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DECLARATION

I Divine UMUHOZA declare that this research entitled “Legal Analysis of the Applicability of the Principle of Public Participation in Environmental Matters under Rwandan Legal Framework” submitted in partial fulfillment of the requirement for the bachelor’s degree in law, is my original work. It has never been submitted to any institution for any academic purpose. All sources that I have used or quoted have been indicated and acknowledged using complete references.

Divine UMUHOZA

Done On 14th August 2024

DEDICATION

To:

To my Family

My Supervisor

My friends and colleagues

All Rwandans.

ACKNOWLEDGMENT

Praise to the Almighty Godfather for blessing me with the wisdom knowledge and all the support I needed to complete this study.

I would like to express my sincere gratitude to all the people and institutions that made a positive contribution to this study especially the following:

I would like to express my sincere gratitude to My Supervisor Innocent NDIYAYE
UWIMANA

for his wise and valuable guidance throughout the writing process.

My unreserved appreciation goes to my Family, my Mother, my Brothers, and my Sisters, for being there for me when I needed them. Your love made me stronger.

My deepest appreciation goes to my friends and colleagues in my LLB classes, for their love, jokes, support, trust, and encouragement throughout my studies. I thank you all.

Finally, I acknowledge the whole staff and lecturers of the School of Law, at the ULK for their quality education. Their inspirations helped me to broaden my professional and personal perspectives.

May God Bless You All.

Divine UMUHOZA

LIST OF ABBREVIATIONS AND ACRONYMS

FONERWA: National Fund for Environment in Rwanda

GoR: Government of Rwanda

EIA: Environmental Impact Assessment

EIR: Environmental Impact Report

REMA: Rwanda Environmental Management Authority (the “Authority”)

PP: Public Participation

SEA: Strategic Environmental Assessment

ToR: Terms of Reference

UNEP: United Nations Environment Programme

WB: World Bank

NGO: Non-Governmental Organizations

EMP: Environmental Management Plan

EU: European Union

SOE State of Environment and Outlook

SOER: State of Environment and Outlook Report

MINEMA: Ministry in Charge of Emergency Management

UNEP: United Nations Environment Programme

ABSTRACT

The principle of public participation in environmental matters has been repeatedly recognized by international legislations and policy instruments which defined it as giving everyone the opportunity by their national laws to participate individually or with others in the formulation of decisions that directly affect his or her environment. According to international instruments like the Rio Declaration 1992, this principle has three elements depending on each other namely, the right of access to environmental information, the right to participate in decision-making, and the right to access justice when the environment is degraded.

The study entitled “Legal Analysis of the Applicability of the Principle of Public Participation in Environmental Matters under Rwandan Legal Framework” was conducted after the

researcher found that Rwandan laws and policies do not provide for all elements of the principle of public participation. The researcher's objectives were to critically analyze the extent to which Rwandan laws and policies facilitate the use of public participation in environmental matters, To examine the meaning, purpose, stages, and elements of the principle of public participation, to investigate and establish the current challenges affecting the applicability of the principle of public participation in environmental matters under Rwandan laws and to make appropriate recommendations from foreign jurisdictions with advanced legislation with a view to strengthening public participation in environmental matters in Rwanda.

The research revealed that the current legal and policy framework in Rwanda does not effectively facilitate public participation in environmental matters. It revealed that public participation in Rwanda is associated with various challenges mainly relating to inadequate laws and policies and limited awareness about the role of the public in the protection of the environment among others. It has been recommended that for the Rwandan legal and policy framework to effectively facilitate public participation in environmental matters, laws, and policies need to be reviewed and amended to cover all elements of the principle of public participation. The government of Rwanda is recommended to raise awareness of the role of the citizens in the protection of the environment and mostly to encourage all the stakeholders to consider public involvement whenever required. Rwandans in general are also recommended to read laws and know about their rights including public participation in environmental matters.

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GENERAL INTRODUCTION

Environmental sustainability is a universal concern, impacting every individual and community. Recognizing this, international and national laws have evolved to emphasize public participation as a fundamental component of environmental governance. This study explores the principle of public participation as enshrined in international environmental law and its implementation within Rwandan legislation. It explores the effectiveness of these laws in facilitating the active involvement of the public in environmental decision-making processes, showing the importance of such participation for sustainable development and democratic governance.

1. BACKGROUND OF THE STUDY

It is often acknowledged that the environment is a concern for everyone. A clean environment benefits all, and no one can escape the impacts of a polluted environment.¹ Environmental problems directly affect every individual, community, group, association, and other organization.² Consequently, the involvement of the public in environmental matters is essential to the promotion of sustainable development, democracy, and a healthy environment.³

Public participation as a principle in international environmental law was first articulated in Agenda 21.⁴ It provides that “One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. Furthermore, in the more specific context of environment and development, the need for new forms of participation has emerged. This includes the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and

participate in decisions, particularly those that potentially affect the communities in which they live and work.⁵

It can be further found in international instruments such as Principle 1 of the Stockholm declaration on the environment, principle 10 of the Rio Declaration on Environment and development, in article 1 of the Aarhus Convention and it is principle 23 of the World Charter for Nature, which defines it as “giving everyone the opportunity, in accordance with the laws of his/her country, to participate individually or with others, in the formulation of decisions that directly affect his/her environment”.

Subsequently this principle was included in many global and regional MEAs⁶ including those signed by Rwanda. For example, the United Nations Framework Convention on Climate Change (UNFCCC) under its article 4(1)(i) obliges parties to ‘encourage the widest participation in this process, including that of a non-governmental organization. Article 6 further provides that parties shall promote and facilitate the public’s access to information and public participation.⁷

The Rio Declaration of 1992 proclaimed this principle in a special way as follows:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”⁸

The three elements are connected and the effective fulfilment of each of them depends on the other elements.⁹ Without access to environmental information, for example, participation in decision-making is without substance. Similarly, obtaining a form of compensation for environmental harm through administrative or judicial proceedings is difficult if not all facts are on the table.¹⁰

Provisions relating to the right to public participation in environmental matters in Rwanda,

can mainly be found in the Constitution, and other laws including the Law n°48/2018 of 13/08/2018 on environment, Official Gazette no Special of 21/09/2018, the Ministerial Order No 002/2021 of 08/02/2021 determining procedures for conducting strategic environmental assessment etc.

Although the Constitution of the Republic of Rwanda has no direct provision on the right to public participation in environmental matters, the right could implicitly be inferred from its article 22 which provides that “Everyone has the right to live in a clean and healthy”; article 53 paragraph 1 which provides that “Everyone has the duty to protect, safeguard and promote the environment”

Law n°48/2018 of 13/08/2018 on environment, under its article 6 also provides that “The principle of information dissemination and incentives for environmental conservation contributes to fostering awareness about the usefulness of environment and its conservation. Every person has the right to be informed of the state of the environment and to take part in strategies and activities aimed at conserving the environment”.

Principle of Public participation is further implied in the Ministerial Order No 002/2021 of 08/02/2021 determining procedures for conducting strategic environmental assessment under its article 3(30) (50) which provides that there shall be “consideration of stakeholders” views and transparency in decisions-making”, “access to information generated or compiled by the responsible institution” respectively.

It is assumed that through public participation the quality of the decisions on environmental issues is improved, as well as the implementation of these decisions. In addition, consultations with the public can provide different points of view, various kinds of knowledge, and useful insights that augment the overall efficiency of environmental decision making. 11

Public participation also enables authorities to take into consideration the public’s environmental concerns. In this way, the accountability and transparency of decision-making on environmental issues is enhanced, as well as the public support for such decisions. This decision-making gains legitimacy through the democratic process it

includes.¹² It can thus prevent social unrest that otherwise might arise when certain environmental decisions are taken, such as a mining concession that might result in severe disruptions of communities. Public participation furthermore is thought to raise environmental consciousness among the population.¹³

It is in this perception that, it is imperative that the public should have a right to be involved in environmental decision-making in order to enable them to know what is at stake, to be able to participate in the decision-making itself, and to have the capacity to challenge decisions that violate their rights to the environment.

2. SIGNIFICANCE OF THE STUDY

This section outlines the multifaceted significance of the study, examining its impact from personal, academic, and scientific perspectives. It highlights how the research not only contributes to the researcher's personal and professional development but also provides valuable insights for improving environmental governance in Rwanda.

2.1. Personal Interest

The research contributed to the researcher acquiring an LLB degree, marking a significant personal achievement. It also enhanced the researcher's skills in conducting research, a valuable personal and professional development.

