

Examining Legal Framework Governing Oil and Gas Revenue in Tanzania: Present and Future Challenges

Liberatus Cosmas Gabagambi✉

Department of Public Law, University of Dodoma
United Republic of Tanzania

Evaristo Emmanuel Longopa

University of Dar es Salaam, United Republic of Tanzania

✉ muginalibelatus@gmail.com

Abstract

This study examines the legal framework for governing oil and gas resources revenues in Tanzania. The governance of oil and gas revenues has been a challenging among various producing countries. The study has analysed the laws and policies that guides the governance of oil and gas revenues. The study findings show that the governance of oil and gas revenues faces several challenges such as: separate laws and institutions governing oil and gas resources, lack of a clear system on sharing of revenues between the two governments, lack of unified oil and gas fund for the union government, limited openness and transparency and lack of coordination clarity among governing institutions. The study recommends for the need on legislative reforms in terms of amendments of laws, establishment of a coordinating unit among institutions, harmonization of governing laws and promote

transparency and accountability in the collection and use of oil and gas revenues.

Keywords

Legal, Framework, Governing, Oil and Gas, Revenue, Challenges, Tanzania

Introduction

Natural resources are among the main sources of national wealth and revenue which should be managed by strong legal institutions to equally benefit the country and people of the State concerned.¹ Countries are most likely to benefit from natural resources where resources are properly managed but where resources are mismanaged results into resource curse.² Governance of natural resource revenue requires transparency and accountability of regulatory bodies and clear legal procedures for sharing of resource revenues.³ Such governance and control of natural resource revenues can be achieved through constitutional provisions, enactment of revenues sharing laws, agreements on natural resource revenue sharing, and asymmetric revenue-sharing model.⁴ It is argued that in countries like Iraq, Nigeria, United Arab Emirates, Canada, Indonesia, and Venezuela their constitutions provide for natural resource revenues sharing between governments.⁵

¹ Nicholas Haysom and Sean Kane, *Negotiating Natural Resources for Peace: Ownership, Control and Wealth-Sharing*, Briefing Paper October 2009, Centre for Humanitarian Dialogue 10 Years for Mediation for Peace 1999-2009. p.5

² George Anderson, *Oil and Gas in Federal Countries*, Ottawa, Ontario. (Canada): Oxford University Press (2013). p.1 *See also* Sarmilah, Milah, Lina Mustafidah, and Hellen George. "Civil Liability for Mining Companies for Environmental Pollution Based on Indonesian Laws". *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 2 (2022): 165-88. <https://doi.org/10.15294/ijel.v1i2.58135>; Empire Hechime Nyekwere, Uche Nnawulezi, Septhian Eka Adiyatma, Kasim Balarabe, and Muhammad Abdul Rouf. "Constitutional and Judicial Interpretation of Environmental Laws in Nigeria, India and Canada". *Lex Scientia Law Review* 7, no. 2 (2023): 905-58. <https://doi.org/10.15294/llesrev.v7i2.69394>.

³ Nicholas Haysom and Sean Kane, *Negotiating Natural Resources for Peace: Ownership, Control and Wealth-Sharing*, Briefing Paper October 2009, Centre for Humanitarian Dialogue 10 years for Mediation for Peace 1999-2009. p.6.

⁴ Ehtisham Ahmad and Erick Mottu, *Oil Revenue Assignments: Country Experiences and Issues*, International Monetary Fund (IMF) Working Paper, WP/02.203, November, 2002

⁵ Ehtisham Ahmad and Erick Mottu., *Oil Revenue Assignments: Country Experiences and Issues*, International Monetary Fund (IMF) Working Paper, WP/02.203, November, 2002

It is also noted that in sub-Saharan African countries are not earning the benefits from their oil and gas resources because of the existing implementation gap between the laws governing extractive industries and the practical application of these laws.⁶ The main challenges are attributed to failure of State-owned companies to manage natural resource funds, and the non-respect of governing rules including disclosing conflicts of interest, particularly where corruption is poorly controlled citing Angola and Gabon as an example.⁷ The only solution is to build a strong and independent oversight institutions that will promote transparency and accountability and hold respective governments accountable for resource revenue.

There have been different systems of revenue collection and sharing depending on the tax base system of a particular State. For example, in the United Arab Emirates each Emirate collects revenue and contributes its share to national government.⁸ The revenue collected by the central government are later distributed to all levels of the government as per the agreed formula or by considering other set criteria like population, the needs, and other internal source of revenue. Where the system of laws provides for revenue sharing, it becomes the duty of the national government to transfer the revenue to other levels of the government depending on availability of natural resources as a major source of revenue.⁹

The Constitutions of most rich countries provide autonomy over natural resources' revenues for both federal States and unitary States.¹⁰ The Constitution provides generally on revenue sharing and implementing legislation provides clear guidelines on the sharing mechanism considering revenues collections, expenditure and measures to fight against corruption practices. These are reported to be major concerns for both unitary and federal resource-rich countries.¹¹ It is imperative to note that legislative framework in

⁶ François; Strong Laws, Poor Implementation Characterize African Resource Sector. Press Release 15 April 2019. Available at <https://resourcegovernance.org/news/strong-laws-poor-implementation-characterize-african-resource-sector> accessed on 16th July 2020

⁷ François; Strong Laws, Poor Implementation Characterize African Resource Sector. Press Release 15 April 2019. Available at <https://resourcegovernance.org/news/strong-laws-poor-implementation-characterize-african-resource-sector> accessed on 16th July 2020

⁸ Ehtisham Ahmad and Erick Mohu, Oil Revenue Assignment: Country Experiences and Issues. IMF Working Paper wp/o2/203, November, 2002, p 20

⁹ Giorgio, B., Raju J. S., Revenue Sharing of Natural Resources in Africa: Reflections from A Review of International Practices. (The World Bank paper no. 90252 2014), pp. 1-10.

¹⁰ Bird, R. and Ebel, R. (2005) Fiscal Federalism and National Unity. 25 March. pp.14-16. Available at <https://www.urban.org/sites/default/files/publication/51376/1000803-Fiscal-Federalism-and-National-Unity.PDF>. Accessed on 18 August, 2020

¹¹ Nicholas Haysom and Sean Kane, Negotiating Natural Resources for Peace: Ownership, Control and Wealth-sharing, Briefing paper October 2009, Centre for Humanitarian Dialogue 10 Years for Mediation for Peace 1999-2009. p.21.

developed resource-rich countries entail both constitutional protection and legislative enactments entrenching constitutional provisions.

Domestically, the Constitution of the United Republic of Tanzania provides the Government with authority to ensure that the national wealth and heritage are harnessed, preserved and applied for the common good and against exploitation of one person by another.¹² Also, it provides that the use of national wealth should be geared towards the eradication of poverty, ignorance and disease.¹³ The purpose of natural wealth and resources exploitation in Tanzania is for betterment of Tanzanian citizens by addressing three major obstacles to development. As a result, it is critical to have in place proper mechanisms for revenue collection and sharing among the constituent governments from natural wealth and resource use.

The governance of natural resources in Tanzania is provided for in the Constitution of the United Republic of Tanzania, 1977, the Constitution of Zanzibar, 1984 and the laws enacted by both the Union Parliament and those enacted by the House of the Representatives. There are dual legal systems on governance of natural resources one applying for union resources and the other for resources exclusively considered as internal resources for Zanzibar.

The Nature of Union in Tanzania and Its Implications on Resource Governance

The Union between the former Republic of Tanganyika and the People's Republic of Zanzibar was formed in 1964 through the Articles of the Union. The Articles of the Union led to the formation of one sovereign state called the United Republic of Tanzania.¹⁴ The Articles of the Union was ratified by Act. No. 22 of 1964 which provided for ratification of Articles of Union between the Republic of Tanganyika and the People's Republic of Zanzibar. The ratification of the articles of the union recognised the Union and Zanzibar Revolutionary Government as well as adopted the Constitution of Tanganyika and laws of Tanganyika as the laws of the Union.¹⁵

The ratification of the Articles of the Union was done by both the Parliament of Republic of Tanganyika and the Revolutionary Council of the People's Republic of Zanzibar together with the Cabinet Ministers.¹⁶ The Acts of the Union provides for the Government of the United Republic and

¹² See article 9(c) of the Constitution of the United Republic of Tanzania, 1977

¹³ See article 9 (i) of the Constitution of the United Republic of Tanzania, 1977

¹⁴ See Article 1 of the Articles of the Union of 1964.

