

Engaging Women in the Extractive Sector: A Review of Tanzania's Policy and Legislative Framework

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Abstract

This article provides an in-depth analysis on the extent to which women are involved in the decision-making chain in the extractive sector (both informal and formal) in Tanzania. Its specific focus is on the legal and policy framework that has been put in place, taking into account both the traditional and non-traditional extractive sectors. Regarding the traditional sector, attention has been placed on oil, gas, and minerals. The non-traditional extractive sector, on the other hand, covers natural resources other than oil, gas, and minerals. Its thesis is guided by three main assessment criteria to benchmark women's participation or/and engagement in the extractive sector in the traditional and non-traditional extractive industries: law, policy, and claimed space. The article reveals that the legal and policy framework governing the extractive sector does not guarantee effective participation of women. The article recommends that the legal and policy framework be amended to address this anomaly.

Keywords: *law and extractives, role of women, Tanzania.*

Introduction

The article focuses on the participation and engagement of women in the informal and formal extractive sectors. The special focus on the informal sector is on artisanal and small-scale mining activities. However, because the current oil and gas legislative regime is still at an embryonic stage, the analysis of the current legislative provisions reflecting the role and position of women is also limited. A discussion on the immediate past legislative provisions has been made to provide hindsight on the foundation of the legislative regime that has set the foundation for the current regime, and which is likely to provide insights on the circumstances of this theme.

Population Dynamics of Women in Tanzania

The most current national census on population and housing in Tanzania carried out in 2015 indicated that the country had a population of 44,928,923 people; out of which the number of women was 23,058,933. The census also noted that women live longer than men, their life expectancy being 63 years compared to men, whose life expectancy was gauged at 61 years (TNBS, 2017). In terms of engagement in labour activities, women offer a significant labour force of the total labour force in the country. However, the contribution and engagement of women in the labour sector is largely characterized by the lack of skills, and is therefore mainly found in non-skilled and labour-intensive works such as subsistence farming (ibid.).

*hmajamba@udsm.c.tz: This article is an abridged version of a report on a study for the Tanganyika Law Society (TLS) in March 2019. Consent to produce this version has been obtained from the TLS.

Women in Tanzania have generally been left out in the economy and key decision-making organs. In terms of the natural resources sector, it is noted that most government policies and laws do not address the gender disparity in many ways (Campese, 2011). Literature also suggests that the same is true with respect to the legal and policy framework governing the extractive sector. We should hasten to point out here that the literature and studies on this theme have not provided a comprehensive review of the legislative and policy provisions in the gas and oil sector in general. This is the gap that this article seeks to fill.

Strategies to Bridge the Gender Gap

The government of Tanzania has taken several steps to bridge the gap between men and women in terms of decision-making, which entail opening avenues for the involvement of women in the extractive sector. For instance, in the National Development Vision 2025 and the National Poverty Reduction Strategy, the government has factored in some deliberate actions to bridge the gap between men and women in decision-making and participation in the development process and economy. The Vision 2025 places greater emphasis on the inclusion of women on emerging economic opportunities. Other initiatives in this regard include the Women and Gender Development Policy (2000) and its strategy. The objective behind these initiatives is to ensure that women feature in all key public positions, with at least 50 per cent representation (URT, 2000).

To emphasize its commitments in bridging the gap between men and women in various government institutions and agencies, the Parliament of the United Republic of Tanzania increased the number of women members of the Parliament to at least 30 percent. This move is in line with Articles 66 (1) (b) and 78 of the Constitution of the United Republic of Tanzania, 1977, in its 13th Amendment that provides that women representatives in the Parliament should comprise of at least 30% of all members of the parliament. These two constitutional provisions are further augmented by Section 86A of the National Elections Act, Cap 343, which requires women parliamentarians to comprise of at least 20 percent. The initiative is further reflected at the local governance level where the relevant legislation has been amended to increase more seats for women in the electoral process at the grassroots level. In this regard, local governments, councils, districts, municipalities, city councils and townships are required to ensure that women comprised of at least 33 percent in their composition since 2000. This has been made possible by the Local Authority (Elections) Act, Cap 292 (URT, 2010: 68).

