

PROMOTION AND PROTECTION OF FOREIGN INVESTMENT VERSUS THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (PSNR): LESSONS FROM TANZANIA

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ABSTRACT

Promotion and protection of foreign investment in many years now has been in dilemma. This dilemma is influenced mainly by competition between foreign investors and host states for more benefits from investment. This has led to development of two groups of concepts, theories and principles in the investment arena. Thus, concepts, theories and principles said to promote and protect foreign investment and those that are said to discourage it. The previous concepts, theories and principles are encouraged by capital exporting states, because they protecting their investments in the host states, while the later concepts, theories, and principles are encouraged by investment hosting states to achieve maximum benefits from the resources exploited in their countries, hence a dilemma.

In natural resources sector, there have been conflicts between foreign investors and the host states for a long time now. The main issue being investors rights against those of the host state over the Principle of PSNR. This paper reviews the principle of PSNR and its impact on the promotion and protection of foreign investment in the world, exploring Tanzanian experience in implementing it in its legal regime.

In the review, the author discovers that the principle is a valid principle of international law, nevertheless it does not encourage foreign investment since it tend to favor host states than the foreign investors. This is because the principle calls for maximum control of the resources by the host country. This can be well described by the laws enacted by Tanzania when domesticating the principle of PSNR.

It is recommended that the international community should come as one and create a single law that guides international investment and especially on matters concerning investment disputes. This will set a clear ground and eliminate all competitions between host states and investors.

INTRODUCTION

Foreign investment is a very important sector to the development of any country in the world.ⁱ This is because foreign investment causes technology advancement, assists individuals wealth formation, contributes to international trade incorporation, helps create a more competitive business environment and enhances project growth.ⁱⁱ In addition foreign investment help improve environmental and social conditions in the country hosting the investment and this can be done for example by transferring “cleaner” technologies and leading to more socially responsible corporate policies. All of these benefits contribute to higher economic growth, which is the most powerful instrument for alleviating poverty in the world and especially in the developing countries.ⁱⁱⁱ More importantly foreign investment is very important in the world and especially to countries that lack capital, technology and knowledge to exploit their resources.

However, a controversy arises when it comes to the understanding between the investor and the host state in the ascertaining benefits from the investment. The host country main goal is to maximize the benefits obtained from the investment, because the resources exploited belong to them. On the other hand, the investor desire is to obtain much profit as possible since he has invested a lot of capital in the exploitation of the resources.^{iv} This has lead to countries in the world especially the under developed and developing countries to opt for the principle of Permanent Sovereignty over Natural Resources (PSNR), they contend that this principle main intention is to create fair benefits in the utilization of natural resources.^v While at the same time, the investor hosting countries and the investor they do regard this principle as biased to favor the host countries than the investors because of its provisions. This is discussed as follows.

PRÉCIS OF PROMOTION AND PROTECTION OF FOREIGN INVESTMENT UNDER INTERNATIONAL INVESTMENT LAW

Foreign investment entails a company from one state moves its capital to another state to establish a business venture there.^{vi} Therefore, this businessperson and his business being from abroad are faced with many risks.^{vii} These risks are like expropriation, failure to transfer of currency and inconvertibility of funds he obtains from his investments, other risks includes the calamity risk (insurrection, revolution, war, etc.).^{viii} It is due to these risks that the international community has put in place measures that protect the foreign investors and their businesses abroad. These protections are in the forms of BITs, Multilateral Investment Treaties and State investors Contracts. The international community has gone further to establishing some fundamental concepts, theories and principles of which are regarded as indicators of promoting and protecting investments in a certain country.^{ix} These concepts, theories and principles are incorporated in different international instruments like the BITs and Multilateral Treaties. For a country to show the world it promotes and protects investment to the fullest, then such a country must have in its local legislation these concepts, theories and principles.^x The following are some of those concepts and principles.

The Concept of Investment Facilitation

This concept mainly focuses on the creation of a suitable investment conditions for the investor to start, run, and develop their active enterprises.^{xi} Further to that, investment facilitation entails investment retention and attracting new investors.^{xii} Studies show that investment facilitation has the following Elements:-

- (i) One-stop centre, this means a place where all activities that a foreign investor is required to do to invest in the country are found in one place.^{xiii}
- (ii) Online registration system, that will enable the investor to get all services of investing in the country while he or she is anywhere in the world.^{xiv}
- (iii) Information portal on legal and administrative procedures, which will enable an investor to know how to start and operate a business in a country.^{xv}
- (iv) Aftercare services to existing investors.^{xvi}
- (v) Policies to improve transparent, predictable, and effective investment environment. Such policies should promote good and reliable lawful structure for investment, legal measures to make simpler management process, and machinery in the investment legal regime of a country.

- (vi) Strategies to afford a facilitative atmosphere for investors to act reliably in the host country.^{xvii}

Generally, for a nation to effectively put into practice these elements there is a need to make sure that it conducts dialogue and coordinates with its stakeholders, give regular training to its officers receiving, registering and attending investors and other civic administrators supervising and evaluating mechanisms and policies.^{xviii}

The Concept of Investment Environment

Investment Environment refers to the legal, economic, financial, and social – political conditions in a country that affect the propensity to invest.^{xix} This concept involves a number of variables, which makes a country suitable for investment. These variables include monetary policy^{xx} good infrastructures like power, transport, communication and water;^{xxi} work force availability, national security, political stability, property rights, government transparency and accountability; and regime certainty. The concept requires countries to observe their control in those aspects. This should be done in order to ensure favourable investment climate, which promotes and attracts existing and future investment.^{xxii}

Generally, this concept calls for host countries to create good and secure climate of investment in their countries.