¹⁵ See long title of the Union of Tanganyika and Zanzibar Act, No. 22 of 1964

¹⁶ See Articles of the Union of 1964. Also, see the Preamble and Article of the Schedule to the Tanganyika and Zanzibar Act, No. 22 of 1964.

Revolutionary Government of Zanzibar and provided for the two Republics to be united in one Sovereign Republic by the name of the United Republic of Tanganyika and Zanzibar.¹⁷ This name was later on changed to United Republic of Tanzania by the United Republic (Declaration of Name) Act of 1964.¹⁸ Also, the Acts of the Union of Tanganyika and Zanzibar provided for a separate Legislature and Executive for Zanzibar as they were established by existing law of Zanzibar, and maintained exclusive authority in and for Zanzibar in all matters other than those mentioned in the list of Union matters which were reserved to the Parliament and Executive of the United Republic.¹⁹ The same system still maintained in the Constitution of the United Republic of Tanzania of 1977.²⁰

The Articles of the Union provides for the Constitution of the United Republic to be the Constitution of Tanganyika and the Acts of the Union ceased the Constitution of Tanganyika and the government of Tanganyika. The Acts of the Union of Tanganyika and Zanzibar provides for cessation of application of the Constitution of Tanganyika on commencement of the Interim Constitution of the United Republic of Tanzania.²¹

It is from the Articles of the Union of 1964 and the Acts of the Union of Tanganyika and Zanzibar, the nature and type of Union practiced in Tanzania can be determined. This is because the Articles of the Union provided for one sovereign United Republic, creates the government of the United Republic and government of Zanzibar and provides for cessation of Constitution of Tanganyika and the government of Tanganyika.²² The Union between Tanganyika and Zanzibar has resulted into; one sovereign United Republic with two Executive organs (the government of the United Republic and the Revolutionary government of Zanzibar); two Judicial organs (the Judiciary of the United Republic and the Judiciary of the Revolutionary Government of Zanzibar); and two legislative organs (the Parliament of the United Republic and the House of Representatives).²³

The main challenge has been what type of Union Tanzania practicing whether unitary, federal or confederation. The type of the Union differs from one another, due to differences in political forces in each circumstance.²⁴

¹⁷ Section 4 of the Union of Tanganyika and Zanzibar Act, No. 22 of 1964.

¹⁸ Act No. 61 of 1964 (Cap. 578 of the Laws).

¹⁹ Section 5(b) of the Union of Tanganyika and Zanzibar Act, No. 22 of 1964.

²⁰ See article 4 of the Constitution of the United Republic of Tanzania 1977.

²¹ Section 7 of the Union of Tanganyika and Zanzibar Act, No. 22 of 1964.

²² See Article 1 of the Articles of the Union 1964, Sections 3 and 7 of the Union of Tanganyika and Zanzibar Act, No. 22 of 1964

²³ See Article 4(1) and (2) of the Constitution of the United Republic of Tanzania of 1977

²⁴ John Jingu, The Union of Tanganyika and Zanzibar: In Search of a Viable Structure, *African Review* Vol. 41, No. 1, 2014, p.93.

2.1 The structure of the union between Tanganyika and Zanzibar

The structure of the Union between Tanganyika and Zanzibar has been attracting different perceptions/ interpretations among scholars. Some argue that it is neither a federal nor a confederal structure but can precisely be referred to as a unitary structure.²⁵ Others refer to it as federal on account of what is said to be the predominance of the federal principle in the Union between the Mainland and the Isles.²⁶ Also, the Union between Tanganyika and Zanzibar is considered as a hybrid of unitary and federal Union systems.²⁷ Nyerere gave the reasons for opting a Union of two governments structure and not unitary government or federation, he said:

“Our fear had been that if we were to have one Government it would appear that Tanganyika had swallowed up Zanzibar, so we had to find a system that would remove from Zanzibar this fear of being swallowed up, without heaping on Tanganyika the burden of running two Governments of comparable weight”.²⁸

Reasons given by Nyerere for avoiding forming a federation was the population of the people of Zanzibar, size of the Zanzibar territory which was all small if compared to their counterparty Tanganyika.²⁹ Based on the identified factors to form a federation would be seen that Tanganyika is swallowing Zanzibar.³⁰ The given reasons have resulted on what we call a semi-federal State. The model which makes the government of Zanzibar retain its full mandates on non-Union matters and its identity.³¹

The Union between Tanganyika and Zanzibar when examined from the Articles of the Union and the Constitution of the United Republic which provide for union government and one sovereign United Republic amounts to

²⁵ Romuald R. Haule, Torturing the Union? An Examination of the Union of Tanzania and Its Constitutionality. *Heidelberg Journal of International Law*, 66(2006), No. 1, pp. 215-233.

²⁶ Isaa G. Shivji, *The Legal Foundations of the Union in Tanzania's union and Zanzibar constitutions*, Dar es Salaam: Dar es Salaam University Press, 1990. 43.

²⁷ John Jingu, The Union of Tanganyika and Zanzibar: In Search of a Viable Structure, *African Review* Vol. 41, No. 1, 2014: 92-115. p 101

²⁸ J.K. Nyerere, *Our Leadership and the Destiny of Tanzania*, Harare (Zimbabwe): African Publishing Group, 1995, p. 35.

²⁹ Romuald R. Haule, Torturing the Union? An Examination of the Union of Tanzania and Its Constitutionality. *Heidelberg Journal of International law*, 66(2006), no. 1, pp. 215-233.

³⁰ John Jingu, The Union of Tanganyika and Zanzibar: In Search of a Viable Structure, *African Review* Vol. 41, No. 1, 2014, p. 98.

³¹ John Jingu, The Union of Tanganyika and Zanzibar: In Search of a Viable Structure, *African Review* Vol. 41, No. 1, 2014, p. 99.

unitary union because the government of Tanganyika is invisible under union government, the union government takes care all union matters and those for Mainland Tanzania.³² When examined based on the position of Zanzibar the union has the face of the federation because the articles of the union and the Constitution of the United Republic allows Zanzibar to have a separate government with autonomous powers on non-Union matters and limits the union government from assuming such powers vested to the government of Zanzibar.³³

The nature of the Union is semi-federal of constitutional government.³⁴ It is called semi-federal government because it lacks the features of unitary government, confederation, or full federalism states. The reasons are that administrative structure of the Union does not provide the Union government as a central government. The structure of the Union provides Zanzibar with its autonomous administrative institutions at the same time there is no separate government for Mainland Tanzania, the situation which does not qualify to make the Union a federation. This is because the Constitution powers are exercised by the Government of the United Republic and the Revolutionary Government of Zanzibar.³⁵

The powers so specified are exercised in relation to Union Matters as listed in the First Schedule and to non-Union matters which are all other matters not so listed in respect of Tanzania Zanzibar.³⁶ The Constitution provides Zanzibar with autonomy and the authority, exclusively within Zanzibar, for matters other than those specified as “Union matters”. The Government of then Tanganyika was included in the Union government.³⁷ It observed from explanations above this study considers the union to be semi federal.

Generally stated, Zanzibar surrendered part of its mandate to union government and retained autonomy on some issues including its identity while Tanganyika was dissolved into the government of the United Republic to form unitary state. Such arrangement also supports the current system of regulating

³² John Jingu, The Union of Tanganyika and Zanzibar: In Search of a Viable Structure, *African Review* Vol. 41, No. 1, 2014, p. 101.

³³ John Jingu, The Union of Tanganyika and Zanzibar: In Search of a Viable Structure, *African Review* Vol. 41, No. 1, 2014, p. 101.

³⁴ Cameron G. (2019), “Zanzibar in the Tanzania Union”. In: de Vries L., Englebert P., Schomerus M. (eds) *Secessionism in African Politics*. Palgrave Series in African Borderlands Studies, Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-319-90206-7_7.

³⁵ See Article 4(1) of the Constitution of the United Republic of Tanzania 1977.

³⁶ See Article 4(3) of the Constitution of the United Republic of Tanzania 1977.

