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## The Relevancy of Permanent Sovereignty Over Natural Resources Vis A Vis States Obligation Under Bilateral Investment Treaties in Tanzania

By

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### Abstract

*This study examines the effective co-existence between the principles of PSNR in relation to BITs. The problem addressed by this study is ineffectiveness of the legal framework governing the PSNR, as well the legal status, recognition and enforcement of BITs in Tanzania. Moreover, the study opts to analyse the legal factor affecting effective coexistence between PSNR and BITs in Tanzania.*

*The study being a qualitative research, it employs a number of methods such as documentary review, interview and questionnaire as methods of data collection. The methods provided the potential information's to the main objective of the study focuses on examination of relevancy of PSNR vis a vis state obligation under BITs in Tanzania.*

*The study detects that, the law governing PSNR is not strong enough to ensure the existing BITs to effectively execute in Tanzania without breach the sovereignty over natural resources. This is due to that there is unclear legal position when it comes to practice aspects on the status of BITs in Tanzania as to the question does the BITs stands as the first law when it comes to conflict arise in extractive industries.*

*Further, the study discussed the legal factors which pave ways to ineffective co existing of the PSNR in relation to BITs in Tanzania this factors includes lacuna in laws, corruption, poor policy, and lack of majority involvements. The study suggests measures towards making effective co-existence of both PSNR and BITs by suggest different approaches such as amendment of laws, creation new policy's, accountability of government officers.*

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### 1. An Overview

State control and ownership of its natural wealth dates back to 5th century CE, long before the Roman era, when various empires and kingdoms vied for ownership and control.<sup>1</sup> Despite this longstanding practice, the doctrine of PSNR only expanded significant recognition in international law after World War II, particularly in the late 1940s.<sup>2</sup> The establishment of the UN in 1945 marked a pivotal moment for this principle, as it received

international acknowledgment through several resolutions, including the 1952 UNGA 626 and the 1958 UNGA 1314.<sup>3</sup>

These resolutions established the legal authority of countries over their natural wealth, sustaining the PSNR as fundamental in contemporary international law.<sup>4</sup> Legal recognition of PSNR initiated new era in state control and ownership of these assets. Under international law, countries are recognized as sole

<sup>1</sup>YOGESH Tyagi (2015), *Permanent Sovereignty over Natural Resources*, Cambridge International Press pp 1

<sup>2</sup>NAUFAL kionka (2017), *The right to regulate in natural wealth and resources in Tanzania*, Sokoine University of Agriculture, Tanzania. pp 114.

<sup>3</sup>[www.un.org/cov.com](http://www.un.org/cov.com). Assessed on 29/12/2023.

<sup>4</sup>HOSSAIN K. et al (eds.), *Permanent Sovereignty over natural resources in international law; Principle and Practice*, Frances Pinter, London, 1984, p. ix.



titleholders and controllers of the natural wealth located within their territories, a position that has largely remained unchanged.<sup>5</sup>

Tanzania is a leader in natural resource wealth, boasting significant reserves of gold, petroleum, gas, and abundant water resources, alongside diverse flora and fauna. This richness attracts many investors to the country.<sup>6</sup> To ensure effective ownership, control, and management of these resources, Tanzania has implemented internal laws in line with UN General Assembly Resolutions 626 and 1314, establishing itself as the sole owner and manager of its natural resources.<sup>7</sup>

To ensure clear and effective ownership of natural wealth, Tanzania has a legal framework that defines the ownership and control of these wealth. Several laws provide a solid legal basis for this governance. *The Constitution of the United Republic of Tanzania* serves as the highest law of the land, addressing various matters in the state, including ownership of natural wealth as outlined in Article 9 (c), (i), and (j) of the Constitution.<sup>8</sup>

As highest law in Tanzania, the Constitution delivers a structure designed for the governance of national affairs and establishes state sovereignty. In addition to the Constitution, Tanzania has enacted several laws to safeguard effective ownership and control of natural wealth.<sup>9</sup> Key legislations include *the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017*,<sup>10</sup> *the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act of 2017*,<sup>11</sup> *the Mining Act of 2010*,<sup>12</sup> *the Petroleum Act of 2015*,<sup>13</sup> and *the Tanzania Extractive Industries (Transparency and Accountability) Act of 2015*.<sup>14</sup> These existing laws collectively govern the supervision of national natural wealth.

Tanzania's rich resources and favorable policies create a positive investment environment, attracting numerous investors across various sectors. The relationship between investors and the state is governed by treaties and contracts that regulate this partnership which are the BITs.<sup>15</sup>

BITs serve as foundational documents for investment regulation, outlining the rights and duties of both parties involved in

investment contracts. These treaties also detail essential elements governing the investment correlation, including duration of investment, dispute resolution mechanisms, access to rights such as land use, tax exemptions, and other benefits.<sup>16</sup>

There is a perspective that BITs are hindering the effective implementation of PSNR. Due to the treaties often contain terms and conditions that conflict with the rights associated with permanent sovereignty.<sup>17</sup> While the principle of PSNR grants host states comprehensive control over its natural wealth, BITs can infringe upon these rights, particularly in determining the legal forum for dispute resolution among investor and host state.

