
THE UNITED REPUBLIC OF TANZANIA

SPECIAL BILL SUPPLEMENT

No. 2

28th June, 2017

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

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NOTICE

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

Dar es Salaam,
27th June, 2017

JOHN W.H. KIJAZI
Secretary to the Cabinet

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(XVIII) 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) The 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, apply to Mainland Tanzania in respect of all arrangements or agreements made over natural wealth and resources by the Government before or after coming into operation of this Act.

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;

“Minister” means the Minister responsible 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 use for economic gain, whether processed or not;

“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 and the United Republic.

PART II

POWERS OF NATIONAL ASSEMBLY TO REVIEW CONTRACTS

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) The National Assembly shall devise the procedure under the Standing Orders of the National Assembly for reviewing any arrangement or agreement made by the Government over natural wealth and resources.

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, direct 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, direct 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 arrangement or agreement

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 the mining;
- (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 forum;
- (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 unconscionable 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. The Minister may make regulations for the better carrying out of the provisions of this Act.

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OBJECTS AND REASONS
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The Bill proposes the enactment of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017 in order to provide for a mechanism by the People of Tanzania, through the National Assembly, can review arrangements or agreements made by the Government. The mechanism for review is included to ensure that the terms and conditions of such arrangements or agreements are in line with the interest of the People and the united republic. Once enacted, the proposed law will implement the provisions of Articles 8, 9 and 27 of the Constitution of the United Republic which charge every Tanzanian with the responsibility of protecting natural resources of the United Republic, the property of the state authority and all property collectively owned by the People and the United Republic.

This Bill is divided into Three Parts. Part I provides for preliminary provisions such as the name, commencement date and construction of terms used.

Part II provides for powers of the National Assembly, in the discharge of its oversight role under the Constitution, to review arrangements and agreements made by the Government and, where necessary, direct the Government to re-negotiate any unconscionable terms identified.

Part III provides for the procedure for the initiation of re-negotiation of unconscionable terms and provides a yard stick for unconstitutionality.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kutungwa kwa Muswada wa Sheria ya Mapitio na Majadiliano kuhusu Masharti Hasi katika Mikataba inayohusu Maliasili za Nchi. Sheria inayopekezwa inakusudia kuweka utaratibu ambapo wananchi kupitia chombo cha uwakilishi yaani Bunge la Jamhuri ya Tanzania kupitia na kujadili makubaliano na mikataba yote inayohusu rasilimali za Nchi ambayo imefungana na Jamhuri ya Muungano wa Tanzania kwa lengo la kujiridhisha endapo masharti, makubaliano na mikataba hiyo haikinzani na maslahi ya wananchi na Taifa kwa ujumla. Muswada huu unakusudia kutekeleza masharti ya Ibara za 8, 9 na 27 za Katiba ya Jamhuri ya Muungano ambazo, pamoja na mambo mengine, zinampa wajibu kila Mtanzania kuhakikisha kwamba anashiriki kikamilifu kulinda mali na rasimali za nchi kwa masilahi ya Watanzania na Jamhuri ya Muungano kwa ujumla.

Kwa kuzingatia wajibu wa kila Mtanzania na kwa kutambua wajibu wa Bunge kama chombo cha uwakilishi, Sheria inayopendekezwa imelipa nguvu Bunge kupitia mikataba yote inayohusina na maliasili za nchi ambayo imeingiwa na Jamhuri ya Muungano ilikujiridhisha kwa masharti yaliyomo katika mikataba hayo yamezingatia maslahi ya watanzania na Taifa kwa ujumla.

Muswada huu umegawanyika katika Sehemu kuu Tatu. Sehemu ya I inahusu masharti ya jumla kama vile jina la sheria na kuanza kutumika kwa Sheria inayopendekezwa.

Sehemu ya II inalipa Bunge la Jamhuri ya Muungano nguvu za kisheria ili kutekeleza wajibu wake wa kuisimamia Serikali liweze kupitia makubaliano na mikataba yote inayohusu maliasili za nchi ambayo imeingiwa na Jamhuri ya Muungano kwa lengo la kujiridhisha namasharti yaliyomo katika mikataba hiyo. Kwa mujibu wa masharti yanayopendekezwa katika Sehemu hii, baada ya kubaini masharti hasi katika Mikataba hiyo Bunge linaweza kuitaka Serikali kufanya majadiliano upya naupande wa pili wa mkataba ili kuondoa masharti hayo.

Sehemu ya III inaweka utaratibu wa namna ya kuanzisha majadiliano na upande wa pili wa mikataba ili kuondoa masharti hasi kama yalivyobainishwa na Bunge kwa mujibu wa ibara ya 6(2) ya Muswada. Aidha, Sheria inayopendekezwa imeainisha masharti ambayo kwataathira yake ni masharti hasi na hayapaswi kuwemo katika Mikataba inayohusu maliasili za nchi.

Dar es Salaam,
23 Juni, 2017

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