³⁷ Romuald R. Haule, Torturing the Union? An Examination of the Union of Tanzania and Its Constitutionality. *Heidelberg Journal of International Law*, 66(2006), no. 1, p. 215-233.

oil and gas resources where the government of the United Republic has laws and institutions which deal with oil and gas resources within Mainland Tanzania and the government of Zanzibar has laws and institutions which govern oil and gas resources in Zanzibar. Thus, the discussion to support the study looks on features of federal state when referring to government of Zanzibar and those for unitary states when referring to union government.³⁸

The system can be practiced in Tanzania provided that the Constitution states clearly that natural resource revenue belongs to the United Republic and is shared between the government of the United Republic and the Revolutionary Government of Zanzibar. However, countries need to have strong legal and institutional framework to make sure that allocated revenue are used for national development and not for political issues and corruption as it was the case for Nigeria, Indonesia, Angola and Iraq.³⁹

The experience from the identified system has shown that it is possible for revenue sharing provided that the regulatory framework provides the sharing mechanisms and authority to manage resource revenue. It was also, noted that resource revenue should be centralized because it gives powers to unitary states and federal States to oversee the national development and to monitor the performance of States. This is because decentralization of resource revenue has not been the solution for resource management but it has resulted into misuse of resources and source of conflicts.

The System of Law Governing Oil and Gas Revenue in Tanzania

The legal framework represents the most fundamental aspect of laws regulating natural resources.⁴⁰ The legal framework establishes the government's authority over the resources on its territory and determines the rules for how those resources should be extracted and produced.⁴¹ Besides, the legal framework provides on how the revenues from the natural resources should

³⁸ John Jingu, The Union of Tanganyika and Zanzibar: In search of a Viable Structure, *African Review* Vol. 41, No. 1, 2014, p. 101.

³⁹ Ragnar, T., "Petroleum Fund in Tanzania? Other Alternatives May Be Better." (Tanzania: REPOA Vol.15 Number 10 REPOA Number 46, 2016), pp. 1-4. available at <http://www.repoa.or.tz>. (Accessed on January 20, 2018)

⁴⁰ Liu, J., "Legal System of Natural Resources Protection in China: GATT 20 and China's Export Limits on Resources." In Matsushita.M *et al* (Eds) *Economics, Law, and Institutions in Asia Pacific*, Chapter 1. (Tokyo: Springer Japan KK, 2016), pp. 27-28.

⁴¹ Bryan L., "Petro-Governance in Tanzania: Opportunities and Challenges." (CMI/REPOA brief number 48 Vol. 15, 2016)2. Available at <https://www.cmi.no/publications/file/5972-petro-governance-tanzania-opportunities-challenges.pdf>. (Accessed on 22 March, 2018).

be used and who must bear and mitigate the costs of production.⁴² It is a common practice that natural resources are regulated by the national legal framework, especially the Constitution.⁴³

According to the nature of the union practiced in Tanzania, the Constitution provides for union matters and non-union matters. Under this scheme of governance Tanzania Zanzibar retains sovereignty over non-union matters. Simply, Revolutionary Government of Zanzibar has exclusive mandate over-all non-union matters with regard to Tanzania Zanzibar including natural wealth and resources that are not of union nature.

The Constitution of the United Republic provides for the protection of natural resources in the authority of the State. The state authority in the United Republic is exercised by two organs: two governments, legislatures, and judiciaries as between the government of the United Republic and the Revolutionary Government of Zanzibar.⁴⁴ The Constitution obliges the State and all its organs to ensure that the natural resources and heritage are harnessed and applied for the common good of all Tanzanians.⁴⁵ The Constitution further provides that the natural resources constitute the property of the state authority, which is collectively owned by the people and managed for the national economy.⁴⁶ According to the nature of the union, the state authority is exercised in relation to union matters and non-union matters.⁴⁷ The oil and gas resources are provided in the list of union matters and vested in the authority of the government of the United Republic.⁴⁸ The government of the United Republic of Tanzania has the authority over all union matters including oil and gas resources.

There have been enacted laws and established institutions to govern oil and gas resources in Tanzania. These involve principal legislation, regulations and contractual arrangements. All these are intending to ensuring state participation in the commercial activities and accommodating fiscal regimes for managing revenue.⁴⁹ Tanzania made efforts to reform the oil and gas

⁴² Bryan L., "Petro-Governance in Tanzania: Opportunities and Challenges (CMI/REPOA brief number 48 Vol. 15, 2016)2. Available at <https://www.cmi.no/publications/file/5972-petro-governance-tanzania-opportunities-challenges.pdf>. (Accessed on 22 March, 2018).

⁴³ Giorgio, B., Raju J. S., Revenue Sharing of Natural Resources in Africa: Reflections from A Review of International Practices. (The World Bank Paper No. 90252 2014), pp. 13-14.

⁴⁴ See article 4 of the Constitution of the United Republic of Tanzania, 1977.

⁴⁵ See article 9 (1) (c), of the Constitution of the United Republic of Tanzania, 1977.

⁴⁶ See article 27 (1) and (2) of the Constitution of the United Republic of Tanzania, 1977.

⁴⁷ See article 4 (1) and (3) of the Constitution of the United Republic of Tanzania, 1977.

⁴⁸ See article 34 (1) and (3) of the Constitution of the United Republic of Tanzania, 1977.

⁴⁹ Mailula, D. T., Protection of Petroleum Resources in Africa: A Comparative Analysis of Oil and Gas Laws of Selected African States Doctoral Thesis Presented at The University of South Africa, 2013 p 91.

regulatory framework to cover the whole oil and gas value chain and meet the current sector demand.⁵⁰ From 1980s to the present, Tanzania has improved the oil and gas exploration and production systems to cover upstream, midstream, and downstream operations. The reforms in the oil and gas sector were necessary for the commercialization process and protection of government commercial interests.⁵¹

The oil and gas regulatory frameworks are hierarchical in nature with the Constitution constituting the highest norm while petroleum contracts are at the bottom.⁵² All the reforms had to consider the provision of the Constitution. The Constitution of the United Republic of Tanzania of 1977 provides that the exploration and production of natural resources should be for the development of the people.⁵³

It is envisaged oil and gas being listed as union matters, the laws governing oil and gas resources would provide for mechanisms for revenue sharing between the two governments. Experience shows that natural resource revenue sharing particularly oil and gas has been challenging, especially in countries where the legal framework provides for separate government systems.⁵⁴ It has been argued that natural resource sharing has been the main reasons for the separation of the former Republic of the People of Sudan as the Southerners were complaining of not benefiting from oil and gas revenues although 60% of the reserves were found within their vicinities.⁵⁵

In Tanzania, the governing law centralized the management and control of oil and gas resources in the authority of the government of the United Republic over oil and gas resources in Mainland Tanzania and

⁵⁰ The National Natural Gas Policy, 2013, p. 23

⁵¹ Rasmus Hundsbaek Pedersen and Peter Bofin, *The Politics of Gas Contract Negotiations in Tanzania: a Review*, DIIS -Danish Institute for International Studies Working Paper 2015:03, p. 15. http://pure.diis.dk/ws/files/615479/WP_2015_03.pdf.

⁵² Rachel O'Reilly *et al.*, *Oil Contracts How to Read and Understand a Petroleum Contract*, Times Up Press Industriezeile Austria. 2012.

⁵³ See article 9 (c), (j), (i) and 27 (2) the Constitution of the United Republic of Tanzania of 1977.

⁵⁴ Zedalis R.J., *The Legal Dimensions of Oil and Gas in Iraq Current Reality and Future Prospects*, United Kingdom: Cambridge University Press, 2009).

⁵⁵ United Nations. Environmental Programme, *Conflict and the Environment: The African Union Mission in Sudan (AMIS) Military Escort for UNEP fieldwork near El Geneina, Western Darfur. Intense competition over declining natural resources is one of the underlying causes of the ongoing conflict.* Available at https://postconflict.unep.ch/publications/sudan/04_conflict.pdf. p.78 (Accessed on 11th July, 2018). See also Mahardika, Ega Rijal, and Muhammad Azhary Bayu. "Legal Politics of Indonesian Environmental Management: Discourse Between Maintaining Environmental Sustainability and Economic Interests". *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 1 (2022): 1-28. <https://doi.org/10.15294/ijel.v1i1.56781>.

