ACKNOWLEDGMENTS

This report is the final deliverable of a capstone project realized at Columbia University’s School of International and Public Affairs. The capstone team is comprised of 13 graduate students who bring their diverse professional and educational backgrounds to the project.

The Tanzania capstone team would like to acknowledge the individuals and organizations that provided invaluable assistance in the creation of this report:

Professor Jenik Radon, the capstone advisor, for his wisdom and mentorship.

The Prevention and Combating of Corruption Bureau, Government of Tanzania, led by Director General Edward Hoseah, for graciously hosting the capstone team, arranging meetings with Government Ministries, sharing their valuable insights, and arranging our work in country.

Columbia University’s School of International and Public Affairs and Columbia Law School for providing financial support for this project.

The over 50 interviewees from government organizations, civil society, UN agencies, donor community, oil and gas industry, academia and others who generously offered their time to meet with us in Tanzania and elsewhere, for their invaluable guidance.

The authors of the other reports in the Columbia University, School of International and Public Affairs’ Natural Resources: Potential and Challenges series:

Oil: Uganda’s Opportunity for Prosperity
Mozambique: Mobilizing Extractive Resources for Development
Colombia: Extractives for Prosperity.

The views expressed in this report are solely those of the authors, and not any affiliated institution.

Cover design and photography by Jefferson Mok © 2014
Wildlife photography by Waseem Adel Mardini © 2014
# Contents

Acknowledgments .................................................................................................................. 2  
List of Tables and Figures ........................................................................................................ 5  
Abbreviations .......................................................................................................................... 6  
Executive Summary .................................................................................................................. 8
  - Client ................................................................................................................................. 8  
  - Purpose ............................................................................................................................... 8  
  - Cross-Cutting Principles ................................................................................................. 9  
  - Roadmap ........................................................................................................................... 10  
Summary of Recommendations ............................................................................................ 13  
Project Parameters .................................................................................................................. 25
  - Purpose ............................................................................................................................. 25  
  - Context and Rationale ...................................................................................................... 26  
  - Methodology .................................................................................................................... 28  
Introduction ............................................................................................................................ 29
  - Cross-Cutting Principle 1: Strengthening the Legal Framework ........................................ 34  
  - Cross-Cutting Principle 2: Building Stronger Institutions ............................................... 35  
  - Cross-Cutting Principle 3: Improving Monitoring and Oversight of Government Ministries and Companies ........................................................................................................... 37  
  - Cross-Cutting Principle 4: Increasing Transparency and Public Accountability ............... 38  
**LAW AND GOVERNANCE** ................................................................................................ 40
  - Context ............................................................................................................................. 40
  - The Current Legal Framework ......................................................................................... 41  
  - Recent Developments ...................................................................................................... 43  
  - Recommendations .......................................................................................................... 45
  - On Strengthening and Simplifying the Legal Framework .................................................. 45  
  - On Building Institutional Capacity for Effective Negotiations ....................................... 49  
  - On Improving Monitoring and Enforcement Mechanisms ............................................. 56  
  - On Increasing Public Accountability ............................................................................... 57  
**INVESTMENT LAW AND DISPUTE RESOLUTION** .......................................................... 59
  - Context ............................................................................................................................. 59  
  - Recommendations .......................................................................................................... 61  
**ECONOMY** ........................................................................................................................ 67
  - Context ............................................................................................................................. 67  
  - The Dutch Disease .......................................................................................................... 68  
  - Economic Roadmap ......................................................................................................... 70  
  - Economy 1: Foreign Direct Investment ........................................................................... 72
LIST OF TABLES AND FIGURES

Table 1  Tanzania’s Offshore Gas Areas...............................................................27
Table 2  Summary of Key Macroeconomic Indicators in Tanzania.........................66
Table 3  Summary of Tanzania’s Rankings on Various Business-Related Indices....78
Table 4  Comparison of Taxes, Incentives and Rules Applicable to Extractive
        Industries Across Tanzania, Kenya and Uganda........................................87
Table 5  Profits/Losses, Corporation Tax Paid and Accumulated Tax Losses in
        respect of Seven Major Mineral Mines in Tanzania for FY 2010 and FY
        2011........................................................................................................91

Figure 1  Map of Tanzania’s Offshore Natural Gas Blocks..................................27
Figure 2  National Anti-Corruption Strategy and Action Plan: Coordination
        Structure...................................................................................................33
Figure 3  Patchwork of Laws Relating to Extractive Resource Governance........42
Figure 4  Holistic Legal Framework...................................................................47
Figure 5  Tanzania’s GPD Growth Compared to that of East Africa and Africa.....67
Figure 6  Relative Shares of Oil Revenue............................................................69
Figure 7  Net FDI Inflows Over Time for Tanzania, Kenya and Uganda..............70
Figure 8  Proposed Organizational Structure for Tanzania’s Gas Governance....104
Figure 9  Government Organizational Structure for Environmental Management..124
Figure 10 EIA Review Process.......................................................... ..................126
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACS</td>
<td>Anti-Corruption Squad</td>
</tr>
<tr>
<td>APRM</td>
<td>African Peer Review Mechanism</td>
</tr>
<tr>
<td>APT</td>
<td>Additional Profits Tax</td>
</tr>
<tr>
<td>BoT</td>
<td>Bank of Tanzania</td>
</tr>
<tr>
<td>BOT</td>
<td>Build, Operate, Transfer</td>
</tr>
<tr>
<td>C&amp;AG</td>
<td>Controller &amp; Auditor General</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CHRAGG</td>
<td>Commission for Human Rights and Good Governance</td>
</tr>
<tr>
<td>CMG</td>
<td>China Merchants Group</td>
</tr>
<tr>
<td>COST</td>
<td>Construction Cost Transparency Initiative</td>
</tr>
<tr>
<td>CPJ</td>
<td>Committee to Protect Journalists</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
</tr>
<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
</tr>
<tr>
<td>DSE</td>
<td>Dar es Salaam Stock Exchange</td>
</tr>
<tr>
<td>EAC</td>
<td>East African Community</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EITI</td>
<td>Extractive Industries Transparency Initiative</td>
</tr>
<tr>
<td>EMA</td>
<td>Environmental Management Act</td>
</tr>
<tr>
<td>ESIA</td>
<td>Environmental and Social Impact Assessment</td>
</tr>
<tr>
<td>EWURA</td>
<td>Energy and Water Utilities Regulatory Authority</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FOI</td>
<td>Freedom of information</td>
</tr>
<tr>
<td>GAAP</td>
<td>Generally Accepted Accounting Principles</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>HDI</td>
<td>Human Development Index</td>
</tr>
<tr>
<td>HIPC</td>
<td>Heavily Indebted Poor Countries</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICMM</td>
<td>International Council on Mining and Metals</td>
</tr>
<tr>
<td>ICT</td>
<td>Information, communication and technology</td>
</tr>
<tr>
<td>JV</td>
<td>Joint Venture</td>
</tr>
<tr>
<td>Kshs</td>
<td>Kenyan Shillings</td>
</tr>
<tr>
<td>LDC</td>
<td>Least Developed Country</td>
</tr>
<tr>
<td>LHRC</td>
<td>Legal and Human Rights Centre</td>
</tr>
<tr>
<td>LNG</td>
<td>Liquefied Natural Gas</td>
</tr>
<tr>
<td>MCST</td>
<td>Ministry of Communication, Science and Technology</td>
</tr>
<tr>
<td>MEM</td>
<td>Ministry of Energy and Minerals</td>
</tr>
<tr>
<td>Model PSA</td>
<td>Model Production Sharing Agreement 2013</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of understanding</td>
</tr>
<tr>
<td>MOWI</td>
<td>Ministry of Water and Irrigation</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
</tr>
<tr>
<td>---------</td>
<td>-----------</td>
</tr>
<tr>
<td>NACSAP</td>
<td>National Anti-Corruption Strategy and Action Plan</td>
</tr>
<tr>
<td>NAO</td>
<td>National Audit Office</td>
</tr>
<tr>
<td>NEMC</td>
<td>National Environmental Management Council</td>
</tr>
<tr>
<td>NGIS</td>
<td>National Gas Information System</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Government Organization</td>
</tr>
<tr>
<td>NMEC</td>
<td>National Environmental Management Council</td>
</tr>
<tr>
<td>NOC</td>
<td>National Oil Company</td>
</tr>
<tr>
<td>OGP</td>
<td>Open Government Partnership</td>
</tr>
<tr>
<td>Petroleum Act</td>
<td>Petroleum (Exploration &amp; Production) Act 1980</td>
</tr>
<tr>
<td>PCA</td>
<td>Prevention of Corruption Act</td>
</tr>
<tr>
<td>PCB</td>
<td>Prevention of Corruption Bureau</td>
</tr>
<tr>
<td>PCCA</td>
<td>Prevention and Combating of Corruption Act</td>
</tr>
<tr>
<td>PCCB</td>
<td>Prevention and Combating of Corruption Bureau</td>
</tr>
<tr>
<td>PCO</td>
<td>Prevention of Corruption Ordinance</td>
</tr>
<tr>
<td>PPP</td>
<td>Public Private Partnership</td>
</tr>
<tr>
<td>PSA</td>
<td>Production Sharing Agreement</td>
</tr>
<tr>
<td>PSLE</td>
<td>Primary School Leaving Exam</td>
</tr>
<tr>
<td>RGI</td>
<td>Revenue Governance Index</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
</tr>
<tr>
<td>SEA</td>
<td>Strategic Environmental Assessment</td>
</tr>
<tr>
<td>SEZ</td>
<td>Special Economic Zone</td>
</tr>
<tr>
<td>SMEs</td>
<td>Small- and medium-sized enterprises</td>
</tr>
<tr>
<td>TANESCO</td>
<td>Tanzania Electric Supply Company</td>
</tr>
<tr>
<td>TAZARA</td>
<td>Tanzania Zambia Railway</td>
</tr>
<tr>
<td>TEITI</td>
<td>Tanzania Extractive Industries Transparency Initiative</td>
</tr>
<tr>
<td>TIC</td>
<td>Tanzania Investment Centre</td>
</tr>
<tr>
<td>TMAA</td>
<td>Tanzania Mineral Audit Agency</td>
</tr>
<tr>
<td>TMF</td>
<td>Tanzania Media Fund</td>
</tr>
<tr>
<td>TNRCEP</td>
<td>Tanzania Natural Resource Charter Expert Panel</td>
</tr>
<tr>
<td>TPDC</td>
<td>Tanzania Petroleum Development Corporation</td>
</tr>
<tr>
<td>TRA</td>
<td>Tanzanian Revenue Authority</td>
</tr>
<tr>
<td>TRC</td>
<td>Tanzania Railways Corporation</td>
</tr>
<tr>
<td>Tsh</td>
<td>Tanzanian Shillings</td>
</tr>
<tr>
<td>UNCAC</td>
<td>UN Convention Against Corruption</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UN ECOSOC</td>
<td>United Nations Economic and Social Council</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
<tr>
<td>VETA</td>
<td>Vocational Education and Training Authority</td>
</tr>
<tr>
<td>WGI</td>
<td>World Governance Indicators</td>
</tr>
<tr>
<td>ZIPA</td>
<td>Zanzibar Investment Promotion Authority</td>
</tr>
</tbody>
</table>
EXECUTIVE SUMMARY

CLIENT

The client for this capstone project is the Prevention and Combating of Corruption Bureau (PCCB). The PCCB is an independent, statutory body created under the Prevention and Combating of Corruption Act 2007 to:

(i) prevent corruption;
(ii) raise public awareness of corruption; and
(iii) investigate and prosecute those guilty of corrupt practices.

As natural gas and oil developments advance in Tanzania, the PCCB is becoming increasingly engaged in addressing corruption-related issues in the extractives industry.

PURPOSE

This report explores how Tanzania can prevent the ‘resource curse.’ The resource curse is a paradoxical phenomenon characterized by resource-rich countries experiencing slower economic growth than resource-poor countries, as well as suffering from weaker governance and higher social and environmental costs, including more unstable and conflict-ridden societies.

The purpose of this report is to make recommendations to relevant stakeholders on how Tanzania can maximize the benefits from exploitation of its hydrocarbon resources, while minimizing the costs borne by communities and their environment. We are providing recommendations to the government, companies, international donors, civil society and media organizations on what measures they can take to serve this overall purpose.

The report provides a review of the actual and potential impacts of Tanzania’s growing hydrocarbon industry on the country’s economy, society, and natural environment. Our focus is on natural gas, with some reference to the emerging oil industry. Natural gas is predicted to rapidly become the primary contributor to Tanzania’s government revenues and chief source of export earnings. The report tackles natural gas and oil development from five angles:

(i) the legal framework governing oil and gas;
(ii) the natural resource economy;
(iii) the environmental impacts of extractive activities;
(iv) the social and human rights impacts of extractive activities; and
(v) the media landscape.

Each of these sections in the report looks at the resource curse through the lens of corruption, considering corruption as both a product and a driver of the resource curse.

CROSS-CUTTING PRINCIPLES

The report is framed by four cross-cutting principles, which are recurring themes in each section:

(i) strengthening the legal framework;
(ii) building stronger institutions;
(iii) improving monitoring and enforcement (internal oversight mechanisms); and
(iv) increasing transparency and public accountability (external oversight mechanisms).
The four principles are intertwined and interlocking. For example, effective institutions are required to implement the law, and a stronger legal framework is required to limit discretion and reduce the scope for corruption in governmental institutions. Our recommendations for addressing the resource curse, specifically for tackling corruption, fall within these four overarching categories. We support our recommendations with evidence from a variety of sources, including economic, legal, social, environmental and media perspectives, and we provide a framework for understanding the complex relationships between stakeholders in Tanzania’s natural resource economy.

ROADMAP

CORRUPTION

Countries that depend on natural resource wealth for their government revenues are among the most economically, socially, and politically troubled the world. Many countries have experienced the resource curse, including the Democratic Republic of the Congo, Equatorial Guinea and Angola. These case studies demonstrate the nexus between a prevalence of corruption and resource riches. Countries with weak legal and institutional frameworks cannot ensure sufficient monitoring and oversight, which breeds corruption. In turn, corruption and financial mismanagement lowers economic performance. The government of Tanzania frames corruption as not only an economic concern, but as an obstacle to democracy, good governance, and human rights, as well as a threat to peace and security.

LAW

Tanzania must tighten its existing and proposed legislative frameworks governing oil and gas development so as to provide for greater operational efficiency and reduced potential for corruption. Comprehensive and coherent policy and legislation is required across the sector, governing upstream, midstream and downstream natural gas activities. In addition, it is necessary to curb instances of excessive discretion being vested in certain individual positions by governing statutes. It is important that Tanzania strengthens both internal and external monitoring and enforcement mechanisms, as well as builds capacity for improved PSA negotiation and ensures non-negotiable statutory protection of rights. Principles of transparency and accountability must guide development and reform of Tanzania’s gas sector in order to contribute to the avoidance of the resource curse.
**ECONOMY**

Tanzania’s economy has grown steadily over the last several years, and is predicted to expand further as natural gas production gets underway. In order to ensure that natural resource revenues contribute tangibly and positively to Tanzania’s economy, effective mechanisms for revenue collection and management must be put in place. This would include the establishment of a natural gas revenue fund to aid in smoothing government spending, reducing corruption and preventing domestic currency appreciation and other negative impacts of the Dutch Disease. It is also important that Tanzania updates its foreign investment laws and improves its attractiveness as an investment location for non-extractive industry sectors so that increased diversification of the economy can be achieved. Priority areas for public investment are also outlined in this section, and include development of transportation infrastructure and expansion of rural electrification, as well as investment in education. Finally, suggestions as to how Tanzania may maximize the positive spillover effects associated with natural gas development are provided. These recommendations focus primarily on the need to develop domestic business and industry, and diversify Tanzania’s economy in order to reduce its reliance on the extractive industries and volatile world commodity prices.

**ENVIRONMENT**

The exploration and development of natural gas in Tanzania poses serious health and environmental risks. Water pollution, toxic emissions, and climate change are important concerns to address as natural gas development progresses. Tanzania’s statutory framework provides a strong foundation for environmental law. Similarly, the country’s superior courts are progressive in granting standing for environmental claims. Despite this strong foundation, however, implementation and enforcement of environmental laws break down in practice. Officials responsible for monitoring and enforcing environmental regulations lack the funding and capacity to fulfill their mandate. The fines for environmental violations are too low to deter noncompliance and budget allocations for monitoring activities are insufficient. In addition, the Environmental Impact Assessments required from extractives companies are weak. While those charged with protecting the environment in Tanzania—from its government officials to civil society—care deeply about protecting the environment, political pressure and budget restrictions prevent them from fully achieving the goals of environmental protection. Tanzania’s natural environment is a great asset; protecting the environment from extractive activities should be a priority.
SOCIAL

Local communities in the vicinity of extractive sites (and the requisite infrastructure for extractive operations), tend to be the most severely affected by oil and gas development. In Tanzania’s mining sector, forcible evictions of customary landowners without adequate compensation have been rife. Consequently, land rights and the process by which evictions are carried out must be reviewed as a matter of urgency, so that similar situations do not arise in natural gas development operations in Tanzania. A failure to address community grievances can escalate into violence. Therefore, early engagement and consultation with communities (who are both directly and indirectly affected by extractive activities) is critical in order to avoid future conflict. In addition to community engagement by the government, extractive companies have an important role in protecting and respecting the rights of the Tanzanian people. Corporations should seek social licenses to operate in advance of commencing projects, and dedicate corporate social responsibility programs to address the most pressing needs of affected communities.

MEDIA

Equipped with the right media tools, journalists, civil society and the public can effectively contribute to the monitoring and oversight of government activities, and may highlight instances of corruption in the extractives industry. A free and independent press, supported by the necessary enabling rights and protections, can shed light on government dealings and, ultimately, contribute to achieving increased transparency, public accountability, and reduced corruption in the extractive activities. Given the highly technical nature of the extractives sector, it is vital that Tanzania has journalists who are trained in reporting on the extractive industries so that they may effectively and accurately disseminate relevant information to the public. As the government increases their use of digital technologies, and expands its roll-out of e-governance and open data initiatives, citizens will increasingly be able to directly access government data related to resource extraction. Such advances will promote the development of a more informed and engaged citizenry and increase the capacity of the media, which together form the cornerstone of government accountability.
<table>
<thead>
<tr>
<th>NO.</th>
<th>SECTION</th>
<th>TARGET</th>
<th>HEADING</th>
<th>RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Law and Governance</td>
<td>Government</td>
<td>Coherent policy for all segments of the industry</td>
<td>To ensure coherency, the upstream policy must be developed in accordance with the Natural Gas Policy (which governs mid- and downstream gas activities). Regulation of upstream activities should be undertaken by either a new regulatory authority formed on the TMAA model, or the TMAA’s capacity and expertise should be extended to empower it to undertake regulation of upstream gas production activities in addition to its current regulation of upstream mining activities.</td>
</tr>
<tr>
<td>2</td>
<td>Law and Governance</td>
<td>Government</td>
<td>Strict consequences for non-compliance</td>
<td>Ensure that applicable standards and practices are clear, ascertainable and enforceable in practice. For gross violations, a strict liability standard should be adopted.</td>
</tr>
<tr>
<td>3</td>
<td>Law and Governance</td>
<td>Government</td>
<td>Require specific standards rather than vague obligations</td>
<td>The <em>Gas Supply Bill</em> should amend all inadequate and vague obligations and instead stipulate clear, ascertainable and enforceable social and environmental standards.</td>
</tr>
<tr>
<td>4</td>
<td>Law and Governance</td>
<td>Government</td>
<td>Mandate that minimum social and environmental standards are non-negotiable</td>
<td>Amend the Bill, Model PSA and other laws pertaining to oil and gas, to ensure that the only negotiable terms relate to financial or commercial matters. All other matters, including standards on the environment, health and safety, social welfare and land acquisition, should be mandated by statute and not open to negotiation. Decisions to deviate from the Model PSA should be made only in limited instances, and clear, written reasons for such deviation should be given and made publicly available.</td>
</tr>
<tr>
<td>5</td>
<td>Law and Governance</td>
<td>Government</td>
<td>Resolve the government’s conflict of interest</td>
<td>In preparing for negotiations, the government should set a reservation value that factors in the cost of long-term social and environmental damage to Tanzania. Decisions regarding how quickly to extract Tanzania’s gas should be based on econometric modeling that takes into consideration relative changes in commodity prices and interest rates over time. Decisions should focus on maximizing and smoothing intergenerational benefits for Tanzania.</td>
</tr>
<tr>
<td>6</td>
<td>Law and Governance</td>
<td>Government</td>
<td>Invest in technical expertise</td>
<td>The government should continue to invest in developing domestic capacity and expertise, and should invest more resources in training lawyers, accountants and economists.</td>
</tr>
<tr>
<td>7</td>
<td>Law and Governance</td>
<td>Government</td>
<td>Invest in negotiation expertise</td>
<td>The government should: (i) Invest in domestic negotiations training and capacity building; and</td>
</tr>
<tr>
<td>Law and Governance</td>
<td>Government</td>
<td>Strengthen bargaining power by forming regional alliances to set regulatory standards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
<td>------------</td>
<td>------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Government</td>
<td>Form regional alliances to collectively set rules or norms for protecting local interests during the extraction process, including the health of Tanzania’s society and environment. Refer to these standards in negotiations to leverage power and hold ground on regulatory standards.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law and Governance</td>
<td>Government</td>
<td>Specify qualifying criteria for contractors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Government</td>
<td>The government should: (i) Remove ministerial discretion for when a contract can be awarded; (ii) Maintain a list of qualified and validated contractors that satisfy a specified list of criteria. If potential contractors do not appear on the list or fail to fulfill the necessary criteria, they should not be eligible to operate in Tanzania’s natural gas sector.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law and Governance</td>
<td>Government</td>
<td>Instigate judicial Reform</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Government</td>
<td>Undertake steps to streamline Tanzania’s judicial system in order to reduce delays and case backlogs, which will lessen resort to corruption in the judicial system. Possible measures could include computerization of judicial records to save time spent performing administrative tasks and amendment of time-consuming procedures. Furthermore, the judiciary itself should also be held accountable for acts of corruption.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law and Governance</td>
<td>Government</td>
<td>Make relevant information publicly accessible</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Government</td>
<td>The government should increase transparency and accountability by making publicly available all documents and information relevant to the signing and implementation of PSAs, except for sensitive proprietary information or trade secrets. Such documents and information could be accessible online, and should include PSAs signed in the past, as well as the proposed terms of PSAs under negotiation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law and Governance</td>
<td>Government</td>
<td>Update the expropriation clauses to include a social and environmental policy carve out</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Government</td>
<td>To ensure that the expropriation clauses in BITs do not have a chilling effect on policy making, the following addition to the current expropriation is suggested: “Non-discriminatory regulatory measures taken by a Party that are designed and applied to protect or enhance legitimate public welfare objectives, such as public health, safety and the environment, do not constitute an indirect expropriation under this Article.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law and Governance</td>
<td>Government</td>
<td>Amend the compulsory arbitration clause</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Government</td>
<td>Require exhaustion of all local remedies before resorting to arbitration, for example: “An Investor may submit a claim to arbitration pursuant to this Agreement, provided that [it]: (i) has first submitted a claim before the domestic courts of the Host State for the purpose of pursuing local remedies, after the exhaustion of any administrative remedies, relating to the measure underlying the claim under this Agreement, and a resolution has not been reached within a reasonable period of time from its submission to a local court of the Host State; or</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(ii) demonstrates to a tribunal established under this Agreement that there are no reasonably available legal remedies [or the] possibility of such remedies in a reasonable period of time.”

<table>
<thead>
<tr>
<th>14</th>
<th>Law and Governance</th>
<th>Government</th>
<th>Introduce an “anti-corruption” clause</th>
<th>Suggested wording to include in BITs going forward: “Investors and their Investments shall not, prior to the establishment of an Investment or afterwards, offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official of the Host State, or a member of an official’s family or business associate or other person in close proximity to an official, for that official or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties, in order to achieve any favor in relation to a proposed investment or any licenses, permits, contracts or other rights in relation to an Investment.”</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Economy I: Foreign Direct Investment</td>
<td>Government</td>
<td>Update key laws and/or provisions and bring them in line with good practices adopted and implemented internationally</td>
<td>The government should enact an updated Investment Act that reflects Tanzania’s current investment environment and good practices adopted and implemented internationally (such as limiting stabilization to only certain fiscal terms).</td>
</tr>
<tr>
<td>16</td>
<td>Economy I: Foreign Direct Investment</td>
<td>Government</td>
<td>Address prohibitive obstacles to investment in Tanzania</td>
<td>Adequate legal protection of occupancy rights and recourse to arbitration for land disputes should be granted to foreign investors.</td>
</tr>
<tr>
<td>17</td>
<td>Economy I: Foreign Direct Investment</td>
<td>Government</td>
<td>Improve enabling infrastructure and energy access</td>
<td>The Tanzanian government should either use natural gas revenues to expand its own capacity to provide infrastructure, or should extend adequate incentives to boost private sector participation in infrastructure development in Tanzania (including ensuring monopoly hold for participating private sector actors if necessary).</td>
</tr>
<tr>
<td>18</td>
<td>Economy I: Foreign Direct Investment</td>
<td>Government</td>
<td>Improve ranking on revenue governance indicators</td>
<td>In order to raise Tanzania’s Resource Governance Indicator rankings, the government should promote greater transparency in the extractives sector, including through making publicly available all mining agreements, natural gas production sharing agreements and associated social and environmental impact assessments.</td>
</tr>
<tr>
<td>19</td>
<td>Economy I: Foreign Direct Investment</td>
<td>Government</td>
<td>Improve credit ratings</td>
<td>To improve its credit ratings, Tanzania needs to invest in infrastructure development and reduce its fiscal deficit through tightened fiscal discipline. Additionally, Tanzania should scale back its tax exemptions and widens its tax base in order to reduce the government’s dependency on resource revenues and lessen Tanzania’s to boom-bust cycles.</td>
</tr>
<tr>
<td>Page</td>
<td>Topic</td>
<td>Sectors</td>
<td>Proposal</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------</td>
<td>---------</td>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>20</td>
<td>Economy I: Foreign Direct Investment</td>
<td>Government</td>
<td>Improve doing business measures</td>
<td>The Tanzanian government urgently needs to address the root causes of its poor ease of doing business rankings. This would involve improving the land acquisition process, strengthening property rights and, of crucial importance, curbing corruption.</td>
</tr>
<tr>
<td>21</td>
<td>Economy I: Foreign Direct Investment</td>
<td>PCCB</td>
<td>Restrict the incentives that Tanzania Investment Centre (TIC) can offer to investors</td>
<td>TIC’s power to offer excessively generous incentives should be reviewed by PCCB, in collaboration with the Ministry of Finance, and such authority considerably constrained. Furthermore, incentives offered by TIC should be limited to those allowed under Tanzanian law. Those that are inconsistent with Tanzanian law, such as the no ring fencing incentive, should be abandoned.</td>
</tr>
<tr>
<td>22</td>
<td>Economy II: Revenue Collection</td>
<td>Government</td>
<td>Improve the Tanzania Investment Centre’s (TIC) efficiency and introduce necessary proprietary information requirements</td>
<td>Remove inefficiencies from TIC’s activities and require full disclosure of proprietary information during TIC’s filing and approval process.</td>
</tr>
<tr>
<td>23</td>
<td>Economy II: Revenue Collection</td>
<td>Government</td>
<td>Limit loss carryforward to seven years, in accordance with Generally Accepted Accounting Principles (GAAP)</td>
<td>To restrict tax evasion, loss carryforward provisions in the Model PSA should be amended to limit losses being carried forward for no more than seven years after they were incurred, in accordance with GAAP.</td>
</tr>
<tr>
<td>24</td>
<td>Economy II: Revenue Collection</td>
<td>Government</td>
<td>Ensure close monitoring of quality and quantity of production</td>
<td>The government should create an audit agency, similar to the TMAA, with the necessary capacity and expertise to monitor natural gas production operations and to perform comprehensive annual financial audits of all companies involved in natural gas production in the country.</td>
</tr>
<tr>
<td>25</td>
<td>Economy II: Revenue Collection</td>
<td>Government</td>
<td>Revise the current double-auditing system</td>
<td>The current system whereby both the TMAA and the TRA conduct annual audits of extractive industry companies should be revised. The auditing process should be streamlined to ease the unnecessary administrative burden on companies and make more efficient use of government’s limited auditing capacity.</td>
</tr>
<tr>
<td>26</td>
<td>Economy II: Revenue Collection</td>
<td>Government</td>
<td>Appoint an</td>
<td>Ensure that the BoT’s management of the proposed revenue fund is fully autonomous of</td>
</tr>
<tr>
<td>Row</td>
<td>Section</td>
<td>Government</td>
<td>Revenue Collection</td>
<td>Revenue</td>
</tr>
</tbody>
</table>
(ii) The construction of the Mtwara port should be prioritized under Tanzania’s development strategy and all additional infrastructures necessary for the effective functioning of the port and industry should be developed; and
(iii) The construction, management and financing of these structures should be included in natural gas development negotiations, with private investors required to provide the necessary funding.

| 33 | Economy IV: Public Investment of Revenues | Tanzania Ports Authority | Improve and expand the Dar es Salaam Port | The Tanzania Ports Authority should implement the World Bank’s recommendations to streamline and simplify the port’s overly complex procedures, as well as upgrade the port’s cranes and build new berths to expand port capacity. Additionally, Tanzania’s road and railway networks need to be developed in an integrated manner in order to better serve Tanzania and its landlocked neighbors and support the increased trade that will pass through the Dar es Salaam port. |
| 34 | Economy IV: Public Investment of Revenues | Government | Build an effective twin-ports system | Complementary industry facilities should be built in close proximity to the Bagamoyo port, such as an Export Processing Zone or an industrial park, to further boost the development of Tanzania’s non-extractive industry sectors. Public-private partnership arrangements may be appropriate to finance such infrastructure development. The Tanzanian government could undertake responsibility for port planning, regulatory functions, and ownership of port-related land and basic infrastructure. The private sector may be responsible for marine and terminal operations and construction, acquisition, and ownership of superstructure and equipment. |
| 35 | Economy IV: Public Investment of Revenues | Government | Expand road and railway infrastructure | The government should use a portion of the revenues from the natural gas activities to fund road and railway construction and maintenance. Alternatively, the government should consider entering into Build-Operate-Transfer arrangements with private sector actors, bearing in mind that it may be necessary to extend monopoly holds to private sector actors in this regard. Importantly, railways and ports should be developed in an interconnected way to ensure that such developments support one another and contribute to expanding trade in and through Tanzania. |
| 36 | Economy IV: Public Investment of Revenues | Government | Augment electricity generation capacity | Undertake assessment of electricity generation capacity of power plants in Dar es Salaam and the rest of Tanzania. Identify strategic locations to develop new natural gas-powered generation plants and encourage private sector participation in restructuring and expanding Tanzania’s electricity supply industry. |
| 37 | Economy IV: Public Investment of Revenues | Government | Invest in rural electrification | The government should extend the national electricity grid to all areas where such extension is financially viable. In those rural areas where grid connection is not financially viable, off-grid stand-alone hybrid power generation systems should be installed, in order to extend energy... |
Economy IV: Public Investment of Revenues

| Government | Improve quality of primary education | The government should invest in improving the quality of primary schooling. This would include training more teachers, equipping teachers with improved teaching skills and providing schools with adequate facilities and educational materials. |

| Government | Improve and diversify secondary education | The government should use the PSLE as an assessment tool rather than a requirement for secondary school entrance. Based on students’ performance on the PSLE, schools may divert students into various streams, with some pursuing traditional secondary education, while others go to technical training schools. |

| Government | Increase extractive industry downstream processing activities | Increase the number of SEZs mandated to undertake downstream processing of extractive resources so as to ensure greater domestic value addition, long-term development of local industry and employment creation. |

| Government | Boost agricultural productivity | To boost agricultural productivity, the government should:
(i) Use their Kilimo Kwanza initiative to assist farmers in adopting improved agricultural practices that will raise crop yields. Such practices include adopting improved seed varieties, using adequate fertilizer, increasing mechanization of farming operations and adopting better husbandry practices;
(ii) Support the extension of services that will improve farmer productivity, including extending access to micro-finance and improved infrastructure; and
(iii) Encourage the development of downstream value addition activities in the agricultural sector, including the growth of agribusiness and food processing industries. |

| Government | Expand telecommunications | Increased private sector participation in Tanzania’s telecommunications sector should be encouraged in order to raise competition and lower service costs for citizens. |

| Government | Support the logistics sector | In order to make full use of the significant potential of the logistics sector, the Tanzanian government urgently needs to repair and expand the country’s transportation infrastructure. |

