

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

No. 6

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THE NATURAL WEALTH AND RESOURCES CONTRACTS
(REVIEW AND RE-NEGOTIATION OF UNCONSCIONABLE
TERMS) ACT, 2017

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THE UNITED REPUBLIC OF TANZANIA



NO. 6 OF 2017

I ASSENT

JOHN POMBE JOSEPH MAGUFULI
President

[5th July, 2017]

PREAMBLE

WHEREAS, by virtue of Article 27 of the Constitution the protection of natural wealth and resources in the United Republic is charged on the People and the Government the control of which is entrusted to the President;

AND WHEREAS, by virtue of Article 9(c) and (i) of the Constitution requires all activities of the Government to be conducted in such a manner as to ensure that the national wealth and heritage are harnessed, preserved and applied for the common good and to prevent exploitation and that the use of the national wealth and heritage places emphasis on the development of the People and the United Republic and in particular, geared towards the eradication of poverty, ignorance and diseases;

AND WHEREAS, the Government has resolved to fairly and equitably undertake protracted measures intended to ensure that the natural wealth and resources of the United Republic are used for the greatest benefit and welfare of the People and the United Republic by ensuring that all arrangements or agreements by the Government protect interests of the People and the United Republic;

AND WHEREAS, pursuant to International Law, the United Republic has permanent sovereign rights for the purpose of exploring, exploiting and managing its Natural Resources. AND RECOGNISING, that the United Republic is a signatory to the United Nations General Assembly Resolution 1803(XVII) of 14th December, 1962 and subscribes to the stipulations therein;

AND WHEREAS, the United Republic being a sovereign state has permanent sovereignty over all natural wealth and resources thence imposing on the Government the responsibility of ensuring that the interests of the People and the United Republic are paramount and protected in any arrangement or agreement which the Government makes or enters in respect of such natural wealth and resources;

AND WHEREAS, it is necessary to make comprehensive statutory provisions that require all arrangements or agreements on natural wealth and natural resources to be tabled for review by the National Assembly for purposes of ensuring that any unconscionable terms therein is rectified or expunged;

NOW THEREFORE, be it ENACTED by Parliament of the United Republic of Tanzania as follows:

PART I

PRELIMINARY PROVISIONS

Short title and
commencement

1.-(1) This Act may be cited as the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017.

(2) This Act shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Application

2. This Act shall, without prejudice to the authority of the Revolutionary Government of Zanzibar over ownership and control of its own national wealth and resources in accordance with the Constitution and the laws of Tanzania Zanzibar in relation to natural wealth and resources, apply to Mainland Tanzania as well as Tanzania Zanzibar.

Interpretation

3. In this Act, unless the context otherwise requires:

“arrangement or agreement” means any contract relating to extraction, exploitation, acquisition and use of natural wealth and resources;

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“Constitution” means the Constitution of the United Republic;

“Government” means the Government of the United Republic or the Revolutionary Government of Zanzibar as the case may be, and the corresponding Constitutions and institutions of the United Republic and Tanzania Zanzibar exercising powers or performing functions in relation to review and re-negotiation of unconscionable terms;

“Minister” means the Minister responsible for constitutional affairs;

“natural wealth and resources” means all materials or substances occurring in nature such as soil, subsoil, gaseous and water resources, and flora, fauna, genetic resources, aquatic resources, micro-organisms, air space, rivers, lakes and maritime space, including the Tanzania’s territorial sea and the continental shelf, living and non-living resources in the Exclusive Economic Zone any other natural wealth and

resources as the Minister may by notice in the *Gazette* prescribe which can be extracted, exploited or acquired and use for economic gain, whether processed or not; and

“unconscionable term” means any term in the arrangement or agreement on natural wealth and resources which is contrary to good conscience and the enforceability of which jeopardises or is like to jeopardise the interests of the People of the United Republic.

PART II POWERS OF NATIONAL ASSEMBLY TO REVIEW ARRANGEMENTS OR AGREEMENTS

Powers to review
arrangements or
agreements
Cap.2

4.-(1) For effective performance of oversight and advisory functions stipulated under Article 63(2) of the Constitution, the National Assembly may review any arrangements or agreement made by the Government relating to natural wealth and resources.

(2) In asserting the principle of permanent sovereignty over natural wealth and resources, there shall be implied in every arrangement or agreement that the negotiation are concluded in good faith and fairly and, at all times, observe the interests of the People and the United Republic.

(3) The principle of permanent sovereignty over natural wealth and resources shall afford fair and equitable treatment to the parties.

(4) For purposes of subsections (2) and (3), the Schedule to this Act shall have effect in relation to assertion of permanent sovereignty over natural wealth and resources by the People and the United Republic.

Procedure for
review

5.-(1) All arrangements or agreements on natural wealth and resources made by the Government shall, within six sitting days of the National Assembly next following the making of such arrangement or agreements be reported to the National Assembly.

(2) Where upon consideration of the report submitted pursuant to subsection (1), the National Assembly finds that the arrangement or agreement contains unconscionable terms, it may, by resolution, advise the Government to initiate re-negotiation of the arrangement or agreement with a view to rectifying the terms.

