

ACCESS TO ENVIRONMENTAL INFORMATION IN TANZANIA

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INTRODUCTION

A Tanzanian citizen's right to obtain and impart information is enshrined in the constitution. Thus, by interpretation at least, the right of citizens to access environmental information is ensured. In practice, however, Tanzanians rarely enjoy this right. Despite the constitutional mandate, the government often has not informed the public and has at times even misled people about decisions and projects that could potentially degrade the environment, threaten livelihoods, and endanger health. When the public does learn of such acts through unofficial channels, inquiries often fall on deaf ears. As a result, the public is often unaware of the possible hazards or potential benefits of many government decisions and projects. Moreover, without effective access to environmental and other information, Tanzania's citizens are not involved in public policy-making processes to the extent necessary to achieve sustainable development.

This policy brief addresses the issues of access to environmental information in Tanzania from policy, legal, and practical perspectives. Tanzania's international commitments are also reviewed. A couple of case studies are presented to provide some context. The brief concludes with a set of recommendations that would help ensure citizen access of government-held environmental information in Tanzania.

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LAWYERS' ENVIRONMENTAL ACTION TEAM

The Lawyers' Environmental Action Team is the first public interest environmental law organization in Tanzania. It was established in 1994 and formally registered in 1995 under the Societies Ordinance. Its mission is to ensure sound natural resource management and environmental protection in Tanzania. It is also involved in issues related to the establishment of an enabling policy environment for civil society, including civil liberties and human rights. LEAT carries out policy research, advocacy, and selected public interest litigation. Its membership largely includes lawyers concerned with environmental management and democratic governance in Tanzania.

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During our work, several things became abundantly clear. First, use of democratic legal institutions and tools in Tanzania is only beginning to develop. Second, wildlife in Tanzania simply cannot survive without direct involvement of local communities in their management. Perhaps most significantly, addressing the problems of human-wildlife conflicts in the buffer zones and migration corridor areas must be among the highest priorities of all stakeholders. It is our hope that the analysis herein will enrich the ongoing debate on wildlife conservation in Tanzania for the betterment of the Tanzanian population and humankind in general.

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THE CONSTITUTION AND NATIONAL LEGISLATION

In Tanzania, the right to give and receive information is enshrined in the Constitution of the United Republic of Tanzania (GOT, 1977). This constitutional right is given in its broadest sense to include rights to give and receive information on environment and natural resource management. Articles 18 and 27 are the most relevant constitutional provisions.

- Article 18(1) of the constitution stipulates that "subject to the laws of the land, every person is entitled to freedom of opinion and expression; that is to say, the right to freely hold and express opinions and seek, receive, and impart information and ideas through any media and regardless of frontiers...Freedom from interference with correspondence [is also guaranteed]."
- Article 18(2) states further that "every citizen has a right to be kept informed of developments in the country and in the world which are of concern to the life of the people and their work and of question or concern to the community."
- Article 27(1) highlights the importance of sustainable use of natural resources for the benefit of the citizens of Tanzania by providing "that every person is obliged to safeguard and protect the natural resources of the United Republic, state property and all property jointly owned by the people, as well as to respect another person's property."
- Article 27(2) provides further that "all persons shall be by law required to safeguard state and communal property, to combat all forms of misappropriation and wastage

- and to run the economy of the nation assiduously with the attitude of people who are masters of the fate of their own nation."

Article 18 of the constitution read together with Article 27 provide a clear constitutional basis for the right to obtain and share information on the environment and natural resource management.

The National Environmental Management Act of 1983 (GOT, 1983), which establishes the National Environmental Management Council (NEMC), also states that the Council must stimulate public and private participation in natural resource management programs and promote general environmental education programs to create enlightened public opinion regarding the environment.

Although not explicit on the matter, the Tanzanian National Environmental Policy (NEP) of 1997 (GOT, 1997) requires public participation in decision-making and provides another basis for public access to environmental information. It further calls for the sustainable management of environmental resources and emphasizes the need to continuously anticipate emerging challenges -- both of which depend on the availability of timely and accurate information.

INTERNATIONAL AGREEMENTS AND GOVERNMENT COMMITMENTS

The international community has strongly affirmed the right to receive and give information, including environmental information, as well as the closely associated right to know. Many consider these rights among the most important cornerstones of a democratic society. Tanzania's constitutional provisions conform with a number of international instruments that the government has signed and ratified, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights.

