

“Be Careful and Watch it”: Examining the Battle between Executive, Parliament, and Media in Tanzania’s Extractive Industry Governance

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ABSTRACT

Tanzania boasts a wealth of extractive resources, featuring large mineral deposits and notable natural gas reserves estimated at 57 trillion cubic feet. Effective governance structures, especially those emphasising transparency, are crucial for ensuring these resources provide advantages for both current and future generations. As the Fourth Estate, the news media play a pivotal role in overseeing the extractive industry governance. Nevertheless, it faces considerable political and legal obstacles that hinder its capacity to carry out this vital responsibility. This article explores the interactions between the Executive, Parliament, and the news media in Tanzania’s extractive sector, focusing on how the current political and legal frameworks limit news media reporting on extractive industry (EI) governance. Specifically, it examines how the actions and statements of the leaders in the executive branch and Parliament-approved legislative measures under the executive’s purview hinder journalists’ freedom and the news media’s ability to engage with issues surrounding the governance of the EI critically. This article posits that the efficacy of news media in performing its oversight function is contingent upon a political and legal landscape that fosters an environment conducive to critical reporting. The study gathered insights to illuminate these dynamics through document reviews and Key Informant Interviews (KII). The article highlights how the political and legal environment negatively impacts press freedom, especially regarding coverage of EI. Newspaper closures, threats from executives, and restrictive laws have led to self-censorship among journalists and their sources. This situation undermines news media and journalists’ ability to engage in extractive journalism effectively. This article enriches the dialogue surrounding news media freedom in Tanzania, highlighting the significant consequences of political and legal environments on the governance of the extractive industry.

Keywords: Extractive Industry, Executive, Parliament, News Media, Tanzania

INTRODUCTION

The National Natural Gas Policy of Tanzania, established in 2013, acknowledges the news media as a key institution within the sector responsible for delivering accurate and balanced information. The policy aims to enhance public awareness, transparency, and accountability regarding the natural gas industry in the country by ensuring the dissemination of reliable information (National Natural Gas Policy of Tanzania, 2013). For the news media to fulfil the policy-stated role also applicable to other extractive resources, they need non-restrictive political and legal environments for them to de-oxygenate news media and journalists from living up to their core responsibility. To discuss news media’s role in extractive governance, the article addresses a topic often overlooked in scholarship: the intersection between the executive, parliament, and news media in extractive industry governance.

BACKGROUND

Extractive resources and the need for governance

Extractive resources are scarce and non-renewable. The dual nature of these resources has made governance a critical issue for policymakers and the international community. Moreover, anticipated population growth, resource depletion, governmental misuse of accrued revenues, and increasing conflicts in resource-abundant regions compound this concern. Some corporations and governments exploit these limited resources, negatively impacting billions of people and future generations. Collier (2010) highlights two forms of natural resource plunder: resources meant for the benefit of all citizens are exploited by a few, deepening poverty, and current generations exploit resources that need preservation for posterity, undermining intergenerational equity.

Collier (2010) highlights that society, including news media and journalists, plays a pivotal role in the stewardship of natural resource wealth. He states, “We are custodians of the value of natural assets. We are ethically obliged to pass on to future generations the equivalent value of the natural assets that we were bequeathed by the past” (Collier, 2010:11). The idea of being “custodians of the value of the natural assets” and ensuring the transfer of their equivalent value to future generations extends beyond mere ethical obligation; it also necessitates the establishment of governance standards.

As Cameron and Stanley (2017) aptly put it, the benefits of extractive resources can hardly be gained without good governance. The news media contributes to fostering the governance of the extractive industry, particularly in promoting transparency and accountability across the industry value chain: “award contracts and licenses”, “regulation and monitoring of operations”, “collection of taxes and royalties”, “revenue management and allocation”, and “implementation of sustainable development policies and projects” (Alba, 2009:3).

Overall, the literature on resource governance has underscored the significance of appropriate legal regimes, strong institutions for accountability, and stakeholder involvement as critical pillars in the governance of extractive industries (Cameron & Stanley, 2017; Desai & Jarvis, 2012; NRGI, 2017; Poncian, 2020). All these aspects must be visible in the transparency of extractive industries, and they can only flourish when the political and legal environment allows them.

EITI as a governance initiative

Extractive resources belong to both current citizens and future generations; their extraction should serve to benefit these stakeholders while fostering economic growth and social development. Harnessing and managing these resources properly is essential to unlock this potential, ensuring transparency for key stakeholders, including International Oil Companies (IOCs) and governments. Formed in 2003 in London, UK, the EITI strives to realise this dream of openness. This global coalition of industry stakeholders works to enhance transparency and accountability in extractive revenue. It is based on the belief that transparent management of natural resources and accountability in extractive revenues can foster a country’s economic growth (Faruque, 2006).

Though valid theoretically and empirically, this underlying assumption remains questionable. After all, empirical studies indicate that the presumed benefits and efficacy of transparency initiatives are uncertain (Zalik, 2020; Ejiogu et al., 2019; Rustad et al., 2017; Khadiagala, 2015; Sovacool & Andrews, 2015; Corrigan, 2014). Indeed, despite the absence of precise metrics linking transparency to accountability, enhanced transparency—through the publication of revenue collection, allocation, production statistics, contracts, and licenses—can significantly augment the advantages of extractive industries. Such openness can mitigate corruption, foster a conducive environment for secure and stable investments, alleviate tensions among industry stakeholders, empower the media to report effectively based on publicly available data and cultivate a well-informed citizenry. Armand et al. (2020) further note that extractive information targeting citizens can boost the citizens’ mobilisation and, thus, reduce violence.

Media and extractive governance

Dupuy et al. (2019) identify four key roles of civil society organisations (CSOs) in the governance of the petroleum sector in Tanzania, which parallel the critical functions of news media in the context of extractive governance, thus making them pertinent to our discussion. These roles are providing information to enhance transparency and awareness among stakeholders, establishing an agenda for extractive governance to prioritise issues and guide discourse, overseeing resource management practices to ensure adherence to regulatory frameworks, and holding resource governance actors accountable, thus serving a vital representation role in advocating for public interests. In this connection, comprehensive reporting on extractive industries is crucial to extractive resource governance (Coryat, 2015; Behrman et al., 2012; Schiffrin, 2009). Organisations focusing on improving extractive governance have long recognised the media's potential role. A prevailing "theory of change" suggests that media coverage can enhance transparency and create demands for accountability in response to questionable governance practices (Le Billon et al., 2021).

