

# ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING THE APPLICATION OF THE TRANSPARENCY AND ACCOUNTABILITY PRINCIPLE IN MAINLAND TANZANIA'S PETROLEUM SECTOR

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## Abstract

*In recent years, the petroleum industry in Mainland Tanzania has experienced significant growth, and numerous discoveries have been made. Many companies, including domestic and foreign ones, have been investing in the industry due to this development. This has provided the government of Tanzania with the opportunity to collect taxes and other earnings from the sector's exploration and production activities. Nevertheless, the sector's operations are not without governance difficulties, such as corruption and misappropriation of funds, to name a few. This article analyses different binding and non-binding legal instruments that necessitate the implementation of transparency and accountability principle in the sector to tackle these challenges. Nevertheless, its application in the sector is impeded by various obstacles, including inadequate punishment for non-compliance and non-verification of information. These obstacles must be promptly eliminated to facilitate the implementation of the principle and enhance the sector's governance.*

**Keywords:** *Transparency, accountability, oil, gas.*

## 1.0 Introduction

The petroleum industry in Tanzania has been subject to regulation by both local and international rules and standards as a consequence of the developments that have been made in the sector via these discoveries. Given the significance of the principle of transparency and accountability in ensuring good governance of the sector to benefit both the current generation and the generation to come, this article provides an analysis of the application of the principle as it is enshrined in the relevant instruments that are relevant to the country. In principle, these instruments encompass both local and international instruments that are either legally binding or non-binding. As far as the transparency and accountability principle is concerned, the article discusses noteworthy efforts that have been made in the sector, the realities that limit the full realization of the principle, and the critical areas that need to be dealt with.

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## 2.0 An Overview of Transparency and Accountability in the Tanzania's Petroleum Sector

Historically speaking, the notion of transparency was formed during the French Revolution as an effort to throw a monarchical regime which was entirely built on opacity and inflexibility. Originally, the notion was designed to encourage publicity and popular sentiment in battling the secretive behaviour of the key actors.<sup>1</sup> Since that time, the idea has caught the attention of a great number of societies, which has led to governments being more transparent and open to public scrutiny.<sup>2</sup> In the process of attempting to determine the correct meaning of the term "transparency", different interpretations have emerged. Some definitions emphasis on the results of transparency, which is believed to promote higher trust, more involvement, better management, and a decrease in bribery. Some definitions focus on obtaining data, whereas others stress on technological advances and notably online government.<sup>3</sup> In the context of information transmission or dissemination from one entity to another, the term "transparency" refers to the effective communication of the truth and its implications. In an ideal world, the most important thing to take into account is the maintenance of honesty.<sup>4</sup> The degree to which companies and governmental authorities in the petroleum sector are open and honest about their operations, decision-making processes, and overall performance is referred to as transparency in the industry.<sup>5</sup>

On the other hand, the term "accountability" has its roots in the realm of finance, where it was originally used to refer to "accounting" or "answering". However, in the modern world, it is primarily concerned with governance that is equal and impartial.<sup>6</sup> The concept may be defined in a variety of ways depending on the circumstances, and in many instances, it is not differentiated from transparency.<sup>7</sup> The concept refers to the obligation that a person or institution has to provide an explanation in some form or another about the manner in which they have managed their operations.<sup>8</sup> Accountability can also be described as a process that keeps the government, petroleum companies, and other agents responsible for their actions and, if required, applies to penalties,

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- 1 P. Münch, 'Révolution Française, Opinion Publique et Transparence: Les Fondements de Ladémocratie Moderne', *Appareil* 7 (2011), 1-15. <<https://journals.openedition.org/appareil/1220>> (accessed on 12 August 2024).
  - 2 V. Mabillard and R. Zumofen, 'The Complex Relationship Between Transparency and Accountability: A Synthesis and Contribution to Existing Frameworks', *2 Public Policy and Administration* 32 (2016), 4.
  - 3 *Ibid*, p. 5.
  - 4 E. Konstantinidou, "A Study of the Extractive Industries Transparency Initiatives using Azerbaijan as a Case Study" Unpublished PhD Thesis, University of Surrey 2015, at 76-79.
  - 5 H. Lu and others 'Blockchain Technology in the Oil and Gas Industry: A Review of Applications, Opportunities, Challenges, And Risks' *7 IEEE Access* (2019), 41426-41444.
  - 6 M. Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework. *European Law Journal* 13 (2007), 447-468.
  - 7 R. D. Behn, *Rethinking democratic accountability* (Washington: Brookings Institution Press, 2001) at 1-21.
  - 8 C. Hood, 'Accountability and Transparency: Siamese Twins, Matching Parts, Awkward Couple?' *West European Politics* 33 (2010), 989-1009.

which may eventually result in the agent being removed from power due to the sanctions.<sup>9</sup>

There is a strong connection between the ideas of accountability and transparency. The concepts depend on each other as one of the goals of transparency is to promote accountability; otherwise, it would be useless.<sup>10</sup> There is a conceptual issue that is shared by both accountability and transparency. Both of these concepts are seldom defined with accuracy, and they have a tendency to mean everything to everyone simultaneously. Despite this, the most important challenge in establishing a connection between the two is determining whether or not openness results in accountability and how this occurs.<sup>11</sup> When it comes to transparency, the primary objective is to ensure that the data that was disclosed allowed actors to take action, which may be either direct or indirect. Indirect action occurs when independent bodies such as the media, civil society organizations (CSOs), and political opponents raise alarm regarding the discoveries that were made from the released data.

On the other hand, direct action occurs when legal or government agencies, including those who are conducting public monitoring, are able to make decisions that are legally binding regarding the information that has been disclosed.<sup>12</sup> The purpose of transparency and accountability is to combat corrupt activities and improve the performance of institutions. In order to accomplish this, the data that is revealed must be verified. This is accomplished by ensuring that the involved parties do have an obligation to release specified types of data, which results in "clear transparency," as opposed to allowing them to voluntarily release the types of data they wish to use, which results in "opaque transparency."

Despite the fact that there are certain similarities between the two notions, it is advised that clear transparency be implemented since it proposes the release of data that may lead to "hard face" accountability, which entails the invocation of penalties against the corrupt behaviours that are disclosed. Opaque transparency is undesirable due to the fact that it results in the release of information that is not helpful and leads to "soft face" accountability, which only calls for answerability. To put it another way, in the absence of robust

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9 S. I. Lindberg, 'Accountability: The Core Concept and its Subtypes' (Published on behalf of the Africa Power and Politics Programme (APPP) by the Overseas Development Institute, 2009) <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.publishing.service.gov.uk/media/57a08b4740f0b652dd000bd6/APPP-WP1.pdf> (accessed on 29 May 2022).

10 J. Poncian and H. M. Kigodi, 'Transparency Initiatives and Tanzania's Extractive Industry Governance', 1 *Development Studies Research* 5 (2018), 106-121.

11 J. Fox, 'The Uncertain Relationship Between Transparency and Accountability', 4-5 *Development in Practice* 17 (2007), 663-671.

12 *Ibid*, pp 665-666.

mechanisms and frameworks that lead to a proper choice of transparency, one concept might not generate the other.<sup>13</sup>

The dualistic character of states is something that Tanzania is a part of when it comes to the domestication of international legal instruments. According to this approach, an international instrument that is to be domesticated in the country has to be presented to Parliament by the relevant Executive Authority for discussion and approval before it can be ratified.<sup>14</sup> Following the ratification of the relevant international treaty, it is necessary for it to be incorporated into municipal law. According to this point of view, the notion of openness and accountability in the petroleum industry in Tanzania is controlled by legal standards that may be found in both local and international legal frameworks. According to several regional and international treaties, to which Tanzania is a State party, several instruments require the relevant State party to be transparent and accountable in various sectors, including petroleum, which is included in the scope of these treaties. While some of these legal instruments have a persuasive character, others have a binding nature.