The Concept of Investment Promotion and Protection

This refers to a set of incentives provided in legal frameworks of the host country.^{xxiii} The incentives are like guarantees against expropriation, nationalization and acquisition; stabilization clauses. Other incentives are transfer of capital; follow of the due process of laws; loans, royalties, infrastructure allowances, expatriate employments just to mention a few.^{xxiv} More guarantees include application of international standards of protections on investments such as national standards of treatment, Most Favoured National Treatment, and Fair and Equitable Treatment.^{xxv}

Apart from the concepts, there are also some principles. The following are some of the principles, which are as follows.

The Principle of Full Protection and Security

This principle calls for the countries inviting investors to make sure that they offer security both physical and legal security of investment.

Physical security means that the host country must deploy its defence forces like the police or military personnel to protect the assets of the investor when such assets are at risk of damage,

from conflicts in the country. On the other hand, Legal Protection require the insertion of stabilization clauses in state-investor agreements providing for the host country commitment to neither annul the investment agreement nor make amendments to such agreements that may affect the agreed terms. This means that the host country will honour the terms of agreements throughout the whole life of the agreement. In the case of *BiwaterGauff Limited V. Tanzania*^{xxvi} it was said that Full Protection and Security means both physical protection of properties and legal protection. Legal Protection protects the investor from the limitations in due process, the enforceability of judgments and violations of investment agreements.

The Principle of Fair and Equitable Treatment

This entails the legal right of treatment of foreign investors with fairness and non-discriminatory manner. This principle was first incorporated in the Havana Charter, thus under article 11(2). The article provided that foreign investment should be assured just and equitable treatment.^{xxvii} The principle is an absolute, non-contingent standard of treatment, which gives obligation to the sides of an agreement to give each other's investment its advantages.^{xxviii} According to article 12 (d) of the Convention establishing MIGA of 1985, it is clearly stated that for MIGA to insure an investor in a host country, the concerned country must have in its legal system this principle, thus meaning that investors must be afforded Fair and Equitable Treatment by such a country. The foundation behind this is that the principle lowers the risk of unfair treatment against the investor and hence will afford investment protection.^{xxix} This principle entitles foreign investors to protection of which failure of a state to afford the investor, may call for responsibility of the state in international courts. This can be evidenced by the case of *AMT (US), Inc. V. Republic of Zaire*,^{xxx} in this case the tribunal found a violation of the standard of fair and equitable treatment and full protection and security as contained in the US-Zaire BIT of 1989. This was because of loss to American Manufacturing and Trading Inc. investment caused by widespread looting in Zaire and failure for the country to protect the investor. The country was found guilty of failing to uphold and respect the minimum standard required of it by international law.

To some up this principle avow a collection of rights, which ensure stability, predictability, consistency, and confidence, management of fair treatment in the judicial process, openness, rationality, and balance in investment accord between host country and international investors.^{xxxi}

In concluding, it is internationally accepted that for a country to promote and protect foreign investment, such country must abide by the above concepts and principles

THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES (PSNR)

The principle is centred on securing equitable benefits of both investors and host country in the exploitation of natural resources.^{xxxii} The principle first emerged when Chile brought the attention of the principle in the UN Commission for Human Rights in the year 1952. Chile suggested that nations not only have the right to independence but also the right to PSNR.^{xxxiii} This assertion by Chile was well received by the newly independent states that were tied up with previous colonial masters' contracts over their natural resources. Since its introduction, the principle of PSNR has developed into becoming an international principle on the safeguards of natural resources. This has led principle to be inserted into numerous United Nations Resolutions.^{xxxiv} Some of these UN Resolutions are like;

- (i) UNGA Resolution 523 (VI), of 12 January 1952: Integrated Economic Development and Commercial Agreements.

This resolution developed the principle of PSNR, after the UN General Assembly realizing the importance of developing countries claims to have control over their natural resources.^{xxxv} The resolution introduced two main issues thus confirming the right of independent states especially the under developed nations to manage their natural resources;^{xxxvi} and the support the fiscal progress of the under developed nations. The UN main intention was to grant the newly independent nations freedom from political disparities or previous agreements signed under colonization.^{xxxvii}

- (ii) The UNGA Resolution 626 (VII), 21 December 1952: Right to Exploit Freely Natural Wealth and Resources.

This resolution focused on the welfare of under developed nations to utilize their natural resources. It was asserted that under developed countries have inherent right to benefit from such resources.

