HakiRasilimali
Transparency & Accountability for the Extractive Industry

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Tanzania

Petroleum Analysis

October 28, 2019

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1. EXECUTIVE SUMMARY

Since 2010, Tanzania has made significant natural gas discoveries, especially offshore the Mafia Basin. These discoveries prompted a need for policy, legal and regulatory reforms in the country with the main objective of improving the governance and regulation of the petroleum industry and ensuring the nation as whole benefits from the petroleum wealth. The reforms began with the Model Production Sharing Agreement (MPSA) 2013 and the Natural Gas Policy 2013. Subsequently, the Upstream Petroleum Policy 2014 and the Oil and Gas Industry Local Content Policy 2014 were promulgated. The Energy Policy was promulgated in 2015, replacing the previous policies in the energy sector including the Energy Policy 2003. The Energy Policy laid the legal foundation for the Petroleum Act, 2015 and the Oil and Gas Revenue Management Act, 2015 which were passed and signed into law in August 2015.

The objective of the assignment was to undertake analysis of the Petroleum Act 2015 and the Oil and Gas Revenue Management Act, 2015 with the aim of identifying the possible legal challenges that might hinder the implementation of the legislation and provide policy options for recommendation. On one hand, the outcomes of the analysis comprise of the strengths in the legislation which presents opportunities on which the Government may capitalize on to realize its objectives in the petroleum industry. These strengths include the establishment of a regulatory framework, which engenders a competitive environment that can potentially attract more investments in the petroleum industry. The legislation also widens the government revenue base by increasing royalty rates, TPDC participation, and introducing new taxes and bonuses. The Petroleum Act also comprises of provisions that ensures adequate natural gas supply to the domestic market and affordable natural gas prices to strategic industries. Besides, participation of Tanzanians and Tanzanian companies is facilitated by the presence of comprehensive local content regime.

On the other hand, the findings show some weaknesses in the legislation which are likely to impede the effective implementation of the legislation. These weaknesses manifest in the inconsistencies existing between the legislation and between the legislation and other legal instruments including the existing production sharing agreements. Other weaknesses that have been observed include but not limited to the following: strategic oversight over the oil and gas economy wrongly vested in the cabinet instead of the parliament, poor coordination and conflicting roles between institutions especially with respect to the Petroleum Act so far as health, safety and environmental management is concerned; absence of natural gas fee; and the poor drafting and the ubiquitous typographical mistakes under the Petroleum Act.

In order to address some of the observed weaknesses in the Petroleum Act, the following actions have been recommended to be taken: enactment of environmental legislation for petroleum industry; Streamlining the roles and responsibilities of various institutions in the petroleum industry; Widening the scope of consultations with relevant authorities especially when prescribing standards, guideline, rules and regulations; introducing the natural gas fee; amending the Petroleum Act under Sections 219-221 to include EWURA in addition to PURA as a regulator to oversee local content in the midstream and downstream; amending the Petroleum Act as appropriate to correct the typographical mistakes as identified; amending Section 240 and Section 241 to include PURA which has been erroneously left out; amending Section 208(5) of the Petroleum Act to include PURA and remove EWURA because the referred operation is an upstream operation and EWURA is not an upstream regulator. It is further recommended that Section 260 (on Repeal and Savings)be amended to clarify the legality of the existing PSAs which were entered under the repealed Petroleum (Exploration and Production) Act 1980, especially on contractual rights and obligations of parties; amending Section 84 to require information on the Petroleum Registry to be available on the website; amend Section 93(2) which prohibits the disclosure of information and align it with the Access to Information Act 2016; It is also recommended to amend Section 93(3) and Section 84(6) to

remove the "claw back clauses" which have been identified above; and redraft the Act in its entirety, and specifically to correct the mistakes that have been highlighted.

