

Strategic mobilization for change: A case of CSO engagement in the Mining Legislation

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Business & Finance

Civil society joins Wassira to oppose Mining Bill

The civil society yesterday joined Agriculture, Food security and Co-operatives Minister Wassira in criticizing the 2010 Mining Bill as flawed, saying it does not encourage transparency in the industry....

Policy Forum said in a statement that the bill classifies much of the information including mining companies' books of accounts and their payments to government....

Because Tanzania is a candidate country to be included in the Extractive Industries Transparency Initiative, the new law should have included a specific reference to this..

The CSO umbrella organization, which monitors government policy said the country made it clear that it is committed to transparency in the mining sector; when it applied to join EITI and the new mining act should indicate such an obligation. PF was among stakeholders which submitted a detailed analysis of the new mining bill of 2010 to the Parliamentary Energy and Minerals Committee at a public hearing.

Who are the players:

- The Policy Forum, a network of over 90 civil society organizations that seeks to strengthen NGO involvement in critical policy processes in Tanzania.
- Legislators including the Energy and Minerals Parliamentary Committee
- Interfaith Committee, one of the most credible voices on mining in Tanzania,
- Legal and Human Rights Centre (LHRC)
- HakiMadini
- ForDIA
- Large and small-scale miners
- Revenue Watch International which works to improve the capacity of the legislature



LHRC, Policy Forum and HakiMadini representatives presenting their case in a Live Radio show

Focused and strategic mobilization of specific groups can play an influential role in advocacy. Bringing together groups already equipped with the basic knowledge, intellectual resources, and training on a particular advocacy issue is an effective way of affecting policy and legislative processes.

Policy Forum's engagement in the 2010 mining legislative process, is a clear example that a coalition does not have to be large in numbers. If it involves the right people and selects the appropriate vehicles to communicate its core messages, it can genuinely generate positive change in policy.

Context

Tanzania is a country endowed with a wealth of minerals, including diamonds, gold and Tanzanite, a gemstone unique to Tanzania. Mining activities account for about 3.2% of Tanzania's GDP and 3.6% of its total tax revenues. Despite the sector's potential to fuel rapid economic growth, there are widespread concerns that mining has not contributed enough to improve the lives of the poor, particularly for those living above and near the mines themselves.

The sector is highly controversial because of the discrepancy between the sector's financial success and its uncertain benefit to citizens' lives. Many Tanzanians believe that the sector disproportionately benefits foreign mining companies. This climate of distrust has only been exacerbated by the fact that the mining contracts and development agreements have been withheld from public scrutiny, and by the government's recent failure to enforce environmental law.

In 2008, the Government started discussions, mainly with major stakeholders, to review the mining policy and introduce a different formula, aiming at more benefits for the country and its citizens.

Process timeline

Setbacks regarding the Mining Act

February
2009

Scheduled legislative changes in a new law

December 2009/
January 2010

Draft presented to "limited group" of stakeholders.

April 2010

April 13: Confirmation that Bill will be presented under certificate of Urgency

April 15: Bill made public

April 16: Issuing certificate of urgency

Rescheduled public hearing from April 17 to April 18

Certificate of Urgency

Although it is legally permissible for a minister to table a bill under a certificate of urgency with the consent of the President, this practice is increasingly subject to criticism as it limits the opportunity for public consultation and debate. Under normal procedures a bill is read for the first time without debate, allowing the responsible committee ample time to consult with the public and analyze the bill prior to debate in the subsequent session (second reading). The certificate of urgency compresses this process into a single session

The commitment to change the mining policy and law was stalled and the foreseen legislative changes to be presented to parliament in February 2009 were not made. Drafts were only presented to (a limited group of) stakeholders in December 2009 and January 2010.

It was also not clear when the draft version of the bill would be presented to a larger audience. The process was not transparent and civil society felt sidelined and excluded of the process. This feeling was even more nurtured by speculations that the Canadian Mission in Tanzania and the Tanzanian Chamber of Minerals and Energy were lobbying behind the scenes to shelve key recommendations made by the Bomani Commission because of vested interests.

Some Recommendations by the Bomani Commission

Royalty on:

- Diamonds from (5%) to (7%);
- Metals like Gold, copper and silver from (3%) to (5%);
- Uranium from current (3%) to (10%)

Introduction of ring-fencing to each mining site

Take steps to achieve a **better deal** for *local communities* affected by mining;

- the local context,
- regional development planning and
- disputes resolution themes

A fast track procedure

On April 13, 2010 the Parliamentary Committee for Energy and Minerals confirmed with RWI that the minister for Energy and Minerals would present the bill under a Certificate of Urgency on April 16 and subsequently a public hearing was scheduled for the following day.

Cognizant of the pressure from the CSOs through media to review the very tight schedule, the public hearing was rescheduled to April 18 to allow some more time for preparation and participation. However the bill was still not publicly available.

With controversies around this particular bill, a certificate of urgency would naturally provoke further public controversy. Despite calls by civil society to use the standard procedure, the minister invoked the certificate of urgency and compressed the review and approval process to less than 10 days.

Need for fast reaction

Policy Forum opted to convene a group of leading CSOs participating in the RWI capacity building program including the prominent Interfaith Committee.

In spite of the limited time available, the group mobilized fast and came up with a two-pronged intervention strategy:

Awareness raising through media

The process for drafting the press statement on April 13/14 began with a joint civil society initiative during the January 2010 PF/RWI workshop.

