

Transparency and Accountability in Tanzanian Petroleum Industry: The Role of Institutions and Challenges Associated

Emmanuel Malya

Assistant Lecturer and PhD Candidate at the University of
Dodoma, Tanzania
emmanuelmalya@yahoo.com

Elia Mwanga

Senior Lecturer at the University of Dodoma, Tanzania
mwanga23@gmail.com

Abstract

The petroleum industry is among the key sectors currently growing in Tanzania and contributing to the country's economic development. It needs precise regulation and management for sustainable development; in achieving that, it is essential to ensure that the setup of institutions responsible for the sector do facilitate transparency and accountability principles. The article analyses the setup of the said institutions and identify challenges hindering performance of its role in ensuring realization of the principles, in the end it provides a way out in having framework that realize the principles. Laws and scholarly works were reviewed in the analysis, direct information from personnel in the institutions also forms part of the findings, which reveals that a number on institutions are established and tasked with different roles in management of the sector, however, despite the commendable efforts, the institutions fail to facilitate realization of the principles due to several challenges including lacking independence and autonomy, limited access to petroleum information, and no specific roles assigned to some of the institutions in relation to the principles. Hence, to tackle the challenges, the article recommends assurance of autonomy, independency to the institutions and setting clear roles for each of them to perform.

Keywords: *Petroleum, Institutions, Oil, Gas, Transparency, Accountability*

1.0 Introduction

Following the conclusion of the Second World War in 1945, the majority of African nations were successful in achieving their full-scale independence. Africans' achievement of such freedom served as a wake-up call, prompting them to realize their potential, including using natural

resources such as minerals, oil, and gas.¹ Africans' achievement of such freedom served as a wake-up call, prompting them to realize their potentialities, including using natural resources such as minerals, oil, and gas.² A need of this magnitude forced the formation of international legislation, which acknowledged the notion of perpetual sovereignty on resources of nature as a right that governments possess.³ This idea is supported by the fact that the Charter of Economic Rights and Duties of States, which recognized the right of states to utilize and have exclusive control over their natural wealth, came into effect. This right was recognized as a right by the Charter.⁴ The sovereignty conferred upon countries about their natural resources requires careful consideration.

Using the sovereignty for growth in the Tanzanian petroleum sector, it is imperative to consider the sustainable utilization of local and national resources in the advancement of the sector, achieved through the effective application of transparency and accountability principles within the appropriate legislative and institutional framework ensuring that each stakeholder benefits from this resource.⁵ The existing Tanzanian institutional framework in the petroleum sector poses a significant obstacle to implementing the principles.⁶ The function of petroleum institutions in fostering transparency and accountability is essential, especially in resource-abundant nations where mismanagement and corruption may result in considerable socio-economic difficulties.⁷ Turkana County in Kenya exemplifies this issue since the inability of petroleum institutions to implement the principles resulted in a lack of transparency in the administration of petroleum resources, thereby leading

¹ Tana High-Level Forum on Security in Africa. "Background Paper on Natural Resource Governance in Africa". Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.tralac.org/images/docs/11546/tana-2017-background-paper-on-natural-resource-governance-in-africa-conflict-politics-and-power.pdf>>(last accessed 13 July 2024).

² S.P. Ng'ambi, 'Permanent Sovereignty over Natural Resources and the Sanctity of Contracts. From the Angle of *Lucrum Cessans*', *Loyola University Chicago International Law Review*, Volume 12, No. 2, 2015 (153-172), p.153.

³ *Ibid.*

⁴ The Charter of Economic Rights and Duties of States was adopted by the United Nations General Assembly Resolution No. 3281 (xxix) in its 29th Session of 1974.

⁵ O. K. Bishoge and others, 'The Overview of the Legal and Institutional Framework for Oil and Natural Gas Sector in Tanzania. A Review' *Journal of Applied and Advanced Research*, Volume 1, No. 1, 2018 (8-17), p.8.

⁶ *Ibid.*

⁷ V. Hauffer, 'Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World', *Global Environmental Politics*, Volume. 10, No. 3, 2010 (53-73) p. 54.

to conflict and apprehension instead of progress.⁸ This underscores the need for petroleum institutions to implement transparent processes that adhere to international norms while also addressing local community issues.⁹

The advantage of applying the principles has been shown in Zambia, where corruption levels in the industry were reduced.¹⁰ Powerful legal and institutional frameworks were necessary to ensure that the resources, including oil and gas, were handled appropriately and efficiently. This freedom over the resources was necessary. Furthermore, as a consequence of this, Tanzania built a great number of institutions to supervise the administration of this sector.¹¹ Considering this pattern, the purpose of this paper is to investigate the setup of the institutions responsible for petroleum and how they facilitate the application of transparency and accountability principles in ensuring proper management of the resources for the benefit of current and future generations. The Petroleum Act defines the term Petroleum to mean naturally occurring hydrocarbons in gas, liquid, or solid states, except for substances extracted from coal or rocks. Hence, the term petroleum in this study refers explicitly to oil and gas components, and they are used interchangeably.

2.0 Institutional Framework Facilitating Transparency and Accountability in Managing Petroleum Sector in Tanzania

There are a number of entities in the country that are responsible for the administration of the petroleum sector. These institutions range from the office of the President to the National Assembly and several ministerial levels. They fulfil a variety of functions in their separate capacities, which are in accordance with many different pieces of law. Starting with the Cabinet is a constitutionally established institution;¹² it comprises the Vice President, the Prime Minister, the President of the Revolution Government of Zanzibar, all of the ministries, and the Attorney General.¹³

⁸ E. Johannes, L. Zulu, and E. Kalipeni, 'Oil Discovery in Turkana County, Kenya: A Source of Conflict or Development?', *African Geographical Review*, Volume. 34, No. 2, 2014 (142-164) p. 143.

⁹ Ibid.

¹⁰ P. Villar and E. Papyrakis, 'Evaluating the Impact of the Extractive Industries Transparency Initiative (EITI) on Corruption in Zambia', *The Extractive Industries and Society*, Volume 4, No. 4, 2017 (795-805), p.796.

¹¹ B. Obadia and Others, 'The Overview of the Legal and Institutional Framework for Oil and Natural Gas Sector in Tanzania. An Overview', *Journal of Applied and Advanced Research*, Volume 1, 2008. Available at <10.21839/jaar.2018.v1i1.127> (last accessed 14 July 2024).

¹² The Cabinet is established under art 54(1) of the Constitution of the United Republic of Tanzania of 1977.

¹³ Ibid.

The President of the United Republic of Tanzania is responsible for presiding over all Cabinet meetings. If the President is not present, the Vice President is given the responsibility of presiding over such sessions.¹⁴ The primary responsibility of the Cabinet is to provide the President of the United Republic of Tanzania with advice on all topics pertaining to the exercise of the powers that have been granted to him or her under the Constitution. In addition, the Cabinet is obligated to deliver assistance and direction to the President in relation to any subject that has been brought to its attention per the President's directions, whether such directives be explicit or general.¹⁵

Regarding the petroleum sector, the Cabinet has been given a number of responsibilities, including, among other things, the promotion of accountability and transparency within the sector. This is evident in the Petroleum Act of 2015, which, in contrast to the previous Act on petroleum, assigns several roles to the Cabinet, including the determination of the country's natural gas and oil economy,¹⁶ the ability to monitor all strategic plans and give directives and making decisions pertaining to petroleum which are final and binding on all other institutions, including the minister who is responsible for petroleum.¹⁷ In addition, concerning transparency and accountability, the Cabinet serves as an authority that grants permission in a variety of circumstances that are associated with the petroleum industry. For instance, the minister does not automatically have the authority to execute production-sharing agreements (PSA) on behalf of the government in Tanzania Mainland; rather, he or she is required to first obtain consent from the Cabinet in order to sign the PSA that is pertinent to the situation.¹⁸

In the same line, in accordance with the Petroleum Act, the process of tendering for petroleum agreements must be carried out in a manner that is both open and competitive. However, in the event that such a tendering process proves to be ineffective, the Cabinet is vested with the authority to authorize direct negotiations between the minister responsible for petroleum and a company that is both qualified and eligible.¹⁹ Although

¹⁴ *Ibid*, art 54(2).

¹⁵ *Ibid*, art 54(3).

¹⁶ Sec 4(3) of the Petroleum Act Cap 392 [R.E 2019].

