
ADEQUACY OF THE LEGAL FRAMEWORK ON GOVERNANCE OF OIL AND GAS FUND IN TANZANIA

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ABSTRACT

Oil and Gas Fund is one of the instruments for sustainable management of revenue from petroleum sector in Tanzania. It seeks to balance government spending and secure interests of the future generation. However, actual realization of this policy objective depends on existence of legal and fiscal rules which stipulates what has to be collected, distributed, spent and invested for the present and future generation. This paper undertakes a critical assessment of the existing legal framework governing the Oil and Gas Fund in Tanzania. It applies doctrinal research methodology in assessing strengths and weaknesses of the existing national legal instruments on governance of Oil and Gas Fund in Tanzania.

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1.0 INTRODUCTION

Petroleum sector is one of the sectors which generate large size of revenue for economic development of resource rich countries. This revenue is highly influenced by various factors, such as volatility and exhaustibility of resource and Dutch disease which tends to weaken non-resource sectors due to exchange rate and spending effects. This requires proper revenue management policy and strategies in order to address how much to spend, where to spend and which structures to develop in order to ensure macroeconomic stability. It is thus prudent that once the extractive industry revenue has been generated and collected, a government must decide on their management and allocation. One among the ways to manage revenue collected from extractive industry is through the establishment of Natural Resource Funds (NRF).

NRF is a revenue management tool used by many governments in resource rich countries as a way of investing or putting aside revenues derived from oil, gas or mineral extraction. It is created for many reasons, including covering budget deficits when revenue declines, save for future generations, and mitigate Dutch disease effects by financing other national development projects. In the year 2015, as a means of managing its natural resource, Tanzanian government enacted the Oil and Gas Revenue Management Act,³ which established the Oil and Gas Fund responsible for benefiting the current and future generation.⁴ Its sources of revenues include royalties, Government profit share, dividends on Government participation in oil and gas operations, corporate income tax on exploration, production and development of oil and gas resources and returns on investment of the fund.⁵ The Oil and Gas Fund was established for different purposes, namely: maintain all the fiscal and macro-economic stability; finance oil and gas investments; enhance social and economic development and safeguard resources for the future generation.⁶

The good governance of NRF in the world is dependent on availability of clear fund objectives and fiscal rules in the form of statutory and constitutional restrictions that set specific limits on fiscal indicators, including budget balances, expenditure and debt levels. This is because tax authorities appear to lack mandate, confidence and ability to handle these aspects.⁷ Similarly,

³ Oil and Gas Revenue Management Act, Act No. 22 of 2015.

⁴ Section 8 of the Oil and Gas Revenue Management Act, Cap 328 R.E 2019.

⁵ Section 9 of the Oil and Gas revenue management Act, [Cap 328 R.E 2019].

⁶ Section 8(3) of the Oil and Gas Revenue management Act, [Cap 328 R.E 2019].

⁷ Calder, J., *Administering Fiscal Regimes for Extractive Industries: A Handbook*, International Monetary Fund, 2014, pp.71-72 (available at <http://old.agora-parl.org/sites/default/files/administeringfiscalregimesforei.pdf>).

it requires availability of clear investment rules, a defined institutional structure and strong independent oversight for monitoring and compliance purposes. This paper critically analyzes the existing legal and institutional frameworks on governance of the Tanzania Oil and Gas Fund. The paper mainly applies doctrinal research methodology supplemented by comparative legal research methodology. Whereas the former has been used to review the existing laws and published works on natural resource fund governance, the latter has been applied to gather experiences international standards and best performing countries, Norway and Ghana, on governance of Resource Funds.

The paper begins by exploring the historical foundations of NRF at global and national levels. It further presents a discussion on international standards and principles on governance of natural wealth funds. Thereafter, the paper analyzes adequacy of the existing legal and institutional framework on governance of NRF. It then explores practices on governance of NRF from Norway and Ghana, which currently present best performance indicators on governance of NRF. Finally, the paper presents measures for policy and legal reforms taking into account international standards and lessons drawn from Norway and Ghana.

2.0 HISTORICAL OVERVIEW AND RATIONALE FOR DEVELOPMENT OF NATURAL RESOURCE FUNDS

Existence of NRF is directly connected with evolution of sovereign wealth funds (SWFs) in the world depending on global economic changes and national financial strategies. Whereas, the first form of SWF emerged in the 1950s, driven primarily by surplus revenues from resource-rich nations such as Kuwait and Kiribati.⁸ Other sovereign wealth funds established included: the Kuwait Petroleum Fund established in 1953; the Alberta Heritage Savings Trust Fund in Canada established in 1976 and the Alaska Permanent Fund established in 1976. The Oldest Fund in the World was set up in Texas in the year 1876. Moreover, it is Norway which first established modern sovereign wealth fund, known as the Norwegian Government Pension Fund Global in the year 1990.

The initial motivation for the above Funds was to create financial reserves that would mitigate dependence on volatile resource markets. Over the decades, SWF expanded in response to

⁸ Basim, K. *et al.*, Theoretical and Conceptual Bases of Sovereign Funds, Review of Economic and Finance, Volume 22 of 2024, p.369.

rising oil prices and accumulation of foreign exchange reserves, especially in Asian economies.⁹ Between 2000 and 2009, its role transformed from simple fiscal stabilization mechanisms to strategic global investors influencing financial markets and providing liquidity and stability during economic downturns. Basically, SWF developed to address risks inherent to the extractive sector. First, the **excess capital inflow from resource extraction** which, if not managed properly, leads to inflation and economic instability. This situation was observed in many oil-exporting nations, where sudden revenue surges resulted in uncontrolled government spending and financial mismanagement. Secondly, the **appreciation of the exchange rate** due to large foreign exchange reserves. When resource-rich nations experience trade surpluses, their local currency strengthens, potentially harming export competitiveness and leading to economic stagnation in non-resource sectors. SWFs served as financial instruments to mitigate these risks by channeling surplus revenues into diversified investments.¹⁰ Furthermore, depletion of natural resources presented a fundamental rationale for establishment of SWF since countries relying on finite commodities risk economic vulnerability once these resources are exhausted; hence a need to preserve wealth for future generations, ensuring economic sustainability beyond resource exploitation.¹¹

Conversely, NRFs was developed to serve different purposes. First, to stabilize the national budgets from the volatility of commodity prices.¹² This is because resources like oil and gas experience price cycles and sudden drops which can severely impact government revenues. By accumulating reserves during high-price periods, NRFs provide financial stability, ensuring that essential public expenditures, such as infrastructure and social services, remain unaffected by market shocks.¹³ A good example is Russia's **National Welfare Fund** which served as financial cushions that helped government to manage revenue fluctuations caused by changes in global market prices.

Secondly, the NRFs played a crucial role in converting **non-renewable resource wealth into diversified assets for future generations**. A good example is Norway's Sovereign Wealth

⁹ *ibid.*, p.370.

¹⁰ Basim, K. *et al.*, Theoretical and Conceptual Bases of Sovereign Funds, Review of Economic and Finance, Volume 22 of 2024, p. 373

¹¹ *Ibid.*, p.374.

