

Community Participation And Service Delivery: An Assessment Of Legal Safeguards In The Context Of Local Governance In Tanzania

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Abstract

This article assesses the effectiveness of the Tanzanian legal framework for community participation in service delivery by highlighting safeguards that are granted in the law for effective implementation of the concept. It addresses two major questions; firstly, do our laws recognize the concept of community participation in service delivery and secondly, how strong are our laws towards enforcing such concept? The concept of community participation is recognized by the Constitution and the Local Government legislation in Tanzania; constitutional safeguards such as the supremacy of the community, right to participate in public affairs, and the right to information are prevalent. However, the absence of recall elections, failures to control participation in public affairs, erosion of community centered plans by the law and the absence of grievance redress system affects the efficiency of concept of community participation in the country. The article recommends for the amendment of the Local Government Legislation so as to oblige the community to vote, recall and hold liable elected officials, to establish grievance redress mechanisms, and to secure community centered plans.

Key phrases: Community Participation Legal Framework, Service Delivery, Local Government

Date of Submission: 18-07-2020

Date of Acceptance: 03-08-2020

I. INTRODUCTION

Discussions on community participation in any country will remain unrealistic unless its underlying legal framework is understood and its effectiveness addressed. This article surveys the concept of community participation in governance and service delivery. It makes a critical analysis of the legal framework for community participation in governance and service delivery in Tanzania. The article explores key concepts regarding community participation and local governance, explores the role of the community in local governance and service delivery, constitutional and legal safeguards for community participation in Tanzania, and limitations to the community participation legal framework in Tanzania. Lastly the article provides for recommendations on what should be done to improve and create active community participation in local governance and service delivery.

1.2 Problem Statement

Despite the fact that literature on community participation suggest that the community holds an important position and plays an important role in local governance and service delivery (Ringold, D. et al, 2012;Loewenson, 1999 and Cornwall and Gaventa, 1999) and the despite the fact that the Constitution and laws in Tanzania establish a legal framework for the community participation in governance and local service delivery. The community is still passive and fails to effectively perform its responsibility for holding local governments responsible, the legal framework community participation has several weaknesses that affect community participation.

If challenges in the current community participation are not addressed, then discussions on, the concept and purpose of community participation in local governance and service delivery will remain unattainable in Tanzania. The industrial development aspiration will hardly materialise in LGAs and the nation at large. Thus, this research intended to explore the effectiveness of the legal framework that safeguards community participation in local governance and service delivery in the country.

1.3 Objectives of the Study

This study had the following objectives:

1.2.1 Main Objective

This study was guided by the main objective of exploring the effectiveness of the legal framework that safeguards community participation in local governance and service delivery in Tanzania.

1.2.2 Specific Objectives

This study has the following specific objectives:

- i. To explore the role of the community in local service delivery
- ii. To explore legal safeguards for community participation in local governance and service delivery in Tanzania
- iii. To explore limitations that affect the effectiveness of the legal framework for community participation in Tanzania

1.3 Research Questions

This study was guided by the following research questions:

- i. What is the role of the community in local governance and service delivery?
- ii. What are the legal safeguards for community participation in local governance and service delivery in Tanzania?
- iii. What are the limitations that affect the effectiveness of the legal framework for community participation in Tanzania?

II. LITERATURE REVIEW

Key Concepts: Conceptual Framework

For the purpose of building the conceptual understanding of community participation and its respective legal framework, this article addresses four key concepts—Local Government, Local Government Authority, Local Autonomy and Local Government Service Delivery.

Local Government

The term Local Government attracts several definitions; it is a wider phrase that cannot be easily defined due to different angles through which a person may be looking at it. Several authors have attempted to define the phrase differently. For example, Clarke, an eminent scholar and political scientist defines Local Government as that part of the Government of a nation or state which deals mainly with such matters that concern the inhabitants of the particular district of places, together with those matters which parliament has deemed it desirable should be administered by local bodies, subordinate to the Central Government (Sahib 2001). He defines the phrase with thinking in his mind that, Local Governments are limited under the law and that they are subordinate to the Central Government.

The Federal Republic of Nigeria; in 1976 defined the phrase based on what Local Governments should do, it stated that a Local Government should do precisely what the word government implies i.e., governing at the grass-roots or local level. (Olasupo, F. 2013). This definition implies the autonomy of Local Government Authorities (LGAs).