¹⁷ *Ibid*.

¹⁸ Sec 47(2) of the Petroleum Act (n 16).

¹⁹ *Ibid*, sec 48(3).

the Cabinet has not managed to totally control the minister's powers as it will be observed later on, it attracts good management of the sector when the cabinet operates in a way that ensures transparency and accountability and limits the minister's discretionary powers.²⁰ As opposed to the trend in the previous Petroleum Act where the minister was given greater leeway to make judgements at his or her own discretion, the practice that is still witnessed in some areas. This kind of governance, in a certain manner, attracts misappropriation and misuse of such resources.²¹

The oil and Gas Advisory Bureau is an additional institution that is responsible for the administration of the country's petroleum sector. This Bureau was founded under section 7 of the Petroleum Act, its primary function is to provide the President and the Cabinet with advice on problems pertaining to the economics of the sector.²² The formation of this Bureau ensured that the President and the Cabinet, who are the ultimate decision-makers in issues pertaining to the industry, were provided with appropriate advice prior to the permission being issued to the necessary authorities for execution in order to improve the growth of the sector. The Bureau is considered to be a technical consultant to the Cabinet about the ways in which the government might invest in, make use of, and profit from the oil and gas industry in Tanzania's mainland. In spite of the fact that there are other authorities, such as the Petroleum Upstream Regulatory Authority (PURA), the Energy and Water Utilities Regulatory Authority (EWURA), the Office of the Commissioner for Oil and Gas, and the Tanzania Petroleum Development Corporation (TPDC), which are responsible for oil and gas development on a daily basis, the Bureau continues to play such a role.²³ This was done with the intention of preventing conflicts of interest and diverting attention away from responsibility among that particular authority compared to when the advise was provided by an independent authority.

Another essential institution that is contributing to the growth of the industry is the Minister responsible for petroleum. As things stand, the

²⁰ B. Lee B and K. Dupuy, 'Petro-Governance in Tanzania: Opportunities and Challenges' *CMI Brief Chr. Michelsen Institute, Volume 15, No. 14, 2016* (2-4).

²¹ *Ibid.*

²² Sec 7 of the Petroleum Act (n 17).

²³ R. Paasch, *Tanzania Oil and Gas Almanac: A Reference Guide Published by the Friedrich-Ebert-Stiftung Tanzania and OpenOil*, Friedrich-Ebert-Stiftung 2015, p. 19-20. Available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://library.fes.de/pdf-files/bueros/tanzania/12551.pdf (Last accessed 20 February 2024).

minister is an appointee of the President who is responsible for supervising the numerous operations that are carried out under the ministry.²⁴ A number of responsibilities pertaining to the administration of the industry have been assigned to the minister in accordance with the framework for oil and gas management. Under the Petroleum Act, such roles include the formulation and review of policies that regulate the petroleum industry, the execution of petroleum agreements on behalf of the government with other stakeholders in the sector, the process of making plans and developing policies that are concerned with the sector, the oversight of all managerial and supervisory responsibilities pertaining to the sector.²⁵

Under the Petroleum Act, the minister who is responsible for petroleum affairs is given the responsibility of providing general oversight of the oil and gas industry. The minister also plays a variety of roles in the process of ensuring transparency and accountability in the oil and gas industry in Tanzania. These roles include making public disclosure of all concessions, agreements, and licenses in the extractive sector through the ministry's web page or other media platforms that are generally accessible. Additionally, the minister is responsible for publishing the names of individual owners who own portions in companies that are engaged in the industry.²⁶ Further, the minister is obligated to provide a report to the National Assembly about the execution of the tasks that have been entrusted to him in the extractive industry under the auspices of transparency and accountability for a period of twelve months after the conclusion of each fiscal year.²⁷

The minister, despite being entrusted with all of these powers related to the execution of his roles, does not have the mandate to exercise those powers in his complete discretionary approach. This was the case in the previous legislation that was used to govern and regulate the extractive industry in Tanzania.²⁸ In accordance with the above provision, the minister is only able to make key decisions after first requesting and receiving permission from the Cabinet. In order to remedy the deficiencies of the previous legislation, which had entrusted the minister

²⁴ Available at <https://www.verfassungsvergleich.de/tz00000_.html> (last accessed 20 February 2024).

²⁵ Sec 5 (1) (2) of the Petroleum Act (n 17).

²⁶ Sec 16(1) of the Tanzania Extractive Industries (Transparency and Accountability) Act, No.23 of 2015.

²⁷ *Ibid*, sec 19.

²⁸ Petroleum (Exploration and Production) Act, Act no. 27 of 1980.

with the authority to make decisions on behalf of the government in issues pertaining to petroleum, this restriction on the minister's authority for petroleum matters has been introduced. Taking this into consideration, it is currently challenging for the minister to handle issues pertaining to petroleum development without taking into consideration the interests of the nation and its public. This is due to the fact that the Cabinet is provided with the authority to make the ultimate decision regarding matters pertaining to the oil and gas sector, particularly when it comes to major decisions. Moreover, as a key figure in the sector's governance, the Minister plays a vital role in ensuring transparency and accountability within the industry.

This is achieved through the facilitation of local content development, the enforcement of anti-corruption measures, the assurance of adherence to internationally recognized standards, and the cultivation of transparency and accountability within the industry. Section 84 of the Petroleum Act requires the public to have access to personal information.²⁹ In addition, this need is backed by section 91, which says that the Petroleum Upstream Regulatory Authority (PURA), subject to the written consent of the Minister, is required to provide the general public with full information on the actions of various companies operating within the petroleum sector.³⁰ The payment of a price that has been indicated is required in order to have access to this information.³¹ Under the provisions of sections 49 (1) and 91 (1) of the Petroleum Act, the Minister is obligated to guarantee that the general public has access to information on contracts, permits, and development plans. This is particularly important in the context of accountability and transparency within the sector.³²

The Tanzania Petroleum Development Corporation (TPDC) is a national oil company that is owned by the government, and the Treasury Registrar is the office that holds the shares of the organization. TPDC is another institution operating in the sector.³³ The Public Corporations Act, No. 17 of 1969, as amended, was the legal basis for the establishment of TPDC,

²⁹ Sec 84(6) of the Petroleum Act (n 17).

³⁰ Sec 91(1) *above at note 27*.

³¹ *Ibid* sec 91(2).

³² *Ibid* sec 49(1) and 91(1).

³³ Available at: <<https://tpdc.co.tz/about-us>> (last accessed 07 July 2024).

which took place on May 30, 1969, by Government Notice No. 140.³⁴ TPDC is primarily responsible for ensuring the commercial elements of petroleum in Tanzania's upstream, midstream, and downstream activities, as well as the government's participation rights in the petroleum and natural gas agreements that have been entered into with different partners in the extractive sector.³⁵ Because of this, the government is involved in the industry via the national oil company.³⁶ When it comes to protecting the government's interests in the oil business, TPDC, plays different roles. Such roles include providing advice to the Government on policy issues about the industry, taking part in petroleum surveys, conducting research and development projects, and carrying out specialized activities in the petroleum supply chain through affiliates (like the Gas Supply Company Limited and TANOIL Investments Limited), management of the government's commercial participating interests in the petroleum sector, management of the marketing of the country's share of petroleum received in kind, development of in-depth expertise in the petroleum industry, investigation and proposal of new upstream, midstream, and downstream ventures in the local and international arena, contracting, holding equity in, or participating in oil service and supply chain franchises and other licenses, and management of the petroleum industry.³⁷

Through either an open bidding procedure or an initial allocation of the block, TPDC can also form partnerships with local or international organizations to carry out petroleum activities.³⁸ On the other hand, executing such a mandate must be carried out with the previous approval of the minister in charge of petroleum and per the recommendations of PURA.³⁹ This indicates that the activities of TPDC are not carried out in a unilateral manner; rather, they are subject to the direction and supervision of other authorities, such as the minister and PURA. This, on the other

³⁴ Public Corporations Act, [Cap. 257 R.E 2002].

³⁵ Sec 8(1) of the Petroleum Act (n 17).