### **1.1. International Instruments Advocating for Transparency and Accountability in the Petroleum Sector**

Tanzania is a State party to several international treaties that collectively serve as the basis for the ideals of transparency and accountability on the international stage. These instruments are classified as either binding or non-binding. Due to the fact that Tanzania is a State party to a number of enforceable international treaties that provide a framework for the implementation of transparency and accountability, it is obligatory for Tanzania to adhere to the provisions that are outlined in treaties below:

#### **1.1.1 The Universal Declaration of Human Rights, 1948**

On 10 December 1948, a few years after the conclusion of World War II, the General Assembly of the United Nations (UN) adopted the Universal Declaration of Human Rights (UDHR). Although it is not a binding international treaty, the UDHR is widely recognized as the most important international legal instrument that serves as the basis for human rights all over the globe. The provisions of the UDHR have since been integrated into various binding international human rights treaties and in the Bill of Rights enshrined in the Constitution of the United Republic of Tanzania (1977).<sup>15</sup> In particular, Article 9(f) of the Constitution of Tanzania affirms the centrality of the UDHR in Tanzania. As such, Tanzania is one of the countries that have enshrined the

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<sup>13</sup> J. Fox *op.cit* fn 17 at 667-668.

<sup>14</sup> Article 63(3)(e) of the Constitution of the United Republic of Tanzania (1977).

<sup>15</sup> The Bill of Rights is enshrined in Articles 12-29 of the Constitution of the United Republic of Tanzania (1977).

UDHR in their Constitutions.<sup>16</sup> However, it is essential to keep in mind that the UDHR does not expressly stipulate for the transparency and accountability principle in the petroleum industry.

However, by way of reference, certain rights that are expressed within the UDHR imply that there must be transparency and accountability in all governmental actions and decisions in relation to the utilization and administration of natural resources, including petroleum. In order to promote openness and accountability, the UDHR incorporates the right of access to information as a fundamental component of human rights. This right is guaranteed in Article 19, which affirms the entitlement of all individuals to the fundamental right to the freedom of opinion and expression. Specifically, Article 19 states expressly that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and freedom to seek, receive, and impart information and ideas through any media and regardless of frontiers.<sup>17</sup>

According to the foregoing provision, it is imperative that the extraction and production of natural gas and oil are done in a transparent manner. This will not only provide citizens the opportunity to voice their opinions, but it will also ensure that they are kept up to date on the procedures that are associated with the petroleum extraction businesses. The business activities that are involved in the extraction of the resources are made public as a result of this, and accountability is ensured and made easier as a result of such transparency. To ensure that such resources are used in a manner that is beneficial to the whole society, the government is held accountable for ensuring that this occurs.

On the other hand, the blocks that are used for oil and gas exploration and production are personally owned by people and are considered to be their possessions. In this respect, in accordance with the requirement of UDHR, such areas, in the event of acquisition, must be allocated to holders in full compliance with the relevant legal requirements and following the relevant due processes, such as the payment of appropriate and acceptable compensation to the previous owners of the said land. With regard to Article 19 of the UDHR, Tanzania is legally obligated to make certain that the utilization of natural wealth and resources such as oil and gas is carried out in accordance with the principle of transparency and accountability.

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16 M. Mrisho and N. Msuya, 'Human Rights-Based Approach to Development in Tanzania: A Myth or Realizable Project?' 7 *African Journal of Social Issues* 1 (2024), 133-151.

17 The Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)).

### 1.1.2 International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights (ICCPR) is a legal document that recognizes and guarantees civil and political rights. The ICCPR was adopted in 1966 by the UN General Assembly and Tanzania has ratified it. Like the UDHR, the ICCPR does not contain any particular provisions that pertain to the management of natural resources, including oil and gas. However, according to Article 1(2) of the ICCPR, the concept of self-determination is included. This principle recognizes the community's right to have unlimited control over its natural wealth and resources.<sup>18</sup> The Article provides expressly that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.<sup>19</sup>

The preceding provision implies that it is the obligation of States to ensure that the natural wealth and resources that are available and accessible are used and managed in a manner that protects the rights of, and benefits, individuals and communities and clearly protects those who are impacted by activities relating to exploitation and extraction of the resources. It is important to note that the ICCPR, which is a legally binding and enforceable international treaty, recognizes one of the fundamental rights that guarantees openness and accountability: the right to freedom of speech and access to information.<sup>20</sup>

In accordance with the ICCPR, people are afforded the protection to obtain information from a variety of media outlets and to express their unconstrained views on a variety of matters. In spite of the fact that the ICCPR provides a solid basis for their rights, it also imposes some limitations on those rights, such as the need to respect the rights and reputation of others, the safeguarding of national safety, and the maintenance of public peace while exercising such rights and freedoms.<sup>21</sup> It is indispensable to acknowledge the rights outlined above in accordance with the ICCPR in order to provide openness and accountability to state actors.

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18 International Covenant on Economic, Social and Cultural Rights, 1966, article 1(2).

19 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

20 ICCPR, 1966, article 19.

21 *Ibid*, article 19(3).



## **1.2 Non-Binding or Persuasive Initiative Stipulating for Transparency and Accountability in the Petroleum Industry**

The majority of international legally binding instruments address the issue of transparency and accountability principle in the petroleum sector in a circuitous way, as explained above. Along the same line, the global community has developed a variety of global mechanisms that strengthen the application of the said principle in the sector. These mechanisms are not enforceable in nature, but they are essential for dealing with both of these aspects. Some of these mechanisms are addressed as follows:

### **1.2.1 The United Nations Guiding Principles on Business and Human Rights (2011)**

With regard to reducing and effectively dealing with the potential damage to human rights that occurs from business activities, the Guiding Principles on Business and Human Rights (2011) serve as the international standards for that purpose. Specifically, they construct a framework that is internationally recognized for the purpose of enhancing norms and practices that are associated with human rights and business. These rules were formulated by the Special Representative of the Secretary-General, who specifically addressed the human rights of multinational corporations and other commercial organizations. Under resolution 17/4, which was passed on 16 June 2011, the Human Rights Council gave its formal approval to the Guiding Principles with a unanimous vote.<sup>22</sup> The principles require that multinational corporations and other commercial enterprises respect human rights, and they put a direct obligation on these firms and enterprises to respect human rights in the course of carrying out their operations.<sup>23</sup>

As part of the obligation that has been imposed, communication with the individuals and communities that are likely to be impacted by the actions that are being carried out is required.<sup>24</sup> Human rights evaluations, mitigation measures, reparations, and other applicable corrective processes are some of the areas of communication that are included.<sup>25</sup> Additionally, in the event that human rights are violated, multinational businesses and organisations are required to publish information about the internal accountability tools.<sup>26</sup> Because companies that extract petroleum need to be held responsible for their behaviour, which has a significant impact on human settlements and rights, the rules are of the utmost importance. Consequently, it is the responsibility of both

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22 <<https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>> (accessed 18 July 2022).

23 United Nations Guiding Principles on Business and Human Rights of 2011, principle 11.

24 *Ibid*, principle 16.

25 *Ibid*.

26 *Op.cit* fn 27, principle 21.

nations and companies to safeguard and uphold human rights when extraction of the said resources is taking place.

### 1.2.2 International Monetary Fund Guidelines on Revenue Transparency

Through the provision of money for a wide range of extractive projects, the International Monetary Fund (IMF) has emerged as one of the most influential actors in the extractive sector. As a crucial stakeholder, the IMF released Guidelines on Resource Revenue Transparency in 2007.<sup>27</sup> To maintain openness and accountability in the petroleum industry, the standards include four norms: clarity of duties and responsibilities, open budget procedures, public access to information, and assurances of integrity. These norms are intended to ensure that transparent and accountable practices are followed. Both a thorough fiscal transparency of natural resources and general good governance over natural resources are provided for by the standards. The Guidelines also allow for the openness of natural resources.<sup>28</sup>

An excellent illustration of these Guidelines is the directive that requires there to be clarity regarding the roles and responsibilities in the natural resources revenue, and furthermore, that the grants of rights overexploitation of such resources must be well framed and established in the national laws, regulations, and procedures that cover all stages of development.<sup>29</sup> Because, if the proposal is included in the legislative framework, it will assist to resolve the debate over who is accountable for what, and the responsibility lies to who; this recommendation contributes to the process of ensuring accountability.<sup>30</sup> In addition, the recommendations suggest that the general public should be provided with information that is both clear and complete about the implementation of the government's policy and legal frameworks for the extraction of natural resources and their participation in these frameworks.<sup>31</sup> The IMF seeks to guarantee openness in transactions with natural resources by means of this suggestion. If these rules are adopted into the Tanzanian legislative framework connected to oil and gas, then the ideals of transparency and accountability will be effectively realized.<sup>32</sup>

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27 <<https://www.imf.org/external/np/fad/trans/guide.htm>> (accessed 23 July 2022).