The Local Government's jurisdiction is limited to a specific area and its functions relate to the provision of civic amenities to the population being within its jurisdiction. A Local Government functions within the provisions of the statute which has created it. It is subordinate to the state or provincial government which exercises control and supervision over it. But the activities of the Local Government are not less numerous. (Andrew M. Cuomo and Rossana Rosado, 2018)

Local Government has been undertaking new activities which either regulated the conduct of the citizens or are in the nature of service such as provision of mass transport, construction of houses for the poor, supply of electricity, health centers, parks, play grounds etc. In fact, Local Government is today much more important in the daily life of a citizen than the state or central government.

In the context of Tanzania, local government may be defined as a sub-national and semi-autonomous government which is established as body corporate and performs its functions subject to the law for the purpose of enhancing community centered governance (Article 145 of the Constitution of the United Republic of Tanzania, 1977).

Local Government Authority

The term Local Government Authority is defined by the local government legislation to mean a District Authority or an Urban Authority. The term District Authority is defined to mean a District Council, a Township Authority, or a Village Council; while the term Urban Authority means a Town Council, a Municipal Council or a City Council.

However, one can literally define LGAs as such authorities, within the government structure, established as part of the decentralization system so as to engage the community in the planning and implementation of development programmes within their respective areas and generally throughout the country.

Local Government Autonomy

Autonomy according to the 9th Edition of the Oxford Advanced Learner's Dictionary, 2015 is the freedom for a country, a region or an organization to govern itself independently. Local Government autonomy can be defined as the ability of the Local Government to control its own affairs in political, economic and social decisions without recourse to or undue interference of the Central Government.

Local Government Service Delivery

Local Governments in Tanzania are responsible for service delivery; some services are exclusively devolved to and provided exclusively by the Local Governments such as local land use planning, sanitation, public markets, and local administration. On the other hand, the role to provide services is undertaken concurrently with the Central Government.

Local Governments' roles in service delivery cannot be overemphasized but it is sufficient to say that they are the best service providers than the Central Government; it is for this reason that Stones, 2006 equated a Local Government to a housewife.

Stones points out that "a Local Government acts as the communities' housewife, in that it makes our surroundings fit to live in, keeps the streets clean, educates our children, builds our houses and does all those other similar jobs which enable us to lead a civilized life." It is the position of this paper that like any government, the main responsibility of Local Government is to safeguard the welfare of her community just like a mother safeguarding the welfare of her family

Community participation

Participation has been defined by different authors such as Ndekha, Hansen et al (2003) and Chamala (1995) who provided good holistic starting points for defining participation as '*a social process whereby specific groups with shared needs living in a defined geographic area actively pursue identification of their needs, take decisions and establish mechanisms to meet these needs*' cited in (Ndekha, Hansen et al. 2003) page 326. '*In true participation, even at the highest level, power and control are shared by the participants ... similarly, scientists, managers, politicians, financial institutions and farmers collectively are also involved in controlling (rather guiding) these projects*' (Chamala 1995) page 7.

Community Participation has also been referred as a cumulative process through which beneficiaries develop the managerial and organizational capacity to increase control over the decisions that affect their lives. (MSH 2012) also Ndekha, Hansen et al (2003) defined community participation as a mechanism to empower and facilitate an improvement in the lives of the world's poor people. All these definitions points out the importance of collective actions of beneficiaries and stakeholders for improving lives.

III. METHODOLOGY

3.1 Study Design

In the course of realizing objectives of the study, this study employed Desk Research. Desk Research is the research technique which is mainly acquired by sitting at a desk, it is basically involved in collecting data from existing resources hence it is often considered a low-cost technique as compared to field research, as the main cost is involved in executive's time, telephone charges and directories (Rogers, 1976).

3.2 Data Analysis

This study uses secondary data analysis procedure. Secondary analysis is the practice of using secondary data in research in order to realize the objectives of the study at hand. This procedure saves both time and money and avoids unnecessary duplication of research effort. Secondary data analysis is usually contrasted with primary analysis, which is the analysis of primary data independently collected by a researcher (Wiseman, 1972).