With respect to the Oil and Gas Revenue Management Act, the following recommendations are made: amending Section 4 to widen the power of the Minister to include the power to enter into performance management agreement with the Bank of Tanzania, the Oil and Gas Fund manager; amending Section 12 on the appointment of Portfolio Advisory Board to include requirements on consideration of gender equity on the appointment of the members of the Portfolio Advisory Board; amending Section 13 to widen the functions of Portfolio Advisory Board to include formulation and proposing to the Minister the investment policy and management and the requirement that the Minister should submit the same to the Parliament; and amending Section 18 to introduce the right for any person to be given records on petroleum revenue upon request.

2. INTRODUCTION

2.1 BACKGROUND

Tanzania has emerged among hydrocarbon frontiers following significant natural gas discoveries in the countries, especially since 2010. At the time of writing this report, the total gas discoveries in Tanzania according to the statistics by the national oil company, the Tanzania Petroleum Development Corporation (TPDC) amounts to 57.54tcf, most of which lie in the Mafia Basin offshore Tanzania. This amount of gas is equivalent to almost 10billion barrels of oil. This amount is not only adequate to meet the domestic natural gas demand but also can be exported in the form of liquefied natural gas (LNG), thus potentially transforming the economy of the country.

Following the significant discoveries of natural gas, the Government of Tanzania embarked into policy, legal and regulatory reforms with the main objective improving the governance and regulation of the petroleum industry and ensuring the nation as whole benefits from the petroleum wealth. To this end, the Model Production Sharing Agreement (MPSA) 2013 and the Natural Gas Policy 2013 were promulgated in 2013. In the following year, the Upstream Petroleum Policy 2014 and the Oil and Gas Industry Local Content Policy 2014 were promulgated. The Energy Policy was promulgated by the Government in 2015, replacing the previous policies in the energy sector including the Energy Policy 2003. On the basis of the Energy Policy 2015, the Government tabled under certificate of urgency three bills of petroleum laws before the Parliament namely, the Petroleum Act, 2015, the Oil and Gas Revenue Management Act, 2015 and the Extractive Industry (Transparency and Accountability) Act 2015. The Acts were signed by the President Kikwete into law on 4th August 2015. This analysis focuses on the Petroleum Act, 2015 and the Oil and Gas Revenue Management Act, 2015.

2.2 OBJECTIVE

As set out in the Terms of Reference, the main objective of the assignment was to undertake an analysis of the Petroleum Act, 2015 and the Oil and Gas Revenue Management Act, 2015. The focus was to identify the possible legal challenges that serves as hindrance factors for legal execution, policy coherence and to provide policy options for recommendations.

2.3 SCOPE OF THE ASSIGNMENT

The Assignment required the Consultant to undertake a comprehensive review of the Petroleum Act, 2015 and the Oil and Gas Revenue Management Act, 2015 and prepare a draft report and policy brief on the analysis to the Client, HakiRasilimali within fourteen (14) days from the date of entering into a Consultancy Agreement. The Consultant was expected to clearly identify policy related issues. Besides, the Consultant was expected to submit a draft schedule of amendments for the two legislation to HakiRasilimali upon submission of the final report.

3. APPROACH AND METHODOLOGY

The Consultant undertook the Assignment through a desktop review and study of various documents, in particular, the *Petroleum Act 2015* and the *Oil and Gas Revenue Management Act 2015*. In order to draw lessons and insights from similar hydrocarbon provinces and jurisdictions, the Consultant made a comparative analysis of legislation from other jurisdictions. This included *the Petroleum (Exploration, Development and Production) Act, 2013* of Uganda. The Consultant also reviewed the *Petroleum Act 2019* of Kenya and the *Petroleum Revenue Management Act, 2013* of Ghana, among other documents and legislation. The Consultant also reviewed other relevant documents and literature in the petroleum industry in Tanzania, including the Energy Policy 2015 and Petroleum (Local Content) Regulations, 2017.