| Government | Increase capacity of Environmental Impact Assessment | The government should:
(i) Increase training of EIA technicians and the Technical Advisory Committee to account for the large volume of natural gas-related EIAs and the technical expertise required to properly... |
<table>
<thead>
<tr>
<th>#</th>
<th>Environment</th>
<th>Government</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>45</strong></td>
<td><strong>Environment</strong></td>
<td><strong>Government</strong></td>
<td>Require certification of the accuracy of EIAs and EIA compliance</td>
<td>Enact legislation to require high-level officials to certify the accuracy of EIA statements and annual reports, subject to civil and criminal liability.</td>
<td></td>
</tr>
<tr>
<td><strong>46</strong></td>
<td><strong>Environment</strong></td>
<td><strong>Government</strong></td>
<td>Third party monitoring and auditing of EIA approval process</td>
<td>Institutionalize a third party mechanism to review the quality of the EIAs and EIA decision-making process.</td>
<td></td>
</tr>
<tr>
<td><strong>47</strong></td>
<td><strong>Environment</strong></td>
<td><strong>Government</strong></td>
<td>Cease all licensing until a proper Strategic Environmental Assessment (SEA) process is completed</td>
<td>Require a comprehensive SEA to be undertaken analyzing potential harms to the environment posed by natural gas development. This SEA should be completed before any further licenses are granted, and should be used to inform environmental protection policy.</td>
<td></td>
</tr>
<tr>
<td><strong>48</strong></td>
<td><strong>Environment</strong></td>
<td><strong>Government</strong></td>
<td>Significantly increase monitoring capabilities</td>
<td>Create a stand-alone enforcement authority for natural gas, similar to the mining sector’s Tanzania Minerals Audit Agency, with the budget and technical resources necessary to adequately monitor the natural gas sector.</td>
<td></td>
</tr>
<tr>
<td><strong>49</strong></td>
<td><strong>Environment</strong></td>
<td><strong>Government</strong></td>
<td>Reduce discretion and remove cap on fines</td>
<td>Remove fine caps and introduce a new fining scheme based on the revenue of the company in violation. This will enable fines to be serious enough to act as a deterrent to non-compliance for companies of all sizes and profitability margins.</td>
<td></td>
</tr>
<tr>
<td><strong>50</strong></td>
<td><strong>Environment</strong></td>
<td><strong>Government</strong></td>
<td>Implement Decommissioning requirements</td>
<td>Establish procedures for rehabilitation or environmental performance bonds in the natural gas sector and ensure natural gas legislation adequately addresses the risks posed by decommissioning or non-compliance with environmental regulations. Rehabilitation or environmental performance bonds should be mandatory, rather than at the discretion of the Director of Environment.</td>
<td></td>
</tr>
<tr>
<td><strong>51</strong></td>
<td><strong>Environment</strong></td>
<td><strong>Government</strong></td>
<td>Increase transparency of EIA process</td>
<td>The government should: (i) Create an online database of EIAs, SEAs and other compliance documents; (ii) Require companies to publish EIAs on company websites within thirty days of completion;</td>
<td></td>
</tr>
<tr>
<td>Page</td>
<td>Section</td>
<td>Stakeholder</td>
<td>Suggestion</td>
<td>Details</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>---------</td>
<td>-------------</td>
<td>------------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Environment</td>
<td>Government</td>
<td>Improve public comment procedures</td>
<td>Require public hearings for all natural gas projects, and not just those where opposition to the project has been expressed.</td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Environment</td>
<td>Companies</td>
<td>Implement grievance procedures in line with the Ruggie Principles</td>
<td>All companies should establish grievance procedures to address environmental and social concerns of natural gas activities. These mechanisms should be in place before drilling activities begin as exploration itself can have serious environmental and social impacts.</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Environment</td>
<td>International Donors</td>
<td>Fund capacity of civil society to bring environmental litigation</td>
<td>International donors should dedicate funding towards building the capacity of local NGOs to bring environmental claims.</td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>Environment</td>
<td>Government</td>
<td>Improve judicial training in environmental law</td>
<td>Integrate environmental law into judicial trainings for district-level judges, and improve environmental law education at Tanzanian universities.</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Environment</td>
<td>Government</td>
<td>Extend the statute of limitations for environmental cases</td>
<td>Extend statute of limitations for claims before the Environmental Appeals Tribunal to at least one to three years. Extend statute of limitations for environmental cases brought under tort law to at least five years after decommissioning has completed as determined by the Minister of Environment.</td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>Social</td>
<td>Government and Companies</td>
<td>Undertake early and ongoing community engagement</td>
<td>Both the government and extractive companies should: (i) Undertake early and ongoing engagement with communities affected directly and indirectly by natural gas development activities; (ii) Keep local communities fully informed of all pertinent project-related information at every stage of extractive operations; (iii) Give local community members an opportunity to participate in, and be given an actual role in, project decision-making as far as decisions have direct or indirect impacts on local communities; and (iv) Include CSOs, especially community-based CSOs, in all consultation processes.</td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>Social</td>
<td>Government</td>
<td>Improve impact monitoring and evaluation procedures</td>
<td>Impact monitoring and evaluation procedures should be improved in order to adequately take cognizance of impacts on socio-economic and cultural aspects of affected communities both over time and across all extraction projects considered together, in aggregate. When granting licenses, government should consider potential impacts on affected communities from extractive projects in aggregate.</td>
<td></td>
</tr>
<tr>
<td>Page</td>
<td>Social</td>
<td>Government</td>
<td>Proposal</td>
<td>Explanation</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>--------</td>
<td>------------</td>
<td>----------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Social</td>
<td>Government</td>
<td>Make EIAs publicly available</td>
<td>EIAs should be made publicly available so that third parties may assist government to monitor extractive companies’ compliance with applicable social standards and social impact mitigation measures identified in EIAs.</td>
<td></td>
</tr>
<tr>
<td>60</td>
<td>Social</td>
<td>Government</td>
<td>No discretion in imposing serious penalties for non-compliance with social standards</td>
<td>Extractive companies that fail to comply with applicable social standards should face mandatory penalties, which should be serious enough to act as a deterrent to non-compliance. Provisions that give NEMC a discretion as to whether to impose penalties for non-compliance should be amended to reflect mandatory application of penalties in situations of non-compliance.</td>
<td></td>
</tr>
<tr>
<td>61</td>
<td>Social</td>
<td>Government</td>
<td>Obtain a social license to operate from affected communities</td>
<td>The government should: (i) Develop minimum standards that extractive companies need to comply with when engaging with affected communities or seeking their consent prior to issuing the operating license, as well as during operations; and (ii) Mediate instances of disagreement between extractive companies and affected communities when necessary.</td>
<td></td>
</tr>
<tr>
<td>62</td>
<td>Social</td>
<td>Government</td>
<td>Conduct land surveys and register titles of customary owners</td>
<td>The government should: (i) Ensure that EIA land survey occupancy records are incorporated into official land registers (to the extent that they are not already); (ii) Standardize land registration procedures for adoption by all regional Land Registry Offices; and (iii) Issue Certificates of Title to individuals with registered land occupancy claims. Titles should be stored and organized in a centralized database at the Ministry of Lands, Housing and Urban Development.</td>
<td></td>
</tr>
<tr>
<td>63</td>
<td>Social</td>
<td>Government</td>
<td>Provide fair and prompt compensation for land displacement</td>
<td>The government should clarify all ambiguities in Tanzania’s land occupancy registration system in order to minimize scope for corruption that would otherwise result in true land occupiers from being deprived of fair compensation when they are relocated.</td>
<td></td>
</tr>
<tr>
<td>64</td>
<td>Social</td>
<td>Government</td>
<td>Ensure women’s right to land occupancy</td>
<td>The government should: (i) Push for Tanzania’s customary law to be developed so that it reflects full gender equality, including in regards to land rights and resettlement procedures; (ii) Establish a grievance mechanism in regional Land Registry Offices whereby women whose land occupancy rights have not been upheld may lodge formal complaints so that this injustice may be rectified; and (iii) Include women in the land surveying process to the same extent as men are included.</td>
<td></td>
</tr>
<tr>
<td>Page</td>
<td>Social</td>
<td>Government</td>
<td>Encourage companies to incorporate Corporate Social Responsibility (CSR) into their business model</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>--------</td>
<td>------------</td>
<td>----------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>Social</td>
<td>Government</td>
<td>The government should encourage extractive companies to: (i) Pursue CSR activities that integrate local businesses and community members into companies’ business models, primarily through employing local labor and procuring goods and services locally; (ii) Design CSR programs through engagement with local communities so that efforts address actual needs of communities and do not serve merely as publicity for extractive companies.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page</th>
<th>Media</th>
<th>Government</th>
<th>Support transparency by creating a Freedom of Information Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>66</td>
<td>Media</td>
<td>Government</td>
<td>The Tanzanian government should improve its current draft Freedom of Information bill by taking guidance from internationally respected freedom of information laws, such as that of South Africa. The bill should then be enacted as a matter of urgency, and the Tanzanian government should make every effort to give effect to it through respecting and upholding the rights contained in it.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page</th>
<th>Media</th>
<th>PCCB</th>
<th>Support transparency relating to corruption investigations</th>
</tr>
</thead>
<tbody>
<tr>
<td>67</td>
<td>Media</td>
<td>PCCB</td>
<td>The PCCB should raise its information dissemination efforts, using various media forms (including internet, radio, television and print media) to increase public awareness of, and participation in, the extractive industry discourse in Tanzania.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page</th>
<th>Media</th>
<th>PCCB</th>
<th>Increase press freedom</th>
</tr>
</thead>
<tbody>
<tr>
<td>68</td>
<td>Media</td>
<td>PCCB</td>
<td>The PCCB should work with the TCRA to advocate for greater press freedom in Tanzania. Press freedom is key to promoting transparency and accountability, and the PCCB should regard Tanzania’s media industry as an ally in combating corruption in the country.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page</th>
<th>Media</th>
<th>Government</th>
<th>Establish a public-private media taskforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>69</td>
<td>Media</td>
<td>Government</td>
<td>Establish an Extractive Industries Media Taskforce that would include representatives from government, civil society, extractive companies, communities, media and local business. This Taskforce should meet regularly (quarterly) to share information related to the extractive industries, which should be disseminated to the public.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page</th>
<th>Media</th>
<th>PCCB</th>
<th>Improve journalism training</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
<td>Media</td>
<td>PCCB</td>
<td>To fulfill its mandate regarding the dissemination of anti-corruption information, the PCCB should invest in journalism training sessions focused on reporting in the extractives sector, in partnership with RWI or another reputable, independent organization.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page</th>
<th>Media</th>
<th>Government</th>
<th>Increase Information, Communication and Technology (ICT) access</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>Media</td>
<td>Government</td>
<td>Tanzania should continue to advance its ICT initiatives, giving particular focus to increasing internet access in rural areas. Such efforts will be important to furthering e-governance initiatives and promoting transparency and accountability in the extractive industries in Tanzania.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page</th>
<th>Media</th>
<th>Government</th>
<th>Clarify the government’s ICT coordination</th>
</tr>
</thead>
<tbody>
<tr>
<td>72</td>
<td>Media</td>
<td>Government</td>
<td>The current ICT Policy does not adequately address or effectively promote Tanzania’s access to ICT and digital platforms. The Ministry of Communication and the Ministry of Information should jointly convene a research committee to produce a report that identifies global best practices for ICT and digital platforms.</td>
</tr>
<tr>
<td>#</td>
<td>Media</td>
<td>Government</td>
<td>Build technical capacity</td>
</tr>
<tr>
<td>----</td>
<td>-------</td>
<td>------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>73</td>
<td></td>
<td></td>
<td>The government should make ICT facilities and training available to all government officials in both rural and urban government offices. This will promote the government’s implementation of its e-governance and open data initiatives, which will increase awareness of extractive industry issues and encourage public engagement.</td>
</tr>
</tbody>
</table>
This report provides a comprehensive review of the critical economic, political, legal, social, media and environmental variables that will affect and be affected by the rapid development of Tanzania’s hydrocarbon resources. These issues are described in greater detail in each section of the report, giving special attention to the role and influence of corruption at various levels and in different sectors of government, industry, and society. Each section proposes methodical and practical recommendations for the country’s policymakers and other key stakeholders, which, if adopted and implemented, will enhance the current institutional framework governing the activities of the extractive sector. Ultimately, this report attempts to provide the government of Tanzania with policy and law reform recommendations that promote the sustainable development of the country’s economy, society, and environment, and aims to help Tanzania avoid the perils of the resource curse.

Our client is the Prevention and Combating of Corruption Bureau (PCCB). The PCCB is the Tanzanian government’s anti-corruption agency established by the Prevention and Combating of Corruption Act. The PCCB is tasked with promoting good governance and combating corruption in Tanzania. We hope that our research and recommendations provide useful guidance for the various stakeholders engaged in the extractive industries, in Tanzania, including the government, extractive companies, international donors, media organizations, and civil society.
CONTEXT AND RATIONALE

Tanzania is rich in minerals, as well as oil and natural gas (both offshore and onshore), particularly along the coast in Southern Eastern Regions of Lindi and Mtwara. The Ministry of Energy and Minerals oversees the sector, and operates with its National Oil Corporation (NOC) Tanzania Petroleum Development Corporation (TPDC) in association with various International Oil Corporations (IOCs).

Recent discoveries of vast offshore natural gas reserves have presented Tanzania with a golden opportunity to prosper from its hydrocarbon riches and translate its natural resource wealth into accelerated and sustainable development. Indeed, the country’s proven natural gas reserves increased from an estimated 0.23 trillion cubic feet in 2011 to over 40 trillion cubic feet in 2013, with predictions that proven reserves could reach 60 trillion cubic feet over the next few years.¹ These offshore discoveries in Tanzania, together with those off the coast of Mozambique, have led to predictions that the region could become the world’s third largest exporter of natural gas, with Tanzania being strategically located for exports to Asia.² Since September 2000, when Tanzania launched its first offshore deep-water licensing round, a total of 12 blocks have been awarded (see Figure 1 and Table 1 below). This number is set to increase as new finds are made.

Evidently, Tanzania is at an important crossroad in its history—if the policies and laws needed to protect the country from the ravages of the resource curse and the Dutch Disease are enacted, implemented and enforced, Tanzania’s natural gas wealth may be converted into prosperity for the Tanzanian people. In this regard, this report serves to provide practical and implementable recommendations that the Tanzanian government and other key stakeholders should take into consideration in their efforts to ensure that Tanzania’s natural gas is a blessing and not a curse.

Table 1. Tanzania’s Offshore Gas Areas

<table>
<thead>
<tr>
<th>Name</th>
<th>Partners</th>
<th>Status</th>
<th>Discovery</th>
<th>Reserves</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block 1</td>
<td>Ophir Energy (40%); BG (60%)</td>
<td>Discovery</td>
<td>Chaza-1 (Tertiary), Mzia-1 (Upper Cretaceous), 23km north of Jodari well [4-9]; Jodari-1 (Lower Tertiary), 39km offshore (3.4 tcf)</td>
<td>11</td>
<td>21</td>
</tr>
<tr>
<td>Block 2</td>
<td>Statoil (65%); Exxon Mobil (35%)</td>
<td>Exploration</td>
<td>Zafarani (5-6 tcf); Lavani (3 tcf) 2400m 16km from Zafarani well</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Block 3</td>
<td>Ophir Energy (40%); BG (60%)</td>
<td>Discovery</td>
<td>Pape-1 (Upper Cretaceous) (0.5-2 tcf)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Block 4</td>
<td>Ophir Energy (40%); BG (60%)</td>
<td>Exploration</td>
<td>Pape-1 (Upper Cretaceous) (0.5-2 tcf)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Block 5</td>
<td>Petrobras (50%); Shell (50%)</td>
<td>Exploration</td>
<td>Not yet determined</td>
<td>Not yet determined</td>
<td>Not yet determined</td>
</tr>
<tr>
<td>Block 6</td>
<td>Ophir Energy (60%); Mubadala (20%)</td>
<td>Exploration</td>
<td>Not yet determined</td>
<td>Not yet determined</td>
<td>Not yet determined</td>
</tr>
<tr>
<td>Block 7</td>
<td>Ophir Energy (60%); Mubadala (20%)</td>
<td>Exploration</td>
<td>Not yet determined</td>
<td>Not yet determined</td>
<td>Not yet determined</td>
</tr>
<tr>
<td>Blocks 9, 10, 11, 12</td>
<td>Shell</td>
<td>Exploration</td>
<td>Not yet determined</td>
<td>Not yet determined</td>
<td>Not yet determined</td>
</tr>
</tbody>
</table>

---

METHODOLOGY

The findings and recommendations contained in this report are based on an extensive review of literature on natural gas development in Tanzania, as well as a comparative study of other hydrocarbon-rich countries in East Africa, including Mozambique, Kenya and Uganda. The research was conducted by a thirteen-member team between January and May 2014, and was complemented by a field visit to Tanzania in March 2014. Approximately 40 interviews with stakeholders located within and outside Tanzania were conducted. These stakeholders included Members of Parliament, government officials tasked with PSA negotiation and management of resource revenues, various government auditors and regulators, legal experts, journalists, academics, members of civil society organizations, oil company representatives, embassy officials, representatives of donor agencies and financial experts. The insights provided by the PCCB were invaluable, as was their assistance in facilitating in-country interviews.

Note that the primary data gathered on social and environmental impacts were limited, as it was not possible to conduct fieldwork outside of Dar es Salaam.
INTRODUCTION:

CORRUPTION AS A DRIVER AND PRODUCT OF THE RESOURCE CURSE

Contrary to intuition, natural resource wealth does not provide poor countries with tangible economic wealth overnight. In fact, countries that depend on natural resource wealth for their livelihood are among the most economically, socially, and politically troubled in the world.6 These countries are often victims of slow economic growth, low social welfare, high levels of poverty, income inequality, rampant environmental destruction, and weak governmental institutions. This is often referred to as the “resource curse,” which is evidenced by an inverse relationship between high natural resource dependence and low economic growth rates.7 It is a phenomenon by which resource rich countries end up as poorer, and with weaker systems of law enforcement and political stability. Four factors have been identified as contributing to the resource curse:

(i) “Dutch disease,” which causes currency appreciation as a result of large resource revenues and their negative effect on the competitive position of other industries;
(ii) fluctuations in government spending and boom bust cycles;
(iii) the strong correlation between resource wealth and the erosion of political integrity and corruption. While nationalization of oil companies has to some

---

Corruption is “the abuse of entrusted power for private gain” and “consists of acts committed at a high level of government that distort policies or the central functioning of the state” (Transparency International). Corruption manipulates “policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers.” This paper will focus primarily on “grand corruption,” defined as corruption “which takes place at the highest levels of political authority and decision making.” It can occur during the formulation of public policy and may involve “the appropriation or embezzlement of government funds, or the tailoring and selective implementation of public laws, codes and regulations” in order to benefit particular individuals or groups or to preserve political support.

Natural resource riches and an environment of weak institutions breed corruption, which, in turn, lowers economic performance. Evidence shows that levels of corruption increase with the proportion of total exports accounted for by fuel, minerals.

---

8 Ibid.
9 Ibid.
World Governance Indicators

The World Governance Indicators (WGI) is a long-standing research project used by the World Bank and others to measure governance across over 200 countries.

- In 2012, Tanzania ranked in the 22nd percentile measuring countries’ ability to control corruption.
- Tanzania’s ability to combat corruption has been steadily falling since the mid-2000s (in 2007, it ranked in the 46th percentile).
- It ranks in the 28th percentile for “Government Effectiveness,” down from 43rd in 2007.
- It ranks in the 37th percentile for “Regulatory Quality” and in the 42nd percentile for “Voice and Accountability.”


Tanzania has vast natural resource wealth and therefore has the opportunity to reap huge economic benefits if it can avoid the resource curse and the attendant problems of corruption.

For nearly two decades, Tanzania has remained a transitional democracy with a commitment to strengthening governmental institutions in the midst of social and economic reforms. The Government’s desire to curb corruption is evident with the introduction of various laws such as the Prevention and Combating of Corruption Act 2007, anti-money laundering law, Public Leaders’ Code of Ethics, Public Procurement Laws.

---


According to the Resource Governance Index, Tanzania receives a “weak” overall rating, ranking 27th out of 58 countries studies by the index. This score is due mainly to insufficient reporting requirements for the extractive industry and the lack of a freedom of information law. The government of Tanzania provides some information on the extractive industry and contracts, but there has been an overall failure to publish contracts. Tanzania receives higher ratings for safeguards and quality controls due to “conflict-of-interest disclosure requirements and satisfactory checks on the budgetary process.” It also scores poorly in terms of corruption and government accountability.

- Tanzania ranked 111th in Transparency International’s 2013 Corruption Perceptions Index out of 177 countries surveyed, scoring 33 on a scale of 100.
- According to the national Control of Corruption survey conducted in 2010, Tanzania ranked in the 37th percentile.
- According to its Open Budget Index from the same year, Tanzania scored 45th out of 100.

The key governing institutions in the anti-corruption regime are the Prevention and Combating Corruption Bureau (PCCB), the National Audit Office (NAO), and the Director of Public Prosecutions (DPP). Tanzania’s National Anti-Corruption Strategy and Action Plan (NACSAP) set the groundwork for this regime and clarifies roles and responsibilities (see the NASCAP organizational chart at Figure 2). This strategy, as well as many foreign anti-corruption programs, have been based on the UN’s Convention Against Corruption (UNCAC). NACSAP II was launched in 2006 (revised

---

in 2007) as a follow up, but came to an end in 2011. NACSAP III will commence in 2014.\textsuperscript{16}

### History of Anti-Corruption in Tanzania

1. **Prevention of Corruption Ordinance of 1958 (PCO):** The PCO re-enacted and expanded corruption offences that were then contained in penal codes. After independence in 1961, the newly independent Tanganyika government inherited the PCO to continue the fight against corruption.

2. **Prevention of Corruption Act (PCA):** In May 1971, the PCO was repealed and replaced with the PCA. An amendment to this Act in 1974 necessitated the establishment of the Anti-Corruption Squad (ACS) in 1975. The ACS was given the mandate to investigate and prosecute offences under the PCA and other offences involving corruption. They took necessary measures for the prevention of corruption in the public and advised the government on the ways to combat corruption.

3. **Prevention of Corruption Bureau (PCB):** In 1991, the PCA was amended again and the Anti-Corruption Squad became the PCB. The PCB was placed under the President of the United Republic of Tanzania. Beginning in 1999, the Bureau was able to open offices at the Regional and District levels.

4. **Prevention and Combating of Corruption Act (PCCA):** On July 1st, 2007, the Prevention of Corruption Act was repealed and replaced with the PCCA. The new legislation contains broad and comprehensive provisions for the prevention, investigation, and combating of corruption and related offences.

5. **Prevention and Combating of Corruption Bureau (PCCB):** The PCCB is established under The Prevention and Combating of Corruption Act No.11 of 2007 (PCCA No.11/2007).\textsuperscript{17}


This report analyzes the natural resource curse and related issues of corruption in the Tanzanian context. We recommend ways of addressing the threat of the resource curse by considering four cross-cutting principles. Each of these principles brings in evidence from a variety of sources, including economic, legal, social, environmental, and media perspectives and provides a framework for understanding the complex relationships between stakeholders in Tanzania’s natural resource economy.

**CROSS-CUTTING PRINCIPLE 1: STRENGTHENING THE LEGAL FRAMEWORK**

In order to ensure long-term benefits from the country’s natural resource wealth, Tanzania needs a clear and predictable legal framework to support governmental and societal interaction with the extractives industry and to ensure equity, oversight, and transparency. Reform of domestic anti-corruption mechanisms and the legal framework is crucial. The developing hydrocarbon sector has created new necessities and opportunities for legal reform. The government of Tanzania is in the process of reviewing the legislative and regulatory framework governing the extractives industry, particularly that of natural gas. A robust legal regime can ensure against corruption and other problems associated with the resource curse, while failure to reform problem areas can result in revenue losses, breakdown in political and economic institutions, and environmental and social degradation. Creating and strengthening this legal framework will require not only reform of the laws and policies themselves, but more effective practical implementation of the law.

Since Tanzania liberalized its economy, many of the laws governing the country’s relationship with extractive resource industries and foreign investment have been
periodically updated and amended. However, this reform has been enacted in an ad hoc manner making the entire process, as well as its benefits, scattered and difficult to fully realize. Many laws have not been updated for decades and while others have been updated recently, they still do not all necessarily reflect international good practices. Attention must be given to the new Natural Gas Policy, and its deficiencies must be rectified, namely that it only governs midstream and downstream activities with no provisions for upstream (exploration and production) activities. Laws directly associated with the extractives industry must be strengthened and reform efforts must also focus on laws that protect financial, social, economic, and environmental health. For example, the reform of the legal framework surrounding environmental impact assessments, if conducted properly, could be a powerful tool for decision-makers in the creation of reliable mitigation strategies and has great potential to reduce the risk of environmental hazards.

**CROSS-CUTTING PRINCIPLE 2: BUILDING STRONGER INSTITUTIONS**

Tanzania’s natural gas potential is likely to become a key source of export earnings for the country in the near future. Effective management of these anticipated revenues is crucial. In the short-term, this will require, among other things, establishing a natural gas revenue fund, preparing sector-wide investment plans, and partnering with multilateral organizations in order to fully develop other vital sectors.

Strong governmental and social institutions, which are often missing in newly established democracies, are especially important in averting the resource curse.\(^\text{18}\) Many researchers have found that weak institutions are made weaker by natural resource extraction.\(^\text{19}\) Whether natural resources become a blessing or a curse depends heavily on the nature of political institutions in place at the time the resource is discovered. Institutions tend to deteriorate in response to changing economic conditions, leading to even weaker accountability and a greater chance that natural resources will become a burden.\(^\text{20}\)

---


Institutional reform is crucial for Tanzania to attract foreign investment and to allocate revenue efficiently and equitably. Notable obstacles, which may deter investment in Tanzania include, among other things, the difficulty of acquiring land, which introduces unnecessary delays and costs into the investment process. Tanzania’s historically low credit scores also pose significant risks for potential investors. Tanzania and Zanzibar have created investment promotion agencies (the Tanzania Investment Center and the Zanzibar Investment Promotion Agency, respectively), which are crucial institutional upgrades. However, there is still work to be done: the approval process of these agencies frequently involves bureaucratic delays, despite their goal of smoothing over the investment process for investors.

Despite improvements in the extractive industry’s institutional governance, there continues to be cause for concern. For example, the TPDC currently performs dual commercial and regulatory roles, which creates scope for conflicts of interest in TPDC’s operations. Furthermore, there continue to be discrepancies between the social and environmental standards included in PSAs and those standards that are regarded as good international practices.

The Democratic Republic of Congo (DRC): The Danger of Weak Institutions

Although endowed with great natural resource wealth, the DRC has weak political institutions that have allowed for government funds from extractive projects to be illegally siphoned off. Consequently, government has less money for spending on public services and the general population remains in poverty whilst corrupt officials grow rich. Weak institutions enable corruption to take place because of faulty or non-existent oversight and accountability mechanisms. Concessions made by the state-owned oil, gas, and mineral companies, Gécamines in particular, generate huge profits for offshore-registered firms, but at a great loss to the DRC’s public. According to some studies, DRC lost an estimated US$1.36 billion in revenues between 2010 and 2012 “from the under-pricing of mining assets that were sold to offshore companies.” With a population of 67 million, this meant that each DRC citizen lost nearly 7% of their average annual income. A legislative committee estimated that in 2008 alone the DRC government lost as much as US$450 million through mismanagement and corruption. The DRC government has acknowledged the scale of the corruption problem and is working toward a solution.
CROSS-CUTTING PRINCIPLE 3: IMPROVING MONITORING AND OVERSIGHT OF GOVERNMENT MINISTERIES AND COMPANIES

Along with legal and institutional reform, improved monitoring and oversight of governmental bodies is crucial to combating the effects of corruption.21 A lack of internal oversight can:

(i) make corruption appear more attractive as the chances of discovery are reduced; and  
(ii) create problems between principles and agents stemming from a lack of information (for example between governments and its citizens, but also between elected officials and the bureaucracy).22

Monitoring and auditing the operations of extractive industry companies is also crucial to ensuring that Tanzania receives the full value of public revenues due to it under applicable taxes and royalties agreements, as has been seen in Tanzania’s mining sector. For much of its history, the government of Tanzanian lacked the ability to audit mining companies and used to rely on self-reporting by companies to determine the quality and quantity of mineral production. The calculation of royalties and other taxes was dependent on the companies’ self-reported figures, thereby giving companies an important incentive to under-report their production. Similar problems will arise in the natural gas industry if mechanisms for the independent monitoring and auditing of companies are not put in place.

According to the Open Budget Index, many of Africa’s resource-rich countries suffer from a debilitating lack of oversight in national budget making. Equatorial Guinea scores zero out of 100 and another seven countries (Cameroon, Chad, Democratic Republic of the Congo, Niger, Nigeria, Zambia, and Zimbabwe) score less than 20.23 In all of these countries mechanisms to ensure budget transparency, legislative oversight, and auditing are extremely weak. This leads to the subordination of the public interest, corruption, and, at times, outright theft. Tanzania can learn from these examples by implementing effective monitoring and accountability controls.

21 Ibid.  
22 Ibid.  
CROSS-CUTTING PRINCIPLE 4: INCREASING TRANSPARENCY AND PUBLIC ACCOUNTABILITY

Transparency, defined as public access to information, is viewed as another key factor in reducing corruption and other dysfunctions in natural resource-rich countries. Several ongoing initiatives, including the Extractives Industries Transparency Initiative (EITI), focus on transparency in revenues from extractive industries. However, even with these initiatives, corruption still persists. Transparency is crucial for holding both companies and the government to higher standards. The culture of secrecy prevents public access to the details of resource contracts and negotiation proceedings, increasing the potential for corruption, and undermining democratic principles.

The mechanisms for oversight, including internal monitoring and social accountability, depend on access to information. There is an urgent need for increased openness and transparency in order to check corruption, increase the culture of accountability and

---


engage citizens in public processes. It is through opaque, secretive processes that corruption survives, and it is incumbent on any modern democracy to make itself answerable to its citizens.

National-level data on corruption in Tanzania is “sparse, incomplete, and irregular.” The few sources of useful corruption information, such as Controller and Auditor General reports, are underused by the public.

There is a considerable need for public investments in infrastructure and provision of basic services in Tanzania. Transparency plays a vital role in ensuring the equitable distribution of resource wealth and oversight of national accounts. Public investments should aim to develop Tanzania’s physical and human capital, and should also contribute to the development of Tanzania’s non-extractive sectors, especially those that are labor-intensive and serve to diversify the economy. In order for natural resource wealth to yield long-term returns for all Tanzanians, its apportionment must be accounted for accurately and transparently.

Support for media effectiveness strengthening press freedom and enacting effective freedom of information laws will be key factors in boosting government transparency. Journalists need to be trained to report on extractive activities so that they may disseminate accurate information to the public and act as a monitoring and oversight check on government activity. Through such developments, corruption in the extractives sector may be reduced.

---

**Equatorial Guinea: Know Who You Are Dealing With**

Equatorial Guinea’s state owned oil company, GEPetrol, is notorious for its lack of transparency, with research conducted by Revenue Watch and Transparency International in 2011 revealing that GEPetrol is one of the most opaque extractive resource firms in the world. In addition to ongoing legal challenges in France, Spain, and the United States, GEPetrol has also been brought before the African Commission on Human and Peoples’ Rights for complaints related to misuse of Equatorial Guinea’s oil funds and transfers of oil wealth to offshore bank accounts. It received the lowest marks in the world for institutional disclosure and was one of eight companies to score zero on the reporting of anti-corruption measures.


---


Law and Governance

Context

The current rapid growth of Tanzania’s hydrocarbon sector necessitates urgent concomitant legal developments in order to protect Tanzania against the resource curse. Weak and inadequate laws provide scope for corruption and will fail to protect the interests of Tanzanians. The Tanzanian government has recently enacted a new Natural Gas Policy and is currently reviewing the laws and regulations that govern the natural gas sector as a whole. This review and legal reform process presents Tanzania with an ideal opportunity to build a strong set of laws and policies that could serve to ensure that Tanzanians prosper from the country’s natural resource wealth.

This section examines the legal framework governing oil and gas development in Tanzania, including the Natural Gas Policy (Policy) and the proposed Gas Supply Bill. We make recommendations on how Tanzania can develop a strong, clear, and predictable legal framework to govern natural gas development operations, while still protecting the environment and ensuring that resource extraction contributes to the long-term prosperity of the Tanzanian people. Our recommendations focus on rectifying weaknesses in the legal and contractual regime, reducing discretion, improving enforcement of standards and requirements, increasing public awareness and promoting accountability. We attempt to address the issue of corruption from both the demand and supply side, suggesting measures that could reduce the opportunity, inclination and advantage for corruption by both government authorities and commercial actors.

While Tanzania is eager to begin receiving revenues from natural gas production, it is important that the government invests time in building a strong legal foundation to govern resource extraction. The effects of a hastily drafted legislation can be irreversible. Similarly, rushed contracts with extractive companies can have long-term negative impacts. At the moment, the Tanzanian government appears to be hurrying the signing of production sharing agreements with extractive companies. Apparently this hasty process is partly the result of pre-election political pressure, and partly because government officials feel as though Tanzania is in competition with

27 There is an ongoing process to draft and update laws relevant to the natural gas sector, which the PCCB specifically sought our research on, and hence other sectors such as mining are not the focus of this Report.
28 Edward Hoseah (Director-General of PCCB), in discussion with the authors. March 14, 2014. Dar es Salaam, Tanzania.
Mozambique, Uganda and Kenya to secure investors. Many government officials believe that if Tanzania waits to update and improve its national legislation before signing PSAs, the country will lose valuable time and squander its opportunity to secure PSAs with extractive companies. This view reflects an incorrect understanding of foreign direct investment in the extractive industries - in truth, there will always be extractive companies willing to invest in Tanzania, regardless of how long the country takes to develop its extractive industries governing framework. It is crucial that hastily signing contracts must be avoided until a solid legal framework is developed.

**THE CURRENT LEGAL FRAMEWORK**

There are numerous laws of relevance to the extractives sector, from environmental law to income tax regimes (see Figure 3 which depicts the different aspects of the legal regime, and indicates where each aspect is explored further in our report). This section focuses on the laws and regulations directly governing oil and gas. The primary legislation governing hydrocarbons, including natural gas and petroleum, is the Petroleum (Exploration & Production) Act of 1980 (*Petroleum Act*), together with corresponding regulations. The Ministry of Energy and Minerals (*MEM*) is the main authority responsible for hydrocarbon production under the Act, and the Minister has final discretionary powers over critical decisions, with little institutional or statutory restraints.

MEM controls the Tanzania Petroleum Development Corporation (*TPDC*), Tanzania’s state-owned petroleum company. TPDC has a combined commercial and regulatory role in Tanzania’s upstream hydrocarbon production activities and is governed by the *Petroleum Act*. Regulation of downstream activities, such as distribution and sale of petroleum products, is carried out by the Energy and Water Utilities Regulatory Authority (*EWURA*). EWURA is an autonomous regulatory agency and is governed by the Energy and Water Utilities Regulatory Authority Act 2003 (*EWURA Act*).

TPDC is the agency through which the government enters into Production Sharing Agreements (*PSAs*), Joint Ventures (*JVs*), and other contractual instruments with oil and gas companies. Under Tanzanian law, TPDC is the initial applicant for all exploration and production licenses in the extractive industries. Once TDPC has obtained the necessary licenses, it can sell them or, more frequently, it enters into a PSA with an oil or gas company.29 Currently, there is no separate legal regime to deal with the issue of corruption in the extractives industry, although the Natural Gas

---

29 Yona Killagane (Managing Director, TPDC) et al., in discussion with the authors. March 14, 2014. Dar es Salaam, Tanzania.
Policy and related proposed legislation (Gas Legislative Package)\textsuperscript{30} does discuss the need for specific legislation to address corruption.

\textit{Figure 3. Patchwork of Laws Relating to Extractive Resource Governance}

Licenses under the \textit{Petroleum Act}

The Petroleum Act envisages two kinds of licenses:

1. \textit{Exploration licenses}, which grant the licensee the exclusive right to explore for petroleum in the specified blocks, and may include a right to acquire an interest in any venture to recover petroleum from such areas. An exploration license is granted for a period of four years, which may be extended for another four years. A second extension of 3 years is also permissible. An application for an exploration license may not normally be made for more than 60 blocks. However, at the discretion of the Minister, application for an exploration license for up to 200 blocks may be permitted.

2. \textit{Development licenses}, which can be granted to both registered and non-registered exploration license holders. A development license confers the licensee with exclusive rights to explore for and develop any petroleum found in the specified areas, and to sell or otherwise dispose of the petroleum recovered. A development license is granted for a period of 25 years, extendable by another 20 years.

\textsuperscript{30} This includes the proposed Natural Gas Policy, Gas Supply Bill, and Natural Gas Master Utilisation Plan, as per information received from PCCB.
RECENT DEVELOPMENTS

The government is current working quickly to update and strengthen its legal framework to keep pace with recent developments in the natural gas sector. The Natural Gas Policy was approved by Parliament in October 2013 and MEM’s related draft Bills, including the Gas Supply Bill, are expected to be placed before Parliament soon. Recent discoveries have also motivated the government to formulate a new Model Production Sharing Agreement (Model PSA) in 2013. The Model PSA includes more stringent terms and conditions that require greater taxes to be paid by extractive companies. The Model PSA also stipulates new royalties structures, setting royalties at 12.5% for development of onshore and shelf areas and 7.5% for offshore production.

In addition to the legislative and contractual reforms outlined above, the government is also pursuing significant institutional reform of the extractives sector. Currently, TPDC performs both the commercial and regulatory roles associated with Tanzania’s oil and gas development. However, the Policy envisions a National Oil Company (NOC) fulfilling a purely commercial role, and it remains unclear whether this NOC will be the TPDC. Furthermore, the Policy only applies to midstream and downstream hydrocarbon sectors. It is not yet known if and how the TPDC will be involved in the upstream sector, nor whether it will continue to play a dual commercial and regulatory role in relation to upstream activities.

