

"Achieving Open Government Requires a Country to Put in Place Systems and Mechanisms which need to be reflected in the National Policies, Laws and Institutions"

-Jakaya Kikwete

Background

Contracts entered between resource rich governments and the multinationals are essential as they set out obligations, rewards, rights and protections in the oil, gas and mining investments. For decades now, contract disclosure for the exploration and exploitation of natural resources (esp. mining, oil and natural gas) in Tanzania has remained to be CRITICAL and an unreciprocated Mystery. - Inaccessibility to such contracts, limits citizens' access to information, shrinks their sense of ownership of their natural resources and decreases their ability and motivation to scrutinize

Open Contracting is about making making entire process of contracting open and transparent, fair and efficient from the planing phase, over tendering, averaging and contracting to implementation.

and engage effectively in debates or decisions on how the country can better manage its natural resources. This is for the country to achieve its desired revenues but also to improve the livelihoods of its people sustainably. Open Contracting is about making the entire contracting process open and transparent, fair and efficient: from the planning phase, over tendering, averaging and contracting, to implementation¹.

The main institution responsible for public procurement standards and practices which monitors compliance of procuring entities, is the Public Procurement Regulatory Authority (PPRA). The Government Procurement Services Agency (GPSA) centralizes the procurement of stock items for re-sale to the government and nongovernmental institutions, and for procuring common goods and services for other public institutions using framework contracts. The GPSA publishes procurement data on its website in an open data format.

The government has a mandate to be transparent and to enhance public participation in public procurement & contracting services; however, there is no clear program in place to engage citizens and the private sector in the whole issue of open contracting.

Moreover, , the legal framework that guides PPRA is inadequate. An amendment to the Public Procurement Act of 2016, seeks to address gaps in legislation, including disclosure. The amended act requires a witness at the signing of contracts, and for entities to report procurements electronically (where possible) or manually. The government also passed other disclosure related legislations such as the Constitution of Tanzania which provides for freedom of information; in 2016, the Access to Information Act was enacted providing the public the right to government-held information. This by itself is not enough as there are clauses in some of these laws that hinder access to some of the information therefore, the Public Procurement Act of 2016 for instance, should focus beyond having a witness but address a need for total disclosure as envisioned by the open contracting approach².

Why does it matter in the Tanzania oil, gas and mining sectors?

Being a compliant country to EITI standards - since 2012, Tanzania's implementation of the EITI Standard and the TEITA Act, 2015 have so far been important tools enabling stakeholders, especially policy makers to oversee governments' management of extractive contracts. However, as a matter of fact, the country has failed to live up to its disclosure obligations, and commitments regarding extractives sector contracts leaving it a MYSTERY for stakeholders to further advocacy and debates which cannot be discussed without disclosure³.

Open and accountable government in the extractive sector empowers "MWANANCHI" to fully participate in the decision-making processes positively impacting on revenues generated that have an impact in their livelihood. This can succeed ONLY when the investment plans and government businesses are carried out openly for the people and relevant stakeholders to scrutinize.

Open Contracting in Tanzania

¹https://www.open-contracting.org/wp-content/uploads/2016/02/OCP2016_EITI_brief.pdf

The public's interest is to understand how their natural resources are used and shared. To achieve this, "Wananchi" must first and foremost be informed about public contracting on agreements between private sector and governments; modalities of engagement, revenues, environmental impact assessments, revenue sharing, and community participation etc. For this reason, the disclosure of records generated from the sector as part of the procurement process is an important component of Open Government.

Where policy makers can lead the push to improve the policy and regulatory practice framework covering open contracting in the country:

1. The policy makers can use the space provided to enhance disclosure through open contracting for reasons such as:

- Fair deal for all: so that the negotiations that the government enters with the multinationals can be on a more level playing field, and that both the government and the investing companies can benefit from their investments.

- Building relationships and trust: to ensure that no information is lost across the entire sector in order to maximize benefits accrued from the sector. Access to these contracts, raises awareness among key stakeholders (CSO and public) which sets the grounds of trust between society, government and companies. This will enable these stakeholders to carry out analysis which provides REALITY checks thus avoiding the state of confusion and misunderstanding around agreements.

- Effective monitoring of rules: policy makers' engagement in the monitoring process of the extractive sector legal framework helps to ensure that the country's expectations especially on the share held by the government is kept in reality. OC makes it easier to know how the rules are implemented and to hold individuals responsible for their actions. This also enables communities to benefit from corporate social responsibility (CSR).

How to lead the push?

An effective policy maker is critical to shape open contracting and make it a success. A policy maker taking an active role in open contracting can position oneself as a leading voice on good governance and transparency. Here are some examples of how one can learn about, and get involved in open contracting in the extractive industry:

- Champion for a specific law on open contracting;
- Push for the amendment of the TEITA Act and its regulations to include open contracting;
- Champion the establishment of an open contracting caucus;
- Work within the key committees to monitor and oversee open contracting in the extractives sector;
- Interact with the media to raise public awareness on open contracting and highlight areas where the process can be improved;
- Request information on open contracting from civil society groups that are active on extractive industry monitoring;
- Present your involvement in open contracting to your constituency to raise constituents' awareness and demonstrate how it can benefit them; and
- Increase political pressure for the implementation of audit recommendations from EITI reports.

Contact:

Policy Forum, P. O. Box 38486,

Dar-es-salaam, Tanzania.

Tel: +255 22 2780200

Mobile: +255 782317434

Email: info@policyforum.or.tz

Website: www.policyforum.or.tz

HakiRasilimali, P. O. BOX 38486,

Dar-es-salaam, Tanzania.

Phone: +255 (0) 745 655 655

Email: info@hakirasilimali.or.tz

Website: www.hakirasilimali.or.tz

THE BIG RESULTS FOR OPEN CONTRACTING



policy forum



Value For Money



Reduced fraud and corruption



Higher Quality Implementation



Fairer Business Environment



²Open Contracting Data Programme of Hivos:
<https://hivos.org/focal-area/open-contracting>

³The EITI Standard 2016:
<https://eiti.org/document/standard>