4. FINDINGS

In accordance with the requirements of the Terms of References for the Assignment, the findings have been divided into three main groups. The first group of findings comprise of those strengths and opportunities in the two legislation that can be leveraged to ensure the achievement of the Government objectives. The second group of findings comprises of those findings that show the inconsistencies between the legislation and between the legislation and other instruments in the industry such as the Energy Policy, 2015, and the existing Petroleum Production Agreements and the Model Production Sharing Agreement (MPSA), 2013. The third and last group of findings comprises of the challenges that are likely to be in implementing both the Petroleum Act and the Oil and Gas Revenue Management. The findings are discussed in detail in the following sections:

4.1. POLICY OBJECTIVES

The Energy Policy 2015 laid the legislative framework for both the Petroleum Act and the Oil and Gas Revenue Management Act. The main objective of the Energy Policy provides guidance for sustainable development and utilization of energy resources to ensure optimal benefits to Tanzanians. The Policy states that the petroleum found is Tanzania belongs to the people of Tanzania and must be utilized for the benefits of the entire society of the Tanzanian people. This policy statement is reflected under Section 4(1) of the Petroleum Act which states that:

"The entire property in and control over petroleum in any land to which this act apply are vested in the United Republic and shall be exclusively managed by the Government on behalf of and in trust for the people of Tanzania, but without prejudice to any right to explore, develop or produce petroleum granted, conferred, acquired or served under this act or the relevant law Tanzania Zanzibar".

The Energy Policy has the following specific objectives, which are more less reflected under the Petroleum Act and the Oil and Gas Revenue Management Act, albeit with some shortcomings:

i) Optimizing and effectively managing petroleum resource base;

ii) Developing and maintaining an efficient petroleum data and information system;

iii) Ensuring timely announcement and optimal development of petroleum commercial discoveries;

iv) Maximizing revenue to the Government while ensuring investors recover prudently incurred costs and appropriate share of profit;

v) Enhancing availability of reliable and affordable supply of petroleum to the domestic market and its use in a sustainable manner;

vi) Developing petroleum infrastructure for refining, processing, liquefaction, transportation, storage and distribution;

vii) Developing a competitive and efficient domestic and export market for oil and natural gas;

viii) Promoting linkages with other sectors of the economy and rational use of the petroleum resource; and

ix) Optimizing benefits accrued from Tanzania's participation in regional and international energy projects.

The analysis of the provisions of the legislation is made against these specific policy objectives to assess their coherence and incoherence.

4.2 POLICY COHERENCE: OPPORTUNITIES AND STRENGTHS

4.2.1. Regulatory framework

The analysis of the Petroleum Act has showed that various provisions have been provided to address the above policy objectives. To ensure optimal and effective management of the petroleum industry, the Petroleum Act established the Upstream Petroleum Authority (PURA), recognized the Tanzania Petroleum Development Corporation (TPDC) as a national oil company (NOC)[1] whose function include the management of the Government's commercial interests and it also mandates the Energy and Water Utilities Regulatory Authority (EWURA) under Section 29(1) to be the midstream and downstream petroleum regulator. The Minister has powers under Section 258 to make various regulations under the petroleum industry. The unbundling of the petroleum industry and the allocation of different roles among the Government entities namely PURA, TPDC, EWURA and the Minister, helps to ensure better regulation and hence promote the competition in the petroleum industry which will potentially attract private investment in the sector for developing gas infrastructure and other projects. Unlike in the past, when there was no dedicated upstream regulatory body and TPDC undertook some regulatory roles, by introducing PURA and recognizing TPDC as a NOC and EWURA as a midstream and downstream regulator, the Petroleum Act has boosted confidence of investor in the petroleum industry.

Under Section 11 of the Petroleum Act, PURA has the responsibility of monitoring, regulation and supervision of the upstream petroleum sector including reserve estimation and measurement

[1] Petroleum Act 2015, Section 8(1).

of produced petroleum[2]. PURA also monitors all phases of petroleum discovery, evaluation, and delineation, reservoir performance and production to ensure optimal rates of recovery, among other things. [3] Under Section 15(1) of the Petroleum Act, PURA may issue directions to a license holder and contractor to require them to comply with the best petroleum industry practices. PURA also has power to issue directions under Section 63 with respect to petroleum discovery requiring the licence holder to notify the Minister in writing of the discovery within specified time.

