Catalyzing Governance:
Limitations on the Freedom of Expression and its Impact on ‘Watch-dogs’ in Tanzania’s Extractive Industries

Candidate number: 8019
Submission deadline: May 15, 2016
Number of words: 19 932
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<tr>
<td>EI</td>
<td>Extractive Industries</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>SAPs</td>
<td>Structural Adjustment Programs</td>
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<td>VAT</td>
<td>Value Added Tax</td>
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<td>NEP</td>
<td>National Energy Policy of Tanzania</td>
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<td>EITI</td>
<td>Extractive Industries Transparency Initiative</td>
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<td>TEITI</td>
<td>Tanzanian Extractive Industries Transparency Initiative</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>UN</td>
<td>United Nations</td>
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<td>HRC</td>
<td>Human Rights Council</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>HRCm</td>
<td>Human Rights Committee</td>
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<td>GC 10</td>
<td>Human Rights Committee General Comment No. 10</td>
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<tr>
<td>GC 34</td>
<td>Human Rights Committee General Comment No. 34</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
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<td>ACmHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<td>NA 1976</td>
<td>Newspapers Act, 1976</td>
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<tr>
<td>NSA 1970</td>
<td>National Security Act, 1970</td>
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<tr>
<td>CA 2015</td>
<td>Cybercrimes Act, 2015</td>
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<tr>
<td>TEITA 2015</td>
<td>Tanzania Extractive Industries (Transparency and Accountability) Act, 2015</td>
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<td>PA 2015</td>
<td>Petroleum Act, 2015</td>
</tr>
<tr>
<td>FIA</td>
<td>Freedom of Information Act</td>
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<tr>
<td>TACCEO</td>
<td>Tanzania Civil Society Consortium on Election Observation</td>
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<tr>
<td>NEMC</td>
<td>National Environmental Management Council</td>
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<tr>
<td>CCST</td>
<td>Coalition of Civil Society in Tanzania</td>
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<tr>
<td>EHAHRDP</td>
<td>East and Horn of Africa Human Rights Defenders Project</td>
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<td>ABG</td>
<td>African Barrick Gold</td>
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1 Introduction

Tanzania has been considered a success in regards to political stability and peace in post-colonial Africa.¹ Yet, amid the stability, a lack of good governance and a profusion of corruption in both the public and private sectors have stunted the development and growth of the state. At the center of this corruption lie the extractive industries (EI). Tanzania’s economy has sought to benefit from the state’s rich natural resources; however, a lack of transparency and accountability has limited the reach of economic benefits from EI to the state.² In order to prevent corruption in EI and improve transparency, Tanzania has voluntarily become party to the Extractive Industries Transparency Initiative (EITI), a non-binding initiative. The EITI stands as one of the leading international global transparency standards in EI, and works to ensure that publication of information about revenues from extractive industry companies and compares them to the tax payments made by these companies to the government. Once this financial information is made available, civil society and the media are encouraged to take the data, or non-existence of data, and hold the relevant authorities accountable in the pursuit of better transparency and an end to corruption. For this to be possible, a strong and free civil society and media must exist for enough pressure to be exerted on both the government and EI corporations to reach better governance in EI. However, Tanzania’s civil society and media are not completely free, let alone strong.

One of the central criteria for a strong civil society and media is the freedom of expression. The importance of the freedom of expression in the process of good governance is indicated by the Human Rights Committee, which stated that the “Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”³ Nevertheless, Tanzania has placed direct restrictions on the freedom of expression for both civil society and the media that limit their reach and capabilities to be ‘watch-dogs’ in EI. Though

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¹ Lindner, “Tanzania: Overview of Corruption and Anti-Corruption.”
² Lange, “Gold and Governance.”
³ Human Rights Committee, General Comment No. 34, para.3.
the freedom of expression is included in the Tanzanian Constitution, it is commonly violated for civil society organizations through limitations in legislative participation capabilities and access to information.\(^4\) Similarly, freedom of the press is limited for the media in Tanzania, where the law as it stands today grants “authorities broad discretion to restrict media on the basis of national security or public interest, which is frequently interpreted for the benefit of the ruling party.”\(^5\) For both governmental bodies and EI companies, there are also documented instances of opposition towards the media and civil society in EI where either state or non-state parties want to prevent awareness raising by civil society and the media through means of attacks or intimidation. These restrictions on civil society and the media undermine efforts for good governance, transparency, and accountability in Tanzania’s extractive industries. For this reason, this thesis will analyze the legal status of the freedom of expression in Tanzania, compared to the level of legislative and structural freedoms for civil society and media expression rights. This will be done to uncover the governmentally applied restrictions that stand in the way of civil society and the media from performing their responsibility to hold the government and EI corporations accountable to the law and the citizenry in Tanzania in the pursuit of good governance in the extractive industries.

### 2 Tanzanian Extractive Industries and Governmental Opacity

Extractive industries are defined as “any operations that remove metals, minerals, and aggregates from the earth” in order to be “used by consumers.”\(^6\) Thus, the sectors of relevance in EI are mining, oil, and gas. Though Tanzania is ranked number four for mineral resource richness and diversity in Africa—following South Africa, Democratic Republic of Congo, and Nigeria respectively—Tanzania’s extractive industries were not fully explored until the late 1990’s. It was at this point that an exploration and exploitation boom occurred following the decentralization and liberalization of the economy.\(^7\) As the indu-

\(^4\) Human Rights Committee, *General Comment No. 34*, para.3.
tries have increased in size, the importance of EI exports has also increased within Tanzanian policy and economics. Yet, amid the growth of the industry, a lack of governmental accountability, and an ongoing tradition of corruption in both the public and private sectors, has limited the realization and extension of possible economic benefits from EI to the state and its citizenry. It is, therefore, important to understand both the mining and oil and gas industries in Tanzania, and the level of opacity that exists in the industries to understand, at least, some aspects of the issue of governance and accountability in EI.

2.1 The Mining Industry

Tanzania has a rich, and vast, variety of mineral resources, including: gold (30% of total exports\(^8\) and 90-94% of total mineral exports\(^9\)), silver, diamonds, gemstones (tanzanite, ruby, sapphire, spinel, tourmaline topaz, scapolite, aquamarine, emeralds, amethyst and garnets), and industrial resources (uranium, limestone, phosphates, coal, trona, and salt brines).\(^10\) To extract these resources, the mining industry includes both small-scale, artisanal mining operations, and large-scale, corporate mining, the latter gaining more and more control over the industry. The combination of these mining operations produce roughly 40 tons of gold, 2,980 tons of copper, 10 tons of silver, and 112,670 carats of diamonds, leading to mining production contributing approximately 2.8% to GDP each year.\(^11\) This continued increase in mining operations came as a result of policy shifts starting in the 1980s, which lead to the rise of the rich investment market in the late 1990’s, as was mentioned above.

This change in market structure and revitalization of the industry resulted from international aid agency pressures, including from the World Bank, through Structural Adjustment Programs (SAPs), that required Tanzania to liberalize its economy to make it more investor-friendly.\(^12\) One of the key changes made by these SAPs was the decentralization

\(^8\) International Monetary Fund, *Sub-Saharan Africa*, 68.
\(^11\) Ibid., 12; Tanzania Chamber of Minerals and Energy, “Overview of Mining Sector.”
\(^12\) Lange, “Gold and Governance,” 233–234.
of the mining industry. Prior to this change, the Tanzanian government controlled both land rights as well as all mining operations under the State Mining Corporation. Decentralization pushed the government into only fulfilling the roles of “regulator, the formulator of policy, guidelines and regulations, and the promoter and facilitator of private investments in the mineral sector.”13 Amid this shift, however, the government was able to retain control of land rights. These rights are leased for a period of 5-99 years (renewable) either through a government-granted right of occupancy, Tanzanian Investment Centre derivative rights, or sub-leases created out of granted rights of occupancy by the private sector.14

Following this change in governmental roles, regulatory changes—including the Mineral Policy of 1997, the Mining Act of 1998, and the adjustment of financial laws—created a more favorable setting for private business investment.15 Unfortunately, these legislative and structural changes gave a fair amount of power to foreign investors to abuse the Tanzanian mining industry. Some examples of regulatory-permitted abuse under the Mining Act of 1998 for international corporations include: mining companies keeping more than 90% of total export earnings between 1998-2002 alone;16 exemption from import duty and Value Added Tax (VAT) on equipment and essential materials until the start of production, with a 5% tax cap applied thereafter;17 royalty payments for gold being set at only 3%;18 and the grant of 10-year tax holidays.19 Since the enactment of these regulations both the National Mineral Policy and Mining Act were amended in 2009 and 2010 respectively to improve national control over and benefit from the mining industry. However, even with the improvement in legislation, tax laws continue to grant international advantage within Tanzanian EI. Following the passage of the Mining Act of 2010, royalties on minerals varied according to the type of mineral, yet, the highest percentage for gemstones was set to only 5%; import duties have not changed from those set in the Mining Act of 1998; and

16 Lange, “Gold and Governance,” 239.
17 Lange, “Gold and Governance,” 239.
19 Ibid.
VAT is set to zero on exports.\textsuperscript{20} Even amid the continuation of benefits to international companies, the Mining Act of 2010 did give some extra protection to Tanzanian small-scale mining operations, indicating that only Tanzanian artisanal miners, and companies controlled exclusively by Tanzanian citizens can take part in small-scale operations.\textsuperscript{21} Thus, there is some improvement for Tanzanian citizens on the small-scale, but the mining industry is still largely focused towards benefiting foreign investment and ownership.

\subsection*{2.2 The Oil and Gas Industry}

The oil and gas industry in Tanzania is relatively smaller than the mining industry. From the beginning of oil exploration until today there has been no discovery of oil in Tanzania; however, in 1974, the first gas field was discovered on Songo Songo Island.\textsuperscript{22} Since this find, five other major gas fields have been discovered in Mnazi Bay (1982),\textsuperscript{23} Mkuranga (2006),\textsuperscript{24} Mzia (2010),\textsuperscript{25} Chewa (2010),\textsuperscript{26} and Zafarani (2012).\textsuperscript{27} With these finds, and a desire to privatize and economize on the gas industry, the parliament passed the first National Energy Policy of Tanzania (NEP) in 1992. The passage of this bill followed the same transitional catalysts as the mining industry, with pressure for structural changes being exerted by international aid organizations through SAPs. Under the NEP, the government sought to promote the growth of the private sector in the oil and gas industry to ensure resource decentralization.\textsuperscript{28} In 2003, the NEP was revised to improve the growth of the energy industry in Tanzania by sanctioning an accelerated growth of the energy sector, which included the oil and gas industry, and increasing efforts to find more natural gas throughout the country.\textsuperscript{29} As a result of these regulatory changes, there are currently 14 exploration

\begin{footnotesize}
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\item\textsuperscript{20} Moore Stephens LLP, “Reconciliation Report,” 20.
\item\textsuperscript{21} Ibid., 19.
\item\textsuperscript{22} Ibid., 15.
\item\textsuperscript{23} “Tanzania Oil and Gas Profile.”
\item\textsuperscript{24} Ngwale, “Discovery of Natural Gas at Mkuranga, Coast Region.”
\item\textsuperscript{25} Ophir Energy, “Tanzania.”
\item\textsuperscript{26} BG Group, “Tanzania.”
\item Padmore, “Energy Giants Statoil and Exxon Target East African Gas;” Maden, “Statoil makes another high-impact gas discovery offshore Tanzania.”
\item\textsuperscript{28} Moore Stephens LLP, “Reconciliation Report,” 15.
\item\textsuperscript{29} Ibid.
\end{enumerate}
\end{footnotesize}
companies, working under contractual agreement with Tanzania’s state oil company, the Tanzania’s state oil company, the Tanzanian Petroleum Development Corporation, and major discoveries by Statoil, Ophir Energy, and BG Group have nearly quadrupled Tanzania’s estimated natural gas reserves from 10 trillion to 40 trillion cubic feet.\[^{30}\]

