FIGHTING CORRUPTION IN THE ENERGY SECTOR IN TANZANIA

By

LUKIKO VEDASTUS LUKIKO

Student Number: 3614680

Submitted in fulfilment of the requirements for degree of

DOCTOR OF LAWS

at the

UNIVERSITY OF THE WESTERN CAPE

Supervisor: Professor Abraham J. Hamman

2022

DECLARATION

I declare that *Fighting Corruption in the Energy Sector in Tanzania* is my own work, that it has not been submitted before for any degree or examination in any other university, and that all sources that I have used or quoted have been indicated and acknowledged by means of complete references.

Student: Lukiko Vedastus Lukiko

Signed: ……

Date: ……

Supervisor: Prof Abraham J. Hamman

Signed: ……

Date: ……

ACKNOWLEDGEMENTS

Thank you God Almighty for strengthening me to this point.

This study is a product of the support that I received from many people and organisations. I am deeply indebted to my supervisor, Prof Abraham Hamman, for his guidance during the writing of this thesis, and for his useful and critical comments on my drafts. In the similar vein, I thank my former supervisors, Prof Raymond Koen and Dr Karin Chinnian, for laying the foundation of this study.

I am highly grateful to my employer, Mzumbe University, for financing my studies and granting me study leave to undertake this project. I am equally grateful to the Acting Dean of the Faculty of Law of Mzumbe University, Dr Seraphina Bakta, for always being ready to support and encourage me through this journey. I thank Dr Mwajuma Kadilu, Head of the Department of Civil and Criminal Law and all staff at the Faculty of Law of Mzumbe University for supporting me in various ways during the writing of this work.

To my wife Beatrice and our daughters Nazarene and Nazarite, I am sincerely grateful. Your prayers, unwavering love, and encouragement strengthened me all the time.

TABLE OF CONTENTS

CHAPTER ONE: STUDY OVERVIEW **1**

1.1. INTRODUCTION **1**

1.2. EVOLUTION OF THE ENERGY SECTOR IN TANZANIA **3**

1.3. ANTI-CORRUPTION EFFORTS IN TANZANIA **10**

1.4. STATEMENT OF THE PROBLEM **11**

1.5. OBJECTIVES OF THE STUDY **13**

1.6. RESEARCH QUESTIONS **13**

1.7. SIGNIFICANCE OF THE STUDY **14**

1.8. RESEARCH METHODOLOGY **15**

1.9. SCOPE OF THE STUDY **15**

1.10. INSTITUTIONAL THEORY **16**

1.10.1. THREE PILLARS OF INSTITUTIONS 20

1.10.1.1. Regulative pillar *21*

1.10.1.2. Normative pillar *24*

1.10.1.3. Cultural-cognitive pillar *26*

1.10.2. COMBINATION OF THE THREE PILLARS 27

1.11. LITERATURE REVIEW **29**

1.12. OUTLINE OF CHAPTERS **37**

CHAPTER TWO: INTERNATIONAL LAW FRAMEWORK FOR ANTI-CORRUPTION IN NATURAL RESOURCES GOVERNANCE **39**

2.1. INTRODUCTION **39**

2.2. PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES **41**

2.2.1. DEVELOPMENT OF INTERNATIONAL LAW AND COLONIALISM 43

2.2.2. TOWARDS DECOLONISATION: BIRTH OF INTERNATIONAL ORGANISATIONS 45

2.2.2.1. League of Nations *46*

2.2.2.2. Bretton Woods institutions *48*

2.2.2.3. United Nations *50*

2.2.3. DEVELOPMENT OF THE PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES DOCTRINE INTERNATIONALLY 53

2.2.4. CRITICAL ISSUES CONCERNING PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES 60

2.2.5. THE NEW INTERNATIONAL ECONOMIC ORDER 65

2.2.6. PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES IN THE AFRICAN CONTEXT 70

2.2.7. PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES IN SOME AFRICAN DOMESTIC LAWS 72

2.2.8. NATURAL RESOURCE OWNERSHIP: THE STATE AND THE PEOPLE 74

2.3. INTERNATIONAL LAW PROTECTION OF NATURAL RESOURCES AGAINST CORRUPTION **76**

2.3.1. UNITED NATIONS INSTRUMENTS 78
2.3.1.1. Prevention of corruption *79*
2.3.1.2. Criminalisation of corruption and law enforcement *80*
2.3.2. ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT 82
2.3.3. INSTRUMENTS OF THE AFRICAN UNION 86
2.3.4. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY 92
2.3.5. INTERNATIONAL CONFERENCE OF THE GREAT LAKES REGION 96

2.4. CONCLUDING REMARKS 99

CHAPTER THREE: TANZANIA'S ANTI-CORRUPTION REGIME 100

3.1. INTRODUCTION 100

3.2. ANTI-CORRUPTION POLICY FRAMEWORK 101

3.2.1. TANZANIA DEVELOPMENT VISION 2025 102
3.2.2. NATIONAL ANTI-CORRUPTION STRATEGY AND ACTION PLAN 105
3.2.3. THIRD NATIONAL FIVE-YEAR DEVELOPMENT PLAN 2021/22-2025/26 110

3.3. ANTI-CORRUPTION LEGAL FRAMEWORK 111

3.3.1. CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA 1977 112
3.3.2. PREVENTION AND COMBATING OF CORRUPTION ACT 113
3.3.3. ANTI-MONEY LAUNDERING ACT 115
3.3.4. PUBLIC PROCUREMENT ACT 116
3.3.5. ECONOMIC AND ORGANISED CRIME CONTROL ACT 120
3.3.6. PUBLIC LEADERSHIP CODE OF ETHICS ACT 121
3.3.7. WHISTLEBLOWER AND WITNESS PROTECTION ACT 124
3.3.8. PROCEEDS OF CRIME ACT 127

3.4. ANTI-CORRUPTION INSTITUTIONAL FRAMEWORK 128

3.4.1. PREVENTION AND COMBATING OF CORRUPTION BUREAU 129
3.4.1.1. Functions and powers *130*
3.4.1.2. Composition *133*
3.4.1.3. Qualifications and appointment of senior officials *133*
3.4.1.4. Reporting and accountability *134*
3.4.1.5. PCCB investigations of energy sector-related corruption *135*
3.4.2. CONTROLLER AND AUDITOR GENERAL 136
3.4.3. PUBLIC PROCUREMENT REGULATORY AUTHORITY 140
3.4.4. DIRECTOR OF PUBLIC PROSECUTIONS 143
3.4.5. JUDICIARY 145
3.4.6. PARLIAMENT 146
3.4.7. PRESIDENT 150

3.5. CONCLUDING REMARKS 152

CHAPTER FOUR: POLICY, LEGAL, REGULATORY AND PRACTICAL ENGAGEMENT OF THE ENERGY SECTOR 154

4.1. INTRODUCTION 154

4.2. EXTRACTIVE INDUSTRY VALUE CHAIN 155

4.2.1. DECISION TO EXTRACT 156
4.2.2. AWARD OF CONTRACTS AND EXTRACTIVE RIGHTS 157
4.2.3. EXTRACTION OPERATIONS AND REGULATION 158
4.2.4. REVENUE COLLECTION 160
4.2.5. REVENUE MANAGEMENT AND SPENDING 162

4.3. ENERGY SECTOR GOVERNANCE FRAMEWORK AND CORRUPTION VULNERABILITIES 163

4.3.1. DECISION TO EXTRACT 164
4.3.1.1. Policy and legal framework 164
4.3.1.2. Actors: roles, powers, and relationships 167
4.3.1.3. Loopholes for corruption 169
4.3.2. AWARD OF CONTRACTS AND EXTRACTIVE RIGHTS 174
4.3.2.1. Policy and legal framework 174
4.3.2.2. Actors: roles, powers, and relationships 177
4.3.2.3. Loopholes for corruption 180
4.3.3. EXTRACTION OPERATIONS AND REGULATION 193
4.3.3.1. Policy and legal framework 193
4.3.3.2. Actors: roles, powers, and relationships 198
4.3.3.3. Loopholes for corruption 201
4.3.4. REVENUE COLLECTION 208
4.3.4.1. Policy and legal framework 208
4.3.4.2. Actors: roles, powers, and relationships 212
4.3.4.3. Loopholes for corruption 214
4.3.5. REVENUE MANAGEMENT AND SPENDING 219
4.3.5.1. Policy and legal framework 219
4.3.5.2. Actors: roles, powers, and relationships 222
4.3.5.3. Loopholes for corruption 224

4.4. CONCLUDING REMARKS 227

CHAPTER FIVE: TRANSPARENCY AND ACCOUNTABILITY INITIATIVES 228

5.1. INTRODUCTION 228

5.2. TRANSPARENCY 229

5.3. ACCOUNTABILITY 233

5.4. STATUS OF TRANSPARENCY AND ACCOUNTABILITY IN DEVELOPING NATIONS 235

5.5. GLOBAL EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVES 236

5.5.1. KIMBERLEY PROCESS 237
5.5.2. PUBLISH WHAT YOU PAY 238
5.5.3. EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE 241

5.6. DRIVERS OF TRANSPARENCY AND ACCOUNTABILITY IN THE EXTRACTIVE SECTOR 246

5.6.1. TRANSPARENCY OF CONTRACTS 246
5.6.2. BENEFICIAL OWNERSHIP TRANSPARENCY 250
5.6.3. FISCAL TRANSPARENCY 254
5.6.4. EFFECTIVE PUBLIC PARTICIPATION 256

5.7. TRANSPARENCY AND ACCOUNTABILITY IN TANZANIA'S ENERGY SECTOR 258

5.7.1. DECISION TO EXTRACT 259
5.7.2. AWARD OF CONTRACTS AND INVESTMENT RIGHTS 262
5.7.3. EXTRACTION OPERATIONS AND REGULATION 266
5.7.4. REVENUE COLLECTION 268
5.7.5. REVENUE MANAGEMENT AND SPENDING 271

5.8. CONCLUDING REMARKS 272

CHAPTER SIX: RECALIBRATING ANTI-CORRUPTION DIMENSIONS IN TANZANIA'S ENERGY SECTOR . 274

6.1. INTRODUCTION 274

6.2. DEFICIENCIES THAT FUEL OR COMPOUND CORRUPTION 274

6.2.1. POLICY DEFICIENCIES 275
6.2.2. LEGAL DEFICIENCIES 277
6.2.2.1. Weaknesses in the national anti-corruption system 277
6.2.2.2. Weaknesses in the petroleum legal framework 282
6.2.3. REGULATORY AND PRACTICAL DEFICIENCIES 290
6.2.3.1. Poor coordination among state organs 290
6.2.3.2. Ineffective oversight of the contract awarding processes 292
6.2.3.3. Inadequate institutional capacity to manage the sector's value chain 296

6.3. PROPOSED INTERVENTIONS AND REFORMS 298

6.3.1. STRENGTHENING THE NATIONAL ANTI-CORRUPTION SYSTEM 298
6.3.1.1. Enacting a strong constitutional mandate to fighting corruption 299
6.3.1.2. Enhancing public participation 300
6.3.1.3. Reinforcing prosecution 300
6.3.2. STRENGTHENING ANTI-CORRUPTION ACTION IN THE ENERGY SECTOR 301
6.3.2.1 Prioritising anti-corruption in the policy, the legal, and the regulatory framework 301
6.3.2.2. Enhancing transparency and accountability across the industry value chain 302
6.3.2.3. Implementing enhanced due diligence of companies 304
6.3.2.4. Prohibiting retrospective consent to assignment or transfer of rights 304
6.3.2.5. Harmonising local content provisions 305
6.3.2.6. Enhancing public participation and consultation 306
6.3.3. STRENGTHENING INSTITUTIONAL CAPACITY TO MANAGE THE SECTOR 306
6.3.3.1. Establishing a Central Government Negotiation Board 306
6.3.3.2. Resourcing the state organs 306

6.4. CONCLUDING REMARKS 307

CHAPTER SEVEN: CONCLUSION 308

REFERENCES 313

PRIMARY SOURCES 313

INTERNATIONAL INSTRUMENTS 313
UNITED NATIONS RESOLUTIONS 314
NON-BINDING INTERNATIONAL INSTRUMENTS 315
MULTILATERAL INSTRUMENTS 316

LEGISLATION **316**

TANZANIAN PRIMARY LEGISLATION 316
TANZANIAN SUBSIDIARY LEGISLATION 317
LEGISLATION OF OTHER STATES 319
CASE LAW 319
NATIONAL POLICIES, PLANS AND STRATEGIES 320
HANSARD OF THE PARLIAMENT OF TANZANIA 321
NATIONAL GUIDELINES 321
REPORTS 321
INDICES 325

SECONDARY SOURCES **326**

BOOKS AND CHAPTERS IN BOOKS 326
JOURNAL ARTICLES 330
WORKING PAPERS & BRIEFS 336
SPEECHES 338
THESES 339
CONFERENCE PAPERS 340
INTERNET SOURCES 340

ABSTRACT

This study contributes to understanding the governance challenges that impact on Tanzania's future as a petroleum producing state. It considers corruption, which has fuelled insecurity, violence, and poverty in most of the oil producing African nations, as a vulnerability in the energy sector. It therefore examines Tanzania's policy, legal, and institutional preparedness for overcoming this challenge before its petroleum industry booms. The relevance of this study lies in the fact that, throughout the post-independence period, corruption levels in Tanzania have remained relatively high. The energy sector is one of the economic sectors that has suffered from several grand corruption scandals, particularly the Richmond and the Independent Power Tanzania Limited/Escrow scandals. However, there has been little research into corruption as a vulnerability in Tanzania's energy sector, and how it may be overcome. Using institutional theory as premised by Richard Scott, this study contributes to filling that knowledge gap, especially from a legal perspective.

The study has found that Tanzania has established several policies, legislation, and institutions to control corruption in all spheres. However, the national anti-corruption regime suffers from a lack of sustainable political will to enforce and implement the set standards, and a strong prosecution system to make corruption a high-risk and unrewarding endeavour. Also, there is weak oversight of the anti-corruption system and poor mechanisms for engaging with the public in fighting this vice. Regarding the energy sector, anti-corruption efforts are undermined by poor public engagement in petroleum governance, hesitancy in decision-making, inefficient transparency mechanisms, weak institutional capacity to manage the sector, and weak corporate anti-corruption compliance mechanisms.

To strengthen anti-corruption efforts in the energy sector, the study proposes constitutional and operational reforms of the national anti-corruption regime. It also proposes interventions to enhance transparency and accountability, strengthen the capacity of state organs to manage the energy sector, and mainstream anti-corruption across the petroleum industry value chain.

KEYWORDS

Accountability

Anti-corruption

Corruption

Energy sector

Enforcement regime

Government

Institutions

International Oil Companies

Legislation

Oil and gas

Petroleum

Regulatory regime

Tanzania

Transparency

ABBREVIATIONS AND ACRONYMS

BBC	British Broadcasting Corporation
CAG	Controller and Auditor General
DPP	Director of Public Prosecutions
EITI	Extractive Industries Transparency Initiative
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EWURA	Energy and Water Utilities Regulatory Authority
FATF	Financial Action Task Force
ICGLR	International Conference on the Great Lakes Region
ICSID	International Centre for Settlement of Investment Disputes
IPTL	Independent Power Tanzania Ltd
NACSAP	National Anti-Corruption Strategy and Action Plan
OECD	Organisation for Economic Cooperation and Development
PCCB	Prevention and Combating of Corruption Bureau
PPRA	Public Procurement Regulatory Authority
PSNR	Permanent Sovereignty over Natural Resources
PURA	Petroleum Upstream Regulatory Authority
SADC	Southern African Development Community
TANESCO	Tanzania Electric Supply Company
TEITI	Tanzania Extractive Industries Transparency Initiative
TPDC	Tanzania Petroleum Development Corporation
TSh	Tanzania Shilling
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Program
UNGA	United Nations General Assembly
US$	United States Dollar

Chapter One:

Study Overview

1.1. Introduction

Tanzania is blessed with abundant natural wealth and resources. These include arable land, tourism parks and game reserves, water bodies and marine resources. It is rich in minerals and gemstones, including gold, iron, copper, diamonds, ruby, and tanzanite.[1] In addition, the country has ample energy resources such as hydropower, natural gas, biomass fuels, coal, uranium, geothermal energy, and wind.[2] These resources are owned by the people of Tanzania, but controlled and managed by the government on their behalf.[3] The extraction, exploitation, or use of these resources must consider the interests of the people of Tanzania first.[4] Despite its rich natural wealth and resources, Tanzania has insufficient human development, ranking 159th out of 189 countries in the United Nations Human Development Index 2019.[5] Its people are characterised by multidimensional poverty and 49,1 per cent of the population live below the international poverty line of US$1,90 a day.[6] This suggests that Tanzania has not managed to utilise its abundant resources effectively to ensure the socio-economic development of its people.

Literature associate corruption with the failure of state institutions to effectively manage and regulate the exploitation of natural resources and the distribution of the accruing

1 Ministry of Energy and Minerals (2009) *Mineral Policy of Tanzania* Dar es Salaam: Ministry of Energy and Minerals 7.

2 Ministry of Energy and Minerals (2015) *National Energy Policy* Dar es Salaam: Ministry of Energy and Minerals 3.

3 Section 4 of the Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017.

4 Section 6 of the Natural Wealth and Resources (Permanent Sovereignty) Act.

5 UNDP (2019) *Human Development Report 2019* New York: United Nations Development Programme 302 & 306.

6 UNDP & Oxford Poverty and Human Development Initiative (2019) *Global Multidimensional Poverty Index 2019* available at http://hdr.undp.org/sites/default/files/mpi_2019_publication.pdf (accessed 8 February 2020) 19.

benefits.[7] Because of corruption, states fail to convert natural resources into the socio-economic development of their people. In many countries, an abundance of natural resources has resulted in violent conflicts, undemocratic regimes, and extreme poverty.[8] Developing countries, including Tanzania, are more vulnerable to corruption and its related effects in natural resources governance than developed ones.[9]

Tanzania's energy sector has suffered several grand corruption scandals which attracted intense discussion in parliament. For instance, corruption allegations around the procurement of Richmond Development Company LLC (Richmond) in 2006, for the production of emergency power, led to the resignation of Prime Minister Edward Lowassa, the Minister for Energy and Minerals Nazir Karamagi, and the Minister for East Africa Cooperation, Ibrahim Musabaha, in 2008. In 2014, another big scandal hit the energy sector. This involved the syphoning of about US$125 million from the Bank of Tanzania's Tegeta Escrow Account.[10] The money was in lieu of capacity charges payable by the Tanzania Electric Supply Company to the Independent Power Tanzania Limited, and was held in escrow at the bank pending arbitration of a dispute between the parties at the International Centre for Settlement of Investment Disputes.

In 2019, Tanzania discovered huge reserves of natural gas along the southern coast, amounting to 57 trillion cubic feet.[11] Exploration activities are continuing, and there are

7 Ross ML (2015) 'What Have We Learned about the Resource Curse?' 18 *Annual Review of Political Science* 248 and Mehlum H, Moene K & Torvik R (2006) 'Cursed by Resources or Institutions?' 29(8) *World Economy* 1117–31.

8 Collier P & Hoeffler A (1998) 'On economic causes of civil war' 50(4) *Oxford Economic Papers* 563–573, Ross ML (2004) 'What Do We Know about Natural Resources and Civil War?' 41(3) *Journal of Peace Research* 337–356, Collier P & Hoeffler A (2005) 'Resource Rents, Governance, and Conflict' 49(4) *The Journal of Conflict Resolution* 625–633 & Ross (2015).

9 Larsen ER (2006) 'Escaping the Resource Curse and the Dutch Disease? When and Why Norway Caught up with and Forged Ahead of Its Neighbors' 65(3) *The American Journal of Economics and Sociology* 628.

10 Bunge la Tanzania (2014) *Taarifa ya Kamati Kufuatia Matokeo ya Ukaguzi Maalum wa Mdhibiti na Mkaguzi Mkuu wa Hesabu za Serikali Katika Akaunti ya Tegeta Escrow Iliyokuwa Katika Benki Kuu ya Tanzania*, Dodoma: Bunge la Tanzania 39 and National Audit Office of Tanzania (2014) *Taarifa Ya Ukaguzi Maalum Kuhusiana Na Miamala Iliyofanyika Katika Akaunti Ya 'Escrow' Ya Tegeta, Pamoja Na Umiliki Wa Kampuni Ya IPTL*, Dar es Salaam: National Audit Office of Tanzania 37.

11 Ministry of Energy (2019) *Hotuba ya Waziri wa Nishati Mhe. Dkt. Medard Matogolo Chananja Kalemani (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Nishati kwa Mwaka 2019/20* Dodoma: Ministry of Energy 75.

prospects for further discovery of natural gas reserves. It is expected that the discoveries will contribute substantially to the economic development of the nation in the future.[12] Several multinational corporations have shown interest and others are already engaged in the exploration and development of Tanzania's natural gas sector. For instance, between 2000 and 2015, the government signed 26 production sharing agreements with 18 international oil companies.[13]

To ensure that Tanzania benefits from the prospective energy sector boom, it is important to examine vulnerabilities that may hinder the sector from performing productively, and how they may be overcome. Corruption is a key vulnerability in this regard. Despite the present anti-graft war declared by the government, studies suggest that its approach is unsustainable, with uncertainties over its performance in the future.[14] This study critically examines the policy, legal, and regulatory framework responsible for the governance of the energy sector in Tanzania, identifies opportunities for corruption, and proposes appropriate interventions. It uses institutional theory to examine how the regulative, normative, and cultural-cognitive elements of institutions affect the actions of the various actors in Tanzania's energy sector regarding corruption and anti-corruption.

1.2. Evolution of the energy sector in Tanzania

The history of the energy sector in Tanzania dates back to 1908 when the German colonial administration in Tanganyika[15] first installed electricity in Dar es Salaam.[16] At the time, electricity served the railway workshops and some colonists' residences.[17] After Tanganyika

12 Demierre J et al. (2015) 'Potential for Regional Use of East Africa's Natural Gas' 143 *Applied Energy* 432.

13 Friedrich-Ebert-Stiftung (2015) *Tanzania Oil and Gas Almanac* Dar es Salaam: Friedrich-Ebert-Stiftung 14.

14 Lukiko L (2017) *Exploring a sustainable anti-corruption regime for Tanzania* LL.M Mini-Thesis University of the Western Cape, available at https://etd.uwc.ac.za/xmlui/handle/11394/5692 (accessed 8 February 2020).

15 Tanganyika united with Zanzibar in 1964 to form the United Republic of Tanzania.

16 Eberhard A et al. (2016) *Independent Power Projects in Sub-Saharan Africa: Lessons from Five Key Countries*, *Independent Power Projects in Sub-Saharan Africa: Lessons from Five Key Countries*, Washington: World Bank Group 194.

17 TANESCO 'Background' available at http://www.tanesco.co.tz/index.php/about-us/historical-background (accessed 10 February 2020).

became a British protectorate in 1920, a Government Electricity Department was formed to manage the supply of electricity in the country. In 1931, the role of supplying electricity was handed over to two private enterprises, the Tanganyika Electric Supply Company Ltd and the Dar es Salaam and District Electric Supply Company Ltd.[18] After independence in 1961, the two entities were nationalised in 1964 and later merged to form the current Tanzania Electric Supply Company Limited. The company performed quite well until the early 1980s when electricity generation started to deteriorate.[19] Since then, it has been operating poorly, often at a loss.[20]

The colonial administration in Tanganyika had commenced petroleum explorations along the coast basin before 1961.[21] The concessions were granted to two companies, British Petroleum and Shell. Drilling activities were conducted in about 100 boreholes, but discovered only small volumes of hydrocarbons.[22] As the volumes were considered too little to justify further investment, the two companies relinquished the concessions in 1964.[23]

In 1969, the Tanzania Petroleum Development Corporation was formed, with a mandate to undertake commercial activities in the petroleum industry on behalf of the government.[24] Under its mandate, the corporation had exploration licences and could enter into joint ventures with other corporations through production sharing agreements. The first agreement was signed with *Azienda Generale Italiana Petroli* (Azienda) to further offshore exploration on the

18 See http://www.tanesco.co.tz/index.php/about-us/historical-background (accessed 10 February 2020).

19 Eberhard et al. (2016) 194.

20 EWURA (2018) *Regulatory Performance Report on Electricity Sub-Sector for the Year Ended 30th June 2018*, Dar es Salaam: Energy and Water Utilities Regulatory Authority 18.

21 Mmari D, Andilile J & Fjeldstad O (2019) 'The evolution and current status of the petroleum sector in Tanzania' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA 13.

22 Ledesma D (2013) *East Africa Gas - Potential for Export* NG 74, Oxford: Oxford Institute for Energy Studies 12.

23 Pe Pedersen RH & Bofin P (2015) *The Politics of Gas Contract Negotiations in Tanzania: A Review* DIIS Working Paper 2015:03, Copenhagen: Danish Institute for International Studies 9 & Mmari, Andilile & Fjeldstad (2019) 13.

24 Pedersen & Bofin (2015) 9.

concessions surrendered formerly by British Petroleum and Shell.[25] In 1973, Azienda partnered with the American Oil Company and, in 1974, they jointly discovered natural gas reserves at Songo Songo, estimated at 2,5 trillion cubic feet.[26] The amount discovered was deemed too small for commercial exploitation, and exploration continued for other fields. In 1982, Azienda discovered another gas reserve at Mnazi Bay, also considered too small for exploitation. Consequently, it ceded the concessions back to government authorities in 1985.[27]

As oil prices rose during the 1970s' oil crisis, and banking on its Songo Songo discoveries, Tanzania enacted the Petroleum (Exploration and Production) Act.[28] Enactment of this law indicates the political cognisance of the fact that the petroleum industry had the potential for economic development. However, it was not until the early 1990s that significant efforts to develop the Songo Songo and Mnazi Bay gas fields started. The first National Energy Policy was published in 1992. Paragraph 60 of the Policy stated that the Songo Songo and Mnazi Bay natural gas fields were to be developed to replace imported petroleum fuels which were expensive. At that time, Tanzania was liberalising its economy from a state-controlled to a market-oriented one. So private sector investment was invited to develop the country's petroleum industry.

In 1992, the government was approached by a Canadian-based gas company, Ocelot, to develop the Songo Songo gas plant.[29] While still negotiating, the country experienced serious droughts which led to severe power shortages, as production depended on hydropower plants. To remedy the situation, the Swedish International Development Agency aided the Tanzania Electric Supply Company Ltd (TANESCO) to procure two open-cycle turbines running on jet fuel, which produced approximately 40 megawatts.[30] The Swedish agency's assistance was to last for

25 Mmari, Andilile & Fjeldstad (2019) 13.
26 Eberhard et al. (2016) 206.
27 Jourdan P (1990) 'The Mineral Economies of SADCC-Tanzania' 7(1) *Minerals and Energy - Raw Materials Report* 43.
28 No 27 of 1980.
29 Eberhard et al. (2016) 206.
30 Eberhard et al. (2016) 206.

two years, in the expectation that by the end of 1993 the Songo Songo gas would be ready to replace the jet fuel which ran the turbines at that time.

As negotiations for the natural gas plant (now known as Songas) continued, the government received an unsolicited proposal from Mechmar Corporation based in Malaysia to build a diesel-fuelled power plant to curb the imminent power crisis which had been caused by another drought in 1994.[31] For its convenience, Mechmar set up a joint venture between itself (holding a 70 per cent share) and a Tanzanian local partner, VIP Engineering & Marketing Limited (holding a 30 per cent share).[32] The venture was known as Independent Power Tanzania Limited. The company managed to sign a 20-year power purchase agreement with TANESCO in May 1995. Meanwhile, the Songo Songo project encountered several bureaucratic obstacles which meant that its operation did not begin until 2004. Independent Power Tanzania Ltd operated in Tanzania for 20 years. This was a costly exercise for both the government and TANESCO. First, TANESCO paid Independent Power US$2,6 million per month as capacity charges.[33] Secondly, the undertaking delayed the development of Songas which would have been more efficient for the country. Thirdly, Tanzania has spent about US$24 million in legal fees on international arbitration against IPTL.[34] In June 2017, two of its kingpins, James Rugemalira and Habinder Singh Sethi, were arrested and arraigned in court, jointly charged with offences of economic sabotage, forgery, impersonation, and money laundering.[35] Sethi

31 Cooksey B (2017) *IPTL, Richmond and "Escrow": The Price of Private Power Procurement in Tanzania*, African Research Institute available at https://www.africaresearchinstitute.org/newsite/publications/iptl-richmond-escrow-price-private-power-procurement-tanzania/ (accessed 12 February 2020) 1.

32 Cooksey B (2002) 'The Power and the Vainglory: Anatomy of a Malaysian IPP in Tanzania' in Jomo KS (ed) *Ugly Malaysians: South-South Investments Abused,* Durban: Institute for Black Research 47.

33 Bunge la Tanzania (2014) 12.

34 Cooksey (2017) 3.

35 Gerald C (4 July 2017) 'IPTL kingpins hit by fresh money laundering charges' available at https://www.ippmedia.com/en/news/iptl-kingpins-hit-fresh-money-laundering-charges (accessed 27 April 2021).

was freed in June 2021 after conceding a TSh26 billion plea bargaining agreement.[36] Rugemalira was released three months later under a *nolle prosequi* by the Director of Public Prosecutions.[37]

The successful operation of the Songo Songo project in 2004 attracted the development of the Mnazi Bay natural gas field in 2006. Subsequently, the 18 megawatt Mtwara Energy Project was developed to supply affordable electricity to Mtwara and Lindi regions.[38] In 2004, Tanzania suffered from another major drought which led to power shortages. Through the Tanzania Electric Supply Company Ltd, the government signed an emergency power off-take agreement with Richmond to remedy the situation. The process which led to the awarding of the tender to Richmond, and its aftermath, was a disgrace to a point that that the Judge in *Tanzania Electric Supply Company Limited v Dowans Holdings SA and Dowans Tanzania Limited*[39] described them as hard and painfully bitter facts. Simply, grand corruption was the essence of Richmond's procurement and operation in Tanzania.

An investigation into the Richmond affair by a Parliamentary Select Committee in 2008 found that Richmond was a dummy company with neither place of business nor any assets.[40] When the investigation report was tabled in Parliament, Prime Minister Edward Lowassa resigned on 7 February 2008, after he had been implicated in assisting Richmond to win the tender. Two other Ministers also resigned over the same allegations. Subsequently, TANESCO terminated its contract with Dowans Holdings SA and Dowans Tanzania Ltd (together referred to as Dowans), who had taken over Richmond in late 2006. In response, Dowans took TANESCO to arbitration before the International Chamber of Commerce for breach of contract. In 2010,

---

36 The Guardian (17 June 2021) 'IPTL's Sethi freed on 26bn/-liability accord' available at https://www.ippmedia.com/en/news/iptl%E2%80%99s-sethi-freed-26bn-liability-accord (accessed 21 March 2022).

37 The Citizen (17 September 2021) 'Rugemalira lives up to his name as case is dropped' available at https://www.thecitizen.co.tz/tanzania/news/video-rugemalira-lives-up-to-his-name-as-case-is-dropped-3553714 (accessed 21 March 2022).

38 Mmari, Andilile & Fjeldstad (2019) 16.

39 Misc. Civil Application No 8 of 2011, High Court of Tanzania, Dar es Salaam (unreported).

40 Bunge la Tanzania (2008) *Taarifa ya Kamati Teule Iliyoundwa na Bunge la Jamhuri ya Muungano wa Tanzania Tarehe 13 Novemba, 2007 Kuchunguza Mchakato wa Zabuni ya Uzalishaji Umeme wa Dharura Ulioipa Ushindi Richmond Development Company LLC ya Houston, Texas, Marekani Mwaka 2006*, Dodoma: Bunge la Tanzania 142.

the arbitrators awarded US$65,8 million to Dowans against TANESCO in damages.[41] Unfortunately, none of the politicians implicated in this saga have been prosecuted for these alleged crimes.

In 2000, the Tanzania Petroleum Development Corporation partnered with the United Kingdom's Western Geophysical to conduct seismic surveys in deep waters off the Tanzanian southern coast.[42] Data from this survey was the basis of the first licensing round of deep-sea production sharing agreements in 2004.[43] Since then, there has been growing interest from international oil companies in investing in the Tanzanian petroleum industry. Between 2004 and 2013, 42 deep sea wells were drilled, with 57,54 trillion cubic feet of natural gas reserves being discovered.[44]

While there has been much scholarly attention on Tanzania's future natural gas potential,[45] the country is also developing other energy sector projects. On 26 July 2019, President Magufuli laid the foundation stone for construction of a 2,115 megawatt hydropower plant known as the Julius Nyerere Hydropower Plant along the Rufiji River, at an area formerly known as Stiegler's Gorge. Implementation of this project will cost US$2,9 billion and was expected to be completed by 2022.[46] Once operational, the plant is expected to transform

41 Cooksey (2017) 2.

42 Alexander's Oil & Gas Connections (2000) 'Tanzania and Western Geophysical to jointly conduct seismic survey' available at http://www.gasandoil.com/news/africa/aaa95b6e3e9829ff0364caa410abd29a (accessed 10 February 2020).

43 Mmari, Andilile & Fjeldstad (2019) 14.

44 Mmari, Andilile & Fjeldstad (2019) 14.

45 Demierre et al. (2015), Fjeldstad & Johnsøn (2017), Roe AR (2017) *Tanzania—from Mining to Oil and Gas: Structural Change or Just Big Numbers?* WIDER Working Paper 2017/175, Helsinki: UNU-WIDER, Bishoge OK et al. (2018) 'The Overview of the Legal and Institutional Framework for Oil and Natural Gas Sector in Tanzania: A Review' 3(1) *Journal of Applied and Advanced Research* 8-17, & Fjeldstad O, Mmari D & Dupuy K (2019) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA.

46 Steven M (2019) 'Major Hydropower Projects Procurement in Africa, Experience, Challenges and Way Forward: The Case of Julius Nyerere Hydropower Project –Tanzania' available at https://www.ppra.go.tz/phocadownload/attachments/EAPPF/2019/DAY1/ENG.%20STEVEN%20A.%20MANDA%20MAJOR%20HYDROPOWER%20PROJECTS%20PRESENTATIONS.pptx (accessed 2 February 2020) 22.

Tanzania's power sector because, merged with the current 1,450 megawatts produced, the country will have more power than it needs for domestic consumption.[47]

Tanzania is also considering exploiting other renewable energy sources such as geothermal, wind, and solar.[48] Its long-term plan is to produce 6,700MW by 2025.[49] In addition, in 2017, the governments of Tanzania and Uganda signed an Inter-Governmental Agreement on the construction of the East Africa Crude Oil Pipeline. The 24-inch diameter and 1,445 kilometre-long pipeline will transport crude oil from Kabale-Hoima in Uganda to the Tanga port in Tanzania, en route to external markets.[50] About 80 per cent of the pipeline will be on Tanzanian land. It is expected that during construction, foreign direct investment in Uganda and Tanzania will increase by 60 per cent.[51] In particular, Tanzania will benefit from a tariff of US$12,20 per barrel of crude oil transported through the pipeline. It is estimated that Hoima will have a total throughput of 2,2 billion barrels of crude oil.[52] This means that, over time, Tanzania will earn around US$26 billion in tariffs from the project, if it is implemented successfully.

These developments make managing the energy sector in Tanzania more challenging now than ever before. The risk of corruption in the sector increases all the time. This study submits that, to overcome such risks and to ensure that these projects benefit Tanzania, there must be a robust policy and a legal and regulatory framework that is supported by effective and independent oversight machinery.

47 Maliki M (2019) 'Nyerere Hydropower Project, honouring Mwalimu's legacy' available at https://www.thecitizen.co.tz/supplement/5043016-5312004-5rapaaz/index.html (accessed 2 February 2020).

48 African Development Bank (2015) *Renewable Energy in Africa: Tanzania Country Profile* Côte d'Ivoire: African Development Bank Group 32-35.

49 Ministry of Energy and Minerals (2013) *Power System Master Plan 2012 Update*, Dar es Salaam: Ministry of Energy and Minerals 142.

50 Petroleum Authority of Uganda 'The East African Crude Oil Pipeline (EACOP) Project' available at https://pau.go.ug/midsteam/east-african-crude-oil-pipeline-project/ (accessed 11 February 2020).

51 East African Crude Oil Pipeline 'Key figures' available at http://eacop.com/ (accessed 11 February 2020).

52 Assaye Risk (2018) 'East Africa Crude Oil Pipeline (EACOP) Cone of Plausability Analysis' available at https://www.assayerisk.com/20180627-east-africa-crude-oil-pipeline-eacop-cone-of-plausability-analysis/ (accessed 11 February 2020).

1.3. Anti-corruption efforts in Tanzania

Tanzania's anti-corruption performance improved slightly during the fifth government regime under President Magufuli. It obtained a score of 38/100 and ranked at 94 out of 180 countries in Transparency International's Corruption Perceptions Index 2020.[53] This is an improvement of 23 positions from its ranking at 117 in 2015, the year Magufuli became President.[54] This suggests that Magufuli's anti-corruption campaign succeeded substantially. Unfortunately, Tanzania's anti-corruption performance depends on the attitude of the incumbent President towards the problem.[55] If the President maintains a soft attitude, corruption will escalate. Should another President adopt a hard stance against corruption, the problem will be reduced. The death of President Magufuli in March 2021 leaves doubts about the sustainability of his anti-corruption approach.[56] Whether the sixth government regime under President Samia Suluhu Hasani will maintain the hard anti-corruption stance like her predecessor is not yet clear.

Anti-corruption efforts in Tanzania are governed mainly by the Prevention and Combating of Corruption Act.[57] The Act establishes the Prevention and Combating of Corruption Bureau as an independent public body, with a mandate to prevent and combat corruption in the public, parastatal, and private sectors.[58] It has introduced a range of 24 corruption offences, including corrupt practices in contracts and procurement, active and passive bribery, and bribery of foreign public officials.[59] Part IV of the Act provides for an asset recovery regime against the proceeds of corruption.

53 Transparency International (2021) *Corruption Perceptions Index 2020* Berlin: Transparency International 3.

54 See Lukiko (2017) 3 for ranking trends since 2000.

55 Lukiko (2017) 4.

56 For critical discussion, see Lukiko LV, Kilonzo C, & Kimela H (2020) 'Tanzania's Post-Independence Anti-Corruption Efforts: Examining the Prevention and Combating of Corruption Bureau's (PCCB) Role during Magufuli's Regime' 4(1) *Journal of Anti-Corruption Law* 32-57.

57 [Cap 329 R.E. 2019].

58 Section 5 & 7 of the Prevention and Combating of Corruption Act [Cap 329 R.E. 2019].

59 Part III of the Prevention and Combating of Corruption Act.

The Prevention and Combating of Corruption Act is complemented by other pieces of legislation which introduce anti-corruption measures in various sectors. The Anti-Money Laundering Act[60] stipulates that all corruption crimes under the Prevention and Combating of Corruption Act are predicate offences for money laundering.[61] The Public Procurement Act[62] prohibits individuals and corporations from engaging in corrupt and fraudulent practices during tender processes.[63] The Oil and Gas Revenues Management Act[64] establishes a framework for collecting and managing revenues from petroleum products. It prohibits the use of revenues deposited in the oil and gas fund for rent-seeking or being subjected to corrupt practices, embezzlement, or theft.[65]

Tanzania is also a state party to the United Nations Convention against Corruption,[66] the African Union Convention on Preventing and Combating Corruption,[67] and the Southern African Development Community Protocol against Corruption.[68] Ratification of these regional and international instruments indicates Tanzania's determination to fight corruption internally and externally. However, legal pronouncements against corruption contained in statute books and policy documents alone do not guarantee a reduction in corruption levels. Using institutional theory, this thesis assesses the existing policy, legal and regulatory frameworks related to the Tanzanian energy sector, with a view to ascertaining opportunities that may further corruption, and proposes appropriate interventions.

1.4. Statement of the problem

The huge reserves of natural gas discovered off the Tanzanian coast, the on-going construction of the Julius Nyerere Hydropower Plant, the implementation of the East Africa Crude Oil

60 [Cap 423 R.E. 2019].
61 Section 3(c)(i) of the Anti-Money Laundering Act [Cap 423 R.E. 2019].
62 No 7 of 2011.
63 Section 83 of the Public Procurement Act 7 of 2011.
64 [Cap 328 R.E. 2019].
65 Section 11(c) of the Oil and Gas Revenues Management Act [Cap 328 R.E. 2019].
66 Ratified by Tanzania on 25 May 2005.
67 Ratified by Tanzania on 22 February 2005.
68 Ratified by Tanzania on 20 August 2003.

Pipeline, and other power projects, are expected to transform the country's energy sector and economy. There are prospects that Tanzania will become a major hydrocarbon exporter in the future.[69] The government and its citizens are expecting increased revenue and the social and economic development associated with these energy sector projects. However, studies on natural resources revenues and corruption in Tanzania indicate that as expectations of future gains from natural resources increase, so do expectations of future corruption.[70] While most citizens are optimistic that natural gas will be good for the economic growth of the nation, they also fear that only a few government officials and the rich will benefit.[71]

As Tanzania is developing several large-scale energy projects simultaneously, the risk of corruption engulfing the sector is a real threat. Considering the way that energy-sector-related corruption has syphoned off the country's revenues during the period from 2005 to 2020, it is doubtful whether Tanzania has strong enough systems for managing the governance challenges presented by these new developments. Lessons from the Independent Power Tanzania Limited/Escrow and Richmond scandals suggest that, when energy deals are not procured and managed in a transparent way, they may have corrosive effects on the nation. As Tanzania envisages economic growth from the opportunities presented by the ongoing energy sector projects, it first needs to establish an effective structure for managing the sector and to prevent any possible chances of corruption.

Despite the explicit determination by the government to protect Tanzania's interests in its natural resources as stated in legislation, studies show that Tanzania is characterised by weak institutions which lack the necessary skills and capacity to enforce the standards set by law.[72] This poses a real threat that corruption may still engulf the energy sector, despite ample existing legislation, and the presence of regulatory agencies. Experience from other countries

69 Fjeldstad, Mmari, & Dupuy (2019) 1.

70 Cappelen et al. (2018) 9.

71 TWAWEZA (2014) Managing Natural Resources *Sauti Za Wananchi*, Dar es Salaam: TWAWEZA 3-5.

72 Polus A & Tycholiz WJ (2019) 'David versus Goliath: Tanzania's Efforts to Stand up to Foreign Gas Corporations' 54(1) *Africa Spectrum* 61–72, Lee B & Dupuy K (2018) 'Understanding the Lie of the Land: An Institutional Analysis of Petro-Governance in Tanzania' 36(1) *Journal of Energy and Natural Resources Law* 85–101 & Roe (2017).

suggests that using natural resources to promote real economic development for the people may be difficult for developing countries.[73] Overcoming those challenges depends on the quality of institutions established to regulate and manage the exploitation of those resources. When the institutions are weak, there is a risk that corruption and elite capture may outwit public interests.[74]

As Tanzania looks forward to boosting its economy through investment in the energy industry, it is imperative to investigate vulnerabilities, such as corruption, that may impede the realisation of that vision.

1.5. Objectives of the study

This study aims at critically examining the policy, legal, and regulatory regime responsible for the governance of the energy sector in Tanzania with a view to identifying the weaknesses that may further corruption, in order to propose appropriate interventions. Specifically, it intends to:

a) Examine the way in which the relationships, roles, and powers of various actors influence corruption and anti-corruption practices in the energy sector in Tanzania;

b) Assess the extent to which normative frameworks such as transparency and accountability mechanisms contribute to fighting corruption in the energy sector in Tanzania; and

c) Identify the policy, legal, regulatory, and practical deficits which create room for corruption in the energy sector and propose appropriate interventions.

1.6. Research questions

This study applies institutional theory as the vehicle for answering the following questions:

---

73 Fjeldstad O & Johnsøn J (2017) 'Governance challenges in Tanzania's natural gas sector: Unregulated lobbyism and uncoordinated policy' in Williams A & Le Billon P (eds) *Corruption, Natural Resources and Development: From Resource Curse to Political Ecology,* Northampton: Edward Elgar Publishing Limited 44.

74 Lee & Dupuy (2018) 86.

a) How do the relationships, roles, and powers of various actors influence corruption and anti-corruption practices in the energy sector in Tanzania?

b) To what extent do normative frameworks, such as transparency and accountability mechanisms, contribute to fighting corruption in the energy sector in Tanzania?

c) What are the policy, legal, regulatory, and practical deficits which create room for corruption in the energy sector, and how can they be overcome?

1.7. Significance of the study

Tanzania is expecting an energy-sector boom following the discovery of huge reserves of natural gas and the implementation of other power projects. However, literature indicates that the management of natural resources in most developing countries is challenging.[75] Corruption is one of the major challenges in this regard. So, if Tanzania's expectations about the energy boom is realised, it is imperative to investigate how corruption may unfold in the sector, and how it may be combated.

There is little literature available dealing with corruption as a vulnerability in Tanzania's future energy sector. The five-year research programme, entitled 'Tanzania as a Future Petro-State: Prospects and Challenges', is one of the few.[76] The programme was implemented by the Research on Poverty Alleviation and the Chr. Michelsen Institute between 2014 and 2019. However, the matter of corruption was just a small part of this project, and many of the intricacies concerning this phenomenon were left untouched. This thesis goes deeper, and provides an in-depth examination and understanding of corruption as a key vulnerability regarding the development of Tanzania's energy sector. It then proposes measures to address it.

[75] Collier P & Hoeffler A (1998), Collier P & Hoeffler A (2005), Mehlum H, Moene K & Torvik R (2006), & Ross ML (2015).

[76] See https://www.cmi.no/projects/1854-tanzania-as-a-future-petro-state (accessed 15 February 2020).

1.8. Research methodology

This study employs a desk-based research methodology, taking a critical-analytical approach to the question of fighting corruption in the energy sector in Tanzania. Data has been gathered from documentary collections of primary and secondary sources, with the aim of analysing the research problem and formulating answers to the research questions. The study is grounded in institutional theory. The methodology and institutional theory provide practical grounds for a critical review of literature, and analysis and discussion of the issues being investigated, in order to achieve the research objectives.

1.9. Scope of the study

This study limits itself to two dimensions. First, it is limited in terms of the energy industry being studied. The energy sector encompasses oil, gas, coal, and consumable fuels.[77] Energy resources are classified further into renewable and non-renewable energy.[78] Renewable energy resources include geothermal, solar, hydro, and wind, and non-renewable energy resources include coal, oil, and gas. This thesis is limited to non-renewable energy resources, particularly oil and gas. There are two reasons for this. First, Tanzania is new to the oil and gas industry, and the challenges of managing this emerging sector are unfamiliar, and have not been explored extensively. Secondly, oil and gas activities fall under a legal framework that is distinct from that governing other energy resources. Therefore, the National Energy Policy of 2015 addresses the electricity industry separately from the petroleum industry.[79]

The second limitation to the scope of this study concerns territorial coverage. Tanzania is a United Republic, consisting of mainland Tanzania and Zanzibar. Zanzibar has its own Constitution and government for administration of non-union matters. The Constitution of the United Republic of Tanzania and its government administers union matters. Oil and natural gas

77 Standard & Poor's (2006) 'Global Industry Untitled folder 2ry Classification Standard' available at https://www.unm.edu/~maj/Security%20Analysis/GICS.pdf (accessed 5 May 2021) 12.

78 Güney T (2019) 'Renewable energy, non-renewable energy and sustainable development' 26(5) *International Journal of Sustainable Development & World Ecology* 389-397.

79 Ministry of Energy and Minerals (2015) *National Energy Policy* Dar es Salaam: Ministry of Energy and Minerals 3, 11 & 22.

resources are union matters.[80] However, the Petroleum Act[81] bestows the administration of petroleum operations upon the Government of Zanzibar and the Government of the United Republic simultaneously. Each government is required to manage the petroleum operations undertaken within its territorial boundaries, including collecting and spending the revenues derived. Zanzibar has its own laws and institutions for managing its petroleum sector.[82] This study is limited to the petroleum industry of mainland Tanzania which is administered under the legal regime of the United Republic. However, the conclusions reached, and lessons learnt in this study may be used to improve petroleum governance in Zanzibar too.

1.10. Institutional theory

Institutional theory examines the influence of institutions on organisations.[83] It addresses the logic of organisational behaviour, and the environments which determine and shape formal structures.[84] This theory posits that organisations are subject to exogenous and endogenous forces which influence organisational structures, actions, decisions, and change.[85] These forces are the institutions which function as blueprints describing the various formal structures and rules to be observed when pursuing certain goals.[86]

Institutions, as distinguished from organisations, are the nucleus of institutional theory. An organisation refers to a group of people performing certain functions in an organised way.[87] This encompasses entities such as courts, parliament, police forces, civil service departments,

80 See the First Schedule to the Constitution of the United Republic of Tanzania of 1977.

81 Section 2 of the Petroleum Act No 21 of 2015.

82 See the Zanzibar Oil and Gas Act No 6 of 2016.

83 Scott RW (2004) 'Institutional Theory: Contributing to a Theoretical Research Program' in Smith KG & Hitt MA (eds) *Great Minds in Management: The Process of Theory Development*, Oxford: Oxford University Press 11.

84 Aksom H, Zhylinska O & Gaidai T (2020) 'Can institutional theory be refuted, replaced or modified?' 28(1) *International Journal of Organisational Analysis* 140.

85 Zucker LG (1987) 'Institutional Theories of Organisation' 13 *Review Literature and Arts of the Americas* 443.

86 Meyer JW & Rowan B (1977) 'Institutionalised Organisations: Formal Structure as Myth and Ceremony' 83(2) *American Journal of Sociology* 345.

87 MacCormick N & Weinberger O (1992) *An Institutional Theory of Law: New Approaches to Legal Positivism,* Holland: Kluwer Academic Publishers 56.

government agencies, regulatory bodies, schools, and businesses. However, institutions in this sense refer to the rules, norms, conventions, practices, and beliefs that define, authorise, justify, and regulate human conduct in a social setting.[88] They are the structures through which authoritative behaviour is established, shaped, and maintained.[89]

Conceptually, institutions are what have been accepted culturally, socially, professionally, or legally, as proper, adequate, rational, and necessary in governing conduct.[90] Institutions establish actors, define their roles and modes of action, empower them to act, and constrain their conduct by setting regulative standards and imposing sanctions for violations. Put simply, they are the rules of the game.[91] These institutions determine the credibility and acceptability of an individual or organisation in the society. Organisations which conform to those institutions are considered credible and acceptable by society, while rebels are considered as illegitimate, and are rejected. Consequently, organisations tend to conform to acceptable institutions to obtain or maintain their legitimacy in society.

The term legitimacy as applied by institutional theorists is differentiated from legality. An action is regarded as being legal if it conforms to state prescriptions stated by law. While legality is doing what the law commands, legitimacy is the perception of the society about the rationality of doing so. According to Suchman

> legitimacy is a generalised perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs, and definitions.[92]

88 MacCormick & Weinberger (1992) 53.

89 Huntington SP (1965) 'Political development and political decay' 17(3) *World Politics* 394.

90 Tolbert PS & Zucker LG (1983) 'Institutional Sources of Change in the Formal Structure of Organisations: The Diffusion of Civil Reform' 28(1) *Administrative Science Quarterly* 25.

91 Ebner A & Beck N (2008) *The Institutions of the Market: Organisations, Social Systems, and Governance*, *The Institutions of the Market: Organisations, Social Systems, and Governance*, Oxford: Oxford University Press 256.

92 Suchman MC (1995) 'Managing Legitimacy: Strategic and Institutional Approaches' 20 *Academy of Management Review* 574.

Therefore, when the law is disconnected from those to whom it applies, it is easily considered illegitimate.[93] Where the law lacks legitimacy, it gets resisted. Schmitt introduces the concept of consent as the basis of legitimacy.[94] In that sense, legitimacy depends on the society's choice not to resist the law.[95] When formal rules are resisted by members of the society or organisation, then there is the likelihood of what institutional theorists refer to as decoupling;[96] that is the departure of actual organisational practice from official prescriptions such as the law. In the quest for legitimacy, organisations strive to fit their structures, processes, and actions within what has been accepted as a legitimate version of them. Legitimacy becomes a controlling force to which organisations must conform. Therefore, in this study the term legitimacy is used in its sociological sense, in contrast to legality.

Institutional theory analyses the mechanisms by which prevailing institutions affect organisational structures, processes, performance, and change. It examines the way institutions arise and become entrenched in organisations' systems, and the reasons for conformity to these institutions by respective organisations. Institutional theory also analyses how institutional elements influence interests, and shape the behaviour of actors in social settings. Institutional analysis has been adopted by scholars from various disciplines, including economics, organisational studies, political science, and law. This has resulted in the generation of various analytical frameworks within institutional theory. Therefore, anyone conducting an institutional analysis must specify the version which he or she is using.[97] One of them is empirical institutionalism propounded by Samuel Huntington.[98] Its specific connection to this thesis is Huntington's argument that corruption may in some instances promote development.

93 Schmitt C (2004) *Legality and Legitimacy* USA: Duke University Press 118.

94 Schmitt (2004) 118.

95 Schmitt (2004) 118.

96 Scott RW (2014) *Institutions and Organisations: Ideas, Interests and Identities* 4th Ed, London: SAGE Publications 185.

97 Scott RW (1987) 'The Adolescence of Institutional Theory' 32(4) *Administrative Science Quarterly* 501.

98 Huntington SP (1965) & Huntington SP (1968) *Political Order in Changing Societies,* London: Yale University Press.

Huntington defines institutions as 'stable, valued, recurring patterns of behaviour'.[99] These patterns tend to grow and mature and may as well decay and dissolve. Accordingly, the strength of a political system depends on its level of institutionalisation. An effectively institutionalised system acquires value and stability and restricts power that may otherwise be applied privately and arbitrarily.[100] Thus, in a corrupt society where private interests subdue public ones, political institutions are weak to control social forces.[101] Huntington argues that corruption is a product of modernisation. When societies adopt new standards of behaviour, they tend to condemn the traditional ones as corrupt. Also, modernisation bears new social groups with diverse interests within the political sphere. For instance, wealthy individuals may bribe the electorate in order to be elected to political positions whereas the electorate may use their ballot power to obtain favours from politicians. Further, modernisation increases governmental functions and regulation which in turn fuel corruption.[102]

Contrary to popular perception that corruption is evil, Huntington argues that corruption may play a positive role to enable individuals or organisations to obtain benefits which would otherwise been blocked by the existing value system and social structure.[103] For instance, government favours to leaders of trade unions may influence them to abandon their associations' broader claims thereby reducing pressure on the government. Further, corruption may be one way of avoiding laws and regulations which humper private investment and economic expansion. Also, corruption in the government may contribute to political development by providing political parties with the agenda for election campaigns.

While Huntington's claims on the utility of corruption are valid regarding the benefiting groups, they are invalid in respect of the public good. For instance, an investor may bribe the regulators to obtain an environmental impact clearance for the investment. In Huntington's view, such corruption is beneficial to the investor for obtaining the clearance, to the state as it

99 Huntington (1965) 394.
100 Huntington (1965) 423.
101 Huntington (1968) 59.
102 Huntington (1968) 61-62.
103 Hunting (1965) 407 & Huntington (1968) 64.

will collect tariffs and taxes from the investment, and to the public through jobs created. However, the environmental impact of that investment may be disastrous far beyond those benefits. It is submitted that corruption is never a victimless transaction. Whenever it is committed, someone is disadvantaged. Therefore, this thesis does not follow Huntington's theoretical proposition as it lacks firm grounds for critical argumentation. In fact, Huntington agrees that corruption debilitates governments and a society with perverse corruption is unlikely to be improved by more corruption.[104]

This study proceeds using Richard Scott's framework of institutional theory.[105] His framework analyses institutions through their regulative, normative, and cultural-cognitive elements. While other versions of institutional analysis tend to focus on one of these three elements, Scott argues that the elements do not work in isolation, and so they should be analysed conjunctionally.[106] In Scott's conception, these elements are interdependent and mutually reinforcing.[107] Each element has a unique influence on an organisation's claim for legitimacy. This theoretical framework is appropriate for this study because it establishes a continuum through which laws, rules, practices, standards, norms, and beliefs affecting the energy sector in Tanzania may be analysed. Since corruption and anti-corruption are influenced differently by the legal, social, economic, and political forces in a given society, institutional theory as translated in Scott's framework strongly guides the analysis, discussion, and formulation of answers to the questions driving this thesis.

1.10.1. Three pillars of institutions

Institutions are founded on three pillars, the regulative, normative, and cultural-cognitive.[108] In this conception, institutions refer to multifaceted systems consisting of settled habits, rules of conduct, norms, and the regulative and governance processes that shape social behaviour.[109]

---

104 Huntington (1968) 69.

105 Scott RW (1995) *Institutions and Organisations*, London: SAGE Publications & Scott (2014).

106 Scott (2014) 70-71.

107 Scott (1995) 34.

108 Scott (1995), Scott RW (2008) 'Approaching Adulthood: The Maturing of Institutional Theory' 37(5) *Theory and Society* 427-42 & Scott (2014).

109 Scott (1995) 33.

Institutions empower and support actors by providing resources and guidelines for action. They control and limit behaviour by prescribing legal, moral and cultural limits within which action is legitimised.[110] Consequently, institutions provide stability and social order by defining acceptable and unacceptable behaviour.[111]

1.10.1.1. Regulative pillar

The regulative pillar of institutions consists of laws, rules, policies, and their associated sanctions. This pillar presupposes the existence of a superior authority that sets the rules to be complied with by the subjects, monitors compliance through enforcement mechanisms, and administers sanctions in the form of rewards for compliance or punishment for violation.[112] This pillar consists of more formalised systems of authorising and controlling social behaviour. Actors are inclined to comply with the rules based on expediency or fear of sanctions.

Under the regulative pillar, the mechanism of enforcement is coercion.[113] DiMaggio and Powell state that coercion

> results from both formal and informal pressures exerted on organisations by other organisations upon which they are dependent and by cultural expectations in the society within which the organisations function.[114]

In this understanding, coercion is wielded from other organisations or society's cultural expectations. In Scott's theoretical framework, cultural expectations encompass the cultural-cognitive pillar of institutions which is considered later in this section. The regulative pillar focuses on coercion, which is exerted on organisations by other organisations. For instance, in Tanzania the anti-corruption agency operates under the Office of the President. The President

110 Scott (2014) 58.
111 Scott (2014) 58.
112 Scott (2014) 59-60.
113 Scott (1995) 36.
114 DiMaggio PJ & Powell WW (1983) 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields' 48(2) *American Sociological Review* 150.

is legally empowered to exercise control over the agency, including hiring and firing its top officials.[115]

The superordinate organisation exercising legal coercion over other organisations is the state.[116] Modern states have enormous authority to define, authorise, and regulate the enjoyment of rights and the exercise of duties by subordinates.[117] In some instances, organisations' structures and processes are designed, implemented, or changed in response to state mandate. For instance, in 2019, manufacturers of plastic bags in Tanzania had to change their technology to producing environment-friendly bags after the government issued regulations banning the use of plastic carrier bags.[118] DiMaggio and Powell remark that states have become the great rationalisers.[119]

Regulative coercion occurs outside the state powers as well. For instance, businesses are structured hierarchically in a way that allows them to exercise direct coercion and regulative authority over their employees. Similarly, businesses usually form networks and strong alliances that lobby and influence state policy and laws which affect their interests.[120] In this way, they exercise indirect coercion upon the state. In situations of extreme corruption, such as state capture, firms have a strong influence on the state which may amount to direct coercion.[121] In a captured state, private firms lobby for the formation of policies and laws through corrupt relationships with public officials and politicians.[122]

115 Section 6(2) of the Prevention and Combating of Corruption Act.

116 Streeck W & Schmitter PC (1985) 'Community, Market, State and Associations: The prospective contribution of interest governance to social order' in Streeck W & Schmitter PC (eds) *Private Interest Government: Beyond Market and State*, Beverly Hills: SAGE Publications 20.

117 Scott (2014) 120.

118 See the Environment Management (Prohibition of Plastic Carrier Bags) Regulations, Government Notice No 394 published on 17 May 2019.

119 DiMaggio & Powell (1983) 147.

120 Fjeldstad & Johnsøn (2017) 46-50.

121 See Hellman JS, Jones G & Kaufmann D (2003) 'Seize the State, Seize the Day: State Capture and Influence in Transition Economies' 31(4) *Journal of Comparative Economics* 751-73; and Hellman JS & Schankerman M (2000) 'Intervention, Corruption and Capture: The Nexus between Enterprises and the State' 8(3) *The Economics of Transition* 545-76.

122 Hellman, Jones & Kaufmann (2003) 1.

Apart from the influence of businesses, states may experience regulative coercion in the form of international law obligations and international diplomacy. International law contains various rules and norms which states must comply with to maintain international legitimacy. For instance, regarding anti-corruption, a nation that has ratified the United Nations Convention against Corruption appears to have more legitimacy than one that has not ratified it. Donor countries and agencies usually grant aid to nations that comply with certain conditionalities, which invariably involve anti-corruption measures. Nations are inclined to ratify certain international instruments or to comply with some conditionalities to obtain or maintain the rewards attributed to such compliance.

The logic behind the regulative pillar of institutions is that rules and laws are crafted to advance certain interests, and that their subjects obey them to obtain the associated rewards or to avoid sanctions.[123] So individuals and organisations conform to what is considered rational in their circumstances. Rational choice scholars argue that individuals make choices and act based on rational calculation of their personal utility.[124] This approach considers the individual as an autonomous actor whose preferences are influenced by perceptions of rational self-interest. It tends to deny the role played by institutions in shaping individuals' preferences.[125] However, in modern organisational structures, individuals' choices are controlled significantly by the prevailing institutions. Calculations of personal utility must take into consideration the boundaries set by the rules governing that organisation and society. This brings in what scholars have termed as bounded rationality.[126] However autonomous an individual or organisation may be, its actions are legitimate only if they are exercised within the limits set by the rules and laws.

Indicators of the regulative pillar include the presence of Constitutions, Acts, regulations, rules, orders, circulars, guidelines, and formal structures that authorise, monitor,

123 Scott (2014) 62.

124 Peters GB (1999) *Institutional Theory in Political Science: The New Institutionalism,* New York: PINTER 1.

125 Peters (1999) 15.

126 Shinn CW (1996) 'Taking Stock of Institutional Thought: Institutions, Institutionalisation and Institutional Effects' 18(2) *Administrative Theory and Praxis* 37 & Peters (1999) 44.

and sanction social behaviour. Most anti-corruption initiatives are anchored in the regulative pillar of institutions. Governments enact laws which establish the rules to be enforced by various organs in fighting corruption. These laws prescribe conduct which amounts to corruption, establish structures to monitor and enforce compliance, define the roles of various actors, and establish sanctioning machineries such as prosecution and the courts.

The regulative pillar is very relevant to this study as it provides a critical lens for examining how the various laws, rules, and regulatory frameworks in Tanzania can be utilised to fight corruption in the energy sector. It provides a foundation for assessing the impact of coercive forces on the anti-corruption response of various actors such as extractive companies, business enterprises, and the regulatory and law enforcement agencies.

1.10.1.2. Normative pillar

This pillar comprises the values and norms which have a prescriptive, evaluative, and obligatory effect on social action.[127] Values are conceptions of desirable or acceptable outcomes, and the standards against which established structures or behaviour may be assessed.[128] They encompass the goals, objectives, and visions of an organisation. Norms define ways through which goals may be achieved and ends met.[129] For instance, rules of fair play in the game of football define the means of pursuing the goal of winning the trophy by the teams. While the regulative pillar prescribes the primary rules of obligation which have a higher force, the normative pillar stipulates the secondary rules which have a lesser force.[130] As La Torre puts it:

> [t]o have and practice law is not just commanding and obeying, sanctioning and being sanctioned, but we need particular normative rules that institute a new dimension for action by qualifying a situation and/or an object in a non-empirical way.[131]

127 Scott (2014) 64.

128 Scott (2014) 64.

129 Scott (2014) 64.

130 La Torre M (2009) 'Institutional Theories and Institutional of Law: On Neil MacCormick's Savoury Blend of Legal Institutionalism' in Del Mar M & Bankowski Z (eds) *Law as Institutional Normative Order*, Edinburgh: ASHGATE Publishing Limited 75 & Scott (2014) 60.

131 La Torre (2009) 77.

Normative systems contain norms and rules which authorise, regulate, and justify behaviour.[132] Their ability to guide behaviour stems from the actor's sense of a social obligation to act in a particular way.[133] These norms establish binding expectations which are morally authorised. Violators are shamed or disgraced, while those who demonstrate exemplary behaviour are honoured and respected. As such, the individual's choices are made under the logic of appropriateness.[134] Instead of asking: what choice is in my best interest? the actor will be confronted with a question like: given this situation and my role within it, what is the appropriate behaviour for me to carry out?[135]

Normative aspects of institutions take the form of professional codes and standards, training, and occupational standards.[136] As such, training institutions, professional bodies and the certification and accreditation organs play a key role in setting standards or influencing behaviour of actors. For instance, various government agencies in Tanzania are striving to improve their services in order to be certified by the International Standards Organisation.[137] Likewise, professional bodies in the country are implementing various measures to ensure that members abide by professional standards. For example, in July 2019, the National Board of Accountants and Auditors deregistered two auditing firms from practising, and suspended one due to auditing malpractice and breach of professional ethics.[138]

Normative institutions set the ground for examining the way normative frameworks influence anti-corruption work in the energy sector in Tanzania. The energy sector involves various actors who are subject to diverse normative rules such as fairness, transparency, public

132 MacCormick & Weinberger (1992) 14.

133 Li J et al. (2008) 'Institutional Pillars and Corruption at the Societal Level' 83(2) *Journal of Business Ethics* 330.

134 Scott (2014) 65.

135 Scott (2014) 65.

136 DiMaggio & Powell (1983) 152; Li et al. (2008) 330.

137 Ubwani Z (2018) 'Companies told to go for ISO certification' available at https://www.thecitizen.co.tz/News/-Companies-told-to-go-for-ISO-certification/1840340-4898652-1qy79p/index.html (accessed 6 May 2020).

138 Msikula A (2019) 'Two auditing firms axed, one on hold' availabe at https://dailynews.co.tz/news/2019-07-135d29988140335.aspx (accessed 6 May 2020).

and business ethics, accountability, and equity. Normative institutions are relevant to this study as they provide a framework for assessing the moral aspects of corruption and anti-corruption in Tanzania, and how various actors establish and implement values and norms that guide their conduct. As engagement in the extractive value chain entails various certifications, the normative pillar offers a basis for assessing the impact of transparency and accountability mechanisms on fighting corruption in the energy sector in Tanzania.

1.10.1.3. Cultural-cognitive pillar

This pillar supports the shared conceptions which constitute the nature of social reality.[139] It analyses an individual's internal representations of the environment and its influence on individual behaviour. Institutional theory emphasises that an individual's subjective interpretations of the environment are shaped by cultural frameworks which create expectations about how things ought to be done.[140] These expectations arise out of the historical background of the society or organisation, the training undertaken by the respective actor, and the surrounding social reality. Actors in a particular society or organisational field conceive these cultures as uniform and consistent across the respective groups of actors. As such, they are taken for granted as the way things should be done.[141] They create a sense of identity as to how certain groups of people or organisations should operate and behave. For instance, the public expects that a good lawyer should have a fancy office, wear expensive clothes, and probably drive a nice car. None of these form part of the regulative or normative pillar. However, they are social realities that legitimise a lawyer in the public's perception.

The underlying logic of compliance under this pillar is orthodoxy, and conforming to what others are doing.[142] Therefore, the mechanism of organisational change is mimetic. Cultural-cognitive scholars stress the role of templates in guiding action.[143] Over time, the templates attain the status of a habitualised action that can be reciprocally typified by the

139 Scott (2014) 67.
140 Scott (2014) 67.
141 Scott (1995) 44.
142 Scott (2014) 68.
143 Scott (2014) 69.

actors. Habitualised action refers to established behaviours that have been accepted by a set of actors in solving common problems.[144] Reciprocal typification involves the development of objective meanings attributed to the habitualised behaviours.[145]

Poorly performing individuals and organisations tend to model their approaches along those of whom are considered superior or successful. Technically, these approaches are referred to as best practices. For instance, Tanzania has modelled its petroleum sector's regulatory framework along the Norwegian model.[146] Its anti-corruption enforcement system is based on the model of Hong Kong's Independent Commission against Corruption.[147] It is expected that such isomorphism will create a strong regime for fighting corruption in the energy sector. Institutional theory provides a reliable theoretical ground for assessing the impact of these efforts on the regulation of the energy sector, and on fighting corruption in the country.

1.10.2. Combination of the three pillars

According to Scott, empirical observations of institutional forms show that the three institutional pillars do not work in isolation but in conjunction.[148] Actors tend to behave in a certain way because they perceive such actions as culturally presumed, normatively sanctioned, or enforced by superior powers.[149] In some situations, one pillar may work essentially alone in supporting or controlling social action. In other situations, a particular pillar may be supreme over others.[150] Nevertheless, in many situations the three pillars are complementary to each other. In most cases, an action is legitimate after passing the test of all the three elements. When the three pillars are aligned, they wield strong influence on individual or organisational

144 Tolbert PS & Zucker LG (1996) 'The Institutionalisation of Institutional Theory' in Clegg S, Hardy C & Nord W (eds) *Handbook of Organisational Studies*, London: SAGE 180.

145 Tolbert & Zucker (1996) 180.

146 See Jacobsen E 'Forewords' in Fjeldstad, Mmari & Dupuy (2019) xi.

147 Policy Forum (2018) *A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16* Dar es Salaam: Policy Forum 3.

148 Scott (2014) 70.

149 Scott (2014) 71.

150 Scott (2014) 71.

behaviour. However, when they are skewed, they produce differing choices and behaviour among actors.[151]

In some instances, institutional formal structures and rules conflict with activities preferred by the actors. Meyer and Rowan argue that this conflict may arise in two situations. First, when the formal structures and rules are inconsistent with the local and technical demands for effective performance;[152] and secondly, when formal structures and rules are inconsistent with one another, leading to poor coordination and control.[153] In response to such situations, organisations conform to institutional pressures by adopting the formal structures and rules, but maintain different practices in actual implementation.[154] Institutional theorists refer to this separation between formal requirements and actual practice as decoupling. Decoupling happens when an organisation's outward presentation is different from its internal actual practices.

This study argues that the regulative, normative, and cultural-cognitive elements relating to the governance of the energy sector in Tanzania must be aligned to ensure the effective management of energy resources and shut the gates of corruption. Similarly, the number of regulatory rules and agencies in this sector creates the risk of regulatory inconsistencies, conflict of interest, and poor coordination and control. This may open the door for decoupling and corruption.

Institutional theory is generally relevant to guiding the analysis, discussion, and formulation of answers to the questions driving this thesis. Scholars have used the different strands of this theory to study corruption and anti-corruption in various settings. Luo applied this theory to examine the patterns of organisational corruption in the private sector.[155] Pillay

151 Strang D & Sine WD (2002) 'Interorganizational institutions' in Baum JA (ed) *The Blackwell Companion to Organisations*, Oxford: Blackwell 499.

152 Meyer & Rowan (1977) 355.

153 Meyer & Rowan (1977) 355.

154 Meyer & Rowan (1977) 357.

155 Luo Y (2005) 'An Organisational Perspective of Corruption' 1(1) *Management and Organisation Review*, 119–54.

and Kluvers applied institutional theory using Luo's model to study corruption in the South African public service.[156] Li et al. used Scott's framework of institutional theory to examine the relationship between social institutions and organisational corruption at the societal level.[157] This study applies Scott's theoretical framework to examine the efficiency of Tanzania's institutions at fighting corruption in the energy sector.

1.11. Literature review

The discovery of natural gas reserves in Tanzania has attracted several studies from various disciplines. This section reviews some of the available literature to establish the knowledge base and the contribution of this thesis to the existing body of knowledge on energy governance in Tanzania.

Roe examines Tanzania's expected transition from mining to an oil and gas economy, and submits that there is need for wider structural changes in the management of natural resources for the new sector to have transformative economic effects.[158] He uses the Tanzanian mining resurgence which started in the late 1990s to explain the way a major priority sector failed to deliver any significant changes to the economy. He argues that during the mining boom, the government was overcome by the need to extract more revenues from the sector while neglecting other policy changes that would have produced greater returns in the future.[159]

Roe's argument is substantiated by data from the Resource Governance Index, 2021 which show that Tanzania had a poor 39 out of 100 score on oil and gas licensing attributed to the opacity of the licensing processes.[160] However, it had a good score of 89 out of 100 on

156 Pillay S & Kluvers R (2014) 'An Institutional Theory Perspective on Corruption: The Case of a Developing Democracy' 30(1) *Financial Accountability and Management* 95–119.

157 Li et al. (2008).

158 Roe AR (2016) *Tanzania — from Mining to Oil and Gas* WIDER Working Paper 2016/79, Helsinki: UNU-WIDER.

159 Roe (2016) 11.

160 Natural Resource Governance Institute (2021) *Resource Governance Index 2021* available at https://resourcegovernanceindex.org/country-profiles/TZA/oil-gas?years=2021 (accessed 7 September 2021).

taxation.[161] Roe asserts that in the absence of clear, realistic, and forward looking plans to regulate and manage the energy sector, the ghost of the mining boom will certainly haunt it.

In a successor paper published in 2017, Roe argues that Tanzania has introduced a plethora of organs and agencies responsible for the energy sector, which has created coordination challenges.[162] There are over ten organs concerned with the management and regulation of the energy sector and its related extraction activities. These include the Ministry of Energy, the Ministry of Finance, the Ministry of Lands, the Central Bank, and the Attorney General's office. The Tanzania Petroleum Development Corporation, the Energy and Water Utilities Regulatory Authority, the Petroleum Upstream Regulatory Authority, the Tanzania Revenue Authority, and the National Environmental Management Council are also involved. At the top of all these structures is the President, who is the trustee of natural wealth and resources in Tanzania.[163] Coordination and decision-making across these institutions presents the risks of excess bureaucracy and political manoeuvring. This may interfere with operations of the regulatory agencies or extractive firms involved in the sector.[164]

Lee and Dupuy have examined the legal and institutional framework for the governance of Tanzania's petroleum resources as enshrined in the three key petroleum laws passed in 2015. They observed that while the new laws have established a relatively solid framework, they have gaps and ambiguities which call for early attention to allow a clear and efficient exercise of functions by different actors to make the sector economically healthy.[165] They noted that the Petroleum Act affords the President and Minister of Energy wider discretion in various aspects, including the appointment of key personnel to regulatory agencies and the awarding of

161 The score scale on the Index is: failing (<30), poor (30-44), weak (45-59), satisfactory (60-74), and good (>75).

162 Roe (2017) 7.

163 Section 5(2) of the Natural Wealth and Resources (Permanent Sovereignty) Act.

164 Roe (2017) 8.

165 Lee & Dupuy (2018) 86.

licences to investors. Meanwhile, Parliamentary oversight over petroleum regulatory agencies and related activities is limited.[166]

Lee and Dupuy have observed that under the Petroleum Act, the status and mandate of the Tanzania Petroleum Development Corporation is complicated, with potential for conflict of interest.[167] On the one hand, it acts as a policy advisor to the government. On the other hand, it participates in petroleum exploration and extraction projects in order to safeguard national interests in the industry. Still, the Minister of Energy may issue policy directions to the Corporation in performing its functions.[168] The risk which Lee and Dupuy contemplate in this regard is that the Corporation may be forced to succumb to political pressure in carrying out its obligations.[169]

Lee and Dupuy also notice the discrepancies in the laws regarding transparency requirements. While the law requires information concerning the Petroleum Registry and the National Petroleum and Gas Information System to be made public, the Model Production Sharing Agreement imposes confidentiality about information provided by contractors to the Tanzania Petroleum Development Corporation.[170] Such information may be disclosed only with the Minister's consent. This discrepancy needs to be addressed to avoid it being used to channel corruption through clandestine transactions. In general, Lee and Dupuy submit that Tanzania's expectation of benefiting from the oil and gas sector depends largely on the quality of its institutions.[171]

Fjeldstad and Johnsøn examine how Tanzania's institutions are coordinated towards formulating and implementing policies related to the gas sector.[172] By examining the process around the enactment of the petroleum laws in 2015, they observe that legislation was

166 Lee & Dupuy (2018) 96.
167 Lee & Dupuy (2018) 97. See also section 9 and 10 of the Petroleum Act 21 of 2015.
168 Section 10 of the Petroleum Act.
169 Lee & Dupuy (2018) 97.
170 Article 18 (n & o) of the Model Production Sharing Agreement of 2013.
171 Lee & Dupuy (2018) 91.
172 Fjeldstad & Johnsøn (2017).

hurriedly enacted by Parliament under a Certificate of Urgency following the huge discoveries of natural gas. There was inadequate opportunity for the participation of various interest groups, and scrutiny by Members of Parliament was limited.[173] There was no platform for proper public consultation, despite calls from opposition Members of Parliament and civil society organisations. No specific Ministry or government agency played any leading role over the process apart from the Chief Secretary, who had the coordinating role.[174] Consequently, ministries, agencies and other stakeholders with divergent interests sought to influence the new legislation.

This study submits that poor coordination in the formulation of state policies creates the risk of policy capture. The Organisation for Economic Cooperation and Development defines policy capture as the process of consistently or repeatedly directing public policy decisions away from the public interest towards the interests of a specific interest group or person.[175] Bribery and lobbyism are the main tools for policy capture in states with poor policy-making environments. Although this thesis is not about the legislative process, it considers the law-making coordination deficit as a potential threat to the effective implementation of the resultant laws.

Bishoge et al. argue that the energy sector in Tanzania, particularly oil and gas, will make a sustainable contribution to the country's economic growth if there are resolute improvements to the existing policy, legal, and institutional structures governing the sector.[176] They have noted some functional overlaps among institutions charged with regulating the energy sector. These overlaps may have two consequences. First, they may cause delay in decision-making and thereby inhibit effective implementation of development plans in the

173 Fjeldstad & Johnsøn (2017) 46.

174 Fjeldstad & Johnsøn (2017) 49.

175 OECD (2017) *Preventing Policy Capture – Integrity in public policy making,* Paris: OECD, available at https://read.oecd-ilibrary.org/governance/preventing-policy-capture_9789264065239-en#page22 (accessed 8 February 2020) 9.

176 Bishoge et al. (2018) 8.

sector. Secondly, they may result in a regulatory dilemma, and thereby influence decoupling and corruption.

Bishoge et al. recommend the harmonisation of policies and laws regulating the energy sector, to ensure transparency, accountability, and the timely execution of projects.[177] It is submitted in this study that, when the boundaries of institutional functions and powers are not clearly defined, corrupt individuals may use those gaps to channel illegal activities. It therefore examines the relationships, roles, and powers among the organs involved in the management, regulation, and operation of petroleum activities, with a view to discovering any faults that may influence corruption; it then proposes ways to overcome them.

Polus and Tycholiz have studied the bargaining powers between the Tanzania government and international gas corporations and observed a huge disparity in terms of experience in gas-related activities, know-how, and negotiation skills.[178] They submit that, while the three major corporations involved in natural gas explorations have over ten decades of combined experience in the industry, Tanzania is almost new to it.[179] They have also noted the blurred relationship between various actors in the management and regulation of the gas sector. They argue that the triad system which Tanzania has imported from Norway may be expensive and inappropriate for the nation. Under this model there are three organs regulating the petroleum sector: an upstream regulator, a national oil company, and a designated Ministry for overseeing the entire process. In fact, the Petroleum Act of 2015[180] establishes four such organs: the Ministry responsible for energy affairs, the Petroleum Development Corporation as the national oil company, the Petroleum Upstream Regulatory Authority, and the Energy and Water Utilities Regulatory Authority.

Polus and Tycholiz claim that the current energy sector governance regime may suffer from maladministration, caused mostly by lack of skills and experience in the sector. This study

177 Bishoge et al. (2018) 16.
178 Polus & Tycholiz (2019).
179 Polus & Tycholiz (2019) 64.
180 Act 21 of 2015.

submits that, given Tanzania's inadequate experience in the petroleum industry, investors may circumvent regulations to obtain an unfair advantage. They add that Tanzania needs to strengthen its training component to produce skilled, ethical, and professional personnel who can monitor the conduct of investors objectively and effectively.

Polus and Tycholiz also state that Tanzania has weak anti-corruption institutions.[181] They argue that, since the energy sector has been affected by corruption scandals in the past, corrupt elites may take advantage of the present weak institutions to exploit the country's resources further. This study examines the existing anti-corruption framework, identifies its deficiencies in relation to controlling corruption in the energy sector, and proposes interventions.

Poncian and Kigodi examine the extent to which transparency initiatives have impacted governance and influenced accountability in Tanzania's extractive sector.[182] Transparency and accountability are normative vehicles for fighting corruption. Transparency exposes the deeds of public officials and other actors to the public eye. Accountability allows the public to act against the misconduct of these officials. Pocian and Kigodi assert that the 2017 natural resource laws and transparency initiatives have made the extractive sector more open than before.[183] They do however contend that these initiatives may not lead to significant governance improvements, due to several factors.

First, the Tanzania Extractive Industries Transparency Initiative reports are published in English which is not the *lingua franca* in Tanzania. So, the majority of citizens may not understand the reports and be able to demand accountability. This diminishes the cultural-cognitive influence of the society to fight corruption. Secondly, media freedom in the country is limited.[184] Government repression has curtailed media reporting on public-interest affairs. The

181 Polus & Tycholiz (2019) 66

182 Poncian Poncian J & Kigodi HM (2018) 'Transparency Initiatives and Tanzania's Extractive Industry Governance' 5(1) *Development Studies Research* 106–21.

183 Poncian & Kigodi (2018) 112.

184 Poncian & Kigodi (2018) 114.

media is a vital ally in fighting corruption. Efforts to emasculate it constrain transparency and accountability and allow corruption to go unnoticed. Tanzania's performance in the World Press Freedom Index is worrying. In 2020, the country ranked 124th out of 180 countries, dropping by 49 positions in five years from 2015.[185] For the energy sector to be transparent and accountable, the media must be protected from all forms of undue interference.

Thirdly, Poncian and Kigodi argue that Parliament, which has oversight over the Executive, is so structurally and compositionally conflicted that it can hardly hold the government accountable.[186] With over 70 per cent of parliamentarians belonging to the ruling party, whose chairperson is the President, there is little hope of effective oversight from Parliament.[187] MP's from the ruling party rarely criticise or demand accountability from their party-led Executive.[188] This study submits that effective parliamentary oversight in energy-related projects is vital to fighting corruption in this sector.

Cappelen et al. conducted a large-scale experiment in 2015 to understand the way expectations about future natural resource revenue shape people's expectations about future corruption.[189] They found that information about future natural resource revenue increases expectations of corruption, although it did not influence their willingness to engage in corrupt activities.[190] They found out that older people who had experiences of corruption during the mining boom had stronger expectations of corruption in the energy sector than younger ones.[191] This thesis submits that these expectations are influenced by observed weaknesses in the national anti-corruption system. Citizen's confidence may be restored when strong and effective institutions to fight corruption are in place. This study looks at and proposes reforms

185 Reporters Without Borders (2021) 'World Press Freedom Index' available at https://rsf.org/en/tanzania (accessed 3 September 2021).

186 Poncian & Kigodi (2018) 115.

187 See Lukiko (2017) 70.

188 Poncian & Kigodi (2018) 115.

189 Cappelen AW et al. (2018) *Understanding the Resource Curse: A Large-Scale Experiment on Corruption in Tanzania*, Dar es Salaam: Chr. Michelsen Institute & REPOA.

190 Cappelen et al. (2018) 10-11.

191 Cappelen et al. (2018) 2-3, 12.

for strengthening the national anti-corruption regime, to enable strong oversight of the energy sector.

Manley and Lassourd analyse the implications arising from an addendum to the agreement between Tanzania and the Norwegian oil company, Statoil, which leaked in July 2014.[192] The leaked addendum sparked debate regarding Tanzania's stake in oil and gas production agreements. While the main production sharing agreement between Tanzania and Statoil signed in 2007 has never been made public, the leaked addendum, signed in 2012, indicated that Statoil would deliver a lower profit share to the government at all levels of production. This was contrary to the Model Production Sharing Agreement of 2010, and to international good practice which warrants an increase in the government's profit share when production increases, and vice versa.[193]

Manley and Lassourd argue that the leaked addendum saga presents a good case for examining transparency in Tanzania's extractive sector contracts. They assert that the government's secrecy regarding agreements entered into on behalf of the people creates mistrust, and curtails constructive dialogue from the public.[194] They contend that systematic disclosure of such contracts is necessary: to affirm the government and investors' commitment to transparency; to manage public expectations and improve trust; and to enhance the public monitoring of implemented projects. This thesis argues that transparency in contract negotiation and management is vital to creating an effective anti-corruption regime in the energy sector. It critically reviews the petroleum contracting and licensing process in Tanzania with a view to identifying deficiencies that may influence or compound corruption; and it proposes appropriate interventions.