The government has also manifested its commitment to bridge the gap between men and women by joining global efforts in ratifying several international legal instruments that call for the elimination of discrimination against women. It is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); United Nations Declaration of Human Rights; African Charter on Human and Peoples Rights; and the optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

Legislative Developments in Engaging Women in the Extractive Sector

During the colonial era, women continued to play a relatively insignificant role in the mineral sector. The relations and factors of production prevailing during this period provided little room for engaging women along the extractive sector value-chain, including artisanal activities. They were confined to subsistence farming and taking care of families as they had been during the pre-colonial period. Laws related to extractive sector that were enacted during this era included the Land Ordinance (1923) and the Mineral Ordinance Act (1929). These excluded all local communities, including women, from the extractive minerals value-chain, mainly through the requirement for accessing mining rights (SID, 2009).

Upon attaining independence in 1961, the government adopted wholesale the colonial legislative framework, including that which regulated the extractive sector, with its attendant biases on gender. The independent government also continued to control all the major means of production, including the extractive (mining) sector through the National Development Corporation (NDC) and the State Mining Corporation (STAMICO). The introduction of the *ujamaa* programme in the late 1960s was followed by the establishment of *ujamaa* villages and the nationalization of all major means of production, including the extractive sector and its entire value-chain that included factories and the banking sector. Although women had started being actively involved in politics, having helped organize movements during the struggle for independence, still they were not visible in the extractive sector during this time. Their presence in the regulatory organs established by law was also evidently absent.

The Mining Act of 1979 was the most comprehensive post-independence mining law enacted by the government to guide and regulate mining activities. Like the colonial laws, it also placed all mineral resources and property rights under the control of the state.¹ Also, only Tanzanians, both juridical and natural persons, could be granted exploration and extractive rights.²

As opposed to the former laws, the new law recognized small-scale miners and their related activities. The artisanal mining sector witnessed its rejuvenation in the 1980s when the government underscored the contribution artisanal miners played in the national economy. It set aside some areas exclusively for artisanal miners, and formally recognized artisanal mining as an important economic activity. It also earmarked large areas of the country for artisanal mining operations. The areas that were set aside for artisanal miners included areas around the Lake Victoria region and Arusha (Chachage, 1995). However, artisanal miners discriminated women on the basis of traditional beliefs, and this affected their involvement in critical decision-making in matters embodied in the extractive value-chain.

¹See section 5

²See section 14

In the 1990s, under the guidance and support of the World Bank (WB), the government of Tanzania commenced a process of reviewing its legislative and policy framework regulating the extractive sector. It endorsed a proposal by the WB to resuscitate the struggling mining sector. This led to the promulgation of the Mineral Policy in 1997, followed by the enactment of a new mining act in 1998. Regarding gender dimensions, the law had little provision for accountability, leaving many members of the communities in the proximity of mining sites—including women—maimed (some permanently) due to the negative effects of mining by mining companies. Also, unlike the earlier initiatives by the government, this Act placed comparatively less focus on artisanal mining activities, which employed many ordinary citizens, including women (Curtis & Lissu, 2008).

To fully operationalize the Mining Act of 1998, several mining regulations were promulgated. These did not help much as there was public outcry on the poor situation in the mining sector, for example, environmental pollution and the lack of compensation for land acquired for mining activities. In an attempt to address the concerns, the government formed a Presidential Committee to inquire into the sector. The Committee found several weaknesses in the sector, and made recommendations to address these (URT, 2008). The recommendations resulted in the promulgation of a new Mining Policy in 2009. This was followed by the enactment of the Mining Act of 2010.³

The 2010 Act is currently the main legislation governing the mining sector in Tanzania. It has introduced progressive provisions that have a bearing on gender dimensions, and the role and place of women in decision-making processes. Other ancillary pieces of legislation in the mining sector, which are also relevant in the discussion on engaging women in the extractive sector, include the Constitution of United Republic of Tanzania, 1977; Tanzania Extractive Industries (Transparency and Accountability) Act, 2015 (TEITA); Natural Wealth and Contracts (Review and Re-negotiation of Unconscionable Terms) Act of 2017 (Natural Wealth Act); Natural Wealth and Resources (Permanent Sovereignty) Act, 2017; Environmental Management Act, 2004; Income Tax Act, 2004; and the Investment Act, 1997. Several regulations have also been made under the Mining Act of 2010 to supplement the regulation of mining activities. A review of the main laws in the extractive sector will assist in comprehending the extent to which the laws have taken on board the theme of this article.

