# PERMANENT SOVEREIGNTY AND RE-NEGOTIATION OF UNCONSCIONABLE TERMS IN NATURAL RESOURCES: CONFIRMATORY ANALYSIS ON LEGAL CHANGES IN TANZANIA

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## ABSTRACT

The doctrine of permanent sovereignty over natural resources is a hugely consequential one in the appearing to grant Tanzania both jurisdiction-type rights and rights of ownership over the resources. This doctrine is a complex notion, embracing freedoms, rights and duties. While Tanzania is free to directly or indirectly exploit its resources, remains bound to comply with international obligations and to respect the self-determination of Tanzanians Citizens for their political status and freely pursue their economic, social and cultural development. They should never be deprived of its own means of subsistence[i]. In its 7th Meeting of the 59th Session held on 3rd and 4th July 2017 Tanzania's parliament significantly made changes to the legal and institutional frameworks governing oil, gas and mineral extraction[ii]. The aim inter alia was to adhere to the principles of democracy and social justice and, by vesting sovereignty to the people[iii] as recognized by the international law[iv] regarding exploring, exploiting and managing natural resources. This article analyses on legal Changes in Tanzania focusing on the permanent sovereignty and rationale for re-negotiation on unconscionable terms.


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## INTRODUCTION

Permanent sovereignty over natural resources is a decisively recognized international law standard, conferring Tanzania to exercise exclusive jurisdiction domestically over natural resources[v]. It consequently, translates the principles inherent in the sovereignty such as economic liberty, sovereignty of domestic legal order, autonomy to administer the social and economic system, sovereign equality, parity, non-intervention, and self-determination into the economic domain[vi]

The genesis of changes in Legislations, is an aftermath of a recognition by the United Republic of Tanzania as a signatory to the United Nations Universal Declaration of Human Rights (UNUDHR) and the African charter on Human and Peoples Rights (ACHPR) and subscribes to Articles l7 and 2l respectively[vii]. In that vein, Government is given the paramount responsibility of protecting the interests of the people and the URT in any arrangement concerning natural wealth and resources.[viii]

Tanzania has been exposed to various cases at the international arbitration as one of the challenges pertaining to the protection of natural resources which include; 1. Sunlodges Case [ix], Nachingwea U.K. Limited (UK), Ntaka Nickel Holdings Limited (UK) and Nachingwea Nickel Limited Case[x] Winshear Gold Corp. Case [xi], and Montero Mining and Exploration Ltd Case[xii]

## DUTY TO PROTECT NATURAL RESOURCES

Natural resources require appropriate management to deliver sustained growth[xiii] specifically in developing counties where determination of national wealth is vital. Natural wealth and resources mean;

> "(…… all materials or substances occurring in nature such as soil, subsoil, gaseous and water resources ……)"[xiv]

Every person has the duty to protect the natural resources, the property of the state, all property collectively owned by the people of Tanzania, and also to respect another person's property……."[xv]. Consequently, any proceedings thereof shall not be subject to any foreign


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court or tribunal and adjudication shall be solely conducted within the jurisdiction of the judicial bodies or other organs established in the United Republic and in accordance with laws of Tanzania[xvi]. Prolific

## APPRAISAL OF NATURAL RESOURCES AND THE PRINCIPLE OF PERMANENT SOVEREIGNTY

The relationships between people and natural resources are configured by an array of norms, conventions, legal rules and regulations[xvii] in order to authenticate natural wealth that ought to justify realized benefits by the citizens. However, convertibility of valuable natural resources into an enhanced citizens' standard of living is considerably complex thereby diverting from the national development plans.[xviii]

Suitable appraisal of natural resources is indispensable for vigorous development planning which requires reliable, stable and predictable regulatory authorities allied with transparency and accountability[xix]; sustainable resource use; the rule of law[xx] and life of the individual in the civil society conforming strictly to procedures and limitations prescribed by laws;[xxi] and adequate legal recourse[xxii].