- Universal Declaration of Human Rights. Article 19 provides that "(e)veryone has a right to freedom of opinion and expression, this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (UN, 1948).
- International Covenant on Civil and Political Rights. Article 19(2) provides that "(e)veryone shall have the rights to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice" (UN, 1966).
- African Charter on Human and People's Rights. Article 9(1) state that "(e)very individual shall have the right to receive information;" Article 9(2) provides that "(e)very individual shall have the right to express and disseminate his opinions within the law" (OAU, 1981).
- Rio Declaration on Environment and Development. Principle 10 upholds the freedom of access to information and declares that "states shall facilitate and encourage public awareness and participation by making information widely available" (UN, 1992a)

The international community has also made commitments through various international instruments to work with African governments to ensure access to environmental information and to provide information that it has to all sectors of society.

- European Community Council Directive on the Freedom of Access to Information on the Environment (1990). Article 1 states the EC's official intent to "ensure freedom of access to, and dissemination of, information on the environment held by public authorities" (EC, 1990).
- Agenda 21. Article 27(9) states that the United Nations system should "provide access for non-governmental organizations to accurate and timely data and information to promote the effectiveness of their programs and activities and their roles in support of sustainable development" (UN, 1992b).
- By signing and ratifying these conventions and by partnering with the United Nations, European Community and other international bodies, the government of Tanzania has committed itself to ensuring citizen access to environmental information and to encouraging all holders of critical information to share it with citizens and society at large.

TANZANIAN EXPERIENCE

In Tanzania, public authorities are the custodians of important information that the public needs to participate in policy debates and help ensure environmental accountability. At the same time, there is a dearth of independent research institutions in Tanzania with the resources and capacity to generate reliable, accurate and timely environmental information. A duty lies with public authorities to inform citizens of the existence of environmental information, to provide access to the information and to let them know how to access it. Yet despite a clear constitutional basis for the state providing information to the public, in practice Tanzanians are rarely able to exercise their rights to access environmental information. In Tanzania, citizens' rights fall far short of the minimum requirements as articulated in ratified international conventions.

In practice, the government has not always acted in the best interests of many Tanzanians by withholding critical environmental information from the public, not sharing information in a timely manner, and at times even misleading citizens. When the public learns of potential or real environmental mismanagement or degradation through unofficial channels or at the time of implementation or impact, inquiries by the public often fall on deaf ears. For example, Tanzania has no standards for environmental impact assessments, nor any law making an assessment mandatory. EIA studies are conducted on some foreign funded projects, usually at the request and conditionality of the funder, such as the World Bank or USAID. Even in cases where an EIA is prepared, the public usually does not have guaranteed and formal access to the statement or any related deliberations and decision-making processes. The following two case studies demonstrate the problems that Tanzanians are experiencing as development initiatives with environmental impacts are prepared and implemented.

Case 1. The Songosongo Gas Pipeline Project

This multi-million dollar project in southern Tanzania is designed to extract natural gas from the Songosongo area and transport it 345 kilometers, via pipeline, to Dar es Salaam, to be converted to electricity. The public, including the local citizens of the Songosongo area, were not involved in the project development and not formally informed of the government's decision to undertake the initiative. The large majority of inhabitants of the southern region first learned of the project when surveying began.

The local people have several concerns. One, the local population will not benefit from the use of this resource, as electricity from natural gas in the Songosongo area will be consumed in Dar es Salaam while the southern region will continue without sufficient capacity to meet the needs of the majority of residents. Two, local communities are concerned that living near the source of natural gas and along the pipeline will subject them to environmental hazards with health implications. Three, the people are concerned that the project will lead to massive displacement of local populations as residents have not received word of what, if any, compensation they will receive.

Following unsuccessful efforts to negotiate with the government and to shape the project, the Southern Region Development Authority (SRDA), a local NGO, initiated legal proceedings on behalf of the inhabitants of the southern regions (Mannoro, 1998). A suit was filed against the government of Tanzania, the Tanzania Petroleum Development Corporation, and two foreign companies carrying out the project, TransCanada Pipelines and Ocelot Tanzania Inc (High Court of Tanzania, 1997). The issues, however, were never heard in court -- the judge ruled that, as the plaintiff, SRDA has no locus-standi or legal authority to bring action. The case was dismissed on a technicality, not on its merits. SRDA is appealing and has filed an application to set aside the ruling. The appeal is still pending (Mannoro, 1998).