The reviewed literature generally suggests that although Tanzania has established a broad framework to regulate the energy sector, its institutions are ineffective in regulating and

192 Manley D & Lassourd T (2014) *Tanzania and Statoil: What Does the Leaked Agreement Mean for Citizens?* Dar es Salaam: Natural Resource Governance Institute.

193 Manley & Lassourd (2014) 6.

194 Manley & Lassourd (2014) 10.

managing this sector to overcome governance challenges such as corruption. There are statutory provisions which facilitate conflicts of interest among regulatory agencies, limit parliamentary oversight, and curtail transparency initiatives. This thesis builds on this body of knowledge to examine the Tanzanian anti-corruption regime and the energy sector governance framework, to answer the research questions and respond to the research objectives.

1.12. Outline of chapters

The study uses institutional theory as the vehicle for analysing the research problem and providing answers to the research questions. It has seven chapters as outlined below.

Chapter One

This is the introductory chapter. It provides an overview of the energy sector in Tanzania and its future potential for the country. It also highlights the risks of corruption that hovers around this sector. It states the objectives of this research, and the questions which guide it. The chapter describes the theory through which lens the analysis and discussion in this thesis has been undertaken. It presents perspectives from literature on Tanzania's capacity to manage the energy sector and its related challenges, including fighting corruption.

Chapter Two

This chapter is devoted to examining the international law aspects of the right to and protection of natural resources, with specific focus on anti-corruption. It examines the right of states and their people to permanent sovereignty over their natural resources, and the intricacies concerning its application in developing countries like Tanzania. It analyses the international and regional instruments that influence the governance of natural resources, and their impact on fighting corruption. It examines international anti-corruption instruments, namely UNCAC, the African Union Convention on Preventing and Combating Corruption, and the Southern African Development Community Protocol against Corruption, focusing on their contribution in guarding natural resources against corruption.

Chapter Three

This chapter examines the Tanzanian anti-corruption regime. It examines the policies, laws, and institutions designed to fight corruption, and their contribution to addressing this vice in the energy sector. This chapter identifies deficiencies that may hamper the national anti-corruption system when controlling corruption in the energy sector.

Chapter Four

This chapter examines the policy, legal, and regulatory framework of the energy sector in Tanzania, and its impact on fighting corruption across the value chain. It examines the roles, powers, and relationships of the various actors in the petroleum industry. Using the value chain approach of analysis, the chapter identifies the vulnerabilities in the policy, legal, regulatory, and practical aspects that may fuel or compound corruption in this sector.

Chapter Five

This chapter examines the established transparency and accountability mechanisms related to governance of the energy sector in Tanzania. It explores the global extractive industry transparency initiatives and standards, and examines how they have been accommodated in Tanzania. The chapter identifies the deficiencies in the implementation of transparency and accountability standards in Tanzania's energy sector.

Chapter Six

This chapter draws findings from the preceding chapters, and identifies the policy, legal, regulatory, and practical deficiencies that facilitate corruption in the energy sector. It goes on to present the researcher's recommendations on the reforms and interventions required to strengthen anti-corruption in the energy sector in Tanzania.

Chapter Seven

This is the concluding chapter. It presents a summary of the findings and recommendations emerging from the research.

Chapter Two:

International Law Framework for Anti-Corruption in Natural Resources Governance

2.1. Introduction

Natural resources are corruption prone. Natural resources exploration and extraction are high-value activities which are likely to attract rent-seeking behaviour among various actors, if not properly controlled.[1] According to the Organisation for Economic Cooperation and Development Foreign Bribery Report published in 2014, the extractive sector, covering natural resources such as mining, oil, and gas, is the world's most corrupt industry.[2] Factors which account for the vulnerability of natural resources to corruption include deficiencies in national anti-corruption legal and judicial systems, high discretionary powers, and politicised decision-making processes in the extractive value chain. Other factors are inadequate regulation and management of the extractive sector, inefficient corporate anti-corruption compliance and due diligence procedures, and ineffective transparency and accountability mechanisms.[3]

The effect of corruption on natural resources governance is well documented in literature.[4] There is a consensus among scholars that corruption is the major contributor to the

1 Leite C & Weidmann J (1999) 'Does Mother Nature Corrupt? Natural Resources, Corruption and Economic Growth' IMF Working Paper WP/99/85 available at https://www.imf.org/external/pubs/ft/wp/1999/wp9985.pdf (accessed 31 July 2020) 3.

2 OECD (2014) *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* Paris: OECD Publishing 21.

3 OECD (2016) *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives* Paris: OECD 15-17.

4 Collier P & Hoeffler A (1998) 'On economic causes of civil war' 50(4) *Oxford Economic Papers* 563–573, Ross ML (2004) 'What Do We Know about Natural Resources and Civil War?' 41(3) *Journal of Peace Research* 337–356, Collier P & Hoeffler A (2005) 'Resource Rents, Governance, and Conflict' 49(4) *The Journal of Conflict Resolution* 625–633, Collier P & Hoeffler A (2012) 'High-Value Natural Resources, Development, and Conflict: Channels of Causation' in Lujala P & Rustad SA *High-Value Natural Resources and Post Conflict Peace Building*, London: Earthscan, & Ross ML (2015) 'What Have We Learned about the Resource Curse?' 18 *Annual Review of Political Science* 239–259.

poor economic performance of resource-rich nations.[5] To address this phenomenon, various measures have been taken at both national and international levels. At the international level, several anti-corruption conventions, protocols, declarations, and guidelines have been adopted to guide states, corporations, non-governmental organisations, civil society, and the public in fighting against this problem.

This chapter examines the existing international anti-corruption framework relating to natural resources governance to seek answers about corruption and anti-corruption practices in the energy sector in Tanzania. It aims at establishing the international law principles that guide states in the regulation of the exploitation of their natural resources, and particularly in curbing corruption. This is based on the understanding that corruption is a global phenomenon that has attracted both international and domestic action to address it. The chapter begins by discussing the international law principles of the right of states to permanent sovereignty over natural resources. This is the foundation of states' powers to control and manage the exploitation of natural resources located in their territories. Considering the intricacies surrounding the exercise of this right in developing countries, the chapter provides a brief account of the development of international law, and the exploitative systems of colonialism and their legacy in postcolonial economic, trade, political, and legal systems. This is crucial to understanding the dynamic factors at play between natural resources governance in Africa and the international trade and investment systems and their governing laws.

The chapter then analyses anti-corruption initiatives relative to the governance of natural resources as enshrined in international, regional, and sub-regional legal instruments to which Tanzania is a State Party, or that have practical implications for the management of its natural resources. Considering the institutional theory which guides this thesis, the chapter

[5] Williams A & Dupuy K (2016) "At the Extremes: Corruption in Natural Resource Management Revisited" U4 Anti-Corruption Resource Centre Brief No 6 available at https://www.cmi.no/publications/file/5950-at-the-extremes-corruption-in-natural-resource.pdf (accessed 31 July 2020) 1 and Kolstad I & Søreid T (2009) 'Corruption in natural resource management: Implications for policy makers' 34 *Resources Policy* 214.

identifies the international regulative and normative aspects that guide states in the fight against corruption in the natural resources sector.

2.2. Permanent sovereignty over natural resources

The primary responsibility of states is the promotion of the well-being of their people. To fulfil this obligation, states have the right to freely exploit and dispose of natural resources found within their boundaries. This principle is established in international law as the right of states to permanent sovereignty over their natural wealth and resources.[6] It gives states exclusive autonomy over the use and control of their natural resources. In the exercise of this right, states have an obligation to protect and promote the interests of their people.[7]

This section provides a synopsis of the development and application of this doctrine, the natural resource ownership relations arising out of it, and the accompanying rights and duties of states. It examines the divergences between developed and developing countries over the application of this principle and how such differences manifest themselves in contemporary trade, and the investment relations of the two groups. However, this section first provides a brief account of the development of international law in the 19th century and the relationship between Western powers and underdeveloped countries during colonialism. It is argued in this thesis that the current international investment and trade relationship between the third world and developed nations is a legacy of colonial domination and the traditional rules of international law which for many years excluded non-European nations from the global negotiation table. Drawing that link is important to understanding, for instance, the way colonial institutions have been transformed in the postcolonial era, to continue the exploitation of the underdeveloped countries.

In this study, the terms underdeveloped countries, developing countries, and third world countries are used interchangeably, but with caution. Basically, they refer to states which

6 See UNGA (1962) Resolution 1803 (XVII) Permanent Sovereignty over Natural Resources 1194th Plenary Meeting 14 December 1962.

7 Article 21(1) of the African Charter on Human and People's Rights of 1981.

Mohammed Bedjaoui describes as belonging to the storm belt,[8] considering their historical experiences with colonialism and their struggles for political and economic liberation. They are underdeveloped because for many decades they were victims of a period of exploitative domination that resulted in stagnation, poverty, relative backwardness, and political, economic, cultural, and technological dependence.[9] In fact, Western powers developed at the expense of these states by amassing wealth from their territories and by frustrating their industrialisation.[10] They are developing countries in the sense that they are determined to overcome their past and adopt new strategies to further their socio-economic interests.[11]

The term third world is a geo-political concept, coined by the French demographer and economic historian Alfred Sauvy in 1952.[12] The concept of the three worlds implied the existence of three groups of nations.[13] The first world consisted of the industrialised capitalist countries which in this study are referred to as Western powers. The second world featured the industrialised or industrialising socialist and communist countries. The third world encompassed the developing countries as described in the preceding paragraph above.[14] In this thesis, the first and second world countries are collectively referred to as developed nations.

Geographically, the third world consists of countries located in the Southern hemisphere that were dominated and economically underdeveloped by the first world countries. This geographical categorisation of states into different worlds contemporarily is identified as the North-South divide, signifying the development and wealth gap between the

8 Bedjaoui M (1979) *Towards a New International Economic Order* New York: Holmes & Meier Publishers 25-26.

9 See Bedjaoui (1979) 24.

10 Anand RP (1987) 'Attitude of the Asian-African States toward Certain Problems of International Law' in Snyder FE & Sathirathai S (Eds) *Third World Attitudes Toward International Law: An Introduction* Boston: Martinus Nijhoff 12.

11 Bedjaoui (1979) 25.

12 Wolf-Phillips L (1987) 'Why Third World?: Origin, Definition and Usage' 9(4) *Third World Quarterly* 1312.

13 Wolf-Phillips (1987) 1313.

14 Wolf-Phillips (1987) 1313 & Bedjaoui (1979) 25.

Global North and the Global South.[15] The terms underdeveloped, developing, and third world countries are used cautiously in this thesis because largely they reflect negative Western notions about their former colonies, particularly in Africa. They are smartly designed to psychologically condemn African, some Asian, and Latin American States to permanent dependence on Western nations. The so-called third world has been struggling to liberate itself from such notions and this study uses these terms conscious of the imperialist and neo-colonialist contexts that harbour them.

2.2.1. Development of international law and colonialism

The origins and the earlier development of international law are credited to relationships among Western European countries during the era of industrial revolution.[16] In 1815, a few European great powers met in Vienna and established a club called the Concert of Europe that among other things asserted exclusive authority to grant or deny the right of statehood even to existing states.[17] The basic qualification for recognition of a state was civilisation and the measure of civilisation was power, economic and military.[18] Weaker states, especially non-European, were regarded as uncivilised and barbarous. Powerful European nations denied the weaker states their statehood and considered their territory as *terrae nullius.*[19] This approach later justified European conquest of weaker states, and the introduction of colonialism.[20]

During the same period, international law was considered as the domain of civilised societies alone.[21] European practices, beliefs, and culture were transposed into the law of nations, dominating all international relations.[22] The industrial revolution of the late eighteenth century and the invention of the steam engine ushered in an era of international economic and

15 Thérien J (1999) 'Beyond the North-South Divide: The Two Tales of World Poverty' 20(4) *Third World Quarterly* 723-724.
16 Anand (1987) 6.
17 Anand (1987) 7-8.
18 Anand (1987) 9.
19 Anand (1987) 8.
20 Bedjaoui (1979) 49.
21 Anghie A (2004) *Imperialism, Sovereignty and the Making of International Law* Cambridge: Cambridge University Press 53.
22 Bedjaoui (1979) 50.

political relations predetermined by European supremacy.[23] Eventually, previous legal arrangements that governed the relationship between European and non-European states, particularly Asian, were denounced in the early nineteenth century.[24] Using their self-proclaimed power to grant or deny statehood, European powers began to question the legal personality of non-European states.[25]

Without their statehood, non-European states were excluded from the family of nations.[26] Consequently, they could not be part of the development of international law which was essentially European law. Similarly, having lost their statehood, they were deprived of any legally recognisable rights of states.[27] Their territories were regarded as *terrae nullius* in the European sense thereby justifying the subsequent occupation by European powers. Conquest, religion, bogus treaty-signing, trickery, and deceit were used by European powers on different occasions to establish and maintain their influence over those states.[28] Weakened by their divisions, inter-tribal wars, and ignorance, these states eventually came under the control and subjugation of European powers.[29] Colonialism arrived formally. Colonial states lost their territory as well the control of their resources. Technically, they lost their sovereignty.[30] Colonisers acquired the right to control and exploit the resources located in those colonies.

At that time, international law was used to justify the domination and exploitation of colonial states by European powers.[31] It endorsed the validity of inequitable treaties encompassing unconscionable terms that allowed European nations to drain colonial states of their natural wealth and resources. Put simply, international law was European law ordained to protect and consolidate European interests abroad as well as to sustain the colonial exploitative

23 Bedjaoui (1979) 77.
24 Anand (1987) 7.
25 Anand (1987) 8.
26 Anand (1987) 8.
27 Anghie (2004) 54.
28 Lugard FD (1922) *The Dual Mandate in British Tropical Africa* London: William Blackwood & Sons 5.
29 Anand (1987) 8.
30 Anghie (2004) 57.
31 Bedjaoui (1979) 49.

system. In that way, Western ideology became the authoritative framework for determining and managing political and economic affairs globally. Thereafter, it was craftily yet forcefully imposed on colonial peoples as the best system for all mankind.[32] In most African societies for example, Western education, religion, trade, and conquest served their masters properly to brainwash natives of their indigenous knowledge, technology, trade systems, as well as political and governance structures.[33] This facilitated the exploitation of raw materials including minerals, wildlife trophies, and crop products from colonial territories to European industries. Eventually, the colonies became primary sources of cheap labour, raw materials, and markets for the colonisers.

The legacy of colonialism has affected African nations until now. Despite regaining their political independence, and their continuing struggle for economic freedom, African States have been unable to extricate themselves from the snares of imperialism. Western countries, in conjunction with China, continue to exploit them, and benefit enormously from the natural resources of the developing countries. It is estimated that Africa loses more than US$50 billion yearly in illicit financial outflows.[34] Over the past 50 years, referred to as the post-independence period, Africa has lost over US$1 trillion in illicit financial flows.[35] The large part of this movement of funds is conducted by multinational corporations through trade mispricing, transfer pricing, as well as base erosion and profit shifting.[36]

2.2.2. Towards decolonisation: Birth of international organisations

Decolonisation was a product of internal and external efforts. Nationalist movements struggled internally for independence. Externally, decolonisation was a process carried through international organisations, from the League of Nations to the United Nations. The following sub-sections examine the role these organisations played, not only in decolonisation, but also in

32 Anghie (2004) 113.

33 See Rodney W (1973) *How Europe Underdeveloped Africa* Dar es Salaam: Tanzania Publishing House.

34 African Union (2015) *Report of the High-Level Panel on Illicit Financial Flows from Africa,* Addis Ababa: African Union 2.

35 African Union (2015) 13.

36 African Union (2015) 80-82.

the creation of systems and institutions that facilitate Western exploitation of developing nations in the post-colonial era.

2.2.2.1. League of Nations

After the first world war, the League of Nations was established as an international organ for maintaining world order and preventing the occurrence of another world war.[37] The League was established in 1919 through the Versailles Treaty. Its governing law was the Covenant of the League of Nations, essentially drawn up by the American President Woodrow Wilson.[38] It should be noted that, through the Versailles Treaty, the victorious Allied Powers stripped Germany of all her colonial territories.[39] Germany and her allies had been defeated in WWI. The responsibility for the loss and the damage caused by that war was placed on Germany.[40] Ceding all her colonies was among the required reparation measures imposed on Germany under the Versailles Treaty.[41] Article 22 of the Covenant of the League of Nations created the Mandate system under which the ceded territories were inherited by the victors of the first world war. In part, the article stated that

> [t]o those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are *inhabited by peoples not yet able to stand by themselves* under the strenuous conditions of the modern world, there should be applied the principle that the *well-being and development of such peoples form a sacred trust of civilisation* and that securities for the performance of this trust should be embodied in this Covenant.[42]

Under those terms, Tanganyika (now Tanzania) was ceded to the British Empire from Germany. The Mandatories had to govern their Mandates under a sacred trust to promote the well-being and development of the natives until they were independent. Lord Frederick Lugard,

---

37 Jackson S & O'Malley A (2018) 'Rocking on its hinges? The League of Nations, the United Nations and the new history of internationalism in the twentieth century' in Jackson S & O'Malley A (Eds) *The Institution of International Order: From the League of Nations to the United Nations* London: Routledge 7.

38 Jackson & O'Malley (2018) 7.

39 Article 257 of the Versailles Treaty of 1919.

40 Article 231 of the Versailles Treaty.

41 Article 119 of the Versailles Treaty.

42 Article 22 of the Covenant of the League of Nations of 1919.

recognised internationally as the foremost colonial expert of his time, claimed that article 22 of the Covenant expressed the conscience of Europe regarding the colonial peoples.[43] It may be argued that article 22 was an early sign of the international preparation for decolonisation. However, the same article provided that owing to various conditions, other territories such as South-West Africa (now Namibia) should be treated as integral parts of the Mandatory's territory. The delayed independence of the Republic of South Africa and Namibia can be attributed to this clause, which justified the endless British occupation of the Union of South Africa whose colonists had declared self-independence in 1910.[44]

Critically examined, article 22 of the Covenant of the League of Nations was nothing else but a perpetuation of Western domination over the underdeveloped countries and the justification of their continued exploitation. It is submitted that Antony Anghie has rightly argued that the well-being and development agenda of the Mandate system was used to impose an exploitative economic system on the Mandate territories.[45] Colonial territories basically functioned to advance the interests of the Western powers. The economic system made them suppliers of raw materials for and markets of finished goods from Western industries. This is still manifest in the current economic relationship between developing and developed nations. For instance, African nations still produce raw materials which are exported for processing by European, American, or Chinese industries. Thereafter, industrial goods are sold back into Africa. This vicious circle has condemned Africa to persistent poverty, dependence, and violence.

Following the creation of the Mandate system, resources located in colonial territories were treated as belonging to the larger international community.[46] This escalated into concepts

43 Lugard (1922) 50.

44 Oliver E. & Oliver WH (2017) 'The Colonisation of South Africa: A unique case' 73(3) *HTS Theological Studies* 1.

45 Anghie (2004) 156.

46 Anghie (2004) 160.

such as the common heritage of mankind.[47] The Mandatories were the primary resources for the commerce of the world.[48] Lord Lugard particularly argued that:

> The tropics [colonies] are the heritage of mankind, and neither, on the one hand, has the suzerain Power a right to their exclusive exploitation, *nor, on the other hand, have the races which inhabit them a right to deny their bounties to those who need them*.[49]

On that premise, the United States of America insisted on the implementation of an open-door policy for all Members of the League of Nations.[50] It is in that sense that the Atlantic Charter of 1941, and the General Agreement on Trade and Tariff of 1947, were concerned about the development of the raw materials of the world and resources of the world respectively. This referred to resources of the colonial territories and not of the world as claimed. Reading from Lord Lugard, as quoted above, it is the colonies that had no right to deny their bounties to the rest of the world. There was no way, and never has been a way, by which resources of the Western powers could be exploited by the so-called world. It is the third world alone that was and still is the victim of this tragedy. The Mandate system served to transfer the economic power of colonial territories into the control of the colonisers. The impact of such arrangements affects Africans' claim for sovereignty over their natural resources even now. For instance, Zimbabwe's repossession of its land from colonial settlers resulted in severe economic sanctions from Western powers.[51]

2.2.2.2. Bretton Woods institutions

Western powers' dubious desire to promote the economic welfare of developing countries prompted the establishment of the World Bank and the International Monetary Fund in 1944, collectively referred to as the Bretton Woods Institutions.[52] Reportedly, their creation aimed at

47 Anghie (2004) 160.

48 Lugard (1922) 60.

49 Lugard (1922) 60-61.

50 See article 23(e) of the Covenant of the League of Nations.

51 See Chingono H (2010) 'Zimbabwe sanctions: An analysis of the Lingo guiding the perceptions of the sanctioners and the sanctionees' 4(2) *African Journal of Political Science and International Relations* 66-74.

52 The Institutions were formed at a meeting of 43 countries in Bretton Woods, New Hampshire, USA in 1944. See https://www.brettonwoodsproject.org/2019/01/art-320747/ (accessed 25 February 2021).

establishing an economic and development framework that would create a firm global economy.[53] Specifically, the World Bank provides funding, policy advice, and technical support to developing countries.[54] The International Monetary Fund works to ensure monetary cooperation between nations, secure international trade and financial stability, and to fight against poverty globally. In carrying out their mandate, they also provide loans to developing countries for addressing various challenges, including governance, poverty, diseases, and ignorance.[55]

From a black letter perspective, these institutions assist developing countries to address their various challenges. From a critical perspective, they are the perpetuation of the Mandate system.[56] Using their mandate to prescribe world economic and monetary policies, they have established systems that subjugate developing countries to the interests of the developed nations.[57] For instance, in the mid-1980s, Tanzania had to succumb to the Structural Adjustment Programmes promulgated by the Bretton Woods Institutions to receive the aid needed to revamp her economy. Tanzania's economy had been affected severely by the 1970s oil crisis, the collapse of the socialist block, and the war against Idi Amin of Uganda. Conditionalities of the Structural Adjustment Programme forced Tanzania to renounce her socialist ideology in favour of the free market economy and trade liberalisation. President Julius Nyerere, who had fathered Tanzania's socialist ideology, argued that the country was forced to embrace competitive market principles without having the power to compete.[58] He wondered for instance, how the Tanzanian National Bank of Commerce could compete against Barclays

53 International Monetary Fund (2020) 'The IMF and the World Bank' available at https://www.imf.org/en/About/Factsheets/Sheets/2016/07/27/15/31/IMF-World-Bank (accessed 10 February 2021).

54 World Bank 'The World Bank Group and the International Monetary Fund (IMF)' available at https://www.worldbank.org/en/about/history/the-world-bank-group-and-the-imf (accessed 25 February 2021).

55 Anghie (2004) 258.

56 Anghie (2004) 191.

57 Anghie (2004) 192.Mandatory

58 Nyerere JK (1995) *Nyufa* Dar es Salaam: Mwalimu Nyerere Foundation 31-33.

Bank. Using a metaphor of a boxing match between a featherweight and a heavyweight boxer, he concluded that the likely outcome would be murder.[59]

The effectiveness of aid and loans from the Bretton Woods Institutions and developed nations for the wellbeing and development of third world countries is seriously doubted by anti-imperialist scholars.[60] These doubts are anchored in the fact that, despite many decades of development assistance often fastened on hard conditionalities, developing countries have remained comparatively poor and increasingly begging.[61] In fact, instead of promoting development, foreign aid has resulted in violent conflicts, rent-seeking, corruption, and undemocratic regimes.[62] To overcome these troubles, developing nations turn back to the so-called development partners for assistance. And so a vicious circle is created where aid causes trouble in developing nations and developing nations ask for more aid to solve these troubles. In this way, the exploitation and domination of developing countries by developed ones is endless.

2.2.2.3. United Nations

In 1945, the United Nations was formed as an international forum for ensuring peace in the world following the end of the Second World War. It replaced the League of Nations. Its primary working tool is the Charter of the United Nations of 1945 (UN Charter). The Charter recognises the self-determination of peoples as one of the conditions necessary for the existence of amicable relations among nations.[63] This principle was the cornerstone of decolonisation movements afterwards. After attaining political independence, developing

59 Nyerere (1995) 32

60 Calderisi R (2006) *The Trouble With Africa: Why Foreign Aid Isn't Working,* London: Yale University Press, Collier P (2007) *The Bottom Billion: Why the Poorest Countries are Failing and What Can be Done about It,* New York: Oxford University Press, Moyo D (2009) *Dead Aid: Why Aid is Not Working and How There is Another Way for Africa,* New York: Penguin & Acemoglu D and Robinson JA (2012) *Why Nations Fail: The Origins of Power, Prosperity and Poverty,* New York: Crown Publishers.

61 Moyo (2009) 35.

62 Djankov S, et al. (2008) 'The Curse of Aid' 13(3) *Journal of Economic Growth* 169-194 & Hodler R (2007) 'Rent-seeking and Aid Effectiveness' 14(5) *International Tax and Public Finance* 525-541.

63 Articles 1(2) and 55 of the Charter United Nations of 1945.

countries struggle to apply the same principle to disentangle themselves from the economic domination of developed nations.

Self-determination refers to the right of a people to determine and control their destiny.[64] With respect to states, this right has both internal and external dimensions. Internally, it connotes the formation of a group of persons as one people identified by a common interest such as language, ethnicity, religion, or territory. Externally, it concerns the recognition of a particular state among the community of nations.[65] It is this external dimension which was the concern of articles 1(2) and 55 of the UN Charter as well as of the colonial territories in demanding for independence.

The sacred trust of preparing colonial territories for self-government as undertaken by the League of Nations through the Mandate system was inherited by the United Nations. The UN Charter established a Trusteeship system by which Mandate territories were placed under the administration and supervision of Western powers until they were able to govern themselves.[66] One of the objectives of the Trusteeship system was

> [t]o promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and *their progressive development towards self-government or independence* as may be appropriate to the particular circumstances of each territory and its peoples.[67]

Based on such international pronouncement, nationalism and decolonisation movements sparked in all colonies. By the late 1950s and early 1960s the demand for independence intensified in the United Nations General Assembly (UNGA) circles. In 1960, it adopted Resolution 1514 (XV) entitled the Declaration on the Granting of Independence to Colonial Countries and Peoples. This Declaration took note of the hunger for freedom by

---

64 Batistich M (1995) 'The Right to Self-Determination and International Law' 7(4) *Auckland University Law Review* 1013.

65 Quane H (1998) 'The United Nations and the Evolving Right to Self-Determination' 47(3) *International and Comparative Law Quarterly* 538.

66 See Chapter XII of the UN Charter.

67 Article 76(b) of the UN Charter.

colonial peoples, and called for the ending of all forms of colonialism.[68] Paragraph 1 of the Declaration acknowledged that colonialism was a violation of the fundamental human rights of the dominated people. Paragraph 2 explicitly declared the right of all peoples to self-determination. Paragraph 5 proceeded to require that immediate steps be taken in all colonial territories to grant independence unconditionally. After that Resolution, many colonial states obtained their independence in the 1960s. Tanganyika obtained its independence from the British on 9 December 1961, about one year after the Resolution was adopted. Nevertheless, some African nations like Namibia had to fight for another thirty years to gain their freedom.

Independence bestowed upon the new states the right of membership to the United Nations. Considering their number, third world countries became the majority in the General Assembly.[69] They sought to use that majority power to change the traditional rules of international law that undermined their political and economic sovereignty.[70] They attempted to develop new doctrines that would replace old principles which were detrimental to their economic interests.[71] However, that move encountered stiff opposition from Western powers who disagreed with the way that third world countries were approaching their development agenda.[72]

Among the doctrines promulgated by the new States was permanent sovereignty over natural resources. The next section examines the development of this doctrine in the United Nations General Assembly, as well as the opposition it has received from the economic superpowers. It is submitted that without domestic economic strength and technology to develop their resources, third world countries cannot equitably benefit from their natural endowments despite the international recognition of their permanent sovereignty over those resources.

68 Preamble paragraph 3 & 12 of UNGA Resolution 1514 (XV) of 1960.

69 Bedjaoui (1979) 140.

70 Anghie (2004) 202.

71 Anghie (2004) 198.

72 Park N (1987) 'The Third World as an International Legal System' 7(1) *Boston College Third World Law Journal* 53.

2.2.3. Development of the Permanent Sovereignty over Natural Resources doctrine internationally

In 1951, Poland presented a draft resolution to the United Nations General Assembly recommending Member States to consider entering into long-term trade agreements with developing nations based on the exchange of machinery and raw materials.[73] In fact, the effects of the 1930s world economic crisis and Second World War resulted in the reliance of developed nations on raw materials from developing nations and colonies, in order to rebuild their war-torn economies.[74] So Poland's proposal may be interpreted as another imperialist strategy for exploiting the resources of underdeveloped countries. Nevertheless, that proposal was the first step towards the international recognition of the right of developing nations to permanent sovereignty over natural resources (PSNR).

The draft resolution contained a provision to the effect that natural resources in underdeveloped countries should be utilised for their economic development in accordance with their national interests;[75] and that underdeveloped nations have the right to determine freely the use of their natural resources.[76] Member States were invited to consider adopting trade agreements whose conditions did not violate the sovereign rights of the economically underdeveloped countries.[77]

The draft resolution kindled a serious debate on the extent to which natural resource policies of developing nations should consider the economic interests of the world.[78] For instance, while the Polish draft referred to the development interests of the third world alone, the United States of America submitted amendments proposing, *inter alia,* to make reference

---

73 UNGA (1951) Economic Development of Under-Developed Countries: Integrated Economic Development and Long-Term Trade Agreements Draft Resolution/Poland (A/C.2/L.81) paragraph 4.

74 Schrijver N (1995) *Sovereignty over Natural Resources: Balancing Rights and Duties in an Interdependent World* PhD Thesis University of Groningen available at https://www.rug.nl/research/portal/files/3265518/dissertatie.pdf (accessed 31 July 2020) 33.

75 UNGA (1951) paragraph 1.

76 UNGA (1951) paragraph 1.

77 UNGA (1951) paragraph 5.

78 Schrijver (1995) 35.

to the interests of the global economy.[79] Undoubtedly, this was to protect her hardly-procured open door policy, and the terms of the Atlantic Charter that sought to promote access to the so-called raw materials of the world.[80] Such contentions haunted the PSNR doctrine throughout its development, and have significantly impaired its application by developing countries. Eventually, Resolution 523 (VI) on integrated economic development and commercial agreements was passed on 12 January 1952.

For the first time in international law history, Resolution 523 (VI) recognised the right of underdeveloped countries to determine freely the use of their natural resources to further their economic development plans in accordance with their domestic priorities.[81] It appears that this right existed previously in developed nations. The Resolution served to extend its application exclusively to underdeveloped nations. The economically dominant nations were unhappy with this new order of international law. Despite the pressure for political independence, Western powers were unprepared to surrender their economic interests in underdeveloped countries.[82] So it is unsurprising that subsequent efforts to secure the recognition of permanent sovereignty over natural resources in the General Assembly encountered serious opposition from Western powers, particularly the United Kingdom and the United States of America.[83]

Implementation of this Resolution involved the exploration of mineral resources in underdeveloped nations. For instance, in 1954 the United Nations Technical Assistance Administration recruited three geologists to assist the British colonial administration in Tanzania in the exploration of mineral deposits that could be valuable to the territory.[84] In that

79 Schrijver (1995) 36.

80 Paragraph 4 of the Atlantic Charter of 1941.

81 UNGA (1952) Resolution 523 (VI) Integrated Economic Development and Commercial Agreements, preamble paragraph 1.

82 Bedjaoui (1979) 12 & 78.

83 Hyde JN (1956) 'Permanent Sovereignty over Natural Wealth and Resources' 50(4) *The American Journal of International Law* 858–860.

84 United Kingdom (1955) *Report by Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the General Assembly of the United Nations on Tanganyika under United Kingdom Administration for the Year 1954*, London: Her Majesty's Stationery Office 8.

year, mineral exports from Tanzania amounted to £4,590,000.[85] Around that time, the British colonial government in Tanzania granted concessions to British Petroleum and Shell for the exploration of petroleum potential in the coastal basin.[86] This is regarded as the beginning of Tanzania's journey in the petroleum industry.[87]

Interestingly, Resolution 523 (VI) assigned underdeveloped nations not only the right to freely use their natural resources, but also the obligation to use those resources to further their economic development and the growth of the global economy.[88] A dual role was created in this regard: furthering domestic economic interests, and contributing to the expansion of the world economy. It appears that this provision was a compromise on the competing demands of third world countries and developed nations. On the one hand, independent developing nations intended to liberate themselves from the economic domination of Western powers. The furthering of domestic economic interest was their main agenda. On the other hand, developed nations wanted to install systems that would maintain their interests in developing nations.[89] The obligation to promote the growth of the world economy tended to satisfy the latter.

In December 1952, the United Nations General Assembly adopted Resolution 626 (VII) on the right to freely exploit natural wealth and resources. It was acknowledged that the right of the peoples to use and exploit their natural wealth and resources is inherent to their sovereignty.[90] It called upon Member States to refrain from any acts which could interfere with the exercise of sovereignty of any state over its natural resources.[91] In line with Resolution 523, Resolution 626 imposed an obligation upon underdeveloped nations to ensure the proper use and exploitation of their resources.[92]

85 United Kingdom (1955) 29.
86 Mmari, Andilile & Fjeldstad (2019) 13.
87 TPDC 'Explorations History' available at https://tpdc.co.tz/upstream.php (accessed 12 February 2021).
88 UNGA (1952) Preamble paragraph 1.
89 Bedjaoui (1979) 78.
90 UNGA (1952 b) Preamble paragraph 3. t
91 UNGA (1952 b) paragraph 2.
92 UNGA (1952 b) Preamble paragraph 1.

A key feature of Resolution 626 is its anchoring of the use and exploitation of natural resources to the sovereignty of that state. The academic discourse on the definition of sovereignty is broad.[93] However, it basically refers to the recognition of the power of people or institutions to govern themselves at all levels.[94] At the international platform, it denotes the external recognition of political bodies exercising effective control over a population within a defined territory.[95] These attributes are a *sine qua non* for conferring international personality on a state.[96] Most third world countries had lost this personality during colonialism. It was restored later at independence. A state that obtains such recognition enters the community of sovereign nations. It is in that sense that membership to the United Nations is reserved primarily for sovereign states.[97] All members of this community of nations are equal.[98] Out of respect for sovereignty, states are prohibited from the threat or use of force against other states.[99]

The prohibition on the use of force among sovereign states significantly reduces the political coercion of mighty states against weaker ones. However, this study argues that such a prohibition, as well as the respect for sovereignty, does not have the same effect with respect to economic coercion. Attaching the exploitation of natural resources to the sovereignty of states was an attempt by developing countries to shield their resources from the exploitative might of the developed nations. In fact, some developed nations opined that Resolution 626 created the risk of expropriation of private property owned by foreign investors without adequate, prompt, and effective compensation.[100] The United States of America, the United Kingdom, South Africa, and New Zealand voted against it, with 20 other nations abstaining.[101]

---

93 See Anghie (2004) 100-107 for a detailed analysis.

94 Nagan WP & Hammer C (2004) 'The Changing Character of Sovereignty in International Law and International Relations' 43(141) *Columbia Journal of Transnational Law* 153.

95 Nagan & Hammer (2004) 153.

96 Article 1 of the Montevideo Convention on the Rights and Duties of States of 1934.

97 Article 3 & 4 of the UN Charter.

98 Article 2(1) of the UN Charter.

99 Article 2(4) of the UN Charter.

100 Hyde (1956) 854.

101 Hyde (1956) 854.

Their concerns were attributed to the Iranian nationalisation of its oil industry in 1951, disregarding the existing agreement between the Government of Iran and the Anglo-Iranian Oil Company Ltd.[102] In such an environment, investors were requested to reconsider their view before deploying any capital to the underdeveloped nations.[103]

Amidst the debate on the right of states to freely use and exploit their natural resources, the United Nations Commission on Human Rights proceeded with the drafting of the international human rights covenants. Some Member States pushed for the inclusion in the draft covenants of the right to self-determination in accordance with the purposes and principles of the UN Charter.[104] In particular, on 16 April 1952, Chile submitted a draft article to be included in the human rights covenants that

> [t]he right of the people to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of rights that may be claimed by other States.[105]

Following this proposal, a debate ensued among Member States over issues such as the meaning of sovereignty, the relationship between the right to self-determination and individuals' rights in the draft covenants, and the definition of a people in international law.[106] The debate was a reflection of the dissatisfaction of the capital-exporting countries over the economic liberation movement of the capital-importing countries.[107]

Considering the non-binding nature of the General Assembly resolutions, and the desire of Western powers to accord no legal value to such resolutions,[108] developing countries sought to invoke international human rights law to protect the right to permanent sovereignty over

---

102 See *Anglo-Iranian Oil Co. case (United Kingdom v Iran*) Judgment of 22 July 1952, International Court of Justice Reports 1952.

103 Hyde (1956) 854.

104 Hyde (1956) 855. See also Article 1(2) of the UN Charter.

105 Economic and Social Council (1952) Recommendations Concerning International Respect for the Self-Determination of Peoples: Draft Resolution/Chile (E/CN.4/L.24) 1.

106 Economic and Social Council (1952b) Summary Record of the Two Hundred and Sixtieth Meeting of the Commission on Human Rights (E/CN.4/SR.260) 5.

107 Hyde (1956) 855.

108 Park (1987) 53 & Tyagi Y (2015) 'Permanent Sovereignty over Natural Resources' 4(3) *Cambridge International Law Journal* 592.

their natural resources. Opponents argued that incorporation of this right in an international treaty posed a potential threat to foreign investment and international economic cooperation, which was necessary for the development of the underdeveloped nations.[109] They maintained that control over natural resources could not be located legally within the right to self-determination.[110] Actually, the threat envisaged by Western powers was that permanent sovereignty over natural resources would grant developing nations the power to expropriate foreign investments without compensation.[111] On their part, the proponents insisted that the right to self-determination entails both political and economic self-determination. So, attaching that right to permanent sovereignty over natural resources was a natural course.[112]

These concerns over the implementation of permanent sovereignty over natural resources moved the General Assembly to form a Commission to conduct a full study on the status of this right in relation to the right to self-determination.[113] That study was the basis of the draft resolution on permanent sovereignty over natural resources submitted to the General Assembly in 1962.[114]

In December 1962, the General Assembly adopted Resolution 1803 (XVII) on permanent sovereignty over natural resources. This was the turning point in the struggle for economic independence of the underdeveloped countries. It was the first concrete international recognition of the right of states to the PSNR. It recognised and reinforced the sovereign and inalienable right of States to freely exploit their natural resources in accordance with their own plans.[115] Paragraph 1 of Resolution 1803 (XVII) declares that the exercise of the right to permanent sovereignty over natural resources must be for national development and for the

109 Tyagi (2015) 597.

110 Tyagi (2015) 597.

111 Hyde (1956) 858.

112 Gess KN (1964) 'Permanent Sovereignty over Natural Resources: An Analytical Review of the United Nations Declaration and Its Genesis' 13(2) *The International Comparative Law Quarterly* 418.

113 UNGA (1958) Resolution 1314 (XIII) Recommendations Concerning International Respect for Right of Peoples and Nations to Self-Determination, Paragraph 1.

114 United Nations (1962) *The Status of Permanent Sovereignty over Natural Resources and the Report of the Commission on Permanent Sovereignty over Natural Resources*, New York: United Nations 243.

115 UNGA (1962) Preamble paragraphs 3 & 4.

welfare of the people of the state concerned. In that regard, the exploration and exploitation of natural resources must conform to domestic rules of the host state and to international law.[116] Paragraph 4 further empowers states in the exercise of this right to nationalise, expropriate, or requisition individual or private interests on grounds of public utility, security, or overriding national interests. However, such actions must be accompanied by appropriate compensation to the owner and must be exercised in accordance with domestic and international law.[117]

Since its adoption in 1962, permanent sovereignty over natural resources is regarded as an international customary law rule. This is evidenced by its incorporation in subsequent international legal instruments, and its recognition by international judicial organs and arbitration tribunals. The common article 1 to the International Covenant on Civil and Political Rights of 1966,[118] and the International Covenant on Economic, Social and Cultural Rights of 1966,[119] recognises this right as an integral part of the right to self-determination. Likewise, the Arbitrator in *Texaco Overseas Petroleum Company v The Government of the Libyan Arab Republic*[120] stated that:

> The right of a State to nationalise [...] results from international customary law, established as the result of general practices considered by the international community as being the law.

Following its recognition in various international instruments and judicial decisions, permanent sovereignty over natural resources is interpreted as a principle of international law and a right of states.[121] Its status as an international law principle is well embraced by the international community. However, its exercise as a right of states is seriously contested by the developed nations. This opposition has undermined the relevance of this doctrine to the development of third world countries since its inception. In an attempt to address the impacts

116 UNGA (1962) Paragraphs 2 & 3.

117 UNGA (1962) Paragraph 4.

118 Adopted by the General Assembly Resolution 2200A(XXI) of 16 December 1966 and entered into force on 23 March 1976.

119 Adopted by the General Assembly Resolution 2200A(XXI) of 16 December 1966 and entered into force on 3 January 1976.

120 17 *International Legal Materials* (1978) 3-37.

121 Tyagi (2015) 613.

of that opposition, in the 1970s developing countries sought again to use the General Assembly to push for a new international economic order.

The next section provides a critical examination of the complexities around the application of this doctrine by developing nations, and their efforts to create a new international economic order. The discussion is of particular importance in understanding the dynamic forces affecting natural resources governance in developing countries on the one hand, and the complex relationships between international legal regimes and domestic anti-corruption regimes on the other.

2.2.4. Critical issues concerning permanent sovereignty over natural resources

The doctrine of permanent sovereignty over natural resources was formally recognised by the United Nations General Assembly in 1962. Nevertheless, the economic conditions of the countries whose development it sought to secure and promote have not improved as envisaged initially. Contrary to the expectation that this right would lead to economic independence of the third world countries, most of them have become increasingly dependent on developed nations. Just as during colonialism, developing nations largely remain exporters of raw materials, and markets for industrial products from developed nations.

The inability of underdeveloped nations to convert their natural endowments into concrete economic and human development has been termed by contemporary economists as the resource curse.[122] Without going into too much detail regarding the resource curse thesis,[123] this section intends to unpack the issues that have undermined the achievement of the PSNR goals with respect to developing nations. For precision, the discussion is narrowed down to examining only the international economic and investment relations between

---

122 Auty RM (1993) *Sustaining Development in the Mineral Economies: The Resource Curse Thesis*, London: Routledge, Sachs JD & Warner AM (1995) *Natural Resource Abundance and Economic Growth* NBER Working Paper 5398, Cambridge: National Bureau of Economic Research, & Karl TL (1997) *The paradox of plenty: Oil booms and petro-states*, Berkeley: University of California Press.

123 For a critical examination of the resource curse thesis see Collier & Hoeffler (1998), Collier & Hoeffler (2005), Shaxson N (2007) 'Oil, Corruption and the Resource Curse' 83(6) *International Affairs* 1123–40 & Ross (2015).

developed nations and African countries. The starting point is the permanent sovereignty over natural resources Resolution 1803 (XVII) itself.

As pointed out earlier, the right to permanent sovereignty over natural resources appears to have existed in respect of developed nations even before it was adopted by the United Nations General Assembly or incorporated in international human rights instruments. It is in that sense that the focus of Resolution 1803, and the subsequent PSNR-related instruments, was to extend its application to developing nations. As Western powers were unhappy with this move, they inserted within Resolution 1803 obligations that ensured the protection of their interests and economic supremacy over developing nations.[124] This was followed by the introduction of multilateral and bilateral investment treaties whose terms subject resource host states to the interests of developed nations.

As part of their claim for sovereignty, developing nations asserted that the management and control of natural resources should be dealt with by the national laws of the host state. In fact, that was the practice during colonialism.[125] Agreements between multinational corporations and colonial governments fell within the domestic jurisdiction of the colonial state and were not the subject of international law.[126] Contrary to this precedent, developed nations insisted that the exercise of the right to permanent sovereignty over natural resources by developing nations should conform to established international law principles.[127] It is worth noting that reference to international law in Resolution 1803 is made in respect to transactions between host states and foreign investors only.[128] Therefore, international law may not be invoked to protect the rights of the peoples to PSNR when for instance it is being violated by their own state. This *lacuna* has enabled rapacious rulers in Africa such as General Sani Abacha of Nigeria, Mobutu Sese Seko of Congo, Frederick Chiluba of Zambia, and Yahya Jammeh of The

124 Bedjaoui (1979) 23.
125 Anghie (2004) 224.
126 Anghie (2004) 224.
127 Hyde (1956) 864.
128 UNGA (1962) Paragraphs 3 & 4.

Gambia to loot their countries without being held accountable internationally.[129] It was against such a deficit that a new dimension of permanent sovereignty over natural resources was introduced concerning its exercise by indigenous peoples.[130]

Subjecting the exercise of permanent sovereignty over natural resources to international law intended to protect the economic interests of developed nations through multinational corporations. At the time of passing Resolution 1803 in 1962, the established international law was basically European law. During colonialism this law served the interests of Western powers in exploiting the underdeveloped states. In the postcolonial era, international law is being used as a tool to perpetuate Western domination and limit developing nations from exercising their sovereignty to further their development plans.[131] Legally, sovereignty empowers a state to absolute and unlimited legal and political powers within its territory.[132] Sovereignty protects a state in the conduct of its domestic affairs from interference by other states, and forbids the use of force against another state.[133] Therefore, by asserting sovereignty in the control of their natural resources, developing nations sought to limit such encroachment from developed nations. In response, developed nations subjected the exercise of PSNR to international law through which they can dictate the course of international relations.

There are two main ways in which international law was used to further the interests of the Western powers: manipulation of legal doctrine, and regime creation.[134] With regard to the former, capital-exporting nations argued that international rules of state succession required

129 For detailed analysis of the looting of African wealth and resources, see Burgis T (2015) *The Looting Machine: Warlords, Oligarchs, Corporations, Smugglers, and the Theft of Africa's Wealth* New York: Public Affairs

130 See Cambou D & Smis S (2013) 'Permanent Sovereignty Over Natural Resources from a Human Rights Perspective: Natural Resources Exploitation and Indigenous Peoples' Rights in the Arctic" 22(1) *Michigan State International Law Review* 347–376 & Enyew E (2017) 'Application of the Right to Permanent Sovereignty over Natural Resources for Indigenous Peoples: Assessment of Current Legal Developments' 8 *Arctic Review on Law and Politics* 222–245.

131 Anghie (2004) 235.

132 Harrison K & Boyd T (2003) *Understanding Political Ideas and Movements* Manchester: Manchester University Press 17.

133 Article 2(4 & 7) of the UN Charter.

134 Miles, K (2013) *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital* Cambridge: Cambridge University Press 79-90.

postcolonial states to assume the rights and obligations of the former state.[135] This included the honouring of concessions granted during colonialism or paying compensation for expropriation.[136] It is in that sense that paragraph 8 of Resolution 1803 required states to observe in good faith their freely-contracted foreign investment agreements. To say that concessions granted during colonialism were freely entered into by the postcolonial states is ironic. Further, capital-exporting powers argued that foreign investment disputes should be settled through international arbitration as they had become internationalised.[137] International law of contract emerged to address this situation. According to Anghie, this new branch of international law dealt only with situations where the dispute involved a third world state.[138] As developing countries were powerless to change the rules of the game, they became prey to these manipulated legal doctrines.

To strengthen the subjection of developing nations to the Western-aligned international law, a new regime of international investment law was created. This was based on the introduction of multilateral and bilateral investment treaties, designed to protect foreign investments in and against host states. In 1965, the World Bank formulated the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (famously the ICSID Convention). The Convention entered into force on 14 October 1966 and has been ratified by 155 Contracting States.[139] Article 1 of the Convention establishes the International Centre for Settlement of Investment Disputes.

The Centre's primary purpose is to provide a platform for settlement of state-investor disputes.[140] Its jurisdiction arises upon the parties' consent in writing to submit their dispute to it.[141] The consent may be expressed in an arbitration clause within the contract or in a bilateral

135 Miles (2013) 80.
136 Anghie (2004) 213.
137 Anghie (2004) 226.
138 Anghie (2004) 238.
139 Ratification status as of 15 February 2021.
140 Article 1(2) of the ICSID Convention of 1965.
141 Article 25(1) of the ICSID Convention.

investment treaty between the host state and the investor's state.[142] Over the years, the Centre has emerged as the dominant forum of settling investment disputes.[143] However, being the offspring of the Western opposition to developing states' assertion of permanent sovereignty over natural resources, it arguably serves the interests of its masters.[144] Studies indicate that the Centre's jurisprudence is biased towards protecting multinational corporations at the expense of the people of the resource host states.[145]

The Centre's jurisprudence has attracted a proliferation of bilateral investment treaties between developed and developing nations, most containing international arbitration clauses. By February 2021, there were about 2,896 bilateral investment treaties globally, of which 2,336 were in force.[146] At the same time, 1,061 treaty-based state-investor dispute cases had been filed for international arbitration.[147] Through these treaties, the economic superpowers chose for themselves the terms of international law to bind them.[148] They also inserted provisions such as the most favoured nation clause and stabilisation clauses, which operate to limit the sovereignty of host states in the treatment of foreign investment, as well the changing of legislation.[149] The treaties are used to limit the powers of host states to nationalise foreign property subject to payment of appropriate compensation.[150] Generally, these treaties and other economic agreements between developed and developing nations perpetuate exploitation under the guise of freely accepted terms.[151] Tanzania's lead nationalist and first

142 Miles (2013) 87.
143 Miles (2013) 88.
144 Tyagi (2015) 606.
145 Sornarajah M (2016) 'International Investment Law as Development Law: The Obsolescence of a Fraudulent System' in Bungenberg M et al. (Eds) *European Yearbook of International Economic Law* Switzerland: Springer International Publishing 215.
146 UNCTAD 'International Investment Agreements Navigator' available at https://investmentpolicy.unctad.org/international-investment-agreements (accessed 15 February 2021).
147 UNCTAD (b) 'Investment Dispute Settlement Navigator' available at https://investmentpolicy.unctad.org/investment-dispute-settlement (accessed 15 February 2021).
148 Sornarajah M (2006) 'Power and Justice: Third World Resistance in International Law' 10 *Singapore Yearbook of International Law* 24.
149 Anghie (2004) 234.
150 Anghie (2004) 233.
151 Bedjaoui (1979) 93.

President Julius Nyerere described this relationship as an unreasonable murder of the developing nations.[152] Similarly, Sornarajah describes international arbitration as a fraudulent system in the following terms:

> The system that emerged was a system of legal plunder for the exorbitant sums awarded as damages and the fees involved for lawyers indicate a drain on the economies of the host states that was anything but promotive of their economic development. *The damages in some cases have exceeded sums that a weak state could hardly afford*. They were awarded in circumstances in which the law that was applied was based on flimsy grounds. The costs involved in arguing some cases have been crippling. A developing economy could have used the funds involved for better purposes of its development.[153]

In response to the inequitable international investment and arbitration system, some developing nations have withdrawn from the ICSID Convention or terminated investment treaties between them and certain developed nations. In 2008, Ecuador relinquished nine of its bilateral investment treaties, and proceeded to withdraw from the ICSID Convention in 2009.[154] South Africa terminated its investment treaties with Belgium and Luxembourg in 2013 followed by those with Spain and Germany in 2014.[155] In 2018, Tanzania terminated its treaty with the Netherlands.[156] Surrounded by this complex and inequitable economic relationship, postcolonial States sought again to use the United Nations General Assembly to advocate for a new international economic order. The next section examines the objectives of this Order and the intricacies of its application.

2.2.5. The new international economic order

Newly independent states were concerned with fixing and rectifying the injustices of the colonial system.[157] The right to permanent sovereignty over natural resources was expected to

---

152 Nyerere (1995) 32.

153 Sornarajah (2016) 216.

154 Tyagi (2015) 608.

155 Tyagi (2015) 608.

156 Sejpal S & Ngumy D (2018) 'Legal Alert: Tanzania Terminates Bilateral Investment Treaty with the Netherlands' available https://www.africalegalnetwork.com/tanzania/news/legal-alert-tanzania-terminates-bilateral-investment-treaty-netherlands/ (accessed 15 February 2021)

157 Akinsanya A (1980) 'Permanent Sovereignty over Natural Resources and the Future of Foreign Investment' 22(4) *Journal of the Indian Law Institute* 473.

be a tool for the economic emancipation of the underdeveloped countries. However, the political, economic, and legal environment in which the doctrine operated was unfavourable to achieving that objective. First, Western powers accorded no legal value to the PSNR-related General Assembly resolutions.[158] Secondly, as the original government and economic systems of the underdeveloped countries had been eroded by colonialism, they were forced to maintain the legal, institutional, and economic models of their former colonisers.[159] New states did and still do borrow techniques, procedures, and technical as well as legal solutions from Western powers and transpose them into local systems, sometimes without modifications to suit local circumstances.[160] For instance, Tanzania's oil and gas management regime established in 2015 is an extrapolation of the Norwegian model.[161] The effect of such isomorphism in the management of its petroleum sector is yet to be determined because the industry is mainly at the exploration stage. Nevertheless, studies suggest that these imported structures invariably operate to consolidate foreign interests at the expense of host states.[162]

Thirdly, competition for foreign direct investment debilitated the cohesion of developing states to fight for their common interests.[163] Fatouros argues that, when the state has no means for developing its natural resources, permanent sovereignty over natural resources remains a mere abstract.[164] Without domestic technology and skills to develop their natural resources, developing nations depend on foreign investment. This has endowed multinational corporations and their home governments with wider powers to dictate the terms of their investment through bilateral treaties and concession agreements. Sometimes

158 Tyagi (2015) 592.
159 Bedjaoui (1979) 79-80.
160 Bedjaoui (1979) 80.
161 See Foreword by the Norwegian Ambassador to Tanzania in Fjeldstad, Mmari & Dupuy (2019) xi.
162 Bedjaoui (1979) 79.
163 Sornarajah (2006) 22.
164 Fatouros A (1964) 'International Law and the Third World' 50(5) *Virginia Law Review* 804.

host states surrender their resource sovereignty powers in order to attract foreign investment.[165]

Considering the constraining circumstances in which developing nations were forced to develop, and the adverse terms of trade imposed by developed nations, they advocated for a new international economic order in the early 1970s. This was a transnational governance reform initiative intended to establish a new economic order based on equitable commodity and capital flows.[166] That order was based on seven major demands of developing nations: (a) enforcement of the right of states to permanent sovereignty over their natural resources; (b) stabilisation of prices for commodities exported by developing nations; (c) regulation of transnational corporations; (d) an increase in official aid to developing nations; (e) cancellation of debts owed by developing nations to developed nations; and (f) reforming the international monetary system to enable the wider participation of developing nations in the management of the world's monetary resources.[167]

The initiative commenced in 1973 during a conference of the non-aligned countries in Algeria, and was later embraced by the United Nations Conference on Trade and Development group of 77 countries in the same year.[168] Subsequently the proposal and its programme of action were endorsed by the United Nations General Assembly through Resolution 3201 (S-VI), entitled Declaration on the Establishment of a New International Economic Order and its subsequent Programme of Action as Resolution 3202 (S-VI), both of May 1974. These instruments incorporated most of the demands of developing countries for a new economic order.[169]

---

165 Ng'ambi SP (2015) 'Permanent Sovereignty Over Natural Resources and the Sanctity of Contracts, From the Angle of Lucrum Cessans' 12(2) *Loyola University Chicago International Law Review* 154.

166 Sen S (1981) 'New International Economic Order and Contemporary World Economic Scene' 16(10) *Economic and Political Weekly* 517.

167 Sen (1981) 516-17 & Gilman N (2015) 'The New International Economic Order: A Reintroduction' 6(1) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 3.

168 Sen (1981) 516.

169 UNGA (1974) Resolution 3201 (S-VI) Declaration on Establishment of a New International Economic Order, Paragraph 4.

It is worth noting that part V of the Programme of Action proposed the adoption and implementation of an international Code of conduct for transnational corporations. The Code would regulate the activities of such corporations in developing countries to prevent interference in internal affairs of the host states and eliminate restrictive business practices. It would facilitate the revision of previously concluded agreements and require corporations to conform to the development plans of host states.[170] Furthermore, the Code would promote the transfer of technology and skills to developing countries, regulate the repatriation of profits accrued by those corporations, and promote the reinvestment of such profits in host states.[171]

The Draft version of the Code was formulated in 1983 but up to the time of writing this thesis, negotiations over this Code have been fruitless. The possible explanation for this delay is that developed nations do not want to subject their multinational corporations to the control of host states.[172] Sauvant argues that developed nations declined to agree on the Code to utilise the new regime of international investment law to limit the powers of developing nations over their corporations.[173] That objective is achieved through bilateral investment treaties which incorporate investment protection clauses such as the most-favoured-nation treatment, fair and equitable treatment, appropriate compensation upon expropriation, and dispute settlement through international arbitration.[174] The Code appeared to limit this enjoyment and developed nations rejected it.

The Programme of Action also recommended the development and adoption of the Charter of Economic Rights and Duties of States (the Economic Rights Charter).[175] This was geared towards establishing a system of international economic relations between developed

---

170 UNGA (1974b) Resolution 3202 (S-VI) Programme of Action on Establishment of a New International Economic Order, section V(a & b).

171 UNGA (1974 b) section V(c-e).

172 For a comprehensive analysis, see Sauvant KP (2015) 'The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned' 16 *Journal of World Investment and Trade* 11–87.

173 Sauvant (2015) 57.

174 Sauvant (2015) 22.

175 UNGA (1974 b) section VI.

and developing nations that was based on equity, sovereign equality, and interdependence of interests.[176] The Charter was adopted by the General Assembly on 14 December 1974, *vide* Resolution 3281 (XXIX). Interestingly, it emphasises the applicability of domestic law in the regulation of foreign investment.[177] This step was intended to liberate developing countries from the misfortunes of the international law principles that had undermined the enjoyment of their right to permanent sovereignty over natural resources. Bedjaoui argues that the Economic Rights Charter intended to achieve in the economic field what Resolution 1514 had achieved in the political field, decolonisation.[178] In fact, Tanzania's move to annex the Economic Rights Charter to its Natural Wealth and Resources (Permanent Sovereignty) Act of 2017 may be attributed to this conception.[179]

The use of the Economic Rights Charter as an economic emancipation tool is highly contested by Western powers. Yogesh Tyagi argues that Western powers considered the new international economic order as mere political aspiration by developing nations for economic justice and endorsed it with no reservations.[180] A contrary perception was held for the Economic Rights Charter. This was considered as a radical statement that threatened the economic interests of what the Arbitrator in *Texaco v Libya* frequently described as the most important Western countries.[181] Consequently, the Charter became a victim of the Western rhetoric, according no legal value to the General Assembly resolutions.[182] They argued that the Charter cannot be invoked as a source of international law since it does not represent a consensus of nations.[183] That view was maintained in the *Texaco v Libya* case where the sole arbitrator declared article 2 of the Charter, which is the basic provision asserting states' powers to regulate foreign investment, as

176 UNGA (1974 b) section VI.

177 UNGA (1974c) Resolution 3281 (XXIX) Charter of Economic Rights and Duties of States, article 2(2).

178 Bedjaoui (1979) 185.

179 See Second Schedule to the Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017.

180 Tyagi (2015) 591. See also Sen (1981) 516.

181 *Texaco v Libya* paragraphs 84 & 85. See also Tyagi (2015) 592.

182 Ng'ambi (2015) 158.

183 See claimant argument in *LIAMCO v Libya* at para 205.

> [a] political rather than a legal declaration concerned with the ideological strategy of development and, as such, *supported only by non-industrialised States*.[184]

That perspective was not followed by the sole arbitrator in *Libyan American Oil Company (LIAMCO) v The Government of the Libyan Arab Republic*[185] who after considering the nature of the permanent sovereignty over natural resources resolutions and the Economic Rights Charter, held in the context of that case that

> [t]he said Resolutions, if not a unanimous source of law, *are evidence of the recent dominant trend of international opinion concerning the sovereign right of States over their natural resources*, and that the said right is always subject to the respect for contractual agreements and to the obligation of compensation.[186]

That approach was reinforced later by the decision of the International Court of Justice in the Case Concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v Uganda*)[187] where it recognised that permanent sovereignty over natural resources through its enforcing resolutions is a principle of customary international law.[188] Despite this positive direction, the exercise of this right by developing countries still has not produced the results envisaged during its inception.

2.2.6. Permanent sovereignty over natural resources in the African context

The right to permanent sovereignty over natural resources has been incorporated in some African regional and sub-regional instruments. Specifically, it is enshrined in the African Charter on Human and People's Rights (the African Charter) of 1981,[189] and the International Conference on the Great Lakes Region Protocol against the Illegal Exploitation of Natural Resources of 2006.[190] The African Charter recognises the right of all peoples to freely dispose of their natural wealth and resources, complemented by a mandatory obligation upon states to

184 Texaco v Libya para 88.
185 Award of 12 April 1977.
186 *LIAMCO v Libya* para 206.
187 Judgment of 19 December 2005 I.C.J. Reports 2005.
188 *Democratic Republic of Congo v Uganda* (2005) International Court of Justice para 244.
189 Adopted on 27 June 1981 and entered into force on 21 October 1986.
190 Adopted on 30 November 2006.

exercise this right exclusively for the interest of the people.[191] Similarly, it enjoins State Parties to fight against all forms of exploitation that may hinder their people from enjoying the full benefits of their natural resources.[192]

The Protocol against the Illegal Exploitation of Natural Resources considers permanent sovereignty over natural resources as an inalienable right that must be exercised in the interest of national development and for the promotion of the well-being of the people of the state concerned.[193] Any exploration, development, or exploitation of natural resources that is inconsistent with public interests and the law is regarded as a violation of that state's right to permanent sovereignty over natural resources.[194] The Protocol specifically provides that Member States shall freely dispose of their natural resources in the exclusive interest of the people and in no case shall they be deprived of it.[195] To protect their resources against illegal exploitation, Member States are required to establish participatory and transparent mechanisms of exploiting natural resources.[196] In case of spoliation, a state has the right to lawfully recover its property and to be awarded adequate compensation for the damage suffered.[197]

The instruments discussed above provide a continental and regional perspective regarding the exercise of permanent sovereignty over natural resources in Africa. Consonant with the United Nations General Assembly resolutions, they assert the powers of African states to control the exploitation of their natural resources. In addition, they impose an obligation on African states to manage those resources for the benefit of their people. Unfortunately, this obligation is often violated by African leaders who loot national resources through corruption. Transparency International's Corruption Perceptions Index identifies Sub-Saharan Africa as the

191 Article 21 (1) of the African Charter on Human and Peoples Rights of 1981.
192 Article 21 (5) of the African Charter on Human and Peoples Rights.
193 Preamble paragraph 5 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources of 2006.
194 See article 9 of the ICGLR Pact on Security, Stability and Development for the Great Lakes Region of 2006.
195 Article 3 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
196 Article 3(4) of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
197 Article 3(2) of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.

most corrupt region in the world.[198] The result of such abuse of permanent sovereignty over natural resources is persistent poverty, conflicts, insecurity, and dependence. Concerted actions are required in order to address the scourge of corruption in Africa to make natural resources beneficial to the people.

2.2.7. Permanent sovereignty over natural resources in some African domestic laws

The right to permanent sovereignty over natural resources is domesticated in various African national laws. In Tanzania, it is founded constitutionally. Article 8(1)(a) of the Constitution acknowledges the people's sovereignty and provides that the Government derives its power and authority from them. The government is required to operate in a way which ensures that national wealth and resources are protected and used for the development of the people of Tanzania.[199] In that regard, a duty is placed on all persons to protect natural resources in the country. Specifically, article 27(2) of the Constitution provides that:

> All persons shall be required by law to safeguard the property of the state authority and all property collectively owned by the people, to combat all forms of waste and squander, and to manage the national economy assiduously with the attitude of people who are masters of the destiny of their nation.

The right to PSNR is incorporated specifically in the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017[200] and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act of 2017.[201] The two laws assert the permanent sovereignty of the people of Tanzania over all natural wealth and resources in the country.[202] They also provide that the government shall exercise control over those resources on behalf of the people and every agreement or arrangement over natural resources must

198 Transparency International (2021).

199 Article 9(c) & (i) of the Constitution of the United Republic of Tanzania of 1977.

200 Act 5 of 2017.

201 Act 6 of 2017.

202 Section 4(1) of the Natural Wealth and Resources (Permanent Sovereignty) Act and section 4(4) of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act.

observe the interests of the people and the country.[203] These two laws have domesticated the General Assembly Resolution 1803 (XVII).[204] Likewise, the Natural Wealth and Resources (Permanent Sovereignty) Act incorporates the Economic Rights Charter.[205]

In Angola, permanent sovereignty over natural resources is reflected under article 3 of the Petroleum Activities Law which provides to the effect that petroleum resources in the country are the public property of the state.[206] In South Africa, it is incorporated in the Mineral and Petroleum Resources Development Act.[207] The preamble paragraph 2 of that law provides that mineral and petroleum resources belong to the nation and are put in the custody of the state. Section 2(a)of the same Act recognises this right in more specific terms by admitting its international character.

Permanent sovereignty over natural resources is also enshrined in article 44(3) of the Constitution of the Federal Republic of Nigeria[208] which states that the entire property in and control of all minerals, mineral oils, and natural gas vests in the government. Likewise, section 1(1) of the Nigerian Petroleum Act provides that the ownership and control of all petroleum in Nigeria is vested in the state.[209] A similar provision is contained in the Nigerian Minerals and Mining Act,[210] but with a qualification that mineral resources are vested in the government for and on behalf of the people of Nigeria.[211] It is worth noting the nature of ownership of natural resources as it features in these laws. While the Minerals and Mining Act makes the people of Nigeria the beneficiary of mineral resources entrusted to the government, such a relationship is absent in the Constitution of the Federal Republic of Nigeria and its Petroleum Act. In the latter

203 Section 4(2) of the Natural Wealth and Resources (Permanent Sovereignty) Act and section 4(2) of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act.

204 First Schedule to the Natural Wealth and Resources (Permanent Sovereignty) Act and Schedule to the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act.

205 Second Schedule to the Natural Wealth and Resources (Permanent Sovereignty) Act.

206 Law No 10/04 of 2004.

207 Act 28 of 2002.

208 Act 24 of 1999.

209 Chapter 350 LFN 1990.

210 Act 20 of 2007.

211 Section 1(1) of the Nigerian Minerals and Mining Act No 20 of 2007.

two laws, the government appears to take ownership absolutely. This situation raises an important question about who, between the state and the people, owns natural resources. Answers to this question are essential in understanding the participation of both the state and the people in the management and protection of those resources. The next section explores that aspect.

2.2.8. Natural resource ownership: The State and the People

The right to permanent sovereignty over natural resources emerged originally as an aspect of the right to self-determination during the decolonisation process. As colonised territories fought for their political freedom, they also claimed their right to full control over resources located in them.[212] Since the traditional public international law regulated affairs between states, this right was vested primarily in the state.[213] In fact, sovereignty as protected under international law applies to states. States acquired the right to permanent sovereignty over natural resources which entitles them to the enjoyment of natural resources within their boundaries. However, during decolonisation, peoples and the state referred to the same thing.[214] It is in that sense that Paragraph 1 of the General Assembly Resolution 1803 recognises permanent sovereignty over natural resources as a right of peoples and nations. As such, peoples have the inherent entitlement to enjoy and utilise natural wealth and resources that are in the control of their state.[215]

The inherent right enjoyed by the people makes them beneficial owners of the natural wealth and resources found in their territory.[216] The state therefore is trustee of those resources. Essentially, the management of natural resources is exercised under a public trust. The public trust doctrine developed from Roman and English law on the premise that the nature of property rights in some natural endowments such as air, sea, waters, and forests

212 Enyew (2017) 225.

213 Cambou & Smis (2013) 354.

214 Miranda LA (2012) 'The Role of International Law in Resource Allocation: Sovereignty, Human Peoples-Based Development'45(3) *Vanderbilt Journal of Transnational Law* 798.

215 See article 47 of the International Covenant on Civil and Political Rights of 1966 and article 25 of the International Covenant on Economic, Social and Cultural Rights.

216 Cambou & Smis (2013) 359.

were of great importance and could not be justifiably subjected to private ownership.[217] Ownership of such property is entrusted to the state for the enjoyment of the public.[218]

In Tanzania, the public trust doctrine is founded constitutionally and statutorily. Article 8(1)(a) of the Constitution of the United Republic of Tanzania of 1977 places sovereignty in the people, and the Government derives its powers and authority from them. Therefore, while the state enjoys sovereignty against other states under international law, its powers and authority are subject to the inner sovereignty of the people under national law. The government is accountable to the people, and its primary objective is the promotion of the welfare of the people.[219] It is in that sense that article 9(c) of the Constitution of Tanzania requires the government to conduct its activities in a way which ensures that national wealth and heritage are exploited and utilised for national interests. Statutorily, section 4(1) of the Land Act[220] creates a public trust over all land in Tanzania, where the President is trustee for and on behalf of all the citizens of Tanzania. In broader terms, section 5(1) and (2) of the Natural Wealth and Resources (Permanent Sovereignty) Act[221] provides that natural wealth and resources shall remain the property of the people, held in trust by the President on their behalf.

Based on the analysis above, states are owners of natural resources as against other states. This is the essence of their sovereignty under international law. However, the people are owners of those resources as against their state. The state must exercise control over its natural resources on behalf of its people, including managing the use and exploitation of those resources. The people have a beneficial interest in natural resources entrusted to the state. Under this relationship, the state as trustee must act in the best interests of the beneficiaries. It is on that basis that article 21(1) of the African Charter on Human and Peoples Rights requires

---

217 Sax JL (1970) 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' 68(3) *Michigan Law Review* 475.

218 Nshala R (2000) 'Management of Natural Resources in Tanzania: Is the Public Trust Doctrine of Any Relevance?' paper presented at the Eighth Biennial Conference of the International Association for the Study of Common Property, Indiana available at http://hdl.handle.net/10535/1405 (accessed 27 July 2020).

219 Article 8(1)(b)&(c) of the Constitution of the United Republic of Tanzania of 1977.

220 [Cap. 113 R.E. 2019]

221 Act 5 of 2017.

states to exercise the right to permanent sovereignty over natural resources exclusively for the interest of the people.[222] The Mandate system after WWI, and the Trusteeship system after WWII, violated this sacred trust. That violation is being perpetuated by some postcolonial leaders who syphon off African resources by colluding with multinational corporations or hiding wealth overseas.

Generally, the right to permanent sovereignty over natural resources aims at protecting the interests of the people regarding their natural resources. States and investors are under legal obligation to ensure that the exploration, development, and exploitation of those resources promote national development and the well-being of the people of the state concerned. Conduct that undermines the people's beneficial interest in their natural resources, such as corruption and environmental damage, is a violation of both international law and the people's sovereignty. Several measures have been deployed at national and international levels to overcome such harmful conduct. To understand the extent of such protection, the next section of this chapter examines the international instruments that have a regulatory or guidance effect over the conduct of states and private enterprises in the exploitation of natural resources. Particularly, it analyses the existing international anti-corruption legal framework in relation to its protection of natural resources.

2.3. International law protection of natural resources against corruption

A wide range of international and regional efforts have been made to address the scourge of corruption. Several anti-corruption instruments have been adopted. The first was the Inter-American Convention against Corruption of 1996.[223] This was followed by the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997.[224] In that year, the European Union adopted the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the

222 See also Paragraph 1 of UNGA Resolution 1803 (XVII) and article 7 of the Charter of Economic Rights and Duties of States.

223 Adopted on 29 March 1996 and entered into force on 6 March 1997.

224 Adopted on 17 December 1997 and entered into force on 15 February 1999.

European Union of 1997.[225] Thereafter, the Council of Europe adopted its Criminal Law[226] and Civil Law[227] Conventions on Corruption in 1999. In Africa, the move commenced in 2001 with the adoption of the Southern African Development Community Protocol against Corruption[228] and the Economic Commission of West African States Protocol on the Fight against Corruption.[229] The African Union Convention on Preventing and Combating Corruption was adopted in 2003.[230] Finally, the United Nations Convention against Corruption was also adopted in 2003.[231] Cumulatively, these instruments provide a global framework for fighting corruption in its various forms.

International instruments are applicable in Tanzania by virtue of article 63(3)(e) of the Constitution of the United Republic of Tanzania of 1977 which requires such instruments to be ratified by Parliament. After the Parliament has ratified a treaty, the state is bound to perform its terms in good faith.[232] Likewise, the government may choose to domesticate the provisions of an international instrument through domestic legislation. For instance, the Prevention and Combating of Corruption Act[233] substantially domesticates UNCAC. Upon ratification, an international instrument becomes part of the domestic law.[234] When interpreting the Constitution and other laws, the courts have to take into account international instruments to which Tanzania is a State Party.[235] However, by doing so, international law does not assume

225 Adopted on 26 May 1997 and entered into force on 28 September 2005.

226 Adopted on 27 January 1999 and entered into force on 1 July 2002.

227 Adopted on 4 November 1999 and entered into force on 1 November 2003.

228 Adopted on 14 August 2001 and entered into force on 6 July 2005.

229 Adopted on 21 December 2001 and entered into force in 2019.

230 Adopted on 11 July 2003 and entered into force on 5 August 2006.

231 Adopted on 31 October 2003 and entered into force on 14 December 2005.

232 See *Tanganyika Law Society v Ministry of Foreign Affairs and International Cooperation & Attorney General,* Miscellaneous Civil Cause No 23 of 2014, High Court of Tanzania at page 29.

233 [Cap 329 R.E. 2019]

234 *Tanganyika Law Society v Ministry of Foreign Affairs and International Cooperation & Attorney General* at page 45

235 See *Christopher Mtikila v Attorney General* [2006] TLR 279 at page 310.

supremacy over the Constitution.[236] International law is complementary to domestic legislation, although Tanzania is bound to align its laws to the ratified international instruments.[237]

The following discussion examines how the existing arsenal of international instruments promotes the protection of natural resources against corruption. It centres on the instruments that influence natural resources governance in Tanzania, as a State Party thereto or through the impact of those instruments on the regulation of foreign investment in the country. Sub-regional instruments relating to the fight against corruption in the management and exploitation of natural resources in Tanzania are considered as well. For analysis purposes, these instruments are discussed in groups related to their respective supervisory bodies.

2.3.1. United Nations instruments

Fighting corruption has been on the agenda of the United Nations for many years. However, the mostly celebrated achievement in this regard is the adoption of the United Nations Convention against Corruption in 2003. Since its adoption, UNCAC has become the global blueprint for combating corruption, with 140 signatories and 187 State Parties.[238] Tanzania ratified this Convention on 25 May 2005, undertaking to be bound by its provisions.

The Convention acknowledges that corruption is no longer a local matter affecting individual nations only, but a transnational problem that demands international efforts and cooperation in preventing and combating it.[239] The Convention prescribes various measures for fighting this evil, including adopting preventive measures, criminalising acts of corruption, enhancing law enforcement and international cooperation, and recovering assets stolen through corruption. These measures are designed to fight corruption in the private and public sectors at both national and transnational levels. It addresses both the supply and demand

236 *Tanganyika Law Society v Ministry of Foreign Affairs and International Cooperation & Attorney General* at page 32.

237 *Tanganyika Law Society v Ministry of Foreign Affairs and International Cooperation & Attorney General* at page 48.

238 Signature and ratification status as of 6 February 2020.

239 Preamble Paragraph 4 of UNCAC.

sides of corruption, and establishes liability and sanctions against individuals and legal persons convicted of corruption.

2.3.1.1. Prevention of corruption

The entire second chapter of the United Nations Convention against Corruption is devoted to preventive measures. This indicates the acknowledgment among State Parties that prevention is fundamental to fighting corruption, in other words, that prevention is better than cure. Through prevention, corruption is conquered before it is committed. Effective prevention saves the community and the nation from the harm which would have resulted from the commission of the offence. Similarly, effective prevention minimises opportunities for corruption, and deters those who would otherwise engage in such conduct.

Preventive measures incorporated under this Convention include the development and implementation of effective anti-corruption preventive policies and practices,[240] and the existence of an anti-corruption body, or bodies.[241] These measures also encompass the adopting of various measures for preventing corruption in the public sector, such as codes of conduct for public officials,[242] and promoting transparency in procurement systems and the management of public funds.[243] Article 11 of the Convention requires State Parties to take measures for enhancing integrity and preventing corruption in the judicial system, including prosecution. This provision is crucial since judicial corruption distorts public confidence in the justice system and could topple the entire anti-corruption machinery. To fight corruption effectively, the justice system must be untainted. So by addressing corruption in the judiciary and the prosecution, the Convention seeks to ensure that offenders are effectively held accountable for their wrongs.

Article 12 of UNCAC requires State Parties to take measures for the prevention of corruption involving the private sector. Certainly, the private sector is the supply side of

240 Article 5 of UNCAC.
241 Article 6 of UNCAC.
242 Articles 7 & 8 of UNCAC.
243 Articles 9 & 10 of UNCAC.

corruption in investments. Article 12(2) of the Convention outlines various measures for preventing private sector corruption, such as implementing codes of conduct in the performance of business and professional functions, and promoting cooperation between law enforcement agencies and private firms. Also, sufficient audit controls should be established to ensure that regulatory procedures related to the private sector are observed. Fighting corruption in the private sector is crucial, because investments in natural resources, particularly the energy sector, are run by private enterprises which may engage in corrupt practices to get or run businesses.

To ensure public participation in the fight against corruption, article 13 of the Convention requires State Parties to take measures to enhance the participation of individuals, civil society, non-governmental organisations, and community-based organisations. Such measures include promoting public participation in decision-making, enhancing public awareness about corruption and anti-corruption, ensuring access to information concerning corruption, and protecting the rights of those who disseminate such information.

2.3.1.2. Criminalisation of corruption and law enforcement

The United Nations Convention against Corruption encompasses a wide range of conducts that constitute corruption, and which State Parties are called upon to criminalise in their national law. Prohibited conducts include bribery of national public officials, of foreign public officials, and officials of public international organisations. Embezzlement, misappropriation or diversion of public property, trading in influence, abuse of functions, and illicit enrichment are also criminalised.[244] Other prohibited conducts are private sector bribery, embezzlement of property in the private sector, laundering the proceeds of crime, and concealing the proceeds of crime.[245]

To enforce these provisions effectively, article 26 of the Convention requires State Parties to establish the liability of both legal and natural persons who engage in the commission

[244] Articles 15-20 of UNCAC.

[245] Articles 21-24 of UNCAC.

of a proscribed conduct. Such liability must be complemented with criminal, civil, or administrative sanctions which are effective, proportionate, and dissuasive.[246] Similarly, State Parties are required to take necessary measures to enable the recovery of assets stolen through corruption.[247] State Parties are required to take such measures as may be necessary to enable entities and persons who have suffered damage due to corruption to claim for compensation from those responsible for that harm.[248] This provision is relevant to Africa which loses about US$50 billion annually in illicit financial flows, whose main catalyst is corruption between multinational companies and African public officials.[249] If applied, the provision would enable the people of Africa to claim compensation for the damage sustained from the corrupt practices of their leaders and these companies.

In other aspects of law enforcement, State Parties are required to take necessary measures to promote cooperation among national authorities charged with the investigation and prosecution of corruption offences.[250] This is relevant in the context of this study, because in Tanzania mistrust, and lack of collaboration among law enforcement agencies, have hampered anti-corruption efforts significantly.[251] For instance, the reluctance of the Director of Public Prosecution to grant consent for the Prevention and Combating of Corruption Bureau to prosecute corruption cases undermines the Bureau's anti-corruption efficiency.[252]

Being a global anti-corruption blueprint, the United Nations Convention against Corruption makes no specific reference to the governance of natural resources. However, it lays down the basic framework through which corruption in various sectors may be overcome.

246 Article 26(2)&(4) of UNCAC.

247 Article 31 of UNCAC.

248 Article 35 of UNCAC.

249 African Union (2015) 13.

250 Article 38 of UNCAC.

251 Chr. Michelsen Institute et al. (2016) *Strengthening Tanzania's Anti-Corruption Action (STACA) Programme – A Case Study Evaluation,* available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533695/S trengthening-Tanzania-Anti-Corruption-Action-Programme.pdf (accessed 27 July 2020) 18-19.

252 See Lukiko L (2017) *Exploring a sustainable anti-corruption regime for Tanzania* Unpublished LL.M Mini-Thesis University of the Western Cape, available at https://etd.uwc.ac.za/xmlui/handle/11394/5692 (accessed 8 February 2020) 72-73.

States, law enforcement agencies, private sector entities, and the public are properly guided by the Convention in establishing and implementing effective mechanisms for preventing and combating corruption in all spheres.

2.3.2. Organisation for Economic Cooperation and Development

Development projects in many African countries depend on foreign investment. Awolusi et al. argue that for developing countries to have sustainable economic growth, they should attract and maintain high levels of foreign investment.[253] This is the primary source of external finance for developing countries.[254] The largest part of such investment concentrates on natural resources exploration and extraction.[255] For instance, in 2019, mining, quarrying, and petroleum accounted for over 20 per cent of the announced green-field foreign investment projects in Africa.[256]

OECD countries account for about one-third of foreign direct investment flowing into Africa.[257] Multinational companies from these countries have a significant influence on the management and the manner of exploiting natural resources in developing economies. Similarly, there is a likelihood that companies from developed countries will bribe foreign public officials in order to obtain or maintain businesses.[258] Transparency International's Bribe Payers Index of 2011 indicated that there is no single company from the major world economies that does not engage in bribery abroad.[259] The OECD Foreign Bribery Report of 2014 indicated that between February 1999 and June 2014, 164 companies and 263 individuals from OECD Member

253 Awolusi AD et al. (2017) 'Foreign Direct Investment and Economic Growth in Africa: A Comparative Analysis' 9(3) *International Journal of Sustainable Economy* 184.

254 UNCTAD (2019) *World Investment Report* New York: United Nations Publications 12.

255 Asiedu E (2006) 'Foreign Direct Investment in Africa: The Role of Natural Resources, Market Size, Government Policy, Institutions and Political Instability' Helsinki: United Nations University available at http://people.ku.edu/~asiedu/world-economy.pdf (accessed 21 July 2020) 64.

256 UNCTAD (2019) 35.

257 World Bank (2014) 'Foreign Direct Investment Flows into Sub-Saharan Africa' available at http://documents.worldbank.org/curated/en/505071468203651135/Foreign-direct-investment-flows-into-Sub-Saharan-Africa (accessed 21 July 2020) 2.

258 Transparency International (2011) *Bribe Payers Index* Berlin: Transparency International 2.

259 Transparency International (2011) 4.

States were indicted for the offence of foreign bribery.[260] Most of the cases concerned the extractive sector, which accounted for 19 per cent of the indictments.[261] This resonates with the findings of the Bribe Payers Index of 2011 which listed mining, oil, and gas among the five sectors most involved in bribery by private firms.[262]

According to the OECD Foreign Bribery Report of 2014, over 80 per cent of foreign bribes in the indicted cases were promised, offered, or given to officials of state-owned enterprises.[263] This suggests that the anti-corruption sword relating to investment must be double-edged. On the one hand, it must control corruption from investors. On the other hand, it must ensure that conduct of public officials is monitored and regulated properly. It is on that account that this thesis considers the OECD Anti-Bribery Convention as a relevant tool to controlling corruption in the Tanzanian energy sector. Tanzania is not a State Party to this Convention. However, its provisions are relevant to the regulation of the conduct of multinational companies from OECD countries that operate in Tanzania. The Convention is even more important in this regard, considering the stalling of the negotiations on the United Nations Code of Conduct for Transnational Corporations.[264]

The Organisation for Economic Cooperation and Development has created an arsenal of instruments and guidelines to fight corruption in international business transactions. The cornerstone of its anti-corruption efforts is the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Anti-Bribery Convention) of 1997. The preamble paragraph 1 of the Convention acknowledges the widespread nature of bribery in international business transactions, and its catastrophic impact on economic development, good governance, political stability, and business competitiveness. To address this phenomenon, article 1 of the Convention requires State Parties to take the necessary measures to criminalise intentional bribery by any person to a foreign public official

260 OECD (2014) 8 & 21.
261 OECD (2014) 21.
262 Transparency International (2011) 15.
263 OECD (2014) 23-24.
264 See section 2.2.5. of this thesis for discussion on this aspect.

in the conduct of international business. Article 1(4)(a) of the Convention defines a foreign public official as

> [a]ny person holding a legislative, administrative, or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation.

This definition implies that the provisions of the Convention apply in respect of all foreign bribery offered, promised, or given to any official exercising a public function for a foreign country or international organisation. Prohibitions contained in this Convention apply to the regulation of the energy sector in Tanzania since most of the investors in this sector currently are companies from the OECD Member States. The prohibition on their engagement in corrupt practices complements national initiatives to regulate the conduct of public officials and private firms simultaneously.