## 2. Legal Recognition of Permanent Sovereignty Over Natural Resources in Tanzania

Tanzania's legal framework is designed to ensure the country maintains full control and ownership over its natural resources. This framework includes various laws and policies aimed at protecting national interests, promoting sustainable resource use, and ensuring equitable distribution of resource benefits among Tanzanians.<sup>18</sup> There are number of laws recognize and regulate PSNR in Tanzania includes but not limited to the followings:

### 2.1 The Constitution of United Republic of Tanzania, 1977

The 1977 Constitution of Tanzania, as supreme law of the land, underscores country's sovereignty over its natural resources.<sup>19</sup> *Article 27(1) of the Constitution of the United Republic of Tanzania* emphasizes responsibility of all citizen to safeguard public property, including natural resources, and mandates that these wealth be used for the public good.<sup>20</sup> Additionally, *Article 9 (i) of the Constitution of the United Republic of Tanzania* requires the state to develop and manage the nation's natural wealth in a manner that benefits both the country and its people.<sup>21</sup>

These constitutional provisions establish a strong legal foundation for resource governance in Tanzania.

However, while the Constitution sets the framework, effective implementation and enforcement require comprehensive supporting legislation and robust institutional capacity. The Constitution not only provides the foundational basis for resource governance but also ensures that national interests are prioritized.<sup>22</sup> The constitutional mandate is central to Tanzania's legal framework, guiding the sustainable and equitable use of natural

<sup>5</sup>DURUGBO E., "Permanent Sovereignty and Peoples' Ownership of Natural Resources in International Law," *The George Washington International Law Review* (2006), pp. 39-40. Assessed through [www.law.cornell.edu.com](http://www.law.cornell.edu.com) on 02/01/2024.

<sup>6</sup>Section 3 Act No 5 of 2017.

<sup>7</sup>[www.un.org/cov.com](http://www.un.org/cov.com). Assessed on 29/12/2023.

<sup>8</sup>NAUFAL kitonka (2017), *The right to regulate in natural wealth and resources in Tanzania*,

Sokoine University of Agriculture, Tanzania. pp 119.

<sup>9</sup>Cap 2.

<sup>10</sup>Act No 5 of 2017.

<sup>11</sup>Act No 6 2017.

<sup>12</sup>Act No 14 of 2010.

<sup>13</sup>Cap 392 RE 2019.

<sup>14</sup>Act No 23 of 2015.

<sup>15</sup>JOHN Page and Finn Tarp (2020)<sup>15</sup>, *Mining for Change Natural Resources and Industry in Africa*, Oxford University Press. pp 283.

<sup>16</sup> JOHN Page and Finn Tarp (2020)<sup>16</sup>, *Mining for Change Natural Resources and Industry in Africa*, Oxford University Press. pp 286.

<sup>17</sup> *Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation* (2002).

<sup>18</sup> Charles Riziki Majinge (2010), *The Doctrine of Permanent Sovereignty over Natural Resources in International Law and its Application in Developing Countries*, *African Foundation for International Law*. pp 21.

<sup>19</sup>Cap 2.

<sup>20</sup>Article 27(1) of Cap 2.

<sup>21</sup>Article 9 (i) of Cap 2.

<sup>22</sup>*Ibid*.



wealth for the collective advantage of its peoples. It reflects nation's commitment to maintaining sovereignty over its resources while leveraging them for socio-economic development and public welfare.<sup>23</sup> Furthermore, this constitutional provision ensures that all legislative and policy measures are aligned with national interests, promoting a cohesive approach to resource management. In doing so *Article 64 (5) of the Constitution of the United Republic of Tanzania* directs need for principle subsidiary legislations to comply with constitution as a way to ensure that all laws and regulations providing governance in nation affairs are in line with the common principles established below constitution of the united republic of Tanzania.<sup>24</sup> This position places constitution at center of national powers towards protection of natural wealth and in ensure the natural wealth are used for the betterments of Tanzania people.

### 2.2 The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017

*The Natural Wealth and Resources (Permanent Sovereignty) Act of 2017* is highlighted by government officials and legal experts as a crucial piece of legislation reinforcing Tanzania's control over its natural wealth.<sup>25</sup> This Act mandates that all agreements and contracts concerning natural resources must prioritize national interests and comply with Tanzanian law. It has been instrumental in renegotiating existing contracts to secure more favorable terms for the country.<sup>26</sup>

While the Act strengthens the legal framework, it also underscores the necessity for rigorous implementation to prevent exploitation and ensure that the benefits of resource extraction are directed towards the Tanzanian population.<sup>27</sup> It is a key element in guaranteeing the welfares of natural wealth remain within the nation, preventing foreign entities from exploiting resources without providing substantial economic benefits the local community.<sup>28</sup>