In September 2012, MEM announced its intention to review all 26 PSAs that have been signed by the Tanzanian government. The purpose of the review, according to the Minister for Energy and Minerals, was “procedural” in nature, with the purpose being to instruct development of legislation rather than to inform contract renegotiation. MEM also temporarily postponed offshore license bidding rounds – originally, the intention was to postpone bidding until the government had adopted the Policy and accompanying legislation. This delayed the fourth bidding round until late 2013. However, after adopting only the Policy, bidding resumed.

---


There was also a delay in the development of the Gas Legislative Package due to political unrest associated with the proposed developments of onshore gas infrastructure in Mtwara. Protests and riots broke out at the end of December 2012 and escalated in January 2013, with seven deaths being reported in relation to such protests.34 The Government is currently seeking to resolve the issues that gave rise to the political unrest in Mtwara, and has formed an ad hoc committee to investigate and report on the issue.35


RECOMMENDATIONS

ON STRENGTHENING AND SIMPLIFYING THE LEGAL FRAMEWORK

One of the major problems identified by numerous stakeholders in this sector is a weak, unclear and uncertain legal framework. A number of the laws that govern the oil and gas industry, such as the Petroleum Act, the Environmental Management Act and the Prevention and Combating of Corruption Act do not reflect recent changes in Tanzania’s situation. For example, such legislation does not take into consideration the discovery of new resources, improved environmental standards, technological advancements, a changed economic order and modern standards of public accountability.

Additionally, the multiplicity of authorities and procedures, including separate policies and planned legislation for upstream and downstream activities, can be confusing. This situation is aggravated by a lack of clear demarcation as to the various roles and responsibilities of relevant parties. The resulting complexity in dealing with multiple authorities has been identified as a factor incentivizing corruption in Tanzania, and has led to Tanzania receiving relatively low ease of doing business ratings. For example, the World Bank’s Ease of Doing Business Index 2013 ranks Tanzania as 145th in the world, which is 19th among countries in sub-Saharan Africa and is well behind Uganda, Kenya, and Mozambique. Furthermore, the East Africa Bribery Index 2013 identifies the police, judiciary and revenue authorities as the most prone to corruption in Tanzania. Many respondents have identified the need to hasten or access services (to which they were already entitled in law) as the primary reason for paying a bribe to government officials. In order to minimize instances of petty corruption, it is necessary that the regulatory framework be clear and simple, and lend itself to efficient functioning.

AMEND THE PROPOSED GAS SUPPLY BILL TO BETTER REFLECT THE OBJECTIVES OF THE NATURAL GAS POLICY

Any legal reform of the oil and gas sector must start with an examination of the Policy and Bill, which form the central components of the proposed Gas Legislative Package. The Natural Gas Policy could provide a strong foundation for Tanzania’s growth if its core principles are successfully translated into legislation and implemented effectively. The Policy’s five key pillars are indicators of what relevant statutes governing hydrocarbon development in Tanzania should contain. Each legislative provision

should be tested against these principles and a determination should be made as to whether they support, and are supported by, the Policy. In this regard, the current version of the Bill contains several provisions that are either too vague to be properly implemented, monitored and enforced, or seem at odds with the spirit and letter of the Policy. The recommendations that follow address these weaknesses.

**RECOMMENDATION 1: COHERENT POLICY FOR ALL SEGMENTS OF THE INDUSTRY**

While Tanzania is eager to license off exploration blocks and sign PSAs with extractive companies, the government has not yet drafted policy or enacted legislation to govern upstream natural gas development. This is highly problematic as such legislation is necessary to guide the licensing of exploration blocks. Without the necessary legal safeguards in place covering upstream activities, it is less likely that Tanzania will receive a good deal under the PSAs that they are currently signing, which will have long-lasting negative impacts on Tanzania’s economy, environment and society.

Currently, EWURA regulates the mid- and downstream segments of gas development, but it is yet unclear which agency will undertake regulation of the upstream segment. It is likely that an agency similar to the Tanzania Mineral Audit Agency (TMAA), which currently regulates upstream activities in the mining sector, would be best placed to regulate upstream gas development. This is because the TMAA, and its operational model, have proved extremely successful in regulation of upstream mining.

---

**Five Pillars of the Natural Gas Policy**

1. **Maximizing benefits for Tanzania:** That benefits to the Government and the people of Tanzania are optimized through strategic participation, interventions and equitable benefit sharing.

2. **Developing human capacity:** That human capacity, as well as institutional, legal and regulatory frameworks, are developed and strengthened to ensure efficient and sustainable natural gas development.

3. **Transparency and accountability:** That a transparent and accountable system be established to ensure effective management and development of the natural gas industry.

4. **Disaster management systems:** That all activities in the natural gas value chain consider disaster management and adopt relevant mechanisms to mitigate adverse impact and protect health, safety and environment.

5. **Integration with other sectors:** That the natural gas industry is integrated with other sectors of the economy in order to promote and facilitate accelerated economic growth and socio-economic transformation.
activities. Therefore, either a new agency should be established modeled on the TMAA, or the TMAA’s capacity and expertise should be extended to empower them to regulate upstream gas production in addition to their current regulation of upstream mining activities. It is important that the upstream policy and governing legislation be developed in alignment with the Natural Gas Policy so that the natural gas governing framework is a comprehensive and coherent whole (see Figure 4).

**Recommendation 1:** To ensure coherency, the upstream policy must be developed in accordance with the Natural Gas Policy (which governs mid- and downstream gas activities). Regulation of upstream activities should be undertaken by either a new regulatory authority formed on the TMAA model, or the TMAA’s capacity and expertise should be extended to empower it to undertake regulation of upstream gas production activities in addition to its current regulation of upstream mining activities.

**Figure 4. Holistic Legal Framework**

![Holistic Legal Framework Diagram](image)
RECOMMENDATION 2: STRICT CONSEQUENCES FOR NON-COMPLIANCE

The Bill does not specify adequate punitive consequences for non-compliance with its requirements, even for gross violations such as unlawful working conditions, oil or gas leakages and spills, or other acts that can cause severe health or environmental harm. Currently, the only penalty provided in the Bill is for revocation of licenses in instances of non-compliance. This appears to be an adequate penalty, but is ineffective if not implemented in practice. Furthermore, while the Bill laudably declares that internationally recognized standards in matters of health and safety will be recognized as compulsory standards, neither the specific standards nor the consequences for failing to comply with them are spelt out.37

Recommendation 2: Ensure that applicable standards and practices are clear, ascertainable and enforceable in practice. For gross violations, a strict liability standard should be adopted.

RECOMMENDATION 3: REQUIRE SPECIFIC STANDARDS RATHER THAN VAGUE OBLIGATIONS

The Bill needs to be drafted with clear and specific obligations to close any possible gaps that may create scope for mismanagement and corruption. For example, while the Bill mentions environmental safeguards, the obligations are so vague as to be vulnerable to abuse. Similarly, the Bill mandates local procurement of goods and services subject to companies’ ‘best efforts.’38 This standard is not ascertainable and, therefore, not enforceable in practice, leaving it without any teeth at all. Ambiguous obligations should be replaced with specific and enforceable requirements in order for such standards to be effectively implemented and observed in practice.

Recommendation 3: The Bill should amend all inadequate and vague obligations and instead stipulate clear, ascertainable and enforceable social and environmental standards.

37 Natural Gas Supply Bill, section 48.
38 Ibid., section 15.
Drafting the new legal framework governing natural gas development in Tanzania requires a comprehensive understanding of how contract negotiations play out in practice. For example, the existence of the Model PSA does not guarantee that it will be adopted in practice, as there is still scope for compromises and concessions to be made by government officials under the pressure of negotiations. Such compromises are frequently at the expense of the environment and the social benefits of resource extraction. In this part, we propose institutional measures for combating corruption in extractive industry negotiations and ensuring the best deal is secured for the Tanzanian people.

While Tanzania is moving in the right direction, it is important to understand the pitfalls to avoid for the sake of its long-term interests. Deals between extractive companies and developing states are notoriously unbalanced. Certain extractive companies have developed a particularly negative reputation of using devious distributive tactics to manipulate governments and landowners in negotiations. In our field research we found that the government holds a weak negotiating position, given its relative lack of technical expertise. Additionally, government officials tend to have considerably less negotiation experience than extractive companies’ representatives, as well as a shortage of human resources and an information asymmetry when dealing with experienced extractive companies. These are areas where effective interventions can be made at government training and budgetary levels.

There are also perceived external pressures on government negotiators, who believe that assuming a hard negotiating position may result in extractive companies opting to

---

invest in neighboring countries instead of in Tanzania. However, such insecurity should be dismissed as foreign direct investment in the extractive industries is primarily driven by location of natural resources. Required compliance with higher standards is a secondary factor in investment decisions, therefore there will always be companies willing to invest in Tanzania despite being required to comply with higher social and environmental standards, for example. Consequently, the Tanzanian government should push harder to protect social and environmental interests during negotiations. The standards made applicable to extractive projects not only need to comport will international good practices, but must also impose strict liability and penalties for non-compliance.

The recommendations in this section address the following points of weakness that could give way to corruption during the negotiation process:

(i) there are too many important issues that are left open to negotiation as non-mandatory conditions in the Model PSA, subject only to the discretionary powers of negotiators;
(ii) the government has difficulty managing its conflict of interest, as it has both commercial and regulatory interests at play in negotiations;
(iii) the industry has more expertise, resources, and information on extractives relative to the government, leading to an information asymmetry and imbalance in bargaining power;
(iv) government officials are not trained to anticipate and respond effectively to the negotiating tactics of the company’s representatives;
(v) the culture of secrecy around contract negotiations works in favor of the company, by undermining the accountability of the government to its people, and enabling corruption.40

RECOMMENDATION 4: MANDATE THAT MINIMUM SOCIAL AND ENVIRONMENTAL STANDARDS ARE NON-NEGOTIABLE

There are too many crucial areas that are left open to negotiation rather than being enshrined in law. These include several key social and environmental safeguards as well as transparency-related measures. For example, there are currently no restrictions on terms of PSAs or contracts except tariffs mandated by EWURA. When these aspects

40 Similarly, the Director-General of PCCB, Dr. Edward Hoseah, has highlighted several potential risks of corruption during the negotiation phase, including the lack of experts supporting Tanzania’s interests, the lack of transparency about negotiations and the resulting contracts, and excessive discretionary power: Edward Hoseah (Director-General, PCCB), in discussion with the authors. March 14, 2014. Dar es Salaam, Tanzania.
do not have strong legal protection, they are dependent on which party has stronger negotiating skills, which may often be commercial investors with their superior experience and monetary resources.

The only way to guarantee the basic rights of Tanzanian citizens is to remove them from the scope of negotiations. This is easily remedied. The Model PSA can be amended so as to reduce the range of topics that are subject to negotiation, thereby strengthening Tanzania’s bargaining position. PSAs signed in practice with extractive companies should adhere to the model form, with clear reasons being required (and made publicly available) where departure from the model form is made.

**Recommendation 4:** Amend the Bill, Model PSA and other laws pertaining to oil and gas, to ensure that the only negotiable terms relate to financial or commercial matters. All other matters, including standards on the environment, health and safety, social welfare and land acquisition, should be mandated by statute and not open to negotiation. Decisions to deviate from the Model PSA should be made only in limited instances, and clear, written reasons for such deviation should be given and made publicly available.

**RECOMMENDATION 5: RESOLVE THE GOVERNMENT’S CONFLICT OF INTEREST**

A major difficulty is navigating the conflict of interest faced by government negotiators. The government is caught between its role as a regulatory authority, imposing environmental and other standards, and its desire to maximize returns from extractive revenues, which often requires lowering such regulatory standards. TPDC has expressed that this is conflict of interest is a problem they are trying to resolve, since it affects their commercial viability. The TPDC is currently undergoing company restructuring, with the aim of becoming responsible for only the commercial aspect of government’s natural gas agenda. It is anticipated that the TPDC’s regulatory and other non-commercial responsibilities will be distributed among soon-to-be-created “offspring” agencies. While bifurcating the government’s commercial and regulatory agendas in this way is a positive step, it will not fully address the government’s conflict of interest since, in practice, TPDC’s offspring agencies will likely struggle to regulate their parent commercial entity.

However, there is a way to resolve the conflict of interest and ensure that Tanzania’s efforts to raise public revenues are not in opposition to the country’s interest in

---

41 Professor Sospeter Muhongo (Minister of Energy and Minerals), in discussion with the authors. March 15, 2014. Dar es Salaam, Tanzania.
upholding social and environmental protections. Notably, the apparent tension may be resolved by applying a different cost calculus. The government should correct the proposed balance sheet by considering potential social and environmental costs from extractive activities in their costs analysis. Such costs should then be weighed against the benefits of extraction, bearing in mind the need to maximize and smooth intergenerational benefits of natural resource wealth. Simple econometric analysis examining the relative growth rates of resource prices and interest rates should be considered.42

This will allow Tanzania to make informed decisions regarding their rate of natural gas extraction, calculating whether intergenerational benefit will be maximized through leaving gas reserves unexploited until future generations, or whether they should rather extract gas today and invest resource revenues in capital markets. A holistic picture of the costs, benefits, and risks of extraction is necessary to determine what the best deal for Tanzania is. This cost-benefit evaluation should inform government’s reservation value - if extractive companies cannot make an offer that exceeds the value Tanzania’s receives (on an intergenerational basis) from leaving reserves unexploited, no deal should be signed. Changing world commodity prices will be another key factor that the Tanzanian government must take into consideration in making this value decision.

As a first step negotiable and non-negotiable factors must be separated43 so that the discretion of government negotiators is limited to only financial and commercial considerations, as mentioned above. The second step is quantifying the externalities of extraction. This is difficult but achievable.44

Recommendation 5: In preparing for negotiations, the government should set a reservation value that factors in the cost of long-term social and environmental damage to Tanzania. Decisions regarding how quickly to extract Tanzania’s gas should be based on econometric modeling that takes into consideration relative changes in commodity prices and interest rates over time. Decisions should focus on maximizing and smoothing intergenerational benefits for Tanzania.

42 In accordance with Hotelling’s Rule.
**RECOMMENDATION 6: INVEST IN TECHNICAL EXPERTISE**

MEM has recognized the importance of engaging technical experts in the oil and gas sectors and has committed funding to education and training for future generations of experts. As the Minister said, “we have a Marshall Plan … on having a critical mass of well-trained Tanzanians in [the] oil and gas sector.”\(^45\) MEM is supporting and keeping a register of Tanzanians who are pursuing advanced studies in engineering, geology, geophysics, chemistry and other sciences related to hydrocarbons at universities worldwide. This is an important move that the government should continue to support.

In addition, Tanzania needs to invest more intensively in training lawyers, accountants and economists. Lawyers are invaluable for updating policy and legislation, thereby ensuring that there is a solid framework to govern negotiations and protect government interests. Accountants and economists are required to advise the government on the relative benefits of leaving gas reserves unexploited for future generations, or whether gas should be extracted today and resource revenues be invested in capital markets. While Tanzania develops its domestic capacity and expertise, the government should be open to receiving foreign expertise to assist the government in making decisions during this critical time in the country’s development.

**Recommendation 6:** The government should continue to invest in developing domestic capacity and expertise, and should invest more resources in training lawyers, accountants and economists.

**RECOMMENDATION 7: INVEST IN NEGOTIATION EXPERTISE**

With their immense financial and human resources, foreign extractive companies invest heavily in expert negotiators to get the best deal. Their negotiators seek to minimize the expenses involved for extractive companies in projects, especially those with a long time horizons where profits are often not attained for decades. Also, they seek to minimize risks, by, for example, insisting on the inclusion of stabilization clauses in PSAs to avoid potential increases in costs from environmental regulations being changed after PSAs have been signed. Governments tend to be unwilling or unable to spend an equivalent amount on professional negotiators – to their detriment.

\(^45\) Professor Sospeter Muhongo (Minister of Energy and Minerals), in discussion with the authors. March 15, 2014. Dar es Salaam, Tanzania.
The academic literature confirms the obvious: “inexperienced negotiators will end up with a much worse deal when facing experienced opponents.”

Taking the lead from the companies, the government of Tanzania should similarly treat expending resources during the negotiation phase as an “investment.” It may be difficult to find expert negotiators who will work for the Tanzanian government for less pay than they could earn at multinational companies. Therefore, the Tanzanian government must consider providing equal incentives to expert negotiators to secure their help during the negotiation process. The government must take a commercial perspective and consider the gains to be made from devoting sufficient resources to correct the imbalance in negotiation expertise.

**Recommendation 7:** The government should:
(i) Invest in domestic negotiations training and capacity building; and
(ii) Consider matching the incentives offered by extractive companies to expert negotiators in order to secure their assistance in the PSA negotiation process.

**RECOMMENDATION 8: STRENGTHEN BARGAINING POWER BY FORMING REGIONAL ALLIANCES TO SET REGULATORY STANDARDS**

Tanzania’s bargaining power is weakened by the so-called ‘race to the bottom’. When other jurisdictions in the region offer more attractive license arrangements with fewer obligations to comply with, it puts pressure on local negotiators to match these expectations. Tanzanian negotiators may be driven by fear of “exit threats” by investors, fleeing to jurisdictions where the costs of doing business, including the costs of compliance with environmental and social standards, are lower. However, these are not always credible threats. Empirical research suggests that, although developing countries often lower standards to attract investment, the location decisions of industries have not been “highly sensitive” to increases in the stringency of environmental standards.

Instead of competing in this retrogressive race, Tanzania should seek to collectively raise standards in the region. Tanzania can leverage its bargaining power by working with its neighbors to set regional codes for protecting health and safety, cultural

---

heritage, human rights, natural resources, biodiversity, and so forth. Even existing non-binding codes are useful reference points that should be called upon in negotiations, as evidence of the standards that Tanzania’s competitors have subscribed to in principle.

**Recommendation 8:** Form regional alliances to collectively set rules or norms for protecting local interests during the extraction process, including the health of Tanzania’s society and environment. Refer to these standards in negotiations to leverage power and hold ground on regulatory standards.

**ON IMPROVING MONITORING AND ENFORCEMENT MECHANISMS**

**RECOMMENDATION 9: SPECIFY QUALIFYING CRITERIA FOR CONTRACTORS**

The *Petroleum Act*, which governs the licensing process, does not require MEM to maintain a list of qualified contractors, nor does it specify the conditions under which a contract will be awarded. Creating a list of qualified and validated contractors would be very useful for Tanzania. It would ensure that only trusted contractors are allowed to operate in the sector, and would allow applications by unknown or unverifiable entities to be culled at the outset. A clear list of criteria could be used and contractors that fail to satisfy every requirement should not be eligible for consideration.

**Recommendation 9:** The government should:
(i) Remove ministerial discretion for when a contract can be awarded; and
(ii) Maintain a list of qualified and validated contractors that satisfy a specified list of criteria. If potential contractors do not appear on the list or fulfill the necessary criteria, they should not be eligible to operate in Tanzania’s natural gas sector.
RECOMMENDATION 10: INSTIGATE JUDICIAL REFORM

According to the East Africa Bribery Index, the judiciary in Tanzania is extremely vulnerable to corruption. Additionally, there is a perception that cases take many years to resolve, which raises scope for corruption in the judiciary. It also incentivizes Tanzanian individuals and companies to avoid the court system and settle disputes, even if it involves the payment of bribes or fails to protect certain rights.

Recommendation 10: Undertake steps to streamline Tanzania’s judicial system in order to reduce delays and case backlogs, which will lessen corruption in the judicial system. Possible measures could include computerization of judicial records to save time spent performing administrative tasks and amendment of time-consuming procedures. Furthermore, the judiciary itself should also be held accountable for acts of corruption.

---

ON INCREASING PUBLIC ACCOUNTABILITY

Transparency is crucial in decision-making in order to hold both companies and the government to higher standards. The culture of secrecy prevents public access to the details of resource contracts and negotiation proceedings, which increases the potential for corruption and undermines democratic principles. The mechanisms for oversight, including internal monitoring and public accountability, depend on both the government and the public having access to accurate information. It is only through opaque, secretive processes that corruption survives. Thus, the need for increased openness and transparency cannot be overstated. A first step is to establish a freedom of information law and amend existing legislation namely the Newspapers Act 1976, the Broadcasting Act 1993 and the Official Secrets Act 1963.

According to TPDC, the terms of Tanzania’s signed PSAs are very favorable to Tanzania, yet the government is unwilling to make such PSAs publicly available. Apparently, the government does not want to PSAs to be publicly available as they believe that public knowledge of the country’s PSA terms will weaken the government’s insistence on those standards in future negotiations with other parties. However, it is far more likely that public disclosure of PSA terms would strengthen the government’s bargaining position, rather than weaken it, which calls into question the government’s rationale. Furthermore, if the government is accountable to its people during the contracting process, it reduces the scope of what licensees may otherwise exploit, and the government’s position becomes less vulnerable to the vagaries of negotiating power.

RECOMMENDATION 11: MAKE RELEVANT INFORMATION PUBLICLY ACCESSIBLE

Very simple changes could go a long way in improving transparency and accountability in Tanzania. Such developments would include mandatory publication of relevant documents and information on websites, including both signed PSAs and the proposed terms of future PSAs. Window periods for interested parties to provide feedback should be provided for. These kinds of measures are supported by international precedents for enforcing higher transparency standards on extractive companies from Canada, the U.S., and the European Union. Such ambitious

---

50 Mandatory reporting for the extractive sector is being implemented in the U.S. through the Dodd Frank Act and in the European Union (EU) through its Transparency and Accounting Directives. Canada recently made a commitment to introduce mandatory reporting standards by June 2015, which require Canadian extractive companies (including oil, gas and mining) to “publish annual reports of payments of $100,000 and over on a project-level basis, made to all levels of government, including Aboriginal entities, both domestically and abroad”: Government of Canada, Natural Resources Canada, “Establishing
initiatives to improve transparency and the accountability of extractive companies are becoming increasingly common; Tanzania cannot afford to be left behind.

**Recommendation 11:** The government should increase transparency and accountability by making publicly available all documents and information relevant to the signing and implementation of PSAs, except for sensitive proprietary information or trade secrets. Such documents and information could be accessible online, and should include PSAs signed in the past, as well as the proposed terms of PSAs under negotiation.

INVESTMENT LAW AND DISPUTE RESOLUTION

CONTEXT

The Tanzania Investment Center has identified investor protections offered by bilateral investment treaties (BIT) and an “unrestricted right to international arbitration”\(^{51}\) as key strategies to attract foreign, direct investment in the extractives industry.\(^{52}\) Tanzania has entered into BITs with 13 countries,\(^{53}\) which set out the standards by which foreign investors will be treated. In accordance with these agreements, the government has agreed to afford investors from the United Kingdom, Denmark and Switzerland, amongst others, preferential rights and protections for their investments. Accordingly, domestic companies and foreign companies whose governments are not party to a BIT, are not afforded the same rights as those whose government have entered into a BIT with Tanzania. The ability to directly bring claims against the Tanzanian government in an international forum is generally the most important feature of BITs for investors.\(^{54}\) Because of the availability of international arbitration, a private investor need not rely on its home state, (who may be unwilling, for diplomatic reasons, to bring a claim on its behalf) for protection.

The rights and obligations in a BIT are reciprocal, for example, a Tanzanian company investing in the United Kingdom can avail itself of the same preferential rights as a British investor in Tanzania. In reality, however, the protections guaranteed by a BIT are operatively more valuable to a foreign company investing in Tanzania. This is because Tanzania is predominantly a capital importing country and there are few Tanzanian companies making foreign investments in developed countries to take advantage of BIT protections. In light of this, there arises the question of whether entering and remaining party to BITs is advantageous for Tanzania. In the following sections the benefits of taking part in the BIT regime and the implications for the extractives industry will be discussed with recommendations for how to modify the

---


regime in order to ensure maximum benefit for Tanzania as it seeks to attract and control FDI in the extractive industry.

**SHOULD TANZANIA REMAIN PARTY TO BILATERAL INVESTMENT TREATIES?**

A key reason the government enters into BITs with capital exporting countries like the United Kingdom and Germany is to ensure that potential foreign investors perceive Tanzania to have a favorable investment climate and as a result are more likely to invest in, amongst others, the extractive sector in Tanzania. For similar reasons, the BIT regime has proliferated across the world and is made up of a network of over 2800 BITs concluded by 180 countries seeking to create a favorable investment climate to attract FDI.55

There is much debate, however, as to whether BITs do in fact attract foreign investment. The competitive advantage Tanzania may gain when compared with a country that has a policy of not entering into BITs has been lauded as a clear advantage of the regime.56 It is believed that the conclusion of BITs also have a signaling effect to investors unprotected by the BIT regime, that the government of Tanzania are serious about protecting foreign investment.57

The investor protections provided by BITs are theoretically more important for investors in the extractive industry because extractive companies tend to invest heavily in projects by way of up front capital expenditure in setting up expensive exploration and extraction operations.58 Whilst in theory the link between heightened investor protections and increased FDI seems inevitable, there has been little empirical research to support this.59 The conclusion of a BIT is often a peripheral factor considered when a company decides to invest in a country.60 There is more evidence to suggest that regardless of whether investment protections are available, a company will invest in a

---

**References**

country if there are significant amounts of natural resources to exploit. Tanzania is in a strong position in this regard with a stable political history and an abundance of natural resources: offering investor protection through the BIT regime will not be determinative of whether companies decide to invest in the country’s natural resources.

Regardless of the debate as to whether BITs do indeed attract FDI, there is one clear advantage to Tanzania entering into BITs: any dispute between the government of Tanzania and a foreign investor will be heard before an independent tribunal and therefore will not be subject to diplomatic bargaining. Settling disputes through diplomatic bargaining is dangerous because it could result in the Tanzanian government being pressured into accepting a settlement offer for the dispute on less favorable terms than it deserves. This is a compelling reason to remain party to BITs and as such, the following section will set out recommendations of how work within the regime to strengthen the terms of the BITs Tanzania is a party to.

RECOMMENDATIONS

In entering into a BIT, the government agrees to limit its freedom to treat investors in accordance with domestic law, in favor of abiding by alternate international standards. The recommendations that follow fall into two categories:

(i) the first category recommends updating specific existing clauses; and
(ii) the second category recommends including a new term in the BITs, designed to balance the rights afforded to private investors with a correlative obligation to the Tanzanian government.

Updating the BIT clauses would signal an important step toward boosting the profitability, development and positive social impacts of the burgeoning hydrocarbon industry, which has, and will continue to attract a significant amount of FDI.

RECOMMENDATION 12: UPDATE THE EXPROPRIATION CLAUSES TO INCLUDE A SOCIAL AND ENVIRONMENTAL POLICY CARVE OUT

Tanzania retains the sovereign right to expropriate the property of a foreign investor even if the investor’s home state is party to a BIT, provided the expropriation is carried out lawfully. In order for an expropriation to be lawful, it must meet be:

61 Ibid.
for a public purpose;
(ii) conducted in a non-discriminatory manner; and
(iii) the investor must be paid adequate compensation for the losses suffered due to
the expropriation.\(^{(i)}\)

---

**Case Study: South Africa’s Investor Protection Regime**

An example of the challenges to policy progression that expropriation clauses can cause
is well illustrated by the reasons South Africa took the recent move to remodel its
investor protection regime. In 2013, South Africa gave notice to cancel many of its
bilateral investment agreements following the review of the BIT regime by the South
African Department of Trade and Industry (DTI).\(^{(ii)}\) The BIT review was initiated because
of a case brought by two European investors who challenged certain provisions in South
Africa’s *Mining and Petroleum Resources Development Act 2004* (MPRDA). The MPRDA
was enacted in part to give effect to the government’s Black Economic Empowerment
policy, which “requires, among other things, equity in mining companies to be partly
owned by ‘Historically Disadvantaged Persons.’”\(^{(iii)}\) The European investors argued that
the effect of the MPRDA amounted to an expropriation of their mineral rights and
demanded adequate compensation for the alleged expropriation.\(^{(iv)}\) This case raised
concerns that the South African government’s obligations under the BIT regime
extended too far into the policy making sphere, hindering the government’s ability to
enact social measures in order to achieve socio-economic policy goals.

The South African government insists that the move to exit the BIT regime does not
signal South Africa’s intention to strip foreign investors of adequate protections; instead
South Africa has proposed a legislative framework protecting foreign investment.\(^{(v)}\) It is
envisioned that domestic legislation will allow the government the proper latitude to
enact social policy in the public interest without threat of an international investment
claim.

The move away from the first generation of BITs, which are arguably skewed in favor of
protecting the foreign investor with few, if any, correlative obligations on foreign
investors, is not unprecedented. As identified by the DTI, the US and Canada have
overhauled the terms of their BITs, Australia no longer includes a compulsory arbitration
clause and the EU and India have begun a “rethink” of the terms of their BITs.\(^{(vi)}\) As the
hydrocarbon industry is in its early stages, it is an appropriate time for Tanzania to

---

\(^{(i)}\) This is set out in all of Tanzania’s bilateral investment treaties including the UK-Tanzania Bilateral
\(^{(ii)}\) International Institute for Sustainable Development. “South Africa begins withdrawing from EU
brief-9/.
\(^{(iii)}\) Herbert Smith Freehills LLP, Nicholas Peacock and Hannah Ambrose. “South Africa terminates its
bilateral investment treaty with Spain: second BIT terminated, as part of South Africa’s planned review of
\(^{(iv)}\) Ibid.
\(^{(v)}\) Xavier Carim. “Update on the Review of Bilateral Treaties in South Africa.” Department for Trade and
\(^{(vi)}\) Ibid.
consider the potential negative effects of BITs on policy making and build in appropriate protections to ensure that foreign investment is a vehicle for positive development which encourages rather than inhibits social and environmental protections and progress.

As is standard in many BITs, the expropriation clauses across the Tanzanian BITs require compensation to be paid by the Tanzanian government to the relevant foreign investor for actions which amount to indirect expropriation. Indirect expropriation has not been clearly defined and as a result, a wide range of government measures may be deemed “indirect expropriation.” For example, environmental and human rights policy changes that negatively affect the value of an investor’s investment may be deemed indirect expropriation. This lack of clarity around what constitutes indirect expropriation risks stunting Tanzania’s policy development because it may induce the government to take less progressive steps toward addressing social and environmental issues due to a fear that such steps may negatively affect foreign investment and require compensation accordingly.

**Recommendation 12:** To ensure that the expropriation clauses in BITs do not have a chilling effect on policy making, the following addition to the current expropriation is suggested: “Non-discriminatory regulatory measures taken by a Party that are designed and applied to protect or enhance legitimate public welfare objectives, such as public health, safety and the environment, do not constitute an indirect expropriation under this Article.”

**RECOMMENDATION 13: AMEND THE COMPULSORY ARBITRATION CLAUSE**

Compulsory arbitration clauses are a common feature of BITs, including the BITs Tanzania has concluded with its treaty partners. A compulsory arbitration clause commits the government to enter into arbitration, should a dispute with a private investor of a BIT state party arise. In agreeing to international dispute resolution, Tanzania voluntarily surrenders sovereignty to hear disputes arising from activities in the country, in Tanzanian courts. Instead, private investors are able to sue the

---


government in an international tribunal. Concerns have arisen as to the consequences of international arbitration for developing countries. Arbitral tribunals have been criticized as being the “business man’s court,”71 which are biased in favor of commercial investors. Another recurring criticism is that the arbitration process is not consistent and tribunals produce vastly different results when adjudicating similar issues, as they are not bound to follow past decisions.72 As noted above, however, there is a significant advantage to arbitration in that there is less risk that the government will be subjected to diplomatic pressure in the resolution of investment disputes. Below are two case studies, which illustrate the potential challenges of compulsory arbitration clauses.

**Case Study: Lessons from Australia on Compulsory Arbitration**

In 2011 Australia changed its trade policy to exclude compulsory investor-state dispute resolution clauses in future BITs. The context in which this shift took place involved a case brought under the Australia-Hong Kong BIT, by Philip Morris Asia, a leading cigarette manufacturer. The case challenged the Australian government’s plain cigarette packaging legislation, which was enacted as part of the health policy to reduce the rate of smoking in Australia. The challenge by Philip Morris Asia caused the government to rethink BIT arbitration provisions because of concerns that the investor-state arbitration could impair the government’s ability to introduce new and progressive health policy.

The Australian government’s concerns are illustrative of the potential negative consequences of compulsory arbitration. In reforming its BIT policy, however, the Australian government was confident that the lack of an arbitration clause would not harm inbound FDI because the Australian courts would be able to handle any resultant investment claims domestically.73 In the context of Tanzania, it would be preferable to amend the compulsory arbitration clauses rather than to exclude them. International confidence in Tanzania’s judiciary does not match that of Australia and as such, investors may consider the possibility of judgments biased in favor of the Tanzanian government more likely.74 As noted above, the international dispute mechanism is valuable to foreign investors and we therefore suggest amendment to allow for exhaustion of local remedies rather than exclusion.

---


73 Ibid.

In order to mitigate the risks of a compulsory arbitration clause, the government should require that local remedies are sought and exhausted in the first instance. This gives the Tanzanian court a chance to settle claims and transform the role of arbitral tribunals to a court of last resort. In order for exhaustion of local remedies to be a meaningful and final step in most dispute resolution processes, it is necessary to build international confidence in the independence of the Tanzanian judiciary.

**Recommendation 13:** Require exhaustion of all local remedies before resorting to arbitration, for example:

> “An Investor may submit a claim to arbitration pursuant to this Agreement, provided that [it]:

(i) has first submitted a claim before the domestic courts of the Host State for the purpose of pursuing local remedies, after the exhaustion of any administrative remedies, relating to the measure underlying the claim under this Agreement, and a resolution has not been reached within a reasonable period of time from its submission to a local court of the Host State; or

(ii) demonstrates to a tribunal established under this Agreement that there are no reasonably available legal remedies [or the] possibility of such remedies in a reasonable period of time.”

---

**Case Study: Occidental Petroleum Corporation v Ecuador**

Another challenge of international arbitration relates to the processes of the tribunal and their increasing willingness to interpret BITs in accordance with their spirit and purpose. This approach has on occasion resulted in a failure to give due weight to clear-cut provisions as was illustrated by the *Occidental Petroleum Corporation (OPC) v the Republic of Ecuador* case. OPC brought claims against the Ecuadorian government alleging breach of the Fair and Equitable Treatment and Expropriation clauses of the UK-Ecuador BIT because the Ecuadorian government terminated an oil concession agreement (Participation Agreement). The Participation Agreement permitted OPC to explore and exploit hydrocarbons in Block 15 of the Ecuadorian Amazon but did not permit assignment of any part of the economic interest in the agreement. The tribunal found that whilst OPC had in fact violated Ecuadorian law by assigning an interest in Block 15 to a third party without receiving ministerial approval, the termination of the Participation Agreement by Ecuador was “disproportionate” to the breach of law. Accordingly, the tribunal awarded OPC US$2.4 billion in damages.

---


76 *Occidental Petroleum Corporation (OPC) v. the Republic of Ecuador* (ICSID Case No. ARB/06/11).