4.2.2. Enhanced Government revenue and tax base

The Petroleum Act introduced a specific royalty payment unlike the repealed Petroleum (Exploration and Production) Act, 1980 which left it subject to negotiation under the Production Sharing Agreement (PSA). Under Section 113 (1) of the Petroleum Act, the royalty is 12.5% of the gross production for onshore and shelf areas, whereas it is 7.5% of the gross production in case of production in offshore areas. The Petroleum Act also introduced two types bonus payments-signature bonus and production bonus.[4] TPDC has the right to participate at least by 25% in the petroleum production ventures following a commercial discovery.[5] The assignment, transfer of interests or corporate reorganization is subject to payment of capital gain tax under Section 116(1) & (2) of the Petroleum Act. These revenue and tax related provisions give an opportunity to the Government to maximize revenues from petroleum production.

4.2.3. Energy Security and Promotion of Economic Growth

Under Section 97 of the Petroleum Act, the licence holder and the contractor shall have the obligation to satisfy domestic market in Tanzania from their proportional share of production. The enforcement of this provision will ensure that the country have adequate energy supply to meet the domestic energy demands. The energy supplied to the domestic market will be priced based on the strategic nature of industries[6] instead of following the market forces of demand and supply. This means that the gas will be accessible for domestic industries at an affordable price to ensure economic viability of these strategic industries which include power generation, petrochemical industries and fertilizer plants[7], which are very crucial for the national economic growth.

4.2.4. Participation of TanzanianS in the Oil and Gas Industry

The promotion of the participation of Tanzanians in the petroleum industry is among the objectives of the Government as encapsulated under the Energy Policy. The Petroleum Act has comprehensive local content provisions to realize this important policy objective. Section 219 requires that licence holder, contractor and sub-contractors to give preference to goods and services which are provided by Tanzanian citizens or Local companies.[8] It further provides that where goods and services are not available in Tanzania, such goods and services must be provided by a company which has entered into joint venture with a local company holding at least twenty of the joint venture.[9]

[2] Petroleum Act 2015, Section 12(2)(b).
[3] Ibid.
[4] Petroleum Act 2015 Section 115.
[5] Petroleum Act 2015 Section 44(5).
[6] Petroleum Act 2015 Section 98.
[7] Petroleum (Natural Gas Pricing) Regulations 2016 defines Strategic Industry as an industry that the Government considers as having significant multiplier effects on the growth of the country's economy including power generation, fertilizer manufacturing and petrochemicals.
[8] Local Companies has been defined Section 219 (9) as company or subsidiary company incorporated under the Companies Act, which is one hundred percent owned by a Tanzanian citizen or a company that is in a joint venture partnership with a Tanzanian citizen or citizens whose participating share is not less than fifteen percent.
[9] Petroleum Act 2015 Section 219 (2) and (3) and Regulation 15(3) of the Petroleum (Natural Gas Pricing) Regulations, 2017.

Apart from goods and services procurement, under Section 220 of the Petroleum Act, the licence holder and contractor are required to provide training to their Tanzanians employees and give preference to recruiting Tanzanians in all areas of their operations. The licence holder, contractor and subcontractor are required to take into account gender equity, persons with disabilities and local communities in their recruitment processes. Specifically, the licence holder and contractor must prepare and submit to PURA the programme for recruitment and training of Tanzanian in accordance with the approved local content plan. Furthermore, under Section 221 the licence holder is required to maximize the transfer of technology to Tanzanians.