28 *Ibid.*

29 International Monetary Fund (IMF) Guidelines, guideline I.2.2.

30 <<https://resourcegovernance.org/publications/imf-strengthens-global-resource-governance-norms-its-fiscal-transparency-code>> (accessed 23 July 2022).

31 International Monetary Fund (IMF) Guidelines, guideline II.

32 HakiRasilimali, 'The Implication of Extractive Sector Fiscal Regime to the Economy: A Case of the Mining Sub-Sector in Tanzania' <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.hakirasilimali.or.tz/wp-content/uploads/2021/08/The-Implication-of-Extractive-Sector-Fiscal-Regime-to-the-Economy.pdf>> (accessed 23 July 2022).



### 1.2.3 Resource Governance Index

The Resource Governance Index (RGI), which is a worldwide index that evaluates the level of governance in specific nations in relation to revenue management, is a comprehensive index developed by the Natural Resource Governance Institute (NRGI). Managing income and maintaining resilience are both impacted by a variety of institutional considerations. The RGI takes into consideration a number of different aspects, such as accountability, adherence to the rule of law, the efficiency of the administration, and the absence of open data.<sup>33</sup> In Tanzania, RGI places a strong emphasis on the need for competent governance, as well as the development of institutions and businesses, in order to ensure the efficient management of petroleum resources over the long term.

The importance of transparency and accountability cannot be overstated when it comes to ensuring that the benefits obtained from these resources effectively contribute to the goals of sustainable development.<sup>34</sup> In the same vein, in order to enhance governance in Tanzania's petroleum sector, it is necessary to build autonomous institutions as well as open decision-making structures.<sup>35</sup> Additionally, the Index contends that the participation of stakeholders in the management of resources is essential in order to protect the rights of neighbourhood residents who are harmed by oil production.<sup>36</sup>

### 1.2.4 Publish What You Pay

Publish What You Pay (PWYP) is a movement that was initiated in the late 1990s as a direct response to the growing problems of corruption and lack of transparency that were prevalent in the extractive industries, including the petroleum industry.<sup>37</sup> The initiative encourages the mandatory disclosure of payments made by petroleum companies to governments in order to enhance accountability and governance in nations that have an abundance of the resources. The realization that openness may reduce the effects of the “resource curse” phenomenon, in which nations that are rich in natural resources generally endure unfavorable economic consequences owing to mismanagement and corruption, was the driving force behind the movement.<sup>38</sup>

It is the fundamental rationale for PWYP that such increased openness can result in better governance and a more equitable allocation of resource wealth.

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33 J. G. Frynas, ‘Corporate Social Responsibility and Societal Governance: Lessons from Transparency in The Petroleum sector’ 2 *Journal of Business Ethics* 93 (2010), 163-179.

34 M. L. Yusuph and K. L. Alman, ‘Analysis of the Factors for Sustainable Development of Oil and Gas Resources in Tanzania’ 10 *Journal of Public Administration and Governance* 2 (2020), 161.

35 L. C. Gabagambi and E. E. Longopa, ‘Analysis of the Legal and Institutional Frameworks Regulating Oil and Gas Resources in Tanzania’ 3 *Journal of Law and Legal Reform* 3 (2022).

36 L. Ayotunde, ‘Oil Production and Host Community Relations in Nigeria: The Limits of the Utilitarian Approach’ 9 *Journal of Sustainable Development Law and Policy* 2 (2018), 26-136.

37 V. Haufler, ‘Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in The Developing World’ 10 *Global Environmental Politics* 3 (2010), 53-73.

38 Ibid.

Evidence indicates that transparency programs such as PWYP can strengthen confidence among investors by showing governments' commitment to responsible and sustainable management of resource revenues. PWYP is a complement to the Extractive Industries Transparency Initiative (EITI) because it promotes openness of income payments made by extractive corporations to governments. The present effort emphasizes the imperative for corporations to disclose their contributions in a manner that is fully accessible to the general public.<sup>39</sup> PWYP has members all around the world, including in Tanzania, where it has formed a coalition with a CSO called *HakiRasilimali*/ PWYP Tanzania Chapter since 2016. This coalition is focussing on strategic concerns pertaining to the production of minerals, oil, and gas.<sup>40</sup> It is the fundamental purpose of the PWYP project to address problems of corruption and promote transparency in the utilization of funds received from the exploitation of natural resources, with the ultimate goal of maximizing the welfare of the general population.<sup>41</sup>

### 1.2.5 The Extractive Industries Transparency Initiatives

The Extractive Industries Transparency Initiative (EITI) is a framework that has gained worldwide recognition and is aimed at improving the quality of governance within the extractive sectors. These sectors include petroleum, coal, and minerals.<sup>42</sup> The need to do something to alleviate the resource curse phenomena was the impetus for the founding of the initiative in the year 2003. Tanzania is one of the 55 nations that are now putting the EITI into action. The fulfilment of the initiative's criteria and the achievement of compliance status are the driving forces behind its broad acceptance.<sup>43</sup> In addition to enhancing the general administration of the petroleum industry, the EITI's key goals are to prevent corruption and work towards achieving these goals. The aforementioned objectives include the promotion of transparency in revenue management, the release of agreements, the publication of data relating to agreements and permits, the release of beneficial owners, the assurance of equal and equitable allocation of benefits, and the enhancement of involvement of stakeholders in the process of making decisions. These objectives are outlined in the 12 principles that are outlined in the EITI Standards of 2023.<sup>44</sup>

Through the adoption of EITI, countries are able to improve their capacity to administer their extractive sectors in an effective manner and address the

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39 J. Fraser, 'Worth Its Weight in Gold: Is the Extractive Industries Transparency Initiative a Credible Signalling Mechanism to Investors?' 27 *Environment and Development Economics* 5 (2021), 436-450.

40 <[https://pwyp.org/pwyp\\_members/tanzania/](https://pwyp.org/pwyp_members/tanzania/)> (accessed 18 July 2022).

41 Frynas J G *op.cit* fn 37.

42 Y. Yanuardi, M. J. Vijge and F. Biermann, 'Social-ecological Reflexivity of Extractive Industry Governance? the Case of the Extractive Industries Transparency Initiative in Indonesia' 5 *Environmental Policy and Governance* 32 (2022), 426-437.

43 *Ibid.*

44 *Ibid.*

negative repercussions that are associated with the exploitation of natural resources.<sup>45</sup> As long as the extractive sector is controlled, transparent, and responsible, the basis of its wealth belongs to all of the people who live in the nation, and not just a select number of them. It is possible for the EITI principles to achieve transparency so long as the information that is supplied by the government about revenues is consistent with the information that is provided by extractive companies along the value chain. Several nations have acknowledged and incorporated these concepts and standards into their legal, legislative, and institutional frameworks. These nations have also embraced these principles and criteria.<sup>46</sup> To provide just one example, the impact of good governance of the sector can be witnessed in Norway, Ghana, and Nigeria which have adopted the EITI framework into their systems.<sup>47</sup>

To be eligible for participation in the EITI framework, nations are required to satisfy a number of conditions. Despite the fact that all of the requirements have been met, a candidate is still required to go through a validation process in order to demonstrate that it is capable of being held responsible. It is only after this that the candidate is able to qualify for EITI compliance and be labelled as such.<sup>48</sup> The method for validation is carried out once every three years; countries that are unable to keep up with the procedure for verification are subject to disciplinary measures, which may include suspension or removal from the list.