(iii) UNGA Resolution 1314 (XIII), 12 December 1958: Recommendations Concerning International Respect for the Right of the Peoples and Nations to Self-determination

The UN through this resolution formed a commission that involved different countries like Chile, the USSR, USA, and Sweden, the commission main duty was to do an assessment on the vital element of the right of self-determination and on the status of PSNR. This was to be done with due consideration of the rights and duties of countries and promotion of international cooperation.^{xxxviii}

(iv) UNGA Resolution 1515 (XV), 15 December 1960: Concerted Action for Economic Development of Economically Less-developed Countries

The resolution on implementing the duties of the UN under its Charter, urges countries to have regard of economic and social cooperation as they have pledged themselves while joining the UN.^{xxxix} The resolution promotes social, economic improvement and diversification of fiscal activities. The resolution encourages free trade on selling, manufacturing of crop products and industrialization of those economies that rely on small-scale farming or small-scale exports.^{xl} Further to that, the resolution addresses abolishment of non-natural limitations on the preservation of an expensive and increasing rank of fiscal actions via multilateral and bilateral trade treaties.^{xli} The resolution stresses on promotion of public and private capital to enable satisfactory conditions from big economies to less economies. It encourages this to be facilitated through free negotiations of terms in multilateral and bilateral arrangements, also through inserting provisions in the international organizations documents.^{xlii} The resolution generally calls for technical cooperation especially in modern technology to developing countries,^{xliii} emphasizes on scientific and cultural cooperation,^{xliv} and regard of human and social aspects of economic development.^{xlv} The resolution proposes states to avoid restrictive variation on the main merchandise from less developed countries.^{xlvi} Again, Technical training education, training, and pre investment on particular areas of the economy is recommended by the resolution.

(v) UNGA Resolution 1803 (XVII), 14 December 1962: Permanent Sovereignty over Natural Resources

This Resolution is a result of the work of the Commission formed under UNGA Resolution number 1314 (1958).

The commission duty was to shape the right of PSNR, thus to create balanced rights between the profits of host economy and the capital transferring investor.^{xlvii} The resolution calls for

fiscal independence in the principle of PSNR.^{xlviii} Therefore, to meet the sole goal of the principle of PSNR, this is exploration, development, disposition of resources, appropriation of property and compensation for the benefits of the country.^{xlix}

(vi) UNGA Resolution 2158 (XXI), 25 November 1966: Permanent Sovereignty over Natural Resources

This resolution places natural resources exploitation and control in the hands of the country they are.^l The resolution clearly states that, citizen of the country have the right to benefit from such resources.^{li} Investors in the natural resources are directed to make sure that there is transfer of knowledge and skills to local people working in the area where the natural resources are exploited. The knowledge should enable the people to have the capacity in sustainable utilization and sale of natural resources.^{lii}

These are some of the United Nations General Assembly about the principle of PSNR.

The Legal Status of the Principle of PSNR

The principle of PSNR has been featured in a number of international conventions namely the Human Rights Covenants of 1966; the African Charter on Human and Peoples' Rights of 1981 and the Vienna Conventions on Succession of States of both 1978 and 1983. In addition, it has been featured in regional agreements, several arbitral awards, and national pieces of legislation and in courts' decisions. The basis for the principle to be featured in international instruments and other documents is due to the fact the principle core values are the principles of self-determination and territorial sovereignty. These values form the primary component of universal law. This has led to writers like Magogo^{liii} to be of the view that, the principle of PSNR has ascertained the international status of jus cogens.

The Essence of the Principle of PSNR

The principle of PSNR main essence is the liberation of the country to exploit their natural resources and their advantage mainly financial gains.^{liv} This is done because the country has the right achieve sovereign equivalence with other countries and the obligations not to interfere in affairs of other countries.^{lv} It is due to the previous rights that the principle has developed rights and duties on states on the management, exploitation and use of natural resources.^{lvi} These rights and duties are found in different legal resources and UNGA Resolutions. The following are some of those rights and duties.

- **The Rights**

The principle of PSNR has set out the following rights.

- (i) The right of a country to own its natural resources by use of their respective leaders,^{lvii} as this forms the fundamental right under international law of right to self-determination.^{lviii}
- (ii) The second right is the right of the country to manage and control the natural resources which also is enshrined under right to self-determination which can be found under Article 2 of the UN Charter. Here countries are urged to enacting suitable policies, laws, and regulations concerning environment, development, and economy of the country.^{lix}
- (iii) The third right is the freedom of a country to use and exploit its resources in the way it desires for the benefits of the people. This right can be found in different UN Conventions such as ICCPR,^{lx} also Article 5 of UNGA Resolution 1515.
- (iv) The fourth right is the right to profit from the natural resources of the state, to facilitate development of the country and the people at general.^{lxi}

- ***The Duties***

Apart from the rights there are also some duties imposed to countries and such duties includes.

- (i) The country has a duty to exercise the principle of PSNR for the interests and development of its people.
- (ii) Investment host country has a duty to practice just and satisfactory compensation in case of nationalization of the properties of the investors for public utility.^{lxii} This is provided in UNGA Resolution 1803: it states;
“Nationalization shall be founded on basis of interests of the people, and security, which are known as superseding personal welfare, both national and overseas. In addition, the owner shall be remunerated proper reparation. This standard is very important for the progress of overseas businesses since it protects the business from unreasonable takeover by leaders of the nations which, these businesses are established.”
- (iii) The duty to leaders of rich resources countries to protect their countries from acts that will endanger their sovereignty, this may be by signing contracts that violate their sovereignty on natural resources.