Following these major gas finds—and with the expansion of gas exploration—state policy and legislation has grown dramatically over the past few years to include: the Natural Gas Policy of 2013, the Petroleum Policy of 2014, the Petroleum Act of 2015, and the National Energy Policy of 2015. These pieces of legislation and policy seek to overcome some of the flaws of past legislation and policy and expand the reach of the industry to make it more efficient, beneficial, transparent, accountable, and profitable for Tanzania.\[^{31}\]

In order to put policy into practice, Tanzania has created an Oil and Gas Model Production Sharing Agreements that is to be the standard for oil and gas contracts. The contractual standards that have been set for taxation, based on Tanzania’s 2013 Oil and Gas Model Production Sharing Agreement, emphasizes national development slightly more than in the mining industry but is still far from maximizing state resource profits. The model agreement states that a royalty of 12.5% of petroleum gained from onshore drilling and 7.5% of crude oil/natural gas production will be delivered to the government.\[^{32}\] Nevertheless, these percentages do allow for a large measure of profit to be extended to companies. However, the agreement also indicates that the state oil company and its sub-contractors, i.e. oil companies under contract to the state oil company, are able to import all materials, machinery, supplies, etc. without the need of paying import taxes, or export taxes if the same are no longer needed.\[^{33}\] Though this is the case for all companies working in the oil and gas industry, it allows for a major loss in import and export duties, which play an important role in financing governmental budgets.\[^{34}\] Such loss greatly impacts GDP and national development.


\[^{32}\] Tanzanian Ministry of Energy and Minerals, “Model Production Sharing Agreement 2013,” art.16(c)

\[^{33}\] Ibid., art.23

\[^{34}\] Baker, “Hiding in Plain Sight,” 31-32.
2.3 Governmental Opacity

For both the mining and oil and gas industries, governmental opacity has led to public and private corruption in both industries. At the center of the non-transparency issue lays governmental contracts between multi-national organizations and the government. The Tanzanian parliament, as well as civil society organizations, has not been permitted to see most of these agreements. Thus far, only two contracts have been released to the public: the Pangea Minerals, Ltd. contract and certain sections of the Statoil/Exxon contract addendum. This lack of transparency makes it difficult for parliament, civil society organizations, and the media to evaluate the contracts and ensure that the agreements do not give unfair or illicit advantages to E1 corporations. An analysis of both leaked contracts shows instances of giving unfair advantages to multi-national corporations. Within the Pangea Minerals, Ltd. 2007 agreement, the company was able to deduct 80% of its capital expenditure from its tax liability, allowing an unfair profit advantage to the company, compared to local miners, and less financial benefits reaching Tanzania.35 Similarly, in the 2012 Statoil/Exxon contractual addendum, the executive agreed to accept lower gas profit rates from the company after costs and royalties than was set in Tanzania’s 2010 version of the Model Product Sharing Agreement for gas deals.36 The model agreement set the amount of gas profits that should go to the Tanzanian government to around 50-70% of profits after costs, yet the amount settled for in the 2010 contract addendum was 30-50%.37 Though some have argued that such benefits are necessary to provide investment incentives in a country with a limited history of offshore gas reserves, the rates should have been set to the amounts in the model rate, rather than the lower percentage, due to the reduction of risk for Statoil following its gas discovery that occurred prior to the addendum in 2012, as was mentioned above.38 Thus, those contracts leaked to the public have shown aspects of unfair advantages being extended to multi-national corporations, indicating the necessity for

36 Manley and Lassourd, “Tanzania and Statoil: What Does the Leaked Agreement Mean for Citizens?”
37 “Tanzania’s Troubles over Gas Revenues: Sharing the Spoils.”
transparency to help civil society and the media insure greater fairness in contractual agreements.

Beyond the fiscal issues that have arisen from EI contracts, secrecy also extends to the process of granting land rights. The granting of mineral exploration rights is often done in secret, at times outside of Tanzania, without the participation of stakeholders from affected communities. These rights, within prospecting licenses attached to EI contracts, have been allocated for areas that include legally protected territories such as forest reserves and village lands. This can be seen with the land allocations for the Lake Victoria Mining Company who has been granted 28 prospecting licenses covering approximately 5,300 square kilometers, where much of the land was inhabited, leading to the necessity for the relocation of those on the mining company’s lands. When looking at the process for determining compensation for relocation, “government evaluator[s] determine the compensation amounts for each property without informing and involving the citizens, and after the valuation exercise, the affected people are paid through the office of the District Commissioner.” The Bomani Commission, authorized by the Tanzanian government to report on governmental oversight of the mining sector, has indicated that the basis for valuation and compensation by the District Commissioner is “not clear and not fair” because the evaluation of compensation is commonly done “without heeding the key issues indicated in the law” such as—“disturbance, transport, and the value of the properties depending on where they are.” The Commission goes on to state that many of the citizenry are not “enlightened about the compensation process” and their “rights,” leading to “many [being] displaced without being paid compensation or being allocated alternative places.” Thus, corporate prospecting agreements are able to skirt around the law by being granted tribal and artisanal mining lands, in many cases, without free, prior and informed consent by

43 Ibid., 27.
stakeholders, or adequate compensation for relocation, showing a necessity for greater accountability and opacity in the EI contractual process.

3 The Theoretical Perspective on Good Governance and the Role of Civil Society and the Media

To understand where Tanzania and its extractive industries fall within the theoretical framework for good governance, it is important to first understand what good governance is and the role of civil society and the media within the process of advocating for good governance. According to Goran Hyden’s theory of governance, governance is “the conscious management of regime structures with a view to enhance[e] the legitimacy of the public realm.”44 “Regime” in this definition is a set of fundamental rules for the organization of the public realm45 that provides a “structural framework within which resources are authoritatively allocated.”46 Thus, for a government, especially a democratic government, to hold legitimacy in the eyes of its people, it must work for and answer to the welfare and needs of its people.47 This coincides with John Mueller’s definition of democracy that says that it is “a form of government in which political officeholders are routinely and necessarily responsive to the citizenry.”48 He goes on to state, “this routine and necessary responsiveness happens in a democracy because citizens have the right to work nonviolently to influence the officeholders….49 It is, therefore, important for the citizenry to give input into the political process to ensure that their opinions are taken into account while also speaking out when governmental action is in opposition to the desires and needs of the populace. In order to understand the larger framework of good governance, Hyden’s governance theory will be discussed in detail within this section to gain an understanding of the

45 Public realm refers to both state and society not within the private sector. Of particular importance here is the existence of a “civic public realm” and its sustainment and management by both governmental actors and civil society. See Hyden, “Governance and the Study of Politics”, 6.
49 Ibid.
necessary criteria for good governance in a state along with the importance of civil society and the media in this process.

3.1 The Characteristics of Good Governance

To ensure good governance, and to understand the role and rights of civil society and the citizenry within the governance process, Hyden indicates that there are four foundational principles necessary for governance, namely:

1. authority,
2. trust,
3. reciprocity, and
4. accountability

Though many factors impact authority, Hyden indicates that it is “effective political leadership.” Effectiveness, in this sense, is multi-variable, encompassing how ‘effectively’ political leadership solves the problems of the citizenry as well as the means whereby decisions are carried out. If the means used for making decisions are oppressive, then governance is not effective. Similarly, if there is a continuation of action that is oppressive, then the “normative consensus” of citizen desire that makes up political trust is lost. This is because, political trust implies that citizens believe that political representatives are responsive, and will act properly without the necessity of constant scrutiny. Thus, a return to harmony with citizen will is necessary for a return of trust.

Reciprocity, in Hyden’s theory, refers to the quality of social interactions within a political community based on the assumption that individuals will act in a way that is beneficial to the other and expect the same in return. As the needs and opinions of the populace shift, either within or without the political sphere, reciprocity permits a shift in the basic rules and norms in politics towards the changing needs of society. To allow for this positive shift to occur, the ability of the citizenry to organize and freely speak to push for change in

51 Ibid., 14.
52 Ibid., 12.
the public realm is required. Finally, accountability is “the effectiveness with which the
governed can exercise influence over their governors,”55 by “oblig[ing]…power-holders to
account for or take responsibility for their actions.”56 Accountability, thus, acts as the bind-
ing link between trust and reciprocity by indicating the specific standards that hold political
leaders accountable to the law and the will of the populace. To accomplish this, Desai and
Jarvis indicate that accountability is only possible if there is governmental transparency and
public participation.57 Transparency and participation, coupled together, can come from
both the bottom-up (civil society actors and organizations) and top-down (policy-makers)
to lead to greater change within the political community. If either transparency or partic-
ipation are crippled in the amount of change civil society and the media can instill, then
there will not be adequate pressure for accountability.

In order to translate authority, trust, reciprocity, and accountability into a practical
framework, Hyden created three good governance, meta-categories—“citizen influence and
oversight,” “responsive and responsible leadership,” and “social reciprocities”58—to trans-
late theory into points of practice. Hyden summarizes the empirical dimension of all three
meta-categories as follows:

1. “Citizen influence and oversight” includes:
   a. “Degree of political participation [degree of allowed citizen or civil
      society action];
   b. “Means of preference aggregation [ways by which public influence
      and preference can be translated into policy]; and
   c. “Methods of public accountability [protected means by which civil
      society and the populace as a whole can hold the government ac-
      countable].”59

2. “Responsive and responsible leadership” includes:
   a. “Degree of respect for the civic public realm [level of seriousness
      civil servants take their positions and work];
   b. “Degree of openness of public policymaking [governmental trans-
      parency with the citizenry, necessary for accountability]; and

56 Malena, Forster, and Singh, “Social Accountability: An Introduction to the Concept and Emerging Prac-
tice,” 2.
59 Ibid., 15.
c. “Degree of adherence to law [level of obedience to national and international law].”

3. “Social reciprocities” includes:
   a. “Degree of political equality [level of equal treatment among citizens];
   b. “Degree of inter-group tolerance [level of multi-group cohesion within the pursuit of political measures]; and
   c. “Degree of inclusiveness in associational membership [extent to which voluntary associational membership is able to transcend social boundaries].”

Though all three meta-categories are vitally important for the process of ensuring good governance and harmony within the country as a whole, the scope of this thesis specifically deals with only two of the three, namely—“citizen influence and oversight” and “responsive and responsible leadership”—due to this thesis only analyzing the relationship between civil society and governmental action within the extractive industries. Within these two groups, both civil society organizations and the media play a vitally important role in the process of promoting and protecting good governance because they are able to both participate and work to affect accountability to protect and promote trust and reciprocity within the public sphere.

3.2 The Role of Civil Society

In order to promote and protect good governance, civil society works to both challenge and decentralize state power so as to make the government more accountable to the public. This measure of political power granted to the populace, through good governance, permits civil participation to directly push for national change, increase citizen rights, and help lead to the protection of accountability for governmental leaders, including within industries like EI. This positive change is possible in states with strong civil society organizations (CSOs) due to the extension of specific freedoms and rights, including: (1) the ability and right to organize CSOs on the provincial, local, or regional levels; (2) the ability

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61 Ibid., 16.
62 Tusalem, “Boon or Bane?,” 378.
63 Ibid.
to encourage quality national and regional policy along with proper bureaucratic management; 64 (3) the ability to effectively challenge state-level corruption through the formation of political action committees and taking on the role of corruption ‘watch-dogs;’ 65 and, finally, (4) the ability to bring citizens together to hold their political leaders accountable. 66 Thus, for civil society to help lead a state or industry towards good governance it must be able to inform the public and political leaders about the status quo, be allowed to be strong and diverse, be granted organizational and democratic freedoms and rights, especially in regard to the freedom of expression, and be able to place pressure on governmental bodies to receive the full protection of rights and public welfare within a country. If civil society’s strength is compromised, especially due to overly restrictive legal and social limitations on expression and participation in public debate, then the impact of civil society is greatly diminished.

