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# AgCLIR: TANZANIA

Commercial Legal and Institutional Reform  
in Tanzania's Agriculture Sector





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May 2010



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# CONTENTS

<b>INTRODUCTION</b> .....	<b>I</b>
<b>WOMEN IN TANZANIAN SOCIETY</b> .....	<b>21</b>
<b>STARTING A BUSINESS</b> .....	<b>30</b>
<b>DEALING WITH LICENSES</b> .....	<b>48</b>
<b>COMPETING FAIRLY</b> .....	<b>61</b>
<b>EMPLOYING WORKERS</b> .....	<b>73</b>
<b>REGISTERING PROPERTY</b> .....	<b>88</b>
<b>GETTING CREDIT</b> .....	<b>103</b>
<b>PROTECTING INVESTORS</b> .....	<b>119</b>
<b>PAYING TAXES</b> .....	<b>130</b>
<b>TRADING ACROSS BORDERS</b> .....	<b>141</b>
<b>ENFORCING CONTRACTS</b> .....	<b>163</b>
<b>COPING WITH FOOD SECURITY INFRASTRUCTURE</b> .....	<b>173</b>
<b>ADDRESSING CLIMATE CHANGE</b> .....	<b>188</b>
<b>APPENDIX A: COMPILATION OF RECOMMENDATIONS</b> .....	<b>203</b>
<b>APPENDIX B: REFERENCED FIGURES</b> .....	<b>206</b>





## INTRODUCTION

This Agriculture-Commercial Legal and Institutional Reform (AgCLIR) report addresses the conditions and opportunities for doing business in Tanzania's agricultural sector, as well as key issues pertaining to the country's limitations in food security, particularly its infrastructure. Through close examination of the relevant laws, institutions, and social dynamics, this report aims to inform assistance decisions by the United States Agency for International Development (USAID) and other donors in the area of agricultural development in Tanzania. It also provides insight and recommendations for consideration by government officials, private sector representatives, and other stakeholders who are directly involved with the agricultural sector. Specific recommendations appear at the end of each chapter and in full in an appendix to this report.

1 USAID/BizCLIR, *Tanzania's Agenda for Action* (February 2008), available at <http://www.bizclir.com/cs/countries/africa/tanzania/overview>.

2 The United Republic of Tanzania was formed by the union of Zanzibar and mainland Tanzania, certain "non-union" matters fall under the authority of the Revolutionary Government of Zanzibar. Such issues include investment, government procurement, privatization, competition, intellectual property, and sectoral strategies (e.g., agriculture or tourism). Based on the distinctiveness of Zanzibar's legal structure and business environment, this diagnostic focuses chiefly on the conditions in mainland Tanzania, unless noted otherwise.

3 Unless identified otherwise, statistics cited in this report are drawn from a number of sources, including various United Nations and World Bank publications, the CIA's online World Factbook (2009), and the Economist's *Pocket World in Figures* (2010). Most of these statistics are themselves derived from Tanzania's National Bureau of Statistics, or, when compiled from many countries, from the domestic statistical services of various other countries. Given limitations in domestic information gathering in most developing environments, most figures cannot be said to be exact, but they do represent best estimates as accepted by the international community.

4 Only Guinea-Bissau, Liberia, the Central African Republic, and Ethiopia derive higher percentages of their respective GDPs from agriculture than Tanzania.

This AgCLIR report is a sector-specific extension of a USAID-sponsored Business Climate Legal and Institutional Reform (BizCLIR) diagnostic in Tanzania, the report for which was issued in February 2008.<sup>1</sup> That report set forth a wide variety of recommendations for building on the potential of Tanzania's agricultural resources, as well as for strengthening the environment for other sectors, such as services, mining, and international trade. Since most of the recommendations in the BizCLIR report remain pertinent today, policymakers should revisit, prioritize, and implement them in conjunction with this report's recommendations.

## AGRICULTURE IN TANZANIA: PROSPECTS ABOUND, OPPORTUNITIES OVERDUE

Tanzania's persistent economic poverty belies its potential wealth. The inhabitants of the country<sup>2</sup> have long dwelled in peace, generally avoiding cross-border conflicts and domestic unrest that have plagued several of Tanzania's neighbors. Its assets and opportunities are vast, including an 800-kilometer coastline, an international port, abundant natural resources, shared regional and international languages, and diminishing trade barriers in its regional markets.