IMPACT OF THE PRINCIPLE OF PSNR IN TANZANIA NATURAL RESOURCES

Tanzania has been a signatory of the United Nations General Assembly (UNGA) Resolution 1803 (XVII) of 1962 on Permanent Sovereignty over Natural Resources (PSNR) since the year 1962. This UNGA Resolution 1803 (XVII) of 1962 is centred on promoting fair benefits in the exploitation of natural resources between investors and the host states. Basing on this justification the Tanzania government in 2017 enacted the Natural Wealth and Resources (Permanent Sovereignty) Act,^{lxiii} and the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act;^{lxiv} thus enforcing the resolution in the country. The two pieces of legislation have received numerous criticisms from among investment stakeholders and others. The critics are mainly cantered on the following fundamental issues affecting the promotion and protection of foreign investment.

The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 key features of the law are centered on the protection of natural resources thus, it provides.

- (i) Natural wealth and resources are inalienable, they are to remain the property of the People and the United Republic of Tanzania, and they shall be held in trust by the President.^{lxv}
- (ii) No raw resources shall be exported for beneficiation outside Tanzania.^{lxvi}
- (iii) Any arrangement 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 Tanzania.^{lxvii}
- (iv) There shall not be proceedings in any foreign court or tribunal in relation to permanent sovereignty over natural wealth and resources.^{lxviii} This section was later amended by the Arbitration Act, 2020 to allow organs established outside Tanzania to adjudicate matters by use of Tanzanian laws within Tanzania.

Again when it comes to the second law which is the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017, this law main features are:-

- (i) It gives mandate to the National Assembly of Tanzania to review all arrangements or agreements entered into between the government and the investor.^{lxix}
- (ii) Upon discovering, any problem in the agreement then the National assembly should advice the government to renegotiate such a term.^{lxx} Failure of the investor to

renegotiate the term in the period specified then such a term is expunged automatically from the agreement.^{lxxi}

- (iii) The law also has granted the country the ability to withdraw from unequal investment contracts, and the ability of a country to review unilaterally the terms of an agreement.

Further to that, a term an investor-State agreement is unconscionable when it:^{lxxii}

- (i) restricts government authority over foreign investment;
- (ii) is inequitable to and onerous on the State;
- (iii) secures preferential treatment of, or creates a separate legal regime to be applied to, the investor;
- (iv) deprives Tanzanian citizens of economic benefits arising from beneficiation in Tanzania; and
- (v) subjects the State to the laws of foreign jurisdictions.^{lxxiii}

The legislation embodying the principle of PSNR has received many critics in the country.^{lxxiv} Stakeholders contend that the two pieces of legislation have negative impact on facilitating foreign investment in the country.^{lxxv} This is because the two pieces of legislation have provisions, which conflict with provisions of other domestic legislation, State-Investor Agreements and the country's commitments to Multilateral Treaties, and Bilateral Investment Treaties (BITs). It is the views of the stakeholders that these laws have negative impact in the country's foreign investment.^{lxxvi} Further, stakeholders are of view that the laws domesticating the principle of PSNR went against provisions of the BITs that the country has signed with other countries like the BIT between UK and Tanzania of 1994, and BIT between China and Tanzania of 2013. The BITs guaranteed investors rights like right to Fair and Equitable Treatment (FET) of nationals and companies of countries,^{lxxvii} Full protection and Security,^{lxxviii} Repatriation of Investment and Returns obtained from investment,^{lxxix} international dispute resolution forum on matters concerning investment by use of international law.^{lxxx} All these rights are restricted under the provisions of the legislation, which domesticate the principle of PSNR. Further to the legislation domesticating the principle of PSNR especially section 11 of the Natural Wealth and Resources (Permanent Sovereignty) Act,^{lxxxi} restricts the use international law in settlement of disputes on conflicts relating to extraction, exploitation and the use of natural wealth and resources. This provision conflicts with the ICSID Convention, which provides for an international dispute settlement forum and Tanzania has signed and ratified the convention.

It is due to these conflicts and misunderstandings that the country received many critics in its foreign investment attraction and protection. This led to several conflicts between the government and the foreign investors. Due to uncertainties in the legal framework, Acacia Mining and Petra Diamonds ceased operations due to bad investment legal environment.^{lxxxii} This was said to have left staff and contractors redundant, and a loss estimated around US\$ 50 to 75 million, which was to be collected from Acacia's activities as revenues to the country at the time.^{lxxxiii} Further, it is reported that the country saw a decline on German investment. That out of one hundred percent (100%) incoming investment to the country, the country only got 25% compared to its neighbours; namely, Ethiopia and Kenya who got 75% and 62% respectively in the year 2019.^{lxxxiv} It was projected that the country would miss its share of US dollars one point one billion (\$1.1 b) fund established by German government to ease entry of German businesses into Africa.^{lxxxv} Conclusively Tanzania lost a great deal of new investors to the country due to the new regulation in the industry and thus the one domesticating the principle of PSNR.^{lxxxvi}