In the Tanzanian context, Tanzania’s civil society, as it will be discussed later in this paper, is restricted in its ability to fulfill its role in leading towards social-based governmental accountability. Though the government gives some freedoms to civil society organizations, it still places limits on the freedom of expression through limitations on what can be published, on their access to information, protection from attack and intimidation, and the degree and level of participation allowed in the policy-making process. 67 Each of these major restrictions works to hamper the far reaching effects of civil society’s efforts for good governance and governmental accountability within the extractive industries because they limit the reach of organizational influence and capabilities. The limited influence and capabilities of civil society show that it is not as strong as necessary to adequately fulfill its ‘watch-dog’ role in Tanzania. This point will be discussed in detail throughout the rest of this paper.

64 Tusalem, “Boon or Bane?,” 379–380.
65 See also World Bank, A Contribution to the Policy Debate, 44–46.
66 Tusalem, “Boon or Bane?,” 380.
3.3 The Role of the Media

The role of the media in good governance is similar to that of civil society organizations. Like CSOs, the media inspires change through raising public awareness about governmental and non-state body action for both civil and civic bodies. The media’s role in raising public awareness takes place not only through reporting on investigations, policy changes, judicial proceeding, and scandals, but also through contributing to the “broader social climate of enhanced political pluralism, enlivened public debate and a heightened sense of accountability among politicians, public bodies and institutions.”

For this to be the case, an environment of press freedom, and plurality of media sources, must exist within a society. The positive results of such freedom and plurality has been found through differing studies which indicate that governments are more responsive to the populace when there are environments rich in information supply; public access to information is a decisive inhibitor to local capture; and freedom of the press both leads to and is associated with lower levels of corruption. Thus, a strong and diverse media directly impacts good governance and accountability through its influence on governmental and public awareness and action.

Though the media can play a significant role in both governance and accountability, the national environment in Tanzania for the media is one that is highly restrictive, inhibiting both its strength and reach. The foremost restriction that the media faces is that, even though Tanzania constitutionally protects the freedom of expression, parliament has passed multiple restrictive laws that significantly limit the freedom of the press. These laws have led to self-censorship and limitations in information to prevent the banning of media sources as well as overly-harsh, legal penalties. Furthermore, the media is also subject to

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69 Stapenhurst, The Media’s Role in Curbing Corruption, 2–3.
70 Besley and Burgess, “The Political Economy of Government Responsiveness: Theory and Evidence in India.”
72 Camaj, “The Media’s Role in Fighting Corruption,” 23; Stapenhurst, The Media’s Role in Curbing Corruption.
limitations in information supply and, at times, journalist intimidation. All of the restrictions towards media freedoms have led to Freedom House indicating that the press are only “partly free” in Tanzania in Freedom House’s 2015 Freedom of the Press Report.\textsuperscript{74} The lack of strength, due to disproportionate limitations, directly impacts the press’s ability to speak freely enough to adequately affect good governance and governmental accountability throughout Tanzania as a whole as well as within the extractive. A further discussion of these restrictions and freedoms will be analyzed in-depth throughout the rest of this paper.

4 Methodology

In the course of completing this thesis, an empirical, socio-legal method has been utilized as a guide for directing this study’s desk research. The research performed for this thesis utilized legal research and analysis; however, instead of simply emphasizing legal sources, including laws and case law as the main means of interpretation, as is the case with a pure doctrinal study, a comparison has been made between international and national human rights laws and political science theories and approaches to understand the law in context. In order to understand the methodology applied to this thesis, this section will present this thesis’ research questions and the interdisciplinary method applied to complete this socio-legal paper. The scope and structure of this thesis will also be presented within this section.

4.1 Research Question

As was discussed in section 3, a free and strong civil society and media is vitally necessary for governmental accountability and good governance. Because of this important role, an overarching, macro, research question and four micro research questions were made to examine the freedoms extended to CSOs and the media in the Tanzanian extractive industries. These five questions are as follows:

\begin{itemize}
    \item \textsuperscript{74} Freedom House, “Tanzania: Freedom of the Press.”
\end{itemize}
1. How do legal and structural freedom of expression restrictions, placed on civil society and the media, impact their capabilities to impact EI and the overall governance of the extractive industries?
   a. What are formal legal protections for the freedom of expression under international, regional, and Tanzanian law?
   b. What are some restrictions to the freedom of expression for CSOs and the media within national legislation?
   c. What are some structural restrictions placed on CSOs and the media in regards to expression and governance in Tanzania?
   d. What are the implications of the legal and structural restrictions on the roles of CSOs and the media in the process of seeking good governance within the extractive industries, and how does this affect overall governance in Tanzania’s EI?

4.2 Interdisciplinary Method

To answer the above questions, a comparative analysis\(^\text{75}\) of international, regional, and national freedom of expression laws was performed to ascertain the level of integration of international and regional human rights standards into domestic laws and practices. This was accomplished through an analysis of the freedom of expression in both hard law,\(^\text{76}\) through an examination of the freedom in the *International Covenant on Civil and Political Rights* and the *African Charter on Human and Peoples’ Rights*, and their soft law,\(^\text{77}\) interpretive instruments, to see how they relate to the freedom of expression provision in Tanzania’s Constitution. Based on the comparison of the legal documents, expression-limiting legislation was analyzed to determine the degree to which the expression rights protected in the Constitution and international human rights treaties were implemented into specific domestic legislation. The analysis of Tanzania’s law and legislation were then tied into

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\(^{75}\) Wilson, “Comparative Legal Scholarship.”

\(^{76}\) Hard law instruments, within international law, are legally binding for those states who have ratified treaties.

\(^{77}\) Soft law instruments, within international law, are non-legally binding documents that come from sources of authority.
three examples of structural restrictions on CSOs and the media within the extractive industries to see the practical application, or lack of application, of the freedom of expression. The analysis of the three thematic discussions was accomplished through a secondary data analysis, as will be described below. The implications of the analysis of the legal issues and these three thematic examples were compared to Hyden’s theoretical indicators of good governance in order to understand the overall impact of these limitations on good governance in Tanzania’s EI. Based on this overall analysis, policy recommendations have been made for Tanzania to improve its freedom of expression laws and policies for civil society and the media within the extractive industries.

In order to complete this process, empirical desk research was performed by applying and analyzing primary and secondary legal as well as non-legal sources. The legal sources used in this paper fall in line with the recognized sources of international law under Article 38 of the Statute of the International Court of Justice. Under Article 38 primary sources of international law include: international conventions, customary international law, and general principles of law; while subsidiary sources include: judicial decisions and legal teachings. The primary legal sources that were used included international and regional human rights treaties, General Comments of UN treaty-bodies, interpretive declarations from regional human rights bodies, as well as national legal texts. The secondary, non-legal, sources used included academic literature, analytical reports, NGO reports, and applicable news articles. The combination of both legal and non-legal texts, as well as the application of an empirical socio-legal method, works to apply methodological triangulation to help connect and illuminate the law through a secondary data analysis to improve the quality of conclusions presented in this thesis. All legal texts were interpreted through the measures laid out in Articles 31-33 of the Vienna Convention on the Law of Treaties, with a specific emphasis on interpretation based on the object and purpose of the treaties in comparison to Tanzania’s law. To aid this interpretation and expand the legal interpretation into the wider political context, a secondary data review and analysis was performed. Secondary

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78 United Nations, Statute of the International Court of Justice, art.38.
sources, those listed above, helped uncover existing data that, when pieced together, indicated the main thematic issues that civil society organizations and the media are encountering in their advocacy efforts in the extractive industries. These sources were collected from library and organizational databases, through online searches, and through recommendations via word of mouth. Every effort was exerted to try and ensure that the sources and data used in the process of applying information from secondary sources avoided bias and misinformation. In instances where data seemed to possibly be biased or questionable, the author sought to verify the reality of the information through the use of third-party sources.

4.3 Scope of the Thesis

This thesis has been limited in its scope to only discuss the freedom of expression, particularly in reference to restrictions on public order and national security, instead of also including the freedom of association and assembly. The reasons for this are two-fold, first restrictions on defamation, public health and morals to expression do not directly impact the issues presented within this paper, and secondly because CSOs, as they are defined in this thesis, referring to Non-governmental Organizations (NGOs) rather than religious groups or trade unions, enjoy the freedom of association and assembly, for the most part, within Tanzania. It is only in the case of trade unions, in the extractive industries, that there have been some limitations in regards to association and assembly; however, since the impact of trade unions falls outside of the scope of this paper these other rights will not be discussed.

4.4 Structure of the Thesis

In order to ascertain civil society and the media’s capabilities for improving governance, this thesis will be organized as follows: chapter one introduces the extractive industries, and the opacity within the industries; chapter two presents the theoretical foundation of the paper and the importance of civil society organizations and the media in good gov-

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Chapter three presents the research question and methodology of the paper; chapter four engages in an analysis of the legal evolution of freedom of expression and legally analyzes the freedom of expression on the international, regional, and national level; chapter five looks at how the freedom of expression is translated from the Tanzanian Constitution into national legislation and the restrictions it places on civil society and the media; chapter six looks specifically at three thematic issues—freedom of information legislation, attacks on journalists and human rights defenders working within EI, and restrictions on civil society action for the passing of three extractive industry bills in 2015—and their impact on civil society and the media’s freedom of expression rights and capabilities to promote good governance; chapter seven discusses the implications of the thesis’s findings on good governance in EI to connecting theory to reality; and, finally, chapter eight provides conclusions and policy recommendations for Tanzania to improve its legislative system and rights environment to better promote the freedom of expression, transparency, and good governance in its EI.

5 Protections and Limitations for the Freedom of Expression in International and Tanzanian Law

Along with understanding the situational background in the extractive industries, and the thesis’ theoretical framework in good governance, it is also necessary to understand the legal and legislative rights civil society organizations and the media have within Tanzania in relation to the freedom of expression. In order to determine the level of protection of the freedom of expression within Tanzania, this section will first discuss the legal evolution of this right in the international, regional, and Tanzanian legal system. This overview will set the scene for discussing the legal protections of the freedom of expression within the United Nation’s (UN) International Covenant on Civil and Political Rights (ICCPR) and the African Union’s (AU) African Charter on Human and Peoples’ Rights (ACHPR) in comparison to Tanzania’s Constitution to determine the legal protections for this right, and its application of international and regional standards, on the state-level.
5.1 Evolution of the Legal Development of the Freedom of Expression in Tanzania

The beginning of the move towards a legal right to the freedom of expression began with Tanzania’s accession to the *International Covenant on Civil and Political Rights* in 1976. The ICCPR was the first legally binding, international human rights treaty on civil and political rights, which included the freedom of expression under Article 19. Under the ICCPR, states have positive and negative responsibilities to change national policy and structures to be in line with the treaty. However, prior to the accession of the ICCPR, the National Security Act of 1970 and the Newspaper Act of 1976 directly limited the freedom of expression in Tanzania by limiting access to information and creating a means for banning media bodies, but they were not removed or changed following Tanzania’s accession to the ICCPR. In 1983, the Human Rights Committee (HRCm) published *General Comment No. 10* (GC 10), which worked to interpret Article 19, as a soft-law document, yet the degree of its interpretations were limited. In response to the creation of the UN’s Bill of Rights—which included the ICCPR—the Organization of African Unity, now known as the African Union, drafted its own legally binding human rights charter in 1981, under the title, *African Charter of Human and Peoples’ Rights*, to create a regional human rights treaty that mirrored African values and culture. Though this treaty went into force in 1981, Tanzania did not become party to it until 1984, showing a measure of reluctance towards the acceptance of human rights responsibilities within the state. Following the state’s ratification of the ACHPR, Tanzania amended its Constitution to include a Bill of Rights based on the standards set in the ACHPR, and portions of the ICCPR, including the right to the freedom of expression. However, the protections for expression in both the ACHPR and the Tanzanian Constitution’s Bill of Rights were not as extensive as those found in Article 19 of the ICCPR.