Tanzania is the world's 31st largest country in land mass, with the 30th largest population (more than 40 million).<sup>3</sup>

Although Tanzania's future may more fully incorporate opportunities in trade, tourism, and industrial growth, its present is very much grounded in agriculture. Among all the world's countries, Tanzania's gross domestic product (GDP) is the fifth most dependent on agriculture—about 45%.<sup>4</sup> At least 76% of the population works in the agricultural sector. Tanzania has the world's 18th lowest rate of urbanization: just 25% of its people live in urban areas (although its commercial capital, Dar es Salaam, is the world's 10th fastest-growing city).

Against this backdrop, most Tanzanian farmers work very small plots and grow food for domestic consumption, chiefly, maize, rice, cassava, and various fruits and vegetables. Low productivity on these farms is endemic because, among other reasons, farmers rarely use high-yielding, government-certified seed; rainfall is highly unpredictable and irrigation is underused; and poor storage facilities and infrastructure contribute to high rates of postharvest loss. According to the World Food Program, more than 40% of Tanzania's population lives

### TANZANIA'S ANNUAL DOING BUSINESS RANKINGS

<i>Doing Business</i> 2005	140
<i>Doing Business</i> 2006	140
<i>Doing Business</i> 2007	142
<i>Doing Business</i> 2008	130
<i>Doing Business</i> 2009	126
<i>Doing Business</i> 2010	131
<small>Note: The number of countries surveyed ranged from 143 in 2005 to 183 in 2010.</small>	

in chronic food-deficit regions. The extreme prevalence of HIV/AIDS, which infects 6.2% of the country's adult population, compounds the effects of poor productivity and hunger. At least 38% of children under five in Tanzania are chronically malnourished (that is, their height is stunted for their age), and more than 50% of children suffer stunted growth in over 30% of all regions in the country.

Across Tanzania, a variety of formerly state-owned plantations and private farms produce so-called cash crops. Tanzania's major products for export include coffee, sisal, tea, cotton, pyrethrum (insecticide made from chrysanthemums), cashew nuts, tobacco, cloves, corn, wheat, cassava, fruits, vegetables, and some livestock. Among these, Tanzania ranks among the world's largest producers—second only to Brazil—for sisal, a product for which global demand has declined significantly in recent years.<sup>5</sup> Tanzania is not among the world's top producers for any other major cash crop, unlike Kenya (the third top producer of tea and the tenth top producer of coffee) or Ethiopia (the third top producer of coffee). Tanzania processes few of the goods it produces within its borders and imports many processed foods, including juices, cereals, and meat products.

As detailed in the Tanzania BizCLIR report, Tanzania's political and economic systems have been significantly transformed over the past generation. In the mid-1990s, the country exchanged its post independence practice of full government control over the economy to a free-market-based system that seeks growth through private investment and trade.

As a charter member of the East African Community, Tanzania has strived to build on opportunities for regional growth. Whereas in the past most of Tanzania's agricultural economy was run through state-controlled farms, plantations, and cooperatives, vast changes in the country's legal framework now provide for entrepreneurship, private investment, and more robust systems of trade.

Political and economic changes in Tanzania have occurred concurrently with a long list of government strategies and initiatives, many of which this report references. Donors are the principal drivers of some macro-initiatives, such as the National Strategy for Growth and Reduction of Poverty, particularly with respect to funding.<sup>6</sup> Others emerged more organically, including the National Employment Policy (2008) and Kilimo Kwanza, a 2009 government initiative that aspires, through a 10-pillar, multi-stakeholder strategy, to launch a "green revolution" in Tanzanian agriculture.<sup>7</sup>

Given the level of political and financial dedication to development in Tanzania, along with the many strengths and prospects its economy affords, a recurring theme emerged during this diagnostic: under such conditions, why hasn't there been *more* change? Why does private enterprise in agricultural products continue to founder? Why does agricultural lending continue to be scarce and investment low? Why is there not more trade? In recent years, both local institutions and donors have conducted a multitude of inquiries and assessments in Tanzania and have developed and issued hundreds of recommendations. Untold hours have gone into building consensus among "champions" over ways forward. In fact, as a result, much has gone well—this diagnostic found marked progress in certain lending schemes, in general awareness of property rights, and in judicial training, for example. Yet there remains a strong sense throughout the agricultural sector that far more is possible. The private sector in particular seeks a stronger commitment to regional

<sup>5</sup> See *New Agriculturalist*, "Sustainable Sisal in Tanzania" (May 2009). Although 98 percent of the sisal plant has, in the past, gone to waste, the plant may present new opportunities in biomass.