2.2. Academic Interest

The dissertation served as a partial fulfillment of the requirements for obtaining a Bachelor's Degree in Law (LLB), underscoring its academic significance. It offers a resource for policymakers, legal scholars, and law students interested in environmental law and governance, specifically regarding public participation in Rwanda.

2.3. Scientific Interest

The study provides empirical insights into the effectiveness of current environmental laws in Rwanda, making a substantial contribution to the field of environmental law and policy. It informs on the necessity of amending laws to enhance public participation in environmental

decision-making, offering actionable recommendations for legislative changes. The research educates Rwandans about their rights related to environmental governance, which can lead to more informed and effective public engagement in environmental issues.

3. SCOPE OF THE STUDY

This section defines the scope of the study, detailing the geographical focus and thematic areas that will be explored. It examines Rwanda's legal frameworks and incorporates international comparisons to enhance the understanding of public participation in environmental governance as follows.

3.1. Scope in Space

The primary focus of the study is on Rwanda, examining its legal and policy framework related to public participation in environmental matters. Additionally, the research will incorporate comparative references from international legal instruments such as conventions, treaties, and multilateral environmental agreements, as well as foreign laws, especially from South Africa. These references are intended to draw comparisons and identify best practices that could enhance the effectiveness of Rwanda's environmental policies.

3.2. Scope in Domain

The study delves into the principle of public participation within the environmental sector, highlighting its pivotal role in effective environmental governance. It specifically addresses three key aspects: access to environmental information, which focuses on how information is made accessible to the public to ensure transparency and informed participation; participation in environmental decision-making, which examines the mechanisms that enable public involvement in decision-making processes that impact the environment; and access to administrative and judicial proceedings, which explores the channels available for the public to seek justice and participate in administrative processes when negatively affected by environmental decisions.

3.3. Scope in Time

The temporal scope of this study spans from the early 2000s to the present, focusing on the evolution of Rwanda's legal and policy frameworks related to public participation in environmental governance. This period allows for a thorough analysis of key developments in international environmental law, significant milestones in Rwandan legislation, and the integration of best practices from other jurisdictions, particularly South Africa. By examining this timeframe, the study provides both a historical perspective and an evaluation of the current effectiveness of public participation in Rwanda's environmental decision-making processes, highlighting successes and areas for improvement.

4. PROBLEM STATEMENT

The principle of public participation in environmental matters is widely recognized from international instruments such as conventions, declarations and multilateral environmental agreements, to which Rwanda is a party. This principle is also enshrined under Rwandan domestic laws mainly in the law n°48/2018 of 13/08/2018 on environment, among others. From an international perspective, this principle is composed of three aspects namely, “participation in decision-making processes on environmental issues, access to environmental information, and access to administrative and judicial proceedings”.¹⁴

When it comes to laws on the environment in Rwanda specifically the law on the environment, only one aspect of this principle is clearly provided which is “access to environmental information” ¹⁵. Another aspect which is participation in decision making is implied in the ministerial order No 002/2021 of 08/02/2021 determining procedures for conducting the strategic environmental assessment under its article 3(30) which provides that there shall be “consideration of stakeholders’ views and transparency in decision-making”.¹⁶ The same ministerial order provides for procedures for strategic environmental assessment and under its article 4(60) it states that there shall be “requesting the views of the beneficiaries”.¹⁷

From the legal provisions above, the aspect of access to administrative and judicial proceedings is not provided under domestic laws on the environment. Moreover, though

the aspect of participation in decision-making is implied in those laws,¹⁸ there are no clear ways (methods) through which beneficiaries participate in decision-making, they do not provide the procedure to follow to get justice in case the views of beneficiaries or other stakeholders are not taken into consideration or in case they are prejudiced by the decisions taken in disregard of their views.

This research aims to assess the extent to which Rwandan laws and policies facilitate public participation in environmental matters, with a focus on the challenges within the legal frameworks that hinder effective participation. It questions the adequacy of Rwanda's provisions on public participation, particularly regarding access to administrative and judicial proceedings, and whether they align with international environmental law and best practices. By critically analyzing Rwandan environmental laws and comparing them with international standards, the study seeks to highlight the gaps and recommend mechanisms to improve the application of public participation principles in Rwanda.

5. RESEARCH QUESTIONS

This research seeks to address key questions that are central to understanding the effectiveness of public participation in environmental governance in Rwanda. Specifically, the study aims to explore the following sub-questions:

- To what extent does the Rwandan law facilitate the use of public participation in environmental protection?
- How can the Rwandan law be improved to ensure the facilitation of effective public participation in environmental matters in Rwanda?

6. HYPOTHESES OF THE STUDY

A hypothesis is an idea or guess that a researcher makes before starting a study. It suggests what they think might be true about a particular topic, based on what they already know. The researcher then tests this idea to see if it's correct or not. It helps guide the study and gives a clear focus on what to look for during the research.¹⁹

Referring to the research questions that will guide this study, the following hypotheses were formulated:

- Rwandan laws and policies on the environment are to a large extent ineffective in facilitating the applicability of the principle of public participation.
- The Rwandan legal and policy framework does not provide for all the main elements of the principle of public participation.

7. RESEARCH OBJECTIVES

This section outlines the aims of the study, explaining what the research seeks to achieve. It has both general objectives and different objectives as follows.

7.1. General Objective

Critically analyze the extent to which Rwandan laws and policies facilitate the use of the principle of public participation in environmental matters in Rwanda. This encompasses an overall evaluation of the framework and its effectiveness in incorporating public involvement in environmental governance.

7.2 Specific Objectives

- Examine the meaning, purpose, stages, and elements of the principle of public participation in environmental matters.
- Investigate and establish the current challenges affecting the applicability of the principle of public participation in environmental matters under Rwandan laws
- Make appropriate recommendations on legislation, policy, and practices to strengthen public participation in environmental matters in Rwanda.

8. RESEARCH METHODOLOGY

This section describes the methods and techniques used in the study to investigate public participation in Rwanda's environmental governance. Those methods and techniques include the following:

8.1. Research Techniques

During this study, the following techniques will be used to gather relevant data, analyze legal frameworks, and compare Rwandan laws with international standards.

8.1.1. Doctrinal Research

This technique involves analyzing legal texts such as statutes, judicial decisions, and constitutional provisions to interpret and develop legal principles and rules. It focuses on existing legal frameworks, assessing their coherence, gaps, and practical implications.

Doctrinal research is foundational in legal studies and is particularly suited for evaluating how well public participation is integrated into environmental law.

8.1.2. Comparative Analysis

This technique involves examining the laws and practices from different jurisdictions to identify best practices and insights that could apply to the local context. In this study, laws and regulations from South Africa are compared to Rwandan law to glean lessons on enhancing public participation in environmental matters. This helps in understanding how different legal environments implement similar principles and what can be learned from their experiences.

8.2. Research Methods

During this study, the following methods will be used:

8.2.1. Analytical Method

This method involves a detailed examination and interpretation of data collected through various sources. In this research, the analytical method is used to scrutinize different elements of public participation under Rwandan law and to evaluate the challenges and effectiveness of these mechanisms. It helps in making informed recommendations for legislative and policy enhancements.

8.2.2. Historical Methods

The historical method involves examining the development and evolution of public participation in environmental governance over time. This method focuses on analyzing past legal frameworks, policies, and significant events that have shaped the current state

of public participation in Rwanda. By understanding the historical context, the researcher can identify trends, changes, and the reasons behind the current legal provisions. This method is valuable for tracing the progress and setbacks in the application of public participation principles, offering insights into how past experiences can inform future legal and policy developments.

9. SUBDIVISION OF THE STUDY

The objectives of this study will be met in three chapters as discussed below:

The study's objectives will be addressed in three main chapters. Chapter 1 will establish the conceptual and theoretical framework, providing an overview of the principle of public participation in environmental matters, including its meaning, scope, elements, and purpose, with a focus on its basis in International Environmental Law. Chapter 2 will analyze how Rwandan laws and policies regulate public participation, identifying the application, limitations, and challenges of this principle in Rwanda. Chapter 3 will propose legal and institutional solutions to the issues identified in Chapter 2, drawing lessons from advanced jurisdictions like South Africa. The dissertation will conclude with a general summary and recommendations for improving Rwandan legislation on public participation in environmental matters.