Though the freedom of expression, as protected by Tanzania, was more muted than the standards set out in the ICCPR, the inclusion of the right into national law was a posi-
tive step forward in Tanzania’s protection of human rights. Nevertheless, there were still concerns about the freedom of expression in national law by the Human Rights Committee in its 1992 Concluding Observations for Tanzania on its implementation of the ICCPR. This resulted, in part, because of the continued existence of expression-limiting legislation in the form of the National Securities Act of 1970, the Newspapers Act of 1976, and the passage of the newest expression-limiting legislation, the Civil Service Act of 1989, which prevented civil servants from disclosing information they received while in office to the public. The legislative situation for Tanzania was not helped when the Public Leadership Code of Ethics of 1995 was passed, which restricted the investigative abilities of the media, including the ability to investigate and report of property holdings of public officials. In 2002, the African Committee on Human and Peoples Rights (ACmHPR) released its soft-law interpretation of Article 9 of the ACHPR in the Declaration of Principles on Freedom of Expression in Africa (ACmHPR Freedom of Expression Declaration), which expanded the interpretation of expression rights under the ACHPR to be more consistent with those of the ICCPR.

This interpretive document, along with the ICCPR, helped in inspiring the changes made in the 2005 amendment of the Tanzanian Constitution. The amendment expanded the protections of the freedom of expression from its more limited, original phrasing, to one that more fully resembled the expanded rights contained in the ICCPR and the ACmHPR Freedom of Expression Declaration. Nevertheless, even amid the improvements to the freedom of expression on paper, the HRCm’s Concluding Observations from 2009 reported that “The Committee is concerned about reports that journalists are subject to harassment, in particular in Zanzibar, and incidents of overly restrictive limitations on the freedom of expression.” Two years following this most recent concluding observation, General Comment No. 10 was replaced by General Comment No. 34 (GC 34), which goes into great depth in identifying a much wider interpretation of expression based on the evolution of the

85 Ibid.
understanding of the freedom of expression on the international level. However, even with the progressive representation of the freedom of expression in the Tanzanian Constitution, and with all of the interpretive tools presented on the international and regional levels, Tanzania continues to limit the freedom of expression, within its existing and new legislation. The Cybercrimes Act and the Statistics Act, passed just last year, work to limit the freedom of expression by regulating what can be legally shared online and by legally mandating that statistics can only come from or be accepted by the National Bureau of Statistics for them to be legal to publish or share. Thus, even though there are some examples of improvement in Tanzania for the freedom of expression, there is still disconnect between state action in regards to the freedom of expression and international, regional, and national standards, as will be seen more clearly below.

5.2 Legal Analysis of the Freedom of Expression in Tanzania

When looking directly at freedom of expression legal standards, it is important to start first on the international level with the ICCPR to determine what expression rights should be extended to civil society organizations and the media. As was mentioned above, Article 19 indicates positive and negative obligations that ratifying states, including Tanzania, must fulfill on behalf of its citizenry, as well as, legitimate limitations that can be placed on the right under specific circumstances. Article 19 states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.\textsuperscript{87}

\textsuperscript{87} UN General Assembly, \textit{International Covenant on Civil and Political Rights}, art.19. (Emphasis added)
This article, thus, provides the right to hold opinions “without interference” as well as the “freedom to seek, receive and impart information and ideas of all kinds” throughout the entire state and within any medium of communication including the press. This right can legally be restricted when it is both proportional and necessary.\(^8\) This is only the case in instances of protecting a person’s rights and reputation, and protecting national security, public order, public health, and public morals.

In order to help interpret Article 19, General Comment 34 assists to not only break down the meaning of the wording of Article 19, but also expands what rights should accompany the freedom of expression. Though GC 34 is soft-law, it is still an authoritative interpretation of the treaty; therefore it can be used as a guide to proper scope and adequate application of Article 19. The freedom of expression, as can be seen from the paragraph above, grants the “freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers.” Thus, Article 19 permits “the expression and receipt of communications of every form of idea and opinion capable of transmission to others” through all mediums of expression, subject to the limitations in paragraph 3(a) and (b).\(^\)\(^9\) These topics and forms of communication include opinions about political discourse, commentary on one’s own affairs as well as public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.\(^10\) Therefore, civil society organizations and the media should be protected when they write about topics and advocate for issues that are political in nature, deals with public affairs, and discusses human rights problems so long as they do not infringe Article 19(3).

To ensure the protection of the freedom of opinion and expression, the HRCm indicates two key rights: (1) a free, uncensored and unhindered press, and (2) a right to access of information. Under a free, uncensored and unhindered press, the HRCm indicates that the Covenant embraces a right where the media (and by extension also civil society organizations due to the similarity of efforts) may receive information necessary for its work, freely comment on public and political issues, and inform public opinion without govern-

\(^{88}\) Human Rights Committee, *General Comment No. 34*, para.22.  
\(^{89}\) Ibid., para.11.  
\(^{90}\) Ibid.
mental interference. In order to receive information necessary for the work of civil society and the media, a right to access information held by public bodies must exist in a state. Under this right, government bodies are encouraged to place information that is of public interest into the public domain, and create procedures for gaining access to said information through means like freedom of information legislation. This legislation will allow transparency and open access in regards to public contracts, spending, and so forth, all of which are necessary for proper governance in Tanzania’s EI.

In regards to the interpretation of the specific limitation clauses in subparagraph (a) and (b), subparagraph (a) as well as limitation due to public health and morals under subparagraph (b) fall outside of the scope of this thesis, whose focus is more specifically placed on restrictions due to national security and public order, and will therefore not be discussed within this section. In reference to the interpretation of national security and public order under subparagraph (b), the HRCm has decided to not define these principles in order to not “hamper legitimate future application[s] of Article 19(3).” Nevertheless, they have given some guidance in relation to application. In regards to national security and public order, the HRCm has detailed that treason laws and laws relating to national security and sedition must be in strict accordance with paragraph 3, preventing the use of these laws from inhibiting access to “information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.”

There are, nevertheless, some instances where it may be permissible to limit some aspects of the freedom of expression based on the protection of public order as in the instance of regulating speech making in specific public places to prevent rioting or violence. This, however, should only be used as a means of moving or postponing such forms of expression to a place or time where such speech will not break public order and not simply as an excuse for muzzling acceptable forms of speech.

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91 Human Rights Committee, *General Comment No. 34*, para.13.
92 Ibid., para.18 and 19.
94 Human Rights Committee, *General Comment No. 34*, para.30.
95 Ibid., para.31.
The freedom of expression, under Article 9 of the *African Charter on Human and Peoples’ Rights*, is less specific in indicating protected legal rights than the ICCPR. Article 9 states:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.\(^96\)

As can be seen above, the Charter protects the right to receive information as well as express and disseminate one’s opinion, but there is no mention of the forms of dissemination of information that are protected, where information can be dispersed, or what restrictions are legally applicable under the Article. In order to overcome the ambiguity of Article 9, the ACmHPR fulfilled its Article 45(1)(b) responsibilities “to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African governments may base their legislation,”\(^97\) by drafting an interpretation of Article 9 in the *Declaration of Principles on Freedom of Expression in Africa*.

Within this soft-law document, the ACmHPR has expanded the understanding of the freedom of expression in the African region to be more in line with the wording of Article 19 of the ICCPR. Under section I, “The Guarantee of Freedom of Expression”, the Declaration states:

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.\(^98\)

The wording in sub-paragraph 1 is almost identical to that of Article 19(2) of the ICCPR, indicating the full range of expression rights (seek, receive, and impart), the protected mediums of expression (orally, writing, print, art, or other forms of communication), and

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\(^{96}\) Organization of African Unity, *ACHPR*, art.9

\(^{97}\) Organization of African Unity, *ACHPR*, art.45(1)(b).

where it can rightly be distributed (across frontiers). As paragraph 2 states, freedom of expression comes with a right to “equal opportunity” in both the use of the right and the ability to access information. In regards to public access to information, section IV, coincides with GC 34’s stance that “everyone has the right to access information held by public [and private (when applicable)] bodies,”99 where “public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest,”100 and to “amend” secrecy laws to “comply with freedom of information principles.”101 These protections for the freedom of information allow for transparency through access to important documents of public interest, as well as improve and create national legislation that helps enforce disclosure of relevant governmental and private information.

The ACmHPR Freedom of Expression Declaration indicates that the freedom of expression should not be subject to “arbitrary”—i.e. unreasonable or disproportionate102—“interference.” Rather, broadcasters103 as well as print media104 should be independent from undue governmental interference as a means of preventing censorship and the muzzling of media sources. However, if restrictions are placed, the ACmHPR Freedom of Expression Declaration indicates that they must be “provided by law,” “serve a legitimate interest,” and be “necessary and proportional,” those same requirements stated by the HRCm. When looking at the overlap between the limitations clauses in Article 19(3)(a) and (b) and the ACmHPR Freedom of Expression Declaration: reputation, national security, public order, and health are mentioned in both documents, with the exception of public morals being excluded from the ACmHPR Freedom of Expression Declaration. Once again a discussion on defamation and public health falls outside of the scope of this thesis and will not be included in this analysis. In relation to restrictions of freedom of expression on the grounds of national security and public order, the ACmHPR suggests that restrictions on these

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100 Ibid., sec.IV(2)(4).
101 Ibid., sec.IV(2)(6).
102 Rehman, International Human Rights Law, 94.
104 Ibid., sec.VIII(2).
grounds can only occur when there is a “real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.”\textsuperscript{105} Thus, if information is leaked to the public that does not rightly represent a true national security risk or negatively affects public order, the freedom of expression should not be restricted, a point which falls directly in line with paragraph 30 of GC 34.

As was mentioned in the previous section, Tanzania is party to both the ICCPR as well as the ACHPR. It is, therefore, legally accountable to the rights contained in both documents. However, unlike countries such as the United States, which have a monist legal system, Tanzania has a dualist system. This means that for international treaty standards to be applicable in the Tanzanian legal system, they must first be passed into law by the Parliament. Due to the ‘non-self-executable’ doctrine in a dualist system, a state can, at times, decide which treaty norms and provisions will have a direct application in the domestic legal order. This can be seen in Tanzania, where it became party to the ICCPR in 1976 and ACHPR in 1984, but its parliament did not amend the Constitution to include a Bill of Rights, until 1984, where the protected rights placed into the Constitution did not exactly equal the standards set out in both Conventions. As of the 2005 amendment of the Tanzanian Constitution, the freedom of expression was changed from its more limited, 1984 version,\textsuperscript{106} to its current formulation. This constitutional overhaul strengthened the freedom of expression, bringing it more in line with the standards laid down in the ICCPR and the ACmHPR Declaration, with some exceptions. Article 18 of Tanzania’s Constitution states:

18. Every person-
(a) has a freedom of opinion and expression of ideas;
(b) has out right to seek, receive and, or disseminate information regardless of national boundaries;
(c) has the freedom to communicate and a freedom with protection from interference from his communication;
(d) has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.\textsuperscript{107}

\textsuperscript{105} African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa, sec.XIII(2).
\textsuperscript{106} See annex for full text of 1984 version of Article 18.
\textsuperscript{107} Constitution of the United Republic of Tanzania 1977 (2005), art.18. (Emphasis added)
As can be seen, Tanzania has given its citizens the legal right to the freedom of opinion and expression, and has specified that this includes the “right to seek, receive and, or disseminate information regardless of national boundaries,” as both ICCPR Article 19(2) and ACmHPR Freedom of Expression Declaration section I include, with a substitution of the term “frontiers” with “national boundaries.” Furthermore, under this law, every citizen has the right to communicate without interference, and to be informed about important matters ranging from the personal to national level.