Research on journalistic practices and their effect on governance in the extractive industry has demonstrated that news media reporting can play a crucial role in exposing questionable practices, advocating for contract transparency, seeking clarification from authorities and corporations, and encouraging some officials to publicly commit to reforms (Arsenault & Le Billion, 2022). Moreover, Armand et al. (2020), in their article "Does Information Break the Political Resource Curse? Experimental Evidence from Mozambique," underscore how providing targeted information on extractive resources and creating public forums for citizen engagement can enhance community mobilisation and help reduce violence.

Overall, the studies reviewed thus far substantiate three critical points regarding the role of media in the context of extractive governance. First, the news media is recognised as a crucial player in this arena. Second, its significance is mainly tied to its ability to improve transparency and foster accountability through investigative and analytical reporting. Third, the dissemination of information via news media can enhance civic engagement in conversations about extractive resources, which could subsequently reduce resource-related violence.

Acosta (2010), in his examination of a pilot programme focusing on parliamentary oversight of extractive industries in both Tanzania and Ghana, illustrates the pivotal role of the media in fostering extractive transparency and accountability in Tanzania. In his analysis of stakeholder performance, Acosta highlights how news media in Tanzania surpass civil society organisations (CSOs) and Members of Parliament (MPs) in their capacity to influence policy discourse, advocate for contract transparency, and trigger enhanced resource revenue allocation. This assertion underscores the centrality of the news media's role as a conduit for promoting accountability and informed governance in the extractive industry. Although many commentators today might question this logical conclusion, it is essential to note that the assessment leading to it occurred in 2009 when the country's press freedom index was relatively strong—it ranked 62nd according to the 2010 World Press Freedom Index—coupled with the publishing of considerable critical coverage of the extractives industry.

In their study of news media coverage of TEITI reports in Tanzania from 2013 to 2016, Poncian and Kigodi (2018) noted:

Content analysis shows that the question of how much the government earns and how much it loses in revenues from mining and oil and gas companies takes centre stage in the media coverage of transparency [TEITI] reports. Remarkably, there is more excellent media reporting and debates on how [the] government loses revenues or receives less than it should. An analysis of all the newspapers [*The Citizen*, *Daily News*, *Mwananchi*, *Mtanzania*, *Nipashe*, *Habari Leo*, and *Raia Mwema*] ...reveals that there are ten news articles reporting about the government losing out in terms of revenues through tax evasion and poor contract terms. By comparison, there are only four news reports about the government receiving more revenues from mining, oil, and gas companies (Poncian & Kigodi, 2018:113).

Analysing the quote reveals two critical insights. First, news media often emphasise transparency as a vital theme in extractive industries. Second, the analysis examined contractual agreements, tax compliance practices, and revenue management strategies. The authors emphasise that the significance of issues related to contracting and revenue has prompted the news media to consistently prioritise them, thus sustaining an ongoing discourse on resource extraction and its socio-economic impacts (Poncian & Kigodi, 2018:113). They argue that the news media's coverage of TEITI reports has been instrumental in maintaining public engagement with the sector, thereby enhancing its governance framework. This sustained advocacy has consequently pressured the government to undertake necessary regulatory reforms (Jacob & Pedersen, 2018; Lange & Kinyondo, 2016).

From a news media perspective, the EITI is, arguably, a valuable initiative, considering extractive industries' complex and often opaque nature, particularly concerning contracting, revenue collection and management, and beneficial ownership. Information provided in EITI reports—whether global or national—empowers journalists to report with authority and utilise the information to enhance their reporting. Scholars on anti-corruption, such as Gillies (2019), observe that these reports have generated critical information and data, prompting journalistic reporting on extractive contracts and beneficial ownership in Cameroon and Liberia.

Yet, the coverage of extractive transparency in Tanzania faces several hurdles, with Acosta (2010) aptly noting that the country's media is less informed about the extractive industry than the civil society organisations (CSOs) and members of parliament (MPs), partly because the industry is technically complex. Though various initiatives have been introduced to support journalists in deepening their understanding, considerable challenges persist. Scholars such as Poncian and Kigodi (2018) argue that the repressive political environment is a substantial issue for news media reporting on extractive transparency. During the 2013 gas-related riots, local radio stations in Mtwara faced the wrath of the law and the government, targeting presenters and hosts arrested with their broadcast programmes labelled as seditious. This environment has created fear among journalists, media owners, and the public, making discussions about natural gas on local radio stations sensitive.

Press Freedom in Tanzania

The country's press freedom journey has been bumpy since 2009. The Reporters Without Borders Press Freedom Index (<https://rsf.org/en/index>) ranked Tanzania 34th out of 180 countries in 2013, but the country slumped to 143rd in 2023, a sharp decline of 109 positions. Commenting on the state of press freedom from 2016 to 2020, Spurk and Katunzi (2023) note the banning of five newspapers for varying lengths from 90 days to 36 months (*Mseto* for 36 months, *Tanzania Daima* and *Raia Mwema* for 90 days each, and *Mawio* and *Mwanahalisi* for 24 months each), with one newspaper's (*Tanzania Daima*) licence revoked in 2020 during the general elections. Two broadcast stations from the same company (*Clouds FM* and *Clouds TV*) were suspended for seven days each.

This tenuous and volatile environment instilled fear not only in journalists but also in their sources. The Yearbook on Media Quality Research Project reports (Spurk & Katunzi, 2019; Katunzi & Spurk, 2020; Katunzi & Spurk, 2022), which examine the state of journalism reporting in the country, reveal that the environment was so restrictive that news media and journalists avoided critical stories on the government. The 2020 report shows that stories with essential viewpoints of the government were infrequent, with newspapers leading the way at four per cent, while radio and TV reporting accounted for less than one per cent. Consequently, news media and journalists played it safe and opted for secure content, primarily focusing on entertainment, music, football, and soap operas.