CHAPTER I. CONCEPTUAL AND THEORETICAL FRAMEWORKS

1.1 Introduction

This chapter provides a general overview of the principle of public participation. It defines key concepts used in this research, its scope, as well as its elements. It also discusses the purpose of public participation in environmental matters and how it is regulated under International environmental law

1.2 Definition of Key Concepts

To make the work easier for the reader to understand this work and to set up my discussions, the following key terms and concepts are defined: environment, public, general public, directly affected public and environmental impact assessment.

1.2.1 Environment

This study defines the environment from a legal perspective. According to Rwandan law, the environment is:

“a diversity of things made up of natural and artificial environment. It includes chemical substances, biodiversity as well as socio-economic activities, cultural, aesthetic, and scientific factors likely to have direct or indirect, immediate or long-term effects on the development of an area, biodiversity and on human activities”.²⁰

On the other hand, The UK Environmental Protection Act 1990 (EPA 1990) section (2) defines the environment as consisting of: all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below the ground.²¹

According to the Black’s law dictionary, environment refers to “The milieu in which an organism lives. Includes the sum of all of its surroundings. This includes natural forces and other living things. It defines the conditions of danger and damage to existence, as well as development and growth. Refer to environmental factors”²²

1.2.2 Public

Under the public participation principle, the term “public” normally refers to individuals acting both in their roles as citizens and as formal representatives of collective “interested and affected parties”—people, groups, or organizations that may experience benefit or harm or that otherwise choose to become informed or involved in an environmental decision.²³ These may include particular ethnic groups, children, affected neighborhoods, occupational categories, or other categories of individuals, groups, or organizations.²⁴

According to the Aarhus Convention, the public means “one or more natural or legal persons, in accordance with national legislation or practice, their associations, organizations or groups.”²⁵

According to the Black’s law dictionary (2nd edition), the term “public” means the inhabitants of a state, county, or community.²⁶ This has been also defined by the supreme court of Michigan in 1937 in the case of *People v. Powell*, 280 Mich. 699, 274 N.W. 372, 373, 111 A.L.R. 721 where public has been referred to as the inhabitants of a particular place, the people of neighborhood.²⁷

The public can consist of the general public that may be organized interests, sometimes referred to as stakeholders or persons who represent organizations, communities, or alliances that have a particular stake in a decision.²⁸ It can also consist of directly affected public which means individuals and non-organized groups that will experience positive or negative effects from the outcome.²⁹

1.2.3 Public participation

Public participation refers to “the process by which public concerns, needs and values are incorporated into governmental and corporate decision making.” It may be defined even more broadly to include citizens making and implementing decisions on matters of public concern directly and in ways that are largely or even entirely independent of government.³⁰

Different authors like Du Plessis, Pierre Andre and Others, and Jean Claude Ashukem defined public participation. Du Plessis describes public participation in layman’s terms as the communication of views or concerns on public issues by those concerned or affected.³¹

In the same line, Pierre André and others defined public participation as the involvement of individuals and groups that are positively or negatively affected by, or that are interested in, a proposed project, program, plan or policy that is subject to a decision-making process.³²

For Jean Claude Ashukem, public participation is generally a multi-layered activity that

involves participation in decision-making and policy-making, proceedings to challenge the outcome of decision-making and governance processes”.³³

From the definitions provided above, it is understood that public participation in environmental matters refers to the engagement of all those concerned by a decision that is going to be made and is likely to affect them negatively or positively or their involvement in the process of challenging the decision taken when necessary.

1.2.4 Environmental Impact Assessment

According to Patrick Owiny, Environmental impact assessment (EIA) is a procedure that seeks to ensure that adequate prior information is obtained on likely environmental consequences of development projects, on possible alternatives, and on measures to mitigate the adverse impacts.³⁴

The International Association for Impact Assessment (IAIA) defines EIA in a detailed way as “the process of identifying, predicting, evaluating and mitigating the social, biophysical, health and other effects of project’s proposals before any decision to proceed or halt the project is arrived at”.³⁵

In Rwanda, Ministerial order no 001/2019 of 15/04/2019 established the list of projects that must undergo environmental impact assessment, instructions, requirements, and procedures to conduct environmental impact assessment, it refers to a systematic process of identifying environmental, social and economic impacts of a project, before a decision of its acceptance is made.³⁶

According to South African Law, An EIA is a formal process used to predict the environmental consequences (negative and/or positive) of a plan, policy, program, or project prior the implementation decision. EIA proposes measures to adjust impacts to acceptable levels or to investigate new technological solutions/alternatives that may reduce impacts or eliminate them altogether, as well as measures to monitor and manage impacts.³⁷

In UK, Environmental Impact Assessment (EIA) is the process consisting of the preparation, submission and consultation of an environmental statement (ES), the

Secretary of State's (SoS) conclusion on the significant effects of the project on the environment considering any further information and representations and the integration of the SoS conclusion into the decision as to whether to agree to the grant of the consent.³⁸ After defining key concepts, the following section discusses the reason behind the principle of public participation.

2.3 Purpose of public participation in environmental protection

Public participation is essential for good governance in environmental matters and may empower local communities. One can mention 5 things that summarize the importance of public participation. First, it aims specifically to invite the affected and interested public into the decision-making process to foster justice, equity and collaboration.³⁹ Second, it informs and educates stakeholders (which includes the proponent, public, decision-maker(s) and the regulator) on the planned intervention and its consequences.⁴⁰ Third, with public participation, data/information is gathered from the public about their human (including cultural, social, economic and political dimensions) and biophysical environment, as well as about the relations (including those related to traditional and local knowledge) they have with their environment. ⁴¹ Fourth, with the information gathered from the public on the planned intervention, positive outcomes of the planned intervention increase.⁴² Fifth, public participation allows better analysis of proposals leading to more creative development, more sustainable interventions and consequently greater public acceptance and support of the decision or intervention than would otherwise be the case.⁴³ Sixth, public participation facilitates mutual learning and empowerment of stakeholders.⁴⁴ The next section indicates how the public participation principle developed historically.

1.3 The scope of the principle of public participation

Concerning the scope of public participation, one would refer to the Aarhus Convention which provides a comprehensive approach to public participation.⁴⁵ According to this convention, public participation covers specific activities, environmental plans, programs and policies and preparation of executive regulations and applicable legally binding normative instruments.

With regard to specific activities, public participation is used when listed or specified activities are going to be undertaken as required by article 6 of the convention. In Europe, such activities are clearly provided under annex I to this convention.⁴⁶

In relation to environmental plans, programs and policies, Article 7 of the same convention obliges state parties to ensure that the public participates in the preparation of plans, programs and policies relating to the environment, within a transparent and fair framework, with provision of the necessary information to the public.

Concerning participation in the preparation of executive regulations and/or generally applicable legally binding normative instruments, article 8 of the convention said above, requires state parties to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. The public must be given an opportunity to participate at an appropriate stage and while options are still open, during the preparation.⁴⁷

With discussions on what is generally covered under public participation, it is important to examine its elements.

1.4 Elements of the principle of public participation

Elements of public participation can be easily identified from different legal instruments like Rio Declaration, UN World Charter for Nature, Aarhus convention, and others.

The Rio Declaration on Environment and Development (hereinafter 'Rio Declaration') describes the principle of public participation as follows: At the national level, citizens should have access to information and participate in decision-making processes. States should facilitate and encourage public awareness and participation by making information widely available and providing effective access to judicial and administrative proceedings.⁴⁸

From the above statement, it is clearly shown that public participation has three main elements: access to information concerning environment, participation of all concerned citizens in decision making, and effective access to judicial and administrative proceedings.

Different authors like Dinah Shelton, Leslie-Anne Duvic-Paoli and others also affirm that public participation has these three elements.