Case 2. The Rufiji River Delta Prawn Plantation Project

The Rufiji Delta is East Africa's largest contiguous mangrove forest, as it covers over 53,000 hectares. A private enterprise, the African Fishing Company (AFC), was granted permission to establish what has been described as the world's largest prawn plantation in the Rufiji Delta. Prawn farming involves converting mangrove forests to open ponds in which the prawns are raised. In addition to destroying the mangroves, a rich and important ecological resource, the prawn farms are likely to generate pollution that further degrades the environment. A large population is also highly dependent on the natural resource base in the Delta.

Though the media and public eventually learned of this project, it was reported that the government withheld information from the public during project design (Lissu, 1999). As a result of internal and international pressure, an environmental impact assessment (EIA) was prepared by proponents of the project at the expense of AFC and submitted to the government in May 1996. Because of the controversy surrounding the project and the first EIA, the government required that the AFC conduct a second EIA, which was submitted to the government in April 1997. The second EIA caused even more controversy as one of its authors claimed the report had been falsified. The government then directed the National Environmental Management Council (NEMC) to review the second EIA study. NEMC found that the AFC assessment contained numerous errors, omissions and

misrepresentations. The review also found that there was no budget for compensating displaced residents and that the AFC proposed importing arms and ammunition worth US\$570,000 for project security. Nevertheless, the government approved the project (Lissu, 1999).

Following numerous efforts to engage the government and AFC in discussions to shape the project, a locally registered NGO opened a representative suit against both the government and the AFC in September 1998. On 14 April 1999, the High Court of Tanzania issued an interim order restraining all AFC development activity regarding prawn plantation establishment in the Rufiji Delta pending the determination of the NGO petition. That petition will have a hearing on 27 May 1999.

These two case studies and other Tanzanian experiences make it clear that the government does not always generate or release important environmental information to the public. They also show that when the public gains access to such information, formally or informally, or generates new independent information, the government does not always consider public concerns and interests.

LEGAL BARRIERS TO ACCESS

In Tanzania, there are a number of legal and other barriers that weaken citizen requests for environmental information and allow the government to withhold information from the public. For example, while the constitution provides the basis for freedom of information, it also limits that freedom in the form of "claw back" clauses that subordinate its provisions to other inferior laws. Article 18(1) of the constitution contains the qualifying phrase "subject to the laws of the land" (GOT, 1977). This type of subjugation makes the rights and obligations of the constitution open to interpretation and modification by subsequent legislation. Such a concept is contrary to the widely adopted principle of constitutional supremacy; in most legal systems, the constitution is considered superior to all other laws.

The Tanzanian National Environmental Policy, which provides a basis for public access to environmental information, does not provide any specific mechanisms through which the public can access information. Nor does the NEP state any sanctions that citizens or NGOs can invoke for the government's failure to involve the public fully (GOT, 1997). Furthermore, although the NEP addresses the issue of public education, no serious government efforts have been undertaken.

Perhaps the most problematic legislative "loophole" is the National Security Act, 1970, which gives the government sweeping discretionary powers to classify information and thereby regulate access to it (GOT, 1970). The lack of objective criteria in the National Security Act prevents any fair determination of what is truly in the national interest. Moreover, once information is classified, it is accessible to only a few government employees, "authorized officers." This one provision excludes virtually the entire citizenry and most government officers from access to classified information.

In practice, much of government information requested by citizens is classified on the pretext of guarding national security. A senior government officer complained to one author that almost every document he receives is classified. Classified information often makes it difficult for environmental and natural resource departments and government officials to meet their responsibilities. If an unauthorized officer needs to review a

classified document to complete his work, he must either become authorized or have the document declassified, and both are long and complicated processes.

The Tanzanian Newspapers Act (GOT, 1976) also hinders public access to information. The Act defines sedition in Tanzania as action taken with the intent of bringing the government into hatred or contempt, or to excite disaffection against the lawful authority of the country or the government. Thus, publishing a document that paints the government in a bad light can be declared seditious even if the contents of that document are correct.

According to the Newspapers Act, a publication is seditious if it (GOT, 1976):

- intends to show that the government has been misled or mistaken in any of its measures;
- points out errors or defects in the government, constitution, or any other law; or
- attempts to persuade inhabitants to procure by any lawful means the alteration of any matter in Tanzania.

Intent, as defined by the Act, is determined by the consequences that would follow from the conduct. The Act imposes a punishment of imprisonment for a term not to exceed two years, a fine not to exceed 2,000 Tanzanian shillings, or both for the publisher and anybody who is found to possess the publication.