4.2.5. Transparency and Accountability

The management of petroleum industry and petroleum revenues is challenging for various reasons. Among the complicating factors for managing petroleum revenues is the exhaustibility of the petroleum resources, i.e. unlike water, wind or solar resources, petroleum resources once they are exploited and depleted, they cannot be renewed. This raises several governance issues including intergenerational equity, i.e. the need for ensuring that petroleum revenues are managed such that they not only benefit the current generation but the future generations as well. The other issue is the volatility of petroleum revenues and the fact that petroleum industry is prone to Dutch Disease, mostly aggravated by corruption and poor governance.[10]

Both the Petroleum Act and the Oil and Gas Revenue Management Act have provisions to address the above challenges. Essentially, the Oil and Gas Revenue Management Act is focused on making sure that revenues from the petroleum production benefits both the current and future generation by ensuring sustainable economic development. To this end, Section 8(3) of the Oil and Gas Revenue Act establishes the Oil and Gas Fund whose function include maintaining fiscal and macroeconomic stability and safeguarding the resource for the future generation. The establishment of the Oil and Gas Fund was envisaged also under the Petroleum Act to ensure transparency and accountability on collection, allocation, expenditure and management of petroleum and natural gas revenues[11] The Oil and Gas Fund comprises of two accounts namely, the Revenue Holding Account and Revenue Saving Account. The Portfolio Investment Advisory Board is established under Section 12(1) with the function of advising the Minister for Finance on the portfolio investment strategy for the Revenue Saving account of the Fund.

The Oil and Gas Revenue Management Act provide comprehensive fiscal rules which must be applied in the management of the Oil and Gas Fund.[12] The objectives of the fiscal rules are provided under Section 16(3) which include safeguarding the economy against the volatility of oil and gas revenue; diversification of the economy and safeguarding the interest of the future generation. The legislation requires that the collection, deposit and disbursement of funds from the Oil and Gas Fund must be made in a transparent and accountable manner.[13] Transparency requirement in the petroleum industry is also a responsibility of the Minister in his supervision of the petroleum sector.[14] The regulatory authorities in the petroleum industry are required to ensure transparency and accountability is upheld.[15]

4.3. POLICY INCOHERENCE: weaknesses

[10] Dutch Disease is the phenomenon which is characterized by the poor performance of an economy as a result of the discovery of a natural resource, as that which occurred in Holland with the exploitation of North Sea gas, which raised the value of the Dutch currency, making its exports uncompetitive and causing its industry to decline.

[11] Petroleum Act 2015 Section 251.

[12] Oil and Gas Revenue Management Act 2015, Section 17.

[13] Oil and Gas Revenue Management Act 2015, Section 18(1) and (2).

[14] Petroleum Act 2015 Section 5(1)(f).

[15] Petroleum Act 2015 Section 13(1) (d) and Section 30(2)(m)(iii).

4.3.1. STRATEGIC Oversight of the petroleum industry

The petroleum Act vest the strategic oversight and direction over the oil and gas economy over the Cabinet under Section 4(3), rather than the Parliament. This mandate should be given to the Parliament, which represent the wider constituencies of the Tanzanian populace. In the neighboring countries of Kenya and Uganda and many other countries this mandate is entrusted on the Parliament including the vetting and approval of the Model Production Sharing Agreement.

4.3.2. Poor coordination MECHANISM between Institutions

There is poor coordination mechanism between various institutions and or authorities under the Petroleum Act. For instance, under Section 5(1)(k) of the Petroleum Act, the Minister is authorized to approve application of technical specifications, standards and quality control norms for the protection of the public health, safety and environment. In so doing, the Minister is only required to consult the Tanzania Bureau of Standards (TBS). The consultation by the Minister with TBS alone is not adequate, as there are other relevant authorities that must be consulted for effective management of the petroleum industry. These other authorities that must also be consulted includes the Occupational Safety and Health Authority (OSHA), the National Environmental Management Council (NEMC), PURA and EWURA. Similarly, when making regulations relating the specifications of petroleum products under section 169, the Minister should consult all the relevant authorities. Equally, the vehicle's standards as stipulated under Section 172 must comply not only with standards set out by TBS but also by the Surface and Marine Transport Regulatory Authority (SUMATRA) and any other relevant authority.