MATERIALS AND METHODS

The study employed two primary methods for data collection: conducting Key Informant Interviews (KIIs) with managing editors of major newspapers and radio station managers and reviewing selected documents. The respondents were purposively selected based on their positions, experiences and knowledge in country's

media industry and EI. Interview sessions took between 45 to 60 minutes and the questions were framed along the political and legal environments in which the news media and journalists operate. In addition to the KIIs, we analysed the political and legal environments to understand their chilling effects on the coverage of EI governance. Thematic analysis guided the analysis of qualitative data by identifying and analysing significant statements made by leaders in the executive branch, critical sections of relevant legislations that could impact news media and journalists' coverage of EI, and letters from various authorities that further elucidated the constraints journalists face. This article highlights some key documents and evidential statements to illustrate the pressing challenges the news media contend with in reporting EI.

RESULTS AND DISCUSSION

Political environment and its influence on the coverage of EI

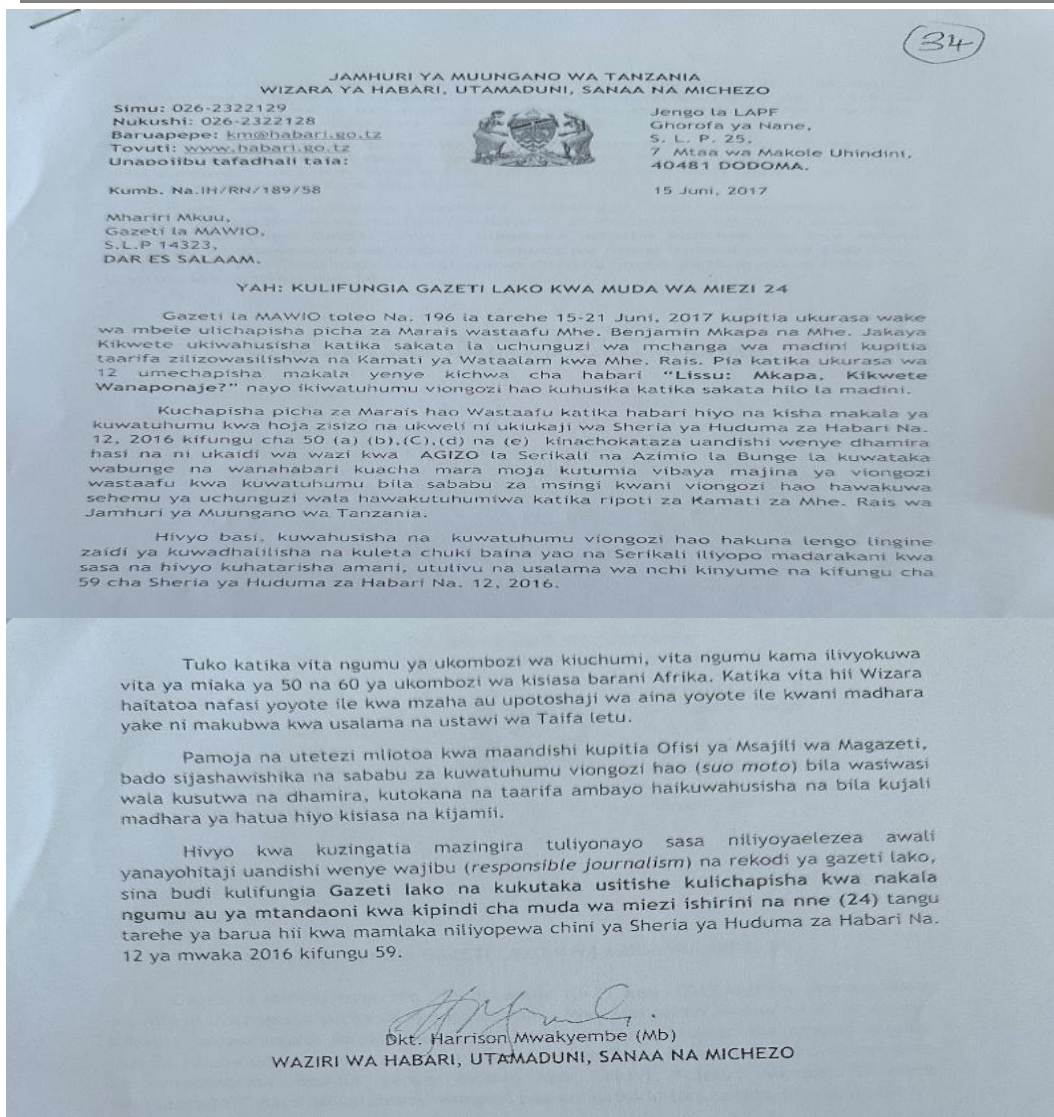
The study's examination of how the country's political environment has positively and negatively influenced the coverage of EI governance found that positive politics towards news media and freedom of expression could create an environment that encourages strong news media and vice versa. Freedom of expression is vital for the news media to function effectively and establish appropriate agendas. This importance stems from the fact that, for news media to gather information, two key layers of freedom are essential: the liberty of sources to express themselves openly (public freedom of expression) and the freedom of the media itself (press freedom) to process and disseminate the gathered information.

“Be careful and watch it”: Press freedom and its implications on EI coverage in Tanzania.

In March 2017, during the swearing-in of his new appointees, the late President John Pombe Magufuli made a sharp statement warning media owners: “*Nawaambia wamiliki wa vyombo vya habari, be careful and watch it. Kama mnafikiri mna freedom ya namna hiyo, not to that extent*” (Mwananchi, 2017). This statement can be translated as *I tell you, media owners, be careful and watch out [don't overstep your boundaries]. If you think you have a lot of freedom, it is not to that extent*. He further directed the then newly-appointed Minister for Information, Dr Harrison Mwakyembe, to act against what he termed ‘unpatriotic journalism,’ saying: “*...sasa Mwakyembe nataka ukafanye kazi. Kama kuna waliokuwepo wanashindwa kuchukuwa hatua, wewe kachukuwe. Serikali ipo. Hatuwezi kuiacha Serikali ikaangamia kwa sababu ya watu wachache. Haitawezekana*” (literally meaning: Mwakyembe [minister], I want you to go and do what you should (punish the media). If there were ministers incapable of making decisions [of punishing media outlets], go and make those decisions. The government exists. We cannot let the government fall because of a few individuals. That will not happen).