Although some court decisions have ignored constitutional claw back clauses such as those in the National Security Act and the Tanzanian Newspapers Act, others have not. In the 1995 case of *Rev. Christopher Mtikila v. Attorney General*, the High Court declared the Police Force Ordinance unconstitutional for, among other reasons, violating the constitutional right of freedom of peaceful assembly and public expression (High Court of Tanzania, 1995). The judge ruled that "fundamental rights are not gifts from the state. They are inherent in a person by reason of his birth and therefore prior to state and other laws." He further stated that "the constitution is the paramount law of the land and cannot be overridden by any other law . . . where the enjoyment of a constitutional right is subject to the laws of the land, the necessary implication is that those laws must be lawful laws" (High Court of Tanzania, 1995).

More recently, a 1997 decision by the Tanzanian High Court in the case of *Adam Mwaibabile v. Republic* (High Court of Tanzania, 1997) reinforces the notion that the government should not be permitted to classify documents to deny citizens access to information. In lower court, Mwaibabile, a journalist, was alleged to have violated the National Security Act by possessing a classified government document -- a directive from a regional commissioner to the Regional Trade Officer to deny the renewal of Mwaibabile's journalist's license. The High Court held that the directive was not a government document as defined in the Act on the grounds that it is not the duty of the government to refuse the granting of business licenses to citizens.

INSTITUTIONAL BARRIERS TO PROVIDING ENVIRONMENTAL INFORMATION

The way Tanzania's environmental institutions are configured and tasked also makes it difficult for citizens to gain access to information. For example, it is not clear which part of

the government or which agencies have responsibility for environmental monitoring and compliance. Each government department or ministry handles its own projects, including all environmental matters. These activities are not well coordinated with either the National Environmental Management Council or the Division of Environment. In fact, there is considerable overlap and, at times, even open conflict between and within government departments. As such, there is no single government source of environmental and natural resource information for the public. With no central repository for environmental information, the public must make requests to multiple sources to get all relevant information.

The NEMC was established by Parliament to create environmental management policies and make recommendations to the government regarding implementation (GOT, 1983). The NEMC has the responsibility of coordinating the activities of all bodies concerned with environmental matters and serving as a channel of communication between these bodies and the government. It is also responsible for stimulating public and private participation in natural resource management programs and activities. This includes developing and operating an information system for storing and disseminating information related to the environment, and promoting general environmental education programs to create enlightened public opinion on the environment. NEMC is now in the Office of the Vice President.

The Division of Environment was created within the then Ministry of Tourism, Natural Resources and Environment, but was recently shifted with the NEMC to the office of the Vice President and charged with the day-to-day supervision of environmental matters. The Division's lack of clear guidelines has resulted in overlapping responsibilities with the NEMC. It has also set off an intense institutional struggle between these two government agencies as to which oversees environmental issues in Tanzania. Problems between the NEMC and the Division have constrained environmental management. For example, the preparation and approval of the Tanzania National Environmental Policy was delayed. To complicate matters, there is now also a Ministry of Natural Resources and Tourism with a mandate that partly overlaps with those of the NEMC and Division of Environment.

Despite their coordinating responsibilities, even the NEMC and the Division of Environment have difficulty gaining access to environmental information from other parts of the government, including line ministries and departments and local governments. This includes information on projects such as the Songosongo gas project and Rufiji prawn-farming project, but also extends to other matters such as the granting of hunting concessions and privatization of land-based parastatal organizations. The Parastatal Sector Reform Commission can privatize a parastatal organization that controls land through which a wildlife migration route passes without informing either the NEMC or the Division of Environment.

RECOMMENDATIONS FOR TANZANIA

Without effective access to environmental and other information, Tanzania's most important resources, its citizens, are not involved to the extent necessary to support and achieve sustainable development. Despite favorable constitutional provisions, the current status of a citizen's right of access to environmental information in Tanzania falls far short of internationally recognized minimum requirements. A recently completed international

instrument, the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (UNECE, 1998), provides the most explicit and thorough provisions relating to information access available in the multilateral context. The basic principles for access to environmental information include (Saladin et al., 1998):

Minimum Requirements of Access

- Information is accessible, unless it falls within one of the grounds for refusal.
- No showing of interest is required.
- Information should be provided in the form requested.
- Responses to requests should be made within 1 month.
- Denials of requests for information shall be in writing, state the grounds for refusal, and be made generally within 1 to 2 months.
- Grounds for refusal are to be narrowly construed, balancing the interest to be protected against the public interest.
- Public authorities should remove confidential portions of documents and disclose nonconfidential portions, where this can be done without prejudicing the confidential information.
- Actual copies of documents should be provided when requested.
- Reasonable charges may be made for supplying information, subject to an established schedule.
- Public authorities must collect and disseminate environmental information.
- The public must be informed of their opportunities to participate in decision-making processes.