For Dinah Shelton, the three elements of public participation are connected to each other and the effective fulfilment of each one of them depends on other elements. Without access to environmental information for example, the participation in decision-making is without substance. Similarly, obtaining a form of compensation for environmental harm through administrative or judicial proceedings is difficult if not all facts are on the table.⁴⁹ Leslie-Anne Duvic-Paoli argues that access to information is the pre-requisite for meaningful participation in environmental decision making. S/he adds that the public has the right to get involved in decisions that affect its environment; and access to justice which is a means to having decisions reviewed.⁵⁰ Similarly, Gidey, Desta Gebremichael and Steven Stec and others confirm that access to information is the cornerstone or the first important step towards genuine or meaningful public participation. ⁵¹

1.4.1 Access to Environmental information

Access to environmental information entails making information available and accessible to any person in an affordable, effective and timely manner without proving a legal or other interest.⁵² Such information can be related to environmental quality, environmental impacts on health and factors that influence them, legislation, policy and advice on how to obtain information.⁵³

According to Jeroen van Bekhoven, to ensure access to information, state authorities have duties of collecting and updating relevant information, responding to demands for information within a reasonable limit of time, maintaining low costs for obtaining information, and guaranteeing equal access for everyone to the information. ⁵⁴

According to this same author, access to environmental information is essential to public participation, because it enables the public to obtain knowledge about factors such as the decision-making processes, the decisions to be taken, and the relevant facts and interests necessary to make an informed personal choice.⁵⁵

1.4.2 Public Participation in decision making

First of all, Participation in decision-making means a possibility for the citizens, civil society organizations (CSOs) and other interested parties to influence the development of policies and laws which affect them.⁵⁶

It entails opportunities for the public to give their views, concerns, interests and fears related to the decision that is going to be made. To be effective, members of the public should be informed about their opportunities to participate in decision-making processes at an early stage.⁵⁷

Richardson and Razzaque argue that participation in decision making can arise in a variety of contexts, including in decisions concerning specific development proposals, plans and policies, and in regulation-making processes.⁵⁸ They further argue that the public environmental enquiry is another means of public participation.⁵⁹

Du Plessis provides the importance of public participation in decision making stating that it is important for accountability of political and administrative decision-makers. Such accountability becomes reinforced when environmentally relevant processes are open to public view because participation in decision-making puts pressure on administrators to follow, for example, required procedures in all cases.⁶⁰

Additionally, broad public participation in decision-making processes is important for it is one of the fundamental prerequisites for the achievement of sustainable development.⁶¹

Mark S. Reed argues that “Stakeholders must be empowered to participate in decision-making and have the technical capability to engage effectively. When decisions are highly technical, it may be necessary to educate participants and develop their knowledge and confidence. Participation is not appropriate if the decision has already been made or cannot be influenced by stakeholders.”⁶²

Furthermore, Reed states that the participatory process is effective if stakeholder participation is considered right from the outset, from concept development and planning, through implementation, to monitoring and evaluation of outcomes. Such early participation leads to high-quality and durable decisions⁶³ and it is required in the UNEP Guidelines for

the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters.⁶⁴

1.4.3 Access to Justice

According to different scholars like Gidey, Emeka, Jeroen, and Claudia, the access to justice element aims to ensure proper enforcement of the rights to access to information and public participation in decision-making, and to enable the public to seek judicial remedy or access to a review procedure where it is alleged that these rights have been infringed. This can improve the protection of the environment by allowing those who are aggrieved or concerned citizens to initiate actions before the appropriate administrative and judicial authorities to obtain prompt and adequate remedy. ⁶⁵

Access to justice can be obtained through different forms such as judicial review, public interest litigations, standing, having environmental courts and alternative disputes resolution (ADR) processes, legal aid and intervener funding.⁶⁶

With judicial review, the public can challenge decisions made by public bodies in courts and courts check if the public bodies have acted within their statutory powers.⁶⁷

This reflect what happened in the case *Squire, R (On the Application Of) v Shropshire Council* [2019] EWCA Civ 888 (24 May 2019) that happened in the United Kingdom, where the Court of Appeal has quashed a planning permission granted by Shropshire Council ('Council') for an intensive chicken farming facility in Shropshire due to the Council's failure to consider the likely effects of odor and dust arising from the proposed disposal of manure.⁶⁸

For public interest litigation, this is legal proceeding seeking for redress of the injury that is suffered by the public in general. Public interest litigation is possible only if the court gives the applicant standing to argue the case.⁶⁹

Concerning environmental courts, they can be used because many environmental issues are assumed to be highly complex and technical, which require having specialized institutions for evaluation of the claims and evidence. Having such courts would also enhance the role of specialist judges in developing a consistent environmental

jurisprudence. For example, The Land and Environment Court in New South Wales are widely considered the world's first environmental court.⁷⁰ It is composed of judges and technical commissioners who shall meet the corresponding professional qualifications in areas including local government management, urban and rural environmental planning, environmental science, environmental protection, environmental assessment, plant cultivation and horticulture, and natural resource management.⁷¹

With regard to legal aid and intervener funding, access to justice often entails having financial resources. Because the public seeking remedies through courts is likely to suffer from financial constraints and is likely to be unable to bear the costs of hiring counsel and researching evidence, or adverse costs awarded when the case is lost, the government provision of legal aid and intervener funding are vital complements to participation reforms.⁷²

From the above discussions on access to justice, I appreciate having environmental courts and ADR processes. To me, having specialized courts and judges is important in rendering justice in environmental matters. If there are no special courts, judges to hear environmental cases should be the ones with special skills in environment matters, at least.

1.5 Regulation of Public Participation under International and Regional Environmental law

The normative evolution of public participation principle is rooted in various binding and non-binding international and regional environmental instruments.⁷³ It is also rooted in some international and regional human rights instruments which are very briefly discussed before discussing those related specifically to environment protection.

1.5.1 Public participation from human rights instruments

Different international and regional human rights instruments such as the Universal Human

Rights Declaration, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights recognized public participation.

As early as 1948, the universal declaration of human rights provided the framework for generalized right of access to information⁷⁴ and justice.⁷⁵ In addition, its article 21 recognizes the right to participate in the conduct of public affairs which includes affairs related to environmental protection.

The International Covenant on Civil and Political Rights (ICCPR) promulgated in 1966 also recognized public participation under its provisions. Under article 19(2), this covenant guarantees the right of access and dissemination of information. The article says:

"Everyone shall have the right 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 his choice."⁷⁶

Besides, article 25 provides for the other element of public participation which is the right to participate in public affairs by citizens directly or through freely chosen representatives.⁷⁷

At regional level, the African Charter on Human and Peoples Rights of 1981 guarantees the right of access to information,⁷⁸ the right to participation either directly or through freely chosen representatives⁷⁹ and the right to justice.⁸⁰

From the above discussions, it is clear that public participation is provided under international and regional human rights instruments. Though the instruments do not specifically mention environmental matters; they are implicitly included. It is important to note that public participation as provided under those instruments, is not discriminatory, meaning that every citizen regardless of his/her status is included.⁸¹ It is also important to note that the right to participation has been recognized as an essential tool in the exercise of other rights such as the right to life, right to good health among other rights.⁸²

1.5.2 Binding international and regional environmental instruments

While there may be a number of international and regional legal instruments that call for public participation in environmental matters, in this research, it was found necessary to

highlight the following: the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), the Cartagena Protocol to the Convention on Biodiversity, the United Nations Convention to Combat Desertification (UNCCD), the Paris Agreement, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), the African Convention on the Conservation of Nature and Natural Resources, and the East African Community Protocol on Environment and Natural Resources Management.

Starting with the UNFCCC, its article 6 calls for education, training and public awareness in climate change matters. It also provides for public access to information on climate change and its effects and encourage parties to promote and facilitate public participation in addressing climate change and its effects and develop adequate responses. This article covers two elements of public participation namely access to information and participation in decision making.⁸³

The CBD provides that Contracting Parties should introduce procedures for environmental impact assessment of proposed projects to avoid or minimize adverse effects on biological diversity and involve public participation.⁸⁴

For the UNCCD, public participation is provided in its article 3(2)(b) call for state parties to promote, on a permanent basis, access by the public to relevant information, and wide public participation in education and awareness activities.⁸⁵

For the Cartagena Protocol to the CBD, its article 23 requires States parties must facilitate awareness, education, and participation in the safe transfer, handling, and use of living modified organisms, taking into account risks to human health. Access to information on imported living modified organisms should be ensured, and the public consulted in decision-making. Each party must inform its public about the Biosafety Clearing House.⁸⁶

In the Paris Agreement, article 12 provides that states Parties must cooperate to enhance climate change education, training, public awareness, participation and access to information.⁸⁷

Under the Espoo Convention, article 2(6) states that the public shall be allowed to participate in areas or matters that are likely to affect them in EIA procedures concerning activities that affect them indiscriminately. In addition, article 3 (8) provides that States parties must ensure that affected public have the right to be informed and provided with opportunities to make comments or objections on proposed projects.⁸⁸

The African Convention on Nature Conservation, article XVI obliges States to adopt legislations that enable the public to participate in decision making, to access environmental information and to access the court for recourse for environmental injustice. This article clearly provides for all three elements of the principle of public participation.