The permanent sovereignty over natural resources (PSNR) is where resource-rich nations have control over their natural resources within the parameters of international law, such as the right to freely dispose[xxiii], the right to spontaneously explore and exploit natural resources, the right to effectively use natural resources for development, the right to regulate foreign investment, and the right to settle disputes on the basis of national law[xxiv].

The demand for economic sovereignty and the right to self-determination in developing countries are factors that drove the development of PSNR where developing countries asserted that states had an "inalienable", "absolute", and "permanent right" to dispose of their natural resources.[xxv] PSNR derived from the right to self-determination, which brought about the end of the colonial empires after the Second World War.[xxvi] However, most developing countries soon realized that such independence was meaningless if foreign control continued to prevail in their economic sectors. Subsequently, the PSNR principle was extended beyond the


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traditional state-centric approach to encompass a people- centric approach, with people currently affording rights over their country's natural resources.[xxvii].

In Saramaka people v. Suriname, the Inter-American Court of Human Rights (IACtHR) concluded that;

> "In the context of indigenous and tribal communities, the right to use and enjoy their territory would be meaningless […] if said rights were not connected to the natural resources that lie on and within the land"[xxviii]

Natural resources with special protection encompass those traditionally used and essential for the very survival, development and continuation of way of life"[xxix]

Likewise, PSNR must configurate basic rules concerning the treatment of foreign investors[xxx]. Its genesis engrossed four rights to resource-owning countries, such as the right to (1) assert ownership; (2) manage and control the exploitation; (3) exploit; and (4) benefit from the exploitation of their resources[xxxi]. Moreover, the RPSNR includes reference to international law, which could be viewed as a move by developing countries to constrain the ability of foreign investors to rely on international standards in the event of expropriation of the investment.[xxxii] On contrary, the Committee on the Elimination of Racial Discrimination (CERD) was supported by a majority of developing countries.

In Congo v Uganda[xxxiii] the ICJ explicitly recognized the principle PSNR as "a principle of customary international law." Therefore, exploration, development and disposition of oil, gas and mineral extraction, as well as enhancement of FDIs should principally be in conformity with the rules and conditions necessary for the authorization, restriction or prohibition of such activities[xxxiv].

In that vein, upon authorization execution, the capital imported and the earnings should be governed by the national legislation in force, and by international law[xxxv]. The profits derived should be shared in the proportions freely agreed upon, in each case, with the investors and a recipient country, however in absentia of the impairment over natural wealth and resources.

Under PSNR, Tanzania can enter into concession agreements with foreign investors and this principle can be invoked when Tanzania wishes to unilaterally abrogate a concession


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agreement. It enables Tanzania to regain its sovereignty and control over its assets to enhance economic and political development[xxxvi]. The word "permanent" in the principle, rationalize this holding because has the effect of allowing Tanzania, at any given time, to exit agreements, notwithstanding a promise not to do so.[xxxvii] The ultimate control over natural resources is permanent - with the state, and accordingly, activities related to their development, exploitation and utilization are subjected to the state's national laws.[xxxviii] A state can legally invalidate existing agreements and cordially re-negotiate existing concessions.[xxxix] However, there is a negative correlation between PSNR and the sanctity of contracts epitomized in, pacta sunt servanda principle which asserts that;

> "Every treaty in force is binding upon the parties to it and must be performed by them in good faith"[xl]

## REFLECTION OF PERMANENT SOVEREIGNTY IN THE TANZANIAN LEGAL FRAMEWORK

The legal framework in Tanzania regarding natural resources, reflects changes in the various laws[xli] that requires National Assembly approval for future investor-state agreements, which must "fully secure" the interests of Tanzanian citizens, and restricts investors from exporting raw minerals, repatriating funds and accessing international dispute resolution; and that mandates the Government to renegotiate or remove terms from investor-state agreements that Parliament considers "unconscionable including mine development agreements ("MDAs")[xlii] whether concluded before or after the Act came into force.