This was not the first occasion the President expressed dissatisfaction with the media's portrayal of his administration. Earlier in January 2017, he warned two unnamed newspapers sternly, ominously suggesting that their future in the industry was precarious. His admonition was laced with accusations of disseminating seditious content, claiming that their reporting threatened the very fabric of national harmony and stability (The Citizen, 2017). In fact, the president referred to the two newspapers, *Mawio* and *Mwanahalisi*, which had distinguished themselves as critical of the government. Consequently, in that year alone (2017), four newspapers faced the government's wrath: *Tanzania Daima* was suspended for 90 days, *Raia Mwema* for 90 days, *Mawio* for two years, and *Mwanahalisi* again for two years in 2017. According to the Media Council of Tanzania (MCT), 2017 was the country's harshest period for press freedom (Media Watch, 2018).

In his letter dated 15 June 2017 (see below) titled “*Kulifungia gazeti lako kwa muda wa miezi 24*” (Banning your newspaper for 24 months), addressed to the Chief Editor of *Mawio* newspaper, Minister Mwakyembe noted that he banned the newspaper due to a publication of a front-page story and an article published on page 12 on the same edition, linking the former presidents, Benjamin Mkapa and Jakaya Kikwete, with the inquiry on the mineral concentrates saga that a committee appointed by President Magufuli was conducting.



Letter 1: Minister of Information letter to *Mawio* newspaper editor

According to the minister, linking the former presidents with the inquiry was false as the former presidents were not part of the inquiry and were not mentioned anywhere in the committee's report. Yet, the minister's letter reads in part:

...linking and accusing those leaders [former presidents with the mineral concentrates saga] was meant to humiliate and incite hatred between the leaders and the government in power, thus jeopardising peace, tranquillity and national security contrary to Section 59 of the Media Services Act No. 12.2016. We are in a brutal war of economic liberation like Africa's political liberations of the 50s and 60s. In this war, the ministry will not allow the publication of misinformation of any nature as it affects the security and prosperity of our country (Mwakyembe, 2017).

Closely examining the front-page story and the article published by the *Mawio* newspaper reveals a contrasting reality. The published articles did not state that the two presidents were mentioned in the presidential committee's report. However, they reported that the gigantic loss from the mining sector that the committee had reported and the problems that have bedevilled the country's mining industry occurred during their tenures.

To fully grasp the timing of the *Mawio* ban and the minister's letter, one needs to note that a few days before the banning of the tabloid, then-President Magufuli had cautioned: "I have read the reports [presidential committees' reports], and I have not seen in the reports where [president] Mkapa or Kikwete were mentioned. The media should stop tarnishing their reputation. They have done great work in serving this country. We should let them rest" (*The Citizen*, 2017). The minister echoed a similar statement: "It has come to our

attention that a section of the media has been blaming our former presidents without considering its political and social implications” (*The Citizen*, 2017).

The banning of *Mawio* was intended to convey key messages to the news media fraternity: media houses should behave, or else they would face the consequences, and former presidents were off-limits for news media coverage regarding the mineral concentrate saga or mining inquiry. These were red lines clearly stated by the Executive. This position was further cemented in a public statement (see below) issued on June 15, 2017, by Dr. Hassan Abbasi, the then Director of Information Services and Chief Government Spokesperson. The director is also responsible for licensing newspapers. As such, it was an additional voice from the country’s newspapers’ regulator. Therefore, the stage for battle was completely prepared.

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TAARIFA KWA UMMIA

KULIFUNGIA GAZETI LA MAWIO KWA MIEZI ISHIRINI NA NNE (24)

Dar es Salaam, Juni 15, 2017:

Serikali kupitia Waziri wa Habari, Utamaduni, Sanaa na Michezo, Dkt. Harrison Mwakyembe (MB) imelifungia gazeti la MAWIO kutochapishwa kwa miezi ishirini na nne (24) kuanzia leo. Mhe. Waziri amechukua hatua hiyo kwa mamlaka aliyonayo kwa mujibu wa kifungu cha 59 cha Sheria ya Huduma za Habari na. 12, 2016.

Hatua hiyo inatokana na gazeti hilo katika toleo na. 196 la 15-21 Juni, 2017 kuchapisha katika ukurasa wa mbele picha za Marais wastaafu Mhe. Benjamin Mkapa na Mhe. Jakaya Kikwete kuwahusisha na sakata la mchanga wa madini.

Aidha, katika ukurasa wa 12 gazeti hilo tena limechapisha makala iliyoandikwa “Lissu: Mkapa, Kikwete Wanaponaje?” kuwatumu viongozi hao kuhusika katika sakata la madini wakati ukweli ni kwamba hawakuwa sehemu ya uchunguzi wa Kamati za Rais na wala matokeo ya Kamati hizo hayakuwatuhumu kwa kosa lolote.

Taarifa ya Mhe. Waziri Mwakyembe kwa Mhariri Mkuu wa gazeti hilo imesisitiza kuwa, licha ya utetezi wao, habari hizo si tu zimekiuka agizo la Serikali, lakini pia zimekiuka vifungu vya 50 (a),(b),(c),(d) na (e) vinavyokataza uandishi wenye dhamira hasi.

“Sina budi kulifungia Gazeti lako na kukutaka usitishwe kulichapisha kwa nakala ngumu au ya mtandaoni kwa kipindi cha muda wa miezi ishirini na nne (24) tangu tarehe ya barua hii kwa mamlaka niliyopewa chini ya Sheria ya Huduma za Habari Na. 12 ya mwaka 2016 kifungu 59,” imesema taarifa ya Dkt. Mwakyembe kwenda kwa Mhariri wa MAWIO.

Natumia fursa hii kuvipongeza vyombo vingi vya habari ambavyo kuanzia leo vimefuata weledi wa taaluma na misingi ya sheria na kutii agizo la Serikali kwa kutowaingiza katika sakata hili pasipo na hoja za msingi viongozi wetu wastaafu.