However, when looking at the content within Article 18, there are important differences that arise between the Constitution and the ICCPR and ACHPR’s interpretation under the ACmHPR Freedom of Expression Declaration. By stating that there is a “freedom to communicate” without “interference,” the Constitution diverges from the ICCPR and the ACmHPR Freedom of Expression Declaration by not specifying the forms of communication that are protected. Though it may be assumed that communication “orally, in writing or in print, in the form of art, or through any other media of his choice”\textsuperscript{108} would be included under the freedom to communicate in Article 18, it does not, however, specifically indicate them. Section 5.3 below will demonstrate that this lack of specificity has been detrimental to the freedom of expression within national legislation. This has led to limitations of the freedom of the press, even though the Constitution promises the freedom to communicate without interference. Furthermore, when talking about restrictions to the freedom of expression, there are no limitation clauses found within Article 18, unlike both the ICCPR and the ACmHPR Freedom of Expression Declaration. This lack of specified restrictions to expression has allowed the Tanzanian government liberty to limit the freedom of expression by unnecessary and disproportionate means within national legislation, which has led to an environment of self-censorship, media shutdowns, a lack of freedom of information, overly strict penalties for written work, and government control over data within Tanzania, as will be discussed below.

\textsuperscript{108} UN General Assembly, \textit{ICCPR}, art.19(2).
6 Restrictive National Legislation for the Freedom of Expression

Though the freedom of expression, including the freedom to communicate without interference, is protected under Article 18 of the Constitution, as discussed above, draconian legislation negatively impacts the freedom of expression in Tanzania. Though some of these pieces of expression-based legislation were passed prior to the most recent amendment of Tanzania’s Constitution, they are still in effect and utilized, even though they are inconsistent with Article 18 of the Constitution. Two of the most important of these laws, as were mentioned above, include: the Newspapers Act of 1976 and the National Securities Act of 1970.109 Similarly, expression-restricting laws have also been passed following the most recent amendment of the Constitution, including the Cybercrimes Act of 2015, which overly limit Article 18.110 These three laws will be discussed in relation to Tanzanian constitutional law as well as international and regional human rights legal standards to show that, though the freedom of expression is protected by the Constitution of Tanzania, some national legislation, as it currently stands, limits expression on a level that fails the test of proportionality and necessity. It thus leads to the muzzling, instead of promotion, of freedom of expression in many cases for civil society and the media.

6.1 The Newspapers Act of 1976

The Newspapers Act of 1976 (NA 1976) creates the governmental newspaper regulatory body for Tanzania as well as sets national media standards. The regulations housed within NA 1976 consist of registration standards for newspapers, general provisions relating to newspapers, offences against the public, and defamation. Though there are multiple issues within the legislation itself, including narrow and harsh defamation laws, the section that has led to the most issues for the freedom of expression for media outlets is Article 25. Under this provision, the Minister of Information has the power to ban newspaper and other

109 Other important draconian, expression-restricting legislation predates the current version of Tanzania’s Constitution, including: the Civil Services Act of 1989 and the Public Leadership Code of Ethics of 1995. They are not discussed here due to being less applicable than those discussed.

110 The Statistics Act of 2015 is also included in this category, but a lack of space prevents its discussion.
media outlets (for either a specified period of time or indefinitely) based on specific criteria.\textsuperscript{111} Article 25 reads:

(1) Where the Minister is of the opinion that it is in the public interest or in the interest of peace and good order so to do, he may, by order in the Gazette, direct that the newspaper named in the order shall cease publication as from the date (hereinafter referred to as "the effective date") specified in the order.\textsuperscript{112}

This Article indicates that the Minister, a single entity instead of a judicial body, can force newspapers to cease publication if he or she believes it is in either the “public interest” or the “interest of peace and good order” without first bringing the accusations laid against a newspaper before a court.\textsuperscript{113} By using the phrasing of “peace and good order,” the bans are based on the need for restricting the freedom of expression due to protecting either national security (which will be discussed in detail in the next section under the National Securities Act) or public order, which is often cited as the reason for closing media organizations under Article 25 of NA 1976.

When looking at the interpretation of the freedom of expression under GC 34, the banning of a particular publication should “never” occur unless the “specific content, that is not severable, can be legitimately prohibited under paragraph 3.”\textsuperscript{114} Thus, a ban on a publication should only occur under the strictest interpretation of a breach of Article 19(3) of the ICCPR, so long as the breach is not severable from the rest of the publications of the organization. Thus, for a legitimate ban of a media source to occur, due to breaches in national security or public order, it must be based on the assumption that the restriction “may not put in jeopardy the right itself”\textsuperscript{115} and that “there is a real risk of harm to a legitimate interest and… a close causal link between the risk of harm and the expression.”\textsuperscript{116} Yet, one merely needs to read the public statements justifying media closures to see that there is a tenuous link between the risk of harm to Tanzania and the expression itself.

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\textsuperscript{111} Legal and Human Rights Centre, \textit{Tanzania Human Rights Report 2013}, 64.
\textsuperscript{112} Parliament of the United Republic of Tanzania, \textit{The Newspapers Act}, art.25. (Emphasis added)
\textsuperscript{113} Media Council of Tanzania, “Media Council Condemns Closure of Two Major Newspapers,” para.6.
\textsuperscript{114} Human Rights Committee, \textit{General Comment No. 34}, para.39.
\textsuperscript{115} Ibid., para.21.
\end{flushleft}
In all but a few cases, the reason that the Minister of Information gives for banning a news source is that the content of the newspaper’s publications were “seditious, inciting, promoted violence and were likely to jeopardize peace in the country,” which if correct, would possibly fall under the legitimate criteria for restriction. However, when looking at the topics of the articles listed for why newspapers have been banned, one can see that there is disconnect between the protection of national security and public order and the reasons for banning the media body. Some of the article topics specified for banning a newspaper include: the sharing of “confidential” governmental salaries, critiques of the president, critiques of national security forces, and, in the case of one newspaper, specific articles were not listed—merely stating that “articles in three editions of the newspaper” were at issue. When holding the content of each of the newspaper articles up to the test of necessity and proportionality for protecting national security or public order, the bans fall short of international norms for determining necessity and proportionality in every case. Furthermore, the topics of the articles are severable from the other content presented within the media source because the government has not specified any other articles as reasons for closure. Therefore, the bans of each of these media bodies fall outside of the standard set by the HRCm.

Though none of the topics of the above-mentioned articles were related to the extractive industries, as of yet, there is the possibility that a ban could be applied to a news source due to content related to the extractive industries. In the case of the newspaper, MwanaHalisi, whose ban did not list the articles it was censored for, the chief editor of the paper and other local journalists believe that the newspaper’s ban came as a result of articles written right before the ban which talk about the kidnapping and torture, with possible connection to national authorities, of a doctor leading a strike on the Medical Association of Tanzania. Similar allegations could be associated with related types of incidents in the extractive industries, like governmental involvement in an attack on an EI strike, and

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117 Article 19, “Tanzania: Ban on Newspaper MwanaHalisi Violates Right to Freedom of Expression.”
119 Committee to Protect Journalists, “Tanzanian Authorities Ban Weekly Indefinitely.”
could, therefore, also result in the banning of a media source for extractive industry issues. However, whether dealing with EI topics or not, the use of NA 1976 for banning news sources acts as a muzzle on media, instead of a legitimate inhibitor of expression, breaking international, regional, and national freedom of expression regulations. It is because of this law that an environment of self-censorship,\textsuperscript{120} on the part of media bodies, has arisen to prevent the possibility of bans, restricting the full realization of the freedom to critique governmental and non-state actors in the process of governmental accountability.

6.2 The National Security Act of 1970

Just as the Newspapers Act impedes the freedom of expression, the National Security Act of 1970 (NSA 1970) also actively works to obstruct the freedom of expression on a disproportionate level for both CSOs and the media. This law seeks to protect national security and the interests of the Tanzanian government by indicating the penalties for sharing documents or information that are either confidential or classified by the Tanzanian government. In relation to the penalties of sharing 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 authorized 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.\textsuperscript{121}

Subparagraph (1) gives the government, and its ministers, complete discretionary power over what information and documents can and cannot 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.”\textsuperscript{122} These documents

\textsuperscript{120} Article 19, “The United Republic of Tanzania: Article 19’s Submission to the Universal Periodic Review,”
\textsuperscript{121} Parliament of the United Republic of Tanzania, \textit{The National Security Act}, arts.5(1)&(2).
and information include those that relate to a public authority, company, organization, or entity that is connected to the government in any way. Though the Act prevents the sharing of classified or confidential information, it does not give a distinction between what information should or should not be considered classified, rather the decision of classification is left to the discretion of national officials. A World Bank report from 2001 indicates that many government officials have tended to classify most information in their possession as classified, leading to any of the information with this designation, whether truly pertinent to national security or not, to be released to the public without penalty. Thus, the lack of public access to information that results from this ambiguous national practice goes against the standard within GC 34 which states that “It is not compatible with paragraph 3…to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security.” This restriction to information of public interest due to a stamp of confidentiality is also in contradiction of Article 18(d) of Tanzania’s Constitution, which states that citizens have the right to information on “issues of importance to the society.”

Subparagraph (2) also gives overly-broad discretionary power to the government to prosecute an individual for breaking the law under the Act, even though the accused did not know or “could not reasonably have known” that the information they shared was classified. The fact that one can be charged for not “reasonably” knowing that a document is classified is in contradiction to international rule of law norms under the principle of legal certainty as well as certain aspects of the Tanzanian Penal Code. When there is legal certainty in a country, what is or is not legal under the law is clearly identified so individuals can reasonably predict what will or will not happen based on his or her actions. Legal certainty allows the law to be a guide by which one can plan his or her life with less uncertain-

124 Miho, Non-Market Controls and the Accountability of Public Enterprises in Tanzania., 60.
125 Nshala, “Public Involvement in Environmental Decisionmaking: Tanzania,” 2–3.
126 Human Rights Committee, General Comment No. 34, para. 30.
ty while also providing protection from being subject to arbitrary actions by the state. By making it legal to sentence an individual for sharing classified information without a “reasonable” lack of knowledge, the law makes it impossible to foresee the actual consequences of one’s actions before the fact. He or she cannot, therefore, act with certainty that the sharing of information will have legal consequences.

This point is substantiated, in part, by the Tanzanian Penal Code, which states that, “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 criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.” However, the paragraph goes on to state that it can be limited in instances where, “the operation of this rule may be excluded by the express or implied provisions of the law relating to the subject,” allowing the National Securities Act, under subparagraph (2), to penalize accused persons for not reasonably knowing their actions were a criminal offence, due to the existence of this provision in Tanzanian law. Thus, the limitations clause in paragraph 11 of Chapter 16 of Tanzania’s Penal Code also contradicts legal certainty by permitting provisions in Tanzanian law that allow for unreasonable knowledge to be punishable so long as the provision already exists. Furthermore, this overreach contradicts GC 34 that states that information of public interest should be shared with the public and the “prosecut[ion] [of] journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information,” should be prevented.

In relation to the impact NSA 1970 could have on civil society and the media when working with the extractive industries, Article 2 of NSA 1970 specifically includes the mining industry as a protected “necessary service” for the nation. In reference to the penalties for negatively impacting a “necessary service,” Article 3 states that:

Any person who, for any purpose prejudicial to the safety or interests of the United Republic [of Tanzania]…

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129 Parliament of the United Republic of Tanzania, Tanzanian Penal Code: Chapter 16, para.11.
130 Ibid.
131 Human Rights Committee, General Comment No. 34, para.30.
(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 life.\textsuperscript{133}

Though the mining industry was controlled by the government of Tanzania at the time of the drafting of the Act, making it a governmental service at the time, the Article, and its overly harsh punishment, can still be invoked today. Therefore, whomever releases information considered classified or hinders or interferes with governmental interests in the mining industry, whether or not he or she is aware of the classified nature of the information, can be sentenced to up to twenty years in jail according to Article 5(2) of NSA 1970 or possibly even life imprisonment under Article 3 of the Act. These same limitations can also be applied to the oil and gas industry if any information listed as classified is leaked to the public. Since NSA 1970 does prevent “protection from interference from…communication,”\textsuperscript{134} NSA 1970 is being used to unlawfully limit the Constitutional right to the freedom of expression based on interpretations of the right within international and regional human rights norms.