4.3.3. INADEQUATE ENVIRONMENTAL PROTECTION MECHANISM

Petroleum industry is prone to major and disastrous environmental consequences, when an accident happens. Thus, strong environmental regulation of the petroleum industry is critical. The recent biggest environmental catastrophe in the petroleum industry which happened in 2010 in the Gulf Coast killed 11 people on board the drill rig and caused over 4.9million barrels of crude oil to spill into the Gulf Coast for 89 days with catastrophic consequences to both humans and other living things and the general environment. The environmental protection regime under the Petroleum Act is not adequate. There is no petroleum industry specific environmental law which would help to address the specific environmental issues and challenges in the petroleum industry.

4.3.4 Likelihood of Loss of Revenue due to Absence of a Natural Gas FEE

The Petroleum Act 2008 which was repealed by the Petroleum Act 2015, introduced a petroleum fee. The petroleum levy was maintained by the Petroleum Act 2015 and is now charged by EWURA under Section 167(2) and it is applied to all petroleum products but not natural gas. As Tanzania has discovered significant natural gas, it is important that a natural gas fee is charged as well to boost government revenues.

4.4. IMPLEMENTATION CHALLENGES

4.4.1. typographical mistakes

There are lots of typographical mistakes especially in the Petroleum Act 2015 which definitely impedes the implementation of the legislation. These mistakes perhaps were caused by the fact that legislation was passed under the certificate of urgency and hence it is likely that the draftsmen did not have enough time to correct those mistakes. The details of these include the following:

- In Section 2(2)(a) the word "or" is written as "ore" and in Section 2(4) the word "from" is written as "tom", in the definition of the term Government, the word "institutions" is written as "constitutions";

- In section 9(2)(k) the term "Gas Utilization Master Plan" is written as "gas mater plan"; Section 32 is written as Section 332; in Section 61(1) in the opening phrase reference has been made to Section 66(1) instead of Section 56(1); under Section 78(2)(b) the word "Sub-Part II" should be "Sub-Part III";

- Under section 101(a) the term "best international petroleum industry practices" is written as "best petroleum practice"; the same mistake is repeated in section 100 where it has been written "best petroleum industrial practice" instead of "best international petroleum industry practices"; the same mistake is found in Section 191(2); and

- Under Section 187(3) the term "rules" is written as "regulation" (Note: PURA makes rules not regulations); the term "breach" is written as "breath" under Section 224(2).

4.4.2. Conflicting roles between institutions

There are conflicting roles between institutions which might hamper effective implementation of the Petroleum Act. For example, under Section 9(2)(l) the Petroleum Act states that TPDC has exclusive right rights over the promotion of local content in the midstream and downstream natural gas value chain. This is in reality not true and strategically wrong. Promotion of local content in the midstream and downstream is the legal mandate of EWURA as stated under Section 30(2)(k)(vii). It is EWURA that manages the subscription to the Local Suppliers and Service Providers (LSSP) register for midstream and downstream, whereas PURA is supposed to cater for upstream.[16]

4.4.3. INCONSISTENCES WITHIN THE LEGISLATION

There are obvious inconsistences between the Petroleum Act and the Petroleum (Local Content) Regulations, 2017. The provisions on local content under the Petroleum Act, i.e. Sections 219, 220 and 221 refer only to PURA but no reference is made to EWURA as if they only apply to upstream. But the Petroleum (Local Content) Regulations, 2017 covers the whole petroleum value chain from upstream to downstream.

In some provisions of the Petroleum Act, references are only made to EWURA and not to PURA, even if both authorities ought to be referred. This is evident in Section 240 and 241. Also, under Section 208(5) which relates to regulation of upstream operations, EWURA is erroneously referred to as the authority instead of PURA, the regulatory authority of the upstream petroleum operations.