Imetolewa na:



Dkt. Hassan Abbasi

Mkurugenzi, Idara ya Habari-MAELEZO na Msemaji Mkuu wa Serikali.

Letter 2: Director of TIS letter to *Mawio* newspaper

The last paragraph of the letter is translated here as follows: “I seize this opportunity to praise many news media that henceforth have adhered to professionalism, follow journalism principles, laws governing media and government directive of not dragging former presidents into the mineral concentrates saga without proper justification” (Abbasi, 2027). Though it is agreeable that former presidents and leaders should not be linked to such issues and any other issues without proof, it is public knowledge that the mining problems that faced this country happened during the reign of the two presidents (1995-2015). Public knowledge also dictates that the dubious contracts the government sealed with extractive companies, which have cost the country massive sums since the 1990s, happened during the tenure of the two presidents. So, *Mawio*’s story was purely interpretive and not necessarily malicious.

It attempted to link what the committees discovered to what happened in the mining sector between the 1990s and 2000s. The government viewed such coverage as tarnishing the image of former presidents. It seems the government did not foresee this coming—that, naturally, after the reports were released, people would quickly start pointing fingers at the former presidents. And that happened not just in the news media but also on social media.

The news media and the public were not pointing fingers for the sake of it. The mining firms were being accused of tax evasion. In 2003, the government contracted Alex Stewart Assayers (ASA) to audit significant mining companies and verify the accuracy of their production and financial records. After submitting the audit report, the government shelved it until 2006, when it was leaked to the news media and covered by the *Sunday Citizen*. According to the report, the four mining companies—Bulyanhulu, Geita, North Mara, and Golden Pride—overstated their losses by USD 502 million between 1999 and 2003 and consequently reduced their tax liabilities to the government by USD 132.5 million (Curtis & Lissu, 2008).

There was another reason the news media was to be contained, and the information minister *perfectly* put it in his letter referenced above (Letter 1). The country was engaged in an economic war against imperialists in extractive industries, and the news media was expected to support the fight rather than attacking former leaders, who, according to President Magufuli, had served the country well. While we agree with flag journalism and that news media and journalists should be patriotic when reporting on their country, patriotism does not mean refraining from critical reporting of government leaders.

For news media, being patriotic means protecting one's country and supporting the government's leaders when pursuing a course of action that serves the country's interests. When Magufuli's government fought for the country's interests in the mining sector, demanding that the resources benefit the country more than foreign investors, the news media rallied behind him, and the issue became a significant topic of discussion in the country (Ngowi, 2017), which was perceived as patriotic. Similarly, when the same news media questioned the actions of former leaders in the mining sector, that too should have been viewed as patriotic.

Those who dared to raise their pen faced the government's wrath. Press freedom was at its lowest ebb, and journalists had to keep reminding themselves of the political environment in which they worked. Fear was so deeply entrenched in newsrooms that journalists began to censor themselves (Katunzi & Spurk, 2020). One respondent noted: "It was difficult to critique the government's position and rhetoric on resource nationalism because the [news] media during that time did not have the power to watchdog the government. Boldness was needed, and no one had it. [news] Media had to self-censor themselves" (Managing editor1, personal communication, May 27).

Due to the prevailing political environment at the time, civic space shrank, with opposition politicians, civil society organisations, and academics avoiding comments that might be perceived as critical of the establishment. News media and journalists struggled to obtain critical voices from experts, with many opting to remain silent, even on matters within their areas of knowledge and expertise. This situation denied the vital voices of the news media as sources began exercising self-censorship. So, it was not only journalists who went into self-censorship mode but experts too. The title of the Human Rights Watch (2019) report on media and CSOs in the country summarises the situation well: "As long as I am quiet, I am safe." The *battleground* was extended beyond newsrooms.

After the *Mawio* newspaper was shut down, its publisher, Victoria Media Services Ltd., filed a court application, No. 24 of 2017, with the High Court of Tanzania against the Minister of Information, the Registrar of Newspapers, and the Attorney General. They sought to overturn the government's closure order, arguing that the minister violated natural justice and the right to publish freely. In his judgment, Judge Benhaji S. Masoud noted:

Based on the circumstances of the case in which the allegation was made against the applicant, and on the same material date of 15/6/2017, the order of banning the newspaper was issued out; it seems to me that there was a prior motive of banning the said newspaper without a proper hearing. The conclusion of the 1st respondent that the applicant violated the provisions of section 50 (a -e) of the Media Service Act No. 12 of

2016 leaves some questions unanswered. In view of the above reasons, I am settled that the 1st and 2nd respondents ought to have conducted a fair hearing of the applicant's case. Unfortunately, they did not. Consequently, the court is satisfied that the ground upon which the court is to test before issuing prerogative orders exists, as clearly stated in the case of *Lausa Alfian Salurn (Supra)*. The order of the 1st respondent is tainted with illegality and is irrational. Basic rules for fair hearing were not observed. In the end, the applicant's application is granted to the extent that an order of certiorari is allowed, and the order of the 1st respondent banning *Mawio* Newspaper for 24 months is quashed and set aside. Instead, the 1st respondent is advised to conduct a fair hearing on the matter in accordance [with] the rules of natural justice if he is still inclined to pursue the matter. The damages claimed by the applicant are denied since there is no evidence on the record to justify the same. The application is granted to that effect and extent for reasons already stated with costs. It is so ordered. (Ngurumo, 2018)

A critical examination of the judgment reveals that the newspaper was targeted for its critical reporting, particularly regarding the coverage of mineral concentrates, rather than for any other reason. The fact that the newspaper was published on June 15, 2017, and subsequently banned on that same day for two years by a High Court advocate serving as a minister suggests an ulterior motive.

Despite the Court's order, the newspaper was not issued a new licence until February 2022, when the Minister for Information, Communication and Information Technology, Nape Nnauye, announced a restoration of publication licences to *Mawio* and the other three newspapers banned in 2017—*Mwanahalisi*, *Tanzania Daima*, and *Mseto*. The decision came a year after the new government under President Samia Suluhu Hassan ordered the minister to lift the ban.