<sup>6</sup> Tanzania Invest, "World Bank funds MKUKUTA National Growth Strategy" (January 11, 2010). For details on MKUKUTA's implementation, see the program's dedicated "poverty monitoring" website at [http://www.povertymonitoring.go.tz/Outputs\\_background.asp](http://www.povertymonitoring.go.tz/Outputs_background.asp).

<sup>7</sup> Tanzania National Business Council, *Kilimo Kwanza: Towards Tanzanian Green Revolution* (June 2009).



trade agreements and less bureaucracy in their implementation as well as reduced government interference into private transactions. Likewise, female entrepreneurs wish for better integration of Tanzanian women into the country's economic development. Change takes time, of course, but many in Tanzania believe that change, under the circumstances, is taking *too much* time. For many people, the benefits promised from a transition to a free-market system have not yet materialized.

## AgCLIR: A TOOL FOR ENGAGING THE AGRICULTURAL SECTOR

In 2007, incorporating lessons learned from its first-generation legal, institutional, and trade diagnostic tool called CLIR, USAID sponsored the redesign of its methodology through its Business Climate Legal and Institutional Reform project.<sup>8</sup> BizCLIR designed its areas of focus to align generally with the structure of the World Bank's enormously influential *Doing Business* country reports.<sup>9</sup>

Since 2002, *Doing Business* has assisted countries in targeting areas where their regulatory environments may favor or interfere with economic growth. For each of the 10 topics it covers,<sup>10</sup> the World Bank considers key indicia of whether and how the environment for doing business is working, measured by such means as the number of procedures involved in achieving a goal (e.g., enforcing a contract), the number of days it takes, and the costs of the procedures in relation to per capita income. The World Bank now gathers data from 183 countries and ranks each, thereby demonstrating how their respective regulatory environments compare to others throughout the world. USAID's BizCLIR initiative takes the same topics and delves far deeper into their respective legal frameworks, implementing and supporting institutions, and social dynamics. That is, while the World Bank delivers a snapshot of the "tip of the iceberg" in 183 countries, BizCLIR subjects the issues covered by *Doing Business* to

TANZANIA'S RANKINGS IN THE WORLD BANK DOING BUSINESS CATEGORIES			
	2010	2009	Change
<i>Doing Business</i> Overall (181 countries surveyed)	131	126	-5
Starting a Business	120	111	-9
Dealing with Construction Permits	178	175	-3
Employing Workers	121	133	+12
Registering Property	145	145	0
Getting Credit	87	84	-5
Protecting Investors	93	88	-5
Paying Taxes	120	113	-7
Trading Across Borders	108	105	-3
Enforcing Contracts	31	31	0
Closing a Business	113	113	0

a far more comprehensive analysis and then reports on the "entire iceberg."

Recognizing that economic growth in many developing countries turns significantly on their agricultural sector, this diagnostic shifts the BizCLIR focus on business environments generally to the specific and critical issues pertaining to agriculture—hence, the name AgCLIR. The focus on agriculture stems from a consensus in recent years that GDP growth in agriculture produces more than twice the impact on reducing poverty as growth in other sectors.<sup>11</sup> Yet, while the majority of the world's population still lives in rural areas, most working in agriculture-related pursuits, only 4% of official development assistance goes to agriculture in developing countries.<sup>12</sup> Similarly, in Sub-Saharan Africa, only 4% of total government spending goes toward supporting farming communities.<sup>13</sup> The goal of this diagnostic is to better understand *why* Tanzania's agricultural sector functions as it does, *what* policy changes could lead the sector to greater productivity and economic growth, and *who* among Tanzania's economic actors must lead or implement change.

This diagnostic took place from January 18 to February 1, 2010. A 12-member team of consultants convened in Tanzania and conducted interviews across the agricultural sector, including

<sup>8</sup> Detailed information about BizCLIR can be found at [www.bizclir.com](http://www.bizclir.com).

<sup>9</sup> See generally World Bank, *Doing Business 2010* (2009), and accompanying literature at [www.DoingBusiness.org](http://www.DoingBusiness.org).