The Act consolidates Tanzania's control over its natural assets, ensuring that their exploitation supports the nation's development goals. It establishes a management framework that prioritizes national interests, promotes fair distribution of benefits, and fosters economic growth. By reinforcing sovereignty, the Act ensures that resource management decisions enhance national prosperity and reduce reliance on foreign entities.<sup>29</sup> Furthermore, the establishment of the Act stands as a cornerstone on safeguard of Tanzania natural wealth since it grants powers of national assembly to pass the agreements which involve extraction of natural resources in Tanzania.<sup>30</sup> The rationale beyond this power is considered as a way to insure that natural wealth in Tanzania is well protected in the manner that the extraction contract of natural

wealth must be agreed by the public through national assembly before execution of the contracts.<sup>31</sup>

Moreover, section 11 of the Act in ensure effective protection of natural wealth grants powers to the domestic legal regime to be the institutional frame work with the power to entertain disputes with the nature of natural wealth exploitation.<sup>32</sup> The view is that the foreign legal regimes does not favor the host states.<sup>33</sup> but rather prioritize the interest of investors. This can be traced by a number of foreign investment cases taken at international legal instruments to end as a loss to host states such as in the case of *Nachingwea and Others V. Tanzania*.<sup>34</sup> That is to say the Act plays a significant role in ensure that control of natural wealth are within Tanzania the resources are used for the best interest of Tanzanians.

### 2.3 The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, 2017

The Act grants government the authority to review also renegotiate contracts deemed unfair or excessively advantageous to foreign investors. This measure highlights the challenge of harmonizing the need for foreign investment with the need to maintain control over national resources.<sup>35</sup> While the Act aims to address historical imbalances in agreements, its implementation must be transparent and consistent to maintain investor confidence. By empowering the government to review existing contracts, the Act provides a crucial mechanism for correcting past imbalances.<sup>36</sup> It allows for the renegotiation of unfavorable terms to better serve national interest, as evidenced by cases handled under this Act. This legislative measure enables the government to identify potentially exploitative or inequitable contract terms and seek amendments that align with fair practices and national priorities.<sup>37</sup>

Ultimately, the Act seeks to rectify historical disparities and foster more equitable partnerships with foreign investors. By enhancing Tanzania's ability to protect its resources and ensure fair agreements, it contributes to a more balanced economic environment and strengthens investor confidence in the country's regulatory framework. It is the position that natural wealth in Tanzania is to be used for the benefit interest and common goal which is to ensure effective development and improvement of Tanzanians.<sup>38</sup> The Act gives power to Tanzania as a state to make changes to any unfair term(s) in an investment agreement which does not favor the interest of Tanzania.<sup>39</sup> This position pave way in

<sup>23</sup>Ibid.

<sup>24</sup> Article 64 (5) of Cap 2.

<sup>25</sup> Act No 5 of 2017.

<sup>26</sup> Section 6 of Act No 5 of 2017.

<sup>27</sup>Ibid.

<sup>28</sup>Ibid.

<sup>29</sup>Ibid.

<sup>30</sup> Section 12 of the Act No 5 of 2017.

<sup>31</sup> Report on the presentation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>32</sup> Section 11 of the Act No 5 of 2017.

<sup>33</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>34</sup> ICSID Case No ARB/20/38 of 2020.

<sup>35</sup> Act No 6 of 2017.

<sup>36</sup> Section 6 of Act No 6 of 2017.

<sup>37</sup> Section 4 of the Act No 6 of 2017.

<sup>38</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>39</sup> Section 4 of the Act No 6 of 2017.



fulfilling of the main goal of exploiting natural wealth in Tanzania to be use for the benefit of the Tanzania's.<sup>40</sup>

#### 2.4 The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, Cap 450, 2020

Building on 2017 Act further strengthens government's authority to renegotiate contracts.<sup>41</sup> Legal scholars and advocates have noted that this law provides clearer guidelines and a more solid legal foundation for the review process, thereby enhancing Tanzania's ability to protect its interests in resource-related agreements. However, they also caution that careful management of the law's implementation is crucial to avoid any negative impact on investment flows.<sup>42</sup> This legislation offers structured and transparent guidelines for renegotiating contracts, which enhances the government's ability to address and amend agreements to ensure fairness and equity. The 2020 Act introduces a detailed framework for systematic renegotiations, making the process more predictable and reducing the potential for disputes.<sup>43</sup> By establishing specific procedures, the amendment fosters a more collaborative relationship between the government and investors. This legislative advancement also highlights Tanzania's commitment to maintaining a fair and stable investment environment, which is essential for attracting and retaining foreign investment.<sup>44</sup>

#### 2.5 The Tanzania Investment Act, Cap 38

The Act is crucial in shaping the country's investment climate by offering provisions for investment incentives and protections aimed at attracting foreign investors.<sup>45</sup> It provides a legal framework that not only draws foreign investment but also ensures these investments align with national interests, including compliance with laws governing natural resources.<sup>46</sup> However, to enhance coherence and consistency in policy application, better integration between the Investment Act and specific natural resources legislation is needed. The Act is designed to promote and facilitate investments in a way that benefits the national economy, balancing the attraction of foreign investments with the protection of national interests.<sup>47</sup>

This Act is essential in creating an investment environment that is both appealing to investors and advantageous to Tanzanian citizens. It defines the privileges and duties of investors, offers incentives, establishes mechanisms to protect investors' interests while ensuring their contributions align with national development

<sup>40</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>41</sup> Cap 450 of 2020.