¹² Oshienebo, E., Managing Resource Revenue: Sovereign Wealth Funds in Developing Countries, Asper Review, Volume XV of 2015, pp.218-264.

¹³ Basim, K. *et al.*, Theoretical and Conceptual Bases of Sovereign Funds, Review of Economic and Finance, Volume 22 of 2024, p. 373

Fund, whereby the surplus revenues from oil production was invested in various asset classes worldwide. Its main goal was and still is to **ensure economic sustainability after resource depletion**; hence preventing future generations from suffering economic hardship once commodity reserves are exhausted. This forward-thinking approach makes NRFs a tool for preserving national wealth over time while fostering economic diversification.

Thirdly, the NRFs **reduce dependence on a single industry**. Many resource-rich nations risk economic stagnation due to their over-reliance on commodities like oil, gas, or minerals. This can be well illustrated by the Kiribati's Revenue Equalization Reserve Fund which historically relied on **phosphate mining** as its primary economic activity. By establishing an NRF, Kiribati safeguarded its economy against **resource depletion risks**, ensuring long-term financial sustainability even after phosphate reserves diminished. Lastly, unlike the central banks, which primarily hold foreign exchange reserves in government bonds and low-yield assets, NRFs adopted **market-driven investment strategies** to maximize returns by investing in **private markets, real estate, and infrastructure projects** which yield higher long-term gains compared to traditional reserve management.¹⁴

3.0 FACTORS WHICH INFLUENCE DESIGN OF LEGAL AND FISCAL REGIME FOR MANAGEMENT OF NATURAL RESOURCE FUNDS

As expressed earlier, NRF is established as revenue management tool for safeguarding the interests of the future generation *vis-à-vis* government spending on various services and development projects. Basically, large revues from oil and gas sector may enable government to expand its spending to improve basic social services such as education, health and infrastructural facilities. Management of oil and gas revenue is important because of demand to balance government consumption and saving for the future generation.¹⁵ Legal and fiscal regime is important in order to balance several factors. First, volatility and uncertainty of revenue is greatest challenge for a resource rich country economy. That is to say any fiscal design of revenue management rules is complicated by the volatility and uncertainty of resource receipts, which affect resource wealth estimates as well as the government cashflow.¹⁶

¹⁴Basim, K. *et al.*, Theoretical and Conceptual Bases of Sovereign Funds, Review of Economic and Finance, Volume 22 of 2024, p. 375.

¹⁵ Segura, A., 'Management of Oil Wealth under the Permanent Income Hypothesis: The Case of Sao Tome and Principe; IMF Working Paper, July 2006, p.11.

¹⁶ Cameron, P.D., and Stanley, Oil, Gas and Mining. A Source book for Understanding the Extractive Industries, First Edition; World Bank Group. 2017, pp.149-153.

This is exacerbated by the unimpressive record of price forecasts and the limited information in future prices.¹⁷

Secondly, exhaustibility of oil, gas and mineral resources raises intergenerational issues, which reveals a need of balance between government consumption and saving for the long term. Policy makers are required to strike a balance between spending today and saving for tomorrow.¹⁸ Thirdly, undetermined ownership and distribution of extractive resources. Studies suggests that resource rent belong to the nation, to the local people and the future generation. This requires strong oversight and accountability measures to limit powers of bureaucrats over revenue distribution.¹⁹ The solution to the above pressing matters can be achieved where appropriate legal and fiscal rules are adopted by national governments to regulate government spending and savings. Primarily, fiscal rules are adopted in order to guarantee fiscal sustainability. This objective can only be realized where national governments have established Sovereign Wealth Funds, set in place clear Fund objectives and fiscal rules and established institutional structures for extractive revenue management. These factors form the basis for assessment of the existing legal framework governing Oil and Gas Fund in Tanzania.

4.0 TYPES OF FISCAL RULES AND INTERNATIONAL STANDARDS FOR SUSTAINABLE REGULATION OF NATURAL RESOURCE FUNDS

4.1 Types of Fiscal Rules for Management of Extractive Revenues

When designing fiscal rules, it is imperative for the governments to consider such other factors, including absorptive capacity constraints, size of non-oil economy, stage of development of the country and stage of oil and gas production.²⁰ The common fiscal rules that are used by resource-rich countries for oil and gas revenue management include: bird-in-hand rule, permanent income rule and the hand-to-mouth rule.²¹ Each of these fiscal rules has implication in terms of how much money is spent and saved by sovereign states. The bird-in-hand rule requires the governments to spend the interest income (dividends) accruing from accumulated

¹⁷ *ibid.*, p.184.

¹⁸ *ibid.*, pp.185-186.

¹⁹ Cameron, P.D & Stanley, M., *Oil, Gas and Mining. A Source book for Understanding the Extractive Industries*, First Edition, World Bank Group., 2017 pp. 6, 27 and 42.

²⁰ Segura, A., 'Management of Oil Wealth under the Permanent Income Hypothesis: The Case of Sao Tome and Principe; IMF Working Paper, July 2006, p.12.

²¹ Other fiscal rules of revenue management include: structural balance budget rule, expenditure rule, non-resource balance rule and debt rules.

resource revenues placed in financial assets abroad instead of capital gains.²² It is a precautionary and conservative measure of saving and ad hoc way to buffer against future oil and gas price shocks.²³ This rule ensures intergenerational equity and fiscal sustainability because the government base spending decisions only on the asset (revenue) already in hand.²⁴ However, it has been criticized for being restrictive and creating social tensions because of low public spending *vis-à-vis* large accumulation of revenues during the period of oil and gas exploitation.²⁵

On the other hand, the permanent income rule requires that a permanent proportion of resource wealth is spent annually to sustain consumption by maintaining a constant real expenditure path beyond a life time period of commodity reserves. This rule is favored by oil producing countries such as Sao Tome and Philipe, because it guarantees sustainable government consumption, guarantees predictable stream of oil revenues for development programs and gives crucial consideration to intergenerational equity.²⁶ Ghana also applies this fiscal rule whereby 70% of oil and gas revenue is used to finance annual government budget while the remaining 30% is paid into the Heritage Fund for investments in approved investment categories. Then, once resources are depleted, the remaining amount in the Stabilization Fund and Heritage Fund is paid into the Ghana Sovereign Wealth Fund from which the government is allowed to use accruing interest for financing government projects.

Conversely, the hand-to-mouth rule requires that the government spends all the money they receive from natural resources. This rule appears to be convenient for countries with capital shortage because it ensures current fiscal balance. However, it does take into consideration the levels of absorptive capacity and exposes government spending to extreme volatility because revenues could rise and fall abruptly. It also does not take into account intergenerational equity.

²² Segura, A., 'Management of Oil Wealth under the Permanent Income Hypothesis: The Case of Sao Tome and Principe; IMF Working Paper, p.12; also see Said, S., 'Dividend Policy and Firm Performance: A Review of Theories and Empirical Literature, Open Access Library Journal, Volume 11 of 2024, p.4; also see F. Morni and others 'The Relevance of Bird-in-Hand Theory to Shariah Inclined Investors: A Case Study of Malaysia, Journal of International Business, Economics and Entrepreneurship, Volume 4 Issue No.2 of December 2019, p.2.