Tanzania Extractive Industries (Transparency and Accountability) Act, No. 23 of 2015

The preamble to this law provides that it was enacted with the main objective of establishing the Extractive Industry (Transparent and Accountability) Committee, which is charged with the overall role of regulating the extractive sector; focusing specifically on oil, gas, and minerals. The Act establishes several oversight regulatory organs. Among these is the envisaged Tanzania Extractive Industry

³Act No 7 of 2017.

Transparency and Accountability Committee established by section 4(1). The Committee is an independent government entity with oversight on promoting and ensuring transparency and accountability in the industry. The composition of the Committee is provided for by section 5(1) of the Act. Accordingly, it is to be comprised of 15 members. The appointing authority is required under section 5(5) “to have a regard to gender balance in making the appointments.” It is clear that this rather loose, vague and evasive provision leaves a leeway for not ensuring effective participation by women in this Committee. Other provisions in the Act are relatively more specific, directing that a certain percentage or number of members must be women. In this regard, the mischief for the draftsman of having left this provision loosely worded remains unclear.

The other oversight organ created by this Act is the Nomination Committee established under Section 6(1). The functions of this Committee are outlined by Section 7(1) and Section 10, which requires it to nominate key persons of the Tanzania Extractive Industry Transparency and Accountability Committee: the chairperson and the chief executive officer. The Committee is also required to develop frameworks for transparency and disclosure, and promote effective citizen participation and awareness of the extractive industry. One very noticeable feature of this Act is section 6(2), which provides for its composition that there is no requirement for consideration of gender balance in this very critical and important Committee. The amendments made in 2017 via the Written Laws (Miscellaneous Amendments) Act, 2017, make no reference to addressing the gender anomaly noted above: it was probably not in the list of preferences.

The Mining Act 2010 No. 14 of 2010

This law, *inter alia*, established the Mining Commission (Commission), which replaces the Mining Advisory Board (Board) as an advisory organ to the Minister.⁴ The Commission is empowered to perform additional functions to those of the Board. The Commission, apart from having advisory functions, is empowered to issue licences, regulate and monitor the mining industry and operations, and ensure orderly exploitation and exploration of minerals (as well as the utilization of minerals).⁵ It is also empowered to resolve disputes arising from mining activities, and to carry out inspections and investigations on safety issues. Section 23(5)(b) of this Act has some provision for appointing members of the Commission, where the Minister is required to take into account gender consideration. It provides that “*at least a third of the members of the Commission must be women.*” Compared to the equivalent provisions of the loose, vague, and ambiguous provisions of the Tanzania Extractive Industries (Transparency and Accountability) Act noted above, the provision of the Mining Act was relatively more progressive in terms of ensuring gender parity in the extractive industry. However, in a twist of events,

⁴Section 22(a) and (b) of the Mining Act as amended by section 11 of the Miscellaneous Amendments Act, See section 21 (1) of the Act No 7 of 2017.

⁵*Ibid.*, section 22.

through a miscellaneous amendment made in 2017, there has been a retrogressive step that has seriously affected the progressive attempt to attain gender parity in this sector. Section 21(4) of the Written Laws Miscellaneous Amendment Act No.7 of 2017 provides that the Commission shall comprise of “...two eminent persons who possess proven knowledge and experience in the mining sector **one of whom shall be a woman**” (*emphasis mine*). It is clear that the requirement of at least a third of members of the Commission to be women in the now repealed provision was better than having only one woman in the Commission.

The Natural Wealth and Contracts (Review and Re-negotiation of Unconscionable Terms) Act No. 6 of 2017

This Act has only 8 sections and establishes no oversight bodies. It allows the government to review and renegotiate agreements entered between it and mining corporations prior or before the enactment of the Act.⁶ It establishes the grounds on which the government may deem certain agreements—for example, MDAs—unconscionable.⁷ Although it does not directly make specific reference to gender issues and the role of women, the preamble to this Act makes some implied reference to the role of women in the ensuring that the natural wealth (extractives) is managed equitably. The Preamble refers to reducing poverty, ignorance and disease. These are matters that women have played crucial and leading roles in their eradication through, among other initiatives, caring for homesteads, in some cases as single parents or widows.