<sup>42</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>43</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>44</sup> Cap 450 of 2020.

<sup>45</sup> Cap 38.

<sup>46</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>47</sup> Cap 38.

objectives.<sup>48</sup> By fostering an environment that attracts foreign capital, technology, and expertise, the Act supports economic growth while preserving national sovereignty and aligning investment activities with the country's development goals which is to guarantee natural wealth of Tanzania are being extracted for the betterment as well as development of Tanzania citizens.<sup>49</sup>

#### 2.6 The Mining Act, Cap 123

The Act of Tanzania governs exploration and extraction of mineral resources, detailing the requirements for acquiring mining licenses, conducting environmental impact assessments, and advancing local content and corporate social responsibility.<sup>50</sup> While the Act's provisions for local content have been recognized for generating job and business opportunities for Tanzanians, there have been calls for stronger enforcement to fully realize these benefits.<sup>51</sup> The Act is comprehensive, addressing multiple facets of mining operations to ensure compliance with national standards. It requires thorough environmental and social impact assessments to promote sustainable practices. By establishing a detailed regulatory framework that encompasses all stages of mining from exploration toward production then closures the Act aims to manage resources responsibly and protect the environment.<sup>52</sup>

It also seeks to distribute mining benefits more equitably among local communities, fostering a sustainable and inclusive mining sector crucial for long-term economic development. The Act being the parent law regulating mining extraction it has distribute clear the position of government as the controller of natural wealth as well as showing the position of the investors who are conducting mining activities in Tanzania.

#### 2.7 The Petroleum Act, 2015

The Act of Tanzania governs the exploration, improvement, and manufacture of petroleum wealth, offering a comprehensive framework for resource management. It includes provisions for licensing, environmental oversight, and revenue sharing.<sup>53</sup> However, with the global energy market evolving rapidly especially with the shift towards renewable energy there is a call for regular updates to the Act to ensure its ongoing relevance and effectiveness.<sup>54</sup>

Moreover, the Act's emphasis on local participation and capacity building is seen as crucial for maximizing the benefits of petroleum resources for Tanzanians.<sup>55</sup> The Petroleum Act is energetic for the effective management of Tanzania's oil and gas resources. It aligns with global best practices, ensuring that petroleum resources are managed to benefit both current and future generations. By

<sup>48</sup> Cap 38.

<sup>49</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>50</sup> Cap 123.

<sup>51</sup> Section 103 of Cap 123.

<sup>53</sup> Act 21 of 2015.

<sup>54</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>55</sup> Section 220 of Act 21 of 2015.





providing a detailed regulatory framework that covers technical, environmental, and social aspects of petroleum operations, the Act promotes efficient and responsible resource exploitation.<sup>56</sup> Its focus on sustainability helps ensure that petroleum activities do not harm the environment or local communities, supporting a balanced approach to resource management.<sup>57</sup> The role of the Act comes in a manner of enforcing proper stands on exploitation of petroleum products, not only that, the Act have played a huge role in ensure there is protection of the interest of the host national such as native community, corporate social responsibility, environmental protection and many more.<sup>58</sup>

### 3. Legal Status, Recognition, and Implementation of Bilateral Investment Treaties in Tanzania

BITs being agreements between the host state and investors, play key role in Tanzania's approach towards attraction of foreign investment. This is due to its role in regulating the relationship between parties by stipulate the rights and duties among parties, where by for host sate they stipulate aspects such as the powers of the host state in the relationship, the benefit which the host state will receive, and for investors it sometimes includes but not limited to guarantees of fair treatment, protection against expropriation, and access to international arbitration for dispute resolution.<sup>59</sup> This part of the study discusses the legal status, recognition, and implementation of BITs in Tanzania. The key intention is to examine the legal base of recognition and implementation of BITs in Tanzania as a way to understand its implications in consideration to existence of PSNR in Tanzania.

#### 3.1 Legal Status of Bilateral Investment Treaties in Tanzania

BITs are recognized under Tanzanian law as binding international agreements, and as such, they can sometimes take precedence over domestic laws, particularly regarding investor protections.<sup>60</sup> While BITs are essential for providing legal certainty and attracting foreign investment by fostering a stable environment, they can also limit Tanzania's regulatory flexibility, especially in sectors related to natural resources.<sup>61</sup> This is because when it comes to dispute related which is its cause of action is contractual in nature the first law to be used is the contract itself in the case of *Biwater V. Tanzania of 2005* is a good example of the part played by the ICJ in resolve international investments dispute basing on the terms agreed by parties in a BITs and not domestic laws.<sup>62</sup> Hence since BITs has legal status and recognition in Tanzania they may hinder

<sup>56</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>57</sup> Section 215 of Act 21 of 2015.