Ultimately, in the reform life cycle, the Finance Act, 2017 ("Finance Act") made a few prominent changes to the extractive sector's legal framework, in which contracts are only valid rebus sic stantibus (i.e., as long as circumstances remain the same). Therefore, Government has a unilateral 'sovereign' right to revoke or substantially modify contractual terms.[xliii]

In the similar vein, Regulations on natural wealth and resources have been published on 31st January 2020 via Government Notices[xliv]. The principles that will be used to guide all agreements and arrangements in natural wealth and resources include; fair dealing, honesty and


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utmost good faith. The Minister for constitutional affairs shall coordinate, monitor and manage all contracts, through a well designed system for effective consultation, coordination and cooperation with other public or private bodies established pursuant to any written law dealing with natural wealth and resources and Minister will be entitled to report to the President [xlv]. A register has been established within the Ministry of constitution affairs for entering information on natural wealth and resources agreements. The first schedule to the Regulations, provides prescribed Application form "NWR Form-N.1 which after having been filled, the Registrar shall enter the information in NWR Form- N.2 and assign an identity registration number of the agreement[xlvi].

The National Assembly has been conferred powers to pass a resolution on re-negotiation, the sectoral Minister must consult the Attorney General and appoint a re-negotiation team obliged to develop a schedule of re-negotiation not exceed 90 days from the date of service of notice to the other party. However, the period for the re-negotiation can be extended by parties on mutual agreement[xlvii] and share it with the other party prior to entering into agreement. After re-negotiation process, parties will sign a re-negotiation summary through NWR Form- N.6 and submit the draft report to the Permanent Secretary of the sectoral Ministry[xlviii].

The Permanent Secretary of the sectoral Ministry has an obligation to convene a stakeholders' meeting to cordially deliberate on the draft report. After adoption, the report shall be submitted to the sectoral Minister who eventually shall submit to the Minister of constitutional affairs. Subsequently, the Minister will table the draft report to the Cabinet of the Ministers accompanied by the Cabinet Paper, and if report is approved, will be submitted to the National Assembly accompanied by the President's Certificate[xlix].

Agreements on natural wealth and resources must be conducted in a manner that adhere to the highest ethical principles, where investors must be compliant with the policies, laws, regulations, other binding instruments, and decisions (precedents) based upon such instruments. The entities, consultants, suppliers, contractors, investors, partners, agents and employees must observe the Code of Conduct in good faith, transparently and in the interest and welfare of Tanzanians. Therefore, the investor is required to conduct Honesty and Integrity Self-Test, and also to sign an Integrity Pledge which is a schedule to the Regulations[l].


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## PUBLIC TRUST DOCTRINE FOR SUSTAINABLE DEVELOPMENT

The country's natural resources are exclusively held in trust by the President on behalf of its citizens[li]. Previously, ownership and control of natural resources were purely vested in the United Republic. Nevertheless, this transformation does not mark a fundamental shift in the state's responsibility for control over the sector, though it possibly signals a more significant role for the president's office.

The aforesaid procedure is in line with the public trust doctrine (PTD)[lii] which interjects notions of sustainable development and intergenerational equity into the decision-making calculus and aims to ensure that the government safeguards, and makes publicly accessible, natural resources which are necessary for public welfare and survival.[liii] PTD is rooted in sovereignty while state ownership of natural resources is an attribute of sovereignty that can only be abrogated by the PTD[liv]. Oposa v. Factoran[lv], located the PTD in the Philippines' constitutional right to a healthy environment and gave standing to schoolchildren to represent the interest of future generations

In, Geer v. State of Connecticut, the U.S. Supreme Court referred to the trust over wildlife as an "attribute of government" and traced the doctrine back "through all vicissitudes of governmental authority."[lvi] Some modern decisions consider the doctrine as inherent in the sovereign structure. In re Water Use Permit Applications (often called the Waiahole Ditch case), the Hawaii 's Supreme Court stated,

> "[H]istory and precedent have established the public trust as an inherent attribute of sovereign authority. . .."[lvii]

Courts have repeatedly emphasized that the beneficiaries of the trust are both the present and future generations of citizen giving a dual quality, protecting both intra generational and inter-generational interests[lviii]. Therefore, term protection" [in the State's constitution] establish that the state has a comparable duty to ensure the continued availability and existence of its natural resources for present and future generations.[lix]The doctrine has its constitutional where the state authority and all its agencies are obliged to direct their policies and programmes towards;