There is also inconsistence between the provision of the Petroleum Act and the existing Production Sharing Agreements (PSAs). Section 44(5) of the Petroleum Act requires that TPDC should participate at least by 25% participating interests unless it decides otherwise. However, the TPDC participation in all the existing PSAs is below 25%. Given the lack of clarity under the saving provision Section 260, it is unclear what is the status of PSAs under the Petroleum Act.

[16] Regulation 38 of the Petroleum (Local Content) Regulations, 2017 requires EWURA and PURA to establish, maintain and annually publish to its database the Tanzanian Local Suppliers and Service Providers (LSSP) Database of persons involved in petroleum sub-sector and prohibits any entity from providing goods, works or services for the petroleum activities unless they are registered on the database

4.4.4. challenge on enforcing transparency and accountability

Though both the Oil and Gas Revenue Management Act and the Petroleum Act contain provisions on transparency and accountability, their enforcement may be a challenge in reality due restrictions to which those provisions are subject but also the lack of clarity in some respect. For instance, section 84(6) of the Petroleum Act states that petroleum register shall be public, but it does not state what means will be used to ensure public access to the register. In other jurisdictions, such information would be accessible to the public via the website. Also, Section 93(2) of the Petroleum Act prohibits disclosure of all the information and report which have been submitted to PURA, this is contrary to other laws, including the Access to Information Act which guarantees access to information by the members of the general public. Some claw back clauses in the Petroleum Act will impede the access of information and hence good governance of the petroleum industry. Under Section 91(3), PURA may avail the information to the public only after "*a written approval of the Minister*". Similarly, under Section 84(6) provide a right to a person to access the information to the petroleum registry "*except as otherwise provided by the law*". No law should override the transparency and accountability requirements and obligations under the petroleum industry if good governance in the petroleum industry is to be achieved. Given the high stakes in the petroleum industry, information must be accessible to the public without any hindrance to ensure transparency and accountability.

4.4.5. Poor drafting

The petroleum Act in particular was very poorly drafted which makes it not a user-friendly legislation. There are several repetitions, for example the definition of "delivery point" has been repeated twice and the two definitions differ in their contents. Another repetition is with respect to Section 93(3) and (4) on the prohibition against disclosure, which is again repeated on section 106 on the duty not to disclose, these two Sections have more or less the same message and could be combined into a one Section after review.

Poor drafting is reflected in the fact that, certain technical terms which have been used in the Petroleum Act have not been defined, thus potentially being a source of confusion to the user or reader. Some of these terms include the term "petroleum rights" and "petroleum operations rights" which have been used specifically under Section 44 (1) and (2), both have not been defined and it is not clear whether they mean one and the same thing or if they mean different things.

Poor drafting is also reflected in the following Sections of the Petroleum Act:

- Section 31 (1) the words "in a transparently, objectively, reasonably, non- discriminatorily…" are wrongly written, they were required to be "in a transparent, objective, reasonable, non- discriminatory…";

- Section 50(1) states that "*The Minister may, by notice published in the Gazette, declare certain block to be reserved for public interest or to be awarded direct to the National Oil Company*." In practice, the interpretation of this provision has proven very problematic. The objective was to give the power to the Minister either to reserve some blocks and also to award some blocks directly to TPDC without subjecting them to the bidding process. But the objective has not been met as it does not come out clear from the provision due to poor drafting.

- Section 79(3) is not clear because some words are missing between the words "development licence" and the words "to take all necessary…";

- Section 96(8) is not generally properly drafted and thus unclear, and in particular the word “detriment” should be “detrimental”

- Section 193(4) is not clear because there are words missing between the words “facility arises” and the words “shall ensure”.