(3) Where the National Assembly considers that certain terms of arrangement or agreement on natural wealth and resources or the entire arrangement or agreement on natural wealth and resources made before coming into force of this Act are prejudicial to the interests of the People and the United Republic by reason of unconscionable terms it may, by resolution, advise the Government to initiate re-negotiation of the agreement or arrangement with a view to rectifying the terms.

PART III

GOVERNMENT RE-NEGOTIATION OF UNCONSCIONABLE TERMS

Re-negotiation of
unconscionable
terms

6.-(1) The Government shall, within thirty days of the resolution of the National Assembly made in terms of section 5, serve the other party to the arrangement or agreement a notice of intention to re-negotiate the terms which the National Assembly found to be unconscionable.

(2) Terms of the arrangement or agreement shall be deemed to be unconscionable and treated as such if they contain any provision or requirement that:

- (a) aim at restricting the right of the State to exercise full permanent sovereignty over its wealth, natural resources and economic activity;
- (b) are restricting the right of the State to exercise authority over foreign investment within the country and in accordance with the laws of Tanzania;
- (c) are inequitable and onerous to the state;
- (d) restricts periodic review of arrangement or agreement which purports to last for life time;
- (e) securing preferential treatment designed to create a separate legal regime to be applied discriminatorily for the benefit of a particular investor;
- (f) are restricting the right of the State to regulate activities of transnational corporations within the country and to take measures to ensure that such activities comply with the laws of the land;
- (g) are depriving the people of Tanzania of the economic benefits derived from subjecting natural wealth and resources to beneficiation in the country;
- (h) are by nature empowering transnational corporations to intervene in the internal affairs of Tanzania;
- (i) are subjecting the State to the jurisdiction of foreign laws and fora;
- (j) expressly or implicitly are undermining the effectiveness of State measures to protect the environment or the use of environment friendly technology; or
- (k) aim at doing any other act the effect of which undermines or is injurious to welfare of the

People or economic prosperity of the Nation.

(3) In a notice served pursuant to subsection (1), the Government shall state the nature of the unconscionable terms and the intention to expunge the terms from the arrangement or agreement if the re-negotiation is not concluded within a specified period.

(4) Unless the period for the renegotiation is extended by parties on mutual agreement, the period for renegotiation of unconscionable terms shall not exceed ninety days from date of service of notice to the other party.

(5) After completion of re-negotiation, the Government shall prepare a report on the outcome of re-negotiation and lay down the report before the National Assembly.

Rectification and
expunge of
unconscionable
terms

7.-(1) Where the Government has served notice of intention to re-negotiate the arrangement or agreement in terms of section 6 and the other party fails to agree to re-negotiate the unconscionable terms or no agreement is reached with regards to the unconscionable terms such terms shall cease to have effect to the extent of unconscionable terms and shall, by operation of this Act, be treated as having been expunged.

(2) For the purpose of subsection (1), the provisions of this Act shall have over-riding effect over any other law governing administration and management of natural wealth and resources.

Powers to make
regulations

8.-(1) The Minister may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the Minister may make regulations on the following matters:

- (a) parameters of negotiations;
- (b) code of conduct for members of Government negotiation team; and
- (c) anything which is incidental or enabling effective implementation of this Act.

SCHEDULE

(Made under section 4(4))

1962 UN GENERAL ASSEMBLY RESOLUTION ON
PERMANENT SOVEREIGNTY OVER NATURAL
RESOURCES (GAR 1803)

The General Assembly,

Recalling its resolutions 523(VI) of 12 January 1952 and 626(VII) of 21 December 1952,

Bearing in mind its resolution 1314(XIII) of 12 December 1958, by which it established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of developing countries,

Bearing in mind its resolution 1515(XV) of 15 December 1960, in which it recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,

Considering that any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States,

Considering that nothing in paragraph 4 below in any way prejudices the position of any Member State on any aspect of the question of the rights and obligations of successor States and Governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule,

Noting that the subject of succession of States and Governments is being examined as a matter of priority by the International Law Commission,

Considering that it is desirable to promote international co-operation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination,

Considering that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State,

Considering the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of such resources and wealth, and the important part which the United Nations and other international organizations are called upon to play in that connection,

Attaching particular importance to the question of promoting the economic development of developing countries and securing their economic independence,

Noting that the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence,

Desiring that there should be further consideration by the United Nations of the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries,

PART I

Declares that:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.

6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.

8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

PART II

Welcomes the decision of the International Law Commission to speed up its work on the codification of the topic of responsibility of States for the consideration of the General Assembly.

PART III

Requests the Secretary-General to continue the study of the various aspects of permanent sovereignty over natural resources, taking into account the desire of Member States to ensure the protection of their sovereign rights while encouraging international co-operation in the field of economic development, and to report to the Economic and Social Council and to the General Assembly, if possible at its eighteenth session.

Passed by the National Assembly on the 3rd July, 2017.

THOMAS DIDIMU KASHILILAH
Clerk of the National Assembly