²³ Harding, T. & Van der Ploeg, F., 'Is Norway's Bird-in-Hand Stabilization Fund Prudent Enough? -Fiscal Reactions to Hydrocarbon Windfalls and Graying Populations, CESIFO Working Paper No.2830, October 2009, pp.13-15; also see Qammar, R., 'The Impact of Dividend Policy on Stock Price Volatility based on 'Bird-in-Hand Theory'-Evidence from Malaysia, a thesis submitted to School of Economics, Finance and Banking, in fulfillment of the requirement for the Degree of Doctor of Philosophy, University of Utara-Malaysia, pp.19-22.

²⁴ Harding, T. & Van der Ploeg, F., 'Is Norway's Bird-in-Hand Stabilization Fund Prudent Enough? -Fiscal Reactions to Hydrocarbon Windfalls and Graying Populations, CESIFO Working Paper No.2830, October 2009, p.17.

²⁵ Segura, A., 'Management of Oil Wealth under the Permanent Income Hypothesis: The Case of Sao Tome and Principe; IMF Working Paper, July 2006, p.12.

²⁶ Segura, A., 'Management of Oil Wealth under the Permanent Income Hypothesis: The Case of Sao Tome and Principe; IMF Working Paper, July 2006, pp.14-19.

Thus, for sustainable management of the Oil and Gas Fund in Tanzania, specifically amount set aside for the future generation, it is recommended that the government applies the bird-in-hand rule or the permanent income rule so as to guarantee intergenerational equity. The drafting and implementation of the fiscal rules under the Oil and Gas Revenue Management and its Regulations should ensure that certain percentage of the oil and gas revenue is safely kept in designated account, and such fund is used for investment purposes. The government should only be allowed to use income from investments and not otherwise. Whether or not the existing fiscal rules in Tanzania is likely to achieve this objective, it is a matter of time to be substantiated under the subsequent paragraphs.

4.2 International Standards governing Natural Resource Funds (NRF)

The effective governance of Natural Resource Funds (NRFs) is paramount for resource-rich nations in order to translate finite natural wealth into sustainable development and long-term prosperity. On this account, the international bodies such as the International Forum of Sovereign Wealth Funds (IFS WF) and the International Monetary Fund (IMF) have established comprehensive frameworks to guide best practices in natural resources fund management. These principles and standards include the following:

(a) Sovereign Wealth Funds Generally Accepted Principles and Practices of 2008 (GAPP)

These principles are commonly known as Santiago Principles. They primarily focus on the institutional and ethical underpinnings of Natural Resource Funds. The principles were established in 2008 by the International Working Group of Sovereign Wealth Funds (IWG) in order to provide for transparent framework for sovereign wealth funds which enhance governance and accountability. These set of principles provide for several issues necessary for governance of NRF as follows:

- (i) The availability of policy and legal framework which clearly state how the sovereign wealth fund will be established, managed and coordinated.²⁷
- (ii) Coordination of activities of the Fund with the domestic fiscal and monetary

²⁷ See GAPP- Principles 1 and 2.

authorities so as to ensure consistency with overall microeconomic policies.²⁸

- (iii) Availability of clear and publicly disclosed policies, rules, procedures or arrangements in relation to funding, withdrawal and spending operations of the Fund.²⁹
- (iv) Timely reporting of statistical data of the Sovereign Wealth Fund;³⁰
- (v) Establishing institutional framework for governance and accountability of the Fund with clearly defined mandates and responsibilities.³¹
- (vi) Preparation and publication of annual audited financial reports in accordance with international standards;³² and
- (vii) Adoption of investment policies to regulate investment plans and risk management decisions.³³

Essentially, the Santiago Principles provide for conditions for establishment and management of NRF to include availability of fiscal and investment rules, establishing institutions for management and disclosure requirements of crucial information such as fund size, investment strategies, and withdrawal activities. To safeguard the fund's financial integrity, the Santiago Principles advocate for robust risk management practices, including investment diversification. Thus, the above principles set standards and requirements for any sovereign wealth fund; hence relevant for assessment of the legal and institutional framework governing the Tanzania Oil and Gas Fund.

(b) IMF Article Fund Governance Framework

This framework offers more specific operational guidelines, particularly concerning the fiscal management of Natural Resources Funds. A central tenet of the IMF's approach is the establishment of fiscal rules on limiting annual withdrawals and prevent rapid depletion of

²⁸ See GAPP-Principle 3

²⁹ See GAPP-Principle 4

³⁰ See GAPP-Principle 5

³¹ See GAPP-Principles 6,7,8,9 and 10.

³² See GAPP-Principles 11, 12, 13, 16 and 17.

³³ See GAPP-Principles 18, 19, 20,21, 22 and 23.

national wealth. The International Monetary Fund Framework also strongly advocates for independent oversight mechanisms, including external audits and robust parliamentary scrutiny, to ensure accountability and prevent mismanagement.

Recognizing the volatile nature of natural resource revenues, the framework emphasizes the importance of revenue smoothing, utilizing the natural resource fund to save windfall gains and mitigate the adverse effects of "boom-bust" cycles on the national economy. Crucially, the IMF stresses the need for clear rules governing the integration of natural resources funds with national budgets, ensuring that their use is transparent and aligned with broader fiscal objectives.³⁴ A good example of resource-rich countries that have applied the above governance standards include: Norway through stringent parliamentary oversight;³⁵ and Ghana through Extractive Industries Transparency Initiative (EITI).³⁶ Similarly, Chile under the Economic and Social Stabilization Fund ensures fiscal discipline through its fiscal rule which limits withdrawals to 3% of GDP.³⁷ Likewise, Botswana through Pula Fund highlights anti-corruption measures by prohibiting investments in conflict zones.³⁸

On the other hand, this Framework is supplemented by the IMF's Article IV, whereas under Article IV of the International Monetary Fund's (IMF) Articles of Agreement, the IMF holds bilateral discussions with member countries, typically on an annual basis. During these consultations, an IMF staff team visits the country to collect economic and financial information and engage in discussions with officials regarding the country's economic developments and policies. Tanzania is also a member of the IMF and is subject to Article IV consultations. Several reports from the IMF confirm that these consultations have been concluded with Tanzania.³⁹ These consultations which play a significant role in promoting sound NRF governance at the country level. Through assessments of member countries' fiscal policies, the IMF often provides specific recommendations related to NRF management. Some of the IMF recommendations include: depoliticizing fund management by establishing

³⁴ International Monetary Fund (IMF); *Fiscal Transparency Handbook*, 2018, pp.125-127.

³⁵ Norges Bank Investment Management (NBIM) - Government Pension Fund Global (see the details on the website (<https://www.nbim.no/>)).

³⁶ Ghana Extractive Industries Transparency Initiative (GHEITI) (see the details on the website at <https://www.gheiti.gov.gh/>).

³⁷ Natural Resource Governance Institute (NRGI):<https://www.resourcegovernance.org/> (Accessed on 3 September 2024).

³⁸ "Botswana's Pula Fund," is an example of a savings fund. It was established by the government of Botswana in order to delink public spending from volatile resource revenues and reduce the risk of Dutch disease.