The Local Government Finance Act (1982)

Although this law—with its numerous amendments since it was promulgated—may apparently seem to have little significance in the extractive sector, it is crucial in terms of enhancing women’s participation in the sector at the local governance level. The primary role of this law is to enable local governments to collect revenues from different sources, including from extractive companies operating in their geographical jurisdictions. One of the revenues the Act authorizes local governments to collect is services levy from extractive companies operating in their geographical jurisdictions. The levy is 0.3 percent of the turnover net of the value-added tax and excise duty of any corporate entity.⁸ The revenue collected by a local government—commonly referred to as ‘own source’—from different sources, including extractive corporate entities, is supposed to be set aside to help women set up economic ventures. The Act requires at least 10 percent of local government’s ‘own sources’ to be set aside for women, youth, and persons with disabilities.⁹ It is clear that this is a very good law as it is women-inclusive, and gives very special attention to the needs of women.

⁶The Natural Resources Act and the Natural Wealth and Resources (Permanent Sovereignty) Act 2007, section 4.

⁷Ibid., section 6 (2).

⁸Section 7 (1) of the Local Government Finance Act 1982 [RE 2002]

⁹See section 37A (1) of the Local Government Act 1982 and section 35 of the Finance Act 2018

Oil and Gas Sector: Traditional Extractive Industries

Tanzania has not discovered oil or petroleum. Exploration activities are currently underway in different parts of the country (IHRB, 2016). Even though Tanzania does not have any oil discovered, it has her own national oil company that is responsible for oil and gas development: the Tanzania Petroleum Development Corporation (TPDC), which was established in 1969.

Exploration activities for natural gas commenced in 1952, and the first discovery was made in 1974 at Songosongo Island in Lindi region. However, major explorations involving huge investments from multinational companies began in the 2000s. As of now, it has been established that Tanzania has abundant natural gas resources both on- and off-shore (URT, 2013). Most of the natural gas deposits are found in onshore gas fields along the country's coast in Songosongo, Mnazi Bay, Mkuranga, Kiliwani North, and Ntorya (TEITI Report, March 2018). The reserves are now estimated to be higher than 43TCF (and at least 57TCF).¹⁰ Commercially, viable natural gas reserves are yet to be exploited and utilized as such.

As is the case in the mining sector, the oil and gas sector is also regulated with specific policies and laws. There are three primary laws that regulate the oil and gas sector: (i) the Petroleum Act, 2015; (ii) the Oil and Gas Revenues Management Act, 2015, and (iii) the Tanzania Extractive Industries (Transparency and Accountability) Act, 2015. Other ancillary laws that are used to regulate oil and gas activities include the Written Laws (Miscellaneous Amendments) Act, 2017; the Natural Wealth and Contracts (Review and Renegotiation of Unconscionable terms) Act, 2017; the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017; the Constitution of Tanzania, 1977; the Income Tax Act, 2004; and the Environmental Act, 2004. These pieces of legislation have provisions that address the involvement of women in different ways as presented hereunder. Others are, however, silent on this matter.

Overview of Key Legislation on Oil and Gas

The Petroleum Act, 2015

The Petroleum Act, 2015, applies to both Zanzibar and Tanzania Mainland. Its primary focus is the regulation of, *inter alia*, oil and gas activities from upstream, midstream and downstream; and establishes several organs to oversee the sector. These organs include the Petroleum Upstream Regulatory Authority (PURA)¹¹ and its Board; the National Oil Company (TPDC)¹² and Oil and Gas Advisory Bureau.¹³ The Energy and Water Utilities Regulatory Authority (EWURA) is recognized by the Act, which vests it with powers to regulate midstream and downstream oil and gas activities.¹⁴ Section 17(3) of the Act, which establishes the PURA Board, makes a provision for gender balance in the appointment of the 5

¹⁰The National Natural Gas Policy of Tanzania - 2013, p.2

¹¹Ibid., sections 11-28.

¹²Ibid., sections 8-10.

¹³Ibid., section 7.

¹⁴Ibid., Section 29 (1).

members of the Board; although the Nomination Committee established by section 27 of the Act to deliberate the appointment of board members has no provision for gender balance.