³⁶ M. Mutambala and B. Diyamett, 'Local Content and Technological Capability Building in the Oil and Gas Sector: Evidence from Latin America and Lessons for Tanzania' Science, Technology and Innovation Policy Research Organization (STIPRO) Brief, 2017, p.1-2. Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://stipro.or.tz/wp-content/uploads/2018/11/Local-Content-Development-and-Technological-Capability-Building-in-the-Oil-and-Gas-Sector_2017.pdf> (last accessed 09 July 2024).

³⁷ Sec 9 (1) of the Petroleum Act (n 17).

³⁸ *Ibid* sec 44(4).

³⁹ *Ibid*.

hand, ensures and simplifies accountability in the event that there is misappropriation and misuse of powers, as well as transparency, which, in turn, makes it possible for the activities of TPDC to be known clearly by the public through the exercise of the minister's roles, which includes the publication of various information connected to the extractive industry. According to the legislation, TPDC is tasked with ensuring that Tanzania and its citizens actively engage in the oil and gas economy rather than allowing investors to dominate the industry completely. Participation of this kind also ensures that Tanzanians would reap the long-term advantages of oil and gas development efforts. Consequently, the TPDC can adequately protect the country's interests in the industry via the existence of these structures.⁴⁰

On the other hand, the Controller and Auditor General (CAG) in charge of the National Audit Office of Tanzania (NAOT) leads the NAOT, the highest audit institution in the country, in carrying out auditing.⁴¹ The office of the CAG is recognized and established under the Constitution of the United Republic of Tanzania.⁴² It has been entrusted with a variety of responsibilities, such as ensuring that all of the funds, the payment of which has been authorized to be charged to the Consolidated Fund of the Government of the United Republic, or the cash, the use of which is under the legislative authorization of the parliament and which have been spent, are utilized per the required and dedicated expenditures and not in any other manner. In addition, conducting an audit and issuing a report on the audit with regard to the accounts of the Government, the accounts handled by each officer of the Government of the United Republic, the accounts of the judiciary of the United Republic, and the accounts controlled by the secretary of the National Assembly are all included in this.⁴³

To strengthen the accountability of government organizations to both parliament and the general public, public auditors play a significant role

⁴⁰ P. Bofin and R. H. Pedersen. 'Tanzania's Oil and Gas Contract Regime, Investments and Markets'. Danish Institute for International Studies, Working Paper 2017:1, p. 5-20. Available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://pure.diis.dk/ws/files/783639/DIIS_WP_2017_1.pdf> (Last accessed 09 July 2024).

⁴¹ Sec 20 (1) (2) of the Public Audit Act, [Cap. 418 R.E. 2021].

⁴² Art 143 of the Constitution (n 13).

⁴³ Available at < <https://www.nao.go.tz/index.php/en/about/category/vision-and-mission> > (last accessed 11 July, 2024).

in building a key relationship between the two groups.⁴⁴ Because NAOT is required to exercise supervisory powers for correct and appropriate utilization of public resources, the office is an essential organization for ensuring accountability in the nation. When it comes to the management of the petroleum sector, NAOT is responsible for a variety of tasks. The primary responsibilities include conducting investigations and generating audit reports if there is a reported discrepancy regarding the payments and receipts from oil and gas businesses in Tanzania.⁴⁵ In addition, the CAG is granted the power to carry out financial audits of the economic reports and books of accounts of the Tanzania Extractive Industries (Transparency and Accountability) Committee by virtue of Section 21(2) of the TEITA Act. Additionally, the office is responsible for conducting audits of other agencies that are associated with oil and gas enterprises. For example, in April 2024, the CAG evaluated the audits of EWURA's yearly performance appraisal for 2021/22 in order to analyse the accomplishments of the year that was being audited in comparison to the success of the previous year.⁴⁶

During the course of such an investigation, it was discovered that an overall of 72,533.56 million standard cubic feet of petrol and petroleum products were actually traded, and that an aggregate price of TZS 1,042 billion was charged for them.⁴⁷ However, the connection fees that were levied by the natural gas distribution managers, specifically TPDC and Pan African Energy Tanzania Ltd (PAET), were not authorised by EWURA. This is in violation of Regulation 20 of the Petroleum (Natural Gas Pricing) Regulations, 2020,⁴⁸ and the organisation in question did not take any action to uphold the regulations. From this point of view, the CAG suggested that such errors would most likely have an impact on the implementation of equitable pricing and market transparency in the industry.⁴⁹ According to the findings of such a study, the liquefied petroleum gas retail locations are neither registered nor supervised by EWURA.

⁴⁴ Art 143 (1) of the Constitution (n 12).

⁴⁵ Sec18 of the Tanzania Extractive Industries (Transparency and Accountability) Act, No. 23 of 2015.

⁴⁶ Controller and Auditor General (2024), "*Annual General Report of the Controller and Auditor General on the Audit of Public Authorities and Other Bodies for the Financial Year 2022/23*", at page 148, available at: <https://www.nao.go.tz/reports> (last accessed on 08 July 2024).

⁴⁷ *Ibid.*

⁴⁸ Government Notice No. 353 Published on 15/5/2020.

⁴⁹ *Ibid.*

Furthermore, the EWURA failed to carry out any surveillance and compliance checks of these locations, which is in violation of Rule 46(1) of the Petroleum (Liquefied Petroleum Gas Operations) Rules 2020.⁵⁰ Liquefied petroleum gas (LPG) may be handled, stored, and transported improperly as a consequence of this, which may lead to potentially dangerous circumstances such as explosions, fires, or leaks, so presenting a significant risk to the nation's safety.⁵¹ And the same puts into question the effective accountability of EWURA in managing such petroleum dealers. The Public Audit Act of Tanzania delineates the responsibilities of NAOT in executing audits and delivering precise and prompt reports to the parliament. Actions must be implemented prior to the next budget session, considering the findings and suggestions presented in the CAG's reports. In Tanzania, the CAG is tasked with executing follow-up operations on recommendations issued to audited entities to evaluate the degree of implementation of these recommendations. Consequently, audited organizations are required to completely execute the recommendations issued by the CAG audit.⁵² NAOT is a national accountability authority responsible for overseeing the proper use of public resources.

The National Assembly is another institution dealing with the petroleum sector. This organ of the state is composed of members who have been chosen on behalf of their respective constituencies, members who are appointed to seats reserved exclusively for women, the speaker, five representatives of the members of the House of Representatives of Tanzania Zanzibar, the Attorney General, and not over ten people selected by the president.⁵³ The National Assembly oversees and advises the government and its relevant organs in discharging their particular responsibilities.⁵⁴ The National Assembly, in precise, has been granted the mandate of checking the petroleum resources contracts to ensure the existence of reasonable terms.⁵⁵ This is done by reviewing the current and previously entered agreements connected with the available natural resources in Tanzania.⁵⁶

⁵⁰ Government Notice No. 825 published on 2/10/2020.

⁵¹ Controller and Auditor General (n 47), p. 149.

⁵² R 36, 38, 39 and 40-42 of the Public Audit Regulations GN. No. 47 of 2009.

⁵³ Art 66 (1) of the Constitution (n 12).

⁵⁴ Art 63 (2) above note 12.

⁵⁵ Sec 5 (2) and (3) of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act.

⁵⁶ *Ibid.*

Upon discovery of any terms that are enshrined in the said agreements which, on the other hand, are unconscionable, then the National Assembly plays a role of advising the government to re-negotiate such agreements so that they can be suitable for the promotion of the national development via the resources generated from the sector.⁵⁷ Further, the National Assembly has room for deliberations on various reports, including the reports sent by the CAG regarding the utilization of the funds collected from the sector. In doing so, it can order some government leaders, like ministers, to resign in case the offices are misappropriated or mismanaged.⁵⁸ It does this via its two committees, one of which is the Public Accounts Committee (PAC), which is responsible for monitoring both the central government and the public parastatal. Concurrently, the Local Authorities Accounts Committee (LAAC) has been entrusted with the responsibility of monitoring the activities of local government authorities in relation to problems concerning income.⁵⁹ When seen in this light with respect to the functions of the National Assembly, it is possible to assert that management of the sector is advantageous to the economic growth of the nation. One can argue that there is transparency and accountability in the sector as a result of the checks that the parliament exercises over the affairs of the government.