³⁹ See the International Monetary Fund (IMF), *United Republic of Tanzania-Staff Report for the 2023 Article IV Consultation and First Review under the Extended Credit Facility Arrangement*, April 2023.

independent boards, as observed in Norway's Norges Bank Investment Management;⁴⁰ and establishing clear NRF withdrawal rules in order to prevent ad-hoc spending, as observed in Azerbaijan's State Oil Fund (SOFAZ).⁴¹ Furthermore, IMF has commended the importance of broader societal accountability, through civil society participation in NRF oversight, as seen under Ghana's Public Interest and Accountability Committee (PIAC).⁴²

(c) Natural Resources Governance Framework (NRGF)

This is a well-structured approach which establishes a set of principles, rules and mechanisms to manage natural resources effectively. This Framework was first conceived in the year 2013 and formally launched by the International Union for Conservation of Nature (IUCN) in the year 2021. It aims to ensure sustainable development, environmental protection, equity and transparency in resource management, often involving stakeholder participation and inclusivity. The framework addresses issues like resource allocation, community rights, environmental protection, and the role of institutions in managing resources effectively. It aims at promoting transparency and stakeholder engagement in decision making processes concerning resource exploitation and management.⁴³ The governance of Oil and Gas Fund in Tanzania need to uphold principles and values articulated by this important framework, especially on transparency, accountability and community participation in management of the fund. This would guarantee sustainable development of the Fund and enhance the livelihoods of the people.

5.0 LEGAL AND INSTITUTIONAL FRAMEWORK ON GOVERNANCE OF OIL AND GAS FUND IN TANZANIA

5.1 The Constitution of the United Republic of Tanzania of 1977⁴⁴

The Constitution serves as the supreme law of Tanzania and lays the foundational

⁴⁰ Norges Bank Investment Management (NBIM) - Government Pension Fund Global (see the details at <https://www.nbim.no/>)

⁴¹ Kenan, A., Fiscal Sustainability and the State Oil Fund in Azerbaijan, *Journal of Eurasian Studies*, 2015, pp. 1-8; also see the Natural Resource Governance Institute (NRGI), State Oil Fund of the Republic of Azerbaijan (Synopsis) 2013, pp.1-13 (available at https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/our%20work/NRF_Azerbaijan_September2013.pdf)

⁴² See the report of the Ministry of Finance and Economic Planning of Ghana (available at <https://mofep.gov.gh/>)

⁴³ Jenny, S. et al., The Natural Resource Governance Framework-Improving Governance for Equitable and effective conservation, International Union for Conservation of Nature, Gland-Switzerland, 2021, pp.9-29.

⁴⁴ Cap 2 R.E 2019.

principles for governance, public finance, and natural resource management. Article 27 of the Constitution establishes a mandatory duty to safeguard and protect the natural wealth and resources in the United Republic of Tanzania, including combating all forms of waste and squander of the resources. This provision establishes collective responsibility to protect and safeguard resources, including oil and gas revenues. One of the statutory mechanisms that has been used to implement article 27 is through access to court by way of judicial review. For example, in the case of *Alphonse Lusako and 3 Others vs. The Attorney General and 3 Others*⁴⁵ the petitioners lodged a case in court challenging validity of the Bilateral Agreement between the Emirates of Dubai and the United Republic of Tanzania. The enabling provision invoked by the petitioners to establish a locus standi to sue was article 27 of the Constitution of the United Republic of Tanzania.

On the other hand, the Constitution entrenches provisions on management and control of revenues in the United Republic of Tanzania. Article 135(1) of the Constitution provides that all revenue derived from various sources for the use of the Government of the United Republic, shall be paid into one special fund to be known as the Consolidated Fund of the Government of the United Republic.⁴⁶ Money paid into the Consolidated Fund can be withdrawn to serve designated purpose of the Fund (including securing public debts) subject to prescribed procedures and approval by the Controller and Auditor General.⁴⁷ Such procedures include approval of the budgetary estimates for specific financial year by the National Assembly under the Appropriation Act.⁴⁸ Impliedly, it means that as a fiscal policy there is no expenditure that can be incurred by the government unless such expenditure is allowed under the law, subject to approval by the national assembly or the President,⁴⁹ as the case may be.

However, article 135(2) of the Constitution provides that certain funds may be paid into separate funds if there is a law enacted to that effect. That is to say, all the funds derived from natural resources would be paid directly to the Consolidated Fund. except revenue from oil and gas sector which is to be paid into Oil and Gas Fund established under the Oil and Gas Revenue Management Act. This implies that management of oil and gas revenues

⁴⁵ Miscellaneous Civil Cause No.5 of 2023, High Court of Tanzania at Mbeya (Unreported)

⁴⁶ The Constitution of the United Republic of Tanzania of 1977.

⁴⁷ Ibid., article 136(1) and (3) read together with article 141.

⁴⁸ Ibid., article 137(1), (2) and (3).

⁴⁹ Ibid., article 139(1) and (2).

is not subjected to the general rules of the Consolidated Fund but the specific fiscal rules and guidelines adopted under the Oil and Gas Revenue Management. Nevertheless, expenditure of the specific fund must be approved by the National Assembly in accordance with the Appropriation Act. Thus, oil and gas revenues paid into the Oil and Gas Fund are not part of the Consolidated Fund, until the same has been withdrawn and paid into the Consolidated Fund.

5.2 The Public Finance Act (Cap 348)

This Act was enacted in order to implement constitutional provisions related to Management of Revenues including establishment and operationalization of the Consolidated Fund. It inter alia provides for the management and control of public funds in Tanzania. The Act guides the proper use of public resources and revenues in a transparent and accountable manner. Section 12(1) of the Public Finance Acts provides as follows:

‘...all revenues or other moneys raised or received for the purposes of the Government not being revenues or other moneys that are payable by or under any law into some other fund established for any specific purpose or that may, by or under any law, be retained by the authority that received them for the purpose of defraying the expenses of that authority, shall be paid into and from a Consolidated Fund.’ (emphasis mine)

The above provision implies two things. First, that all revenues received by the government bodies or public authorities must as a general rule be paid into the Consolidated Fund. Second, it provides for exception in terms of revenue that need not be paid into the Consolidated Fund but be paid into the separate fund established for specific purpose. This simply means that all the moneys that is paid into the Oil and Gas Fund do not form part of the Consolidated Fund. This is because the former is established by a distinct piece of legislation, the Oil and Gas Revenue Management, which sets in place its own regulatory framework. Hence, it is expected that the Oil and Gas Fund ought to be managed in accordance with its objectives, fiscal rules and control mechanisms. However, once revenues have been withdrawn from Oil and Gas Fund (either the Revenue Holding Account or Revenue Saving Account) and paid into the Consolidated Fund as prescribed under the Oil and Gas Revenue Management Act 2015, then such funds must be administered in accordance with rules and principles of Consolidated Fund.

5.3 The Annual Appropriation Act of 2025

This Act is ordinarily passed annually outlining the government's financial priorities and appropriating funds for the particular fiscal year.⁵⁰ Generally, the Annual Appropriation Act provides for funding allocations and specifies how funds from the Consolidated Fund will be allocated across various governmental departments and projects for the fiscal year, aligning with national priorities.⁵¹ Thus, the Act serves as a basis for monitoring government spending, ensuring that allocations from government revenues, including oil and gas are utilized effectively and in accordance with set national development agenda.