Technically, article 1 of the Convention addresses the supply side of bribery which also is referred to as active bribery. This is the offence committed by a person who offers, promises, or gives the bribe, as opposed to the offence committed by a person who solicits, receives, or accepts the bribe, referred to as passive bribery. The use of the words active and passive is technical, since in some situations the bribery recipient may be more active in soliciting the bribe than the briber in giving it. By dealing with the supply side of bribery, the Convention aims at fighting unfair competition in the conduct of international business, particularly corruption.[265]

State Parties to the Convention are required to adopt measures aimed at ensuring that their companies and nationals do not bribe public officials of other nations to obtain or maintain business or other improper advantage.[266] Such measures include establishing in their national law the offence of bribery of foreign public officials;[267] establishing the liability of legal

---

265 Ehlermann-Cache N 'The impact of the OECD Anti-Bribery Convention' available at https://www.oecd.org/mena/competitiveness/39997682.pdf (accessed 22 July 2020) 2.

266 Article 1(1) of the OECD Anti-Bribery Convention.

267 Article 1 of the OECD Anti-Bribery Convention.

persons for the offence;[268] conducting serious investigation and prosecution of cases involving bribery of foreign public officials;[269] and administering effective, proportionate, and dissuasive sanctions against offenders, such as imprisonment, seizure, and confiscation.[270]

To send a clear message to companies to invest and transact ethically in international business, the OECD called upon Member States to disallow the tax deductibility of bribes paid to foreign public officials.[271] By 2008, the tax deductibility of such bribes had been outlawed in all State Parties to its Anti-Bribery Convention. Further, under the Recommendation of the Council on Bribery and Officially Supported Export Credits, Member States are advised to inform exporters and other parties about the legal consequences of engaging in bribery in international business transactions; encourage exporters to develop and apply management systems that help to detect and prevent bribery; and to perform enhanced due diligence for exporters or their agents who have been convicted of foreign bribery or are have been charged.[272]

The Convention and its supporting Guidelines provide a strong framework for combating corruption in investments. OECD Member States are required to criminalise this offence in their national laws, and to establish such measures as may be necessary to prevent their nationals and companies from engaging in corrupt practices abroad. Laws such as the United States of America's Foreign Corrupt Practices Act[273] and the United Kingdom's Bribery Act[274] are examples of domestic initiatives of the OECD Member States to control the conduct of their companies in international business transactions. This helps to reduce the risk of importing both capital and corruption in recipient nations.

---

268 Article 2 of the OECD Anti-Bribery Convention.

269 Article 5 of the OECD Anti-Bribery Convention.

270 Article 3 of the OECD Anti-Bribery Convention.

271 Para VIII(i) of the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 2009.

272 Para IV & VI of the Recommendation of the Council on Bribery and Officially Supported Export Credits, 2019.

273 (1977) 15 United States Code.

274 Chapter 23 of 2010.

2.3.3. Instruments of the African Union

Anti-corruption at Africa's regional level draws its spirit from the Constitutive Act of the African Union.[275] Principles of the African Union include respect for democratic principles, human rights, the rule of law, and good governance.[276] It aims at *inter alia* promoting the economic, social, and cultural development of the continent and its people. These principles and objectives concentrate on harnessing natural resources for the development of the people. In this regard, respect for the rule of law and good governance presupposes fighting against all acts, such as corruption, which undermine these values.

Regarding this, and considering the negative effects of corruption on the economic, social, and political stability of Africa, the African Union Convention on Preventing and Combating Corruption was adopted in 2003. This Convention provides a continental framework for controlling corruption. It criminalises acts of corruption, including active and passive bribery, abuse of office, diversion, trading in influence, illicit enrichment, laundering the proceeds of corruption, and participation in committing an act of corruption.[277] State Parties are supposed to criminalise these offences in their national laws.[278] States have to establish strong anti-corruption bodies; implement strong mechanisms for accounting, auditing, and monitoring public income and expenditure; promote public awareness and participation in fighting corruption; and establish strong whistle-blower and witness protection systems.[279]

The Convention requires State Parties to strengthen their domestic controls to ensure that investments and operations of foreign corporations do not violate the national laws of the host state.[280] Corruption fuels the largest part of illicit financial flows from Africa whose main perpetrators are multinational corporations.[281] These have been accused of instigating violence

---

275 Adopted by 36th Ordinary Session of the Assembly of Head of States and Government on 11 July 2000.
276 Article 4(m) of the Constitutive Act of the African Union of 2000.
277 Article 4(1) of the African Union Convention on Preventing and Combating Corruption of 2003.
278 Article 5(1) of the African Union Convention on Preventing and Combating Corruption
279 Article 5(3-8) of the African Union Convention on Preventing and Combating Corruption.
280 Article 5(2) of the African Union Convention on Preventing and Combating Corruption.
281 African Union (2015) 32 & 36.

and conflicts in some states where they engaged in the exploitation of natural resources.[282] On that understanding, and based on the fact that multinational companies are the largest investors in energy projects in Africa, it is imperative for host states to establish strong institutions for regulating and controlling the activities of these companies.

State Parties are required to adopt measures for combating corruption in the private sector and by its agents, including necessary measures for preventing the paying of bribes by companies to win government tenders.[283] As public officials are the recipients of bribery from companies, the Convention prescribes measures to be adopted by State Parties in controlling corruption in the public service.[284] These measures include asset declaration, adopting codes of conduct and ethics, ensuring transparent tendering and procurement of public goods and services, and lifting the immunity from prosecution when the privileged official engages in corrupt practices.

To strengthen the fight against corruption in the continent, in 2014 the Statute of the African Court of Justice and Human Rights (the African Court) was amended to give it jurisdiction over international crimes.[285] Of interest to this thesis are two crimes: namely corruption, and the illicit exploitation of natural resources.[286] Article 28I of the Statute of the African Court brings within the jurisdiction of the Court the acts of corruption criminalised under article 4(1) of the African Union Convention on Preventing and Combating Corruption. The Court has jurisdiction to enforce the provisions of the Convention, including those relating to bribery by foreign companies.[287] Notably, the Statute of the African Court of Justice and

282 Alao A (2007) *Natural Resources and Conflict in Africa: The Tragedy of Endowment* New York: University of Rochester Press 6-8, Ngomba-Roth R (2007) *Multinational Companies and Conflicts in Africa: The Case of the Niger Delta-Nigeria* Münster: LIT-VERLAG 70-73, Global Witness (2009) *Faced with a Gun, What Can You DO? War and the Militarisation of Mining in Eastern Congo* available at https://www.globalwitness.org/en/campaigns/democratic-republic-congo/faced-gun-what-can-you-do/ (accessed 16 July 2020) 59-69.

283 Article 11 of the African Union Convention on Preventing and Combating Corruption.

284 Article 7 of the African Union Convention on Preventing and Combating Corruption.

285 See Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights of 2014 (Malabo Protocol).

286 Article 28A(1) of the Statute of the African Court of Justice and Human Rights of 2008.

287 Article 28I(1) of the Statute of the African Court of Justice and Human Rights.

Human Rights is the first international instrument to confer on an international court criminal jurisdiction over corporations.[288] This innovation in international law is particularly relevant to Africa, where multinational corporations have contributed substantially to violence, unrest, and poverty, due to corruption and the illicit exploitation of natural resources. As stated by Hatchard, corruption is the most significant crime in the framework of the African court.[289] Its significance lies in the fact that, unlike other crimes, corruption is a continental plague which affects millions of people in their daily lives.[290]

In a similar vein, article 28L *Bis* of the Statute of the African Court proscribes the illicit exploitation of natural resources. This is a novel crime in international criminal law which was previously prohibited as a war crime of pillage.[291] Black's Law Dictionary defines pillage as the forcible seizure of another's property, especially in war, such as the wartime plundering of a city or territory.[292] It was on the basis of this prohibition that the International Court of Justice held Uganda responsible for violation of international law obligations by the engagement of its army in the plundering, looting, and illegal exploitation of natural resources of the Democratic Republic of Congo.[293]

There are six conducts that constitute the illicit exploitation of natural resources.[294] First, concluding an agreement to exploit natural resources in violation of the principle of permanent sovereignty over natural resources or in violation of the legal and regulatory procedures of the state concerned. Secondly, concluding through corrupt practices an

288 Article 46C of the Statute of the African Court of Justice and Human Rights. See also De Jong DD and Stewart JG (2019) 'Illicit Exploitation of Natural Resources' in Jalloh CC, Clarke KM & Nmeheille VO (eds) *The African Court of Justice and Human and People's Rights in Context: Development and Challenges* Cambridge: Cambridge University Press 590-591.

289 Hatchard J (2019) 'Combating Corruption Effectively? The Role of the African Court of Justice and Human Rights' in Jalloh CC, Clarke KM & Nmehielle VO (eds) *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges* Cambridge: Cambridge University Press 477.

290 Hatchard (2019) 477.

291 Article 33 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 & article 8(2)(b)(xvi) of the Rome Statute of the International Criminal Court of 1998.

292 Garner BA (ed) (2004) *Black's Law Dictionary* 8th Ed Minnesota: West 1185.

293 *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* para 245-250.

294 Article 28L *Bis* of the Statute of the African Court of Justice and Human Rights.

agreement to exploit natural resources. Thirdly, concluding an exploitation agreement which is manifestly one-sided. Fourthly, exploiting natural resources without the requisite state permits. Fifthly, violating environmental protection norms during exploitation. Finally, violating the norms and standards of exploitation established by the relevant natural resource certification mechanism. Article 28L *Bis* of the Statute of the African Court is enacted *mutatis mutandis* from article 12 of the International Conference on the Great Lakes Region Protocol against the Illegal Exploitation of Natural Resources of 2003, which is discussed later in section 2.3.5 of this thesis.

By giving the African Court of Justice and Human Rights jurisdiction over corruption and the illicit exploitation of natural resources, the African Union has made a progressive effort to address two of the major problems affecting Africa's stability and development. Nevertheless, there are three significant limitations to this effort. First, for the Court to adjudicate on these offences, the act alleged to have been committed must be of a serious nature affecting the stability of a state, region, or the African Union. The test for this standard is left for the Court to establish. Undoubtedly, the drafters of this chapeau clause intended to limit the flood of cases that would be brought to the Court concerning corruption and illicit exploitation of natural resources. However, considering its great vagueness, this clause may limit the admissibility of many cases which could have been adjudicated by the Court. For instance, apart from its obscurity on the nature of the seriousness required, the clause is equally vague on whether the alleged act must result in actual instability or that a potential threat to stability would suffice to bring the case within the ambit of the Court.[295]

The second limitation in this regard concerns the immunity provided under article 46A *Bis* of the Statute of the African Court of Justice and Human Rights. This provision exempts Heads of state or government in the African Union, or any other person acting or entitled to act in such capacity, and other senior state officials from being charged before the Court during their tenure of office. Certainly, immunity for serving Presidents and Heads of state or

[295] Amnesty International (2016) *Malabo Protocol: Legal and Institutional Implications of the Merged and Expanded African Court* London: Amnesty International 26.

government is well founded in customary international law.[296] However, that immunity does not reduce the powers of international criminal courts or tribunals to prosecute such officials for international crimes.[297] The practice of the African Court in this regard is bewildering as it deviates from the practice well established in other international criminal courts. The provision is even more discouraging as the scope of the other senior state officials covered under it is not defined by the Statute.

Invariably, grand corruption in Africa involves senior state officials on the one hand and individual businessmen or corporations on the other hand.[298] For instance, official testimonies of investigations into state capture in South Africa revealed that a private company paid monthly bribes of US$250,000 – US$400,000 to senior government officials.[299] It is unfortunate that officials involved in such serious corruption which affects the economic and political stability of a country can be prosecuted within the African Court's framework only upon leaving office. Considering the political ecology of grand corruption in Africa, waiting for senior officials to leave office for them to be prosecuted undermines the impact of the Court in addressing the major problems affecting Africa's development and stability. As put by Amnesty International:

> The clause will effectively prevent the investigation and prosecution of serving Heads of State and Government who use their position or authority to order, plan, finance or otherwise mastermind crimes against humanity, war crimes or acts of genocide. Experience has shown that on the African continent, as elsewhere, it is those in positions of power who typically abuse their authority and state resources to commit international crimes. The immunity clause essentially promotes and strengthens the culture of impunity that is already entrenched in most African countries.[300]

296 Amnesty International (2016) 26.

297 Article 27 of the Rome Statute, Article 6(2) of the Statute of the International Criminal Tribunal for Rwanda & Article 7(2) of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

298 Gray HS (2015) 'The Political Economy of Grand Corruption in Tanzania' 114(456) *African Affairs* 388–389, and Munyai A & Agbor AA (2020) 'Delineating the Role of Foreign Governments in the Fight against Corruption in Africa' 6(1) *Cogent Social Sciences* 2-4.

299 Transparency International (2019) *Global Corruption Barometer – Africa* available at https://images.transparencycdn.org/images/2019_GCB_Africa3.pdf (accessed 7 October 2021)

300 Amnesty International (2016) 27.

The above observation leads to the third limitation to the jurisdiction of the African Court of Justice and Human Rights, namely the lack of political will to prosecute established offences. The efficiency of the African anti-corruption arsenal depends upon the political will of individual nations. Unfortunately, that political will is lacking. For instance, the Statute of African Court of Justice and Human Rights requires ratification by 15 Member States to come into force. Sadly, since its adoption in 2008, the Statute has been ratified by eight states only.[301] Worse, the Malabo Protocol, which also requires 15 ratifications to come into force, has had zero ratification since its adoption in June 2014.[302] Tanzania is one of the countries that have not ratified the Statute of the African of Justice and Human Rights, or the Malabo Protocol.

This trend gives doubts about the sanctity of the African Union's approach to fighting continental evils especially corruption. A possible explanation for this puzzle may be what has been discussed earlier about the political ecology of grand corruption in Africa, and the unwillingness of African political leaders to be held accountable for their transgressions. It is for that reason that only eight African states currently accept the jurisdiction of the African Court on Human and Peoples' Rights to receive complaints from individuals and non-governmental organisations with observer status, pursuant to article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Right. Tanzania submitted to that jurisdiction in 2010, but was the second to withdraw its declaration, in November 2019, after Rwanda had done so in March 2016.[303]

The withdrawal of Tanzania from article 34(6) of the Protocol on the establishment of the African Court on Human and Peoples' Rights is attributed to the increasing number of complaints that were filed in that Court against Tanzania by individuals.[304] In fact, as of February 2021, Tanzania had the highest number of cases filed against a state by individuals

301 Ratification status as of 18 February 2021.

302 Ratification status as of 18 February 2021.

303 International Justice Resource Centre (5 December 2019) 'As African Court Releases New Judgments, Tanzania Withdraws Individual Access' available at https://ijrcenter.org/2019/12/05/as-african-court-releases-new-judgments-tanzania-withdraws-individual-access/ (accessed 21 March 2022).

304 International Justice Resource Centre (5 December 2019).

before the Court. As of February 2021, of the 76 finalised cases published on the Court's website, 33 (43 per cent) were against Tanzania.[305] It is unfortunate that by not making that declaration or by withdrawing from the court, African governments are limiting their citizens from obtaining remedies that sometimes may not be available in domestic courts. For instance, in the case of *Jebra Kambole v The United Republic of Tanzania*,[306] the Court held that there was no local remedy available for exhaustion with respect to Tanzanians seeking to challenge presidential election results. In such circumstances, only access to international courts or tribunals can protect the rights of those concerned.

The African Union has, generally, established a broad framework for fighting corruption in Africa. However, considering the complementarity principle of international law, the efficacy of that anti-corruption framework depends on the will of African nations to implement it in their domestic jurisdictions. Unfortunately, as has been shown above, that will is lacking. There is a need for the domestic legal systems of the Member States to ensure that political leaders are bound to implement anti-corruption initiatives, and honour their respective international obligations.

2.3.4. Southern African Development Community

The Southern African Development Community (SADC) has adopted various measures to fight corruption in the region, especially the SADC Protocol against Corruption of 2001 (the SADC Protocol). This instrument aims at promoting and strengthening the development of regional mechanisms necessary for preventing, detecting and punishing offenders, and eradicating corruption in the public and private sectors.[307] Article 3 of the Protocol criminalises a range of acts of corruption including bribery of or by public officials or persons working in the private sector, abuse of functions, diversion of state assets, trading in influence, fraudulent use or

305 African Court on Human and Peoples Rights 'Finalised cases' available at https://www.african-court.org/cpmt/finalised (accessed 22 February 2021).

306 African Court on Human and Peoples Rights Application No. 018/2018 Judgment of 15 July 2020.

307 Article 2(1)(a) of the Southern African Development Community (SADC) Protocol against Corruption 2001.

concealment of proceeds of corruption, and participation in the commission or attempted commission of acts of corruption.

To fight corruption effectively, the Protocol affirms the need to adopt effective prevention and deterrence mechanisms such as strictly enforcing anti-corruption legislation and fostering public participation.[308] Article 4 of the Protocol outlines the preventive measures to be adopted by State Parties, including the adoption of codes of conduct for public servants, and establishing and maintaining strong and transparent government procurement systems. They also encompass maintaining government revenue collection and control systems that deter corruption in individual and corporate practices. State Parties must adopt mechanisms for promoting access to information needed to eliminate opportunities for corruption, establish witness and whistle-blower protection systems, establish strong anti-corruption bodies, and promote public awareness and participation in fighting corruption.

To ensure that offenders do not benefit from their wrongdoing, State Parties are required to adopt the measures necessary to ensure the recovery of stolen assets.[309] These measures include mutual legal assistance by State Parties in the investigation, arrest, extradition, and prosecution of offenders. Asset recovery mechanisms are particularly significant to the region considering the density of corruption, illicit financial flows, and capital flight from Africa. About US$50 billion flows out of Africa annually.[310] A 2017 report by a consortium of United Kingdom and African equality and development campaigners claims that capital flight from Africa amounts to US$68 billion annually.[311] Out of that amount, multinational companies alone steal about US$48.2 billion through trade misinvoicing.[312] As such, having strong asset recovery mechanisms may deter corporations and individuals from

308 Preamble Paragraph 9 of the SADC Protocol against Corruption.

309 Article 8 of the SADC Protocol against Corruption.

310 African Union (2015) 13.

311 Global Justice et al. (2017) *Honest Accounts: How the World Profits from Africa's Wealth* available at https://www.globaljustice.org.uk/sites/default/files/files/resources/honest_accounts_2017_web_final.pdf?utm_source=Global+Justice+Now+press+release+list&utm_campaign=17a92094cc-EMAIL_CAMPAIGN_2017_05_17&utm_medium=email&utm_term=0_166972fef5-17a92094cc-288067141&mc_cid=17a92094cc&mc_eid=6149d72169 (accessed 19 July 2020) 2.

312 Global Justice et al. (2017) 4.

stealing Africa's wealth as well as enabling African states to recover what has been stolen already.

In addition to other measures designed to fight corruption in the region, and considering the plight of bilateral investment treaties, SADC has enacted a Model Bilateral Investment Treaty (the Model Treaty).[313] It contains comprehensive regional provisions to guide Member States in the negotiation of investment treaties with other states. Article 10 of the Model Treaty creates a common obligation for investors to refrain from corrupt practices during the establishment or execution of an investment. Specifically, it prohibits investors and their investments from bribing public officials in a host state as well as any member of their family, business associate or others closely related to them.[314] This model provision is derived from article 1 of the OECD Anti-Bribery Convention, and article 16 of United Nations Convention against Corruption.

An innovation in this provision is that, unlike the OECD Anti-Bribery Convention and UNCAC which prohibit bribes paid to a foreign public official only, the Model Treaty extends its reach to address even bribes paid to family members, business associates, and other persons closely related to a public official. It prohibits investors and their investments from being complicit in acts of corruption, including inciting, aiding, abetting, and conspiring to commit or authorising the commission of such acts.[315] The host state and the investor's home state are required to enforce these anti-corruption provisions in their domestic law.[316] Most importantly, article 10(3) of the Model Treaty provides that an investment obtained or operated through corruption constitutes a violation of the domestic law of the host state and a breach of the bilateral investment treaty. Such an investment is void *ab initio* since the definition of an

313 See https://www.iisd.org/itn/wp-content/uploads/2012/10/sadc-model-bit-template-final.pdf (accessed 23 March 2022).

314 Article 10(1) of the SADC Model Bilateral Investment Treaty.

315 Article 10(2) of the SADC Model Bilateral Investment Treaty.

316 Article 10(4) of the SADC Model Bilateral Investment Treaty.

investment requires that it should be made in accordance with the domestic law of the host state.[317]

Decisions of some international arbitral tribunals support the above approach. They show that an investment which is made or operated in violation of domestic law of the host state (such as involvement in corruption) is void and not protected by the bilateral treaty of the respective states.[318] *Metal-Tech Ltd v Republic of Uzbekistan* is a good illustration of the application of this principle. In 2000, an Israeli company, Metal-Tech Ltd, entered a joint venture known as Uzmetal with two state-owned enterprises in Uzbekistan for the manufacture of pure molybdenum and the provision of access to international markets for products made from it.[319] Under the contract, the claimant had to pay Uzmetal using the proceeds of the sales. In 2006, authorities in Uzbekistan initiated criminal proceedings against Uzmetal for abuse of authority and causing harm to the nation. Subsequently, the state-owned enterprises filed domestic suits which resulted in liquidation of Uzmetal, and the transfer of all of its assets to them.[320]

In 2010, Metal-Tech Ltd initiated arbitration proceedings in the International Centre for Settlement of Investment Disputes. It sought for a declaration that the government of Uzbekistan had breached its obligations under the Israel-Uzbekistan bilateral investment treaty by failing to protect the claimant's investment.[321] Uzbekistan objected to the Tribunal's jurisdiction on the ground that the investment was made and operated in violation of domestic law, due to the engagement of the claimant in corruption and fraudulent misrepresentations in obtaining approval for the investment.[322] The Tribunal made findings of corruption and

317 Mbiyavanga S (2017) 'Corruption and International Investment Treaty Law' 1(2) *Journal of Anti-Corruption Law* 139. See also article 1(a) of the bilateral investment treaty between the United Kingdom and Northern Ireland and Tanzania of 1994.

318 *Saba Fakes v Republic of Turkey* para 115, *Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines* para 323.

319 *Metal-Tech Ltd v Uzbekistan* para 20.

320 *Metal-Tech Ltd v Uzbekistan* para 50 & 51.

321 *Metal-Tech Ltd v Uzbekistan* para 55.

322 *Metal-Tech Ltd v Uzbekistan* para 110.

concluded that, since the investment was not implemented in accordance with the laws of the host state, it was not protected under the bilateral investment treaty and the Tribunal lacked jurisdiction over the dispute.[323]

The provisions of the SADC Protocol against Corruption and other instruments of the SADC highlight the commitment of Member States to fight corruption. However, as other international instruments, implementation of these initiatives depends upon the political will of individual states.

2.3.5. International Conference of the Great Lakes Region

The International Conference of the Great Lakes Region is an intergovernmental organisation of African countries of the Great Lakes Region. It consists of twelve countries, including Tanzania. The organisation was founded in 2000 under the umbrella of the United Nations and the African Union with the view to addressing the root causes of political instability and conflicts in the Great Lakes region.[324] In November 2004, Member States adopted the Dar es Salaam Declaration on Peace, Security, Democracy, and Development in the Great Lakes Region (the Dar es Salaam Declaration). Through that Declaration, Member States have expressed concern about the endemic conflicts and persistent insecurity which are caused *inter alia* by the proliferation of organised crime and the illegal exploitation of natural resources.[325] Member States were encouraged to establish regional bodies for addressing these problems.[326]

As part of implementing the Dar es Salaam Declaration, in November 2006 Member States adopted the Protocol against the Illegal Exploitation of Natural Resources.[327] The Protocol contains strong provisions regarding the protection of natural resources located in the

---

323 *Metal-Tech Ltd v Uzbekistan* para 372 & 373.

324 ICGLR 'Background' available at http://www.icglr.org/index.php/en/background (accessed 30 July 2020).

325 Paragraph 2 of the Dar es Salaam Declaration on Peace, Security, Democracy, and Development in the Great Lakes Region.

326 Paragraph 34 of the Dar es Salaam Declaration on Peace, Security, Democracy, and Development in the Great Lakes Region.

327 See https://www.icglr-rtf.org/publication/protocol-against-the-illegal-exploitation-of-natural-resources/ (accessed 30 July 2020).

territory of Member States. It acknowledges that the illegal exploitation of natural resources in the Great Lakes region has resulted in extreme poverty, pervasive conflicts, insecurity, and has undermined the development of Member States.[328] It defines the illegal exploitation of natural resources as

> [a]ny exploration, development, acquisition, and disposition of natural resources that is contrary to law, custom, practice, or principle of permanent sovereignty over natural resources, as well as the provisions of this Protocol.[329]

The Protocol aims at influencing and strengthening Member States to develop effective measures for preventing and combating the illegal exploitation of natural resources in the region.[330] It calls upon Member States to harmonise their national legislations, policies, and procedures relating to the exploitation of natural resources, to ensure that such resources are protected effectively.[331] To achieve its objectives, the Protocol outlines preventive measures which should be adopted by Member States to deter the illegal exploitation of their natural resources.[332] Such measures include formulating and applying whistle-blower protection rules, and establishing and strengthening independent specialised bodies responsible for combating the illegal exploitation of natural resources. They include enhancing the participation of the press, civil society, and non-governmental organisations in raising public awareness, and detecting and preventing acts or means of exploiting natural resources illegally.

In addition to these preventive measures, the Protocol enjoins its Member States to criminalise in their national laws all acts of illegal exploitation of natural resources.[333] The acts proscribed in the Protocol are *mutatis mutandis* in accordance with those criminalised under article 28L *Bis* of the Statute of the African Court of Justice and Human Rights.[334] Likewise, article 13 of the Protocol requires Member States to criminalise the laundering of the proceeds

328 Preamble paragraph 7 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources 2006.
329 Article 1 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
330 Article 2(1) of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
331 Articles 2(3) & 22 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
332 Article 10 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
333 Article 12 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
334 See part 2.3.3 of the chapter for a list of the prohibited acts.

of illegal exploitation of natural resources. It establishes the liability of both legal and natural persons for participation in the illegal exploitation of natural resources.[335] As such, liability of corporations does not exonerate individual persons involved in the criminalised acts. Article 15 of the Protocol requires Member States to impose sanctions commensurate with the harm inflicted by the illegal exploitation of natural resources. Sanctions may be criminal, civil, or administrative, including imprisonment of individual persons, and fines.[336]

The spirit of natural resources protection enshrined in the Protocol against the Illegal Exploitation of Natural Resources revolves around the right to permanent sovereignty over natural resources. The preamble paragraph 6 of the Protocol considers this right as an absolute right of the people that must be exercised in the interest of their well-being and national development. Article 3 of the Protocol reiterates the right of Member States to freely dispose of their natural resources. As well as recognising the right of Member States to permanent sovereignty over their natural resources, the Protocol enjoins them to establish participatory and transparent mechanisms in the exploitation of natural resources.[337]

Under this Protocol, investors are required to respect the right of Member States to permanent sovereignty over natural resources. Exploitation activities must conform to the rules and conditions which the host state considers necessary and desirable.[338] Profits accruing from the exploitation of natural resources should be distributed fairly between investors and the host state.[339] This aims at ensuring that public interests in natural resources are protected, and that such resources contribute to the development of the host state. Any act of illegal exploitation of natural resources is a violation of the right of the Member State to permanent sovereignty over its natural resources and contrary to international law principles as contained in various international declarations and instruments.[340]

335 Article 17 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
336 Articles 15 & 17(2) of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
337 Article 3(3) of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
338 Article 5(1) & (2) of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
339 Article 5(3) of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.
340 Article 4 of the ICGLR Protocol against the Illegal Exploitation of Natural Resources.

2.4. Concluding remarks

Considering the transnational nature of corruption, various measures have been taken to fight this vice globally. This chapter has shown that the international community is deeply concerned about the negative effects of corruption on the daily lives of the people. States are required to take all necessary measures to prevent and combat corruption in all sectors. Similarly, states are required through their right to permanent sovereignty over natural resources to ensure that natural resources found in their territories are utilised in the exclusive interest of the people of that state. This doctrine was intended primarily to empower developing nations with the autonomy to determine the modes of exploitation of their natural resources. However, its exercise is seriously opposed by Western powers who seek to protect their interests in developing countries. At the same time, developing nations are struggling at the international platform to advocate for policies that would promote their economic emancipation. The disagreement of developed and developing nations over the regulation of international trade and investment significantly impacts the domestic resource governance anti-corruption regimes of developing nations. Building on this background, the next chapter of this study examines the Tanzanian anti-corruption regime with a view to identifying its deficiencies in fighting corruption in the energy sector.

Chapter Three:

Tanzania's Anti-Corruption Regime

3.1. Introduction

Fighting corruption is one of Tanzania's key post-independence agenda. Various policy and legislative initiatives have been implemented to prevent and combat corruption in the past 60 years. Anti-corruption programming is enshrined in several policy documents, including the National Anti-Corruption Strategy and Action Plans, the Tanzania Development Vision 2025, and the National Five-Year Development Plans. These policies prescribe a wide range of efforts that should be implemented to control corruption. The policy statements and directions are enforced through various laws that establish the legal and institutional framework for fighting this vice.

Despite its broad anti-corruption policy and legal regime, Tanzania still has high levels of corruption.[1] Poor anti-corruption performance is attributed mainly to the lack of a strong and sustainable political will to overcome the problem.[2] Poor political will leads to systemic, structural, and organisational malfeasance in fighting corruption.[3] This argument is substantiated by the chequered commitment to fighting corruption during the past five post-independence government regimes. While the first, third, and fifth regimes demonstrated strong commitment to fighting corruption, that was not the case with the second and fourth regimes.[4] The sixth government regime under President Samia Suluhu Hassan is in its infancy. It came to power on 19 March 2021, after the death of the fifth President John Pombe Magufuli, so its performance in fighting corruption cannot be assessed fairly at this stage.

1 Lukiko L (2017) *Exploring a sustainable anti-corruption regime for Tanzania* Unpublished LL.M Mini-Thesis University of the Western Cape, available at https://etd.uwc.ac.za/xmlui/handle/11394/5692 (accessed 8 February 2020).

2 Lukiko (2017) 68-71.

3 Luo Y (2005) 'An Organisational Perspective of Corruption', 1(1) *Management and Organisation Review* 121.

4 Lukiko (2017) 31-54.

Considering that corruption undermines the equitable exploitation of natural resources like oil and gas, this chapter examines the Tanzanian anti-corruption regime with the view to identifying its weaknesses in controlling this vice. In the lens of institutional theory, it examines the environments and forces that determine and shape anti-corruption in the country.[5] Particular focus is paid to the implications of this regime for anti-corruption in the energy sector.

The chapter is anchored on the regulative pillar of institutions.[6] This pillar consists of the laws, rules, and policies that establish authority, regulate conduct, monitor compliance, and administer sanctions in form of rewards for compliance or punishment for violation.[7] Anti-corruption policies and laws in Tanzania are examined critically to identify their weaknesses in fighting corruption, especially in the energy sector. Organs responsible for enforcing and monitoring compliance are examined to determine the environments and forces that undermine the effective implementation of the anti-corruption policies and laws.

The chapter responds to the first research question, namely: How do the relationships, roles and powers of various actors influence corruption and anti-corruption practices in the energy sector in Tanzania? It also addresses the third research question regarding the policy, legal, regulatory, and practical deficits which create a space for corruption in the energy sector, and how such corruption may be combated. The shortcomings in the national anti-corruption regime are identified, and their likely impact on fighting energy sector corruption is highlighted.

3.2. Anti-corruption policy framework

Tanzania's anti-corruption policy framework is enshrined in various policy documents and strategy papers that aim to reduce poverty and promote good governance and economic growth. These include the Tanzania Development Vision 2025, the National Anti-Corruption

---

5 See Aksom H, Zhylinska O & Gaidai T (2020) 'Can institutional theory be refuted, replaced or modified?' 28(1) *International Journal of Organisational Analysis* 140.

6 Scott RW (2014) *Institutions and Organisations: Ideas, Interests and Identities* 4th Ed, London: SAGE Publications 59-60.

7 Scott (2014) 59-60.

Strategy and Action Plans, and the National Five-Year Development Plans. These instruments require the government to fight corruption in all socio-economic and political spheres.

Development of the energy sector in Tanzania is guided by the National Energy Policy of 2015. The policy's main objective is to provide guidance for the sustainable development and utilisation of energy resources for the economic transformation of Tanzanians.[8] Unfortunately, it does not identify corruption as a serious threat to the realisation of that objective. Corruption is mentioned only once in the policy, regarding the need to promote transparency and accountability in the management of energy resources.[9] Therefore, the policy does not offer strong guidance to fighting corruption in the energy sector. Against that backdrop, this section analyses the anti-corruption policy framework enshrined in other multisectoral policy documents and their influence on fighting corruption in the energy sector.

3.2.1. Tanzania Development Vision 2025

In 1999, Tanzania published its Development Vision to guide social, economic, and governance efforts for the next 25 years. The Tanzania Development Vision 2025 is the nation's blueprint for economic transformation from a least developed to a middle-income country.[10] It is envisioned that by 2025, Tanzania will have a high quality livelihood, peace, stability and unity.[11] There will be good governance, a well-educated society, and a competitive economy capable of producing sustainable growth and shared benefits.[12] The goal of the Vision is people-centred development.[13]

To achieve its objectives, the Vision recognises the need for promoting good governance and the rule of law.[14] The correlation between good governance and economic development is

8 Ministry of Energy and Minerals (2015) *National Energy Policy* Dar es Salaam: Ministry of Energy and Minerals 10.

9 Ministry of Energy and Minerals (2015) 46.

10 Planning Commission (2000) *Tanzania Development Vision 2025* Dar es Salaam: Planning Commission 2.

11 Planning Commission (2000) 3.

12 Planning Commission (2000) 3.

13 Planning Commission (2000) 3.

14 Planning Commission (2000) 4.

irrefutable. Political and economic scholars generally agree that good governance is an indispensable ingredient of democracy and economic growth.[15] With respect to the energy sector, literature indicates that good governance of energy resources directly improves productivity, and sector contribution to economic growth.[16] Good governance is measured in six dimensions which are: control of corruption; rule of law; regulatory quality; government effectiveness; political stability and absence of violence; and voice and accountability.[17] In that sense, the Vision's good governance resolve presupposes the incorporation of these indicators in its implementing strategies and policies such as the National Energy Policy.

The Tanzania Development Vision 2025 calls for entrenching a culture of accountability in the national socio-economic systems to fight governance evils such as corruption.[18] It notes that over time, corruption and other vices have escalated, and public voices in the development process have been disregarded. Ambitious policies and programmes have been developed in the absence of the necessary implementation, monitoring, and evaluation structures.[19] Cognisant of those deficits, it enjoins the government to adhere to good governance principles, respect the rule of law, and eradicate corruption and other bad practices.[20] To attain those goals, it requires the government to enlist public participation, strengthen accountability

15 Pere E (2015) 'The impact of good governance in the economic development of Western Balkan countries' 4(1) *European Journal of Government and Economics* 26-27 & Green D (2015) 'What is the relationship between governance and economic growth?' available at https://www.weforum.org/agenda/2015/11/what-is-the-relationship-between-governance-and-economic-growth/ (accessed 16 June 2021).

16 Bercu A et al. (2019) 'Investigating the Energy–Economic Growth–Governance Nexus: Evidence from Central and Eastern European Countries' 11 *Sustainability* 4 & 12, Ramirez J (2021) 'Governance in energy democracy for Sustainable Development Goals: Challenges and opportunities for partnerships at the Isthmus of Tehuantepec' 4 *Journal of International Business Policy* 120-121 & al-Kuwari S (2020) 'Good governance key to energy sector's better performance and productivity' available at https://www.gulf-times.com/story/668783/Good-governance-key-to-energy-sector-s-better-perf (accessed 16 June 2021).

17 Kaufmann D, Kraay A & Mastruzzi M (2010) *The Worldwide Governance Indicators: Methodology and Analytical Issues* The World Bank available at https://documents1.worldbank.org/curated/ar/630421468336563314/pdf/WPS5430.pdf (accessed 16 June 2021).

18 Planning Commission (2000) 4.

19 Planning Commission (2000) 11.

20 Planning Commission (2000) 4 & 13.

mechanisms, and establish and enforce strong legal and regulatory frameworks.[21] The government should also adopt strategies for enhancing the capacity of law enforcement organs, Parliament, and the media, to promote accountability and transparency.[22]

Three government regimes have participated in implementing the Tanzania Development Vision 2025.[23] The fourth regime under President Samia took over in 2021. The Vision is the yardstick for broad governance and development policies and programmes that are implemented by the government. Being a multi-sectoral development framework, the Vision does not address in specific terms the governance issues of the energy sector. Such guidance is expected to feature in sector-specific instruments such as the National Energy Policy. However, as pointed out earlier, the policy's account of anti-corruption in the energy sector is narrow.

Critical examination of the National Energy Policy of 2015 through the lens of the Tanzania Development Vision 2025 reveals a policy disconnection regarding the role of anti-corruption in ensuring the sustainable growth of the energy sector. While the Vision considers corruption as a hindrance to the realisation of development,[24] the policy does not explicitly identify corruption among the bottlenecks facing the energy sector.[25] In fact, it does not make direct reference to the Vision at all. This is astonishing, because sector-specific policies are expected to implement the national development vision. For instance, the National Trade Policy of 2003 and the National Employment Policy of 2008 categorically align their vision and mission statements to realising the Tanzania Development Vision 2025.[26] Therefore, the deviation of

21 Planning Commission (2000) 22-23.

22 Planning Commission (2000) 30.

23 Mkapa regime (2000-2005), Kikwete regime (2005-2015) & Magufuli regime (2015-2021).

24 Planning Commission (2000) 22-23.

25 See Ministry of Energy and Minerals (2015) 2.

26 See Ministry of Industry and Trade (2003) *National Trade Policy* Dar es Salaam: Ministry of Industry and Trade 15-16 & Ministry of Labour, Employment and Youth Development (2008) *National Employment Policy* Dar es Salaam: Ministry of Labour, Employment and Youth Development 10.

National Energy Policy from this norm is paradoxical, and creates a policy vacuum in controlling corruption in the energy sector.

3.2.2. National Anti-Corruption Strategy and Action Plan

In line with the national development vision, the government issued the National Framework on Good Governance in 1999 to promote good governance in the country.[27] The Framework focused on promoting public participation in decision-making, ensuring the rule of law and respect for human rights, enhancing the regulation of the private sector, and promoting democratic elections.[28] It also emphasised the promotion of accountability, transparency and integrity in the public service, as well as ensuring the efficient and quality delivery of public services.[29] As part of implementing that Framework, the government prepared a National Anti-Corruption Strategy to guide government Ministries, Departments, and Agencies in combating corruption.[30] Forthwith, these institutions prepared their action plans to implement the strategy. The action plans were harmonised and integrated into the National Anti-Corruption Strategy to form the National Anti-Corruption Strategy and Action Plan (NACSAP).[31]

NACSAP's implementation runs in five-year phases. The current is the third phase, running from 2017 to 2022.[32] It aims at providing a comprehensive anti-corruption approach through the promotion of good governance and strong leadership.[33] Anti-corruption efforts

---

27 Mdee A & Thorley L (2016) *Good governance, local government, accountability and service delivery in Tanzania: Exploring the context for creating a local governance performance index*, ESRC Working Paper 2 available at https://www.intrac.org/wpcms/wp-content/uploads/2016/11/WP2_Local-governance-and-accountability-in-Tz_Mzumbepaper_FINAL_311016.pdf (accessed 22 October 2020) 6.

28 Mdee & Thorley (2016) 6.

29 Mdee & Thorley (2016) 6.

30 Afro-Barometer & REPOA (2006) *Combating Corruption in Tanzania: Perception and Experience,* available at http://afrobarometer.org/sites/default/files/publications/Briefing%20paper/AfrobriefNo33.pdf (accessed 22 October 2020) 2.

31 Afro-Barometer & REPOA (2006) 2.

32 For assessment of previous NACSAP phases see President's Office (2008) *Enhanced National Anti-Corruption Strategy and Action Plan Phase II 2008-2011* Dar es Salaam: President's Office and Wang'ati M & Shah R (2012) *Evaluation of the Enhanced National Anti-Corruption Strategy and Action Plan - II (NACSAP II) 2008-2011 for the Republic of Tanzania* Final Report Submitted to the PCCB and UNDP.

33 President's Office (2017) *National Anti-Corruption Strategy and Action Plan Phase III 2017-2022* Dar es Salaam: President's Office 24.

under this strategy are intended to contribute to realising the Tanzania Development Vision 2025 and the National Five-Year Development Plan.[34] In particular, it seeks to reduce corruption in sectors prone to it, including public procurement; revenue collection; exploitation of natural resources such as minerals, energy, oil, and gas; and the administration of justice.[35] This strategic focus is commendable. Corruption in these sectors constitutes the largest part of the grand corruption scandals in Tanzania.[36] Prioritising these sectors in the national anti-corruption strategy would be a significant policy direction towards curbing this vice. In the context of this thesis, it is important to examine the way this prioritisation enhances anti-corruption in the energy sector.

The National Anti-Corruption Strategy and Action Plan 2017-2022 has four objectives.[37] First, to promote efficiency, transparency, and accountability in public and private sectors; secondly, to establish effective anti-corruption enforcement mechanisms; thirdly, to strengthen oversight and watchdog institutions in fighting corruption; and fourthly, to promote effective political leadership in fighting corruption. While the first to the third objectives are continuations of the aims of the previous national anti-corruption strategies, the fourth is novel. As pointed out in the introduction to this chapter, invariably anti-corruption efforts fail due to lack of a strong political will.[38] With anti-corruption, effective political will encompasses the will to initiate anti-corruption, and the will to sustain the fight until it is successful.[39] It is submitted that Tanzania's political will deficit is not about initiating anti-corruption action but about sustaining the fight to victory.[40] This explains the reason why, despite the broad anti-

34 President's Office (2017) 23.

35 President's Office (2017) 24.

36 See Gray HS (2015) 'The Political Economy of Grand Corruption in Tanzania' 114(456) *African* 388-393.

37 President's Office (2017) 24-25.

38 Brinkerhoff DW (2000) 'Assessing Political Will for Anti-Corruption Efforts: An Analytic Framework' 20 *Public Administration and Development* 240, Quah JST (2001) 'Combating Corruption in Singapore: What Can Be Learned?' 9(1) *Journal of Contingencies and Crime Management* 34, Persson A et al. (2013) 'Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem' 26(3) *Governance* 454 & Lukiko (2017) 69-71.

39 Brinkerhoff (2000) 240.

40 See Lukiko (2017) 69-71.

corruption regime, corruption levels in the country are still very high.[41] The determination to enhance political leadership in anti-corruption is an important step towards addressing the political will deficit.

Being one of the priority sectors, the National Anti-Corruption Strategy and Action Plan requires strategic anti-corruption interventions to be entrenched in the energy sector's value chain in order to attain value for money and improve service delivery.[42] This should be achieved through mapping corruption risks in the value chain, identifying their root causes and taking remedial measures, undertaking compliance checks, and conducting anti-corruption awareness programmes.[43] The value chain refers to the stages by which the full value of a product is managed and ultimately realised.[44] The OECD typology of corruption risks in the extractive sector identifies six stages of the value chain where corruption may occur. These stages are: decision to extract; awarding of oil, gas and mining rights; extraction operations and regulation; revenue collection; revenue management; and revenue spending and social investment projects.[45] Corruption risks in these stages in the context of Tanzania's energy sector are examined in chapter four of this thesis.

To achieve its objectives, the National Anti-Corruption Strategy and Action Plan assigns various roles to public institutions, the private sector, development partners, civil society, media, and political parties. Public institutions such as those entrusted with the regulation and management of the energy sector are required to ensure timely preparation of their anti-corruption strategies and action plans, and ensure compliance to laws, regulations, and codes of ethics in workplaces.[46] They are supposed to enforce existing national anti-corruption

41 See Lukiko (2017) 3.

42 President's Office (2017) 25.

43 President's Office (2017) 25.

44 Natural Resource Governance Institute (2010) 'The Value Chain' available at https://www.resourcegovernance.org/analysis-tools/publications/value-chain (accessed 3 September 2021).

45 OECD (2016) *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives* Paris: OECD 12.

46 President's Office (2017) 46.

measures, mount effective integrity committees, adopt client service charters, and enhance transparency and accountability in their undertakings.[47]

Institutions responsible for managing the energy sector have adopted several initiatives in line with the national anti-corruption strategy. For instance, the Tanzania Electric Supply Company Ltd and the Energy and Water Utilities Regulatory Authority have published client service charters on their websites.[48] Online publication of these documents is in line with the e-Government Strategy that aims at utilising technology to enhance citizen participation and have influence on policy outcomes.[49] One of the common features of these client service charters is the commitment to operate honestly and transparently.[50] Unfortunately, the Ministry of Energy, the Tanzania Petroleum Development Corporation and the Petroleum Upstream Regulatory Authority have not published such service charters online.[51] This limits transparency and public assessment of the standards of services provided by these energy sector organs.

To promote accountability, parliament is designated as one of the anti-corruption watchdog institutions.[52] The Parliamentary Standing Orders of 2020 requires a Minister, during the tabling of budget estimates for the next financial year, to also table a report of the implementation of development activities in the ministry for the ending year.[53] Since corruption is one of the critical development issues, Ministers are expected to report to parliament how the ministry has addressed it. For instance, in the budget speech for the financial year 2020/21, the Minister of Lands, Housing and Human Settlements Development reported that the

47 President's Office (2017) 46.

48 See TANESCO (2013) *Customer Service Charter* available at http://www.tanesco.co.tz/index.php/customer-service/customer-service-charter/44-customer-service-charter (accessed 17 June 2021) & EWURA (2020) *Client Service Charter* available at https://www.ewura.go.tz/wp-content/uploads/2020/10/EWURA-Client-Service-Charter-English-Revised-2020.pdf (accessed 17 June 2021).

49 President's Office – Public Service Management (2013) *Tanzania e-Government Strategy* Dar es Salaam: President's Office – Public Service Management 47.

50 TANESCO (2013) 8 & EWURA (2020) 3.

51 See https://www.nishati.go.tz/; https://www.tpdc.co.tz/; and https://www.pura.go.tz/ (accessed 23 June 2021).

52 President's Office (2017) 28.

53 Order 118 of the Parliamentary Standing Orders of 2020.

ministry had prepared a strategy to fight corruption in the lands sector[54] and that it had conducted public ethics and anti-corruption training for its staff, including signing the code of ethics. In addition, information on 47 staff members of the ministry who faced corruption allegations was channelled to relevant organs for appropriate action. A similar report was made during that ministry's budget speech for the financial year 2021/22.[55]

The above is not the case with the Ministry of Energy. A keyword search in the budget speeches of the Minister of Energy in the four financial years from 2018/19 to 2021/22 using the words *rushwa* (corruption), *maadili* (ethics) and *uwazi* (transparency) found no mention of these terms.[56] Therefore, for four consecutive financial years, the Ministry of Energy did not report to parliament about its anti-corruption performance. This raises doubts about its determination to fight this problem, considering the aggressive nature of corruption in the energy sector. It also raises doubts about the capacity of parliament to oversee anti-corruption implementation as envisaged in the National Anti-Corruption Strategy and Action Plan. If the parliament was discharging its anti-corruption oversight roles effectively, the Minister of Energy would not have omitted reporting about it for four consecutive years.

In addition to public sector anti-corruption initiatives, the National Anti-Corruption Strategy and Action Plan requires the private sector to incorporate anti-corruption measures in its corporate plans, and develop and implement business ethics compliance frameworks.[57] The private sector is supposed to enhance transparency and accountability in its operations, and strengthen public-private partnerships in fighting corruption. In this regard, the Oil and Gas Association of Tanzania has developed an anti-corruption policy to ensure that the activities of

54 Ministry of Lands (2020) *Hotuba ya Waziri wa Ardhi, Nyumba na Maendeleo ya Makazi, Mheshimiwa William V. Lukuvi (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara kwa Mwaka wa Fedha 2020/21* Dodoma: Ministry of Lands, Housing and Human Settlements 85.

55 Ministry of Lands (2021) *Hotuba ya Waziri wa Ardhi, Nyumba na Maendeleo ya Makazi, Mheshimiwa William V. Lukuvi (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara kwa Mwaka wa Fedha 2021/22* Dodoma: Ministry of Lands, Housing and Human Settlements 140-141.

56 See budget speeches of the Minister of Energy for the years 2018-2021.

57 President's Office (2017) 51.

its members conform to national anti-corruption laws.[58] This is an umbrella organisation of oil and gas firms, designated as a conduit for dialogue between industry, government, and the community.

Generally, the National Anti-Corruption Strategy and Action Plan brings together various actors and stakeholders to fight corruption. Public and private entities have various roles to play in this regard. The measures prescribed in it are crucial in controlling corruption from the demand and supply sides. However, the strategy is structurally designed to be implemented more by public institutions than by private and non-state actors. Chapter four of the strategy states the roles of public organs in mandatory terms, while those of the private sector are deemed hortatory. This gives the private sector the discretion to formulate and implement their own plans.

3.2.3. Third National Five-Year Development Plan 2021/22-2025/26

Tanzania's zeal to control corruption is proclaimed also in its Third National Five-Year Development Plan 2021/22–2025/26 (the Development Plan). Its theme is to realise competitiveness and industrialisation for human development.[59] It reinforces the government's resolve to transform Tanzania into a semi-industrialised nation by 2025.[60] In line with the Tanzania Development Vision 2025, the Development Plan considers corruption as a hindrance to national development efforts, and a major challenge to achieving implementation effectiveness.[61] It enjoins the government to prioritise reforms that are geared towards combating corruption, ensuring good governance, and promoting transparency and accountability.[62] This includes applying digital technologies to reduce corruption-prone

58 Oil and Gas Association of Tanzania 'ANTI-CORRUPTION POLICY' available at https://ogat.or.tz/index.php/2019/03/15/anti-corruption-policy/ (accessed 17 June 2021).

59 Ministry of Finance and Planning (2021) *National Five-Year Development Plan 2021/22-2025/26* Dodoma: Ministry of Finance and Planning 3.

60 Mwananchi (8 September 2015) 'Magufuli: Serikali ya awamu ya tano itakuwa ya viwanda' available at https://www.mwananchi.co.tz/mw/habari/kitaifa/magufuli-serikali-ya-awamu-ya-tano-itakuwa-ya-viwanda-2789116 (accessed 27 March 2021).

61 Ministry of Finance and Planning (2021) 56.

62 Ministry of Finance and Planning (2021) 56.

interpersonal contacts in service delivery.[63] It also requires the government to monitor and control all central and local government organs to prevent corrupt practices during revenue collection.[64] In addition, the government is supposed to provide an environment conducive to business growth through, among other measures, fighting corruption in the private sector.[65]

The Development Plan describes the energy sector as an enabling sector of socio-economic activities such as manufacturing, transportation, and trading.[66] It identifies the construction and implementation of energy sector projects as part of the leading drivers of economic transformation.[67] The oil and gas industry is expected to be one of the major sources of external finance through foreign direct investment.[68] To manage this sector effectively and reduce opportunities for corruption, its Financing Strategy prescribes four major actions.[69] First, enhancing transparency and accountability in the extractive sector through amending relevant laws and regulations. Secondly, the dissemination of revenue information from oil and gas companies. Thirdly, ensuring the transparency of contracts between the government and international oil companies. Lastly, ensuring the disclosure of beneficial ownership information of extractive companies. Implementation and enforcement of such transparency and accountability mechanisms, and their contribution to anti-corruption in the energy sector, is examined critically in chapter five of this thesis.

3.3. Anti-corruption legal framework

Tanzania has established a broad legal framework for managing and controlling the exploitation of its natural resources. This includes various statutes that guide anti-corruption in investments, public procurement, public finance, and revenue collection. This section examines this anti-

63 Ministry of Finance and Planning (2021) 56.
64 Ministry of Finance and Planning (2021) 143.
65 Ministry of Finance and Planning (2021) 56.
66 Ministry of Finance and Planning (2021) 80
67 Ministry of Finance and Planning (2021) 130-132.
68 Ministry of Finance and Planning (2021) 142.
69 Ministry of Finance and Planning (2021 b) *Financing Strategy of the National Five-Year Development Plan 2021/22-2025/26* Dodoma: Ministry of Finance and Planning 44.

corruption legal framework to identify its deficits in fighting this vice, especially in the energy sector.

3.3.1. Constitution of the United Republic of Tanzania 1977

The Constitution is the mother law. Other laws draw their spirit and legitimacy from it.[70] It is the foundation of domestic legislation. Therefore, critical matters like anti-corruption should be constitutionally anchored.[71] Unfortunately, the Constitution of the United Republic of Tanzania of 1977 hardly speaks of fighting corruption. Only article 9(h) of the Constitution directs state organs to orient their policies and programmes towards curbing corruption. This provision is not justiciable.[72] Therefore, the government cannot be sued in court for not discharging the obligation to fight corruption.

Article 27 of the Constitution imposes the duty on every citizen to protect natural resources in the country and to safeguard them from all forms of waste and squander. In a democratic state, such protection is realised when citizens are free to sue the government and its leaders for violating the Constitution. Placing the anti-corruption provision in the non-justiciable part of the Constitution undermines citizen's participation in safeguarding natural resources against misuse by leaders. Studies indicate that the looting of Africa's wealth is perpetuated by its corrupt leaders.[73] For instance, the exposé of the Luanda leaks by the International Consortium of Investigative Journalists revealed how Angola's former president, José Eduardo dos Santos, oversaw the loss of over US$13 billion from the national oil company Sonangol through his daughter Isabel dos Santos.[74]

70 See *Julius Ishengoma Francis Ndyanabo* v *Attorney General* [2004] TLR 14 at 17.

71 Lukiko (2017) 78-79.

72 See article 7(2) of the Constitution of the United Republic of Tanzania of 1977.

73 See Burgis (2015) for detailed analysis of the looting of African wealth and resources.

74 International Consortium of Investigative Journalists (2020) 'Luanda Leaks' available at https://www.icij.org/investigations/luanda-leaks/ (accessed 21 June 2021) & Reed E (2020) 'Angola tallies corruption cost, eyes Sonangol listing' available at https://www.energyvoice.com/oilandgas/africa/ep-africa/271510/angola-tallies-corruption-cost-eyes-sonangol-listing/ (accessed 21 June 2021).

Since independence in 1961, no senior government leader[75] in Tanzania has been prosecuted for corruption. However, corruption levels in the country are invariably high. Some high-profile politicians were implicated in corruption scandals such as the Richmond and the Independent Power Tanzania Limited/Escrow affairs, without being investigated further or prosecuted. This predicament may be attributed to the constitutional disempowerment of citizens to enforce their right to live in a corruption-free country.[76] The Constitution does not impose on government leaders the political will to fight corruption. In fact, article 46(1) of the Constitution immunises Presidents from being prosecuted for anything they do in that capacity.[77] Under article 46A(2)(a) of the Constitution, the National Assembly may pass a resolution to impeach the President if he or she is accused of violating a law concerning ethics of public leaders. Corruption is a violation of the Public Leadership Code of Ethics Act.[78] A President who engages in corruption may be dealt with under this provision. However, the nature of party politics within the National Assembly and the ruling party *Chama cha Mapinduzi* make this provision logically unrealisable.[79]

3.3.2. Prevention and Combating of Corruption Act

In the absence of a strong constitutional foundation, the Prevention and Combating of Corruption Act[80] is the primary anti-corruption legislation in Tanzania. Its preamble paragraph 1 identifies corruption as a hindrance to the promotion of democracy, good governance, and human rights. It also considers this vice as a threat to the peace, tranquillity, and security of the nation.[81] The Act presents the government's resolve to eradicate this crime through the initiation of broad measures for the prevention, investigation, and prosecution of corruption. It also establishes the framework for the recovery of assets stolen through corruption.

75 'Senior government leader' in this sense encompass the President, Vice President, and Prime Minister.
76 Lukiko (2017) 79.
77 For detailed discussion, see section 3.4.7 of this study.
78 [Cap 398 R.E. 2015].
79 See further discussion at section 3.4.6 of this study.
80 [Cap 329 R.E. 2019].
81 Preamble paragraph 1 of the Prevention and Combating of Corruption Act [Cap 329 R.E. 2019].

In line with international anti-corruption instruments which Tanzania has ratified, the Prevention and Combating of Corruption Act proscribes twenty-four offences of corruption. These include bribery, corrupt transactions in contracts, employment, procurement, and auctions, and the bribery of foreign public officials.[82] It also criminalises sexual corruption, illicit enrichment, embezzlement and misappropriation, diversion, trading in influence, abuse of position, and laundering of the proceeds of corruption.[83] It criminalises conspiracy, and aiding and abetting the commission of proscribed conduct.[84] Interestingly, section 35 of the Act introduces a presumption of corruption where it is proved that an advantage was offered, promised, given, or obtained by a public official from a person holding or seeking to obtain a contract from a public office. In these circumstances, it is presumed that the advantage was so offered, promised, given, or obtained as an inducement or reward.

Enforcement of this law is primarily the role of the Prevention and Combating of Corruption Bureau.[85] The Bureau is mandated to take all necessary measures to prevent and combat corruption in public, parastatal, and private sectors.[86] It has advisory, educational, investigation, prosecution, and asset recovery roles.[87] To fight corruption holistically, the Bureau is enjoined to cooperate with international agencies, national authorities and the private sector in carrying out its mandate.[88] In the context of the energy sector, this empowers the Bureau to cooperate with international oil companies, the national oil company, and sector regulators to overcome corruption. The Act establishes whistle-blower and witness protection mechanisms to promote public participation in the reporting, investigation, and prosecution of corruption crimes.[89]

82 Sections 15, 16, 17, 18, 20 & 21 of the Prevention and Combating of Corruption Act.
83 Sections 25, 27, 28, 29, 33 & 34 of the Prevention and Combating of Corruption Act.
84 Section 30-32 of the Prevention and Combating of Corruption Act.
85 Section 5 of the Prevention and Combating of Corruption Act.
86 Section 7 of the Prevention and Combating of Corruption Act.
87 Section 7(a-f) of the Prevention and Combating of Corruption Act. See detailed discussion at section 3.4.1. of this thesis.
88 Sections 45 & 46 of the Prevention and Combating of Corruption Act.
89 Section 51 & 52 of the Prevention and Combating of Corruption Act.

3.3.3. Anti-Money Laundering Act

Article 23 of United Nations Convention against Corruption, and article 6 of the African Union Convention on Preventing and Combating Corruption, enjoin States Parties to criminalise the laundering of the proceeds of corruption. The Prevention and Combating of Corruption Act also criminalises this conduct, and empowers the Director of Public Prosecutions to take measures to prevent the transfer of such proceeds.[90] The OECD Foreign Bribery Report of 2014 identifies the extractive sector, covering mining, oil, and gas, as the world's most corrupt industry.[91] Corruption provides criminals with the funds for laundering. Therefore, fighting corruption in the energy sector must be accompanied with effective anti-money laundering measures. Assets obtained corruptly are useless unless they are laundered and integrated into the financial system without raising suspicion.[92] If successful, money laundering encourages more corruption.[93] To avoid that vicious cycle, anti-corruption measures as well as anti-money laundering measures need to be implemented.[94]

Tanzania identifies corruption as a predicate offence to money laundering. A predicate offence is an unlawful activity classified by a specific law and whose proceeds may be the subject of money laundering.[95] Section 3 of Anti-Money Laundering Act[96] lists 31 predicate offences to money laundering in Tanzania, including corruption. That provision also identifies the Prevention and Combating of Corruption Bureau among the anti-money laundering enforcement agencies. Other law enforcement organs are the Financial Intelligence Unit, the Police Force, and the Tanzania Revenue Authority.[97] Reporting institutions such as banks, cash

90 Section 34 of the Prevention and Combating of Corruption Act.

91 OECD (2014) *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* Paris: OECD Publishing 21.

92 FATF (2011) *Laundering the Proceeds of Corruption* Paris: FATF available at https://www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf (accessed 21 June 2021) 6.

93 ESAAMLG (2019) *Procurement Corruption in the Public Sector and Associated Money Laundering in the ESAAMLG Region* Dar es Salaam: ESAAMLG 18.

94 FATF (2011) 6.

95 Bell RE (2002) 'Abolishing the concept of predicate offence' 6(2) *Journal of Money Laundering Control* 137.

96 [Cap 423 R.E. 2019].

97 Section 3 of the Anti-Money Laundering Act [Cap 423 R.E 2019].

dealers, regulatory authorities, and lawyers have a legal duty to report suspicious transactions that may be associated with the commission of a predicate offence.[98] This extends the fight against corruption to involve various anti-money laundering reporting institutions and persons who could act as whistle-blowers. Their suspicious transaction reports may be utilised to address corruption in different sectors, including the energy sector. Most of the anti-money laundering reporting professions are key players in the energy sector, including banks, lawyers, real estate managers, and accountants. Therefore, in discharging their anti-money laundering obligations, they complement anti-corruption measures.

3.3.4. Public Procurement Act

The energy sector is one of the five sectors most vulnerable to procurement corruption.[99] Procurement corruption manifests in four main forms, namely eliminating or reducing competition, biassed supplier selection, unethical contract negotiation and management, and over payment or false payment.[100] In Tanzania's context, the Richmond scandal typifies how corrosive to the nation mismanaged public procurement in the energy sector may be.

In the Richmond saga, the former Ministry of Energy and Minerals hijacked the procurement process of the Tanzania Electric Supply Company Limited (TANESCO) in explicit violation of the Public Procurement Act of 2004.[101] The procurement was in respect of an emergency power production tender intended to relieve the country of the heavy load shedding caused by prolonged droughts between 2002 and 2006. After taking over the procurement exercise, the Ministry ordered it to sign a Power Off-Take Agreement with Richmond. Before the process was hijacked by the Ministry, the tender evaluation committee of TANESCO had classified Richmond's bid as the weakest among the submitted proposals.[102] As Richmond was truly unable to deliver as agreed, it secretly assigned its rights and obligations to

98 Sections 3 & 17 of the Anti-Money Laundering Act.

99 ESAAMLG (2019) 32.

100 ESAAMLG (2019) 24-26.

101 For detailed facts see Bunge la Tanzania (6 February 2008) and *Tanzania Electric Supply Company Limited v Dowans Holdings SA & Dowans Tanzania Limited* Miscellaneous Civil Application No 8 of 2011.

102 *Tanzania Electric Supply Company Limited v Dowans Holdings SA & Dowans Tanzania Limited* at 4.

Dowans Holdings SA, and sought for the retrospective consent of TANESCO. The Ministry approved the assignment. However, subsequent public concern and a parliamentary inquiry led to termination of that contract in 2008. Following that termination, Dowans filed for arbitration at the International Chamber of Commerce and was awarded damages of US$65,812,630.03 for breach of contract.[103]

In Tanzania, public procurement is guided by the Public Procurement Act of 2011[104] and the Public Procurement Regulations of 2013.[105] This legislation regulates procurement in all public bodies and in public private partnership projects.[106] It also governs procurement in non-governmental entities with respect to public-financed projects.[107] The Act establishes principles, sets standards, and prescribes procedures to be observed by all procuring entities in the course of public procurement.[108] It sets the conditions to be complied with by contractors, suppliers, and consultants during the tendering and execution of public contracts.[109] Specifically, it prohibits corrupt practices during public procurement.[110] Supervision and monitoring of public procurement is entrusted to the Public Procurement Regulatory Authority (PPRA).[111]

Part VIII of the Public Procurement Act of 2011 is fundamental to fighting corruption in public procurement. Section 83 requires tenderers and procuring entities to operate transparently and accountably. A procuring entity is required to reject a proposal for awarding a contract to a tenderer who engages in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for that contract.[112] In addition, a procuring entity is enjoined to report

103 *Tanzania Electric Supply Company Limited v Dowans Holdings SA & Dowans Tanzania Limited* at 2.
104 Act 7 of 2011.
105 Government Notice No 446 published on 20 December 2013.
106 Section 2(1)(a&c) of the Public Procurement Act 7 of 2011.
107 Section 2(1)(b) of the Public Procurement Act.
108 Part V of the Public Procurement Act.
109 Part VI of the Public Procurement Act.
110 Part VIII of the Public Procurement Act.
111 Section 7 of the Public Procurement Act.
112 Section 83(2)(a) of the Public Procurement Act.

such a tenderer and its directors to the PPRA which shall debar and blacklist them from participating in public procurement proceedings for a period of not less than ten years.[113] Section 83(6) of the Act prohibits staff and members of procuring entities from engaging in corrupt or fraudulent practices during the procurement or execution of public contracts. To secure the commitment of tenderers, procuring entities are required to enclose with the tender documents an undertaking by the tenderer to observe country laws against fraud and corruption.[114]

Section 84 of the Act prohibits bribery and influence peddling in public procurement. A tender awarded corruptly should be reported to the Prevention and Combating of Corruption Bureau for appropriate legal action and to respective professional bodies for ethical proceedings against the persons involved.[115] Section 85(1) requires tenderers, within thirty days after execution of a contract, to submit to the Bureau and to the Tanzania Revenue Authority a statement:

> (a) stating particulars of any consideration given or to be given to any person or organisation for the purpose of or as a commission for obtaining the contract; and
>
> (b) giving the names of the persons to whom and the organisation to which any such consideration was or is to be given.

Where no consideration was so given, the statement furnished should state so. Where such consideration was given to a public body or public officer, it shall be handed over to the Pay-Master General within thirty days from the date of receiving the consideration.[116] Failure to comply with this provision is an offence.[117] Offences arising from failure to comply with the provisions of the Public Procurement Act may be prosecuted through the Penal Code, the Prevention and Combating of Corruption Act or any other appropriate law.[118]

113 Section 83(2)(b) of the Public Procurement Act.
114 Section 83 (7) of the Public Procurement Act.
115 Section 84(6) of the Public Procurement Act.
116 Section 85(5) of the Public Procurement Act.
117 Section 85(6) of the Public Procurement Act.
118 Section 87 of the Public Procurement Act.

Section 35 of the Public Procurement Act essentially controls the invasion of a public entity into the procurement process of another procuring entity. Section 35(1) requires that the invitation for tenders and the awarding of contract must be authorised by the accounting officer of the procuring entity upon obtaining all necessary approvals. The procuring entity's tender board is the primary approval organ. Section 35(2) of the Act provides that any contract signed with a public body must have been approved by the respective tender board. A contract signed without that approval is automatically null and void.[119]

Section 35(3) of the Public Procurement Act of 2011 was crafted that way to remedy the mischief caused by the lack of such provision in the former Public Procurement Act of 2004. Enactment of this provision was in response to the *Dowans Holdings SA and Dowans Tanzania Limited v Tanzania Electric Supply Company Limited* arbitration.[120] In that case, arbitrators rejected TANESCO's claim that the agreement with Richmond (assigned later to Dowans) was void for being awarded by the Ministry in contravention of section 31(1) and (2) of the Public Procurement Act of 2004. Section 31(2) of that law prohibited the signing of any contract that had not been awarded by the procuring entity's tender board. There was no provision in the statute providing for the consequences of flouting that requirement. The arbitrators objected to TANESCO's attempt to invoke that provision to nullify the contract with Richmond/Dowans and proceeded to award damages for breach of contract to the claimant.[121]

In 2011, the government approached parliament to enact the new Public Procurement Act, and introduced section 35(3). Essentially, the provision renders contracts that are not awarded by the procuring entity's tender board, such as the Richmond/Dowans one, null and void *ab initio.* The provisions of the Public Procurement Act apply to bidding rounds for petroleum licences as well.[122] Therefore, corrupt practices in the procurement of international oil companies can also be addressed through this law.

---

119 Section 35(3) of the Public Procurement Act.

120 International Court of Arbitration Case No. 15947/VRO.

121 ICC International Court of Arbitration Case No. 15947/VRO page 119.

122 Regulation 40 of the Petroleum (Reconnaissance and Tendering) Regulations of 2019.

3.3.5. Economic and Organised Crime Control Act

Corruption is an economic crime in the context of the Economic and Organised Crime Control Act.[123] Paragraph 21 of the first schedule to the Act embraces all offences under the Prevention and Combating of Corruption Act as economic offences, except for bribery under section 15 thereof. Similarly, money laundering offences under the Anti-Money Laundering Act are economic offences.[124] Regarding the energy sector, the Economic and Organised Crime Control Act criminalises the misappropriation of the proceeds of the oil and gas fund,[125] the unlawful mining of minerals,[126] and the violation of transparency and accountability provisions under the Tanzania Extractive Industries (Transparency and Accountability) Act.[127]

The significance of this statute to fighting corruption in the energy sector rests in its punishment and asset forfeiture provisions. A person convicted of an economic offence under this law is liable to imprisonment for a term of not less than twenty years.[128] In addition, all instrumentalities and proceeds derived from the offence are liable to confiscation and forfeiture.[129] Courts are enjoined to pass the sentence set by it except where a different law imposes a greater punishment for the offence.[130] In the latter situation, courts are supposed to impose the greater punishment.[131] For instance, the Oil and Gas Revenues Management Act[132] prescribes an imprisonment term of not less than thirty years for misappropriation of the proceeds of the oil and gas fund. In this case, courts must pass this sentence as it is greater than that prescribed in the Economic and Organised Crime Control Act. Conversely, the Prevention and Combating of Corruption Act prescribes lighter punishments than those prescribed in the

123 [Cap 200 R.E. 2019].
124 Paragraph 22 of the First Schedule to the Economic and Organised Crime Control Act [Cap 200 R.E. 2019].
125 Paragraph 35 of the First Schedule to the Economic and Organised Crime Control Act.
126 Paragraph 27 of the First Schedule to the Economic and Organised Crime Control Act.
127 Paragraph 30 of the First Schedule to the Economic and Organised Crime Control Act.
128 Section 60(2) of the Economic and Organised Crime Control Act.
129 Section 60(3) of the Economic and Organised Crime Control Act.
130 Section 60(1) of the Economic and Organised Crime Control Act.
131 Section 60(2) of the Economic and Organised Crime Control Act.
132 [Cap. 328 R.E. 2019].

Economic and Organised Crime Control Act. Since corruption offences can be tried under the latter statute, courts will impose the punishment prescribed by it.

3.3.6. Public Leadership Code of Ethics Act

The worsening state of corruption in the early 1990s moved the government to enact the Public Leadership Code of Ethics Act in 1995.[133] This statute and its regulations establish a framework for enforcing ethics among public leaders through asset declaration, regulation of conflicts of interest, and prohibition of corruption and insider dealing. Its application is limited to public leaders specified under section 4. These include the President and all members of the Cabinet, Speaker of the National Assembly and all Members of Parliament, Chief Justice, Judges, and Magistrates. It also covers Regional and District Commissioners and Chief Executive Officers of independent government departments, and corporate bodies in which the government has a controlling interest. Heads of the state organs involved in managing the energy sector are subject to the provisions of this statute.

Public leaders are required to uphold the highest ethical standards to enhance public confidence and trust in the integrity, objectivity, and impartiality of the government.[134] Various measures have been introduced to achieve that objective. Public leaders are required to declare their assets, interests, and liabilities within thirty days after taking office and at the end of their term of office.[135] Declarable assets include cash and deposits in financial institutions, dividends, and other benefits from stocks and shares held by the public leader.[136] They also cover interests in businesses that do not involve contracts with the government and that are not traded publicly, and assets owned beneficially.[137]

133 [Cap 398 R.E. 2015].

134 Section 6(a) of the Public Leadership Code of Ethics Act [Cap 398 R.E. 2015].

135 Section 9 of the Public Leadership Code of Ethics Act.

136 Section 11 of the Public Leadership Code of Ethics Act.

137 Section 11 of the Public Leadership Code of Ethics Act.

The declaration of assets is made in a prescribed form and submitted to the Ethics Commissioner.[138] Asset declaration is regulated by the Public Leadership Code of Ethics (Declaration of Interests, Assets, and Liabilities) Regulations 1996.[139] Regulation 5 requires the Ethics Commissioner to keep and maintain a register of declared assets, interests, and liabilities. The register is accessible to public inspection upon meeting the prescribed conditions.[140] Regulation 6(1)(a) directs that a person wishing to inspect the register should submit their complaints against a public leader to the Ethics Commissioner. Before granting access to the register, the Commissioner should be satisfied that the complaints are made in good faith and have legal basis.[141] Thereafter, the applicant should pay the prescribed fees and be granted access.[142] Regulation 6(2) empowers the Ethics Commissioner to deny access to the register when he or she is of the view that the complaints are baseless, or is unsatisfied with the content of the complaint.

Regulation 6 essentially limits public scrutiny over public leaders' wealth accumulation. First, only people with complaints against a public leader can apply to inspect the register. Secondly, the Commissioner has the discretion to decide on granting or denying access to the register. Being a public document, access to it should not be confidential. The essence of requiring leaders to declare their assets is to enable members of the public to investigate those assets, and to establish their legitimacy against the declarant. Regulation 6 defeats this purpose. Instead, it protects the declared interests of public leaders at the expense of public interests. Below is an illustration of the negative implications of this Regulation.

On 17 October 2019, a Tanzanian human rights activist, Abdul Nondo, wrote to the Ethics Commissioner requesting to inspect the register of interests, assets, and liabilities against

138 Section 9(1) of the Public Leadership Code of Ethics Act.

139 Government Notice No 108 published on 21 June 1996.

140 Regulation 6 of the Public Leadership Code of Ethics (Declaration of Interests, Assets, and Liabilities) Regulations of 1996.

141 Regulation 6(1)(b) of the Assets Declaration Regulations.

142 Regulation 6(1)(c) of the Assets Declaration Regulations.

the former Dar es Salaam Regional Commissioner Paul Makonda.[143] In his complaint, Nondo alleged that Makonda had been offering monetary gifts to various groups of people in amounts which raised doubts regarding his sources of income. Earlier, Makonda had explained in a press statement that he talks to rich people about various social issues, and they give him money which he delivers to the needy in different ways.[144] Nondo's request aimed at inspecting the register of assets to ascertain if Makonda had declared those gifts, as required by section 12(2) of the Public Leadership Code of Ethics Act. The Ethics Commissioner declined to grant access on the ground that Nondo's request was unclear, irrelevant, and unrealistic. Unfortunately, what constitutes a clear, relevant, and realistic complaint is not defined in the statute, the regulations, or the reply letter of the Ethics Commissioner to Nondo.

Another measure to ensure ethical behaviour introduced by this statute, is the prohibition on dishonestly receiving any pecuniary advantage. Public leaders are prohibited from insider dealing, embezzlement of public property, and unlawfully soliciting or accepting gifts or transfers of economic benefit.[145] Public leaders may not accept gifts from persons with whom they have contact in the course of official duties.[146] Where the value of the gift exceeds TSh50,000, a public leader should declare and submit it to the accounting officer of the respective institution.[147] The accounting officer decides on the use or disposal of that gift. Nevertheless, the accounting officer should record the declaration in the register of gifts maintained at the respective office.[148] At the end of each year, the accounting officer should

143 Since complaints submitted to the Ethics Commissioner are confidential, these details were shared on social media by Abdul Nondo himself. See https://twitter.com/abdulnondo2/status/1197937301579546627?lang=es (accessed 29 March 2021).

144 Mwananchi (18 September 2019) 'VIDEO: Makonda aeleza anakotoa fedha za misaada' available at https://www.mwananchi.co.tz/mw/habari/kitaifa/video-makonda-aeleza-anakotoa-fedha-za-misaada-2988306 (accessed 29 March 2021).

145 Section 12 of the Public Leadership Code of Ethics Act.

146 Regulation 6(2) of the Public Leadership Code of Ethics (Control of Conflict of Interest) Regulations, Government Notice No 113 published on 14 February 2020.

147 Section 12(2) of the Public Leadership Code of Ethics Act.

148 Regulations 6 & 7 of the Public Leadership Code of Ethics (Control of Conflict of Interest) Regulations.

submit to the Ethics Commissioner a report on the declaration and disposal of gifts.[149] Such reports are open to public access.[150]

The Public Leadership Code of Ethics Act also reinforces ethics by requiring public leaders to declare conflicts of interest. A conflict of interest is a situation where a public leader has a personal interest that affects, may affect, or appears to affect the implementation of his responsibilities to the public.[151] For instance, a public leader has a conflict of interest where he or she uses their office for personal benefit, or takes advantage of and personally benefits from insider information.[152] Similarly, there is conflict of interest when a leader compels members of a tender board to award a tender to any person or company in violation of the procedures established by law.[153] This prohibition is of particular interest to this study, because the Richmond scandal was born out of such misconduct.

3.3.7. Whistleblower and Witness Protection Act

The Whistleblower and Witness Protection Act[154] was enacted to promote the reporting of organised crime, corruption, unethical conduct, abuse of office, and illegal and dangerous activities.[155] It establishes mechanisms to protect whistle-blowers and witnesses against potential retaliation. Section 4(1) of the Act prescribes wrongs against which a public interest disclosure may be made. Specifically, section 4(1)(d) of the Act provides for whistleblowing in cases of waste, misappropriation or mismanagement of public resources, and abuse of office in public institutions. This provision is crucial to uncovering corruption in the public sector. Unfortunately, it promotes anti-corruption whistleblowing in the public sector, but disregards

149 Regulation 9(1) of the Public Leadership Code of Ethics (Control of Conflict of Interest) Regulations.
150 Regulation 9(2) of the Public Leadership Code of Ethics (Control of Conflict of Interest) Regulations.
151 Regulation 3(1) of the Public Leadership Code of Ethics (Control of Conflict of Interest) Regulations.
152 Regulation 3(2)(b, c & f) of the Public Leadership Code of Ethics (Control of Conflict of Interest) Regulations.
153 Regulation 3(2)(j) of the Public Leadership Code of Ethics (Control of Conflict of Interest) Regulations.
154 Act 20 of 2015.
155 See long title of Whistleblower and Witness Protection Act 20 of 2015.

the private sector. Considering that in foreign direct investment the supply side of corruption is usually the private sector, promoting whistleblowing in the private sector is equally necessary.

Transparency International identifies whistleblowing as one of the effective ways of detecting, preventing, and combating corruption.[156] Revelations such as the Panama Papers[157] and the Luanda Leaks show the importance of whistleblowing in fighting fraud and malpractice. However, whistleblowing is a high-risk calling. Whistle-blowers risk their career, livelihood, personal safety, and, in extreme cases, life.[158] The handling of some corruption complaints submitted to the Prevention and Combating of Corruption Bureau by opposition politicians in Tanzania illustrates this risk. On 17 October 2017, opposition Member of Parliament Joshua Nassari submitted to the Bureau videos alleging involvement of three Arumeru District leaders in bribing opposition councillors to switch to the ruling political party.[159] The following day the Bureau's Director-General Valentino Mlowola warned Nassari not to politicise the matter lest legal measures be taken against him.[160] Subsequently, on 18 December 2017, the Bureau publicly dropped Nassari's complaint and evidence, condemning it for being politicised.[161] Similarly, on 8 December 2018, opposition Member of Parliament Zitto Kabwe submitted a complaint and documents to the anti-corruption Bureau, alleging that some companies from China, Turkey, and Russia had bribed some government leaders to derail the implementation of

156 Transparency International 'Whistleblowing' available at https://www.transparency.org/en/our-priorities/whistleblowing (accessed 21 June 2021).

157 International Consortium of Investigative Journalists (2020) 'Luanda Leaks' available at https://www.icij.org/investigations/luanda-leaks/ (accessed 21 June 2021).

158 See https://www.transparency.org/en/our-priorities/whistleblowing (accessed 21 June 2021).

159 Nassor T (17 October 2017) 'Nassari awasilisha ushahidi wa tatu TAKUKURU' available at https://mtanzania.co.tz/nassari-awasilisha-ushahidi-wa-tatu-takukuru/ (accessed 17 June 2020).

160 Kenyunko K (18 October 2017) 'Taasisi ya kupambana na rushwa yamwonya mbunge wa Arumeru mashariki' available at http://www.mtaakwamtaa.co.tz/2017/10/taasisi-ya-kupambana-na-rushwa-yamwonya.html (visited 17 June 2020).

161 Butahe F (18 December 2017) 'Nassari azungumzia ushahidi aliowasilisha Takukuru' available at https://www.mwananchi.co.tz/habari/Nassari-aeleza-Takukuru-imemshangaza/1597578-4233158-view-printVersion-15qv6uf/index.html visited 17 June 2020)

the Liganga and Mchuchuma iron mining projects.[162] The Bureau has never given any public feedback on those allegations.

Such reactions from the principal anti-corruption body in the country are against the spirit of whistleblowing, and tend to discourage public interest disclosures against economic crimes and abuse of office. When complaints are not investigated properly, and no feedback is given, the safety of whistle-blowers is jeopardised, and the public is discouraged from taking the risk of reporting corruption. Statistics show that in Tanzania seven out of ten people fear adverse consequences for reporting corruption to government authorities.[163] Conversely, in Hong Kong, members of the public are ready to report corruption and also to disclose their identity when doing so.[164] This explains why Tanzania ranked 94th and Hong Kong ranked 11th in the Transparency International Corruption Perceptions Index of 2020.

In Tanzania, a whistle-blower is protected if the disclosure is made in good faith, reasonably, and conforming to the provision of the Whistleblower and Witness Protection Act.[165] Whistle-blowers and witnesses may request protection if there is reasonable belief or fear that they may be subjected to dismissal, suspension, harassment, discrimination, or intimidation at their place of employment, or that their life or property or that of their close relatives may be endangered.[166] The scope of protection measures offered under the statute is uncertain. Sections 10 and 11 require that once the need for protection is established, the competent authority shall refer the matter to an institution capable of providing that

162 Michael C (9 December 2018) 'Zitto atumia dakika 240 Takukuru' available at https://www.mwananchi.co.tz/habari/kitaifa/Zitto-atumia-dakika-240-Takukuru/1597296-4887554-nbe8p8/index.html (accessed 17 June 2020).

163 Olan'g L & Msami J (2017*) In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement* Afrobarometer Dispatch No. 178 Dar es Salaam: REPOA & Afrobarometer 2.

164 Man-wai TK (2006) 'Formulating an Effective Anti-Corruption Strategy –The Experience of Hong Kong ICAC' available at http://www.unafei.or.jp/english/pdf/PDF_rms/no69/16_P196-201.pdf (accessed 2 September 2021) 196 and Gong T & Xiao H (2017) 'Socially Embedded Anti-Corruption Governance: Evidence from Hong Kong' 37 *Public Administration and Development* 177.

165 Section 9 of the Whistleblower and Witness Protection Act.

166 Sections 10 & 11 of the Whistleblower and Witness Protection Act.

protection. More specifically, section 12 provides for transfer of employment or relocation of place of residence where appropriate.

3.3.8. Proceeds of Crime Act

Proceeds of crime refer to property derived or realised directly or indirectly by any person from the commission of a serious offence.[167] A serious offence is an offence punishable by death or imprisonment for a period of not less than twelve months.[168] Therefore, offences under the Economic and Organised Crime Control Act, such as the misappropriation of proceeds of the oil and gas fund, are serious offences in the purview of Proceeds of Crime Act.[169] The Act enjoins the Director of Public Prosecution to apply for forfeiture orders where a person has been convicted of a serious offence involving a tainted property or in respect of the benefits derived by a person from the commission of the offence.[170] The court may issue forfeiture orders where it is satisfied that the property is tainted property.[171] Tainted property is defined as

> [a]ny property used in or in connection with the commission of an offence; any proceeds of crime; or any property in the United Republic which is proceeds of a foreign serious offence.[172]

Confiscation and forfeiture of proceeds of crime are important aspects of the anti-corruption arsenal. They ensure that offenders do not benefit from their wrongs. The asset forfeiture framework of Tanzania is aligned to article 31 of the United Nations Convention against Corruption, that requires States Parties to take necessary measures to enable the confiscation of proceeds derived from corruption offences. The Proceeds of Crime Act provides for conviction-based and civil-based forfeiture regimes.[173] Conviction-based forfeiture arises when a person has been convicted of a serious offence by a court of competent authority, and the DPP thereby applies to the convicting court for forfeiture orders. Civil-based forfeiture is an

167 Section 3 of the Proceeds of Crime Act [Cap. 256 R.E. 2019].
168 Section of the Proceeds of Crime Act.
169 [Cap 256 R.E. 2019].
170 Section 9(1) of the Proceeds of Crime Act.
171 Section 14 of the Proceeds of Crime Act.
172 Section 3 of the Proceeds of Crime Act.
173 Sections 9 & 13A of the Proceeds of Crime Act.

action *in rem.* It operates where a person involved in an offence dies or flees during an investigation or before conviction but there are reasonable grounds to believe that a confiscation order would be issued against that person had he or she been present.[174] In civil-based forfeiture, an action is brought against the stolen property itself. The requirement for a confiscation order to be issued is proof of the nexus between that property and criminal conduct.[175]

Considering the problem of illicit financial flows in Africa, such as capital flight and tax evasion, it is necessary to install strong and effective asset recovery machineries. These are global problems, but their impact on developing countries is overwhelming. Globally, it is estimated that about US$1 trillion is lost annually through unrecorded money.[176] Africa in particular loses more than US$50 billion yearly in illicit financial outflows.[177] It is estimated that Africa has lost over US$1 trillion in illicit financial flows in the past 50 years.[178] A Report of the High Level Panel on Illicit Financial Flows from Africa published in 2015 identifies that the channels of these flows are commercial activities, criminal activities, and corruption.[179] It also points out that oil-dependent countries are more prone to this vice.[180] Therefore, as Tanzania prepares for natural gas extraction and production, illicit financial flows may undermine the expected contribution of the energy sector to economic growth. The asset recovery regime under the Proceeds of Crime Act is an important step towards overcoming this problem.