<sup>58</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>59</sup> Ibid.

<sup>60</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation. pp 8.

<sup>61</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.

<sup>62</sup> [www.untrade&development.net](http://www.untrade&development.net). Assessed on 21/06/2024.

the applicability of domestic laws if there are terms in the BITs which were agreed to be so.

To safeguard Tanzania's sovereign rights, it is crucial to carefully draft and negotiate BITs. These treaties offer significant security for foreign investors, ensuring adherence to agreed terms and protections against arbitrary changes in the investment environment. They also provide mechanisms for resolving disputes, reinforcing Tanzania's reputation as a reliable investment destination. The binding nature of BITs obliges Tanzania to honor its commitments, thereby enhancing its credibility and attractiveness for foreign investment.<sup>63</sup>

#### 3.2 Legal Recognition of Bilateral Investment Treaties in Tanzania

Tanzania formally acknowledges BITs through ratification and their integration into national law, ensuring that these treaties align with the country's legal framework and national interests.<sup>64</sup>

Despite this, the negotiation and ratification processes often lack transparency and public engagement, leading to limited public understanding and support. Increasing public awareness and discussion about the implications of BITs could better align these treaties with Tanzania's development goals.<sup>65</sup>

Acknowledging BITs highlights Tanzania's commitment to international investment and adherence to global standards, which is crucial for attracting foreign direct investment and driving economic growth. By upholding BITs, Tanzania signals its dedication to participating in the global economy and following internationally accepted norms. This legal recognition creates a predictable and secure investment environment, essential for attracting long-term investments and fostering economic development.<sup>66</sup>

#### 3.3 Legal Enforcement and Implementation of Bilateral Investment Treaties in Tanzania

Enforcement of BITs often relies on international arbitration, which provides a neutral platform for determining disputes among investors and the host national.<sup>67</sup> While this mechanism is valued for its fairness and impartiality, both investment companies and government officials have noted that arbitration outcomes can occasionally be unfavorable to Tanzania. Additionally, the high costs and complexities of international arbitration pose significant challenges.<sup>68</sup> The existing position is currently in contradiction with the existing laws especially the Act No 5,<sup>69</sup> and Act No 6 of 2017.<sup>70</sup> Which gives more power to Tanzania as a sovereign state to decide what should be done in over its natural resources and the

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation (2002). pp 4.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Act No 5 of 2017.

<sup>70</sup> Act No 6 of 2017.



domestic laws should apply when it comes to exploitation of natural wealth in Tanzania.<sup>71</sup>

To address these issues, there have been calls to bolster the capacity of local legal professionals and institutions to handle such disputes more effectively. Enhancing local expertise could reduce reliance on international arbitration and better safeguard Tanzania's interests.<sup>72</sup> Effective enforcement of BITs is crucial for maintaining investor confidence and attracting additional investments. International arbitration plays a key role in resolving disputes, which reassures investors and mitigates perceived risks. Tanzania's commitment to the proper implementation of BITs ensures that foreign investors have legal recourse in disputes, reinforcing the nation's attractiveness as an investment target and supporting sustainable economic growth.<sup>73</sup>

On the perspective BITs operation must go hand in hand with the PSNR of the state. PSNR stands as the power of a host state to control and regulate its natural resources with ought to interfere by any external forces, thus the domestic laws regulating natural resources are to be respected since they stand as an end product of excising PSNR within a state. That, the government upon creation of BITs must ensure they contain terms which does not affect the interest of the hoist state by comply towards the principles established under PSNR since PSNR grants power to host state to control its natural resources with the presence of domestic laws hence they must be respected and complied upon.<sup>74</sup>

#### 4. Legal Challenges Affecting Permanent Sovereignty Over Natural Resources Upon the Implementation of Bilateral Investment Treaties in Tanzania

Tanzania faces several legal challenges in maintaining its PSNR, particularly in relation to existing and future BITs. A major challenge is the mismatch between BIT provisions and national laws.<sup>75</sup> Further, there other factors affecting implementation of PSNR in relation to BITs including but not limited to:

##### 4.1 Limited Government Capacity

Key issues include a shortage of skilled personnel, inadequate resources, and insufficient training. Both the Ministry of Mines and the Ministry of Energy have emphasized need for continuous training and capacity building to equip officials with the necessary skills and knowledge.<sup>76</sup> They also noted that financial constraints further impede the government's ability to implement and monitor policies effectively. Enhancing institutional capacity is crucial for enabling Tanzania to negotiate and enforce contracts that protect its

interests.<sup>77</sup> That Building capacity within government institutions is critical for effective implementation. Providing government officials with adequate training and resources is essential for enforcing laws properly. Strengthening institutional capacity requires not only increasing the number of skilled personnel but also continuously developing their expertise through ongoing training. Additionally, ensuring sufficient financial resources is vital for the effective operation of regulatory bodies. Improved capacity will enable the government to better monitor and regulate resource activities, ensuring compliance with legal and environmental standards.