Tanzania Zanzibar.⁵⁶ As a result, it has been very challenging for institutions regulating oil and gas resources established by the government of the United Republic of Tanzania to operate in Zanzibar. The main reasons were economic benefits where the Revolutionary Government of Zanzibar claimed autonomy over oil and gas resources within Zanzibar.⁵⁷ For instance, in 1997 the Government of the United Republic through the Tanzania Petroleum Development Corporation (TPDC) issued two exploration licences to Dutch Shell Exploration Corporation and Antrim Resources of Canada to prospect for oil and gas on the offshore deep-sea areas East of Pemba and Unguja and on the onshore blocks of Pemba and Unguja islands. However, the Zanzibar Revolutionary Government nullified the licences and banned the exploration.⁵⁸ This was followed by another ban in 2002 by the Government of Zanzibar against a Dutch oil prospector that is, Shell Exploration Corporation, which had been granted a prospecting licence by TPDC to search for oil and gas on four deep-sea blocks east of Zanzibar.⁵⁹

It is argued that the reason behind this ban was Zanzibar's dissatisfaction with the production sharing arrangements administered and negotiated by the TPDC, particularly regarding the revenue sharing mechanism.⁶⁰ Zanzibar wanted this resource found in Zanzibar to be solely controlled by the Revolutionary Government of Zanzibar.⁶¹

The absence of a clear system for the distribution of revenues between the United Republic and the Zanzibar Revolutionary Governments is another challenge facing governance of oil and gas sector in Tanzania.⁶² There are no explicit mechanisms of sharing of the revenue between the two governments from oil and gas operations taking place in Tanzania. These challenges have been caused by the absence of legal provisions on sharing of natural resource revenues between the two Governments.

⁵⁶ See article 34(3) of the Constitution of the United Republic of Tanzania of 1977

⁵⁷ Jaston. B., Zanzibar oil 'the union' an Interview with Zanzibar officials. <http://www.tzbusinessnews.com/zanzibar-oil-and-the-union/> (accessed on 20th June, 2018).

⁵⁸ The Oil and Gas Year Tanzania. The Who's Who of The Global Energy Industry; A State to Negotiate (2014), Article 15. Available at [https:// www.theoilandgasyear.com](https://www.theoilandgasyear.com) (accessed on 22nd January, 2018). In this footnote a more reliable source of information is required to cement on this information available. Who is the author of this cited reference?

⁵⁹ *Ibid.*

⁶⁰ Shah, J. K., "Zanzibar and Tanzania vie over oil reserves," Oil and Gas Eastern Africa blog, Dec 09. 2015, <https://www.insideafricalaw.com/blog/zanzibar-and-tanzania-vie-over-oil-reserves>. (accessed on 8 July, 2018).

⁶¹ Jaston. B. Zanzibar oil 'the union' an Interview with Zanzibar. See <http://www.tzbusinessnews.com/zanzibar-oil-and-the-union/> (accessed on 24th June, 2018)

⁶² *Ibid.*

Despite the controversy on proper mechanisms on benefit sharing, the union Parliament has continued taking measures to enact different laws to govern this sector. These include the Petroleum Act, 2008, the Petroleum Act, No. 21 of 2015, the Oil and Gas Revenues Management Act, No. 10 of 2015, and the Tanzania Extractive Industries (Transparency and Accountability) Act, No. 16 of 2015. Other laws are the Natural Wealth and Resources (Permanent Sovereignty) Act, No. 3 of 2017, and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, No. 2 of 2017. Similarly, House of Representatives have made strides by enacting the Oil and Gas (Upstream) Act, 2016. For the present study focuses on only few legal instruments which explicitly addresses the issues of oil and gas in context of analysing the challenges associated with oil and gas sector in Tanzania. These are the Petroleum Act No. 21 of 2015, the Oil and Gas Revenues Management Act No. 22 of 2015⁶³, the Tanzania Extractive Industries (Transparency and Accountability) Act No. 16 of 2015⁶⁴, and the Oil and Gas (Upstream) Act, 2016.

The Petroleum Act, 2015

The Petroleum Act is the principal legislation that comprehensively provides for the regulation of upstream, midstream, and downstream petroleum activities, the establishment of the Petroleum Upstream Regulatory Authority, provision of the National Oil Company and to secure accountability of petroleum entities.⁶⁵

To address the existing challenges relating to management and control of oil and gas resources, the Petroleum Act provides the Government of the United Republic and the Revolutionary Government of Zanzibar each with its laws and institutions regulating oil and gas exploration and production operation.⁶⁶ Also, the Act empowers both governments to determine the use of revenues derived from oil and gas resources.⁶⁷ The Act further provides the sharing of revenue where the two governments undertake joint petroleum operations and revenues collected are used and reported according to the agreement entered in relation to petroleum operations relating to overlapping blocks.⁶⁸ The regulatory framework has separated the management and control of revenue generated from oil and gas operations save for joint operations

⁶³ The Oil and Gas Revenues Management Act No. 22 of 2015, Revised in 2019

⁶⁴ The Tanzania Extractive Industries (Transparency and Accountability) Act No. 16 of 2015

⁶⁵ See the long title to the Petroleum Act No. 21 of 2015

⁶⁶ See section 2 (2) (a) and (b) of the Petroleum Act, No. 21 of 2015

⁶⁷ See Section 2 (4)(a) and (b) of the Petroleum Act, No. 21 of 2015

⁶⁸ See section 2(3)(4)(c) of the Petroleum Act, No. 21 of 2015

which are also regulated by separate agreements as between the United Republic and the Zanzibar Revolutionary governments.

According to the Petroleum Act where the activities are undertaken in Tanzania Zanzibar such development must be governed by laws and institutions established in Zanzibar and for all oil and gas activities in Mainland Tanzania such activities shall be governed by the laws and institutions of the Union. Explicitly, the revenue derived from either part are to be utilised by that respective government.⁶⁹ Also, the Petroleum Act vests strategic oversight and directions over oil and gas economy in the Cabinet for the Union government while the Revolutionary Council of Zanzibar is named as overall institution for such oversight role in Tanzania Zanzibar.⁷⁰

The Act provides for the establishment of a Fund for management and control of petroleum and natural gas revenue. The Fund is meant ensure effective management of petroleum and natural gas revenues. It provides for transparency and accountability on the collection, allocation, expenditure, and management of petroleum and natural gas revenues. Further, the Fund caters for ensuring that oil and gas revenue is used sustainably for oil and gas industry development and the benefit of the present and future generations.

The Act calls for the enactment to provide for establishment and operationalization of the Fund.⁷¹ Thus, the Parliament of United Republic has enacted the Oil and Gas Revenue Management Act for the provisions of fiscal rules, management, and control of revenue derived from oil and gas resources.

To ensure that oil and gas revenues are properly managed, the Act requires Petroleum Upstream Regulatory Authority (PURA) to conduct an audit on all matters relating to the assessment and collection of oil and gas revenues; and costs relating to exploration, production, development, and sale of oil and gas.⁷² The audit requirement for every activity with financial implication signifies accountability on all players in oil and gas sector development. Further, the Act provides for ring-fencing on the recoverable cost of exploration and development license by the licence holder and contractor. However, the provisions on recoverable contract expenses are recoverable from petroleum revenue in the development area to the extent they were incurred prior to the commencement of petroleum production from the contract area.⁷³

⁶⁹ See section 2(2)(b) of the Petroleum Act, No. 21 of 2015.

⁷⁰ See section 4(2) and (3) of the Petroleum Act, No. 21 of 2015.

⁷¹ See section 251(a) and(b) of the Petroleum act, No. 21 of 2015

⁷² See section 13(2) (a) and (b) of the Petroleum Act, No. 21 of 2015.

⁷³ See section 117(1) and (2) of the Petroleum Act, No. 21 of 2015.

In addition, the Act entitles the participating interest to the Government in form of joint venture established under the joint operating agreement.⁷⁴ It further states that the revenues resulting from the management of participating interests belong to the Government. The revenue is determined in accordance with the Government shares and after the reduction of operating expenses appropriated to the Government.⁷⁵ The Act imposes the rules regarding the use of development license as security for financing oil and gas operations. By providing that for the development license to be used as security the regard shall be on licence holder's share and entitlement from future revenue to be obtained from oil and gas production.⁷⁶

The Oil and Gas Revenues Management Act, 2015

This Act was enacted to provide for the establishment and management of the Oil and Gas Fund, to provide for the framework for fiscal rules and management of oil and gas revenues, and to establish the mechanism for sustainable use of revenues generated from oil and gas resources.⁷⁷ The Oil and Gas Revenues Management Act applies in Mainland Tanzania in relation to the management of revenue derived from oil and gas operations undertaken in Mainland Tanzania.⁷⁸ The Act also applies to Mainland Tanzania and Tanzania Zanzibar in relation to the management of revenues derived from oil and gas activities undertaken under joint petroleum operations between the Government of the United Republic and the Revolutionary Government of Zanzibar.⁷⁹

The Act provides for administrative institutions to oversee the whole processes of sustainably managing the oil and gas resources. These institutions include the Minister of Finance and the Bank of Tanzania. The functions of the Minister are: managing oil and gas revenues, formulating and supervise policy matters of the Fund, and formulating and monitoring broad investment strategies and operation guidelines.⁸⁰ On the other hand, the functions of the Bank of Tanzania include: opening accounts of the Fund, operating the accounts of the Fund, determining investment strategies, and reporting the performance of the Fund to the Minister.⁸¹

⁷⁴ See section 218 (1) and (3) of the Petroleum Act, No. 21 of 2015.