For states to be able to join the EITI framework, there are a number of requirements that must be met. These elements include; sufficient oversight, the release of EITI Reports, the public disclosure of revenue and beneficial owners by the government, the publication of agreements, the release of details of licenses, the participation of stakeholders, and the effect of EITI implementation.<sup>49</sup> Transparency has been extensively recommended as the key policy strategy to solve governance shortcomings. Several programs have endorsed more disclosure and supervision of the money earned from natural resources because of this. It has been noted that a sizeable fraction of countries that are dependent on natural resources are unable to provide essential information about their extractive sector. This issue is illustrative of the propensity of these countries to have a disproportionate amount of power and influence in the petroleum industry.<sup>50</sup>

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45 *Ibid.*

46 *Ibid.*

47 *Ibid.*

48 Deutsche EITI 'Implementation of the EITI in G7, EU and OECD Countries Facts and Figures' (Deutsche Gesellschaft für, 2016) 2-32 <<https://eiti.org/sites/default/files/attachments/study-on-eiti-implementation-in-oecd-countries.pdf>> (accessed 17 October 2022).

49 *Ibid.*

50 *Ibid.*

The ability of the oil industry to operate as a separate entity from the economy and society as a whole is primarily responsible for the fact that resources serve as a tool for leaders to obtain an independent income stream. As a result, it is very uncommon for the leader of the State to take on a role that is both active and exclusive in the process of controlling the industry and distributing the revenues that are created from natural resources. There is a correlation between the concentration of power and the concentration of knowledge, which shows that information asymmetries play a role in facilitating rent-seeking behaviour. In circumstances like this, the advantages of preserving opacity are large, but the disadvantages of avoiding transparency are very minor.

Given the circumstances, the idea of openness presents a number of obstacles, but it also has the ability to bring about results that are transformational.<sup>51</sup> EITI is commonly promoted in international development talks as a potential means of assisting resource-rich countries in realizing the benefits that come with their natural resource richness. In order for a country to be eligible to take part in the initiative, it is necessary for that nation to fulfill the conditions that have been specified by EITI.<sup>52</sup> During the registration process with EITI, it is vital to act in accordance with the specified criteria and to adhere to four separate stages. In addition, the stages include the necessity for the government to publicly announce its unshakeable resolve to carry out EITI. In addition, it is anticipated that the government will show its commitment to working in conjunction with companies and civil society in order to successfully implement the EITI. Additionally, the government is required to choose a high-ranking official to become the driving force behind the execution of the project. That is to say, the government is required to form a multi-stakeholder group (MSG) in order to oversee the execution of the EITI.<sup>53</sup>

Following the completion of the five requirements for registration, the country is able to submit an application to the EITI Board in order to be considered as a Candidate. Twenty-eight months are allotted to a nation once it has been accepted as a Candidate for EITI. This allows the country to issue its first report. In the aftermath of this, the nation is given a period of time equal to two and a half years to submit the final Validation report.<sup>54</sup> Those nations who fail to publish the report will be suspended, and there is a possibility that they will be

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51 K Adams et al, 'South African MNCs' HRM Systems and Practices at the Subsidiary Level: Insights from Subsidiaries in Ghana' 23 *Journal of International Management* 2 (2016), 180-193.

52 EITI, 'Consultation on the scope of refinements to the EITI Standard' 2022, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.pwyp.org/wp-content/uploads/2022/05/PWYP-contribution\_Consultation-on-the-scope-of-refinements-to-the-EITI-Standard-2022.docx.pdf> (accessed 18 August 2022).

53 EITI International Secretariat, 'EITI Validation procedure' 2022, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://eiti.org/sites/default/files/2022-07/EITI%20Validation%20procedure\_1.pdf> (accessed 20 August 2022).

54 *Ibid.*

given an extension for the submission. Tanzania is one of the nations that has been suspended because it did not submit the report. The country was subject to suspension on 2 September 2015, owing to the fact that it did not meet the deadline of 30 June 2015 for the publishing of the report for the 2012/2013 fiscal year. Tanzania released its reports for the 2012/2013 and 2013/2014 fiscal years on November 27, 2015, and the restriction was removed on 18 December 2015.<sup>55</sup>

In order to provide assistance to the government and the MSG in the process of putting EITI into action, the Secretariat has compiled a list of criteria. These requirements include a number of actions that need to be completed in order to appropriately prepare the nation for the procedures involved in the validation process. One of the most important requirements of the EITI is that the government must identify and eliminate any existing legislative or regulatory obstacles that might potentially hinder the efficient implementation of the initiative. One of the most common problems that often occurs is the presence of confidentiality clauses in contracts that are granted by private companies and federal government agencies. It is possible to confront and triumph over these problems by taking a number of different initiatives. It is possible that these actions will entail the implementation of regulatory and legislative changes, the granting of exemptions to confidentiality restrictions, and other measures that are pertinent.<sup>56</sup>

It is the responsibility of governments and extraction corporations to guarantee that such principles are put into practice, and the EITI Standards of 2023 place certain duties on them. These criteria include the disclosure of licenses as well as contract awards and transfers, with the goal of ensuring that stakeholders are aware of any flaws that may exist in the distribution of licenses and the execution of contracts, as well as the monitoring of compliance with contractual obligations.<sup>57</sup> A public registry of the beneficial owners of the entities that apply for or have participation interests in the exploration or production of oil and gas is another criterion. This requirement is in addition to the other requirements that must be met.<sup>58</sup> A record of this kind is required to provide the transparent identities of the beneficial owners, the extent of their ownership, and a comprehensive explanation of the manner in which they exercise their ownership or control.<sup>59</sup> This requirement is intended to monitor the ownership of natural resources by politically exposed individuals, as well as to encourage openness and accountability with respect to the dangers of inappropriate and corrupt conduct in the extractive sector.

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55 <<https://www.resourcedata.org/dataset/rgi-lifting-of-tanzania-s-eiti-suspension/resource/c5d03778-da36-461b-851f-023a99ce2415>> accessed 20 August 2022.

56 *Ibid.*

57 EITI Standards of 2023, section 2.2 and 2.4

58 *Ibid.*, section 2.5.

59 *Ibid.*



Comprehensive disclosure of taxes and revenues is another criterion that is provided under EITI to guarantee openness and accountability in the petroleum industry.<sup>60</sup> As a result of this need, governments are strongly encouraged to be transparent about the payments that are made by businesses and other organizations operating within the extractive sector. Not only must the rates of their respective tax payments be stated, but also the other revenues that have been collected. On the other hand, it is reasonable to anticipate that businesses would disclose their financial accounts, which will include the tax deductions and the incentives that have been granted. A disclosure of this kind is intended to assist the general public in comprehending the role that the extractive sector plays in the collection of government revenues. The principles and requirements that are outlined in the EITI, of which Tanzania is a member state, make it abundantly obvious that their observance results in a government that is efficient, transparent, and responsible in its utilization of petroleum resources.

## **2.0 Regional Instruments Advocating for Transparency and Accountability in the Petroleum Sector**

The Tanzanian government has agreed to accept proposals for a number of regional instruments in order to guarantee that the petroleum industry in Tanzania adheres to the principle of openness and accountability. These include the following:

### **2.1 The African Charter on Human and Peoples' Rights, 1981**

It is the African Charter on Human and Peoples' Rights ('the Banjul Charter')<sup>61</sup> that serves as the primary and most important legal instrument in Africa for the protection of human and people's rights.<sup>62</sup> Tanzania signed the Charter on 31 May 1982, and it was approved on 18 February 1984. A number of rights are speculated upon in the Charter, which contributes to an increase in the accountability and openness of the states that are party to it. Among the many rights that are outlined in the Charter, Article 9 stipulates that individuals have the right to obtain information and to express their ideas. This privilege is not offered without reservation. The protection of the right to information has the effect of increasing openness among the states that are parties to the Charter. This includes information that pertains to the petroleum industry, which is subject to the application of national legislation.

Additionally, in accordance with Article 21 of the Charter, individuals from every state have the right to freely dispose of their wealth and natural resources,

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<sup>60</sup> *op.cit* fn 61, section 4.1.