Another institution is the Prevention and Combating of Corruption Bureau (PCCB), which is an autonomous agency that was founded in 2007 to prevent corruption practices in Tanzania, conducting investigations into them and prosecuting those whom they expose.⁶⁰ Also, according to section 7 of the Prevention and Combating of Corruption Bureau Act, the agency is charged with various roles. These roles involve guiding public, private, and parastatal bodies on the ways and means of preventing corruption practices, as well as the methods of work or procedures that should be adopted by such entities that are compatible with the effective performance of their relevant duties, which are necessary for reducing the scandals of corruption. Additionally, the bureau assists in providing cooperation and collaboration with

⁵⁷ Ibid.

⁵⁸ The Auditor General. 'Have a New Insight in the Management of Public Resources Through the CAG's Reports for the Year 2012/13' *Journal of the National Audit Office of Tanzania, Volume 7, No. 1, 2014*. p.5-6. Available at <chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.nao.go.tz/uploads/NAOT_Journal_-_April_2014.pdf> (last accessed 12 July 2024).

⁵⁹ Ibid.

⁶⁰ Sec 5 (1) of the Prevention and Combating of Corruption Bureau Act, [Cap. 329 R.E 2022].

internationally established institutions, agencies, or organizations to combat corruption.⁶¹ The petroleum industry is among the sectors that need serious follow-up on its financial affairs as the likelihood of corruption is high.⁶² Given this fact, the PCCB's primary role in managing the oil and gas sector is to prevent corruption.⁶³ In achieving its objectives, the Bureau formulates and executes anti-corruption policies and initiatives to enhance public consciousness regarding the detrimental impacts of corruption on the natural gas and oil economy and society at large. In doing so, the PCCB collaborates extensively with many other governmental entities like the police, the office of the director of public prosecutions, and other stakeholders to advance openness and accountability within the natural resources sector.⁶⁴ With the above elaboration, it is clear that PCCB has a great role in ensuring there is accountability for proper management and utilization of the sector's resources. This is particularly true of issues related to financial resources for the development of the nation at large via the sector's proceeds.

Additionally, the Energy and Water Utilities Regulatory Authority (EWURA) is also a part of the institutions that regulate the petroleum sector. EWURA is established under section 4 of the Energy and Water Utilities Regulatory Authority Act.⁶⁵ Regulation of energy and water utilities is one of the many functions that have been delegated to the authority. EWURA is responsible for various duties about mid- and downstream petroleum operations, including the issuance, renewal, and revocation of permits. These powers include the ability to issue licenses.⁶⁶ To participate in mid- and downstream operations linked to oil and gas in Tanzania, people and organizations must get permits from EWURA. Therefore, the institution has the authority to provide licenses, decline to issue licenses, update licenses, cancel licenses, and terminate licenses.⁶⁷

⁶¹ PCCB, 'Oil and Gas Sector: Corruption Vulnerability Analysis' Available at < File:///C:/Users/Thinkpad/Desktop/Ta/Oil-and-Gas-Sector-Corruption-Vulnerability-Analysis.Pdf > (Last Accessed 18 August 2022).

⁶² PCCB Above note 61.

⁶³ S. Lindner, 'Tanzania: Overview of corruption and anti-corruption', *Transparency International*, 2014, p. 4-10. Available at < chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://knowledgehub.transparency.org/assets/uploads/helped-sk/Country_profile_Tanzania_2014.pdf > (last accessed 18 July 2024).

⁶⁴ Ibid.

⁶⁵ Sec 4 of the Energy and Water Utilities Regulatory Authority Act, Cap 414 [R.E 2002].

⁶⁶ Sec 29 (2) (a) of the Petroleum Act (n 17).

⁶⁷ Ibid.

Another power is to appoint an administrator to manage the business of the regulated supplier whose license has been cancelled.⁶⁸

These powers are necessary because if a regulated supplier's license has been cancelled in one way or another, then the management of its business will be subject to an administrator who will be appointed by EWURA.⁶⁹ EWURA also has the power to regulate service rates and charges.⁷⁰ This power means that the suppliers of the services regulated by EWURA, such as petroleum, have no arbitral power to set prices for their services; instead, the charges and appropriate rates are regulated and supervised by EWURA to ensure fair competition in the market.⁷¹ Another one is the power to obtain information, which mandates EWURA to order any person who holds certain information capable of being used as evidence or relevant in any way to produce or furnish such information.⁷² Such a process is done by issuing a summons signed by the chairman or secretary of the Authority.⁷³ Holding inquiries power is vested in EWURA when it is considered appropriate to conduct such an inquiry.⁷⁴ It is mainly used to exercise the authority to grant, renew, and cancel service licenses, regulate any rate or charge, and adopt a code of conduct. EWURA is a vital authority in the successful monitoring and control of the oil and gas sector in Tanzania, primarily with respect to the regulation of the prices under which petroleum products are to be sold in the market. It is possible that the failure of such control would result in unfair market practices and unambiguous rates of pricing in the oil and gas sector in Tanzania. This is especially true when considering the fact that the industry is expanding considerably in the country compared to the years that have passed.

The Petroleum Upstream Regulatory Authority (PURA) is another regulatory body within the petroleum industry that was formed under section 11 (1) of the Petroleum Act. An individual appointed by the President of the United Republic of Tanzania to the position of Director General, who also acts as the Authority's chief executive officer and

⁶⁸ Sec 16(2) (b) above at note 65.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, sec 17(1) and 7 (1) (b) (iv).

⁷¹ *Ibid.*

⁷² *Ibid.*, sec 18(1).

⁷³ *Ibid.*

⁷⁴ Sec 19 (1) above at note 65.

accountant, is in charge of the Authority.⁷⁵ The authority is responsible for a variety of tasks that are associated with the industry. These functions may be broken down into advising and direct regulatory operations. PURA is tasked with advising the minister responsible for petroleum and the government on various issues pertaining to the industry from the perspective of its advisory functions. PURA provides the minister with initial advice about promotion, bargaining, and tendering procedures for production-sharing agreements and other contractual matters. Additionally, this kind of guidance encompasses the activities of awarding, extending, halting, and canceling production permits and licenses for petroleum exploration and production.⁷⁶ This kind of clarification makes it abundantly evident that the minister is taking action on such matters per the PURA's recommendations.

To provide advice to the government, PURA provides advice about the projected development plans, the development of infrastructure, the tail-end plan, and, finally, the detachment of facilities that have been presented to the government by license holders. PURA's responsibilities include evaluating and approving the budgets that license holders provide, monitoring the performance of the projects and programs related to petroleum affairs, conducting analysis, disseminating information, and providing information associated with the petroleum sector in Tanzania.⁷⁷ The Petroleum Act mandates that PURA maintains transparency and accountability in the upstream oil and gas sector. This requires the authority to keep a registry that provides access to information about issued agreements, licenses, and permits. PURA is required to provide the public with detailed information on the activities conducted by various players in the petroleum industry.⁷⁸

Another key party to the facilitation of transparency and accountability in the petroleum sector is the Civil Society Organisations (CSOs), which are responsible for monitoring the acts of the government in situations when the regulatory framework that governs Tanzania's petroleum industry is found to be lacking control. On a worldwide scale, civil society organizations have made major contributions to developing international

⁷⁵ Sec 23 (1) and (2) of the Petroleum Act (n 17)

⁷⁶ *Ibid*, sec 12 (1).

⁷⁷ *Ibid*, Sec 12 (2).

⁷⁸ *Ibid*, sec 84 (6).

multi-stakeholder codes throughout the years.⁷⁹ Since the beginning of the Extractive Industries Transparency Initiatives (EITI), CSOs have been among the most important contributors to its formation. Within the framework of the EITI, CSOs are included in the governing board as an integral component.⁸⁰ A Civil Society Steering Committee facilitates the Tanzania Extractive Industry Transparency Initiative (TEITI). This committee also serves to develop cooperation between civil society organizations and the TEITI Board to collaboratively carry out a variety of outreach programs and activities linked with the Initiative. TEITI also has a civil society liaison officer committed to his job, and he works full-time. This officer is employed in a permanent role. The operations of the TEITI and EITI have been brought to the attention of a significant number of CSOs on both the national and international levels. An important part of this has been the promotion of awareness. A Memorandum of Understanding (MOU) has been in place since 2009, when Tanzania became a member of the EITI, to facilitate the increasing engagement of CSOs in the EITI process. This action is being taken to focus more on the mutually beneficial connection that exists between TEITI and CSOs in Tanzania.⁸¹

One of the civil society organizations working to improve transparency and accountability in the petroleum industry is *HakiRasilimali*. This organization is actively working to raise knowledge about petroleum operations among members of parliament and the general public. In Tanzania, it also serves as a chapter of the PWYP and offers representation for civil society organizations that serve on the TEITI Committee. In addition, the Natural Resource Governance Institute (NRGI) is responsible for publishing index reports detailing Mainland Tanzania's progress in transparency and accountability. Additionally, it offers suggestions to the government about releasing petroleum information. Policy Forum has been working with other CSOs to provide the government with advice on things about petroleum. This includes hosting and monitoring initiatives that provide information to the general public on oil and gas and encourage the government to disclose petroleum contracts. This would enable citizens to evaluate whether or not the

⁷⁹ E. Oshionebo, *Regulating Transnational Corporations in Domestic and International Regimes: An African Case Study*, University of Toronto, 2009, 99-141.