<sup>10</sup> Starting a Business, Dealing with Construction Permits, Employing Workers, Registering Property, Getting Credit, Protecting Investors, Paying Taxes, Trading across Borders, Enforcing Contracts, and Closing a Business.

<sup>11</sup> World Bank, "World Bank Calls for Renewed Emphasis on Agriculture for Development," at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21513382~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

interviews with national, regional, and local officials; farmers and cooperatives; owners and managers of agricultural enterprises; business associations; nongovernment organizations (NGOs); the banking and lending community; court representatives; women's organizations; lawyers; accountants; and many others. Interviews and observations took place in and near Dar es Salaam, Morogoro, Moshi and Kilimanjaro, Arusha, and the Kibaigwa maize market. The AgCLIR diagnostic culminated in a roundtable presentation and discussion on

February 1, 2010, which more than 120 stakeholders in Tanzania's agricultural sector attended, along with several donor representatives. At the roundtable, team members introduced their preliminary observations, to which the participants responded with feedback and elaboration. This input helped shape the final conclusions of the team, which this report presents.

## SUMMARY OF FINDINGS

A summary of the findings of the 13 subject-matter areas examined in this diagnostic appears below. In general, the areas that scored highest in the AgCLIR diagnostic—those with the most positive findings—are Protecting Investors and Competing Fairly. The weakest scores—indicating more negative circumstances than positive—emerge from the areas of Dealing with Licenses and Trading across Borders. Beyond these trends, the key findings are as follows:

### WOMEN IN TANZANIAN SOCIETY

Four out of five Tanzanian women work in the agricultural sector. Notwithstanding a generally favorable legal framework that affirms equality between men and women (with certain critical exceptions), along with public policies that prioritize gender equity within the work of state institutions, conditions for these women remain enormously difficult. Although certain cultural norms are gradually changing, most rural women live amid low expectations, stagnant economic opportunities, unhealthy living and work environs, and rampant abuses of their property and employment rights. Poverty runs deep among both women and men in Tanzania, but deeply ingrained cultural forces continue to render women less literate and less likely to meet their families' needs through paid work and entrepreneurship than men.

At this time, the need is less for further study than for legislative, ministerial, and private sector action. Recommendations set forth in the International Finance Corporation (IFC) and World Bank Group's *Tanzania Gender and*

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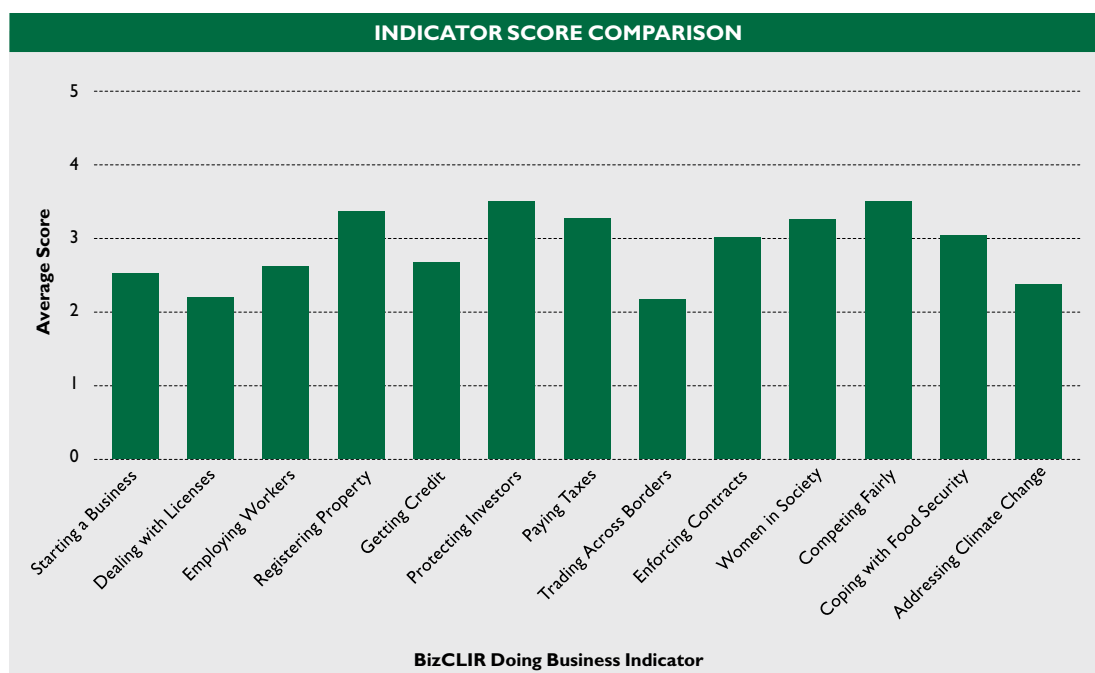
Tanzania's fast pace of urbanization has increased the population's dependence on commercialized agriculture as a source of food and income. In the last fifteen years, Tanzania's urban population has almost doubled, while the rural population has increased by only a third, suggesting significant rural-urban migration. While increased production of major staple crops has kept pace with population growth overall and exceeded the rural population growth rate, slightly over a third of the country's population has remained food insecure during this time; they cannot produce enough, sell enough, or buy enough to meet their food needs. Tanzania's business enabling environment must adapt to meet the needs and support the growth of a commercial agriculture sector that can feed and employ more people more efficiently.