<sup>61</sup> African Charter on Human and People's Rights (adopted June 01 1981, entered into force October 21, 1986) OAU.

<sup>62</sup> G. Antigen, 'The Role of the African Court on Human and Peoples' Rights for Human Rights Protection: The Case of Libyan Crises' 7 *Advanced Journal of Social Science* 1 (2020), 38-44, available at <https://doi.org/10.21467/ajss.7.1.38-44> (accessed on 29 May 2024).



which may include oil and gas, in accordance with their own personal interests. This encompasses the right to get an equal distribution of the wealth and natural resources that are at one's disposal. Through the implementation of this provision, the significance of making use of the natural resources that are at one's disposal in a manner that serves the overall interests of the population rather than favouring a select few individuals is brought to light. In addition, the state parties are strongly encouraged, in accordance with this right, to make certain that in the event of spoliation, the individuals who have been disposed of have the legal right to retrieve their possessions and are also compensated adequately.<sup>63</sup> For the sake of their citizens, states are required to derive benefits from the extraction of natural resources and wealth. Within the context of the use of natural resources such as oil and natural gas, this imposes an obligation on state parties to maintain accountability to international standards, among other things.

Under Article 22(1), it is even more emphasized that the realization of socioeconomic growth may be achieved via the equitable enjoyment of the accessible common inheritance of humanity, which includes natural resources such as oil and gas.<sup>64</sup> Because of these articles of the Charter, it is made abundantly obvious that the government is obligated to be responsible for the well-being of the community as opposed to the advantages of a select few. Additionally, transparency in the petroleum industry may be accomplished, for example, by making information about the extraction, production, and utilization of the aforementioned resources accessible to the public.

## 2.2 Declaration of Principles on Freedom of Expression in Africa

In order to determine whether or not States parties adhere to Article 9 of the African Charter on Human and Peoples' Rights, the Declaration of Principles on Freedom of Expression in Africa serves as a fundamental reference. Signatories to the African Charter are obligated to make every effort to put the principles into practice at all times.<sup>65</sup> A number of issues are included in the preamble of the Declaration. One of these issues states that:

Respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as good governance and the strengthening of democracy.<sup>66</sup>

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<sup>63</sup> *Ibid.*

<sup>64</sup> *ibid.*

<sup>65</sup> B. K. Sheila, 'Major African Legal Instruments' <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://addis.unfpa.org/sites/default/files/resource-pdf/7\_Keetharuth%20African%20Union%20Human%20Rights%20Instruments.pdf> (accessed 17 October 2022).

<sup>66</sup> Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 65th Ordinary Session, 21st October - 10th November, 2019: Banjul, The Gambia.

This implies that access to information will result in transparency and accountability, as well as good governance. The Declaration provides the right to receive information and sets processes for openness and redress in the case that information is denied. This is outlined in Part III of the document. It is required by Principle 26 that access be provided for information that is kept by both public and private entities. Principle 27 proclaims the right to information to be paramount, and it states that no legislation shall limit the right to information. It is not necessary to wait for a request before disclosing information, as stipulated by Principle 29. Both Principle 32 and 9(2)(c) provide that when access is denied, the decision may be challenged via the appeals process. In addition, the rules require that laws pertaining to confidentiality be modified so that they are in accordance with the ideals of freedom of information.<sup>67</sup> This Declaration is of great significance because it outlines the essential principles and guidelines that should be followed in order to promote and protect the right to freedom of speech on the African continent. The proclamation emphasizes the relevance of freedom of speech and access to information as basic human rights, as well as an essential component of democracy and the advancement of society.

In order to successfully address the growing concerns about freedom of speech in this age of digital technology, the Declaration places a strong emphasis on the significance of implementing specific legislation or taking a smart approach to the interpretation of existing laws.<sup>68</sup> The principle of openness and accountability, as well as the idea of freedom of speech as it is granted under the Declaration, are reflected in the preamble of the document. In Part III of the Declaration, there are principles that guarantee access to information. The use of these principles in the petroleum industry assures that the public will have access to crucial information that is assisted by governmental institutions. This information may give the public the ability to hold the actors accountable.

### **3.0 The Domestic Legal Framework Advocating for Transparency and Accountability in the Petroleum Sector**

Principal legislation and subsidiary legislation are the two types of laws that Tanzania uses in order to keep an eye on the extractive sector. Within the context of the Tanzanian petroleum industry, these domestic laws are hereunder analyzed to determine how well they embody the principle of transparency and accountability:

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<sup>67</sup> *Ibid.*

<sup>68</sup> P. J. Fourie, 'Rethinking the Role of the Media in South Africa' 1 *Journal for Communication Studies in Africa* 21(2022), 17-40.

### 3.1 The Constitution of the United Republic of Tanzania (1977)

The validity of all other laws in the nation is derived from this law, which is the mother law of the land. In the event that this law is violated, the laws in question might be ruled null and void in their whole or in their sections.<sup>69</sup> According to Article 8, it is hypothesized that the people are the source of the government's authority, and as a result, the government is obviously responsible and accountable to the people. The Constitution does not include any provisions that are specifically pertaining to oil and gas matters. On the contrary, it falls within the category of natural resources, of which, in accordance with Article 27 of the Constitution, the public is held accountable for the ownership of them. It is provided in the article:

- (1) Every person has the duty to protect the natural resources of the United Republic, the property of the state authority, all property collectively owned by the people, and also to respect another person's property.
- (2) 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.

According to the wording of the above provision, natural resources are very important to the well-being of the country. In addition, the provision gives the public the responsibility to protect these resources and, if necessary, to hold responsible those individuals who have been entrusted with the responsibility of dealing with these natural resources in the event that they are wasted. In addition, the Constitution guarantees and safeguards the fundamental rights that are enshrined in the UDHR, the ICCPR, and the Banjul Charter. One of these rights is the right to freedom of speech, and another is the right to access information. The right is propounded under Article 18, which provides that:

Every person –

- (a) has a freedom of opinion and expression of his ideas;
- (b) has out right to seek, receive and, or disseminate information regardless of national boundaries;
- (c) has the freedom to communicate and a freedom with protection from interference from his communication;
- (d) has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.

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69 *The Attorney General v. Lohay Aknonaay and Joseph Lohay*, Civil Appeal No. 31 of 1994 (Unreported).

When such a right is acknowledged, it becomes much simpler to protect the values of accountability and openness that are prevalent in the oil and gas business. It is possible for members of the general public to provide their comments on the utilisation of the resources that are available and to be well-informed about the varied information that is associated with the extractive sector.

### **3.2 The Petroleum Act (2015)**

A significant piece of legislation that governs the petroleum sector in Tanzania is the Petroleum Act, which was enacted in 2015. This law enacted for the purpose of ensuring that petroleum companies or entities are held accountable for their actions as well as for other problems relating to the industry.<sup>70</sup> The Petroleum (Exploration and Production) Act of 1980 was repealed and replaced by this Act; however, it did not include any measures that dealt with accountability or transparency. The Petroleum Act, together with the other two pieces of legislation, should be read in conjunction with one another in order to ensure openness and accountability. These laws are the Oil and Gas Revenues Management Act and the Tanzania Extractive Industries (Transparency and Accountability) Act.

In principle, the Oil and Gas Revenues Management Act and the Tanzania Extractive Industries (Transparency and Accountability) Act are significant because the first one acknowledges and recognises the necessity of the next generation to profit from natural resources by creating the Oil and Gas Fund.<sup>71</sup> Establishing an independent committee for the purpose of protecting such fundamental values in the extractive sector is one of the measures that the second piece of legislation has to provide in order to guarantee openness and accountability. In accordance with the standards imposed by the international framework, which is both binding and non-binding, the Petroleum Act creates a number of procedures that guarantee accountability and transparency in the petroleum industry.

Additionally, the Petroleum Act grants citizens the right to access information such as licenses, permits, and agreements that are associated with the oil and gas business.<sup>72</sup> This is a significant achievement because it preserves the spirit of the Constitution as well as other international documents that advocate for the right to access information, especially with regard to the sector. In addition to this, the right is connected with the Petroleum Upstream Regulatory Authority (PURA), and no other individual is permitted to disclose information

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70 Preamble to the Petroleum Act (Cap 392 R.E. 2019).