IV. RESULTS AND DISCUSSIONS

The Community in Role of Local Service Delivery

Community participation in governance entails the implementation of the principles of democracy and social justice in which the community has the powers to create the State and bestow it with such powers and authorities so that the later becomes its agent to safeguard its welfare according to its wishes. If the State fails to fulfill its agency functions, the community can revoke its previously bestowed powers hence ending the principle-agent relationship.

In performing exclusive and concurrent service delivery responsibilities, Local Governments are required to engage the community so as to improve the quality of such services and to respond to the commands of good governance and accountability. Failures in quality service delivery are evident where the community is not engaged in the planning and implementing processes.

In most primary services which create direct interactions between the community and service providers such as education, health and water; the standard of such services is influenced by activeness or passiveness of the community as recipient of the services. The poor quality of public service delivery in the education and health sectors is demonstrated by high rates of absenteeism among teachers and doctors; leakages of public funds intended for schools, health clinics, or shortages and stock-outs of pharmaceuticals and textbooks as seen in many low-income countries (Ringold, D. et al, 2012).

For some decades; governments, civil societies, and donors have become increasingly interested in the idea that citizens can hold accountable policy makers and service providers hence the community as a whole can contribute to improved quality of service delivery. As argued by Ringold, D. et al., 2012 the ability of citizens to hold policy makers and service providers accountable is more vivid in what the authors refer to as the Human Development sectors to wit health, education, and social protection, because these sectors involve close interactions between providers and the citizens who use their services.

Loewenson, 1999 and Cornwall and Gaventa, 1999 argue that the role of the community is changing when it comes to issues of service delivery. They further argue that rather than being passive recipients, communities have in many contexts become the active makers and shapers of services, exercising their preferences as consumers and their rights as citizens.

In 2004 the World Bank (WB 2003) has shaped the idea that citizens' participation influence better governance and service delivery, the report states that accountability can be implemented through either a "long route," whereby citizens influence policy makers who in turn influence service delivery through providers, or a "short route," which involves citizens (individually and collectively) to directly influence, participate in, and supervise service delivery by providers. Hence from the analogy of the WB's position, it can be argued that the community has an important role to play in governance and improving service delivery.

Legal Safeguards for Community Participation

The legal framework for community participation in governance and local service delivery in Tanzania is spread through different laws; it is primarily grounded in the Constitution of the United Republic of Tanzania of 1977 (the Constitution), and further detailed in the Local Government legislation. These laws contain requirements to engage the community in governance and service delivery, the scope of such safeguards is discussed hereunder.

Constitutional Safeguards

This part highlights three major constitutional safeguards for community participation which are Supremacy of the Community, Freedom of the Community to participate in Public Affairs and the Right to Information as discussed in the following paragraphs below.

Supremacy of the Community

The United Republic of Tanzania is a state which adheres to the principles of democracy (URT 1977) in constitutional sense, democracy is the system of Government, in the administration of which, every adult citizen of the country enjoys some direct or indirect share. Keeping in view the real spirit and high ideas of democracy, the system of Local Government forms an indispensable part of governance and administration of a country.

The community in the Tanzanian local governance system has the opportunity to participate in direct and indirect democracy and governance; the community is raised into being superior to the State and State organs. Such supremacy of the community is reiterated under Article 8(1) (a) which directs that, the State shall derive all its powers and authority from the people. Therefore, service delivery in the country must be in the fashion and standards set by the community.

Freedom of the Community to Participate in Public Affairs

The Constitution entitles the community to participate in public affairs, it further makes cognizance of other laws that may contain detailed information on the exercise of such powers by the community. For the purpose of Local Governance; the Local Government Elections Act, caters for this and provides for matters related with the right to vote and to be voted in office for all community members as well as other matters related with local elections and making up of a representative local Council.

The Constitution empowers the community to elect leaders including local government leaders; elections enable the establishment of grass root governance which is responsible for local service planning and monitoring. Article 5 it partly states that, every citizen of the United Republic who has attained the age of eighteen years is entitled to vote in any election held in Tanzania.

The provisions of Article 21 (1) on the other hand accommodates the right of the community to participate in the governance of the country, either directly or through representatives who are elected by the people in conformity with the procedures laid down by the law.

The Right to Information

Citizens need information to make smart choices, information is a tool which the community uses to assess and determine if policy makers and service providers do their jobs, deliver quality services, and make effective use of public funds. At this level therefore; in the context of local service delivery, a say “information is power” is a reality.