It should also be noted that the composition of the Oil and Gas Advisory Bureau—established by section 7 and located within the Office of the President—is not provided for. In this regard, whether gender balance will be considered in its office bearers is unknown. The functions of the Bureau are critical to the sustainability of the extractive sector. It is charged with advising the government on strategic administrative matters in the oil and gas subsector. Although at the time of writing, a woman held the position of the Chief Executive Officer of this important Bureau, there is no guarantee of gender balance in the absence of an express provision in the law providing for this. The issue of gender balance has been considered in terms of training and employment in the extractive sector. This is clearly elucidated by section 220(2) of the Act, which directs that license holders must have a detailed programme for training and recruiting employees.

The Oil and Gas Revenues Management Act, 2015

The objective of this law is to properly manage oil and gas revenues that the country is expecting to accrue from its oil and gas reserves. Tanzania has not discovered any oil reserves. The Act seems to operate in Tanzania Mainland for oil and gas reserves that will/have been discovered within its geographical limits. In the areas where oil and gas reservoirs seem to go across Tanzania Mainland and Tanzania Zanzibar, the Act will apply to cater for the so-called joint oil and gas explorations or developments.¹⁵

Women in Artisanal and Small-scale Mining Activities

Artisanal and small-scale mining (ASM) have dominated the traditional extractive industry, especially mining. It has been estimated that 700,000 people are involved in traditional extractive industries in Tanzania (TEITI, 2016). Out of these, women comprise a mere 27 percent.¹⁶ Other data indicates that the ASGM sector alone employs between 500,000 to 1.5m people. The contribution of the ASGM sector in foreign earnings from gold exports in 2009, for example, was estimated to be 10 percent. Gold exports were estimated to earn the country approximately US\$1.076bn (UNEP, 2012). Despite being informal and considered backward, detrimental, operating without proper legal framework, and not offering enough revenues to the government, the employment opportunities offered by ASGM are massive compared to the formal and large-scale extractive industry. The amendments to the Mining Act in 2019 have relieved small miners from paying withholding tax of 5 percent and VAT of 18 percent. Mineral supplied by small-scale miners at designated stations are also zero-rated (*Citizen Newspaper*, 25th February, 2019: 1).

¹⁵The Oil and Gas Revenues Management Act, 2015, section 2 (a) & (b).

¹⁶Ibid.

Despite its potential in terms of offering employment opportunities to many ordinary Tanzanians, including women, the sector is highly dominated by men as women lack access to mining licences due unfriendly legal and policy frameworks, lack of access to financial services to engage in the ASGM value-chain, and social norms that hinder women from entering mines sites (UN Women, 2016; Mutagwaba, 2018).

Engagement of Women in Traditional and Non-traditional Extractive Sectors

Efforts have been made outside the typical legal arena, at regional and national level, to ensure gender parity in the traditional extractive sector, such as in the mining industry. At the regional level, there have been strategies and programmes to address this vice, while policies have been put in place at the national level. These include mainstreaming gender in the banking sector to access loans, and encouraging women to cooperate in groups (Mutagwaba, 2018)

The African Mining Vision 2009

The Vision—a product of the Council of Ministers of minerals of the African States and governments in 2008—was adopted by the heads of states and governments in 2009 during the African Union (AU) Summit. Tanzania, being a member of the AU, adopted the African Mining Vision.¹⁷ Though the Vision is not a law, it is a guideline that calls upon African states to put in place systems to guarantee transparency, equity and an optimal exploration of mineral resources based on broader sustainable growth and socio-economic development.¹⁸

On the issue of the involvement of women in the extractive sector, the Vision acknowledges that there is inequality between men and women, whereby women are not fully engaged in the sector, especially in the artisanal small-scale mining value-chain. The Vision calls upon African governments to address that gap in their national laws and policies that regulate the mining sector.¹⁹ The Vision is in all aspects a pro-women guideline as it specifically calls for inclusion of women in the sector.²⁰ It calls upon the AU members to initiate strategies of women empowerment by integrating gender equity in all plans and institutions through mining policies, laws, standards, and codes.²¹

The Mineral Policy of Tanzania

The mineral policy is one of the key instruments that govern the mining sector in Tanzania.²² In many ways it seeks to promote and encourage the inclusion of women in mining activities. This is reflected in its objectives, which seeks “... to encourage and promote women participation in mining activities.”²³

¹⁷The African Mining Vision of 2009 p. 26-32

¹⁸Ibid.