However, the Annual Appropriation Act usually vests discretionary powers to the Minister of Finance to reallocate funds in the course of implementing the national budget. For example, s.6 of the Annual Appropriation Act of 2025 gives power to the Minister of Finance to reallocate money from the fund if necessary and for public interest, except on votes for pensions, gratuities or other retirement benefits. Such provision in the law caters for unforeseeable expenditure and provides for contingency expenditures. However, discretionary powers of administrative officers must be exercised judiciously and limited by law.

5.4 The Oil and Gas Revenues Management Act⁵² and Oil and Gas Revenue Management Regulations 2017⁵³

This Act was enacted in the year 2015 in order to regulate and manage revenues generated from oil and gas activities. However, it was not until the year 2017 when the Oil and Gas Revenue Management Regulations were adopted in order to operationalize the Oil and Gas Fund. The Act establishes the Oil and Gas Fund for ensuring fiscal and macroeconomic stability, financing of investment in oil and gas sector, promoting social and economic development and safeguarding interests of the present and future generation.⁵⁴ The Fund has two types of accounts: Revenue Holding Account and Revenue Saving Account.⁵⁵ Further, it designates specific sources of the Fund to include royalties, government profit share, dividends on

⁵⁰ See the Constitution of the United Republic of Tanzania, article 137(1) and (2).

⁵¹ This may include the Five-Year Development Plan or any Development Plan approved by the Government of the United Republic of Tanzania.

⁵² Cap 328 R.E 2019

⁵³ GN No.497 of 2017.

⁵⁴ Cap 328 R.E 2019, s.8

⁵⁵ Ibid., s.10(3) and (4).

government participation in oil and gas operations, corporate income tax on oil and gas operations and return on investment of the Fund.⁵⁶

Similarly, the Act vests the power to Tanzania Revenue Authority (TRA), the National Oil Company (known as Tanzania Petroleum Development Corporation -TPDC) or any other designated State office, to collect all revenues from oil and gas operations, except for surface rentals or annual block fees, signature bonuses and training fees which must be retained by TPDC.⁵⁷ As a principle, revenues of the Oil and Gas Fund must be used to further the objectives of the Fund; hence cannot be used to provide credit to the government and its departments, or be used as guarantee or collateral or liabilities of any other entity or be used for rent seeking.⁵⁸ Any kind of misappropriation of proceeds of the Fund amounts to economic crime punishable by payment of the money misappropriated or imprisonment for a period of thirty (30) years or to both.⁵⁹

On the other hand, the Act sets in place management framework of the Oil and Gas Fund, which comprises of the Minister of Finance who is responsible for formulating and supervising all policy matters of the Fund, broad investment strategies and operation guidelines of the Fund and participation in negotiation of Petroleum Sharing Agreements (PSA).⁶⁰ Basically, the Minister is the chief decision maker on management and performance of the Fund, subject to advice of the Board.⁶¹ In so doing, the Minister manages the Fund in collaboration with other state bodies, namely: Permanent Secretary at the Ministry of Finance (Paymaster General)⁶² who is an accounting officer of the Fund and the Portfolio Investment Advisory Board composed of five (5) persons knowledgeable in field of financial investment, portfolio management or investment law.⁶³ The Board comprises of the Chairperson and Vice Chairperson.⁶⁴

⁵⁶ Ibid., s.9 read together with regulation 6(3) of the Oil and Gas Revenue Management Regulations, GN No.497 of 2017.

⁵⁷ Ibid., s.6(1), (2), (3) and (4) read together with regulations 5 and 6(1) and 6(2) of the Oil and Gas Revenue Management Regulations, GN No.497 of 2017.

⁵⁸ Ibid., s.11(a), (b) and (c) read together with s.16(2)(a), (b) and (c).

⁵⁹ Ibid., s.21(1), (2), (3) and (4)

⁶⁰ Cap 328 R.E 2019, s.4 read together with regulation 4 of the Oil and Gas Revenue Management Regulations, GN No.497 of 2017.

⁶¹ GN No.497 of 2017, regulation 12(1), (2) and (3).

⁶² This office is established under s.6 of Public Finance Act, R.E 2019.

⁶³ Cap 328 R.E 2019, ss.5, 10(1) and 12(1), (2) and (3).

⁶⁴ Ibid., s.12(4) read together with the Schedule to the Act.

Like the Minister, Members of the Board and Paymaster General are appointed by the President of the United Republic of Tanzania. Generally, the Board is mandated to advise the Minister on portfolio investment strategies and report to the Minister on governance and performance of the Fund.⁶⁵ The decision-making process for the Fund must pass through three processes. First, the Board makes its determination and informs the Minister accordingly. Secondly, the Minister is required within seven (7) days to accept or reject the advice. In case of rejection of the advice, the Minister must inform the Board in writing stating reasons for rejection and require the Board to reconsider its decision.⁶⁶ Then, the Board is obliged to reconsider its decision in which case it may maintain or vary its position and forward the same to the Minister, who may accept or reject the same.⁶⁷ Where the Minister rejects the advice of the Board, the matter shall be referred to the President for determination.⁶⁸ Moreover, in case of absence of advice from the Board for any reasons, including emergency factors, the Minister is given power to make decision subject to consultation with the Governor and the Chairperson of the Board.⁶⁹

On the other hand, the Act establishes the Secretariat of the Board duly constituted by the Bank of Tanzania (BoT) which oversees the daily operations of the Fund, including carrying out investment strategies, setting and implementing benchmarks, standards and risk limits and reporting performance of the Fund.⁷⁰ The Governor of the Bank of Tanzania is the Secretary to the Board, who then appoints other members of the Bank to constitute Secretariat of the Board.⁷¹ However, the Governor or his representative does not have any voting power during Board's resolutions.⁷²

To ensure checks and balances, the Act mandates the Controller and Auditor General (CAG) to conduct quarterly audit of reports concerning with financial and performance matters of the Fund which are submitted by the Board and the Governor to the Minister.⁷³ Basically, auditing of the Fund must be done within 90 days after the end of financial year.⁷⁴ Then, the Minister of

⁶⁵ Ibid., s.13.

⁶⁶ GN No.497 of 2017, regulation 13(1), (2) and (3).

⁶⁷ Ibid., regulation 13(4).

⁶⁸ Ibid., regulation 13(5).

⁶⁹ Ibid., regulation 15 (1), (2) and (3).

⁷⁰ Cap 328 R.E 2019., ss10(2) and 14.

⁷¹ GN No.497 of 2017, regulation 14(1) and (2).

⁷² Ibid., regulation 14(3).

⁷³ Cap 328 R.E 2019, s.15(1), (2) and (3) read together with regulation 16 of the Oil and Gas Revenue Management Regulations, GN No.497 of 2017.

⁷⁴ GN No.497 of 2017, regulation 24(1) and (2).