⁸⁰ <<https://eiti.org/eiti-board>> (last accessed 2 June 2023).

⁸¹ E. Mujih, 'Regulating Multinationals in Developing Countries: A Case Study of the Chad- Cameroon Oil and Pipeline Project' *African Journal of International and Comparative Law*, Vol. 16, No. 1, 2008.

government is meeting its obligations for human rights and whether or not such agreements are damaging.⁸²

Throughout the process of restructuring the governance of the petroleum sector, CSOs were quite vocal. Their efforts to fight for transparency resulted in the passage of three pieces of legislation: the Petroleum Act, the Oil and Gas Revenue Management Act, and the Tanzania Extractive Industries (Transparency and Accountability) Act. The regulations that have been passed illustrate the tremendous effect that CSOs can have in lobbying for transparency and accountability in the petroleum sector. Through the legislation, CSOs have been allowed to conduct a thorough investigation of the government's activities, educate the general public, and push for more improvements.⁸³ A further instance of the continuing lobbying of civil society for enhanced transparency and better governance improvements in the petroleum business is the response of CSOs members to the rising practice of the government to expedite legislative proceedings. In response to the rushed legislative process in 2015, a coalition of CSOs issued a statement in which they condemned the practice and voiced their unhappiness with the lack of public discussion. Therefore, CSOs can successfully contribute to achieving the benefits of transparency if they adopt a position that is appropriate and well-prepared. The public outreach and awareness techniques that are conducted by civil society and/or the government are very important to nurture an informed populace that is capable of demanding accountability. Although transparency means that information is easily accessible, the efficient use of that knowledge is strongly dependent on its utilization. It would not have been possible to achieve significant gains in Tanzania if CSOs had not consistently pressured the government to demonstrate transparency in its operations and participate in outreach projects to guarantee that information was disseminated to the general populace.

Petroleum Companies also play a key role in fostering transparency and accountability within the oil and gas business. Particularly notable is the contribution that the petroleum sector makes to Tanzania's economy, which is considered to be of great importance. Disclosing financial and

⁸² J. Poncian and H M Kigodi, 'Transparency Initiatives and Tanzania's Extractive Industry Governance', *Development Studies Research*, Volume 5, No. 1, 2018 (106-121) p. 115-117.

⁸³ *Ibid.*

operational data openly and transparently is one of the most important methods that petroleum companies can use to improve the level of transparency and accountability within the industry. The disclosure of beneficial owners, the reporting of payments to government agencies (including taxes, royalties, and other levies), and the dissemination of information on oil and gas activities are all included in this. Through disseminating this information to the general public, oil and gas companies have the opportunity to demonstrate their commitment to implementing transparency and accountability, therefore promoting trust among governmental institutions, CSOs, and other key stakeholders.⁸⁴ Through the implementation of comprehensive corporate governance procedures, petroleum companies have the opportunity to improve their level of openness and accountability. A few of these steps include the establishment of ethical standards and codes of conduct, as well as the installation of internal controls and processes to identify and prevent instances of corruption. In addition to fostering integrity and improving governance standards inside the company, this program also contributes to the integrity of the industry as a whole via its contributions.⁸⁵

In order to comply with the TEITA Regulations, petroleum companies are required to keep detailed paperwork about their activities. The records of payments, the information on beneficial ownership, the expenditures involved with production, exploration, and prospecting activities, and the specifics of the awarding or transfer of licenses are all included in this category. For each licence that they possess, businesses are required to provide documentation of their capital expenditures at each step of the investment process. Additionally, they must provide information on the amount of production and exports from enterprises in the extractive sector. Assume that a corporation is interested in maintaining the confidentiality of certain data inside the PSA framework. If such is the case, the corporation must apply to the TEITI Committee to seek that certain information included within its PSA be published.⁸⁶ Section 16 of the Finance Act of 2020 mandates that oil and gas companies must construct a register for beneficial owners and provide the Registrar of Companies with the necessary information. The Registrar of Companies will then create and manage the register at the Companies Registry.

⁸⁴ J. Poncian and H M Kigodi, (n 83).

⁸⁵ B. Lee B and K. Dupuy (n 21).

⁸⁶ R3 and 4 of Tanzania Extractive Industries (Transparency and Accountability) (General) Regulations, 2019.

Local Government Authorities (LGAs) do also have an important role to play in the petroleum sector, particularly with regard to the promotion of transparency and accountability in the administration of these important resources.⁸⁷ As a result of the widespread recognition that natural resources belong to the public, it is imperative that local authorities in regions of exploration and production work hard to maximise the advantages that are gained from the industry.⁸⁸ This is in accordance with their right to participate in the administration of national resources and to obtain compensation for the social, environmental, and health costs that are usually concentrated in close proximity to locations where exploration and prospecting are taking place. On the other hand, central governments make an effort to give solutions that are tailored to the requirements of the people that are live in these areas in order to reduce the likelihood of any possible social conflicts emanating.⁸⁹

2.1 Challenges Observed in the Institutional Setups on Facilitating Transparency and Accountability in Managing the Petroleum Sector

As discussed earlier, institutions play a vital role in the administration of the petroleum industry; nevertheless, there are challenges connected with carrying out the responsibilities assigned to the appropriate institutions to apply transparency and accountability in managing the sector. There are several obstacles, such as:

The parliament has a limited role in achieving transparency and accountability in the petroleum industry. The legislative branch's oversight of the petroleum sector is a complicated process that includes specialized committees, strategic investigations, independent evaluations, and public monitoring. These variables work together to guarantee that the administration of oil and gas resources is transparent and accountable, therefore improving governance and fostering sustainable development in this very important area. This additional legislative oversight function ensures that petroleum institutions operate transparently.⁹⁰ It is anticipated

⁸⁷ M. W. Ross 'Does Oil Hinder Democracy?' *World Politics, Volume. 3, No. 53, 2001* (325-361) p. 330-335.

⁸⁸ *Ibid*

⁸⁹ A. Hassan, C. Nakhle and T. Karam, 'Policy Recommendations on the Role of Local Authorities in the Petroleum sector' Common Space Initiative, 2019. Available at:

<file:///C:/Users/ThinkPad/Downloads/CSIOilgasEngweb.pdf> (last accessed 10 March 2023).

⁹⁰ I. Irawati. 'Effectiveness of Law of the Republic of Indonesia number 11 of 2020 on Job Creation Towards Oil and Gas Downstream Business Supervision Implementation in Indonesia' Proceedings of the 2nd

that the parliament would carry out several actions, such as examining and debating oil and gas contracts even before they are signed, conducting an investigation into any activity relating to the industry, requesting information on oil and gas, and holding important participants responsible.⁹¹

However, the Tanzanian parliament is legally obligated to oversee the petroleum sector on behalf of the Tanzanian people; yet, due to the parliament's structure, it cannot carry out this responsibility. The provisions that have previously been mentioned which only allows review of contracts entered after 2017, as well as the loyalty and composition of political parties, provide a considerable barrier to the capacity of the parliament to carry out its monitoring tasks. Given the circumstance that most affiliates put the interests of their political parties ahead of the interests of the general public, the majority of resolutions are not in the public interest. As a result of the fact that the Minister is selected from within the parliament, particularly by the party that is in power, the ability of the parliament to hold the Minister and other important actors accountable is diminished due to the dominance of the ruling party over a relatively small number of opposition members.⁹²

An outstanding instance of this is the event that occurred in 2014, in which two officials from TPDC were jailed for refusing to furnish the Public Account Committee (PAC) with 26 petroleum contracts. At that time, the Attorney General sided with them when the Minister in charge of petroleum, Hon. Sospeter Muhongo, who spoke on their behalf and urged that TPDC not publish those contracts since doing so would be a violation of the petroleum agreement, which would result in liability to the country. Despite the fact that they were aware that the presence of such contracts in the house was essential for the protection of the public interest, members of the parliament did not take any action to solve the issue.⁹³

International Conference on Law, Economic, Governance, ICOLEG 2021, 29-30 June 2021, Semarang, Indonesia. Available at: <<https://doi.org/10.4108/eai.29-6-2021.2312619>> (last accessed 25 August 2024).