¹⁹Ibid.

²⁰Ibid., for example, p. 32 and 42.

²¹Ibid: 42.

²²Mineral policy of 2009.

²³Ibid., Objective 4(r).

The Policy, under policy statement 6.2, further provides that the government will continue to ensure women are participating in mining activities, including in education and training opportunities:

The Government will continue to promote participation of women in mining activities and [it] will ensure that all programmes related to mining, including education and training opportunities are based on gender equality and equity.²⁴

The National Energy Policy of 2015

The energy policy was formulated with a view of providing guidance for sustainable development and utilization of energy resources to ensure optimal benefits to Tanzanians, and contribute towards the transformation of the national economy.²⁵ To a large extent, the policy embraces the participation of women in the energy sector and other related matters.²⁶ It calls for the abandonment of inequality between men and women in the oil and gas sector.²⁷ It has specific policy statements that guarantee women participation at all levels of decision-making on energy matters. The policy provides that women must effectively participate in decision-making in the management and development of energy resources from all levels up to the grassroots level.²⁸ It calls upon the government and stakeholders in the energy sector to promote the participation of women in energy-related activities.²⁹

Although it does not provide a minimum number of women to be included in decision-making organs in institutions, the national energy policy has special statements that require women interests to be protected. Thus, this policy is pro-women and highly women-inclusive.

Engagement of Women in Non-traditional Extractive Industries

The Forest Act 2002

Part 2 of the Forest Act, 2002, sets several objectives. There are two key objectives that are worth analysing for the purposes of our theme: (i) encouraging and facilitating active participation of citizens in sustainable planning, management, use and conservation of forest resources through the development of individual and community rights, whether derived from customary law or under the Act;³⁰ and (ii) delegating the responsibility of the management of forest resources to the lowest possible level of local management, consistent with the furtherance of national policies. The two objectives seek to devolve the power of managing forestry resources, traditionally put under the central government, to ordinary people at the grassroots. They are also aimed at ensuring that people participate and engage more in the management of forests and associated resources. The Act establishes several

²⁴ Ibid: 24.

²⁵ The National Energy Policy, 2015: 9.

²⁶ Ibid: 49 (Policy statement i & ii)

²⁷ Ibid.

²⁸ Ibid: 49.

²⁹ Ibid.

³⁰ See section 3 (b) & (d) of the Forest Act 2002

entities for governing and managing forests in the country. The entities established by the Act are the president, minister, National Forestry Advisory Committee, district councils, and village councils.

The village council is an important entity for managing forests in Tanzania. It may, through a resolution, establish a village forest reserve.³¹ Village councils, established under the Local Government (District Councils) Act, 1982, are composed of not more than 25—and not less than 15—members. Out of these, women shall not be less than one-third. To some extent, women are represented in village councils. However, the village assemblies may override a council's decision as it is the final approval organ.³² At the assembly level, women usually do not have equal voice due to cultural constraints, among other factors (Kesale, 2017).

Another organ that is established by this Act is the National Forestry Advisory Committee. The Minister appoints members of this Committee in a balanced manner between men and women.³³ Like many other advisory organs, its core function is to advise the Minister.³⁴ As an advisory organ, the Act requires the Committee to be balanced, equally between men and women in its composition.³⁵ The Tanzania Forest Fund was created to promote and fund forestry research, and raise awareness on the importance of forests. It is managed by a board of trustees that is supposed to have not less than 7—and no more than 9—members, whereby at least 3 should be women.³⁶ However, this requirement is not mandatory and as such women participation may be compromised.

The National Fisheries Policy 2015

This policy was formulated with the overall objective of developing a robust, competitive, and efficient fisheries sector so that it can contribute to food security and nutrition, growth of the national economy, and the improvement of the wellbeing of fisheries stakeholders, while conserving environment. In attaining this objective, the policy recognises the fact that there are some groups in society—women being one of them— which are marginalized in the development processes even though they are key stakeholders in the sector. In recognition of this reality, the policy contains some women-inclusive approaches. In many instances it articulates gender mainstreaming and equity in the fisheries sector.³⁷

The policy statement also imposes the responsibility to the government to ensure that gender is promoted in the fisheries sector. In this respect, the policy statement provides that the government shall:

³¹Ibid., section 33

³²See the Village Land Act section 8 (5).