Finance is required to submit the reports before the National Assembly for deliberations and scrutiny.⁷⁵

On the other hand, the Act entrenches fiscal rules and principles regulating expenditure and saving of the Oil and Gas Fund, which as a matter of principle cannot be changed or altered unless five years have lapsed and a resolution is passed by not less than two thirds of the total number of Members of Parliament.⁷⁶ The law permits withdrawal of an amount equal to 3% or less of GDP from the Revenue Holding Account or Revenue Saving Account respectively to the Consolidated Fund for budgetary use whereby 60% of the amount be used to finance strategic development expenditure.⁷⁷ This cap on fiscal deficits ensures that excessive government borrowing is avoided and long-term economic sustainability is promoted.

Finally, the Oil and Gas Revenue Management Act provide for enforcement and compliance mechanisms. The petroleum sector is one of the areas where corruption and mismanagement of funds is more apparent in the world. Thus, the Act provide offences and penalties related to revenue management. Such offences include: misappropriation of petroleum funds, defraud or attempts to use or defraud the Government in relation to proceeds of the Fund; use or attempt to use information on proceeds of Funds for personal benefit, and aiding in the commission of the above offences.⁷⁸ Penalty for the offences under s.21(1) and (2) upon conviction is a fine not less than the amount defrauded or imprisonment term of not less than 30 years or to both, and order for forfeiture of asset defrauded or attempted to defraud or freezing respective bank accounts.

6.0 LEGAL GAPS IN THE LAWS REGULATING GOVERNANCE OF OIL AND GAS FUND IN TANZANIA.

The legal framework providing for management of Oil and Gas Fund explained above falls short of some international legal requirements. First, it does not clearly define how much should be designated into the Fund for the future generation. In comparison with Ghana's Petroleum Revenue Management Act of 2011 which clearly mandates that at least 70% of oil revenues be allocated to the national budget, while 30% must be saved in a Heritage and

⁷⁵ Oil and Gas Revenue Management Act, s.20(1), (2), (3), (4) and (5) read together with regulation 24(3) of Oil and Gas Revenue Management Regulations, GN No.497 of 2017.

⁷⁶ Oil and Gas Revenue Management Act, s.16(4) and (5).

⁷⁷ Oil and Gas Revenue Management Act, s.17(1) read together with regulations 18 and 19 of GN No.497 of 2017.

⁷⁸ Oil and Gas Revenue Management Act, s.21(1) and (2)

Stabilization Fund. Secondly, the Act does not set rules for which oil and gas revenues paid into the Consolidated Fund should be accounted for. The law merely mandates that an amount equal to 3% or less of GDP, as case may be, be transferred from Revenue Holding Account into the Consolidated Fund to be used for annual budgetary expenditure including strategic development projects.⁷⁹

Legally speaking, the Minister of Finance under the Annual Appropriations Act,⁸⁰ and the Oil and Gas Revenue Management Act⁸¹ has discretionary powers to make decisions, including withdrawing funds from the Consolidated Fund and allocate them across different government votes. Once oil and gas revenues enter the common pool, they become indistinguishable from other government income, making it impossible to trace whether they are being used for priority development projects, resource-rich communities, or other specific needs. The Tanzania's EITI 2021-2022 Report reveals that once oil and gas revenues enter the Consolidated Fund, they cannot be traced to specific projects.⁸² Conversely, the EITI Requirements (2023 Standard 4.2)⁸³ mandates that countries should disclose how extractive revenues are allocated and spent at a project level. As observed by IMF many resource-rich African countries struggle with off-budget expenditures, whereby extractive revenues bypass parliamentary scrutiny.⁸⁴ Such situation has been reported to undermine public trust and hampers efforts to ensure that natural resource wealth directly benefits Tanzanians.⁸⁵

Thirdly, the Minister of Finance, being a political figure, appears to have unfettered powers over general performance and management of the Fund. While the Portfolio Investment Advisory Board has duty to advise the Minister, the latter has power to accept or reject the same on personal assessment and reasons. Lack of binding nature of Board's resolutions or any other accounting committee over the Minister is likely to affect smooth oil and gas revenue management. This gap needs to be resolved to meet the internationally accepted oversight standards. A good example is Ghana whereby s.51 of the Petroleum Revenue Management Act,

⁷⁹ GN No.497 of 2017, regulations 19(5).

⁸⁰ Act No. 6 of 2023.

⁸¹ Cap 328 R.E 2019 and GN No.497 of 2017.

⁸² Tanzania Extractive Industries Transparency Initiative (TEITI)-14th Report for the Fiscal Year 2021/2022, pp.79-80.

⁸³ EITI Standards of 2023.

⁸⁴ IMF Fiscal Transparency Report, 2019 (available at <https://www.imf.org/en/Publications/Fiscal-Affairs-Departmental-Papers/Issues/2016/12/31/Fiscal-Transparency-Handbook-41141>)

⁸⁵ Tanzania Extractive Industries Transparency Initiative (TEITI), 14TH Report for the fiscal year 2021/2022, p. 79

2011 regulating management and governance of the Petroleum Holding Fund⁸⁶ establishes a committee known as Public Interest and Accountability Committee (PIAC). Its functions include: monitoring and evaluating compliance of the fiscal rules; providing space and platform for the public to debate on whether or not spending and management of the Fund is appropriate; and providing independent assessments on the management and use of petroleum revenues.⁸⁷

Basically, PIAC is composed of various stakeholders in the private sector and religious institutions. Specifically, members of PIAC comprise of one member from the following groups: independent policy research think tanks, Civil Society Organizations, Trade Union Congress, National House of Chiefs, Association of Queen Mothers, Association of Ghana Industries and Chamber of Commerce, Ghana Journalist Association, Ghana Bar Association, Ghana Extractive Industries Transparency Initiative, Christian Groups, Federation of Muslim Council and Ahmadiyya Mission and Ghana Academy of Arts and Science.⁸⁸ A decision of the Public Interest and Accountability Committee if adopted by majority of members⁸⁹ is binding on the Minister.⁹⁰

Notwithstanding, the law in Tanzania does not clearly provide for participation of non-state actors, particularly private sector and women in the composition of the Board, unless if invited by the Board to provide technical expertise.⁹¹ Empirical evidence shows that existence of independent oversight bodies and active participation of citizens in fund management is necessary for successful functioning of NRFs.⁹² It's important to note that private sector contain a pool of experts in various areas of international investments and governance that could be very instrumental in sustainable governance of the Oil and Gas Fund. A good example is Ghana where the Investment Advisory Committee (similar to the Investment Portfolio Advisory Board in Tanzania) comprises of seven (7) members at least one of whom must be a woman with proven competence in designated sectors.⁹³

⁸⁶ This Fund comprises of Ghana Stabilization Fund and Ghana Heritage Fund.

⁸⁷ Petroleum Revenue Management Act, 2011 (Ghana), s.52.

⁸⁸ Petroleum Revenue Management Act, 2011 (Ghana), s.54(1)(a), (b) and(c).

⁸⁹ A quorum for decision making is Nine (9) members.

⁹⁰ Petroleum Revenue Management Act, 2011 (Ghana), s.54(2) and (3).

⁹¹ Oil and Gas Revenue Management Act, s.12(4) read together with rule 4(1) and (2) of the Schedule to the Act.

⁹² Ghose, J., *et al.*, Managing Mineral Wealth Through Natural Resource Funds: A Systematic Review, a Technical Report of January 2018, pp.43-45.