For the regional EAC Protocol on Environment and Natural Resources, the Protocol mentions various areas covered including public participation, access to information and justice.⁸⁹

Moreover, Article 34 of EAC Protocol on Environment and Natural Resources requires Partner States to adopt common policies, laws and programs relating to access to information, justice and the participation of the public in environmental and natural resource management.⁹⁰

Rwanda is a member to the above discussed international and regional instruments (with the exception of the Espoo Convention). It therefore bound to implement the principle of public participation because the Rwandan Constitution recognizes that ratified international conventions or treaties become binding to Rwanda. They are at the 3rd rank in hierarchy of

norms; they come after the Constitution and Organic Laws.⁹¹ Rwanda cannot have a defense to breach the international obligation of ensuring that there is public participation in environmental matters. It cannot have a domestic law that differs from that international obligation and the government should not fail to give effect to that international norm.⁹² This is also in accordance with articles 27 and 46 of the Vienna Convention on the Law of Treaties 1969.

Most of the above discussed instruments adopted the principle of public participation with inspiration from soft law instruments examined below:

1.5.3 Soft law instruments related to environment protection

The key soft law instruments that contain the PPP which need to be indicated are the Stockholm Declaration on Human Environment, World Charter for Nature, Rio Declaration on Environment and Development and Johannesburg Declaration on Sustainable Development.

The Stockholm Declaration is credited to be the first soft law instrument, albeit indirectly, which highlighted the importance of public participation in environmental decision making. According to Mwebaza, though the Stockholm Declaration does not use the term 'public participation',⁹³ the latter is indirectly provided under its principle 1 which says: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations". Also, Gidey Desta Gebremichael argued that the Stockholm declaration can be taken as the genesis of public participation in the international arena, even though it did not explicitly use the term.⁹⁴

Besides, principle 1, principle 19 of Stockholm declaration also indirectly provides for public participation by saying: "Education in environmental matters, for the younger generation as well as adults is essential in protecting the environment."⁹⁵

In this regard, public participation is implied given the fact that due consideration is given to under-privileged. In addition to that, the call for enlightened opinion and responsible

conduct by individuals, enterprises and communities in protecting and improving the environment clearly presumes public participation.

The World Charter for Nature, under its paragraph 23, provides that "All persons have the right to participate in decisions affecting their environment and have access to redress for damage or degradation."⁹⁶

Under Rio Declaration, public participation is fully provided by its principle 10. It states that environmental issues are best handled with participation of all citizens at the relevant levels. Meaning that everyone concerned has to participate without any kind of discrimination. It further provides three elements of public participation namely: access to information, participation in decision making and access to justice.⁹⁷

For the Johannesburg Declaration on Sustainable Development, its paragraph 26 states that Sustainable development requires broad-based participation in policy formulation, decision-making and implementation, with all social players respecting their individual roles."⁹⁸ This statement obviously provides for public participation.

1.6 Conclusion of the chapter

This chapter has provided a general overview on the principle of public participation in environmental matters. It has given definitions of key concepts relating to the principle of public participation, scope, elements and stages of public participation, and how public participation is regulated under international binding and non-binding instruments. The chapter indicates that public participation firstly appeared in international soft law instruments and was later incorporated in binding international instruments related to environment and in national laws. For the scope, it was revealed that it can cover a wide range of areas including environmental plans, programs and policies and preparation of executive regulations and applicable legally binding normative instruments. Concerning elements of public participation, it has 3: Access to information, participation in decision making over environmental matters and access to justice to redress environmental injustices.

This chapter also discussed the purpose of public participation which is mainly to contribute to better analysis of proposals leading to more creative development, more sustainable interventions and consequently greater public acceptance and support.

This research found that one element affects others and that access to environmental information is a pre-requisite because the public can neither participate in decision making nor seek for access to justice if it is not informed. However, if there is no access to justice, access to information and participation in decision making are also difficult to be realized.

The following chapter will discuss in details how public participation is regulated under Rwandan domestic laws/regulations/policies as well as the challenges associated with Rwandan laws.

CHAPTER 2: ANALYSIS OF THE RWANDAN POLICY AND LEGAL FRAMEWORK ON PUBLIC PARTICIPATION AND THE CHALLENGES ASSOCIATED.

2.1 Introduction

This chapter examines public participation in environmental matters and Rwanda's policy and legal framework. The chapter evaluates how this principle is applied, the limitations and challenges faced with the applicability of the doctrine of public participation

2.2 Policy Framework Governing Public Participation

Under this section, the following policies are examined: General Guidelines and Procedures for Environmental Impact Assessment (2006), Guidelines for Environmental Audit in Rwanda (2009), Guidelines for Environmental Impact Assessment (EIA) for oil and petrol projects in Rwanda (2012), Guidelines for environmental impact assessment (EIA) for mining projects in Rwanda (2012), and National Environment and Climate Change Policy (2019).

2.2.1 General Guidelines and Procedure for Environmental Impact Assessment and Guidelines for Environmental Audit

The General Guidelines and Procedure for Environmental Impact Assessment were adopted in 2006. They encourage public participation where they provide that the EIA process is dependent on public participation.⁹⁹ The public can be individuals, groups of people, governments, businesses, non-profits, and other entities.¹⁰⁰ The public can participate through a public consultation which should be conducted before, during, and after the completion of the project.¹⁰¹ Public hearings should be presided over by a REMA-appointed presiding chair and include a range of individuals, agencies, and organizations.¹⁰²

REMA must notify the public of proposed development projects IN Environmental Impact Report and public hearing by posting public posters, publishing a notice in a newspaper, announcing it in Kinyarwanda, English, and French, holding three public meetings, and sending notices at least once per week.¹⁰³

These guidelines further list other methods of public participation considered appropriate namely public review of the environmental impact report, informal group meetings, workshops, public displays, public notification, participation in scoping processes, surveys, consultation with focus groups, comment and review of the EIA, and distribution of relevant documents.¹⁰⁴ REMA can issue a Certificate of Authorization after approval, but if rejected, the developer can abandon the project, improve and resubmit an EIA report, or appeal to the Minister for Environment. ¹⁰⁵

Concerning the Guidelines for Environmental Audit, they were adopted in 2009 and provide that environmental audit have been generally considered as private and confidential.

However, it is still possible to use the public in audits so that the members of the public can highlight areas of priority concerning them.¹⁰⁶ Under these guidelines, public participation is encouraged when there is a public interest or significant impact of operations on the lives of the on the community.¹⁰⁷

2.2.2 Guidelines for Environmental Impact Assessment (EIA) for Oil and Petrol Projects in Rwanda (2012)

These guidelines provide criteria for petrol and oil station project classification, roles and responsibilities of stakeholders, and promote good environmental practices. 108 They are intended to help oil and petrol station developers and EIA consultants to prepare better Environmental Impact Statements and ensure sufficient information is available for a proper assessment. 109 They also provide for public hearings to inform stakeholders about development projects, obtain their inputs, and use the information in decision-making. 110 These guidelines provide relevant levels of public involvement and explain that public consultation should be conducted before, during, and after completion of the project. 111 The guidelines also provide different methods of public participation as provided by EIA guidelines of 2006. 112

2.2.3 Guidelines for environmental impact assessment (EIA) for mining projects in Rwanda (2012)

These guidelines state that public participation in EIA processes is essential to promote sustainable decisions by recognizing and communicating the needs and interests of all participants. 113 They encourage public participation in EIA for mining projects in Rwanda by taking inspiration from principle 10 of the Rio Declaration by providing that effective public involvement should cover access to information, opportunity to participate in the decision-making process, and effective access to administrative and judicial proceedings. 114 They also provide a range of stakeholders to be involved, including government ministries, local government bodies, private sector organizations, trade unions, local communities, and NGOs. 115 They also copy the mechanisms of public participation provided by the EIA Guidelines of 2006.

2.2.4 National Environment and Climate Change Policy (2019)

The main goal of this policy is for “Rwanda to be a nation that has a clean and healthy environment, resilient to climate variability and change that supports a high quality of life for its society.” 116

This policy encourages public participation in environmental management and climate change intervention decision-making. The guiding principle (i) states that effective

involvement of women and youth is essential and should be encouraged, while the guiding principle (xi) states that everyone has the right to be informed of the state of the environment and to take part in decisions aimed to protect it.¹¹⁷

Conclusively, all policies discussed above define the term “Project” as a developmental activity or proposal which has or is likely to have an impact on the environment. This encompasses policies, plans and programs or strategic environmental assessment as well as technology and other categories of activities.¹¹⁸ They all clearly encourage public participation in environmental matters and recognize the importance of public participation where they commonly provide that: “when people are informed about projects and empowered to invoke changes, their concerns reduce and are more receptive to proposed developments”. Moreover, the policy framework discussed above to a small extent facilitate access to justice because it only provides for administrative appeal and not judicial appeal where necessary.

