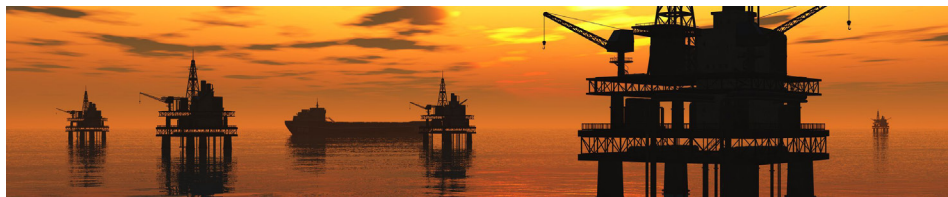


3 January 2018



## Special Parliamentary Committee commences probe on oil and gas agreements

- **Mandate similar to previous Parliamentary Committees that investigated diamond and tanzanite mining**
- **Headed by same MP who chaired the Committee that investigated tanzanite mining**
- **Composed of 11 MPs**
- **Given 30 days to complete its probe for further action**
- **Commenced its probe yesterday 2 January 2018**
- **TORs make reference to the 'Unconscionable Terms Act'**
- **To identify unconscionable terms in oil and gas agreements**
- **To recommend best ways for management and regulation of the gas subsector**
- **To identify flaws in the policy and laws governing the gas subsector**

On 17 November 2017, the Speaker of the National Assembly, vide Speaker's Circular No. 6 of 2017, formed a Special Advisory Committee to probe any flaws in the law and policies governing the gas subsector and recommend how the nation can benefit from revenues accruing from the gas subsector.

In its preambular statements, the Circular makes reference to the Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017 (Unconscionable Terms Act). This Act empowers the National Assembly to review all agreements entered by the Government on the extraction of natural resources. In doing so, the National Assembly has powers to evaluate whether or not such agreements contain unconscionable terms.

The Circular also makes reference to the perceived public outcry for review of different agreements on extraction of natural resources, including gas. In the upshot, the Circular suggests that while the discovery of gas in the country created a glamour of hope to the citizens that such resources would help to boost the economy of the country and citizen's living standards, such hopes have now started to fade away.

The Circular further makes reference to the challenges identified and recommendations made by a sub committee formed in 2011 by the Parliamentary Energy and Minerals Committee to evaluate the gas subsector. According to the Circular, the report by the sub committee concluded that the Production Sharing Agreements (PSA) were not beneficial to the nation. The Circular identifies the challenges and flaws in the PSAs as reported by the 2011 Sub Committee to include:

- (i) Cost sharing system between the Government and its partners
- (ii) Partners having 'Redeemable Preference Shares' while the Government has only ordinary shares
- (iii) Management of the Special Purpose Vehicle (SPV)
- (iv) Profit sharing formula between the Government and the partner, whereby the partners obtain a share of revenue regardless of the profit while the Government's share depends on the profit made
- (v) Restricted back-in-rights participation for the Government (i.e. limited FCI once commercial production has started), and

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(vi) Delays in evaluation and audits on projects implemented by the Government's partners.

In view of the preceding background, the National Assembly considers that it is necessary to take special measures to address the identified challenges in the gas subsector by forming this special committee that is mandated to conduct an in-depth evaluation of the gas subsector so that it can accordingly recommend to the Government.

The Committee will work for 30 days from 2 January 2018 and is composed of the following members.

- (i) Hon. Doto M. Biteko – Chairperson (MP for Bukombe Constituency)
- (ii) Hon. Innocent Lugha Bashungwa – Member (MP for Karagwe Constituency)
- (iii) Hon. Dustan Luka Kitandula – Member (MP for Mkinga Constituency)
- (iv) Hon. Dr. Suleiman Ally Yussuf – Member (MP for Mgogoni Constituency)
- (v) Hon. Wanu Hafidh Ameir – Member (MP representing the House of Representatives)
- (vi) Hon. Oscar Rwegasira Mukasa – Member (MP for Biharamulo West Constituency)
- (vii) Hon. Ruth Hiyob Mollel – Member ((MP Special Seats)
- (viii) Hon. Richard Philip Mbogo – Member (MP for Nsimbo Constituency)
- (ix) Hon. Omar Mohamed Kigua – Member (MP for Kilindi Constituency)
- (x) Hon. Abdallah Ally Mtolea – Member (MP for Temeke Constituency)
- (xi) Hon. Sebastian Simon Kapufi – Member (MP for Mpanda Town Constituency)

According to the Circular, the Committee will have the following TORs:

- i. Identify flaws in the policy and laws governing the implementation of agreements for production and exploration of gas.
- ii. Identify unconscionable terms in the agreements and contracts for exploration and production of gas in the country.
- iii. Recommend the best ways for management and regulation of the gas subsector in the country.
- iv. Recommend the best way for entering into contracts for extraction, exploration and gas business in the country.
- v. To deal with any other issues/matters related to gas subsector in the country.

### The likely consequences of this review are:

Although the move by the National Assembly makes reference to the 'Unconscionable Terms Act', it does not adhere to the procedures contemplated by this Act.

- In terms of section 5 of the 'Unconscionable Terms Act', the first step is for the Government to submit all Agreements (both new and old) to the National Assembly.

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- The National Assembly then scrutinizes the Agreement; the Procedure for such scrutiny ought to have been provided for under the Regulations which have not been promulgated, nor have the Parliamentary Standing Orders been amended. This could be the reason why the Hon. Speaker has invoked the general powers vested on him under Order 5(1) of the Parliamentary Standing Orders 2016 which provides that the Speaker in discharge of his duties must be guided by the Constitution, Laws, Regulations and precedents from previous practices. It is also not clear whether the review will be conducted by the whole house, by a sector committee or a special select committee.
- Notwithstanding the above procedural issue, where in its scrutiny the National Assembly considers that such agreements contain unconscionable terms, it shall pass a resolution directing the Government, to initiate re-negotiation of the agreements to rectify the unconscionable terms. No such resolution has yet been passed although the Circular already indicates that the country is not benefitting from such agreements.
- After the National Assembly resolves, the Government must within 30 days serve the other party a notice of intention to renegotiate such unconscionable terms.
- The notice shall state nature of the unconscionable terms and intention to expunge (remove) the term if renegotiation is not concluded within a specified term.
- Maximum time to renegotiate (unless time extended by mutual agreement) is 90 days from date of service of notice otherwise the 'unconscionable term' is automatically expunged.
- After completion of renegotiation, Government to prepare a report and table before the National Assembly.

Biggest challenge for international oil and gas companies is that the definition of Unconscionable Terms (under the 'Unconscionable Terms Act') is very wide and it can literally affect any article of the PSAs.

Given the previous experience in the mining sector, the report is going to create greater uncertainty, reduce investor interest and confidence in investing in Tanzania particularly in the extractive industry. There is a high chance that such unilateral reviews of already signed PSAs, if renegotiations fail, may delay or stall the much awaited USD 30B+ LNG investment, and lead to international investment disputes in foreign arbitration Tribunals as most PSAs have arbitration clauses outside Tanzania.

Considering the complexity of the PSAs, it is to be seen if the allotted time of 30 days will suffice for the Committee, amongst others, to undertake such an economic and legal review.

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