⁷⁵ See section 218 (4) of the Petroleum Act, No. 21 of 2015.

⁷⁶ See section 248 (1) and (2) of the Petroleum Act, No. 21 of 2015.

⁷⁷ See the Preamble of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁷⁸ See section 2(a) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁷⁹ See section 2(b) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁸⁰ See section 4 of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁸¹ See section 5 of the Oil and Gas Revenues Management Act, No. 22 of 2015.

The revenues from the oil and gas are mainly collected by the Tanzania Revenue Authority and the National Oil Company. These institutions are designated as collectors of oil and gas revenues and deposit the same into two separate accounts all maintained at the Bank of Tanzania, namely the Revenue Holding Account and the Revenue Savings Account.⁸² The Bank is only permitted to apply the oil and gas funds to facilitate achievement of three major objectives, namely: ensuring maintenance of fiscal and macroeconomic stability, guaranteeing the financing of investment in oil and gas, enhancing social and economic development, and safeguarding resource for future generations.⁸³ Imperatively, use of oil and gas revenues aim at ensuring sustainable development of the country through proper management of proceeds of the oil and gas resources.

The Act restricts the use of the Fund to provide credit to the Government, public enterprises, private sector entities, or any other person or entity, to use revenues of the Fund as collateral or guarantees, commitments or other liabilities of any other entity, for rent-seeking or corrupt practices, embezzlement or theft.⁸⁴ This ensure the good use of the Fund by proscribing aspects that may impair the finances in that Fund.

Also, the Act establishes the Investment Advisory Board. The Board is comprised of five persons with technical expertise, skills, and experiences in the fields of financial investment, portfolio management, and investment law.⁸⁵ The functions of the Board are advising the Minister on investment strategies and guidelines, on matters related to operations of the revenue saving account and investment policies.⁸⁶ In addition, the Board is required to report periodically to the Minister responsible for finance on the governance and performance of the Revenue Saving Account of the Fund.

However, the coverage of the Act is limited to Mainland Tanzania only as it excludes Zanzibar save for joint oil and gas operations between the two governments. This is taken from the institutions involved, the mechanism of distribution of the revenue collected, and the nature of decision-making organs. According to the Act there are separate management of oil and gas revenue between the Government of the United Republic and the Revolutionary Government of Zanzibar save for joint petroleum operations.⁸⁷

⁸² See section 6 and 7 of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁸³ See section 8 of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁸⁴ See section 11 of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁸⁵ See section 12(2) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁸⁶ Section 13(a) and (b) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁸⁷ See section 2(b) and (2) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

The collection and deposit of oil and gas revenues into the Fund should be done in a transparent and accountable manner to ensure effective management of the Fund.⁸⁸ It also requires all expenditure from oil and gas revenues to follow a transparent and accountable system. The law calls for publication in the Government Gazette and official websites of all the records of oil and gas revenues and expenditure. Furthermore, the records of oil and gas revenue is subject to scrutiny by the Parliament for purposes of oversight for transparency and accountability.⁸⁹ Additionally, there are provisions for fiscal rules to govern the management of expenditure of oil and gas revenue. These fiscal rules articulate the manner and modalities on use of the Fund.⁹⁰ The change of these rules requires the support of not less than two-thirds of the total number of Members of Parliament and such reviews can be done in five year's term commencing from 1st July 2015 as the date of operationalization of this Act.⁹¹ Also, the rules stipulate the use of revenues by dividing percentages which show revenue distribution.⁹²

The Oil and Gas Revenues Management Act limits the powers of the government to authorise the use of the Fund by providing that; in case of insufficient revenue from the designated oil and gas revenue, the money to offset the shortfall should be drawn from the Revenue Saving Account and deposited to Consolidated Fund to support the budget. All transfers and allocation must be approved and reported to the National Assembly. Such approval requires the support of not less than two-thirds of all members of the National Assembly.⁹³ Based on the established institutions, regulatory authorities, and restrictions relating to expenditure and the requirement of transparency and accountability systems, it is argued that there are sufficient mechanisms to avoid misuse of the revenues from oil and gas sector.

The Tanzania Extractive Industries (Transparency and Accountability) Act, 2015

The Tanzania Extractive Industries (Transparency and Accountability) Act was enacted to cement efforts to ensure that natural wealth and resources exploitation are done in transparent and accountable manner. The Act establishes the Tanzania (Transparency and Accountability) Committee as an oversight body for promoting and enhancing transparency and accountability

⁸⁸ See section 18 (1) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁸⁹ See section 18 (4) and (6) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁹⁰ See section 16 (2) and (3) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁹¹ See section 16 (4) and (5) of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁹² See section 17 of the Oil and Gas Revenues Management Act, No. 22 of 2015.

⁹³ See section 17 (2) The Oil and Gas Revenues Management Act No. 22 of 2015.

in the extractive industry.⁹⁴ This Act ensures that information on the extractive industry is made available to the public and keeps the public informed on all issues in the extractive industry. The Act requires the Minister responsible for mining, oil, and natural gas⁹⁵ and the Committee to disseminate information to general public and promote citizens' participation in the management of these resources.⁹⁶ Such information include those relating to concession and award of exploration and production licences and the names of all stakeholders interested in the extractive industry.⁹⁷ This duty is imposed on the Committee, the extractive companies and the Minister to ensure publication in different forms of media, all information relating to the extractive industry.⁹⁸

The disclosures intend to ensure transparency and accountability in order to improve contributions of the extractive industry to the national growth of domestic products. These relate to an investment in the extractive industry and revenues generated from natural resources extraction.⁹⁹ They also entail the consideration of the volume of production, cost of production, and general expenditure.

As we have noted that transparency and accountability are important tools toward proper revenues management, the Act have permitted the tax laws to publish tax information from extractive industry companies.¹⁰⁰ Generally, the coming into force of the Tanzania Extractive Industries (Transparency and Accountability) Act is a major step to doing away with the confidentiality of information in the extractive industry in Tanzania which was used as a shield by foreign companies to withhold important information from public consumption. In fact, transparency and accountability are key in addressing corruption that normally is prevalent in secrecy. It has been argued that corruption is directly proportional to economic rent and discretionary powers

⁹⁴ See the Long Title and section 4 (1) and (2) of the Tanzania Extractive Industries (Transparency and Accountability) Act. No. 16 of 2015

⁹⁵ See section 3 of the Tanzania Extractive Industries (Transparency and Accountability) Act. No. 16 of 2015.

⁹⁶ See section 10 (2) (d) of the Tanzania Extractive Industries (Transparency and Accountability) Act. No. 16 of 2015.

⁹⁷ See section 16 of the Tanzania Extractive Industries (Transparency and Accountability) Act, No. 16 of 2015

⁹⁸ See section 16 of the Tanzania Extractive Industries (Transparency and Accountability) Act, No. 16 of 2015

⁹⁹ See section 10 (2) of the Tanzania Extractive Industries (Transparency and Accountability) Act, No. 16 of 2015

¹⁰⁰ See section 58 of The Tanzania Extractive Industries (Transparency and Accountability) Act, No. 16 of 2015.

but inversely proportional to accountability.¹⁰¹ Thus, accountability is crucial to ensuring revenues from extractive industries are not lost through corruption.

The Oil and Gas (Upstream) Act, 2016

In exercising the powers delegated to it over the management and administration of oil and gas resources within Zanzibar the Revolutionary Government of Zanzibar through the House of Representatives enacted the Oil and Gas (Upstream) Act, 2016. The Act provides for the regulation of upstream oil and gas activities, establishment of the Zanzibar Petroleum Upstream Regulatory Authority, the establishment of Zanzibar Petroleum Development Company and to secure the accountability of petroleum entities.¹⁰²

This law it applies to cover oil and gas existing in the territorial land, the islets, internal water, territorial sea, contiguous zone, exclusive economic zone of Zanzibar and any other area as...be extended and recognized by international law from time to time.¹⁰³ This provision indicates that the government of Zanzibar has powers to issue exploration licences onshore and offshore areas within the territorial boundaries of Tanzania Zanzibar.