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> "… ensuring that the national resources and heritage are harnessed, preserved and applied toward the common good and also to prevent the exploitation of one person by another …"[lx]

## REFLECTION OF UNCONSCIONABLE TERMS IN TANZANIAN LEGAL FRAMEWORK

Any clause that subjects the contract to the jurisdiction of an international arbitration body might be deemed unconscionable.[lxi]Therefore,

> "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 likely to jeopardise the interests of the People of the United Republic of Tanzania[lxii]

Professor Muchlinski writes;

> "Where unconscionable conduct is found, this may have serious consequences for any claim made by the investor. Evidence of such conduct may vitiate any right to a claim, especially if the regulatory response that is being challenged arises out of the application, by the host country, of its powers to punish the conduct through an interference with the investment"[lxiii]

In Azinian v. Mexico[lxiv] the tribunal found that; the concession contract was invalid, primarily on the ground of misrepresentation on the part of the investor, and thus dismissed the claim.

In that vein, terms that restrict the right of the State to exercise full permanent sovereignty[lxv], right of the State to exercise authority over foreign investment within the country[lxvi]among others; they are inequitable and onerous to the state[lxvii]; terms that consent export of raw materials would run afoul of requirements for local beneficiation because deprive Tanzanians economic benefits derived from natural wealth and resources in the country.[lxviii] Beneficiation, promotes greater value addition in natural resources that is very common policy initiative to stimulate new export sectors in developing countries. Considering that, this spectrum is a


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natural and logical trajectory for structural transformation favoring sectors with similar technological requirements, factor intensities, and other requisite capabilities[lxix] that present the highest value proposition towards the attainment of its objectives.[lxx]

However, the planning and construction of facilities for the beneficiation of minerals, such as refineries and smelters, require huge capital expenditures and long-term investment. Currently, in Tanzania Mwanza Precious Metals Refinery Company Ltd owned under a Joint venture Agreement between Rozella General Trading LLC of UAE and ACME Consultant Engineers PTE Ltd of Singapore (RGTACE) operate the refinery plants in the Mwanza City. In the similar vein, Tanzanite One Limited operates beneficiation facilities[lxxi].

Another term relates to any stabilization clauses restricting periodic review of arrangement or agreement purporting to last for life time. These might violate the requirement that there be no restrictions on the periodic review of terms.[lxxii] Early variants of stabilization clauses, however, were thoroughly intended to 'freeze', in whole or in part, the legal and fiscal regimes governing extractive projects whereby law governing the project had been the law of the host country as of the date of execution of the contract. Stabilization clauses can be administratively unwieldy, limit tax policy flexibility, and impair the legislature's normal authority to pass fiscal legislation.[lxxiii] Stabilization clauses are the major means of investment protection at the disposal of oil companies[lxxiv], However, despite such mechanisms, host countries will still proceed with their nationalization policies, under the aegis of the permanent sovereignty over natural resources principle, and challenge their previous commitments if they find it lucrative to do so[lxxv].

The stabilization provisions should be applied under "economic equilibrium principle-based" by providing that the host State shall pay compensation to the resource extraction company in the event that changes to the host State's laws or fiscal regimes adversely affect the economic interests of the company. However, some stabilization clauses are hybrid in the sense that they encompass features of the 'freezing' clause and the 'economic equilibrium' clause[lxxvi]. However, stabilization mechanisms are drastically preferable during high geological, political and regulatory risks and not when project is sufficiently profitable. Developing countries, like Nigeria and Angola, with a well-established petroleum sector, do not offer stability provisions[lxxvii].


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There shall be implied in every arrangement or agreement that the negotiations are [sic] concluded in good faith and fairly and, at all times, observe the interests of the People and the United Republic"[lxxviii]. If the parties unfortunately fail to reach agreement on terms and the National Assembly has declared unconscionable "such terms shall cease to have effect … and shall … be treated as having been expunged."[lxxix] The process for review and renegotiation; and application of the "good faith" principle is procedural subject to be consistent with the substantive's provisions of natural resources laws.