3.4. Anti-corruption institutional framework

A substantial body of literature attributes the phenomenon of underdevelopment in resource-rich countries to the quality of state institutions entrusted with the management of those

174 Smith J, Pieth M & Jorge G (2007) *The Recovery of Stolen Assets: A Fundamental Principle of the UN convention against Corruption,* U4 Brief No. 2, Bergen: Chr. Michelsen Institute 3.
175 Smith, Pieth and Jorge (2007) 3.
176 Kar D & Spanjers J (2014) *Illicit Financial Flows from Developing Countries: 2003-2012*, Washington DC: Global Financial Integrity iii.
177 African Union (2015) 2.
178 African Union (2015) 13.
179 African Union (2015) 24-32.
180 African Union (2015) 56 & 67.

resources.[181] Scholars argue that natural resources do not produce any good or bad results on their own. It is the institutions which manage those resources that set the stage for the outcome. Natural resources can contribute positively to a nation's economy only when its institutions have attained a certain level of quality.[182]

The Tanzanian anti-corruption policy and legal framework discussed above establishes several implementing institutions. As envisaged by the National Anti-Corruption Strategy and Action Plan, anti-corruption institutional arrangements run through the entire government administrative structure, from village/street level to the national level.[183] However, institutions established under that strategy deal primarily with anti-corruption programming, oversight, awareness raising, and training. They are policy implementation institutions and not creatures of statute. The following discussion examines the statutory institutions that are vested with the powers to investigate, prosecute and adjudicate corruption cases. It also examines the statutory institutions that have oversight powers over anti-corruption action in the country. It seeks to identify the institutional and structural deficits that undermine the anti-corruption performance of these institutions.

3.4.1. Prevention and Combating of Corruption Bureau

The Prevention and Combating of Corruption Bureau (PCCB) is an independent public body entrusted to fight corruption in Tanzania.[184] It is mandated to prevent and combat corruption in the public, parastatal and private sectors.[185] Considering its unique position in fighting corruption, it is necessary to critically examine the Bureau's functions and powers, composition,

181 Menaldo VA (2016) *The Institutions Curse: Natural Resources, Politics, and Development*, Cambridge: Cambridge University Press, Lee & Dupuy (2018), de Medeiros Costa HK & dos Santos EM (2013) 'Institutional Analysis and the "Resource Curse" in Developing Countries' 63 *Energy Policy* 788–95.

182 Sarmidi T, Law SH & Jafari Y (2014) 'Resource Curse: New Evidence on the Role of Institutions' 28(1) *International Economic Journal* 192.

183 President's Office (2017) 39-43.

184 Section 5 of the Prevention and Combating of Corruption Act.

185 Section 7 of the Prevention and Combating of Corruption Act.

staffing, and reporting and accountability structures. In the context of this thesis, it is important also to examine specifically its contribution to fighting corruption in the energy sector.

3.4.1.1. Functions and powers

The functions of the Prevention and Combating of Corruption Bureau include examining the practices and procedures of public, parastatal, and private organisations, and advising on mechanisms that facilitate the detection and prevention of corruption.[186] The Bureau is mandated to receive and investigate corruption complaints and, subject to consent of the Director of Public Prosecution, prosecute corruption offences.[187] Also, it has to solicit public support and cooperate with other international and domestic organs in fighting corruption.[188] In carrying out its mandate, officers of the Bureau have powers to arrest, enter premises, search, detain suspects, and seize property suspected of being involved in corruption or likely to be involved in corruption.[189] They have powers to investigate corruption, including summoning any person for questioning, and ordering the production of any document which may assist the investigation.[190]

The Bureau applies a three-pronged approach to anti-corruption. This encompasses public awareness, research and control, and criminal investigation and enforcement.[191] With regard to enforcement, it can prosecute offences falling under section 15 of the Prevention and Combating of Corruption Act.[192] This provision criminalises bribery, which is the commonest form of petty corruption in the country. Prosecution of all other corruption offences is subject to the consent of the Director of Public Prosecution (DPP).[193] High-profile corruption cases are prosecuted by the DPP, or by the Bureau after obtaining approval of the DPP. A similar

186 Section 7(a&c) of the Prevention and Combating of Corruption Act.
187 Section 7(e) of the Prevention and Combating of Corruption Act.
188 Section 7(b&d) of the Prevention and Combating of Corruption Act.
189 Section 8(2) of the Prevention and Combating of Corruption Act.
190 Sections 8(5)(i) & 10(1) of the Prevention and Combating of Corruption Act.
191 Mlowola V (2016) 'The Role of Good Governance towards Transforming Tanzania to a Middle-Income Economy by 2025' available at *erb.go.tz › category › 10-aed-2016-presentation* (accessed 14 January 2021)
192 Section 57 of the Prevention and Combating of Corruption Act.
193 Section 57 of the Prevention and Combating of Corruption Act.

requirement is contained under section 26(1) of the Economic and Organised Crime Control Act, which provides that prosecution of economic offences must be by the consent of the Director of Public Prosecution. Since energy-sector corruption invariably involves huge amounts of funds, its prosecution is subject to the DPP fiat. However, this fiat is blamed for delaying the prosecution of corruption offences, and undermining anti-corruption efforts.[194] For instance, in the 2019/20 financial year, out of 183 corruption cases forwarded for approval, consent was granted on 47 cases only.[195] This prosecution bureaucracy contributes to the weakening of anti-corruption enforcement.

The assignment of the investigation and prosecution functions to two distinct bodies was introduced in the 1980s in response to the recommendations of the report of the Judicial System Review Commission.[196] Hitherto, the investigation and prosecutorial duties were performed by the police. However, few had the necessary training to discharge the roles of a prosecutor.[197] This among others, caused various prosecutorial challenges, including fabrication of cases. To remedy the situation, the Commission proposed for the establishment of an independent prosecution department within the Ministry of Justice and the abolition of the prosecution mandate for police officers.[198] On that premise, the DPP was charged with the supervision and coordination of the prosecution of all offences.[199] Nevertheless, the National Prosecutions Service is understaffed to handle all criminal cases nationwide. For instance, in 2014, there were less than 200 DPP state attorneys handling the national prosecution load,

194 Hoseah EG (2014) 'Corruption as a global hindrance to promoting ethics, integrity, and sustainable development in Tanzania: The role of the anti-corruption agency' 10(3) *Journal of Global Ethics* 387 & Lukiko (2017) 73.

195 President's Office – Public Service Management and Good Governance (2020) *Hotuba ya Waziri wa Nchi – Ofisi ya Rais, Menejimenti ya Utumishi wa Umma na Utawala Bora, Mhe. Kapt. (Mst.) George H. Mkuchika (Mb.) Kuhusu Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2020/21* Dodoma: *Ofisi ya Rais, Menejimenti ya Utumishi wa Umma na Utawala Bora* 17.

196 United Republic of Tanzania (1977) *Report of the Judicial System Review Commission,* Dar es Salaam: Ministry of Justice.

197 United Republic of Tanzania (1977) 82.

198 United Republic of Tanzania (1977) 90.

199 Section 9 of the National Prosecutions Service Act.

including corruption cases.[200] The meagre number of prosecutors is one of the factors for causing delays in the disposal of criminal cases.

In efforts to address the delay in issuance of consent to prosecute, in June 2021, the DPP issued a Notice which delegates those powers to other officers in the National Prosecutions Service.[201] Paragraph 3 of the Notice prescribes three levels of consent to prosecute. The first level requires the personal consent of the Director of Public Prosecution. In the context of this study, this is required to prosecute corruption offences involving property of TSh1 billion and above and offences under sections 239 and 240 of the Petroleum Act and section 21 of the Oil and Gas Revenues Management Act.[202] The second level requires consent to be issued by the Deputy Director of Public Prosecution and other specified Directors within the National Prosecutions Service. These have powers to issue consent in respect of *inter alia* corruption offences involving property of TSh500 million and less than TSh1 billion.[203] The third level requires consent to be issued by Regional and District Prosecution Officers and Prosecution Attorneys In-Charge of prosecutorial functions in a Court of Resident Magistrate or District Court where an economic offence is charged. They may issue consent to prosecute *inter alia* corruption offences where the value of the property involved is less than TSh500 million.[204] There are indications of a positive outcome from this delegation. For instance, out of the 358 cases that were forwarded by the PCCB to the DPP between July 2021 and March 2022, consent was granted in 193 cases.[205]

200 Hoseah (2014) 387.

201 Paragraph 3 of the Economic Offences (Specification of Offences for Consent) Notice, Government Notice No 496H published on 30 June 2021.

202 Part I of the Schedule to the Economic Offences (Specification of Offences for Consent) Notice, 2021.

203 Part II of the Schedule to the Economic Offences (Specification of Offences for Consent) Notice, 2021

204 Part III of the Schedule to the Economic Offences (Specification of Offences for Consent) Notice, 2021.

205 President's Office – Public Service Management and Good Governance (2022) *Hotuba ya Waziri wa Nchi – Ofisi ya Rais, Menejimenti ya Utumishi wa Umma na Utawala Bora, Mheshimiwa Jenista J. Mhagama (Mb.) Kuhusu Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2022/23* Dodoma: *Ofisi ya Rais, Menejimenti ya Utumishi wa Umma na Utawala Bora* 137.

3.4.1.2. Composition

The Prevention and Combating of Corruption Bureau is composed of the Director-General, Deputy Director-General and other officers needed for the effective and efficient performance of its functions.[206] In addition, regulation 3 of the Prevention and Combating of Corruption Regulations of 2009[207] establishes three other directors and four committees of the Bureau. The three directors are the Director of Community Education, the Director of Research and Control, and the Director of Investigation.[208] The four committees are the Oversight Committee, the Management Committee, the Integrity Committee, and the Remuneration Committee. The Bureau's organisational structure also includes Regional and District Commanders who enforce anti-corruption in respective regions and districts. During 2021, the Bureau had established offices in 29 regions, 85 districts, and seven special stations in mainland Tanzania.[209]

3.4.1.3. Qualifications and appointment of senior officials

The Prevention and Combating of Corruption Act and the Prevention and Combating of Corruption Regulations do not require qualifications for top officials of the Bureau. Section 6(2) of the Act provides that the Director-General and Deputy Director-General shall be appointed by the President. There are no qualifications or criteria set by law for the President to consider when appointing the two top officers of the Bureau. The Director-General is empowered to appoint the staff of the Bureau, including Regional Bureau Chiefs, the Deputy Regional Bureau Chief, Heads of Sections, Heads of Units, District Bureau Chiefs and Deputy District Bureau Chief.[210] There are no statutorily prescribed qualifications of such staff as well.

Just as there are no statutorily stated qualifications for the appointment of the Bureau's Director-General and Deputy Director-General, so there are no criteria for their termination.

---

206 Section 6 of the Prevention and Combating of Corruption Act.

207 Government Notice No 300 of 21 August 2009.

208 PCCB (2017) *Strategic Plan 2017/18-2021/22* Dar es Salaam: PCCB vii.

209 PCCB 'Ofisi za Mikoa na Wilaya' available at http://www.pccb.go.tz/index.php/en/habari-za-uchunguzi/541-ofisi-za-mikoa-na-wilaya (accessed 14 January 2021).

210 Regulations 9 and 11 of the Prevention and Combating of Corruption Regulations 2009.

The two senior officers of the Bureau hold office at the pleasure of the President.[211] It is not surprising therefore that between November 2015 and June 2021, the Bureau had five Director-Generals.[212] This suggests two things: first, that the appointees are incompetent to lead the institution, which leads to frequent reshuffles; or secondly, that the appointees have been bold enough to defy the personal interests of the President, so making them unfit for him or her. Whatever the case, the absence of security of tenure for the Bureau's senior officers exposes anti-corruption work to the will of the President. While an ethical President may use such powers to strengthen the Bureau, a corrupt one may abuse them to intimidate its officers and jeopardise anti-corruption efforts.

3.4.1.4. Reporting and accountability

The Prevention and Combating of Corruption Bureau reports directly to the President. It is required to submit to the President reports of its operations on or before 31 March of every year.[213] Unfortunately, these reports are neither available for public consumption nor tabled in parliament for scrutiny. Moreover, accounts and performance of the Bureau are not audited by the Controller and Auditor General although its procurement activities are audited by the Public Procurement Regulatory Authority.[214] The Parliamentary Committee on Administration and Local Government is mandated to oversee the affairs of all agencies under the President's office, including the anti-corruption Bureau.[215] However, the Committee has no direct control over the Bureau and its oversight role in this regard is limited. It may review the performance of the Bureau only through ministerial reports or through visits to the institution as part of the visitations of Parliamentary Committees to government departments.[216]

---

211 See section 6 of the Prevention and Combating of Corruption Act.

212 Edward Hoseah (sacked in December 2015), Valentino Mlowola (December 2015 – Sept 2018), Diwani Athumani (Sept 2018 – Sept 2019), Brigadier General John Mbungo (Sept 2019 – May 2021) and Salum Hamduni (from May 2021).

213 Section 14 of the Prevention and Combating of Corruption Act.

214 Policy Forum (2018) *A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16* Dar es Salaam: Policy Forum 26.

215 Orders 6(4) & 7 of the Eighth Schedule to the Parliamentary Standing Orders, 2020.

216 Paragraph 7(1) of the Eighth Schedule to the Parliamentary Standing Orders, 2020 prescribes the general roles of Parliamentary Standing Committees.

Order 136(15) of the Parliamentary Standing Orders of 2020 requires every Parliamentary Committee to table in Parliament an annual report of its activities for discussion. A keyword search of the Parliamentary Committee on Administration and Local Government reports for the years 2018/19[217] and 2019/20[218] using *TAKUKURU* and *rushwa* which are the Kiswahili[219] words for PCCB and corruption respectively, revealed two findings. First, *TAKUKURU* was mentioned only once in the 2018/19 report as one of the organs which had been visited by the Committee during that year.[220] There was no further information about the Committee's findings during that visit. Secondly, *rushwa* was mentioned in the 2018/19 report only, referring to training on corruption which members of the Committee had attended in that year.[221] There was no further scrutiny by the Committee over the Bureau or the state of corruption and anti-corruption in the country. There was no mention of *TAKUKURU* or *rushwa* in the 2019/20 Committee report. This suggests that in that year, the Committee did not review the operation of the anti-corruption Bureau. It is submitted in this study that parliamentary oversight on anti-corruption in Tanzania is cursory and weak.[222]

3.4.1.5. PCCB investigations of energy sector-related corruption

The Richmond[223] and the Independent Power Tanzania Limited/Escrow[224] scandals illustrate how the Prevention and Combating of Corruption Bureau has handled corruption allegations in the energy sector in Tanzania. Public criticism of the Richmond contract triggered investigation by the Public Procurement Regulatory Authority and the Prevention and Combating of Corruption Bureau in 2007.[225] Surprisingly, while the procurement Authority found serious

217 Bunge la Tanzania (2019) *Taarifa ya Shughuli za Kamati ya Kudumu ya Bunge ya Utawala na Serikali za Mitaa kwa Kipindi cha kuanzia Januari, 2018 hadi Januari, 2019* Dodoma: Bunge la Tanzania.

218 Bunge la Tanzania (2020) *Taarifa ya Shughuli za Kamati ya Kudumu ya Bunge ya Utawala na Serikali za Mitaa kwa Kipindi cha kuanzia Februari, 2019 hadi Januari, 2020* Dodoma: Bunge la Tanzania

219 In Tanzania, all parliamentary affairs are conducted in Kiswahili.

220 Bunge la Tanzania (2019) 5.

221 Bunge la Tanzania (2019) 34-35.

222 This aspect is examined further at section 3.4.6 of this thesis.

223 See section 3.3.4 of this study for details.

224 See section 1.2. of this study for details.

225 Bunge la Tanzania (6 February 2008) *Majadiliano ya Bunge,* Mkutano wa 10, Kikao cha Saba, Dodoma: Bunge la Tanzania 60.

flaws suggesting corruption in the procurement process, the anti-corruption Bureau reported that the process was transparent, competitive, and had involved no criminal conduct.[226] Classifying as transparent and competitive a hijacked procurement process that led to awarding of a contract to the poorest evaluated bidder is derisory. The Parliamentary Select Committee that investigated the Richmond affair concluded that the anti-corruption Bureau's investigation was intended to whitewash and cover up illegal conduct in the awarding of that contract.[227]

Similarly, investigations by the Controller and Auditor General into the Independent Power Tanzania Limited/Escrow scandal found that the sum of over TSh70 billion that had been withdrawn from the escrow account at the Bank of Tanzania was paid to several politicians, judges, civil servants, and clergy as gifts.[228] The Controller and Auditor General transmitted that information to the anti-corruption Bureau for investigation, and appropriate legal action against those implicated.[229] The Bureau has never provided feedback to the public regarding its investigation into that scandal. Also, none of those implicated in receiving the Escrow money has been prosecuted. The only notable action was the arrest of Harbinder Singh Sethi and James Rugemalira as discussed earlier.[230] Lack of investigation feedback from the anti-corruption Bureau to the public reveals a serious deficiency in its anti-corruption approach. This may be attributed to the accountability structure that requires the Bureau to report to the President alone.

3.4.2. Controller and Auditor General

Article 143 of the Constitution of the United Republic of Tanzania establishes the Controller and Auditor General (CAG) of the United Republic. He or she is mandated to ensure that expenditures from the Consolidated Fund have been authorised by the law and used for the purposes connected to such authorisation. Each year, the CAG is required to audit and submit

226 Bunge la Tanzania (6 February 2008) 61.
227 Bunge la Tanzania (6 February 2008) 76.
228 Bunge la Tanzania (2014) 61-63.
229 National Audit Office of Tanzania (2014) 60.
230 See discussion at section 1.2 of this thesis.

to the President an audit report on the accounts of the Government, the Judiciary, and the National Assembly.[231] Upon receiving any of the audit reports, the President is enjoined to transmit them to Parliament for discussion and deliberation.[232] The Controller and Auditor General is the Head of the National Audit Office of Tanzania.[233]

For many years, the National Audit Office was not seen as a strong watchdog over public finances.[234] Audit reports were not submitted in time, and were sometimes delayed for up to three years.[235] Consequently, both audited institutions and the public underrated the audit reports.[236] The coming into power of President Jakaya Kikwete in 2005 brought a breath of fresh air into the Office. Kikwete began by appointing a new Controller and Auditor General, followed by convening meetings with Cabinet and accounting officers in the central government to discuss the findings of the audit reports.[237] In 2008, the government enacted the Public Audit Act[238] followed by the Public Audit Regulations in 2009.[239] These legislative measures are aimed at strengthening the National Audit Office and aligning it with international proclamations on independence and the operations of the Supreme Audit Institutions.

The Preamble to paragraph 2 of the Public Audit Act provides that the mandate of the Controller and Auditor General is intended *inter alia* to promote accountable and transparent public institutions by preventing financial malpractice and corruption. The powers of the CAG include forbidding any public expenditure or investigating the sum involved where it appears that there has been deficiency or loss occasioned by negligence, misconduct, fraud, or

231 Article 143(2)(c) of the Constitution of the United Republic of Tanzania of 1977.
232 Article 143(4) of the Constitution of the United Republic of Tanzania.
233 Part II of the Public Audit Act 11 of 2008.
234 Msasato M (18 May 2011) 'Tanzania: National Audit Office Shines Beyond Borders' available at https://allafrica.com/stories/201105190337.html (accessed 15 January 2021).
235 Msasato (18 May 2011).
236 Msasato (18 May 2011).
237 Sitta S, Slaa W & Cheyo J (2008) *Bunge Lenye Meno: A Parliament with Teeth for Tanzania* London: Africa Research Institute 79.e
238 Act 11 of 2008.
239 Government Notice No 47 published on 6 March 2009.

corruption.[240] The National Audit Office also conducts special audits on various matters of public concern. Several inquiries into corruption allegations have been conducted following such audit reports. The Special Audit Report on the Transactions Conducted over the Tegeta Escrow Account and the Ownership of the IPTL Company[241] is relevant to this study. Following that report, the parliamentary Public Accounts Committee conducted a follow up inquiry into the scandal. The inquiry resulted in the resignation of the Minister of Energy and Minerals Sospeter Muhongo, and the Attorney General Frederick Werema.[242]

In 2016, the Controller and Auditor General issued seven performance audit reports on the management of the oil and natural gas industry in Tanzania.[243] The audits covered the management of geophysical and geological data, and the processes for awarding petroleum exploration and development contracts and licences. It audited the implementation of local content provisions and verification of recoverable costs in production sharing agreements, and the development of human capital in the oil and gas industry. It also audited the enforcement of environmental laws in petroleum activities, and the quality of graduates in the oil and gas fields. The audit reports identified several weaknesses in the management of the oil and gas industry in Tanzania. Identified weaknesses relevant to this study are discussed in the chapter four of this thesis. In 2021, a follow-up report on the implementation of the recommendations given in the previous seven audit reports on the oil and gas industry was published.[244] These measures suggest that the National Audit Office is playing an active role in overseeing public finances and institutional performance in the energy sector.

240 Section 11(3)(c) of the Public Audit Act.

241 National Audit Office of Tanzania (2014).

242 Kabendera E & Anderson M (24 December 2014) 'Tanzania energy scandal ousts senior politicians' available at https://www.theguardian.com/global-development/2014/dec/24/tanzania-energy-scandal-ousts-senior-politicians (accessed 30 March 2021).

243 See National Audit Office of Tanzania (2017) *General Report on the Performance and Specialised Audits for the Period Ending 31st March 2017* Dar es Salaam: National Audit Office.

244 See National Audit Office of Tanzania (2021) *Follow-up Report on the Implementation of the Controller and Auditor General's Recommendations for the Five Performance Audit Reports Issued and Tabled Before Parliament in April 2016* Dodoma: National Audit Office of Tanzania.

Despite its achievements, the National Audit Office is a toothless watchdog against corruption. In most cases, its recommendations are not implemented fully. For instance, between 2015 and 2018, only 4 per cent of its recommendations concerning local government authorities were implemented fully.[245] Similarly, when presenting audit reports for the year 2018/19 to the President, the Controller and Auditor General lamented that the status of implementation of his recommendations was unsatisfactory.[246] In that year, out of the 266 recommendations only 82 were implemented fully.[247]

An examination of the national audit framework suggests that Parliament is the fulcrum of enforcement of the audit recommendations.[248] Its reaction to the reports tabled before it is crucial to giving force to the mandate of the National Audit Office. Regulation 42 of the Public Audit Regulations provides that any Minister who fails to implement the audit recommendations should be reported to the President. Thereafter, the President shall cause that report to be tabled in Parliament for deliberation.[249] Unfortunately, Parliament has not shown resolve in this regard, and the useful information contained in the audit reports is often underused.[250] This deficit was noted also by the former Controller and Auditor General, Professor Mussa Assad, in December 2018 during a press interview. He highlighted that Parliament showed weaknesses in holding the government accountable as recommended in the audit reports.[251]

245 Wajibu Institute (2018) *Ripoti ya Uwajibikaji: Mamlaka ya Serikali za Mitaa Na Miradi ya Maendeleo 2017-18* Dar es Salaam: Wajibu Institute available at http://www.wajibu.or.tz/local/images/uploads/15790709765e1eb60092a07.pdf (accessed 30 March 2021) 14.

246 Mwananchi (26 March 2020) 'CAG asema hali ya utekelezaji wa mapendekezo yanayotolewa hauridhishi' available at https://www.mwananchi.co.tz/mw/habari/kitaifa/video-cag-asema-hali-ya-utekelezaji-wa-mapendekezo-yanayotolewa-hauridhishi-3010276 (accessed 30 March 2021).

247 Mwanachi (26 March 2020).

248 See Regulations 42, 92 & 94 of the Public Audit Regulations of 2009.

249 Regulation 42 of the Public Audit Regulations.

250 Norad (2011) *Joint Evaluation of Support to Anti-Corruption Efforts: Tanzania Country Report*, Oslo: Norad xv.

251 BBC (2 April 2019) 'Bunge la Tanzania laazimia kutofanya kazi na CAG baada ya kumtia 'hatiani' kwa kudharau mhimili huo' available at https://www.bbc.com/swahili/habari-47782449 (accessed 15 January 2015).

Following that statement, Assad was interrogated by the Parliamentary Committee on Rights, Ethics, and Powers of Parliament, and was accused of disrespecting Parliament.[252] The Committee tabled its report in Parliament against Assad on 2 April 2019. After discussion, Parliament passed a resolution not to work with Professor Mussa Assad.[253] On 3 November 2019, President Magufuli appointed a new Controller and Auditor General to succeed Assad whose first term was to end the following day.[254] The President's decision not to renew Assad's tenure may be attributed reasonably to his poor relationship with Parliament. Unfortunately, the weaknesses that he identified remain unaddressed.

3.4.3. Public Procurement Regulatory Authority

The energy sector is highly vulnerable to procurement corruption.[255] The unscrupulous behaviour of Richmond in 2006 typifies this risk. To avoid such pitfalls, it is necessary to install strong institutions for regulating public procurement. Section 7 of the Public Procurement Act[256] establishes the Public Procurement Regulatory Authority (PPRA) as an independent body to oversee public procurement activities in Tanzania. It has four main objectives: first, to ensure the application of fair, competitive, transparent, and fair-value procurement standards and practices;[257] secondly, to set standards and provide guidance on public procurement systems;[258] thirdly, to enforce compliance to the set standards;[259] and fourthly, to build procurement capacity in procuring entities.[260] The primary function of the Authority is to implement these objectives.[261]

252 Bunge la Tanzania (2 April 2019) *Majadiliano ya Bunge,* Mkutano wa 15, Kikao cha Kwanza, Dodoma: Bunge la Tanzania 36.

253 Bunge la Tanzania (2 April 2019) 46.

254 ITV (3 November 2019) 'Magufuli ateua CAG mpya' available at https://www.itv.co.tz/news/rais-magufuli-ateua-cag-mpya (accessed 15 January 2015)

255 ESAAMLG (2019) 32.

256 No 7 of 2011.

257 Section 8(a) of the Public Procurement Act 7 of 2011.

258 Section 8(b) of the Public Procurement Act.

259 Section 8(c) of the Public Procurement Act.

260 Section 8(d) of the Public Procurement Act.

261 Section 9(1) of the Public Procurement Act.

The Public Procurement Regulatory Authority is mandated to monitor the award and implementation of public contracts to ensure that they are awarded impartially and on merit.[262] It should also ensure that public contracts are implemented according to the agreed terms and that their termination is proper.[263] The Authority is empowered to investigate various procurement aspects, including tender procedures relating to contracts awarded by public bodies and the award of any public contract.[264] Looking back into the Richmond/Dowans affair, it fulfilled this role quite effectively. However, its professional advice and regulatory powers were overruled by political decisions by the former Ministry of Energy and Minerals. The following brief account of that saga as recorded in *Dowans Holdings SA and Dowans Tanzania Limited v Tanzania Electric Supply Company Limited*[265] substantiates the assertion.

As the Tanzania Electric Supply Company Limited (TANESCO) endeavoured to advertise a tender for the supply of emergency electricity in February 2006, it first sought the procurement Authority's approval to abridge the advertisement period from the 45 days required by the law to 10 days.[266] The Authority advised that such abridgement would violate international competitive bidding principles and might be detrimental to the company. It proposed to proceed through international shopping under which reputable manufacturers would be invited to submit their quotations. TANESCO informed the Ministry of Energy and Minerals about the procurement Authority's advice. However, the Ministry disregarded that guidance and ordered the company to proceed under the international competitive tendering method, with an abridged bidding period.[267] TANESCO abided by the Ministry's directives.

After the tender was advertised, stating a 10-day bidding period, the procurement Authority wrote to TANESCO stating that the approach violated the law and might spoil the entire procurement process. Its advice was ignored again by the Ministry of Energy and

---

262 Section 9(1)(h)(i) of the Public Procurement Act.

263 Section 9(1)(h)(ii&iii) of the Public Procurement Act.

264 Section 10(1)(b&c) of the Public Procurement Act 2011.

265 International Court of Arbitration Case No. 15947/VRO.

266 International Court of Arbitration Case No. 15947/VRO at 12.

267 International Court of Arbitration Case No. 15947/VRO at 13.

Minerals. Just as the Authority had predicted, the process was spoiled afterwards when the Ministry took over the role of TANESCO's tender board. Subsequently, Richmond, which was classified by the initial evaluation team as the most unqualified bidder, was awarded the contract by the Ministry.[268] About three months after the contract was signed, and following public outcry about the controversies of that procurement, the Procurement Authority investigated the matter and concluded that procurement regulations had been violated.[269]

The Public Procurement Act of 2011 empowers the procurement Authority to terminate procurement proceedings, or to order the procuring entity to rectify the anomaly if it is satisfied that procurement laws and guidelines had been violated.[270] These powers did not exist in the statute when the Richmond (Dowans) affair surfaced. They were introduced in 2011, supposedly in response to the recommendations of the Parliamentary Select Committee that investigated the Richmond saga.[271] Among others, the Committee proposed that the procurement Authority should be empowered to execute its directives instead of just giving advice to procuring entities.[272] Where the breach of law is persistent, the Authority shall recommend to a competent authority the necessary actions to be taken.[273] Such actions include suspension of disbursement of funds, replacement of the officer in breach, and disciplining of the accounting officer or other officers in breach.[274]

To control procurement malpractice by the private sector, the PPRA is empowered to blacklist a tenderer from participating in public procurement.[275] A tenderer that has been blacklisted by a foreign country, international organisation, or other foreign institution is automatically blacklisted in Tanzania as well.[276] Regulation 101(2) of the Public Procurement

268 International Court of Arbitration Case No. 15947/VRO at 16.
269 Bunge la Tanzania (2008) 139.
270 Section 19(1) of the Public Procurement Act.
271 Bunge la Tanzania (2008) 191.
272 Bunge la Tanzania (2008) 191.
273 Section 20(1) of the Public Procurement Act.
274 Section 20(1)(a-c) of the Public Procurement Act.
275 Section 62 of the Public Procurement Act.
276 Section 62(2) of the Public Procurement Act.

Regulations prohibits procuring entities from contracting with or engaging a tenderer who is blacklisted from participating in public procurement proceedings. The procurement Authority has a broad range of powers to ensure transparency, efficiency, and value for money in public procurement in Tanzania.

With respect to procurement in the petroleum industry, regulation 19(3) of the Petroleum (Reconnaissance and Tendering) Regulations[277] requires the Petroleum Upstream Regulatory Authority to consult the PPRA during the preparation of tender procedures for a licensing round. The procurement authority has a legal mandate to monitor the tendering procedures in the petroleum industry.[278] In addition to specific tendering requirements stated in the petroleum tendering regulations, it may invoke the Public Procurement Act in discharging its functions regarding petroleum-related procurement.[279] These include powers to blacklist from participating in any public tender any bidder that provides false or misleading information.[280] These measures are crucial in preventing and controlling corruption in the award and execution of petroleum exploration and production agreements.

3.4.4. Director of Public Prosecutions

The Director of Public Prosecution (DPP) is established under article 59B of the Constitution of the United Republic of Tanzania of 1977. The primary responsibility of the DPP is to institute, prosecute, and supervise all criminal prosecutions in the country.[281] The Constitution provides that the DPP shall be independent in the discharge of his or her functions.[282] The powers of the DPP may be discharged by him or herself or by any other officer under his or her instructions.[283]

277 Government Notice No 958 published on 6 December 2019.
278 Regulation 40 of the Petroleum (Reconnaissance and Tendering) Regulations 2019.
279 Regulation 41 of the Petroleum (Reconnaissance and Tendering) Regulations.
280 Regulation 26(3) of the Petroleum (Reconnaissance and Tendering) Regulations.
281 Article 59B(1) & (2) of the Constitution of the United Republic of Tanzania 1977.
282 Article 59B(4)(c) of the Constitution of the United Republic of Tanzania.
283 Article 59B(3) of the Constitution of the United Republic of Tanzania.

Operations of the DPP are guided by the National Prosecutions Service Act.[284] It has powers to coordinate and supervise criminal investigation and to prosecute crimes in all courts except for a court martial.[285] It is also empowered to decide to prosecute an offence or to discontinue criminal proceedings against any person at any stage before judgement.[286] With regard to anti-corruption, prosecution of corruption offences is primarily the role of the DPP,[287] except for offences under section 15 of the Prevention and Combating of Corruption Act. Nevertheless, the Prevention and Combating of Corruption Bureau may prosecute other corruption offences upon consent of the DPP as discussed in section 3.4.1.1. of this thesis.[288]

The Director of Public Prosecution is a key player in the anti-corruption framework. Without effective prosecution, corrupt people may evade justice and benefit from their wrongs. A debilitated prosecution machinery erodes public confidence in the justice system and discourages them from participating in fighting crimes. In deciding to prosecute an offence, state attorneys and prosecutors are required to consider public interest, interest of justice, the need to prevent abuse of court process, and the presence of a realistic prospect of conviction.[289] Thus, apart from the delays in obtaining prosecution consent for corruption cases, the low number of approvals granted may be attributed to the failure of the forwarded cases to meet these preconditions. However, even where the consent to prosecute is granted and the case instituted in court, the DPP still can stop the prosecution at any stage before judgment by entering a *nolle prosequi* certificate.[290] This is a formal entry by the prosecutor in a criminal action that they do not wish to prosecute the case further. The law in Tanzania does not prescribe any conditions for entering a *nolle prosequi* certificate and the DPP is not

284 [Cap. 430 R.E. 2019].
285 Section 9(1)(c&d) of the National Prosecution Service Act [Cap 430 R.E. 2019].
286 Section 9(1)(a&e) of the National Prosecution Service Act.
287 Section 9(1) of the National Prosecution Service Act.
288 Section 57 of the Prevention and Combating of Corruption Act.
289 Part 4(3) of the Prosecution General Instructions for State Attorneys and Prosecutors, 2011.
290 Section 91(1) of the Criminal Procedure Act [Cap 20 R.E. 2019].

enjoined to give reasons for doing so.[291] This puts anti-corruption efforts under prosecution discretion which analytically is susceptible to abuse.

Towards the end of 2019, the government amended the Criminal Procedure Act[292] to establish plea bargaining procedures in criminal matters.[293] This amendment empowers prosecutors to enter plea bargaining agreements with the accused for various offences, including corruption and money laundering.[294] This procedure complements the Proceeds of Crime Act's asset recovery regime by establishing an out-of-court settlement framework. In fact, a few months after the plea-bargaining provisions were enacted, the DPP declared that the Government had recovered over TSh12 billion through plea bargaining.[295] This approach reduces prosecution costs and ensures quick recovery of stolen assets. Therefore, if implemented efficiently, plea bargaining arrangements may significantly strengthen the fight against corruption.

3.4.5. Judiciary

The judiciary is the pinnacle of the law enforcement arm of anti-corruption. Effective anti-corruption requires the presence of an independent, incorruptible, and trustworthy judiciary. Article 11 of the United Nations Convention against Corruption implores States Parties to strengthen integrity and prevent opportunities for corruption in the judiciary. The judiciary is the authority with the final decision in administering justice.[296]

To ensure effective adjudication of corruption cases, in 2016 the government established the Corruption and Economic Crimes Division of the High Court[297] (the anti-

---

291 Sayi PR (2016) 'Crime Victims' Remedy against a DPP Decision not to Prosecute in Tanzania' 1(10) *International Journal of Science Arts and Commerce* 4.

292 [Cap. 20 R.E. 2019].

293 See section 194A – 194H of the Criminal Procedure Act [Cap 20 R.E. 2019].

294 See section 194F of the CPA for excluded offences.

295 The Citizen (10 February 2020) 'Tanzania collects Sh12 billion through plea-bargaining agreements with accused persons' available at https://www.thecitizen.co.tz/tanzania/news/tanzania-collects-sh12-billion-through-plea-bargaining-agreements-with-accused-persons--2703106 (accessed 20 January 2021).

296 Article 107A(1) of the Constitution of the United Republic of Tanzania 1977.

297 Section 3 of the Economic and Organised Crime Control Act.

corruption court). The court has jurisdiction to hear and determine economic cases where the value of the subject matter exceeds TSh1 billion. Also, it has primary jurisdiction over other crimes regardless of the value involved, as specified under section 3 and the first schedule to the Economic and Organised Crime Control Act. Corruption is one of the offences where the pecuniary jurisdiction of the anti-corruption court is TSh1 billion.[298] Corruption cases falling below this threshold are prosecuted in District Courts and Resident Magistrates' Courts.

Having a special High Court division dealing with corruption cases is a positive step towards speeding up the prosecution of corruption cases, particularly for the energy sector where huge sums of money are involved. However, a survey of the judgements uploaded into the Tanzania Legal Information Institute's database shows that up to February 2021 there was no single corruption case that had been determined by the anti-corruption court in the exercise of its primary jurisdiction.[299] Most of the cases that have been determined by this court concern trafficking in narcotic drugs and unlawful possession of government trophies. This suggests that few corruption cases meet the TSh1 billion threshold to invoke the primary jurisdiction of the anti-corruption court.

3.4.6. Parliament

Parliament holds a special place in fighting corruption. Parliamentarians have a number of roles to play in curbing this vice. First, they have to demonstrate the political will to fight corruption by disengaging from corrupt practices and maintaining high standards of ethics, transparency, and accountability.[300] Secondly, they should enact strong laws to fight corruption.[301] Such laws should punish the corrupt, seal off corruption opportunities in specific sectors, ensure the

298 Section 3(3)(a) and paragraph 21 of the First Schedule to the Economic and Organised Crime Control Act.

299 This is an official database of the Judiciary of Tanzania used to disseminate judgments of the High Court and Court of Appeal. Judgments of the Anti-Corruption Court are available at https://tanzlii.org/tz/judgments/high-court-corruption-and-economic-crimes-division (accessed 15 March 2021).

300 Marshall D (2006) 'Afterword' in Stapenhurst R, Johnston N & Pellizo R (Eds) *The Role of Parliament in Curbing Corruption* Washington DC: World Bank 228 & 231.

301 Pope J (2006) 'Parliament and Anti-Corruption Legislation' in Stapenhurst R, Johnston N & Pellizo R (Eds) *The Role of Parliament in Curbing Corruption* Washington DC: World Bank 52-65.

recovery of stolen assets, and promote the participation of the public, media and civil society.[302] Thirdly, they have the duty to ensure financial integrity and effective government spending by analysing and scrutinising government budgets and monitoring implementation.[303] Fourth, they have to exert strong oversight over anti-corruption work by publicly holding Ministers, the supreme audit institution, and the anti-corruption agency accountable.[304]

The Constitution of the United Republic of Tanzania of 1977 grants parliament the legislative and supervisory powers over the conduct of public affairs.[305] It further states that the government is accountable to the people.[306] Principally, this accountability is exercised through parliament. Parliament has a constitutional mandate to oversee and advise the government on behalf of the people.[307] That authority encompasses powers to question Ministers on public affairs, debate government budgets and ministerial performance, and enact laws to regulate the implementation of government plans.[308] These powers are the basis of parliamentary action in fighting corruption.

Despite its constitutional mandate to oversee public affairs, the Parliament of Tanzania has some deficits regarding the strengthening of anti-corruption work. First, there are no effective mechanisms for holding Members of Parliament accountable for alleged corruption. In the context of the energy sector, the report of the Parliamentary Select Committee on the Richmond affair in 2008 implicated Prime Minister Edward Lowassa and two other ministers for unscrupulously assisting and favouring Richmond to obtain the contract with the Tanzania Electric Supply Company Limited.[309] The Prime Minister and the two ministers resigned over

302 Pope (2006) 52-65.

303 Wehner J (2006) 'Effective Financial Scrutiny' in Stapenhurst R, Johnston N & Pellizo R (eds) *The Role of Parliament in Curbing Corruption* Washington DC: World Bank 81-87.

304 Marshall (2006) 234.

305 Article 4(2) of the Constitution of the United Republic of Tanzania 1977.

306 Article 8(1)(c) of the Constitution of the United Republic of Tanzania.

307 Article 63(2) of the Constitution of the United Republic of Tanzania.

308 Article 63(2)(a-d) of the Constitution of the United Republic of Tanzania.

309 Bunge la Tanzania (6 February 2008) 78.

those allegations.[310] No legal or disciplinary actions were taken against the implicated Members of Parliament. Similarly, no legal action was taken against Members of Parliament implicated in the Independent Power Tanzania Limited/Escrow scandal. This approach is contrary to article 71(1)(d) of the Constitution which provides that a person ceases to be a Member of Parliament if it is established that he or she has contravened the provisions of the law regulating the ethics of public leaders. These allegations concerned the violation of the Public Leadership Code of Ethics Act, and warranted serious action from parliament. Condoning corruption allegations against Members of Parliament raises doubts about the determination of parliament to fight corruption with clean hands.

The second deficit is that parliamentary oversight of anti-corruption work is remote. Parliament can strengthen anti-corruption by monitoring the operations of the anti-corruption agency. As discussed earlier, the Prevention and Combating of Corruption Bureau reports to the President alone.[311] Such reports are confidential and not subjected to parliamentary or public scrutiny. The Parliamentary Committee on Administration and Local Government has no direct oversight over the operations of the anti-corruption Bureau. The Committee's mandate includes reviewing budgets, legislative bills, and annual performance reports of ministries under its jurisdiction.[312] Also, it is empowered to monitor and evaluate the implementation of various projects under those ministries.[313] In that sense, direct parliamentary oversight is exercised against the ministry. The anti-corruption Bureau is established under the President's Office Public Service Management and Good Governance ministry. The Parliamentary Committee may review performance of the Bureau only when reviewing the activities of this ministry or during Committee visits to the institutions under the ministry. As discussed earlier, the Committee has not utilised this avenue effectively to hold the Bureau accountable.[314]

310 BBC (7 February 2008) 'Tanzanian PM to resign over graft' available at http://news.bbc.co.uk/2/hi/africa/7232141.stm (accessed 4 March 2021).

311 Section 14 of the Prevention and Combating of Corruption Act.

312 Order 7(1) of the Eight Schedule to the Parliamentary Standing Orders 2020.

313 Order 7(1)(d) of the Eighth Schedule to the Parliamentary Standing Orders 2020.

314 See discussion at section 3.4.1.4 of this study.

The third deficit in parliamentary anti-corruption action concerns the nature of party politics in parliament. Most of the corruption scandals investigated by parliament between 2005 and 2015 were revealed by opposition Members of Parliament. However, the number of opposition Members of Parliament dropped from 115 in the 2015 general election to 27 in the 2020 general election.[315] The Speaker of the National Assembly, Job Ndugai, remarked that this number gives the ruling party power to pass whatever the government tables in parliament.[316] It is submitted that Members of Parliament from the ruling party are structurally constrained from holding their party-led government accountable for corruption.

The President is the party's chairperson. Using those powers, the President can suppress opposition in the party and subsequently in Parliament. Evidence for this argument is the resignation of the former Speaker of the National Assembly Job Ndugai on 6 January 2022. Hitherto his resignation, Ndugai had publicly questioned the government's external borrowing trend, remarking that the nation may end up being auctioned.[317] These remarks were vehemently attacked from within his political party, calling him to resign from the Speaker position. As the attacks mounted, Ndugai opted to publicly apologise to the President. The President publicly rejected the apology.[318] Consequently, the Speaker tendered a resignation letter to the party's secretary general.[319]

Constitutionally, to be a Member of Parliament, a person should be sponsored by a political party.[320] If that party expels the member, he or she loses that position.[321] It is

315 Mwananchi (11 November 2020) 'Upinzani, historia mpya nje ya Bunge' available at https://www.mwananchi.co.tz/mw/habari/kitaifa/-upinzani-historia-mpya-nje-ya-bunge-3018668 (accessed 5 March 2021).

316 Mwananchi (11 November 2020).

317 The EastAfrican (6 January 2022) 'Tanzania's National Assembly Speaker Job Ndugai resigns' available at https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-national-assembly-speaker-job-ndugai-resigns-3674296 (accessed 4 October 2022).

318 Wambura B (6 January 2022) 'Tanzania's Speaker of Parliament Job Ndugai has resigned' available at https://www.thecitizen.co.tz/tanzania/news/national/tanzania-s-speaker-of-parliament-job-ndugai-has-resigned-3674316 (accessed 4 October 2022).

319 The EastAfrican (6 January 2022).

320 Article 67(1)(b) of the Constitution of the United Republic of Tanzania.

321 Article 71(1)(e) of the Constitution of the United Republic of Tanzania.

submitted that this condition subjects Members of Parliament to the demands of their political parties rather than of their electors. It is inferred from the Speaker's resignation phenomenon described above that Ndugai resigned to avoid the danger of being expelled from the party. Expulsion would make him lose both membership to the party, membership of Parliament and the position of Speaker. Reasonably, he chose the lesser evil. In such environment, it is doubtful if the currently near one-party parliament can effectively hold the government accountable for corruption.

3.4.7. President

The President of Tanzania has a special position in fighting corruption in the energy sector. Natural resources are vested in the President as trustee for and on behalf of the people of Tanzania.[322] Similarly, section 4(1) of the Petroleum Act[323] entrusts the management of petroleum resources exclusively to the Government for the benefit of the people. As Head of Government, the President must ensure that these resources are managed and exploited ethically for national interests. Powers granted to the President enable him to significantly influence decision-making in the energy sector. Heads of all state organs and state-owned enterprises engaged in the energy sector are appointed by the President. These include the Minister of Energy, and the Director-Generals and Board Chairpersons of the Petroleum Upstream Regulatory Authority, the Tanzania Petroleum Development Corporation, and the Energy and Water Utilities Regulatory Authority.

Apart from appointing key personnel in the management of the energy sector, the President appoints the heads of all anti-corruption organs. These are the Director of Public Prosecution, the Director-General of the Prevention and Combating of Corruption Bureau, the Controller and Auditor General, the Ethics Commissioner, and the Chief Justice and the Judges of the High Court.[324] Through these appointments, the President may put in place a strong institutional regime to fight corruption. Conversely, he or she may appoint weak or unethical

322 Section 5(2) of the Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017.

323 Act 21 of 2015.

324 Articles 59B, 132, 109(1), 118(1) & 143(1) of the Constitution of the United Republic of Tanzania.

people to further personal or corrupt interests. This is concerning bearing in mind the fact that the anti-corruption bureau's Director-General and Deputy Director-General have no security of tenure.[325]

The President's power to appoint the heads of all anti-corruption organs leaves the fight against corruption to his or her personal attitude towards the problem. In fact, analysis of the post-independence anti-corruption trends in Tanzania has indicated that anti-corruption performance depends on the personal will of the President.[326] When the President is determined to fight it, the problem declines. If he is weak, the problem escalates. Anti-corruption institutions appear to follow the attitude of the president, instead of acting independently and professionally. Former Director-General of the anti-corruption Bureau Edward Hoseah explained the dilemma facing heads of anti-corruption agencies in this regard as follows:

> As Heads of [anti-corruption agencies] either they persevere with high-level investigations and bold reforms that are required to be taken to escalate the level of awareness and engagement of the society they live in, and by so doing they are risking their positions and constantly face the crippling pushback or potential dissolution of the [agencies] they lead. Or they lower their sights and pursue unobtrusive efforts that might appear timid or biassed. Either outcome imperils the political support or public trust [the agencies] need to sustain effective operations.[327]

The risk of presidential unaccountability to fighting corruption is cemented by article 46(1) of the Constitution which immunises the President from being prosecuted for acts he or she does in that capacity. Disappointingly, article 46(3) extends that immunity to the post-presidency period. And so the Prevention and Combating of Corruption Bureau or any other law enforcement organ cannot commence investigation into the criminal conduct of the President during and after his term of office. The exception is when the President has been removed from

325 See section 6(2) of the Prevention and Combating of Corruption Act.

326 Lukiko (2017).

327 Hoseah EG (2015) 'Practical Experience and Insights in the Fight against Corruption: The African Experience' Paper presented at the International Anti-Corruption Academy in Vienna on 9 July 2015.

office through impeachment by the National Assembly.[328] It is unfortunate that the Constitution shields Presidents from prosecution even after their term has ended. The assurance of safety from prosecution may be abused by corrupt leaders to loot the country of its resources or promote unaccountability. The risk of impeachment by the National Assembly is negligible considering the nature of political clientelism within the ruling party and parliament, as discussed above.

3.5. Concluding remarks

Critical examination of Tanzania's anti-corruption regime reveals a decoupling between rules and practice. Institutional theorists such as Meyer and Rowan argue that organisations conform to institutional pressures by adopting appropriate rules and structures.[329] However, their actual practices tend to deviate significantly from official prescriptions of behaviour and action.[330] In order to ensure conformity with the established rules and structures, Meyer and Rowan propose the enforcement of effective inspection, monitoring, and evaluation mechanisms.[331] Also, the various organisational goals should be unified and coordinated.[332]

Decoupling in Tanzania's anti-corruption regime can be seen in the disintegration and discoordination of existing policies, laws, and institutions. First, anti-corruption policies, laws, and institutions are established without creating the necessary political will to enforce them. This has been shown by the inconsistent anti-corruption approaches and performance of the previous post-independence government regimes, and the absence of a constitutional anchor to fight this vice. Secondly, enforcement institutions are in practice not independent, and are structurally subjected to the will of the President. The president appoints Heads of all anti-corruption enforcement organs, including the anti-corruption Bureau's Director-General and

328 Articles 46(3) & 46A(10) of the Constitution of the United Republic of Tanzania 1977.
329 Meyer & Rowan (1977) 356.
330 Scott (2014) 185.
331 Meyer & Rowan (1977) 357.
332 Meyer & Rowan (1977) 357.

the DPP. These two have no security of tenure. The president may use his appointment and dismissal powers to strengthen or debilitate anti-corruption efforts in the country.

Thirdly, prosecution of corruption cases is jeopardised by the DPP fiat where in most cases consent is withheld. Fourthly, public participation in fighting corruption is weakened by poor whistle-blower and witness protection mechanisms, and poor engagement from the anti-corruption Bureau. Confidentiality of the Bureau's reports, and poor feedback on investigation and prosecution of corruption cases, erodes public confidence in the agency. Fifthly, oversight organs such as the Controller and Auditor General and Parliament have remote powers over anti-corruption enforcement. The Controller and Auditor General reports to Parliament but does not audit activities of the anti-corruption Bureau. Parliament through its Committee reviews activities of the Bureau cursorily and rarely. With respect to the energy sector, Parliament has not reviewed the anti-corruption programming and performance of the Ministry of Energy for four consecutive years.

While the anti-corruption policy and legal framework suggest that corruption is fought seriously, these deficiencies show a decoupling in actual practice. It is for this reason that corruption levels in Tanzania are still very high. The next chapter uses these deficiencies to examine the governance regime of the energy sector, with a view to identifying corruption paths in its value chain.

Chapter Four:

Policy, Legal, Regulatory and Practical Engagement of the Energy Sector

4.1. Introduction

In this chapter the first and third research questions are dealt with. The first question addresses how the relationships, roles, and powers of various actors influence corruption and anti-corruption practices in the energy sector in Tanzania. The third question examines the policy, legal, regulatory, and practical deficits which facilitate corruption in the energy sector. The chapter also responds to the first research objective regarding the way relationships, roles, and powers of various actors influence corruption and anti-corruption practices in the energy sector in Tanzania. The third objective, which is to identify policy, and legal, regulatory, and practical deficits which create room for corruption in the energy sector, and to propose appropriate interventions, is also discussed. The proposed interventions pertaining to the third research question and its objective are addressed in chapter six.

The chapter adopts the extractive industry value chain approach to analyse and examine the policy, legal, regulatory, and practical aspects of energy sector governance in Tanzania. This approach is an international best practice for understanding and studying the governance of the extractive industry.[1] It provides a systematic framework for examining every stage of the resource exploitation process, from deciding to extract to revenue allocation and spending.[2] The extractive industry encompasses mining, oil, and gas.[3] The oil and gas industry in

1 See Alba EM (2009) 'Extractive Industries Value Chain: A Comprehensive Integrated Approach to Developing Extractive Industries' Extractive Industries for Development Series No 3, Washington DC: World Bank Group, Natural Resource Governance Institute (2010) 'The Value Chain' available at https://www.resourcegovernance.org/analysis-tools/publications/value-chain (accessed 3 September 2021), OECD (2016) *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives* Paris: OECD, and Cameron PD & Stanley M (2017) *Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries* Washington DC: World Bank Group.

2 OECD (2016) 12.

3 Alba (2009) 1.

Tanzania is also referred to as the petroleum industry. Therefore, the value chain approach is adopted to guide the examination of the petroleum industry governance regime and the roles, powers, and relationships of the actors involved in this sector. The analysis is undertaken at every stage of the value chain to identify deficiencies which create room for corruption in this sector.

The chapter is divided into four major sections. The introduction is followed by an overview of the extractive industry value chain. It describes the phases of the value chain, the activities undertaken, and the basic functions of the actors in those phases. Thereafter, the Tanzanian energy sector governance regime is examined, focusing on the policy and legal framework governing this sector, and the roles, powers, and relationships of the actors involved at every phase of the petroleum industry value chain. The chapter also identifies and discusses the weaknesses that may fuel corruption in this sector.

4.2. Extractive industry value chain

A value chain refers to the stages by which the full value of a product is managed and ultimately realised.[4] With regard to the extractive sector, the value chain involves the activities from extraction of natural resources to their processing, sale, and revenue distribution.[5] The World Bank describes five stages of the extractive industry value chain, namely award of contracts and licences, regulation and monitoring of operations, revenue collection, revenue management and allocation, and implementation of sustainable development policies and projects.[6] Similarly, the Natural Resource Governance Institute describes the extractive industry value chain as involving the decision to extract, contracting, ensuring revenue transparency, managing volatile resources, and investing for sustainable development.[7]

Based on the above description of the extractive industry value chain, in 2016 the Organisation for Economic Cooperation and Development published a typology of corruption

4 Natural Resource Governance Institute (2010).
5 Natural Resource Governance Institute (2010).
6 Alba (2009) 3.
7 Natural Resource Governance Institute (2010).

risks in the extractive value chain and mitigation measures (the OECD typology).[8] The typology maps corruption risks at six stages of the extractive industry value chain. These stages are the decision to extract, the awarding of extractive rights, extraction operations and regulation, revenue collection, revenue management, and revenue spending and social investment projects.[9] Using these frameworks of the extractive industry value chain, this study examines the Tanzanian petroleum industry governance regime in five stages. These are decision to extract, award of contracts and extractive rights, extraction operations and regulation, revenue collection, and revenue management and spending.

4.2.1. Decision to extract

This is the preparation stage, covering key government decisions before attracting investment in the extractive industry. The government is expected to undertake a cost-benefit analysis to ascertain the benefits, costs, and risks of extracting the resource.[10] It considers the various land use possibilities and associated restrictions, including the environmental impact, indigenous rights, cultural heritage, and local community interests.[11] The government should assess whether it has the requisite skills and expertise to manage the investment profitably.[12] In the absence of such skills, expertise, and experience, the government may be unable to negotiate, implement, or regulate investments efficiently.[13]

In addition, the government must establish a strong policy, legal, contractual, and regulatory framework to manage investments.[14] This is necessary to shape and limit investment operations so that they are carried out in ways that ensure the promotion and protection of public interests.[15] It sets out the resource ownership structure in the country, the contractual

8 OECD (2016).
9 OECD (2016) 12.
10 OECD (2016) 30.
11 OECD (2016) 30.
12 Negotiation Support (2015) 'Sector-Wide Analyses' available at http://www.negotiationsupport.org/roadmap/sector-wide-analyses (accessed 5 May 2021).
13 Negotiation Support (2015).
14 Cameron PD & Stanley M (2017) *Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries* Washington DC: World Bank Group 57.
15 Cameron and Stanley (2017) 57.

arrangements between investors and the state, and the framework for settlement of investment disputes.[16]

4.2.2. Award of contracts and extractive rights

After the decision to extract is made, the government must decide on who the participants in the whole process should be.[17] Often, extractive sector laws empower the government to negotiate and enter into agreements with potential investors. Considering the nature of the industry, negotiators are allowed to develop terms that attract investors in a competitive market.[18] Negotiators may adopt standard terms established in a model agreement, or establish terms that consider the specific risks of the respective project.[19]

In the petroleum industry, exploration and extraction rights may be awarded through competitive licensing rounds or direct negotiations on an *ad-hoc* basis.[20] The outcome of either awarding method is a contract, often concluded between the host country and its national oil company as the one party, and an international oil company or a consortium of such companies as the other party.[21] Petroleum agreements may be granted in the form of a concession, a service contract, or a production sharing agreement.[22] Under the concession system, the state grants the exclusive right to explore and extract the resources found in its territory.[23] The state collects revenue through income tax and royalties while the investor enjoys the exclusive extraction rights over the agreed area.[24] An example of the concession system is expressed under the Mozambique Petroleum Law of 2014.[25]

16 Cameron and Stanley (2017) 61.
17 OECD (2016) 37.
18 Cameron & Stanley (2017) 74.
19 Cameron & Stanley (2017) 74.
20 Natural Resource Governance Institute (2010).
21 Taha E (2016) 'Navigating through Production Sharing, Concession, and Service Agreements' available at https://egyptoil-gas.com/features/navigating-through-production-sharing-concession-and-service-agreements/ (accessed 13 May 2021).
22 OECD (2016) 37.
23 Alfarsi H (2018) 'Fiscal Regimes: Types of Oil and Gas Agreements' available at https://www.profolus.com/topics/types-oil-and-gas-agreements/ (accessed 13 May 2021).
24 Taha (2016).
25 See article 28(1) of Mozambique Petroleum Law No 21 of 2014.

The service contract framework allows the host country to hire an investor that has the financial and technical capacity to perform the exploration, extraction, and production activities and reimburses it for the costs and expenses incurred.[26] The investor profits from a fee charged on the services rendered to the host country.[27] This form of petroleum agreements is prevalent in Middle Eastern countries such as Iran and Iraq, and in Latin American countries like Brazil, Argentina, and Mexico.[28]

Under the production sharing agreement system, the state has ownership and control of the resource but allocates part of the generated income to cover the costs of exploration, extraction, and production.[29] Thereafter, the state and the investor share the remainder of the income based on agreed terms.[30] Under this arrangement, the investor undertakes the investment at its sole risk and costs but under the supervision of the host country.[31] Tanzania employs the production sharing agreement system in the management of its petroleum resources.[32]

The contracting and licensing phase is critical in promoting and protecting national interests. It defines the country and investor's participation, obligations, and share of profits in the investment. Therefore, improper management of this phase can undermine national interests significantly.

4.2.3. Extraction operations and regulation

This phase of the extractive industry value chain covers the operations and institutional structures that enable the conversion of natural resources into wealth.[33] It addresses the activities in the petroleum upstream, midstream, and downstream sectors, and the institutions

26 Taha (2016).
27 Taha (2016).
28 Cameron & Stanley (2017) 77.
29 Alfarsi (2018).
30 Alfarsi (2018).
31 Taha (2016).
32 See section 12(1)(a) of the Petroleum Act No 21 of 2015.
33 Cameron & Stanley (2017) 115.

and legal instruments established to monitor and regulate those activities. The upstream sector covers activities related to the exploration and production of oil and gas, including drilling wells and extraction of the resources.[34] Upstream activities are the beginning of the commercial value chain of the petroleum sector. Companies involved in this stage use geological surveys and other methods of data gathering to locate areas with petroleum deposits.[35] After locating the potential production areas, exploration companies drill wells to test the resource. When the resource is found to be commercially viable, actual production starts.[36] Midstream activities encompass the transportation, storage, and marketing of petroleum products.[37] Downstream operations deal with the transformation of petroleum raw products into consumable goods.[38] Activities in the downstream sector include the refining of crude oil, processing of natural gas, and the distribution of final products such as fuels, oil, and lubricants.[39]

Effective regulation and monitoring of extraction operations entails defining the roles, powers, and authority of state entities, and the availability of sufficient resources to undertake those responsibilities.[40] Close monitoring of extraction activities is vital to protecting national interests. To achieve that, countries adopt and enforce internationally recognised technical, environmental, accounting and auditing standards, and good industry practice.[41] On-the-job training programmes are often used to enhance the host country's technical and human capacity.[42] This includes adopting licence and contractual terms that require extractive companies to recruit and train local personnel, and ensure the transfer of knowledge, skills, and technology.[43]

---

34 Furman KC et al. (2017) 'Optimization in the Oil and Gas Industry' 18(1) *Optimization and Engineering* 1.

35 Revenue Loop (2020) 'Upstream, Midstream, Downstream: Comparing Oil & Gas Operations' available at https://www.revenueloop.com/upstream-midstream-downstream-comparing-oil-gas-operations/ (accessed 20 May 2021).

36 Revenue Loop (2020).

37 Furman et al. (2017) 1.

38 Furman et al. (2017) 1.

39 Revenue Loop (2020).

40 Alba (2009) 10.

41 Alba (2009) 8.

42 Alba (2009) 9.

43 See for instance section 221 of the Petroleum Act 21 of 2015.

4.2.4. Revenue collection

This phase deals with the system responsible for collecting revenue from extractive operations. It looks at the country's fiscal regime and the institutional quality for revenue administration. Revenue collection in the extractive sector may be implemented through a wide range of instruments.[44] The choice of an appropriate fiscal instrument depends on the host country's fiscal objectives, policies, resource potential, and development of the industry.[45] Effectiveness of the fiscal regime depends on the clarity of the fiscal rules and the quality of the fiscal administration.[46]

Extractive industries are subject to various fiscal instruments, including royalties, government profit share, government participating interest, bonuses, income tax, and other indirect taxes.[47] Royalties are payments made to compensate the host country for the permanent loss of a valuable non-renewable resource.[48] They are paid out of the gross production at a contract area, prior to the deduction of the cost of oil or gas.[49] Government profit share refers to the amount of profit payable to the government after deducting the contractor's costs.[50] Profit gas or oil is distinguished from cost gas or oil. Cost gas or oil refers to the amount that could be recovered as expenses which were incurred by the contractor in the exploration and development of the field.[51] These costs are deducted first[52] and the profit is the

44 Alba (2009) 11.

45 Cameron and Stanley (2017) 149.

46 Cameron and Stanley (2017) 149.

47 Cameron and Stanley (2017) 150.

48 Cameron and Stanley (2017) 156.

49 Mmari D et al. (2019) 'An overview of the fiscal systems for the petroleum sector in Tanzania' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA 39. See also article 12(e) of the Model Production Sharing Agreement of 2013.

50 Section 3 of Oil and Gas Revenues Management Act [328 R.E. 2019].

51 Manley D & Lassourd T (2014) *Tanzania and Statoil: What Does the Leaked Agreement Mean for Citizens?* Dar es Salaam: Natural Resource Governance Institute 6.

52 Article 12(a) of the Model Production Sharing Agreement of 2013.

remaining balance.[53] The profit from gas or oil is shared between the government and contractor according to their agreement.

Government participating interest allows the state to share in a proportion of the investment capital with the contractor.[54] Cameron and Stanley describe three forms of state participation, namely, full participation interest, carried participation interest, and free equity participation.[55] With full participation interest, the government and the private investor share the costs of the project equally.[56] In carrying participation interest, the private investor services the costs of the state's interest at particular stages of the project.[57] Thereafter, the state shares the costs of the remaining stages equally with the investor. Free equity participation allows the state to own a simple equity interest in the project without bearing any financial obligations.[58] Through this arrangement, the state is entitled to dividends from the project equivalent to its equity share.[59]

Bonuses are payments that could be agreed upon between the government and the contractor depending on the project reaching certain stages.[60] Bonuses could increase the government's portion from an investment by creating a leverage between the state's fiscal dimensions and what the investor is willing to pay.[61] A signature bonus is payable upon the signing of the contract between the government and the contractor, whereas a production bonus is usually payable at the start of production.[62] Investors are subject to income tax which is charged on the profits made by the petroleum companies from the sales of oil or gas.[63]

53 See article 12(g)(i) of the Model Production Sharing Agreement of 2013.
54 Cameron and Stanley (2017) 160.
55 Cameron and Stanley (2017) 160.
56 Cameron and Stanley (2017) 160.
57 Cameron and Stanley (2017) 160.
58 Cameron and Stanley (2017) 160.
59 Cameron and Stanley (2017) 160.
60 Cameron and Stanley (2017) 157.
61 Cameron and Stanley (2017) 157.
62 Section 115(2) of the Petroleum Act.
63 Deloitte (2016) 'Oil and Gas Taxation in Tanzania' available at https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Energy-and-Resources/gx-er-oil-and-gas-tax-guide-tanzania.pdf (accessed 12 July 2021) 5.

Petroleum activities may also be subject to other indirect taxes such as service levies, custom duties, and value added tax.[64]

These fiscal instruments can be complex to assess and collect if they are based on fiscal rules that create ambiguities, uncertainties, and chances for evasion.[65] A properly designed fiscal regime balances the interests of the government with those of the investors. On the one hand, governments grant exploration and extraction rights to private companies with a view to collecting revenue when the fields are exploited.[66] The revenue collected converts the grounded resource into social and economic capital for national development. On the other hand, private companies invest in a country that has a fair fiscal regime with a view to making profit proportional to the risk taken and the capital invested.[67] Therefore, balancing the interests of all parties is key to ensuring that investments take place and that the government, the investor, and the local community benefit from the resource.[68]

4.2.5. Revenue management and spending

This phase concerns the rules governing the management and spending of the collected resource revenue. The basic question at this stage is whether to consume or save.[69] If the government gives priority to spending, then it will need to decide on how to increase public expenditure.[70] Conversely, if saving is the priority, the government will need to determine an appropriate investment vehicle.[71] The outcome of a chosen approach will depend on the strength of the fiscal framework established to manage such revenue.

One of the tools used to control government spending of resource revenue is the enactment of fiscal rules.[72] These are formal commitments by the government to achieve

64 Deloitte (2016) 10-11.
65 Cameron and Stanley (2017) 149.
66 Cameron and Stanley (2017) 150.
67 Cameron and Stanley (2017) 150.
68 Cameron and Stanley (2017) 150.
69 Cameron and Stanley (2017) 185.
70 Cameron and Stanley (2017) 185.
71 Cameron and Stanley (2017) 185.
72 Cameron and Stanley (2017) 185.

certain objectives based on selected variables such as public expenditure, fiscal balance, and public debt.[73] These rules shape a country's fiscal design and implementation. As such, they are usually fixed in legislation to avoid frequent amendments.[74]

Considering the uncertainties of extractive revenue flows, many resource-rich nations have established resource funds to manage the revenue generated from extractive activities.[75] When properly managed, these funds insure the state against budget deficits, enhance public expenditure accountability, save for future generations, and ensure revenue flows once the resource has depleted.[76] However, mismanagement of resource revenue may result in increased corruption, civil and political unrest, and extreme poverty.[77] Scholars refer to this pitfall as the resource curse.[78] The next section examines these extractive industry governance aspects in the Tanzanian petroleum sector and identifies weaknesses that may compound corruption therein.

4.3. Energy sector governance framework and corruption vulnerabilities

This section utilises the extractive industry value chain to examine the Tanzanian energy sector governance framework, and to identify the underlying avenues for corruption. Policies, laws, and regulations governing every stage of the value chain are analysed critically to establish weaknesses that may compound corruption. The roles, powers, and relationships of the actors involved at every stage of the value chain are discussed to identify vulnerabilities for corruption.

73 Cameron and Stanley (2017) 185.

74 Lledó V et al. (2017) 'Fiscal Rules at a Glance' International Monetary Fund available at https://www.imf.org/external/datamapper/FiscalRules/Fiscal Rules at a Glance-BackgroundPaper.pdf (accessed 27 May 2021) 8.

75 OECD (2016) 92.

76 Cameron and Stanley (2017) 189.

77 Alba (2009) 14.

78 For detailed discourse on the resource curse thesis see Collier & Hoeffler (1998), Collier & Hoeffler (2005), Shaxson (2007) & Ross (2015).

4.3.1. Decision to extract

4.3.1.1. Policy and legal framework

The policy and legal framework relating to the preparatory stages of the petroleum value chain in Tanzania is contained in the National Energy Policy of 2015,[79] the Petroleum Act,[80] the Natural Wealth and Resources (Permanent Sovereignty) Act[81] and the Environmental Management Act.[82] The energy policy defines the resource ownership structure by asserting the nation's right to permanent sovereignty over its natural resources. It states that petroleum resources in the country belong to the people of Tanzania and their exploitation must benefit those people.[83] This policy statement is an important caveat in the management of petroleum resources. It is a notice to all actors to ensure that their actions and operations must consider the vested interests of Tanzanians.

The energy policy acknowledges the importance of establishing a petroleum resource base and the need for proper administration of the pre-licensing phase.[84] It enjoins the government to monitor the pace of resource exploration and extraction, ensure the availability of accurate petroleum information, and exercise efficient control over the acquired data and information.[85] It requires the government to announce petroleum discoveries timeously and to diligently declassify petroleum data deemed fit for public consumption.[86] This is crucial to promoting transparency, accountability, and public participation in the petroleum industry. To mitigate the negative effects of petroleum operations on the environment, the government is required to enforce environmental standards and laws pertaining to the petroleum industry.[87]

79 Ministry of Energy and Minerals (2015) *National Energy Policy* Dar es Salaam: Ministry of Energy and Minerals

80 No 21 of 2015.

81 No 5 of 2017.

82 No 20 of 2004.

83 Ministry of Energy and Minerals (2015) 22.

84 Ministry of Energy and Minerals (2015) 24.

85 Ministry of Energy and Minerals (2015) 25.

86 Ministry of Energy and Minerals (2015) 26 & 27.

87 Ministry of Energy and Minerals (2015) 48.

This encompasses subjecting petroleum projects to environmental and social impact assessments as well as strategic environmental assessments.

In line with energy policy, the Petroleum Act addresses the pre-licensing phase in different provisions. Section 4(1) of the Act reiterates the right to permanent sovereignty over natural resources in relation to the ownership and governance of petroleum resources. This resource ownership regime is established also in the Natural Wealth and Resources (Permanent Sovereignty) Act.[88] The government is required to undertake resource exploration activities on behalf of and in the interest of Tanzanians. Any undertaking that does not fully secure the interests of people of Tanzania is unlawful.[89] Organs and persons exercising executive, legislative, or judicial authority in Tanzania are enjoined to observe and apply the principle of permanent sovereignty over natural resources when dealing with matters relating to these natural resources.[90]

To manage the petroleum industry effectively, the Petroleum Act provides a broad institutional and regulatory framework. This encompasses the Cabinet, the Minister of Energy, the Tanzania Petroleum Development Corporation, the Petroleum Upstream Regulatory Authority, and the Energy and Water Utilities Regulatory Authority.[91] These organs have different roles and powers in developing and regulating the petroleum industry across the value chain. To establish the resource potential, sections 12(2)(a) and 34 of the Petroleum Act empower the upstream regulatory Authority to conduct reconnaissance surveys to acquire and interpret geological, geochemical, and seismic data in frontier areas. Procedures governing reconnaissance activities are provided for in the Petroleum (Reconnaissance and Tendering) Regulations of 2019.[92] The Authority is required to maintain a reference map showing areas of

88 Section 5 of the Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017.
89 Section 6(1) of the Natural Wealth and Resources (Permanent Sovereignty) Act.
90 Section 6(3) of the Natural Wealth and Resources (Permanent Sovereignty) Act.
91 See Part II of the Petroleum Act.
92 Government Notice No 958 published on 6 December 2019.

potential petroleum accumulation.[93] The map should be publicly accessible, and reconnaissance activities must be published in media with a wide circulation in Tanzania.[94]

Before opening an area for petroleum operations, Section 33 of the Petroleum Act requires the Minister of Energy to obtain an evaluation report on various interests. The evaluation report should include an assessment of the potential for petroleum accumulation in the area, and an assessment of the social and environmental impact of petroleum operation in the area. The Minister is required to publish the evaluation report in the Government Gazette and government websites for public comment.[95] Thereafter, the Minister recommends to the Cabinet on whether to open an area for petroleum activities.

Environmental protection standards are enforced under the Environmental Management Act.[96] Extractive projects must be preceded by an environmental impact assessment.[97] The ministry responsible for an extractive project is required to conduct a strategic environmental assessment to ascertain the baseline environmental conditions and status of the natural resource, identify ecologically sensitive and protected areas, and describe the communities surrounding the area of the project.[98]

The gist of the policy and legal framework governing the preparatory phase of the petroleum value chain in Tanzania is to promote the interests of Tanzanians. In particular, the prohibition of undertakings that do not secure those interests expresses the government's resolve to control exploitative practices such as corruption. The resource ownership structure creates a level of vertical accountability whereby the government as trustee of natural resources is accountable to the people who are the beneficiaries. This is in line with article 8(1) of the Constitution of the United Republic of Tanzania of 1977 which provides that sovereignty resides in the people and the government is accountable to the people. Despite its

93 Section 32(1) of the Petroleum Act.
94 Sections 32(7) & 36(2) of the Petroleum Act.
95 Section 33(4-6) of the Petroleum Act.
96 See also section 38(a) of the Petroleum Act.
97 Section 81(2) of the Environmental Management Act 20 of 2004.
98 Section 105 of the Environmental Management Act.

determination to protect the interests of the people, the policy and legal framework in this phase has some weaknesses that may fuel corruption, as discussed in section 4.3.1.3. below. The next section discusses the roles, powers, and relationships of the actors involved in this phase of the petroleum industry value chain.

4.3.1.2. Actors: roles, powers, and relationships

The pre-licensing phase involves several actors, including local communities, regulatory institutions, and petroleum companies. Local communities where extractive resources are found are key actors in the management and sustainability of extractive operations. Extractive activities may have a significant impact on their environment, economy, and social structures.[99] Therefore, they should be adequately consulted and involved in the planning and execution of extractive projects. This is referred to as the social licence to operate.[100] This is an informal social contract between important stakeholders in the extractive sector that requires them to consider the views and interests of the public before any important decision is made.[101] It is the social approval for undertaking extractive projects. Studies show that poor engagement of the local community may lead to unrealistic public expectations, or resistance against investors and the government.[102]

There are several state actors in this phase of the petroleum industry value chain. The Minister of Energy is mandated to develop policies and plans for the petroleum sector, attract foreign investment and technology, and promote transparency.[103] The Minister is required to consult with other relevant ministries where a duty to be discharged touches upon their functions or mandate. In discharging those roles, the Minister is advised primarily by the

99 Di Noi C & Ciroth A (2018) 'Environmental and Social Pressures in Mining: Results from a Sustainability Hotspots Screening' 7(4) *Resources* 80

100 Komnitsas K (2020) 'Social License to Operate in Mining: Present Views and Future Trends' 9 *Resources.*

101 Komnitsas (2020) 2.

102 Cappelen AW et al. (2018) *Understanding the Resource Curse: A Large-Scale Experiment on Corruption in Tanzania*, Dar es Salaam: Chr. Michelsen Institute & REPOA 10 & Frynas JG & Buur L (2020) 'The Presource Curse in Africa: Economic and Political Effects of Anticipating Natural Resource Revenues' 7(4) *Extractive Industries and Society* 1257

103 Section 5(1) of the Petroleum Act.

Petroleum Upstream Regulatory Authority.[104] The Authority is required to conduct or cause reconnaissance surveys and evaluate the prospective productivity of frontier areas.[105] It receives applications for conducting reconnaissance surveys and grants permits thereof.[106]

Reconnaissance refers to preliminary exploration of the target area to establish the existence of mineral potential.[107] Reconnaissance generates geological evidence of probable mineral deposits to warrant further investigation.[108] Section 42(1) of the Petroleum Act provides that data, and information obtained from a reconnaissance survey is property of the Government. Such data and information are managed by the Petroleum Upstream Regulatory Authority, and it may freely use them.[109] The Authority may enter into an agreement with the permit holder to sell the acquired data.[110] The proceeds of such sale are shared between the Authority and the reconnaissance permit holder.[111] Based on the available reconnaissance data, petroleum companies may apply for licences to conduct detailed exploration.[112]

To ensure control over the data and information obtained at this stage and safeguard national interests, section 9(1)(b) of the Petroleum Act enjoins the Tanzania Petroleum Development Corporation to participate in reconnaissance operations. Section 62 of the Petroleum Act requires the Corporation to notify the Minister of Energy and upstream regulatory Authority about petroleum discovery in an exploration area, stating whether it merits appraisal. Practically, it receives petroleum-related geological and geophysical information from the contracted oil companies.[113] Based on the information received, it

104 Section 12(1) of the Petroleum Act.

105 Section 12(2)(a) of the Petroleum Act.

106 Sections 34 to 36 of the Petroleum Act and Part II of the Petroleum (Reconnaissance and Tendering) Regulations 2019.

107 Haldar KS (2018) *Mineral Exploration: Principles and Applications* 2nd Ed Oxford: Elsevier 9.

108 Haldar (2018) 9.

109 Regulation 12(2) of Petroleum (Reconnaissance and Tendering) Regulations 2019.

110 Regulation 8 of the Petroleum (Reconnaissance and Tendering) Regulations.

111 Section 42(3) of the Petroleum Act and Regulation 12(2) of the Petroleum (Reconnaissance and Tendering) Regulations.

112 See Haldar (2018) 9-10 for detailed discussion of exploration stages.

113 Article 9 of the Model Production Sharing Agreement 2013.

determines the quantity, chemical composition, and physical properties of the resource.[114] Parallel to that, the oil companies make calculations to ascertain whether the discovery is of commercial value.[115] All this information is collated by the Tanzania Petroleum Development Corporation and submitted to the upstream regulatory Authority which advises the Minister on the appropriate actions to be taken.[116] Data acquisition operations in this phase must conform to environmental management standards which are monitored and enforced by the National Environmental Management Council.

The relationship of the actors involved in the pre-licensing phase provides a certain degree of monitoring and oversight which is crucial to fighting corruption. Licence and permit holders involved in reconnaissance are supposed to operate in partnership with the Tanzania Petroleum Development Corporation. This ensures close monitoring of the data gathering process. Obtained data is collated and analysed by the Corporation and submitted to the Petroleum Upstream Regulatory Authority for transmission to and advising the Minister of Energy. Based on that advice, the Minister seeks approval of the Cabinet to open an area for petroleum exploration. The evaluation reports submitted to the Minister are supposed to be published in widely accessible outlets, including government websites.[117] This promotes transparency of the process. Despite its potential to promote transparency and oversight, this regulatory structure has weaknesses that may compound corrupt practices in this phase, as discussed below.

4.3.1.3. Loopholes for corruption

4.3.1.3.1. Inadequate capacity to ascertain the country's reserves

Tanzania's capacity to generate accurate, reliable, and quality geological and geophysical information of petroleum resources is deficient. A Performance Audit Report on the Management of Geophysical and Geological Data for Oil and Gas in Tanzania published by the

114 Article 9(a)(iii) of the Model Production Sharing Agreement 2013.
115 Article 9(a)(iv) of the Model Production Sharing Agreement 2013.
116 Sections 62 and 63 of the Petroleum Act.
117 Section 33(4-6) of the Petroleum Act.

Controller and Auditor General in 2016 highlights the country's weaknesses in this aspect.[118] It should be noted though, that at the time of that audit, the Petroleum Upstream Regulatory Authority had not been established. The government's commercial interests and regulatory functions in this industry were handled by the Tanzania Petroleum Development Corporation. Oversight functions were performed by the former Ministry of Energy and Minerals. All production sharing agreements in force by 2021 were secured during that time. The audit report highlighted the following weaknesses in this respect.

First, the Tanzania Petroleum Development Corporation (TPDC) had no specific Plan or Guideline for managing oil and gas geological and geophysical data.[119] On-site personnel attached to contractors had no defined protocol to guide their activities in monitoring the acquisition, analysis, and interpretation of such data.[120] Consequently, it could not properly document the activities and processes related to the generation and management of the data.[121] The Petroleum Upstream Regulatory Authority has established a Data Management Policy that guides its engagement with licence and permit holders regarding oil and gas data.[122] Also, it has established Sampling Guidelines and developed an Oil and Gas Exploration and Production Operation Manual.[123] These documents provide it with a framework for collecting and handling samples, analysis, data processing and submission, and data validation, storage, access, security, and reporting.[124]

Secondly, the Tanzania Petroleum Development Corporation had poor storage facilities for samples, and information was recorded manually in Microsoft Excel sheets.[125] The audit team observed geological samples stored in domestic plastic containers and laid down on the

118 National Audit Office of Tanzania (2016) *Performance Audit on the Management of Geophysical and Geological Data for Oil and Gas in Tanzania* Dar es Salaam: National Audit Office of Tanzania.
119 National Audit Office of Tanzania (2016) 25.
120 National Audit Office of Tanzania (2016) 26.
121 National Audit Office of Tanzania (2016) 26.
122 National Audit Office of Tanzania (2021) 65.
123 National Audit Office of Tanzania (2021) 66.
124 National Audit Office of Tanzania (2021) 65-66.
125 National Audit Office of Tanzania (2016) 27-18

basement floor of the building that hosted the Corporation's Headquarters.[126] Poor handling of geological samples creates the risk of diminishing the quality of the samples, leading to inaccurate results after analysis. Likewise, Excel-based data recording provides wide room for human errors and little accuracy of input data. Following the audit recommendations, the Corporation improved the storage of geological samples by installing a modern storage facility.[127] Also, it has installed software for receiving and verifying geological data.[128] All data is automatically saved and backed up in its servers.[129]

Thirdly, the Corporation had weak mechanisms for assuring the accuracy of the data received from contractors and subsequently transmitted to the Ministry.[130] Data management staff were inadequately trained, and there was no established framework to guide its personnel when reviewing and verifying geological data.[131] The Corporation mainly relied on the contractor's obligation to act in good faith when reporting on the acquisition, processing, and interpretation of geological data.[132] The Ministry of Energy and Minerals as an overseer had no specific policy for ensuring the integrity of the received data. It had few personnel skilled in the oil and gas industry, and ineffectively reviewed upstream petroleum activities.[133] This created the risk of the government being misled by the information transmitted from contractors to the TPDC and subsequently to the ministry. This risk is still alive. In 2021, a Follow-up Report on the Implementation of the Controller and Auditor General's Recommendations for the Five Performance Audit Reports Issued and Tabled before Parliament in April 2016[134] was published (the Follow-Up Report). It shows that the Ministry of Energy still does not have a monitoring and evaluation system to ensure that the petroleum information transmitted to the

126 National Audit Office of Tanzania (2016) 28.
127 National Audit Office of Tanzania (2021) 68.
128 National Audit Office of Tanzania (2021) 67.
129 National Audit Office of Tanzania (2021) 67.
130 National Audit Office of Tanzania (2016) 34-35.
131 National Audit Office of Tanzania (2016) 33 & 37.
132 National Audit Office of Tanzania (2016) 35 & 37.
133 National Audit Office of Tanzania (2016) 39-41.
134 National Audit Office of Tanzania (2021) *Follow-up Report on the Implementation of the Controller and Auditor General's Recommendations for the Five Performance Audit Reports Issued and Tabled Before Parliament in April 2016* Dodoma: National Audit Office of Tanzania.

government is accurate.[135] It relies mainly on the TPDC's verification of the data submitted by the contractors.[136]

While some of the weaknesses identified by the Controller and Auditor General have been addressed, their impact on petroleum governance may still be prevalent. All production sharing agreements in force during 2021 were secured in the environment affected by the information deficiencies described above. This raises doubts about the extent to which public interests are protected in those agreements. This point is illustrated by the Addendum Production Sharing Agreement between the Government of Tanzania and the Norwegian oil company Statoil that was leaked in 2014 (the Statoil addendum). Tanzania's original agreement with Statoil signed in 2007 focused on oil exploration, not gas.[137] There were few prospects that the block held significant natural gas reserves.[138] Following later discoveries of significant natural gas reserves in the country's southern coast, the government signed an addendum production sharing agreement with Statoil in 2012 for exploration of natural gas. When the addendum was leaked, it was found to contain revenue sharing terms that deviated significantly from the Model Production Sharing Agreement Addendum for Natural Gas issued in 2010.[139] Analysts argue that such deviation was prompted by the insufficiency of geological information regarding the resource potential available at the time of contract signing.[140] So, the government conceded an agreement that gave the investor incentives more than commensurate with the risk taken.[141]

Without adequate capacity to generate independent petroleum information and to authenticate the information generated, companies may mislead the government to obtain an undue advantage from the extractive activities. Uncertainties about the resource potential and

135 National Audit Office of Tanzania (2021) 72.
136 National Audit Office of Tanzania (2021) 71.
137 Manley and Lassourd (2014) 4.
138 Manley and Lassourd (2014) 4.
139 See further discussion of this issue at section 4.3.4.3.3. of this thesis.
140 Manley and Lassourd (2014) 4.
141 Manley and Lassourd (2014) 4.

its size affect policy design, and may also lead to incorrect revenue assumptions during contract negotiation with investors.[142]

4.3.1.3.2. Poor regulatory coordination

This aspect concerns the way government institutions are organised for delivering a common approach in managing the energy sector. Poor coordination of government action is one of the main causes of poor resource governance in developing countries.[143] An uncoordinated regulatory environment may lead to a policy impasse, conflicting government priorities, and competition among regulatory bodies.[144] In Tanzania, coordination among the over ten institutions responsible for managing the energy sector is challenging.