To promote viable food production and distribution systems that strengthen the country's food security, Tanzania's enabling environment must simultaneously improve incentives for producers, processors and distributors; remove barriers to trade; increase the efficiency of handling and transportation; and ultimately stabilize and lower the prices paid by consumers. Currently, the business environment in Tanzania falls short of what is required. Commercial farmers lack access to credit and have limited capital to scale up operations, and banks are seldom willing sources of finance for the agricultural sector. Traditions governing land use, with their emphasis on communal access for subsistence farming, limit the potential for surplus production intended for the market. The lack of information on grades and standards, coupled with ineffective commercial dispute resolution systems, adds time and cost to transactions all along the value chain. Wholesale markets are generally not transparent and open, reducing potential earnings from farmers. High transportation costs associated with a weak infrastructure discourage internal trade and inflate retail prices paid by consumers. Most egregiously, the export ban on grains has isolated producers from profitable cross-border markets, while high tariffs on imports of maize and rice inflate consumer prices and limit the purchasing power of Tanzania's market dependent population.

Tanzania's demographic change necessitates a new policy approach to enable commercial agriculture and trade to meet the growing demand for food and jobs. Government policy still tends to favor blunt instruments such as export bans, import tariffs, price controls and supports, and subsidies for inputs. These temporary measures distort market signals and add a high degree of uncertainty that discourages investment by farmers and banks alike. In many instances, policy makers and politicians lack the benefit of analyses measuring the real impact of policies they do enact and the potential impact of alternative policies they should enact.

A viable long-term strategy to enable commercial agriculture requires the government to re-evaluate the impact of existing policies and identify alternative approaches that would bring lasting benefits to producers, suppliers and consumers, while investing resources to improve the country's ailing infrastructure. For support, the government could take advantage of available donor and government-funded support mechanisms, such as COMESA's Alliance for Commodity Trade in Eastern & Southern Africa, which promotes regional trade and the commercialization of small holder agriculture. Signing the CAADP compact, which mandates a certain level of public investment in agriculture, would be a good start, but must be complemented by policy changes to derive the maximum benefit from this investment. Policy makers and politicians need a better understanding of the relationship between policies, incentives, and prices and must weigh short-term objectives, like increased domestic supply of maize, against long-term goals, such as improved productivity of the maize sector.

They key for Tanzania is to implement policies and facilitate investments that improve the productivity and profitability of commercial agriculture while strengthening the purchasing power of consumers. Agricultural enterprises can deliver better produce at a lower cost with access to credit and inputs, an open and transparent market, and most importantly, incentives. Distributors, meanwhile, need dependable suppliers and efficient infrastructure for moving and storing commodities. Both require an enabling environment that reduces or mitigates risk and rewards efficiency. Consumers will ultimately benefit from a wider variety of food available at lower, more stable prices, improving their nutrition as well as their purchasing and investment potential.



*Economic Growth Assessment*, published in 2007, directly address the relationship between Tanzanian women and their country’s environment for accessing land, finance, paid work, economic justice, and opportunities in international trade.<sup>14</sup> These recommendations warrant far greater consideration and integration into reform efforts than has taken place to date. As an immediate first step, integration of the IFC Gender Assessment’s major recommendations into implementation of Kilimo Kwanza, which significantly neglected integration of women into the vision for a “green revolution,” should be a priority of public and private implementers of that policy.