Critics of the decision characterize the tribunal’s finding of disproportionality as a “fabricated...extension of the Fair and Equitable Treatment obligation,” illustrating the creative license of an arbitral tribunal to read non-existent standards into clear cut provisions. Whether one agrees with the outcome of the case or not, the case is illustrative of the vast and unchecked interpretive powers of arbitral tribunals.

**RECOMMENDATION 14: INTRODUCE AN ANTI-CORRUPTION CLAUSE**

Foreign investors in Tanzania are obliged to comply with domestic anti-corruption laws, which reflect Tanzania’s international commitments to tackle corruption. In order to raise the profile of domestic anti-corruption law and elevate its operation to the international plane, an anti-corruption clause should be introduced into the BITs to impose obligations on investors prohibiting corruption. To ensure the efficacy of an anti-corruption provision in a BIT, there must be significant consequences attached to the investment in addition to individual civil and criminal liability of those involved. This could include revocation of relevant regulatory licenses.

**Recommendation 14:** Suggested wording to include in BITs going forward:

“Investors and their Investments shall not, prior to the establishment of an Investment or afterwards, offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official of the Host State, or a member of an official’s family or business associate or other person in close proximity to an official, for that official or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties, in order to achieve any favor in relation to a proposed investment or any licenses, permits, contracts or other rights in relation to an Investment.”

---


ECONOMY

CONTEXT

The Tanzanian economy has been growing steadily for the past 10 years. The country’s GDP (adjusted for purchasing power parity) is currently some $79 billion. Economic growth averaged approximately 6.9% in 2012 and 2013, and the economy is expected to perform even better in 2014, outpacing African and East African GDP growth averages (see Figure 5). Tanzania continues to do well in maintaining macroeconomic stability which, along with institutional and policy reforms, has been a fundamental factor driving the country’s strong economic growth. It is also anticipated that further progress will be made in reducing inflation and closing the country’s budget balance and current account deficits (see Table 2).

Table 2. Summary of Key Macroeconomic Indicators in Tanzania

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real GDP growth</td>
<td>6.4</td>
<td>6.4</td>
<td>6.9</td>
<td>7</td>
</tr>
<tr>
<td>Real GDP per capita growth</td>
<td>3.4</td>
<td>3.3</td>
<td>3.8</td>
<td>3.9</td>
</tr>
<tr>
<td>CPI inflation</td>
<td>12.7</td>
<td>16.1</td>
<td>8.4</td>
<td>6.9</td>
</tr>
<tr>
<td>Budget balance % GDP</td>
<td>-6</td>
<td>-9.1</td>
<td>-3.9</td>
<td>-3.1</td>
</tr>
<tr>
<td>Current account % GDP</td>
<td>-11.9</td>
<td>-11.1</td>
<td>-11.9</td>
<td>-10.8</td>
</tr>
</tbody>
</table>

Based on just the known estimates of recoverable gas resources, Tanzania could attract around US$30 billion in investments in the natural gas sector over the next five years, with exploration and production operations expected to bring in up to US$250 billion in government revenues over the next ten years. Considering that government

revenues currently stand at approximately US$7.1 billion, increases of US$2.5 billion in government revenues every year would represent annual increases of some 35.7%. Unless properly managed, this rapid and significant increase in revenues may result in greater government spending, which may trigger the negative economic effects associated with the Dutch disease.

Figure 5. Tanzania’s GDP Growth Compared to that of East Africa and Africa

![Tanzania’s GDP growth compared to that of East Africa and Africa](image)

THE DUTCH DISEASE

An increase in government spending (due to raised government revenues from the extractive industries) causes domestic currency (or real exchange rate) appreciation as a result of more hard currency entering the country. Domestic currency appreciation results in an increase in “the relative prices of exports and effectively renders other export industries non-competitive since they become too expensive.” In Tanzania’s context, we would see a decline in the country’s agricultural and manufacturing exports as those exports become expensive in comparison to those of neighboring countries and thus less competitive. The agricultural and manufacturing sectors, together with wholesale and retail trade, transport and communication activities, have traditionally been the primary drivers of Tanzania’s economy. The collapse of these

---

sectors in Tanzania would be devastating for the country since these sectors employ the vast majority of Tanzania’s work force and hold the greatest potential to reduce poverty and lead to inclusive and sustainable economic development in the country. The decline of Tanzania’s non-extractive industry sectors would also mean that there would be no domestic industry left to sustain the economy once the country’s natural gas reserves are depleted.\textsuperscript{89}

While exports in the agricultural and manufacturing sectors have continued to grow, the bulk of Tanzania’s export growth has come from the extractive industries. Indeed, whereas the extractive industry’s share of exports was only 4\% in 1995, it has grown to over 40\% in recent years, a trend which has made Tanzania highly dependent on natural resource extraction. It is anticipated that Tanzania’s natural gas development will further raise the extractive industry’s share of exports, thereby increasing Tanzania’s reliance the sector. Much of the foreign direct investment in Tanzania is also attributed to the extractive industries. This natural resource dependency will make Tanzania’s economy less diversified, thereby making the country extremely vulnerable to external shocks, particularly to changes in world mineral and petroleum prices.\textsuperscript{90}

Furthermore, since 75\% of the country’s work force is employed in the agricultural sector, it is not surprising that Tanzania’s extractive industry-driven growth has been largely jobless growth, with chronic unemployment remaining a key challenge. Tanzania has negligible downstream value-adding mineral processing activities, which has meant that the country’s mineral wealth has not been used to boost the long-term development of Tanzania’s domestic industry and manufacturing sectors. Both industry and manufacturing are labor-intensive sectors that could otherwise have created significant employment opportunities for Tanzanians. The failure to develop local industry and manufacturing capacity on the back of the country’s mineral wealth undermines the sustainability of Tanzania’s economic growth. It also explains why the country’s economic growth has not led to substantial reductions in poverty or unemployment or other improvements in overall socio-economic conditions for most of the population.\textsuperscript{91}

In order to counter this, and other negative effects associated with the so-called Dutch disease, it is vital that Tanzania diversifies its economy and resource endowments in order to distance its investments from the volatility of commodity markets. It is also

\textsuperscript{89} Ibid.
\textsuperscript{90} Ibid.
essential that Tanzania invests its natural resource revenue in strengthening the country’s physical and human capital base, as well as in expanding its domestic industry and manufacturing capacity. It is only through such policies and investments, together with effective revenue management, that Tanzania can translate its temporary resource abundance into higher levels of employment and sustainable and inclusive long-term economic growth.

**Figure 6. Relative Shares of Oil Revenue**

![Diagram of Oil Revenue Shares](image)

**ECONOMIC ROADMAP**

In order to ensure that Tanzania’s natural resource wealth is harnessed effectively for the prosperity of the Tanzanian people, it is of crucial importance that policies that support sustainable and inclusive development in Tanzania are adopted and implemented at every stage in the natural resource revenue life cycle. This process can be broken down into the following five key stages:

1. Attracting and securing foreign direct investment in the extractive industries
2. Collecting fair government take from natural gas development
3. Effectively managing natural gas revenues for the benefit of all Tanzanians in present and future generations
4. Ensuring that natural gas revenues are invested in developing Tanzania’s physical and human capital, which will yield returns for Tanzania for generations to come
5. Maximizing positive spillover effects from natural gas development to boost domestic non-extractive industry sectors and local small- and medium-sized enterprises, so that economic growth in Tanzania may be both inclusive and sustainable.
**ECONOMY I: Foreign Direct Investment**

**CONTEXT**

Tanzania adopted socialist economic policies at independence in 1961, which led to the marked decline of Tanzania’s economy. Since the mid-1980s, successive Tanzanian presidents have pushed for increasing liberalization of the economy. Most recently, Tanzania’s current president, Jakaya Kikwete, has adopted tough economic measures that include “tight control of public spending, privatization of parastatals, reform of the Investment Code, the taxation system and land ownership, steps to improve revenue collection, expenditure control and civil service retrenchment.” Such reforms have resulted in Tanzania’s investment framework and financial sector becoming relatively developed in comparison to the country’s regional neighbors, and open-market policies have allowed for considerable economic growth in recent years.

Indeed, as is apparent from *Figure 7*, net foreign direct investment into Tanzania has grown significantly over the last 10 to 15 years.

*Figure 7. Net FDI Inflows Over Time for Tanzania, Kenya and Uganda (US$ current)*

---


However, foreign direct investment has been concentrated in Tanzania’s extractive industry sector, with very little spilling over into other sectors of the economy, despite unexploited potential existing in the services, agriculture and manufacturing sectors. For foreign direct investment in Tanzania to be sustainable, there is a crucial need to expand its focus beyond the extractive industries to other sectors that will be more sustainable and endure beyond the life of the country’s non-renewable natural resources.

Other problematic issues remain, including weak protection of private property rights (such as legal enforcement of individuals’ claims to use and possession of their land occupancy rights), and a lack of commitment to the institutional reforms necessary for private sector development. These challenges deter investment in Tanzania and restrain the economic potential of the country.

**RECOMMENDATIONS**

**RECOMMENDATION 15: UPDATE KEY LAWS AND/OR PROVISIONS AND BRING THEM IN LINE WITH GOOD PRACTICES ADOPTED AND IMPLEMENTED INTERNATIONALLY**

Since Tanzania embarked on liberalization of its economy, many of the laws governing the country’s extractive industries and foreign investment have been periodically updated. While some laws have been updated relatively recently, not all provisions in these laws reflect good practices adopted internationally. A key example concerns the broad stabilization clauses that Tanzania’s Mining Act permits to be included in mining agreements signed between investors and the government. Generally speaking, stabilization clauses serve to exclude the application of changes in law to an investment project, thereby ensuring that only the law that was in force on the day the investment agreement was signed applies to an investment project. While investors often insist that they require such regulatory stabilization in order to guarantee the economic predictability of their investments, such clauses also prevent reasonable and necessary improvements from taking place and serve to undercut governments of their fair share of benefits from an investment project.

---

In this regard, the *Mining Act 2010* allows for broad stabilization clauses to be included in mining development agreements that stabilization extends beyond fiscal terms (royalties, taxes, duties and levies) and also includes limitations on the exercise of discretion by the Minister or Commissioner and environmental matters. Such broad stabilization clauses are not considered good practice, and should not be permitted as they undermine Tanzania’s economic interests and restrict the government’s ability to enact public policies that protect the best interests of the country.

A more limited (and more appropriate) form of stabilization is provided for in Tanzania’s *Investment Act*, which provides for the stabilization of only certain fiscal benefits that are extended to investors under various acts, including the *Income Tax Act*, the *Customs Tariff Act* and the *Sales Tax Act*. Such a stabilization clause is more in line with good practice, although it appears that the broader (unacceptable) stabilization clause provided in the *Mining Act 2010* likely supersedes the clause included in the *Investment Act* as far as investment in the mining sector is concerned. While fiscal stabilization is undoubtedly offered by the Tanzanian government in order to attract foreign investment, there is a need to balance extending such incentives to investors against Tanzania’s interests in receiving a fair government take. This is particularly so as world commodity prices rise and Tanzania’s mineral and petroleum wealth becomes more valuable.

Additionally, the laws governing some key areas have remained unchanged for many years. For example, the *Investment Act* was passed in 1997, at a time when world prices for many minerals were very low, and the government may have been too hasty in extending incentives that they deemed necessary to encourage foreign investment in Tanzania. It was also enacted before Tanzania’s natural gas wealth had been discovered. Considering that notable changes have taken place since Tanzania’s investment laws were passed, it is important that such laws be updated to reflect Tanzania’s current situation so that both foreign investment and the benefits that Tanzania derives from foreign investment may be maximized.

**Recommendation 15:** The government should enact an updated Investment Act that reflects Tanzania’s current investment environment and good practices adopted
and implemented internationally (such as limiting stabilization to only certain fiscal terms).

**RECOMMENDATION 16: ADDRESS PROHIBITIVE OBSTACLES TO INVESTMENT IN TANZANIA**

There are several obstacles to investment in Tanzania, particularly to foreign investment, that need to be urgently addressed by the government. They, at best, introduce unnecessary delays and costs into the investment process and, at worst, deter investors from investing in Tanzania. The most notable of these obstacles are difficulties associated with acquiring land ownership and inadequate enabling infrastructure and energy access.

Acquisition of land occupancy rights in Tanzania is a difficult procedure for both citizens and foreign investors, and is characterized by expensive and lengthy processes. All land is state-owned, but foreign investors “may occupy land for investment purposes through a government-granted right of occupancy, through derivative rights, or through sub-leases through a granted right of occupancy.”\(^9\) Such occupancy rights are granted for 99-year periods, with the option of further renewal.\(^10\) Inadequate protection of these private property rights and complex arbitration mechanisms for land disputes constitute further land-related barriers to investment.\(^11\) Addressing these shortcomings will be essential to both attracting and sustaining investment in Tanzania, and their importance of streamlining the land acquisition process has been recognized by President Kikwete.\(^12\)

**Recommendation 16:** Adequate legal protection of occupancy rights and recourse to arbitration for land disputes should be granted to foreign investors.

**RECOMMENDATION 17: IMPROVE ENABLING INFRASTRUCTURE AND ENERGY ACCESS**

Other major constraints to investment in Tanzania include inadequate enabling infrastructure (such as transportation infrastructure) and limited energy access. The


\(^10\) Ibid.


Tanzanian government lacks the resources required to undertake all necessary infrastructure development themselves, thereby making private sector participation vital. However, the private sector has not been actively participating in infrastructure development in Tanzania so far, and it remains questionable whether this will change. This is likely due to investor perceptions that investments in infrastructure development in Tanzania do not yield worthwhile returns for the private sector.

Importantly, infrastructure development, particularly expansion of roads and energy distribution, are “subject to important increasing returns to scale, suggesting the need for a public supplier of the infrastructure, or at least a publicly regulated monopoly.”

This will necessitate the government channeling revenues from its natural gas development into expanding its own capacity to provide adequate infrastructure. Alternatively, Tanzania should consider extending adequate incentives to secure private sector participation in infrastructure development in the country, bearing in mind that it will likely be necessary for them to extend monopoly power to a private sector actor in this regard. In the absence of being guaranteed a monopoly hold on the sector, it is unlikely to be economically attractive for the private sector to participate in infrastructure development in Tanzania.

**Recommendation 17:** The government should either use natural gas revenues to expand its own capacity to provide infrastructure, or should extend adequate incentives to boost private sector participation in infrastructure development in Tanzania (including ensuring monopoly hold for participating private sector actors if necessary).

---

**IMPROVE THE ATTRACTIVENESS OF TANZANIA’S INVESTMENT CLIMATE**

Tanzania’s Investment Policy and *Investment Act* removed almost all restrictions on foreign investor participation. Now, foreign investors are generally accorded national treatment and only minor restrictions remain in certain areas, such as in financial

---


104 The Investment Act No. 26 of 1997.

services. There is a general consensus that Tanzania has made strides in improving the attractiveness of its investment climate since embarking on liberalization.106

However, despite the government’s efforts to liberalize the economy and encourage investment, Tanzania continues to perform poorly on a number of credit, business and governance-related measures, which is a notable cause for investor concern. Low credit ratings are a symptom of poor fiscal discipline, which has and will continue to have extensive negative impacts on the Tanzanian economy and foreign investment flows in the extractive industries if it is not remedied. The government needs to improve its fiscal discipline if the country is to effectively manage its natural resource revenues and maximize the benefits of its natural gas development.

RECOMMENDATION 18: IMPROVE RANKING ON REVENUE GOVERNANCE INDICATORS

Tanzania ranks 27 out of 58 countries on the Revenue Governance Index (RGI). This measure takes into consideration transparency, disclosure and publication of information, “the overall governance enabling environment, including rule of law, corruption and democratic accountability, as well as the sector’s legal setting,

106 Ibid.
institutional arrangements, integrity safeguards and quality controls which can help to facilitate disclosure and public accountability, limit arbitrary powers, curb conflicts of interest, and clarify roles and authority.”  

Tanzania’s ranking is categorized as “weak,” and the poor grade is primarily due to a low score on the RGI’s enabling environment index. A poor enabling environment score is characteristic of a broader environment that hinders transparency and accountability efforts in the extractive sector. Tanzania’s relatively low scores for RGI’s institutional and legal settings index is indicative of a country where “the laws, regulations and institutional practices … [do not facilitate] comprehensive disclosures, open and fair competition and accountability.”

In order to counter these issues, it is necessary for the Tanzanian government to take concrete steps to promote transparency and accountability in its extractive industry sector. A key way in which the government can do this is to make publicly available all signed mining agreements, natural gas production sharing agreements and associated social and environmental impact assessments. This will empower both media and civil society to monitor extractive industry projects and hold the Tanzanian government accountable for any discrepancies or shortcomings they discover.

**Recommendation 18:** In order to raise Tanzania’s Resource Governance Indicator rankings, the government should promote greater transparency in the extractives sector, including through making publicly available all mining agreements, natural gas production sharing agreements and associated social and environmental impact assessments.

**RECOMMENDATION 19: IMPROVE CREDIT RATINGS**

Tanzania has historically received relatively low scores from credit ratings agencies such as Moody’s and Standard & Poor’s, which pose a significant risk to attracting investors. Tanzania’s current Moody’s rating is Caa2, which is indicative of an “extremely speculative” investment environment with very high credit risk, and its current Standard & Poor’s rating is a CCC score, which reflects a vulnerable economy that is “dependent on favorable business, financial and economic conditions to meet its

---


108 Ibid.

financial commitments.”\textsuperscript{110} Tanzania’s poor credit ratings are due in part to the country’s increasing external debt, which “has almost quadrupled since the country secured debt relief under the Heavily-Indebted Poor Countries (HIPCs) initiative beginning in the second half of the 1990s.”\textsuperscript{111} Such increase in external debt is indicative of poor fiscal discipline, which is a key aspect of credit ratings assessments and largely explains Tanzania’s low performance on credit ratings.

More recently, the Economist Intelligence Unit’s Sovereign Risk Report stated that Tanzania’s risk score is a middle B rating, which means that despite “the country being vulnerable to external and internal shocks it now boasts the capacity to meet its financial obligations within the comity of nations.”\textsuperscript{112} In line with such developments, it appears that the government will shortly commission an assessment of its sovereign rating by Moody’s, Standard & Poor’s or Fitch Ratings.\textsuperscript{113} Once Tanzania has been given a new rating by one of these agencies, the country will be able to float a sovereign bond within six months of their new global rating being determined.\textsuperscript{114}

An improved credit rating would allow the government to acquire loans at lower interest rates, which would make government borrowing more affordable. This is particularly important since it is anticipated that the government will use borrowed funds to reduce the country’s fiscal deficit and for investment in infrastructure.\textsuperscript{115} Such moves will also strengthen the Tanzanian government’s hand when negotiating PSAs, as addressing risks and weaknesses in the Tanzanian economy reduces the need for the government to compensate investors through extending incentives.

Further measures necessary to improve Tanzania’s credit ratings include government efforts to “widen the tax base, scale back tax exemptions and curb the growth of recurrent spending.”\textsuperscript{116} Widening the tax base will be crucial to diversifying the government’s revenue base, which will reduce reliance on resource revenues. Such a measure will also strengthen the social contract between the Tanzanian government and its people since the government would become less reliant on natural resource

\textsuperscript{111} Ibid.
\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.
\textsuperscript{115} Ibid.
\textsuperscript{116} Ibid.
revenue and more reliant on taxes paid by individuals, to whom they are politically accountable.

Scaling back tax exemptions will also help raise government take from investment projects, ensuring that there are increased revenues available for spending on public goods and services. Furthermore, such measures are important in achieving government revenue smoothing by reducing the country’s reliance on its extractive industries, and will allow Tanzania to avoid recurrent spending and the boom-bust cycles associated with resource volatility. Together, such measures will be instrumental in helping Tanzania escape the Dutch disease.

**Recommendation 19:** To improve its credit ratings, Tanzania needs to invest in infrastructure development and reduce its fiscal deficit through tightened fiscal discipline. Additionally, Tanzania should scale back its tax exemptions and widens its tax base in order to reduce the government’s dependency on resource revenues and lessen Tanzania’s to boom-bust cycles.

**RECOMMENDATION 20: IMPROVE DOING BUSINESS MEASURES**

Tanzania has also been receiving low scores on a number of ease of doing business rankings (see *Table 3*).

**Table 3. Summary of Tanzania’s Rankings on Various Business-Related Indices**

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Index</th>
<th>Index Description</th>
</tr>
</thead>
</table>
| 145th/189 | Ease of Doing Business  | The Ease of Doing Business index is an aggregate ranking based on indicators that “measure and benchmark regulations applying to domestic small to medium-sized businesses through their life cycle.”  
| 81st/89 | Global Opportunity Index | The Global Opportunity Index includes indicators pertaining to economic fundamentals, regulatory barriers, ease of doing business, quality of regulations and the rule of law. |
| 106th/186 | Index of Economic Freedom | The Global Opportunity Index includes indicators pertaining to economic fundamentals, regulatory barriers, ease of doing business, quality of regulations and the rule of law. |

The primary stated reasons for Tanzania’s low rankings on these indices include:

(i) prevalence of corruption in Tanzania’s land acquisition process;

---

(ii) inadequate protection of property rights; and
(iii) weak rule of law and low regulation efficiency.

In order to improve Tanzania’s ease of business rankings, therefore, it is necessary for the government to address these challenges. It is also evident that limited energy access in Tanzania makes investment in many sectors unappealing, particularly industry and manufacturing. These difficulties must also be addressed in order for the Tanzanian economy to diversify beyond the extractives sector. Worryingly, Tanzania’s ranking on the Ease of Business Index has fallen nine places in the last two years, placing Tanzania even further below both Kenya (ranked 129) and Uganda (ranked 132).

Tanzania’s low rankings are problematic as they lower Tanzania’s attractiveness as an investment location for other sectors. This may not be a real threat in the extractive industries, since extractive companies may invest regardless of the difficulties of the domestic business environment, obstacles to doing business in Tanzania need to be overcome if Tanzania is to achieve maximum benefit from its natural gas development. Because a difficult business environment may increase government’s vulnerability to investors’ attempts to wrangle more favorable investment terms, with investors citing the number of difficulties associated with operating in Tanzania in support of pushing for government concessions. This undermines Tanzania’s potential to secure good hydrocarbon investment deals and negates from government’s efforts to increase public revenues and promote sustainable investment and development. Importantly, a more widely attractive domestic business environment is key to promoting diversification of the Tanzanian economy, as it is only through such measures that local businesses and foreign non-extractive industry companies can establish, expand and thrive in Tanzania.

In response to Tanzania’s ranking slippages, the Tanzanian government adopted the Government Roadmap for Improving the Investment Climate in 2009, which identified key areas for reform that require inter-ministerial action.\textsuperscript{118} The Roadmap prioritizes the achievement of quick wins that will rapidly improve Tanzania’s ranking on these business-related indexes.\textsuperscript{119} In particular, Tanzania is aiming to improve its Doing

\textsuperscript{119} Ibid.
Business performance ranking from three digits to two, i.e. they intend to move into the top 99 countries in terms of ease of doing business.120

**Recommendation 20:** The government urgently needs to address the root causes of its poor ease of doing business rankings. This would involve improving the land acquisition process, strengthening property rights and, of crucial importance, curbing corruption.

**IMPROVE THE EFFECTIVENESS OF THE TANZANIA INVESTMENT CENTRE**

Both Tanzania and Zanzibar have established investment promotion agencies: the Tanzania Investment Centre (TIC) and the Zanzibar Investment Promotion Authority (ZIPA) respectively. The establishment of these centers has been described as “another stride in building a more efficient framework for business establishment” in Tanzania.121 TIC serves as a one-stop shop for investors and is tasked with facilitating investment, largely through the provision of relevant information122 and creating opportunities for partnerships between local and foreign investors.123 TIC acts as the “focal point for all investors’ inquiries, screens foreign investments, and facilitates project start-ups.”124 It is unclear whether TIC has any lobbying role to influence government to improve Tanzania’s investment environment in specific ways.

**RECOMMENDATION 21:** RESTRICT THE INCENTIVES THAT TIC CAN OFFER TO INVESTORS

The incentives extended to investors by TIC are extensive (and very questionable in their generosity) (see below).

### Incentives Relevant to Petroleum Exploration and Production

- Relatively large exploration areas
- Fully negotiable work program and economic terms (cost oil recovery and profit oil split)
- Maximum TPDC participation is capped at 20% (down from 50%)
- Income tax and royalty paid for by TPDC on behalf of the concessionary company
- No signature or production bonus payment

---


121 Ibid.


124 Ibid.
Given these hugely generous terms, it is not surprising that many investors voluntarily file with TIC to take advantage of these incentives. In fact, between “1997 and 2007 TIC registered over 4,000 investments, of which over a quarter were foreign.”

These incentives are far too extensive and overly generous towards investors. Neighboring Uganda and Kenya offer considerably more restricted extractive industries-related incentives that do not appear to extend beyond duty and tax free imports of certain plant and machinery equipment (Uganda) or limited allowances for persons who have incurred capital expenditure on mineral exploration activities (Kenya).

Tanzania’s excessive incentives have undoubtedly resulted in the country losing considerable public revenue through their extension to thousands of investors, both in the extractive industries and in non-extractive industry sectors. Indeed, it appears that several of these incentives are not even legal under Tanzanian law, for example, Tanzania introduced a ring fencing rule in July 2010, prohibiting extractive companies from using losses incurred in one mine to offset profits of another mine, even if the same extractive company owns both mines. It is therefore not clear on what basis TIC is empowered to extend such incentives, nor is it clear who is mandated with making incentive decisions or how much discretion they are granted in such decision-making.

---

Without clear limitations to what TIC can offer in terms of incentives (and without such incentives being only what is absolutely necessary to attract and secure investment), TIC’s activities are undermining the government’s attempts to raise public revenue, from both the extractive industries and non-extractive industry sectors. Additionally, the ability for TIC to extend such incentives creates much potential for corruption, which is heightened when scope for discretion in decision-making is allowed.

**Recommendation 21:** TIC’s power to offer excessively generous incentives should be reviewed by PCCB, in collaboration with the Ministry of Finance, and such authority considerably constrained. Furthermore, incentives offered by TIC should be limited to those allowed under Tanzanian law. Those that are inconsistent with Tanzanian law, such as the no ring fencing incentive, should be abandoned.

**RECOMMENDATION 22: IMPROVE TIC’S EFFICIENCY AND INTRODUCE NECESSARY PROPRIETARY INFORMATION REQUIREMENTS**

Another area of concern in regards to TIC’s activity, includes the fact that TIC’s approval process frequently involves bureaucratic delays. This is despite the purpose of TIC’s involvement being to smooth the investment process for investors.\(^{131}\) It is essential that TIC functions effectively with a fast turnaround in order to enhance Tanzania’s attractiveness as an investment location for foreign investors in the extractive industries and other sectors. Additionally, it is very problematic that “companies are not required to disclose proprietary information as part of the approval process.”\(^{132}\) Failing to obtain proprietary information means that Tanzania cannot fully know the investors they are dealing with, which could leave the country vulnerable and unable to pursue company shareholders for recourse when necessary.

**Recommendation 22:** Remove inefficiencies from TIC’s activities and require full disclosure of proprietary information during TIC’s filing and approval process.

---


\(^{132}\) Ibid.
ECONOMY II:

Revenue Collection

CONTEXT

Tax revenue makes up the majority of domestic revenue in Tanzania. Taxes are collected by the Tanzanian Revenue Authority (TRA), the agency mandated to administer major taxes, including income taxes (corporate income tax, employment taxes and withholding taxes) and taxes on consumption (VAT and customs duties). The rest of the domestic revenue comes from royalties, fees, levies, dividends, and so on, which are administered by the Ministry of Energy and Minerals, the Ministry of Finance and other central government ministries.

It appears that Tanzania is on a good track with respect to taxing petroleum companies, after learning some hard lessons from shortcomings in the country’s mining sector. In general, Tanzania’s various taxation provisions, investment incentives and investment rules appear to be broadly comparable to those of Kenya and Uganda (see Table 4). It also appears that fewer tax exemptions or waivers have been granted to companies under natural gas PSAs in comparison to the numerous blanket exemptions granted to companies in the mineral sector in the 1990s. This is to be celebrated, considering that estimates suggest that the broad tax exemptions granted in the mineral sector have reduced Tanzania’s GDP by some 3% annually—a significant loss considering that such exemptions resulted in little positive impact in return.

It is commendable that Tanzania has moved towards offering only limited fiscal incentives in its natural gas development. There is growing evidence that fiscal incentives do not play a determining role in companies’ investment decisions in the extractive industries. Instead the determining factor for investors is invariably the value of the natural resources that they will be able to access. Attaining fiscal incentives is merely the cherry on the cake that sweetens the deal for investors rather than a necessity for investment. Extending fiscal incentives, including tax exemptions,

---

contributes very little (if anything) to attracting foreign investment in the extractive industries, yet they have significant negative impacts on the country’s public revenues.

INCOME TAXES

Under Tanzania’s Income Tax Act, extractive industry companies may be required to pay:

- Corporation tax
- Capital gains tax
- Additional profits tax

CORPORATION TAX

Companies are required to pay corporation tax on gains or profits from conducting business activities and from investments. The corporation tax rate is 30%, except for:

- Companies that make tax losses for three consecutive years, in which case an alternative minimum tax of 0.3% of annual turnover applies.
- Companies that have at least 30% equity issued to the public and have been listed on the Dar es Salaam Stock Exchange for less than three years, in which case a 25% income tax rate applies.

Importantly, in calculating income in arrangements between associates, companies are required to pay income tax on the full value of transactions, as if the arrangement had been conducted at arm’s length. This provision prohibits transfer pricing, which is a mechanism by which companies may shift profits to avoid paying tax in host countries. In the context of the extractive industries, we see transfer pricing when companies sell extracted resources to affiliate companies at less than the fair market price of such resources. This allows extractive companies to under-declare revenues that should be subject to corporation tax, thereby undercutting the host country of their fair share of financial benefits.

---

137 Ibid.
CAPITAL GAINS TAX

Companies are subject to a 30% capital gains tax on the profits realized on the sale of non-inventory assets, i.e. capital gains tax is leveraged on the gains made in the sale where the asset was purchased for a value lower than what it was later sold for.

ADDITIONAL PROFITS TAX

Additional Profits Tax (APT) is provided for under Tanzania’s Model PSA. The method for calculating APT is clearly outlined in Article 17 of the Model PSA: APT will “vary with the real rate of return earned by [the company] on the net cash flow from the Development Area in question.”

WITHHOLDING TAXES

Withholding taxes tend to be taxes on transactions, but also include resource rents and royalty payments. There are several withholding taxes applicable to extractives companies in Tanzania:

- Transaction taxes
- Customs or import duties
- Service fees
- Royalties

TRANSACTION TAXES

For companies in Tanzania, VAT is the most important transaction tax and is levied at “18% on the supply of goods and services in mainland Tanzania and on the importation of VATable goods or services from any place outside mainland Tanzania.”

CUSTOMS OR IMPORT DUTIES

Imported goods are subject to customs duty at point of entry into Tanzania and East African Community (EAC) rates are applicable. Raw materials and capital goods are not subject to customs duty, whereas customs duty of between 10% and 25% is

---

140 Article 17(a) of Tanzania’s Model Production Sharing Agreement, 2013.
applicable to intermediary or finished goods. Preferential customs rates are given to goods originating in Southern African Development Community (SADC) or East African Countries (EAC). Imported goods are also subject to 0.6% destination inspection fee.

**SERVICE FEES**

Service fees are set at 5% for resident companies and 15% for non-resident companies.

**ROYALTIES**

Royalties are payments due to the government by companies and are based on the quantity of minerals, oil and/or natural gas produced. Previously, royalties in Tanzania’s mineral sector were calculated on the net back value of mineral sales, i.e. the value achieved by companies once they had recovered all their deductible costs. This clearly created a low base for royalty calculation and resulted in Tanzania receiving very little in terms of royalties from mining companies. The system was also open to abuse and tax evasion since there was inadequate monitoring and auditing of what costs mining companies were deducting before they declared net back values for royalty calculation purposes.

The base on which royalties are calculated in Tanzania was changed under the Mining Act from net back value to gross value, i.e. the base for royalty calculation became the gross value of minerals produced before any deductible costs were recovered by companies. The gross value is a higher base for royalty calculation and ensures that Tanzania receives more in terms of royalties than before. Additionally, there is reduced scope for abuse and tax evasion under this system since companies are not able to manipulate the recoverable costs mechanism to inflate recoverable costs and reduce the value on which they are required to pay royalties. Furthermore, the Mining Act also changed the royalty rates applicable to various minerals, for example, the royalty rates for copper, gold, silver and platinum were raised from 3% to 4%.

However, many (if not all) of the mining development agreements signed by the government for mineral mining operations in Tanzania included a stabilization clause that covered at least fiscal stabilization. This means that the progressive changes in royalty calculation

---

142 Ibid.
143 Ibid.
144 The Mining Act No. 14 of 2010.
introduced by the *Mining Act* are likely not applicable to mining projects already in operation when the *Mining Act* was passed in 2010.

In terms of oil and natural gas production in Tanzania, the *Petroleum (Exploration and Production) Act*\(^\text{146}\) does not stipulate a specific royalty rate. However, the Model PSA states that applicable royalty rates are 12.5% for onshore and shelf areas and 7.5% for offshore production. The lower royalty rate for offshore production is likely an attempt to encourage investor participation in offshore blocks, since offshore development tends to be associated with higher production costs. Importantly, petroleum royalties are to be calculated prior to cost oil and/or cost gas recovery, i.e. they are to be calculated on the gross value of petroleum produced. This provision is indicative of the Tanzanian government learning from the earlier problems in the mining sector, and is a move towards ensuring that scope for tax evasion is reduced and that Tanzania receives a greater share of revenues from the petroleum sector.

**Table 4. Comparison of Taxes, Incentives and Rules Applicable to Extractive Industries Across Tanzania, Kenya and Uganda\(^\text{147}\)**

<table>
<thead>
<tr>
<th><strong>Income taxes</strong></th>
<th><strong>TANZANIA</strong></th>
<th><strong>KENYA</strong></th>
<th><strong>UGANDA</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Corporation tax</strong></td>
<td>30% for resident companies and non-resident companies</td>
<td>30% for resident companies</td>
<td>30% for resident and non-resident companies (except mining companies)</td>
</tr>
<tr>
<td></td>
<td>25% for newly listed companies (for 3 years after listing)</td>
<td>37.5% for non-resident companies</td>
<td>Between 25% and 45% for mining companies</td>
</tr>
<tr>
<td></td>
<td>Alternative minimum tax of 0.3% of turnover</td>
<td>3% of turnover (for turnover up to Kshs 5 million)</td>
<td></td>
</tr>
<tr>
<td><strong>Capital gains tax</strong></td>
<td>30%</td>
<td>Not applicable (currently suspended to encourage saving and investment)</td>
<td>30% (taxed together with income, no separate capital gains tax legislation in Uganda)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Incentives</strong></th>
<th><strong>TANZANIA</strong></th>
<th><strong>KENYA</strong></th>
<th><strong>UGANDA</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Extractive sector</strong></td>
<td>100% capital deduction for mining exploration and development</td>
<td>When mining specified minerals: 40% capital deduction in year one 10% capital deduction in year two to seven</td>
<td>100% capital deduction for mining exploration</td>
</tr>
<tr>
<td><strong>investment incentives</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{146}\) The Petroleum (Exploration and Production) Act No. 27 of 1980.