Good faith is a filter based on moral values for the existence of a contract, after the contract is declared to have been valid under the terms of the legal contract[lxxx] Good faith is an exception to freedom of contract principle which requires parties to enter into contract and lay down the conditions of contract freely and the rule of pacta sunt Servanda, because in good faith if a party acting contrary to good faith may have to pay the losses of the aggrieved party and the contract may be changed, modified, and even terminated if the changing circumstances obviously disturb the balance between the parties[lxxxi]. Good faith principle is viewed into two-fold i.e., "consensual rationality" and "contractual morality both of which views grant that good faith entails norms of cooperation. It is where the doctrine locates, ought to locate, these norms that defines the difference between consensual rationality and contractual morality[lxxxii].

In Inceysa v. El Salvador,[lxxxiii] tribunal offers an extensive discussion of the principle of good faith on the investor in international investment law, including:

> "(1) Good faith is a supreme principle, which governs legal relations in all of their aspects and content...(2) In the contractual field, good faith means absence of deceit and artifice during the negotiation and execution of instruments that gave rise to the investment, as well as loyalty, truth and intent to maintain the equilibrium between the reciprocal performance of the parties...(3) Any legal relation starts from an indispensable basic premise, namely the confidence each party has in the other. If this confidence did not exist"

The equitable distribution of benefits for resource distribution structure[lxxxiv] favoring the national interest, participation, transparency, accountability and non-derogation from generally applicable law are pre-requisite for better accountability[lxxxv]. Fortunately, modern stabilization clauses often provide for an automatic or (re-negotiated) adjustment of contractual terms to


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compensate for a change in the regulatory and fiscal regime; they are often labelled 'equilibrium' clauses[lxxxvi].

## CONCLUSION

At the outset, changes in the Laws relating to natural resources in Tanzania have been rationally performed and any of the lacunae that would prevail during the implementation of related laws should be filled upon critical legal analysis. In that context, the people of Tanzania would likely be appreciating efficient permanent sovereignty over all-natural wealth and resources; their ownership and effective control of these resources need to be exercised by the government on their behalf. The determinants of these goal to be achieved will be stable and predictable legal framework among others. Considering that, resources are inalienable "[lxxxvii]permanent sovereignty over natural resources requires any disputes relating to resource extraction be adjudicated in judicial bodies or other organs established in Tanzania.[lxxxviii] However, these judicial bodies must be competent, and their jurisdiction value and mandate must undoubtedly be fairly realized under the international and domestic legal frameworks.

In another spectrum, international investment treaties that would be freely signed and enforced by Tanzania should be observed in good faith; in that context, the treaty framework and practice should strictly and conscientiously respect the sovereignty of Tanzanians over their natural wealth and resources.