It is fair to conclude that the principle of PSNR did not work very well in the country because as seen above it led to the country entering into conflicts with existing investors. Again, even the investors that accepted to review their contracts, it is reported that the said contracts were reviewed with disregard to some provisions of the new laws. This is the 2019 agreement involving the government of Tanzania and Barrick Gold Corporation (BGC). The agreement had the following terms; that each party to get fifty percent in economic profits.^{lxxxvii} Another term is BGC to own eighty four (84) percent shares and Tanzania sixteen (16) percent shares.^{lxxxviii} In addition, BGC is allowed to transfer raw minerals abroad and to build mineral beneficiation facilities at their own will,^{lxxxix} which is against section 9 (1) and (2) of the Natural Wealth and Resources (Permanent Sovereignty) Act.^{xc} Under section 9 (1) the legislation^{xc} restricts transfer of raw resources abroad, while section 9 (2) requires an agreement in natural resources, in this case mining industry between the country and the investor to ensure that the investor commits himself to build beneficiation facilities in the country. The agreement again allows BGC to make use of foreign banks in transactions concerning mining activities;^{xcii} this is in conflict with section 10 of the Natural Wealth and Resources (Permanent Sovereignty) Act,^{xciii} which restrict such a right. Finally, BGC was allowed to make use of foreign dispute forum and by use of international laws when a dispute arises between the country and BGC.^{xciv} This right conflicted with section 11 of the Natural Wealth and Resources (Permanent

Sovereignty) Act. The section did not allow any form of adjudication of conflicts arising from extraction, exploitation, or acquisition and use of natural wealth and resources by foreign organs and laws. Even though the section was later amended, to allow matters arising from extraction, exploitation, or acquisition and use of natural wealth and resources to be adjudicated by judicial bodies or other organs other than those established in Tanzania but by use of Tanzanian Law.^{xcv} Apart from the terms, this agreement has not been presented to the National Assembly for review as directed by law.^{xcvi} Hence, the law proved not easy to abide by, something that possess a great threat to the future of the foreign investor should another government come in and try to enforce the law as it is.

OBSERVATION AND CONCLUSION

The paper highlights some basic issues pertaining to Promotion and Protection of Foreign Investment and the impact of the principle of Permanent Sovereignty over natural Resources (PSNR), while assessing the Tanzania experience in implementing the principle in its laws. Therefore, it can be concluded as follows.

Foreign investment is very important in the world today and this because apart from economic gains that may be achieved between the country and the foreign investor there are many other benefits like cultural exchanges, technological developments and many more. This is the reason why countries that supply foreign investors' at large quantity preach for the promotion and protection of foreign investment. Looking at the concepts and principles above, we see most of their provisions are very legitimate. Even though some provisions that calls for freezing of the host country laws on a particular investment still need some improvements.

From the case study of Tanzania, we observe the powers that were derived from the principle of PSNR by the government of Tanzania were much unlimited and defeated the investors' interests in the country as per their previous signed contracts with the government. These unlimited powers did not consider the position of the investors who invested their money and other resources. For example the powers to review terms of an agreement that might unquestionable, the definition of the law is too vague that can lead to the government misuse such powers against the investor. This requirement of the law in its self-violated the principle of Full Protection and Security that assures the foreign investor that there would be no change of terms of the contract during the life of the contract between the investor and the country.

Again, on the question of restriction of international arbitration, it is the right of the country to do so according to the principle of PSNR, but this poses great risk to the investor to lose his or her rights in the national courts. This is because the Courts will be obliged by the law to abide by the principle as per section 6 (3) of the law.^{xcvii} Again, the courts are swamped with many cases and the work force is low. In addition, the knowledge of the judges in matters pertaining to international investment is another problem and lastly the government influence on the decisions of the courts is likely to happen since the Judiciary depends on funds from the budget prepared by the government and Judges in the bench are appointed by the government.^{xcviii} This depicts many countries especially the developing countries where corruption is still very high.^{xcix} As seen in the conclusion on the impact of the principle in Tanzania, it is evidence that the principle is likely more to discourage foreign investment than attract it.

There is no doubt that the principle of PSNR is a legal principle under international law and is indeed important for the development of the investment host countries. However, the contents of the principle of PSNR are very hard to enforce in the today competitive business world. This is because the principle gives a lot of room to the host national control over their natural resources than the investors who also invests a lot of money, technology and energy in the business venture. Moreover, bearing in mind some investments in the natural resources sector are very expensive to even start running and realizing profits, a good example is the mining industry, which requires a lot capital to invest and it a lot time to realize the profits. This makes nearly impossible for an investor to risk his or her capital in the investment where the host country possess the important rights like the host state dispute resolution in case of a conflict. From the face of it, the principle of PSNR restrict even fundamental concepts and principles of international investment law like the Principle of Full Protection and Security and the Principle of Fair and Equitable Treatment which are basic principles under international law. The failure to abide by the Principle of Fair and Equitable Treatment by the host country makes the investors even more vulnerable to be insured under the MIGA Convention, which one of its conditions to ensure an investor, the host country to have the principle of Fair and Equitable Treatment in its legal framework.^c

Therefore, it is recommended that the international community through different organizations like the United Nations should make initiatives to make a single law for international investment law. This law should guide the international community in matters of international investment law especially on the issue of Dispute Resolution between the investor and the host

State, which has been criticized for a long time for lacking many important things like consistence in the decisions, representation of host countries in the panels of arbitrators and others.