Grounds for Refusal of a Request for Information

- The public authority does not have the information.
- The information request is manifestly unreasonable or overly general.
- The information request concerns materials being completed.
- Disclosure would adversely affect:
 - Confidentiality of the proceedings of public authorities,
 - Internal relations, national defense, or public security,
 - Confidentiality of commercial or industrial information,
 - Intellectual property rights,
 - Confidentiality of personal data,
 - The interests of a third party that has supplied the information, without that party being legally obliged to do so.

Meeting these minimum requirements will require a number of legislative and institutional reforms. Five recommendations follow.

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The constitution should be revised to remove claw back clauses, make the public's right of access to information more explicit and include specific environment and natural resource provisions. Although the constitution contains favorable language pertaining to the right of access to information, it can be strengthened by clarifying and specifying this right and by eliminating legal opportunities for the government to effectively override these provisions. Furthermore, the constitution makes only brief mention of the environment and natural resources. The right of access to environmental information should be recognized in the context of broader environmental provisions.

2. Repeal Laws Used To Limit Access To Information

The National Security Act and the Tanzanian Newspapers Act should be repealed or revised to support the right of access to information. In 1992, a commission headed by Frances Nyalali, the Chief Justice of Tanzania, called for the repeal and amendment of 40 draconian pieces of legislation including the National Security Act. The new or revised NSA should set high standards for classifying documents. Classified documents should be restricted to those that involve critical matters of internal relations, national defense, public security, confidential commercial or industrial information, confidential personal data, confidential proceedings of public authorities and protection of the interests of a third party that voluntarily provides information. Similarly, the Newspapers Act should be amended to recognize freedom of speech, press, and dissent. The preparation and sharing of documents should not be considered seditious.

3. Enact Access-to-Information Legislation

The government should enact legislation that meets or exceeds internationally recognized minimum requirements for citizen access to information. Even if a new constitution explicitly included principles of free access to environmental information, Tanzania could benefit from enabling legislation and regulations that detail the processes by which the public can obtain information from the government. Depending on the level of specificity in the constitution, this law could spell out the basic right of citizens to access all government information subject to a few clearly delineated exceptions where a competing interest would outweigh the public interest in full disclosure. Such a law would also include specific response times and require written responses, when an information request is refused, that cite both the specific basis for exclusion and a clear indication of how to appeal the decision. In addition, the establishment of a clear punishment for violations of the right to information would help ensure the effective enforcement of such a law.

4. Restructure Environmental Institutions

The government should restructure apex environmental institutions to provide clear roles and authority for the implementation and enforcement of environmental and natural laws and the gathering and sharing of information. Collecting, managing and disseminating environmental information would be facilitated by empowering a single government agency with broad administrative responsibilities and enforcement authority. Other

ministries and government departments would be required to involve and inform the central agency in all environmental and natural resource matters. This environmental agency would be well positioned to be the custodian of all government information related to the environment. Such coordination on the environment would facilitate monitoring and compliance to regulations. It would also make the government more transparent to the public.

While the National Environmental Management Act gives the National Environmental Management Council advisory power and responsibilities of coordination, public participation and information sharing (GOT, 1983), the National Environmental Policy vests the Division of Environment with enforcement powers (GOT, 1997). Given that many environmental decisions in Tanzania are subject to political pressure, it would be useful to consider establishing by statute a semi-autonomous institution with regulatory powers. This institution could also have environmental information management and dissemination responsibilities.

5. Extend Public Education

The government should conduct -- and encourage private institutions to conduct -- broad public education and outreach efforts regarding citizen rights and participation opportunities. Few Tanzanians and civil society organizations are adequately informed about their rights and responsibilities related to the environment. Few fully understand government roles and responsibilities regarding the environment and natural resources. Through such education the constitutional rights to be informed and have access to information can come to life. Through education, the public can better understand its rights to participate in government decision-making, monitor government performance and demand compliance, and ensure environmental accountability.

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