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## ENDNOTES

[i] Art. 1 of the International Covenant on Civil and Political Rights (ICCPR) and of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
[ii] Laws were assented by the President John Pombe Magufuli on Monday 10 July 2017.
[iii] Sub-article (l) of Article 8 and Article 9(f) of the Constitution
[iv] Charter of Economic Rights and Duties of States GA-Res 3281 (XXiX) UN GAOR 29the Sess [' supp' No' 31 (1974) 50: 1962 The General Assembly Resolution on Permanent '-Sovereignty Over Natural Resources (Gar 1803):
[v] PETRA G, (2014) *"Restraining permanent sovereignty over natural resources"* Enrahonar. Quaderns de Filosofia 53, 2014 93-114
[vi] COHEN, J. L. (2012). *"Globalization and Sovereignty. Rethinking Legality, Legitimacy, and Constitutionalism".* New York: Cambridge University Press. http://dx.doi.org/10.1017/CBO9780511659041
[vii] Charter of Economic Rights and Duties of States GA-Res 3281 (XXiX) UN GAOR 29the Sess[' supp' No' 31 ( 1974) 50: 1962 The General Assembly Resolution on Permanent '-Sovereignty Over Natural Resources (Gar 1803): 1st Schedule and 2nd Schedule to the Natural Wealth and Resources (Permanent sovereignty) Act' No 5 of 2017
[viii] Preamble to the Natural Wealth and Resources (Permanent sovereignty) Act' No 5 of 2017
[ix] *1. Sunlodges Ltd (BVI), 2. Sunlodges (T) Limited (Tanzania) v. The URT* PCA 2018-09 UNCITRAL: Agreement between the United Republic of Tanzania and the Italian Republic on the Promotion and Protection of Investments: Claims arising out of the Government's alleged seizure of the claimants' cattle farming land in order to build a cement works and a power station.
[x] *Nachingwea U.K. Limited (UK), Ntaka Nickel Holdings Limited (UK) and Nachingwea Nickel Limited (Tanzania) v. URT,* ICSID Case No. ARB/20/38Tanzania - United Kingdom BIT (1994): Claims arising out of the Government's cancellation of retention licences held by the claimants for the Ntaka Hill Nickel Project and the subsequent public tender for the joint development of areas covered by these licences without offering compensation to the claimants.
[xi] *Winshear Gold Corp. v. United Republic of Tanzania* (ICSID Case No. ARB/20/25): Canada - United Republic of Tanzania BIT (2013): Claims arising out of the Government's cancellation of retention licences for mineral rights issued prior to the 2018 mining regulations, following amendments to the Mining Act in 2017, and the transfer of related mining rights to the government, including those held by the claimant's local subsidiary for the SMP gold project.
[xii] *Montero Mining and Exploration Ltd v. United Republic of Tanzania* (ICSID Case No. ARB/21/6)
[xiii]HAMILTON K. & RUTA, G. *"From curse to blessing: natural resources and institutional quality",* Environment Matters (2006), 24–27: DURUIGBO, E. *"Permanent sovereignty over natural resources and people's ownership of natural resources in international law",* 38 George Washington International Law Review (2006), 33–100.
[xiv] Section 3 of the Natural Wealth and Resources (Permanent Sovereignty) Act, No 5. of 2017
[xv] Article27(1)(2) of the Constitution of the United Republic of Tanzania
[xvi] Section 11(2) through (3) of the Natural Wealth and Resources (Permanent Sovereignty) Act, No 5. of 2011: Section 22 of the PPP Act, Cap 103 (R.E 2018), "any disputes arising under a PPP contract "shall in case of mediation or arbitration be adjudicated by judicial bodies or other organs established in Tanzania and in accordance with its laws."
[xvii] NORTH, D.C. (1990) *"Institutional Change and Economic Performance".* Cambridge University Press; Schmid, A.A. (2004) *"Conflict and cooperation: institutional and behavioural economics".* Blackwell Publishing: See *Saramaka People v. Suriname* (Preliminary Objections, Merits, Reparations and Costs), IACtHR, Case
No.172 [2007], para.118.
[xviii] Despite the massive oil revenues generated by Algeria, Ecuador, Indonesia, Nigeria, Trinidad and Tobago, and Venezuela, they performed lower than other developing non-oil exporters in terms of growth and development: See Gelb A.H. and associates, *Oil windfalls*: blessing or curse? (Oxford University Press, Oxford, 1988), at pp. 134–136.
[xix] MEJIA-ACOSTA, A. (2010). *"Review of Impact and Effectiveness of Transparency and Accountability Initiatives"*: Annex 4: Natural Resource Governance. [Google Scholar]
[xx] Ibid (fn 12)


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[xxi] See also LEGAL AID COMMITTEE, "*Essays on Law and Society, Kampala":* Sapoba Bookshop Press Ltd, 1985 p.29

[xxii] OECD (2011) "*The Economic Significance of Natural Resources: Key Points for Reformers In Eastern Europe, Caucasus And Central Asia"* EAP Task Force: promotion, adoption and implementation of the best practices in transparency, accountability, prevailed in Tanzania under Tanzania Extractive Industries Transparency Initiative (TEITI) in which joined in February, 2009 and became compliant with the EITI Rules in 2012.See BASADA, H. &MARTIN, P. (2013). "*Mining Codes in Africa: Emergence of a 'Fourth' Generation?"* The North-South Institute (NSI), Ottawa.