BIBLIOGRAPHY

Books

Maina, Chriss P, Mwakaje, Saudin J. 2004. *Investment in Tanzania-Some Comment-Some Issues*. Dar es Salaam, Ecoprint Ltd.

Sornarajah, M, 2010. *The International Law on Foreign Investment*. Cambridge University Press.

Articles

Bastos, F. L 2013. "A Southern African Approach to the Permanent Sovereignty over Natural Resources and Common Resource Management Systems." *University Siegen*, pp. 3-18.

Earl Snyder, 1963. "Foreign Investment Protection: A Reasoned Approach." *61 Mich. L. Rev.* 1087

Gazzini, Tarcisio 2017. "A Legitimate but Risky Path: The New Tanzania legislation on natural resources." obtained from www.uea.ac.uk/law/research/internationallawblog//asset_publisher - accessed on August 2020.

Kofele, Kale 1995. "Patrimonicide: the international economic crime of indigeneous spoliation." *28 Vanderbilt Journal of Transnational Law*.

Novik, A and DE Crombrughe, A (2018), *Towards an International Framework for Investment Facilitation*, OECD Investments Insights.

OECD, 2002. "Foreign Direct Investment for Development Maximising Benefits, Minimising Costs." *Paris OECD Publishing*.

OECD 2004. "Fair and Equitable Treatment Standard in International Investment Law." *OECD Papers on International Investment, 2004/03, OECD Publishing*, p. 3, obtained from <http://dx.doi.org/10.1787/675702255435>, - accessed on September, 2020.

Sauvant, Karl P. and Hamdani, Khalil, 2015. "An International Support Programme for Sustainable Investment Facilitation." *E15Initiative, Geneva*, obtained from <http://e15initiative.org/publications/an-international-support-programme-for-sustainable-investment-facilitation/> - accessed on September, 2020.

Martha Belete H, Zeray Yihdego, 2017. “The Law and Policy of Foreign Investment Promotion and Protection in Ethiopia: An Appraisal of Theories, Practices and Challenges.” *Ethiopian Yearbook of International Law, Springer Nature Switzerland AG. ISSN 2522-5286 ISSN 2522-5294*

Magogo, T.D 2020. “The Principle of Permanent Sovereignty Over Natural Resources (PSNR) Vis-À-Vis benefits from extractive investments: A highlight on natural resources investment arrangements.” *International Journal of Legal Developments and Allied Issues, Volume 6, The Law Brigade (Publishing) Group.*

Novik, A and De Crombrughe, A 2018. “Towards an International Framework for Investment Facilitation, OECD Investments Insights.”

East African Herald, 2020. “Is Tanzania on the Edge of a Precipice?.” Obtained from <https://www.eastafricanherald.com/business/2020/1/28/is-tanzania-on-the-edge-of-a-precipice> - Accessed on February, 2020.

Sauvant, Karl P. and Hamdani, Khalil, 2015. “An International Support Programme for Sustainable Investment Facilitation.” *E15Initiative, Geneva*, obtained from <http://e15initiative.org/publications/an-international-support-programme-for-sustainable-investment-facilitation/> - accessed on September, 2020.

Steppek, J.M and Ferhad, S 2017. “Tanzania’s Legal Reform of the Natural Resources Sector Threatens Extractive Industries.” *Winston and Straun LLP International Arbitration.*

United Nations Conference on Trade and Development (UNCTAD), 2009. “The Role Of International Investment Agreements In Attracting Foreign Direct Investment To Developing Countries.” *UNCTAD Series On International Investment Policies For Development United Nations, New York and Geneva.*

Theses

Hofbauer, Jane A 2009. “The Principle of Permanent Sovereignty over Natural Resources and Its Modern Implications.” Masters diss, University of Iceland.

Mamongonyo, Baasi 2017. “An analysis of expropriation protection mechanism in the Bilateral Investment Treaties (BITs) within the context of Permanent Sovereignty Over Natural Resources.” Masters diss, University of Pretoria.

Magogo, Telesphory, D. 2018. “Impact of Legal Framework Governing Investment in Tanzania on Ensuring Maximum Benefits for the Country and Its Citizens: Mineral and Petroleum Sectors.” PhD diss, St. Augustine University of Tanzania.

Rwechungura Gideon C. 2020. "Examination of the Legislation which Domesticates the Principle of Permanent Sovereignty Over Natural Resources on Facilitating Foreign Investment in Tanzania: Case Study of Mining Industry." Masters diss, St. Augustine University of Tanzania.

Sinda, Aisha (2010), Foreign Direct Investment in Tanzania: Implications of Bilateral Investment Treaties in Promoting Sustainable Development in Tanzania, LLM Thesis, University of Pretoria Dissertation.

Reports

Transparency International, Corruption Perceptions Index 2022 obtained from www.transparency.org/cpi accessed March 2023.

Constitutions

The Constitution of Tanzania of 1977 (As amended from time to time)

Conventions

The United Nations Charter of 1945.

The Convention establishing MIGA of 1985

UNGA Resolutions

UNGA Resolution 523 (VI), of 12 January 1952: Integrated Economic Development and Commercial Agreements.