⁹¹ Interview with MP (02 June 2023, Dodoma).

⁹² E. Mwanga, 'Transparency and Accountability in Tanzania's Oil and Gas Industry: Law and Practice' *Oil, Gas & Energy Quarterly*, Volume 64, No. 2, 2015 (337-352) p. 342-348.

⁹³ *Ibid.*

Furthermore, some functions overlap amongst institutions. This is shown by the responsibilities of the National Assembly and the Cabinet. Both of these institutions are tasked with assessing the government issues that are provided by the minister responsible for petroleum. This is because the minister is subject to the directions issued by the Cabinet. In contrast, the minister's performance of such tasks is subject to the examination of the parliament, while its choices are final. This nature of delegating a job to two separate entities has an impact, in one sense, on who will be responsible for ensuring that there is transparency and accountability in executing the minister's role in the utilization of the resources.⁹⁴ This is due to the fact that the same powers may be subjected to double standards, and the appropriate institution may not fulfil its role as necessary.⁹⁵ The overlap of functions across different institutions may result in conflicts of interest that compromise accountability. This underscores the need for an explicit definition of duties and responsibilities to avoid disputes and guarantee that all hydrocarbon institutions function within a framework that fosters transparency.⁹⁶

Additionally, since some important institutions are comprised of members who are part of the same circle of participants in the affairs that need to be checked for accountability, the dysfunctional structure of the relevant institutions presents difficulty. For example, the Cabinet is comprised of the same people who are members of the central government, and the heads of certain institutions, such as the PCCB, are appointed by the President, who is also a central government member. As a result, the capacity of these institutions to supervise and ensure that transparency and accountability are carried out in the sector by the central government is called into question.⁹⁷ This challenge is similar to Iran where accountability in the oil and gas sector is compounded by the involvement of the same individuals or institutions tasked with enforcing oversight and hence makes it hard to apply the principles since the same key players who are supposed to be accountable for the sector are the same persons who are supposed to initiate accountability.⁹⁸ In the Tanzanian petroleum

⁹⁴ Interview by author (02 June 2023, MP, National Assembly, Dodoma).

⁹⁵ B. Lee B and K. Dupuy (n 21).

⁹⁶ D. Fianka, J. Didi, and S. Ibrighademor, 'Examining Nepotism Among Participants in the Procurement Process: An Analysis of the Nigerian Oil and Gas Sector', *International Journal of Scientific Research*, 2024 (5-7), p. 5-6. Available at: <<https://doi.org/10.36106/ijrsr/3226902>> (last accessed 25 August 2024).

⁹⁷ Interview with John E, (8 March 2023, Policy Forum, Mikocheni, Dar es Salaam).

⁹⁸ L. Morrison, A. Alshamari, and G. Finau, 'Interrogating the Environmental Accountability of Foreign Oil and Gas Companies in Basra, Iraq: A Stakeholder Theory Perspective,' *Meditari Accountancy Research*,

industry, dual function engenders a substantial conflict of interest, hence compromising the integrity of accountability procedures and resulting in insufficient implementation of accountability norms.⁹⁹ The authors advocates for creating independent institutions in Tanzania to guarantee that accountability frameworks remain untainted by the interests of those in authority.¹⁰⁰ One further thing to consider is that some organizations, like the Oil and Gas Advisory Bureau, do not have a well specified composition.¹⁰¹ It is generally accepted that the Bureau is an independent organization, yet, the fact that its members are not publicly known raises questions regarding the Bureau's complete independence and its ability to ensure transparency and accountability in managing the oil and gas industry. As a result, the Bureau itself is not transparent.¹⁰²

A further challenge is observed in exercising the vested duties to be carried out by such institutions with a significant amount of discretionary authority. This creates obstacles that make it more difficult to ensure they implement transparency and accountability in the management of the industry. This is the case since most institutions operate on a discretionary basis rather than a requirements-based one. By way of illustration, the National Assembly has a discretionary role in examining the agreements that have been entered into involving natural resources, including unconscionable provisions. This means that the institution can either review the terms or ignore them.¹⁰³ In 2018, Hon. Job Ndugai, then Speaker of the National Assembly, established a committee to investigate the terms and conditions of oil and gas contracts. The special committee was established to submit its recommendations to parliament and to advise the government on necessary actions.¹⁰⁴ Unfortunately, addressing the inequitable terms remains at the discretion of the organ, a concern noted by several anonymous sources.¹⁰⁵ Similarly, the Minister is vested with the authority to exercise discretion over several domains, and he or

Volume 32, No. 1, 2023 (207-233) p. 210.

⁹⁹ C. L. Gabagambi and E. E. Longopa, 'Analysis of the Legal and Institutional Frameworks Regulating Oil and Gas Resources in Tanzania' *Journal of Law and Legal Reform, Volume 3, No. 3, 2022.*

¹⁰⁰ Ibid.

¹⁰¹ B. Lee B and K. Dupuy (n 21).

¹⁰² Interview with MP (02 June 2023, Dodoma).

¹⁰³ Sections 4 (1) and 5 (2) (3) of the Natural Wealth and Resources Contracts (Review and Re- Negotiation of Unconscionable Terms) Act, No. 6 of 2017.

¹⁰⁴ The Citizen, "Bunge Moves to Investigate Oil, Gas Agreements with Investors" (02 January 2018), available at: <<https://www.thecitizen.co.tz/tanzania/news/national/bunge-moves-to-investigate-oil-gas-agreements-with-investors-2618584>> (last accessed 23 November 2024).

¹⁰⁵ Interview with MP (02 June 2023, MP Dodoma).

she, in conjunction with the President, is responsible for appointing persons to run oil and gas institutions.

Lack of accountability from the findings and recommendations in the reports of some institutions is also a challenge in ensuring the application of the principles in the sector. Most reports involving misuse of money and associated concerns in different sectors have been without legal effects, which has been a challenge for a long time, not just in the petroleum sector but also in other sectors of the nation. For example, the reports compiled by the CAG have been presented to various authorities, such as the President and the National Assembly. Despite this, there is no legally enforceable enforcement mechanism in place to hold accountable the individuals suspected of being responsible for the anomalies.¹⁰⁶ This is the case regardless of the severity of the findings. This makes reporting meaningless because it only ensures one component of transparency, and the component of accountability is not considered, which makes the process an afterthought. This also applies to the Tanzania Extractive Industries Transparency Initiative (TEITI) reports that are published per section 10(2) of the TEITA Act, there are no mechanisms to enforce accountability from its findings and recommendations.¹⁰⁷

Another challenge is the tendency to treat some institutions in the sector as third parties when it comes to accessing information. According to the majority of the laws regulating the oil and gas business, institutions are considered third parties when it comes to obtaining information in this sector. For example, according to the Petroleum Act, the information that license holders provide to PURA is considered secret and is only available to persons who have been authorized to see it. In such case, if any other party, including the institutions being addressed in this article, desires access to such information, then the authorization of the minister responsible for petroleum must be acquired in advance, together with an agreement between PURA and the license holder.¹⁰⁸ The management of the oil and gas industry is impacted when institutions such as the National Assembly, NAOT, and PCCB are treated as third parties when it comes to access to industry information. This is especially true regarding the assurance of transparency and accountability.¹⁰⁹ This is because the

¹⁰⁶ Interview with MP (02 June 2023 Dodoma).

¹⁰⁷ Tanzania Extractive Industries (Transparency and Accountability) Act, Cap. 447 [R.E 2019].

¹⁰⁸ Sec 92 (1) of the Petroleum Act (n 17).