Legal Environment and Its Influence on the EI Coverage

Media Services Act of 2016

The Media Services Act (MSA) of 2016 was a government response to stakeholders' long-standing call for repeal of the Newspaper Act of 1976, which the media fraternity and stakeholders of freedom of expression found to be the most draconian law in Tanzania's media history (Nyalali Commission, 1992). The Act was enacted with the primary goal of professionalising journalism in the country. Section 50 (1) of Part VII of the Act lists offences relating to media reads:

Any person who makes use, by any means, of a media service for publishing (a) information which is internationally or recklessly falsified in a manner which (i) threatens the interests of defence, public order, the **economic interests of the United Republic**, public morality or public health...commits an offence and upon conviction, shall be liable to a fine of not less than five million shillings but not exceeding twenty million shillings or to imprisonment for a period not less than three years but not exceeding five years or both.¹

This legal section instils fear in news media and among journalists. Consequently, those in power can perceive a serious journalism investigation into extractive industries as "threatening the economic interests of the United Republic" even when based on paranoia. The *Mawio* newspaper incident in 2017 (see letter 1 above) is a casualty of such overreaching power. The minister banned the newspaper partly because the authorities perceived it to be going against the government's economic war. The minister's interpretation, in this case, can be traced to Section 50 above—though this was not featured in the letter. The government perceived *Mawio*'s coverage as 'threatening the country's economic interests', as the government was championing an economic war against multinational companies in the extractive industries.

Another offence is stipulated under Section 54 (1), which reads:

Any person who publishes any false statement, rumour or report that is likely to cause fear and alarm to the public or disturb the public peace commits an offence. It shall be liable upon conviction to a fine or not less than ten million shillings but not exceeding twenty million shillings or to imprisonment for a term of not less than four years and not exceeding six years or both.

¹Emphasis ours

Although the law does not directly address EI, this section and specifically the phrase “likely to cause alarm to the public” exposes how an EI report can make the government swing its axe against those so-called may be perceived as causing public alarm. A story disclosing unfavourable contract terms on EI is likely to alarm the public; a story that exposes a contract that goes contrary to the Model Production Sharing Agreement (MPSA) is likely to alarm the public; a story that reveals how mining activities harm public safety is expected to cause alarm to the public; and a story that exposes government leaders’ involvement in EI corruption is also likely to alarm the public.

Nevertheless, Section 54 (2) states that anyone charged with the offence listed under Section 54 (1) can be safe if they can prove that before publication, they verified the accuracy of the published statement, report, or rumour and reasonably believed the information to be accurate. Although this subsection outlines a defence strategy for the accused, it creates three chilling effects. First, it instils fear in news media and journalists. News media and journalists would be unsure that publishing a particular story on EI would not cause public alarm. This uncertainty can lead to self-censorship, compromising the news media’s critical role in covering the extractive industry’s governance. Second, due to the secretive nature of the industry and its culture of silence, it is not always easy for news media and journalists to verify the accuracy of the information they gather. Third, it is highly challenging for journalists to have confidence that their efforts to verify the accuracy of the information they gather will meet the court’s threshold; the journalism threshold may differ. Again, this limits the news media’s role in championing the agenda of EI governance.

The National Security Act of 1970

The National Security Act of 1970 (NSA, 1970) significantly restricts the work of news media and journalists. The law aims to protect national security and government interests by establishing penalties for sharing documents or information deemed confidential or classified by the government. Concerning the penalties for disclosing such information, sub-paragraphs (1) and (2) of Article 5 state:

- (1) Any person who communicates any classified matter to any person other than a person to whom he is authorised to communicate it or to whom it is in the interests of the United Republic his duty to communicate it shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding twenty years.
- (2) In a prosecution for a contravention of subsection (1) it shall be no defence for the accused person to prove that when he communicated the matter he did not know and could not reasonably have known that it was a classified matter.²

Sub-paragraph (1) grants complete discretion to the government and its ministers over what information and documents may be released to the public and “makes it a punishable offence to investigate, obtain, possess, comment on, pass on or publish any document or information which the government considers classified.”³

The Act allows for the classification of information at the discretion of national officials, with many government officials classifying most of their information as confidential (Nshala, 2001). This excessive classification prevents the public and the news media from accessing important information to society, thus contradicting Article 18(d) of the Constitution, which guarantees citizens the right to information on significant issues. Sub-paragraph (2) grants the government overly broad discretion to prosecute individuals for violating the Act, even if the accused did not know or “could not reasonably have known” that the information they shared was classified. This provision also contradicts international rule of law norms, particularly the principle of legal certainty and specific aspects of the country’s Penal Code. In a legal system that upholds legal certainty, what is legal or illegal is clearly defined, allowing individuals to reasonably anticipate the consequences of their actions.

This point is supported, in part, by Tanzania’s Penal Code, which states: “A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not

²Parliament of the United Republic of Tanzania, *The National Security Act*, sect.5(1) & (2).

³*Ibid*

criminally responsible for the act or omission to any greater extent than if the actual state of things had been such as he believed to exist.”⁴ However, the paragraph also indicates that this principle may be restricted in cases where “the operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.” Sub-paragraph (2) allows the NSA to penalise individuals even for unwittingly committed actions constituting a criminal offence due to this provision.

In connection with the influence that NSA 1970 may have on news media and journalists working with the extractive industries, Article 2 of NSA 1970 designates the mining industry as a protected “necessary service” for the country. Moreover, Article 3 outlines the penalties for negatively affecting a “necessary service”: “Any person who, for any purpose prejudicial to the safety or interests of the United Republic [of Tanzania]:

(d) without lawful excuse damages, hinders or interferes with, or does any act which is likely to damage, hinder or interfere with, any *necessary service* of the carrying on thereof, shall be guilty of an offence and liable on conviction to imprisonment for life⁵.

Since the enactment of the Act, the mining industry in Tanzania has been under stringent government control, functioning primarily as a governmental service. This regulatory environment created a framework of sensitively treating information related to the industry as primarily classified. Consequently, the stipulations outlined in the Act regarding disseminating classified information remain applicable and enforceable today.