UNGA Resolution 1515 (XV), 15 December 1960: Concerted Action for Economic Development of Economically Less-developed Countries

UNGA Resolution 2158 (XXI), 25 November 1966: Permanent Sovereignty over Natural Resources

Bilateral Investment Treaties

BIT between Germany and Tanzania of 1965.

BIT between UK of 1994.

BIT between China and Tanzania of 2013.

Legislation

The Natural Wealth and Resources (Permanent Sovereignty) Act No. 5 of 2017.

the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act No. 2017

The Investment Act of 1997, (Act No. 26 of 1997),

Case Law

ICSID Case No. ARB/05/22.

ICSID case No. ARB/93/1 Award, 21 February, 1997, reprinted in 36 International Legal Materials 1531 (1997).

Online Materials

www.oecd.org/investment/pfi.htm

<https://www.investopedia.com/terms/f/foreign-investment.asp> - accessed on March, 2023

President Samia Suluhu Hassan (President of Tanzania) mentioned while addressing State Attorneys and Law Officer of Tanzania General Meeting obtained from Government Press Release of 29th September, 2022 available at <https://www.ikulu.go.tz/> (visited on 30 Sep 2020) Reported on BBC Swahili News of 22nd September, 2020 obtained from www.bbc.com/dwahili/habari - accessed on September, 2020.

www.un.org/law/avl - accessed March, 2020.

ENDNOTES

ⁱSornarajah, M, 2010. *The International Law on Foreign Investment*. Cambridge University Press.

ⁱⁱOECD, 2002. "Foreign Direct Investment for Development Maximising Benefits, Minimising Costs." *Paris OECD Publishing*.

ⁱⁱⁱIbid

^{iv}Magogo, Telesphory, D. 2018. "Impact of Legal Framework Governing Investment in Tanzania on Ensuring Maximum Benefits for the Country and Its Citizens: Mineral and Petroleum Sectors." PhD diss, St. Augustine University of Tanzania.

^vHofbauer, Jane A 2009. "The Principle of Permanent Sovereignty over Natural Resources and Its Modern Implications." Masters diss, University of Iceland.

^{vi}Maina, Chriss P, Mwakaje, Saudin J. 2004. *Investment in Tanzania-Some Comment-Some Issues*. Dar es Salaam, Ecoprint Ltd.

^{vii}Earl Snyder, 1963. "Foreign Investment Protection: A Reasoned Approach." *61 Mich. L. Rev.* 1087

^{viii}Ibid

^{ix}Rwechungura Gideon C. 2020. "Examination of the Legislation which Domesticates the Principle of Permanent Sovereignty Over Natural Resources on Facilitating Foreign Investment in Tanzania: Case Study of Mining Industry." Masters diss, St. Augustine University of Tanzania.

^xIbid

^{xi}www.oecd.org/investment/pfi.htm

^{xii}Novik, A and De Crombrughe, A 2018. "Towards an International Framework for Investment Facilitation, OECD Investments Insights." p.3.

^{xiii}Sauvant, Karl P. and Hamdani, Khalil, 2015. "An International Support Programme for Sustainable Investment Facilitation." *E15Initiative, Geneva*, obtained from <http://e15initiative.org/publications/an-international-support-programme-for-sustainable-investment-facilitation/> - accessed on September, 2020.

^{xiv}Ibid

^{xv}Ibid

^{xvi}Ibid

^{xvii}Ibid

xviii Supra Note 12, p.5.

xix <https://www.investopedia.com/terms/f/foreign-investment.asp> - accessed on March, 2023

xx Supra Note 4

xxi Supra Note 6, p. 33.

xxii Supra Note 4

xxiii Ibid

xxiv United Nations Conference on Trade and Development (UNCTAD), 2009. "The Role Of International Investment Agreements In Attracting Foreign Direct Investment To Developing Countries." *UNCTAD Series On International Investment Policies For Development UNITED NATIONS, New York and Geneva.*

xxv Ibid

xxvi ICSID Case No. ARB/05/22.

xxvii OECD 2004. "Fair and Equitable Treatment Standard in International Investment Law." *OECD Papers on International Investment, 2004/03, OECD Publishing, p. 3,* obtained from <http://dx.doi.org/10.1787/675702255435>, - accessed on September, 2020.

xxviii Ibid

xxix Ibid

xxx ICSID case No. ARB/93/1 Award, 21 February, 1997, *reprinted in 36 International Legal Materials 1531 (1997).*

xxxi Martha Belete H, Zeray Yihdego, 2017. "The Law and Policy of Foreign Investment Promotion and Protection in Ethiopia: An Appraisal of Theories, Practices and Challenges." *Ethiopian Yearbook of International Law, Springer Nature Switzerland AG. ISSN 2522-5286 ISSN 2522-5294*

xxxii Bastos, F. L 2013. "A Southern African Approach to the Permanent Sovereignty over Natural Resources and Common Resource Management Systems." *University Siegen*, pp. 3-18.

xxxiii www.un.org/law/avl - accessed March, 2020.

xxxiv Mamongonyo, Baasi 2017. "An analysis of expropriation protection mechanism in the Bilateral Investment Treaties (BITs) within the context of Permanent Sovereignty Over Natural Resources." Masters diss, University of Pretoria, p. 18.