The Act mandates the Revolutionary Government of Zanzibar to use its own laws and institutions to protect and manage oil and gas resources for the benefits of the people of Zanzibar. The Act provides that:

The entire property in, and the control of petroleum... under any land or territorial waters in Zanzibar ...is vested in the Government on behalf of the people of Zanzibar, and that, petroleum resource is the public property of the People of Zanzibar and the Government shall hold petroleum rights for the benefit of the People of Zanzibar.¹⁰⁴

This declaration of oil and gas resources within the territorial water of Zanzibar to be vested in the Government of Zanzibar and for the people of

¹⁰¹ Myint, U. "Corruption: Causes, Consequences and Cures" in the *Asia-Pacific Development Journal*, Vol. 7 No.2, December 2000 at p. 39. See also Arie Afriansyah, and Salsabila Siliwangi Surtiwa. "Surveillance at Sea: Legal Aspects of Offshore Installation's Utilization". *Journal of Indonesian Legal Studies* 5, no. 2 (2020): 419-48. <https://doi.org/10.15294/jils.v5i2.38943>.

¹⁰² See the long title to the Oil and Gas (Upstream) Act, 2016.

¹⁰³ See section 2 of the Oil and Gas (Upstream) Act, 2016.

¹⁰⁴ See section 4(1), (2) of the Oil and Gas (Upstream) Act, 2016.

Zanzibar implements the position of the Constitution of Zanzibar by recognizing Zanzibar and its territory including the offshore and the territorial water together with its exclusive economic zone which also covers the offshore oil and gas resources.¹⁰⁵

The Oil and Gas (Upstream) Act provides the Minister with duties and responsibilities to manage and administer all oil and gas operations in Zanzibar. The main duties and responsibilities of the Minister include developing the petroleum policies and reviewing regulations, monitoring and evaluating of the sector performance, and reporting to the House of Representatives and Zanzibar Revolutionary Council.¹⁰⁶ Also, the Minister is duty-bound to promote local participation in the petroleum sector, to ensure full accountability, transparency, and efficiency in developing a system of revenue management and tax collection and their planned expenditures.¹⁰⁷ All these entails sustainable management of oil and gas for betterment of lives of the Zanzibaris.

The Act also provides for the establishment of the Zanzibar Petroleum Development Company (ZPDC) to participate in the upstream oil and gas operation taking place in Zanzibar. The company and holds shares, on behalf of the Government and people of Zanzibar and acts on behalf of the government as a commercial entity and safeguards the national interest in petroleum activities.¹⁰⁸ The Oil and Gas (Upstream) Act grants the company with exclusive rights to carry out petroleum exploration and operation in the production contract area.¹⁰⁹ Thus, the Minister grants exploration licence to the ZPDC while other companies or contractors acquire exploration rights from ZPDC or through a joint venture agreement with ZPDC.

Furthermore, to avert challenges relating to the misuse of oil and gas revenue, the Act provides for the establishment of the Petroleum Revenue Fund. The Establishment of a specific Fund promotes transparency and accountability in collection, expenditure, and management of petroleum revenues and to ensure that petroleum revenues are used for the sustainable development of the present and future generations.¹¹⁰

Oil and gas ownership are considered as the central point of the natural resource regulatory framework although it does not mean natural resources management and revenue sharing which are regulated by separate legislation

¹⁰⁵ Section 2,3, and 4 of the Oil and Gas (Upstream) Act, 2016.

¹⁰⁶ See section 6 and 34 of the Oil and Gas (Upstream) Act, 2016.

¹⁰⁷ See section 6 (2) of the Oil and Gas (Upstream) Act, 2016.

¹⁰⁸ See section 32 (4) and (5) of the Oil and Gas (Upstream) Act, 2016.

¹⁰⁹ See section 55 (1) and (2) of the Oil and Gas (Upstream) Act, 2016.

¹¹⁰ See section 154 (a) and (b) of the Oil and Gas (Upstream) Act, 2016

are of less importance.¹¹¹ It can be summed up that when there are different legislation governing ownership and benefit sharing mechanism there are several challenges that might arise.

Legal Challenges on Oil and Gas Management in Tanzania

We have underscored on existing legal framework on oil and gas in Tanzania and demonstrated that such regimes cover various aspects. The analysis of legal framework points some issues that may pose challenges in development of oil and gas sector. These challenges include the following: -

Revenue Sharing Mechanisms

The system governing natural resources revenue centralizes the resources in the Government of United Republic of Tanzania and Revolutionary Government of Zanzibar. The governing law has not made clear on oil and gas revenue sharing between the Government of United Republic and Revolutionary Government of Zanzibar and other levels of the governments.¹¹² This is attributed to socialism philosophy that perceives natural resources as a property of the State and used for benefit of the people of Tanzania.¹¹³ The system which has centralized natural resources to union government without providing specific share of resource revenue to other levels of the government.

It is observed generally that at ongoing natural gas discoveries in different areas of the country has raised the tensions regarding how revenues are shared between the Government of the United Republic and the Revolutionary Government of Zanzibar. As such offshore oil and gas discoveries have put the semi-autonomous island of Zanzibar under pressure because discovery has become the center of political debate within Zanzibar

¹¹¹ Nicholas Haysom and Sean Kane. Negotiating Natural Resources for Peace: Ownership, Control and Wealth-Sharing, Briefing Paper October 2009, Centre for Humanitarian Dialogue 10 years for Mediation for Peace 1999-2009. p 8.

¹¹² Interview response from one of legal practitioner in Zanzibar, held on 14th February, 2020

¹¹³ James Andilile, Odd-Helge Fjeldstad and Donald Mmari “The Legislative Landscape of the Petroleum sector in Tanzania.” In Odd-Helge Fjeldstad etal (Eds), *Governing Petroleum Resources: Prospects and Challenges for Tanzania*, REPOA, Dar es Salaam, 2019, pp. 26, 27and 101. Compare to another case, see Mochamad Zain, “Politics of Law on the State Control of Oil and Gas in Indonesia: Gas Liberalization and the Hesitancy of Constitutional Court”. *Journal of Indonesian Legal Studies* 1, no. 1 (2017): 69-86. <https://doi.org/10.15294/jils.v1i01.16569>

and between the two governments.¹¹⁴ Despite these complaints from the people of Zanzibar, there is no clear share for the Government of Zanzibar from natural gas and other minerals. Also, areas endowed with natural resources such as Lindi and Mtwara claim their share from oil and gas resources.¹¹⁵ Thus, centralization of natural resources is also faced with challenges in sharing revenue and authority to decide on how to manage resources.¹¹⁶

The existing laws governing oil and gas resources are silent on the sharing of natural resources listed in the list of union matters between the two governments: Union and Zanzibar Revolutionary governments. Though there are tariffs and royalty paid from the ongoing exploitations of natural gas, yet the modalities of sharing are not clearly articulated.¹¹⁷ The main source of regular insistence on clear benefit sharing mechanisms is attributed to belief by Zanzibaris that there are large reserves of fossils located within their boundaries thus need to have a lion's share of revenues. However, there is no data to justify truthiness on the availability of a large quantity of oil and gas reserves on the part of Tanzania Zanzibar. Currently, there have been no any discoveries in Mainland Tanzania or Tanzania Zanzibar.¹¹⁸

It is noted that all revenues collected by the Union government from various sources are deposited in the Consolidated Fund of the Government of the United Republic.¹¹⁹ There are feelings that the operations and management of the Fund might be more favourite to the Union government thus implicitly to Mainland Tanzania and not the Revolutionary government of Zanzibar.¹²⁰ The Consolidated Fund is managed by the Union Government. There is no any explicit provision regarding participation of

¹¹⁴ Marcelin, R.N., "Natural Gas Conflict in Tanzania and the Impacts to the Population in Mtwara Municipality" (Master Thesis submitted at Norwegian University of Life Sciences Faculty of Social Sciences Department of International Environment and Development Studies, 2014), p.29. https://www.brange.bibsys.no/xmlui/bitstream/handle/11250/225343/ndimbwa_master2014.pdf?sequence=4. (Accessed on 12th February, 2018).

¹¹⁵ Interview response from legal officer working with Lawyers' Environmental Action Team (LEAT) at Dar es salaam held on 9th March, 2020.