71 Section 8 of the Oil and Gas Revenues Management Act (Cap 399 R.E. 2019).

72 Petroleum Act, *op.cit* fn 74, section 91(1).

to the general public in any manner.<sup>73</sup> Another protection that maintains responsibility in the sector is the clause relating to compensation for disruptions caused to persons during the exploration and production of oil and gas.<sup>74</sup> This provision supports the fact that the process of extracting oil and gas has a variety of effects on people, including the destruction of structures, the cutting down of trees and crops, and other similar activities. These individuals have the right to receive compensation that is appropriate and fair for the disturbances that they experience as a result of the extraction process. The fact that this is the case demonstrates that the permit holder is responsible to the general public for the difficulties that are brought about by extraction operations.

The same obligation is vested to PURA under section 13(1)(d) in such a way that such authority conducts its functions in a manner that upholds transparency, and finally, the Energy and Water Utilities Regulatory Authority (EWURA) falls under the same obligation under section 31(1). This comes as a result of the fact that the Act, in section 5(1)(f), mandates that the minister responsible for petroleum must ensure and maintain the realization of transparency in the petroleum subsector. Additionally, it is the minister's responsibility to make certain that the petroleum agreements are not entered into until a public bidding procedure that is both open and competitive has been finished.<sup>75</sup> A need for openness is included in these provisions under the Petroleum Act. This is intended to protect the extractive sector from actions that are corrupt and misappropriate resources. As a result, this prepares the way for the identification of those who will be held responsible in the event that such resources are misused.

### **3.3 The Oil and Gas Revenues Management Act (2019)**

In order to guarantee that the revenues that are generated by the oil and gas sector are managed in an appropriate manner, the Oil and Gas Management Act was enacted with the intention of creating a specific Oil and Gas Fund as well as fiscal guidelines for the administration of these revenues.<sup>76</sup> The established fund's objectives include enhancing social and economic development and safeguarding resources for future generations.<sup>77</sup> The Oil and Gas Management Act provides a specific provision that elaborates on the issues of transparency and accountability in oil and gas revenue management.<sup>78</sup> Section 18 stipulates that all relevant revenues to and from the fund must be collected, deposited, and disbursed in a transparent and accountable manner.

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<sup>73</sup> *Ibid*, section 93.

<sup>74</sup> *Ibid*, section 111.

<sup>75</sup> *ibid*, section 48(1).

<sup>76</sup> Oil and Gas Revenues Management Act, *op.cit* fn 75, preamble.

<sup>77</sup> *Ibid*, section 8.

<sup>78</sup> *Ibid*, section 18.

In order to guarantee access to information, the Oil and Gas Management Act mandates that the minister of finance publish the records related to collection and expenditure in the Government Gazette simultaneously. Additionally, the Oil and Gas Management Act encourages the government to publish information regarding the petroleum industry finance on the online websites of both the government and the Ministry of finance. The purpose of all of the aforementioned measures is to guarantee that the income obtained from oil and gas are accessible to the general people. This kind of disclosure ensures that there is openness and responsibility in the event that there is any abuse. For the purpose of highlighting the aforementioned problem, the parliament has been given the authority to monitor records of this kind.<sup>79</sup>

### **3.4 The Companies Act (2002)**

Companies in Tanzania are required to keep a register of all of their members (beneficiaries), which includes their names, addresses, dates of membership, and shares owned (in the case of companies with share capital). Additionally, the Companies Act,<sup>80</sup> is the primary piece of legislation that is responsible for coordinating matters pertaining to companies in Tanzania. Section 115 of the Companies Act states that companies are required to keep a register of all of their members. In accordance with the requirements of sections 451A and 451B, which were introduced to the Finance Act of 2020, it is now obligatory for businesses that are functioning in Tanzania to keep a record of the beneficial owners of their assets. Companies are required to provide the aforementioned information to the Registrar of Companies, and the Registrar is obligated to construct and maintain a register of beneficial owners at the Companies Registry.

Furthermore, the Companies Act goes on to impose the requirement of disclosure of the beneficial owners, which is mandatory during the process of registering the companies. More importantly, such beneficial owners must be described in terms of the interests they hold, and affirmation of whether or not a beneficial owner is a politically exposed person.<sup>81</sup> The registration of beneficial ownership is needed to be filed to the registrar of companies, who is then obligated to retain such information in a register.<sup>82</sup> This is a requirement that must be met. The fact that the general public does not have direct access to such information is a significant problem; instead, the only authorities who are able to do so are the national competent authorities for combating anti-money laundering and terrorism, investigation and prosecution, the Financial

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<sup>79</sup> *Ibid*, section 18(6).

<sup>80</sup> Cap. 212 R.E. 2002.

<sup>81</sup> Companies Act, Cap. 212 [R.E 2002], section 14(2) as amended by section 8 of the Finance Act, No. 8 of 2020.

<sup>82</sup> *Ibid* section 451A as amended by section 16 of the Finance Act, No. 8 of 2020.



Intelligence Unit, and the Tanzania Revenues Authority (TRA), amongst others.  
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Therefore, the provisions of the Companies Act that have been discussed above have the intention of enhancing transparency and accountability to companies that participate in the extraction of oil and gas. This is in accordance with the requirement 2.5 of the EITI. The Companies (Beneficial Ownership) Rules (2021) are particular bylaws that offer a more complete definition of this obligation. These Rules have been added to the focus that has been placed on the necessity of beneficial ownership disclosure.<sup>84</sup>

### **3.5 The Companies (Beneficial Ownership) Regulations (2021)**

The Companies (Beneficial Ownership) Regulations were introduced by the Minister of Industry and Trade.<sup>85</sup> Both Sections 115 and 149 of the Companies Act become operational as a result of the Regulations.<sup>86</sup> The requirements were changed by the Finance Act, which also introduced the beneficial owner and defined the idea behind it.<sup>87</sup> In Tanzania, persons who seek to form new businesses are required to identify and provide the details or particulars of their respective beneficial owners to the Registrar during the process of registration. This is especially true if the company is intended to be incorporated. There is a penalty that may range from a minimum of five million shillings to a maximum of ten million shillings for failing to provide information on beneficial ownership, which is regarded an offence.<sup>88</sup>

Companies that are formed under the Companies Act are required to comply with the Companies (Beneficial Ownership) Regulations, which stipulates that they must give information about their beneficial owners in line with the principles of accountability and openness.<sup>89</sup> Regulation 6 provides that the use or disclosure of any data pertaining to the beneficial owner is absolutely banned, unless it is for the purpose of communicating with the relevant beneficial owner, in accordance with the provisions of the rules, or in order to comply with a direction issued by the court.<sup>90</sup>

### **3.6 The Tanzania Extractive Industries (Transparency and Accountability) Act (2015)**

The Tanzania Extractive Industries (Transparency and Accountability) Act ('TEITA Act') seems to be a result of the National Energy Policy of 2015, which

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83 *Ibid*, section 451B.

84 Companies (Beneficial Ownership) Regulations, G.N No.391 of 2021.

85 *Ibid*.

86 Companies Act *op.cit* fn 84.

87 Finance Act, No.4 of 2020.

88 Companies (Beneficial Ownership) Regulation, *op.cit* fn 87, regulation 10.

89 *Ibid*, regulation 3.