<table>
<thead>
<tr>
<th>Withholding taxes</th>
<th>TANZANIA</th>
<th>KENYA</th>
<th>UGANDA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dividends</strong></td>
<td>5% for companies listed on DSE</td>
<td>5% for resident companies</td>
<td>15% in general</td>
</tr>
<tr>
<td></td>
<td>10% otherwise</td>
<td>10% for non-resident companies</td>
<td>10% for dividends paid by companies listed on</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>the stock exchange to residents</td>
</tr>
<tr>
<td><strong>Interest</strong></td>
<td>0% for resident and non-resident</td>
<td>15% for resident and non-resident companies</td>
<td>15% for resident and non-resident companies</td>
</tr>
<tr>
<td></td>
<td>companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Royalties</strong></td>
<td>15% for resident and non-resident</td>
<td>5% for resident companies</td>
<td>Nil rate for resident companies</td>
</tr>
<tr>
<td></td>
<td>companies</td>
<td>20% for non-resident companies</td>
<td>15% for non-resident companies</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>**Natural resource</td>
<td>15% for resident and non-resident</td>
<td>Not applicable for resident companies</td>
<td></td>
</tr>
<tr>
<td><strong>payments</strong></td>
<td>companies</td>
<td>30% for non-resident companies</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Rents</strong></td>
<td>10% for resident companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>15% for non-resident companies</td>
<td>6% on import of goods</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Service fees</strong></td>
<td>5% for resident companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>15% for non-resident companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>VAT</strong></td>
<td>18%</td>
<td>16%</td>
<td>18%</td>
</tr>
<tr>
<td><strong>Customs duty</strong></td>
<td>Nil rate for many raw materials and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>capital goods 10%-25% otherwise,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>depending on their nature</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rules</th>
<th>TANZANIA</th>
<th>KENYA</th>
<th>UGANDA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transfer pricing</strong></td>
<td>Prohibition on transfer pricing</td>
<td>Prohibition on transfer pricing</td>
<td>Prohibition on transfer pricing</td>
</tr>
<tr>
<td><strong>Thin capitalization</strong></td>
<td>An exempt-controlled resident entity</td>
<td>Interest deductions are restricted only to</td>
<td>Interest deductions are restricted for</td>
</tr>
<tr>
<td></td>
<td>may deduct for a year of income</td>
<td>the extent that the total indebtedness of</td>
<td>foreign-controlled resident</td>
</tr>
<tr>
<td></td>
<td>is limited to the sum of interest</td>
<td>the company does not exceed three time the</td>
<td>companies when the ratio of foreign debt to</td>
</tr>
<tr>
<td></td>
<td>equivalent to a debt-to-equity ratio</td>
<td>paid-up share capital and revenue reserves</td>
<td>foreign equity ratio exceeds 2:1</td>
</tr>
<tr>
<td></td>
<td>of 7:3</td>
<td>or an amount of deemed interest</td>
<td></td>
</tr>
</tbody>
</table>

Go to: Table of Contents | Legal | Economy | Environment | Social | Media
RECOMMENDATIONS

RECTIFY CERTAIN PROVISIONS IN GOVERNING LEGISLATION AND/OR PSAS:
LESSONS TO BE LEARNT FROM TANZANIA’S MINERAL SECTOR

Despite the improvements outlined above, there are still causes for concern, however, mainly regarding problematic PSA accounting practices and a lack of capacity to adequately monitor and enforce compliance with taxation, royalties and other provisions. Such problematic issues have resulted in Tanzania’s extractive sector contributing a mere 5% to the country’s GDP over the past few years.\textsuperscript{148} The bulk of such revenues likely come from royalties paid by mining companies, since company payment of corporation tax has been negligible. However, as discussed above, there are also mechanisms whereby companies may distort the payment of royalties in Tanzania.

RECOMMENDATION 23: LIMIT LOSS CARRYFORWARD TO SEVEN YEARS, IN ACCORDANCE WITH GAAP

The Model PSA provides for perpetual loss carryforward allowances, enabling companies to carry forward losses they incur and offset them against any profits for an indefinite period of time.\textsuperscript{149} This provision is problematic as it provides scope for tax evasion in that it allows extractive industry companies to manipulate their finances so as to perpetually avoid paying corporations tax. It is also not in accordance with Generally Accepted Accounting Principles (GAAP), which stipulate that losses should be carried forward for no more than seven years following the loss being incurred.\textsuperscript{150} This time limit acts to mitigate against tax evasion by companies, thus helping to ensure that host countries, such as Tanzania, receive what they are due in corporations tax from extractive industry companies.

Tanzania’s mining sector has shown clearly that perpetual loss carryforward allowances serve to undermine the interests of the country. Many of the mining development agreements signed by Tanzania in the 1990s included a provision that allowed companies to perpetually carry forward deductible losses, and also raise such


\textsuperscript{149} Article 12(b) of the Model Production Sharing Agreement, 2013.

deductible losses by 15% (i.e. they provided for an additional 15% capital allowance). This provision allowed for the possibility of tax evasion and gave companies room to manipulate their revenues so as to avoid declaring profits on which they would be required to pay corporation tax. As a result, of Tanzania’s seven major mining companies, only two companies (Resolute Tanzania Limited and African Barrick Gold) paid corporation tax in the 16 years preceding the 2011 financial year end, for their operations at Golden Pride mine and Tuluwaka mine respectively—and they only paid corporations tax for one out of those 16 years. Indeed, the Tanzanian government received only USD16,432 in 2011 and USD3,863 in 2010 for mineral operations in Tanzania, despite the majority of mines having declared a profit in both years.

It is clear that the mechanism allowing for accumulation of tax losses, which can be offset against profits at companies’ own volition, is a primary reason that companies have managed to evade paying corporations tax in Tanzania despite their profitable operations. Additionally, the aggregate tax losses that companies have accumulated over the years under this provision continue to grossly outweigh the mines’ aggregate profits, thereby making it likely that offsets of tax losses will continue to undercut the Tanzanian government of corporation tax revenue for many more years - likely until the end of the life of Tanzania’s mines (see Table 5 below).

In order to circumscribe the scope for tax evasion in Tanzania’s natural gas sector, it is important that loss carryforward is limited to no more than seven years, in accordance with the GAAP. Indeed it is possible to limit loss carryforward periods even further. For example, in 2010, Kenya introduced a five-year limit for carrying forward losses (after

---


152 Innocent Bash (Economist, TEITI), in discussion with the authors. March 17, 2014. Dar es Salaam, Tanzania.

previously allowing losses to be carried forward perpetually). Considering that the time horizons in natural gas production are greater than those in mineral extraction, it is vital that restrictions on loss carryforward are enforced, as the life of natural gas operations in Tanzania could endure for the next 40 to 50 years.

Table 5. Profits/Losses, Corporation Tax Paid and Accumulated Tax Losses in respect of Seven Major Mineral Mines in Tanzania for FY 2010 and FY 2011

<table>
<thead>
<tr>
<th>No.</th>
<th>Company</th>
<th>Year ended 31 December 2010</th>
<th>Year ended 31 December 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Profit (loss) before tax USD '000</td>
<td>Corp. tax paid USD '000</td>
</tr>
<tr>
<td>1</td>
<td>Bulyanhulu Gold Mine</td>
<td>205,974</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Pangea Minerals Limited</td>
<td>138,743</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>North Mara Gold Mine Limited</td>
<td>79,792</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Resolute Tanzania Limited **</td>
<td>68,331</td>
<td>16,432</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Tanzanite One Mining Limited</td>
<td>327</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Williamson Diamonds Limited</td>
<td>(7,544)</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Geita Gold Mine</td>
<td>327,946</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>** Grand total revenues</td>
<td>813,569</td>
<td>16,432</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

** Resolute has a year-end of June 2011 instead of December

Recommendation 23: To restrict tax evasion, loss carryforward provisions in the Model PSA should be amended to limit losses being carried forward for no more than seven years after they were incurred, in accordance with GAAP.

---


**RECOMMENDATION 24: ENSURE CLOSE MONITORING OF QUALITY AND QUANTITY OF PRODUCTION**

For many years, the Tanzanian government lacked the capacity to audit mining companies and used to rely on self-reporting by companies to determine the quality and quantity of mineral production.\(^{156}\) This was highly problematic as the calculation of royalties and other taxes was dependent on the companies’ self-reported figures, thereby giving companies an important incentive to under-report their production.

There was therefore a clear need for the Tanzanian government to undertake close monitoring of the quality and quantity of minerals being produced by each company, so that the true value of royalties and taxes due to the government could be determined. This led to the establishment of the Tanzania Mineral Audit Agency (TMAA) in 2009 and the deployment of TMAA mineral auditors to all major mines to monitor production operations. New requirements were instituted that prohibited production unless a TMAA auditor was present.\(^{157}\) In addition to monitoring quantity of production, TMAA mineral auditors take samples of minerals produced (especially gold) for quality testing at TMAA’s laboratories so that mineral quality reports from companies can also be verified.\(^{158}\)

At the same time, TMAA began to perform comprehensive financial audits of mining companies in order to determine their true financial status. All major mining companies are now audited every year by TMAA, and the audit findings they reach are incorporated into the annual audits conducted by the TRA. TMAA also undertakes strategic financial auditing of the 4000 to 5000 small- and medium-scale mining operations in Tanzania. Since TMAA lacks the capacity to audit every one of those operations annually, they focus primarily on the most profitable operations in order to realize more public revenue for Tanzania.\(^{159}\)

The result of TMAA’s financial audits and deployment of mineral auditors is two-fold. First, the Tanzanian government now has access to far more reliable data on the quality and quantity of minerals being produced in the country, which has enabled more accurate calculation of royalties and other taxes due to Tanzania. Second, the Tanzanian government now has a greater understanding of the financial status of all

\(^{156}\) Eng. Dominic Rwekaza (Acting Chief Executive Officer of TMAA), in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania.

\(^{157}\) Ibid.

\(^{158}\) Ibid.

\(^{159}\) Ibid.
major mines in Tanzania, which allows them to better monitor compliance with corporation tax payment on company profits. Unsurprisingly, the little corporations tax that has been paid by mining companies in Tanzania was paid in the immediate aftermath of the companies’ first comprehensive financial audits by the TMAA and the deployment of TMAA mineral auditors to monitor production at major mines. This coincided with the EITI process being launched in Tanzania, and the additional scrutiny brought to revenue transparency during that process undoubtedly further contributed to companies beginning to pay corporation tax due to the Tanzanian government.

Monitoring and auditing the operations of extractive industry companies is crucial to ensuring that Tanzania receives the full value of public revenues due to it under applicable taxes and royalties, as has been seen in Tanzania’s mining sector. Monitoring and auditing of companies producing natural gas in Tanzania will be similarly necessary. The TMAA is an appropriate model for an audit agency that could undertake such monitoring and evaluation of natural gas production in Tanzania, and TMAA’s extensive experience in this regard is likely to be highly informative.

**Recommendation 24:** The government should create an audit agency, similar to the TMAA, with the necessary capacity and expertise to monitor natural gas production operations and to perform comprehensive annual financial audits of all companies involved in natural gas production in the country.

**RECOMMENDATION 25: REVISE THE CURRENT DOUBLE-AUDITING SYSTEM**

Both the TMAA and the TRA conduct comprehensive on-site financial audits of all major mining companies in the mineral sector on an annual basis. Both agencies gather similar financial data from mining companies and the audit findings of the TMAA are incorporated into the TRA’s audit assessment. It appears that the TRA occasionally uses TMAA’s audit findings without amendment, as their own audit assessment, likely as a result of both the apparent comprehensiveness of the TMAA’s findings and the audit backlog at the TRA.160 This practice of double-auditing companies annually is a heavy administrative burden on companies, who are required to cooperate with both audits and provide both agencies with the same information. It seems to be an unnecessary duplication of work that constitutes an ineffective use of government’s limited auditing capacity.

---

160 Ibid.
Recommendation 25: The current system whereby both the TMAA and the TRA conduct annual audits of extractive industry companies should be revised. The auditing process should be streamlined to ease the unnecessary administrative burden on companies and make more efficient use of government’s limited auditing capacity.
ECONOMY III:

Revenue Management

CONTEXT

Tanzania has proven natural gas reserves of at least 46 trillion cubic feet to date, however, some estimates predict that Tanzania’s proven reserves will rise to some 200 trillion cubic feet by 2017.\(^{161}\) With export earnings potentially exceeding $3 billion annually (10% of 2012 GDP) natural gas is likely to become a key source of export earnings for the country.\(^{162}\) Additionally, as global demand for natural gas continues to expand by an estimated 33% by 2025, world natural gas prices are set to increase significantly.\(^{163}\)

Effective management of anticipated natural gas revenues is crucial to ensure that the sudden increase in government revenues does not lead to local currency appreciation and other harmful economic effects associated with the Dutch disease. It is also necessary to ensure that Tanzania’s natural gas revenues are invested in a way that contributes to inclusive and sustainable development in Tanzania for both current and future generations. In this regard, it is important that natural gas revenues are invested in strengthening Tanzania’s physical and human capital, through investments in infrastructure, education and the development of labor-intensive, non-extractive industry sectors of the economy. In the short-term, this will require, among other things, establishing a natural gas revenue fund, reforming Tanzania’s legal and institutional framework, preparing sector-wide investment plans and partnering with multilateral organizations in order to fully develop other sectors.\(^{164}\)

---


RECOMMENDATIONS

ESTABLISH A NATURAL GAS REVENUE FUND

Tanzania already has plans to establish a Natural Gas Revenue Fund, with the Natural Gas Policy stipulating that such a fund will be created to receive and manage all revenues from Tanzania’s natural gas development. While very few details regarding the anticipated fund are known, the Tanzanian government has indicated that it will take guidance from the Norwegian experience in structuring its fund.165 Bearing in mind that Tanzania’s development context is vastly different to that of Norway, it is vital that the Tanzanian government does not attempt to model Tanzania’s fund on the Norwegian one. Although some lessons may be learnt from the Norwegian experience, Tanzania should rather look at successful resource funds established by countries more comparable to Tanzania in terms of development. Key examples in this regard are the revenue funds established by Timor-Leste and Mozambique.

It must be emphasized that establishing a revenue fund is complementary to, and not an alternative to, maintaining tight fiscal discipline. Some countries with natural resource wealth have successfully used their revenues for intergenerational prosperity without having established a revenue fund, whereas some other countries have established revenue funds that were ineffective because the government lacked the fiscal discipline necessary to allow them to operate properly. Among countries with effective revenue funds, “there is no evidence that adopting [revenue funds] ... contributed to the soundness of their fiscal policies.”166 An absolutely essential requirement for resource revenues to successfully bring intergenerational prosperity is a government that resists overspending the country’s resource revenues today, a government that chooses to comply with the strict rules governing the fund’s activities rather than using revenues for its own political gain.

We will now briefly explore key features that should be adopted by the Tanzanian government in their efforts to establish a natural gas revenue fund.

RECOMMENDATION 26: APPOINT AN AUTONOMOUS AGENCY TO ADMINISTER THE REVENUE FUND

There are many possible ways that Tanzania’s proposed natural gas revenue fund may be institutionally structured. While many countries choose to establish revenue funds that are independent of the state and central bank, many others choose to place the revenue funds under the control of the Ministry of Finance, with the fund generally being managed by a Central Bank or specially created statutory management agency.167 The Tanzanian government appears to have chosen the latter of these two options, stating in the Natural Gas Policy that the fund will be managed and administered by the Bank of Tanzania (BoT).168 However, in speaking with senior officials at the BoT and in other key government ministries in Tanzania, it was apparent that there is still no clarity regarding the extent of the anticipated role of the BoT in managing the proposed fund. It seems that further details of the fund will be set out in a proposed Natural Gas Revenue Management Act, although it is not clear when such Act will be drafted or enacted.

Regardless of the finer management details of Tanzania’s revenue fund, it is crucial that the management and investment activities of revenue funds are executed by autonomous agencies, whether they are government entities such as the BoT, private sector entities or commissions established for this purpose.169 Therefore, if the BoT is to manage Tanzania’s revenue fund, it is essential that it is empowered with the autonomy necessary to do so effectively without political interference from any other government agencies or departments. In addition, it is vital that there are regular mandatory internal and external audits of the fund in order to ensure that the fund is being managed properly and is operating in accordance with the government’s investment strategy.170

Recommendation 26: Ensure that the BoT’s management of the proposed revenue fund is fully autonomous of government, that the fund’s role and function is clearly stipulated in law, and that the fund is subject to regular mandatory internal and external audits. Furthermore, the fund’s performance information and audit findings should be made publicly available to allow for public monitoring and oversight.

168 Natural Gas Policy of Tanzania, October 2013, 5.1.5.
170 Ibid.
RECOMMENDATION 27: LOCATE PROPOSED NATURAL GAS REVENUE FUND OFFSHORE IN REPUTABLE FINANCIAL INSTITUTION

Tanzania’s Natural Gas Policy does not specify any details regarding where the account for the fund is to be located. International good practice is for sovereign wealth funds to be established as a recognized offshore account, located at a reputable offshore financial institution.\(^{171}\) Locating the fund offshore serves two key functions: first, it protects the economy from domestic currency appreciation since it ensures that revenues from natural gas production do not swamp the domestic market. Second, it allows for funds to be managed by experienced asset managers with superior access to, and knowledge of, international financial markets. These are key fund management requirements that cannot be rivaled in developing countries such as Tanzania. For example, although Timor-Leste’s Ministry of Finance determines the country’s petroleum fund investment strategy, the fund’s assets are managed by JP Morgan in New York.

Recommendation 27: Tanzania’s revenue fund should be located offshore at a reputable financial institution to:

(i) avoid domestic currency appreciation; and
(ii) ensure administration by experienced asset managers with superior access to, and knowledge of, international financial markets.

RECOMMENDATION 28: CREATE SUB-ACCOUNTS OF THE REVENUE FUND

When one thinks of sovereign wealth funds or resource revenue funds, it is often the Norwegian savings model that comes to mind. Under the Norwegian model, the principal remains in long-term investments and only the earnings on such investments (interest, dividends and profits) are spent from year to year. While such a model secures intergenerational benefit, it is not a model that would be appropriate for Tanzania, considering Tanzania’s pressing development needs that necessitate significant public investment today. However, conveniently, revenue funds may be used for several other purposes too, and it will be appropriate for Tanzania to establish different sub-accounts to separately serve each of these purposes. These sub-accounts should include:

- Stabilization fund
- Development fund
- Savings fund

The stabilization fund

Tanzania is already a highly resource dependent country, and with exploration and production of its natural gas getting underway, this dependency will only increase. Such reliance on natural resources leaves the country very vulnerable to commodity price volatility and the boom-bust cycles of government spending that are often associated with such price volatility. In good years, during commodity price booms, governments tend to spend more as income is easily accessible; and during downturns, it becomes necessary for governments to enact painful spending scale backs, which often triggers unemployment and damaging economic contraction. This is especially true of countries dependent on oil and natural gas, which tend to have greater fluctuations in commodity prices than other natural resources.

Therefore, it is vital that Tanzania establishes a stabilization fund to assist in smoothing government spending and maintaining macroeconomic stability as its dependency on resource revenues increases. Importantly, “[w]hen commodity prices are high, the fund will expand and can be drawn on to supplement and smooth government expenditures during times of low commodity prices.” This serves to ensure that government expenditure does not track resource revenues too closely, thereby reducing the economy’s exposure to commodity price swings. In order to determine when prices are high enough to warrant expanding the stabilization fund, or low enough to require drawing down on the stabilization fund, either the opinion of an independent committee or a price-smoothing formula can be relied upon. To function effectively, the stabilization fund assets must be fairly liquid, to enable them to be cashed in at short notice if necessary.

---

173 Ibid., 16.
174 Ibid., 17.
176 Ibid., 18.
177 Ibid., 18.
THE DEVELOPMENT FUND

In a poor developing country such as Tanzania, it will be vitally important that the government invests a portion of its resource revenues in developing Tanzania’s physical and human capital, through investments in infrastructure, education, health and business development. Such investments will yield long-term returns for Tanzania and ensure that all Tanzanians may benefit from the country’s natural resource wealth for generations to come. Importantly, funds earmarked for development projects should be tied to the national budget, so that they may serve to strengthen, rather than undermine or circumvent, Tanzania’s democratic system. If specific large-scale projects are planned, it may be prudent to establish separate development accounts to fund such projects. The effectiveness and sustainability of these investments will be maximized when they work to diversify Tanzania’s economy.\textsuperscript{178}

THE SAVINGS FUND

The savings fund retains principal stock in long-term investments and makes only the earnings on such investments available for spending year to year. The idea is that, “[b]y leaving the principal untouched, … the fund will generate permanent income through interest earnings.”\textsuperscript{179} This allows for the conversion of “revenues of presently sold national assets … into productive capital that generates recurring revenues.”\textsuperscript{180} The permanency of the savings fund’s earnings is crucial to ensuring intergenerational benefit from resource wealth.

THE BUDGET ACCOUNT

A portion of Tanzania’s resource revenues should be used to close the country’s budget and current account deficits. However, it is vital that this is done in accordance with the necessary fund withdrawal rules so that Tanzania’s democratic process is not undermined.

It is important that Tanzania establishes these various sub-accounts under its revenue fund in order to achieve the objectives associated with each sub-account. What portion of the resource revenues are directed into each sub-account will need to be determined by the government in accordance with a long-term investment strategy. Additionally, Tanzania’s unique context needs to be taken into consideration and it must be realized

\textsuperscript{178} Ibid., 18.
\textsuperscript{179} Ibid., 19.
\textsuperscript{180} Ibid.
that what has worked for one country may not necessarily work for Tanzania. For example, while the Norwegian savings fund is hailed as a success, a savings only fund is not appropriate for Tanzania, with its urgent development needs that require public investment today. The lessons that Timor-Leste learnt in this regard should be instructive to Tanzania: Timor-Leste modeled its petroleum fund on the Norwegian savings model, only to have to restructure the fund when it became apparent that it was failing to serve the development needs of Timorese citizens today.

**Recommendation 28:** The Tanzanian revenue fund should be structured with four sub-accounts:

(i) The stabilization fund;
(ii) The development fund;
(iii) The savings fund; and
(iv) The budget account.

Such a structure will allow revenues to be divided between these sub-accounts so that several key objectives may be achieved, including intergenerational prosperity, smooth government spending and investment in Tanzania’s physical and human capital.

**RECOMMENDATION 29: ESTABLISH STRICT OPERATIONAL RULES FOR THE REVENUE FUND**

Revenue funds only function effectively if governments adhere strictly to the rules governing their operation. Important lessons have been learned from both the successes and failures of other countries, and experience has shown that the following requirements are essential for an effective revenue fund:

(i) withdrawal decisions should be regulated in part by clear rules rather than general guidelines;
(ii) key decisions should be made by bodies representing the interests of diverse political constituencies; and
(iii) there should be high levels of transparency regarding their status and operation – in particular, there should be a unified budgetary process and public reporting of payments, holdings and investments.\(^{181}\)

---

RULES GOVERNING FUND WITHDRAWALS AND INFLOWS

Withdrawal rules should clearly stipulate how much may be withdrawn from the fund, when withdrawals can be made, and for what purpose. In this regard, the Tanzanian government should consider:

- Setting quantitative caps on how much can be withdrawn – the government’s discretion can be limited by applying a rule or formula that determines maximum withdrawal. It is vital that money kept in the revenue fund has appropriate access safeguards to ensure the funds are preserved over the long term. 182
- Setting qualitative restraints on what revenue fund money can be spent on – allowable expenditure purposes should be generally limited to investments in physical and human capital, including infrastructure, education and health. Spending to boost the establishment and growth of small- and medium-sized enterprises in the country is also necessary.

As mentioned earlier, it is vital that money withdrawn from the revenue fund is directed into the national budget in order to strengthen, and not circumvent, Tanzania’s democratic budgetary processes.

There should also be strict rules governing the inflow of revenues into the fund to ensure that governments cannot “circumvent the rules the [revenue fund] imposes on spending by simply directing money straight to the budget without passing through the [revenue fund].”183 It would be optimal if all natural gas revenues in Tanzania were paid directly into the revenue fund, leaving no discretion to the government to divert revenues elsewhere. The government can then withdraw money from the fund in accordance with the applicable withdrawal and spending rules.

Importantly, experience has shown that governments are more likely to adhere to strict withdrawal rules if they believe successive governments will comply with them too.184 Therefore, it is in Tanzania’s best interests that strict withdrawal and spending rules be established in order to guarantee an important degree of stability and predictability regarding fund withdrawal and spending decisions.185 There is also evidence to suggest that there is the greatest potential for government overspending in societies

182 Ibid., 215.
183 Ibid., 217.
184 Ibid., 214.
185 Ibid.
deeply divided along ethnic, racial, religious or other lines.\textsuperscript{186} It is hoped that Tanzania’s unique united identity may serve to minimize the threat of government overspending in this regard.

\textbf{POWER-SHARING IN DECISION-MAKING}

Sharing the authority to make or approve withdrawal and spending decisions across multiple groups serves as an effective mechanism to prevent mismanagement of funds.\textsuperscript{187} For example, in Norway, although the State Petroleum fund is managed by the Bank of Norway, all transfers out of the fund must be approved by parliament, which has a considerable political opposition presence.\textsuperscript{188} Such a requirement may not be so effective in Tanzania, which does not have such a strong political opposition presence in parliament. Nevertheless, there are several other ways in which decision-making authority could be shared in Tanzania, including:

- requiring the assent of a supermajority of the legislature for spending decisions;
- requiring the main opposition party, or some share of the opposition, to sign off on spending decisions every year before the [revenue fund] can disburse;
- dividing the decisions about how much to spend and on what to spend across different levels of government;
- giving the [revenue fund] itself legal personality and institutional independence;\textsuperscript{189}
- giving courts the authority to review compliance with the spending rules/funds;
- creating a new technical body not beholden to the executive, and giving this the authority to determine a spending cap;\textsuperscript{190}
- giving civil society representatives decision-making power or supervisory authority over how much to spend, how to spend it, or both;\textsuperscript{191}
- writing spending rules into the contract with the bank holding the [revenue fund].\textsuperscript{192}

\textsuperscript{186} Ibid., 226.
\textsuperscript{187} Ibid., 219.
\textsuperscript{188} Ibid.
\textsuperscript{189} Method used by Alaska’s Permanent Fund.
\textsuperscript{190} Method used in Sao Tome and Principe.
\textsuperscript{191} Method used in both Chad and Sao Tome and Principe.
TRANSPARENCY OF OPERATIONS

All information regarding the revenue fund’s decisions and transactions should be publicly available so that civil society and the Tanzanian public as a whole may monitor and oversee the fund’s operations.193 As the ultimate beneficiaries of Tanzania’s natural resource wealth, Tanzanians should be empowered to lodge any concerns they may have concerning the fund’s operation and management, ideally with a commission created for this particular purpose.

**Recommendation 29:** The government should establish clear rules governing revenue inflows and withdrawals from the revenue fund. These rules should remove all governmental discretion and be given the force of law. The authority to make (or approve) withdrawal and spending decisions should be shared between different stakeholders. All information pertaining to revenue fund transactions and withdrawal and spending decisions should be publicly available.

**RECOMMENDATION 30: ESTABLISH THE REVENUE FUND AS A TRUST FUND**

Establishing the revenue fund as a trust fund is an option that offers great potential for Tanzania. A trust fund is managed by nominated (and court appointed) trustees, who are under fiduciary duties to act in utmost good faith in their management of trust assets on behalf of the trust beneficiaries (the people of Tanzania in this case). Importantly, trustee actions are subject to court supervision, which introduces an element of additional legal oversight.194 The management of the revenue fund as a trust fund would require a high level of transparency and public disclosure of information relating to fund decisions, transactions and financial performance. Additionally, a trust fund set-up would “require a tight system of audits consisting of at least two annual audits, one potentially carried out by a domestic government entity such as the Auditor General or an Administrative Court, and the other by an internationally recognized auditing firm.”195 Such a high level of transparency will be instrumental in ensuring the effective management of the revenue fund.

Establishing the revenue fund as a trust fund would ensure that the fund assets are shielded from creditors of the Tanzanian government, since such assets’ legal title

193 Ibid., 223.
195 Ibid., 29.
would be held by the trustees in trust on behalf on the Tanzanian people. This protection feature of trust funds is particularly beneficial for countries that have struggled to service their debt in the past and that have high levels of external debt. Keeping its resource revenues in trust would mean that Tanzania’s fund assets are protected from seizure by any creditors of the Tanzanian government.

**Recommendation 30:** the Tanzanian natural gas revenue fund should be established as a trust fund in order to benefit from:

(i) Trust fund features, including trustees’ legal obligations to act in utmost good faith;
(ii) The court’s extensive supervision of all trustee actions and decisions; and
(iii) The fact that the fund’s assets are shielded from creditors of the Tanzanian government.

**RECOMMENDATION 31: ESTABLISH A NATIONAL OIL COMPANY TO OPERATE ON A PURELY COMMERCIAL BASIS**

The Natural Gas Policy calls for separate entities to be responsible for the commercial and regulatory activities of the natural gas sector. Historically, TPDC has been responsible for both the commercial and regulatory activities associated with petroleum development. This created scope for conflict of interest as TPDC had no incentive to regulate effectively when poor regulation yielded them higher profits. It is not yet certain, which agencies will be assigned the commercial and regulatory roles, and there is no clear indication of TPDC’s anticipated role (if in fact it is to have a role under the new system). Rather, the Natural Gas Policy refers to a “National Oil Company” (NOC), which will be tasked with developing, purchasing, transporting and selling natural gas. According to the provisions of the Natural Gas Policy, the proposed organizational structure to govern Tanzania’s natural gas development will be as in *Figure 8*.

---

196 Ibid., 24.
197 Ibid.
198 Natural Gas Policy of Tanzania, October 2013, 5.1.3.
Regardless of which agencies are created and/or tasked with fulfilling the commercial and regulatory roles, it is clear that decoupling these activities will be essential to improving the efficiency and effective monitoring and oversight of the sector. This will serve to better regulate the sector in terms of compliance with tax and royalty payments and observing social and environmental standards. This will translate into greater protection, and therefore benefit, for Tanzania.

From the Natural Gas Policy, it is not clear how operational the Tanzanian government intends the country’s NOC to be. NOCs range from being fully operational to non-operational, with fully operational companies undertaking actual extraction activities and managing their own revenues while non-operational companies tend to be government entities that merely represent the government in licensing agreements. Examples of NOCs with operational capacity include Petrobras (Brazil), Sonangol (Angola), Azerbaijan’s State Oil Company of Azerbaijan Republic (SOCAZ) and Statoil (Norway). Within this category, some NOCs have exclusive rights to a country’s petroleum reserves, while others compete for licenses on similar terms as international oil and gas companies. NOCs that are partially operational include Ghana’s National Petroleum Corporation, which is allowed to manage some of its revenues independently, but salaries, for example, are set by the government.

---

Given Tanzania’s very limited experience with natural gas production, it is important that the country’s proposed NOC initially functions in a non-operational manner. As Tanzania gradually builds up its capacity and experience in natural gas production, Tanzania’s NOC could become increasingly operational. However, it is likely that Tanzania’s NOC would best serve the country’s development if its authority and functions are constrained and the NOC’s objectives are made subservient to Tanzania’s development agenda, in a similar way to how Ghana’s NOC has been harnessed for purposes of the country’s development. However, with no upstream policy in place to define the NOC’s purpose or organizational structure, there is the risk that the Tanzanian NOC’s mandate may be overly broad, which could give rise to both monopoly and capacity problems.

**Recommendation 31:** Tanzania should establish and task separate agencies with the commercial and regulatory roles associated with natural gas development. Tanzania’s proposed NOC, which would undertake purely commercial activities, should initially be non-operational and should only become more operational as gradual capacity and experience is developed. The NOC’s mandate should be made subservient to Tanzania’s development agenda in order to ensure that it works towards the goal of achieving prosperity for all Tanzanians.
ECONOMY IV:
Public Investment of Revenues

CONTEXT

While a significant portion of Tanzania’s natural gas revenues should be saved or used for macroeconomic stabilization purposes, there is a considerable need to use a portion of such revenues for public investments today. It is vitally important that the government is cognizant of the temporary nature of the country’s natural resource wealth – and it should be very aware that the only way to convert transient natural resource wealth into long-term inclusive and sustainable economic growth is through strategic public investments. Such public investments should develop the country’s physical and human capital, and should also contribute to the development of non-extractive sectors, particularly those that are labor intensive. In this way, the country’s natural resource wealth can continue to yield long term, intergenerational returns for all citizens.

Tanzania published its Development Vision 2025 in 2000, which outlined the government’s development goals and strategies. However, the government needs to more clearly identify the strategies that they intend to adopt in working towards the achievement of their stated development goals. Such strategies need to be specialized and targeted and, in this regard, the following recommendations may prove informative.

RECOMMENDATIONS

ON INVESTING IN PHYSICAL CAPITAL

DEVELOP TANZANIA’S TRANSPORTATION INFRASTRUCTURE

Tanzania’s transportation infrastructure consists of the following:

- a road network of about 95,000 km;
- two railway systems: the Tanzania Zambia Railway (TAZARA), which links Dar Es Salaam with Zambia, and Tanzania Railways Corporation (TRC), which serves the central and northern regions and provides transit access to DRC, Rwanda, Burundi and Uganda;
- one dominant port at Dar es Salaam and three subsidiary ports at Zanzibar, Tanga and Mtwara; and
a civil aviation sector consisting of several small airlines, three international airports and a number of domestic airports and air strips.

Tanzania’s transportation facilities are grossly inadequate and are poorly maintained, particularly the country’s road and railway infrastructure. Weak transportation infrastructure constrains foreign direct investment and economic growth in Tanzania, since it increases operational costs and lowers market penetration. Weak infrastructure also serves as an obstacle to community access to public services such as education and health care.

DEVELOP TANZANIA’S PORTS

Ports are a crucial part of a country’s transportation system as they connect countries with international trade routes and allow for the importation and export of an array of goods. In Tanzania’s context, ports are also necessary for the country’s natural gas development – both in terms of importing required inputs as well as exporting natural gas. Tanzania’s geographical location makes the country an ideal East African transportation hub, with the potential of serving Tanzania’s six landlocked neighbors, as well as Tanzania itself. Also, Tanzania’s position on the Indian Ocean places it in an excellent position to export its natural gas to Asia.

RECOMMENDATION 32: DEVELOP THE PROPOSED MTWARA PORT

The Mtwara region has been earmarked for port development, due to its proximity to Tanzania’s natural gas exploration and production activities. The construction of the Mtwara port is being financed under a public-private partnership agreement, with foreign companies designing and constructing the port. Costs of construction will be garnered from revenue generated by the port’s operation.200

Furthermore, Tanzania’s Integrated Industrial Development Strategy201 identified the Mtwara Development Corridor for a Special Economic Zone (SEZ) for heavy industries, primarily chemical and iron industries. Mtwara was selected on the basis of the planned Mtwara port and coal and iron reserves at Liganga and Mchuchuma (which are located at the head of the Mtawara Development Corridor). Additional

---

200 Claudio Kisanko (Senior Planning Officer of Tanzania Ports Authority), in discussions with the authors. March 19, 2014. Dar es Salaam, Tanzania.
infrastructure will need to be developed in Mtwara for the port and SEZ to function effectively.