6.3 The Cybercrimes Act of 2015

The Cybercrimes Act of 2015 (CA 2015) was passed April 1, 2015. The document regulates all information that is shared online, setting guidelines for illegal access, illegal data interference, data espionage, child pornography, pornography, identity related crimes, publication of false information, racist or xenophobic material, unsolicited messages, disclosure and obstruction of investigations, cyber bullying, and violation of intellectual property rights. The Article of primary interest to media and civil society organizations is Article 16 on the publication of “false information.” It states:

16. Any person who publishes information, data or facts presented in a picture, text, symbol or any other form in a computer system where such information, data or fact is false, deceptive, misleading or inaccurate commits an offence, and shall on conviction be liable to a fine not less than three million shillings or

\textsuperscript{133} Parliament of the United Republic of Tanzania, \textit{The National Security Act}, art.3(d). (Emphasis added).

\textsuperscript{134} \textit{The Constitution of the United Republic of Tanzania 1977 (2005)}, art.18(c).
to imprisonment for a term not less than six months or to both.\textsuperscript{135}

Though the sharing of false information should be knowingly avoided, especially from CSOs and the media, this provision makes the sharing of any form of information or data that could be considered as “false, deceptive, misleading or inaccurate” illegal. These broad criteria can have far reaching consequences on information shared from social media users (including CSOs and media bodies on social media), online media outlets, and online reports from CSOs being scrutinized and prosecuted for what is shared or written. This negative impact can lead to complications when reporting or performing advocacy work because of the difficulties, at times, of determining what can be considered accurate information, as is the case with breaking news (where it can be difficult to verify facts), when collecting data that is seen as contradictory to existing studies, or when writing about topics that government officials believe to be untruthful. These issues aside, the Human Rights Committee has also spoken against the use of false news and information provisions in domestic law, stating that they “unduly limit the exercise of freedom of opinion and expression.”\textsuperscript{136} The HRCm has further stressed this fact, by stating that the “prosecution and punishment of journalists for the crime of publication of false news merely on the ground…that the news was false [is a] clear violation of Article 19 of the [ICCPR].”\textsuperscript{137} Thus, international soft-law standards would indicate that, beyond the foundational limitations that could result in unreasonable governmental interference, the very existence of such a law violates the freedom of expression.

Though there is not an example of this Act being applied in regards to the extractive industries, as of yet, civil society organizations and the media, as a whole, fear that the Act will be used as a means of limiting the freedom expression.\textsuperscript{138} One example of misuse occurred during the 2015 presidential elections in Tanzania, where paragraph 16 of the Cy-

\textsuperscript{135} Parliament of the United Republic of Tanzania, \textit{The Cybercrimes Act}, art.16.


\textsuperscript{138} Mwangonde, “Rights Activists Declare War on Tanzania Cyber, Statistics Bills”; Cornell, “You Could Go to Jail for Tweeting This in Tanzania.”
bercrimes Act was used to confiscate data devices and arrest members of the Tanzania Civil Society Consortium on Election Observation (TACCEO). These arrests and confiscations by the police resulted from the police’s belief that the group was collecting and disseminating election results illegally. TACCEO, however, had not been releasing election results, but was rather collecting reports from national election observers from throughout Tanzania, a task they were accredited to perform by Tanzania’s National Electoral Commission. Under the powers of the Cybercrimes Act, the police were able to raid the establishment and confiscate 26 desktop computers, 2 laptops, and 36 mobile phones, while also arresting 36 data analysts. This was done under the precedent of Article 31 of CA 2015 that states:

The police officer in charge of a police station or a law enforcement officer of a similar rank, upon being satisfied that there are reasonable grounds to suspect or believe that a computer system-
(a) may be used as evidence in proving an offence; or
(b) is acquired by any person as a result of an offence, issue an order authorizing a law enforcement officer to:
(i) enter into any premise and search or seize a device or computer system;
(ii) secure the computer data accessed; or
(iii) extend the search or similar accessing to another system where a law enforcement officer conducting a search has grounds to believe that the data sought is stored in another computer system or part of it.

This grants broad discretionary powers to the police to search homes or businesses and seize data devices without need of a warrant based only on the suspicion or belief that there is illegal activity occurring under the Act. Due to this unrestricted policing power, both the freedom of expression of TACCEO and their right to privacy were infringed as they performed their governmentally mandated task. This law has led organizations, like Freedom House, to lower the ranking of the level of civil liberties in Tanzania due to the Cybercrimes Act’s real and possible impact on the freedom of expression for the media, academia, and civil society. This Act can, therefore, possibly be used on extractive industry

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139 Mbashiru, “Enforcement of Cybercrimes Law Alarms Development Partners.”
140 Ibid.
groups if the police deem their online actions as suspect, even though they might be acting within the confines of the law.

7 The Freedom of Expression and Governance Restrictions for Civil Society and the Media in Tanzania’s Extractive Industries

Though the freedom of expression is protected under Tanzania’s Constitution, national legislation directly diminishes the right beyond the boundaries set under international, regional, and, at times, national law. These restrictions have a far reaching impact on civil society and the media’s capabilities to positively impact the extractive industries. Though EI legislation—the Natural Gas Policy of 2013, National Petroleum Policy of 2014, and the National Energy Policy of 2015—indicates the importance of civil society and the media within accountability in the industry, there are still many structural barriers, beyond expression-specific legislation, that limit what CSOs and the media can accomplish in EI. Three thematic examples will be discussed in this section to exemplify some of the major expression-restrictions both civil society and the media are experiencing within their advocacy efforts in the extractive industries. The first is a discussion on freedom of information legislation in Tanzania and its impact on expression and accountability in EI; the second is a discussion of governmental and non-state party attacks on and intimidations of human rights defenders and journalists while working on EI issues; and the third pertains to the use of certificates of urgency in the legislative process that limited CSO input on extractive industries bills in 2015. These thematic discussions will help uncover the impact of the restrictions on the freedom of expression for CSOs and the media by explicating the obstacles that stand in the way of advocating for good governance.

7.1 Freedom of Information Legislation

As was discussed in section 5.2, both the HRCm and ACmHPR have emphasized the importance of governments and private bodies, when applicable, ensuring the freedom of

information, emphasizing the creation of legislation, and amendment of current legislation, as a means of protecting transparency and the full attainment of the freedom of expression. However, as demonstrated above, certain pieces of legislation actively work against the freedom of information and expression in Tanzania. This environment is further hampered by the fact that there is not a Freedom of Information Act that extends over every industry and governmental branch within Tanzania. In order to try and promote a nationally-unified approach to public access to information, the parliament of Tanzania has been in the process of drafting a national Act since 2006, when the first bill on the topic was presented.\textsuperscript{144} Nevertheless, the process to pass the bill continues to be stymied to this day, even though there have been multiple promises of the bill being passed. The most recent of these promises came in 2015 when President Jakaya Kikwete stated that a Freedom of Information Act would be in place by October of that same year;\textsuperscript{145} the adoption of this bill has yet to take place. Nonetheless, even if a progressive Freedom of Information Act were to be passed by parliament, the draconian, legal limitations present in Tanzanian law, like NSA 1970, would continue to limit the full application and interpretation of the information Act. A change or removal of such legislation would be necessary, as the ACMHPR suggests, for the full attainment of the freedom of information. This, along with other central issues, can be seen with existing industry-specific transparency and freedom of information legislation, including in the extractive industries. The lack of a unified, national approach to freedom of information has led to problems with application of the law and contradictory freedom clauses that allow existing legislation to limit reach.

Within Tanzania’s extractive industries, there have been some improvements in the sharing of industry related information with the public through Tanzania’s participation in the Extractive Industries Transparency Initiative (EITI). This initiative has led to a greater degree of access to the financial information of EI companies. This past year, the Tanzanian parliament boosted the efforts of the EITI with the introduction of the Tanzania Extractive Industries (Transparency and Accountability) Act of 2015 (TEITA 2015) that sets the

\textsuperscript{144} Nalwoga, “Access to Information in Tanzania: Laws, Policies and Practice.”

\textsuperscript{145} “JK: Freedom of Information Act Ready in 2015.”
transparency standard for the extractive industries. The Act indicates what information from the extractive industries should be made public knowledge, including: financial and investment information for companies in the extractive industries, all concessions, contracts, licenses, names and shareholders who own interests in extractive industry companies, implementation of Environmental Management Plans of EI companies, and implementation reports.\textsuperscript{146} This legislation legally obliges the Minister of Energy and Minerals to make all contractual and negotiated information in EI available for public access. Even though this legislation is a progressive, and unprecedented, step forward for Tanzania concerning the freedom of information, there are still limitations to public access to information in EI. One of the greatest difficulties following the passage of TEITA 2015 into law has been the continued inactivity of the Minister of Energy and Minerals to share the information listed under Article 16 of the Act, even though it was passed into law over eight months ago. A period of this length should provide ample time for at least starting to the release this information to the public.

Beyond governmental inaction, there is also legislation in the extractive industries that limits access to information. One example of this is found in the Petroleum Act of 2015 (PA 2015), an Act passed at the same time as TEITA 2015. Under Article 125(5) of PA 2015, information that protects “the security of the state and proprietary market data or other confidential information” shall not be made public in the newly mandated National Petroleum and Gas Information System.\textsuperscript{147} Though Article 125(6) defines “proprietary market data” to mean, “data related to intellectual rights of a licensee,”\textsuperscript{148} there is not any form of definition or explanation as to the meaning of “information that protects the security of the state” or “other confidential information.” This ambiguity leaves room for interpretation and abuse based on the fact that the only official definition of national security in Tanzania is NSA 1970, which allows for an overly liberal interpretation of national security. Furthermore, “other confidential information” is ambiguous in nature and could give

\textsuperscript{146} Parliament of the United Republic of Tanzania, \textit{The Tanzania Extractive Industries (Transparency and Accountability) Act}, art.16.

\textsuperscript{147} Parliament of the United Republic of Tanzania, \textit{The Petroleum Act}, art.125(5).

\textsuperscript{148} Ibid., art.125(6).
power to either a governmental body or corporate body to say that a document is confidential in nature and cannot be shared. Both restrictions on national security and confidentiality could lead to information being made unavailable to the public through PA 2015 even though such information should be made available under HRCm and ACmHPR standards.

Thus, the conflicting freedom of information standards between TEITA 2015 and PA 2015, let alone other pieces of EI and non-EI legislation, counteracts the full attainment of the freedom of information in the extractive industries. If, however, a national Freedom of Information Act were passed and restrictive legislation were removed or reformed according to international norms, including existing transparency legislation, a heightened level of freedom of information would be possible. The transparency that would follow would be an important step forward for good governance in Tanzania’s EI. It is only when this change occurs that both CSOs and the media will have the documentary means necessary for better understanding the underlying problems holding back the extractive industries.

7.2 Attacks on and Intimidations of Human Rights Defenders and Journalists while Working with the Extractive Industries

Along with issues regarding the protection of the freedom of information, threats, intimidation, and attacks on journalists and CSO researchers are also in direct violation of the freedom of expression. As was mentioned in section 5.2 of this thesis, the HRCm has stated that the use of these methods on a person, because of their exercise of the freedom of opinion or expression, is not compatible with Article 19 of the ICCPR. General Comment 34 states that “Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports….” Thus, both journalists and members of civil society organizations (known from this point onward as human rights defenders) are subject to forms of attack or intimidation because of the nature of their work in many countries in the world. Tanzania is not an ex-

149 Human Rights Committee, General Comment No. 34, para.23.
150 Ibid.
ception to this worldwide problem. Attacks, intimidation, and arrests have been used against journalists and human rights defenders throughout Tanzania as well as within EI.