¹¹⁶ Nicholas Haysom and Sean Kane. *Negotiating Natural Resources for Peace: Ownership, Control and Wealth-Sharing*, Briefing Paper October 2009, Centre for Humanitarian Dialogue 10 years for Mediation for Peace 1999-2009, p. 10

¹¹⁷ Interview Responses from members of the House of Representatives held on 11st February, 2020

¹¹⁸ Festo Maro, "Mainland Tanzania and Zanzibar Island Socio-Economic and Environment Study" Economic and Social Research Foundation (ESRF), 2008, p 22

¹¹⁹ See Article 135 of the Constitution of the United Republic of Tanzania 1977.

¹²⁰ Interview response from officer working with the Ministry of Water and Energy, Revolutionary Government of Zanzibar, held on 12 February, 2020 (requested anonymity)

Zanzibar Revolutionary Government in authorization of expenditure from the Union Consolidated Fund.

There have been attempts to resolve this challenge of benefit sharing mechanisms. The two governments have signed Memorandum regarding management of oil and gas revenues. Such Memorandum of Understanding echoes the fact that legal framework has allowed each part of the Union to manage all revenues arising from exploitation of oil and gas within its boundaries.¹²¹ It was revealed that the two governments had engaged the British AUPEC consultant to provide technical advice on revenue sharing mechanisms and the consultant recommended that oil and gas should remain a shared union resource.¹²² However, the two governments on 17th October 2020 signed the MoU to the effect that all issues regarding sharing of revenues from oil and gas between Union and Zanzibar Revolutionary Governments have been resolved by allowing each part to manage such resources on its own. The reasons put forward for such understanding were that the Petroleum Act and the Oil and Gas (Upstream) Act had already separated the governance and control of oil and gas resources between the two governments.¹²³

It can be argued that that oil and gas revenues are no longer a shared resource between Mainland Tanzania and Zanzibar except where there are operations or activities jointly carried out and following agreement entered between the Government of the United Republic and the Revolutionary of the Government of Zanzibar.¹²⁴ It was observed that sharing of revenues is important thus need for the provision of natural resources revenue sharing in the Constitution of the United Republic.¹²⁵ Such provisions must include a formula based on population size, geographical area, and the government budget for both Union and Zanzibar Revolutionary government.

It is argued that there exist such arrangements in other States. For instance, in the Nigerian Constitution, the National Assembly is empowered to determine the formula for the distribution of funds into the Federation Account. The Constitution provides for revenue sharing on based on allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density. However,

¹²¹ <https://www.africa-press.com/tanzania/policy/govt-resolves-5-union-vexes>. Accessed on 18 October, 2020.

¹²² <https://www.africa-press.com/tanzania/policy/govt-resolves-5-union-vexes>. Accessed on 18 October, 2020

¹²³ Interviews responses with officers working in the Ministry of Energy and officers in the Vice President's Office responsible for union affairs held in Dodoma on 17th March 2021 and 26th March, 2021 respectively.

¹²⁴ See Section 2 (3), and (4) (c) of the f Petroleum Act, 2015

¹²⁵ Interview by Gabagambi LC (26 October 2020, Ministry responsible for oil and gas Tanzania Mainland and Tanzania Zanzibar).

such allocation formula should ensure that not less than thirteen percent of the revenue accruing to the Federation Account is directed to the State where such natural resources is extracted.¹²⁶

Indeed, this formula ensures that revenues are distributed for use of the federal government as well respective State where the particular resource is found. It can be argued that such arrangements may partly apply to Tanzania where the revenues sharing may accommodate the interests of the Union and the Zanzibar Revolutionary governments. Such inclusion of revenue sharing provision in the Constitution it resolves the contention on lack of clear revenue sharing mechanism. It should be noted that Nigerian Constitution is Federal State Constitution while in Tanzania the features of federation are not explicit rather a Unitary State.

Contradictions between Constitution and Principal Legislation on Oil and Gas

We have noted that Constitution of United Republic of Tanzania entails oil and gas as a union matter. Implicitly, the management of such resources should be mandated to the union government. However, the statutory analysis revealed the continued contradiction of laws governing oil and gas resources in Tanzania. The Petroleum Act, 2015 provides its application to both Mainland Tanzania and Zanzibar.¹²⁷ However, in real sense, it applies to Mainland Tanzania as the same Act under section 2(2) (b) and (4) (b) provides for the Revolutionary Government of Zanzibar to establish and govern oil and gas resources according to the laws and institutions of Tanzania Zanzibar.

Further, the Oil and Gas Revenues Management Act, 2015 states its applicability to Mainland Tanzania as well as Zanzibar in relation to the management of oil and gas revenue derived from joint exploration and operations.¹²⁸ Despite the comprehensiveness of the Oil and Gas Revenues Management Act, 2015 Act, the same does not provide for modalities on involvement of the government of Zanzibar in the management of oil and gas revenue.

The laws regulating oil and gas revenue management have not addressed oil and gas shared resources between the Government of the United Republic and the Revolutionary of the Government of Zanzibar. As a result, the Government of the United Republic will continue using oil and gas revenues

¹²⁶ Section 162 (2) Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹²⁷ See section 2 of the Petroleum Act, No. 21 of 2015.

¹²⁸ See section 2 of the Petroleum Act, No. 21 of 2015

for Mainland Tanzania and the Revolutionary of the Government of Zanzibar will use oil and gas revenue for Tanzania Zanzibar.¹²⁹ This is contravening the Constitution of the United Republic of Tanzania which vests all union matters to the Government of the United Republic. As such, these legislative frameworks have restricted the government of the United Republic of Tanzania to exercise its powers over oil and gas resources within Tanzania Zanzibar.

Separating revenues derived from oil and gas resources between the two governments is against the spirit of the Constitution of the United Republic of putting oil and gas resources under the list of union matters. The separation of union resources denies Tanzanians common enjoyment of resources and revenue sharing between the two Government.¹³⁰ Otherwise, separating the management of oil and gas revenues is ousting the constitutional powers of the Union government over oil and gas resources. As a result, the authority of the Government of the United Republic is limited to Mainland Tanzania and with no power to question how oil and gas revenue is collected, managed, and used in Tanzania Zanzibar.

Further, the law separated oil and gas revenue between the two governments without considering that Zanzibar has not discovered any oil or natural gas is like depriving Zanzibaris of access to revenues derived from the resources of the United Republic.¹³¹ However, oil and gas being union resources, it would better for the regulating laws to provide the Government of the United Republic and the Revolutionary Government of Zanzibar access and sharing of revenues derived from oil and gas operations.

Territorial Mandate Complications

The Union Constitution delineates the territorial boundaries of the United Republic of Tanzania to be the whole of the area of Mainland Tanzania and the whole of the area of Tanzania Zanzibar and include its territorial waters.¹³² This reinforces the declaration of Tanzania as one State which is sovereign United Republic.¹³³ This declaration of the State and its boundaries culminates that to the jurisdictional mandate of the union government on all resources which are stated to be of union nature. In that context, international

¹²⁹ See section 2(3) (b) and 2(4)(b) of the Petroleum Act, No.21 of 2015

¹³⁰ Interview Response from a Law Lecturer at the School of Law, University of Dodoma held on 27th January, 2020

¹³¹ Interview response from law officer from Zanzibar Upstream Regulatory Authority, held on 12 February, 2020

¹³² Article 2(1) of the Constitution of the United Republic of Tanzania, 1977.

¹³³ Article 1 of the Constitution of the United Republic of Tanzania, 1977.

oil companies (IOCs) intending to operate in Tanzania are required to comply with union institutions.

However, on ground the IOCs must engage both parts of Union in case their intended operations are planned on shared zones within the sea. There are various blocks which either fall on the Union Government while others are within the boundaries under the ownership and control of Revolutionary Government of Zanzibar. In fact, there are likelihood that IOCs may wish to operate on blocks that cojoin both parts of the Union thus creating territorial mandate complications as to which institutions have proper mandate on such blocks to license any of the OICs.

In the circumstances, territorial mandate complications might cause derail in handling the applications for licensing to operate in such areas. This is a hinderance towards smooth licensing processes for exploration and extraction of oil and gas in United Republic of Tanzania attributed to the legal challenges caused by splitting of the laws and institutions on governance of the resources.

Complexities on Investors regarding Multiplicity of Institutions

The other noted challenge resulting from the separate system of governance of oil and gas resources is to result in different policies governing oil and gas resources. The duo system is contrary to previous oil and gas policies which covered both Mainland Tanzania and Zanzibar, whereby the Policy Development Committee also included members from both the Union and Revolution Government of Zanzibar.¹³⁴ The policy provides a balanced system of revenue management by requiring the government to ensure revenues are shared between the two governments and investors considering the cost incurred and appropriate sharing of profit oil.