Specifically, Article 5(2) of the NSA 1970 outlines severe penalties for individuals who disclose any classified information pertaining to the mining sector. This provision states that anyone guilty of releasing such information or who intentionally or unintentionally obstructs or interferes with governmental interests in the mining industry could face a substantial prison sentence of up to twenty years. Under Article 3 of the Act, individuals could face life imprisonment for serious offences related to the leakage of classified information. Therefore, the EI operates under a legal regime of heightened scrutiny and potential legal repercussions for any breach of confidentiality or infringement of governmental interests.

Explaining how this affects the work of news media, a managing editor with a leading national newspaper noted:

I understand the importance of protecting national security, and we [journalists and editors] must be at the forefront to champion the protection of national security. However, some of the sections in the National Security Act make it difficult for the [news] media and journalists to exercise their role meaningfully as they impose severe legal penalties for publishing classified mining information...after all, with the tendency of public officials to label even non-protected information as confidential, it complicates our work. We end up self-censoring ourselves (managing editor², personal communication, May 28).

Other interviewees, including newspaper managing editors and radio station managers, fully support this view. They also opined that the NSA imposes several restrictions on journalists’ work, such as empowering a Director of Public Prosecutions to demand source disclosure from journalists—what the Act refers to as the ‘duty to give information’. The penalty for failure to comply is imprisonment not exceeding five years.

EI legislation and restrictions for news media and journalists

Various EI policies acknowledge the importance of news media, such as the Natural Gas Policy of 2013, the National Petroleum Policy of 2014, and the National Energy Policy of 2015. Despite the acknowledgement, EI legislation imposes specific restrictions on what the Fourth Estate can accomplish in EI governance. This section discusses EI legislation and its effects on the news media’s ability to promote governance in EI and the use of certificates of urgency in the legislative process, which limits news media agenda-setting and input on EI bills.

It is essential to recognise that within the country’s EI, there have been notable improvements in sharing industry-related information with the public through the country’s participation in the EITI. This initiative has

⁴Parliament of the United Republic of Tanzania, *Tanzanian Penal Code: Chapter 16*, para.11.

⁵Parliament of the United Republic of Tanzania, *The National Security Act*, sect.3(d).

enhanced access to EI companies' financial information. Section 16 of the TEITI Act of 2015 specifies the information from EIs that should be made public, including companies' financial and investment information, concessions, licenses, contracts, shareholders' names (including beneficial owners), the implementation of Environmental Management Plans, and implementation reports⁶.

This legislation mandates that the Minister of Energy and Minerals—the sectors now each have their own ministry—must make all contractual and negotiated information related to extractive industries (EI) publicly available. While this transparency framework represents a progressive advance for the country regarding freedom of information and, consequently, access to industry data for news media, significant limitations still exist regarding media access to EI information. One of the most notable shortcomings since the implementation of the TEITI Act a decade ago has been the ongoing inaction, as the responsible minister has not fulfilled the requirement to share this information.

A decade-long period is more than adequate for the government to begin releasing this information to the public, thereby enhancing the access of news media and journalists to crucial industry details. The prolonged failure to disclose this information has not only deprived the public of their right to know. Still, it has also significantly hampered the news media's ability to fulfil its essential role in overseeing extractive governance. In an industry often shrouded in secrecy, releasing such information would have empowered journalists to access valuable insights and leverage this data to undertake analytical and investigative reporting.

In addition to this inaction, EI legislation restricts access to information. A notable example is the Petroleum Act of 2015 (PA 2015), which was enacted concurrently with the TEITI Act in 2015. Section 125 of PA 2015 establishes the National Petroleum and Gas Information System (NPGIS) (<https://npgis.ewura.go.tz/>), overseen by the Energy and Water Utilities Regulatory Authority (EWURA). Article 125 (3) clearly outlines the purpose of the NPGIS: "NPGIS shall consist of an integrated and centralised information system containing appropriate data processing technology and encompassing all midstream and downstream gas activities and related installations, key market activities, relevant national statistics, and international reference data."⁷

Although NPGIS is meant to provide the public with gas industry information, Article 125 (5) restricts the disclosure of some information: "Except for information that protects the security of state and proprietary market data or any other confidential information as EWURA may determine, all information contained in the NPGIS shall be available for inspection by the public."⁸ Upon examining this article, three key issues related to restricted access to information on the gas industry for news media and journalists become apparent. To begin with, the Act fails to define or clarify the term "information that protects the security of the state." Second, it does not define or explain what constitutes "any other confidential information." Third, the Act grants the energy regulator broad authority to determine what should be categorised as "any other confidential information." This ambiguity allows for diverse interpretations and potential misuse, as the only official definition of national security is outlined in the NSA 1970.

This definition is broad enough to permit an expansive understanding of national security. Consequently, it could be employed to limit access to specific information, given its broad scope. Furthermore, the phrase "other confidential information" is vague and may empower EWURA to classify a document as confidential, thereby restricting its dissemination. It is concerning that the Act grants discretionary authority to a single entity, EWURA, to determine what constitutes "any other confidential information." Considering the limitations imposed by the Act, the unclear language, and the extensive powers conferred upon the regulator, it is clear that the news media and journalists' access to information regarding the gas industry is ultimately subject to the government's discretion.

Notwithstanding the restrictions this provision imposes, Section 241 (1) (iv) makes it an offence to publish or disclose any information in contravention of the Act, and whoever does that, the Act states, "commits an offence, and on conviction, shall be liable to a fine not less than ten million shillings [USD 4,000] or to

⁶Parliament of the United Republic of Tanzania, *The Tanzania Extractive Industries (Transparency and Accountability) Act*, sect.16.

⁷Parliament of the United Republic of Tanzania, *The Petroleum Act*, sect. 125 (3).

⁸Parliament of the United Republic of Tanzania, *The Petroleum Act*, sect. 125 (5).

imprisonment for a term not less than two years or both.”⁹ Although Section 242 (1) provides for compounding of offences by EWURA, upon [the] minister’s direction, in that a person accused can pay an amount “not exceeding one half of the amount of the fine to which such person would have been liable if he had been convicted of such offence,”¹⁰ Still, this provision limits the appetite of news media and journalists to forage for EI information.