##### 4.2 Economic Policies

The emphasis on short-term economic gains over long-term sustainability has been recognized as a major challenge in resource management. Current policies often prioritize immediate revenue generation, which can compromise sustainable development and environmental protection. This short-term focus can lead to over-extraction of resources and have long-lasting negative effects both environment and local communities. There is a clear need to align economic policies with long-term sustainability goals. As one respondent noted, harmonizing economic policies with the principles of PSNR is essential for sustainable development. Consistent and supportive economic policies are crucial for effectively implementing PSNR principles.<sup>78</sup> When economic policies are misaligned with sustainability objectives, they can hinder effective resource management and obstruct the achievement of national development goals. By ensuring that economic policies support PSNR principles, Tanzania can create an environment that encourages sustainable resource use, fostering long-term economic growth and development. This alignment involves integrating PSNR principles into national development plans and economic strategies to ensure coherence and synergy across policy areas.<sup>79</sup>

##### 4.3 Local Community Involvement

Involving local communities in decision-making processes for natural wealth management is crucial for ensuring that resource extraction projects are socially sustainable and equitable. That insufficient consultation and participation often lead to conflicts and resistance, particularly in areas affected by large-scale projects.<sup>80</sup> They stressed that meaningful community engagement, including sharing benefits and addressing local concerns, is essential for achieving long-term sustainability and social harmony.

##### 4.4 Environmental Considerations

Balancing resource extraction with environmental protection is a significant challenge, as highlighted by respondents. Environmental experts pointed out that weak enforcement of environmental laws and regulations can lead to degradation, loss of

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *St. Augustine University Law Journal Vol.1 No.3, Faculty of Law, St. Augustine University of Tanzania.*

<sup>76</sup> *Report on the Implementation of the Investment Policy Review United Republic of Tanzania by United Nation.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Goldfrank, B. (2007). Lessons from Latin American Experience in Participatory Budgeting. Latin American Studies Association.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*



biodiversity, and negative impacts on local communities. To address these concerns, stronger regulatory frameworks and enforcement mechanisms are needed to ensure that resource extraction is environmentally sustainable.<sup>81</sup> There is a stressed the importance of incorporating environmental considerations throughout every stage of resource management, from exploration to post-extraction rehabilitation. Environmental sustainability is a key element of PSNR, Implementing strict environmental regulations ensures that resource exploitation does not compromise future generations.<sup>82</sup> Conducting thorough environmental impact assessments and adopting sustainable practices are essential for preserving natural resources. Responsible resource activities protect ecosystems, biodiversity, and community health. By enforcing rigorous environmental regulations and promoting sustainable practices, Tanzania can effectively balance resource extraction with environmental conservation, guaranteeing natural resources are safeguarded for upcoming generations. This approach not only aligns with global sustainability goals but also enhances Tanzania's reputation as a responsible steward of its natural resources.<sup>83</sup>

#### 4.5 Technological and Scientific Capabilities

The limited advancement in technological and scientific capabilities was identified as a major challenge restricting Tanzania's ability to effectively manage its natural resources. There is need to invest in research and development, as well as in the education and training of local experts. The highlight is on modern technology and scientific knowledge are essential for efficient resource exploration, extraction, and management.<sup>84</sup> Enhancing these capabilities would enable Tanzania to better evaluate its resource potential, minimize environmental impacts, and maximize benefits. That, investing in technology and scientific research is crucial for efficient and sustainable resource utilization. Advanced technologies and research can greatly improve resource management and extraction techniques.<sup>85</sup> By investing in technology and fostering innovation, Tanzania can optimize its resource management practices, reduce environmental impact, and increase the economic benefits from its natural resources. Additionally, strengthening technological and scientific capabilities supports the growth of local industries, creates skill development opportunities, and generates employment.<sup>86</sup>

#### 4.6 Political Stability

Political stability is essential for effective resource management. That political instability can lead to frequent policy changes and shifting priorities, creating uncertainty and disrupting long-term

planning and investment. Consistent and predictable governance is crucial for maintaining a reliable legal and regulatory framework, which is important for both domestic and foreign investors.<sup>87</sup> Stable governance is vital for the successful implementation of PSNR. Political stability ensures a reliable and predictable investment climate, minimizing disruptions to resource activities and deterring investment risks. By promoting transparency, accountability, and adherence to the laws, Tanzania container foster an environment advantageous to effective resource management sustainable investments. Additionally, political stability supports social cohesion and builds trust in government institutions, which are crucial for the long-term success of resource projects.<sup>88</sup>

### 5. Recommendations

The study discussed challenges affecting effective implementations of PSNR vis a vis BITs. The following are the recommendation towards the solutions to the problems.