Each part of the Union has established various institutions to govern the oil and gas resources. As a result, the Union Government and Zanzibar Revolutionary Government institutions have separate mandate each having competence and superiority over its area of jurisdiction. These institutions can successfully achieve their respective mandates only if they cooperate with each other in sharing exploration data that were formerly under the TPDC in order to facilitate proper functioning of the other institutions particularly in Zanzibar.

Generally, lack of cooperation on one hand and existence of such multiple institutions might lead to complexities on part of investors regarding

¹³⁴ The National Petroleum Policy of Tanzania 2014

which institution should they approach in order to operate in Tanzania. Alignment of the laws and institutions is among the aspects that would clear such impending complexities due to multiplicity of institutions. These institutions are those operating in the Mainland Tanzania where the Union institutions have mandate and those institutions in Tanzania Zanzibar whereby laws enacted by the House of Representatives. Thus, calls for the governments to align laws and policies governing oil and gas revenues either by reviewing existing or enacting new legislation.

Conclusion

The study noted that the claims on sharing of revenue derived from oil and gas resources between the Government of the United Republic and the Revolutionary Government of Zanzibar are the result of the absence of revenue sharing provisions in the Constitution of the United Republic of Tanzania and laws governing development of oil and gas sector. It was concluded that this challenge can only be resolved where the regulatory framework provides the procedures on revenue sharing to be implemented by the Government of the United Republic and the Revolutionary Government of Zanzibar. Thus, conspicuous absence of the revenue sharing mechanisms in the Constitution between the two governments is an impediment to successful operation of oil and gas sector. Such limitation has been the main cause for constant laments from the Zanzibaris throughout the modern days of multiparty system.

It is recommended that there is a need to have a Constitution with provisions on oil and gas revenue sharing between the two governments in the United Republic of Tanzania. The inclusion in the Constitution a provision on revenue sharing will resolve the quagmire on the lack of clarity on benefit sharing mechanisms from revenue arising from development of oil and gas in Tanzania. As such, inclusion would serve a clear yardstick and criteria for proper governance of oil and gas in this country. Each party of the Union in circumstances would be aware of its rightful share from oil and gas operations thus having no reason for removing oil and gas from the list of union matters.

Further, it is recommended for the establishment of joint development institution responsible for oil and gas operations and for advising the governments on oil and gas revenue sharing. Thus, the Constitutional sovereignty of the United Republic over natural resources cannot be exercised where resource revenues are separated and the government vested with authority over Union resources has no access to oil and gas revenue in Tanzania Zanzibar.

These recommendations are based on the findings that, despite oil and gas being Union resources there is no legal provision for sharing of oil and gas revenues, except the only possibility is where there are joint operations between the Government of the United Republic and the Revolutionary Government of Zanzibar which is not yet practiced as there is no any project jointly operating. Thus, addressing benefit sharing mechanisms is likely to resolve such quagmire that have caused a lot of tension on governance of oil and gas in Tanzania.

References

- Afriansyah, Arie, and Salsabila Siliwangi Surtiwa. "Surveillance at Sea: Legal Aspects of Offshore Installation's Utilization". *Journal of Indonesian Legal Studies* 5, no. 2 (2020): 419-48. <https://doi.org/10.15294/jils.v5i2.38943>.
- Anderson, George. *Oil and Gas in Federal Countries*. (Ottawa, Ontario, Canada: Oxford University Press, 2013).
- Andilile, James, Odd-Helge Fjeldstad and Donald Mmari "The Legislative Landscape of the Petroleum sector in Tanzania." In Odd-Helge Fjeldstad et al (Eds), *Governing Petroleum Resources: Prospects and Challenges for Tanzania*. (REPOA, Dar es Salaam, 2019).
- Bakari, Mohammed, and Alexander A. Makulilo. "Between confusion and clarity: Rethinking the union of Tanganyika and Zanzibar after 50 Years." *The African Review: A Journal of African Politics, Development and International Affairs* (2014): 1-34.
- Brosio, Giorgio, and Raju Jan Singh. "Revenue Sharing of Natural Resources in Africa: Reflections from A Review of International Practices". *The World Bank Paper* No. 90252 (2014): 1-41.
- Ebel, Robert D, and Richard M. Bird. "Fiscal Federalism and National Unity." *Urban Institute* (2005): 1-24.
- Français, Français. "Strong Laws, Poor Implementation Characterize African Resource Sector". *Press Release National Resources Governance Institute* 15 April 2019. Available at <https://resourcegovernance.org/news/strong-laws-poor-implementation-characterize-African-resource-sector>, accessed on 16th July 2020.
- Haysom, Nicholas and Sean Kane. "Negotiating Natural Resources for Peace: Ownership, Control and Wealth-Sharing", *Briefing Paper* October

- 2009, Centre for Humanitarian Dialogue 10 years for Mediation for Peace 1999-2009.
- Jaston. B., Zanzibar oil ‘the union’ an Interview with Zanzibar officials. <http://www.tzbusinessnews.com/zanzibar-oil-and-the-union/> (accessed on 20th June, 2018).
- Lee, Bryan, and Kendra Dupuy. "Petro-governance in Tanzania: Opportunities and challenges." *CMI Brief* 15, no. 14 (2016). <https://open.cmi.no/cmi-xmlui/handle/11250/2475315>
- Liu, Jingdong. "Legal System of Natural Resources Protection in China: GATT 20 and China’s Export Limits on Resources." *Emerging Issues in Sustainable Development: International Trade Law and Policy Relating to Natural Resources, Energy, and the Environment* (2016): 27-40.
- Mahardika, Ega Rijal, and Muhammad Azhary Bayu. "Legal Politics of Indonesian Environmental Management: Discourse Between Maintaining Environmental Sustainability and Economic Interests". *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 1 (2022): 1-28. <https://doi.org/10.15294/ijel.v1i1.56781>.
- Marcelin, R. N. "Natural Gas Conflict in Tanzania and the Impacts to the Population in Mtwara Municipality". Thesis (Norwegian University of Life Sciences Faculty of Social Sciences Department of International Environment and Development Studies, 2014).
- Maro, Festo. "Tanzania mainland and Zanzibar Island socio-economic and environment study." *Economic and Social Research Foundation, Dar es Salaam* (2008).
- Mottu, Eric, and Ehtisham Ahmad. "Oil revenue assignments: Country experiences and issues." *IMF Working Papers* 2002, no. 203 (2002).
- Myint, U. "Corruption: Causes, consequences and cures." *Asia Pacific Development Journal* 7.2 (2000): 33-58.
- Nyekwere, Empire Hechime, Uche Nnawulezi, Septhian Eka Adiyatma, Kasim Balarabe, and Muhammad Abdul Rouf. "Constitutional and Judicial Interpretation of Environmental Laws in Nigeria, India and Canada". *Lex Scientia Law Review* 7, no. 2 (2023): 905-58. <https://doi.org/10.15294/lesrev.v7i2.69394>.
- Sarmilah, Milah, Lina Mustafidah, and Hellen George. "Civil Liability for Mining Companies for Environmental Pollution Based on Indonesian Laws". *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 2 (2022): 165-88. <https://doi.org/10.15294/ijel.v1i2.58135>.
- Shah, J. K., "Zanzibar and Tanzania vie over oil reserves" oil and gas eastern Africa blog, Dec 09.2015,

<https://www.insideafricalaw.com/blog/zanzibar-and-tanzania-vie-over-oil-reserves>. (accessed on 8 July, 2018).

Torvik, Ragnar. "Petroleum fund in Tanzania? Other alternatives may be better." *CMI Brief* (2016).

United Nations. *Environmental Programme, Conflict and the Environment: The African Union Mission in Sudan (AMIS) Military Escort for UNEP fieldwork near El Geneina, Western Darfur*. Available at https://postconflict.unep.ch/publications/sudan/04_conflict.pdf. (Accessed on 11th July, 2018).

Zain, Mochamad. "Politics of Law on the State Control of Oil and Gas in Indonesia: Gas Liberalization and the Hesitancy of Constitutional Court". *Journal of Indonesian Legal Studies* 1, no. 1 (2017): 69-86. <https://doi.org/10.15294/jils.v1i01.16569>.

Zedalis R. J., *The Legal Dimensions of Oil and Gas in Iraq Current Reality and Future Prospects*. (United Kingdom: Cambridge University Press, 2009).

Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.