specialist judges in developing a consistent environmental jurisprudence on environmental issues in general and the right to public participation in environmental decision-making in particular.

Finally, in order to establish an effective legal framework especially in the context of COVID-19 and the growing environmental crisis in Cameroon, the promotion of the right to public participation in environmental decision-making as provided under the legal framework, must be based on the empowerment to the civil society as well as other environmental associations, improving public environmental awareness and the demand for public participation in decision-making processes that could affect their lives is primordial in contemporary Cameroon.

CONCLUSION

This article critically presents the legal frameworks supporting the right to public participation in environmental decision-making process in Cameroon. From the above analysis, there is increasing needs not to relent efforts in strengthening the nexus between human rights and environmental protection. This is so required because a full enjoyment of human rights depends on a safe, healthy and sustainable environment and vice versa. The right to public participation in environmental decision making as one of the procedural environmental human rights in Cameroon is yet to be firmly grounded in the Cameroonian legal landscape. Even though Cameroon has a large number of environmental legislations, ratified international treaties recognizing the right to public participation in environmental decision-making process, the right is yet to be fully fulfilled due to the uncertainties, ambiguities and the reluctance in the implementation of the existing texts. Given these challenges this article suggests some ways forward in order to meet up with the theoretical underpinning problems that underlies the effective realization of the right to public participation in environmental decision-making process in Cameroon.

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