Back in 2012, the Minister of Energy and Minerals, Sospeter Muhongo, directed the Tanzania Petroleum Development Corporation to review all petroleum exploration contracts in order to revoke those which were not in the public interest.[145] That directive was never implemented.[146] In September 2014, a few months after the Statoil addendum leaked, the Tanzania Revenue Authority announced that it was going to review all mining and petroleum agreements.[147] A revenue collection agency was preparing to review government contracts. It revoked its statement a few days later, claiming that such an approach could undermine investment and on-going explorations.[148] After this, in November 2014, the parliamentary Public Accounts Committee demanded that the Tanzania Petroleum Development Corporation submit all petroleum contracts to parliament for review. The Corporation did not comply,

142 Cameron and Stanley (2017) 60.i

143 Fjeldstad O & Johnsøn J (2017) 'Governance challenges in Tanzania's natural gas sector: Unregulated lobbyism and uncoordinated policy' in Williams A & Le Billon P (eds) *Corruption, Natural Resources and Development: From Resource Curse to Political Ecology,* Northampton: Edward Elgar Publishing Limited.

144 Fjeldstad & Johnsøn (2017) 52.

145 Obulutsa G (17 September 2012) 'Tanzania orders review of all oil and gas exploration contracts' available at https://www.reuters.com/article/tanzania-exploration-idUSL5E8KH0A520120917 (accessed 7 June 2021).

146 Pedersen RH & Bofin P (2015) *The Politics of Gas Contract Negotiations in Tanzania: A Review* DIIS Working Paper 2015:03, Copenhagen: Danish Institute for International Studies 20.

147 The Economist (9 September 2014) 'Tanzania's troubles over gas revenue: Sharing the spoils' available at https://www.economist.com/baobab/2014/09/09/sharing-the-spoils (accessed 7 June 2021). See also Pedersen & Bofin (2015) 20.

148 The Economist (9 September 2014).

asserting that contract disclosure was restricted by confidentiality clauses in the agreements.[149] This claim was refuted by the oil companies, particularly Statoil, which cast blame on the government for the contract's secrecy.[150] This forced the parliamentary committee to order the detention of two of the Corporation's senior officials.[151] They were released shortly after arrest, pending clarification from the Attorney General to the Police on whether the parliamentary committee was legally empowered to order the arrest of public officials who fail to comply with its directives.[152]

This scenario shows how government institutions are sometimes uncoordinated in their approach to issues. The Minister, the revenue authority, and the parliamentary committee unsuccessfully sought to initiate the review of petroleum agreements. Impliedly, none of them had any legal authority to do so. Without proper coordination, corrupt companies and individuals may easily find ways to circumvent regulation to obtain undue favours from the regulators. Also, state organs may deliver inconsistent approaches or decisions, and so create room for corruption.

4.3.2. Award of contracts and extractive rights

4.3.2.1. Policy and legal framework

The policy framework for contracting in the petroleum industry is set out in the National Energy Policy of 2015. The policy requires the government to ensure that the procurement and development of the energy sector is competitive, transparent, and accountable.[153] It entrusts the government with the role of negotiating production sharing agreements or other contractual arrangements for petroleum operations.[154]

149 Pedersen and Bofin (2015) 20.

150 Pedersen & Bofin (2015) 20.

151 The East African (15 November 2014) 'Secret oil and gas deals generate heat in Dar' available at https://www.theeastafrican.co.ke/tea/news/east-africa/secret-oil-and-gas-deals-generate-heat-in-dar--1329904 (accessed 19 May 2021).

152 The East African (15 November 2014).

153 Ministry of Energy and Minerals (2015) 46.

154 Ministry of Energy and Minerals (2015) 54.

The legal framework governing the award of petroleum contracts and rights is contained in the Law of Contract Act,[155] the Public Procurement Act,[156] and the Petroleum Act. The Law of Contract Act provides the general legal requirements, principles, and remedies for all contracts enforceable in Tanzania. It defines a contract as an agreement enforceable by law.[157] Agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration, with a lawful object, and are not expressly declared to be void.[158] For instance, section 35(3) of the Public Procurement Act declares any contract signed without approval of the procuring entity's tender board to be null and void. Such agreements are not contracts in the framework of the Law of Contract Act and therefore are unenforceable. The requirements of this statute prevail over contractual provisions under other laws.[159] Therefore, to be enforceable, contractual arrangements, usage, and customs of trade under other laws should conform to the essentials of a contract under the Law of Contract Act.

The Awarding of petroleum contracts may be conducted through direct negotiations with investors, or through competitive licensing rounds.[160] Choice of the appropriate method depends on the general market conditions, the productivity prospects of the project, and relevant statutory requirements.[161] In the petroleum industry, competitive licensing rounds are preferred to direct negotiation.[162] This is because they create competition among oil companies and therefore raise the benefits for the host country.[163]

Section 48(1) of the Petroleum Act requires all petroleum agreements to be awarded through transparent and competitive public tendering processes.[164] However, the Cabinet may approve the initiation of direct negotiations with eligible investors where competitive tendering

155 [Cap. 345 R.E. 2019].
156 No 7 of 2011.
157 Section 2(1)(h) of the Law of Contract Act [Cap. 345 R.E. 2019].
158 Section 10 of the Law of Contract Act.
159 Section 1(2) of the Law of Contract Act.
160 Alba (2009) 5 & OECD (2016) 37.
161 Alba (2009) 5.
162 Alba (2009) 5.
163 Alba (2009) 5.
164 See also Regulation 16(1) of the Petroleum (Reconnaissance and Tendering) Regulations 2019.

is unproductive.[165] The direct negotiation method should be undertaken in the public interest upon the advice of the Petroleum Upstream Regulatory Authority to the Minister of Energy.

Tendering procedures and requirements are prescribed in the Petroleum (Reconnaissance and Tendering) Regulations of 2019.[166] Regulation 19(1)(g) requires negotiations to be based on the latest Model Production Sharing Agreement. Governments adopt model agreements to guide negotiations with investors, and to formulate actual contracts.[167] A model agreement complements the country's extractive industry laws by setting standard terms that guide the negotiators on the national interests to be protected in any production sharing agreement.[168] It is a reference point that helps governments to standardise their relationships with various investors, to leverage negotiations, and enhance compliance monitoring and regulation.[169] Nevertheless, governments have the legal discretion to deviate from the model agreement when negotiating an individual contract.[170]

Since the start of intensive explorations of petroleum resources in the early 2000s, the government of Tanzania has issued four Model Production Sharing Agreements.[171] The first was issued in 2004, focusing on oil exploration and production. The second was released in 2008, covering onshore oil and gas activities. The third focused on offshore natural gas activities and was published in 2010. The leaked Statoil addendum agreement was negotiated based on this. The Model Production Sharing Agreement currently in force was issued in 2013, focusing on both onshore and offshore oil and gas activities.

The existing policy and legal frameworks establish the basic procedures and requirements for the awarding of contracts and rights in the petroleum industry. Specifically, the requirement for agreements to be awarded primarily through competitive and transparent

165 Section 48(3) of the Petroleum Act.
166 Government Notice No 958 published on 6 December 2019.
167 Cameron & Stanley (2017) 74.
168 Manley and Lassourd (2014) 5.
169 Manley and Lassourd (2014) 5.
170 Manley and Lassourd (2014) 5.
171 Manley and Lassourd (2014) 5.

tendering minimises opportunities for corruption in this phase. The creation of the model production sharing agreement regime as the basis of negotiation is a solid step towards controlling discretion in the negotiation process. However, despite these crucial legal provisions, there are weaknesses that facilitate corruption at this phase of the petroleum industry value chain, as discussed at section 4.3.2.3 below.

4.3.2.2. Actors: roles, powers, and relationships

The awarding of the contracts and extractive rights phase involves several actors who have different powers and roles in the bidding, contracting, and licensing of petroleum operations. The Minister of Energy is responsible for granting, renewing, suspending, and cancelling petroleum exploration and development licences.[172] He or she is responsible for entering into petroleum agreements on behalf of the government.[173] The decisions of the Minister are subject to the guidance and directives of the Cabinet.[174] The Minister is prohibited from entering into a petroleum agreement without the prior approval of the Cabinet.[175] Section 47(4) of the Petroleum Act requires the Petroleum Upstream Regulatory Authority (PURA) to develop and submit to the Minister a model production sharing agreement for approval by the Cabinet. This indicates that the Cabinet is the ultimate decision-maker over petroleum agreements.

Petroleum agreements are essentially awarded through open, transparent, and competitive tendering. Therefore, subject to consent of the Minister, PURA is empowered to conduct bidding rounds for the award of petroleum agreements.[176] The Minister announces the areas open for bidding while the Authority handles the prequalification and request for proposal stages.[177] The upstream regulatory Authority invites bidders to submit applications in

172 Section 5(1)(b) of the Petroleum Act.
173 Section 5(1)(c) of the Petroleum Act.
174 Section 5(3)(a) of the Petroleum Act.
175 Sections 47(2) & 68(3) of the Petroleum Act.
176 Regulation 18(1) of the Petroleum (Reconnaissance and Tendering) Regulations.
177 Section 218(2) of the Petroleum Act and Regulations 21-29 of the Petroleum (Reconnaissance and Tendering) Regulations.

respect of the available blocks.[178] Thereafter, the Minister, in consultation with the Authority, appoints a bid evaluation committee for each bidding round.[179] The evaluation committee consists of seven to ten members, including at least five members representing the Ministry of Energy, Ministry of finance, PURA, the Tanzania Petroleum Development Corporation and the Tanzania Extractive Industries Transparency Initiative.[180] In addition, the Minister of Energy may appoint any other person to membership of the evaluation committee.[181] Members of the evaluation committee are prohibited from having any interests in any company participating in the bidding round.[182] This provision is intended to prevent conflict of interest among members of the committee.

Upon completing the evaluation, the committee is required to submit to the Petroleum Upstream Regulatory Authority a bid assessment report, classifying the bids and providing recommendations.[183] Subsequently, the Authority transmits that report to the Minister of Energy, appending its observations and recommendations on the bid assessment and bid award.[184] Based on these recommendations, the Minister initiates negotiations with successful bidders to harmonise their offers with government expectations.[185] This is done by appointing a Government Negotiation Team for each petroleum agreement.[186]

The Government Negotiation Team is the primary negotiator of petroleum agreements on behalf of the government. The Minister of Energy is empowered to issue a code of conduct or specific guidelines for the discharge of the functions of the team.[187] The primary instrument for negotiation is the Model Production Sharing Agreement. However, the government may

178 Regulation 29(1) of the Petroleum (Reconnaissance and Tendering) Regulations.
179 Regulation 30 of the Petroleum (Reconnaissance and Tendering) Regulations.
180 Regulation 31(2)(a-e) of the Petroleum (Reconnaissance and Tendering) Regulations.
181 Regulation 31(2)(f) of the Petroleum (Reconnaissance and Tendering) Regulations.
182 Regulation 31(3) of the Petroleum (Reconnaissance and Tendering) Regulations.
183 Regulation 32(1) of the Petroleum (Reconnaissance and Tendering) Regulations.
184 Regulation 32(3) of the Petroleum (Reconnaissance and Tendering) Regulations.
185 Regulation 33 of the Petroleum (Reconnaissance and Tendering) Regulations.
186 Regulation 34(1) of the Petroleum (Reconnaissance and Tendering) Regulations.
187 Regulation 35(3) of the Petroleum (Reconnaissance and Tendering) Regulations.

also issue other directives in this regard.[188] The negotiation team consists of not more than eleven members.[189] These are two representatives of the Ministry of Energy, one representative of the Attorney General, one representative of the Ministry of Finance, and one representative of the Tanzania Revenue Authority. Others are representatives of the Tanzania Petroleum Development Corporation and any other member proposed by the Petroleum Upstream Regulatory Authority.[190] The number of representatives of the Tanzania Petroleum Development Corporation in the Government Negotiation Team is uncertain. Considering that the sum of the expressly identified representatives is six, the Corporation may have five representatives to make a total of eleven members if the Minister decides to form a maximum-constituted team.

Upon successful negotiations, the Tanzania Petroleum Development Corporation which is the national oil company applies to the Minister of Energy for a petroleum exploration licence.[191] The Corporation has an exclusive right over all petroleum operations.[192] The licence for petroleum operations is granted to the Corporation alone and is not transferable.[193] Any local or foreign company that intends to undertake petroleum operations may do so only through the Corporation.[194] By granting the licence, the government enters into an agreement with the Corporation and the international oil company, which in this case is considered as a contractor.[195] Section 44(5) of the Petroleum Act requires the national oil company to maintain a participating interest of not less than 25 per cent in every petroleum licence granted. This ensures that the state benefits directly from the profits of the petroleum project and guarantees close monitoring of operations.

188 Regulation 35(2) of the Petroleum (Reconnaissance and Tendering) Regulations.
189 Regulation 34 of the Petroleum (Reconnaissance and Tendering) Regulations.
190 Regulation 34(3) of the Petroleum (Reconnaissance and Tendering) Regulations.
191 Section 51(1) of the Petroleum Act & Regulation 39(1) of the Petroleum (Reconnaissance and Tendering) Regulations.
192 Section 44 of the Petroleum Act.
193 Section 44(1 & 3) of the Petroleum Act.
194 Section 44(4) of the Petroleum Act.
195 Section 47(1) of the Petroleum Act.

The roles, powers, and relationships of the actors involved in the awarding of the contracts provide a certain level of oversight which is crucial to preventing corrupt practices. The Public Procurement Regulatory Authority is exclusively mandated to oversee the bidding process and enforce public procurement laws and standards, including blacklisting tenderers who engage in corruption.[196] Consultations are required between the Minister of Energy and the Petroleum Upstream Regulatory Authority during decision-making and appointments, thereby limiting discretion. All key decisions are subject to the approval of the Cabinet. This regime has the potential to reduce chances of corruption if implemented effectively. However, despite such potential, there are weaknesses that create room for corruption in this phase as discussed below.

4.3.2.3. Loopholes for corruption

4.3.2.3.1. Opacity and discretion in the bidding processes

This deficiency arises from the procedures governing the direct award of petroleum agreements, and the appointment and composition of the bid evaluation committee. The direct award method applies in situations where the competitive tendering method is unsuccessful, or it is in the public interest to do so.[197] The corruption risk lies in what amounts to a public interest sufficient to trigger the direct award of a contract. The Petroleum Act does not set parameters through which the public interest claim can be justified. This brings about the risk of discretion. So far, Tanzania has awarded two production sharing agreements through this method. The first was signed with Ophir Energy PLC in 2006 and the second with Hydrotanz Limited in 2008. There has been controversy over the ethics of their award as illustrated below.

Hydrotanz Limited is linked to the controversial Pan African Power Solutions Ltd.[198] Tanzanian business tycoon Habinder Singh Sethi was a Director of Hydrotanz Ltd and the Managing Director of Pan African Power Solutions at the time of signing the production sharing

196 Regulations 19(3) & 40 of the Petroleum (Reconnaissance and Tendering) Regulations.

197 Section 48(3) of the Petroleum Act.

198 Pedersen RH & Bofin P (2015) *The Politics of Gas Contract Negotiations in Tanzania: A Review* DIIS Working Paper 2015:03, Copenhagen: Danish Institute for International Studies 24.

agreement.[199] Pan African Power Solutions Ltd is responsible for the controversial purchase of Independent Power Tanzania Ltd and the syphoning of over US$125 million from the Bank of Tanzania's Tegeta Escrow Account in 2014 (the Escrow scandal).[200] Sethi was arrested in 2017 and charged on counts of economic crimes, including forgery and money laundering.[201] He was freed in June 2021 after conceding a TSh26 billion plea bargaining agreement.[202]

Hydrotanz Ltd was incorporated in the same year that it was awarded the petroleum contract in Tanzania, apparently without any previous experience in the industry.[203] Reportedly, the company's interest was more focused on selling the licence than developing the field.[204] Considering the high level of secrecy of the negotiations and contracts in the government, it is unclear what public interest was being served by awarding the contract to this firm through the direct award method.

Similarly, the honesty of the agreement with Ophir Energy PLC is doubted. In late 2012, a Member of Parliament, Zitto Kabwe, accused Ophir of acquiring its production sharing agreement corruptly.[205] Kabwe alleged that Ophir used a 'fixer', Mr. Moto Matiko Mabanga, to bribe some local officials to obtain the exploration licence.[206] In 2013, Mabanga successfully sued Kabwe for defamation.[207] However, facts from the United Kingdom High Court of Justice's judgment in *Moto Mabanga v Ophir Energy Plc and Ophir Services Pty Ltd*[208] indicate that

199 Pedersen & Bofin (2015) 21.

200 Bunge la Tanzania (2014) 39.

201 Gerald C (4 July 2017) 'IPTL kingpins hit by fresh money laundering charges' available at https://www.ippmedia.com/en/news/iptl-kingpins-hit-fresh-money-laundering-charges (accessed 27 April 2021)

202 The Guardian (17 June 2021) 'IPTL's Sethi freed on 26bn/-liability accord' available at https://www.ippmedia.com/en/news/iptl%E2%80%99s-sethi-freed-26bn-liability-accord (accessed 21 March 2022).

203 Pedersen & Bofin (2017) 22.

204 Pedersen & Bofin (2017) 22.

205 The Citizen (9 December 2013) 'The billionaire who 'fixed' Zitto Kabwe' available at https://www.thecitizen.co.tz/tanzania/news/the-billionaire-who-fixed-zitto-kabwe-2501568 (accessed 5 July 2021)

206 Friedrich-Ebert-Stiftung (2015) *Tanzania Oil and Gas Almanac* Dar es Salaam: Friedrich-Ebert-Stiftung 126.

207 The Citizen (9 December 2013).

208 [2012] EWHC 1589 (QB).

Mabanga assisted Ophir to obtain the petroleum contracts for blocks 1, 3 and 4 in Tanzania on the understanding that he would be entitled to a 15 per cent share of the net profits when production began from those blocks.[209] The assistance rendered by Mabanga in obtaining the award is unknown. However, considering the lucrative benefits granted to Mabanga by Ophir, and that the contracts were obtained through a non-competitive procedure, Kabwe's bribery claims cannot be totally ignored.

The above facts regarding the procurement of Hydrotanz Ltd and Ophir contracts suggest that the direct awarding method is highly vulnerable to corruption and may be disadvantageous to the country. The method is opaque and non-competitive so enabling government officials to exercise discretion reflecting personal interests. Opacity and discretion in the awarding process undermine the accountability necessary to control corruption.

Another deficiency in this regard concerns the composition of the bid evaluation committee. The number of members of the committee is seven to ten, including at least one member from the five institutions listed under regulation 31(2)(a-e) of the Petroleum (Reconnaissance and Tendering) Regulations 2019. This makes a total of five members if the Minister maintains the one member minimum for every listed institution. Regulation 31(2)(f) empowers the Minister to appoint any other person he deems necessary to be a member of the evaluation committee. Logically, if the Minister decides to form an evaluation committee of ten members and maintains the statutory minimum of representatives from the listed entities, then the Minister will have appointed five other persons of his choice to the evaluation committee. This is half of the ten-members committee, if formed. The law does not provide any criteria or safeguards for the appointment of such other persons. This gives the Minister significant powers which may be used to influence the evaluation outcome. A corrupt Minister may abuse this power to ensure that the bidders of his choice sail through the evaluation stage. This risk is evident, considering that post-procurement evaluation mechanisms are ineffective.[210]

---

209 See also ruling of the High Court of Tanzania in *Moto Matiko Mabanga v Ophir Energy PLC & Six Others* Commercial Case No 43 of 2019.

210 See further discussion at section 4.3.2.3.4. of this thesis.

4.3.2.3.2. Insufficient capacity to evaluate bids and manage contract negotiations

To secure equitable petroleum agreements, the host country should have sufficient institutional capacity to evaluate bids and negotiate contracts.[211] Tanzania's petroleum contracting regime is weak in this aspect. In 2016, the Controller and Auditor General published a Performance Audit on the Management of the Process of Awarding Exploration and Development Contracts and Licences for Natural Gas.[212] It found out that the Tanzania Petroleum Development Corporation, which was the upstream regulator at that time, was insufficiently resourced to manage procurement processes effectively.[213] Its procurement management unit had no staff with the expertise to interpret and understand petroleum technical specifications required from contractors.[214] It should be noted that all production sharing agreements in force in Tanzania by 2021 were secured during the Corporation's regime as the petroleum upstream regulator. Therefore, bids were evaluated and agreements entered into under such institutional deficiencies.

Currently, the Petroleum Upstream Regulatory Authority (PURA) coordinates and regulates the evaluation process. However, it has insufficient resources to discharge this role effectively. The Controller and Auditor General's follow-up report of 2021 indicates that the Contracting and Licencing Unit at PURA had only one staff member who was a lawyer.[215] To discharge its functions, the Unit depends on support from the Procurement Management Unit. Although bid evaluation is done by the committee appointed by the Minister, presence of a single staff member in the regulator's contracting and licensing unit raises doubts about its capacity to coordinate and oversee the process efficiently. In such an environment, corruption may engulf the bidding process due to weak oversight and poor regulatory structure.

---

211 Extractiveshub 'Petroleum Licensing and Contracting' available at https://extractiveshub.org/topic/view/ID/33 (accessed 1 July 2021).

212 National Audit Office of Tanzania (2016b) *Performance Audit on the Management of Process of Awarding Exploration and Development Contracts and Licences for Natural Gas* Dar es Salaam: National Audit Office of Tanzania.

213 National Audit Office of Tanzania (2016b) 22-30.

214 National Audit Office of Tanzania (2016b) 28.

215 National Audit Office of Tanzania (2021) 19.

Another deficiency concerns the composition of the Government Negotiation Team. First, the absence of a specified number of representatives for the Tanzania Petroleum Development Corporation may be abused to provide it with a greater influence in the team. Where the Corporation is headed by a corrupt person, as was the case for the Angolan Sonangol during Isabel dos Santos' tenure, such influence is an avenue for kleptocracy in the awarding of petroleum contracts.[216] Secondly, the absence of an express mention of PURA's representation in the negotiation team undermines its regulatory roles and its position as principal advisor to the Minister. The Authority has an option to nominate its representative through the blank position under regulation 34(3)(f) of the Petroleum (Reconnaissance and Tendering) Regulations. However, this is an unsustainable approach, as it depends on the discretion of the Authority and the Minister. It is submitted that discretion is susceptible to abuse, and may be used to further corruption.

The Minister is supposed to appoint a negotiation team for each petroleum agreement.[217] This implies that petroleum agreements are negotiated by separate teams. This presents the likelihood of inconsistency in the agreed terms between them. Although the latest Model Production Sharing Agreement is based on negotiations, the Regulations simultaneously subject such negotiations to other directives from the government.[218] Supposedly, the departure of the Statoil addendum agreement from the Model Production Sharing Agreement of 2010 resulted from such directives. Requiring separate negotiation teams for each agreement may lead to differences in the directives given by the government, the negotiation expertise and experience of the negotiators, the negotiation approach, and the final outcome. This risk becomes more apparent considering that the negotiation proceedings, and the resulting contracts, are classified information. Legal provisions which create inconsistencies in the negotiation approaches and their outcomes are openings for corruption. Similarly, the

216 International Consortium of Investigative Journalists (2020) 'Luanda Leaks' available at https://www.icij.org/investigations/luanda-leaks/ (accessed 21 June 2021) & Reed E (2020) 'Angola tallies corruption cost, eyes Sonangol listing' available at https://www.energyvoice.com/oilandgas/africa/ep-africa/271510/angola-tallies-corruption-cost-eyes-sonangol-listing/ (accessed 21 June 2021).

217 Regulation 34(1) of the Petroleum (Reconnaissance and Tendering) Regulations.

218 Regulation 35(2) of the Petroleum (Reconnaissance and Tendering) Regulations.

requirement to observe other government directives subject the negotiators to political pressure which may lead to corruption.

4.3.2.3.3. Secrecy of contracts

The Tanzanian government regards its contracts with its investors as secret.[219] Even when the parliamentary Public Accounts Committee ordered the Tanzania Petroleum Development Corporation to submit oil and gas contracts for review, it was denied access.[220] Such secrecy violates article 18(d) of the Constitution of the United Republic of Tanzania 1977 which establishes the right of every Tanzanian to be informed at all times of important issues. It is also in conflict with article 63(2) of the Constitution, which empowers the Parliament to oversee and advise the government on behalf of the people of Tanzania.

Interestingly, section 4 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act[221] empowers the Parliament to review any arrangements and contracts entered into by the government concerning natural wealth and resources. Where Parliament determines that any arrangement or contract contains an unconscionable term, it may pass a resolution for re-negotiation.[222] Regulation 2 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations 2020[223] defines an unconscionable term as

> [a]ny term in the arrangement or agreement on natural wealth and resources which is contrary to good conscience and the enforceability of which jeopardises or is likely to jeopardise the interests of the People of the United Republic.

Despite its review powers, the Parliament still has no opportunity to access the resource contracts. The procedure for review is as follows.[224] The Minister of Constitutional and Legal

---

219 Friedrich-Ebert-Stiftung (2015) 189.

220 See further discussion of this aspect at section 4.3.1.3.2 of this thesis.

221 No 6 of 2017.

222 Regulations 3(2) & 9(1) of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations 2020.

223 Government Notice No 57 published on 31 January 2020.

224 Regulation 6 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations.

Affairs, as coordinator and manager of all government contracts, directs the ministry responsible for concluding a specific contract to prepare a report.[225] The content of that report is not specified in the Regulations. The Minister reviews the submitted report to establish whether the contract complies with the Constitution, and the Natural Wealth and Resources (Permanent Sovereignty) Act. Thereafter, the Minister submits to the Cabinet a report regarding that contract. The Cabinet deliberates and prepares a resolution on the report. Upon the Cabinet's directives, the Minister presents the Cabinet resolution to Parliament. At this point the parliamentary powers of reviewing government contracts come into play. Should Parliament find any term to be unconscionable, it may pass a resolution advising the government to renegotiate the contract.[226]

Throughout the above review process, Parliament does not access the particular contract being reviewed. Its review centres on the resolution of the Cabinet. There is no legal provision requiring the Minister to submit the actual contract to Parliament. As pointed out earlier, entering into any petroleum agreement requires prior approval of the Cabinet.[227] Therefore, the established review procedure engages the Cabinet to review its own decision and forward the outcome of its review to Parliament for deliberation. Since Parliament does not access the actual contract, its review is logically limited to the views of the Cabinet. It is astonishing that the Cabinet that approves contracts before signing is the same organ requiring Parliament to review these contracts, while denying it access to the actual contract. In this framework, parliamentary oversight on government contracts is blind.

Contract secrecy is a hiding place for corruption in the management of natural resources. It denies the public the opportunity to scrutinise the terms of the contracts, establish their benefits to the people, and hold the responsible officials accountable. For instance, if the Statoil addendum agreement had not leaked, the public would not have known that its profit

---

225 See regulations 4(2) & 8(1) of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations.

226 Section 5 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act 6 of 2017.

227 Section 47(2) of the Petroleum Act.

split terms deviated seriously from the Model Production Sharing Agreement of 2010. Such secrecy enables companies and corrupt government officials to insert unconscionable terms in extractive contracts without fear of being noticed and held accountable. It also undermines the monitoring of extractive projects in order to assess their compliance with national legal requirements.

4.3.2.3.4. Inadequate oversight of the bidding and licensing process

Independent oversight, the monitoring of the licensing process and strong parliamentary scrutiny is paramount to reducing corruption vulnerability in the extractive sector.[228] The Controller and Auditor General's audit of 2016 found that there were no regular ex-post reviews and assessments of the licensing process.[229] It was noted that no evaluation of the process of awarding exploration and development contracts had been conducted by any regulatory or oversight organ during the four licensing rounds held previously.[230] This means that no evaluation of the licensing process had been conducted in the period from 2000 to 2015, during which 26 production sharing agreements had been signed with 18 international oil companies.[231]

The Ministry of Energy and Minerals, which was responsible for the legal oversight of the functions of the Tanzania Petroleum Development Corporation disassociated itself from this deficit. It claimed that the Corporation was supposed to review and evaluate the awarding process and report to the Ministry.[232] Apparently, it did not have mechanisms for overseeing and evaluating the licensing process, apart from waiting for reports from the Corporation. Even so, the Ministry did not ensure that the Corporation produced the evaluation reports. This *lacuna* was attributed to the absence of monitoring and evaluation departments at both institutions, and poor role assignment between the two.[233] Unfortunately, the Controller and

228 OECD (2016) 41.
229 National Audit Office of Tanzania (2016) 41.
230 National Audit Office of Tanzania (2016) 42.
231 Friedrich-Ebert-Stiftung (2015) 14.
232 National Audit Office of Tanzania (2016) 42.
233 National Audit Office of Tanzania (2016) 43.

Auditor General's follow-up report of 2021 shows that the Petroleum Upstream Regulatory Authority and the Ministry of Energy still have no explicit strategy for ex-post assessment of the licensing process.[234]

The licensing process requires strong evaluation and oversight mechanisms, otherwise deficiencies in previous licensing rounds may not be identified and addressed appropriately. Such deficiencies may then recur in future licensing rounds. As pointed out earlier, in Tanzania negotiation proceedings and contracts are extremely confidential. The Parliament, which is the public representative, has only superficial review powers over the awarded contracts. The ability of the public to hold accountable those involved in the licensing process is limited. Without effective evaluation and oversight of the licensing process, corrupt practices may not be identified and addressed.

The Public Procurement Regulatory Authority (PPRA) is mandated to oversee the oil and gas tendering procedure.[235] Section 9(1)(g–h) of the Public Procurement Act empowers it to monitor the award and implementation of public contracts, and to periodically inspect records and proceedings of procuring entities to ensure their full compliance with the law. However, it is unclear in practice how these functions are implemented in the regulation of the petroleum sector.[236] As noted in the Controller and Auditor General's audit report of 2016, the PPRA's regulations and procedures do not address key licensing and contracting aspects of the petroleum sector.[237] Its procurement regulatory powers may not contribute effectively to addressing corruption risks and misconduct in the petroleum licensing and contracting processes.

234 National Audit Office of Tanzania (2021) 15 & 23.

235 Regulation 40 of the Petroleum (Reconnaissance and Tendering) Regulations.

236 Ovadia JS (2019) 'Local content in Tanzania's gas and minerals sectors: Who regulates?' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA 84.

237 National Audit Office of Tanzania (2016) 23.

Similarly, the Controller and Auditor General (CAG) is empowered to conduct regularity, performance, and special audits of public institutions.[238] He or she may evaluate and examine the procurement procedures of such institutions, and their compliance with applicable laws, regulations, and policies. For instance, in 2016 seven performance audits covering various aspects in the management of the oil and gas industry were published.[239] However, the CAG is not a primary watchdog of the petroleum licensing process. Its powers may be exercised long after the licensing process has been undertaken. For instance, since the beginning of offshore licensing in 2001, the first audit on the process of awarding contracts and licences was conducted in 2016. In addition, enforcement of the recommendations of the CAG depends on the attitude and determination of the Parliament. It is submitted that Parliament has not been strong enough in this regard, and many of these recommendations have not been implemented fully.[240]

The lack of strong oversight mechanisms over the bidding and licensing process may be abused by those involved in corruption. The existing oversight institutions have limited powers or mechanisms for responding timeously and effectively to corrupt practices during the contracting process. Without timely and strong oversight, corrupt officials may enable corrupt contracts, such as the Richmond one.[241]

4.3.2.3.5. Opacity in the reallocation of contracts to third parties

This section illustrates potential for corruption due to the lack of transparency in the reallocation of extractive contracts to third parties. Three cases where companies colluded or attempted to collude to bypass the established transfer procedures, are discussed. The first two cases deal with the transfer of Richmond's interests in the agreement to Dowans Holdings SA; and the transfer of Independent Power Tanzania Ltd from Mechmar Corporation to Pan African

238 Sections 26-29 of the Public Audit Act.

239 See National Audit Office of Tanzania (2017).

240 See section 3.4.2. of this thesis for further discussion of this aspect.

241 See section 3.3.4. of this thesis for detailed discussion.

Power Solutions Ltd.[242] The third case concerns the attempted transfer of shares between Swala Oil & Gas (Tanzania) PLC and Orca Exploration Group Inc.

In the Richmond case,[243] the company failed to deliver the emergency power generation plant. A Tanzanian business tycoon and Member of Parliament, Rostam Aziz, obtained the details of the agreement and of the non-performance by Richmond. Rostam Aziz had a power of attorney from Dowans Holdings SA, a company incorporated in Costa Rica, to manage its affairs outside Costa Rica. Having access to the essential documents of the project, Rostam Aziz arranged for a meeting between Dowans and Richmond in Houston, Texas. The outcome of that meeting was a secret assignment by Richmond of its rights and obligations under the contract to Dowans. This was done without the knowledge of the Tanzania Electric Supply Company Ltd (TANESCO) which was the other party to the contract, and contrary to section 15.12 of the agreement which required its prior consent.

Thereafter, Richmond and Dowans jointly sought TANESCO's retrospective consent to the assignment. But before the letter seeking that consent was served, it was informed by the Ministry of Energy and Minerals that Richmond had proposed to assign the contract to a third party. Reluctant to consent to the assignment, the Board of TANESCO resolved to inform Richmond of its intention to terminate the agreement. Surprisingly, the Ministry directed TANESCO to agree to the assignment of the contract, and not to bother about contacting Richmond. The company abided by the orders from the Ministry. The secret assignment of the contract, and the subsequent favour and protection provided by the Ministry to Richmond and Dowans, suggest the presence of corrupt dealings in the process. Petroleum companies such as the Hydrotanz Ltd, which reportedly had no experience in the sector but was interested in selling the licence, present risks similar to those of Richmond.

242 See section 1.2. of this thesis for detailed facts of the two scandals.

243 Facts are collated from *Dowans Holdings SA and Dowans Tanzania Limited v Tanzania Electric Supply Company Limited* ICC International Court of Arbitration Case No. 15947/VRO.

In the Independent Power Tanzania Ltd (IPTL) case,[244] in 2007 the Tanzania Electric Supply Company Ltd filed for international arbitration claiming that IPTL was overcharging it for power generation. In 2010, before judgment was delivered, Mechmar Corporation reportedly sold its 70 per cent share of the IPTL to Piper Link Investment, incorporated in the British Virgin Islands, for US$6 million.[245] A year later, Piper Link assigned those shares to Pan African Power Solutions Ltd for US$20 million.[246] It was that assignment that enabled Habinder Singh Sethi, as Managing Director of the assignee company, to demand the payment of over US$125 million from the Tegeta Escrow Account maintained at the Bank of Tanzania.

In the two above-mentioned cases contractors assigned their interests to third parties without the knowledge of the Tanzania Electric Supply Company Ltd. The Ministry of Energy and Minerals endorsed the assignments without ascertaining beyond any doubt their legality and propriety. Investigations by the parliamentary Public Accounts Committee into the Escrow scandal found that Piper Link was a dummy company not recognised in the British Virgin Islands or anywhere else.[247] In June 2021, the Court of Appeal of Tanzania in *Mechmar Corporation (Malysia) Berhad v VIP Engineering & Marketing Limited and Others*[248] ruled that the transfer of the affairs of the Independent Power Tanzania Ltd to the total ownership of Pan African Power Solutions Ltd was illegal. In that sense, the Escrow monies were paid by the government to an illegal owner of the IPTL. These cases suggest the following. First, the government has limited ability to verify the authenticity of the companies it is contracting or transacting with. Secondly, there are corrupt officials in the government who approve illicit transfers of contractual rights for their private gains. Without transparency and strong oversight, such practices jeopardise the prospects of national benefits for the oil and gas sector.

---

244 Facts are collated from Bunge la Tanzania (2014) *Taarifa ya Kamati Kufuatia Matokeo ya Ukaguzi Maalum wa Mdhibiti na Mkaguzi Mkuu wa Hesabu za Serikali Katika Akaunti ya Tegeta Escrow Iliyokuwa Katika Benki Kuu ya Tanzania*, Dodoma: Bunge la Tanzania, and National Audit Office of Tanzania (2014) *Taarifa Ya Ukaguzi Maalum Kuhusiana Na Miamala Iliyofanyika Katika Akaunti Ya 'Escrow' Ya Tegeta, Pamoja Na Umiliki Wa Kampuni Ya IPTL*, Dar es Salaam: National Audit Office of Tanzania.

245 National Audit Office of Tanzania (2014) 27.

246 National Audit Office of Tanzania (2014) 28.

247 Bunge la Tanzania (2014) 33.

248 Civil Application No 190 of 2013.

A later case regarding the transfer of interests in a production sharing agreement involved Swala Oil & Gas (Tanzania) PLC (Swala) and Orca Exploration Group Inc (Orca). On 2 January 2018, Swala announced that it had reached an agreement with Orca whereby Swala's subsidiary Swala (PAEM) Limited would acquire up to 40 per cent of Orca's wholly owned subsidiary Pan African Energy Tanzania.[249] The Tanzania Petroleum Development Corporation (TPDC) reacted to this announcement by denouncing the agreement on the ground that it was not fully informed about that transaction.[250] It stated further that the government had decided to halt that transaction, pending verification.[251] The government's decision was prompted by the fact that, on 19 December 2017, Orca wrote to the TPDC denying plans to sell any of its shares in Pan African Energy Tanzania.[252] On 22 February 2018, Swala responded to the TPDC's claims stating that the transaction had been effected on 29 December 2017, and that it had fruitlessly requested a meeting with the two to clarify the matter.[253]

Later in April 2019, Swala announced that it had reached an agreement with Orca to terminate the investment agreement, but continued to hold 7.933 per cent of the issued and outstanding shares of Pan African Energy Tanzania.[254] The shares were acquired by Swala on 16 January 2018, three days before the government halted the process on 19 January 2018. In its press release announcing the termination, Swala stated that the investment had terminated due to Swala's failure to acquire additional shares.[255] It appears that the issues raised by the

249 Swala (2 January 2018) 'Swala to invest up to $130 million in PAE PanAfrican Energy Corporation' available at https://swalaoilandgas.com/documents/SwalaToInvest$130millionInPanafricanEnergy.pdf (accessed 5 July 2021).

250 TPDC (2018) 'Taarifa kwa Umma' available at https://www.tpdc.co.tz/wp-content/uploads/2018/02/Taarifa-kwa-umma-Swala-na-PAET.fnl_.pdf (accessed 5 July 2021).

251 TPDC (2018).

252 TPDC (2018).

253 Swala (22 February 2018) 'Swala Response to TPDC's Recent Press Statements' available at https://swalaoilandgas.com/documents/Pre-emptive-Swala-respons-to-(TPDC)-English.pdf (accessed 5 July 2021)

254 Swala (1 April 2019) 'Update on the Transaction with Orca Exploration Group Inc.' available at https://swalaoilandgas.com/documents/Termination-of-Investment-Agreement.pdf (accessed 5 July 2021).

255 Swala (1 April 2019).

Tanzania Petroleum Development Corporation over that transfer were not resolved, leading to termination of the assignment.

Swala's case highlights the need for effective oversight and regulation of the process of reallocating extractive rights to third parties. Similar to the clandestine transfers in the Richmond and the Independent Power Tanzania Ltd cases, Swala and Orca had initiated share transfer negotiations without involving the TPDC which legally is a necessary party to all petroleum agreements in Tanzania. Likewise, they had not engaged the Petroleum Upstream Regulatory Authority which is mandated to establish and maintain a registry of petroleum agreements, licences, permit authorisations, and any changes in interest relating to such instruments.[256] In the absence of strong oversight, oil companies may bypass regulation to assign their extractive rights to third parties. This may be an opportunity for corruption as was seen in the Richmond and Independent Power Tanzania Ltd cases.

4.3.3. Extraction operations and regulation

4.3.3.1. Policy and legal framework

Petroleum extraction operations are governed by the National Energy Policy of 2015, the Petroleum Act and its relevant secondary legislation, and the Model Production Sharing Agreement. The policy requires the government to utilise the best available technologies and industry practices in undertaking petroleum operations.[257] It enjoins the government to develop the necessary midstream and downstream petroleum infrastructure.[258] This encompasses the installation of processing and refinery facilities for value addition, enhancing state participation in developing such infrastructure, and securing domestic and foreign markets. It requires the government to promote local content and participation in petroleum activities.[259] This includes promoting partnership between local and multinational companies,

256 Section 84(1) of the Petroleum Act.
257 Ministry of Energy and Minerals (2015) 25 & 27.
258 Ministry of Energy and Minerals (2015) 28.
259 Ministry of Energy and Minerals (2015) 31-39.

encouraging petroleum companies to procure locally available goods and services, and ensuring that nationals are trained and employed in petroleum projects.

In line with the energy policy, the Petroleum Act establishes several controls on the conduct of petroleum operations. Section 100 of the Act requires the licence holder and contractors to undertake operations in a proper and safe manner according to best industry practices. This includes ensuring the safety, health, and welfare of those involved, as well as preservation of the environment. Any violation of the provisions of section 100 is an offence punishable by a fine of not less than TSh20 million.[260] The licence holder and contractor are required to furnish the Petroleum Upstream Regulatory Authority with copies of all data generated from petroleum operations, such as geological maps, geophysical records, and interpretations.[261] Such data is owned by the government. The licence holder and contractors are prohibited from exporting any gathered data, including cores, cuttings, or samples, without approval of upstream regulatory Authority.[262]

The licence holder and contractor are supposed to notify the upstream regulatory Authority and keep records of drilling operations; petroleum, water, and mineral substances encountered; and the quantity and quality of crude oil or natural gas produced.[263] They must keep records of the quantity of petroleum used in field operations, and the quantity of natural gas flared or vented. These records are vital in the verification of recoverable costs and ascertaining the profit share of the parties to the contract. Data, records, and information submitted to the upstream regulator by the licence holder and contractors are confidential.[264]

The Ministry of Energy and the regulatory authorities are empowered to make rules on the conduct of petroleum operations, such as regulatory accounting and reporting standards,

260 Section 102 of the Petroleum Act.
261 Section 88(2)&(6) of the Petroleum Act.
262 Section 88(1)&(4) of the Petroleum Act.
263 Section 89(1)(a-g) of the Petroleum Act.
264 Sections 92 and 93 of the Petroleum Act.

and an integrity pledge.[265] The Petroleum (Corporate Integrity Pledge) Regulations 2019[266] and the Petroleum (Cost Recovery Accounting) Regulations 2019[267] were established to complement the Petroleum Act. Section 223 of the Petroleum Act enjoins the licence holder and contractors to undertake petroleum operations with the utmost integrity. This includes not engaging in any conduct that is prejudicial to the country's financial, tax, or security systems.[268] Corporate integrity principles include promoting transparency and good governance, supporting the country's anti-corruption initiatives, fighting all forms of corrupt practices, implementing a whistle blower system, and maintaining appropriate financial reports.[269] All persons undertaking petroleum operations are supposed to sign a corporate integrity pledge form.[270] The energy sector regulatory authorities are mandated to monitor and enforce integrity compliance of companies and to initiate investigation into an activity of any person engaged in petroleum operations.[271]

In addition to those integrity standards, Regulation 6 of the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations 2020[272] covenants investors to operate transparently and in good faith. It requires investors to sign an integrity pledge to comply with national laws and ethical business practices.[273] The Code is implied in every arrangement or agreement concerning natural resources.[274] The government is entitled to terminate any agreement without

265 Section 259 of the Petroleum Act.
266 Government Notice No 782 published on 1 November 2019.
267 Government Notice No 957 published on 6 November 2019.
268 Section 223(2) of the Petroleum Act.
269 Regulation 5 of the Petroleum (Corporate Integrity Pledge) Regulations 2019.
270 Regulation 8 of the Petroleum (Corporate Integrity Pledge) Regulations.
271 Regulations 17 & 19 of the Petroleum (Corporate Integrity Pledge) Regulations.
272 Government Notice No 58 published on 31 January 2020.
273 Regulation 21 of the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations 2020.
274 Regulation 18 of the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations.

compensation or remedy where the investor commits serious or repeated violations of the Code without taking corrective actions.[275]

Regarding accounting and auditing, the contractors are required to maintain all accounting records related to petroleum operations in the contract area for the duration of the licence. The Petroleum Upstream Regulatory Authority is mandated to receive, examine, and verify such accounting records to establish recoverable costs and expenses incurred by the contractor.[276] Contractors are required to keep all accounting records concerning the contract area for the entire duration of the licence.[277] Upon commencement of petroleum production, contractors are supposed to submit to the upstream regulator monthly production statements.[278] They are also supposed to submit annual reports of their activities, management audit reports, and audited financial reports.[279] Before submitting such information to the regulatory authority, contractors should consult, discuss, and agree with the Tanzania Petroleum Development Corporation, which is the licence holder.[280] This requirement is intended to enable them to harmonise their records and avoid submitting conflicting information to the regulator.

Regarding the promotion of local content and participation, the Petroleum Act establishes several requirements. Section 218(1) of the Petroleum Act provides a hortatory requirement for the government, through the national oil company, to hold a specific participation interest in petroleum operations. Whereas the requirement under section 218(1) is non-mandatory, section 44(5) establishes a mandatory requirement for the company to maintain a participating interest of not less than 25 per cent unless it decides otherwise. State participation is crucial to ensuring close monitoring of extractive operations.

275 Regulation 19(3) of the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations.

276 Regulation 9 of the Petroleum (Cost Recovery Accounting) Regulations 2019.

277 Regulation 18(1) of the Petroleum (Cost Recovery Accounting) Regulations.

278 Regulation 23 of the Petroleum (Cost Recovery Accounting) Regulations.

279 Regulations 28 & 29 of Petroleum (Cost Recovery Accounting) Regulations.

280 Regulation 41 of the Petroleum (Cost Recovery Accounting) Regulations.

Apart from state participation, the Petroleum Act promotes local content and participation in other dimensions. Section 219(1) requires all actors in the petroleum sector to give preference to locally produced or available goods and services. Contractors and subcontractors should purchase goods, services, and materials that have been certified by national authorities.[281] Section 219(2) of the Petroleum Act requires foreign companies to form joint ventures with local companies for the provision of goods and services which are not locally available. In that case, the local company must own at least 25 per cent of the shares in the joint venture.[282]

Notwithstanding the above requirement, regulation 15(4) of the Petroleum (Local Content) Regulations 2017[283] allows a foreign company to supply goods and services to contractors without forming a joint venture with a local company. In that situation, the foreign company should obtain approval of the Petroleum Upstream Regulatory Authority and enter into any other business arrangement that ensures local participation of at least 10 per cent interest, shares, or equity in the contract value for the goods or services provided. For the Authority to approve a wholly foreign company to provide the services, three conditions should be satisfied.[284] The procuring entity must have conducted a fair, transparent, and competitive tendering process, where no local company qualified as the lowest bidder or where formation of a joint venture failed. Monitoring and enforcement of local content provisions is assigned to the Petroleum Upstream Regulatory Authority and the Energy and Water Utilities Regulatory Authority.[285]

Apart from participation of local companies, investors are also supposed to give employment preference to Tanzanians, as well as reserving semi-skilled and unskilled jobs for nationals.[286] Within twelve months of the grant of a licence, the licence holder and contractors

281 Article 20(b) of the Model Production Sharing Agreement 2013.
282 Regulation 15(3) of the Petroleum (Local Content) Regulations 2017.
283 Government Notice No 197 published on 5 May 2017.
284 Regulation 38(8)(b) of the Petroleum (Local Content) Regulations.
285 Regulation 40 of the Petroleum (Local Content) Regulations.
286 Regulation 14 of the Petroleum (Local Content) Regulations.

are required to furnish the upstream regulatory Authority with a detailed programme for recruitment and training of Tanzanians in all phases of petroleum operations.[287] This includes providing scholarships and financial support for training of Tanzanians in domestic and foreign academic institutions, and ensuring the transfer of knowledge, skills, and technology.[288]

Generally, Tanzania has a broad policy and legal framework to govern petroleum extraction operations. This framework encompasses legal provisions designed to ensure that all persons engaged in this sector operate ethically. Several controls are established, including periodical reporting by contractors to the Petroleum Upstream Regulatory Authority, accounting and auditing, signing of integrity pledges, and requiring the national oil company to participate in every petroleum project. If implemented effectively, these controls minimise chances of corporate fraud and malpractice. Despite that potential, there are weaknesses that compound corruption in this phase, as discussed in section 4.3.3.3. below. The next section discusses the roles, powers, and relationship of the actors engaged in this phase of the petroleum industry value chain.

4.3.3.2. Actors: roles, powers, and relationships

The extraction operations phase encompasses several actors who perform various roles in regulating, monitoring, and undertaking petroleum activities. Regulation of petroleum operations is primarily the role of the Petroleum Upstream Regulatory Authority (PURA) for upstream activities, and the Energy and Water Utilities Regulatory Authority for midstream and downstream operations. In addition to the roles of which have been discussed in the preceding section, these organs have other functions and powers in this phase. PURA is mandated to monitor and evaluate the performance of petroleum activities, including investment, cost of operations, regularity of outputs, and availability of crude oil and natural gas for domestic supply.[289]

[287] Section 220(1) of the Petroleum Act.
[288] Section 221 of the Petroleum Act.
[289] Section 12(2)(j) of the Petroleum Act.

In discharging its mandate, PURA is supposed to promote efficiency, economy, and safety of investments.[290] It should ensure transparency, competition, and fairness in the conduct of petroleum operations.[291] It is supposed to ensure the compliance of licence holders and contractors to the law, contractual agreements, licence conditions, and international best industry practices.[292] Its compliance orders are enforceable as an injunction of the High Court, and non-compliance is an offence.[293]

Regarding the midstream and downstream operations, the Energy and Water Utilities Regulatory Authority is mandated to regulate the activities related to electricity, petroleum and natural gas pipeline and distribution, and distribution of water and sewerage.[294] In addition, the Petroleum Act empowers it to grant, renew, suspend, or revoke licence for midstream and downstream activities, and to determine and enforce tariffs, rates, charges, and fees payable by the licence holders.[295] It prescribes standards of service, issues codes of conduct, monitors the quality of petroleum products, and ensures compliance to environmental protection requirements.[296]

Government's commercial interests in petroleum operations are supervised by the Tanzania Petroleum Development Corporation which is the national oil company.[297] Section 8(2) of the Petroleum Act requires the government to maintain a controlling 51 per cent share in the Corporation. During 2021, it was owned wholly by the government of Tanzania and all its shares were held by the Treasury Registrar.[298] The mandate of the national oil company includes participating in petroleum reconnaissance, exploration and development ventures,

290 Section 13(1)(a) of the Petroleum Act.
291 Section 13(1(c-d) of the Petroleum Act.
292 Section 13(1)(b) of the Petroleum Act.
293 Section 15 & 16 of the Petroleum Act.
294 Sections 3 & 7 of the Energy and Water Utilities Regulatory Authority Act [Cap 414 R.E. 2006].
295 Section 29(2) of the Petroleum Act.
296 Section 30(2) of the Petroleum Act.
297 Section 8(1) of the Petroleum Act.
298 TPDC 'Welcome to Tanzania Petroleum Development Corporation (TPDC)' available at https://www.tpdc.co.tz/ (accessed 21 May 2021).

and undertaking specialised operations in the petroleum value chain through its subsidiaries.[299] It is also entrusted to manage the government's commercial participating interests, to develop domestic expertise in the sector, and to explore and propose new local and international petroleum ventures.[300] Section 9(2)(l) of the Petroleum Act requires the Corporation to promote local content and participation in the petroleum industry.

The national oil company has exclusive rights over the natural gas midstream and downstream operations.[301] It is empowered to own and operate natural gas infrastructure, its own pipeline network, hold land for key oil and natural gas projects, and to participate in the development and strategic ownership of natural gas projects.[302] It is the grantee of all petroleum exploration, development, and production rights.[303] Local and foreign companies may participate in the Tanzanian petroleum industry only by partnering with it.[304] A company may partner with the Corporation only if it is registered under the laws of Tanzania, and is of proven technical and financial capability to undertake the project.[305] These companies are referred to as contractors.[306]

Section 44(5) of the Petroleum Act requires the national oil company to maintain a participating interest of not less than 25 per cent in every granted licence. It is required to pay for its participating interest.[307] Such payment is appropriated from the government.[308] Where it fails to pay for its share, the contractor is supposed to cover costs by way of a loan that is recoverable on interest from its share of cost oil or gas.[309] This framework is designed to ensure that the government participates in every petroleum project in the country.

299 Section 9(1)(a-c) of the Petroleum Act.
300 Section 9(1)(d,f&g) of the Petroleum Act.
301 Section 9(2) of the Petroleum Act.
302 Section 9(2)(a-n) of the Petroleum Act.
303 Section 44(1) of the Petroleum Act.
304 Section 44(4 & 6) of the Petroleum Act.
305 Section 45 of the Petroleum Act.
306 Section 3 of the Petroleum Act.
307 Article 10(b) of the Model Production Sharing Agreement 2013.
308 Section 218(4) of the Petroleum Act.
309 Article 10(b)(iii) of the Model Production Sharing Agreement 2013.

Environmental protection standards and compliance are enforced and monitored by the National Environmental Management Council.[310] The licence holder, contractors, and all persons undertaking petroleum activities are enjoined to observe environmental protection principles and standards prescribed in the Environmental Management Act.[311] A person damaging the environment by pollution is liable for compensation for the damage.[312] Moreover, the licence may be revoked in case the licensee fails to comply with environmental protection standards.[313]

The roles and powers of the organs discussed above indicate the government's determination to closely monitor and regulate petroleum operations. Nevertheless, there are regulatory deficiencies that are opportunities for corruption in this phase.

4.3.3.3. Loopholes for corruption

4.3.3.3.1. Poor coordination of local content enforcement

Several institutions participate in the promotion of local content requirements in the petroleum sector in Tanzania. However, there is no provision in the Petroleum Act or the Petroleum (Local Content) Regulations to coordinate the roles of these organs to deliver a common approach. The risk is that each may adopt a distinct approach when implementing its local content promotion obligations, resulting in conflicting decisions or over-regulation.

In addition, the National Economic Empowerment Act[314] establishes and empowers the National Economic Empowerment Council to promote and coordinate the participation of Tanzanians in economic activities. The Council operates under the Prime Minister's Office and its blueprint in this regard is the National Multisectoral Local Content Guidelines of 2019. The guidelines entrust the Council with the multi-sectoral coordination, monitoring, and supervision

310 Sections 30(2)(i) & 208(5) of the Petroleum Act.
311 Section 208 of the Petroleum Act.
312 Section 210(1) of the Petroleum Act.
313 Section 143(1)(i) of the Petroleum Act.
314 No 16 of 2004.

of local content implementation.[315] Another organ is the Ministry of Education, Science, and Technology which has the crucial role of ensuring the training and skills development for human capital in all sectors.[316]

The multiplicity of institutions responsible for the promotion of local content provisions creates the risk of functional overlap, uncoordinated decisions, and over-regulation. Using data on over 30,000 firms from over 100 countries, Clarke found that companies which spend more time dealing with regulations are more likely to pay bribes to regulatory officials.[317] The presence of multiple local content supervisory organs in Tanzania presents the risk of deploying diverse monitoring and compliance approaches, creating confusion in implementation. This study submits that regulatory coordination among government organs in Tanzania is problematic.

This argument is illustrated by the inconsistency in the definition of a local company in the instruments that establish local content requirements for the petroleum industry. The National Energy Policy 2015 defines a local company/business as that which is wholly owned by Tanzanians or of which at least 51 per cent of shares are owned by Tanzanian nationals.[318] However, section 219(3) of the Petroleum Act and regulation 15(3) of the Petroleum (Local Content) Regulations requires that to qualify as a local company, at least 25 per cent of the shares should be owned by Tanzanians. More confusion is added by regulation 3 of the local content regulations which defines the minimum shares owned by Tanzanians in a local company as not less than 15 per cent. Such discrepancies highlight that government institutions are uncoordinated in their regulatory actions. This may grant some discretion to regulators concerning the threshold of shareholding in a local company. It is submitted that such discretion is a catalyst of corruption in public administration.

315 National Economic Empowerment Council (2019) National Multisectoral Local Content Guidelines, Dar es Salaam 5.

316 Ovadia (2019) 85.

317 Clarke G (2014) 'Does overregulation lead to corruption?' available at http://www.aabri.com/LV2014Manuscripts/LV14025.pdf (accessed 6 July 2021) 10.

318 Ministry of Energy and Minerals (2015) Xiii.

Another deficiency in this regard concerns the training of local personnel in the petroleum industry. The Petroleum Act does not expressly require the government to train Tanzanians in this industry. Conversely, it requires the licence holder and contractors to recruit, train, and transfer knowledge and technology to Tanzanians in all phases of petroleum operations.[319] Section 114(2)(b) of the Petroleum Act requires contractors to pay to the national oil company annual training and research fees. The national oil company is required to utilise such revenue for developing the petroleum sector, including providing scholarships and educational financial support for local personnel.[320]

Analytically, the training and knowledge transfer requirements under the Petroleum Act are designed primarily for on-the-job personnel. The licence holder and contractors are more likely to train their employees than other members of the public. In 2016, the Controller and Auditor General published a Performance Audit Report on the Management of Human Capital Development in the Oil and Natural Gas Industry in Tanzania.[321] It noted that stakeholders responsible for human capital development in this sector were highly uncoordinated.[322] This affected the implementation of plans such as production of graduates with required skills. For instance, an Audit Report on Produced Graduates in the Oil and Natural Gas Field of 2017 shows that the Ministry of Education, Science and Technology concentrated more on producing graduates with higher professional skills than the semi-skilled personnel required by the industry.[323] Similarly, between 2013 and 2016, the Ministry of Energy and Minerals implemented six short-term courses on oil and gas which were not identified in the human capital development programme, omitting those identified.[324]

319 Sections 220 & 221 of the Petroleum Act.

320 Section 114(3) & 221(1) of the Petroleum Act.

321 National Audit Office of Tanzania (2016d) *Performance Audit Report on the Management of Human Capital Development in Oil and Natural Gas Industry in Tanzania* Dar es Salaam: National Audit Office of Tanzania.

322 National Audit Office of Tanzania (2016d) 30.

323 National Audit Office of Tanzania (2017b) *Performance Audit Report on Produced Graduates in Oil and Natural Gas Industry as Performed by the Ministry of Education, Science and Technology* Dar es Salaam: National Audit Office of Tanzania 22-23.

324 National Audit Office of Tanzania (2016d) 31.

Without proper and well-coordinated plans to develop domestic expertise, skills, and technology, the energy sector will remain foreign-dominated. All stages of the petroleum value chain require the presence of personnel with relevant skills to ensure effective monitoring and regulation of operations. In the absence of such relevant personnel, regulatory organs may be unable to discharge their mandate properly to protect national interests.

4.3.3.3.2. Uncoordinated integrity pledge enforcement framework

Provisions requiring extractive companies to sign an integrity pledge are contained in several laws[325] and enforced by diverse organs. Integrity pledge provisions under the Companies Act are enforced by the Business Registration and Licencing Authority which is the registrar of companies. The Petroleum Upstream Regulatory Authority and the Energy and Water Utilities Regulatory Authority enforce the integrity pledge under the Petroleum (Corporate Integrity Pledge) Regulations. There is no organ that is expressly mandated to enforce the integrity pledge under the Natural Wealth and Resources (Permanent Sovereignty) Act and its respective Code of Conduct. The only available provision in this regard is regulation 17(1) of the Code which states that the government shall be entitled to audit and monitor any investor bound by the Code in order to verify integrity compliance. It is not clear which government organ is responsible for this task. This creates a regulatory vacuum. Since no specific organ is charged with this role, enforcement of the integrity pledge under this Code is uncertain.

The multiplicity of organs enforcing the integrity pledge presents implementation challenges. Presuming that another organ should be designated to enforce the Code of Conduct for investors under the Natural Wealth and Resources (Permanent Sovereignty) Act, there will be four institutions enforcing the integrity pledge requirements for companies involved in the petroleum industry. While the Petroleum Upstream Regulatory Authority and the Energy and Water Utilities Regulatory Authority enforce the same integrity pledge, the other two organs have separate integrity pledges to supervise under their respective statutes. Therefore, a petroleum company signs at least three integrity pledges and must conform to monitoring

[325] The Petroleum Act, the Companies Act, and the Petroleum (Corporate Integrity Pledge) Regulations.

procedures of three different regulators. This creates this risk of functional overlap, overregulation, and regulatory inconsistency. As discussed earlier, companies which spend more time dealing with regulations are more likely to pay bribes to regulatory officials.[326] So under these circumstances, enforcement of the integrity pledge provisions may compound corruption instead of contributing to fighting it.

4.3.3.3.3. Unfavourable investment climate

Tanzania's investment environment is troubled by regulatory opacity, inconsistency, and arbitrariness.[327] The Investment Climate Statements Report 2020 published by the United States Department of State indicates that policies and laws adopted by the government of Tanzania between 2015 and 2020 present a challenging business climate and raise doubts about the future of foreign investment in the country.[328] The report notes further that arbitrary enforcement of regulations; unfriendly investor legislation; complex labour regulations; and corruption in procurement, taxation and customs clearance make Tanzania a less attractive investment destination.[329]

Similarly, the World Bank's Doing Business Report 2020 ranked Tanzania at 141 out of 190 countries for ease of doing business.[330] This means that the country generally has an unfavourable climate for doing business. This is affected by the complex procedures for establishing and maintaining a business. Tanzania has a poor score of 1.25 out of 5 on regulatory transparency in the World Bank's Global Indicators of Regulatory Governance.[331] It shows that ministries and regulatory agencies in Tanzania do not develop forward regulatory plans such as providing lists of anticipated regulatory changes, or proposals intended to be

326 Clarke (2014) 10.

327 United States of America Department of State (2020) 'Investment Climate Statements: Tanzania' available at https://www.state.gov/reports/2020-investment-climate-statements/tanzania/ (accessed 8 July 2021)

328 United States of America Department of State (2020).

329 United States of America Department of State (2020).

330 World Bank (2020) *Doing Business: Tanzania Country Profile* available at https://www.doingbusiness.org/content/dam/doingBusiness/country/t/tanzania/TZA.pdf (accessed 8 July 2021).

331 World Bank 'Global indicators of regulatory governance' available at https://rulemaking.worldbank.org/en/data/explorecountries/tanzania# (accessed 8 July 2021).

adopted or implemented within a specified time frame. Where such plans exist, they are not available to the public.[332]

Regulatory opacity, arbitrariness, and inconsistency increases opportunities for corruption between public officials and private firms.[333] Fjeldstad and Johnson argue that the poor regulation of a booming sector creates room for rent-seeking, lobbyism, and outright theft of resources.[334] The poor regulatory environment may result in inconsistent decisions by decision-makers, bureaucratic competition, policy stalemate, and potential regulatory capture.[335] Corrupt practices may be used to influence regulatory design and enforcement, or to undermine and circumvent existing legislation and regulation.[336] Corruption in this regard may be associated with violation of local content requirements, environmental protection standards, immigration and labour rules, and customs and clearance rules.[337] It may also be connected to the granting of operation permits and standard certifications.[338]

4.3.3.3.4. Weak accounting and monitoring mechanisms

Tanzania's petroleum governance regime has deficiencies related to weak accounting and monitoring mechanisms. The Performance Audit on the Implementation of Local Content Provisions and Verification of Recoverable Costs in Production Sharing Agreements published by the Controller and Auditor General in 2016[339] identified several weaknesses in this regard. Firstly, the Tanzania Petroleum Development Corporation had no special department to audit and verify the accounts submitted by the oil companies.[340] The task was done by its directorate of internal audit, which primarily handled the institution's general auditing affairs. Currently,

332 See https://rulemaking.worldbank.org/en/data/explorecountries/tanzania# (accessed 8 July 2021).
333 OECD (2016) 63.
334 Fjeldstad and Johnsøn (2017) 44.
335 Fjeldstad and Johnsøn (2017) 45.
336 OECD (2016) 59.
337 OECD (2016) 59-60
338 OECD (2016) 60.
339 National Audit Office of Tanzania (2016c) *Performance Audit on the Implementation of Local Content Provisions and Verification of Recoverable Costs in Production Sharing Agreements* Dar es Salaam: National Audit Office of Tanzania.
340 National Audit Office of Tanzania (2016c) 37.

the Petroleum (Cost Recovery Accounting) Regulations do not mandate the establishment of a special department to manage the auditing of the accounts of oil companies and the verification of recoverable costs. The previous shortfalls in this regard may happen again. During the Controller and Auditor General's follow-up report of 2021, the Petroleum Upstream Regulatory Authority, which handles the verification of recoverable costs, claimed to be understaffed and insufficiently resourced.[341] Such claims exacerbate the worry about its capacity to discharge all its functions effectively.

Secondly, verification of recoverable costs was delayed, sometimes for up to three years.[342] This means that costs and expenses of contractors were not verified on time. Through a review of selected agreements, the audit found that recorded costs by oil companies amounting to US$1.5 billion had not been verified at the time of the audit.[343] In the absence of serious verification procedures, oil companies may fraudulently claim for recoverable costs. This may lead to loss of revenue for the government. For instance, in the budget speech for the financial year 2020/21, the Minister of Energy reported that the Petroleum Upstream Regulatory Authority had completed the verification of recoverable costs for 2016 to 2018 and recovered over TSh10 billion that investors had accounted for as investment expenses.[344] This shows that weak accounting and verification of recoverable costs procedures can be used by companies to obtain an undue advantage from extraction operations.

Thirdly, the Tanzania Petroleum Development Corporation lacked experienced staff for auditing recoverable costs.[345] It had planned to hire private auditors but withdrew as they were expensive and relatively inexperienced as well.[346] It resorted to training its own staff to handle those functions. Considering the upstream regulatory Authority's infancy in regulating the

341 National Audit Office of Tanzania (2021) 18.

342 National Audit Office of Tanzania (2016c) 39.

343 National Audit Office of Tanzania (2016c) 41.

344 Ministry of Energy (2020) *Hotuba ya Waziri wa Nishati Mhe. Dkt. Medard Matogolo Chananja Kalemani (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Nishati kwa Mwaka 2020/21* Dodoma: Ministry of Energy 29.

345 National Audit Office of Tanzania (2016c) 42.

346 National Audit Office of Tanzania (2016c) 42.

petroleum sector and its understaffing claims, the diversity of functions entrusted to it raises critical implementation challenges.[347] Ironically, while the regulator complains of being understaffed and under-resourced, the regulated companies are well resourced financially and run by highly skilled and experienced staff and consultants. This disproportionality is a deficit that may further corruption in this sector.

Effective and ethical regulation of extraction operations is primary in ensuring that extracted resources are properly quantified, accounted for, and marketed at a fair price. Weaknesses in the regulation of this phase of the extractive value chain may cause the country to lose significant revenue to corrupt officials and dishonest firms. Also, regulatory deficiencies may result in the energy sector contributing poorly to local content development, as well as the violation of established standards and regulations. Corruption can thrive in such an environment and undermine the contribution of the energy sector to national development.

4.3.4. Revenue collection

4.3.4.1. Policy and legal framework

Tanzania's petroleum fiscal regime is governed by the National Energy Policy, legislation, and the Model Production Sharing Agreement. The policy establishes the framework for revenue administration in this sector. However, it does not expressly state the fiscal policy and objectives required to guide fiscal legislation and administration. It criticises the production sharing system adopted by the government on revenue apportionment and profit sharing as being inadequate at capturing all the benefits derived from petroleum operations.[348] On that account, it recommends that the government should attempt to establish policy guidelines for a progressive tax framework in the form of additional profit tax.[349] The energy policy requires the government to legislate for the fiscal terms contained in the Model Production Sharing Agreement, and to appropriately collect taxes and other profits accruing from petroleum

347 National Audit Office of Tanzania (2021) 15.

348 Ministry of Energy and Minerals (2015) 51.

349 Ministry of Energy and Minerals (2015) 51.

production or transfers and sale of assets in the contract area.[350] Legislating the fiscal terms of the Model Production Sharing Agreement is crucial to controlling discretion and deviation during contract negotiation, which is an avenue for corruption.[351]

The legislation which governs revenue collection consists of the Petroleum Act, the Oil and Gas Revenues Management Act, and the Income Tax Act.[352] The Petroleum Act establishes the fiscal regime governing petroleum operations. Section 113(1) of the Petroleum Act requires the licence holder and contractors to pay royalties to the government out of the gross volume of petroleum recovered at the delivery point. In Tanzania, royalties are capped at 12.5 per cent and 7.5 per cent for onshore and offshore production, respectively.[353] Section 113(4) of the Petroleum Act empowers the Minister of Energy to amend, vary, or alter the royalty threshold upon advice by the Petroleum Upstream Regulatory Authority. The obligation to pay royalties is charged on the national oil company which undertakes it on behalf of the contractors and itself.[354] Royalties may be delivered in the form of crude oil, natural gas, or in any other manner that the government may direct.[355]

In addition to royalties, the licence holder, contractors, and subcontractors must pay tax, including corporate tax, capital gains tax, withholding tax, and other taxes applicable under the relevant laws of Tanzania.[356] Further, section 116(2) of the Petroleum Act subjects to tax any profits accrued from any assignment, transfer, sale, or any disposal of rights in a petroleum agreement, regardless of the beneficiary type of the transaction. Division V of the Income Tax Act subjects petroleum operations to income tax, and establishes the taxation principles for such revenue.

350 Ministry of Energy and Minerals (2015) 31.
351 Cameron & Stanley (2017) 74-75.
352 [Cap. 332 R.E. 2019].
353 Second schedule to the Petroleum Act.
354 Second schedule to the Petroleum Act and article 16(c) of the Model Production Sharing Agreement 2013.
355 Section 113(2) of the Petroleum Act & article 16(c) of the Model Production Sharing Agreement 2013.
356 Section 116(1) & (4) of the Petroleum Act.

Income tax is calculated in respect of income derived from disposal of petroleum obtained from a licensed area, income from sale of petroleum data and information, and income from assignments or transfer of petroleum rights.[357] In calculating the income tax, the Income Tax Act allows deductions in respect of annual fees incurred, depreciation of depreciable assets, and amounts deposited in the decommissioning fund for the petroleum operations.[358] Section 65S of the Income Tax Act includes licensed midstream and downstream operators in the income tax framework. Income from petroleum operations is taxed at the rate of 30 per cent.[359] It also recognises withholding tax charged on dividends, interests, natural resource payments, and royalties.[360]

Sections 114 and 115 of the Petroleum Act require contractors to pay to the national oil company annual surface rental, research and training fees, as well as signature and production bonus. Surface rentals refer to fees charged on the contractor for undertaking exploration, development, and production activities over a licensed area.[361] Annual rental fees are charged at US$50 per square kilometre.[362] This may be raised to US$100 and US$200 for first and subsequent licence extensions respectively.[363] With regard to bonuses, article 11(c) of the Model Production Sharing Agreement of 2013 sets US$2.5 million as the minimum amount payable as signature bonus, and US$5 million for production bonus.[364]

In line with the fiscal instruments provided in the Petroleum Act, the Oil and Gas Revenues Management Act provides additional streams of oil and gas revenues. These are government profit share, government participating interest, dividends from the national oil company for the government's equity share and return on investment income derived from the

357 Section 65M(1) of the Income Tax Act [Cap 332 R.E. 2019].
358 Section 65N(1) of the Income Tax Act.
359 Paragraph 1(6) of the First Schedule to the Income Tax Act.
360 Section 82(1)(a) of the Income Tax Act.
361 Section 3 of the Oil and Gas Revenues Management Act [Cap 328 R.E. 2019].
362 Mmari et al. (2019) 39.
363 Mmari et al. (2019) 39.
364 Article 11(c)(i & ii) of the Model Production Sharing Agreement 2013.

oil and gas fund.[365] With regard to government profit share, article 12(a) of the Model Production Sharing Agreement of 2013 limits the recoverable cost of gas or oil in any calendar year to 50 per cent of the total net royalty. It sets a profit-sharing framework that requires an increase in the government's share based on daily production levels.[366] For instance, when production of natural gas in an offshore area is between zero and 149.9 million standard cubic feet per day, the government's profit share is 60 per cent, and the contractor's share is 40 per cent. When production reaches 750 million standard cubic feet and above per day, the government's profit share rises to 85 per cent while the contractor's share drops to 15 per cent. Such an incremental structure assumes that higher production brings higher profitability to the investor.[367] The government should be able to retain a higher share of the revenue as the resource's profitability increases.[368]

Regarding the government' participating interest, section 44(5) of the Petroleum Act requires the national oil company to maintain a participating interest of not less than 25 per cent in every granted licence. This framework entitles the government to equity share of the petroleum project and therefore be eligible for dividends of the project's profits.

The policy and legal framework described above identifies various government revenue streams from petroleum operations. If administered properly, the country can benefit from the resource, and will be able to transform the economic and social well-being of its people. However, legal, institutional, and enforcement weaknesses in this phase may compound corrupt practices, and enable individuals to benefit at the expense of the nation. The next section examines the roles, powers, and relationships of the actors involved in revenue collection, with a view to identifying deficiencies that may further corruption.

365 Section 3 of the Oil and Gas Revenues Management Act.

366 See article 129h) of the Model Production Sharing Agreement 2013.

367 Manley and Lassourd (2014) 6.

368 Manley and Lassourd (2014) 6.

4.3.4.2. Actors: roles, powers, and relationships

The revenue collection phase involves four main actors, namely the Tanzania Revenue Authority, the Tanzania Petroleum Development Corporation, the Petroleum Upstream Regulatory Authority, and contractors. The Revenue Authority is established under section 4 of the Tanzania Revenue Authority Act[369] with the mandate to assess, collect, and account for all revenue administered under the laws specified in its first schedule.[370] The laws enforced through that schedule include the Petroleum Act and the Oil and Gas Revenues Management Act.[371] The Revenue Authority is also mandated to monitor and ensure that government organs and departments collect revenue under their jurisdiction, such as fees, levies, and charges.[372] With that mandate, it can monitor the Tanzania Petroleum Development Corporation in the collection of surface rentals, training fees, and signature bonuses as provided in the Petroleum Act and the Oil and Gas Revenues Management Act.

The Tanzania Revenue Authority and the Tanzania Petroleum Development Corporation are the collectors of oil and gas revenues due to the government.[373] The Revenue Authority is charged to assess, collect, and account for all taxes and levies.[374] Non-tax revenue such as royalties, government profit share, signature bonuses, and surface rentals are collected by the Tanzania Petroleum Development Corporation.[375] It is allowed to retain surface rentals, annual block fees, training fees, as well as signature and production bonuses for developing the oil and gas sector.[376] Contractors are obliged to pay their dues on time, after which failure attracts a two per cent surcharge penalty on the amount in default for each day of default.[377]

369 [Cap 399 R.E. 2019].

370 Section 5(1)(a) of the Tanzania Revenue Authority Act [Cap 399 R.E. 2019.

371 See Part B of the First Schedule to the Tanzania Revenue Authority Act.

372 Section 5(1)(c) of the Tanzania Revenue Authority Act.

373 Section 6(1) of the Oil and Gas Revenues Management Act.

374 See section 6(2)(a) of Oil and Gas Revenues Management Act & section 5(1)(a) of the Tanzania Revenue Authority Act.

375 Section 6(2)(b) of the Oil and Gas Revenues Management Act.

376 Section 114(3) of the Petroleum Act & section 6(3) of the Oil and Gas Revenues Management Act.

377 Section 119 of the Petroleum Act.

To determine the government's profit share and royalty, the Petroleum Upstream Regulatory Authority is mandated to conduct an audit of the recoverable costs incurred by the contractor in the exploration, development, production, and sale of oil and gas.[378] Verification of contractor's recoverable costs is governed by the Petroleum (Cost Recovery Accounting) Regulations 2019. Contractors are supposed to submit accounting records to the Authority within 90 days of the end of each calendar year.[379] The Authority examines and verifies all charges and credits relating to the contractor's activities and all books of accounts, accounting entries, vouchers, payrolls, invoices, and any other documents and records necessary in the verification exercise.[380]

During the audit, auditors are empowered to visit and inspect all infrastructure and offices of the contractor related to the activities under the production sharing agreement and to make inquiries of personnel involved in those activities.[381] Where the verification observes no discrepancy, anomalies, or exceptions, the Petroleum Upstream Regulatory Authority is supposed to issue a notice of clearance to the contractor.[382] Where discrepancies are found, the Authority is required to notify the contractor, who should provide a substantive response. If the contractor fails to produce a defence, the Authority may adjust the accounts accordingly. Based on the Authority's verification of the contractor's recoverable costs, the amount of profit oil or gas is ascertained, and the taxes payable are assessed.

Government organs involved in the collection of petroleum revenue play a crucial role in ensuring that the country benefits from this resource. Any weaknesses in the discharge of their functions may lead to loss of revenue, thereby undermining the people's beneficial interests under the doctrine of permanent sovereignty over natural resources. Also, such deficiencies

378 Section 7 of the Oil and Gas Revenues Management Act.
379 Regulation 13(2) of the Petroleum (Cost Recovery Accounting) Regulations.
380 Regulation 13(3) of the Petroleum (Cost Recovery Accounting) Regulations.
381 Regulation 13(5) of the Petroleum (Cost Recovery Accounting) Regulations.
382 Regulation 15 of the Petroleum (Cost Recovery Accounting) Regulations.

may fuel corrupt practices and enable individuals to benefit at the expense of national interests, as discussed in the next section.

4.3.4.3. Loopholes for corruption

4.3.4.3.1. Inadequate capacity to audit and verify recoverable costs

During the budget speech for the financial year 2020/21, the Minister of Energy reported that the Petroleum Upstream Regulatory Authority had completed the verification of recoverable costs for 2016 to 2018 and recovered over TSh10 billion that investors had accounted for as investment expenses.[383] In the subsequent budget speech for the financial year 2021/22, the Minister reported that the upstream regulatory Authority had verified the contractors' accounts for the years 2019 and 2020 and recovered Tsh26.4 billion.[384] This is more than twice the amount recovered during the previous verification round. It suggests that the risk of dishonest accounting by contractors is apparent, and sufficient institutional capacity is required to audit and verify such accounts.

The petroleum industry is expected to grow soon, attracting large-scale investments. This means that there will be larger volumes of accounts for verification. However, the Petroleum Upstream Regulatory Authority claims to be understaffed and under-resourced.[385] This raises doubts about its capacity to verify those accounts timeously and efficiently.[386] Without sufficient resources and experienced personnel for auditing and verifying recoverable costs, dishonest contractors may falsify accounts to obtain an undue advantage. In turn, such practices will diminish the country's revenues in the form of royalties, profits share, dividends, and taxes.

383 Ministry of Energy (2020) 29.

384 Ministry of Energy (2021) *Hotuba ya Waziri wa Nishati Mhe. Dkt. Medard Matogolo Chananja Kalemani (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Nishati kwa Mwaka 2021/22* Dodoma: Ministry of Energy 76-77.

385 National Audit Office of Tanzania (2021) 18.

386 See further discussion at section 4.3.3.3.4. of this thesis.

4.3.4.3.2. Insufficient capacity for tax administration

Insufficient technical, financial, and human capacity may limit revenue administration departments from effectively assessing tax liabilities, enforcing fiscal rules, and ensuring tax compliance.[387] In 2016, the Controller and Auditor General conducted an audit on the capacity of the Tanzania Revenue Authority to assess and collect oil and gas revenues. It found some deficits that undermine effective revenue collection, and which may be windows for corruption. First, the Revenue Authority had weak procedures and controls on information gathering from oil and gas companies.[388] It relied mainly on information submitted by these companies.[389] It had no established procedures for verifying the reliability and authenticity of such information through third party sources.[390] In such an environment, companies can easily manipulate information to lower taxes, leading to loss of tax revenue. Information asymmetry is caused also by the non-participation of the government in production operations. For instance, the Tanzania Petroleum Development Corporation does not participate in the Songo Songo gas project due to lack of capital.[391] This denies the government an opportunity to participate in the daily management of the project and to access internal information which may be relevant for revenue administration and limiting the chances of fraudulent accounting practices.

Weaknesses in the verification of tax information submitted by the contractors partly arises from Tanzania's non-participation in international frameworks for exchange of tax information. For instance, Tanzania is not a State Party to the Convention on Mutual Administrative Assistance in Tax Matters.[392] This multilateral instrument provides states with various options for cooperation in assessing and collecting taxes, including information sharing and recovery of foreign tax claims.[393] Tanzania has not entered into automatic information

387 OECD (2016) 79.
388 National Audit Office of Tanzania (2017) xii.
389 National Audit Office of Tanzania (2017) xiv.
390 National Audit Office of Tanzania (2017) 16-17
391 National Audit Office of Tanzania (2017) 14.
392 Participation status as of 20 September 2021.
393 OECD (2020).

exchange agreements to fast-track the identification of persons transacting in the country.[394] Considering its weak capacity to verify information submitted by extractive companies, the absence of international assistance further undermines Tanzania's capacity to obtain accurate information for tax assessment.

Secondly, the Revenue Authority's audit plan gave little attention to corporate tax from petroleum companies.[395] Contractors in the petroleum industry pay income tax as corporate tax.[396] Since most of the international oil companies in Tanzania are undertaking exploration activities currently, they report loss from their investments.[397] This creates less incentive for tax auditors to assess corporate tax for these companies. This thesis submits that a comprehensive tax audit is necessary even to such declarations to ensure that future revenue potential is not eroded by unrealistic declarations of loss.[398] The case of *African Barrick Gold PLC v Commissioner General Tanzania Revenue Authority*[399] substantiates this argument.

In that case, it was held that the company had abused corporate laws to avoid paying tax in Tanzania. African Barrick Gold PLC owned three mining companies in Tanzania. The ownership of these companies was the primary and sole business of the plaintiff. For four consecutive years from 2010 to 2013, those subsidiaries declared losses. However, the African Barrick's financial statements in the United Kingdom revealed that the company had declared a dividend of over US$800 million from the mining business in Tanzania. The court found the declaring of the dividend very suspicious. It could not fathom that the subsidiaries had not declared any profits for four years in Tanzania, but African Barrick managed to distribute huge amounts as dividends to its shareholders. The Court of Appeal of Tanzania interpreted this as a

394 Tax Justice Network (2020) *Financial Secrecy Index 2020: Narrative Report on Tanzania* available at https://fsi.taxjustice.net/PDF/Tanzania.pdf (accessed 13 July 2021) 3.

395 National Audit Office of Tanzania (2017) 21.

396 TEITI (2021) *Tanzania Extractive Industries Transparency Initiative 11th Report for the Period 1 July 2018 to 30 June 2019* Dar es Salaam: TEITI 19.

397 National Audit Office of Tanzania (2017) 21.

398 See also National Audit Office of Tanzania (2017) 21.

399 Civil Appeal No 144 of 2018, Court of Appeal of Tanzania at Dar es Salaam.

tax avoidance mechanism. Therefore, unverified declarations of losses by extractive companies can result in tax avoidance and the subsequent loss of revenue to a country.

