
THE UNITED REPUBLIC OF TANZANIA

SPECIAL BILL SUPPLEMENT

No. 3

28th June, 2017

to the Special Gazette of the United Republic of Tanzania No. 4 Vol. 98 dated 28th June, 2017

Printed by the Government Printer, Dar es Salaam by Order of Government

THE NATURAL WEALTH AND RESOURCES (PERMANENT
SOVEREIGNTY) ACT, 2017

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NOTICE
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This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dar es Salaam,
27th June, 2017

JOHN W. H. KIJAZI,
Secretary to the Cabinet

PREAMBLE

WHEREAS, the fundamental objectives and directive principles of state policy enshrined under sub-article (1) of Article 8 of the Constitution, asserts that the United Republic is a State which adheres to the principles of democracy and social justice and, accordingly, sovereignty resides in the People and it is from the People that the Government, through the Constitution, derives all its powers and authority and that the primary objective of the Government shall be the welfare of the People;

AND WHEREAS, international law recognizes the right of the United Republic to assert permanent sovereign right for the purpose of exploring, exploiting and managing its natural resources;

AND RECOGNIZING, that the United Republic is a signatory to the United Nations General Assembly Resolution 1803 (XVIII) of 14th December, 1962 and Resolution 3281 (XXIX) of 12 December 1974 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 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, 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 and the control of which is entrusted to the President;

AND WHEREAS, the fundamental objectives and directive principles of state policy enshrined under paragraphs (c) and (i) of Article 9 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 Nation, 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 made into by the Government protect interests of the People and the United Republic;

AND WHEREAS, it is necessary to make comprehensive statutory provisions to provide for ownership and control over natural wealth and resources and to provide for the protection of permanent sovereignty over natural wealth and resources;

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

PART I

PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017, and 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, apply to Mainland Tanzania .

Interpretation

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

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

“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 which can be extracted, exploited or acquired and used for economic gain whether processed or not;

“national jurisdiction” means the authority of judicial system in the United Republic to administer justice over things and persons within the United Republic.

PART II

PERMANENT SOVEREIGNTY OVER NATURAL WEALTH AND RESOURCES

Proclamation of permanent sovereignty

4.-(1) The People of the United Republic shall have permanent sovereignty over all natural wealth and resources.

(2) The ownership and control over natural wealth and resources shall be exercised by, and through the Government on behalf of the People and the United Republic.

Inalienability of natural wealth and resources

5.-(1) The natural wealth and resources shall be inalienable in any manner whatsoever and shall always remain the property of the People of the United Republic.

(2) The natural wealth and resources shall be held in trust by the President on behalf of the People of the United Republic.

(3) For purposes of subsections (1) and (2), all activities and undertakings relating to exploration of natural wealth and resources shall be conducted by the Government on behalf of the People of the United Republic.

Prohibition of exploitation except for the benefit of the People Cap. 2

6.-(1) Pursuant to paragraphs (c) and (i) of Article 9 of the Constitution, it shall be unlawful to make any arrangement or agreement for the extraction, exploitation or acquisition and use of natural wealth and resources except where the interests of the People and the United Republic are fully secured and approved by the National Assembly.

(2) Any arrangement or agreement for international cooperation for the economic and social development involving natural wealth and resources, 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 Tanzania's independence based upon respect for permanent sovereignty over natural wealth and resources.

Guarantee of returns from natural wealth and resources

7. In any arrangement or agreement for extraction, exploitation or acquisition and use of natural wealth and resources, there shall be guaranteed returns into the Tanzanian economy from the earnings accrued or derived from such extraction, exploitation or acquisition and use.

Participation of the People and Government

8. Any authorization granted for the extraction, exploitation or acquisition and use of natural wealth and resources, arrangements shall be made or given to ensure that the Government obtains an equitable stake in the venture and the People who are citizens of the United Republic may acquire stakes in the venture.

Requirement of
beneficiation

9.-(1) Any arrangement or agreement for the extraction, exploitation or acquisition and use of natural wealth and resources shall ensure that no raw resources shall be exported for beneficiation outside the United Republic.

(2) For the purpose of subsection (1), any arrangement or agreement for the extraction, exploitation or acquisition and use of natural wealth and resources, there shall be commitment to establish beneficiation facilities within the United Republic.

Retention of
earnings

10.-(1) Any arrangement or agreement for extraction, exploitation or acquisition and use of natural wealth and resources shall require that earnings from disposal or dealings be retained in the banks and financial institutions established in the United Republic.

(2) For the purpose of subsection (1), it shall be unlawful to keep such earnings in banks or financial institutions outside the United Republic except where distributed profits are repatriated in accordance with the laws of Tanzania.

PART III

PROTECTION OF PERMANENT SOVEREIGNTY

Prohibition of
proceedings in
foreign courts

11.-(1) Pursuant to Article 27 (1) of the Constitution, permanent sovereignty over natural wealth and resources shall not be a subject of proceedings in any foreign court or tribunal.

(2) For the purpose of subsection (1), disputes relating arising from extraction, exploitation or acquisition and use of natural wealth and resources shall be adjudicated by judicial bodies or other organs established in the United Republic and accordance with laws of Tanzania.