90 *Ibid*.

provides for, among other issues, safeguards of EITI standard as promulgated under chapter 4, paragraph 4.1, which states:

To achieve the desired level of transparency and accountability in the Energy Sector, collaboration among stakeholders is important especially with respect to information sharing and dissemination. Consequently, the general public has become aware of the opportunities and benefits in the sector, including coal, natural gas, uranium, etc. Other mechanisms that will be used to promote good governance include effective monitoring and enforcement of laws, prevention of corruption and maintaining political stability of the country. The Government shall promote accountability and transparency in planning, procurement, contracting of goods and services in the energy sector as advocated by Extractive Industry Transparency Initiative (EITI).<sup>91</sup>

The Tanzania Extractive Industries (Transparency and Accountability) Act domesticates EITI. Tanzania's enactment of this Act shows its final commitment to ensuring transparency and accountability in the extractive industry as set under the EITI standard. The Tanzania Extractive Industries (Transparency and Accountability) Act promotes transparency and accountability by establishing an independent committee (Extractive Industries (Transparency and Accountability) Committee) specifically designed to ensure transparency and accountability in the extractive industry.<sup>92</sup> According to the 2021 amendments, the TEITI Committee consists of a total of 8 members;<sup>93</sup> Four members are from government agencies (one from TPDC, one from TRA, one from TEITI, and one from the AG office), two from civil society, and two from oil and gas companies. The President appoints the chairman for a total of nine members.

The committee's main responsibility is to ensure that the profits derived from the extractive industry are verified, accounted for, and prudently utilized for the benefit of Tanzanians.<sup>94</sup> Under section 16 (1), the Act also obliges the committee to cause the Minister for petroleum to publish information related to all concessions, contracts, licenses, and names of the persons holding a share interest in the extractive industry. This is a provision in line with the requirement under EITI.<sup>95</sup> The Act generally covers the standards relating to transparency and accountability in the extractive industry that have been incorporated into the EITI.

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91 National Energy Policy, 2015, chapter 4, paragraph 4.1.

92 Tanzania Extractive Industries (Transparency and Accountability) Act, Cap. 447 [R.E 2019], section 4(2).

93 Written Laws (Miscellaneous Amendments) (No. 4) Act, 2021 section 51.

94 TEITA Act *op.cit* fn 95, section 10(1).

95 EITI Standards 2023, section 2.2(a).

### 3.7 The Environmental Management Act (2004)

The Environmental Management Act<sup>96</sup> was enacted in 2004 with the express purpose of addressing environmental concerns and overseeing their administration. The Extractive sector includes a number of principles that, in one way or another, encourage openness and accountability in a variety of different types of affairs, including the extractive sector. The polluter pays principle, the precautionary principle, and the notion of sustainable development are all examples of such principles.<sup>97</sup> For instance, the polluter pays principle requires persons carrying on activities that adversely affect the environment to be accountable for paying the environmental costs or remedying the situation caused by such adverse effects.<sup>98</sup> Also, the Environmental Management Act requires prudent utilization of non-renewable resources like petroleum by considering the consequences for present and future generations.<sup>99</sup>

Furthermore, corporations intending to carry out such projects are required to conduct environmental impact assessments to preserve the safety of persons affected by operations like hydrocarbon projects.<sup>100</sup> This requirement ensures accountability to the stakeholders carrying out extractive activities to preserve the environment and the well-being of community members. Also, the public's engagement in conducting an environmental impact assessment upholds the people's right to freedom of expression as enshrined in various international instruments.<sup>101</sup>

### 3.8 The Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act (2017)

The Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act<sup>102</sup> was enacted in 2017 to discover and avoid the major problems in previous contracts. However, the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act<sup>103</sup> has been criticized regarding its terms as it promotes unilateral contract amendment, which, on the other hand, violates international norms, including the stabilization clauses in international agreements.<sup>104</sup> The Act brings about the retrospective effect in the production sharing agreements (PSA), which creates an uncondusive atmosphere in the investment sector in Tanzania. The Act, on

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96 Act No. 20 of 2004.

97 Environmental Management Act, No 20 of 2004, part II.

98 *Ibid*, section 7(3)(d).

99 *Ibid*, section 7(3)(j).

100 *Ibid*, section 81.

101 *Ibid*, section 89.

102 Cap. 450 R.E. 2023.

103 No. 6 of 2017).

104 M. Ryoba and M. Barnabas, 'Legal Status of Stabilization Clauses vis-à-vis Legislative Actions: The Implications in the Current and Future Investment in the Petroleum Industry in Tanzania' 1 *The Journal of African Law and Contemporary Legal Issues* 1 (2022) at 96-116.

the other hand, intends to assure accountability regarding unfriendly and dubious terms previously included in various bilateral agreements. This safeguards the fact that the available resources must be exploited and utilized for the interests of Tanzanians rather than for the benefit of a few individuals within and outside Tanzania.

### **3.9 The Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations (2020)**

The Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations (2020)<sup>105</sup> were made under the Natural Wealth and Resources (Permanent Sovereignty) Act.<sup>106</sup> The Regulations apply to various stakeholders in the extractive industry, including entities, consultants, suppliers, contractors, investors, partners, agents, and their respective employees.<sup>107</sup> They are designed to promote sustainable development and the compliance of ethical principles and values under Tanzania's laws and policies.<sup>108</sup> The Regulations provide for various ethical considerations that uphold the principles of transparency and accountability in the petroleum industry. For instance, the Regulations require the operations of various natural resources activities to be done in good faith, transparently, and in promotion of Tanzanians' benefits and welfare from such activities.<sup>109</sup>

In addition, investors are urged not to engage in corrupt practices in any way and to ensure respect for human rights. More significantly, the Regulations impose an obligation on investors to sign an integrity pledge, which seeks to promote commitment to investors with respect to assurance of transparency and accountability in the exploitation and production activities, mainly fighting against corrupt practices.<sup>110</sup> Generally, the ethical considerations covered under these Regulations intend to ensure transparency and fight corruption, which is the main obstacle to enhancing development in various sectors, including the petroleum sector.

### **4.0 Challenges Associated with Establishing a Link Between Transparency and Accountability in the Mainland Tanzania Petroleum Sector.**

It is necessary to have a kind of transparency that will lead to accountability, which will result in the achievement of the goals that were meant to be achieved by the said requirements for the improvement of governance in the petroleum

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105 G.N. No. 58 of 2020.

106 These Regulations were made under Section 13(2)(a) of the Natural Wealth and Resources (Permanent Sovereignty) Act (2017)

107 Regulation 2 of the Natural Wealth and Resources (Permanent Sovereignty) (Code of Conduct for Investors in Natural Wealth and Resources) Regulations (202).

108 *Ibid*, regulation 4.

109 *Ibid*, regulation 6.

110 *Ibid*, regulation 21.

industry. It is worthless to have openness if there is no accountability, as was indicated before in the sentence for this argument. There are a number of obstacles that have been identified in the domestic legal framework that are preventing the two from being linked together. This has a direct impact on the achievement of 'clear transparency' rather than opaque transparency, which will result in 'hard face' accountability rather than the 'soft face' accountability. Listed below are some of the difficulties observed:

#### **4.1 Constraints Relating to Achieving Genuine Transparency and Accountability**

There is a challenge in achieving genuine transparency and accountability because the Tanzania Extractive Industries (Transparency and Accountability) Committee does not have a mechanism for verifying the information that is included in TEITI reports. The wording of Section 10(2) of the TEITA Act suggests that TEITI reports contain information that has been submitted by a variety of stakeholders. (Odo 2016) acknowledges this as a challenge and states that verification of the correctness of the oil and gas data is important for a variety of reasons, including the enhancement of accountability, the assurance of exact reporting, and the cultivation of trust among stakeholders. EITI's principal mission is to promote openness in the administration of oil, gas, and mining resources, with the end goal of guaranteeing efficient governance and sustainable development in countries that have an abundance of these resources.<sup>111</sup>

The authors state further that in the petroleum sector, having accurate information is of the utmost importance. A significant amount of financial mismanagement and corruption might be the consequence of data that is either inaccurate or misleading. In light of the fact that the value of a company is usually tied to its stated reserves, it is important to emphasise that the lack of accuracy in reserve data may significantly complicate the decision-making process for investors and stakeholders.<sup>112</sup> In light of the fact that TEITI does not possess the resources necessary to check the data that is provided by the stakeholders, it becomes difficult to reach the level of transparency that is required.<sup>113</sup>

Furthermore, the Tanzania Extractive Industries (Transparency and Accountability) Committee is tasked with the responsibility of publishing reports on the implementation of transparency and accountability, as stipulated by section 10(2)(a) and (h) of the Tanzania Extractive Industries Trade and

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111 O. C. Odo, 'To What Extent Do United Kingdom Companies Provide Oil and Gas Reserves Information Sufficient to Satisfy Statement of Recommended Practice Requirements' 26 *Australian Accounting Review* 1 (Vol. (2016), 4-44.