The Controller and Auditor General observed that the major reason that tax auditors disregarded corporate tax for contractors involved in petroleum exploration activities was the complexity of its assessment, which requires sufficient information and technical competence in data mining and analysis.[400] If not addressed, this deficit may undermine the Revenue Authority's capacity to assess corporate tax in the future when petroleum operations enter the production phase. Weak institutional capacity to assess and collect resource revenue may result in bribery to receive favourable tax treatment, embezzlement and misappropriation of the collected revenue, accounting distortions and misreporting, and trade mispricing.[401]

4.3.4.3.3. Lack of revenue-collection-related data transparency

Tanzania's revenue collection is marred by the secrecy of tax-related data. The Financial Secrecy Index 2020 published by the Tax Justice Network ranked Tanzania at 98th out of 133 countries for financial secrecy.[402] In addition, the State of Tax Justice Report 2020 shows that Tanzania loses over US$270 million annually to corporate tax abuses.[403] This is equivalent to five per cent of tax revenue collected annually by the Tanzania Revenue Authority.[404] Such loss of revenue is attributed to weak regulations on beneficial ownership disclosure, non-participation in multilateral tax information exchange, and limited access to information by the public.[405]

Revenue collection is undermined further by the absence of updated, comprehensive, and harmonised tax-related data such as contract terms, geological potential, and daily

400 National Audit Office of Tanzania (2021) 33.

401 OECD (2016) 79.

402 Tax Justice Network (2020).

403 Tax Justice Network (2020b) *The State of Tax Justice 2020: Tax Justice in the Time of Covid-19* available at https://taxjustice.net/wp-content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf (accessed 13 July 2021)18.

404 Tax Justice Network (2020c) 'Illicit Financial Flows Vulnerability Tracker: Tanzania' available at https://iff.taxjustice.net/#/profile/TZA (accessed 13 July 2021).

405 Tax Justice Network (2020).

production rates.[406] Data submitted to the Petroleum Upstream Regulatory Authority by a licence holder is confidential.[407] Such data may be disclosed to third parties including government agencies and organs on strict terms and conditions to maintain confidentiality.[408] This undermines public scrutiny of petroleum information which is necessary to ensure revenue accountability. For instance, it was not until the Statoil addendum agreement with the government leaked in 2014 that the public realised that its profit split terms deviated significantly from the Model Production Sharing Agreement of 2010. The profit gas split determines the amount of gas shared between the government and the contractor after deduction of the production costs.[409]

As in most production sharing agreements globally, the Tanzanian model agreement of 2010 required the amount of gas share collected from the contractor to vary according to the amount of gas produced per day.[410] For instance, it allocated 60 per cent share of profit gas to the government and 40 per cent to the contractor when the contract area produced 500 million standard cubic feet per day.[411] If production increased to 1000 or above 1500 million standard cubic feet per day, the government's share would be 70 per cent and 80 per cent respectively. In that case, the contractor's share of the profit gas would be 30 per cent and 20 per cent, respectively.

Contrary to those terms, the Statoil addendum agreement allocated the government's share of the profit gas at 37.5, 45 and 50 per cent for 600, 1,200 and above 1,500 million standard cubic feet per day, respectively.[412] Therefore, at all levels of production, the addendum agreement delivered to the government a lower share of the profit gas. Considering

406 OECD (2016) 80.

407 Section 92 of the Petroleum Act.

408 Section 92(3)(a) & (4) of the Petroleum Act.

409 Manley and Lassourd (2014) 6.

410 Manley and Lassourd (2014) 6.

411 See Kabwe Z (2017) 'Tanzania to lose up to $1b under StatOil PSA: Open these Oil and Gas Contract' available at https://zittokabwe.wordpress.com/2014/07/04/tanzania-to-lose-up-to-1b-under-statoil-psa-open-these-oil-and-gas-contracts/ (accessed 19 May 2021).

412 Article 11.1(f)(iv) of the leaked Statoil Addendum Production Sharing Agreement.

the differences between the Model Production Sharing Agreement of 2010 and the Statoil addendum agreement, analysts calculated that Tanzania would lose over US$400 million annually when production was 500 million standard cubic feet per day.[413] Equally, it would lose about US$900 million per year if production reached 1,000 million standard cubic feet per day.[414]

Opacity of tax-related data from extractive companies may cause loss of government revenue due to inaccurate tax assessment. Institutional weaknesses in collecting and verifying tax information, and the lack of transparency in tax administration, create opportunities for corruption between tax officers and companies.

4.3.5. Revenue management and spending

4.3.5.1. Policy and legal framework

The policy and legal framework for managing petroleum revenue is established in the National Energy Policy and the Oil and Gas Revenues Management Act. The policy acknowledges the risk of the resource curse when petroleum revenues are mismanaged.[415] It identifies the need for managing such revenues in a manner that serves the interests of current and future generations.[416] It requires the government to establish a petroleum revenue fund to ensure transparency and accountability over the collection, allocation, spending, and management of petroleum revenue.[417] The requirement to establish an oil and gas revenues fund is provided for under section 251 of the Petroleum Act.

In line with the National Energy Policy and the Petroleum Act, the Oil and Gas Revenues Management Act establishes the oil and gas fund and provides the fiscal rules governing the management of revenue deposited in it.[418] The fund consists of two accounts, the revenue

413 Taylor B (7 July 2014) 'Tanzania: Leaked Agreement Shows Govt May Not Get Good Gas Deal' available at https://www.flowtechenergy.com/news/oilfield/tanzania-leaked-agreement-shows-govt-may-not-get-good-gas-deal/ (accessed 19 May 2021).

414 Taylor (7 July 2014).

415 Ministry of Energy and Minerals (2015) 30.

416 Ministry of Energy and Minerals (2015) 30 & 31.

417 Ministry of Energy and Minerals (2015) 30.

418 Sections 8 & 16 of the Oil and Gas Revenues Management Act.

holding account, and the revenue saving account.[419] The revenue holding account receives all revenues of the fund. The revenue saving account receives any revenue from the revenue holding account that exceeds three per cent of the GDP.[420] Revenue held in the holding account includes royalties, government profit share, dividends on government participating interest, corporate income tax charged on petroleum operations, and return on investment of the fund.[421] Signature and production bonuses, training fees, and surface rentals collected by the national oil company are excluded from the sources of the fund.

The objectives of the oil and gas fund are to ensure fiscal and macroeconomic stability, to guarantee government financing of petroleum investments, to promote socio-economic development, and to safeguard the interests of future generations.[422] To achieve these objectives, three major restrictions are imposed on the use of revenues in the fund. First, it cannot be used to provide credit to the government or any other public or private entity.[423] Secondly, it cannot be used as collateral, guarantee, or liability of any entity.[424] Thirdly, it cannot be used for rent seeking or be subjected to embezzlement, theft, or corrupt practices.[425] Specifically, section 21 of the Oil and Gas Revenues Management Act establishes the offences of: misappropriating the proceeds of the fund; defrauding or conspiring to defraud the government the proceeds of the fund; and using, attempting or conspiring to use information or documents relating to the fund for person benefit or advantage. A person convicted of such offences is liable to a fine of not less than the amount misappropriated or defrauded, or to imprisonment for a term of not less than 30 years, or to both.[426]

419 Section 8(2) of the Oil and Gas Revenues Management Act.
420 Sections 10(3&4) & 17(2)(c) of the Oil and Gas Revenues Management Act.
421 Section 9 of the Oil and Gas Revenues Management Act.
422 Section 8(3) of the Oil and Gas Revenues Management Act.
423 Section 11(a) of the Oil and Gas Revenues Management Act.
424 Section 11(b) of the Oil and Gas Revenues Management Act.
425 Section 11(c) of the Oil and Gas Revenues Management Act.
426 Section 21 of the Oil and Gas Revenues Management Act.

To ensure prudent management and spending of oil and gas revenues, the law prescribes the fiscal rules governing the fund.[427] All designated oil and gas revenues must be deposited in the revenue holding account and be excluded from the domestic revenue source when estimating the fiscal deficit.[428] In any fiscal year, an amount not exceeding three per cent of GDP may be transferred from the oil and gas fund to the Consolidated Fund for budgetary use. In such circumstances, at least 60 per cent of the transferred amount should be allocated to strategic development projects, including training Tanzanians in the fields of science and technology.[429] Where revenue deposited in the holding account exceeds three per cent of the GDP, the amount in excess is transferred to the revenue saving account.[430]

To ensure credibility and predictability of the fiscal rules, section 16(4) of the Oil and Gas Revenues Management Act requires any change to the fiscal rules to be supported by at least two thirds of all Members of Parliament. However, application of the fiscal rules may be suspended temporarily to allow the government to allocate sufficient funds to address a major disaster or war.[431] In such a situation, the government is enjoined to report the expenditure fully to the next session of the National Assembly. Also, the government may suspend any part of the fiscal rules to undertake a major strategic investment.[432] In that case a proposal for such suspension should be supported by at least two thirds of the Members of the National Assembly. To ensure that petroleum host communities benefit from the resource, the Act allocates the oil and gas service levy to local government authorities that serve those communities.[433] The Minister of Finance and the Minister responsible for local government are supposed to establish fiscal rules to guide local government authorities in managing such revenue.[434]

427 Part V of the Oil and Gas Revenues Management Act.
428 Section 17(1)(a) & (c)(i) of the Oil and Gas Revenues Management Act.
429 Section 17(1)(c)(i)(aa) of the Oil and Gas Revenues Management Act.
430 Section 17(1)(c)(i)(bb) of the Oil and Gas Revenues Management Act.
431 Section 17(2)(a) of the Oil and Gas Revenues Management Act.
432 Section 17(2)(b) of the Oil and Gas Revenues Management Act.
433 Section 17(3) of the Oil and Gas Revenues Management Act.
434 Section 17(4) of the Oil and Gas Revenues Management Act.

The policy and legal framework governing revenue management establish a solid framework for protecting national interests and avoiding the resource curse. Specifically, restrictions against rent-seeking, embezzlement, and corrupt behaviours and the respective sanctions are crucial to promoting good governance of petroleum revenues. Nevertheless, there are weaknesses which undermine the governance potential of these provisions as discussed in section 4.3.5.3. below. The next section examines the roles, powers, and relationships of the actors involved in this phase of the petroleum industry value chain.

4.3.5.2. Actors: roles, powers, and relationships

Management of petroleum revenues in Tanzania involves several actors. In terms of section 4 of the Oil and Gas Revenues Management Act, the Minister of Finance may formulate and supervise all policy matters concerning the oil and gas fund. Further, he or she is mandated to establish and monitor investment strategies for the revenue saving account of the fund. The general management of the fund is done by the Bank of Tanzania.[435] The Bank is supposed to maintain accounts of the fund, establish benchmarks and risk limits for the investment strategies of the fund, and represent the government in undertaking the investment strategies and operations of the fund.[436]

In addition, a Portfolio Investment Advisory Board is established under section 12 of the Oil and Gas Revenues Management Act to advise the Minister of Finance on the portfolio investment strategy of the revenue saving account.[437] The Advisory Board consists of five members appointed by the President, and a Secretariat constituted by the Bank of Tanzania.[438] In discharging its mandate, the Board is required to consider the interests of current and future generations; contemporary economic conditions, opportunities and constraints; and the

435 Sections 5 & 10 of the Oil and Gas Revenues Management Act.
436 Section 5(a-c) of the Oil and Gas Revenues Management Act.
437 See section 13 of the Oil and Gas Revenues Management Act.
438 Sections 12(3) & 14 of the Oil and Gas Revenues Management Act.

volatility of petroleum revenue flow.[439] The Minister of Finance may decline to take the advice of the Board. In that case, the matter shall be forwarded to the President for determination.[440]

To ensure oversight and control, the Portfolio Investment Advisory Board is required to submit to the Minister of Finance quarterly reports on the performance of the revenue saving account.[441] Parallel to that, the Governor of the Bank of Tanzania is enjoined to report quarterly to the Minister of Finance on the governance and performance of the oil and gas fund.[442] Subsequently, the Controller and Auditor General is supposed to conduct quarterly audits of the reports of the Portfolio Investment Advisory Board and the Bank of Tanzania.[443] To enhance transparency and accountability in the management of the oil and gas fund, the Minister of Finance is required to publish all records of oil and gas revenue and expenditure in the government *Gazette* and in the website of the Ministry of Finance.[444] Such records are subject to parliamentary oversight.[445]

Apart from the revenues held in the oil and gas fund, the national oil company retains surface rentals, signature and production bonuses, and training fees for the purpose of developing the petroleum industry.[446] It administers such revenue under ordinary supervision of the Treasury Registrar.[447] An amount equivalent to 0,1 per cent of the GDP should be ring-fenced annually into the revenue saving account.[448] These funds are allocated through budgetary processes to strategic investments by the national oil company. This measure is intended to secure capital for government participation in petroleum projects.

439 Section 13(2) of the Oil and Gas Revenues Management Act.
440 Section 13(3) of the Oil and Gas Revenues Management Act.
441 Sections 13(1)(b) & 15(1) of the Oil and Gas Revenues Management Act.
442 Section 15(2) of the Oil and Gas Revenues Management Act.
443 Section 15(3) of the Oil and Gas Revenues Management Act.
444 Section 18(4) of the Oil and Gas Revenues Management Act.
445 Section 18(6) of the Oil and Gas Revenues Management Act.
446 Section 6(3) of the Oil and Gas Revenues Management Act.
447 Section 17(1)(e)(ii) of the Oil and Gas Revenues Management Act.
448 Section 17(1)(e)(iii) of the Oil and Gas Revenues Management Act.

The roles and powers entrusted to the various organs in this phase and the relationship between them indicate that oil and gas revenues are closely monitored and accounted for. The Portfolio Investment Advisory Board and the Bank of Tanzania, which administer the oil and gas fund and its investment strategy, report quarterly to the Minister of Finance. Such reports are subject to auditing by the Controller and Auditor General as well as parliamentary oversight. This accountability structure ensures that the fiscal objectives of the Oil and Gas Revenues Management Act are observed. However, there are some weaknesses in this framework that may be avenues for corruption, as discussed below. The mismanagement of resource revenue may promote corrupt practices, escalate social and economic inequalities, and instigate civil and political unrest.[449] This phase of the extractive industry value chain is the hub of the resource curse as described by economic scholars.[450]

4.3.5.3. Loopholes for corruption

4.3.5.3.1 Weak budget implementation supervision framework

Revenues in the oil and gas fund below three per cent of the GDP should be transferred to the Consolidated Fund to service the national budget.[451] Simulations by the Natural Resource Governance Institute indicate that natural gas revenues in Tanzania are unlikely to reach the three per cent threshold to trigger savings into the revenue saving account.[452] Therefore, invariably, petroleum revenues will be used for budgetary purposes. The risk of corruption lies in the budget implementation and supervision framework. For instance, the Annual General Report on the Audit of Development Projects 2021 found several deficiencies in the implementation of such projects.[453] These include double payments to contractors, inadequate

449 Alba (2009) 14.

450 For detailed discourse on the resource curse thesis see Collier & Hoeffler (1998), Collier & Hoeffler (2005), Shaxson (2007) & Ross (2015).

451 Section 17(1)(c))(i) of the Oil and Gas Revenues Management Act.

452 Scurfield T and Mihalyi D (2017), 'Uncertain Potential: Managing Tanzania's Gas Revenues' Natural Resource Governance Institute Brief available at http://www.reuters.com/article/tanzania-gas- (accessed 13 July 2021) 20.

453 National Audit Office of Tanzania (2021b) *Annual General Report of the Controller and Auditor General on the Audit of Development Projects for the year ended on 30th June 2020* Dodoma: National Audit Office of Tanzania.

procurement planning and compliance with procurement regulations, and inadequate budget implementation.[454] In the absence of strong supervision and monitoring of budget implementation, petroleum revenue allocated to the national budget may be engulfed by corrupt practices and end up benefiting a few elites in the public service.

4.3.5.3.2. Political interference in the investment strategy of the oil and gas fund

The Portfolio Investment Advisory Board simply advises the Minister of Finance on the investment strategy of the oil and gas fund.[455] It is not the investment manager for the revenue saving account. The Minister decides and implements, and may decline to take the Board's advice.[456] In such circumstances, the Minister is required to refer the matter to the President for determination. This approach subjects the Board to political pressure, and investment decisions could be made based on political interests instead of professional opinion.

Experience shows that public investment decisions in Tanzania are influenced significantly by the attitude of the incumbent President towards a particular project. The political situation around the construction of the Bagamoyo Special Economic Zone illustrates this point. In 2013, the fourth President, Jakaya Kikwete, signed an intergovernmental agreement with China and Oman for the project.[457] Essentially, the project involves the construction of a US$10 billion port in Bagamoyo, and an affiliate industrial zone.[458] When fully developed, the investment would make Bagamoyo the largest economic gateway in East Africa.[459] From its inception, the project was accused of being exploitative, with some organisations labelling it as a deadly Chinese loan.[460] Demands for President Kikwete to rescind

454 National Audit Office of Tanzania (2021b) xx-xxxi.

455 Section 13(1) of the Oil and Gas Revenues Management Act.

456 Section 13(3) of the Oil and Gas Revenues Management Act.

457 Ayemba D (2021) 'Bagamoyo port project timeline and all you need to know' available at https://constructionreviewonline.com/project-timelines/bagamoyo-port-project-timeline-and-all-you-need-to-know/ (accessed 14 July 2021).

458 Ayemba (2021).

459 Oirere S (2019) 'Tanzania Suspends $10B Bagamoyo Port Project' available at https://www.enr.com/articles/47134-tanzania-suspends-bagamoyo-port-project (accessed 14 July 2021).

460 Mittal P (2020) 'Falling Apart – A story of the Tanzanian Bagamoyo Port Project' available https://www.orfonline.org/expert-speak/falling-apart-a-story-of-the-tanzanian-bagamoyo-port-project/ (accessed 14 July 2021).

the project were unsuccessful and, in October 2015, his leadership endorsed the construction of the first phase of the project[461]

When he came into power in November 2015, President Magufuli moved quickly to suspend the project. He did so in January 2016, demanding for renegotiation of the unconscionable terms.[462] The project resumed in 2018 after the government reportedly agreed with the investors' proposal.[463] Surprisingly, in June 2019, Magufuli suspended the project indefinitely, identifying its terms as exploitative and awkward, to the extent that only a madman would agree to them.[464] Magufuli died in March 2021 and, three months later, his successor President Samia Hassan announced that the government had commenced negotiations to resume the project.[465] Considering the secrecy of government contracts in Tanzania, the public may never know the actual terms of this project to assess its benefit to the nation.

This saga illustrates how politicians influence investment projects in Tanzania. In such a hazy decision-making environment, investments on the oil and gas fund may suffer the same peril. Accountability for presidential decisions in Tanzania is very weak.[466] Therefore, a corrupt president may use his powers to dictate the kind of investment or investors to be involved through the oil and gas fund. Weaknesses in budget implementation and oversight as well as political discretion regarding investments of the fund are critical corruption risks in the management of petroleum revenues in Tanzania. These deficiencies may influence bribery, misappropriation, embezzlement, and diversion of public funds.

461 Mittal (2020) & Ayemba (2021).

462 Mittal (2020).

463 Ayemba (2021).

464 Oirere (2019).

465 Reuters (26 June 2021) 'Tanzania considers reviving $10 billion port project' available at https://www.reuters.com/world/africa/tanzania-considers-reviving-10-billion-port-project-2021-06-26/ (accessed 14 July 2021).

466 See discussion at section 3.4.7. of this study.

4.4. Concluding Remarks

Tanzania has established a broad policy, legal, and regulatory framework to manage the petroleum industry across its value chain. This framework is anchored in the right to permanent sovereignty over natural resources as a caveat to ensuring that all actors involved in this sector conduct their affairs in a manner that is not prejudicial to the interests of people of Tanzania. Specifically, integrity pledges have been enacted to ensure that investors operate honestly, transparently, and in conformity with the law and industry best practice. Also, restrictions have been imposed on the management of petroleum revenue to ensure that it is not subjected to embezzlement and corruption.

Despite that broad framework, petroleum governance is marred by several weaknesses that create room for corruption. Regulatory opacity, contract secrecy, discretion, and institutional deficiencies in managing, monitoring, and overseeing this sector raise doubts about Tanzania's preparedness to overcome the corruption that challenges petroleum governance in developing countries. As corruption thrives in secrecy, the next chapter examines Tanzania's transparency and accountability mechanisms in line with the established international standards to assess the extent to which such normative frameworks contribute to controlling corruption in this sector.

Chapter Five:

Transparency and Accountability Initiatives

5.1. Introduction

Corruption flourishes in environments of secrecy and opaque government processes, with weak accountability structures in the use of public resources.[1] There is an understanding among scholars and international organisations that enhancing transparency and accountability in government systems is essential to fighting corruption.[2] The argument is that transparency exposes conduct to public scrutiny thereby increasing accountability and limiting opportunities for corruption.[3] This has prompted the establishment of various international and national initiatives for enhancing transparency and accountability in government operations.

The extractive industry is one of the primary targets of global transparency and accountability initiatives. Advocates argue that the large amounts of money involved in this industry attract high and pervasive levels of corruption which is clandestine by nature.[4] Therefore, transparency measures can expose misconduct and safeguard public interests against corruption incentives.

This chapter assesses the extent to which normative frameworks such as transparency and accountability mechanisms contribute to fighting corruption in the energy sector in Tanzania. It responds to the second research objective of this study. Also, it answers the second research question as to the extent that normative frameworks such as transparency and

1 Davenport S & Kallaur E (2020) 'Open and Inclusive Government' in World Bank *Enhancing Government Effectiveness and Transparency: The Fight against Corruption* Kuala Lumpur: World Bank Group 179.

2 David-barrett L & Okamura K (2013) 'The Transparency Paradox: Why Do Corrupt Countries Join EITI?' ERCAS Working Papers No 38 University of Oxford, Sørreime H & Tronvoll K (2020) 'The Extractive Industries and Society Performing Accountability in Petroleum Resource Governance in a Shrinking Democratic Space: The Case of Tanzania' 7(4) *The Extractive Industries and Society* 1490–1497, and World Bank (2020 c) *Enhancing Government Effectiveness and Transparency: The Fight against Corruption* Kuala Lumpur: World Bank Group.

3 Sørreime & Tronvoll (2020) 1492.

4 Cameron PD & Stanley M (2017) *Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries* Washington DC: World Bank Group 221.

accountability mechanisms contribute to fighting corruption in the energy sector in Tanzania. To achieve the objective and answer that research question, the chapter begins by providing an overview of the transparency and accountability context and its role in improving extractive sector governance. Thereafter, it discusses the global transparency initiatives in the extractive sector, particularly the Kimberley Process, Publish What You Pay, and the Extractive Industries Transparency Initiative. Subsequently, it discusses the drivers of transparency and accountability in the extractive sector, namely contract transparency, disclosure of beneficial ownership information, fiscal transparency, and effective public participation. Afterwards, the chapter examines the transparency and accountability mechanisms in Tanzania's energy sector value chain, and how they contribute to fighting corruption in this sector. The last section provides concluding remarks.

5.2. Transparency

Transparency refers to the extent to which information is available to outsiders that enables them to have an informed voice in decisions, to measure the performance of insiders, and guard against the abuse of power.[5] At the state level, availability of information to the public allows them to scrutinise government action and hold public officials accountable for their conduct.[6] Transparency is the prerequisite of accountability. However, to facilitate accountability, transparency measures must be combined with other measures such as freedom of the press, actively engaged civil society, and effective public participation.[7]

Transparency in the public sector has two main pathways, proactive and demand-driven.[8] Proactive transparency happens when the government *suo motu* publishes information regarding its processes, activities, performance, and decisions.[9] Information is made public at

5 Cameron & Stanley (2017) 222 & Carsten A (2005) 'The Role of Transparency and Accountability for Economic Development in Resource-rich Countries' available at https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp012705 (accessed 19 March 2022).

6 Sørreime & Tronvoll (2020) 1492.

7 David-barrett & Okamura (2013) 22.

8 Fox J (2007) 'The Uncertain Relationship between Transparency and Accountability' 17(4-5) *Development in Practice* 665.

9 Fox (2007) 665.

the government's own initiative without request from the public.[10] This type of transparency is also known as proactive disclosure or affirmative publication.[11] Its forms include press releases, publication of information in the government gazette, and online posting of official documents. Proactive disclosure enables the public to access government information immediately when needed.[12] Also, it reduces costs of access to information, as well as limiting bureaucracy that hinders such access.

Demand-driven transparency encompasses the government's commitment to provide citizens with access to certain information or documents upon request.[13] This form of disclosure depends on the public's initiative in seeking information from the government. The government may grant or deny such access depending on several factors such as payment of prescribed fees or confidentiality provisions.

Transparency is the source of the right to information enshrined in international human rights instruments.[14] Proponents argue that the right to information enables the public and other stakeholders to access information held by state entities, understand their operations and performance, and hold public leaders accountable.[15] The right to information was given judicial impetus for the first time by the Inter-American Court of Human Rights in the landmark case of *Claude-Reyes et al. v Chile*.[16] The victims in that case had requested from the Chilean Foreign Investment Committee information regarding a major forestry contract signed between the state and a foreign investor. They were denied access to such information and unsuccessfully challenged the denial in the Chilean Supreme Court. Subsequently, a group of

10 Ruijer HJM (2017) 'Proactive Transparency in the United States and the Netherlands: The Role of Government Communication Officials' 47(3) *American Review of Public Administration* 356.

11 Ruijer (2017) and OECD (2011) OECD Guidelines for Multinational Enterprises, Paris: OECD Publishing 142.

12 OECD (2011) 142.

13 Fox (2007) 665.

14 Article 19 of the Universal Declaration of Human Rights 1948, article 19(2) of the International Covenant on Civil and Political Rights of 1966, and article 9 of the African Charter on Human and Peoples Rights of 1981.

15 Noveck BS (2017) 'Rights-Based and Tech-Driven: Open Data, Freedom of Information, and the Future of Government Transparency' 19(1) *Yale Human Rights and Development Law Journal* 4-5.

16 See pages 34-46 of the Order at https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf (accessed 21 March 2022).

South American human rights activists filed a petition on behalf of the victims, alleging violation of article 13 of the Inter-American Convention on Human Rights. The Inter-American Court held that access to information is an essential component of democracy, enabling citizens to participate in decisions affecting their development. As such, states' actions should be governed by the principle of maximum disclosure subject to restrictions established by law in the public interest.[17]

The right to information is also recognised as an important part of the international anti-corruption arsenal. Article 10 of the United Nations Convention against Corruption requires States Parties to take measures for enhancing transparency in public administration. This includes establishing mechanisms to enable members of the public to access information on the organisation, functioning, and decision-making processes of public entities.[18] Similarly, article 3(3) of the African Union Convention on Preventing and Combating Corruption recognises transparency and accountability in the management of public affairs as a basic principle in fighting corruption. Specifically, article 9 of the Convention mandates States Parties to adopt measures to enforce the right of access to any information as a necessary ingredient in fighting corruption. This demonstrates an international consensus that to fight corruption effectively, governments should be more open and transparent.

Operationally, the right to information could occur in three phases. It encompasses the right to seek, receive, and disseminate information. During the seeking phase, the public has an obligation to search or request for information from those holding it. The receiving phase establishes a positive obligation on information-holders to grant access to information-seekers. The dissemination phase empowers both public officials and members of the public to freely publish information that is in their custody. This right has been legislated for in most countries,

17 See *Claude-Reyes et al. v Chile* page 45.

18 Article 10(a) of the United Nations Convention against Corruption 2003.

including Tanzania.[19] Article 19, an activist organisation for freedom of expression, has developed nine Principles on Right to Information Legislation.[20]

Principle one: maximum disclosure, calls for disclosure of all information held by public bodies except in very limited circumstances justified by law; principle two: obligation to publish, demands proactive dissemination of public interest information, including providing regular updates; principle three; promotion of open government and the need to address government secrecy, increase openness, and enhance public awareness; principle four: limited scope of exceptions, prohibits the broadening of confidentiality provisions and subjects all non-disclosure attempts to the overriding public interest test; principle five: process to facilitate access, calls for mechanisms to ensure fair and fast processing of information requests, including availability of review systems when access is denied; principle six: costs, demands for free or low-cost access to information; principle seven: open meetings, advocates for public participation in decision-making processes; principle eight: disclosure takes precedence, restricts the culture of secrecy by requiring laws to be interpreted primarily in the interest of information disclosure; and principle nine: protection for whistle-blowers, promotes the protection of individuals that uncover wrongdoing from legal, administrative, or employment sanctions.

The principles outlined above clearly capture the nature of transparency in public administration. In 2000 these principles were endorsed by the United Nations Special Rapporteur on Freedom of Opinion and Expression.[21] As a result, they have international recognition. The transparency initiatives advocated by various organisations in the twenty-first century are largely in line with these principles. The expected outcome of transparency and right to information initiatives is enhanced public accountability. As postulated by the Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression, right to

19 See Access to Information Act 6 of 2016.

20 Article 19 (2016) *Public's Right to Know: Principles on Right to Information Legislation* London: Article 19.

21 Article 19 (2016) 2.

information is a crucial tool for enhancing public participation in governance, strengthening oversight of state operations, and controlling corruption.[22]

5.3. Accountability

Accountability refers to oversight over the discharge of public functions and the enforcement of checks and balances in the exercise of administrative, political, public, or judicial powers.[23] Accountability helps to control public officials from abusing their entrusted powers.[24] There are three major ways in which accountability operates, namely vertical, horizontal, and diagonal.[25] Vertical accountability covers the relationship between citizens and the state.[26] It encompasses the answerability of public leaders to the people. An example of vertical accountability is provided under article 8(c) of the Constitution of the United Republic of Tanzania 1977 which expressly states that the government shall be accountable to the people. Also, the relationship between the state and the people in the ownership of natural resources presents a clear picture of vertical accountability in the management of those resources. Through the doctrine of permanent sovereignty over natural resources, the state manages natural resources for and on behalf of its people.[27] As the ultimate beneficiaries of such resources, the people have the right to hold accountable those entrusted to manage those resources.

22 Organisation of American States (2009) 'Right of access to information' Office of the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights Organization of American States Report' available at http://www.oas.org/dil/access_to_information_iachr_guidelines.pdf (accessed 24 August 2021) 2.

23 Ocampo JA & Arteaga NG (2014) 'Accountability for Development Cooperation' *Accountable and effective development cooperation in a post-2015 era* available at https://www.un.org/en/ecosoc/newfunct/pdf13/dcf_germany_bkgd_study_3_global_accountability.pdf (accessed 25 August 2021) 7.

24 Cameron & Stanley (2017) 221 and David-barrett & Okamura (2013) 22.

25 Fox (2007) 665, Ocampo & Arteaga (2014) 8-9, Sørreime & Tronvoll (2020) 1492, and Lührmann A, Marquardt KL & Mechkova V (2020) 'Constraining Governments: New Indices of Vertical, Horizontal, and Diagonal Accountability' 114(3) *American Political Science Review* 812.

26 Sørreime & Tronvoll (2020) 1492.

27 See section 2.2 of this study for detailed discussion of the PSNR principle.

Horizontal accountability refers to checks and balances exercised by and among state organs.[28] This form of accountability is embedded in the constitutional law doctrine of separation of powers. Under this doctrine, parliament checks on the exercise of executive powers through enacting laws, passing state budget, and monitoring public spending. Through its legislative powers, parliament establishes the political and institutional rules for managing public affairs by the executive.[29] Horizontal accountability of public powers is also exercised through the judiciary. The judiciary checks on the exercise of executive powers through judicial reviews and adjudication of cases. Judicial review ensures that administrative action is in line with legislation. Adjudication of cases ensures the protection of property rights, fair competition, prosecution of crimes such as corruption, and compensation for victims. Other bodies of horizontal accountability include human rights commissions, ombudsmen, supreme audit institutions, and investigation and prosecution offices.

Diagonal accountability reflects the participation of non-state actors such as civil society, media, and donors in holding state actors responsible for their actions or inactions.[30] The actors of diagonal accountability use a wide range of options to disseminate information about the government's processes and performance, and motivate the institutions of vertical and horizontal accountability to act.[31] Successful diagonal accountability depends on the presence of press freedom, access to information, a learned and engaged society, and active civil society.[32] These are institutions of transparency that fuel effective stakeholder participation in achieving accountability.

28 Amundsen I (2014) 'Drowning in Oil: Angola's Institutions and the 'Resource Curse'' 49(2) *Comparative Politics* 172-173.

29 Amundsen (2014) 172.

30 Lührmann, Marquardt & Mechkova (2020) 813.

31 Lührmann, Marquardt & Mechkova (2020) 813.

32 Lührmann, Marquardt & Mechkova (2020) 815.

5.4. Status of transparency and accountability in developing nations

Resource-rich developing nations generally have low transparency and accountability scores.[33] For instance, from 2012 to 2019, the Sub-Saharan Africa region scored a low 2,7 out of 6 rating on transparency, accountability, and corruption in the public sector indicator of the World Bank's Country Policy and Institutional Assessment.[34] In that period, Tanzania maintained a score of 3 out of 6 for this indicator, dropping to 2,5 in 2018.[35] Based on a rating of 1 (low) to 6 (high), this indicator assesses the extent to which citizens, parliament, and the judiciary can hold public officials accountable for their decisions and use of resources. It also measures the level of civil society's access to information on public affairs. Therefore, the average to low scores by Sub-Saharan countries in this indicator suggests that the actors of vertical, horizontal, and diagonal accountability have meagre access to government information, and are limited in holding public officials accountable. It is unsurprising therefore that only 11 out 47 Sub-Saharan African countries scored above the average in the 2019 Voice and Accountability Index for the Worldwide Governance Indicators.[36] On a scale of -2,5 (weak) to 2,5 (strong), the index assesses the level of media freedom, freedom of expression and association, and citizen participation in elections. Tanzania's score in that index for 2019 is -0,50.

The size of natural resource rents, the technical complexity of operation and management, and the fragility of transaction and revenue flows make transparency and accountability indispensable in extractive sector governance.[37] Opacity and unaccountability are significant contributors to the resource curse.[38] For instance, Ross's analysis of literature on the political effects of natural resources on government accountability found strong evidence

33 Cameron & Stanley (2017) 224.

34 World Bank (2021) *Supreme Audit Institutions Independence Index 2021: Global Synthesis Report* available at https://openknowledge.worldbank.org/handle/10986/36001 (accessed 7 September 2021).

35 World Bank (2021 b) 'DataBank: World Development Indicators' available at https://databank.worldbank.org/reports.aspx?source=2&series=IQ.CPA.TRAN.XQ&country=TZA (accessed 30 August 2021).

36 Kaufmann D, Kraay A & Mastruzzi M 'Worldwide Governance Indicators' available at http://info.worldbank.org/governance/wgi/Home/Reports (accessed 30 August 2021).

37 Cameron & Stanley (2017) 222.

38 Ross ML (2015) 'What Have We Learned about the Resource Curse?' 18 *Annual Review of Political Science* 243-248.

that petroleum endowment suffers three resource curse effects.[39] First, it tends to make authoritarian regimes more stable and less likely to transition to democracy.[40] Secondly, it erodes institutional quality, resulting in government ineffectiveness and increased corruption.[41] Thirdly, it fuels violent conflicts and political unrest, particularly in low-and-middle income countries.[42]

Given the negative impact of opacity in extractive activities, several global initiatives have been established to promote transparency and accountability in the extractive sector. Whilst these initiatives are primarily voluntary, they are important legitimacy intermediaries for companies and countries involved in the extractive industry.[43] Developing resource-rich nations are adopting them rapidly, to obtain or maintain reputations with international donors and to attract foreign investment.[44] The next section discusses these initiatives and their impact on global governance of the extractive sector.

5.5. Global extractive industry transparency initiatives

Transparency initiatives targeting the extractive industry have proliferated since the early 2000s. Currently, there are three major forums advocating for transparency in this sector. These are the Kimberley Process, Publish What You Pay, and the Extractive Industries Transparency Initiative. The following sections discuss the standards and norms established under these initiatives, and their impact on extractive sector governance in developing countries, particularly Tanzania. It is important to note that these initiatives cover the extractive industry generally. However, in this discussion attention is paid to how the initiatives contribute to fighting corruption in the energy sector.

39 Ross (2015) 240.
40 Ross (2015) 243.
41 Ross (2015) 248-250.
42 Ross (2015) 251-252.
43 Suchman MC (1995) 'Managing Legitimacy: Strategic and Institutional Approaches' 20 *Academy of Management Review* 574.
44 David-Barrett & Okamura (2013) 2.

5.5.1. Kimberley process

In May 2000, Southern African diamond-producing states met in the city of Kimberley in South Africa to devise mechanisms for controlling trade in conflict diamonds and their impact on financing rebel groups.[45] This concern was later included in the agenda of the 55th session of the United Nations General Assembly in 2001. The Assembly noted with concern the impact of conflict diamonds in fuelling armed conflict in several countries, including Angola, Sierra Leone, and the Democratic Republic of Congo.[46] Conflict diamonds are rough diamonds used by rebel groups to fund rebel movements, including military operations against legitimate governments.[47] Through Resolution A/RES/55/56, the General Assembly called upon states to take pragmatic measures to break the link between conflict diamonds and armed conflict. The recommended measures included the establishment of an international certification scheme for rough diamonds, and enhancing transparency.[48]

Following that Resolution and extensive negotiation, 37 countries signed and launched the Kimberley Process Certification Scheme in 2002 in Interlaken, Switzerland.[49] The scheme was named after the city where the initial negotiations took place, Kimberley. It entered into force in 2003 when participating states started to implement its rules.[50] Currently, the Kimberley Process has 56 participants, representing 82 countries.[51] Tanzania participates in this Process. Jointly, Kimberley Process participants regulate 99,8 per cent of the global trade in diamonds.[52]

45 Kimberley Process 'History' available at https://www.kimberleyprocess.com/en/what-kp (accessed 1 December 2021).

46 UNGA (2001) 'The role of diamond in fuelling conflict: breaking the link between the illicit transaction in rough diamonds and armed conflict as a contribution to prevention and settlements of conflicts, UNGA Resolution A/RES/55/56.

47 UNGA (2001) preamble paragraph 2.

48 UNGA (2001) paragraphs 2 and 3(a & g).

49 See https://www.kimberleyprocess.com/en/what-kp (accessed 1 December 2021).

50 See https://www.kimberleyprocess.com/en/what-kp (accessed 1 December 2021).

51 See https://www.kimberleyprocess.com/en/what-kp (accessed 1 December 2021).

52 Kimberley Process (b) 'What is the Kimberley Process?' available at https://www.kimberleyprocess.com/en/what-kp (accessed 26 August 2021).

The Kimberley Process is the first multilateral forum dedicated to preventing the flow of so-called blood diamonds.[53] It sets transparency and oversight standards in the trade of diamonds to ensure that rough diamonds sold by rebel groups and their allies do not flow into the global market.[54] Under the Kimberley Process Certification Scheme, participants must meet the set minimum requirements, establish national legislations and institutions, and enforce import or export controls on rough diamonds.[55] Furthermore, they must abide by transparency processes, exchange critical data with other participants, and trade solely with fellow Kimberley Process participants. In addition, they should certify all rough diamonds as conflict-free before entering the global supply chain.[56]

The Kimberley Process has contributed significantly to reducing the volume of conflict diamonds traded internationally. In the 1990s, conflict diamonds accounted for 15 per cent of the global diamond trade.[57] By the 2010s, the amount had dropped to less than one per cent.[58] With this achievement, the Kimberley Process has provided important learning for other extractive sectors such as energy. The scheme can be customised to address governance issues related to oil and gas which are affecting oil-dependent nations in Africa. It is submitted that requiring countries to certify their oil and natural gas as conflict- and corruption-free could be an incentive for the ethical exploitation of energy resources.

5.5.2. Publish What You Pay

Publish What You Pay is a worldwide coalition of civil society organisations campaigning for the greater transparency of resource revenues.[59] It was founded in 2002 to address corruption and

53 Cameron & Stanley (2017) 228.

54 United States of America Department of State 'Conflict Diamonds and the Kimberley Process' available at https://www.state.gov/conflict-diamonds-and-the-kimberley-process/ (accessed 26 August 2021).

55 See https://www.kimberleyprocess.com/en/what-kp (accessed 26 August 2021).

56 Cameron & Stanley (2017) 228.

57 Howard A (2015) 'Blood Diamonds: The Successes and Failures of the Kimberley Process Certification Scheme in Angola, Sierra Leone and Zimbabwe' 15(1) *Washington University Global Studies Law Review* 153.

58 Nichols JE (2012) 'A Conflict of Diamonds: The Kimberley Process and Zimbabwe's Marange Diamond Fields' 40(4) *Denver Journal of International Law and Policy* 650.

59 Publish What You Pay 'Our history' available at https://www.pwyp.org/about/ (accessed 1 December 2021).

mismanagement caused by opacity in the extractive industry in resource-rich nations.[60] During 2021, it had over 1 000 member organisations in 51 countries, and claims to be the leading global movement advocating for accountable spending of natural resource revenues to promote national development.[61] The coalition's primary goal is to ensure that citizens in resource-rich nations benefit from those endowments.[62] Its strategy promotes the disclosure of payments made by companies to governments, and revenues received by governments from extractives companies.[63] Such disclosure is expected to enable citizens and civil society to analyse transactions, question suspicious ones, determine the benefits of an extractive project to the people, and hold public officials accountable in case of violation.[64]

Publish What You Pay's scope of work includes anti-corruption and contract transparency.[65] With regard to anti-corruption, it advocates for the disclosure of beneficial ownership of companies, in addition to disclosing payments made by those companies. Also, it demands tax justice by collaborating with the Extractive Industries Transparency Initiative to ensure that country reports provide detailed information of the fiscal regime and tax payments from extractive companies.[66] Regarding contract transparency, it encourages open and competitive bidding processes, as well as the publication of the full contract terms in the extractive industry.[67] In 2020 it launched a global campaign called #DiscloseTheDeal, which calls for the comprehensive disclosure of extractive contracts.[68]

60 See https://www.pwyp.org/about/ (accessed 1 December 2021),.

61 Publish What You Pay 'Homepage' available at https://www.pwyp.org/ (accessed 26 August 2021).

62 Natural Resource Governance Institute (2015) 2.

63 Publish What You Pay 'Revenue Transparency' available at https://www.pwyp.org/areas-of-work/revenue-transparency/ (accessed 26 August 2021).

64 See https://www.pwyp.org/areas-of-work/revenue-transparency/ (accessed 26 August 2021).

65 Publish What You Pay 'What we work on' available at https://www.pwyp.org/areas-of-work/ (accessed 26 August 2021).

66 Publish What You Pay 'Anti-Corruption' available at https://www.pwyp.org/areas-of-work/anticorruption/ (accessed 26 August 2021).

67 Cameron & Stanley (2017) 228.

68 Publish What You Pay '#DiscloseTheDeal' available at https://www.disclosethedeal.org/ (accessed 26 August 2021).

Being a coalition of civil society organisations, Publish What You Pay lacks the legal force to demand implementation from governments and companies. To achieve effectiveness of its strategy, it collaborates with the Extractive Industries Transparency Initiative which is legislated for in most of its member countries. In that regard, it played a crucial role in ensuring that contract disclosure requirements are incorporated in the Extractive Industries Transparency Initiative Standard of 2019.[69] Its impact in improving resource governance is notable. In Indonesia, the coalition reconciled data on mining licences with acreage data to determine if licensees were operating in their allocated areas.[70] They found that over 200,000 hectares were occupied by unlicensed miners.[71] This prompted the Indonesian Corruption Eradication Commission to review its mechanisms of improving mining governance.[72]

In Tanzania, Publish What You Pay has a national coalition called *HakiRasilimali* which was established formally in 2016. *HakiRasilimali* aims at promoting knowledge and capacity for policy analysis and advocacy to influence the enactment of policies and laws that ensure sustainable and equitable benefits from extractive resources.[73] *HakiRasilimali* is one of the civil society representatives in the Tanzania Extractive Industries Transparency Initiative multi-stakeholder group.[74] Participation in this group is an important platform for stakeholder dialogue and civil society engagement in advocating for transparency and accountability in the governance of extractive resources, and the management of the accruing revenue. Generally, implementation of the Publish What You Pay initiatives promotes public access to crucial revenue information that may be used to identify corrupt practices in resource revenue management, and hold those responsible accountable.

69 See https://www.disclosethedeal.org/ (accessed 26 August 2021).

70 Landau K, Lewis RJ & Squires C (2020) 'Using extractive industries data for better governance' available at https://www.brookings.edu/blog/up-front/2020/10/06/using-extractive-industries-data-for-better-governance/ (accessed 26 August 2021).

71 Landau, Lewis & Squires (2020).

72 Landau, Lewis & Squires (2020).

73 HakiRasilimali 'About HakiRasilimali' available at https://www.hakirasilimali.or.tz/about-us/ (accessed 26 August 2021).

74 EITI (2017) *Validation of Tanzania Report on Initial Data Collection and Stakeholder Consultation* EITI International Secretariat 24.

5.5.3. Extractive Industries Transparency Initiative

This is an international multi-stakeholder body that implements the global standard for promoting transparency and accountability in the management of oil, gas, and mineral resources.[75] It was established in 2003 out of the Publish What You Pay campaign to leverage the obligation of disclosing payments between companies and resource host countries.[76] Over the years, it has evolved from its initial focus on revenue transparency to addressing opacity across the extractive industry value chain.[77] Its implementation strategy is the Extractive Industries Transparency Initiative (EITI) Standard which is updated regularly to address new developments in extractive sector governance. The current edition of the Standard was published in 2019.

As a soft-law standard, EITI's implementation requires countries' voluntary commitment. During 2021, there were 55 countries implementing its Standard, of which 25 are African countries, including Tanzania.[78] Implementation follows five major steps.[79] First, an International Secretariat develops the Standard, and implementing countries agree to it. Secondly, at national level, a multi-stakeholder group decides on the implementation process for the respective country and ensures monitoring. Thirdly, implementing countries report annually to the EITI International Board on the overall governance of the extractive sector in line with the Standard. Fourth, the Board assesses the country's progress against the Standard through a process called validation. Validation reviews the country's implementation progress, analyses its impact, and provides recommendations for improvement. Through validation, the Board assigns the country's implementation status as having made satisfactory progress, meaningful progress, inadequate progress, or no progress. Lastly, the country's report and the

75 EITI 'What we do' available at https://eiti.org/About (accessed 27 August 2021).

76 EITI 'History of the EITI' available at https://eiti.org/history (accessed 27 August 2021)

77 EITI (2019) *The EITI Standard 2019* EITI International Secretariat 2.

78 EITI (2021) *EITI Progress Report: Extractive Transparency in a Year of Change* EITI International Secretariat 4.

79 For details on how the EITI process works, EITI (c) 'How we work' available at https://eiti.org/about/how-we-work#upholding-the-standard-internationally-validation (accessed 27 August 2021).

validation information are disseminated widely to inform public debate and participation in reform.

The EITI Standard of 2019 establishes seven requirements for promoting transparency and accountability across the extractive industry value chain. These requirements are minimum standards, and countries are encouraged to go beyond them where necessary.[80] The gist of each requirement is captured briefly below with the view to guiding the later discussion on Tanzania's extractive sector transparency and accountability initiatives.

Requirement One concerns the establishment of the national multi-stakeholder group.[81] This comprises representatives from the government, companies, and civil society. The Government is required to expressly commit to implementing the Standard, including appointing a senior official to lead the initiative and provide a conducive environment for participation of companies and civil society. Companies and civil society are required to participate fully, actively, and effectively in the implementation process. Government restriction on public dialogue is prohibited. The multi-stakeholder group is the national focal point for EITI implementation. It approves work plans and oversees implementation.

Requirement Two is about the licensing and contracting chevron of the extractive industry value chain.[82] It establishes five key obligations. First, governments should ensure transparency of the legal and fiscal regime governing the extractive industry. Secondly, information about licences granted and contracts signed should be disclosed to the public. Specifically, Requirement 2.4 requires all contracts and licences granted from 1 January 2021 to be published. Thirdly, countries are required to maintain a publicly accessible register of licences with information about the licence holder, licence area, licence duration, and commodity being produced. Fourth, countries must maintain a publicly available register of beneficial ownership of the companies engaged in extractive activities. Fifth, the government should disclose information about state participation in extractive operations. Essentially,

80 EITI (2019) 9.
81 EITI (2019) 10.
82 EITI (2019) 13.

Requirement Two of the Standard addresses the major corruption avenues in the award of contracts identified in this thesis.[83]

Requirement Three covers disclosure of information concerning the exploration and production phases.[84] Put simply, it requires countries to publish information about exploration activities, production data such as volume and value of commodity, and data on exports. Requirement Four commands transparency in revenue collection.[85] It requires the comprehensive disclosure of all material payments made by companies to the government, and revenue received by the government from companies. The multi-stakeholder group is expected to agree on which payments and revenues are material for the purposes of disclosure requirements. Nevertheless, they include the host government's profit share, taxes, dividends, royalties, bonuses, and fees. Disclosed payments and revenue information should be subjected to credible and independent audit, applying international auditing standards.

Requirement Five deals with revenue allocation.[86] It requires governments to disclose the allocation of extractive revenue such as to the national budget, sovereign wealth and development funds, subnational governments, or to state-owned enterprises. Countries must also disclose information about the management and expenditure of such revenues. This is essential in ensuring that extractive revenues are not spent corruptly. Requirement Six addresses social and economic spending. Countries should disclose social expenditures of revenues from extractive companies, including those relating to environmental protection. Also, countries should provide comprehensive information about the contribution of the extractive sector to the economy.

Requirement Seven looks at the outcome and impact of extractive activities. EITI argues that comprehensive disclosure of extractive sector information is meaningful only if the public is aware of and understands what the figures mean, and has space for debate on the effective

83 See discussion at section 4.3.2 of this thesis.
84 EITI (2019) 21.
85 EITI (2019) 22.
86 EITI (2019) 27.

use of resource revenues.[87] It requires government and companies' disclosures to be comprehensible, well promoted, publicly accessible, and encouraging public debate. Published data should be open, and in easily accessible and interpretable formats.

Implementation of the EITI Standard contributes significantly to improving resource governance. In Nigeria, it triggered tight scrutiny over natural resource governance.[88] In 2019, the Validation recognised Nigeria as the first Anglophone African country to make satisfactory progress in implementing all requirements of the Standard.[89] Although this does not imply automatic reduction in corruption levels, it reflects improvements in transparency structures which are necessary for controlling corruption. Similarly, in 2020, the local EITI chapter in the Democratic Republic of Congo published a contract regarding the purchase by Multree of royalties in the Metalkol copper and cobalt project from the state-owned mining company Gécamines.[90] Multree was incorporated in the British Virgin Islands and linked to Dan Gertler whom the United States of America's authorities sanctioned in 2017 on corruption allegations.[91] The low price paid by Multree for the high-value royalties, and the connection between Gertler and the project attracted wide criticism from local and international stakeholders and media.[92] This indicates that contract disclosure requirements stimulate public oversight on natural resource governance.

EITI's reporting requirements complement the fight against corruption in several ways.[93] First, they uncover resource governance practices that are vulnerable to abuse by dishonest actors. Secondly, they expose suspicious transactions in the extractive industry value chain and

87 EITI (2019) 31.

88 David-Barrett & Okamura (2013) 23.

89 EITI (2019 b) 'Nigeria uses EITI to reform industry, build accountability' available at https://eiti.org/news/nigeria-uses-eiti-to-reform-industry-build-accountability (accessed 27 August 2021).

90 EITI (2021) 13.

91 Reuters (18 November 2020) 'Mining magnate Gertler expects to recoup Congo royalties investment by 2026' available at https://www.reuters.com/article/ozabs-uk-congo-mining-gertler-idAFKBN27Y0WD-OZABS (accessed 27 August 2021).

92 BBC (23 March 2021) 'Dan Gertler - the man at the centre of DR Congo corruption allegations' available at https://www.bbc.com/news/world-africa-56444576 (accessed 27 August 2021).

93 For detailed discussion, see Sahla S, Gillies A & Salomon M (2021) *How Can Anticorruption Actors Use EITI Disclosures?* Natural Resource Governance Institute.

prompt public reaction. Thirdly, they provide valuable information for anti-corruption stakeholders to act upon. Fourthly, they promote public debate and participation in overseeing the extractive sector. Finally, they report obligations on companies and governments, increasing the likelihood of detection, and thereby deterring some officials from acting corruptly. Justice Louis Brandeis famously stated in 1913 that sunlight is said to be the best of disinfectants.[94] Therefore, EITI implementation can expose many corrupt practices to scrutiny.

Despite its potential contribution to anti-corruption, the Extractive Industries Transparency Initiative is not conceived as an anti-corruption tool by its implementing participants.[95] While implementing countries typically frame their strategies towards promoting good governance through increased transparency and accountability, that may not necessarily reduce corruption. It is in that sense that despite achieving the highest classification of satisfactory progress in implementing the EITI Standard in 2019, Nigeria ranked 149th out 180 countries in the Transparency International Corruption Perceptions Index for 2020. This decoupling may be attributed to several limitations. First, the Initiative addresses the extractive sector only, and countries have not managed to transpose its requirements to other sectors and government structures.[96]

Secondly, implementation processes focus on meeting EITI's reporting standards rather than improving governance systems.[97] As such, while information contained in the reports may inform investigation and prosecution, national EITI institutions lack the mandate to investigate or prosecute wrongdoing such as corruption. Thirdly, there is little focus on corruption in the reporting.[98] EITI reports rarely describe the state of corruption or anti-corruption in the extractive sector. Hence, recommendations for improvement do not address anti-corruption

94 Louisville 'What publicity can do' available at https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v (accessed 27 August 2021).

95 Sahla, Gillies & Salomon (2021) 6-7.

96 EITI (2019 c) 'Discussion Paper: The EITI's Role in Fighting Corruption' available at https://eiti.org/files/documents/eiti_global_conference_discussion_paper_-_eitis_role_in_fighting_corruption_1.pdf (accessed 27 August 2021) 9.

97 Cameron & Stanley (2017) 229.

98 Sahla, Gillies & Salomon (2021) 7.

frameworks directly. In those circumstances, there is scepticism among scholars and civil society over the Initiative's relevance to addressing corruption in implementing countries.[99]

The Extractive Industries Transparency Initiative provides a solid framework for enhancing transparency and accountability in the extractive industry. However, to contribute effectively to reducing corruption it should be complemented by other measures to enhance citizen's capacity to understand and act upon the available information and establish effective sanctions to ensure government response.[100] The next section discusses the important drivers of achieving transparency and accountability effectiveness in extractive sector governance.

5.6. Drivers of transparency and accountability in the extractive sector

Transparency and accountability in the extractive industry value chain depends on several drivers. These include disclosure of contracts, disclosure of beneficial ownership, fiscal transparency, open government, and effective citizen and civil society engagement. This section discusses these drivers with the view to identifying their guiding international standards, their impact on fighting corruption in the extractive sector, and how they have been adopted in country-specific contexts. This discussion is important in this study as it establishes the standards against which Tanzania's extractive sector transparency and accountability initiatives can be assessed.

5.6.1. Transparency of contracts

It is estimated that annually governments around the world undertake public contracts worth US$9.5 trillion.[101] These contracts impact on the daily lives and economic well-being of the entire world population. Extractive contracts particularly affect the well-being of about 3.5

99 Sahla, Gillies & Salomon (2021) 7.

100 Chen C & Ganapati S (2018) 'Is Transparency the Best Disinfectant? A Meta-Analysis of the Effect of Transparency on Government Corruption' Open Government Partnership Working Paper 24 and Davenport & Kallaur (2020) 181.

101 Marchessault L (2013) *Open Contracting: A New Frontier for Transparency and Accountability* World Bank Institute & Open Contracting 1.

billion people from 63 countries globally.[102] Despite their significant impact on the people's well-being, for many years public contracts have been treated as top government secrets in most countries.[103] This denies the public opportunity to assess the terms of those contracts and determine their benefits to the people.

To address that deficit, global transparency initiatives now advocate for disclosure of contracts related to mining, oil, and gas. There are several grounds in favour of this movement. Firstly, contract transparency can ensure the conformity of agreed contract terms to the country's legal framework governing the respective extractive industry.[104] For instance, it was only after the Statoil addendum agreement with Tanzania leaked that the public realised that its profit split terms deviated significantly from the terms of the Model Production Sharing Agreement of 2010.[105] Secondly, contract transparency strengthens monitoring and compliance with contractual obligations, including tax collection and sector auditing.[106] For instance, in Côte d'Ivoire, it was observed that contract secrecy limited the capacity of the supreme audit institution to undertake effective oversight of public finances.[107]

Thirdly, contract disclosure improves fiscal modelling and revenue forecasting. Following the leak of the Statoil addendum agreement with Tanzania, the Natural Resource Governance Institute made a financial analysis of its terms to determine if the country had obtained a good deal. It found that, despite the deviation from the model agreement, the Statoil addendum agreement still was in line with international standards.[108] Nevertheless, the analysis was not exhaustive as it was limited to the leaked addendum agreement. Analysts had no access to the

---

102 Open Contracting 'Delving into the world of oil, mining and gas contracts with open contracting' available at https://www.open-contracting.org/what-is-open-contracting/extractives/ (accessed 30 August 2021) and World Bank (13 August 2021) 'Extractive Industries' available at https://www.worldbank.org/en/topic/extractiveindustries/overview (accessed 30 August 2021).

103 See at https://www.open-contracting.org/what-is-open-contracting/extractives/ (accessed 30 August 2021).

104 EITI (2018) *Contract Transparency in Oil, Gas and Mining: Opportunities for EITI Countries* Oslo: EITI International Secretariat 10.

105 See detailed discussion of this issue at part 4.3.4.3.3 of this thesis.

106 EITI (2018) 11.

107 EITI (2018) 11.

108 Manley & Lassourd (2014) 8.

core agreement where they could assess the fiscal terms of the entire project.[109] Contract secrecy diminishes public trust in the management of natural resources and may prompt unrealistic public expectations about the resource rents.

Several international organs have committed to promoting contract transparency. The OECD Principles for Integrity in Public Procurement requires governments to adopt procurement procedures that ensure transparency for suppliers, stakeholders, and oversight institutions across the procurement cycle.[110] Similarly, the G-20 Principles for Promoting Integrity in Public Procurement commits countries to ensuring open and timely publication of procurement laws, rules, procedures, opportunities, and awards.[111] Likewise, the 2016 London Anti-Corruption Summit resolved to implement measures to ensure transparent contracting and prevent theft and misuse of public funds.[112] This includes assisting developing countries to collect information on beneficial owners of companies for use in contracting processes, and sharing timely and open contracting data to enable public scrutiny.

Specific to the extractive sector, the Extractive Industries Transparency Initiative Standard of 2019 provides the relevant contract transparency guidance. Under Requirement 2.3, countries are required to maintain a publicly accessible register of licences granted to extractive companies. Information in the register includes licence holders, location of the licence area, licence duration, and, where relevant, the commodity produced. Requirement 2.4 enjoins countries to disclose all contracts and licences granted or amended from 1 January 2021. Such disclosure should be comprehensive, including the terms of the exploitation. Multi-

109 Manley & Lassourd (2014) 6.

110 OECD (2009b) *Principles for Integrity in Public Procurement* Paris: OECD Publishing 22.

111 G-20 (2015) 'Principles for Promoting Integrity in Public Procurement' available at http://www.seffaflik.org/wp-content/uploads/2015/02/G20-PRINCIPLES-FOR-PROMOTING-INTEGRITY-IN-PUBLIC-PROCUREMENT.pdf (accessed 30 August 2021) 2.

112 Anti-Corruption Summit (2016) *Communique* available at https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/20-24June2016/V1603744e.pdf (accessed 30 August 2021) paragraph 9.

stakeholder groups are required to set plans for implementing this requirement and addressing any barriers to implementation.

Over 900 petroleum and mining contracts have been published by the EITI implementing countries.[113] Over half of those countries have committed to disclose extractive contracts in practice or by enacting relevant legislation.[114] In 2018, Ghana launched an online public register of petroleum contracts.[115] During 2021, the register contained publicly accessible information of 18 petroleum contracts, including the actual contract documents. Similar registers have been established by civil society organisations, containing resource contracts from around the world. Notably, the Resource Contracts online repository contains over 2 600 extractive contracts and related documents from over 90 countries.[116] This repository has nine documents from Tanzania. Five of them are Model Production Sharing Agreements, three concern the Songo Songo gas project, and the last one is the leaked Statoil addendum agreement.[117] Most of the petroleum agreements in Tanzania have not been disclosed to the public and are strictly shielded from scrutiny.

Contract secrecy denies the public access to important information concerning the exploitation of their natural resources. Through permanent sovereignty over natural resources, the people have an inherent right to enjoy their natural endowments.[118] Governments as trustees must manage the exploitation of those resources on their behalf. The people as beneficiaries must have the power to hold the trustee accountable. To do so effectively, they must know the terms of the exploitation of those resources. This is even more important where the trustee is untrustworthy, as in the situation of corrupt governments. Contract secrecy

113 EITI (2021) 13.

114 Oxfam (2018) 'Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas, and Mining Companies' Oxfam Briefing Paper 3 & EITI (2021) 13.

115 See https://www.ghanapetroleumregister.com/ (accessed 31 August 2021).

116 See https://resourcecontracts.org/ (accessed 31 August 2021).

117 See https://resourcecontracts.org/countries/tz (accessed 31 August 2021).

118 See detailed discussion at section 2.2.8 of this thesis.

makes this accountability framework unrealistic and creates a vacuum for abuse of powers by dishonest government officials.

5.6.2. Beneficial ownership transparency

Corporate vehicles such as companies, trusts, and foundations play a crucial role in concealing corruption and its perpetrators.[119] Revelations such as the Panama Papers,[120] the Luanda Leaks,[121] and the Pandora Papers[122] illustrate how dishonest individuals use corporate entities to hide ill-gotten wealth. Anonymous shell companies account for over 70 per cent of grand corruption cases globally.[123] There is a growing international concern for identification of the actual owners and controllers of corporate entities. This is the gist of the beneficial ownership transparency campaign.

A beneficial owner is the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted.[124] This definition includes natural persons who exercise ultimate effective control over a legal person or arrangement.[125] In that sense, beneficial ownership transparency refers to the disclosure of the information relating to the natural persons who own or control a legal person or arrangement and their respective interests.

Beneficial ownership transparency is a key component of the international anti-corruption and anti-money laundering framework. Article 52(1) of the United Nations

---

119 For detailed analysis and examples, see Willebois E et al. (2011) *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* Washington DC: World Bank.

120 International Consortium of Investigative Journalists (2016) 'The Panama Papers: Exposing the Rogue Offshore Finance Industry' available at https://www.icij.org/investigations/panama-papers/ (accessed 1 December 2021).

121 International Consortium of Investigative Journalists (2020) 'Luanda Leaks' available at https://www.icij.org/investigations/luanda-leaks/ (accessed 21 June 2021).

122 International Consortium of Investigative Journalists (2021) 'Pandora Papers' available at https://www.icij.org/investigations/pandora-papers/ (accessed 1 December 2021).

123 UNODC (2021) 'Implementing Beneficial Ownership Transparency for Anti-corruption and Good Governance in South Africa' available at https://www.unodc.org/documents/ft-uncac/BOT_Workshop_-_Event_Outline.docx (accessed 31 August 2021)1.

124 FATF (2014) *FATF Guidance: Transparency and Beneficial Ownership* Paris: FATF/OECD 8.

125 FATF (2014) 8.

Convention against Corruption enjoins State Parties to take measures requiring financial institutions to identify the beneficial owners of funds deposited in high-value accounts, and report suspicious transactions to competent authorities. The global anti-money laundering standards setter Financial Action Task Force Recommendation 24 requires countries to provide timely, accurate, and adequate information of the beneficial owners of legal persons.[126] The European Union Directive 2015/849 on preventing the use of the financial system for the purposes of money laundering or terrorist financing, requires member states to adopt and enforce beneficial ownership transparency measures.[127]

From the extractive industry perspective, Requirement 2.5 of the EITI Standard 2019 calls upon implementing countries to maintain publicly accessible registers of beneficial owners of corporate entities that are engaged in the exploration or production of oil, gas, or minerals. From 1 January 2020, countries have been required to request such information, and companies are enjoined to publicly disclose it.[128] Several initiatives have been adopted by countries and civil society organisations in this regard. For instance, Nigeria, Trinidad and Tobago, Myanmar, and Armenia have launched online registers of beneficial ownership. From the civil society side, Open Ownership has established an online register of beneficial ownership, containing information on more than 12 million beneficial ownerships during 2021.[129]

The beneficial ownership transparency framework requires the information collected to be adequate, current, and accurate. Such information includes the names of the beneficial owners, their nationality, country of residence, national identity number, level of control exerted, and nature and extent of the beneficial interest held. It should also disclose the beneficial owners' date of birth, residential address, contact details, and association with

126 FATF (2021) *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* FATF 22.

127 See Chapter III of the European Union Directive 2015/849 on Preventing the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.

128 EITI (2019) 18.

129 Available at https://register.openownership.org/ (accessed 31 Aust 2021).

politically exposed persons, if any. Once published, this information may be used by the public, companies, and government authorities.[130] Citizens can use such information to identify links between companies and public officials to hold them accountable. For companies, beneficial ownership transparency creates a level playing field by allowing them to know who they are transacting with. To governments, it helps to prevent revolving door practices, conflict of interest, and tax evasion. It enhances the capacity of law enforcement organs to investigate and prosecute financial crimes.

There are three main approaches to beneficial ownership transparency, namely the central registry approach, the licenced intermediary or gatekeeper approach, and the company approach.[131] Under the central registry approach, companies submit beneficial ownership information to a designated government authority which collects, records, and maintains such information in a central register.[132] This is the most common approach. For instance, article 30(3) of the European Union Directive 2015/849 has a central or public register requirement for member states. A survey of beneficial ownership legislation in EITI implementing countries found that the majority have designated a central authority for this purpose.[133] Such authorities vary across nations and may be a corporate registry, sector-specific ministry, tax authority, extractive sector regulatory agency, or central bank.[134] Depending on country requirements, access to the register is either limited to law enforcement and government agencies, or open to the public. Where public access is allowed, it is invariably preceded by filing a request for access (such as online registration) or payment of prescribed fees.[135]

The licensed intermediary or gatekeeper approach requires professional service providers to collect and submit to a government authority beneficial ownership information of

130 EITI 'Beneficial ownership' available at https://eiti.org/beneficial-ownership (accessed 31 August 2021).

131 Habershon A, Krause S & Sztykowski Z (2020) 'Beneficial Ownership Transparency' in World Bank *Enhancing Government Effectiveness and Transparency: The Fight against Corruption* Kuala Lumpur: World Bank Group 251.

132 Habershon, Krause & Sztykowski (2020) 251.

133 EITI (2019 d) *Legal approaches to beneficial ownership transparency in EITI countries* EITI 3.

134 EITI (2019 d) 3 and Habershon, Krause & Sztykowski (2020) 251.

135 EITI (2019 d) 16.

their clients.[136] The gatekeepers may be financial institutions, lawyers and notaries, auditors, investment and tax advisors, or real estate professionals. Under this approach, these professionals have reporting obligations in line with those imposed for anti-money laundering obligations.[137] Reporting may be routine or upon request.[138] The role of these gatekeepers is mainly to authenticate and verify beneficial ownership information of their clients as part of their customer due diligence obligations.[139] Therefore, they should be properly regulated and supervised, and be liable to sanctions for non-compliance.[140]

The company approach enjoins corporations to collect and maintain information of their beneficial owners and release this to government authorities upon request.[141] This is self-declared information, detailing the shareholders or members of the company and its representatives.[142] However, in the absence of independent verification, the FATF guidance doubts the accuracy and authenticity of such information.[143] This is because corrupt beneficial owners of corporate entities are unlikely to self-expose their ownership interests to government authorities.[144] The FATF suggests that if a country adopts this approach for beneficial ownership transparency, it should establish a clear legal framework guiding companies on the information that must be disclosed, and how it should be obtained, held, and updated.[145]

The FATF's mutual evaluations suggest that a single beneficial ownership transparency approach is ineffective in providing government authorities with timely, accurate, and authentic beneficial ownership information.[146] National authorities, companies, and gatekeepers face

136 Habershon, Krause & Sztykowski (2020) 251.
137 FATF (2019) *Best Practices on Beneficial Ownership for Legal Persons* Paris: FATF 31.
138 Habershon, Krause & Sztykowski (2020) 251.
139 FATF (2019) 31.
140 FATF (2019) 31 and Habershon, Krause & Sztykowski (2020) 251.
141 Habershon, Krause & Sztykowski (2020) 252.
142 FATF (2019) 17.
143 FATF (2019) 74.
144 Habershon, Krause & Sztykowski (2020) 252.
145 FATF (2019) 18.
146 FATF (2019) 22.

diverse challenges in fulfilling their beneficial ownership transparency obligations.[147] A multi-pronged approach using various information sources is recommended.[148] This must be complemented by the effective engagement of stakeholders, including companies, shareholders, company registrars, professional service providers, financial institutions, and national authorities.

Disclosure of beneficial ownership information is crucial to fighting corruption in the energy sector. The huge costs of investing in this sector necessitates the participation of oil companies that have a strong financial base. Most of these are listed in international stock exchanges with different forms and nature of shareholders and ownership.[149] Beneficial ownership transparency helps the public to link companies to specific persons, thereby enabling the identification of suspicious transactions. Also, it helps to uncover corrupt practices between public officials and private companies such as influence peddling, patronage, diversion, and nepotism.

5.6.3. Fiscal transparency

This driver is concerned with transparency of the revenue collection, revenue management, and revenue distribution frameworks. It encompasses the availability to the public of clear, reliable, frequent, timely, relevant, and open information about the country's fiscal policy and reporting.[150] Clarity refers to the extent by which information can be understood by consumers. Reliability concerns the accuracy of the information presented. Frequency is about consistency of the reporting. Timeliness refers to the range of time within which reports are disseminated. Relevance concerns the usefulness of the disseminated information to consumers such as investors, markets, citizens, and state authorities. Openness is the ease of access to such

147 See FATF (2019) 15-10 for analysis of the challenges for every approach.

148 FATF (2019) 22.

149 Publish What You Pay (2015) 'Transparency on the Move: Payment Disclosure by the World's Largest Oil, Gas & Mining Companies' available at http://www.publishwhatyoupay.org/wp-content/uploads/2015/10/Company_Coverage_Fact_Sheet_Final.pdf (accessed 13 August 2021)

150 International Monetary Fund (2018) *Fiscal Transparency Handbook* Washington DC: IMF.

information by the public, including its ability to hold government officials accountable for their fiscal decisions.[151]

The International Monetary Fund provides regular guidance on fiscal transparency, including on natural resources revenue. Its Fiscal Transparency Code is the widely recognised international standard in this regard.[152] The Code outlines a set of principles based on four major pillars, namely fiscal reporting, fiscal forecasting and budgeting, fiscal risk analysis and management, and resource revenue management. The last pillar establishes the principles for open and transparent collection, management, and distribution of revenues generated from natural resource exploration and extraction.[153] Such principles include setting clear procedures for allocation of extractive rights, and implementing clear and impartial resource revenue administration policies and procedures with regular reporting. There must also be transparent budgeting of resource revenue in accordance with the fiscal objectives, well-defined and accountable governance of natural resource funds, and regular reporting and auditing of resource revenue spending.[154]

Fiscal transparency is crucial to effective revenue collection, equitable revenue distribution, and fighting corruption in revenue management.[155] It helps governments to make informed decisions based on accurate assessment of policies, financial position, and potential risks.[156] It enhances the credibility of the fiscal regime thereby increasing investor and market confidence.[157] And it provides citizens, civil society, and legislature with relevant information to assess government decisions and hold public officials accountable for their management and use of public resources.[158]

151 See International Monetary Fund (2018) for detailed guidance on these components.
152 See International Monetary Fund (2019) *The Fiscal Transparency Code* Washington DC: IMF.
153 International Monetary Fund (2019) 4-5.
154 International Monetary Fund (2019) 4-5.
155 Cameron & Stanley (2017) 183.
156 International Monetary Fund (2018) 1.
157 Cameron & Stanley (2017) 183.
158 International Monetary Fund (2018) 1.

From an anti-corruption perspective, fiscal transparency exposes corruption opportunities in public finance management and helps in the designing of appropriate interventions. It enables citizens to scrutinise public accounts, identify suspicious transactions, and hold responsible organs accountable. Tools for budget tracking and reporting such as the Public Expenditure Tracking Survey are useful to reducing the leakage of public funds.[159] Using budget disclosure data from 95 countries, Chen and Nshekova conducted a cross-country analysis of the effect of fiscal transparency on corruption, and found that fiscally transparent governments are perceived to be less corrupt.[160] In Brazil, the Office of the Controller General created the Budget Transparency Portal in 2004, publishing information on government spending.[161] The media used the published information to identify and publish suspicious transactions such as the abuse of government credit cards by officials. This resulted in a change of policy on credit cards, including a 25 per cent reduction on spending by officials, restricting cash withdrawals on the cards, and banning the use of the card to pay for travel and per diems.[162] Therefore, with enhanced fiscal transparency, anti-corruption actors can glean relevant information and take measures to prevent, investigate, or prosecute corruption.

5.6.4. Effective public participation

To achieve accountability, transparency initiatives should be combined with effective public participation.[163] There is consensus among development policy scholars and the donor community that citizen engagement and participation improves governance and contributes to achieving development outcomes.[164] Public participation is anchored in the concept of open

159 Davenport & Kallaur (2020) 182.

160 Chen C & Neshkova MI (2020) 'The effect of fiscal transparency on corruption: A panel cross-country analysis' 98(1) *Public administration* 241.

161 Graft A, Verhulst S & Young A (2016) *Open Data's Impact: Brazil's Open Budget Portal* GOVLAB available at https://odimpact.org/files/case-study-brazil.pdf (accessed 2 September 2021).

162 Graft, Verhulst & Young (2016) 10-11.

163 Cameron & Stanley (2017) 222.

164 Gaventa J & Barrett G (2010) 'So What Difference Does it Make? Mapping the Outcomes of Citizen Engagement' *IDS Working Paper 347* available at https://www.participatorymethods.org/sites/participatorymethods.org/files/Wp347.pdf (accessed 2 September 2021), Carothers T & Brechenmacher S (2014) *Accountability, Transparency, Participation, and Inclusion: A New Development Consensus?* Washington DC: Carnegie Endowment for International Peace, and Interpeace (2015) 'Public Participation and Citizen Engagement' available at

government. A government is open if it provides citizens with relevant information, empowers them to engage in government workings, and responds to their demands.[165] The open government movement is grounded in principles of transparency, integrity, accountability, and stakeholder participation.[166]

Active citizen engagement contributes to improving governance in several ways. First, through their understanding of the people's concerns, the public can assist governments in shaping policy priorities and resource allocation.[167] This helps to reduce the risk of elite capture in government planning. Secondly, citizen engagement enables the public to understand the problems affecting their welfare and to participate in addressing them. It helps governments to foster public support in implementing plans and interventions. In countries with unfavourable public participation environments, fighting corruption is left to the state authorities. A study conducted by Afrobarometer and Research on Poverty Alleviation in 2017, found that in Tanzania seven out of ten people fear adverse consequences for reporting corruption to government authorities.[168] There is little public participation in fighting corruption in Tanzania. Conversely, in Hong Kong public members are ready to not only report corruption but also to disclose their identity when doing so.[169] Such country diversity contributes to explaining why Tanzania ranked 94th and Hong Kong ranked 11th in the Transparency International Corruption Perceptions Index 2020.

Thirdly, citizen engagement enhances public trust in government authorities. In 2019, governments were trusted by only 45 per cent of the citizens.[170] This means that the majority of citizens do not trust their governments. Trust in government encompasses confidence of

https://www.interpeace.org/wp-content/uploads/2015/10/2015_10_12_Effective_Advising_How-Public_participation.pdf (accessed 2 September 2021).

165 Davenport & Kallaur (2020) 181.

166 OECD 'Open Government' available at https://www.oecd.org/gov/open-government/ (accessed 2 September 2021).

167 Interpeace (2015) 2.

168 Olan'g & Msami (2017) 2.

169 Man-wai (2006) 196 and Gong & Xiao (2017) 177.

170 OECD 'Trust in Government' available at https://www.oecd.org/gov/trust-in-government.htm (accessed 2 September 2021).

citizens that the actions of the government are right and fair.[171] This is the cornerstone of government legitimacy and sustainability. It influences public reactions towards government policy and actions, including compliance with established rules and regulations. Government institutions cannot obtain support if the public has no confidence in them. For instance, citizen's fear of reporting corruption in Tanzania, as argued above, is an indication of the public's distrust of the country's anti-corruption institutions. With such distrust, anti-corruption efforts in the country can hardly succeed.

Effective public participation depends on access to information, favourable legislation and policy practices, and ability of the public to understand and act upon the available information.[172] It presupposes the presence of independent media and civil society, broad stakeholder engagement forums, and strong oversight institutions capable of enforcing sanctions against public officials.[173] The next section examines the transparency and accountability mechanisms in Tanzania's extractive sector to identify deficits in contributing to fighting corruption in the energy sector.

5.7. Transparency and accountability in Tanzania's energy sector

This section examines how the global extractive industry transparency and accountability standards are incorporated and implemented in Tanzania's energy sector governance framework. Analysis is based on the Extractive Industries Transparency Initiative Standard of 2019. This is because the Tanzanian legal and institutional framework on extractive industry transparency and accountability is crafted along that Standard. The extractive industry value chain approach is adopted in the analysis, with a view to identifying transparency and accountability deficiencies that may compound corrupt practices in the Tanzanian energy sector.

171 OECD (2013) 'Trust in government, policy effectiveness and the governance agenda' *Government at a Glance* available at https://www.oecd-ilibrary.org/docserver/gov_glance-2013-6-en.pdf?expires=1630571800&id=id&accname=guest&checksum=FEA2FF041A21CE76CBA4A281CDD5186A (accessed 2 September 2021) 21.

172 Davenport & Kallaur (2020) 181.

173 Interpeace (2015) 7.

5.7.1. Decision to extract

Transparency at this stage encompasses securing informed consent of the resource-host local communities, ensuring active public participation, and establishing clear legal, regulatory, and contractual framework for managing the sector.[174] Poor engagement of the local community may result in resistance to extractive projects. For instance, in 2013, riots ensued in the Tanzanian gas-rich Mtwara region as the local community contested the construction of a gas pipeline from that region to Dar es Salaam.[175] Protestors wanted Mtwara to have the lion's share of the gas revenue as part of their indigenous right to the resource.[176] They considered the government's decision to transport gas to Dar es Salaam for processing as a continuation of the decades of development marginalisation of the southern regions.[177] As a result of the riots, eight people were killed, dozens were injured, and hundreds were arrested.[178] The government contained the violence and the construction was completed successfully in 2015. However, the Mtwara riots underscores the need for public consultation and engagement in the exploitation and management of natural resources.

A study conducted by Ahearne and Childs between 2012 and 2014 concluded that the Mtwara protests were a sign of a fragmented citizenry surrounded by widespread mistrust in the government's actions towards development of the southern communities.[179] As such, one of the protesters' potential solutions was for the southern region to secede from the Tanzanian state in order to take control of resource discoveries.[180] Such notions based on grievances of local communities are serious threats to the security of the nation and the successful operation

174 Natural Resource Governance Institute (2010) and Alba (2009).

175 Stølan A et al. (2017) 'Prospects for peace in a petro-state: gas extraction and participation in violence in Tanzania' CMI Brief Volume 16 Number 10 available at https://www.cmi.no/publications/file/6394-prospects-for-peace-in-a-petro-state.pdf (accessed 5 May 2021) 1.

176 Ngw'anakilala F (22 May 2013) 'Tanzanian gas pipeline plan sparks riot -government officials' available at https://www.reuters.com/article/tanzania-riots-idUKL6N0E33YE20130522 (accessed 5 May 2021).

177 Ahearne R & Childs J (2018) 'National resources? The fragmented citizenship of gas extraction in Tanzania' 12(4) *Journal of Eastern African Studies* 697.

178 Ahearne & Childs (2018) 696.

179 Ahearne & Childs (2018) 703-707.

180 Ahearne & Childs (2018) 708.

of extractive projects. Indeed, the rise of insurgent groups in the Mozambican gas-rich Cabo Delgado province is attributed partly to local resentment against the state's resource management framework.[181] There are reports that some Tanzanians have joined the Mozambican militants.[182] In October 2020, Kitaya village in Mtwara region was attacked by about 300 militants claiming to be members of the Mozambican insurgent group.[183] This shows that lack of transparency in petroleum governance can result in human rights abuses and insecurity.

Ahearne and Childs argue that the Mtwara community grievances against the state resulted partly from misinformation and information asymmetries about the gas discoveries and its potential for transforming the economic status of the region.[184] Similarly, lack of transparency in the natural gas development deals contributed to the local dissatisfaction in Mozambique.[185] In 2017, Stølan et al. conducted a study to investigate the influence of information about petroleum expectations on public participation in violence in Tanzania. They concluded that providing citizens with thorough and updated information reduces expectations, lowers the risk violence, and helps them to make informed choices.[186] Therefore, effective community engagement is crucial to ensuring peaceful exploitation of the resource and management of public expectations.

Tanzanian laws recognise the people's sovereignty over natural resources.[187] However, the policy and legal framework guarantees little-to-no space for public participation in decision-making over natural resources. There are no guiding principles or legal provisions requiring the government to ensure public consultation and participation in the design and implementation

181 International Crisis Group (2021) *Stemming the Insurrection in Mozambique's Cabo Delgado* African Report No 303 Brussels: International Crisis Group 3-9.

182 International Crisis Group (2021) 17.

183 Obultusa G (23 October 2020) 'Militants from Mozambique staged deadly attack in Tanzania, police say' available at https://www.reuters.com/article/us-tanzania-security-mozambique-idUSKBN2781PB (accessed 3 September 2021).

184 Ahearne & Childs (2018) 706.

185 International Crisis Group (2021) 6.

186 Stølan et al. (2017) 4.

187 Section 4 of the Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017.

of petroleum governance policies.[188] The public's role is simply to safeguard energy infrastructure against vandalism.[189] Under the Petroleum Act, public participation provisions focus on the engagement of Tanzanians in the extractive activities, not in the sector's decision-making and oversight system. In such a context, it is possible for the government to enter into inequitable resource arrangements without the risk of being held accountable.[190]

Public participation in natural resource governance is weakened further by the shrinking civic and democratic space in Tanzania. Between 2015 and 2020, there were serious limitations on access to information, and on public criticism against the government. The country consistently dropped in the World Press Freedom Index from 75th out of 180 countries in 2015, to 124th in 2021.[191] Crackdown on media freedom automatically translates into limiting access to information by the public. This facilitates opacity of government processes. It is submitted in this thesis that opacity is the hub of corruption in the public sector, as it undermines the public scrutiny of government processes which is necessary for accountability.

Regarding transparency of the legal, regulatory, and contractual regime, Tanzania publishes the enacted legal and policy instruments primarily in the Government Gazette. Some of these instruments are available online on the websites of respective government institutions. This facilitates access by various stakeholders to the relevant instruments governing the energy sector. However, publication of the legal instruments is insufficient to address corruption where there is a lack of strong and free media, active civil society, and effective public engagement.

188 Luoga (2016) 'Challenges in Setting up Legal Frameworks for Natural Resources Governance in the East African Countries' 43(2) *The African Review* 8.

189 Ministry of Energy and Minerals (2015) 61.

190 Luoga FD (2016) 4.

191 Reporters Without Borders (2021) 'World Press Freedom Index' available at https://rsf.org/en/tanzania (accessed 3 September 2021).

5.7.2. Award of contracts and investment rights

Global transparency standards in this stage include disclosure of contracts, maintaining public registers of awarded contracts and licences, and disclosure of beneficial owners of the corporate entities participating in the extractive industry. Tanzania has a chequered performance regarding these aspects. Regarding contract disclosure, section 16 of the Tanzania Extractive Industries (Transparency and Accountability) Act[192] enjoins the multi-stakeholder group to cause the Minister responsible for mining, oil, and natural gas to publish all extractive industry agreements, contracts, and licences through a website or widely accessible media. It is also empowered to determine confidential contract information that might be exempted from disclosure.[193]

The contract disclosure provisions under the Act conform in theory to Requirement 2.4 of the EITI Standard 2019. However, since the enactment of that statute in 2015 until 2021, no petroleum agreement was disclosed by the government. It is not clear from the statute how the Tanzania Extractive Industries (Transparency and Accountability) Committee[194] should cause the Minister to publish those agreements. From 2018, the Committee and the government engaged with extractive industry stakeholders to identify a better approach of implementing the contract disclosure requirement.[195] As a result, a roadmap for such disclosure was prepared.[196] According to that roadmap, a government portal for disclosing contracts would be established in January 2022. However, up to March 2022 that portal was not yet operational. The level of disclosure in the portal once operational is uncertain.

192 No 23 of 2015.

193 Section 27(2) of the Tanzania Extractive Industries (Transparency and Accountability) Act 23 of 2015.

194 Established under section 4 of the Tanzania Extractive Industries (Transparency and Accountability) Act.

195 Ministry of Minerals (2021) *Hotuba ya Mheshimiwa Doto Mashaka Biteko (Mb.), Waziri wa Madini Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2021/2022* Dodoma: Wizara ya Madini 98.

196 TEITI 'Roadmap for Disclosing Contracts in Tanzania' available at https://www.teiti.go.tz/storage/app/uploads/public/60d/c11/125/60dc111252093547408015.pdf (accessed 6 September 2021).