In addition to the policy framework, Rwanda has a legal framework that supports implementing public participation in different guidelines. The following section discusses the legal framework governing public participation in environmental matters in Rwanda.

2.3 Legal framework governing public participation in environmental matters in Rwanda

Different laws starting from the Constitution regulate public participation. Such laws are the Law on Environment, the Law relating to access to information, the Ministerial Order for the procedure of conducting strategic environmental assessment and the Ministerial Order establishing the list of projects that must undergo environmental audit and related procedures, and the Ministerial Order establishing a list of projects that must undergo environmental impact assessment.

2.3.1 The Constitution of the Republic of Rwanda

The Rwandan Constitution entitles to everyone the right to live in a clean and healthy environment in article 22. It further provides for the right to participate in government and

public services in Article 27 (1). By providing the right to participate in the government, participation in environmental matters is impliedly included.

One would argue that the provisions above clearly provide for a constitutional basis upon which public participation in environmental matters can be construed.

2.3.2 Law N°48/2018 of 13/08/2018 on Environment

This law determines the modalities for protecting, conserving and promoting the environment.¹¹⁹

It provides for public participation in environmental conservation through the principle of information dissemination and incentives. According to this principle, everyone has the right to be informed and to take part in strategies and activities to conserve the environment.¹²⁰

Additionally, article 22 of that law provides for access to information through education on the conservation of environment and climate change and access to information is a component of public participation.

Though this law encourages public participation, only one element of public participation is provided and that is “access to environmental information”. To a small extent, it encourages the second pillar(element) which is participation in decision making.¹²¹

Therefore, public participation as regulated under this law is limited taking into account that the principle of public participation is composed of three elements namely access to information, participation in decision-making and access to administrative and judicial proceedings which depend on each other as it has been clearly explained in chapter two.¹²² One would question how affected stakeholders get justice in relation to this law if there is no provision on the ways of access to administrative and judicial proceedings.

2.3.3 Law N° 04/2013 of 08/02/2013 relating to access to information

The purpose of this law is to enable the public and journalists to access information possessed by public organs and some private bodies. Moreover, it is to establish modalities and procedures to promote the publication and dissemination of

information.¹²³ This law defines information as “facts, things intended to be done, speeches held in reports, documents to be published, pictures, mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, papers, samples, and any other material of public interests held in any form by a public organ and certain organs of private bodies”¹²⁴.

As far as public participation is concerned, the provision of article 1 of this law as indicated above, contains the first element of the principle of public participation which is access to information.¹²⁵ This law provides to everyone the right of access to information in possession of a public organ and some private bodies¹²⁶ and this includes environmental information. This law is therefore relevant because it provides the very basic element of public participation. Though it does not specifically refer to environmental information, obviously it is included. Hence, this law also plays a role in the promotion of public participation in environmental matters.

2.3.4 Ministerial Order No. 002/2021 of 08/02/2021 determining procedures for conducting strategic environmental assessment

This Ministerial Order determines procedures for conducting strategic environmental assessment.¹²⁷ Strategic environmental assessment is defined as systematic process of assessing and addressing the environmental aspects and consequences of proposed policies, plans and program before decision making.¹²⁸

In order to fulfill that purpose, this ministerial order provides for guiding principles among which public participation is included. Public participation in this regard is found in article 3(30) and (50). They provide for “consideration of stakeholders’ views and transparency in decision-making” and “access to information generated or compiled by the responsible institution” respectively. Moreover, it provides that the responsible institution engages all relevant stakeholders in the strategic environmental assessment process of a proposed policy, strategic plan or program.¹²⁹

Though this ministerial order encourages public participation, it can be criticized for not

providing for methods or mechanisms that can be used for public participation.

2.3.5 Ministerial Order No. 001/2021 of 08/02/2021 establishing the list of projects that must undergo an environmental audit, instructions, and procedures for conducting environmental audit

This ministerial order does not provide much about public participation since it is only concerned with establishment of a list of projects that must undergo environmental audit before they obtain authorization for implementation as well as instructions and procedures for conducting environmental audit.¹³⁰ Environmental audit is defined as a systematic documentation, objective and periodic evaluation of protection and management of the environment and of conservation and sustainable use of natural resources.¹³¹

However, article 10 provides for involvement of the public in decision making through the use of public hearing. The said article says: “If it is necessary to hold public hearing, the Authority determines an additional period of thirty (30) working days from the date of public hearing notification”.

2.4 Analysis of the extent to which Rwandan laws and policies facilitate the use of public participation in environmental protection

The policies, laws and regulations discussed above clearly show that public participation in environmental matters is encouraged and provided for in Rwanda. They all recognize the importance of public participation in environmental matters especially in environmental impact assessment. Furthermore, they define different stakeholders to be involved depending on the concerned matter. Different methods of public participation such as Public review of Environmental Impact Reports, Informal group meetings with local community groups and leaders, Workshops, Public displays or bulletin boards posted in communities, Public notification and calls for written comments on proposed projects/activities, Participation in scoping processes, are provided by these

instruments.¹³² The Rwandan legal framework further encourages public participation but it is limited to its two pillars: access to information and to some extent participation in decision-making. Public consultation and public involvement were the only stages of public participation provided by the frameworks discussed above.

Despite the above positive contributions of the Rwandan legal and policy instruments to promoting public participation, there are several criticisms regarding the regulation of public participation in environmental matters in Rwanda.

Firstly, methods of public participation provided are just listed and to some extent seem vague especially to amateur people yet they might be interested. Moreover, those methods are more technical and can be used by educated or expert people and not amateurs and villagers. For example, among the methods are bulletin boards posted in communities and public notification and calls for written comments on proposed projects/activities, among others. Bulletin boards are hard to interpret for unskilled people. Plus, written comments can also be a barrier to those who do not know how to write.

Second, the Rwandan legal framework provides elements of public participation but when it comes to the third element which is “access to administrative and judicial proceedings” to a small extent, administrative reviews are allowed but there is no indication where a concerned stakeholder may take an action to court if not satisfied by an administrative decision. This is problematic and a hindrance to the use of the right of the public to participate in environmental matters. It is questionable whether there is public participation when the aggrieved parties cannot challenge the decision taken to their detriment.

Third, as it has been discussed in chapter two, there are five recognized common stages of effective public participation namely information, consultation, involvement, collaboration and empowerment. When it comes to Rwandan situation, only the first three stages are provided and that can only encourage passive participation. With this issue, one would wonder if there is public participation at all if they can only provide their views but not actively participate in the decision-making.

Decisively, Rwandan policy and legal framework on environmental protection encourages

public participation to some extent. However, it does not facilitate its applicability because of numerous uncertainties associated with those laws and policies especially lack of detailed provisions on stages of public participation and lack of provisions on access to justice which make Rwandan law not effective in ensuring effective public participation. Besides, different challenges impact the effective use of public participation as examined below.

2.5 Limitations and Challenges Faced in the Use of Public Participation Principle in Rwanda

Public participation in environmental matters is hindered by numerous challenges and limitations Those relevant in Rwanda are the following:

2.5.1. Lack of Communication Between Government and Local People

This is associated with the Government information not being shared with the local population before projects are developed, and project authorities often make promises that are rarely kept. 133

This reflects what happened Nyabihu District, Northern Province, where a stone crushing factory(plant) was established approximately in 10 meters from neighboring people and started its operations without consulting people about the effects of those operations on their lives and agricultural activities. The district mayor of Nyabihu said that they knew that the factory was operating since they had some agreement with it before it was established. The fact that the factory started its operations without respecting environmental regulations specifically Environmental Impact Assessment and most importantly without considering citizens' views makes the laws relating to environment and their enforcement questionable.134 This is clearly a challenge to the exercise of the right of public participation in environmental matters.

2.5.2 Low Levels of Environmental Rights Awareness

The low levels of environmental awareness, is often associated with inadequate technical

human resources and low intra-sectoral coordination on environmental issues.¹³⁵

This is associated with the lack of framework for public awareness and education with regard to environmental matters. Low level of literacy makes it more arduous to impart environmental information to the general public. Moreover, it has a great potential to impede levels of appreciation of environmental impact of any particular project.¹³⁶

Consequently, this can result in lack of reporting resulting in low public awareness and stakeholder engagement.¹³⁷ Hence this lead to limit the extent of public participation in environmental protection.

In line of the above limitation, Sandra E. Odemene affirmed that “Lack of formal education, expertise, and supporting resources makes it difficult for members of communities, a lot of whom are uneducated, to fully get involved and contribute efficiently in participation programs.