¹⁰⁹ Interview with Baravuga R, (7 March 2023, TPDC, Azikiwe, Dar es Salaam).

aforementioned institutions can only function, provide advice, and take action regarding the actions and affairs that are carried out in the sector when they have sufficient information. Given these circumstances, the institutions are unable to efficiently ensure the application of transparency and accountability in the oil and gas industry.

Another challenge is that oil and gas institutions do not seem to have sufficient autonomy to enable them to ensure the application of transparency and accountability. The fact that the President of Tanzania appoints the chairman of the Tanzania Extractive Industries (Transparency and Accountability) Committee and that the Minister responsible for petroleum appoints the members of the said Committee, as well as the fact that the directors of PURA, TPDC, EWURA, PCCB, NAOT, the Cabinet, and the Minister for petroleum are also president appointees, it raises concerns about the independence of the aforementioned institutions in terms of implementing transparency and accountability. Due to the fact that they have a numerical advantage, this structure raises concerns over the possibility of government members having a dominant position in voting procedures. As a consequence of this, the guarantee of transparency and accountability becomes dubious when certain circumstances are present. During a presentation on TEITI, the chairman of the Tanzania Extractive Industries (Transparency and Accountability) Committee brought up the question of the committee's independence. It was questioned by the Chairman of the tripartite composition of the committee, which included representatives from CSOs, the government, and extractive companies, would enable the committee to maintain its independence. Concerns like this are brought about by the fact that the government appoints the Chairman.¹¹⁰

TEITI and the Tanzanian parliament are both impacted by the unfettered autonomous powers of the executive branch since executive functions and responsibilities influence members' actions.¹¹¹ An arrangement of this kind, with regard to the management and leadership of these institutions, raises questions regarding the independence of these institutions, which is necessary for putting into reality the features of accountability and transparency in the oil and gas industry.¹¹² The president's appointees

¹¹⁰ L.S.L. Utouh, 'Transparency and Accountability Mechanism Inherent in Extractive Industries' paper presented at NGRI Virtual Training on 19th August, 2021.

¹¹¹ Lee B and Dupuy K (n 21).

have a difficult challenge when it comes to demonstrating devotion to the authority that appointed them. The same is true for the members of parliament, the vast majority of whom are members of the party now in power, in which the president acts as the chairperson.¹¹³ A good illustration of this is seen in the case *Attorney General & Others v. Bob Chacha Wangwe*,¹¹⁴ whereby the petitioner stated that section 7(1) of the National Elections Act, together with other sections, violates article 21 of the Constitution of Tanzania, which guaranteed, among other things, the right to free and fair elections. The petitioner also alleged that other provisions violated the Constitution of Tanzania. The petitioner contended that the returning officers, who are appointed by the President, have considerable hurdles when it comes to working independently and impartially during election supervision periods. The accusations made by the petitioner were supported by the High Court of Tanzania, which also ruled that section 7(1) of the National Elections Act was in violation of the constitution.

The difficulties involving the independence of presidents appointees and members of the parliament from the ruling party have not been addressed, despite the fact that the Court of Appeal finally reversed the conclusion that was presented earlier.¹¹⁵ The majority of the time, presidential appointees are chosen on the basis of their political affiliation and intellectual congruence with the president, which may compromise their independence.¹¹⁶ There is empirical evidence to show that appointees usually prioritize the preferences of the president above their own professional judgment, which leads to a reduction in bureaucratic performance in comparison to career civil servants who may possess more unbiased talents.¹¹⁷ Numerous studies have shown that the implementation of institutional frameworks that include autonomous regulatory agencies has the potential to significantly progress both transparency and accountability in the management of resources.¹¹⁸ On the other hand, when the executive branch has complete authority over

¹¹³ E. Mwanga, 'Who votes in Tanzania? An Overview of the Law and Practices Relating to Parliamentary Elections' *African Human Rights Law Journal*, Volume 22, 2022 (139-160) p. 140.

¹¹⁴ *Attorney General & Others vs Bob Chacha Wangwe*, Civil Appeal No. 138 of 2019 (TZCA).

¹¹⁵ E. Mwanga (n 114) p. 143-144.

¹¹⁶ G. E. Hollibaugh, 'Naive Cronyism and Neutral Competence: Patronage, Performance, and Policy Agreement in Executive Appointments' *Journal of Public Administration Research and Theory*, Volume 25, No. 2, 2014 (341-372).

¹¹⁷ *Ibid.*

¹¹⁸ C. L. Gabagambi and E. E. Longopa (n 100).

these institutions, it usually leads to a lack of coordination and synchronization in the processes that regulate the institutions.¹¹⁹ As a result of the executive branch's potential to prioritize private or political goals above the welfare of the general public, the absence of autonomous monitoring mechanisms increases the likelihood of corrupt practices and incompetence.¹²⁰

Another hurdle is the lack of a clear, statutorily backed role that civil society organizations (CSOs) play in promoting transparency and accountability. CSOs in Tanzania are important players in putting TEITI into effect. Nevertheless, the participation of CSOs in ensuring transparency and accountability is met with several obstacles. In contrast to the other parties engaged in the TEITI process, such as the government and petroleum companies, whose responsibilities seem well-defined and organized in the laws, CSOs' roles, and duties remain unclear. Multiple efforts have been put into place by TEITI, including the coordination of a variety of activities and the holding of discussions with civil society organizations in various parts of the country to clarify the responsibilities that CSOs play within TEITI.¹²¹ The absence of well-defined duties for Civil Society Organisations (CSOs) may result in inadequate oversight of the state and companies within the oil and gas industry.

In Nigeria for example, CSOs have traditionally served as watchdogs, using frameworks such as the Extractive Industries Transparency Initiative (EITI) to scrutinize corporate practices and insist on accountability from the government and oil and gas corporations. Nonetheless, without defined goals or delineated roles, these organizations may have difficulties in mobilization, leading to a diminished ability to affect policy or corporate conduct.¹²² The findings of Debrah and Graham reflect a similar issue in Tanzania, indicating that CSOs in Ghana encounter difficulties stemming from inadequate capacity and limited access to information, which obstruct their engagement with

¹¹⁹ K. O. Bishoge and others 'A Literature Survey of Community Participation in the Natural Gas Sector in Developing Countries' *International Journal of Energy Sector Management*, Volume 13, No. 4, 2019 (765-786).

¹²⁰ S. Saidu and H. A. Sadiq 'Production Sharing or Joint Venturing: What is the Optimum Petroleum Contractual Arrangement for the Exploitation of Nigeria Oil and Gas?' *Journal of Business and Management Sciences*, Volume 2, No. 2, 2014 (35-44).

¹²¹ Interview with Shao L, (15 March 2023, HakiRasilimali, Msasani, Dar es Salaam).

¹²² A. Osawe and O. Uwa, 'Natural Resource Governance and Conflicts in Nigeria', *British Journal of Multidisciplinary and Advanced Studies*, Volume 4, No. 1, 2023 (17-35) p. 17-23.

the government and oil companies.¹²³ The absence of clearly defined CSO duties may lead to low engagement with local populations, which is essential for equitable oil and gas resource advantages.¹²⁴ CSOs are crucial in promoting transparency and accountability and ensuring that local perspectives are included in making decisions. Nevertheless, when their functions are unclear, they may fail to effectively represent community interests, resulting in a disjunction between resource management and local needs.¹²⁵ Gyampo points out the advancements achieved in the transparent management of oil earnings within the Ghanaian petroleum industry, particularly with the involvement of CSOs. The author contends that greater outcomes may be attained by proactive engagement and well-defined frameworks for CSOs participation.¹²⁶

Furthermore, the status of the Oil and Gas Advisory Bureau is unclear. The Oil and Gas Advisory Bureau sprang into being due to the Petroleum Act of 2015. The President's Office is home to this Bureau, which plays a crucial function and strategically positions itself inside the office. Despite this, the Act does not provide extensive information on the exact authorities, structure, eligibility requirements, or activities of the Bureau. In this modern period, characterized by an emphasis on openness and accountability, which is generally recognized as vital for successful oil and gas management, the formation of the Bureau that lacks clear roles is a cause of concern at the present time.¹²⁷ Throughout its existence, the Bureau has been operating under the supervision of the President's office. On the other hand, the actual condition of the situation is unclear, which presents substantial hurdles to promoting openness and accountability.