Agenda Participation, a local NGO and a PF member and participant in the workshop, developed and posted 40 TV announcements, requesting for effective public engagement in the debate and a normal approval process for the bill. TV adverts, addressing legislators to be vigilant while debating the bill were also posted. This became a positive and very powerful message to the legislators. Two hotline numbers for mobile phones were opened to collect views from the general public. Public comments collected over the two days were passed on to parliament during the public hearing.

On April 13, Policy Forum and other civil society organizations issued a press release on the bill.

The Legal and Human Rights Centre (LHRC) organized a press conference on April 14, highlighting the flaws in the process for the bill, including the questionable use of the certificate of urgency. This event was followed by a TV dialogue on the famous program "PAMBANUA" (literally "Analyse"). Three of the four guest speakers were alumni of the PF / RWI capacity building program. Ministry officials invited for the debate did not turn up.

Improving the bill

This task, in close partnership with Parliament was particularly challenging since a copy of the bill was only received on April 15, (from the Energy and Minerals committee) just before the public hearing. RWI legal analysts acted quickly to review the document and prepare a technical opinion.

Three additional analyses of the bill were undertaken by Agenda Participation 2000, Legal and Human Rights Centre and HakiMadini.

Time line of Strategies

PF/RWI
workshop

January
2010

40 TV
announcements
by Agenda
Participation

March 8,
April 10,
2010

Hotline
numbers for
citizens

Press release
by PF and
CSO

April 13,
2010

Press
conference by
LHRC and
TV program

April 14,
2010

Receipt of
Bill and
action by
RWI

April 15,
2010

Improving the bill

RWI's exhaustive technical analysis was shared with more than 20 CSOs gathered in Dodoma and submitted to the Energy and Minerals Committee. The four analyses were compared and consolidated into one common stand to be presented during the public hearing.

The Energy and Minerals committee invited the public on April 17 for the public hearing on April 18. The Energy and Mineral Committee's public hearing took place, as scheduled, in Parliament.

In the process, RWI also facilitated informal sharing of information and dialogue between civil society and the committee, helping to lay the foundations for an ongoing constructive forum for these critical stakeholders.

CSOs emerged as the most organized stakeholder group. They submitted a united statement to the committee, which was presented by the Executive Director of HakiMadini Amani Mustapha with contributions from several others.

Weaknesses of the bill

The Minister for Energy and Minerals, Hon. William Ngeleja, introduced six key features of the bills (see on the right).

The unified statement of the CSOs however pointed at various weaknesses:

- Lack of provisions for small-scale miners and gemstone mining,
- Missing links between the 2009 mining policy and the new Bill
- Omission of Primary Prospective License clause (making it illegal for locals to search and explore minerals)
- A mining license granted to an applicant shall be for the estimated live of the ore body or such period as the applicant may request.
- Omission to review the performance benchmarks and lack of sanctions for non-compliance
- Confidentiality clauses vs the implementation of EITI
- Excessive powers of the Minister to determine the agenda regarding mining developments that are of national interest

Time line of Strategies

Invitation for public hearing

April 17, 2010

Public hearing

April 18, 2010

Request for Expression of Interest to prepare legal framework for the EITI By the Ministry of Energy and Minerals

July 16, 2010

Key features of the Mining Act

1. Government and public participation in mining projects where the government would acquire free carried interest in mining projects
2. Special Mining License and Mineral Development Agreements and the period and extent of fiscal stabilization
3. Restrictions on dealer licensing for uranium mining
4. Decentralized licensing authorities (zonal mines officers)
5. Establishment of a Mineral Advisory Board
6. Changes in royalty rates and base for all minerals, at varying percentages

Achievements

The bill has been adopted as law and the Mining Act has been assented by the president. The above mentioned weaknesses were fully integrated.

CSOs also introduced several recommendations, which are as well taken on board in the last version of the bill:

This includes a principle agreement on the establishment of a Mineral Development Fund (Sovereign Wealth Fund) to address the finite character of mineral resources. MPs (like Hon. Zitto Kabwe) were strongly in support of such fund and the introduction of a specific law on Extractive Industries Transparency Initiative (EITI).

Furthermore, the revised law states that a Primary mining license has a validity of 5 years, renewable for another 5 years. The position of small-scale miners have been clarified and secured.

Success factors

The fact that the civil society prepared itself since January 2010 and the support in terms of capacity building of the Policy Forum and RWI resulted in having various groups already equipped with the basic knowledge, intellectual resources, and training on a particular advocacy issue.

These organizations could also be swiftly mobilized at crucial stages in the process. Access to the technical knowhow from RWI made it possible to have in a very short period (2 days), a thorough assessment of the proposed Bill.

Support from the media helped to diffuse the message to a larger audience, and especially the live radio and television programs helped in achieving awareness creation.

Working in coalition with Members of Parliament was very successful and the unexpected support from a cabinet Minister made it easier to have the recommendations accepted and integrated in the new bill.

Sovereign Wealth Fund

With the aim to support strategic public investments in areas such as infrastructure, to promote small scale miners, as well as education and skills development, among other interventions.

Allies at Hearing

Amongst others:
Hon. Stephen Wassira (Minister,
Agriculture and Cooperatives)

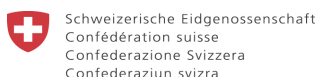
Allies in the process

Amongst others:

Hon. Zitto Kabwe
(MP Kigoma
North,
CHADEMA Party,
Member of the
Bomani
Commission)



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