A growing number of countries are adopting legislation in their constitutions or in separate national laws providing for access to information about public services and transparency (Ringold, D. et al 2012). Tanzania is not an exception, the Constitution provides for the right to freedom of conscience whereby under Article 18 (1) (b) it creates the right to access of information and it *inter alia* states that every person has a right to seek, receive and, or disseminate information.

Safeguards under the Local Government Finances Act

This Act plays a crucial role in safeguarding residents’ participation in service delivery; it ensures that the community pays taxes so that LGAs can generate sufficient revenue to finance public services. Generally, this law makes provision for sources of revenue and the management of funds and resources of LGAs and for matters connected or incidental to securing the proper collection and sound management of finances in the Local Government system.

Several provisions of this law demand consultations of the community when making financial decisions, the general feature in most of its provisions implies that the law empowers community checks in the utilization of LGAs’ financial resources. For example, when a Council (representative of the community) passes the annual budget the later binds the Council hence it is not allowed to spend sums outside the budget under the provisions of Section 43 (4).

A local tax/ rate on the other hand; cannot be valid unless the same is brought before the attention of the community for a period not less fifteen days. Taxes in LGAs are intended not to be a nuisance hence the community need to approve the same. Section 16 of the Act contains a requirement to publish any proposed local tax.

Safeguards under the Local Government Legislation

The Local Government Legislation (i.e. Act no. 7 and 8 of 1982) offers a safeguard through the composition of LGAs and transparency of the Councils’ meetings. Council composition ensures that policy makers emanate from the community through a representative democracy. Members of the Councils consist among others of; elected members from each ward, resident Members of Parliament representing the constituency within which an LGA is situated and members appointed by the Minister from among the residents of the respective LGA.

Besides the Councils’ composition; meetings of the Councils are generally open to the public, and the press. As argued earlier the community is given an opportunity for access to information.¹ In addition to the transparency of these meetings, the Chairperson of an LGA can invite any person to attend and speak on any matter, or participate in any other way, at any meeting of the council.² The legislation also limits powers of LGAs to make any bylaw which may affect welfare of the community in any way without seeking public consultation and opinions.

Direct Democracy

Community participatory appraisal methods have empowered the users of public service to be consulted in the design and evaluation of interventions (Rifkin, 1996). In Tanzania, the community is empowered under the law to engage directly in governance, decision making and planning for appropriate services which the community will be willing to contribute.

Engaging users through mechanisms such as user groups and committees has generally been regarded as a means to ensure the appropriateness of service provision, and to enhance project efficiency. In this context, users have been viewed as recipients of services that are designed for their benefit (Andrea 2000). Compatible with this theory is the powers of the Village Assembly under the law; this organ of the Village Government is composed of all adult members of the village; it has supreme decision making powers and direct influence over

¹ Refer Section 34 (1) of CAP 288 as an example

² Refer S. 40 of CAP 288

the village governance hence implementing accountability in service delivery through a “short route” as suggested by the World Bank Above.

Limitations to the Community Participation Legal Framework in Tanzania

The preceding part presented the legal framework for community participation; several legal pronouncements imply a high recognition of the concept under the law. However, it is one thing to pronounce and a totally different thing to implement. This part highlights some challenges that are inherent in the Tanzanian community participation legal framework.

Absence of Recall Elections

While the Constitution affords the community with a right to participate in public affairs through electing public leaders to the community; the same grants a “security of tenure” to non-performing leaders by denying the community a concurrent power of recalling non-performing leaders, the community is forced to stay with such leaders until when their terms end.

A recall is the power of the voters, provided in States’ Constitutions, to remove elected officials from office before their terms expire. It has been used by voters to express their dissatisfaction with their elected officials (Orange 2016) Constitutions of some States guarantee the right of the people to recall any elected officials, of any Local Government.³ This right ensures a control of the community towards their leaders and makes sure those leaders really represent the will and interests of the community, absence of recall powers in the law partly makes obsolete the provisions of Article 5.