**Recommendation 32:** The government should develop the proposed Mtwara port as follows:

(i) Development within the Mtwara Development Corridor should include downstream natural gas processing, including LGN terminals, as well as heavy industry;

(ii) The construction of the Mtwara port should be prioritized under Tanzania’s development strategy and all additional infrastructure necessary for the effective functioning of the port and industry should be developed; and

(iii) The construction, management and financing of these structures should be included in natural gas development negotiations, with private investors required to provide the necessary funding.

**RECOMMENDATION 33: IMPROVE AND EXPAND THE DAR ES SALAAM PORT**

Tanzania’s primary port at Dar es Salaam handles 90% of the country’s trade.202 The Dar es Salaam port’s performance indicators compare well to those of other eastern and southern African ports, due to the port’s sizable terminal operations, specialized container handling equipment and adoption of a container terminal concession to incorporate private management of operations.

However, there is still much inefficiency in the Dar es Salaam port’s operations, which causes delays and raises costs considerably. For example, it can take a container vessel 10 days just to find a berth – costing $200,000 in waiting fees – and another 10 days to unload its cargo.203 By contrast, this would take less than one day at Kenya’s Mombasa port.204 Port fees are also on average 74% higher in Dar es Salaam than at Mombasa.205 Such inefficiencies have cost Tanzania and its landlocked neighbors some $2.6 billion per year in lost trade.206 Dar es Salaam port’s inefficiencies affect every individual and company in the country and have caused every household in Tanzania to lose $147

---


204 Ibid.

205 Ibid., 36.

annually, a staggering amount considering that it corresponds to about 8.5% of total annual household expenditure. The World Bank has argued that the slow progress in implementing reforms to achieve higher efficiency at the Dar es Salaam port has partly been the result of corrupt officials who stand to gain from the port’s inefficiencies.

Reforms at the Dar es Salaam port are gradually getting underway, and the World Bank has put forward a number of recommendations for efficiency improvements at the port, including streamlining and simplifying overly complex procedures, and modernizing the port’s cranes and building new berths to expand port capacity. The World Bank has also identified the need to encourage greater participation by foreign investors so that efficiency gains may be achieved through greater competition and provision of better quality services. In order for Tanzania to cope with increased trade as a result of an expanded and more efficient port at Dar es Salaam, it is essential that the country’s road and railway networks are also upgraded and expanded. Tanzania’s inefficient and inadequate railway system, in particular, raises the cost of trade and transportation of goods in and through Tanzania.

**Recommendation 33:** The Tanzania Ports Authority should implement the World Bank’s recommendations to streamline and simplify the port’s overly complex procedures, as well as upgrade the port’s cranes and build new berths to expand port capacity. Additionally, Tanzania’s road and railway networks need to be developed in an integrated manner in order to better serve Tanzania and its landlocked neighbors and support the increased trade that will pass through the Dar es Salaam port.

**RECOMMENDATION 34: BUILD AN EFFECTIVE TWIN-PORTS SYSTEM**

The Tanzanian government has recognized the limitations of the Dar es Salaam port and has advocated for a Twin-Ports system. The Twin-Ports strategy identifies the development of a port at Bagamoyo, 75km to the north of Dar es Salaam, to act as a supplementary port to the Dar es Salaam port. It is intended that the Bagamoyo port be

---

207 Ibid.
208 Ibid.
209 Ibid.
210 Ibid.
constructed by 2020 with the financing of the port’s construction by way of a public private partnership. The potential foreign investor for the construction of the Bagamoyo port is China Merchants Group (CMG), which intends to ensure that the Bagamoyo port has more than 25 times the capacity of the Dar es Salaam port. The project will take 7 to 10 years and is anticipated to cost US$10 billion. The Tanzanian government will take responsibility for dredging the port (at a cost of US$500 million), while CMG will begin work on the construction of the port. On completion, the Bagamoyo port will be the biggest port along the east African coast and will have capacity to berth cargo ships up to 100,000 tons.

**Recommendation 34:** Complementary industry facilities should be built in close proximity to the Bagamoyo port, such as an Export Processing Zone or an industrial park, to further boost the development of Tanzania’s non-extractive industry sectors. Public-private partnership arrangements may be appropriate to finance such infrastructure development. The Tanzanian government could undertake responsibility for port planning, regulatory functions, and ownership of port-related land and basic infrastructure. The private sector may be responsible for marine and terminal operations and construction, acquisition, and ownership of superstructure and equipment.

**RECOMMENDATION 35: EXPAND ROAD AND RAILWAY INFRASTRUCTURE**

Tanzania has made notable progress in rehabilitating and extending the country’s road network. However, inadequate infrastructure remains a big problem, with 54% of Tanzania’s business community identifying poor quality of roads as the primary obstacle to undertaking and expanding their economic activities. Poor road infrastructure drives up production costs, especially in the agricultural sector, which requires frequent transportation of goods to and from rural areas. Furthermore, the railway systems are not operated or maintained effectively, resulting in underperformance and deterioration of equipment. Indeed the Tanzania-Zambia

---


213 Ibid.

214 Ibid.


railway operates only twice a week, despite the considerable potential for trade between the countries.

Expansion of roads and railways, are “subject to important increasing returns to scale, suggesting the need for a public supplier of the infrastructure, or at least a publicly regulated monopoly.”217 This will necessitate the government channeling revenues from its natural gas development into expanding its own capacity to provide adequate transportation infrastructure. Alternatively, the government should consider extending adequate incentives to secure private sector participation in infrastructure development in Tanzania, perhaps entering into Build-Operate-Transfer arrangements with the private sector.218 However, it is important to bear in mind that it will likely be necessary for the Tanzanian government to extend monopoly power to a private sector actor in this regard. In the absence of being guaranteed a monopoly hold on the sector, it is unlikely to be economically attractive for the private sector to participate in infrastructure development in Tanzania.

**Recommendation 35:** The government should use a portion of the revenues from the natural gas activities to fund road and railway construction and maintenance. Alternatively, the government should consider entering into Build-Operate-Transfer arrangements with private sector actors, bearing in mind that it may be necessary to extend monopoly holds to private sector actors in this regard. Importantly, railways and ports should be developed in an interconnected way to ensure that such developments support one another and contribute to expanding trade in and through Tanzania.

**EXPAND ELECTRICITY ACCESS**

TANESCO, the government-owned electricity company, is a major player in Tanzania’s natural gas development. It is currently the primary consumer of natural gas in the country, consuming an estimated 85% of natural gas produced by TPDC in its thermal electricity generation processes.219 Despite TANESCO receiving natural gas at reduced cost, it still fails to provide adequate electricity for the majority of citizens,

---


218 Build-Operate-Transfer (BOT) arrangements involve the private sector building infrastructure and operating the services associated with the infrastructure after construction is completed. Once the contract with the private sector expires, however, the infrastructure and its operation is transferred to the government of the host country.

219 Abdul Masunga (TANESCO Commercial Service Manager), in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania; TPDC, in discussion with the authors. March 14, 2014. Dar es Salaam, Tanzania.
with only one quarter of the population having access to electricity. In addition to hindering educational opportunities and access to quality health care, inadequate energy access is also a prohibitive constraint on economic activity. Furthermore, the high cost of the little electricity that is available has been cited as a very problematic obstacle to doing business in Tanzania.

TANESCO is presently in a difficult financial situation. Insiders reveal that this is mainly because of the high cost of electricity generation and the fact that electricity tariffs are already close to the price consumers’ are willing to pay. Recent droughts have meant that TANESCO has been unable to use its hydropower capacity to generate electricity, forcing it to switch to costly emergency diesel fuelled plants. There are efforts underway, however, to substitute emergency diesel fuelled power plants with cheaper natural gas-powered replacements. It is anticipated that such moves will enable expansion in the country’s electricity provision to serve 30% of the population. Electricity tariffs are expected to fall to US 6 to 8 cents per kWh (from current US 40 to 44 cents). However, the country’s planned gas-power generation capacity is still inadequate.

Boniface Njombe (TANESCO Deputy Managing Director, Generation), in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania.


RECOMMENDATION 36: AUGMENT ELECTRICITY GENERATION CAPACITY

Tanzania currently has an installed electricity generation capacity of 957,000 KW. This is half the capacity of neighboring Kenya and 46 times smaller than that of South Africa. In order to successfully utilize the country’s natural gas reserves to achieve increased electricity provision in Tanzania, it is vital that natural gas-powered generation plants are built in Tanzania. To cater to growing energy demands in Dar es Salaam, it is necessary to expand Dar es Salaam’s generation capacity so that natural gas piped from Mtwara to Dar es Salaam can be effectively used for increased electricity generation.

Recommendation 36: Undertake assessment of electricity generation capacity of power plants in Dar es Salaam and the rest of Tanzania. Identify strategic locations to develop new natural gas-powered generation plants and encourage private sector participation in restructuring and expanding Tanzania’s electricity supply industry.

RECOMMENDATION 37: INVEST IN RURAL ELECTRIFICATION

Only 2% of Tanzania’s rural areas are electrified. In the absence of access to electricity, rural households are highly dependent on biomass to meet about 80% of their energy needs. This heavy reliance on biomass is leading to deforestation in Tanzania. The country’s average annual deforestation rate is 1.1%, more than twice the global average of 0.5% and arguably the highest rate of deforestation in the world. Tanzania’s National Environmental Management Council predicts that the trend will continue if the country fails to introduce alternative fuels.

A big obstacle to rural electrification is that extension of the national electricity grid to many rural areas is not financially or economically feasible at present, particularly in western and southern regions of the country. This is primarily because of the excessive costs associated with extending the grid vast distances to areas of low population density. Furthermore, transmission and distribution losses are high when

---

energy is transported over great distances. This further undermines the economic feasibility of connecting remote rural areas to the national grid. Realizing this, TANESCO has submitted a proposal to establish a hybrid power generation system for rural households, which would involve incorporating renewable energies such as wind, solar and biomass, with stand-alone diesel generators as emergency backups.

**Recommendation 37:** The government should extend the national electricity grid to all areas where such extension is financially viable. In those rural areas where grid connection is not financially viable, off-grid stand-alone hybrid power generation systems should be installed, in order to extend energy access to all Tanzanians.

**ON INVESTING IN HUMAN CAPITAL**

With 44% of the population under the age of 15, Tanzania has a rapidly expanding demographic base. In order to transform the country’s human potential into inclusive and sustainable economic growth, it is vital that the government invests significantly in education.

**INVEST IN EDUCATION**

Providing quality education is key to creating a skilled and capable population, who are empowered to either secure gainful employment or establish their own small- and medium-sized enterprises, thereby creating employment for others. More educated people earn higher incomes, which is important in efforts to reduce poverty and raise standards of living. Additionally, having an educated population makes a country more attractive for foreign direct investment in labor-intensive sectors. Therefore, it is clear that if Tanzania is to translate its resource wealth into long-term, inclusive and sustainable economic development, it is vital that the government provides quality education to the people. In order to diversify the economy, it is necessary for the government to provide its people with the education and skills necessary to both develop local industry and attract foreign direct investment in labor-intensive and non-extractive sectors.

Currently, 6.2% of budget expenditures are spent on education in Tanzania, which is relatively high, but is still lower than education expenditures in Kenya (6.7%), Ghana (8.10%), Timor-Leste (9.4%) and other resource-rich nations that are investing their

---

resource wealth in developing their human capital. There is room for Tanzania to both increase their education expenditures and improve the effectiveness of their educational spending.

**RECOMMENDATION 38: IMPROVE QUALITY OF PRIMARY EDUCATION**

It is laudable that Tanzania abolished primary school fees in 2000. Net primary school enrolment subsequently soared and currently stands at 92.2% for males and 95.1% for females. However, only 81.9% of children go on to complete their final grade of primary school, indicating a retention problem. Additionally, quality standards are declining as a result of the rapid increase in the number of children attending primary school. This is because enrolment expansion has not been matched by a necessary supply of quality-related educational inputs such as qualified teachers, educational materials, sufficient number of classrooms, investments in school infrastructure as well as safety, water, sanitation and hygiene. It is important that the Tanzanian government addresses these shortcomings in order to improve the quality of primary education in the country and to prepare children to succeed at secondary school.

**Recommendation 38:** The government should invest in improving the quality of primary schooling. This would include training more teachers, equipping teachers with improved teaching skills and providing schools with adequate facilities and educational materials.

**RECOMMENDATION 39: IMPROVE AND DIVERSIFY SECONDARY EDUCATION**

Only 26.2% of male and 24.4% of female children in Tanzania attend secondary school. These figures are staggeringly low considering that “attendance” is a far less stringent measurement than successful secondary school completion. There are several explanations for the low secondary school attendance figures, including the fact that passing the Primary School Leaving Exam (PSLE) is currently required for access to public secondary education. However, since more than 49% of students failed the exam in 2013, a significant portion of the country’s youth was prevented from

---

230 Ibid.
231 Ibid.
pursuing secondary schooling. Students’ failure to pass the PSLE may be indicative of the poor quality of primary education provided.

A further likely explanation is that secondary schooling is cost prohibitive in Tanzania. Secondary schooling is not provided for free; families are required to pay tuition fees, as well as provide funding for books and uniforms. Such costs are often too expensive for the majority of Tanzanians, and families frequently have to withdraw their children from secondary school as a result of inability to pay tuition and other fees. Low secondary school attendance and completion is very problematic since it is clear that primary education is not sufficient to equip young people with the knowledge and skills necessary for them to succeed in the labor market.

Tanzania’s Vocational Education and Training Authority (VETA) has a number of vocational, training and teaching centers throughout the country. These facilities could be expanded and developed to improve vocational and technical training for the youth. The vocational and technical training offered should be informed by current market demands, in order to ensure that those trained are able to find employment upon completion of their training.

**Recommendation 39:** The government should use the PSLE as an assessment tool rather than a requirement for secondary school entrance. Based on students’ performance on the PSLE, schools may divert students into various streams, with some pursuing traditional secondary education, while others go to technical training schools.
Maximizing Positive Spillovers

**CONTEXT**

For Tanzania to maximize the economic benefits that its natural gas development offers, it is necessary for the country to use its present opportunity to develop its domestic extractive industry and non-extractive industry sectors. There is much scope for Tanzanian small- and medium-sized enterprises (SMEs) to develop to serve various stages of the natural gas development value chain, such as telecommunications, logistics and suppliers of industry inputs. Local SMEs may gain much expertise and technology transfer from foreign extractive industry companies while either partnering or working with foreign companies. Local SMEs also have significant potential to participate in non-extractive sectors, such as manufacturing, agribusiness and services. The development of local SMEs would significantly strengthen and diversify Tanzania’s local economy.

However, for local SMEs to establish and grow, it is vital that they receive the support necessary to make this possible. This would necessitate the government ensuring that SMEs have access to affordable credit and uninterrupted electricity supply. It will be necessary for the government to improve the country’s transportation infrastructure to enable SMEs to operate more efficiently while incurring lower production costs.

**RECOMMENDATIONS**

**RECOMMENDATION 40: INCREASE TANZANIA’S EXTRACTIVE INDUSTRY DOWNSTREAM PROCESSING ACTIVITIES**

Tanzania’s natural resource wealth offers the country an opportunity to develop its domestic industry off the back of its natural resources, primarily through boosting domestic value addition to raw natural resources. In this regard, the government is developing a number of Special Economic Zones (SEZs) throughout Tanzania to encourage investment in a wide range of industries, including downstream mineral processing which has, to date, been minimal. The planned lapidary SEZ at Mtwara is intended to boost domestic downstream processing of diamonds, gemstones (including tanzanite) and gold. Beyond SEZs, local SMEs should also be encouraged to participate in downstream value addition activities, both in the mineral and natural gas sectors.
It is important that the domestic downstream industry is developed in order to ensure that the country’s mineral sector can continue to thrive and provide employment even after the country’s natural resources are depleted. It should also result in the domestic industry being able to supply products to other sectors of the domestic economy, thereby contributing to the development of Tanzania’s non-extractive industry sectors.

**Recommendation 40**: Increase the number of SEZs mandated to undertake downstream processing of extractive resources so as to ensure greater domestic value addition, long-term development of local industry and employment creation.

**INVEST IN THE DEVELOPMENT OF NON-EXTRACTIVE INDUSTRY SECTORS IN TANZANIA**

In addition to boosting downstream processing capabilities in the extractive industries, it is necessary to reduce the country’s dependence on volatile world commodity markets through diversification of the domestic economy. In this regard, Tanzania’s natural gas revenues should be invested in developing key non-extractive industry sectors in Tanzania, particularly those that are labor-intensive and involve domestic value addition. In this way, Tanzania can transition from an unsustainable extractive-centered economy to a more sustainable agriculture- and industry-based economy, with greater employment opportunities and income for its people. Key non-extractive industry sectors that the Tanzanian government should pay particular attention to developing include agriculture, telecommunications and logistics. We will consider these in turn.

**RECOMMENDATION 41: BOOST AGRICULTURAL PRODUCTIVITY**

Tanzania’s agricultural sector employs up to 75% of the country’s work force and should be the backbone of the country’s economy. However, Tanzania’s agricultural sector has been on the decline for many years, largely as a result of diminishing productivity as a result of “over-reliance on unpredictable natural precipitation, use of manual labor to work the land, the limited use of improved seeds and fertilizer and

---

234 Humphery Moshi (Department of Economics, University of Dar es Salaam), in discussion with the authors. March 17, 2014. Dar es Salaam, Tanzania.
low productivity.” Improving Tanzania’s agricultural productivity will be crucial in boosting yields and incomes derived from the sector.

In this regard, the government should use a portion of their resource revenues to fund the implementation of their Kilimo Kwanza (“Transforming Agriculture”) initiative. Kilimo Kwanza aims to improve agricultural productivity by introducing improved farming methods such as mechanization and irrigation, improved seed and fertilizer technology, better husbandry practices and establishment of fisheries. It is also important that farmer capacity is developed by equipping farmers with technical training and basic literacy and business development skills. Since small-scale farming is constrained by farmers’ lack of access to micro-finance, which prevents them from being able to invest in improving their productivity, making micro-finance more accessible to farmers is be key in strengthening Tanzania’s agricultural sector. Finally, the government should also invest in developing downstream processing value addition activities in the agricultural sector, such as agribusiness and food processing activities. The development of infrastructure will also be important in improving farmers’ productivity, including transportation infrastructure, irrigation systems and access to electricity.

**Recommendation 41:** To boost agricultural productivity, the government should:

(i) Use their Kilimo Kwanza initiative to assist farmers in adopting improved agricultural practices that will raise crop yields. Such practices include adopting improved seed varieties, using adequate fertilizer, increasing mechanization of farming operations and adopting better husbandry practices;

(ii) Support the extension of services that will improve farmer productivity, including extending access to micro-finance and improved infrastructure; and

(iii) Encourage the development of downstream value addition activities in the agricultural sector, including the growth of agribusiness and food processing industries.

---


Case Study: Agribusiness in Malaysia and Vietnam

Malaysia and Vietnam have boosted their agricultural productivity by adopting a three-pronged approach to agricultural transformation by:

(i) promoting the commercialization of agriculture by extending financial incentives to farmers;
(ii) encouraging farmers to move beyond farming only traditional crops to cultivating higher value agricultural produce, such as avocados and flowers; and
(iii) encouraging farmers to develop non-farm sources of income by participating in mining, retail or tourism-related activities.

Diversifying farmers’ income sources was crucial in increasing farmers’ incomes, as well as mitigating risks by protecting them against climatic shocks that would have undermined their agricultural productivity. Lastly, both Malaysia and Vietnam have encouraged rural-urban migration, accepting that many rural households will move to cities in search of productive jobs, better salaries and improved living conditions.
**RECOMMENDATION 42: EXPAND TANZANIA’S TELECOMMUNICATIONS**

Telecommunications are key as they support business development and economic growth. In recent years, Tanzania’s telecommunications sector has grown considerably and this trend is set to continue, with fiber optic networks having been extended into Tanzania to link Dar es Salaam with Nairobi, Kampala and Kigali. Improved telecommunications serve to reduce inefficiencies in doing business and lower production and operation costs. There is considerable room for the telecommunications sector in Tanzania to expand further, and as more service providers begin to operate in the country, lower costs for quality services may be achieved as competition in the sector increases.

Recommendation 42: Increased private sector participation in Tanzania’s telecommunications sector should be encouraged in order to raise competition and lower service costs for citizens.

**RECOMMENDATION 43: SUPPORT THE LOGISTICS SECTOR**

Logistics is a promising industry, particularly since exports from various sectors of the economy have been increasing in recent years. Additionally, much of the country’s domestic processing involves processing raw materials that have been imported into Tanzania. Importation requires logistics. Given Tanzania’s strategic location bordering six landlocked countries, there is significant potential to grow the logistics sector to serve the trade needs of the country as well as its many neighbors, who rely on transportation through Tanzania for trade.

However, the growth of the logistics sector is constrained by inadequate transportation infrastructure. It is vital that this infrastructure is developed as a matter of urgency in order to facilitate both the export of the country’s natural gas, as well as the development of non-extractive sectors such as logistics.

Recommendation 43: In order to make full use of the significant potential of the logistics sector, the Tanzanian government urgently needs to repair and expand the country’s transportation infrastructure.

---


238 Yokishina Muzawa (Consultant to the Ministry of Industry), in discussion with the authors. March 21, 2014. Dar es Salaam, Tanzania.
ENVIRONMENT

CONTEXT

ENVIRONMENTAL IMPACTS OF NATURAL GAS

Natural gas development in Tanzania poses significant risks to human health and the environment. It is important that the government puts in place adequate environmental protection mechanisms, and effectively implements these measures, to mitigate the negative impacts that natural gas development could have on the health and wellbeing of local communities, wildlife and the natural environment.

While the particular environmental risks posed by natural gas development in Tanzania are not yet fully known, there are a number of environmental risks common to such projects worldwide, including water and air pollution. Of particular concern is the practice of flaring, which is commonly used to dispose of unusable or waste gas. Flaring produces greenhouse gases, which contribute to climate change;\(^\text{239}\) in Nigeria, scientists have identified flaring as a major contributor to air pollution and acid rain.\(^\text{240}\)

Waste management is also a key factor to be taken into consideration during natural gas development. During the drilling process, rock fragments (commonly called “cuttings”) and muds are brought to the surface.\(^\text{241}\) These can contain contaminants such as mercury, cadmium, arsenic and hydrocarbons.\(^\text{242}\) While this waste can be reduced during drilling by using smaller drill sizes and reducing the number of exploration holes drilled, it is important that detailed waste management plans are adopted to deal with waste generated during the drilling process. Such waste management plans must address the disposal of cuttings, the volume of which may be too great to merely deposit into surface water.\(^\text{243}\) It will also be necessary for waste

---

242 Ibid.
243 Ibid.
management plans to address treating water contaminated with toxins as a result of the drilling process.244

Although some aspects of Tanzania’s natural gas development may be subject to environmental standards as conditions of financing from international lending institutions, such as the World Bank, ultimate responsibility for protecting Tanzania’s environment lies with the government. The most effective way for the government to protect the environment is through proactive prevention of environmental harm. This necessitates developing a strong legal and regulatory regime governing environmental protection, and ensuring that the standards and requirements stipulated in environmental laws are observed and upheld in practice. Furthermore, non-compliance with such standards and requirements must be met with heavy penalties that are serious enough to act as deterrents for extraction companies that may otherwise fail to comply with such environmental obligations.

CURRENT LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION

STATUTORY FRAMEWORK

The Environmental Management Act245 is the primary statutory source of environmental law in Tanzania. Five basic principles underlie the Environmental Management Act:

(i) the precautionary principle;
(ii) the polluter pays principle;
(iii) the democratic principle;
(iv) public awareness; and
(v) integration.

The Environmental Management Act sets forth two tools for regulating the environmental impacts of proposed projects: the Environmental Impact Assessment (EIA) and the Strategic Environmental Assessment (SEA). EIAs are mandatory for all natural gas development projects, and the purpose of them is to analyze the potential risks of a proposed project and to identify strategies and measures that companies may adopt in order to mitigate such risks. EIAs are undertaken by experts authorized by the government to conduct EIAs and are submitted by companies as part of their applications for exploration and production licenses. SEAs are conducted by the government in order to inform how environmental considerations may be embedded

244 Ibid.
in policy-making. SEAs should be conducted before companies undertake natural gas exploration. The two main statutes dealing with petroleum in Tanzania, the *Petroleum (Exploration and Production) Act* and the *Petroleum Act*, contain few environmental protections. Rather, the *Environmental Management Act* provides for environmental protection in the context of natural gas development.

The *Environmental Management Act* provides a strong foundation for environmental protection in Tanzania since EIAs and SEAs are powerful tools to identify and mitigate environmental risks in proposed projects. When conducted properly, EIAs ensure that environmental risks are identified and that plans to mitigate such risks are developed. Given the large areas involved in gas exploration and production, SEAs are very important in enhancing environmental governance by bringing environmental considerations into policymaking. However, this framework can only be successful with equally strong regulatory and judicial roles, as well as active participation from civil society.

**REGULATION**

The chain of responsibility for environmental matters, including implementation of the *Environmental Management Act*, is as follows:

*Figure 9. Government Organizational Structure for Environmental Management*

The National Environment Management Council (NEMC) is the main regulatory body coordinating and overseeing environmental procedures nationally. NEMC consists of

---

247 The Petroleum Act of 2008. The Petroleum Act of 2008 sets forth environmental requirements in Sections 28 and 29. It delegates authority to the Energy and Water Utilities Regulatory Authority to determine when an EIA will be required. In addition, it sets forth requirements and liability in the instance of an oil spill.
trained environmental experts and it undertakes three main roles: drafting environmental regulations, overseeing the EIA process, and monitoring and enforcing environmental laws.

The Minister of Environment has oversight over the NEMC’s regulatory activities, including giving final approvals for EIAs. The Minister thus has wide discretion regarding which development projects move forward. The Environmental Management Act also empowers the Minister of Environment with the authority to pass regulations concerning liquid and natural gas pipelines. In addition, it also provides for an environmental official to be stationed within each ministry to ensure effective environmental regulation across all government departments.

NEMC has the authority to promulgate regulations on how EIAs are conducted. The EIA and Audit Regulations set forth many of the details of the EIA process, from registration to scoping, through EIA submission and review, and finally monitoring and compliance. The EIA Regulations set forth strong conditions on the content of EIAs. Importantly, companies must set out the anticipated impacts of extractive activities on the environment, including the “social and cultural effects, and the direct, indirect, cumulative, irreversible, short term and long term effects.” In addition, they must address “alternative technologies,” and “identification of gaps in knowledge and uncertainties.” In addition, the EIA must include an environmental management plan that sets forth measures for eliminating, minimizing, or mitigating adverse environmental impacts. Review of EIAs is conducted first by NEMC employees, followed by a technical advisory committee consisting of cross-ministerial experts. EIAs are then passed along to the Minister of Environment, who is required to deny approval if environmental impacts cannot be mitigated. This process is summarized in Figure 10.

248 Environmental Management Act of 2004, section 77.
249 EIA and Audit Regulations of 2005.
250 Ibid., section 18-1(i).
251 Ibid., section 18-1(j), (o).
252 Ibid., section 18-1(l).
253 Ibid., section 22.
254 Environmental Management Act of 2004, section 77.
The *Environmental Management Act* and the *EIA Regulations* mandate monitoring by NEMC but provide little detail about such monitoring. While NEMC itself is charged with monitoring, companies are also given the responsibility to self-monitor, for example, by submitting annual reports to the NEMC describing compliance with environmental impact standards.\(^{255}\) As discussed below, NEMC’s capacity to monitor projects, especially natural gas projects, is a concern for effective environmental protection.

Lastly, the *Environmental Management Act* provides for NEMC authority to enforce the decommissioning of projects. It requires that “the proponent or operator shall, at his own cost undertake safe decommissioning, site rehabilitation and ecosystem restoration before the closure of the project or undertaking”\(^ {256}\) and delegates authority to the NEMC to require an environmental performance bond.\(^ {257}\) The bond may not be released until all decommissioning conditions, including site rehabilitation and ecosystem restoration, have been satisfied.\(^ {258}\)

NEMC acts as a strong network for coordinating environmental considerations and for pooling resources to monitor environmental impacts. However, NEMC is still growing as an institution and lacks the resources to effectively conduct many of its activities. In addition, as NEMC is ultimately housed under the office of the Vice President, important decisions regarding project approval can be influenced by political motivations. NEMC only has the authority to recommend approval or rejection of a

\(^{255}\) Ibid., section 101(3).
\(^{256}\) Ibid., section 102(1).
\(^{257}\) Ibid., section 227.
\(^{258}\) Ibid., section 102(2).
project based on environmental considerations. The Minister of Environment, who is ultimately responsible to the Office of the Vice President, must decide whether to approve or deny a project based on environmental considerations. Thus, NEMC’s capacity is limited by resources, technical expertise, and political influences. Tanzania must address these limitations in order to secure environmental protection in the face of the natural gas boom.

**LITIGATION**

The Tanzanian judiciary is progressive with respect to environmental protection. The High Court has implied the right to live in a clean and healthy environment in Article 14 of the Constitution (which provides that “every person has the right to live”). In 1991, the High Court recognized the right of citizens to bring a case on environmental matters, by granting standing to environmental litigants in *Festo Balegele v. Dar es Salaam City Council*.259

The *Environmental Management Act* codifies the right to standing by providing for civil and criminal proceedings for non-compliance with the Act. Significantly, the Act provides standing in the interest of an individual, class, in the public interest, or “in the interest of the environment or other habitats.”260 The *Environmental Management Act* also creates an environmental tribunal to adjudicate environmental claims under the Act.261 The tribunal exercises jurisdiction over matters concerning any person aggrieved by a decision or omission by the Minister of Environment, the imposition or failure to impose conditions, limitations, or restrictions under the Act, and the decision of the Minister to approve or disapprove an act or omission.262 Grievances must be submitted within thirty days of the act or omission in question. The tribunal is still in its nascent stages and is only just starting to be used as a complaint mechanism.263

While the superior courts in Tanzania have made significant strides in environmental protection, gaps in knowledge at the district level (where most environmental cases are heard) impede robust judicial enforcement. In addition, education on environmental law in Tanzanian law schools remains underdeveloped, exacerbating the existing gap

261 Ibid., section 204.
262 Ibid., section 206.
in environmental litigation in the public interest. To strengthen oversight of the oil and gas industry and government regulation, Tanzania needs knowledgeable environmental lawyers with the capacity to bring cases before courts, as well as district-level judges with environmental expertise to hear them.

RECOMMENDATIONS

RECOMMENDATION 44: INCREASE CAPACITY OF EIA COMMITTEE AND TECHNICAL ADVISORY COMMITTEE AND USE OUTSIDE INDEPENDENT EXPERTS

EIAs can only be an effective tool to identify potential risks and appropriate mitigation measures if they are conducted properly. They must address the risks relevant to the natural gas sector with sufficient and credible data to form reliable mitigation strategies. They must also be conducted in a way that fosters public awareness and participation in the project.

Our review of how EIAs work in practice reveals that the EIAs submitted to NEMC are generally of low quality. During the exploration stage, EIAs take baseline data and estimate the potential environmental impact of the proposed project. They are required to assess the cumulative environmental impact, over space and time, should natural gas reserves be proven. However, our research indicates that, in practice, insufficient attention is given to the cumulative impacts of extractive projects. When asked about whether their EIAs were considered together, in aggregate, one company stated that even during the exploration process, the original EIA had been commissioned for two exploratory wells, but they had ended up drilling five without

---

264 Ibid.
265 Environmental Management Act of 2004, section 89-90.
resubmitting a more comprehensive EIA.\textsuperscript{266} EIAs of exploration sites should include not only all potential exploratory activities, but also a thorough analysis of potential impacts should reserves be proven and the site become productive. EIAs should include scenarios of supplementary activities related to production including, but not limited to, additional wells, type and number of rigs, roads, pipelines, increased marine traffic, and other transport activities and processing facilities.

In the open ocean, EIAs should be undertaken for a period of time concurrent with the duration of the most infrequent marine animal migration, to fully understand the potential environmental impact. One season of data collection, or speculation, is insufficient as it does not reveal the cumulative effects of multiple activities, including increased marine traffic.

Experts note that extractive companies often contract the consultant who is willing to produce EIAs at the lowest cost. The result is rote EIAs of low quality that fail to take into account temporal and geographic specifics of a given project.\textsuperscript{267} One study indicates that over 60% of EIAs submitted to NEMC fail to address the five basic principles set forth in the Environment Management Act.\textsuperscript{268} According to the study,

\begin{quote}
\textit{``[T]he influence of EIA in FDI decision making has been weak and more efforts need to be undertaken. A high proportion of EIAs reviewed have failed to capture issues of polluter pays principle, democratic principle, integrative principle and precautionary principle. There is also generally low public awareness on the importance of EIA, competence of the EIA expertise as well as competence of the review and regulatory authorities.''}\textsuperscript{269}
\end{quote}

As such, these EIAs fail to be effective tools in identifying potential environmental risks or in proposing appropriate mitigation measures.

The natural gas sector presents specific challenges for environmental protection.\textsuperscript{270} Although NEMC regulates the approval process of EIA consultants, the study above indicates that many EIA consultants either lack the capacity to adequately conduct EIAs, or fail to put in the time and monetary investment to conduct a quality

\begin{flushright}
\textsuperscript{266} Oil and gas company operating in Tanzania, in discussion with the authors. March 19, 2014. Dar es Salaam, Tanzania.
\textsuperscript{267} Institute for Resource Assessment, Dar es Salaam University, in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania.
\textsuperscript{268} Agnes G. Mwakaje, “Assessing the Contribution of Environmental Impact Assessments in Informing Decision Makers Concerning the Booming of FDI in Tanzania,” Environment and Natural Resources Research 4:3(2013), 123.
\textsuperscript{269} Ibid.
\textsuperscript{270} Institute for Resource Assessment, Dar es Salaam University, in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania.
\end{flushright}
For instance, a natural gas EIA should cover the span of two years in order to account for seasonal changes. However, there is no indication that this kind of time investment has been undertaken to conduct natural gas EIAs. EIA consultants should be monitored more closely to ensure they have the adequate training and capacity to deal with the specific issues natural gas presents to the environment.

The EIA process involves various levels of consultation between NEMC and the company, beginning with the terms of reference, the first document setting forth the anticipated effects of the project. Without active and expert participation from NEMC, EIAs will fail to adequately address environmental concerns. As such, increased funding and training of NEMC staff is necessary ensure that government officials have the capacity to adequately analyze EIAs. Trainings, workshops, and secondments should all be used to ensure that government officials are aware of and can adequately implement best practices.

Another issue is that Tanzania’s Environmental Management Act provides for discretionary review of EIAs by a Technical Advisory Committee. The Committee generally consists of members of different governmental departments that may be affected by the proposed project. The Committee has at times also included academic experts for technical EIAs. This practice should be expanded significantly to account for the increase in volume and technicality of EIAs for petroleum projects. In Namibia, for instance, the environmental ministry contracts with outside independent experts to review EIAs, thus increasing its capacity to respond to EIAs from different sectors. Tanzania already has the legal framework to do so, and should maximize this practice as a means of addressing the volume of highly technical EIAs for the natural gas sector.