Certificate of urgency

For news media and journalists to exercise their role meaningfully, they must be *protected*, particularly when setting agendas to promote governance in the EIs. One way of limiting news media and journalists’ capabilities to fulfil their role is the President’s use of the certificate of urgency. The certificate of urgency expedites a bill in parliament, allowing it to be processed outside the standard process. To better understand how this practice affects the legislative process, it is essential to grasp the standard procedure for passing legislation in the country.

Introducing a bill typically begins with the proposal being presented to the Cabinet. Then, the Cabinet submits the bill to the Chief Parliamentary Draftsman, who drafts the legislation in collaboration with the relevant ministry. Once completed, the bill is published in the Government Gazette within 21 days. After its gazetting, the Parliamentary Clerk schedules it for a first reading in Parliament. During this initial reading, the party that introduced the bill presented it to the Parliament, although no discussion occurred. The chairperson of the standing committee then directs a pertinent Parliamentary committee to review the bill, inviting stakeholders to comment on the proposed legislation (URT, 2023).

During stage two, the bill is read in Parliament for the second time after the committee’s review. Following a motion by a minister or MP, the committee chair presents findings. The opposition leader outlines their party’s position, and amendments may be made based on feedback. In stage three, Parliament meets as a Committee to discuss amendments or adoption. Finally, in stage four, once the bill is adopted, the parliamentary speaker sends it to the president for assent (URT, 2023). The president can expedite the legislative process in urgent cases by issuing a certificate of urgency, bypassing standard requirements. This reduces the analysis and review period for stakeholders from 21 days to as little as 2 to 8 days.

A pattern is being established to use certificates of urgency on significant legislation in EIs. In 2015 and 2017, certificates of urgency were applied to the Tanzania Extractive Industries (Transparency and Accountability) Act, 2015; the Oil and Gas Revenue Act, 2015; the Petroleum Act, 2015; the Natural Wealth and Resources (Review and Renegotiation of unconscionable Terms) Act, 2017; the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017; and the Written Laws (Miscellaneous Amendments) Act, 2017. This follows the earlier application of a certificate of urgency for the 1998 Mining Act and its amended version in 2010, which remains the current, legally binding version of the Mining Act.¹¹

Utilising a certificate of urgency presents significant challenges for news media and journalists, who must race to inform the public about the bill’s implications, conduct thorough analyses, and advocate for including diverse stakeholder perspectives. This compressed timeline hinders efforts to ensure that the legislation effectively addresses the needs and concerns of the community it aims to serve. Expanding on this, a radio station manager based in a region where mining extraction occurs noted:

The urgency imposed by the certificate can compromise the ability of news media and journalists to assess whether the bill aligns with national policies and international standards. Consequently, this constraint on public awareness limits the opportunity for in-depth scrutiny and diminishes the potential impact of news media coverage on the legislative process. In 2015, there was no serious reporting on the bills. Everything was super fast-tracked...it was also an election year, and the incumbent president [Jakaya Kikwete] was completing his second term. Everything was rushed, and there was no time to dig deeper into issues (radio

⁹Parliament of the United Republic of Tanzania, *The Petroleum Act*, art 241 (1) (iv).

¹⁰Parliament of the United Republic of Tanzania, *The Petroleum Act*, art 242 (1).

¹¹Lugongo, “Civil Societies Fault Rushing of Key Bills”; Civil Society Coalition (Tanzania), “Civil Society Coalition’s Full Statement.”

station manager¹, personal communication, May 28).

It is not superfluous to state here that the application of certificates of urgency also works against Article 21(2) of the Tanzanian Constitution, which grants the right for every citizen to have the “right and the freedom to participate *fully* in the process leading to the decision on matters affecting him, his well-being or the nation.”¹²

The Constitutional right to free expression is hindered in several ways. Harsh legislation, attacks and intimidation of journalists, and the use of certificates of urgency in the legislative process all restrict the news media and journalists’ ability to promote governance in EI effectively. Each of these structural limitations diminishes the voice of the news media by fostering an environment of self-censorship and reducing the capacity of journalists to comment on and influence national policy. These limitations placed on participation also directly impact citizen preference aggregation. Stakeholder input is a structural component of the legislative process, as evident in the inclusion of stakeholders in the deliberation process of a bill. This inclusion allows a bill to be changed to align with the citizenry’s will. However, using certificates of urgency for extractive industry bills limits the capacity of news media and journalists to adequately “aggregate” citizen desires and recommendations within policymaking.

Poncian (2023) notes that some of the governance challenges the country has faced stem from legislation enacted under a certificate of urgency. The author notes that the tendency to use certificates of urgency makes the sector unstable and unpredictable and, most significantly, limits the space for meaningful and active citizen and civil society participation and produces laws with provisions that cannot be enforced (Poncian, 2023). Although the author does not explicitly mention news media and journalists, it is clear that the culture of certificate of urgency limits citizens’ participation, whose voices are amplified by news media. When the news media are constrained, they can hardly inform the public about EIs, initiate meaningful public debate, empower citizens through the right to information, stimulate public discourse, and offer alternatives.

CONCLUSION AND RECOMMENDATIONS

Overall, the article emphasises how the political and legal landscape in the country exerts a chilling effect on press freedom, particularly regarding the coverage of extractive industries (EIs). The closure of newspapers, threats from executives, and restrictive legislation have resulted in self-censorship among journalists, undermining their ability to engage in extractive journalism effectively. Subsequently, inconsistent freedom of information standards between the TEITI 2015 and PA 2015 hinder media access to crucial EI information, thereby limiting its capacity to promote good governance within the sector. The failure to disclose mandatory information presents significant barriers to transparency and campaigning in EIs. The article thus advances two sets of recommendations—research-driven and practical—to address the key challenges in journalism. Specifically, it advocates for reviewing restrictive laws to ensure alignment with international standards and encourages strategic litigation to contest these laws. Moreover, it implores executive leaders to uphold principles of natural justice regarding media misconduct. Authorities must also guarantee the disclosure of essential information about EIs, as legally mandated, to foster an informed citizenry. Such accessibility will facilitate meaningful discussions on governance, ultimately benefiting the people of Tanzania.

Conflict of Interest

No conflict of interest.

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