³³The Forest Act 2002, section 10 (2) (b).

³⁴Ibid., section 10-(4).

³⁵Ibid., section 10 (1) (b).

³⁶Ibid., section 79 (2)

³⁷The National Fisheries Policy 2015 p.30-31.

- (a) Promote gender mainstreaming and awareness in the fisheries and aquaculture interventions; and
- (b) Promote equity in the access of fisheries production resources and benefits.³⁸

Although the policy is women-sensitive, it does not provide guidance on how women would be engaged practically in the fisheries sector. Also, although it embraces equity principles, these do not necessarily translate into addressing practical issues relating to equality between men and women in the fisheries sector.

The Fisheries Act 2003

Unlike the National Fisheries Policy, 2015, the Fisheries Act, 2003, is gender-blind. There is a great mismatch and incompatibility between the policy and this Act in terms of addressing women participation and engagement in the fisheries sector. Perhaps the mismatch and incompatibility are caused by the fact that the Act was enacted before the policy was formulated. It is critical to note that all decisions-making organs under this Act are gender-blind. There are no provisions for the inclusion of women.

Women, Claimed Space, and the Extractive Sector

Claimed space refers to situations where women take their own initiative in seeking to create space or opportunities for recognition to enable them participate and engage in activities that they have been excluded. The concept was developed to combat the upshot of male domination of contemporary space. Claimed space has been used by marginalized communities, including women, to mobilize and lobby for inclusion in the extractive sector through traditional and non-traditional ways (Leifsen, 2017). In the process they have organized themselves into voluntary organizations and units with a view of ensuring that they are actively involved and engaged in shaping policy and legal frameworks in the extractive sector (Kuntala, 2007). In Tanzania, women have also devised mechanisms to claim space in the gaps that have been identified in the policy and legislative framework analysed above. Some of the initiatives that reflect the claimed space phenomena in Tanzania include the Tanzania Women Miners Association (TAWOMA), Tanzania Women Lawyers Association (TAWLA), and the Tanzania Gender Networking Programme (TGNP (*Mtandao*)).

Tanzania Women Miners Association (TAWOMA)

Formed in 1997 as a non-governmental organization (NGO) for advocating for equality in the mining sector (focusing mainly on the mining sector), TAWOMA, with close to 350 active members, advocates for equality in the mining sector (TAWOMA, 2019). The NGO acknowledges that there exist imbalances between men and women, whereby women do not have equal access to resources for sustainable development in the mining sector (Mohamed, 2016). It engages in policy formulation, lobbying for political spaces for women miners to raise their

³⁸ Ibid.

voices, and training small-scale miners on risks associated with mining activities and many others (ibid.). In the course of undertaking its activities, this NGO has managed to create a political space for women to participate and engage in the extractive sector, mainly in the mining sector.

Tanzania Women Lawyers Association (TAWLA)

TAWLA is a women-based organization, mostly comprised of women professional lawyers. It was founded in 1989 and officially registered in 1990 (TAWLA, 2018). Among others, the organization advocates for equality between men and women in all spheres of life and industry. With more than 570 members, TAWLA has several programs for addressing women land rights, and calls for equality on access and ownership of natural resources. It also offers legal aid services to women, children, and other marginalized communities.

TGNP Mtandao

Founded in 1993, TGNP Mtandao is one of the oldest women's led organizations in Tanzania. It has been very active in ensuring women's agenda on a variety of issues, including inclusion in decision-making processes in the management of natural resources in the extractive industries and related human rights (TGNP Mtandao, 2016).

In the course of lobbying, TGNP Mtandao has been on the forefront in ensuring the elimination of all forms of discrimination against women and other marginalized groups. It advocates for equality between men and women in all forms of lives. In its 2016 Annual Report, the organization lists five areas as its thematic areas. One of these is the extractive industry.¹ Unlike TAWOMA, which specifically deals with women in the mining sector by providing services to the membership and the general public, TGNP Mtandao mainly addresses women-inclusion in the extractive sector through policy advocacy and research. Through its advocacy work, the organization has created a political space and enabled women to engage and bring out issues that affect them in the extractive sectors and related services in natural resources, such as land and water.