Recommendation 44:
(i) Increase training of EIA technicians and the Technical Advisory Committee to account for the large volume of natural gas-related EIAs and the technical expertise required to properly analyze such EIAs.
(ii) Call on environmental experts in the natural gas sector to support the EIA review process through participation in the technical advisory committee.

271 Ibid.
272 Ibid.
274 Ibid.
**RECOMMENDATION 45: REQUIRE CERTIFICATION OF THE ACCURACY OF EIAS AND EIA COMPLIANCE**

The *Environmental Management Act* creates liability for false statements submitted on EIAs: any person who fraudulently makes a false statement on an EIA submitted under the Act commits an offence, and is liable on conviction to a fine between Tsh 500,000-10,000,000 [approximately US $300-6,000] or 2-7 years imprisonment. However, weak EIA practice indicates that greater incentives are needed in order to ensure that high-quality, accurate EIAs are submitted. Further, this provision applies to initial EIA statements only, with no complementary requirement for accuracy in the ongoing compliance reports required by the *Environmental Management Act*. These provisions should be strengthened to create individual liability for high-level officers of companies. Creating liability will act as an incentive for companies to ensure compliance with environmental requirements.

**Recommendation 45:** Enact legislation to require high-level officials to certify the ongoing accuracy of EIA statements and annual reports, subject to civil and criminal liability.

**RECOMMENDATION 46: THIRD PARTY MONITORING AND AUDITING OF EIA APPROVAL PROCESS**

An outside monitor of the EIA process could provide an independent check and assessment on the efficacy of the EIA process. Many countries employ outside auditors to conduct assessments of the quality of EIAs. For example, in 2007, the natural gas regulator in the UK commissioned the University of Manchester to review the preparation and assessment of Environmental Statements to analyze whether the environmental regulatory authority was fulfilling its mandate. The study conducted by the Institute for Resource Assessment is a useful resource in analyzing the effectiveness of EIAs and providing a basis for improvement; such studies should be commissioned on a regular basis to monitor the effectiveness of the process.

**Recommendation 46:** Institutionalize a third party mechanism to review the quality of the EIAs and EIA decision-making process.

---

276 Environmental Management Act of 2004, section 184(c).

RECOMMENDATION 47: CEASE ALL LICENSING UNTIL A PROPER SEA PROCESS IS COMPLETED

The Environmental Management Act requires that government undertakes SEAs to measure the cumulative impact of industry activities on Tanzania’s environment. Conducting a thorough SEA is essential to ensuring that environmental impacts are adequately understood so that policies addressing such impacts can be designed and implemented. In June 2012, a Terms of Reference was published for the commissioning of an SEA with respect to natural gas development, to be funded by the World Bank. The SEA was scheduled to be completed within 40 weeks. To date, no SEA has been completed. Without an SEA specific to the risks posed by natural gas and oil extraction, the real environmental and economic costs and benefits cannot be identified and adequately weighed. Tanzania should cease further licensing for natural gas projects until an SEA has been submitted.

Recommendation 47: Require a comprehensive SEA to be undertaken analyzing potential harms to the environment posed by natural gas development. This SEA should be completed before any further licenses are granted, and should be used to inform environmental protection policy.

RECOMMENDATION 48: SIGNIFICANTLY INCREASE MONITORING CAPABILITIES

Environmental protection can only be achieved if monitoring and compliance are effective. Though the Environmental Management Act sets forth requirements for monitoring and enforcement of EIA provisions, there is a gap between policy and practice. There are currently several significant obstacles to adequate monitoring of environmental compliance. For example, NEMC spends nearly seven times as much on reviewing EIAs as it does monitoring compliance with such EIAs. Indeed, NEMC’s budget for monitoring for the year ending 30 June 2012 was Tsh 166,324,367.00 (approximately US$101,790.51). In contrast, the amount spent on EIAs was Tsh 1,108,967,154.00, nearly seven times as much. Given the large environmental threats posed by non-compliance, Tanzania must ensure monitoring mechanisms are strong.

278 Environmental Management Act of 2004, section 105(a).
279 Institute for Resource Assessment, Dar es Salaam University, in discussion with the authors. May 20, 2014. Dar es Salaam, Tanzania.
281 NEMC, in discussion with the authors. May 20, 2014. Dar es Salaam, Tanzania.
282 NEMC Budget for Year Ending 30 June 2012.
283 Ibid.
enough to effectively police natural gas companies. This, at the very least, requires adequate spending on environmental monitoring.

The volume of environmental monitoring required has increased drastically since the natural gas boom, and the current regulatory regime is ill-equipped to effectively monitor or ensure compliance with environmental regulations. Tanzania should consider creating a stand-alone enforcement mechanism to deal with the environmental threats posed by oil and natural gas. Tanzania has already done so with respect to mining - the Tanzania Minerals Audit Agency\(^\text{284}\) monitors environmental compliance of mining companies, among other activities. While the TMAA does not have the power to enforce compliance, it provides NEMC with information regarding incidences of non-compliance so that NEMC may take appropriate action to penalize non-compliance. Expanding upon this concept, Tanzania should consider implementing a stand-alone, adequately funded monitoring agency dedicated to environmental enforcement.

**Recommendation 48:** Create a stand-alone enforcement authority for natural gas, similar to the mining sector’s Tanzania Minerals Audit Agency, with the budget and technical resources necessary to adequately monitor the natural gas sector.

**RECOMMENDATION 49: REDUCE DISCRETION AND REMOVE CAP ON FINES**

Many of the fines set forth in the *EIA Regulations* can only be issued at the discretion of NEMC officials. The *Environmental Management Act* sets forth that where monitoring uncovers noncompliance with an EIA, NEMC may require the offender to either mitigate the damages, or pay a fine. Similarly, the *Environment Act* sets forth the right of the Council to require a new EIA in the case of a “substantial change or modification in the project,” where the project involves unforeseeable environmental threats, or where the data upon which the initial EIA was produced was inaccurate.\(^\text{285}\) While making fining discretionary may allow officials to take into account the specifics of a given situation, it ultimately impedes the efficacy of the EIA process. Companies shirk their responsibility for environmental violations because the enforcement power of NEMC is insufficient:\(^\text{286}\)

\(^\text{284}\) Established by the Executive Agencies Act of 1997, Cap. 245.

\(^\text{285}\) Environmental Management Act of 2004, section 97(a)-(c).

\(^\text{286}\) Lawyers Environmental Action Team, in discussion with the authors. March 18, 2014. Dar es Salaam, Tanzania.
Companies are ... failing to adequately implementing EIA mitigation and monitoring plans due to avoiding costs and this is done partly because of the perceived weaknesses in the regulatory and enforcement systems.  

NEMC must transform from a purely regulatory authority to one that fosters a culture of enforcement. As mentioned earlier, fines and penalties should not be a matter left to discretion, but a mandatory consequence of non-compliance. NEMC officials are currently drafting a mandatory fee schedule for violations of the Environmental Management Act, but several structural issues in the Environmental Management Act prevent effective implementation.

Fines should be scaled by ability to pay, so that fines are sufficiently large to deter non-compliance by large extractive companies. Currently, the Environmental Management Act provides for a maximum penalty of Tsh 50,000,000 (approximately US$30,500) for violations of the Act. These fees are insufficient to act as a deterrent for violations of the Environmental Management Act except in the case of small-scale operators. While larger fees can still be sought through tort (delict) actions, a strong enforcement body must have the power to issue fines to induce compliance with its regulations. Rather than a capped penalty, NEMC should be able to issue fines from a formula based on company revenues from natural gas activities in Tanzania.

**Recommendation 49:** Remove fine caps and introduce a new fining scheme based on the revenue of the company in violation. This will enable fines to be serious enough to act as a deterrent to non-compliance for companies of all sizes and profitability margins.

**RECOMMENDATION 50:** IMPLEMENT DECOMMISSIONING REQUIREMENTS

The Environmental Management Act requires the company to “at his own cost undertake safe decommissioning, site rehabilitation and ecosystem restoration before the closure of the project or undertaking.” In addition, the Director of Environment has the authority to require companies to post an environmental performance bond, or rehabilitation bond. Experience from the mining sector indicates that even where abandonment funds are required, they may not in practice be fully funded. As of the

---


290 Ibid., section 102.
current financial year, rehabilitation bonds are now required by law, with the amount owing by each mining company being proportional to the size of that company’s operations in Tanzania.\textsuperscript{291} Reports indicate that this process has not yet been completed.\textsuperscript{292} Tanzania’s rehabilitation or environmental performance bonds are an important step towards ensuring long-term mitigation of environmental risks. To avoid non-compliance, Tanzania must require all companies to submit detailed decommissioning plans, with the right of the government to access to funds if (i) sites are not closed properly,\textsuperscript{293} and/or (ii) companies fail to take appropriate steps to remedy instances of non-compliance with environmental regulations. These funds must be dedicated at the outset of the project, before any disagreement may arise between the government and extractive companies over compliance with environmental regulations.

**Recommendation 50:** Establish procedures for rehabilitation or environmental performance bonds in the natural gas sector and ensure natural gas legislation adequately addresses the risks posed by decommissioning or non-compliance with environmental regulations. Rehabilitation or environmental performance bonds should be mandatory, rather than at the discretion of the Director of Environment.

**RECOMMENDATION 51:** INCREASE TRANSPARENCY OF EIA PROCESS

Principle 10 from the internationally recognized Rio Declaration sets forth public participation as an integral piece of effective environmental regulation.\textsuperscript{294} The EIA process currently in place is commendable for providing public comment opportunities. However, the current legislative framework does not go far enough to build an informed citizenry or foster a strong civil society. EIAs may not be removed from the NEMC office, and are frequently not available in the regional offices that have regulatory authority over the project at issue.

Although NEMC’s efforts to make EIAs publicly available is laudable, the way in which such EIAs are made available to the public and relevant stakeholders is antiquated and obstructive, for the following reasons:

---


\textsuperscript{293} Environmental Management Act of 2004, section 227.

(i) In order to review an EIA, individuals are required to complete a request form at the Dar es Salaam NEMC office; however, NEMC has a broad discretion to deny such requests, which defeats the object of efforts to promote openness and transparency.

(ii) Electronic forms of EIAs are not publicly available; only printed copies of EIAs are available, and can only be examined within the main NEMC office in Dar es Salaam.

(iii) EIAs cannot be removed from the office; even though most of them are extremely long, they must be read in the office.

(iv) While the fees for viewing the EIAs may be considered nominal (roughly US$2), the expense of traveling measured both in the actual cost of travel and time away from revenue-generating activities during business hours makes access to EIAs unaffordable to many members of the public.295

EIAs, SEAs, and ongoing compliance documents should be made available to the public in a way that is easily accessible. In addition to being accessible at the relevant ministries, EIAs should be published online and available at district NEMC offices. Creating a database of EIAs, SEAs, and compliance documents will allow NEMC to adhere to both the letter and spirit of the law outlined in the *Environmental Management Act*. This activity can be funded through an additional fee imposed on companies submitting EIAs.

**Recommendation 51:**
(i) Create an online database of EIAs, SEAs and other compliance documents.
(ii) Require companies to publish EIAs on company websites within thirty days of completion.
(iii) Ensure EIAs are available at the relevant district-level NEMC offices. Permit copies of EIAs to be removed from the NEMC offices.

**RECOMMENDATION 52: IMPROVE PUBLIC COMMENT PROCEDURES**

The *Environmental Management Act* requires NEMC to provide for public participation in the EIA process.296 The *EIA Regulations* provide for public participation at a few stages:

---


296 Environmental Management Act of 2004, section 89-90.
(i) The project developer shall hold public meetings with affected communities while conducting the environmental impact assessment;

(ii) NEMC shall notify the public and solicit oral or written comments of the people who will be affected; and

(iii) NEMC has the discretion to conduct public hearings and set forth the procedures under which such hearings occurs.297

Currently, public hearings are held on an ad hoc basis, usually where public opposition to a project is expected or has already been expressed.298 Limiting public hearings to only such instances prevents public hearings from furthering the education and public awareness of the public, and it fails to alert the public to issues they may not yet be aware of.

The Natural Gas Policy recognizes, as one of its five pillars, that a “transparent and accountable system” needs to be in place regarding the management and development of the natural gas industry.299 In addition, good practices adopted and implemented internationally recognize the important role of civil society as a watchdog of government action. The government should enact regulations that take proactive steps to ensure public participation. First, the requirements for public comment should be set forth in greater detail to ensure that citizens know the correct procedures for engaging with NEMC. Although the cost of increased public participation is front-loaded, the benefits of integrating public concern are well worth the investment. The Environmental Management Act sets forth that NEMC shall decide “whether or not to convene a public hearing for purposes of collecting submissions or comments on the proposed project or undertaking.”300 To improve citizen participation, public hearings should be made mandatory for each proposed natural gas project.

**Recommendation 52:** Require public hearings for all natural gas projects, and not just those where opposition to the project has been expressed.

**RECOMMENDATION 53: IMPLEMENT GRIEVANCE PROCEDURES IN LINE WITH THE RUGGIE PRINCIPLES**

Special Rapporteur John Ruggie introduced international standards for corporate responsibility in his internationally accepted “Protect, Respect, and Remedy”

---

297 Ibid., section 27(1).
298 NEMC Official, in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania.
299 Natural Gas Policy, October 2013, section 2.2(c).
300 Environmental Management Act of 2004, section 90(2).
Framework and Guiding Principles. The Guiding Principles were endorsed by the UN Human Rights Council in 2011. In line with Guiding Principle 29, the multinational oil and gas companies operating in Tanzania should ensure that the considerations of local populations are adequately addressed. Principle 29 states that:

“To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”

Companies should set up grievance mechanisms to identify adverse impacts, including environmental and social impacts, and to address and remEDIATE grievances in a timely manner.

**Recommendation 53:** All companies should establish grievance procedures to address environmental and social concerns of natural gas activities. These mechanisms should be in place before drilling activities begin as exploration itself can have serious environmental and social impacts.

**RECOMMENDATION 54: FUND CAPACITY OF CIVIL SOCIETY TO BRING ENVIRONMENTAL LITIGATION**

Corruption cannot be adequately tackled without the active engagement of civil society, with civil society organizations (CSOs) demanding compliance from the bottom up. Despite this, Tanzania’s civil society lacks the capacity and resources to effectively challenge governmental actions that fail to protect the environment. The Lawyers’ Environmental Action Team (LEAT) is one of the few NGOs engaged in public interest environmental litigation in Tanzania. Civil society should be strengthened through funding and trainings to act as a third party check on government and the private sector.

**Recommendation 54:** International donors should dedicate funding towards building the capacity of local NGOs to bring environmental claims.

---

RECOMMENDATION 55: IMPROVE JUDICIAL TRAINING ON ENVIRONMENTAL LAW

As environmental law is a relatively new field in Tanzania, civil society cite lack of judicial education as a barrier to bringing environmental claims. Annual judicial trainings should include a section on environmental law, especially aimed at district level judges who hear the majority of environmental claims. In addition, funds should be dedicated to increasing environmental law education at universities in Tanzania. While environmental law is compulsory at the University of Dar es Salaam, regional and district education is required to ensure that lawyers across the country have the capacity to bring claims to protect their local environment.

Recommendation 55: Integrate environmental law into judicial trainings for district-level judges, and improve environmental law education at Tanzanian universities.
RECOMMENDATION 56: EXTEND THE STATUTE OF LIMITATIONS FOR ENVIRONMENTAL CASES

Under the *Environmental Management Act*, the Environmental Appeals Tribunal has jurisdiction to hear claims regarding acts or omissions of the Environmental Minister, imposition or failure to impose a condition, limitation or restriction, or decision to approve or disprove an EIA. However, the availability of data and information has significant impacts on litigation. As discussed above, much needs to be done in order to improve public disclosure of important environmental documents, including EIAs. In addition, civil society needs time to grow its capacity to act as a check on government. Under these conditions, a thirty-day statute of limitations prevents the Environmental Appeals Tribunal from becoming an effective forum for resolving environmental disputes.

While suits brought by or on behalf of the government have a statute of limitations of sixty years, general tort (delict) claims have a statute of limitations of three years. As many environmental claims proceed as tort (delict) claims, this limits the ability of civil society to bring litigation against companies that commit torts (delicts). With respect to natural gas extraction, companies should be required to comply with environmental regulations throughout the entire life of the project. As such, the statute of limitations should not kick into effect until after the company has properly decommissioned the site, as determined by the Minister of Environment. From decommissioning, the statute of limitation should run for five years.

**Recommendation 56:** Extend statute of limitations for claims before the Environmental Appeals Tribunal to at least one to three years. Extend statute of limitations for environmental cases brought under tort law to at least five years after decommissioning has completed as determined by the Minister of Environment.

---

302 Environmental Management Act of 2004, section 206(2).
303 The Law of Limitation Act, Chapter 89, Schedule (1971).
SOCIAL AND HUMAN RIGHTS IMPACTS

CONTEXT

The development of Tanzania’s vast natural gas reserves has the potential to generate substantial wealth and prosperity for the country and its people. However, this development also presents major social and human rights challenges for the government, including displacement of communities, social unrest and conflict, degradation of the environment and worsening gender inequality. Tanzania has already experienced many of these problems in its mining sector. For example, the Geita Gold Mines project sparked a series of demonstrations over perceived unfair treatment of local citizens regarding labor and land rights.304 Similarly, Resolute Gold Mine (Golden Pride) at Nzega experienced social unrest because of alleged inadequate compensation being paid to locals displaced by mining operations.305 There has also been considerable environmental damage at the North Mara Gold Mine, where a chemical waste spill affected farmland and harmed the health of local citizens.306

There have already been some incidences of social unrest in connection with Tanzania’s natural gas development. In May 2013, citizens in the Mtwara region vehemently protested the planned construction of a natural gas pipeline from Mtwara to Dar es Salaam. The protests were fuelled by frustration at a perceived lack of consultation over the gas pipeline and the fear that affected communities would not receive fair benefit from Tanzania’s natural gas development.307 The Mtwara protests were quelled with government force and President Kikwete reassured Mtwara residents that they would receive ample benefits from infrastructure and industry developments in the area.308 Additionally, President Kikwete also emphasized that the advantages of Tanzania’s resource wealth would be shared by all Tanzanians; while efforts would be made to ensure that Mtwara residents benefit from natural gas

305 Ibid., 5.
306 Ibid., 3.
development, it was necessary that they accept that Tanzanians elsewhere in the country were also entitled to benefit equally.\textsuperscript{309}

Local communities in the vicinity of extraction operations are undoubtedly impacted the most by extractive development, and may have one or more of the human rights listed below either threatened or violated as a result of extractive activities.

### Human Rights at Risk in Extractive Activities

Oil, gas and mining operations pose risks to:

- **Labor rights**, given that extractive companies may have large labor forces, consisting of both local and foreign workers;
- **Land rights**, since on-shore extractive activities may occur on land that is owned, leased or used by local people;
- **The right to food and the right to an adequate standard of living**, as land dispossession may take away a vital source of food or livelihoods from local people;
- **The right to water**, as extractive operations impose a heavy burden on water supply and may damage water quality or pollute water sources shared with local communities;
- **The right to health**, as dust, chemicals and other by-products of operations can harm the health of local communities;
- **The right to life, liberty and security, and freedom from torture, and cruel, inhuman and degrading treatment**, as such violations could be committed by a company's own private security forces, or the company could be complicit in violations by third parties, such as government; and
- **Women's rights**, as the influx of foreign workers in remote communities has been connected with an increase in domestic violence, prostitution, and HIV/AIDS.\textsuperscript{310} Additionally, the extractives sector tends to provide disproportionately few employment opportunities for women, in comparison to men.

However, the social harms associated with natural gas development are preventable, and the risk of future unrest and conflict can be mitigated, if government and extractive companies undertake certain measures. Government should introduce and effectively enforce compliance with good social standards and safeguards. Extractive

\textsuperscript{309} Ibid.

companies should implement measures to mitigate any potential social harm associated with their proposed extractive activities.

In Tanzania, a comprehensive social impact assessment (SIA) must be conducted as part of the broader environmental impact assessment (EIA) requirement mandated by the Environmental Management Act. EIAs must be conducted by qualified independent assessors and are submitted as part of an extractive company’s proposed work plan in its application for exploration and production licenses. The key purpose of the SIA (within the EIA) is (i) to identify the potential negative socio-economic and cultural impacts that extractive activities may have on local communities, and (ii) stipulate measures that extractive companies will undertake to mitigate these impacts. The severity of socio-economic, cultural and environmental impacts identified in EIAs, and the potential effectiveness of proposed mitigation measures, should be integral factors affecting the government’s decision on whether to grant the requested license(s) or not.

RECOMMENDATIONS

RECOMMENDATION 57: UNDERTAKE EARLY AND ONGOING COMMUNITY ENGAGEMENT

Early and ongoing engagement with communities that are affected (either directly or indirectly) by extractive activities is critical in preventing social unrest and conflict. In order for community engagement processes to be successful and effective, it is crucial that such processes be genuine. This requires that government and extractive companies be honest and transparent in their dealings with communities. It also requires that local communities be kept fully informed of all pertinent project-related information at every stage of extractive operations. This is important in order to manage community expectations and minimize the possibility of misunderstandings arising as a result of insufficient information-sharing. Additionally, local communities must be both invited to participate in, and be given an actual role in, project decision-making as far as such decisions have direct or indirect impacts on

“Every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation.”

-- Constitution of Tanzania, Article 21(2)
local communities. Indeed, the Constitution of Tanzania entrenches the right of Tanzanians to participate fully in decision-making processes regarding matters that affect them either individually or collectively as a nation.\textsuperscript{311}

It is crucial that communities that could be affected (either directly or indirectly) by extractive operations are engaged in the EIA process, so that EIAs may accurately identify all potential environmental, socio-economic and cultural harms that may result from extractive activities. Additionally, input from affected communities will be invaluable in identifying appropriate mitigation measures to minimize possible negative impacts. Various methods could be used to engage with local communities, including disseminating information via pamphlets, radio broadcasts or public meetings, and inviting feedback from communities at public hearings and through calls for public comments. If carried out effectively, efforts to ensure local community involvement in extractive operations, and associated developments, could foster a sense of community acceptance (and even support) for such activities.

The Songo Songo Gas to Electricity Project\textsuperscript{312} is a good illustration of how consultation with local communities can be integrated into extractive projects. The Songo Songo EIA process involved conducting 29 environmental and social research studies, investigations and impact assessments between 1993 and 1997. Based on the EIA, which outlined various potential negative impacts that natural gas development may have on local communities, extraction companies prepared a management plan that included measures to prevent or mitigate such negative impacts. For example, the major social impact of the project concerned land acquisition and resettlement, and affected 3,100 households in various degrees. Songas, the extractive company leading the natural gas development, successfully made use of the local print, radio and TV media to disseminate information and communicate with local community stakeholders. Working closely with local communities aided in identifying land of cultural importance, such as cemeteries, that would be affected by the natural gas development. Consequently, Songas compensated families for harm caused to cultural lands and also provided for a reburial ceremony to be conducted in accordance with local cultural practices.

\textsuperscript{311} The Constitution of Tanzania, Article 21(2).

\textsuperscript{312} In 1995, Ocelot International Tanzania Ltd. and TCPL Tanzania Limited in partnership with the government, MEM, TANESCO and TPDC agreed to create a company called Songas to implement the Songo Songo Gas to Electricity Project. Songas developed the Songo Songo gas field in the Kilwa District, Lindi Region of Tanzania and constructed gas processing facilities on Songo Songo Island and transports natural gas to Dar es Salaam where it is being used as the principle fuel supply for gas turbine electricity generators.
The Songo Songo project sets a positive example for other Tanzanian extractive projects to follow in terms of engaging affected communities and identifying and mitigating adverse social impacts. It appears that the effective way in which Songas communicated with those affected by natural gas development activities has been somewhat of an exception in Tanzania’s extractive industry sector. Generally, the sector has been characterized by a lack of transparency and public engagement - a view that is supported by members of both affected communities and civil society organizations that were interviewed by the authors. The government currently lacks a coherent communication strategy regarding extractive industries, despite the importance of clear and adequate communication with local communities.

It is recommended that, in accordance with the Environmental Management Act, information-sharing and engagement with local communities should start at the point of conducting EIA research (at the very latest). If local support can be achieved through early engagement, affected communities may develop a sense of control and ownership over the project and, ideally, may positively support the project. Getting buy-in from affected communities early on in the process will help prevent social unrest and conflict that may otherwise occur as a result of distrust and the perceived lack of inclusivity and transparency.

Civil society organizations (CSOs), especially community-based CSOs, should also be involved in public consultation processes, including during the EIA. The involvement of CSOs could ensure greater representation of the interests of marginalized groups within affected communities, for example. The CSOs could also contribute to raising awareness of important social issues and could be integral in encouraging affected communities to engage with the process and provide input.

**Recommendation 57:** Both the government and extractive companies should:

(i) Undertake early and ongoing engagement with communities affected directly and indirectly by natural gas development activities;

(ii) Keep local communities fully informed of all pertinent project-related information at every stage of extractive operations;

---

313 Resident of Temeke, in discussion with the authors. March 19, 2014. Dar es Salaam, Tanzania.
314 Researcher at Legal and Human Rights Centre, in discussion with the authors. March 19, 2014. Dar es Salaam, Tanzania.
317 Ibid., section 89.
(iii) Give local community members an opportunity to participate in, and be given an actual role in, project decision-making as far as decisions have direct or indirect impacts on local communities; and

(iv) Include CSOs, especially community-based CSOs, in all consultation processes.

**RECOMMENDATION 58: IMPROVE IMPACT MONITORING AND EVALUATION PROCEDURES**

In addition to effective monitoring of extractive companies’ compliance with relevant social standards and the mitigation measures identified in the SIA portion of the EIA, it is vital that impact monitoring and evaluation procedures are improved. It is not sufficient to merely monitor compliance – the impact of extractive activities on affected communities’ socio-economic and cultural conditions over time must also be monitored and evaluated in order to determine actual impact on affected communities. In this regard, it is crucial that comprehensive and accurate baseline data is gathered on indicators identified as being of relevance to assessing the socio-economic and cultural wellbeing of local communities, so that the impact of extractive activities on these socio-economic and cultural factors can be gauged.

In addition, the impact findings of various extraction projects should also be considered and assessed together, in aggregate. This is important in order to ascertain the impact that the extractive industry sector as a whole is having on the social sphere of all affected communities. Importantly, when deciding whether to grant exploration and production licenses, government should bear in mind all other extractive projects already in operation, particularly those in the vicinity of the proposed project. Projects that are close to one another may compound the social impacts felt by affected communities, and this reality needs to be considered when determining whether to grant further licenses or not.

**Recommendation 58:** Impact monitoring and evaluation procedures should be improved in order to adequately take cognizance of impacts on socio-economic and cultural aspects of affected communities both over time and across all extraction projects considered together, in aggregate. When granting licenses, government should consider potential impacts on affected communities from extractive projects in aggregate.

**RECOMMENDATION 59: MAKE EIAS PUBLICLY AVAILABLE**

EIAs should be made publicly available and third parties should be invited to monitor extractive companies’ compliance with applicable social standards and the social
impact mitigation measures identified in EIAs. This would lessen the monitoring burden on government, which is important since government frequently lacks the capacity necessary to adequately monitor companies’ compliance with social requirements. Third parties invited to monitor companies’ compliance with social requirements would include local community members and CSOs, both of which possess a deep knowledge of either the affected area or relevant subject matter.

**Recommendation 59:** EIAs should be made publicly available so that third parties may assist government to monitor extractive companies’ compliance with applicable social standards and social impact mitigation measures identified in EIAs.

**RECOMMENDATION 60: NO DISCRETION IN IMPOSING SERIOUS PENALTIES FOR NON-COMPLIANCE WITH SOCIAL STANDARDS**

The *Environmental Management Act* stipulates that non-compliance with EIAs may result in extractive companies being required:

- (a) to take all reasonable measures to mitigate the impact of such non-compliance and report such measures to the Council; or
- (b) to pay a fine imposed by way of administrative measure by the Council for such non-compliance.

This provision is problematic in that it gives NEMC the discretion whether to penalize extractive companies for non-compliance with social standards. Such a vague penalty provision fails to give due cognizance to the importance of social standards and human rights. Furthermore, it creates scope for corruption as companies could, theoretically at least, bribe NEMC to not impose any penalty. Rather, extractive companies should face mandatory penalties for non-compliance, and fines imposed should be large enough to act as a serious deterrent to extractive companies breaching their social obligations and violating applicable social standards.

**Recommendation 60:** Extractive companies that fail to comply with applicable social standards should face mandatory penalties, which should be serious enough to act as a deterrent to non-compliance. Provisions that give NEMC a discretion as to whether to impose penalties for non-compliance should be amended to reflect mandatory application of penalties in situations of non-compliance.

---

318 Ibid.
319 Ibid., section 100(1).
RECOMMENDATION 61: OBTAIN A SOCIAL LICENSE TO OPERATE FROM AFFECTED COMMUNITIES

Beyond compliance with legal requirements, extractive companies are becoming increasingly concerned with securing a “social license to operate.”\textsuperscript{320} A social license to operate is earned when a project has “the ongoing approval or broad acceptance within the local community and other stakeholders.”\textsuperscript{321} The main components of a social license are community perceptions of the social legitimacy and credibility of the project, and the presence of trust between stakeholders.\textsuperscript{322} A social license is akin to community buy-in and needs to be earned and maintained by companies. However, a social license “requires [that] a sentiment [be] shared across a whole network of groups and individuals [which] introduces considerable complexity into the process.”\textsuperscript{323}

“Without the support of the community, your project is going nowhere... [A social license to operate is] the acceptance and belief by society and specifically our local communities, in the value creation of our activities, such as we are allowed to access and extract mineral resources ... You don’t get your social license by going to a government ministry and making an application or simply paying a fee... it requires far more than money to truly become part of the community in which you operate.”

-- President, Newmont Mining Corporation

Given local communities’ deep knowledge of potentially affected areas, it is vital that members of these communities are invited to participate in monitoring and evaluating extractive projects’ socio-economic and cultural impacts. Local communities should be empowered to monitor extractive companies’ compliance with relevant social standards and the mitigation measures outlined in the EIA. Interviews on the ground revealed that, in practice, community consultation and engagement in the EIA process rarely happens.

\textsuperscript{321} Ibid.
\textsuperscript{322} Ibid.
\textsuperscript{323} Ibid.
International Standards on Community Consent and Consultation

- The World Bank requires “meaningful participation” by communities as a condition of lending to extraction projects.\(^{324}\)
- Natural Resource Charter (voluntary) requires “free, prior and informed consent.”\(^{325}\)
- Equator Principles (voluntary) require free, prior and informed “consultation.”
- International Council on Mining and Metals requires community consultation, and notes growing pressure to make free, prior and informed consent the standard.\(^{326}\)

To earn a social license to operate, companies in the extractives sector need to:

- understand local culture, customs, language and history;
- educate local stakeholders about the extraction project;
- ensure open communication among all stakeholders;
- build community support for the project;
- provide meaningful compensation for unavoidable harm caused; and
- partner with NGOs for assistance where necessary.

In order to ensure that extractive companies obtain a social license to operate and properly engage with potentially affected communities at every stage of their operations, government should integrate the social license process into regulatory requirements and procedures. While securing a social license undoubtedly requires significant community engagement efforts by extractive companies, this process enables companies to better understand the risks inherent in specific projects, and how these risks can impact both affected communities and the companies’ reputation.

Recommendation 61: The government should:

(i) Develop minimum standards that extractive companies need to comply with when engaging with affected communities or seeking their consent prior to issuing the operating license, as well as during operations; and

---


Lessons from Mining on a Social License to Operate

The following cases exemplify some of the problems with obtaining a social license to operate in Tanzania and Peru:

Newmont Mining – Minas Conga, Peru:

“The controversy surrounding Newmont Mining’s Minas Conga project in Cajamarca, Peru, has been reported around the world. Controversy was sparked by the apparent risk that the project poses to local watercourses, which contains a political element and further Minas Conga is not the first project with which Newmont has faced problems with the local community. The Minas Conga controversy highlights three separate themes that recur when we look at social license to operate: the potential environmental damage that can be caused by mining pollution and accidents; the struggle between regional and central government; and the importance of having appropriate processes and understanding of the local situation.”

African Barrick Gold – North Mara, Tanzania:

“Barrick Gold inherited the North Mara gold mine in its 2006 takeover of Placer Dome and subsequently spun it out into African Barrick Gold in 2010. Since the takeover from Placer Dome in 2006 there have been significant operational challenges at the mine, primarily resulting from social unrest and attempts by locals to illegally enter the mine. In 2008 around 200 people entered the mine and destroyed close to $15m worth of Barrick’s equipment and property, ultimately ending in the death of one local. Tensions between African Barrick Gold’s operations and the local population continued between 2008 and 2011 with 7 locals being killed in a 2 year period. The clashes ultimately escalated until the 16th May 2011, when Tanzanian Police killed 7 intruders to the mine when under sustained attack from a group of around 800 people.”


328 Ibid.
ON PROTECTING LAND RIGHTS

RECOMMENDATION 62: CONDUCT LAND SURVEYS AND REGISTER TITLES OF CUSTOMARY OWNERS

In Tanzania, all land is public and ultimate ownership of land is vested in the President as trustee on behalf of Tanzanian citizens. The Commissioner for Lands, who is appointed by the President, administers the land. Under this land ownership regime, individuals and companies cannot obtain private rights of land ownership; rather, they are granted occupancy rights by the government. Land is undoubtedly central to the welfare and livelihoods of Tanzanians, and is fundamental to various other basic human rights, including the right to housing and food, and employment. Thus, the government must ensure that the legal and policy framework governing land effectively protects the land rights of Tanzanians living in areas where natural gas-related facilities may be constructed.

The co-existence of both statutory and customary rights of land occupancy has created much ambiguity in land ownership in Tanzania. Additionally, Tanzania’s history of relatively frequent changes in land laws, policies and procedures has further complicated land issues. The majority of land occupants do not have formal certificates or titles to the land they are occupying, especially in rural areas where most land occupation is governed by customary law. Due to these ambiguities, the full extent of potential social impacts on local communities may not be realized during the EIA process, which may result in underestimating the extent of necessary resettlement and undervaluing appropriate compensation.

---

329 Land Act of 1999, Article 4(1)
331 International Covenant on Economic and Social Rights, Article 11(1).
332 Ibid., Article 6.
334 Ibid.
335 For instance, land occupied under Operation Vijiji in 1973 necessitated the forcible relocation of millions of people to Ujamaa (socialist) villages to facilitate service delivery and farming. This policy was abandoned in 1980, yet it continues to cause land tenure confusion until today.
336 Yefred E. Myenzi (Executive Director, The Land Rights Research and Resources Institute/ Hakiardhi), in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania.
Although Tanzania’s natural gas exploration and extraction will take place offshore, pipelines, refineries and other related infrastructure will need to be constructed onshore in order to transport and process the natural gas. The construction of onshore infrastructure will affect communities living in the vicinity of construction sites. The EIA process necessitates surveying and ascertaining occupancy title for all land in the vicinity of where extractive project-related infrastructure is to be constructed. Given the confusion in Tanzania’s land rights framework, this endeavor is notably difficult to undertake. For example, in the case of the Songo Songo Gas to Electricity Project, the vast majority of the land on the proposed pipeline route had not been previously surveyed and was not titled. Preparatory survey teams were forced to determine land rights based on the owner’s good faith claims, supported by further due diligence measures.