⁹³ Petroleum Revenue Management Act, 2011 (Ghana), s.31(1) and (2).

Fourth, the Oil and Gas Revenue Management Act and its Regulations do not meet the minimum transparency and accountability standards as prescribed under Santiago Principles and IMF Article Fund Governance Framework which require publication of petroleum receipts. While the Oil and Gas Revenue Management Act and Regulations made thereto provide for auditing of financial records of the Fund by the C.A.G, the same do not provide for compulsory publication of the financial records for public scrutiny. It is only the Parliament which has a right to scrutinize audited reports. Unlike Ghana, where the Petroleum Revenue Management Act of 2011 compulsorily require the Minister responsible for petroleum to publish records of petroleum receipts in the Government Gazette, Ministry website and in at least two state owned daily newspapers within thirty (30) calendar days after the end of every quarter.⁹⁴ Similarly, PIAC is mandatorily required to publish a semi-annual report and annual report in at least two state owned daily newspapers and its website and hold public meetings twice each year to deliberate on Fund's matters.⁹⁵ Such provisions do not exist in the Oil and Gas Revenue Management Framework in Tanzania, except for general disclosure requirements under the Tanzania Extractive Industries (Transparency and Accountability) Act of 2015.⁹⁶

Fourth, the Oil and Gas Revenue Management Act and its Regulations do not have specific provisions providing for Ring-Fencing Mechanisms of oil and gas revenues. The Act vests power to the Minister of Finance to withdraw any amount from the Revenue Saving Account or borrow against future revenues in order to finance the government budgets if it appears the Revenue Holding Account does not have sufficient funds.⁹⁷ Furthermore, it allows the Minister to withdraw money from the Oil and Gas Fund in case of any major disaster subject to reporting of the same to the national assembly. Worse enough the same law allows suspension of fiscal rules by the national assembly in order to finance major strategic development project.⁹⁸ These provisions waters down the intended purpose of safeguarding the Oil and Gas Funds for the interests of future generation.

Likewise, under the Public Finance Act,⁹⁹ all government revenues including those from mining, oil, and gas deposited into the Consolidated Fund become public funds to be allocated by the National assembly in accordance with the Annual Appropriation Act. Once deposited

⁹⁴ Petroleum Revenue Management Act 2011 (Ghana), s.8(1), (2) and (3).

⁹⁵ Petroleum Revenue Management Act 2011 (Ghana), s.56.

⁹⁶ Act No.23 of 2015.

⁹⁷ Oil and Gas Revenue Management Act, s.17(1)(a), (b), (c) and (e).

⁹⁸ Oil and Gas Revenue Management Act, s.17(2)

⁹⁹ Section 11 of the Public Finance Act, Cap 348

into the Consolidated Fund there is no any mechanisms by which money from the Oil and Gas Fund could be tracked contrary to the established EITI Standard 4.2 of the Extractive Industries Transparency Initiative of 2003 on revenue traceability. Taking into account the volatility nature of oil and gas revenues, ring fencing provisions become mandatory. A good example can be seen from Ghana whereby the Petroleum Revenue Management Act stipulates revenue sharing for stabilization and heritage funds as 70% by 30% respectively and prohibits extrabudgetary expenditure.¹⁰⁰

Fifth, the laws do not clearly state the objectives of Revenue Holding Account and Revenue Saving Account and how the Oil and Gas Fund will be apportioned to meet the objectives of creating the two accounts. The law only states generally the objectives of the Oil and Gas Fund.¹⁰¹ The law ought to have clearly stated what account saves which purpose and how oil and gas revenue should be distributed for financing development projects and security for future generation. A good example can be deduced from Ghana whereby the Petroleum Holding Fund is distributed into two funds, namely: Ghana Stabilization Fund and Ghana Heritage Fund. Whereas the former fund's role is to cushion the impact or sustain public expenditure capacity during periods of anticipated petroleum revenue shortfalls,¹⁰² the latter Fund's object is to provide an endowment to support development for future generation when petroleum reserves have been depleted and receive excess petroleum revenues.¹⁰³ Each type of Ghana Petroleum Funds is clearly allocated specific percentage of revenue by the Parliament to execute specific objects of the Fund.¹⁰⁴

Additionally, the Petroleum Revenue Management Act establishes Ghana Petroleum Wealth Fund, a consolidated Fund of the Ghana Stabilization Fund and Ghana Heritage Fund.¹⁰⁵ This Fund is established in order to continue financing development projects after depletion of petroleum reserves through dividends from national oil company and earnings on Ghana Petroleum Wealth Fund.¹⁰⁶ Such clarity of specific account objectives and national wealth fund is non-existent in the Oil and Gas Management Act and its Regulations, a gap that needs to be

¹⁰⁰ Petroleum Revenue Management Act 2011 (Ghana), ss.18, 21 and 22.

¹⁰¹ Oil and Gas Revenue Management Act of 2015, s.8(3).

¹⁰² Petroleum Revenue Management Act, 2011 (Ghana), s.9(1) and (2).

¹⁰³ Petroleum Revenue Management Act, 2011 (Ghana), s.10(1) and (2).

¹⁰⁴ Petroleum Revenue Management Act, 2011 (Ghana), ss.9(3) and 10(3) read together with s.11.

¹⁰⁵ Petroleum Revenue Management Act, 2011 (Ghana), s.20(1).

¹⁰⁶ Petroleum Revenue Management Act, 2011 (Ghana), s.20(2).

addressed.

Sixth, the existing legal framework in Tanzania does not clearly set limits for annual budget funding amount from the Oil and Gas Fund and type of development projects that can be financed. It only requires an amount not exceeding 3% of GDP to be transferred to the Consolidated Fund to finance development projects to be determined and approved by the Parliament in accordance with National Development Plan. Looking at the dynamic and political nature of the Parliament, it is prudent for restricting powers of the Parliament on the amount of money and type of development projects so as to exclude political financing projects which are not sustainable. A good experience can be deduced from Ghana whereby the Petroleum Revenue Management Act of 2011 restricts annual budget funding amount from the Petroleum for public investment to a limit of 70% of the Benchmark Revenue.¹⁰⁷

The annual above budget funding amount must be used for maximizing rate of economic development, promote equality of economic opportunity, undertake even and balanced development of the regions.¹⁰⁸ The kind of activities to be financed must be underlined in the long term national development plan or in case of absence of the same, be used for stipulated activities, namely: agriculture, physical infrastructure, water delivery and sanitation, environmental protection, public safety and security, housing delivery, social welfare and protection of disadvantage groups.¹⁰⁹ Unlike Tanzania where the Minister may under special circumstances spend more than the approved budget, the annual budget funding from petroleum revenues in Ghana must be approved by the Parliament and should not exceed the 70% of the Benchmark Revenue. Any extra budgetary activity or statutory earmarking of petroleum revenue in Ghana is prohibited.¹¹⁰ Thus, by adopting similar provisions, the Oil and Gas Fund would be used for financing only those projects with direct impact to the people while safeguarding the interests of the future generation.