#### 5.1 To the Legislature

The legislature should prioritize the revision and strengthening of existing laws governing PSNR. This includes ensuring that these laws are fully compatible with Tanzania's obligations under BITs. The current legal framework should be assessed for gaps and inconsistencies that could be exploited by foreign investors to the detriment of Tanzania's sovereign rights. For example, Namibia has undertaken significant legislative reforms to strengthen its control over natural wealth, particularly in the diamond industry, where the government has introduced laws to ensure greater local participation and benefit.<sup>89</sup> Similarly, Brazil has implemented strict regulations on foreign land ownership and mining to protect its Amazon rainforest, balancing environmental protection with investment needs.<sup>90</sup> Furthermore, the legislature should take a proactive approach in reviewing BITs that are nearing renewal or expiration, using these opportunities to renegotiate terms that better reflect Tanzania's interests. This could involve incorporating lessons learned from other countries, such as South Africa's experience in drafting BITs that explicitly include provisions for sustainable development and local community benefits.<sup>91</sup> The inclusion of clauses that protect the country's right to regulate and manage its natural resources, even in presence of foreign investment, is crucial. Additionally, the legislature should consider enacting new legislation that provides clear guidelines on balancing investor rights with state sovereignty, ensuring that Tanzania's natural wealth is safeguarded for future generations. This could involve the establishment of a regulatory institute

<sup>81</sup> Goldfrank, B. (2007). *Lessons from Latin American Experience in Participatory Budgeting*. Latin American Studies Association.

<sup>82</sup> Li, T. M. (2014). *Land's End: Capitalist Relations on an Indigenous Frontier*. Duke University Press.

<sup>83</sup> Ibid.

<sup>84</sup> Goldfrank, B. (2007). *Lessons from Latin American Experience in Participatory Budgeting*. Latin American Studies Association.

<sup>85</sup> Li, T. M. (2014). *Land's End: Capitalist Relations on an Indigenous Frontier*. Duke University Press.

<sup>86</sup> Ibid.

<sup>87</sup> Goldfrank, B. (2007). *Lessons from Latin American Experience in Participatory Budgeting*. Latin American Studies Association.

<sup>88</sup> Ibid.

<sup>89</sup> Berne Declaration. (2012). *Land Grabbing in Namibia*. Accessed at [berne-declaration.ch](http://berne-declaration.ch).

<sup>90</sup> Zoomers, A. (2010). *Globalisation and the Foreignisation of Space: Seven Processes Driving the Current Global Land Grab*. *Journal of Peasant Studies*, 37(2), 429-447.

<sup>91</sup> de Schutter, O. (2011). *The Green Rush: The Global Race for Farmland and Its Implications*. Yale University Press.

tasked with overseeing the operation of such laws in ensuring obedience by all stakeholders, similar to the Resource Governance Index used by some countries to assess and improve resource management practices.<sup>92</sup>

### 5.2 To the Government

The government should take proactive steps to renegotiate existing BITs to ensure that they align with the principle of PSNR. In these negotiations, the government should seek to include clauses that explicitly recognize Tanzania's sovereign rights to regulate and manage its natural resources without undue interference from foreign investors. This process requires a coordinated effort involving legal experts, economists, and policymakers to develop negotiation strategies that will secure more favorable terms for Tanzania. For instance, Ecuador successfully renegotiated its oil contracts with foreign companies, increasing its share of revenues and reinforcing state control over its resources.<sup>93</sup> Similarly, Venezuela's renegotiation of its oil industry contracts in the early 2000s permitted government to proclaim greater regulation of its resources while still benefiting from foreign expertise and investment.<sup>94</sup> Furthermore, the government should enhance its capacity to implement and enforce laws related to natural resource management, ensuring that any foreign investment in this sector contributes meaningfully to Tanzania's socio-economic development. This might involve the strengthening of institutions responsible for resource management, such as seen in Botswana government's effective supervision of its diamond resources has contributed significantly on national growth.<sup>95</sup> Improving transparency in resource-related transactions ensuring local societies advantage in resource exploitation are also critical. In Norway, for example, the government has established a sovereign wealth fund that channels oil revenues into long-term investments for future generations, ensuring that the wealth generated by natural resources benefits the entire nation.<sup>96</sup> The government must also endow capacity-building initiatives to equip its negotiators with the skills necessary to engage effectively in international negotiations, drawing on the experiences of countries like Malaysia, which has developed a robust system for training and supporting its diplomats in trade and investment negotiations.<sup>97</sup>

<sup>92</sup>NRGI. (2017). *Natural Resource Governance Index 2017: Promoting Accountability in the Oil, Gas and Mining Sectors*. Natural Resource Governance Institute.

<sup>93</sup>Schrijver, N. (2008). *Sovereignty over Natural Resources: Balancing Rights and Duties*. Cambridge University Press.

<sup>94</sup>Rodriguez, F., & Sachs, J. D. (1999). *Why Do Resource-Abundant Economies Grow More Slowly?* *Journal of Economic Growth*, 4(3), 277-303.

<sup>95</sup>Acemoglu, D., Johnson, S., & Robinson, J. A. (2003). *An African Success Story: Botswana*. In *Search of Prosperity: Analytic Narratives on Economic Growth* (pp. 80-119). Princeton University Press

<sup>96</sup>Ølgaard, O. (2008). *The Norwegian Government Pension Fund-Global: An Example of Institutional Best Practice?* *Journal of Financial Regulation and Compliance*, 16(4), 357-368.