There is also a need to streamline Tanzania’s land registration procedures, since there are currently multiple land registers, each with their own documentation standards. In this regard, the Ministry of Lands, Housing and Urban Development should coordinate the land registers and create standard land registration mechanisms. All regional Land Registry Offices should then adopt the same process and documentation requirements for individuals to officially register and secure their land titles. All land occupancy information and land titles should be lodged at the Central Land Registry and organized and stored in a database. Importantly, the Ministry of Lands, Housing and Urban Development should issue official Certificates of Title so that individuals may protect their land occupancy by providing official evidence of their occupancy rights. Additionally, possessing Certificates of Title would enable individuals to use such certificates to secure micro-finance loans from official lenders, enabling them to start their own enterprises or invest in improving their agricultural productivity.

---


**Recommendation 62:** The government should:

(i) Ensure that EIA land survey occupancy records are incorporated into official land registers (to the extent that they are not already);

(ii) Standardize land registration procedures for adoption by all regional Land Registry Offices; and

(iii) Issue Certificates of Title to individuals with registered land occupancy claims. Titles should be stored and organized in a centralized database at the Ministry of Lands, Housing and Urban Development.

**RECOMMENDATION 63: PROVIDE FAIR AND PROMPT COMPENSATION FOR LAND DISPLACEMENT**

The lack of clarity on land rights creates the risk that those with legitimate land claims will be dispossessed without fair (or any) compensation when extraction projects necessitate their resettlement. There have been instances of improper land acquisitions, unfair evictions and delayed and unfair compensation for displacement in extractive projects in Tanzania. For example, in the Geita District in 2007, the government evicted residents of Mtakuja and Katoma from their land to make way for the Geita Gold Mine. Residents of 170 households were forcibly relocated without adequate compensation for their farmland. However, it appears that the failure to compensate resettled households was the fault of the government, and not the extractive companies involved in the project, who in fact paid the government Tsh 4.3 billion ($5.06 billion) to be distributed to the Mtakuja people in compensation for their land.

The Geita Gold Mine compensation debacle also highlights how ambiguity in land occupancy rights may breed corruption. At Geita, the Mwanza regional head of the Prevention of Corruption Bureau (PCB) led an investigating task force that discovered that the list of names of those entitled to compensation contained fake names and that most people who were actually living in Mtakuja were not listed. Consequently, two Geita Gold Mine employees and several lower level civil servants

---


345 The Prevention of Corruption Bureau (PCB) was the forerunner of the PCCB.

were found guilty for corrupt practices. This incident clearly shows the need for accurate surveying and ascertaining the true holders of occupancy rights, so that the right people may be compensated when relocation is necessary.\textsuperscript{347}

**Recommendation 63:** The government should clarify all ambiguities in Tanzania’s land occupancy registration system in order to minimize scope for corruption that would otherwise result in true land occupiers from being deprived of fair compensation when they are relocated.

**RECOMMENDATION 64: ENSURE WOMEN’S RIGHT TO LAND OCCUPANCY**

Part of the reason that surveying and titling the land in the vicinity of the Songo Songo Gas to Electricity Project was so difficult is because of complications associated with Tanzania’s customary patrilineal inheritance system.\textsuperscript{348} The reliance on this custom as a determinant of land rights is problematic because it rarely results in women being granted legal rights to land and other property, despite women occupying the land in reality.\textsuperscript{349}

The fact that women are deprived of land occupation rights under customary law is in tension with Tanzania’s responsibility to treat men and women equally, including in regard to land rights and resettlement schemes. Tanzania is party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires that women be treated equally in land and agrarian reform as well as in land resettlement schemes.\textsuperscript{350} This provision is also reflected in Tanzania’s land laws, which recognize the right of every woman to “acquire, hold, use and deal with land to be of the same extent and subject to the same restrictions as a right of any man.”\textsuperscript{351} Any rule of customary law that contravenes such principles by denying women lawful access to ownership is in violation of Tanzanian law.\textsuperscript{352} Whilst customary law is vital in determining land rights absent a functioning titling system, the current customary law fails to adequately protect the rights of women.

\textsuperscript{347} Ibid.


\textsuperscript{350} Article 14(g).

\textsuperscript{351} Article 14(g).

\textsuperscript{352} Article 14(g).
Consequently, the government should ensure that women’s right to land occupancy is secured by developing the customary law on this point through court decisions (case law) granting women equal land rights to men. Government could do this by bringing an appropriate legal action before Tanzania’s courts – either supporting affected individuals to bring such actions or applying to be added as an interested party in the court action in order to push for gender equality on this issue. Furthermore, government should establish a grievance procedure to identify and redress past violations of women’s rights to land. This grievance mechanism would be most appropriately housed at regional Land Registry Offices. It is also important that women are as involved in the land surveying process, alongside men, in order for them to have influence in the process and help prevent further violations.

**Recommendation 64:** The government should:

(i) Push for Tanzania’s customary law to be developed so that it reflects full gender equality, including in regards to land rights and resettlement procedures;

(ii) Establish a grievance mechanism in regional Land Registry Offices whereby women whose land occupancy rights have not been upheld may lodge formal complaints so that this injustice may be rectified; and

(iii) Include women in the land surveying process to the same extent as men are included.
ON CORPORATE SOCIAL RESPONSIBILITY

RECOMMENDATION 65: ENCOURAGE COMPANIES TO INCORPORATE CORPORATE SOCIAL RESPONSIBILITY INTO THEIR BUSINESS MODEL

Corporate Social Responsibility (CSR) has traditionally been viewed as a philanthropic endeavor whereby a portion of company profits is used to provide support to communities affected by extractive activities. Such activities tend to be more akin to charity than to establishing and maintaining collaborative relationships with affected communities. CSR activities that involve little more than building schools or clinics in local communities do not contribute tangibly to sustainable economic development in the vicinity of extraction projects, and therefore they have little impact on reducing poverty or improving social development in local communities. Rather, such efforts appear to be undertaken by extractive companies primarily for reputational purposes.

For CSR efforts to have a lasting impact on social and economic development in communities affected by extraction projects, it is vital that it involves activities that incorporate local businesses and community members into the actual business model of companies. These CSR efforts would involve, for example, hiring local labor and procuring goods and services from local businesses. Such activities should, ideally, be the result of “a comprehensive set of policies, practices and programs that are integrated throughout business operations.” In this way, CSR is, in fact, the “commitment of business to contribute to sustainable economic development, working with employees, their families, the local community, and society at large to improve their quality of life, in ways that are both good for business and good for development.”

While there is still a long way to go in achieving effective CSR in Tanzania’s extractive industry, some progress has been made. Several initiatives are involved in sharing information on good CSR practices and community engagement methods, such as the Business Code of Ethics for Tanzania that has been developed by the Tanzania


Responsible Business Network (TRBN). Moreover, greater emphasis is being placed on enhancing partnerships between government, the private sector and civil society in Tanzania’s development efforts. For example, multi-stakeholder cooperation is prioritized in the Tanzania Development Vision 2025 and the National Strategy for Growth and Reduction of Poverty.

When designing CSR programs, it is important that extractive companies engage with local communities, so that such programs actually address the needs of local communities instead of merely providing media coverage for companies. Local context and capacity must also be taken into consideration when determining how local procurement of goods and services may be incorporated into companies’ business models. It may be necessary for companies to modify the way they normally deal with suppliers in order to make local procurement efforts successful. For example, extractive companies may need to initially pay suppliers upfront for goods in order to enable smaller businesses with limited credit access to fulfill orders. As local businesses grow as a result of economic development in local communities, such provisions may no longer be necessary, but extractive companies should be mindful of local limitations in their local procurement activities. Additionally, while local procurement of goods and services may initially be comparably more costly for extractive companies, as local capacity and capability is improved, procuring locally may substantially reduce procurement costs for companies in the long run. This would ensure greater profitability for companies while contributing to sustainable economic development in the host country.

**Recommendation 65:** Extractive companies should:

(i) Pursue CSR activities that integrate local businesses and community members into companies’ business models, primarily through employing local labor and procuring goods and services locally; and

(ii) Design CSR programs through engagement with local communities so that efforts address actual needs of communities and do not serve merely as publicity for extractive companies.

---

356 The Tanzania Responsible Business Network was officially launched in October 2013 and initially signed by 20 companies.

357 NSGRP/MKUKUTA I and II.
This section considers how the Tanzanian media can be harnessed to promote transparency in the government’s activities in the extractives sector. Supporting press freedom and quality journalism is an essential part of strengthening public accountability. A strong media is instrumental in providing a platform for sharing information related to the extractives sector, as well as promoting accountability of those in government and extractive companies. Increased publication of extractives sector information will reduce secrecy within the industry and encourage government officials to act in an open and honest manner in their transactions and negotiations with foreign investors.

Media has played a key role in strengthening democracy in Tanzania – from radio broadcasting in the 1950s before Tanzania’s independence, to a proliferation of private news sources after the establishment of multiparty democracy in 1992. Today, Tanzania’s media industry includes over 40 licensed radio stations, a dozen television stations, over 500 print publications and increasing access to the internet.358 This gives Tanzanians access to the news in multiple forms and allows those living in rural areas to be apprised of events taking place in Dar es Salaam.

Worldwide, many governments and international agencies have embraced electronic governance (e-governance), which is the application of information and communication technology (ICT) to aid government sharing of information and provision of government services to citizens via ICT platforms. However, use of ICT platforms requires a basic level of ICT infrastructure that is still inadequate in Tanzania. Tanzania supports the World Bank’s Open Data Initiative, which provides guidance as to how digital technologies can be used to create electronic documents to replace outdated paper files.359 This would allow easier access to important documents,


such as government budgets, by both government officials and the general Tanzanian public. Following the World Bank model, the Tanzanian government has implemented its own e-governance scheme to introduce ICT to its government offices, to expand internet access through development of fiber optic infrastructure, and to work with partners like UNESCO to increase media access to rural areas. Adherence to the Open Data Initiative’s standards should vastly increase public access to government data, which will help Tanzanian citizens to monitor and oversee government activities in the extractives sector. Such initiatives will contribute significantly to transparency and accountability in the extractives sector in Tanzania.

Although advances have been made to boost the media’s capability, the government continues to exercise some restraint on the sector, especially regarding sensitive issues such as land displacement. Without access to relevant extractives information, the media cannot adequately report on such issues and cannot fulfill its role as a check on government power. In this regard, it is vital that the media, and the public more broadly, have access to key documents such as contracts and environmental and social impact assessments.

Although press freedom and e-governance campaigns are vital to increasing government transparency and accountability, this alone is not enough to keep a country safe from the resource curse. Additionally, it is necessary for the government to enact and implement a robust freedom of information law and come to an understanding with the media industry that both government and media have important and mutually reinforcing roles to play in moving the country toward a more prosperous future.

**RECOMMENDATIONS ON INCREASING TRANSPARENCY**

Public access to information is a key factor in combating corruption in resource-rich countries. A lack of transparency can lead to an environment that enables abuse of power by government officials and may lead to diversion of public funds for private gain. When opaqueness surrounds government decisions and transactions, government officials and extractive companies have few incentives to act ethically. 360 Recognizing the importance of public scrutiny in the extractives sector, there are several initiatives, including the Extractives Industries Transparency Initiative (EITI),

---

that publish extractives-related information in an effort to achieve greater transparency and public accountability. Experience has shown that increased transparency and greater press freedom is associated with less corruption. Additionally, improved media coverage of government activities is associated with increased government spending on infrastructure and, therefore, increased economic development.

Development of the natural gas industry provides Tanzania with an ideal opportunity to learn key lessons from the experience of other countries. In this regard, the Nigerian experience is likely to prove very informative for Tanzania. Nigeria is commonly regarded as a prime example of a country suffering from the resource curse and a lack of transparency in its extractives and foreign direct investment sectors. As the boom in natural gas presents new challenges for governance, the Tanzanian government must seize this opportunity to promote increased transparency in its decision-making procedures, encourage a free and well-informed press and give effect to a right to information for its citizens.

**RECOMMENDATION 66: SUPPORT TRANSPARENCY BY CREATING A FREEDOM OF INFORMATION LAW**

Enacting a freedom of information law (FOI law) in Tanzania would be key to giving “the public access to information held by public authorities or private bodies that is required for the exercise or protection of any right.” A FOI law would give Tanzanians, including the media, the ability to access government documents upon request, and would be instrumental in combating corruption in Tanzania.

The Tanzanian government is currently considering a draft Freedom of Information Bill, as well as a draft Media Services Bill. According to Dr. Emmanuel Nchimbi, the Former Minister of Information and Culture, “The government will do everything...

---

361 Ibid. See also Anya Schiffrin, “Power and Pressure: African Media and the Extractive Sector,” *Journal of International Affairs* 62 (Spring 2009), 127.
362 Ibid.
possible to make sure that the [Media Services] bill is enacted and implemented.”

By providing for a general right of access to information, a FOI law is supposed to eliminate pretexts for government persecution of journalists who are trying to uncover “sensitive” information, since such information should be publicly accessible. Without having such a law in place, journalists remain vulnerable to arrest and prosecution for investigating and publishing information on matters that the government takes issue with.

A Case Study for Transparency and Corruption: Nigeria

Nigeria has become the poster child for the so-called resource curse. Nigeria has a stated commitment to democracy and a big, diverse and generally well-funded news media. Despite this, however, the Nigerian oil industry is infamously corrupt and there is significant disparate wealth in the population.

As in Tanzania, the cross-cutting challenges in the Nigerian media include lack of new media skills, inadequate internet access, poor salaries that do not attract talented journalists, lack of knowledge and journalism skills, pressure not to publish, and threats of violence and defamation suits. Piece-meal responses to these challenges have failed to strengthen the country’s media, resulting in the media not being able to contribute sufficiently to preventing the resource curse in Nigeria.

In 2011, Nigeria passed a FOI law, which was a landmark achievement for media advocates in the country. Although this marked huge progress, the passing of the law in Nigeria did not automatically change press freedom in the country, nor did it allow journalists to freely access information. The implementation of the law in practice remains a challenge, with requests for information frequently not being granted. Furthermore, even with the enactment of the FOI law, it remains difficult for the public to access important Nigerian government documents.

The lesson to be learned from Nigeria is that the passing of a FOI law may not necessarily translate into an increase in transparency and better reporting on the extractives sector. The law must be fully implemented and the government must respect and uphold the rights included in the law, so that important government documents are public and accessible in practice. Importantly, journalists need to be trained to understand how to read technical and legal documents, otherwise granting journalists access to such documents will not translate into more media coverage or public understanding of extractive industries issues.

366 Dr. Emmanuel Nchimbi (Minister of Home Affairs), in discussion with the authors. March 2014. Dar es Salaam, Tanzania.
The Media Services Bill represents the Freedom of Information Campaign Coalition’s vision of future media regulation in Tanzania. If enacted, the bill would:

... bring Tanzania closer [to] international standards and best practice governing the right of freedom of expression and freedom of the media. In particular, the bill would provide a basis for combating the pernicious problem of media concentration; assist in the establishment of genuine public service media; put in place a proper framework for the development of a diverse private and community broadcasting landscape; and promote the rights of media workers, including the all-important right to protection of sources.369

However, it is not clear when either bill will be approved – most likely, neither will be addressed until after the 2015 national elections in Tanzania.370 It is also evident that enactment of a FOI law is not sufficient to improve transparency and press freedom in Tanzania - it is necessary for the government to respect and uphold the rights contained in the FOI law.

**Recommendation 66:** The government should improve its current draft Freedom of Information bill by taking guidance from internationally respected freedom of information laws, such as that of South Africa. The bill should then be enacted as a matter of urgency, with the government making every effort to give effect to it through respecting and upholding the rights contained in it.

**RECOMMENDATION 67:** SUPPORT TRANSPARENCY RELATING TO CORRUPTION INVESTIGATIONS

The Prevention and Combating of Corruption Act provides clear guidelines on the use of media as a tool in the fight against corruption. The PCCB is required to:

- disseminate information to the public on evils and effects of corruption and corrupt practices as well as negative traditions and usage; and
- promote and foster public support in combating corruption.371

There are specific instructions to the PCCB to publish information relating to corruption investigations “in the [Government] Gazette, and at least two daily newspapers widely circulated in Tanzania.”372 There are also notable opportunities for

---

372 Ibid., Part III, section 38(4)(a).
the PCCB to align with Tanzania’s e-governance objectives, especially regarding proper oversight of finances and asset management. In practice, the PCCB publishes information on completed investigations on its website. This is positive because it increases public awareness of PCCB’s work and instills citizen confidence in PCCB’s operations. However, since a significant portion of the Tanzanian population does not have access to the internet, it would be useful if the PCCB could disseminate information via other modes of media, such as print, radio and television.

To date, the government has not used the media as a tool to reduce corruption. The PCCB should encourage media involvement in combating corruption by increasing information dissemination to the public, using media communication to improve citizen awareness of, and participation in, the discourse around Tanzania’s extractives sector.

**Recommendation 67**: The PCCB should raise its information dissemination efforts, using various media forms (including internet, radio, television and print media) to increase public awareness of, and participation in, the extractive industry discourse in Tanzania.

---

**ON USING MEDIA TO CREATE AN OPEN SOCIETY**

Tanzanian civil society comprises several hundred associations and non-governmental organizations (NGOs), many of which use media to raise awareness and facilitate dialogue with the government on issues of concern to citizens. Journalists often collaborate closely with NGOs on certain issues, taking on the role of social activists. Consequently, civil society and media groups frequently overlap in their objectives and activities - both push for increased transparency regarding government activities and greater respect for citizens’ rights, and both advocate for a fair distribution of government resources to Tanzanian citizens. Media groups will be key in creating an informed and engaged public, and in assisting civil society to further their objectives. These functions will be vital for overseeing the extractives sector, where documentation and activities tend to be highly complex.

---


374 Mkinga Mkinga (Chief Editor, The Citizen), in discussion with the authors. March 17, 2014. Dar es Salaam, Tanzania.
In the long term, the government should view e-governance as both a gateway for civic participation and a mechanism to increase transparency. The World Bank’s Open Data Initiative lays out basic data collection and sharing standards to help government gather and share data, such as data on demographics and budgetary figures. These standards inform the government’s own Open Government Partnership, a government-wide push to increase transparency, promote access to information, and create a more open and free society. ICT plays a central role in that process, and there is considerable scope for the media to engage in such initiatives.

**RECOMMENDATION 68: INCREASE PRESS FREEDOM IN TANZANIA**

In August 2013, the Committee to Protect Journalists (CPJ) released a report on press freedom in Tanzania entitled “The invisible plight of the Tanzanian press.” The report highlighted the increasing crackdown on journalists, especially those associated with political opposition parties. An example of this is the arrest and torture of Absalom Kibanda, Chairman of the Tanzania Editors Forum, in 2012 for publishing articles denouncing the government. Kibanda has since been released and has returned to Tanzania after being treated in South Africa for injuries. Since September 2012, the CPJ has documented ten further attacks on journalists, though none have been as high profile as that on Kibanda.

Due to the restricted reporting environment, journalists are reporting less on issues that impact society at large. As a result, the use of excessive police force to suppress anti-protests in rural areas, such as Mtwara, has gone largely unreported. Furthermore, authorities have barred the press from covering open court trials of protesters accused of instigating violence. According to the CPJ report, Tanzania’s threatening media environment has resulted in many rural journalists “self-censor[ing] for self-survival.” Such a situation clearly undermines efforts to combat corruption and promote transparency in the extractives sector, and discourages the publication of relevant information.

The PCCB should work with the Tanzania Communications Regulatory Authority (TCRA), the government authority that oversees media operations, to address the

---

378 Ibid.
379 Ibid.
“The public needs to have information about extractives. The media plays an important role in informing the public. There was a concern that the media might mislead by not informing them correctly. We thought we could bridge that gap to provide them the knowledge of the industry, to do investigative business journalism.”

— Silas Olang, Senior Regional Associate for Africa at the Revenue Watch Institute

Tanzanians to be better informed of the industry, including its benefits and shortfalls, and how activities in the sector impacts their communities.

**Recommendation 68:** The PCCB should work with the TCRA to advocate for greater press freedom in Tanzania. Press freedom is key to promoting transparency and accountability, and the PCCB should regard Tanzania’s media industry as an ally in combating corruption in the country.

**RECOMMENDATION 69: ESTABLISH A PUBLIC-PRIVATE MEDIA TASKFORCE**

There is significant scope for collaboration between the government and civil society in Tanzania: civil society can use its strong connections to different segments of Tanzanian society to assist the government in community engagement matters related to the extractives sector. A key pillar of the Open Government Partnership (OGP) is to connect government with civil society.  

380 This linkage would open a necessary conduit for information exchange and civic participation on social issues like land rights, adequate compensation, and equitable resource distribution. Media can operate as “a vehicle for social change,” 381 illuminating issues concerning marginalized populations, such as gender equality and labor conditions.

The government currently conducts some public awareness campaigns, notably PCCB’s Anti-Corruption Youth Clubs. These clubs have been effective in educating youth on practices concerning corruption prevention, reporting and combating.

---

380 DFID Officer, in discussion with the authors. March 21, 2014. Dar es Salaam, Tanzania.
381 Godfrida Jola (Program Officer, TAMWA), in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania.
However, the government is failing to engage with other important vectors of community influence, such as religious institutions.  

To improve collaboration with civil society, the Tanzanian government could create an Extractive Industries Media Taskforce to serve as a multi-stakeholder forum with representatives from the government, civil society members, extractive companies, respected local business owners, media professionals, and community leaders. Such bodies exist for extractive industry representatives in the form of business interest groups and steering committees, but civil society and media organizations lack similar dialogue platforms and access to state officials. Such a forum could enable stakeholders to share information and opinions about extractive processes and discuss pertinent social, environmental, legal and economic issues related to Tanzania’s extractive industries. Such dialogue could be instrumental in enhancing civic participation and government accountability. Media coverage of such multi-stakeholder discussions could also allow both government officials and extractive companies to disseminate valuable information to the public.

**Recommendation 69:** Establish an Extractive Industries Media Taskforce that would include representatives from government, civil society, extractive companies, communities, media and local business. This Taskforce should meet regularly (quarterly) to share information related to the extractive industries, which should be disseminated to the public.

---

**Anti-Corruption Youth Clubs**

PCCB has created anti-corruption youth clubs at different levels of the school system throughout the country. These extracurricular clubs educate students about forms of corruption and provide a forum to discuss their experiences fighting corruption. Students have learned about important corruption-related concepts, including the difference between ‘petty corruption’ and ‘grand corruption,’ which is a necessary nuance for understanding corruption in the extractive industries. The students interviewed shared their experiences of reporting corrupt practices and educating others in their communities about corruption. They also explained how club meetings have instilled in them the responsibility to react when they witness acts of corruption. There is a valuable opportunity to expand this resource beyond the school system.

---

382 Dorothea Mrema (Director of Youth Community Education, PCCB), in discussion with the authors. March 20, 2014. Dar es Salaam, Tanzania.

383 Members of the Combined Efforts Organization Against Corruption Club, in discussion with the authors. March 18, 2014. Dar es Salaam, Tanzania.
RECOMMENDATION 70: IMPROVE JOURNALISM TRAINING

Like many other African countries, Tanzania struggles to produce quality journalism on the extractive industries. The financial and technical aspects of these sectors are complex, and “both governments and companies often have a vested interest in withholding information from journalists.” Reporters lack adequate training and rarely have the expertise needed to produce in-depth quality reports on issues in this sector. This makes it difficult for the media to contribute to transparency and corruption reduction efforts in Tanzania’s natural gas sector. For example, journalists reporting on the natural gas industry need to know what documents to look for, how to read production sharing agreements, and how joint ventures and other public-private venture arrangements work.

Several organizations have already begun to set up programs to train journalists to report on the extractives sector in Tanzania. Revenue Watch Institute (RWI), the BBC Media Trust, the Tanzania Media Fund (TMF) and Reuters have all established training programs. The TMF, in partnership with Revenue Watch, leads a set of general training programs and fellowships for journalists. The Media Council of Tanzania also offers trainings for its journalists, focused on media ethics. RWI’s training model for business journalists seems to be the most successful, and should continue to have the support of the government.

Although RWI and TMF are spearheading trainings for journalists in Tanzania, they do not have the capacity or finances necessary to continue such trainings. In addition, most newsrooms do not have the money to send their reporters to training sessions. As a result, journalists who want to develop expertise in the extractives industries have to look abroad for education, which is an option that few can afford without the help of their newsrooms.

---

385 Ibid., 130.
386 Ibid., 127.
While journalistic training is a positive step, it is not enough. Notably, “training [can’t] solve all the news media’s problems, such as those related to the lack of resources or a viable business model for African newspapers.” Low pay for journalists, for example, makes the profession unattractive and discourages talented reporters from staying in Tanzania. Training initiatives should therefore be coupled with investment in attracting and retaining talent in Tanzania’s media industry.

**Recommendation 70:** To fulfill its mandate regarding the dissemination of anti-corruption information, the PCCB should visibly support journalism training sessions focused on reporting in the extractives sector, in partnership with RWI or another reputable, independent organization.

**ON IMPROVING ACCESS TO INFORMATION THROUGH ICT**

Extractive industry firms are highly resourced and tech-savvy. They are able to generate their own proprietary data to map and measure Tanzania’s natural gas reserves. The tools needed to adequately oversee these firms’ activities requires a level of ICT infrastructure that is still absent in Tanzania. Improving the ICT infrastructure should be a high priority so that the government can adopt digital technologies for its e-governance scheme and gather its own data on extractives.
While Tanzania should be proud of its varied media environment, there is ample room for greater growth in the ICT sector. Various entities, from news organizations to NGOs, to the government, now depend on a solid ICT structure to use media to effectively communicate their messages. In Tanzania, deploying the right media tools can help educate citizens about their rights in matters of land and resource ownership, and can encourage them to report observed cases of corruption in the natural resources industry.\(^{388}\) More importantly, the World Bank’s Open Data Initiative, launched in 2010, highlights crucial pathways for digital media to boost public knowledge about government and economic activities, thereby enhancing accountability mechanisms.\(^{389}\)

With over 7,000km of fiber optic cable laid down by the end of 2012,\(^{390}\) Tanzania’s ICT infrastructure aims to popularize internet use in the country. The fiber optic cable, already boosting productivity in neighboring countries like Kenya and Rwanda, will bring broadband internet speeds to many rural areas of Tanzania. This will significantly increase internet access for Tanzanians, and expand their educational opportunities.\(^{391}\) E-governance efforts can take full advantage of ICT expansion in Tanzania, making public databases and important information available to even the most remote villages. This will enable both the dissemination of information to Tanzanians, as well as facilitating input from an informed and engaged citizenry.

In much of Tanzania, digital media use is new and rare, but is growing rapidly across all sectors and institutions. The World Bank is supporting digital media use in the health, water and education sectors. The government has publicly embraced e-governance in its Open Government Program.\(^{392}\) However, government officials are not fully exploiting this valuable resource. Slow implementation of the current ICT Strategy document, weak technical capacity to fully adopt digital platforms within various ministries, and lack of coordination and leadership from the government to expand ICT use are all challenges preventing ICT expansion at the government level. Fortunately, solutions are available and achievable, and the benefits of developing Tanzania’s ICT could be exponential compared to the costs of investment. If the

\(^{388}\) Sanne van den Berg (M&E Officer, Tanzania Media Fund) in discussion with the authors. March 17, 2014. Dar es Salaam, Tanzania.

\(^{389}\) Chiara Bronchi (World Bank) in discussion with the authors. April 16, 2014. Skype.


government of Tanzania is serious about engaging with its citizens, it will need to provide clear mechanisms to dialogue with its constituents. Increasing internet access in both urban and rural areas, together with promoting other forms of media, will be a necessary step in that process.

**RECOMMENDATION 71: INCREASE ICT ACCESS**

There are signs that Tanzania needs to push harder to expand ICT use by increasing internet access in order to facilitate and support e-governance activities. Household access to internet in Tanzania grew by less than half a percent between 2011 and 2012. Consequently, Tanzania has fallen behind regional competitors like Rwanda in household internet access, ranking only above Burundi within the East African Community. The rate of increase in household internet access in Tanzania is also significantly lower than the regional average. The government of Tanzania has been slow to implement its ICT Strategy from 2003, which aimed to narrow the gap between urban and rural media access. As a result, internet access in households is largely confined to urban areas. The government’s project to install a fiber optic cable has been largely successful, but weak “last-mile” technology prevents end-users from achieving high internet access speeds, which neutralizes the benefits of using fiber optic cables.

Providing strong ICT access throughout the country will strengthen accountability, which is an important safeguard against the resource curse. With improved ICT, the government could, for example, gather data for voter registration and census records, thereby enhancing data management for public monitoring. They will be able to crowd-source data from local or remote sources to create accurate up-to-date maps on environmental impacts or access to clean water wells. Equipping the public with ICT tools will create greater supply of public information about the government’s activities, which will in turn boost demand for accurate information and reporting. This cycle will create lasting momentum to strengthen the country’s culture of public accountability.

---

395 Ibid.
396 Chiara Bronchi (World Bank) in discussion with the authors. April 16, 2014. Skype.
Recommendation 71: The government should continue to advance its ICT initiatives, giving particular focus to increasing internet access in rural areas. Such efforts will be important to furthering e-governance initiatives and promoting transparency and accountability in the extractive industries in Tanzania.

RECOMMENDATION 72: CLARIFY THE GOVERNMENT’S ICT COORDINATION

If the government of Tanzania hopes to improve ICT use in both private households and public domains (such as the press), it must be properly structured to promote, regulate and coordinate media-related activities. Clarifying which agencies or ministries should oversee media usage will determine whether information channels are open, where the limits of censorship lie, which media-based entities or individuals will be licensed to operate, and ultimately, the accuracy of public data. For example, the Ministry of Information currently regulates press activities, but the Ministry of Communication, Science and Technology handles registration of digital-based media entities. However, the mandates of the Ministries increasingly overlap as more news outlets move to web-based reporting. According to officials in the Ministry of Information, this structure is creating confusion. Traditionally, the Ministry of Information regulated content, but with the Ministry of Communication holding licenses for digital media, media-based organizations often turn to the latter Ministry for guidance. There is a need to clarify the legal and institutional responsibilities of the various government departments in regard to ICT development. Improved coordination would allow for a clearer division between content, such as press reporting, and ICT development, including infrastructure and technological innovation.

Recommendation 72: The current ICT Policy does not adequately address or effectively promote Tanzania’s access to ICT and digital platforms. The Ministry of Communication and the Ministry of Information should jointly convene a research committee to produce a report that identifies global best practices on ICT development, technological innovation, regulation of digital media, and recommendations to update the government’s ICT Policy in accordance with the rapid evolution of media technologies.

RECOMMENDATION 73: BUILD TECHNICAL CAPACITY

While having clear strategic policies and plans in place is integral to ICT development, these programmatic objectives must be supported by adequate capacity. ICT capacity comprises both the technical knowledge to make use of media technologies and possessing the necessary resources to collect data, share information and communicate effectively. The government is well placed to fund ICT activities with a new commitment to infrastructural spending. The main task now is to ensure that officials and staff at all levels understand why ICT spending is a necessary investment, rather than a novel luxury, so that they might properly allocate budgets for ICT activities.

Ensuring that staff in field offices have access to basic resources like laptops is the first step to increasing ICT use for the government. Such developments would be instrumental in promoting implementation of e-governance initiatives. As the push for ICT development gains momentum, the government should work with educational partners, including universities and media organizations, to recruit technical staff with knowledge on newer media platforms. Increasing effective ICT operations within the government will cut operating costs, open new pathways for sharing information, and enhance public accountability efforts. Bearing in mind the complexity of the extractives sector and the vital need to collect and disseminate accurate data in the sector, such ICT developments will be crucial in supporting improved governance of Tanzania’s extractive industries.

**Recommendation 73:** The government should make ICT facilities and training available to all government officials in both rural and urban government offices. This will promote the government’s implementation of its e-governance and open data initiatives, which will increase awareness of extractive industry issues and encourage public engagement.

---

BIBLIOGRAPHY

Websites and Online Resources


award-in-history-an-overview-of-occidental-petroleum-corporation-v-the-republic-of-ecuador/.


United Republic of Tanzania President’s Office. “Tanzania Investment Centre: Procedure for Obtaining TIC Certificate of Incentives.”


http://www.doingbusiness.org/rankings.

http://data.worldbank.org/indicator/NY.GDP.PCAP.DE.


Articles and Publications


GIZ. “Corporate Social Responsibility practices in Tanzania: Insights from an in-depth study.”

Herbert Smith Freehills LLP, Nicholas Peacock and Hannah Ambrose. “South Africa terminates its bilateral investment treaty with Spain: second BIT terminated, as part of South Africa’s planned review of its investment treaties.”


NEMC Budget for Year Ending 30 June 2012.

NEMC, “Terms of Reference for Strategic and Social Impact Assessment for the Oil and Gas Sub-Sector.” June 2012.


UNCTAD. “Full list of Bilateral Investment Treaties concluded, 1 June 2013.”


UNCTAD. “World Investment Report 2013.”


**Legislation and Case Law**

EIA and Audit Regulations of 2005
Natural Gas Supply Bill
Natural Gas Policy of 2013
Tanzania’s Model Production Sharing Agreement, 2013
The Constitution of Tanzania
The Environmental Management Act of 2004
The Income Tax Act of 2004
The Investment Act of 1997
The Land Act of 1999
The Law of Limitation Act of 1971
The Mining Act of 2010
The Petroleum (Exploration and Production) Act of 1980
The Prevention and Combating of Corruption Act of 2007
The Village Land Act of 1999

*Occidental Petroleum Corporation (OPC) v. the Republic of Ecuador* (ICSID Case No. ARB/06/11).

**Persons Cited in Interviews in this Report**

Abdul Masunga (TANESCO Commercial Service Manager)
Boniface Njombe (TANESCO Deputy Managing Director, Generation)
Chiara Bronchi (World Bank)
Claudio Kisanko (Senior Planning Officer of Tanzania Ports Authority)
Combined Efforts Organization Against Corruption Club members
DFID Officials
Dorothea Mrema (Director of Youth Community Education, PCCB)
Emmanuel Nchimbi (Dr.) (Minister of Home Affairs)
Edward Hoseah (Director-General of PCCB)
Dominic Rwekaza (Eng.) (Acting Chief Executive Officer of TMAA)
Godfrida Jola (Program Officer, TAMWA)
Humphrey Moshi (Department of Economics, University of Dar es Salaam)
Innocent Bash (Economist, TEITI)
Institute for Resource Assessment, Dar es Salaam University
Lawyers Environmental Action Team
Legal and Human Rights Centre researchers
Ministry of Information Officials
Mkinga Mkinga (Chief Editor, The Citizen)
NEMC Officials
Oil and gas companies operating in Tanzania
Sospeter Muhongo (Professor/Minister) (Minister of Energy and Minerals)
Sanne van den Berg (M&E Officer, Tanzania Media Fund)
Yefred E. Myenzi (Executive Director, The Land Rights Research and Resources Institute/Hakiardhi)
Yokishina Muzawa (Consultant to the Ministry of Industry)
Yona Killagane (Managing Director, TPDC)

**Books**


**International Treaties, Principles and Agreements**