112 *Ibid.*

113 Ketagory, E., interview by author (22 June 2023, TEITI, Madini, Dodoma).

Investment Act (TEITA Act). On the other hand, the reports do not have any legal weight, which means that there is no legal recourse available for any violation of the transparency and accountability standards that are outlined in the reports. The challenge was acknowledged in an interview with Shao who was of the view that it is impossible to utilise TEITI to create transparency and accountability if there is no action that can be done against a major person based on what has been revealed by TEITI.<sup>114</sup> (David 2015) admits the challenge and states that the problem has its origins in the fact that EITI is a voluntary organisation, and it is made worse by the fact that many governments in resource-rich countries have a propensity to join EITI purely for the purpose of enhancing their worldwide position, without any genuine intention of really implementing the necessary structural reforms.<sup>115</sup> If there are no reports that can be put into action, then people can get the impression that transparency is more of a symbolic gesture than a way for the government to improve the way it manages the resources.<sup>116</sup>

## 4.2 Insufficiency of Punitive Measures

Another challenge is on insufficiency of punitive measures provided under Sections 23 and 24 of the TEITA Act in order to ensure compliance with the requirements of the law pertaining to accountability and transparency. The sanctions that will be imposed on people or businesses who are found to have violated the transparency standards are outlined in these clauses. In particular, the provisions provide that people who fail to provide the required papers or information as stipulated by the TEITA Act would be subject to a minimum punishment of 10 million shillings. In the case of corporate entities, the stipulated punishment is a minimum fine of one hundred and fifty million shillings. In addition, the Act stipulates that those who spread incorrect information are subject to a minimum fine of one hundred million shillings. The challenge was also observed by the Chairman of the TEITI who has some qualms about the appropriateness of these sanctions in terms of ensuring that the law is followed.

Utuh discussed this challenge when he raised the issue of whether the severity of the penalties that are mandated is enough to encourage compliance with the TEITA Act and to promote more transparency and accountability within the extractive sector of the nation.<sup>117</sup> If petroleum companies are required to pay a fine of not more than one hundred and fifty million shillings for failing to submit

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114 Shao, L., interview by author (15 March 2023, *HakiRasilimali*, Msasani, Dar es Salaam).

115 B. E. Dávid and O. Ken, 'Norm Diffusion and Reputation: The Rise of The Extractive Industries Transparency Initiative' 29 *Governance* 2 (2015), 227-246.

116 A. M. Jiyad, 'Transparency in Iraq Petroleum Sector: More Symbolic Formality Than Impacting Effectiveness' 13 *Journal of Contemporary Iraq & The Arab World* 2 (2019), 145-165.

117 L. S. L. Utuh, 'Transparency and Accountability Mechanism Inherent in Extractive Industries' paper presented at NGRI Virtual Training on 19th August, 2021.



information or for reporting incorrect information, information worth more than the fine is useful for them, and thus cannot fulfil the aim of the law. Insufficient sanctions may lead to corporations lacking the motivation to comply.<sup>118</sup>

### **4.3 Constraints Concerning How the Standards are Put into Practice in the Petroleum Value Chain**

Another challenge is seen in how the standards are put into practice in the petroleum value chain. The Petroleum Act, like other oil and gas laws, focuses on sharing information in the later stages of the value chain. However, none of these laws talk about the early stages. The oil and gas value chain includes things like getting a license, looking over the licensing offer, negotiating, signing the Production Sharing Agreement (PSA), and getting the license. It also includes getting growth rights for things like research, production, and marketing. No part of the Petroleum Act requires transparency and accountability during the license and negotiation stages. This means that the outcomes of these stages cannot be checked, and no one is aware of what occurs during the talks. Transparency and accountability cannot be guaranteed by giving information after the fact when the damage has already been done because most oil and gas problems happen in the early stages. TEITI chairman, Utoh, acknowledges the challenge and states that focusing exclusively on contract disclosure cannot offer openness and accountability; there is much more to be done in our petroleum laws, especially in the early phases of the value chain.<sup>119</sup>

## **5.0 Conclusion and Recommendations**

From the foregoing progressive elements and the challenges constraining transparency and accountability in the petroleum sector in Tanzania, we would like to make the following recommendations, in conclusion:

### **5.1 Conclusion**

Based on the foregoing analysis, it can be concluded that not all forms of transparency result in accountability, and not all forms of accountability result in better petroleum sector governance. To achieve the form of transparency and accountability required for improved sector management, there are prerequisites as provided in the international binding and nonbinding instruments. The domestic legal framework, particularly the Constitution of the United Republic of Tanzania and other laws of the land, have provided clearly

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118 F. Adegbeie and others, 'Corporate Governance on Environmental Protection Index of Sustainability Reporting in Oil and Gas Companies Quoted in Nigeria' 9 *The International Journal of Business & Management* 11 (2021) <<https://doi.org/10.24940/theijbm/2021/v9/i11/bm2111-003>> (accessed 25 August 2024).

119 L. S. L. Utouh *op.cit* fn 116.

the matters related to the realization of the core principles of transparency and accountability in the petroleum industry, whose end result is the public benefit. On the other hand, there are a few legal problems that prevent the full realization of such concepts of accountability and transparency. As an example, there is a lack of verification of the information that is submitted to TEITI; there are no legal sanctions that have been established for corrupt practices that have been revealed by TEITI reports because they do not have any legal force; there is no specific mechanism that has been established for taking action against corrupt practices that have been realized from the released petroleum information; additionally, there is the release and publication of information that cannot assist in achieving the appropriate accountability; and the punishments that have been established for those who do not comply with the principle of transparency and accountability are insufficient. Because of these obstacles, it is becoming more difficult to establish the necessary connection between the two concepts in order for them to function as intended in terms of enhancing the management of the sector.

## **5.2 Recommendations**

Although Tanzania has made several efforts to ensure transparency and accountability principles in the petroleum industry, laws need to be amended for some aspects to be worked upon towards full promotion and assurance of the principle in the sector. The areas recommended to be worked upon include:

*Firstly*, to have verified data in order to maintain the trust of investors and to enable stakeholders to make decisions that are well-informed and based on precisely accurate information. Through the process of verifying the information that is provided to TEITI, the nation will lessen the risks of corruption and mismanagement, which are prevalent in many countries that have an abundance of precious resources. The implementation of this verification procedure not only improves the dependability of the data that is presented, but it also helps to foster public confidence in governmental and corporate bodies that are involved in the petroleum industry.

*Secondly*, it is essential to determine the appropriateness of the penalties that are imposed for failing to provide information on oil and gas. The determination of whether or not penalties are successful in discouraging non-compliance and whether or not they are sufficient in developing transparency and accountability in the petroleum industry is of the utmost importance. Companies are motivated to adhere to transparency and accountability when they are subjected to an adequate amount of penalties, which provide a punishment for failing to comply.

*Thirdly*, there needs to be a single law to deal with corrupt practices in the petroleum industry. This law should set up ways for people to use the information given to hold corrupt officials accountable. For example, the United States passed the Foreign Corrupt Practices Act, which deals with corrupt things in oil operations.

*Fourth*, TEITI reports must be made legally binding. In order to establish accountability, the laws must stipulate that TEITI reports must be examined and presented to parliament in order to inform the general public about the results of the investigation and to ensure that those responsible are held accountable.

*Finally*, the laws must incorporate provisions that requires for transparency throughout the first phases of the oil and gas value chain, such as during the licensing and negotiation stages. The general public has a right to be informed about what occurs at the preliminary stages so that appropriate actions may be taken. The disclosure of information after the harm has been done, on the other hand, may not be the best choice. Transparency needs to start early so that early efforts may be made to save the situation before it is too late. Tanzania cannot escape the resource curse just by publicizing the findings; disclosures must begin early.