Contract secrecy limits public scrutiny of the terms of the exploitation of energy resources, and creates an opportunity for corrupt officials to agree to exploitative terms for their personal gain. The award of the emergency power production contract to the dummy Richmond company in 2006 justify this argument.[197] Considering Tanzania's infancy in the oil and gas sector, maintaining contract secrecy denies the public, development partners, and international organisations an opportunity to assist the government in overcoming the challenges, such as corruption, of managing this sector.

The government is required to establish a register of all arrangements or agreements relating to natural resources.[198] Therefore, information about oil and gas exploration or production contracts, permits, and licences should be entered in the register. Such information includes parties to the agreement, the subject matter, duration, value or consideration, percentage of royalty, and adherence to local content and corporate social responsibility requirements.[199] Requirement 2.3 of the EITI Standard of 2019 requires such a register to be publicly accessible. However, there is no explicit provision in the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations 2020 that makes the register a public document. This denies the public access to the register.

The register is kept and maintained by the Director responsible for natural wealth observatory activities in the Ministry of Constitutional and Legal Affairs.[200] Information on the website of the Ministry shows that as of September 2021 the Directorate had not been established.[201] Impliedly the register is not in force as well. Similarly, section 84 of the Petroleum Act requires the Petroleum Upstream Regulatory Authority to establish and maintain

197 See discussion at section 3.3.4. of this thesis.

198 Regulation 5 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations 2020.

199 See Second Schedule to the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations.

200 Regulation 5 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations.

201 See https://www.sheria.go.tz/pages/natural-wealth (accessed 6 September 2021).

a registry of petroleum contracts, licences, and permits.[202] It has already established an offline version of the registry, and plans are underway to publish it online.[203] The public can access the petroleum registry on request.[204] Unlike the petroleum sector, the mining sector has progressed further in this aspect. The Mining Commission has established an online mining cadastre which provides public access to basic information on mining licences, such as licence holder, duration, commodity, and area covered.[205]

While the establishment of petroleum and mining registers is commendable, the information contained in them is insufficient to trigger productive public scrutiny, especially concerning anti-corruption. The information provided does not disclose interests held by the licence holders in those projects or the revenue arrangements on the part of the government. Fiscal terms are the most important aspect of the extractive industry transparency regime. They help the public to identify the revenue streams and assess the public's benefits from the extractive projects. Unlike the register maintained by the Petroleum Upstream Regulatory Authority, the register established at the Ministry of Constitutional and Legal Affairs addresses this shortcoming by requiring the disclosure of the value or consideration of the project, and its adherence to corporate social responsibility and local content provisions.[206] However, it is not yet operational and the absence of an explicit provision mandating public disclosure of its content makes the prospects of utilising it to enhance public debate and anti-corruption oversight uncertain.

Another transparency aspect in this phase is the disclosure of information of the beneficial owners of corporate entities that are engaged in extractive activities.[207] In 2020, the government amended the Companies Act[208] to introduce beneficial ownership disclosure

202 See further discussion of this aspect at section 4.3.5.5 of this study.
203 TEITI (2021) 54.
204 Section 84(6) of the Petroleum Act.
205 See https://portal.madini.go.tz/map/ (accessed 6 September 2021).
206 See Second Schedule to the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations 2020.
207 Requirement 2.5 of the EITI Standard 2019.
208 [Cap 212 R.E. 2008].

requirements.[209] The Registrar of Companies is enjoined to establish and maintain a register of beneficial owners of companies.[210] Information to be disclosed includes full name, date and place of birth, contact details, nationality and identity number, residential address, nature of interest held, and a statement as to whether the beneficial owner is a politically exposed person.[211] The implementation of the beneficial ownership transparency requirement is guided by the Companies (Beneficial Ownership) Regulations 2021.[212] The requirement applies to all companies incorporated or registered under the Companies Act.[213] Foreign-incorporated companies that have established a place of business in Tanzania are required to be registered by the Registrar of Companies.[214] As such, oil companies operating in Tanzania are registered under the Companies Act and are subject to its beneficial ownership disclosure provisions.

Tanzania adopts the company approach to beneficial ownership transparency. Companies are required to take reasonable steps to identify their beneficial owners, record such information in the register of members, and file it with the Registrar of Companies for registration.[215] Companies are required to do the same where there are changes in beneficial ownership information of their members.[216] The Registrar is empowered to refuse to register the information submitted if he or she is not satisfied with its accuracy.[217] However, there is no provision in the Companies Act or the Beneficial Ownership Regulations that expresses how the Registrar should verify the accuracy of such information. Absence of explicit verification mechanisms places beneficial ownership transparency requirements at the risk of false declaration or manipulation.

209 See Part III of the Finance Act 8 of 2020.
210 Section 451A of the Companies Act [Cap 212 R.E. 2008].
211 Section 14(2)(b) of the Companies Act as amended by the Finance Act 8 of 2020.
212 Government Notice No 391 published on 14 May 2021.
213 Regulation 3(1) of the Companies (Beneficial Ownership) Regulations 2021.
214 Section 434 of the Companies Act.
215 Regulation 3(2) of the Companies (Beneficial Ownership) Regulations.
216 Regulation 5 of the Companies (Beneficial Ownership) Regulations.
217 Regulation 8 of the Companies (Beneficial Ownership) Regulations.

Another deficit in the Tanzanian beneficial ownership transparency regime is the total ban on public access to the register. Access to the register is restricted. Only the national authorities responsible for the prevention, investigation, prosecution, and combating of money laundering and terrorist financing, the Financial Intelligence Unit, the Tanzania Revenue Authority, and the government institution responsible for economic empowerment of Tanzanians may gain access.[218] The parties who access such information are prohibited from disclosing it.[219] Similarly, companies are prohibited from disclosing information of their beneficial owners except when this is in compliance with a court order or an obligation under the Beneficial Ownership Regulations. Such information may be disclosed during communications with the respective beneficial owner.[220] This restriction completely denies public scrutiny of corporate ownership and control. Without access to beneficial ownership information, the public and civil society can hardly establish whether any conflict of interest and suspicious transactions exist between companies, public officials, and politically exposed persons.

Generally, Tanzania's legal framework restricts transparency in the award of contracts and the investment rights phase of the extractive industry value chain. As a result, it affords the accountability actors little to no opportunity to hold government officials responsible for their conduct in the management of extractive resources. Without public access to relevant information on extractive contracts, and on the beneficial owners of extractive companies, anti-corruption efforts become the role of state authorities alone.

5.7.3. Extraction operations and regulation

Transparency initiatives in this phase essentially concern the timely disclosure of production and export data.[221] During 2021, Tanzania produced natural gas at the Mnazi Bay and Songo

218 Regulation 11 of the Companies (Beneficial Ownership) Regulations.
219 Regulation 11 of the Companies (Beneficial Ownership) Regulations.
220 Regulation 6 of the Companies (Beneficial Ownership) Regulations.
221 Requirement 3 of the EITI Standard 2019.

Songo fields.[222] There are no gas exports as the entire volume produced is consumed domestically. However, exports are expected in the future after construction of a liquified natural gas plant. Negotiations between the government and investors are ongoing.

The licence and permit holder is required to submit to the Petroleum Upstream Regulatory Authority accurate records of the quantity of crude oil or natural gas produced or processed in Tanzania.[223] Information submitted to the Authority is confidential, and disclosure to third parties must be made under strict terms and conditions.[224] Nevertheless, the Authority is required to submit to the Minister responsible for petroleum annual reports of its operations detailing *inter alia* the quantity of petroleum produced.[225] Subsequently, the Minister presents that report to parliament. In line with its EITI reporting obligations, the government discloses production data in its report.[226] Through this reporting framework, transparency of production data is ensured, and public scrutiny may be achieved through those reports. The risk of corruption in this phase occurs if the upstream regulatory Authority fails to verify the accuracy of the information submitted to it by the licence and permit holders.[227]

Regarding export data, the Energy and Water Utilities Regulatory Authority is required to establish and maintain a Central Registry of Petroleum Operations that contains *inter alia* information on petroleum exportation by type, quantity, and destination.[228] The registry is part of the National Petroleum and Gas Information System which is maintained by the Authority.[229] The system is meant to be a strategic planning tool for the government and other stakeholders, and a platform for informing the public about the petroleum industry.[230] The Energy and Water Utilities Regulatory Authority has established an online portal to the system, but is not yet

222 TEITI (2021) 37.
223 Section 89(1) of the Petroleum Act 21 of 2015.
224 Section 92 of the Petroleum Act.
225 Section 233(1 & 2) of the Petroleum Act.
226 See for instance TEITI (2021) 37.
227 See further discussion at section 4.3.3.3.4. of this study.
228 Section 124(7) of the Petroleum Act.
229 Section 124(1 & 7) of the Petroleum Act.
230 Section 124(2) of the Petroleum Act.

operational.[231] The portal's stated goal is to assist the Authority and by extension the Ministry of Energy in performing its legislatively mandated role of regulating the energy sector.[232] This goal excludes the public awareness objective of the National Petroleum and Gas Information System as stated in the Petroleum Act.[233] If the portal is implemented in the context of that goal, it is likely that the public will not have access to it. This exclusion appears also in the National (Petroleum and Natural Gas) (Information System) Rules of 2019.[234] These Rules do not explicitly guarantee public access to the system. Lack of such access will inhibit public awareness of important developments in the energy sector, and undermine the public scrutiny of industry performance and regulatory efficacy.

5.7.4. Revenue collection

Extractive companies and governments are supposed to disclose taxes paid and revenues received in a comprehensive and publicly accessible manner.[235] In Tanzania, transparency in revenue collection is undertaken through several initiatives. First, the companies are required to present their annual accounts and audit reports of those accounts to their annual general meetings and submit a copy thereof to the Registrar of companies.[236] This provides company shareholders and the Registrar with the opportunity to scrutinise the company's transactions and take appropriate action. Equally, the Controller and Auditor General is mandated to audit the accounts and performance of all public institutions.[237] He or she produces two forms of audit reports: an individual report issued to the audited institution, and the annual general reports of the central government, local government authorities, parastatal organisations, and government projects.[238] The annual general reports are tabled in parliament for deliberation, and are publicly accessible.

231 Available at https://npgis.ewura.go.tz/ (accessed 6 September 2021).
232 See https://npgis.ewura.go.tz/ (accessed 7 September 2021).
233 Section 124(2) of the Petroleum Act.
234 Government Notice No 184 published on 15 March 2019.
235 Requirement 4.1 of the EITI Standard 2019
236 Sections 166 & 167 of the Companies Act.
237 Article 143 of the Constitution of the United Republic of Tanzania 1977.
238 TEITI (2021) 62.

The audit reporting framework ensures public scrutiny over public finances and promotes public participation in holding the government accountable for its management of public finances. Through this framework, suspicious transactions and financial mismanagement practices including corruption can be detected, investigated, and prosecuted.

Secondly, the Tanzania Extractive Industries (Transparency and Accountability) Committee conducts reconciliation of payments made by extractive companies and revenue received by the government. Extractive companies that fall within the materiality threshold set by the Committee are enjoined to submit information and data about all forms of taxes and charges paid to the government.[239] During 2021, the materiality threshold was TSh1 billion.[240] Therefore, all payments exceeding this threshold are to be reported to the Committee for reconciliation. Government institutions that receive such payments are also required to submit to the Committee information and data about the revenue received, for purposes of reconciliation. Regulation 9 of the Tanzania Extractive Industries (Transparency and Accountability) (General) Regulations of 2019[241] requires companies and government institutions to submit to the Committee accurate and certified information.

The reconciliation report encompasses a description of the revenue streams, transactions, and payments made to and by state-owned enterprises, revenue received from each stream, and sale of government production share.[242] It covers capital expenditure at every stage of the investment, production data of the respective extractive sector, corporate social responsibility payments, and adherence to local content requirements.[243] If the reconciliation identifies significant discrepancy between company payments and revenue receipts, the Tanzania Extractive Industries (Transparency and Accountability) Committee is enjoined to

239 Section 14 of the Tanzania Extractive Industries (Transparency and Accountability) Act.

240 TEITI (2021) 70.

241 Government Notice No 141 published on 8 February 2019.

242 Regulation 6(a-e) of the Tanzania Extractive Industries (Transparency and Accountability) (General) Regulations 2019.

243 Regulation 6(f-j) of the Tanzania Extractive Industries (Transparency and Accountability) (General) Regulations.

forward the report to the Controller and Auditor General for further investigation.[244] After investigating, the Controller and Auditor General are required to forward the audit report to the Committee. In line with the recommendations of the audit report, the Committee forwards the report to relevant authorities for further action. The relevant authority is supposed to act within 30 working days and submit an implementation report to the Committee. Finally, the Committee forwards that report to the responsible Minister for consideration and publication.[245]

The reconciliation process is a significant transparency and accountability step in the collection of extractive revenues. As described above, discrepancies between payments and revenue receipts trigger investigation and action from the Controller and Auditor General and other relevant authorities. This means that corruption, fraud, and financial misconduct by companies or government institutions can be detected and addressed if the oversight organs discharge their mandate properly.

The reconciliation report is part of the annual reports submitted to the Extractive Industries Transparency Initiative International Board for validation.[246] These reports are publicly accessible. This reporting framework enhances public scrutiny to identify suspicious transactions and demand accountability from the responsible organs. For instance, the 11th Tanzania Extractive Industries Transparency Initiative Report for the financial year 2018/19 showed discrepancy of over Tsh2 billion between companies' payments and revenue receipts of government agencies.[247] This means that companies declared higher payments than the revenue declared to have been received by government institutions. Such discrepancy suggests faults in the revenue collection and administration system which may be a door for corruption. Therefore, revenue reconciliation reports can expose leakage in revenue streams, and enhance the fight against corruption in the energy sector.

244 Section 18(1) of the Tanzania Extractive Industries (Transparency and Accountability) Act.

245 See section 18 of the Tanzania Extractive Industries (Transparency and Accountability) Act.

246 See for instance TEITI (2021) 66-100.

247 TEITI (2021) 80.

5.7.5. Revenue management and spending

Extractive Industries Transparency Initiative implementing countries are supposed to promote transparency in the allocation and expenditure of extractive industry revenues.[248] Relevant initiatives include revenue allocation in the national budget, disclosure of subnational revenue transfers, and publicly available information on budgeting, expenditures and audit reports.

Tanzania had a weak performance score of 53 out of 100 in the Resource Governance Index 2021 revenue management component.[249] This is attributed to concerns over the opacity of the national budgeting framework and the subnational revenue sharing system.[250] It had a lower transparency score of 17 out 100 and ranked 102nd out of 117 countries in the Open Budget Index 2019 published by the International Budget Partnership.[251] Similarly, it scored 9 out of 100 on public participation in the budget process and 33 out of 100 on budget oversight in the Open Budget Survey 2019.[252] The survey assesses the level of public access to budget information of the central government, formal opportunities enabling public participation in the budget process, and the role of budget oversight institutions such as parliament and the supreme audit organ.[253]

Those scores suggest that Tanzania has little transparency in the budget process which may be an opportunity for misallocation and mismanagement of public funds. The national budget system does not guarantee public participation in the budgeting process.[254] Simply, the process involves public sector institutions, Cabinet, and the Parliament. This way, the public has no opportunity to participate in planning and setting priorities for the use of natural resource

248 Requirement 5 of the EITI Standard 2019.

249 Natural Resource Governance Institute (2021) *Resource Governance Index 2021* available at https://resourcegovernanceindex.org/country-profiles/TZA/oil-gas?years=2021 (accessed 7 September 2021).

250 Natural Resource Governance Institute (2021).

251 International Budget Partnership (2020) *Open Budget Survey 2019: Tanzania* available at https://www.internationalbudget.org/open-budget-survey/country-results/2019/tanzania (accessed 7 September 2021).

252 International Budget Partnership (2020).

253 International Budget Partnership (2020).

254 See section 16 of the Budget Act [Cap 439 R.E. 2015].

revenues. As discussed earlier, the Mtwara riots were influenced by the perception among local communities that the government was distributing resource revenues inequitably, disregarding the southern regions.[255] Such perceptions arise partly from the public's non-participation in the budget process. Lack of public participation in the budget process may lead to public distrust of the government, and in extreme cases may result in resource conflicts.

Apart from the budget transparency deficits, Tanzania's national audit framework enables public scrutiny of public expenditure and performance.[256] The Controller and Auditor General's reports are accessible to the public and in some instances have influenced public debate over public finance management, such as the Independent Power Tanzania Limited/Escrow inquiry in 2014. Despite such achievements, Tanzania has a moderate level of audit independence in the World Bank's Supreme Audit Institutions Independence Index 2021.[257] This implies that the National Audit Office's independence is limited and may be unable to exert effective oversight on public finances. Without effective and independent oversight on public finances, natural resource revenues may be wasted in corruption.

5.8. Concluding remarks

Tanzania's membership of international transparency initiatives demonstrates the government's determination to promote transparency and accountability in the governance of extractive resources. However, there is decoupling between the transparency requirements and actual implementation. Mechanisms for public participation in the extractive sector governance are weak and inefficient at enhancing public oversight of extractive activities. Similarly, public access to government information is constrained by the government's crackdown on media freedom, as well as the shrinking democratic space. Across the energy sector value chain, regulation is marred with secrecy. Government does not publish its contracts with international oil companies, access to information of the beneficial owners of companies is limited to national authorities, public participation in budgetary processes is

255 See discussion at section 5.5.1 of this study. See also Ahearne & Childs (2018) 702.

256 See discussion at section 3.4.2 of this thesis.

257 World Bank (2021) 19.

limited, and the supreme audit institution is not fully independent in the discharge of its mandate. These deficiencies undermine transparency in the management of extractive resources. Less transparency limits the ability of accountability actors to hold government officials accountable for their conducts. Where the accountability framework is crippled and secrecy is upheld, corruption thrives easily. The next chapter proposes interventions for addressing the corruption vulnerabilities identified in this thesis.

Chapter Six:

Recalibrating Anti-Corruption Dimensions in Tanzania's Energy Sector

6.1. Introduction

Corruption is a vulnerability that may undermine the oil and gas sector's contribution to Tanzania's anticipated economic transformation. Despite the measures that have been adopted to fight this vice, corruption levels in the country are still very high.[1] This implies that economic sectors such as oil and gas are potentially vulnerable to corruption. This chapter therefore identifies the policy, legal, regulatory, and practical deficiencies which create room for corruption in the energy sector, and proposes interventions to overcome them. It draws on findings from previous chapters of this study to answer the third research question about the policy, legal, regulatory, and practical deficits which are avenues for corruption in the energy sector, and how they may be overcome.

The chapter is divided into four major sections. After this introduction, the next section delves into identifying the deficiencies which may compound corruption in Tanzania's energy sector. Thereafter, the chapter proposes interventions for overcoming those deficits. The last section provides concluding remarks.

6.2. Deficiencies that fuel or compound corruption

Tanzania's energy sector governance regime has several weaknesses that provide opportunities for corruption or undermine the fight against it. Deficiencies are found in the policy, legal, regulatory, and practical aspects of this sector. This section identifies these weaknesses with the view to informing the discussion on how anti-corruption in this sector may be enhanced.

[1] Tanzania ranks 94th out of 180 countries in Transparency International's Corruption Perceptions Index 2020.

6.2.1. Policy deficiencies

The resolve to fight corruption in Tanzania is well articulated in the national development and anti-corruption policy framework. The policy regime enjoins the government to prioritise the fight against corruption in all social, economic, and political spheres.[2] Sector policies are expected to transpose this general guidance into specific direction for implementation by their respective policy actors. Unfortunately, the National Energy Policy of 2015 lacks such guidance for the energy sector. It is blind to corruption as a serious threat in this sector, as well as to the role of public participation in promoting good governance. This is substantiated in two ways.

Firstly, the background section of the National Energy Policy identifies the major challenges that undermine performance of the energy sector, and which it sets out to address.[3] Corruption does not feature in that list. The entire policy document mentions corruption only once, when highlighting prevention of corruption as one of the mechanisms for promoting good governance.[4] It does not provide any explicit policy guidance on or statement about fighting corruption in the energy sector. Similarly, it does not make any reference to the Tanzania Development Vision 2025 and the National Anti-Corruption Strategy and Action Plan which proclaim and strategise the nation's anti-corruption agenda. In those circumstances, its implementing institutions lack a sectoral policy anchor to fighting corruption.

These institutions are enjoined to implement anti-corruption measures under national anti-corruption strategy, the national Five-Year Development Plan and national laws, but a sectoral policy framework is necessary to guide sector-specific initiatives. The national anti-corruption strategy identifies the energy sector among the priority sectors for anti-corruption programming.[5] It is submitted that such a priority is wanting in the energy sector governance framework. For instance, annual budget speeches of the Minister of Energy lack an anti-

---

2 See discussion at section 3.2 of this thesis.

3 Ministry of Energy and Minerals (2015) *National Energy Policy* Dar es Salaam: Ministry of Energy and Minerals 2.

4 Ministry of Energy and Minerals (2015) 46.

5 President's Office (2017) *National Anti-Corruption Strategy and Action Plan Phase III 2017-2022* Dar es Salaam: President's Office 25.

corruption dimension. This study has found that during the Minister's budget speech for the financial years 2018/19 to 2021/22, the Minister of Energy did not report to parliament about the Ministry's implementation of anti-corruption measures.[6] This is contrary to the practice of other ministries such as the Ministry of Lands, Housing and Human Settlement that does so regularly.[7]

Secondly, the National Energy Policy provides only limited opportunity for public and local community participation in the planning and decision-making over the energy sector. It requires the government to consult key stakeholders over major decisions in this sector.[8] If one considers the exercise of permanent sovereignty over natural resources, the public and local communities are key stakeholders in it. There is, however, only a limited forum for their participation under the national energy policy framework. On the one hand, only the Petroleum Upstream Regulatory Authority is expressly required to consult the public over the conduct of upstream regulatory roles.[9] On the other hand, the policy states that the only role of local communities is to safeguard the security and safety of energy infrastructure.[10] The policy underrates the public's position and role as owners of the petroleum resources under the permanent sovereignty over natural resources doctrine, to hold the government accountable for protecting their interests, which the government manages in trust.[11]

This study has found that poor public engagement in petroleum resource governance has in some cases resulted in local community dissatisfaction, which has led to violence and

6 See discussion at section 3.2.2 of this thesis.

7 Ministry of Lands (2020) *Hotuba ya Waziri wa Ardhi, Nyumba na Maendeleo ya Makazi, Mheshimiwa William V. Lukuvi (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara kwa Mwaka wa Fedha 2020/21* Dodoma: Ministry of Lands, Housing and Human Settlements 85 & Ministry of Lands (2021) *Hotuba ya Waziri wa Ardhi, Nyumba na Maendeleo ya Makazi, Mheshimiwa William V. Lukuvi (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara kwa Mwaka wa Fedha 2021/22* Dodoma: Ministry of Lands, Housing and Human Settlements 140-141.

8 Ministry of Energy and Minerals (2015) 45.

9 Ministry of Energy and Minerals (2015) 56.

10 Ministry of Energy and Minerals (2015) 61.

11 See article 8(1)(c) of the Constitution of the United Republic of Tanzania 1977, section 4(1) of the Petroleum Act 23 of 2015 & sections 5(3) & 6(1) of the Natural Wealth and Resources (Permanent Sovereignty) Act 5 of 2017.

insecurity in the gas rich regions of Mtwara in Tanzania, and Cabo Delgado in Mozambique.[12] Therefore, the National Energy Policy's lack of concern regarding public and local community participation in energy sector governance is a flaw that may fuel not only corrupt practices, but also insecurity in the country.

6.2.2. Legal deficiencies

Tanzania has a broad legal framework for fighting corruption in all social, economic, and political spheres. This encompasses both international instruments which the country has ratified, and domestic laws. From a blackletter law perspective, the prevailing legal framework suggests that corruption is being fought seriously in all sectors. However, global corruption measurements such as the Transparency International's Corruption Perceptions Index indicate that corruption levels in the country are still very high.[13] Specific sectors including energy are not immune from this problem. This study has found several legal deficiencies which may fuel or compound corrupt practices in the energy sector, as presented below.

6.2.2.1. Weaknesses in the national anti-corruption system

6.2.2.1.1. Unsustainable political will

Political will refers to the commitment of actors to undertake actions to achieve a set of objectives and to sustain the costs of those actions over time.[14] While such commitment may be expressed in words such as 'enacting legislation', commitment can only be manifested through action.[15] Tanzania has proclaimed the fight against corruption by enacting various laws and ratifying key international instruments. However, enforcement of these laws, to realise the vision of a corruption-free country, is defective. This defect is attributed to the absence of a

12 Ahearne R & Childs J (2018) 'National resources? The fragmented citizenship of gas extraction in Tanzania' 12(4) *Journal of Eastern African Studies* 703-707 & International Crisis Group (2021) *Stemming the Insurrection in Mozambique's Cabo Delgado* African Report No 303 Brussels: International Crisis Group 3-9.

13 Tanzania ranks 94th out of 180 countries in the Corruption Perceptions Index 2020.

14 Brinkerhoff DW (2010) 'Unpacking the concept of political will to confront corruption' U4 Brief No 1 available at https://www.cmi.no/publications/file/3699-unpacking-the-concept-of-political-will-to.pdf (accessed 6 October 2021) 1.

15 Brinkerhoff (2010) 1.

sustainable political will to fight corruption.[16] Studies have argued that anti-corruption enforcement in Tanzania depends on the will of the incumbent president.[17] When the president is determined to fight corruption, it is fought and the problem decreases. When the president maintains a soft stance, those responsible relax, and the problem increases. So the political will to fight corruption is sporadic and unsustainable.[18]

Grand corruption allegations in Tanzania are sometimes ignored by law enforcement institutions since the Presidency and Parliament remain silent.[19] For instance, despite Parliament's serious debate over the Richmond and Escrow scandals, there has been no public feedback from the Prevention and Combating of Corruption Bureau about the investigation or prosecution of the implicated politicians.[20] The only notable action was the arrest and prosecution of Harbinder Singh Sethi and James Rugemalira.[21] The Bureau has not been held publicly accountable for how it reacted to those scandals.

It is submitted that the poor political will to fight corruption in Tanzania has its source in the wide powers entrusted to the president to control the anti-corruption system. The president appoints heads of all anti-corruption enforcement organs in the country. Some of them have no security of tenure, including the Director of Public Prosecution and the Director-General and Deputy Director General of the Prevention and Combating of Corruption Bureau. This makes these heads of the anti-corruption enforcement machinery more likely to obey the orders of the president than to abide by the law. The president can direct who should be arrested, investigated, or prosecuted, and who should not. This is clear since the anti-corruption Bureau reports to the president alone, and its reports are confidential. For instance,

16 Lukiko L (2017) *Exploring a sustainable anti-corruption regime for Tanzania* LL.M Mini-Thesis University of the Western Cape, available at https://etd.uwc.ac.za/xmlui/handle/11394/5692 (accessed 8 February 2020) 68-71.

17 Lukiko LV, Kilonzo C, & Kimela H (2020) 'Tanzania's Post-Independence Anti-Corruption Efforts: Examining the Prevention and Combating of Corruption Bureau's (PCCB) Role during Magufuli's Regime' 4(1) *Journal of Anti-Corruption Law* 32-52

18 See Lukiko (2017) 68-71 for critical analysis of the political will deficit in Tanzania.

19 Gray HS (2015) 'The Political Economy of Grand Corruption in Tanzania' 114(456) *African Affairs* 382-403.

20 See discussion at section 3.4.1.5. of this thesis.

21 See discussion at section 1.2 of this study.

in March 2021, President Samia Hassan directed the Bureau to drop prosecutions which were based on falsified charges.[22] Two months later, the President announced that the Bureau had dropped 147 cases.[23] This suggests two things. First, integrity and ethics in the anti-corruption Bureau are so frail that dubious charges can be laid against individuals. Secondly, the president has the power to dictate the country's anti-corruption decisions. In short, the president holds the keys to the success or failure of Tanzania's anti-corruption system.

Thirdly, poor political will is caused by the lack of a constitutional anchor to fighting corruption. The Constitution of the United Republic of Tanzania 1977 contains a single provision that directs state authorities to fight corruption.[24] Unfortunately, that provision is not justiciable. This disempowers citizens from enforcing in court their right to live in a corruption-free country, as envisaged in the Tanzania Development Vision 2025. Further, the Constitution makes the president immune from prosecution for anything done as president.[25] The only available accountability mechanism against a serving president on ethical grounds is impeachment by Parliament.[26] However, the nature of party politics in Parliament and the ruling party make such impeachment extremely unlikely.[27] In that context, anti-corruption enforcement is fragile and susceptible to political manipulation.

6.2.2.1.2. Weak corruption prosecution system

For anti-corruption to be successful, legislation and law enforcement should make the public see corruption as a high-risk and unrewarding endeavour. Tanzania's anti-corruption legislation does this by establishing a wide range of corruption and economic crimes, as well as strong penalties including imprisonment, fines, and asset forfeiture. Nevertheless, the prosecution

22 Voice of America (28 March 2021) 'Tanzania : Rais aitaka Takukuru kuondoa kesi za kubambikizwa' available at https://www.voaswahili.com/a/tanzania-rais-aitaka-takukuru-kuondoa-kesi-za-kubambikizwa/5831396.html (accessed 7 October 2021).

23 Mwangonde H (19 May 2021) 'PCCB admits: 147 cases are framed' available at https://www.ippmedia.com/en/news/pccb-admits147-cases-are-framed (accessed 7 October 2021).

24 Article 9(h) of the Constitution of the United Republic of Tanzania 1977.

25 Article 46(1) of the Constitution of the United Republic of Tanzania.

26 Article 46A(2) of the Constitution of the United Republic of Tanzania.

27 See discussion at section 3.4.6. of this study.

system is weak.[28] The Prevention and Combating of Corruption Bureau which is the primary anti-corruption body prosecutes petty corruption cases. Prosecution of other corruption offences is entrusted to the Director of Public Prosecution or to the Bureau upon approval of the DPP. This prosecutorial fiat jeopardises anti-corruption efforts since in most cases consent is delayed or withheld.[29] The National Prosecutions Service is understaffed to discharge it prosecution mandate effectively and timely for all crimes. Also, the Director of Public Prosecution is empowered to withdraw criminal charges at any time before judgement, without needing to provide reasons.[30] For instance, while Habinder Singh Sethi of the Independent Power Tanzania Limited was freed after conceding a TSh26 billion plea bargaining agreement,[31] his co-accused James Rugemalira was released under a *nolle prosequi* from the Director of Public Prosecution.[32] This prosecution structure jeopardises anti-corruption efforts, as it is subject to the unchecked discretion of the Director of Public Prosecution.

6.2.2.1.3. Weak anti-corruption oversight

The oversight of anti-corruption work in Tanzania is obscure. The Primary anti-corruption oversight organs are the Controller and Auditor General, Parliament, and the President. However, the Prevention and Combating of Corruption Bureau reports to the president alone and its reports are confidential. The President is head of the Executive which the Bureau is supposed to monitor. The Controller and Auditor General has no forum to audit the accounts and performance of the anti-corruption Bureau.[33] Likewise, Parliament can review performance of the Bureau through reports of the ministry under which it operates, and through visits by a

28 Lukiko, Kilonzo & Kimela (2020) 56.

29 See also Lukiko, Kilonzo & Kimela (2020) 45.

30 Section 9(1)(e) of the National Prosecution Service Act [Cap 430 R.E. 2019 and section 91(1) of the Criminal Procedure Act [Cap 20 R.E. 2019].

31 The Guardian (17 June 2021) 'IPTL's Sethi freed on 26bn/-liability accord' available at https://www.ippmedia.com/en/news/iptl%E2%80%99s-sethi-freed-26bn-liability-accord (accessed 21 March 2022).

32 The Citizen (17 September 2021) 'Rugemalira lives up to his name as case is dropped' available at https://www.thecitizen.co.tz/tanzania/news/video-rugemalira-lives-up-to-his-name-as-case-is-dropped-3553714 (accessed 21 March 2022).

33 Policy Forum (2018) *A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16* Dar es Salaam: Policy Forum 26.

parliamentary committee; these are rare and often cursory.[34] Poor parliamentary oversight of anti-corruption can also be seen in ministries when implementing the National Anti-Corruption Strategy and Action Plan. It has been discovered that between the financial years 2018/19 and 2021/22, the Minister of Energy did not report to parliament about its anti-corruption action and performance. This suggests that parliament did not demand such a report. This behaviour reduces the accountability of the Prevention and Combating of Corruption Bureau and other anti-corruption actors in the discharge of their mandate. The current legal framework positions the president as the main overseer of anti-corruption work in Tanzania. Unfortunately, the accountability framework suggests that performance depends on his personal attitude towards the problem. In those circumstances, the president can strengthen or paralyse the anti-corruption system. In the latter case, the mechanisms to hold him or her accountable are remote and ineffective, and are restricted to impeachment by parliament.

6.2.2.1.4. Poor public engagement

Public participation in fighting corruption in Tanzania is weak. Studies show that seven in ten people fear adverse consequences for reporting corruption to government authorities in Tanzania.[35] This is attributed to insufficient whistle-blower and witness protection, public mistrust over the anti-corruption system, and the anti-corruption Bureau's unpredictable attitude towards filed corruption complaints. There are limitations on media freedom and access to information. Between 2015 and 2020, Tanzania dropped consistently in the World Press Freedom Index, from 75th out 180 countries in 2015, to 124th in 2021.[36] Crackdowns on media freedom limit access to information by the public; this is crucial to uncovering and reporting corruption. Lack of regular feedback from the anti-corruption Bureau to the public

34 See discussion at section 3.4.1.4 of this thesis.

35 Olan'g L & Msami J (2017*) In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement* Afrobarometer Dispatch No. 178 Dar es Salaam: REPOA & Afrobarometer 2.

36 Reporters Without Borders (2021) 'World Press Freedom Index' available at https://rsf.org/en/tanzania (accessed 3 September 2021).

about its performance, and ongoing investigations and prosecutions, diminishes its legitimacy and public support.[37] Without that support, the Bureau fights corruption alone.

6.2.2.2. Weaknesses in the petroleum legal framework

To promote and protect national interests, corruption must be overcome in all phases of the extractive industry value chain. This study has found deficiencies in the petroleum legal framework which may occasion or compound corrupt practices in this sector. These are presented below.

6.2.2.2.1. Poor public consultation framework

The petroleum legal framework provides limited opportunity for public consultation during planning and decision-making over petroleum resources. The Petroleum Act has three instances where public consultation is mandated. First, section 12(2)(m) mandates the Petroleum Upstream Regulatory Authority to maintain dialogue with all stakeholders, including the public, to ensure optimal development of the petroleum industry. This provision provides room for the Authority to engage the public in the discharge of its mandate. However, the absence of express requirement for public consultation in key phases of the value chain, such as award of contracts and licences, diminishes the essence of this provision.

Secondly, section 33(4-7) of the Petroleum Act requires the Minister of Energy to publish, in the Government Gazette and on websites, the evaluation report for public comments before opening an area for petroleum operations. This provision is actually a call for comments from individual persons, and not a requirement for public consultation. Looking at the contents of the evaluation report as provided under section 33(3), it is a technical report written in English, which is not the *lingua franca* in Tanzania. About 65 per cent of Tanzanians live in rural areas,[38] and 86 per cent of that population does not have internet connectivity.[39]

---

37 See Lukiko, Kilonzo & Kimela (2020) 52-54.

38 World Bank (2020 b) 'Rural population (% of total population) – Tanzania' available at https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=TZ (accessed 6 December 2021).

39 Mirondo R & Zacharia A (17 May 2021) 'Government targets 80 percent internet access in Tanzania by 2025' available at https://www.thecitizen.co.tz/tanzania/news/business/government-targets-80-percent-internet-access-in-tanzania-by-2025-3403442 (accessed 6 December 2021).

Therefore, while the requirement to publish the evaluation report is a commendable transparency action, its practical contribution to effective public engagement is remote. Most of the citizens are unlikely to access it, and those who do may not understand it. Even if comments are made, there is no provision for the Minister to consult those who have made them. Section 33(7) of the Petroleum Act merely requires the Minister to consider their views when recommending to Cabinet on whether to open an area for petroleum operations. It is not clear what weight the law attaches to such comments during the Minister's recommendations.

Thirdly, section 222(4) of the Petroleum Act requires local government authorities to sensitise local communities about natural gas projects in their areas. It is noteworthy that this provision is enforced as part of the corporate social responsibility. It is submitted that this provision is intended to solicit local community approval for the contracted petroleum operations, rather than their participation in the planning or decision-making over these projects. Thus their role in monitoring extractive activities and the management of accruing revenues is diminished.

This study submits that poor consultation and lack of local community engagement in the governance of petroleum resources may have negative impacts on the security of investments, and of the nation. The Mtwara riots in 2013 in Tanzania, and the rise of insurgent groups in Cabo Delgado in Mozambique due to local community dissatisfactions, justify this claim. Studies show that there is a strong link between insecurity and corruption.[40] Poor public consultation may be an avenue for corruption, resource theft, followed by looting through civil and political unrest. Poor consultation also restricts the public's protection of their rights under the permanent sovereignty over natural resources principle through which government actions are monitored and responsible officials held accountable.

[40] Idris M (2013) 'Corruption and Insecurity in Nigeria' 2(1) *Public Administration Research* 59-66

6.2.2.2.2. Wide discretionary powers

Administrative discretion refers to the use of a public official's own judgment or perception in decision-making, especially where there are no clear rules, criteria, or procedures.[41] Studies show that the impact of discretion in public sector administration is two-fold. On the one hand, it empowers public officers with flexibility in responding to society's needs.[42] On the other hand, public officials may use such powers to implement policies in favour of minority interests.[43] In the latter situation, discretion may result in favouritism, corruption, and diversion of public resources.[44]

In Tanzania's petroleum industry value chain, discretion is observed at various stages. First, the government has legal discretion to deviate from the Model Production Sharing Agreement when negotiating an individual agreement.[45] It is submitted that in the absence of effective controls, such discretion may be abused by dishonest officials to enter into exploitative petroleum agreements in the interest of the few individuals. This argument is substantiated by the deviation of the Statoil addendum agreement from the Model Production Sharing Agreement of 2010, regarding the profit split. During negotiations, the Government Negotiation Team is required to observe other government directives in addition to the conditions and terms established in statutes, regulations, and the model agreement. These government directives may differ between investment undertakings, leading to diverse negotiation outcomes and contract terms. There are no criteria by which the legitimacy and legality of such directives can be established by the negotiation team before observing them. This gives politicians wider opportunity to dictate the terms for negotiation. This risk is clear

41 Yeboah-Assiamah E, Otchere-Ankrah B, Alesu-Dordzi S (2018) 'Administrative Discretion and Development Administration: Pet Turned into a Monster?' In Farazmand A (ed) *Global Encyclopaedia of Public Administration, Public Policy, and Governance* Springer: Cham 3.

42 Sowa JE & Selden SC (2003) 'Administrative Discretion and Active Representation: An Expansion of the Theory of Representative Bureaucracy' 63(6) *Public Administration Review* 700–710.

43 Reddick CG, Abdelsalam HM & Elkadi H (2011) 'The influence of e-government on administrative discretion: The case of local governments in Egypt' 31 *Public Administration and Development* 391-292.

44 Reddick, Abdelsalam & Elkadi (2011) 292.

45 Regulation 35(2) of the Petroleum (Reconnaissance and Tendering) Regulations 2019.

considering that the negotiation process and the resulting contracts are confidential, and the post-contracting evaluation mechanisms are defective.[46]

Secondly, discretion is exercised in the award of petroleum licences through the direct award method. This method applies in situations where the competitive tendering method is unsuccessful, or it is in the public interest to do so.[47] However, there are no legal parameters by which the public interest claim is justified. Also, due to secrecy of contracts, the public has no opportunity to establish the public interest served in any directly awarded agreement. Two production sharing agreements have been awarded through this method, one with Hydrotanz Ltd and another with Ophir Energy PLC. Both are surrounded by controversies regarding the ethics of their award process.[48] This suggests that the direct award method is vulnerable to corruption, and may be disadvantageous to the country.

Thirdly, the Minister of Energy has wide discretion in appointing members of the bid evaluation committee for petroleum tendering.[49] The Minister may appoint half of the members of the evaluation committee of his choice. This gives the Minister wider room to influence the evaluation outcome. This study has found out that post-procurement evaluation mechanisms for the petroleum sector are dysfunctional. Therefore, flaws and fraud in the procurement process may go unnoticed and unaddressed. In such an environment, an unethical Minister may abuse his or her appointing powers to further private interests. This argument is exemplified by the grant of the emergency power production contract to the unqualified Richmond company in 2006 and the subsequent lack of legal action against those involved.

Fourth, there is political discretion over the portfolio investment of the Revenue Saving Account of the oil and gas fund. While the Portfolio Investment Advisory Bureau is required to advise the Minister of Finance in this regard, the final decision rests with the Minister and the

46 See discussion at sections 4.3.2.3.3. and 4.3.2.3.4. of this study.
47 Section 48(3) of the Petroleum Act 21 of 2015.
48 See discussion at section 4.3.2.3.1 of this study.
49 See discussion at section 4.3.2.3.1 of this study.

President.[50] It is submitted that public investment decisions in Tanzania are highly susceptible to political influence, and depend on the attitude of the incumbent president towards the project.[51] Political preferences and personal interests of the president sometimes overrule expert opinion. In such an environment, politicians may divert the resources in the oil and gas fund to investment in projects that favour their political or personal interests. This risk is clear considering the weaknesses in the national accountability framework for presidents.

6.2.2.2.3. Weak corporate anti-corruption compliance procedures

The private sector is the supply side of corruption to the public service.[52] Therefore, measures to overcome corruption in the public sector must be performed in parallel to similar measures in the private sector. This is recognised in both international and domestic anti-corruption instruments.[53] However, anti-corruption enforcement for the private sector in Tanzania is weak. For instance, while the anti-corruption roles of public organs are stated in mandatory terms in the National Anti-Corruption Strategy and Action Plan, those of the private sector are hortatory. This gives private firms laxity in formulating and implementing corporate anti-corruption plans.

Regarding the energy sector, ethics and integrity standards have been established under several laws and regulations.[54] Essentially, these instruments require investors to operate transparently, in good faith, and in compliance with national laws. This study has found that there is potential functional overlap, over-regulation, and regulatory inconsistency in the enforcement of the integrity pledge. Investors in the petroleum industry are supposed to sign three different integrity pledges, which are monitored and enforced by three different organs. There is no central organ coordinating the enforcement of those integrity pledges. Investors

50 Section 13 of the Oil and Gas Revenues Management Act [Cap 328 R.E. 2019].

51 See discussion at section 4.3.5.3.2 of this study.

52 Low LA (2006) 'The United Nations Convention against Corruption: The Globalisation of Anti-corruption Standards' paper prepared for a Conference of the International Bar Association, International Chamber of Commerce, and Organisation for Economic Cooperation and Development London on 4-5 May 2006.

53 Article 12 of UNCAC and section 7 of the Prevention and Combating of Corruption Act [Cap 329 R.E. 2019].

54 See discussion at sections 4.3.3.1 and 4.3.3.3.2 of this study.

may be subjected to multiple compliance requirements over the same issue. This can influence bribery practices between companies and regulatory officials to avoid compliance. Also, enforcement inconsistencies can create confusion in compliance and weaken the significance of the integrity pledge.

In addition, there is potential conflict of interest in enforcing the Petroleum (Corporate Integrity Pledge) Regulations. The Petroleum Upstream Regulatory Authority and the Energy and Water Utilities Regulatory Authority regulate most of the petroleum value chain. Their interaction with investors is susceptible to corruption. In fact, investors are likely to bribe officials from these Authorities to circumvent regulation. Therefore, mandating these organs to monitor integrity and ethics compliance in the petroleum sector presents the likelihood of bias and conflict of interest, especially since the Regulations do not establish any oversight mechanism in that regard.

6.2.2.2.4. Inefficient transparency initiatives

Tanzania's energy sector is marred with secrecy across the value chain. This is despite the country's participation in the globally recognised extractive industry transparency initiatives, namely, the Kimberley Process, Publish What You Pay, and the Extractive Industries Transparency Initiative. This study submits that the will to implement these global standards fully is lacking. This is substantiated by the unfavourable whistle-blower protection system, confidentiality of the anti-corruption Bureau's performance reports, strong secrecy of government contracts, and limited public participation in petroleum industry decision-making frameworks.

Opacity dominates the contracting and operations phases of the value chain. Tanzania has laws that require the disclosure of extractive contracts,[55] maintaining registers of awarded contracts and licences,[56]and disclosure of beneficial owners of extractive companies.[57]

55 Section 16 of the Tanzania Extractive Industries (Transparency and Accountability) Act 23 of 2015.

56 Section 84(1) of the Petroleum Act, and Regulation 5 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations 2020.

57 Section 451A of the Companies Act [Cap 212 R.E. 2008].

However, their implementation does not provide the level of transparency required to trigger effective accountability. First, extractive contracts are treated as secret. This denies even parliament access to those contracts. Without access to the actual contracts, the public is unable to assess their equity and fairness in order to hold public officials accountable.

Secondly, the information displayed in resource contracts registers is insufficient to activate public accountability. There are two contract registers relevant to the energy sector, one maintained by the Petroleum Upstream Regulatory Authority and the other maintained by the Director responsible for the natural wealth observatory at the Ministry of Constitutional and Legal Affairs. The register at the upstream regulatory Authority is accessible to the public upon request and contains information on applications for grant, assignments, transfers, renewal, revocation, and suspension of licences and permits.[58] This information is very basic and is insufficient to trigger critical scrutiny of the governance and economic aspects of petroleum projects. The register maintained at the Ministry is better in this regard. Its content includes parties to the agreement, the subject matter, duration, value or consideration, percentage of royalty, and adherence to local content and corporate social responsibility requirements.[59] Unfortunately, the Directorate responsible for maintaining that register has not yet been established, and by implication, the register is also not yet in force. Further, there is no legal provision that explicitly declares the register to be a public document. Therefore, even when established, the public may still not have access to it.

Thirdly, there is a total ban on public access to the register of beneficial ownership information of companies. Access to the register is restricted to specified state authorities.[60] This is contrary to global guidance on this aspect, such as the Extractive Industries Transparency Initiative Standard of 2019, which recommends that such registers be publicly accessible.[61] Whereas Tanzania has made the beneficial ownership register confidential, other countries,

58 Section 84(2) of the Petroleum Act.

59 See Second Schedule to the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations.

60 Section 451B of the Companies Act.

61 Requirement 2.5 of the Extractive Industries Transparency Initiative Standard 2019.

including Nigeria, Trinidad and Tobago, Myanmar, and Armenia, have established publicly available online versions of the same. This study has found that the government of Tanzania has weaknesses in conducting due diligence on the companies it is transacting with.[62] Therefore, restrictions on access to the register of beneficial ownership information reinforce the inability to establish the true nature of contracted companies. Also, confidentiality of the register denies the public an opportunity to scrutinise government transactions against corporate beneficial owners. Ultimately, it undermines public participation in fighting corruption.

Apart from the transparency deficiencies in the contracting and operations phases, the revenue collection phase too is affected by the lack of revenue-related data transparency. This is due to the Tanzania Revenue Authority's weak capacity to gather information from oil and gas companies, and non-participation of the national oil company in some petroleum projects. It is also caused by Tanzania's non-participation in international frameworks for exchange of tax information. This study has found that extractive companies are not fully honest in their tax declarations. Some companies manipulate data to avoid tax.[63] It is submitted that weaknesses in gathering of tax-related data from petroleum companies may result in loss of revenue due to inaccurate tax assessment. Also, it may influence bribery practices between companies and tax officials to obtain favourable tax treatment.

Lastly, the revenue management and spending phase is affected by the lack of public participation in the national budget process, and weak oversight of public funds. Under the Budget Act, the budgetary process involves public institutions, Cabinet, and Parliament.[64] Therefore, the public is not directly involved in the planning and prioritisation of the use of natural resource revenues. In some instances, this has resulted in local community mistrust

62 See section 6.2.3.3. of this thesis.

63 See *Africa Barrick Gold PLC v Commissioner General Tanzania Revenue Authority* Civil Appeal No 144 of 2018.

64 Section 16 of the Budget Act [Cap 439 R.E. 2015]. See also Ministry of Finance 'The Budget Process' available at https://mof.go.tz/mofdocs/budget/process.htm (accessed 7 December 2021).

over the budget allocation, leading to violence such as the Mtwara riots in 2013.[65] Also, there is no opportunity for public participation in the budget execution or in its monitoring and control.[66] This undermines public scrutiny over the management and spending of resource revenue, to control abuses and corruption.

There are also weaknesses in the oversight of public funds by parliament and the Controller and Auditor General. The two organs have a composite weak score of 33 out of 100 in the oversight of the budget process aspect of the Open Budget Survey of 2019.[67] It is submitted that weaknesses in the budget oversight framework are an opportunity for embezzlement and diversion of public funds. It is submitted further that ineffective budget oversight is a deficiency that may enable unethical politicians and public officials to loot the country, or to allocate public funds to projects that further their personal or political interests.

6.2.3. Regulatory and practical deficiencies

6.2.3.1. Poor coordination among state organs

There are over ten organs that have diverse roles and powers in managing and regulating the petroleum industry. Coordination among these organs to deliver a common governance approach is challenging. In some instances, there have been conflicting directives or orders resulting in implementation stagnation. This is exemplified by the failed attempts by the former Minister of Energy and Minerals, Sospeter Muhongo, the Tanzania Revenue Authority, and the parliamentary Public Accounts Committee to review petroleum agreements.[68]

This indicates the absence of clear role assignment among state organs in some respects, as well as the presence of poor accountability structures. For instance, it is surprising

65 See detailed discussion at section 5.5.1 of this study.

66 International Budget Partnership (2020) *Open Budget Survey 2019: Tanzania* available at https://www.internationalbudget.org/open-budget-survey/country-results/2019/tanzania (accessed 7 September 2021).

67 International Budget Partnership (2020).

68 See discussion at section 4.3.1.3.2 of this study.

that the Tanzania Revenue Authority also was planning to review petroleum contracts.[69] There is no legal provision that empowers it to do so. Therefore, its intent was legally unfounded. The same was the case with the parliamentary committee. After its directives were ignored, the legality of its order for the arrest of two senior officials of the Tanzania Petroleum Development Corporation was questioned by the police, and the officials were released shortly after their arrest.[70] In such an uncoordinated environment, the elite may find ways to circumvent regulations for corrupt ends.

Coordination faults have also been noted in other aspects of the petroleum industry value chain. First, the Petroleum Upstream Regulatory Authority is not expressly included in the composition of the Government Negotiation Team for petroleum agreements.[71] This gives the Minister of Energy the discretion to decide on the participation of the Authority in the team. Since the Upstream Regulatory Authority is the primary advisor to the Minister of Energy on petroleum contracting and licensing, absence of its express inclusion as a member of the negotiation team undermines its capacity to monitor and regulate the negotiation process.

Secondly, the local content enforcement regime is fragmented. There are six institutions that promote and enforce local content provisions in the energy sector. These organs monitor local content implementation at diverse levels of the energy sector value chain. However, their multiplicity raises coordination and regulation challenges, since each organ discharges its mandate independently. There is a risk of subjecting investors to multiple compliance requirements, functional overlap between regulators, and over-regulation.[72] It is submitted that such deficiencies are openings for bribery and kickbacks between private firms and regulatory

69 See Pedersen RH & Bofin P (2015) *The Politics of Gas Contract Negotiations in Tanzania: A Review* DIIS Working Paper 2015:03, Copenhagen: Danish Institute for International Studies 20.

70 The EastAfrican (15 November 2014) 'Secret oil and gas deals generate heat in Dar' available at https://www.theeastafrican.co.ke/tea/news/east-africa/secret-oil-and-gas-deals-generate-heat-in-dar--1329904 (accessed 19 May 2021).

71 Regulation 34(3) of the Petroleum (Reconnaissance and Tendering) Regulations 2019.

72 See discussion at section 4.3.7.1 of this study.

officials.[73] Poor coordination may result in a policy stalemate due to unclear distribution of roles among enforcement organs.

An example of the fragmentation in local content enforcement is the definition of a local company under the various local content instruments. The National Energy Policy of 2015 provides a 51 per cent local shareholding threshold for a company to qualify as a local company or business.[74] The Petroleum Act and the Petroleum (Local Content) Regulations, however, set the threshold at 25 per cent.[75] More confusion is caused by the interpretation regulation 3 of the Petroleum (Local Content) Regulations, which defines the minimum number of shares owned by Tanzanians in a local company to be not less than 15 per cent. This diversity creates discretion for state organs regarding the threshold of company shareholding for purposes of local content enforcement. It is submitted that this discretion is susceptible to abuse for private interests. So conflicting legal provisions may undermine effective enforcement of local content requirements.

6.2.3.2. Ineffective oversight of the contract awarding processes

Institutional theorists argue that the enforcement of effective inspection, monitoring, and evaluation mechanisms is crucial to avoiding decoupling in organisational performance.[76] This study has found that the process of awarding petroleum contracts in Tanzanian is ineffectively supervised, monitored, and evaluated. For instance, all production sharing agreements in force during 2021 were secured when the Tanzania Petroleum Development Corporation as regulator had insufficient capacity to review and verify the accuracy of geological data submitted by contractors.[77] Similarly, there was no ex-post evaluation of the contract awarding process for

73 Clarke G (2014) 'Does overregulation lead to corruption?' available at http://www.aabri.com/LV2014Manuscripts/LV14025.pdf (accessed 6 July 2021) 10.

74 Ministry of Energy and Minerals (2015) Xiii.

75 Section 219(3) of the Petroleum Act and regulation 15(3) of the Petroleum (Local Content) Regulations 2017.

76 Meyer JW & Rowan B (1977) 'Institutionalized Organizations: Formal Structure as Myth and Ceremony' 83(2) *American Journal of Sociology* 357.

77 National Audit Office of Tanzania (2016) *Performance Audit on the Management of Geophysical and Geological Data for Oil and Gas in Tanzania* Dar es Salaam: National Audit Office of Tanzania 33 & 37.

the four licensing rounds held between 2000 and 2014. The Ministry of Energy and Minerals, the legal overseer of the Corporation, disassociated itself from that deficit. It claimed that the Corporation was supposed to review and evaluate the awarding process and report to it.[78] When the Corporation failed to submit such reports, the Ministry did not demand them from the Corporation, or hold it accountable.[79] This deficit has not been remedied. The Ministry of Energy and the Petroleum Upstream Regulatory Authority who regulate the petroleum sector still have no explicit strategy for ex-post assessment of the licensing process.[80] Therefore, previous weaknesses in the contract awarding and licensing process may not be noticed and addressed to prevent their recurrence in future licensing rounds.

Another oversight deficit in this regard concerns the established framework for the review of resource contracts. Parliament is empowered to review resource contracts and, where appropriate, advise the government to renegotiate any terms found to be unconscionable.[81] The established review procedure[82] is cumbersome and unlikely to result in any critical and productive review of the contracts. Apparently the process is initiated by the Ministry of Constitutional and Legal Affairs requiring a ministry that entered into a resource agreement to prepare and submit a report on that agreement. It is not clear what circumstances trigger the directive for ministries to submit their reports, nor what the content of those reports should be. After this, the Minister of Constitutional and Legal Affairs reviews the report against the contract in question, and reports the outcome to Cabinet. The Cabinet resolution is tabled in parliament for determination. If parliament finds any terms to be unconscionable, it may direct the government to renegotiate the contract.

78 National Audit Office of Tanzania (2016) 42.

79 National Audit Office of Tanzania (2016) 43.

80 National Audit Office of Tanzania (2021) *Follow-up Report on the Implementation of the Controller and Auditor General's Recommendations for the Five Performance Audit Reports Issued and Tabled Before Parliament in April 2016* Dodoma: National Audit Office of Tanzania 15 & 23.

81 Section 5(2) of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act 6 of 2017.

82 See Regulation 8 of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations 2020.

Throughout that process, parliament does not access the actual resource contract. Its determination of unconscionable terms depends on the Cabinet resolution tabled before it. This procedure denies parliament and the public an opportunity to scrutinise the actual contract. In July 2017, the government enacted section 47(6) into the Petroleum Act, requiring all petroleum agreements to be approved by Parliament before coming into force.[83] This provision gave parliament the power to review and endorse petroleum contracts before their implementation. Three months later, the government went back to parliament to amend the Petroleum Act and deleted that provision.[84] The government's ground for deleting that provision was that it conflicted with the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act which empowers parliament to review signed contracts, and not to approve their coming into force.[85] It is submitted that the level of secrecy surrounding petroleum contracts is a sign of the government's unwillingness to be checked and held accountable for their terms. So contractual terms that may be prejudicial to public interests, such as the profit split terms in the leaked Statoil addendum agreement, may never be uncovered.

Weak oversight of the licensing processing is observed also from the remote involvement of the Public Procurement Regulatory Authority. This is the primary organ entrusted with the monitoring and supervision of public procurement in Tanzania.[86] However, its role in petroleum licensing is unclear.[87] Its regulations and procedures do not address key licensing and contracting aspects of the petroleum sector, such as the conduct of licensing rounds.[88] Such procedures are contained in the Petroleum (Reconnaissance and Tendering) Regulations which are enforced by the Petroleum Upstream Regulatory Authority. Practically,

83 See section 30 of the Written Laws (Miscellaneous Amendments) Act No 7 of 2017.

84 See section 16 of the Written Laws (Miscellaneous Amendments) (No.3) Act No 9 of 2017.

85 Bunge la Tanzania (12 September 2017) *Majadiliano ya Bunge* Mkutano wa 8 Kikao cha Sita, Dodoma: Bunge la Tanzania 74-75.

86 Section 7 of the Public Procurement Act 2011 & Regulation 40 of the Petroleum (Reconnaissance and Tendering) Regulations 2019.

87 National Audit Office of Tanzania (2016) 23.

88 National Audit Office of Tanzania (2016) 23.

the Upstream Regulatory Authority is the procuring entity for petroleum agreements, although they are entered into by the Minister of Energy. It prepares tender documents, conducts the prequalification processes, receives a bid evaluation report from the evaluation committee for submission to the Minister, and forms part of the secretariat to the Government Negotiation Team.[89] Parallel to that, it regulates the petroleum tendering process. This creates the potential for conflict of interest in the discharge of its procuring and regulatory functions. The absence of the status of the Public Procurement Regulatory Authority in this process undermines accountability.

In addition to the remote regulatory role of the Public Procurement Regulatory Authority, the petroleum legal framework does not directly engage the Prevention and Combating of Corruption Bureau at any stage. Section 85 of the Public Procurement Act provides that tenderers must submit to the Bureau and the Tanzania Revenue Authority, within 30 days after the execution of a contract, a statement about the payments made to any person or organisation as commission for obtaining the contract. If this provision had been applied to the petroleum sector, the 15 per cent share consideration agreed between Mr. Moto Matiko Mabanga and Ophir Energy PLC for his assistance in obtaining the production sharing agreements for blocks 1, 3, and 4[90] would have been declared to the anti-corruption Bureau and the revenue Authority. Accordingly, the veracity of the bribery claims raised by former Member of Parliament Zitto Kabwe against Ophir Energy PLC would have been established. Unfortunately, there is no such provision in the Petroleum (Reconnaissance and Tendering) Regulations. Regulation 41 therefore allows the application of the provisions of the Public Procurement Act to procurement matters that are not provided for in the Petroleum Act and the Regulations. However, it is unclear how the requirement of section 85 of the Public Procurement Act is enforceable on the petroleum tendering process. Generally, the position of the anti-corruption Bureau in monitoring this corruption-vulnerable sector is invisible.

89 Regulations 18, 19, 21, 29 & 32 of the Petroleum (Reconnaissance and Tendering) Regulations.

90 See discussion at section 4.3.2.3.1. of this study.

6.2.3.3. Inadequate institutional capacity to manage the sector's value chain

Effective management of all phases of the extractive industry value chain is paramount to ensuring that the country benefits from its endowments. Tanzania's energy sector regulatory regime has several weaknesses in this regard. First, the Petroleum Upstream Regulatory Authority is new to the sector, and is still struggling to establish an internal frame and operational instruments.[91] It is understaffed and under-resourced. For instance, its contracting and licensing unit is manned by just a single person.[92] Conversely, the investors which it deals with are well equipped. Considering the wide scope of the functions performed by the Authority, being under-resourced diminishes its capacity to manage this sector effectively, including detecting and addressing unethical practices including bribery.

Secondly, there are weak due diligence procedures where the companies are transacting with the government. The Richmond scandal shows that the former Ministry of Energy and Minerals ordered the Tanzania Electric Supply Company to sign an agreement with a fictitious company that had no place of business or any assets.[93] In the Independent Power Tanzania Limited/Escrow scandal, the assignment of Mechamar's shares to Pan African Power Solutions Limited was done by a dummy company Piper Link Investment.[94] Subsequently, the payment of Escrow monies from the Bank of Tanzania to Pan African Power Solutions Limited was illegal.[95] Likewise, in 2008 the government signed a production sharing agreement with Hydrotanz Ltd which was incorporated in the same year, reportedly without experience in the petroleum sector.[96] These cases suggest two things: one, that the government's due diligence mechanisms are defective in establishing the true status of the companies it is transacting with; or two, that there are corrupt officials in high-level decision-making organs who traffic such

91 National Audit Office of Tanzania (2021) 15.

92 National Audit Office of Tanzania (2021) 19.

93 Bunge la Tanzania (2008) *Taarifa ya Kamati Teule Iliyoundwa na Bunge la Jamhuri ya Muungano wa Tanzania Tarehe 13 Novemba, 2007 Kuchunguza Mchakato wa Zabuni ya Uzalishaji Umeme wa Dharura Ulioipa Ushindi Richmond Development Company LLC ya Houston, Texas, Marekani Mwaka 2006*, Dodoma: Bunge la Tanzania 142.

94 Bunge la Tanzania (2014) 33.

95 See *Mechmar Corporation (Malysia) Berhad v VIP Engineering & Marketing Limited and Others.*

96 Pedersen & Bofin (2017) 22.

unqualified companies through the procurement process. Either way, the country is at risk of irregular contracts that are prejudicial to national interests.

Thirdly, the capacity to establish government participating interests in petroleum projects is limited. Of the two projects in the production stage during 2021, the government had participating interests in only one. Lack of capital precluded involvement in the other.[97] This denied the government an opportunity to participate in the daily management of the project, and to access the internal information which is necessary for equitable contract management and revenue administration. It is submitted that non-participation in petroleum projects makes the government vulnerable to misinformation and false declarations from extractive companies.

The Controller and Auditor General's report shows that the government still has no clear strategies for raising capital for its participating interests.[98] As an alternative, it is negotiating with investors to service its capital obligations and to recover it during production as incurred expense.[99] However, scholars argue that this approach is unsustainable and increases investment risk by requiring investors to mobilise funds for both their share and the state's share.[100] In the absence of clear strategies to raise capital for the government's participating interest, the country's control over the conduct of petroleum operations is limited. Investors may inflate operating costs to raise the amount of recoverable costs and reduce the government's profit share and taxes.[101]

97 National Audit Office of Tanzania (2017) *General Report on the Performance and Specialised Audits for the Period Ending 31st March 2017* Dar es Salaam: National Audit Office 14.

98 National Audit Office of Tanzania (2021) 50.

99 National Audit Office of Tanzania (2016c) *Performance Audit on the Implementation of Local Content Provisions and Verification of Recoverable Costs in Production Sharing Agreements* Dar es Salaam: National Audit Office of Tanzania 23.

100 Mmari D et al. (2019) 'An overview of the fiscal systems for the petroleum sector in Tanzania' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA 37.

101 PCCB (2011) *Oil and Gas Corruption Vulnerability Analysis* Dar es Salaam: PCCB 36.

Fourth, there are weaknesses in the state's capacity to assess non-tax revenue. The Petroleum Upstream Regulatory Authority conducts the verification of companies' accounts to establish recoverable costs of the contractor and determine the government's royalty and profit share.[102] When this function was under the Tanzania Petroleum Development Corporation, it was inadequately performed as accounts were not verified timeously.[103] The Corporation lacked experienced staff to audit the recoverable costs claimed by contractors. Since its establishment, the Petroleum Upstream Regulatory Authority has verified companies' accounts for the years 2016 to 2020 and recovered about TSh36 billion which investors had claimed as expenses.[104] This suggests that without strong verification mechanisms, petroleum companies can lower government revenue through fraudulent accounting. The Authority has managed to undertake the verification exercise timeously. However, its claims of being understaffed and under-resourced raise doubts over its capacity to do so effectively in the future, when the industry is expected to expand and involve many more contractors.

6.3. Proposed interventions and reforms

The discussion above shows that the policy, legal, and regulatory framework for managing the energy sector in Tanzania has weaknesses that undermine its capacity to address the ensuing governance challenges specifically corruption. Part of the third objective of this study is to propose interventions that are required to possibly address the identified deficiencies and strengthen the fight against corruption in this sector. The following section presents the recommendations for recalibrating anti-corruption aspects in Tanzania's energy sector.

6.3.1. Strengthening the national anti-corruption system

The following measures are recommended for strengthening Tanzania's anti-corruption system to fight corruption in all social, economic, and political spheres. It is submitted that with a

102 Regulation 9 of the Petroleum (Cost Recovery Accounting) Regulation 2019.

103 National Audit Office of Tanzania (2016c) 41.

104 Ministry of Energy (2020) 29 & Ministry of Energy (2021) 76-77. PURA recovered TSh10 billion in the 2016-2018 verification exercise and TSh26.4 billion in 2019-2020 round.

strong national anti-corruption regime, the country will be able to detect, prevent, investigate, and prosecute corruption in specific sectors particularly energy.

6.3.1.1. Enacting a strong constitutional mandate to fighting corruption

The Constitution of the United Republic of Tanzania of 1977 should be amended to establish a justiciable right of the people to live in a corruption-free country. State organs should be constitutionally obliged to fight corruption. This should be complemented by abolishing the immunity of presidents from prosecution. No officials should be shielded from liability when they transgress the law. This should include liability for failing to take reasonable measures to control corruption in their areas of jurisdiction.

The constitution should further be amended to establish a prohibition on presidents being leaders of their political parties. This would reduce the president's influence in the ruling political party, which is often used to control Members of Parliament from that party and undermine parliamentary oversight over the government. In addition, the constitutional amendment should include a provision to the effect that a Member of Parliament does not lose membership of parliament just by being expelled from his or her political party. This will provide Members of Parliament with the autonomy and confidence to oversee the government and to hold it accountable.

The constitution should be amended to re-establish the Prevention and Combating of Corruption Bureau as a constitutional organ, totally independent from the Executive. Appointment, discipline, and termination of its heads should be done by an independent commission and approved by parliament. That commission should be empowered to check and oversee the conduct of the Bureau and its staff, and report to parliament. Similar amendments should be made in respect of the Controller and Auditor General, the Director of Public Prosecution, and the Ethics Commissioner. This will guarantee their institutional and operational independence in fighting corruption, and enhance their accountability to the public. In addition, the amendment should establish an obligation on all these organs to submit to

parliament annual reports of their performance for scrutiny. Such reports should be available to the public.

6.3.1.2. Enhancing public participation

The Prevention and Combating of Corruption Bureau should revisit its approaches to soliciting public trust and support. Corruption, anti-corruption, and ethics sensitisation programmes should be implemented at all levels, covering educational institutions, public officials, the private sector, and the public. This should be complemented by guaranteeing media freedom and freedom of expression through public dialogue and criticism of the government. Whistleblower laws should guarantee anonymity to and confidentiality of the reporter. It is recommended that section 5(1)(a) of the Whistleblower and Witness Protection Act[105] be removed from the statute. That provision requires the full name, address, and occupation of the whistleblower to be identified when filing a complaint. Similarly, section 8(1)(b) of that Act should be amended to remove the requirement for the whistleblower to sign the disclosure form.

In addition, the Prevention and Combating of Corruption Bureau should be proactive in gleaning corruption allegations or complaints raised through any fora, investigate them thoroughly, and provide feedback to the public. Any person suspected of engaging in corruption, including high-profile politicians, should be investigated and, where appropriate, prosecuted. This is crucial to restoring public trust in the anti-corruption system which is needed for its support.

6.3.1.3. Reinforcing prosecution

The prosecution of corruption should be strong, timely, and effective. To achieve that, it is recommended that the Direct of Public Prosecution fiat in prosecution of corruption crimes be eliminated. The Prevention and Combating of Corruption Bureau should be empowered to prosecute all corruption cases without requiring the consent of the Director of Public

105 No 20 of 2015.

Prosecution. The scope of section 10(2) of the Prevention and Combating of Corruption Act should be broadened by empowering the PCCB to prosecute corruption offences directly. Accordingly, section 57 of the Prevention and Combating of Corruption Act and section 26 of the Economic and Organised Crime Control Act should be amended to remove the Director of Public Prosecution's sanction for prosecution of corruption offences. This will enhance efficiency by entrusting the prosecution of corruption to a body which specialises in that field therefore reducing the prosecution load that is placed on the DPP. The anti-corruption Bureau should be sufficiently resourced to discharge its roles effectively. To control discretion and abuse, effective checks and oversight should be exercised as proposed in section 6.3.1.1. above.

6.3.2. Strengthening anti-corruption action in the energy sector

6.3.2.1 Prioritising anti-corruption in the policy, the legal, and the regulatory framework

Corruption should be expressly condemned in the energy sector's policy, legal and regulatory framework. It is recommended that the National Energy Policy of 2015 should be revised to provide a strong policy statement on fighting corruption. It should require all of its implementing organs to establish and execute anti-corruption programmes in line with the National Anti-Corruption Strategy and Action Plan, and to report annually on their performance. This should include publishing their anti-corruption policies and plans online, as well as their client service charters. After the policy's revision, the Petroleum Act[106] should be amended to establish a strong anti-corruption anchor in managing the petroleum value chain. The following draft provision is proposed to be enacted into the Petroleum Act as section 4A.

> 4A.-(1) Petroleum activities shall be conducted in good faith, with utmost integrity, and in accordance with national laws.
>
> (2) Investors and their investments shall not, prior to the establishment of an investment or afterwards, offer, promise, or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official, or a member of an official's family or business associate or other person in close proximity to an official, for that official or for a third party, in order that the official or third party act or refrain from acting in relation to the performance

[106] No 21 of 2015.

> of official duties, in order to achieve any favour in relation to an investment or any licences, permits, contracts or other rights in relation to an investment.
>
> (3) Investors and their investments shall not engage in any conduct that is in any way prejudicial to the economic, security, social, and political interests of the people of Tanzania.
>
> (3) Any contract or investment obtained or operated in violation of the provisions of this section is null and void.

This proposed provision extrapolates from the decisions of the Arbitral Tribunals in *World Duty Free Co Ltd v Republic of Kenya*[107] and *Metal-Tech Ltd v The Republic of Uzbekistan.*[108] The *ratio decidendi* in those cases is that an investment obtained or operated corruptly violates transnational public policy and cannot be protected by international investment law. Also, the proposed provision is aligned to article 10 of the Southern African Development Community Model Bilateral Investment Treaty, article 1 of the OECD Anti-Bribery Convention, and article 16 of the United Nations Convention against Corruption which criminalises the bribery of foreign public officials in international business transactions.

The Ministry of Energy should perform an active role in monitoring the implementation of anti-corruption measures by the organs under its jurisdiction. This should be reinforced by ensuring that annual reports of the Ministry's anti-corruption initiatives are presented in parliament. In addition, anti-corruption strategies established in the National Anti-Corruption Strategy and Action Plan should be implemented effectively by all actors in the energy sector value chain.

6.3.2.2. Enhancing transparency and accountability across the industry value chain

Tanzania should adopt a progressive approach to enforcing transparency and accountability standards for the energy sector. First, an online resource contracts portal should be established, containing all petroleum agreements, and providing unconditional public access to the actual contracts. Secondly, there should be a single register of all petroleum contracts and

107 ICSID Case No. ARB/00/7.
108 ICSID Case No ARB/10/3.

operations information. The diverse registers established under the different laws should be merged into one register maintained by one organ having oversight powers. That register should be available online and be publicly accessible. Thirdly, the register of beneficial ownership information of companies should be available for public access through an online portal.

To control discretion and enhance oversight, transparency, accountability, and public participation in the awarding and licensing process, the following reform is proposed. It is recommended that the Tanzania Extractive Industries (Transparency and Accountability) Committee should be added to the existing petroleum tendering and licensing framework. In addition to its current functions, the Committee should have the following roles:

a) To monitor and evaluate the bidding process before the signing of a petroleum agreement. Where the direct award method is employed, the Committee should evaluate the process to establish the need for employing that method and the public interest being served.
b) To review and endorse petroleum agreements before approval by the Cabinet. Where the Committee declines to endorse an agreement, the government should be obliged to renegotiate with contractors.
c) To review and endorse petroleum licences and permits and subsequent transfers or assignments before being granted by the Minister.
d) To coordinate and monitor the implementation of the integrity pledge for the petroleum industry.
e) To be the custodian of the registers of petroleum contracts and information and ensure their disclosure to the public.
f) To oversee the performance of the petroleum industry and report to parliament annually. This includes receiving reports from companies, the Tanzania Petroleum Development Corporation, the Petroleum Upstream Regulatory Authority, the Energy and Water Utilities Regulatory Authority, and the Ministry of Energy.
g) To forward to relevant investigation and law enforcement organs any matter that in the opinion of the Committee warrants their action.

To achieve the objective of this proposed reform, the composition of the Tanzania Extractive Industries (Transparency and Accountability) Committee should be revised to establish a broader representation. The Committee should be composed of representatives from the government, parliament, the Attorney General, the anti-corruption Bureau, extractive industry companies, civil society organisations, media, petroleum and mining community

organisations, faith-based organisations, and universities and research institutions. Affairs of the new Committee should be discharged in accordance with the provisions of the Tanzania Extractive Industries (Transparency and Accountability) Act.[109] Reviewing and amending that statute, petroleum industry laws, and other extractive industry laws would be paramount to the harmonious integration of these proposed reforms into the existing legal and institutional framework.

To enhance accountability in the spending of petroleum revenues, it is proposed that investment strategies of the oil and gas fund should be subjected to approval by parliament. Accordingly, after the Minister of Finance receives recommendations from the Portfolio Investment Advisory Board, he or she should table the same in parliament for deliberation and approval.

6.3.2.3. Implementing enhanced due diligence of companies

The Petroleum Upstream Regulatory Authority and the bid evaluation committee should undertake enhanced due diligence of petroleum companies during the bidding process. The same should apply when the direct award method is applied. In the latter case, the bid evaluation and negotiation provisions under the Petroleum (Reconnaissance and Tendering) Regulations of 2019[110] should apply in line with the oversight reforms proposed in section 6.3.2.2. above.

6.3.2.4. Prohibiting retrospective consent to assignment or transfer of rights

The law should expressly prohibit the retrospective consent by any state organ to the assignment or transfer of rights and obligations arising from a petroleum agreement, permit or licence. The law should also require any agreement for such assignment or transfer to be endorsed by the Tanzania Extractive Industries (Transparency and Accountability) Committee before approval by the Minister. It is proposed that the provisions of section 86(1) and (4) of

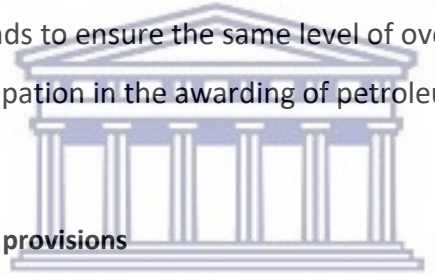
109 No 23 of 2015.

110 Government Notice No 958 published on 6 December 2019.

the Petroleum Act be replaced with the provisions below. Also, a new subsection (5) is recommended to be added, and the subsequent subsections to be renumbered accordingly.

> 86. (1) An instrument by which a legal or equitable interest in, or affecting a production sharing agreement, licence, or permit is created, assigned, transferred, effected, or dealt with, whether directly or indirectly, shall be null and void unless there is prior written endorsement by the Tanzania Extractive Industries (Transparency and Accountability) Committee and approval by the Minister.
>
> (4) Where the transferee or assignee of an interest under subsection (1) is not the National Oil Company, the Minister shall cause the Petroleum Upstream Regulatory Authority to conduct due diligence of that other person and submit an evaluation report containing its recommendations to the Minister.
>
> (5) Where the Minister, upon receiving the report under subsection (4), is satisfied to grant the application, he shall consult the Tanzania Extractive Industries (Transparency and Accountability) Committee for endorsement before approval.

This proposed amendment intends to ensure the same level of oversight, transparency, accountability, and public participation in the awarding of petroleum rights as recommended in section 6.3.2.2. above.



6.3.2.5. Harmonising local content provisions

Local content provisions in the National Energy Policy of 2015, the Petroleum Act, and the Petroleum (Local Content) Regulations of 2017 should be harmonised to eliminate ambiguities such as the shareholding threshold in the definition of a local company. This should include establishing a well-coordinated framework for enforcing local content provisions in the petroleum industry. It is recommended that the National Economic Empowerment Council should be empowered to enforce local content provisions. This reform will promote efficiency by entrusting the local content enforcement role to one organ, and allowing the Petroleum Upstream Regulatory Authority and the Energy and Water Utilities Regulatory Authority to deal with other industry regulatory aspects.

6.3.2.6. Enhancing public participation and consultation

The public should be consulted over key decisions in the energy sector. This includes consultation during the formulation of policies, enactment of laws, implementation of petroleum projects, and allocation of resource revenue. Sensitisation programmes should be implemented effectively to manage public expectations, and solicit the social licence to operate. The budget process should be inclusive to enable wider public consultation and dialogue. Likewise, the public should be engaged during evaluation of the budget implementation.

6.3.3. Strengthening institutional capacity to manage the sector

6.3.3.1. Establishing a Central Government Negotiation Board

To build sustainable national capacity to negotiate contracts, it is proposed to establish a Central Government Negotiation Board. Unlike the current practice, where Government Negotiation Teams are appointed on ad hoc basis, the Board should be permanently established. The Board should be entrusted to negotiate all contracts relating to natural resources and other central government contracts whose value exceeds a particular threshold as determined by the government. The Board should be composed of sufficiently trained and ethically cleared personnel from various professions as may be relevant to achieving efficiency in the discharge of its mandate. Regarding petroleum agreements, it should be required to observe the terms of the law and the Model Production Sharing Agreement. Any deviation should be in the public interest and must be disclosed to the Tanzania Extractive Industries (Transparency and Accountability) Committee during the review process proposed in section 6.3.2.2. above.

6.3.3.2. Resourcing the state organs

It is proposed that institutions charged with regulating the energy sector and managing state interests should be sufficiently resourced financially and in terms of human capital. First, the government should adopt clear and sustainable strategies to raise the capital for the Tanzania Petroleum Development Corporation to pay for government participating interests in every

petroleum project. The Corporation should be adequately resourced to enable it to undertake reconnaissance surveys to effectively establish the petroleum resource potential in the country. Secondly, the Petroleum Upstream Regulatory Authority should be sufficiently staffed and financially resourced to discharge its mandate. This includes procuring relevant up-to-date technology and tools to verify data submitted by contractors and the licence holder, monitor extractive operations, and audit and verify recoverable costs submitted by contractors. Thirdly, the Tanzania Revenue Authority should be resourced sufficiently to gather and analyse information from petroleum companies for purposes of tax assessment. To that end, it should participate in international frameworks for exchange of tax information.

6.4. Concluding remarks

The deficiencies identified in this chapter demonstrate the risk of corruption in Tanzania's energy sector. The government should take concerted measures to address these deficits before the sector booms. This chapter has proposed several interventions and reforms to strengthen the fight against this vice. However, the implementation of the proposed interventions and reforms has two limitations. The first is the lack of the necessary political will. The proposed reforms entail major constitutional and statutory changes that strip a lot of the current powers from the president and put him or her at risk of prosecution. Therefore, politicians may be unhappy with such reforms. Since the current establishment gives the president wide powers to dictate state policy, these reforms may never be implemented if the president does not favour them. To overcome this limitation, development partners, advocacy organisations and good governance activists have a crucial role to play in pushing the agenda for reform as proposed in this study. The second limitation is the absence of sufficient resources. The proposed interventions presuppose the presence of adequate financial and human resources. This may be hard for a developing country to achieve in a short time. However, if the political will to implement the reforms is present, the resources may be mobilised gradually. Development partners may also assist to build the national capacity to undertake these reforms.

Chapter Seven:

Conclusion

This study was conducted to identify vulnerabilities that facilitate corruption in the Tanzanian energy sector, and propose appropriate interventions to address them. The study was anchored in institutional theory to ascertain how the regulative, normative, and cultural-cognitive elements of institutions affect the actions of the various actors in fighting corruption in this sector. The study examined the policy, legal, and regulatory frameworks responsible for the energy sector, in order to identify deficiencies that may further or compound corrupt practices. It also examined the roles, powers, and relationships of the various actors in this sector with a view to determining their influence on corruption and anti-corruption practices.

The study aims to contribute to the understanding of governance challenges that impact on Tanzania's future as a petroleum producing state. It considers corruption as a vulnerability in the energy sector which has fuelled insecurity, violence, and poverty in most oil producing African nations. Therefore, it examines Tanzania's policy, legal, and institutional preparedness to overcome this problem before its petroleum industry expands. The relevance of this study lies in the fact that, throughout the post-independence period, corruption levels in Tanzania have remained relatively high.[1] This implies that the national anti-corruption regime is ineffective at addressing and overcoming this vice. The energy sector is one of the economic sectors that has suffered from grand corruption scandals between 2005 and 2020, particularly the Richmond and the Independent Power Tanzania Limited/Escrow scandals. However, little has been studied on corruption as a vulnerability in Tanzania's energy sector and how it may be overcome. This study attempts to contribute to filling that knowledge gap, especially from a legal perspective.

[1] For a detailed discussion, Lukiko L (2017) *Exploring a sustainable anti-corruption regime for Tanzania* LL.M Mini-Thesis University of the Western Cape, available at https://etd.uwc.ac.za/xmlui/handle/11394/5692 (accessed 8 February 2020).

For a critical examination of the issues under investigation, the study had recourse to international instruments and standards relating to the governance of natural resources. It explored how the international customary law principle of permanent sovereignty over natural resources strengthens the capacity of developing nations to control the exploitation of their resources. The study found out that, despite its potential for promoting the equitable exploitation of natural resources in developing nations, application of this principle is highly contested by the developed nations. As such, new regimes such as the bilateral investment treaties and international arbitration of foreign investment disputes were established to limit the extent to which developing nations can exercise their right to permanent sovereignty over natural resources. In that environment, developing nations still struggle to establish strong machineries to manage the exploitation of their natural resources for the well-being of their people.

From an anti-corruption perspective, the study examined international anti-corruption instruments to ascertain how they promote the protection of natural resources against corruption. It found out that international instruments provide broad guidance for fighting corruption in national settings. In particular, criminalisation of the bribery of foreign public officials is an important international initiative towards controlling corruption in the exploitation of natural resources in developing countries. The African Union has taken a progressive step to give the African Court of Justice and Human Rights jurisdiction over the crimes of corruption and the illicit exploitation of natural resources. These crimes are among the major problems affecting Africa's stability and development. Unfortunately, the pace of ratification of the Statute of that Court by African nations is very slow, thereby undermining the prospects of utilising this forum to fight corruption and protect African resources against illicit exploitation.

In Tanzania, fighting corruption has been one of the government's primary agenda since independence in 1961. Several policies, legislation, and institutions have been established to address this conundrum in all spheres. However, this study has found that the national anti-corruption regime suffers from a lack of sustainable political will to enforce and implement the

set standards, and needs a strong prosecution system to make corruption a high-risk and unrewarding endeavour. There is also weak oversight of the anti-corruption system, and poor mechanisms for engaging the public in fighting this vice.

Regarding the energy sector, this study has found that despite the broad policy, legal, and regulatory framework governing this sector, there are several weaknesses that may fuel or compound corruption. Firstly, there is no strong anti-corruption guidance in the National Energy Policy of 2015. As such, while the policy-implementing institutions are enjoined to fight corruption under national laws and other initiatives such as the National Anti-Corruption Strategy and Action Plan and the national Five-Year Development Plan, they lack sector-specific guidance. Secondly, there is a poor public consultation framework in the management of the petroleum industry value chain. This creates the risk of local resentment against petroleum projects, and unrealistic public expectations which may result in violence and insecurity. Thirdly, discretion is exercised at various stages of the petroleum industry value chain, such as appointment of the members of bid evaluation committees, awards of petroleum licences through direct method, and the choice of a portfolio investment vehicle for the oil and gas fund. It is submitted that unchecked discretion is susceptible to abuse for personal or political interests.