<sup>97</sup>Bradshaw, C. J. A., & Brook, B. W. (2014). *Human Population Reduction Is Not a Quick Fix for Environmental Problems*. *Proceedings of the National Academy of Sciences*, 111(46), 16610-16615.

### 5.3 To Corporations

Corporations operating in Tanzania, particularly those participate in extraction and utilization of natural wealth must recognize and respect PSNR. They should actively engage with the government to guarantee their operations are conducted in a way that is both legally compliant and socially responsible. This includes adhering to best practices in environmental conservation and contributing to the local communities in which they operate. For example, in Australia, mining companies are required to engage in extensive environmental impact assessments and work with local Aboriginal communities to ensure that their operations do not harm cultural heritage sites.<sup>98</sup> In Canada, the government and corporations have developed partnerships with Indigenous communities to ensure that they share in the benefits of natural resource extraction, through mechanisms such as revenue-sharing agreements and local employment initiatives.<sup>99</sup> Corporations should be transparent in their dealings, particularly in the areas of resource extraction and revenue sharing, ensuring that their activities do not undermine the sovereignty of the Tanzanian state. They should also engage in corporate social responsibility (CSR) initiatives contribute to the growth of local communities, for instance devoting in infrastructure, education, as well as health services. In Zambia, for instance, mining companies have partnered with the government to fund community development projects in the Copper belt region, addressing some of the socio-economic challenges faced by local communities.<sup>100</sup> Additionally, corporations should work collaboratively with the government to ensure that their investments benefit the Tanzanian people. This could involve forming partnerships with local businesses and employing local labor, thereby ensuring that the economic benefits of resource extraction are shared more broadly across society. A good example is found in Chile, where the copper mining industry has established extensive programs to support local suppliers and entrepreneurs, fostering economic diversification and reducing dependency on the mining sector.<sup>101</sup>

### 5.4 To the Community

The local community shows a crucial role in ensuring sustainable administration of Tanzania's natural wealth. Tanzania community should be empowered and educated about their rights regarding use plus management of natural wealth. This involves not only raising awareness about the legal and economic aspects of resource management but also providing the tools and platforms necessary for effective community participation. For instance, in Ghana, community-based natural resource management programs have been successful in connecting local populations in decision-making

<sup>98</sup>Jomo, K. S., & Wee, C. H. (2013). *Malaysia's New Economic Policy and National Unity*. Malaysian Economic Association.

<sup>99</sup>Newman, D. G. (2014). *Natural Resource Jurisdiction in Canada*. In *The Oxford Handbook of Canadian Politics*. Oxford University Press.

<sup>100</sup>Fraser, A., & Lungu, J. (2007). *For Whom the Windfalls? Winners and Losers in the Privatization of Zambia's Copper Mines*. Catholic Agency for Overseas Development.

<sup>101</sup>Wright, G., & Czelusta, J. (2007). *Resource-Based Growth Past and Present*. In *Natural Resources: Neither Curse Nor Destiny* (pp. 183-211). Stanford University Press.





procedures related to forest conservation, leading to better outcomes for both the environment and local livelihoods.<sup>102</sup> Similarly, in Namibia, communal conservancies have allowed local communities to manage wildlife resources sustainably, providing them with direct economic benefits while preserving biodiversity.<sup>103</sup> Increased awareness will enable the community embrace both the government and corporations answerable for their actions in natural resource sector. Community members should be involved in decision-making processes related to natural resource management, ensuring that their voices are heard and their interests protected. This could be facilitated through establishment of community-based organizations (CBOs) that serve as intermediaries between the community, the government, and corporations. In Peru, for example, local communities have successfully used CBOs to negotiate better terms with mining companies, ensuring the benefits of resource extraction are more justifiably distributed.<sup>104</sup>

Furthermore, the community should be encouraged in contribution actively in decision-making processes related to natural resource management, ensuring that their voices are heard and their interests protected. This participation is vital for ensuring that resource management strategies are aligned with the needs and ambitions of the local people, thereby funding to the sustainable development of the region. In Bolivia, the government has implemented a participatory budgeting system that allows local communities to have a say in how revenues from natural resources are spent, fostering greater accountability and more targeted development outcomes.<sup>105</sup>

## 6. Conclusion

The PSNR stands as the power towards state fully control, manage as well as exploit its natural resources without interferences from any external forces.<sup>106</sup> Moreover, BITs are the agreements between the investor and host state towards exploitations of natural resources while benefiting both parties to the contract.<sup>107</sup> For Tanzania to successfully implement PSNR, it is crucial to strengthen its legal and regulatory framework, enhance government capacity, combat corruption, align economic policies with sustainability goals, foster positive international relations, engage local communities, ensure environmental protection, invest in technology, and maintain political stability. The study emphasizes

the importance of a comprehensive approach that incorporates legal, economic, social, and environmental factors in achieve sustainable resource management. By addressing these challenges and leveraging its natural wealth effectively, Tanzania can promote long-term development and improve the well-being of its citizens.

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