2.5.3 Confidentiality Restrictions

The EIA process for major projects lacks adequate provision to inform the public. For example, the classification of documents as confidential can prevent public dissemination and in the absence of transparency (openness), it is difficult for effective public participation to be achieved. Moreover, lack of transparency fosters mistrust and misunderstanding between project authorities and communities.¹³⁸ Consequently, it may weigh against early involvement and consideration of alternatives.¹³⁹

2.5.3 Cost of Participation

Members of the public usually have other commitments, and it is a myth that poor people have an excess of free time. The time available for participating in environmental matters may be limited; hence, consistently high levels of participation tend to be the ideal rather than the practical norm over a long period of time, especially as far as the attendance of meetings and/or public hearings is concerned. Involvement means time spent away from income-producing tasks.¹⁴⁰ This is an issue in Rwanda because it has been even provided by REMA in 2006 guidelines for environmental impact assessment as one of the

factors that may lead to constrained public participation.

2.5.4 Inadequate Appeal Procedures in the Legal Framework on Environmental Protection

Neither the Law on Environment nor the Ministerial Order on EIA provide for an appeal against decisions taken under these legal instruments by persons aggrieved by such decisions. The EIA Guidelines, however, do make provision for an appeal process.¹⁴¹ But it is also not adequate because it is only an administrative appeal. As it has been indicated in different instruments, there should be both administrative and judicial appeal¹⁴² and the latter is not provided by any of the domestic laws on environmental protection in Rwanda. Moreover, guidelines and policies provided above, provide the appeal procedure only for the project developers.¹⁴³ It is not mentioned anywhere that any other concerned or affected stakeholder can appeal against the decision. This presents a challenge and limitation to the right of public participation of the parties affected by the decisions taken by administrative entities.

2.5.5 Conservative Behavioral Norms

Behavioral norms or cultural traditions can inhibit public involvement or exclude those who do not want to disagree publicly with dominant groups.¹⁴⁴ REMA argued that this is one of the factors which can lead to unbalanced public participation.¹⁴⁵

2.5.6 Language Barrier Associated with Publication of Environmental Protection

Guidelines, and Policies.

In Rwanda, stakeholders in rural areas may not have a working knowledge of French or English, which are most of the time used in environmental reports, EIA reports and other environmental-related documents, hence, potentially making communication difficult.

Participation is ineffective because there can be sound participation if the public understands well the content of the project's documents.¹⁴⁶

In short, lack of communication between the government and local people, inadequate provision on appeal procedures, confidentiality restrictions, low levels of environmental

rights awareness, inadequate technical human resources and low intra-sectoral coordination on environmental issues, costs of participation are the main challenges faced in the use of public participation principle in Rwanda.

After examining how public participation is regulated under the Rwandan legal and policy framework and determining the limitations and challenges observed in the use of public participation in Rwanda, the author of this research found it relevant to look at how public participation is regulated under foreign jurisdictions to learn some lessons that can help enhance both legal and institutional frameworks of Rwanda about public participation in environmental matters. and that is the subject of the following section.

CHAPTER 3. LEGAL AND INSTITUTIONAL MECHANISMS TO ENHANCE PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS

3.1 Introduction

Effective public participation in environmental governance is essential for ensuring sustainable development and fostering democratic decision-making processes. In Chapter 2, we explored how Rwandan laws currently address the principle of public participation in environmental matters, identifying both strengths and limitations. Building on this foundation, Chapter 3 delves deeper into legal and institutional mechanisms that can enhance the applicability of public participation in Rwanda's environmental governance framework.

This chapter investigates international best practices, with a particular focus on jurisdictions like South Africa known for their robust environmental laws. By drawing comparisons and analyzing these practices, we aim to propose actionable recommendations for strengthening Rwandan legislation. These recommendations will address existing gaps in the legal framework, aiming to foster greater transparency, accountability, and inclusivity in environmental decision-making processes.

3.2 Legal Mechanisms

The following mechanisms can enhance the applicability of public participation in Rwanda's environmental governance framework.

3.2.1 Strengthening Constitutional Provisions

The Rwandan Constitution could be amended to include an explicit provision that guarantees the right to public participation in environmental matters. This would ensure that citizens have a constitutional right to access environmental information, participate in decision-making, and seek judicial remedies for environmental harms.

3.2.2 Enacting Comprehensive Environmental Legislation

Rwanda could benefit from enacting comprehensive environmental legislation. This law should prioritize public participation, requiring that all environmental governance processes include opportunities for input from all stakeholders, particularly marginalized and vulnerable groups. The law should also mandate that decisions be made transparently and with access to relevant information.

3.2.3 Establish Clear Public Participation Procedures

Establish clear procedures and methods for public participation, such as mandatory public hearings, community consultations, and access to environmental impact assessments (EIAs). These procedures should be standardized across all sectors to ensure consistency and fairness.

3.2.4 Strengthening Access to Information Laws

Rwanda should enhance its existing access to information laws to specifically cover environmental information. The law should require that all environmental data, reports, and decision-making processes be made publicly available in a timely and accessible manner and in the local language where necessary.

3.2.5 Mandatory Environmental Audits and Public Involvement

Mandate regular environmental audits for projects that have significant environmental impacts. These audits should involve public participation at every stage, from planning to execution, ensuring that the voices of affected communities are heard and considered.

3.3 Institutional Mechanisms

The following institutional mechanisms, can help the institutions of the Republic of Rwanda enhance public participation in environmental matters.

3.3.1 Ministry of Justice (MINIJUST)

Enhancing access to justice in environmental matters involves establishing specialized environmental courts or tribunals that are easily accessible to the public and equipped to handle disputes related to environmental decisions and violations of public participation rights. These courts would provide a focused and expert platform for resolving environmental issues effectively.

Additionally, implementing a legal aid program specifically for environmental justice would ensure that all citizens, regardless of their financial status, can seek legal redress when their environmental rights are violated. This program would provide crucial support to individuals and communities, empowering them to pursue justice and uphold their environmental rights.

3.3.2 Ministry of Environment (MoE)

MoE should establish a dedicated unit within the Ministry of Environment responsible for coordinating and overseeing public participation in environmental governance. This unit would ensure that public consultations are conducted properly, manage the dissemination of environmental information, and monitor compliance with public participation requirements.

Moreover, MoE is recommended to develop and implement public awareness and education programs aimed at raising awareness about environmental rights and the importance of public participation. These programs should be tailored to different demographics and use various platforms, including traditional media, social media, and community workshops.

3.3.3 Ministry of Local Government (MINALOC)

MINALOC should strengthen the role of local governments in environmental governance by giving them more authority to engage communities in environmental decision-making. Local governments should be required to hold regular public consultations on environmental matters and report back to the Ministry of Environment on the outcomes. Moreover, the ministry should provide training and resources to local government officials to improve their capacity to facilitate public participation in environmental governance. This includes training on legal frameworks, community engagement techniques, and conflict resolution.

3.3.4 Rwanda Environment Management Authority (REMA)

REMA is recommended to create an online portal where all environmental data, impact assessments, and reports are published and accessible to the public. This portal should also provide a platform for public submissions and feedback on environmental matters. Additionally, it can deploy community liaison officers across the country to facilitate communication between local communities and REMA. These officers would ensure that communities are informed about upcoming projects, understand their rights, and know how to participate in environmental decision-making processes.

3.4 Best Practices from South African Legislation

In South Africa, the constitution of 1996, requires public participation in policy-making and transparency through timely, accessible, and accurate information.¹⁴⁷ This means that access to information including environmental information is guaranteed. It is specifically referred to in section 32. In addition, access to justice is provided for in sections section 33 and 34 of the South African Constitution.

Apart from the Constitution, public participation in environmental matters is also provided in various acts enacted to implement the South African constitution. The Act that merits attention here is the National Environmental Management Act (NEMA). The latter sets out

national environmental management principles¹⁴⁸ which require all organs of state to prioritize people and their needs and serve their interests equitably. ¹⁴⁹ NEMA encourages public participation under its Section 2(4)(f) which requires that “the participation of all interested and affected parties in environmental governance must be promoted, and that all people must have the opportunity to develop the understanding, skills, and capacity necessary for achieving equitable and effective participation, and that participation by vulnerable and disadvantaged persons must be ensured”.

Furthermore, section 2(4)(k) embodies public participation in environmental decision-making and promote decision-making taken in an open and transparent manner with access to information provided in accordance with the law.