In a 2012 study by the East and Horn of Africa Human Rights Defenders Project (EHAHRDP), multiple incidences of arrests, confiscations of recording devices, threats, difficulties in obtaining passports and visas, deportation (in the case of one foreign journalist), and harassment by police and mine security forces were mentioned for journalists and human rights defenders working with issues in the extractive industries. This trend continued beyond 2012, where in 2013, reports indicated the burning of the home of a news reporter, who protestors believed supported the government’s natural gas plans in Mtwara; as well as instances of three human rights defenders, working for different CSOs on EI topics, being illegally monitored, threatened, and—in one case—having data and recording devices stolen. Similar instances were recorded in 2014 where the editor of *Mtanzania* was attacked by three assailants due, according to the victim, to a story he had written about the owner of the Lake Oil Company and his human rights violations; and, the arrest of a radio host for telling listeners “to use the day to recall the incidents of the 2013 oil and gas saga” when protests had broken out over the government’s decision to pump gas from Mtwara to the capital without it benefiting the local community. Though reports have yet to be published in regards to instances of intimidation, attack, or arrest of journalists or human rights defenders in EI for 2015, it can be assumed that similar patterns of persecution would continue beyond 2014. This is because such incidents have existed every year prior to 2015. Further research will need to be performed to confirm this claim.

In order to give a more in-depth description of the situation for those working with EI, an example of journalists being subjected to levels of intimidation and muzzling while researching an attack at the African Barrick Gold (ABG) mine in 2011 will be examined.

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152 Though this is not a governmental action it still directly impacts the work and rights of the reporter. Legal and Human Rights Centre, *Tanzania Human Rights Report 2013,* 72.
According to Barrick and ABG, 800 or more armed intruders stormed the gold ore stockpile to steal ore from the mine.155 Due to the threat of violence, ABG contacted the police for protection. While the police were in the process of attempting to maintain order, a violent confrontation between the police and villagers broke out, leading to the death of five attackers and multiple others being injured.156 While looking into the events at the mine, Canadian journalist, Jocelyn Edwards went to the North Mara region to research and report on the incidents at the mine. Edwards reported that upon arrival in Tanzania, until she was later arrested, men followed her every movements and kept an eye on her even while she was at her hotel. After making some inquiries about what happened at the mine, she went to the district commissioner’s office to ask him about a statement he had supposedly made about wishing more people had died in the mine attack.157 Upon her arrival at the office, she was escorted into a room and told that she was suspected of having pictures on her camera that were, “dangerous to the ‘security and stability’ of the country,” even though she only had a few photos of the family members of the deceased attackers on her camera.158 She was then taken to an immigration office where she was questioned further for working in Tanzania without a work permit.

Though Edwards was detained on charges of “engaging in journalism without permission,” the train of questioning by the police focused more on why she, as a foreigner, was interested in the deaths at the mine, how she had come to know about the shootings, and what her conclusions about them were.159 Following her questioning and 8 hour imprisonment, she was driven to her hotel and her room was searched without a warrant and her camera, laptop, and recorder were confiscated and searched throughout the night even though she had already admitted to working in the country without a permit.160 She was taken to court the next day, and deported to Kenya after paying fees.161 Thus, her arrest,

155 Barrick Gold, “Recent Police Action at North Mara, Tanzania.”
156 Barrick Gold, “Recent Police Action at North Mara, Tanzania.”
157 Edwards, “‘Engaging in Journalism Activities without Permission.’”
158 Ibid.
159 Ibid.
160 Ibid.
interrogation, illegal invasion of privacy, and deportation seems to denote more of a concern about the information Edwards was collecting than her lack of work visa. In this and other instances, journalists and human rights defenders were subjected to levels of intimidation and persecution by both state and non-state actors due to their work in EI. Each incidence points towards a perceivable intent to silence the work being performed by these individuals. Each of these instances of attacks, intimidation, and unlawful arrests represent a violation of the freedom of expression, the results of which have limited, and in some cases, prevented the work of both CSOs and the media within the extractive industries.

7.3 Civil Society and the Passing of Extractive Industries Bills in 2015

Just as it is necessary to protect journalists and human rights defenders from attack and intimidation to promote expression, it is also important to protect the capabilities of civil society and other stakeholders to give input on legislation to better promote good governance and democracy. An unfortunate hindrance to this process is the ability of the president of Tanzania to use a certificate of urgency during the life of a bill to limit public input. To help understand how a certificate of urgency can impact the legislative process, it is first important to understand the process of passing legislation. A bill starts with its concept being presented to the Cabinet, who in turn, presents the bill to the Chief Parliamentary Draftsman. The Chief Draftsman writes the bill under consultation with the ministry who proposed it. It is then publicly published twice in the official government Gazette for a period of 21 days, allowing adequate time for analysis by public and parliamentary bodies, before the bill’s submission to parliament for its first reading. Once the first reading begins, the bill is introduced and the Chairperson of the standing committee directs the pertinent committee to review it. It is at this stage of review that the public is invited to present their assessments of and comments on the bill.

Following the receipt of public input, the bill is read before parliament for the second time and the findings of the committee are presented. After the opposition party presents its opinions on the bill, the necessary changes are made to it based on the input provided by

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the members of parliament and the public. However, if the president believes that the bill is of a particularly pressing nature, it is within his power to place a certificate of urgency upon it to dispense with the publication procedure, limiting the time for analysis and review by civil society and other stakeholders from a period of 21 days to somewhere between 2-8 days. This decrease in time forces civil society to have to scramble to improve the bill and make it more representative of stakeholder needs and national and international law following a superficial analysis. The certificate of urgency, therefore, limits public awareness and the ability to adequately provide an in-depth analysis of and input on the bill, preventing the full impact of civil society and other public bodies on legislation.

A pattern is developing of using such certificates on major pieces of legislation in EI. In 2015, a certificate of urgency was placed on three EI bills: the Tanzania Extractive Industries (Transparency and Accountability) Act of 2015; the Oil and Gas Revenue Act of 2015; and the Petroleum Act of 2015. This follows after the use of certificates of urgency for the Mining Act of 1998 along with its amended version in 2010 (the current legally-binding version of the Mining Act). The use of a certificate of urgency limited the open and informed participation and freedom of expression of the citizenry, industry stakeholders, and legislators in the process of improving national legislation because civil society and other stakeholders only had 3-4 days to meet and analyze the bills to make recommendations on their findings to parliament. This decreased the amount and depth of recommendations stakeholders could provide and the number of organizations able to present their findings. Thus, the application of certificates of urgency work against Article 21(2) of the Tanzanian Constitution, which grants the right for every citizen to have the “freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation.” There is a constitutional breach here because it is difficult to partici-
participate fully if a certificate of urgency prevents full and adequate capacity to participate in the determination of policy that impacts both “him” and/or the “nation.”

In response to the president’s actions, a group of 60 civil society organizations, which make-up the Coalition of Civil Societies in Tanzania (CCST), released a public statement on July 6 presenting their concerns about the lack of public consultation within the process of passing these three bills. Under these concerns, the Coalition openly criticized the pattern of using certificates of urgency in EI because of its opposition to the freedom of expression and alienation of stakeholders within the legislative process. Members of the opposition party in the parliament also opposed the lack of public input in the legislative process, where members of parliament (MPs) demanded that the vote for the bills be postponed to allow stakeholders time to adequately scrutinize the laws. The heated debate that followed this demand led to the suspension of 40 opposition MPs, due to their shouting during the debate, limiting the capability of these MPs to participate in the vote for the bills.\textsuperscript{170} This suspension allowed for an overwhelming majority vote and the passage of these three bills. Thus, the use of a certificate of urgency impeded the constitutional right to adequately communicate opinions and recommendations, within the legislative process, by stakeholders and MPs within this specific case. This example shows the growing trend of applying certificates of urgency on major EI legislations is and gives cause for concern because it is allowing legislation to circumvent the full application of public review, granting preventable issues and unfair corporate benefits to be passed when they could have possibly been prevented.

8 Implications of Expression Restrictions on Governance in the Extractive Industries

The above legal and thematic discussion has presented specific problems that directly impact the freedom of expression and the capabilities of CSOs and the media as they try to fulfill their role as ‘watch-dogs’ in the extractive industries. To better understand the implications of these legal and structural restrictions, it is important to look at how they relate to

\textsuperscript{170} “Tanzanian Lawmakers Pass Disputed Petroleum Bill.”
and impact Hyden’s good governance indicators—“degree of political participation,” “means of preference aggregation,” “methods of public accountability,” and “degree of openness of public policymaking.” This will help uncover the impact the legal and structural restrictions, among other issues, have had on EI governance in general in the extractive industries.\textsuperscript{171} Thus, this implications section will examine each of the above empirical indicators in relation to the laws, data, and themes analyzed throughout this thesis to better understand the level of governance and CSO and media capabilities that exists in Tanzania’s extractive industries.

8.1 Implications of Restriction based on Good Governance Indicators

Hyden indicates that citizen participation is one of the foundational principles of both good governance and politics. It is, therefore, little surprise that the right to participate within the state political process is protected under Article 21 of the Tanzanian Constitution. Article 21 states: “Every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation.”\textsuperscript{172} This Constitutional right, however, is impeded in many ways for CSOs and the media. Draconian legislation, attacks on and intimidation of human rights defenders and journalists, and certificates of urgency within the legislative process actively limit the ability of civil society, the media, and other stakeholders from fully participating in the process of governance in EI. Each of these structural limitations ebb the voice of CSOs and the media by creating an environment of self-censorship, forcibly preventing work on EI issues, and through decreasing the ability of stakeholders to comment on and improve national policy. This directly impacts the number and strength of the voices actively speaking out against EI issues.

These limitations placed on participation also directly impact citizenry preference aggregation. Stakeholder input is a structural facet of the legislation process, as can be seen by the inclusion of stakeholders in the deliberation process of a bill. This inclusion allows a

\textsuperscript{171} Hydén, “Governance and the Study of Politics,” 15.
\textsuperscript{172} The Constitution of the United Republic of Tanzania 1977 (2005), art.21(2).
bill to be changed for it to be better aligned with the will of civil society and the citizenry as a whole. In instances where the parliament has seen merit in the changes presented by stakeholders, necessary improvements in wording and content have been made.\footnote{Policy Forum, “Parliamentary Advocacy in the Extractive Industries,” 4–6.} However, the use of certificates of urgency for extractive industry bills limits the capacity of civil society and stakeholders to adequately “aggregate” citizen desires and recommendations within policymaking. Further limitations to stakeholder input come from their lack of inclusion in the process of drafting EI contracts and prospecting licenses. Though such inclusion is not necessarily linked to policymaking, it does relate to governmental action and mandate due to the fact that land grants associated with contracts and prospecting licenses directly impact the lives and livelihood of tribes, rural communities, and artisanal miners.\footnote{Society for International Development, The Extractive Resource Industry in Tanzania, 50-51; Lange, “Gold and Governance,” 241–244.}

It is within the power of the government to relocate national residents for government works and national development, nevertheless, proper discussion between national authorities and affected communities must first be emphasized for the desires and arguments of the community to be heard. If relocation cannot be avoided, adequate compensation must be given for such relocation to be lawful. The presentation of public will to governmental authorities and of adequate compensation to affected persons however has not occurred in most instances during relocation efforts for EI as section 2.3 indicated. Thus, both participation and citizen preference aggregation has been directly impeded within the extractive industries for CSOs, the media, and stakeholders.

Similarly, in reference to the degree of openness in public policymaking, limitations to transparency directly inhibit both civil society and media capabilities in the process of holding state authorities and their non-state partners accountable to national and international legal standards. Though there has been some improvement in regards to transparency in Tanzania, especially in the extractive industries, the discussion in section 6.1 indicates that existing legislation, those that specifically limit expression—such as NSA 1970—and arbitrary limitations in transparency legislation continue to stand as obstacles to public access to information. This situation is only exacerbated by the fact that Tanzania does not
have a national Freedom of Information Act that allows for better access to documentation from all levels of government as well as industries throughout the state. The lack of such legislation limits the examination of governmental action. Even in instances of existing legislation, the plague of governmental inaction and contradictory standards in freedom of information clauses continues to limit access to information. All of the above limitations make the advocacy process for accountability severely limited for governmental regulatory bodies as well as for CSOs and the media. Thus, “the degree of openness” within Tanzania is below Hyden’s and human right’s standards.