It is clear that the initiatives in the use of claimed space in Tanzania have been championed by Civil Society Organizations (CSOs) for a while now. Indeed, some of these have made significant changes in the law and policy making processes, influencing positive transformation on gender equity with cross-cutting issues on the extractive sector at national and international platforms.

Conclusion and Recommendations

This article has provided a critical analysis of the provisions of legislation and policies that have direct and indirect (ancillary) bearing on the extractive sector in Tanzania Mainland. It has noted initiatives that have been made by NGOs and CSOs in developing strategies to fill some of the identified gaps in the legislative and policy frameworks through claimed spaces.

It has been observed that the government has made several progressive efforts in its attempt to make provision for gender balance in policy and legislative frameworks in key natural resources sector generally, and specifically those that have a direct bearing to the extractive sector. The government's commitment to accede to international legal instruments guaranteeing women with equal opportunities and fighting against all women discrimination also illustrates its efforts to walk the talk.

It has clearly been illustrated that some of the provisions of the policy and law governing the extractive sector reflects gender parity. However, it has also been observed that in some cases these relatively progressive provisions have been watered down with provisions in the very same enactments! A critical review of the legal provisions also reveal that some have provided room for arbitrary application of otherwise well-intended provisions, for example, by giving appointing authorities too much discretion that may be used to curtail inclusion of women in decision-making processes. There are also setbacks that water-down efforts by the government to take on board gender equity by downplaying the government's drive and well-intended initiatives to commit to international obligations. This does not augur well with the picture painted at the international diplomacy arena.

Admittedly, in some cases the capacity of women to engage effectively in the extractive sector value-chain, especially in the production and exploration stages, has been hampered by historical and cultural factors. This may partly explain some of the rather vague and elusive provisions in the policy and legal frameworks that seems to provide for a cautious approach in appointing women in decision-making organs ostensibly to avoid a scenario where there could be no women who qualify.

Recommendations

In view of the findings above, we suggest that the government put in place and make a close follow-up on strategies, programs and plans that promote effective engagement of women in all aspects in decision-making processes in the natural resources sector in general, and the extractive sector in particular.

There is also a need to implement the government's obligation and commitment effectively and fully at the international legal plane. Legislative and policy provisions on the extractive sector that have been critiqued in here should be reviewed to reflect the commitment to ensure women play an active role in determining the direction of management and use of extractive resources in the country. Regulations made by the Minister charged with regulating the extractive sector are an easy way to implement international agreements. Alternatively, amending principal legislations, preferably through the procedure of Miscellaneous Amendments, could take on board the incorporation of international legal instruments in the law. The use of Regulations and Miscellaneous Amendments would not entail a long process as the necessity of having to pass through the tedious and sometimes unpredictable parliamentary procedure of enacting a new law.

The study also recommends that a review of the provisions of laws should take into account having specific, clear, and unambiguous provisions requiring a specific percentage of the number of women in decision-making organs at all levels. The provisions should be gauged in a mandatory manner, leaving no room for appointing authorities to exercise discretion in appointments. A leaf could be borrowed from the Village Land Act 1999 that requires the number of women to be at least 3 out of 7 members of a village land council. The law is clear: without this number, the decisions of a village land council will be null and void.

The government should also make efforts to ensure that the progressive provisions of the law and policies that seek to ensure women participation in the extractive sector are implemented to the letter. The Ministries charged with regulating the mineral and women empowerment sectors should be on the forefront in this regard.

Similarly, the government— in collaboration with stakeholders— should be on the lead in efforts to build capacities of women through affirmative action initiatives, to train and impart knowledge to them on how they can participate effectively in the entire extractive sector value-chain. This should be followed by putting in place a mechanism for periodic evaluations of existing policies, laws, strategies, programs and plans that have been put in place to promote the involvement of women; and promote gender equity and address the challenges and shortfalls identified. The evaluation process should include— and take into account— views, studies, and reports of CSOs that have a stake in the extractive sector in the country.

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