xxxv Magogo, T.D 2020. "The Principle of Permanent Sovereignty Over Natural Resources (PSNR) Vis-À-Vis benefits from extractive investments: A highlight on natural resources investment arrangements." *International Journal of Legal Developments and Allied Issues, Volume 6, The Law Brigade (Publishing) Group.*

xxxvi UNGA Resolution 523 (VI), of 12 January 1952: Integrated Economic Development and Commercial Agreements.

xxxvii Ibid

xxxviii Article 1 of the Resolution.

xxxix UNGA Resolution 1515 (XV), 15 December 1960: Concerted Action for Economic Development of Economically Less-developed Countries

xl Ibid, article 2.

xli Ibid, article 3 (a).

xlii Ibid, the Preamble.

xliiii Ibid, the Preamble.

xliv Supra Note 39, article 3(d).

xlv Ibid, article 3(e).

xlvi Ibid, article 4(a).

xlvii Kofele, Kale 1995. "Patrimonicide: the international economic crime of indigeneous spoliation." *28 Vanderbilt Journal of Transnational Law, p. 85.*

xlviii Ibid

xlix Ibid

^lArticle 4 of the Resolution.

^{li}UNGA Resolution 2158 (XXI), 25 November 1966: Permanent Sovereignty over Natural Resources, article 5

^{lii}Ibid, articles 6 &7.

^{liii}Supra Note 35 at p. 11

^{liv}Supra Note 5.

^{lv}Ibid

^{lvi}Ibid

^{lvii}Article 2 of the United Nations Charter of 1945.

^{lviii}Article 2 of the United Nations Charter of 1945.

^{lix}Supra Note 34.

^{lx}Article 2 of the Convention.

- ^{lxi}UNGA Resolution 1803 (XVII).
- ^{lxii}Supra Note 5
- ^{lxiii}Act No. 5 of 2017.
- ^{lxiv}Ibid
- ^{lxv}Section 5 of the The Natural Wealth and Resources (Permanent Sovereignty) Act No. 5 of 2017.
- ^{lxvi}Ibid, Section 9
- ^{lxvii}Ibid, Section 10.
- ^{lxviii}Ibid, Section 11.
- ^{lxix}Section 5(2) of the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act No. 2017
- ^{lxx}Ibid, Section 5(2).
- ^{lxxi}Ibid, Section 7.
- ^{lxxii}Supra Note 69, Section 6 (1).
- ^{lxxiii}Sinda, Aisha 2010. "Foreign Direct Investment in Tanzania: Implications of Bilateral Investment Treaties in Promoting Sustainable Development in Tanzania." Masters diss, University of Pretoria Dissertation.
- ^{lxxiv}Gazzini, Tarcisio 2017. "A Legitimate but Risky Path: The New Tanzania legislation on natural resources." obtained from www.uea.ac.uk/law/research/internationallawblog//asset_publisher - accessed on August 2020.
- ^{lxxv}Stepak, J.M and Ferhad, S 2017. "Tanzania's Legal Reform of the Natural Resources Sector Threatens Extractive Industries." *Winston and Straun LLP International Arbitration*.
- ^{lxxvi}EAST AFRICAN HERALD, 2020. "Is Tanzania on the Edge of a Precipice?." Obtained from <https://www.eastafricanherald.com/business/2020/1/28/is-tanzania-on-the-edge-of-a-precipice> - Accessed on February, 2020.
- ^{lxxvii}Article 1 of BIT between Germany and Tanzania of 1965.
- ^{lxxviii}Ibid, Article 3.
- ^{lxxix}Article 6 of the BIT between UK of 1994.
- ^{lxxx}Article 8 of BIT between UK and Tanzania of 1994, and article 12 of BIT between China and Tanzania of 2013.
- ^{lxxxi}Supra Note 63.
- ^{lxxxii}Supra Note 76.
- ^{lxxxiii}Ibid.
- ^{lxxxiv}Ibid Note 76.
- ^{lxxxv}Supra Note 76
- ^{lxxxvi}President Samia Suluhu Hassan (President of Tanzania) mentioned while addressing State Attorneys and Law Officer of Tanzania General Meeting obtained from Government Press Release of 29th September, 2022 available at <https://www.ikulu.go.tz/> (visited on 30 Sep 2020)
- ^{lxxxvii}Reported on BBC Swahili News of 22nd September, 2020 obtained from www.bbc.com/dwahili/habari - accessed on September, 2020.
- ^{lxxxviii}Supra Note 63.
- ^{lxxxix}Ibid Note 87.
- ^{xc}Ibid Note 88.
- ^{xc1}Ibid
- ^{xcii}Supra 87.
- ^{xciii}Supra Note 63.
- ^{xciv}Ibid
- ^{xcv}The Arbitration Act, 2020
- ^{xcvi}Supra Note 63.
- ^{xcvii}Supra Note 65
- ^{xcviii}Article 109 of the Constitution of Tanzania of 1977 (As ammended from time to time).
- ^{xcix}Transparency International, Corruption Perceptions Index 2022 obtained from www.transparency.org/cpi accessed March 2023.
- ^cArticle 12 (d) of the Convention establishing MIGA of 1985