Failure to Control Participation in Public Affairs

Voting is voluntary in Tanzania; a person may ignore voting and abuse his right to vote because it is his freedom⁴ it is neither a civic duty nor an offence to ignore voting. As argued earlier, democratic governance requires every adult citizen to share the governance duty. If this duty is left as a freedom, only a small portion of the total population may participate in elections

Borrowing an example of the 2010 elections, the number of registered voters who voted was lower than 50% of all the registered voters, and the turnout for that year’s election was shockingly low comparing the percentage of turnouts of voters since first election in 1965 (LHRC 2010). This could not be the case had voting been compulsory in the country, compulsory voting requires all adult citizens to appear and cast their votes in elections, voting is treated as civil duty in some countries (Evans, T. 2006). For example, the turnout at Australian elections has never fallen below 90% since the introduction of compulsory voting in 1924.

Erosion of Community Centered Plans

The law recognizes the role of the community in the budgetary processes, a budget of the Council emanates from participatory planning and rising of priorities of public services that the community would prefer to be offered by an LGA.⁵ A budget dully passed by the Council is supposed to bind it and the authority cannot spend sums outside the budget as highlighted earlier.

However, the Local Governance Finances Act on the other hand contains a somewhat plenary provision under Section 43 (8) which empowers the Minister to issue a directive at any time during the implementation of the Councils’ budgets if it appears to him that a Local Government Authority is in contravention of any national policies, guidelines or standards. Such powers appear to be structured discretionary as they are based on the Minister’s personal reasoning of contravention hence capable of eroding community-based plans as shown in an annual budget of LGAs.

Absence of Grievance Redress System

For accountability to work; citizens, once they are informed, need opportunities to transform information into action. Grievance redress mechanisms are one channel that citizens can use for accountability, along with others such as choice and voting. Grievance redress mechanisms (GRMs), also known as complaints-handling systems, are the formal institutions and channels people can use to express their dissatisfaction with service delivery and to demand redress. They can also be used in a positive way to give feedback to providers and policy makers about the performance of services.

³ For example Article III of the North Dakota Constitution

⁴ Article 5(2) every citizen has the right and the *freedom* to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation. Emphasis mine

⁵ See Section 43, CAP 290

The right to information enshrined under Article 12 need to be transformed into action through grievance redress mechanisms, whereby the community can use such information to influence the quality of service delivery by holding providers, program managers, and policy makers accountable.

There are three main grievance redress categories common in other jurisdiction, the first is grievance redress mechanisms within government agencies such as hotlines, complaints offices, websites, and other channels. The second category consists of independent redress institutions, such as tribunals, ombudsmen, civil society organizations (CSOs), and a variety of sector-specific entities, such as labor relations boards.

The third category is the judicial system, primarily the courts whereby courts can hear complaints and requests for redress regarding the failures of line agencies and providers to comply with their statutory and contractual obligations. These mechanisms are not address within the current legal framework making it difficult to enforce the light to information granted to the community by the Constitution. The mechanism in Tanzania has been recently purported to be established by the Complaint Handling Guideline, 2012 which maintains the status quo, it is general, vague, lacks legislative status, and judicial enforcement as the same is a mere guideline (URT 2012).

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

This article made a critical assessment of the effectiveness of the legal framework for community participation in governance and service delivery in the context of local government of Tanzania. The article highlighted the fact that the concept of community participation is recognized and have a constitutional and legal backup. The constitution of the United Republic of Tanzania of 1977 provides for the supremacy of the community, freedom of the community to participate in public affairs safeguards towards community participations such as it highlighted the effectiveness of such a framework through pointing out the strength of the legal framework under the current law, such as the superiority of the community, the right to information and the right and freedom to participate in public affairs.

On the other hand; the absence of recall elections, failure to control participation in public affairs, erosion of community centered plans, and the absence of grievance redress system defeat the effectiveness of the concept of community participation. The article has highlighted in details such weaknesses in the current legal framework.

Recommendations

In order to empower the community and to give it vivid influence on local governance and service delivery, the community participation legal framework needs to be improved. The Local Government Legislation and the Local Government Finances Act should be amended so as to allow and oblige the community to vote, to enable the community to recall and hold liable elected officials in the Councils, to establish a specific grievance redress mechanism, and to secure community centered plans as well as to remove any possible loophole for eroding community preferences in service delivery as it appears in the current community participation legal framework.

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Einstern Alexander Mwankupili, et. al. "Community Participation and Service Delivery: An Assessment of Legal Safeguards in the Context of Local Governance in Tanzania." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(8), 2020, pp. 30-37.