Michael Kidd argued that the right of access to environmental information is essential for public participation in environmental governance. This is important because members of the public who wish to enforce environmental law often require certain information to participate effectively in the decision-making process.¹⁵⁰

In South Africa, the importance of the right of access to information was further supported in the case *President of the Republic of South Africa and others v Mail and Guardian Media Ltd* (2012) (2) SA 50 (CC) para 10 where it was held that “The constitutional guarantee of the right of access to information held by the state gives effect to —accountability, responsiveness and openness as founding values of our constitutional democracy. It is impossible to hold accountable a government that operates in secrecy. The right of access to information is also crucial to the realization of other rights in the Bill of Rights. For without access to information, the ability of citizens to make responsible political decisions and participate meaningfully in public life is undermined.”¹⁵¹

For the third pillar of public participation: access to justice, NEMA empowers members of the public to further environmental interests through litigation to protect the environment. This is in accordance with section 32(1) which provides that any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act... or any other statutory provision concerned with the protection of the

environment or the use of natural resources.¹⁵²

According to Kotze, “Administrative justice is aimed to ensure good governance and administration, ensure fair dealing within the administrative context, enhance protection of the individual against abuse of state power, promote public participation in decision-making and strengthen the notion that public officials are answerable and accountable to the public they are meant to serve¹⁵³

Access to justice can be clearly perceived in the case of *The Director: Mineral Development, Gauteng Region Sasol Mining (Pty) Ltd v Save the Vaal Environmental and others*. In this case, the people of Save the Vaal Environment were able to challenge the decision of the director of mineral development before the courts. In this, The Supreme Court of Appeal ruled that the audi alteram partem rule applied when an application for a mining license is made and that interested parties should be notified and be given an opportunity to raise their objections in writing.¹⁵⁴ The court further held that the Constitution, by including environmental rights as fundamental, justiciable human rights, by necessary implication required that environmental consideration be accorded appropriate recognition and respect in the administrative processes in our country.¹⁵⁵

The Promotion of Access to Information Act (PAIA) enables individuals to access information from public and private entities.¹⁵⁶ Public and private entities are required to disclose certain categories of information and respond to requests promptly.¹⁵⁷

Promotion of Administrative Justice Act (PAJA) aims to ensure that administrative action is transparent, accountable, and subject to effective scrutiny.¹⁵⁸ requires decision-makers to give reasons for their decisions and allows affected persons to request reasons and participate in decision-making processes. PAJA also sets out procedures for judicial review and complaints against administrative action.¹⁵⁹

3.4.1 Lessons that Rwanda can learn from South Africa’s Practices

Rwandan legislation can learn several critical lessons from the South African framework on public participation in environmental governance:

Firstly, Rwanda can benefit by embedding explicit constitutional provisions guaranteeing

access to environmental information, as seen in South Africa's Section 32. This ensures transparency and empowers citizens to engage effectively in environmental decision-making processes. Clear constitutional mandates promote accountability and responsiveness in governance, essential for sustainable development.

Secondly, adopting legislation akin to South Africa's National Environmental Management Act (NEMA) could enhance Rwanda's environmental governance. NEMA's principles prioritize public participation, particularly for vulnerable and disadvantaged groups, ensuring equitable access to decision-making processes. Incorporating similar provisions in Rwandan law would foster inclusive environmental policy development and implementation.

Thirdly, Rwanda can strengthen its legal framework by incorporating robust mechanisms for access to justice in environmental matters, similar to South Africa's constitutional provisions in Sections 33 and 34. These provisions empower individuals and groups to challenge environmental decisions through litigation, ensuring that environmental rights are justiciable and respected in administrative processes.

Lastly, Rwanda can emulate South Africa's legislative tools like the Promotion of Access to Information Act (PAIA) and the Promotion of Administrative Justice Act (PAJA). These laws facilitate public access to information and ensure transparent, accountable administrative actions. Implementing similar statutes in Rwanda would bolster transparency, accountability, and public trust in environmental governance.

By adopting these lessons from South Africa, Rwanda can enhance its legal and institutional frameworks to promote effective public participation, transparency, and accountability in environmental governance, ultimately contributing to sustainable development and environmental protection.

3.5 GENERAL CONCLUSION AND RECOMMENDATIONS

This is the chapter of the research work. It concludes the study by providing a summary of the main findings of this research and gives recommendations that are likely to shape the future developments of public participation legislation and implementation in environmental protection in Rwanda.

3.5.1 General Conclusion

The general objective of this study was to critically analyze the extent to which Rwandan laws and policies facilitate the use of the principle of public participation in environmental matters in Rwanda. The general finding is that despite having laws and policies that encourage public participation in environmental matters in Rwanda, several loopholes are found in the Rwandan policy and legal framework on public participation. The research revealed that public participation especially in EIA is not effective because it is associated with many challenges related to laws, people, and practices.

The first specific objective was to examine the meaning and elements of the principle of public participation in environmental matters. The research revealed that there is no universal definition of public participation. The research showed that common ways of public participation in Rwanda are information consultation and involvement which encourage passive participation. The research has revealed that effective public participation is made of three elements (pillars) namely access to information, participation in decision-making as well as access to justice. It has been claimed that those elements are dependent on each other and affect each other, however, the research has shown that the third element which is access to administrative and judicial review is not provided under the Rwandan legal framework which, to a big extent, affects the effectiveness of public participation in environmental matters in Rwanda.

The second specific objective was to investigate and establish the current challenges affecting the applicability of the principle of public participation in environmental matters

under Rwandan laws. The research has shown that there are numerous challenges such as a lack of communication between government and local people, low level of literacy which makes it more difficult to impart environmental information to the general public, inadequate appeal procedures in the legal framework on environmental protection, confidentiality restrictions, and litigation costs.

The last objective was to propose appropriate solutions with a view to strengthening public participation in environmental matters in Rwanda with the help of lessons drawn from foreign jurisdictions. The research has shown that South Africa has coherent and advanced laws that encourage effective public participation in environmental matters compared to Rwandan legislation. Some lessons were proposed including having a specific law regulating environmental information, use of technology to raise public awareness and encourage public participation in environmental protection, allowing local authorities and communities to participate in the planning of projects that might affect environment in their communities, providing the legal aid for those who want to defend environmental rights in courts in case environmental rights are infringed, have been drawn from those jurisdictions to enhance public participation in environmental matters in Rwanda.

In critical analysis, this research revealed that both Rwandan policy and legal framework encourage public participation in environmental matters especially in the conduct of Environmental Impacts Assessment. They commonly provide for public consultation and involvement for those affected or likely to be affected by a given decision on the environment. However, they do not guarantee the effectiveness of public participation because they do not clearly provide for the means of access to justice either through administrative or judicial procedures. Furthermore, stages of public participation are limited to information and consultation stages. Moreover, there is a big challenge of limited awareness of the role of the public in environmental protection and this highly hampers the use of public participation in environmental protection.

Based on the above findings, the following section proceeds to discuss some of the recommendations which can help Rwanda to enhance the use of public participation in environmental protection.

3.5.2 Recommendations

The following are recommendations to the government, private sector as well as the general population.

a) To the government

The government is recommended to ensure that its laws related to public participation are detailed enough to facilitate effective public participation. Given the gaps identified in this study, some amendments of the current legal framework are recommended to make the current public participation legislation more coherent and enhance the effectiveness and applicability of public participation in environmental matters. I propose the inclusion of administrative and judicial appeal procedures, effective methods of public participation and all stages of public participation in environmental legislation.

Additionally, the government is recommended to strengthen the implementation of its international obligations contained in Multilateral Environmental Agreements and other international treaties or conventions encouraging public participation in environmental matters.

The government is also recommended to make local communities empowered through capacity building so that they can participate actively in decision making over environmental matters. They can be empowered through education and training to increase their knowledge about the environment and raise their awareness of their roles in participation in environment protection.

b) To private sector agents

Private agents are encouraged to allow public participation because it benefits them all for example in EIA. Private sector agents are mainly the implementers of developmental

projects that would be better implemented if public participation is used. It is thus recommended to provide the public with a chance to contribute to projects' design and implementation, which enhances harmony between the projects' developers and host communities. When people are informed about projects and empowered to invoke changes, their concerns are reduced, and are more receptive to proposed developments.

c) To the general population

Citizens are recommended to consult laws and policies to know their rights and obligations towards the environment including the right to information. Moreover, they are recommended to participate in the decision-making over environmental matters for the sake of the present and future generations. More importantly, citizens are encouraged to participate because it is not just their right, it is also their duty to protect the environment.160

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