Fourth, there are weak corporate anti-corruption compliance mechanisms. This is due to the presence of multiple integrity pledges for petroleum companies, which are enforced by three different regulatory bodies. This creates the risk of functional overlap and regulatory inconsistency, thereby creating confusion during compliance and weakening the relevance of the integrity pledge. Fifthly, there are inefficient transparency initiatives. Secrecy is observed across the petroleum value chain. It is even strong in the contracting and operations phases. Initiatives taken to promote transparency in the extractive sector, such as joining the Extractive Industries Transparency Initiative and enacting the Tanzania Extractive Industries (Transparency and Accountability) Act, have not been translated into practical transparency in this sector. Sixthly, there are practical regulatory deficiencies such as poor coordination among state

organs, ineffective oversight of the contract awarding processes, and inadequate institutional capacity to manage the sector effectively.

Considering the identified deficiencies, this study proposes several interventions and reforms to strengthen the fight against corruption in Tanzania's energy sector. First, it proposes strengthening the national anti-corruption system. This includes enacting a strong constitutional mandate to fight corruption by, for example, abolishing the immunity of presidents from prosecution and guaranteeing the structural and functional independence of anti-corruption organs. It also involves reinforcing the corruption prosecution machinery and soliciting more public support to fight this vice. Secondly, the study proposes measures for strengthening anti-corruption in the energy sector. This includes prioritising anti-corruption in the petroleum policy, legal, and regulatory framework; enhancing transparency and accountability across the value chain; and conducting enhanced due diligence of petroleum companies before contracting with them. Other interventions would be prohibiting the retrospective consent to assignment or transfer of petroleum rights, harmonising local content provisions, and enhancing public participation and consultation.

Thirdly, the study proposes measures to enhance the capacity of state organs to manage this sector effectively and seal gaps for corruption. These include establishing a central board to negotiate government contracts, providing state organs with sufficient human and finance resources to discharge their mandates, and training Tanzanians effectively in all phases of the petroleum industry value chain. Generally, this study proposes for the institutionalisation of the anti-corruption regime in Tanzania broadly and in the energy sector particularly.

If implemented successfully, the proposed interventions and reforms are expected to contribute significantly to reducing opportunities for corruption, and securing the economic benefits of Tanzanians in this sector. A strong political will is required to undertake the constitutional and structural changes proposed in this study. As argued by Huntington, to create strong institutions, institution-builders must relinquish person powers and individual

interests in favour of public interests and institutionalisation.[2] Institutionalisation encompasses the limitation of powers which may be exerted personally and arbitrarily.[3] Politicians who are favoured by the current system may be unprepared to do so and expose themselves to scrutiny and potential prosecution. Thus, they may not embrace the proposed anti-corruption reforms. Also, the proposed interventions presuppose the presence of adequate financial and human resources. This may be difficult for a developing country to accomplish quickly. In that context, development partners, advocacy organisations, and good governance activists may take up the agenda for the reforms proposed in this study and advocate for their implementation by the identified actors.

2 Huntington SP (1965) 'Political development and political decay' 17(3) *World Politics* 423.

3 Huntington (1965) 423.

References

PRIMARY SOURCES

International Instruments

African Charter on Human and People's Rights adopted on 27 June 1981 and entered into force on 21 October 1986

African Union Convention on Preventing and Combating Corruption adopted on 11 July 2003 entered into force on 5 August 2006

Atlantic Charter of 1941

Charter of the United Nations of 1945

Constitutive Act of the African Union adopted by the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government on 11 July 2000

Convention on Mutual Administrative Assistance in Tax Matters of 1988 amended by Protocol in 2010

Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union adopted 26 May 1997 and entered into force on 28 September 2005

Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965

Council of Europe Civil Law Convention on Corruption adopted on 4 November 1999 and entered into force on 1 November 2003

Council of Europe Criminal Law Convention on Corruption adopted on 27 January 1999 and entered into force on 1 July 2002

Covenant of the League of Nations of 1919

European Union Directive 2015/849 on Preventing the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing

General Agreement on Trade and Tariff of 1947

Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949

Inter-American Convention against Corruption adopted on 29 March 1996 and entered into force on 6 March 997

International Conference on the Great Lakes Region Pact on Security, Stability and Development for the Great Lakes Region of 2006

International Conference on the Great Lakes Region Protocol against the Illegal Exploitation of Natural Resources adopted 30 November 2006

International Covenant on Civil and Political Rights adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976

International Covenant on Economic, Social and Cultural Rights adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966 and entered into force on 3 January 1976

Montevideo Convention on the Rights and Duties of States adopted on 26 December 1933 and entered in force on 26 December 1934

Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights adopted by the 23rd Ordinary Session of the Assembly on 27 June 2014

Protocol on the Statute of the African Court of Justice and Human Rights adopted by the 11th Ordinary Session of the Assembly of the African Union on 1 July 2008

Rome Statute of the International Criminal Court adopted on 17 July 1998 and entered into force on 1 July 2002

Southern African Development Community Protocol against Corruption, signed on 14 August 2001, entered into force on 6 August 2003

Statute of the International Criminal Tribunal for Rwanda adopted on 8 November 1994

Statute of the International Criminal Tribunal for the Former Yugoslavia adopted on 25 May 1993

Treaty of Versailles signed at Versailles on 28 June 1919

United Nations Convention against Corruption adopted on 31 October 2003 entered into force on 14 December 2005

Universal Declaration of Human Rights of 1948

United Nations Resolutions

Economic and Social Council (1952) Recommendations Concerning International Respect for the Self-Determination of Peoples: Draft Resolution/Chile (E/CN.4/L.24) of 16 April 1952

Economic and Social Council (1952b) Summary Record of the Two Hundred and Sixtieth Meeting of the Commission on Human Rights (E/CN.4/SR.260) held at Headquarters New York on 21 April 1952

UNGA (1951) Economic Development of Under-Developed Countries: Integrated Economic Development and Long-Term Trade Agreements Draft Resolution/Poland (A/C.2/L.81) of 26 November 1951

UNGA (1952) Resolution 523 (VI) Integrated Economic Development and Commercial Agreements of 12 January 1952

UNGA (1958) Resolution 1314 (XIII) Recommendations Concerning International Respect for Right of Peoples and Nations to Self-Determination 788th Plenary Meeting of 12 December 1958

UNGA (1960) Resolution 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples of 17 October 1960

UNGA (1962) Resolution 1803 (XVII) Permanent Sovereignty over Natural Resources 1194th Plenary Meeting 14 December 1962

UNGA (1966) Resolution 2158 (XXI) Permanent Sovereignty over Natural Resources 1478th Plenary Meeting 25 November 1966

UNGA (1966b) Articles on Measures of Implementation of the Draft Covenant on Economic, Social and Cultural Rights, Third Committee 1405th Meeting of 27 October 1966

UNGA (1974) Resolution 3201 (S-VI) Declaration on Establishment of a New International Economic Order 2229th Plenary Meeting of 1 May 1974

UNGA (1974b) Resolution 3202 (S-VI) Programme of Action on Establishment of a New International Economic Order 2229th Plenary Meeting of 1 May 1974

UNGA (1974c) Resolution 3281 (XXIX) Charter of Economic Rights and Duties of States 2315th Plenary Meeting of 12 December 1974

UNGA (2001) 'The role of diamond in fuelling conflict: breaking the link between the illicit transaction in rough diamonds and armed conflict as a contribution to prevention and settlements of conflicts, UNGA Resolution A/RES/55/56

Non-Binding International Instruments

EITI (2019) *The EITI Standard 2019* EITI International Secretariat

FATF (2014) *FATF Guidance: Transparency and Beneficial Ownership* Paris: FATF/OECD

FATF (2019) *Best Practices on Beneficial Ownership for Legal Persons* Paris: FATF

FATF (2021) *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* FATF

OECD (2009) *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions* Paris: OECD Publishing

OECD (2011) *OECD Guidelines for Multinational Enterprises* Paris: OECD Publishing

OECD (2019) *Recommendation of the Council on Bribery and Officially Supported Export* Credits Paris: OECD Publishing

Southern African Development Community Model Bilateral Investment Treaty Template of 2012

Multilateral Instruments

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Republic of Tanzania for the Promotion and Protection of Investments made on 7 January 1994 and entered into force on 2 August 1996

Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region of 2004

LEGISLATION

Tanzanian Primary Legislation

Access to Information Act No 6 of 2016

Anti-Money Laundering Act [Cap 423 R.E. 2019]

Budget Act [Cap 439 R.E. 2015]

Companies Act [Cap 212 R.E. 2008]

Constitution of the United Republic of Tanzania of 1977

Criminal Procedure Act [Cap 20 R.E. 2019]

Economic and Organised Crime Control Act [Cap 200 R.E. 2019]

Energy and Water Utilities Regulatory Authority Act No 11 of 2001 [Cap 414 R.E. 2006]

Environmental Management Act No 20 of 2004

Finance Act No 8 of 2020

Income Tax Act [Cap. 332 R.E. 2019]

Land Act [Cap. 113 R.E. 2019]

Law of Contract Act [Cap 345 R.E. 2019]

National Prosecutions Service Act [Cap 430 R.E. 2019]

Natural Wealth and Resources (Permanent Sovereignty) Act No 5 of 2017

Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act No 6 of 2017

Oil and Gas Revenues Management Act [Cap 328 R.E. 2019]

Parliamentary Immunities, Powers and Privileges Act [Cap 296 R.E. 2015]

Petroleum (Exploration and Production) Act No 27 of 1980

Petroleum Act No 21 of 2015

Prevention and Combating of Corruption Act [Cap 329 R.E. 2019]

Proceeds of Crime Act [Cap 256 R.E. 2019]

Public Audit Act No 11 of 2008

Public Leadership Code of Ethics Act [Cap 398 R.E. 2015]

Public Procurement (Amendment) Act No 5 of 2016

Public Procurement Act No 7 of 2011

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

Tanzania Revenue Authority Act [Cap 399 R.E. 2019]

Whistleblowers and Witness Protection Act No 20 of 2015

Written Laws (Miscellaneous Amendments) (No.3) Act No 9 of 2017

Written Laws (Miscellaneous Amendments) Act No 7 of 2017

Tanzanian Subsidiary Legislation

Companies (Beneficial Ownership) Regulations, Government Notice No 391 published on 14 May 2021

Economic Offences (Specification of Offences for Consent) Notice, Government Notice No 496H published on 30 June 2021

Environment Management (Prohibition of Plastic Carrier Bags) Regulations, Government Notice No 394 published on 17 May 2019

National (Petroleum and Natural Gas) (Information System) Rules, Government Notice No 184 published on 15 March 2019

Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, Government Notice No 58 published on 31 January 2020

Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Regulations, Government Notice No 57 published on 31 January 2020

Petroleum (Corporate Integrity Pledge) Regulations, Government Notice No 782 published on 1 November 2019

Petroleum (Cost Recovery Accounting) Regulations, Government Notice No 957 published on 6 November 2019

Petroleum (Local Content) Regulations, Government Notice No 197 published on 5 May 2017

Petroleum (Reconnaissance and Tendering) Regulations, Government Notice No 958 published on 6 December 2019

Prevention and Combating of Corruption Regulations, Government Notice No 200 published on 21 August 2009

Prosecution General Instructions for State Attorneys and Prosecutors, 2011

Public Audit Regulations, Government Notice No 47 published on 6 March 2009

Public Leadership Code of Ethics (Control of Conflict of Interest) Regulations Government Notice No 113 published on 14 February 2020

Public Leadership Code of Ethics (Declaration of Interests, Assets and Liabilities) Regulations GN No 108 of 21 June 1996

Public Procurement (Amendment) Regulations, Government Notice No 333 published on 30 December 2016

Public Procurement Regulations, Government Notice No 446 published on 20 December 2013

Standing Orders of the National Assembly of Tanzania, Government Notice No 626 published on 7 August 2020

Tanzania Extractive Industries (Transparency and Accountability) (General) Regulations Government Notice No 141 published on 8 February 2019

Legislation of Other States

Bribery Act, Chapter 23 of 2010 (United Kingdom)

Constitution of the Federal Republic of Nigeria of 1999 (Nigeria)

Foreign Corrupt Practices Act (1977) 15 U.S.C (United States of America)

Mineral and Petroleum Resources Development Act No 28 of 2002 (South Africa)

Minerals and Mining Act No 20 of 2007 (Nigeria)

Petroleum Act, Chapter 350 LFN 1990 (Nigeria)

Petroleum Activities Law No 10/04 of 12 November 2004 (Angola)

Petroleum Law No 21 of 2014 (Mozambique)

Case Law

African Barrick Gold PLC v Commissioner General Tanzania Revenue Authority Civil Appeal No 144 of 2018, Court of Appeal of Tanzania at Dar es Salaam

Anglo-Iranian Oil Co. case (United Kingdom v Iran) Judgment of 22 July 1952, I.C.J Reports 1952

Case Concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v Uganda*) Judgment of 19 December 2005 I.C.J. Reports 2005

Christopher Mtikila v Attorney General [2006] TLR 279

Claude-Reyes *et al.* v. Chile (2006) *Inter-American Court of Human Rights* available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf (accessed 24 August 2021)

Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines ICSID Case No ARB/11/12, Award of 10 December 2014

Jebra Kambole v The United Republic of Tanzania African Court of Human and Peoples Application No. 018/2018 Judgment of 15 July 2020

Julius Ishengoma Francis Ndyanabo v *Attorney General* [2004] TLR 14

Libyan American Oil Company (LIAMCO) v The Government of the Libyan Arab Republic award of 12 April 1977

Mechmar Corporation (Malysia) Berhad v VIP Engineering & Marketing Limited and Others Civil Application No 190 of 2013, Court of Appeal of Tanzania at Dar es Salaam

Metal-Tech Ltd v Republic of Uzbekistan ICSID Case No ARB/10/3, Award of 4 October 2013

Moto Mabanga v Ophir Energy Plc and Ophir Services Pty Ltd [2012] EWHC 1589 (QB)

Moto Matiko Mabanga v Ophir Energy PLC & Six Others Commercial Case No 43 of 2019 High Court of Tanzania (Commercial Division) at Dar es Salaam

Saba Fakes v Republic of Turkey ICSID Case No ARB/07/20, Award of 14 July 2010

Tanganyika Law Society v Ministry of Foreign Affairs and International Cooperation & Attorney General, Miscellaneous Civil Cause No 23 of 2014, High Court of Tanzania, Main Registry Dar es Salaam

Tanzania Electric Supply Company Limited v Dowans Holdings (SA) and Dowans Tanzania Ltd, Misc. Civil Application No 8 of 2011, High Court of Tanzania, Dar es Salaam

Texaco Overseas Petroleum Company v The Government of the Libyan Arab Republic 17 International Legal Materials (1978) 3-37

National Policies, Plans and Strategies

Ministry of Education and Vocational Training (2014) *National Education and Training Policy* Dar es Salaam: Ministry of Education and Vocational Training

Ministry of Energy and Minerals (2009) *Mineral Policy of Tanzania* Dar es Salaam: Ministry of Energy and Minerals

Ministry of Energy and Minerals (2015) *National Energy Policy* Dar es Salaam: Ministry of Energy and Minerals

Ministry of Finance and Planning (2021 b) *Financing Strategy of the National Five-Year Development Plan 2021/22-2025/26* Dodoma: Ministry of Finance and Planning

Ministry of Finance and Planning (2021) *National Five-Year Development Plan 2021/22-2025/26* Dodoma: Ministry of Finance and Planning

Ministry of Industry and Trade (2003) *National Trade Policy* Dar es Salaam: Ministry of Industry and Trade

Ministry of Labour, Employment and Youth Development (2008b) *National Employment Policy* Dar es Salaam: Ministry of Labour, Employment and Youth Development

Ministry of Water, Energy and Minerals (1992) *Energy Policy of Tanzania* Dar es Salaam: Ministry of Water, Energy and Minerals

Planning Commission (2000) *Tanzania Development Vision 2025* Dar es Salaam: Planning Commission

President's Office – Public Service Management (2013) *Tanzania e-Government Strategy* Dar es Salaam: President's Office – Public Service Management

President's Office (1999) *National Anti-Corruption Strategy and Action Plan* Dar es Salaam: President's Office

President's Office (2008) *Enhanced National Anti-Corruption Strategy and Action Plan Phase II 2008-2011* Dar es Salaam: President's Office

President's Office (2017) *National Anti-Corruption Strategy and Action Plan Phase III 2017-2022* Dar es Salaam: President's Office

Hansard of the Parliament of Tanzania

Bunge la Tanzania (6 February 2008) *Majadiliano ya Bunge,* Mkutano wa 10, Kikao cha Saba, Dodoma: Bunge la Tanzania

Bunge la Tanzania (12 September 2017) *Majadiliano ya Bunge* Mkutano wa 8 Kikao cha Sita, Dodoma: Bunge la Tanzania

Bunge la Tanzania (2 April 2019) *Majadiliano ya Bunge,* Mkutano wa 15, Kikao cha Kwanza, Dodoma: Bunge la Tanzania

National Guidelines

Model Production Sharing Agreement 2013

Model Production Sharing Agreement Addendum for Natural Gas 2010

National Economic Empowerment Council (2019) National Multisectoral Local Content Guidelines, Dar es Salaam: National Economic Empowerment Council

Reports

African Development Bank (2015) *Renewable Energy in Africa: Tanzania Country Profile* Côte d'Ivoire: African Development Bank Group

African Union (2015) *Report of the High-Level Panel on Illicit Financial Flows from Africa,* Addis Ababa: African Union

Afro-Barometer & REPOA (2006) *Combating Corruption in Tanzania: Perception and Experience,* available at http://afrobarometer.org/sites/default/files/publications/Briefing%20paper/AfrobriefNo33.pdf (accessed 22 October 2020)

Bunge la Tanzania (2008) *Taarifa ya Kamati Teule Iliyoundwa na Bunge la Jamhuri ya Muungano wa Tanzania Tarehe 13 Novemba, 2007 Kuchunguza Mchakato wa Zabuni ya Uzalishaji Umeme wa Dharura Ulioipa Ushindi Richmond Development Company LLC ya Houston, Texas, Marekani Mwaka 2006*, Dodoma: Bunge la Tanzania

Bunge la Tanzania (2014) *Taarifa ya Kamati Kufuatia Matokeo ya Ukaguzi Maalum wa Mdhibiti na Mkaguzi Mkuu wa Hesabu za Serikali Katika Akaunti ya Tegeta Escrow Iliyokuwa Katika Benki Kuu ya Tanzania*, Dodoma: Bunge la Tanzania

Bunge la Tanzania (2019) *Taarifa ya Shughuli za Kamati ya Kudumu ya Bunge ya Utawala na Serikali za Mitaa kwa Kipindi cha kuanzia Januari, 2018 hadi Januari, 2019* Dodoma: Bunge la Tanzania

Bunge la Tanzania (2020) *Taarifa ya Shughuli za Kamati ya Kudumu ya Bunge ya Utawala na Serikali za Mitaa kwa Kipindi cha kuanzia Februari, 2019 hadi Januari, 2020* Dodoma: Bunge la Tanzania

Chr. Michelsen Institute et al. (2016) *Strengthening Tanzania's Anti-Corruption Action (STACA) Programme – A Case Study Evaluation,* available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533695/Strengthening-Tanzania-Anti-Corruption-Action-Programme.pdf (accessed 27 July 2020)

EITI (2017) *Validation of Tanzania Report on Initial Data Collection and Stakeholder Consultation* EITI International Secretariat

EITI (2018) *Contract Transparency in Oil, Gas and Mining: Opportunities for EITI Countries* Oslo: EITI International Secretariat

EITI (2019 d) *Legal approaches to beneficial ownership transparency in EITI countries* EITI

EITI (2021) *EITI Progress Report: Extractive Transparency in a Year of Change* EITI International Secretariat

ESAAMLG (2019) *Procurement Corruption in the Public Sector and Associated Money Laundering in the ESAAMLG Region* Dar es Salaam: ESAAMLG

EWURA (2018) *Regulatory Performance Report on Electricity Sub-Sector for the Year Ended 30th June 2018*, Dar es Salaam: Energy and Water Utilities Regulatory Authority

Global Justice et al. (2017) *Honest Accounts: How the World Profits from Africa's Wealth* available at

https://www.globaljustice.org.uk/sites/default/files/files/resources/honest_accounts_2017_web_final.pdf?utm_source=Global+Justice+Now+press+release+list&utm_campaign=17a92094cc-EMAIL_CAMPAIGN_2017_05_17&utm_medium=email&utm_term=0_166972fef5-17a92094cc-288067141&mc_cid=17a92094cc&mc_eid=6149d72169 (accessed 19 July 2020)

Global Witness (2009) *Faced with a Gun, What Can You DO? War and the Militarisation of Mining in Eastern Congo* available at https://www.globalwitness.org/en/campaigns/democratic-republic-congo/faced-gun-what-can-you-do/ (accessed 16 July 2020)

International Crisis Group (2021) *Stemming the Insurrection in Mozambique's Cabo Delgado* African Report No 303 Brussels: International Crisis Group

Lledó V et al. (2017) 'Fiscal Rules at a Glance' IMF available at https://www.imf.org/external/datamapper/FiscalRules/Fiscal Rules at a Glance-BackgroundPaper.pdf (accessed 27 May 2021)

Ministry of Energy and Minerals (2013) *Power System Master Plan 2012 Update*, Dar es Salaam: Ministry of Energy and Minerals

National Audit Office of Tanzania (2014) *Taarifa Ya Ukaguzi Maalum Kuhusiana Na Miamala Iliyofanyika Katika Akaunti Ya 'Escrow' Ya Tegeta, Pamoja Na Umiliki Wa Kampuni Ya IPTL*, Dar es Salaam: National Audit Office of Tanzania

National Audit Office of Tanzania (2016) *Performance Audit on the Management of Geophysical and Geological Data for Oil and Gas in Tanzania* Dar es Salaam: National Audit Office of Tanzania

National Audit Office of Tanzania (2016b) *Performance Audit on the Management of Process of Awarding Exploration and Development Contracts and Licences for Natural Gas* Dar es Salaam: National Audit Office of Tanzania

National Audit Office of Tanzania (2016c) *Performance Audit on the Implementation of Local Content Provisions and Verification of Recoverable Costs in Production Sharing Agreements* Dar es Salaam: National Audit Office of Tanzania

National Audit Office of Tanzania (2016d) *Performance Audit Report on the Management of Human Capital Development in Oil and Natural Gas Industry in Tanzania* Dar es Salaam: National Audit Office of Tanzania

National Audit Office of Tanzania (2017) *General Report on the Performance and Specialised Audits for the Period Ending 31st March 2017* Dar es Salaam: National Audit Office

National Audit Office of Tanzania (2017b) *Performance Audit Report on Produced Graduates in Oil and Natural Gas Industry as Performed by the Ministry of Education, Science and Technology* Dar es Salaam: National Audit Office of Tanzania

National Audit Office of Tanzania (2021) *Follow-up Report on the Implementation of the Controller and Auditor General's Recommendations for the Five Performance Audit Reports Issued and Tabled Before Parliament in April 2016* Dodoma: National Audit Office of Tanzania

National Audit Office of Tanzania (2021b) *Annual General Report of the Controller and Auditor General on the Audit of Development Projects for the year ended on 30th June 2020* Dodoma: National Audit Office of Tanzania

Norad (2011) *Joint Evaluation of Support to Anti-Corruption Efforts: Tanzania Country Report*, Oslo: Norad

OECD (2014) *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* Paris: OECD Publishing

PCCB (2011) *Oil and Gas Corruption Vulnerability Analysis* Dar es Salaam: PCCB

PCCB (2017) *Strategic Plan 2017/18-2021/22* Dar es Salaam: PCCB

Policy Forum (2018) *A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16* Dar es Salaam: Policy Forum

Tax Justice Network (2020) *Financial Secrecy Index 2020: Narrative Report on Tanzania* available at https://fsi.taxjustice.net/PDF/Tanzania.pdf (accessed 13 July 2021).

Tax Justice Network (2020b) *The State of Tax Justice 2020: Tax Justice in the Time of Covid-19* available at https://taxjustice.net/wp-content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf (accessed 13 July 2021)

TEITI (2021) *Tanzania Extractive Industries Transparency Initiative 11th Report for the Period 1 July 2018 to 30 June 2019* Dar es Salaam: TEITI

UNCTAD (2019) *World Investment Report* New York: United Nations Publications

UNDP (2019) *Human Development Report 2019* New York: United Nations Development Programme

United Kingdom (1955) *Report by Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the General Assembly of the United Nations on Tanganyika under United Kingdom Administration for the Year 1954*, London: Her Majesty's Stationery Office

United Nations (1962) *The Status of Permanent Sovereignty over Natural Resources and the Report of the Commission on Permanent Sovereignty over Natural Resources*, New York: United Nations

United Republic of Tanzania (1977) *Report of the Judicial System Review Commission,* Dar es Salaam: Ministry of Justice

Wajibu Institute (2018) *Ripoti ya Uwajibikaji: Mamlaka ya Serikali za Mitaa Na Miradi ya Maendeleo 2017-18* Dar es Salaam: Wajibu Institute available at http://www.wajibu.or.tz/local/images/uploads/15790709765e1eb60092a07.pdf (accessed 30 March 2021)

Wang'ati M & Shah R (2012) *Evaluation of the Enhanced National Anti-Corruption Strategy and Action Plan - II (NACSAP II) 2008-2011 for the Republic of Tanzania* Final Report Submitted to the PCCB and UNDP

World Bank (2020) *Doing Business: Tanzania Country Profile* available at https://www.doingbusiness.org/content/dam/doingBusiness/country/t/tanzania/TZA.pdf (accessed 8 July 2021)

Indices

International Budget Partnership (2020) *Open Budget Survey 2019: Tanzania* available at https://www.internationalbudget.org/open-budget-survey/country-results/2019/tanzania (accessed 7 September 2021)

Natural Resource Governance Institute (2021) *Resource Governance Index 2021* available at https://resourcegovernanceindex.org/country-profiles/TZA/oil-gas?years=2021 (accessed 7 September 2021)

Reporters Without Borders (2021) *World Press Freedom Index* available at https://rsf.org/en/tanzania (accessed 3 September 2021)

Transparency International (2011) *Bribe Payers Index* Berlin: Transparency International

Transparency International (2019) *Global Corruption Barometer – Africa* available at https://images.transparencycdn.org/images/2019_GCB_Africa3.pdf (accessed 7 October 2021)

Transparency International (2021) *Corruption Perceptions Index 2020* Berlin: Transparency International

UNDP & OPHI (2019) *Global Multidimensional Poverty Index 2019* available at http://hdr.undp.org/sites/default/files/mpi_2019_publication.pdf (accessed 8 February 2020)

World Bank (2021) *Supreme Audit Institutions Independence Index 2021: Global Synthesis Report* available at https://openknowledge.worldbank.org/handle/10986/36001 (accessed 7 September 2021)

SECONDARY SOURCES

Books and Chapters in Books

Alao A (2007) *Natural Resources and Conflict in Africa: The Tragedy of Endowment* New York: University of Rochester Press

Acemoglu D & Robinson JA (2012) *Why Nations Fail: The Origins of Power, Prosperity and Poverty,* New York: Crown Publishers

Amnesty International (2016) *Malabo Protocol: Legal and Institutional Implications of the Merged and Expanded African Court* London: Amnesty International

Anand RP (1987) 'Attitude of the Asian-African States toward Certain Problems of International Law' in Snyder FE & Sathirathai S (Eds) *Third World Attitudes Toward International Law: An Introduction* Boston: Martinus Nijhoff

Anghie A (2004) *Imperialism, Sovereignty and the Making of International Law* Cambridge: Cambridge University Press

Article 19 (2016) *Public's Right to Know: Principles on Right to Information Legislation* London: Article 19

Auty RM (1993) *Sustaining Development in the Mineral Economies: The Resource Curse Thesis*, London: Routledge

Bedjaoui M (1979) *Towards a New International Economic Order* New York: Holmes & Meier Publishers

Beitz CR (1979) *Political Theory and International Relations* Princeton: Princeton University Press

Burgis T (2015) *The Looting Machine: Warlords, Oligarchs, Corporations, Smugglers, and the Theft of Africa's Wealth* New York: Public Affairs

Calderisi R (2006) *The Trouble With Africa: Why Foreign Aid Isn't Working,* London: Yale University Press.

Cameron PD & Stanley M (2017) *Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries* Washington DC: World Bank Group

Carothers T & Brechenmacher S (2014) *Accountability, Transparency, Participation, and Inclusion: A New Development Consensus?* Washington DC: Carnegie Endowment for International Peace

Collier P & Hoeffler A (2012) 'High-Value Natural Resources, Development, and Conflict: Channels of Causation' in Lujala P & Rustad SA *High-Value Natural Resources and Post Conflict Peace Building*, London: Earthscan

Collier P (2007) *The Bottom Billion: Why the Poorest Countries are Failing and What Can be Done about It,* New York: Oxford University Press.

Cooksey B (2002) 'The Power and the Vainglory: Anatomy of a Malaysian IPP in Tanzania' in Jomo KS (ed) *Ugly Malaysians: South-South Investments Abused,* Durban: Institute for Black Research

Davenport S & Kallaur E (2020) 'Open and Inclusive Government' in World Bank *Enhancing Government Effectiveness and Transparency: The Fight against Corruption* Kuala Lumpur: World Bank Group

De Jong DD and Stewart JG (2019) 'Illicit Exploitation of Natural Resources' in Jalloh CC, Clarke KM & Nmeheille VO (eds) *The African Court of Justice and Human and People's Rights in Context: Development and Challenges* Cambridge: Cambridge University Press

Eberhard A et al. (2016) *Independent Power Projects in Sub-Saharan Africa: Lessons from Five Key Countries*, *Independent Power Projects in Sub-Saharan Africa: Lessons from Five Key Countries*, Washington: World Bank Group

Ebner A & Beck N (2008) *The Institutions of the Market: Organisations, Social Systems, and Governance*, *The Institutions of the Market: Organisations, Social Systems, and Governance*, Oxford: Oxford University Press

Fjeldstad O & Johnsøn J (2017) 'Governance challenges in Tanzania's natural gas sector: Unregulated lobbyism and uncoordinated policy' in Williams A & Le Billon P (eds) *Corruption, Natural Resources and Development: From Resource Curse to Political Ecology,* Northampton: Edward Elgar Publishing Limited

Fjeldstad O, Mmari D & Dupuy K (2019) 'Petroleum resources, institutions and politics' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania*,Dar es Salaam: Chr. Michelsen Institute & REPOA

Fjeldstad O, Mmari D & Dupuy K (2019) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA

Friedrich-Ebert-Stiftung (2015) *Tanzania Oil and Gas Almanac* Dar es Salaam: Friedrich-Ebert-Stiftung

Garner BA (ed) (2004) *Black's Law Dictionary* 8th Ed Minnesota: West

Habershon A, Krause S & Sztykowski Z (2020) 'Beneficial Ownership Transparency' in World Bank *Enhancing Government Effectiveness and Transparency: The Fight against Corruption* Kuala Lumpur: World Bank Group

Haldar KS (2018) *Mineral Exploration: Principles and Applications* 2nd Ed Oxford: Elsevier

Harrison K & Boyd T (2003) *Understanding Political Ideas and Movements* Manchester: Manchester University Press

Hatchard J (2019) 'Combating Corruption Effectively? The Role of the African Court of Justice and Human Rights' in Jalloh CC, Clarke KM & Nmehielle VO (eds) *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges* Cambridge: Cambridge University Press

Huntington SP (1968) *Political Order in Changing Societies,* London: Yale University Press

International Monetary Fund (2018) *Fiscal Transparency Handbook* Washington DC: IMF

International Monetary Fund (2019) *The Fiscal Transparency Code* Washington DC: IMF

Jackson S & O'Malley A (2018) 'Rocking on its hinges? The League of Nations, the United Nations and the new history of internationalism in the twentieth century' in Jackson S & O'Malley A (Eds) *The Institution of International Order: From the League of Nations to the United Nations* London: Routledge

Kar D & Spanjers J (2014) *Illicit Financial Flows from Developing Countries: 2003-2012*, Washington DC: Global Financial Integrity

Karl TL (1997) *The paradox of plenty: Oil booms and petro-states*, Berkeley: University of California Press

La Torre M (2009) 'Institutional Theories and Institutional of Law: On Neil MacCormick's Savoury Blend of Legal Institutionalism' in Del Mar M & Bankowski Z (eds) *Law as Institutional Normative Order*, Edinburgh: ASHGATE Publishing Limited

Lugard FD (1922) *The Dual Mandate in British Tropical Africa* London: William Blackwood & Sons

MacCormick N & Weinberger O (1992) *An Institutional Theory of Law: New Approaches to Legal Positivism,* Holland: Kluwer Academic Publishers

Marchessault L (2013) *Open Contracting: A New Frontier for Transparency and Accountability* World Bank Institute & Open Contracting

Marshall D (2006) 'Afterword' in Stapenhurst R, Johnston N & Pellizo R (Eds) *The Role of Parliament in Curbing Corruption* Washington DC: World Bank

Menaldo VA (2016) *The Institutions Curse: Natural Resources, Politics, and Development*, Cambridge: Cambridge University Press.

Miles, K (2013) *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital* Cambridge: Cambridge University Press

Mmari D et al. (2019) 'An overview of the fiscal systems for the petroleum sector in Tanzania' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA

Mmari D, Andilile J & Fjeldstad O (2019) 'The evolution and current status of the petroleum sector in Tanzania' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA

Moyo D (2009) *Dead Aid: Why Aid is Not Working and How There is Another Way for Africa,* New York: Penguin

Ngomba-Roth R (2007) *Multinational Companies and Conflicts in Africa: The Case of the Niger Delta-Nigeria* Münster: LIT-VERLAG

Nyerere JK (1995) *Nyufa* Dar es Salaam: Mwalimu Nyerere Foundation

OECD (2009b) *Principles for Integrity in Public Procurement* Paris: OECD Publishing

OECD (2011) *Government at a Glance* Paris: OECD Publishing

OECD (2016) *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives* Paris: OECD

Ovadia JS (2019) 'Local content in Tanzania's gas and minerals sectors: Who regulates?' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA

Peters GB (1999) *Institutional Theory in Political Science: The New Institutionalism,* New York: PINTER

Pope J (2006) 'Parliament and Anti-Corruption Legislation' in Stapenhurst R, Johnston N & Pellizo R (Eds) *The Role of Parliament in Curbing Corruption* Washington DC: World Bank

Rodney W (1973) *How Europe Underdeveloped Africa* Dar es Salaam: Tanzania Publishing House

Schmitt C (2004) *Legality and Legitimacy* USA: Duke University Press

Scott RW (1995) *Institutions and Organisations*, London: SAGE Publications

Scott RW (2001) *Institutions and Organisations* 2nd Ed, London: SAGE Publications

Scott RW (2004) 'Institutional Theory: Contributing to a Theoretical Research Program' in Smith KG & Hitt MA (eds) *Great Minds in Management: The Process of Theory Development*, Oxford: Oxford University Press

Scott RW (2014) *Institutions and Organisations: Ideas, Interests and Identities* 4th Ed, London: SAGE Publications

Sitta S, Slaa W & Cheyo J (2008) *Bunge Lenye Meno: A Parliament with Teeth for Tanzania* London: Africa Research Institute

Sornarajah M (2016) 'International Investment Law as Development Law: The Obsolescence of a Fraudulent System' in Bungenberg M et al. (Eds) *European Yearbook of International Economic Law* Switzerland: Springer International Publishing.

Strang D & Sine WD (2002) 'Interorganizational institutions' in Baum JA (ed) *The Blackwell Companion to Organisations*, Oxford: Blackwell

Streeck W & Schmitter PC (1985) 'Community, Market, State and Associations: The prospective contribution of interest governance to social order' in Streeck W & Schmitter PC (eds) *Private Interest Government: Beyond Market and State*, Beverly Hills: SAGE Publications

Tolbert PS & Zucker LG (1996) 'The Institutionalisation of Institutional Theory' in Clegg S, Hardy C & Nord W (eds) *Handbook of Organisational Studies*, London: SAGE

Wehner J (2006) 'Effective Financial Scrutiny' in Stapenhurst R, Johnston N & Pellizo R (eds) *The Role of Parliament in Curbing Corruption* Washington DC: World Bank

Willebois E et al. (2011) *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* Washington DC: World Bank

World Bank (2020 c) *Enhancing Government Effectiveness and Transparency: The Fight against Corruption* Kuala Lumpur: World Bank Group

Yeboah-Assiamah E, Otchere-Ankrah B, Alesu-Dordzi S (2018) 'Administrative Discretion and Development Administration: Pet Turned into a Monster?' In Farazmand A (ed) *Global Encyclopaedia of Public Administration, Public Policy, and Governance* Springer: Cham

Journal Articles

Ahearne R & Childs J (2018) 'National resources? The fragmented citizenship of gas extraction in Tanzania' 12(4) *Journal of Eastern African Studies* 696-715

Akinsanya A (1980) ‘Permanent Sovereignty over Natural Resources and the Future of Foreign Investment’ 22(4) *Journal of the Indian Law Institute* 466–479.

Aksom H, Zhylinska O & Gaidai T (2020) ‘Can institutional theory be refuted, replaced or modified?’ 28(1) *International Journal of Organisational Analysis* 135-59

Amundsen I (2014) ‘Drowning in Oil: Angola’s Institutions and the ‘Resource Curse’’ 49(2) *Comparative Politics* 169–89

Awolusi AD et al. (2017) ‘Foreign Direct Investment and Economic Growth in Africa: A Comparative Analysis’ 9(3) *International Journal of Sustainable Economy* 183-198

Batistich M (1995) ‘The Right to Self-Determination and International Law’ 7(4) *Auckland University Law Review* 1013–1038

Bell RE (2002) ‘Abolishing the concept of predicate offence’ 6(2) *Journal of Money Laundering Control* 137-140

Bercu A et al. (2019) ‘Investigating the Energy–Economic Growth–Governance Nexus: Evidence from Central and Eastern European Countries’ 11 *Sustainability* 1-21

Bishoge OK et al. (2018) ‘The Overview of the Legal and Institutional Framework for Oil and Natural Gas Sector in Tanzania: A Review’ 3(1) *Journal of Applied and Advanced Research* 8-17.

Brinkerhoff DW (2000) ‘Assessing Political Will for Anti-Corruption Efforts: An Analytic Framework’ 20 *Public Administration and Development* 239-252

Cambou D & Smis S (2013) ‘Permanent Sovereignty Over Natural Resources from a Human Rights Perspective: Natural Resources Exploitation and Indigenous Peoples’ Rights in the Arctic’ 22(1) *Michigan State International Law Review* 347–376

Chen C & Neshkova MI (2020) ‘The effect of fiscal transparency on corruption: A panel cross-country analysis’ 98(1) *Public administration* 226-243

Chingono H (2010) ‘Zimbabwe sanctions: An analysis of the Lingo guiding the perceptions of the sanctioners and the sanctionees’ 4(2) *African Journal of Political Science and International Relations* 66-74

Collier P & Hoeffler A (1998) ‘On economic causes of civil war’ 50(4) *Oxford Economic Papers* 563–573

Collier P & Hoeffler A (2005) ‘Resource Rents, Governance, and Conflict’ 49(4) *The Journal of Conflict Resolution* 625–633

de Medeiros Costa HK & dos Santos EM (2013) ‘Institutional Analysis and the “Resource Curse” in Developing Countries’ 63 *Energy Policy* 788–95

Demierre J et al. (2015) 'Potential for Regional Use of East Africa's Natural Gas' 143 *Applied Energy* 414-36

Di Noi C & Ciroth A (2018) 'Environmental and Social Pressures in Mining: Results from a Sustainability Hotspots Screening' 7(4) *Resources* 80

DiMaggio PJ & Powell WW (1983) 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields' 48(2) *American Sociological Review* 147–60

Djankov S, et al. (2008) 'The Curse of Aid' 13(3) *Journal of Economic Growth* 169-194

Enyew E (2017) 'Application of the Right to Permanent Sovereignty over Natural Resources for Indigenous Peoples: Assessment of Current Legal Developments' 8 *Arctic Review on Law and Politics* 222–245

Fatouros A (1964) 'International Law and the Third World' 50(5) *Virginia Law Review* 783–823

Fox J (2007) 'The Uncertain Relationship between Transparency and Accountability' 17(4-5) *Development in Practice* 663–71

Frynas JG & Buur L (2020) 'The Presource Curse in Africa: Economic and Political Effects of Anticipating Natural Resource Revenues' 7(4) *Extractive Industries and Society* 1257-1270

Furman KC et al. (2017) 'Optimization in the Oil and Gas Industry' 18(1) *Optimization and Engineering* 1-2

Gess KN (1964) 'Permanent Sovereignty over Natural Resources: An Analytical Review of the United Nations Declaration and Its Genesis' 13(2) *The International Comparative Law Quarterly* 398–449

Gilman N (2015) 'The New International Economic Order: A Reintroduction' 6(1) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 1–16

Gong T & Xiao H (2017) 'Socially Embedded Anti-Corruption Governance: Evidence from Hong Kong' 37 *Public Administration and Development* 176-190

Gray HS (2015) 'The Political Economy of Grand Corruption in Tanzania' 114(456) *African Affairs* 382-403

Güney T (2019) 'Renewable energy, non-renewable energy and sustainable development' 26(5) *International Journal of Sustainable Development & World Ecology* 389-397

Hellman JS & Schankerman M (2000) 'Intervention, Corruption and Capture: The Nexus between Enterprises and the State' 8(3) *The Economics of Transition* 545-76

Hellman JS, Jones G & Kaufmann D (2003) 'Seize the State, Seize the Day: State Capture and Influence in Transition Economies' 31(4) *Journal of Comparative Economics* 751–73

Hodler R (2007) ‘Rent-seeking and Aid Effectiveness’ 14(5) *International Tax and Public Finance* 525-541

Hoseah EG (2014) ‘Corruption as a global hindrance to promoting ethics, integrity, and sustainable development in Tanzania: The role of the anti-corruption agency’ 10(3) *Journal of Global Ethics* 384-392.

Howard A (2015) ‘Blood Diamonds: The Successes and Failures of the Kimberley Process Certification Scheme in Angola, Sierra Leone and Zimbabwe’ 15(1) *Washington University Global Studies Law Review* 136-159

Huntington SP (1965) ‘Political development and political decay’ 17(3) *World Politics* 386-430

Hyde JN (1956) ‘Permanent Sovereignty over Natural Wealth and Resources’ 50(4) *The American Journal of International Law* 854–867

Idris M (2013) ‘Corruption and Insecurity in Nigeria’ 2(1) *Public Administration Research* 59-66

Jourdan P (1990) ‘The Mineral Economies of SADCC-Tanzania’ 7(1) *Minerals and Energy - Raw Materials Report* 18–49

Kolstad I & Søreid T (2009) ‘Corruption in natural resource management: Implications for policy makers’ 34 *Resources Policy* 214-226

Komnitsas K (2020) ‘Social License to Operate in Mining: Present Views and Future Trends’ 9 *Resources* 79

Larsen ER (2006) ‘Escaping the Resource Curse and the Dutch Disease? When and Why Norway Caught up with and Forged Ahead of Its Neighbours’ 65(3) *The American Journal of Economics and Sociology* 605–40

Lee B & Dupuy K (2018) ‘Understanding the Lie of the Land: An Institutional Analysis of Petro-Governance in Tanzania’ 36(1) *Journal of Energy and Natural Resources Law* 85–101.

Li J et al. (2008) ‘Institutional Pillars and Corruption at the Societal Level’ 83(2) *Journal of Business Ethics* 327–39

Lührmann A, Marquardt KL & Mechkova V (2020) ‘Constraining Governments: New Indices of Vertical, Horizontal, and Diagonal Accountability’ 114(3) *American Political Science Review* 811–820

Lukiko LV, Kilonzo C, & Kimela H (2020) ‘Tanzania's Post-Independence Anti-Corruption Efforts: Examining the Prevention and Combating of Corruption Bureau's (PCCB) Role during Magufuli's Regime’ 4(1) *Journal of Anti-Corruption Law* 32-57

Luo Y (2005) ‘An Organisational Perspective of Corruption’, 1(1) *Management and Organisation Review*, 119–154

Luoga FD (2016) ‘Challenges in Setting up Legal Frameworks for Natural Resources Governance in the East African Countries’ 43(2) *The African Review* 1–16

Mbiyavanga S (2017) ‘Corruption and International Investment Treaty Law’ 1(2) *Journal of Anti-Corruption Law* 132-150

Mehlum H, Moene K & Torvik R (2006) ‘Cursed by Resources or Institutions?’ 29(8) *World Economy* 1117–31

Meyer JW & Rowan B (1977) ‘Institutionalised Organisations: Formal Structure as Myth and Ceremony’ 83(2) *American Journal of Sociology* 340–363

Miranda LA (2012) ‘The Role of International Law in Resource Allocation: Sovereignty, Human Peoples-Based Development’45(3) *Vanderbilt Journal of Transnational Law* 785–840

Munyai A & Agbor AA (2020) ‘Delineating the Role of Foreign Governments in the Fight against Corruption in Africa’ 6(1) *Cogent Social Sciences* 1–15

Nagan WP & Hammer C (2004) ‘The Changing Character of Sovereignty in International Law and International Relations’ 43(141) *Columbia Journal of Transnational Law* 141–187

Ng’ambi SP (2015) ‘Permanent Sovereignty Over Natural Resources and the Sanctity of Contracts, From the Angle of Lucrum Cessans’ 12(2) *Loyola University Chicago International Law Review* 153–172

Nichols JE (2012) ‘A Conflict of Diamonds: The Kimberley Process and Zimbabwe's Marange Diamond Fields’ 40(4) *Denver Journal of International Law and Policy* 648-685

Noveck BS (2017) ‘Rights-Based and Tech-Driven: Open Data, Freedom of Information, and the Future of Government Transparency’ 19(1) *Yale Human Rights and Development Law Journal* 1–46

Oliver E. & Oliver WH (2017) ‘The Colonisation of South Africa: A unique case’ 73(3) *HTS Theological Studies* 1-8.

Park N (1987) ‘The Third World as an International Legal System’ 7(1) *Boston College Third World Law Journal* 37–60

Pere E (2015) ‘The impact of good governance in the economic development of Western Balkan countries’ 4(1) *European Journal of Government and Economics* 25-45

Persson A et al. (2013) ‘Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem’ 26(3) *Governance* 449–471

Pillay S & Kluvers R (2014) ‘An Institutional Theory Perspective on Corruption: The Case of a Developing Democracy’ 30(1) *Financial Accountability and Management* 95–119

Polus A & Tycholiz WJ (2019) 'David versus Goliath: Tanzania's Efforts to Stand up to Foreign Gas Corporations' 54(1) *Africa Spectrum* 61–72

Poncian J & Kigodi HM (2018) 'Transparency Initiatives and Tanzania's Extractive Industry Governance' 5(1) *Development Studies Research* 106–21

Quah JST (2001) 'Combating Corruption in Singapore: What Can Be Learned?' 9(1) *Journal of Contingencies and Crime Management* 29-35

Quane H (1998) 'The United Nations and the Evolving Right to Self-Determination' 47(3) *International and Comparative Law Quarterly* 537–572

Ramirez J (2021) 'Governance in energy democracy for Sustainable Development Goals: Challenges and opportunities for partnerships at the Isthmus of Tehuantepec' 4 *Journal of International Business Policy* 119–135

Reddick CG, Abdelsalam HM & Elkadi H (2011) 'The influence of e-government on administrative discretion: The case of local governments in Egypt' 31 *Public Administration and Development* 390-407

Ross ML (2004) 'What Do We Know about Natural Resources and Civil War?' 41(3) *Journal of Peace Research* 337–356

Ross ML (2015) 'What Have We Learned about the Resource Curse?' 18 *Annual Review of Political Science* 239–259

Ruijer HJM (2017) 'Proactive Transparency in the United States and the Netherlands: The Role of Government Communication Officials' 47(3) *American Review of Public Administration* 354–75

Sarmidi T, Law SH & Jafari Y (2014) 'Resource Curse: New Evidence on the Role of Institutions' 28(1) *International Economic Journal* 191–206

Sauvant KP (2015) 'The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned' 16 *Journal of World Investment and Trade* 11–87

Sax JL (1970) 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' 68(3) *Michigan Law Review* 471-566

Sayi PR (2016) 'Crime Victims' Remedy against a DPP Decision not to Prosecute in Tanzania' 1(10) *International Journal of Science Arts and Commerce* 1-12

Scott RW (1987) 'The Adolescence of Institutional Theory' 32(4) *Administrative Science Quarterly* 493–511

Scott RW (2008) ‘Approaching Adulthood: The Maturing of Institutional Theory’ 37(5) *Theory and Society* 427-42

Sen S (1981) ‘New International Economic Order and Contemporary World Economic Scene’ 16(10) *Economic and Political Weekly*, 516–25

Shaxson N (2007) ‘Oil, Corruption and the Resource Curse’ 83(6) *International Affairs* 1123–40.

Shinn CW (1996) ‘Taking Stock of Institutional Thought: Institutions, Institutionalisation and Institutional Effects’ 18(2) *Administrative Theory and Praxis* 31–41

Sornarajah M (2006) ‘Power and Justice: Third World Resistance in International Law’ 10 *Singapore Yearbook of International Law* 19–58

Sørreime H & Tronvoll K (2020) ‘The Extractive Industries and Society Performing Accountability in Petroleum Resource Governance in a Shrinking Democratic Space: The Case of Tanzania’ 7(4) *The Extractive Industries and Society* 1490–1497

Sowa JE & Selden SC (2003) ‘Administrative Discretion and Active Representation: An Expansion of the Theory of Representative Bureaucracy’ 63(6) *Public Administration Review* 700–710

Suchman MC (1995) ‘Managing Legitimacy: Strategic and Institutional Approaches’ 20 *Academy of Management Review* 571–610

Thérien J (1999) ‘Beyond the North-South Divide: The Two Tales of World Poverty’ 20(4) *Third World Quarterly* 723-742

Tolbert PS & Zucker LG (1983) ‘Institutional Sources of Change in the Formal Structure of Organisations: The Diffusion of Civil Reform’ 28(1) *Administrative Science Quarterly* 22–39

Tyagi Y (2015) ‘Permanent Sovereignty over Natural Resources’ 4(3) *Cambridge International Law Journal* 588–615

Wolf-Phillips L (1987) ‘Why Third World?: Origin, Definition and Usage’ 9(4) *Third World Quarterly* 1311–1327

Zucker LG (1987) ‘Institutional Theories of Organisation’ 13 *Review Literature and Arts of the Americas* 443–64

Working Papers & Briefs

Alba EM (2009) ‘Extractive Industries Value Chain: A Comprehensive Integrated Approach to Developing Extractive Industries’ Extractive Industries for Development Series No 3, Washington DC: World Bank Group

Asiedu E (2006) 'Foreign Direct Investment in Africa: The Role of Natural Resources, Market Size, Government Policy, Institutions and Political Instability' Helsinki: United Nations University available at http://people.ku.edu/~asiedu/world-economy.pdf (accessed 21 July 2020)

Cappelen AW et al. (2018) *Understanding the Resource Curse: A Large-Scale Experiment on Corruption in Tanzania*, Dar es Salaam: Chr. Michelsen Institute & REPOA

Chen C & Ganapati S (2018) 'Is Transparency the Best Disinfectant? A Meta-Analysis of the Effect of Transparency on Government Corruption' Open Government Partnership Working Paper

Cooksey B (2017) *IPTL, Richmond and "Escrow": The Price of Private Power Procurement in Tanzania*, African Research Institute available at https://www.africaresearchinstitute.org/newsite/publications/iptl-richmond-escrow-price-private-power-procurement-tanzania/ (accessed 12 February 2020)

David-barrett L & Okamura K (2013) 'The Transparency Paradox: Why Do Corrupt Countries Join EITI?' ERCAS Working Papers No 38 University of Oxford

Ledesma D (2013) *East Africa Gas - Potential for Export* NG 74, Oxford: Oxford Institute for Energy Studies

Leite C & Weidmann J (1999) 'Does Mother Nature Corrupt? Natural Resources, Corruption and Economic Growth' IMF Working Paper WP/99/85 available at https://www.imf.org/external/pubs/ft/wp/1999/wp9985.pdf (accessed 31 July 2020).

Manley D & Lassourd T (2014) *Tanzania and Statoil: What Does the Leaked Agreement Mean for Citizens?* Dar es Salaam: Natural Resource Governance Institute

Mdee A & Thorley L (2016) *Good governance, local government, accountability and service delivery in Tanzania: Exploring the context for creating a local governance performance index*, ESRC Working Paper 2 available at https://www.intrac.org/wpcms/wp-content/uploads/2016/11/WP2_Local-governance-and-accountability-in-Tz_Mzumbepaper_FINAL_311016.pdf (accessed 22 October 2020)

Olan'g L & Msami J (2017*) In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement* Afrobarometer Dispatch No. 178 Dar es Salaam: REPOA & Afrobarometer

Oxfam (2018) 'CONTRACT DISCLOSURE SURVEY 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas, and Mining Companies' Oxfam Briefing Paper

Pedersen RH & Bofin P (2015) *The Politics of Gas Contract Negotiations in Tanzania: A Review* DIIS Working Paper 2015:03, Copenhagen: Danish Institute for International Studies

Roe AR (2016) *Tanzania — from Mining to Oil and Gas* WIDER Working Paper 2016/79, Helsinki: UNU-WIDER

Roe AR (2017) *Tanzania—from Mining to Oil and Gas: Structural Change or Just Big Numbers?* WIDER Working Paper 2017/175, Helsinki: UNU-WIDER

Sachs JD & Warner AM (1995) *Natural Resource Abundance and Economic Growth* NBER Working Paper 5398, Cambridge: National Bureau of Economic Research.

Sahla S, Gillies A & Salomon M (2021) *How Can Anticorruption Actors Use EITI Disclosures?* Natural Resource Governance Institute

Scurfield T and Mihalyi D (2017), 'Uncertain Potential: Managing Tanzania's Gas Revenues' Natural Resource Governance Institute Brief available at http://www.reuters.com/article/tanzania-gas- (accessed 13 July 2021)

Smith J, Pieth M & Jorge G (2007) *The Recovery of Stolen Assets: A Fundamental Principle of the UN convention against Corruption,* U4 Brief No. 2, Bergen: Chr. Michelsen Institute

Stølan A et al. (2017) 'Prospects for peace in a petro-state: gas extraction and participation in violence in Tanzania' CMI Brief Volume 16 Number 10 available at https://www.cmi.no/publications/file/6394-prospects-for-peace-in-a-petro-state.pdf (accessed 5 May 2021)

TWAWEZA (2014) Managing Natural Resources *Sauti Za Wananchi*, Dar es Salaam: TWAWEZA

Williams A & Dupuy K (2016) "At the Extremes: Corruption in Natural Resource Management Revisited" U4 Anti-Corruption Resource Centre Brief No 6 available at https://www.cmi.no/publications/file/5950-at-the-extremes-corruption-in-natural-resource.pdf (accessed 31 July 2020)

Speeches

Jacobsen E (2019) 'Forewords' in Fjeldstad O, Mmari D & Dupuy K (eds) *Governing Petroleum Resources Prospects and Challenges for Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA

Ministry of Energy (2018) *Hotuba ya Waziri wa Nishati Mhe. Dkt. Medard Matogolo Chananja Kalemani (Mb.) Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Nishati kwa Mwaka 2018/19* Dodoma: Ministry of Energy

Ministry of Energy (2019) *Hotuba ya Waziri wa Nishati Mhe. Dkt. Medard Matogolo Chananja Kalemani (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Nishati kwa Mwaka 2019/20* Dodoma: Ministry of Energy

Ministry of Energy (2020) *Hotuba ya Waziri wa Nishati Mhe. Dkt. Medard Matogolo Chananja Kalemani (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Nishati kwa Mwaka 2020/21* Dodoma: Ministry of Energy

Ministry of Energy (2021) *Hotuba ya Waziri wa Nishati Mhe. Dkt. Medard Matogolo Chananja Kalemani (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Nishati kwa Mwaka 2021/22* Dodoma: Ministry of Energy

Ministry of Lands (2020) *Hotuba ya Waziri wa Ardhi, Nyumba na Maendeleo ya Makazi, Mheshimiwa William V. Lukuvi (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara kwa Mwaka wa Fedha 2020/21* Dodoma: Ministry of Lands, Housing and Human Settlements

Ministry of Lands (2021) *Hotuba ya Waziri wa Ardhi, Nyumba na Maendeleo ya Makazi, Mheshimiwa William V. Lukuvi (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara kwa Mwaka wa Fedha 2021/22* Dodoma: Ministry of Lands, Housing and Human Settlements

Ministry of Minerals (2021) *Hotuba ya Mheshimiwa Doto Mashaka Biteko (Mb.), Waziri wa Madini Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2021/2022* Dodoma: Wizara ya Madini

President's Office – Public Service Management and Good Governance (2020) *Hotuba ya Waziri wa Nchi – Ofisi ya Rais, Menejimenti ya Utumishi wa Umma na Utawala Bora, Mhe. Kapt. (Mst.) George H. Mkuchika (Mb.) Kuhusu Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2020/21* Dodoma: *Ofisi ya Rais, Menejimenti ya Utumishi wa Umma na Utawala Bora*

President's Office – Public Service Management and Good Governance (2022) Hotuba ya Waziri wa Nchi – Ofisi ya Rais, Menejimenti ya Utumishi wa Umma na Utawala Bora, Mheshimiwa Jenista J. Mhagama (Mb.) Kuhusu Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2022/23 Dodoma: Ofisi ya Rais, Menejimenti ya Utumishi wa Umma na Utawala Bora

Theses

Lukiko L (2017) *Exploring a sustainable anti-corruption regime for Tanzania* LL.M Mini-Thesis University of the Western Cape, available at https://etd.uwc.ac.za/xmlui/handle/11394/5692 (accessed 8 February 2020)

Schrijver N (1995) *Sovereignty over Natural Resources: Balancing Rights and Duties in an Interdependent World* PhD Thesis University of Groningen available at https://www.rug.nl/research/portal/files/3265518/dissertatie.pdf (accessed 31 July 2020)

Conference papers

Clarke G (2014) 'Does overregulation lead to corruption?' available at http://www.aabri.com/LV2014Manuscripts/LV14025.pdf (accessed 6 July 2021)

Hoseah EG (2015) 'Practical Experience and Insights in the Fight against Corruption: The African Experience' Paper presented at the International Anti-Corruption Academy in Vienna on 9 July 2015

Low LA (2006) 'The United Nations Convention against Corruption: The Globalisation of Anti-corruption Standards' paper prepared for a Conference of the International Bar Association, International Chamber of Commerce, and Organisation for Economic Cooperation and Development London on 4-5 May 2006

Nshala R (2000) 'Management of Natural Resources in Tanzania: Is the Public Trust Doctrine of Any Relevance?' paper presented at the Eighth Biennial Conference of the International Association for the Study of Common Property, Indiana available at http://hdl.handle.net/10535/1405 (accessed 27 July 2020)

Internet sources

African Court on Human and Peoples Rights 'Finalised cases' available at https://www.african-court.org/cpmt/finalised (accessed 22 February 2021)

Alexander's Oil & Gas Connections (2000) 'Tanzania and Western Geophysical to jointly conduct seismic survey' available at http://www.gasandoil.com/news/africa/aaa95b6e3e9829ff0364caa410abd29a (accessed 10 February 2020)

Alfarsi H (2018) 'Fiscal Regimes: Types of Oil and Gas Agreements' available at https://www.profolus.com/topics/types-oil-and-gas-agreements/ (accessed 13 May 2021).

al-Kuwari S (2020) 'Good governance key to energy sector's better performance and productivity' available at https://www.gulf-times.com/story/668783/Good-governance-key-to-energy-sector-s-better-perf (accessed 16 June 2021)

Anti-Corruption Summit (2016) *Communique* available at https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/20-24June2016/V1603744e.pdf (accessed 30 August 2021)

Assaye Risk (2018) 'East Africa Crude Oil Pipeline (EACOP) Cone of Plausability Analysis' available at https://www.assayerisk.com/20180627-east-africa-crude-oil-pipeline-eacop-cone-of-plausability-analysis/ (accessed 11 February 2020)

Ayemba D (2021) 'Bagamoyo port project timeline and all you need to know' available at https://constructionreviewonline.com/project-timelines/bagamoyo-port-project-timeline-and-all-you-need-to-know/ (accessed 14 July 2021)

BBC (2 April 2019) 'Bunge la Tanzania laazimia kutofanya kazi na CAG baada ya kumtia 'hatiani' kwa kudharau mhimili huo' available at https://www.bbc.com/swahili/habari-47782449 (accessed 15 January 2015)

BBC (23 March 2021) 'Dan Gertler - the man at the centre of DR Congo corruption allegations' available at https://www.bbc.com/news/world-africa-56444576 (accessed 27 August 2021)

BBC (7 February 2008) 'Tanzanian PM to resign over graft' available at http://news.bbc.co.uk/2/hi/africa/7232141.stm (accessed 4 March 2021)

Brinkerhoff DW (2010) 'Unpacking the concept of political will to confront corruption' U4 Brief No 1 available at https://www.cmi.no/publications/file/3699-unpacking-the-concept-of-political-will-to.pdf (accessed 6 October 2021)

Butahe F (18 December 2017) 'Nassari azungumzia ushahidi aliowasilisha Takukuru' available at https://www.mwananchi.co.tz/habari/Nassari-aeleza-Takukuru-imemshangaza/1597578-4233158-view-printVersion-15qv6uf/index.html visited 17 June 2020)

Carsten A (2005) 'The Role of Transparency and Accountability for Economic Development in Resource-rich Countries' available at https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp012705 (accessed 19 March 2022)

Deloitte (2016) 'Oil and Gas Taxation in Tanzania' available at https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Energy-and-Resources/gx-er-oil-and-gas-tax-guide-tanzania.pdf (accessed 29 November 2021)

East Africa Crude Oil Pipeline 'Key figures' available at http://eacop.com/ (accessed 11 February 2020)

Ehlermann-Cache N 'The impact of the OECD Anti-Bribery Convention' available at https://www.oecd.org/mena/competitiveness/39997682.pdf (accessed 22 July 2020)

EITI (2019 b) 'Nigeria uses EITI to reform industry, build accountability' available at https://eiti.org/news/nigeria-uses-eiti-to-reform-industry-build-accountability (accessed 27 August 2021)

EITI (2019 c) 'Discussion Paper: The EITI's Role in Fighting Corruption' available at https://eiti.org/files/documents/eiti_global_conference_discussion_paper_-_eitis_role_in_fighting_corruption_1.pdf (accessed 27 August 2021)

EITI (b) 'Histrory of the EITI' available at https://eiti.org/history (accessed 27 August 2021)

EITI (c) 'How we work' available at https://eiti.org/about/how-we-work#upholding-the-standard-internationally-validation (accessed 27 August 2021)

EITI (d) 'Beneficial ownership' available at https://eiti.org/beneficial-ownership (accessed 31 August 2021)

EITI 'What we do' available at https://eiti.org/About (accessed 27 August 2021)

EWURA (2020) *Client Service Charter* available at https://www.ewura.go.tz/wp-content/uploads/2020/10/EWURA-Client-Service-Charter-English-Revised-2020.pdf (accessed 17 June 2021)

Extractiveshub 'Petroleum Licensing and Contracting' available at https://extractiveshub.org/topic/view/ID/33 (accessed 1 July 2021)

FATF (2011) *Laundering the Proceeds of Corruption* Paris: FATF available at https://www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf (accessed 21 June 2021)

G-20 (2015) 'Principles for Promoting Integrity in Public Procurement' available at http://www.seffaflik.org/wp-content/uploads/2015/02/G20-PRINCIPLES-FOR-PROMOTING-INTEGRITY-IN-PUBLIC-PROCUREMENT.pdf (accessed 30 August 2021)

Gaventa J & Barrett G (2010) 'So What Difference Does it Make? Mapping the Outcomes of Citizen Engagement' *IDS Working Paper 347* available at https://www.participatorymethods.org/sites/participatorymethods.org/files/Wp347.pdf (accessed 2 September 2021)

Gerald C (4 July 2017) 'IPTL kingpins hit by fresh money laundering charges' available at https://www.ippmedia.com/en/news/iptl-kingpins-hit-fresh-money-laundering-charges (accessed 27 April 2021)

Graft A, Verhulst S & Young A (2016) *Open Data's Impact: Brazil's Open Budget Portal* GOVLAB available at https://odimpact.org/files/case-study-brazil.pdf (accessed 2 September 2021)

Green D (2015) 'What is the relationship between governance and economic growth?' available at https://www.weforum.org/agenda/2015/11/what-is-the-relationship-between-governance-and-economic-growth/ (accessed 16 June 2021)

HakiRasilimali 'About HakiRasilimali' available at https://www.hakirasilimali.or.tz/about-us/ (accessed 26 August 2021)

ICGLR 'Background' available at http://www.icglr.org/index.php/en/background (accessed 30 July 2020)

International Consortium of Investigative Journalists (2016) 'The Panama Papers: Exposing the Rogue Offshore Finance Industry' available at https://www.icij.org/investigations/panama-papers/ (accessed 1 December 2021)

International Consortium of Investigative Journalists (2020) 'Luanda Leaks' available at https://www.icij.org/investigations/luanda-leaks/ (accessed 21 June 2021)

International Consortium of Investigative Journalists (2021) 'Pandora Papers' available at https://www.icij.org/investigations/pandora-papers/ (accessed 1 December 2021)

International Justice Resource Centre (5 December 2019) 'As African Court Releases New Judgments, Tanzania Withdraws Individual Access' available at https://ijrcenter.org/2019/12/05/as-african-court-releases-new-judgments-tanzania-withdraws-individual-access/ (accessed 21 March 2022)

International Monetary Fund (2020) 'The IMF and the World Bank' available at https://www.imf.org/en/About/Factsheets/Sheets/2016/07/27/15/31/IMF-World-Bank (accessed 10 February 2021)

Interpeace (2015) 'Public Participation and Citizen Engagement' available at https://www.interpeace.org/wp-content/uploads/2015/10/2015_10_12_Effective_Advising_How-Public_participation.pdf (accessed 2 September 2021)

ITV (3 November 2019) 'Magufuli ateua CAG mpya' available at https://www.itv.co.tz/news/rais-magufuli-ateua-cag-mpya (accessed 15 January 2015)

Kabendera E & Anderson M (24 December 2014) 'Tanzania energy scandal ousts senior politicians' available at https://www.theguardian.com/global-development/2014/dec/24/tanzania-energy-scandal-ousts-senior-politicians (accessed 30 March 2021)

Kabwe Z (2017) 'Tanzania to lose up to $1b under StatOil PSA: Open these Oil and Gas Contract' available at https://zittokabwe.wordpress.com/2014/07/04/tanzania-to-lose-up-to-1b-under-statoil-psa-open-these-oil-and-gas-contracts/ (accessed 19 May 2021)

Kaufmann D, Kraay A & Mastruzzi M (2010) *The Worldwide Governance Indicators: Methodology and Analytical Issues* The World Bank available at https://documents1.worldbank.org/curated/ar/630421468336563314/pdf/WPS5430.pdf (accessed 16 June 2021)

Kaufmann D, Kraay A & Mastruzzi M 'Worldwide Governance Indicators' available at http://info.worldbank.org/governance/wgi/Home/Reports (accessed 30 August 2021)

Kenyunko K (18 October 2017) 'Taasisi ya kupambana na rushwa yamwonya mbunge wa Arumeru mashariki' available at http://www.mtaakwamtaa.co.tz/2017/10/taasisi-ya-kupambana-na-rushwa-yamwonya.html (visited 17 June 2020)

Kimberley Process (b) 'What is the Kimberley Process?' available at https://www.kimberleyprocess.com/en/what-kp (accessed 26 August 2021).

Kimberley Process 'History' available at https://www.kimberleyprocess.com/en/what-kp (accessed 1 December 2021)

Kimberley Process 'Participants' available at https://www.kimberleyprocess.com/en/participants (accessed 26 August 2021)

Landau K, Lewis RJ & Squires C (2020) 'Using extractive industries data for better governance' available at https://www.brookings.edu/blog/up-front/2020/10/06/using-extractive-industries-data-for-better-governance/ (accessed 26 August 2021)

Louisville 'What publicity can do' available at https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v (accessed 27 August 2021)

Maliki M (2019) 'Nyerere Hydropower Project, honouring Mwalimu's legacy' available at https://www.thecitizen.co.tz/supplement/5043016-5312004-5rapaaz/index.html (accessed 2 February 2020)

Man-wai TK (2006) 'Formulating an Effective Anti-Corruption Strategy –The Experience of Hong Kong ICAC' available at http://www.unafei.or.jp/english/pdf/PDF_rms/no69/16_P196-201.pdf (accessed 2 September 2021)

Michael C (9 December 2018) 'Zitto atumia dakika 240 Takukuru' available at https://www.mwananchi.co.tz/habari/kitaifa/Zitto-atumia-dakika-240-Takukuru/1597296-4887554-nbe8p8/index.html (accessed 17 June 2020)

Mirondo R & Zacharia A (17 May 2021) 'Government targets 80 percent internet access in Tanzania by 2025' available at https://www.thecitizen.co.tz/tanzania/news/business/government-targets-80-percent-internet-access-in-tanzania-by-2025-3403442 (accessed 6 December 2021)

Mittal P (2020) 'Falling Apart – A story of the Tanzanian Bagamoyo Port Project' available https://www.orfonline.org/expert-speak/falling-apart-a-story-of-the-tanzanian-bagamoyo-port-project/ (accessed 14 July 2021)

Mlowola V (2016) 'The Role of Good Governance towards Transforming Tanzania to a Middle Income Economy by 2025' available at *erb.go.tz › category › 10-aed-2016-presentation* (accessed 14 January 2021)

MoF 'The Budget Process' available at https://mof.go.tz/mofdocs/budget/process.htm (accessed 7 December 2021)

Msasato M (18 May 2011) 'Tanzania: National Audit Office Shines Beyond Borders' available at https://allafrica.com/stories/201105190337.html (accessed 15 January 2021)

Msikula A (2019) 'Two auditing firms axed, one on hold' availabe at https://dailynews.co.tz/news/2019-07-135d29988140335.aspx (accessed 6 May 2020)

Mwananchi (11 November 2020) 'Upinzani, historia mpya nje ya Bunge' available at https://www.mwananchi.co.tz/mw/habari/kitaifa/-upinzani-historia-mpya-nje-ya-bunge-3018668 (accessed 5 March 2021)

Mwananchi (18 September 2019) 'VIDEO: Makonda aeleza anakotoa fedha za misaada' available at https://www.mwananchi.co.tz/mw/habari/kitaifa/video-makonda-aeleza-anakotoa-fedha-za-misaada-2988306 (accessed 29 March 2021)

Mwananchi (26 March 2020) 'CAG asema hali ya utekelezaji wa mapendekezo yanayotolewa hauridhishi' available at https://www.mwananchi.co.tz/mw/habari/kitaifa/video-cag-asema-hali-ya-utekelezaji-wa-mapendekezo-yanayotolewa-hauridhishi-3010276 (accessed 30 March 2021)

Mwananchi (8 September 2015) 'Magufuli: Serikali ya awamu ya tano itakuwa ya viwanda' available at https://www.mwananchi.co.tz/mw/habari/kitaifa/magufuli-serikali-ya-awamu-ya-tano-itakuwa-ya-viwanda-2789116 (accessed 27 March 2021)

Mwangonde H (19 May 2021) 'PCCB admits: 147 cases are framed' available at https://www.ippmedia.com/en/news/pccb-admits147-cases-are-framed (accessed 7 October 2021)

Nassor T (17 October 2017) 'Nassari awasilisha ushahidi wa tatu TAKUKURU' available at https://mtanzania.co.tz/nassari-awasilisha-ushahidi-wa-tatu-takukuru/ (accessed 17 June 2020)

Natural Resource Governance Institute (2010) 'The Value Chain' available at https://www.resourcegovernance.org/analysis-tools/publications/value-chain (accessed 3 September 2021)

Negotiation Support (2015) 'Sector-Wide Analyses' available at http://www.negotiationsupport.org/roadmap/sector-wide-analyses (accessed 5 May 2021).

Ngw'anakilala F (22 May 2013) 'Tanzanian gas pipeline plan sparks riot -government officials' available at https://www.reuters.com/article/tanzania-riots-idUKL6N0E33YE20130522 (accessed 5 May 2021)

Obultusa G (23 October 2020) 'Militants from Mozambique staged deadly attack in Tanzania, police say' available at https://www.reuters.com/article/us-tanzania-security-mozambique-idUSKBN2781PB (accessed 3 September 2021)

Obulutsa G (17 September 2012) 'Tanzania orders review of all oil and gas exploration contracts' available at https://www.reuters.com/article/tanzania-exploration-idUSL5E8KH0A520120917 (accessed 7 June 2021).

Ocampo JA & Arteaga NG (2014) 'Accountability for Development Cooperation' *Accountable and effective development cooperation in a post-2015 era* available at https://www.un.org/en/ecosoc/newfunct/pdf13/dcf_germany_bkgd_study_3_global_accountability.pdf (accessed 25 August 2021)

OECD (2013) 'Trust in government, policy effectiveness and the governance agenda' *Government at a Glance* available at https://www.oecd-ilibrary.org/docserver/gov_glance-2013-6-en.pdf?expires=1630571800&id=id&accname=guest&checksum=FEA2FF041A21CE76CBA4A281CDD5186A (accessed 2 September 2021)

OECD (2017) *Preventing Policy Capture – Integrity in public policy making,* Paris: OECD, available at https://read.oecd-ilibrary.org/governance/preventing-policy-capture_9789264065239-en#page22 (accessed 8 February 2020)

OECD (b) 'Trust in Government' available at https://www.oecd.org/gov/trust-in-government.htm (accessed 2 September 2021)

OECD 'Open Government' available at https://www.oecd.org/gov/open-government/ (accessed 2 September 2021)

Oil and Gas Association of Tanzania 'ANTI-CORRUPTION POLICY' available at https://ogat.or.tz/index.php/2019/03/15/anti-corruption-policy/ (accessed 17 June 2021)

Oirere S (2019) 'Tanzania Suspends $10B Bagamoyo Port Project' available at https://www.enr.com/articles/47134-tanzania-suspends-bagamoyo-port-project (accessed 14 July 2021)

Open Contracting 'Delving into the world of oil, mining and gas contracts with open contracting' available at https://www.open-contracting.org/what-is-open-contracting/extractives/ (accessed 30 August 2021)

Organisation of American States (2009) 'Right of access to information' Office of the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights Organisation of American States Report' available at http://www.oas.org/dil/access_to_information_iachr_guidelines.pdf (accessed 24 August 2021)

PCCB 'Ofisi za Mikoa na Wilaya' available at http://www.pccb.go.tz/index.php/en/habari-za-uchunguzi/541-ofisi-za-mikoa-na-wilaya (accessed 14 January 2021)

Petroleum Authority of Uganda 'The East African Crude Oil Pipeline (EACOP) Project' available at https://pau.go.ug/midsteam/east-african-crude-oil-pipeline-project/ (accessed 11 February 2020)

Publish What You Pay (2015) 'Transparency on the Move: Payment Disclosure by the World's Largest Oil, Gas & Mining Companies' available at http://www.publishwhatyoupay.org/wp-content/uploads/2015/10/Company_Coverage_Fact_Sheet_Final.pdf (accessed 13 August 2021)

Publish What You Pay '#DiscloseTheDeal' available at https://www.disclosethedeal.org/ (accessed 26 August 2021)

Publish What You Pay 'Anti-Corruption' available at https://www.pwyp.org/areas-of-work/anticorruption/ (accessed 26 August 2021)

Publish What You Pay 'Homepage' available at https://www.pwyp.org/ (accessed 26 August 2021).

Publish What You Pay 'Our history' available at https://www.pwyp.org/about/ (accessed 1 December 2021).

Publish What You Pay 'Revenue Transparency' available at https://www.pwyp.org/areas-of-work/revenue-transparency/ (accessed 26 August 2021)

Publish What You Pay 'What we work on' available at https://www.pwyp.org/areas-of-work/ (accessed 26 August 2021)

Reed E (2020) 'Angola tallies corruption cost, eyes Sonangol listing' available at https://www.energyvoice.com/oilandgas/africa/ep-africa/271510/angola-tallies-corruption-cost-eyes-sonangol-listing/ (accessed 21 June 2021)

Reuters (18 November 2020) 'Mining magnate Gertler expects to recoup Congo royalties investment by 2026' available at https://www.reuters.com/article/ozabs-uk-congo-mining-gertler-idAFKBN27Y0WD-OZABS (accessed 27 August 2021)

Reuters (26 June 2021) 'Tanzania considers reviving $10 billion port project' available at https://www.reuters.com/world/africa/tanzania-considers-reviving-10-billion-port-project-2021-06-26/ (accessed 14 July 2021)

Revenue Loop (2020) 'Upstream, Midstream, Downstream: Comparing Oil & Gas Operations' available at https://www.revenueloop.com/upstream-midstream-downstream-comparing-oil-gas-operations/ (accessed 20 May 2021)

Sejpal S & Ngumy D (2018) 'Legal Alert: Tanzania Terminates Bilateral Investment Treaty with the Netherlands' available https://www.africalegalnetwork.com/tanzania/news/legal-alert-tanzania-terminates-bilateral-investment-treaty-netherlands/ (accessed 15 February 2021)

Standard & Poor's (2006) 'Global Industry Classification Standard' available at https://www.unm.edu/~maj/Security%20Analysis/GICS.pdf (accessed 5 May 2021)

Steven M (2019) 'Major Hydropower Projects Procurement in Africa, Experience, Challenges and Way Forward: The Case of Julius Nyerere Hydropower Project –Tanzania' available at https://www.ppra.go.tz/phocadownload/attachments/EAPPF/2019/DAY1/ENG.%20STEVEN%20A.%20MANDA%20MAJOR%20HYDROPOWER%20PROJECTS%20PRESENTATIONS.pptx (accessed 2 February 2020)

Swala (1 April 2019) 'UPDATE ON THE TRANSACTION WITH ORCA EXPLORATION GROUP INC.' available at https://swalaoilandgas.com/documents/Termination-of-Investment-Agreement.pdf (accessed 5 July 2021)

Swala (2 January 2018) 'Swala to invest up to $130 million in PAE PanAfrican Energy Corporation' available at https://swalaoilandgas.com/documents/SwalaToInvest$130millionInPanafricanEnergy.pdf (accessed 5 July 2021)

Swala (22 February 2018) 'SWALA RESPONSE TO TPDC'S RECENT PRESS STATEMENTS' available at https://swalaoilandgas.com/documents/Pre-emptive-Swala-respons-to-(TPDC)-English.pdf (accessed 5 July 2021)

Taha E (2016) 'Navigating through Production Sharing, Concession, and Service Agreements' available at https://egyptoil-gas.com/features/navigating-through-production-sharing-concession-and-service-agreements/ (accessed 13 May 2021)

TANESCO (2013) *Customer Service Charter* available at http://www.tanesco.co.tz/index.php/customer-service/customer-service-charter/44-customer-service-charter (accessed 17 June 2021)

TANESCO 'Background' available at http://www.tanesco.co.tz/index.php/about-us/historical-background (accessed 10 February 2020)

Tax Justice Network (2020c) 'Illicit Financial Flows Vulnerability Tracker: Tanzania' available at https://iff.taxjustice.net/#/profile/TZA (accessed 13 July 2021)

Taylor B (7 July 2014) 'Tanzania: Leaked Agreement Shows Govt May Not Get Good Gas Deal' available at https://www.flowtechenergy.com/news/oilfield/tanzania-leaked-agreement-shows-govt-may-not-get-good-gas-deal/ (accessed 19 May 2021).

TEITI 'Roadmap for Disclosing Contracts in Tanzania' available at https://www.teiti.go.tz/storage/app/uploads/public/60d/c11/125/60dc111252093547408015.pdf (accessed 6 September 2021)

The EastAfrican (6 January 2022) 'Tanzania's National Assembly Speaker Job Ndugai resigns' available at https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-national-assembly-speaker-job-ndugai-resigns-3674296 (accessed 4 October 2022).

The Citizen (10 February 2020) 'Tanzania collects Sh12 billion through plea-bargaining agreements with accused persons' available at https://www.thecitizen.co.tz/tanzania/news/tanzania-collects-sh12-billion-through-plea-bargaining-agreements-with-accused-persons--2703106 (accessed 20 January 2021)

The Citizen (17 September 2021) 'Rugemalira lives up to his name as case is dropped' available at https://www.thecitizen.co.tz/tanzania/news/video-rugemalira-lives-up-to-his-name-as-case-is-dropped-3553714 (accessed 21 March 2022)

The Citizen (9 December 2013) 'The billionaire who 'fixed' Zitto Kabwe' available at https://www.thecitizen.co.tz/tanzania/news/the-billionaire-who-fixed-zitto-kabwe-2501568 (accessed 5 July 2021)

The EastAfrican (15 November 2014) 'Secret oil and gas deals generate heat in Dar' available at https://www.theeastafrican.co.ke/tea/news/east-africa/secret-oil-and-gas-deals-generate-heat-in-dar--1329904 (accessed 19 May 2021)

The Economist (9 September 2014) 'Tanzania's troubles over gas revenue: Sharing the spoils' available at https://www.economist.com/baobab/2014/09/09/sharing-the-spoils (accessed 7 June 2021).

The Guardian (17 June 2021) 'IPTL's Sethi freed on 26bn/-liability accord' available at https://www.ippmedia.com/en/news/iptl%E2%80%99s-sethi-freed-26bn-liability-accord (accessed 21 March 2022).

TPDC (2018) 'Taarifa kwa Umma' available at https://www.tpdc.co.tz/wp-content/uploads/2018/02/Taarifa-kwa-umma-Swala-na-PAET.fnl_.pdf (accessed 5 July 2021)

TPDC 'Explorations History' available at https://tpdc.co.tz/upstream.php (accessed 12 February 2021)

TPDC 'Welcome to Tanzania Petroleum Development Corporation (TPDC)' available at https://www.tpdc.co.tz/ (accessed 21 May 2021)

Transparency International 'Whistleblowing' available at https://www.transparency.org/en/our-priorities/whistleblowing (accessed 21 June 2021)

Ubwani Z (2018) 'Companies told to go for ISO certification' available at https://www.thecitizen.co.tz/News/-Companies-told-to-go-for-ISO-certification/1840340-4898652-1qy79p/index.html (accessed 6 May 2020)

UNCTAD (b) 'Investment Dispute Settlement Navigator' available at https://investmentpolicy.unctad.org/investment-dispute-settlement (accessed 15 February 2021).

UNCTAD 'International Investment Agreements Navigator' available at https://investmentpolicy.unctad.org/international-investment-agreements (accessed 15 February 2021).

United States of America Department of State (2020) 'Conflict Diamonds and the Kimberley Process' available at https://www.state.gov/conflict-diamonds-and-the-kimberley-process/ (accessed 26 August 2021)

United States of America Department of State (2020) 'Investment Climate Statements: Tanzania' available at https://www.state.gov/reports/2020-investment-climate-statements/tanzania/ (accessed 8 July 2021)

UNODC (2021) 'Implementing Beneficial Ownership Transparency for Anti-corruption and Good Governance in South Africa' available at https://www.unodc.org/documents/ft-uncac/BOT_Workshop_-_Event_Outline.docx (accessed 31 August 2021)

Voice of America (28 March 2021) 'Tanzania : Rais aitaka Takukuru kuondoa kesi za kubambikizwa' available at https://www.voaswahili.com/a/tanzania-rais-aitaka-takukuru-kuondoa-kesi-za-kubambikizwa/5831396.html (accessed 7 October 2021)

Wambura B (6 January 2022) 'Tanzania's Speaker of Parliament Job Ndugai has resigned' available at https://www.thecitizen.co.tz/tanzania/news/national/tanzania-s-speaker-of-parliament-job-ndugai-has-resigned-3674316 (accessed 4 October 2022).

World Bank (13 August 2021) 'Extractive Industries' available at https://www.worldbank.org/en/topic/extractiveindustries/overview (accessed 30 August 2021)

World Bank (2014) 'Foreign Direct Investment Flows into Sub-Saharan Africa' available at http://documents.worldbank.org/curated/en/505071468203651135/Foreign-direct-investment-flows-into-Sub-Saharan-Africa (accessed 21 July 2020)

World Bank (2020 b) 'Rural population (% of total population) – Tanzania' available at https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=TZ (accessed 6 December 2021)

World Bank (2021 b) 'DataBank: World Development Indicators' available at https://databank.worldbank.org/reports.aspx?source=2&series=IQ.CPA.TRAN.XQ&country=TZA (accessed 30 August 2021)

World Bank 'Global indicators of regulatory governance' available at https://rulemaking.worldbank.org/en/data/explorecountries/tanzania# (accessed 8 July 2021)

World Bank 'The World Bank Group and the International Monetary Fund (IMF)' available at https://www.worldbank.org/en/about/history/the-world-bank-group-and-the-imf (accessed 25 February 2021)