(3) For the implementation of subsection (2), in any arrangement or agreement the jurisdiction of judicial bodies or other bodies established in the United Republic and application of laws of Tanzania shall be acknowledged and incorporated.

Review by the
National Assembly

12. All arrangements or agreements entailing extraction, exploitation or acquisition and use of natural wealth and resources may be reviewed by the National Assembly.

Power to make
regulations

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

(2) Without prejudice to the generality of subsection (1), the regulations shall prescribe:

- (a) code of conduct for investors in natural wealth and resources;
- (b) minimum guidelines for inspection, monitoring and evaluation of investments in natural wealth and resources; and
- (c) any thing which is incidental or conducive to the effective implementation of this Act.

OBJECTS AND REASONS

This Bill proposes the enactment of the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 and makes provisions for the integration of the regional and international agreements on the country's permanent sovereignty over natural wealth and resources. The Agreements trace origin in the General Assembly Resolutions 523 (VI) of 12 January 1952 and 626 (VII) of 21 December 1952, Resolution 1314

(XIII) of 12 December 1958, Resolution 1515 (XV) of 15 December 1960, Resolution 1803 (XVII) of 14 December 1962 Resolution 2158 (xxi) of 6 December 1966, Resolution 2692 (xxv) of 11 December 1970 and Resolution 3281 of 12 December 1974.

In the light of international agreement to which the United Republic is signatory, this Bill seeks to ensure that any measure taken in investments in natural and strategic resources must be based on the recognition of the inalienable right of the country freely to dispose of its natural wealth and resources in accordance with its national interests, and on respect for the economic independence, free from wanton exploitation.

The Bill also seeks to implement the provision of Article 27 of the Constitution of the United Republic, which asserts the duty of every person to protect the natural resources of the United Republic, the property of the state authority and all property collectively owned by the People of the United Republic. The measures stipulated in the Bill are aimed at safeguarding the property of the state authority and all property collectively owned by the People of the United Republic, to combat all forms of waste and squander, and to manage the national economy assiduously with the attitude of people who are masters of the destiny of their nation.

The Bill is divided into Three Parts. Part I provides for preliminary matters including the short title, date of commencement, application and construction of terms.

Part II provides for key requirements in securing permanent sovereignty over natural wealth and resources. Lastly, Part III provides for the protection of permanent sovereignty over natural wealth and resources, and powers of the Minister to make regulations.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kutungwa Sheria ya Mamlaka ya Nchi kuhusiana na Umiliki wa Maliasili, 2017 kwa kuweka masharti yanayohusianisha misingi iliyomo katika mikataba na itifaki mbalimbali ambazo Jamhuri ya Muungano imetia saini na kuridhia. Baadhi ya masharti yanayopendekezwa katika Muswada huu yanatokana na Azimio la Umoja wa Mataifa Namba 523(VI) la tarehe 12 Januari, 1952 na Azimio Namba 626(VII) la Tarehe 21 Disemba, 1952, Azimio Namba 1314(XIII) la tarehe 12 Disemba, 1958, Azimio Namba 1515(XV) la tarehe 15 Disemba, 1960 Azimio Namba 1803(XVII) la tarehe 14 Disemba, 1962; Azimio Namba 2158(XXI) la tarehe 6 Disemba 1966, Azimio Namba XXV la tarehe 11 Disemba, 1970; na Azimio Na. 32 la tarehe 12 Disemba 1974.

Kwa kuzingatia masharti yaliyomo katika Mikataba hiyo, Muswada huu unakusudia kuweka masharti yatakayohakikisha kwamba hatua yoyote inayochukuliwa kuhusu uwekezaji wa rasilimali za Taifa inatambua na kuzingatia haki ya Jamhuri ya Muungano kama Taifa huru na lenye mamlaka kusimamia na kutumia rasilimali zake kwa maslahi ya Taifa. Aidha, Muswada huu unakusudia kutekeleza masharti ya Ibara ya 27 ya Katiba ambayo, pamoja na mambo mengine, inamtaka kila Mtanzania kulinda na kusimamia kikamilifu rasilimali za Nchi kwa masilahi ya wananchi na Taifa kwa ujumla. Hatua zinazopendekezwa katika Muswada huu zinalenga kulinda mali na rasilimali za Taifa na kuondoa aina yoyote ya upotevu au ubadhirifu wa rasilimali za Nchi.

Muswada huu umegawanyika katika Sehemu Tatu. Sehemu ya I inahusu masharti ya jumla kama vile jina, tarehe ya kuanza kutumika kwa sheria, matumizi ya sheria na ufafanuzi wa misamiati.

Sehemu ya II inaainisha mahitaji ya msingi katika kuhakikisha kwamba mamlaka ya nchi juu ya rasilimali za Taifa yanatambuliwa na kulindwa. Mwisho, Sehemu ya III inatambua na kulinda mamlaka ya Jamhuri ya Muungano juu ya rasilimali na inampatia mamlaka Waziri ya kutengeneza kanuni.

Dar es Salaam,
23 Juni, 2017

PALAMAGAMBA J.A.M. KABUDI,
Waziri wa Katiba na Sheria