Seventh, the existing legal framework in Tanzania do not provide for benchmarks in terms of how and where the Oil and Gas Fund would be invested for securing interests of future generation. Basically, the law only submits investment issues of the Fund to the Directives and Policy Guidelines to be issued by the Minister in consultation with the Board and the Bank of

¹⁰⁷ Petroleum Revenue Management Act, 2011 (Ghana), s.18 read together with s.21(4).

¹⁰⁸ Petroleum Revenue Management Act, 2011 (Ghana), s.21(1) and (2).

¹⁰⁹ Petroleum Revenue Management Act, 2011 (Ghana), s.21(3).

¹¹⁰ Petroleum Revenue Management Act, 2011(Ghana), s.22.

Tanzania. The international standards require that investment guidelines of Natural Resource Funds must be predetermined and publicized. A good experience can be drawn from the Social Security Schemes Investment Guidelines of 2021¹¹¹ issued by the Bank of Tanzania which provide for investment policy; investment categories and limits, including investment in government securities, convertible bonds, collective investment schemes, investment in properties and offshore investments.¹¹² Apparently, there is no specific investment Guideline adopted by the Bank of Tanzania, and if any, then it has not been publicized as required by the international standards.

This Guideline is very important for guaranteeing sustainable investment of the Oil and Gas Fund. Because of huge revenues associated with exploitation of oil and gas and geopolitics surrounding oil and gas sector, it is prudent for statutory guide on where to invest and how much to be invested in every kind of asset. A good example is Norway Ethical Guidelines for the Management of the Government Pension Fund Global (GPFG) of 2004. GPFG is Norway's Sovereign Wealth Fund owned by the Government of Norway but managed by the Ministry of Finance and the Norwegian Central Bank (Norges Bank) which receives revenues from oil and gas sector and invests the same into money markets across different countries. By 2019, the Norwegian Sovereign Wealth Fund was reported to own a stake in over 9,000 Companies across 70 countries, representing over a 1.3 % stake in the world's publicly-listed companies.¹¹³ The Fund is currently valued at \$1.7 trillion with more revenue earned from investments in equities, fixed income, real estate and renewable energy assets.¹¹⁴ Like Ghana Petroleum Holding Fund, the GPFG is subjected to ethical guidelines, whereby the Independent Council of Ethics is established to determine whether investments are consistent with the Investment Guidelines.

7.0 CONCLUSION

Tanzania's legal and institutional framework for managing oil and gas revenues has pertinent provisions which establish the Oil and Gas Fund, fiscal rules and set in place institutional frameworks for management and governance of the Fund. However, critical gaps exist in terms

¹¹¹ These Guidelines were issued under s.26(2) and s.48(a) of the Social Security (Regulatory Authority) Act, Cap 135 R.E 2019.

¹¹² Social Security Schemes Investment Guidelines of 2021, guidelines 5-23.

¹¹³ See the Norges Bank Statement on the growth of the Fund (available at <https://www.nbim.no/en/the-fund/about-the-fund/>)

¹¹⁴ Ibid.

of transparency, accountability, inability of fiscal rules to secure interest of the future generations, lack of ethical investment guidelines; lacks robust ring-fencing provisions and independent oversight. These issues need to be resolved as early as possible before the oil and gas sector reaches the peak taking into account international standards and best experiences from Ghana and Norway, as stipulated hereunder.

8.0 RECOMMENDATIONS

8.1 Policy and legal reforms

The government must amend fiscal rules by adopting the Hartwick Rule which suggests that an income generated from the depletion of a non-renewable resource should be reinvested in a way that preserves wealth for future generations.¹¹⁵ This could be safeguarded by establishing National Sovereign Wealth Fund and **apportioning specific percentage of the Fund to stabilization and intergenerational equity** aspects of the Oil and Gas Fund. For example, fiscal rules should clearly state that **30% of oil and gas revenues be deposited** directly into the Revenue Saving Account for investment purpose in **diversified foreign assets such as stocks and bonds; and the remaining 70%** be paid into Revenue Holding Account for financing government budgets.

Furthermore, the government should adopt and publish Investment Guidelines for the Oil and Gas Fund in order to define where to invest and how much to invest in every investment category. The rules should clearly diversify its investments across sectors and regions in order to mitigate risks. This is because careful asset allocation can help safeguard the economy against downturns in specific sector.¹¹⁶ Furthermore, the government must adopt and implement a more prudent fiscal policy which limits government spending of resource revenues without causing inflation, undermining the economic stability or compromising the heritage aspect of the Fund; but at the same time limit powers of bureaucrats over the Oil and Gas Fund management. Withdrawal below the prescribed national limit or extrabudgetary expenditure should be outlawed.

¹¹⁵ Hamilton, H. et al., Capital Accumulation and Resource Depletion: A Hartwick Rule Counterfactual, World Bank Policy Research Working Paper 3480, January 2005.

¹¹⁶ Fouche (2022), Rocky ride ahead for Norway's \$ 1.2 trillion wealth fund, <https://www.reuters.com/world/europe/norway-sovereign-wealth-fund-ceo-warns-rocky-ride-ahead>. (Accessed on 24 November 2024).

Similarly, the Oil and Gas Revenue Management and its Regulations should strengthen systems of checks and balance for proper performance and management of the Oil and Gas Fund. Specifically, the law should vest overriding performance and management powers of the Oil and Gas Fund to the Investment Portfolio Advisory Board other than the Minister of Finance. The Minister should be bound by the advice and decisions of the Board. Furthermore, **the law should entrench provisions on ring-fencing of revenues for national and local economic development projects and programs. Likewise, the law should provide for compulsory public disclosure of financial position of the Oil and Gas Fund on quarterly, semi and annual basis in the Government Gazette, Ministry website and local daily newspapers.**

8.2 Strengthening the Investment Portfolio Advisory Board

The mandates of the Investment Advisory Board need to be clearly redefined in order to monitor discharge of functions by the Minister and the Bank of Tanzania. The organizational structure should be such that the Board becomes the superior organ over the Minister and managers of the Oil and Gas Fund. Similarly, the composition of the Board should be redefined to include representation from non-state actors, such as women and the Tanzania Private Sector Foundation.

8.3 Establishment of the Natural Resource Oversight Committee

The government should establish an oversight committee for the Oil and Gas Fund. This Committee should be vested with powers and functions similar to **Public Interest and Accountability Committee (PIAC)** of Ghana, including: monitoring and evaluating compliance of the fiscal rules by the Minister and the Board; conducting public hearing and debates on government spending and management of the Oil and Gas Fund and providing independent assessments on the management and use of petroleum revenues. This oversight Committee should comprise of stakeholders selected by respective stakeholders from the private sectors, including financial and legal experts, professional associations, workers unions, religious institutions and civil society organizations. Members of the Committee should be selected by respective groups, recommended to the President for appointment provided one is a Tanzanian, with sound mind and with proven integrity.

Similarly, the law establishing the oversight committee should vest power to the committee to adopt their own rules to govern their proceedings, including aspects of quorum, selection of

chairperson, rules on conflict of interest and other related matters. The Committee should only be accountable to the President and the National Assembly. Additionally, the government should adopt **Ethical Investment Principles and Code of Ethics in order to ensure compliance by respective statutory organs and stakeholders.**

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