5. CONCLUSION

Both the Petroleum Act and the Oil and Gas Revenue Management Act were passed in 2015 following policy and legal reforms that were initiated in the country following significant discovery of natural gas. The Petroleum Act led to the establishment of PURA and recognition of TPDC as a national oil company and EWURA as a midstream and downstream regulator. While the Petroleum Act enhanced the collection of government revenue from the petroleum industry through the introduction of specific statutory royalties, capital gain tax, minimum NOC participation interest and bonus payments, the Oil and Gas Revenue Management Act put in place a robust legal framework for the management of petroleum revenues. In order to promote the participation of Tanzanians and Tanzanian companies, the Petroleum provides extensive local content provisions requiring the licence holder, the contractor and sub-contractor to comply with them. The Oil and Gas Revenue Management Act has provisions to address governance issues namely the exhaustibility of the petroleum industry, the volatility of petroleum revenue and the Dutch Disease by ensuring intergenerational equity through savings of part of the revenues and ensuring fiscal and macroeconomic stability through restricted expenditure of petroleum revenues.

Despite the above strengths and opportunities afforded by the legislation, there are challenges that are likely to impede the implementation of the legislation. These include lack of coordination mechanism between various institutions; lack of adequate environmental management regime; and the absence of provision requiring the payment of natural gas fee. The other flaws include the rampant spelling and typographical mistakes as identified above; the conflict of roles between TPDC and EWURA especially with regard to promotion of local content; and the inconsistencies between the Petroleum Act and the Petroleum (Local Content) Regulations and the existing PSAs and lastly, the presence of poorly drafted provisions making it difficulty for users of the legislation.

6. IMPLICATIONS AND RECOMMENDATIONS

The challenges and weaknesses identified above inhibit the effective implementation of the legislation. In order to address all those weaknesses and challenges, and thus improve the execution of the legislation particularly with regard to governance of the petroleum industry and the management of petroleum revenues, the following actions are recommended:

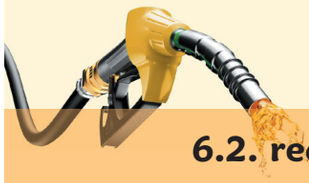
6.1. general Recommendations

The following actions are recommended to be taken generally:

- Enact a petroleum industry specific environmental legislation;

- Streamline the roles and responsibilities of various institutions in the petroleum industry;

- Widen the scope of consultations with relevant authorities especially when prescribing standards, guideline, rules and regulations;



6.2. recommendations with respect to the petroleum act

With respect to the Petroleum Act, the following actions are recommended:

- Introduce the natural gas fee;
- Amend the Petroleum Act under Sections 219-221 to include EWURA in addition to PURA as a regulator to oversee local content in the midstream and downstream;
- Amend the Petroleum Act as appropriate to correct the clerical and typographical mistakes as identified above;
- Amend Section 240 and Section 241 to include PURA which has been erroneously left out;
- Amend Section 208(5) of the Petroleum Act to include PURA and remove EWURA because the referred operation is an upstream operation and EWURA is not an upstream regulator;
- Amend Section 260 (on Repeal and Savings) to clarify the legality of the existing PSAs which were entered under the repealed Petroleum (Exploration and Production) Act 1980, especially on contractual rights and obligations of parties;
- Amend Section 84 to require information on the Petroleum Registry to be available on the website
- Amend Section 93(2) which prohibits the disclosure of information and align it with the Access to Information Act 2016;
- Amend Section 93(3) and Section 84(6) to remove the "claw back clauses" which have been identified above; and
- Redraft the Act in its entirety, and specifically to correct the mistakes that have been highlighted.

6.3. Recommendations with respect to the oil and gas revenue management act

The following recommendations are made with respect to the Oil and Gas Revenue Management Act:

- Amend Section 4 to widen the power of the Minister to include the power to enter into performance management agreement with the Bank of Tanzania, the Oil and Gas Fund manager;
- Amend Section 12 on the appointment of Portfolio Advisory Board to include requirements on consideration of gender equity on the appointment of the members of the Portfolio Advisory Board;
- Amend Section 13 to widen the functions of Portfolio Advisory Board to include formulation and proposing to the Minister the investment policy and management and the requirement that the Minister should submit the same to the Parliament;
- Amend Section 18 to introduce the right for any person to be given records on petroleum revenue upon request.