[xxiii] Art. 1(2), International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171 (1967); Art. 1(2), International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNTS 3 (1967); UNGA – Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, Dec. 14, 1960, 15 UN – GAOR, Supp. No. 16, p. 66, UN Doc. A/4684; Art. 5, UNGA – Res. 1515 (XV), Concerted action for economic development of economically less developed countries, Dec. 15, 1960, 15 UN – GAOR, Supp. No. 16, p. 9, UN Doc. A/4648; Art. 21, African Charter on Human and Peoples' Rights, June 27, 1981, 1520 UNTS 217.

[xxiv] CHOWDHURY, R, S. (1988) *"Permanent Sovereignty Over Natural Resources: Substratum of the Seoul Declaration, in International Law and Development"* 59, 61 (Paul de Wart et al. eds., 1988).

[xxv] See generally, NICO SCHRIJVER, (1997) *"Sovereignty Over Natural Resources: Balancing Rights and Duties"* (Cambridge University Press, 1997).

[xxvi] SORNARAJAH, M. (1986) *"The Pursuit of Nationalized Property"* 120 (Martinus Nijhoff, 1986).

[xxvii] MIRANDA L. A, (2012) *"The Role of International Law in Intrastate Natural Resource Allocation",* (2012) p. 794; see also ANGHIE A, (1993) *"The Heart of My Home": Colonialism, Environmental Damage, and the Nauru Case"*, 34 Harvard International Law Journal, (1993) p.474,

[xxviii] *Saramaka People v. Suriname* (Preliminary Objections, Merits, Reparations and Costs), IACtHR, Case No.172 [2007], para.118.

[xxix] ENYEW E. L. (2017) *"Application of the Right to Permanent Sovereignty over Natural Resources for Indigenous Peoples: Assessment of Current Legal Developments"* Arctic Review on Law and Politics Cappelen Damm AS - Cappelen Damm Akademisk

[xxx] Art. 1, paras. 1, 4, UNGA – Res. 1803 (XVII), Permanent sovereignty over natural resources, Dec. 14, 1962, 17 UN – GAOR, Supp. No. 17, p. 15, UN – Doc. A/5217; ZAMORA S.: *"Economic Relations and Development"* in The United Nations and International Law, C. C. Joyner ed., Cambridge et al. 1997, p. 259; Award on the Merits in Dispute between Texaco Overseas Petroleum Company/California Asiatic Oil Co. and the Government of the Libyan Arab Republic (*Texaco v. Libya*), 17 ILM 1, p. 30 (Award, Jan. 19, 1977).

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[xxxiv] General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources"

[xxxv] General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources"

[xxxvi] See ZIEGLER A. & GRATTON L.-P. *"Investment Insurance",* p. 526; CHOWDHURY, R. S.: *"Permanent Sovereignty over Natural Resources – Substratum of the Seoul Declaration"*, pp. 61-62;

[xxxvii] JIMENEZ DE ARECHAGA, (1978) *"General Course in Public International Law",* 159 Recueil des Cours 307-09 (1978)

[xxxviii] Art. 3, UNGA – Res. 1803 (XVII), Permanent sovereignty over natural resources, Dec. 14, 1962, 17 UN – GAOR, Supp. No. 17, p. 15, UN Doc. A/5217.

[xxxix] Ibid (fn 24)

[xl] Article 26 of Part 111 to the 1969 Vienna Convention on the Law of Treaties


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[xlv]The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020 (the Unconscionable Terms Regulations): the Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act
[xlvi]The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020 (the Unconscionable Terms Regulations)
[xlvii]Section6(4) of the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, No 6 of 2017
[xlviii] The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020 (the Unconscionable Terms Regulations)
[xlix] The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Regulations, 2020 (the Unconscionable Terms Regulations)
[l] (Code of Conduct for Investors in Natural Wealth and Resources) Regulations, 2020 (the Code of Conduct for Investors Regulations).
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