Also, oil and gas industry institutions do not coordinate their efforts. The lack of cooperation between TEITI and PURA is a key impediment that must be overcome to fulfil the requirements of transparency and accountability. It seems that TEITI, the principal organ responsible for guaranteeing accountability and openness, has taken over the obligations

¹²³ E. Debrah and E. Graham, 'Preventing the Oil Curse Situation in Ghana: The Role of Civil Society Organisations', *Insight on Africa, Volume 7, No. 1, 2015* (21-41), p. 21-25.

¹²⁴ L. L. Kerekkum and K. K. Nwachukwu, 'The Role of Civil Society Organisations in the Public Financial Management Process of Sub-nationals in Nigeria', *International Affairs and Global Strategy, Volume 96, 2022* (26-38) p. 28-30.

¹²⁵ *Ibid.*

¹²⁶ R. Gyampo, 'Transparency and Accountability in the Management of Oil Revenues in Ghana', *Africa Spectrum, Volume 51, No. 2, 2016* (79-91) p. 80-85.

¹²⁷ Interview with Olan'g S, (7 March 2023, NREGI, Mikochehi, Dar es Salaam).

initially earmarked for PURA. The absence of any statutory mandate for TEITI to be supplied by PURA with information or reports about operations is a clear indication of the lack of coordination. Tanzania's ability to conduct its operations transparently and responsibly has been hindered by insufficient cooperation between government agencies and other players in the petroleum sector. The Acts necessitate adequate coordination among the authorities in the process of carrying out their obligations. A significant amount of collaboration across different government institutions in decision-making and authorization capabilities will be required for the successful implementation of transparency and accountability.¹²⁸

Another challenge is the executive's excessive powers over the petroleum industry's management. It is important to note that the President and the Minister in charge of petroleum resources have a large amount of discretionary control over several different aspects of petroleum administration. The final decisions on the distribution of licenses and agreements, as well as the eventual appointment of people to take on leadership posts within PURA and the MSG, are all included in this power. The executive branch's tendency to amass excessive control over oil and gas resources often results in a lack of checks and balances, which are essential for ensuring that the government is open and honest. This challenge is acknowledged by Abgonma, who uses the Nigerian oil and gas sector as an example and states that due to discretionary powers, structural weaknesses have been uncovered that allow individuals to take advantage of administrative loopholes for personal profit, so endangering the economic well-being of the country. This consolidation of power may make it possible for individuals to steal money, as was seen in the Nigerian oil and gas industry.¹²⁹

3.0 Conclusion

It is pertinent that these institutions, as elaborated above, play a significant role in managing the petroleum sector by ensuring that the industry is run in a way that promotes transparency and accountability;

¹²⁸ L. Chuwa and J. P. Mrema, 'Strengths, Weaknesses, and Opportunities of Local Content Policy, Legal, and Institutional Framework in the Upstream Natural Gas Sector in Tanzania', *Resources Policy*, Volume 81, 2023.

¹²⁹ E. B. Abgonma and others, 'Misappropriation in the Nigerian Petroleum Sector: Strategies for the Accountant General of the Federation' April-May 2024, p. 15-22. Available at: <https://doi.org/10.55529/jsrth.43.15.22> (Last accessed 08 June 2024).

this is witnessed by the role played by the institutions in access to oil and gas information and how they facilitate for critical players to be responsible for what is going on in the sector. However, such institutions still face various challenges, including limited parliamentary oversight on the sector, some institutions being sidelined in accessing important information, overlapping roles between them regarding the facilitation of transparency and accountability, lack of autonomy, and excessive control from the executive. Such challenges hinder the said institutions from promoting transparency and accountability for the sector's development in furthering the economic growth of the citizens of Tanzania. Therefore, the categorized challenges must be addressed to ensure the principles are well applied for good governance in the petroleum sector; otherwise, it will remain an afterthought to realize the same.

4.0 Recommendations

From the analysis of the institutional setups that facilitate transparency and accountability in the sector, it is clear that from the existing challenges, there is something to be done as a way out of solving them. Therefore, the author recommends the following to be done in such respect:

Firstly, discretionary powers granted to some institutions must be reduced so that the relevant institutions can be scrutinized to ensure transparency and accountability. As elaborated above, some institutions like the minister and the National Assembly are vested with various roles but enjoy an avenue of effecting such roles discretionally. Performance of such roles under discretion endangers the sector's best interests to the public at large because an institution may opt not to discharge specific roles while the same is of paramount importance for the betterment of the sector. So, the laws responsible for the institution's frameworks need to accommodate a way that will ensure the said institutions are not performing unmonitored discretion; for circumstances where discretion is inevitable, the laws must set specific criteria that justify the exercise of the said discretion compared to the existing way.

Secondly, the frameworks of the institutions need to be set in a way that will ensure that, in exercising transparency and accountability, the institutions can act independently and with autonomy. In doing this, there has to be an independent authority with the power to appoint or suggest

the names of individuals who can be the heads of the institutions vested with the power to oversee oil and gas management. In return, the sector will have proper management with the practical realization of transparency and accountability as critical areas in the economic proliferation of any industry.

Thirdly, the Petroleum Act of 2015 provisions establishing the Oil and Gas Advisory Bureau need to be amended to provide for its composition. This will secure the Bureau's transparency and legitimacy in executing its advisory role in the sector. Failure to do this will continue to create uncertainties regarding its setup and its exercise of roles.

Fourthly, to ensure transparency and accountability, changes must be made to the laws setting up the framework for petroleum institutions to remove the conditions that limit disclosure of information to some important institutions. As it is now that the key institutions are regarded as third parties when it comes to access to information, hence hindering their function, it is therefore paramount that these institutions have access to the relevant information in the sector. Such access will, among other things, make the functioning of these institutions effective. Leaving these institutions without direct access to the relevant information in the sector makes them act like a toothless dog in the bush. Also, granting such access will create the authenticity of such institutions' reports, actions, and recommendations.

Fifthly, to avoid the problem of functions overlap, the frameworks for the said institutions must be changed to assign specific roles to be performed in every institution so that it can be easy to ensure transparency and accountability. It is easy to conduct performance audits for such institutions when it is known which institution performs what role as far as transparency and accountability are concerned. So, separation or straightforward setup of the roles of the institutions is necessary by the relevant legal framework concerning managing the sector. This enables solving the problem of contradictions regarding the performed roles, as seen above regarding the roles of the Cabinet and the National Assembly. Sixth, the legal frameworks setting up the petroleum institutions need to be changed to introduce accountability of responsible key players from the findings and recommendations of the reports done by the said institutions and organs. These reports include the reports from TEITI and the NAOT as submitted by the CAG. This will improve and enhance

accountability among crucial petroleum industry players. Conversely, such players will deem it a mere game with no action taken upon the conduct of undesirable activity in the sector uncovered by the reports.

Seventh, to facilitate transparency and accountability in the petroleum sector, the laws must be amended to grant supervisory powers to the parliament over the sector. Members of the parliament are representatives of the general population, and the law needs to allow them to make strong judgments on essential concerns for the country without being swayed by party connections. Granting powers to review already signed contracts is not enough to ensure that the public benefits from the sector through transparency and accountability principles. The parliament's structure has to be modified regarding how it makes decisions about significant subjects. Contracts from the industry need to be presented and reviewed even before they are signed, important decisions on the natural resources particularly oil and gas needs to be tabled, discussed and passed by the parliament. Additionally, TEITI reports, just like the one by CAG, need to be tabled for discussion, and accountability needs to be initiated per the findings and recommendations.¹³⁰

Eighth, there have to be amendments to the laws that assign roles to institutions so that civil society organizations have specific roles in facilitating transparency and accountability in the sector. CSOs' part in the transformation of the sector cannot be ignored; as observed above, there are a number of tasks that have been performed that facilitated the new enactments in the sector. CSOs have commendable efforts in the current state of transparency and accountability in the petroleum sector, given the fact that they link the government and the general public. Having provisions of law that mandate CSOs in their role will create an obligation, and their efforts will no longer be ignored. As of now, most efforts by the CSOs tend to be ignored even if they can impact accountability in the sector; this is so because there is no legal duty assigned to them, and hence, its findings and recommendations seems to matter less.¹³¹

¹³⁰ Interview with Ketagory E (22 June 2023, TEITI, Madini, Dodoma).

¹³¹ Interview with Rwegellera S, interview (7 March 2023, NREGI, Mikocheni, Dar es Salaam).