The predicament of openness in governmental action has a direct impact on the effectiveness of “methods of public accountability” in Tanzania. The state has attempted to build an institutional framework for public accountability, especially for the prevention of corruption within the extractive industries. These governmental bodies include: Prevention and Combating of Corruption Bureau (PCCB), Controller and Auditor General (CAG), Commission for Human Rights and Good Governance (CHRGG), Ethics Secretariat (ES), Public Procurement Regulatory Authority (PPRA), and, the most recent addition, Tanzania Extractive Industries Transparency and Accountability Committee (TEITAC). However, these bodies have been critiqued for lack of governmental independence (specifically PCCB, ES, CHRGG, CAG, and TEITAC), inadequate numbers of staff to effectively fulfill their responsibilities (specifically CAG and PCCB), and limitations in the reach and binding nature of organizational findings (specifically CHRGG, ES, and CAG). Issues along these lines, directly prevents the full capabilities of each of the governmental accountability bodies.

Some international, non-state accountability initiatives have helped improve accountability efforts in Tanzania, including: Extractive Industries Transparency Initiative (EITI) and the Open Government Partnership (OGP). The EITI has been instrumental in the release of some, not all, financial information in the extractive industries, and for inspiring the passage of the most recent extractive industries transparency and accountability legisla-

tion. The OGP has worked to try and have the government release civic data to the public. The Tanzanian Government has made commitments to OGP to improve data disclosure through the creation of a website for the release of governmental information and to enhance its efforts towards global initiatives. Nevertheless, the results of these commitments to OGP have not fully materialized as this thesis has demonstrated. On the national, non-governmental level, civil society organizations, like Policy Forum, and media bodies, like MwanaHalisi, work to also positively affect accountability, as this thesis has sought to prove, yet the lack of governmental transparency, overly-restrictive laws, and, at times, governmental and private cooperation, prevents the full capability of these organizations to exact change. Thus, by looking at governmental as well as international and national non-state accountability initiatives, one can see that they are limited in the level of influence and adequate action they are able to perform in the process of ensuring fair and lawful action in the extractive industries within Tanzania.

8.2 Implications of Governance Imbalance in Tanzania’s Extractive Industries

As can be seen by the above discussion, more than one of Hyden’s empirical good governance indictors are overly-restricted, indicating that governance, and civilian input, is out of balance within Tanzania’s EI. Such imbalance works to undermine civilian action (including CSO and media advocacy), political trust, political reciprocity, accountability, and citizen-perceived authority. Though some of this imbalance has shrunk, to a degree, over the past few years—thanks to the EITI, some positive strides forward in legislation, and governmental adherence to some CSO suggestions for legislation—there is still a long way to go before EI is seen as being properly governed. This is due to restrictive legislation and policy as well as diminished capabilities of CSOs, the media, stakeholders, legislative bodies, and so forth, within the governance process. This, and other issues beyond civil society and media limitations, is exemplified by Tanzania receiving a governance score of

“Weak”\textsuperscript{178} in the \textit{Resource Governance Index} of the Natural Resource Governance Institute.\textsuperscript{179} Tanzania governance has been ranked so low because of its weak institutional and legal framework settings that result from insufficient reporting mechanisms and a lack of freedom of information law; weak reporting practices due to the non-disclosure of contracts, limited information on the mineral licensing process, and not releasing information about EI revenues by the Finance Minister; partial safeguards and quality controls because of the Minister of Energy and Mineral having discretionary power over licensing and contract negotiations, and the non-existence of a clear outline of parliamentary responsibilities for oversight; and, finally, a weak enabling environment for governmental effectiveness and the rule of law along with poor rankings for corruption and accountability indicators.\textsuperscript{180} Even though Tanzania’s record is marginally better than those states ranked as “failing,” the Index shows that Tanzania’s EI governance is still a great distance from reaching international standards.

Once overly-strict restrictions to the freedom of expression and participation of CSOs and the media are removed as well as improvements in transparency and accountability are increased in Tanzania, it will better follow other countries, like Norway, who are highly ranked in resource governance within the extractive industries. Norway, the host state for the EITI, is ranked the highest for good governance in the \textit{Resource Governance Index}. It has been successful in its governance process due, in part, to high levels of transparency and an environment of openness due to a freedom of information Act; strong institutional and legal structures that protect societal benefits from EI; strong reporting practices that makes publicly accessible EI financial information and EI specific documentation including information on licenses, locations, operators, and owners; strict safeguards and quality controls through mandatory audit requirements; and, an enabling environment for accountability, democracy, and rule of law.\textsuperscript{181} As part of the enabling environment in Norway, the rights of freedom of expression and political participation are legally protected and strictly

\textsuperscript{178} This scale goes from “Satisfactory” to “Failing.”
\textsuperscript{179} Natural Resource Governance Institute, “Resource Governance Index.”
\textsuperscript{180} Natural Resource Governance Institute, “Tanzania’s Performance on the Resource Governance Index.”
\textsuperscript{181} Natural Resource Governance Institute, “Norway’s Performance on the Resource Governance Index”
enforced for civil society and the media in Norway, allowing organizations to play a strong role in the governance process. Until these same changes are made in Tanzania, the developmental benefits of the extractive industries will continue to be limited for Tanzania and, most especially, its citizens.

9 Conclusion and Recommendations

The Tanzanian extractive industries are a divers and important mechanism for the possible development of the state, yet they are fraught with issues of public and private corruption, detrimental tax laws, and weak means of accountability. Though Tanzania has improved, to a certain degree, in regards to financial transparency within EI, the extractive industries are still far from reaching good governance. This diminished lack of governance is due, in part, to freedom of expression-limiting, legislation and structural barriers, which actively restrict civil society and the media from adequately participating in and sufficiently holding the Tanzanian government and international corporations accountable within EI.

Though the freedom of expression is fairly progressive in nature within Tanzania’s Constitution, the reality of the right to the freedom of expression is well below international, regional, and national legal standards, especially for civil society organizations and the media. Tanzanian legislation—including: the Newspapers Act of 1976, National Security Act of 1970, and Cybercrimes Act of 2015, among others—contradicts and limits both the reach and scope of the freedom of expression under Tanzania’s Constitution as well as under international and regional human rights standards. These pieces of legislation allow for the banning of media sources for reasons that fall below necessity and proportionality under the law, the disproportionate limitation of information based on subjective interpretations of national security, and the prevention of communication without interference based on perceptions of data being false, deceptive, misleading or inaccurate. An environment of

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varying levels of self-censorship and fear exists for civil society and the media as a result from these pieces of draconian legislation.

Structural barriers, along with the above mentioned legislation, actively impede the efforts of civil society and the media from fulfilling their role as ‘watch-dogs’ in EI. These barriers include: limited and disjointed freedom of information legislation, attacks on and intimidation of journalists and human rights defenders, and the use of certificates of urgency within the legislative process. In Tanzania there is not a national Freedom of Information Act; rather, there are only some examples of industry-specific transparency legislation. Though some legislation for transparency in EI is better than no legislation at all, a lack of consistency on what should be made public, a lack of action by ministers to make documents public, and continued limitations from expression-restricting legislation directly limit the freedom of information for CSOs and the media. Attacks on and intimidations of journalists and human rights defenders working with extractive industry topics have directly impacted capacity to influence EI through arrests, lack of visas being provided, the confiscation or theft of data devices, personal attacks, and so forth. Similarly, the continuous use of certificates of urgency within the legislative process for extractive industry bills directly limits the capacity of CSOs and other stakeholders from adequately taking part and expressing their views and recommendations in the legislative process.

These restrictions to expression stand in the way of civil society and the media from gaining the strength necessary to exact high levels of change within EI, and the rest of the country. When a strong civil society and media exist they can help improve the level of freedom in a country, decrease corruption, promote the rule of law, and increase accountability, as mentioned above. Yet, to accomplish this, governmental transparency, free expression, and participatory rights must abound for civil society and the media to have the necessary capabilities and strength to adequately and effectively hold state and non-state bodies accountable within EI and the state as a whole. It is only when Tanzania follows suit with countries, like Norway, who have built the necessary governance mechanisms, including civil society and media accountability capabilities, to allow for good governance, that governance for Tanzania will be able to rise from weak to good.
In order to help move Tanzania towards the goal of both good and accountable governance in EI, specific changes must be made within EI and the country as a whole. Five specific policy recommendations are suggested to help lead to this change. These recommendations are based upon the major issues presented within this thesis. Thus my recommendations for Tanzania, based on this study, are as follows:

1. **Revise or remove draconian legislation that overly limits the freedom of expression.**
   The Newspapers Act of 1976, the National Security Act of 1970, the Cybercrimes Act of 2015, and all other pieces of expression-restricting legislation should be amended, removed, or rewritten to make them resemble international human rights standards. Also, the penalties for infractions of these laws must be revised and reduced. This should be done with the intent to strengthen, not weaken, the power of the citizenry to use both speech and the press in impacting EI.

2. **Pass a progressive Freedom of Information Act, and follow common practices in sharing information and documentation in the EI.**
   The Freedom of Information Act should encompass the accessibility norms found within General Comment 34 and the Declaration of Principles on Freedom of Expression in Africa. These soft-law standards should lead the content of the Act to only allow limitations in public accessibility that can pass the tests of necessity and proportionality as described within the ICCPR. Under this law, all extractive industry documents should be made accessible to the public. This recommendation should also lead to the necessity of interpreting specific, existing extractive industry legislations like Article 125(6) of the Petroleum Act of 2015, based upon international and regional human rights standards, to ensure progressive, not overly restrictive, transparency legislation in the extractive industries.

3. **Pass legislation that implement HRCm and ACmHPR standards for the freedom of expression.**
   The purpose of this legislation should be to strengthen the existing expression clauses within Tanzania’s Constitution. New legislation, based on progressive expression standards, should protect the freedom of press and prevent overly restrictive interpretations of the Constitution.
4. **Ensure that communities affected by EI have a say in decisions affecting their lands and livelihoods.**
Certificates of Urgency should be prevented, as much as is reasonable, within the legislative process. It is vitally important for the full capability and incorporation of stakeholder input within proposed bills. As these opinions are fully allowed and adequately weighed, policy can better meet the needs of the governed. Also stakeholders should be included within discussions of land rights during EI contract negotiations to ensure free, prior and informed consent. Clarification and an explanation of legal rights should also be presented to those who must be relocated to ensure adequate compensation is provided.

5. **EI legislation should be revised to bring greater benefit to Tanzania as a whole.**
An implementation of more favorable tax laws on behalf of the state, revision of checks on ministerial powers, provision of fair contractual proceedings, indication of clear parliamentary responsibilities for oversight, improvement in reporting practices, and improvement in auditing procedures are necessary for accountability and governance within the state to be increased and provide greater development for Tanzania and its citizenry.
10 References

International, Regional, and National Legal Instruments


———. The National Natural Gas Policy of Tanzania, 2013.
———. The Non-Governmental Organizations Act, 2002.


UN General Assembly. Statute of the International Court of Justice, 1946.

International, Regional, and National Soft-Law Documents


Books and Articles


Curtis, Mark, and Tundu Lissu. “A Golden Opportunity?: How Tanzania Is Failing to Benefit from Gold Mining.” Christian Council of Tanzania, National Council of Mus-

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Reports


Newspaper Articles


Online Resources


11 Annex

11.1 Freedom of Expression under 1984 Version of Tanzania’s Constitution

18. (1) Without prejudice to the laws of the country, everyone is free to express any opinion, to offer his views, and to search for, to receive and to give information and any ideas through any medium without consideration to country boundaries, and is also free to engage in personal communication without interference.

(2) Every citizen has the right to be informed at all times about different events taking place within the country and around the world, events that are important to his life and to the livelihood of the people, and also about important social issues.