### STARTING A BUSINESS

In addition to the customary issues of registration and licensing, agricultural businesses in Tanzania confront many challenges during business start-up, the most pervasive being the availability of information. Tanzania currently lacks readily available information on the legal instruments that govern business operations, including not only the initial business registration and licensing processes but also land tenure, water rights, health and safety, employment, and marketing. In addition, constraints to

starting a business arise from legislation providing for the various commodity boards, including those overseeing cashew, coffee, cotton, meat, pyrethrum, sisal, sugarcane, tea, and tobacco. The legislation for all boards contains two common themes: the power of each board to raise levies on the produced or processed crop and the mandate of the board to monitor negotiations and pricing between producers and buyers to ensure a fair price. In practice, the laws constitute potential constraints on the start-up and ongoing business activities of both producers (who, for example, may wish to enter into contracts outside the existing market arrangements sanctioned by boards) and buyers, who may wish to enter into trading without domestic processing. Moreover, Tanzania’s marketing infrastructure is inadequate to service domestic demand. Considerable investment is needed not only in processing and marketing but also in the supporting infrastructure (including laboratory facilities, cold chain infrastructure and transport) to meet the growing demand.

### DEALING WITH LICENSES

In Tanzania, licensing procedures are typically designed to achieve one or more of three ends: (1) identification of capacity (otherwise achieved

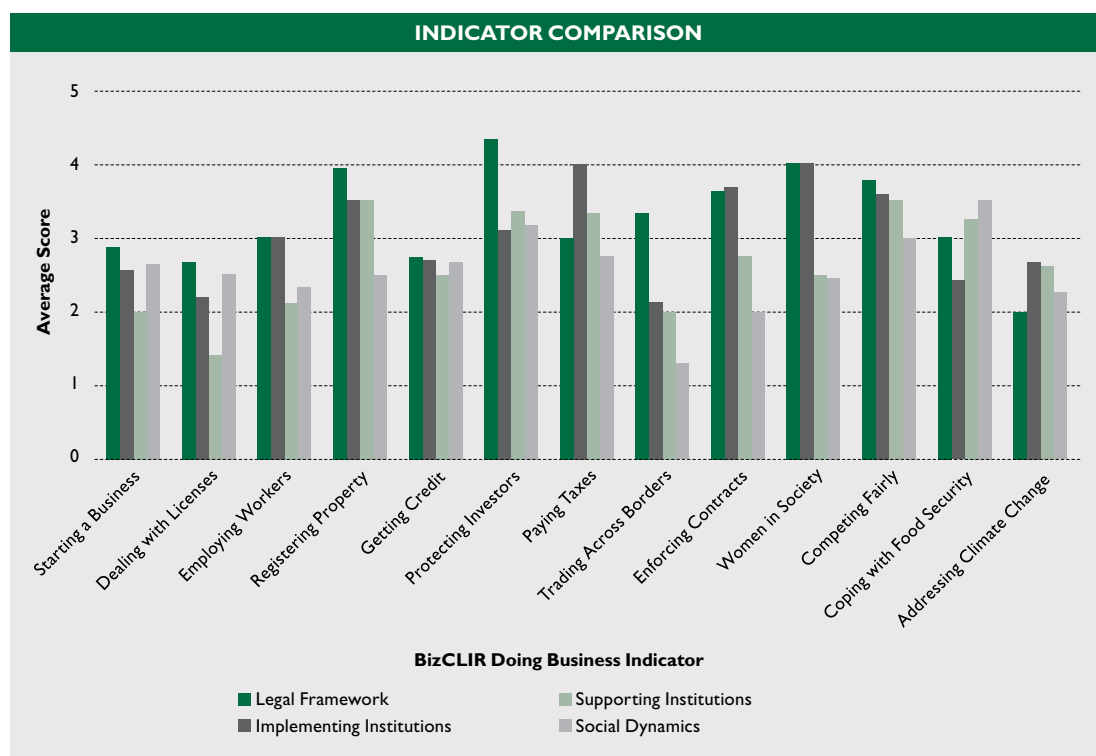
<sup>14</sup> IFC/World Bank, *Tanzania Gender and Economic Growth Assessment* (2007).

through registration); (2) maintenance of standards (often for consumer or employee protection but also for the protection of quality-based markets); and (3) generation of revenue (otherwise achieved through taxes or levies). Because many of the procedures relevant to agriculture incorporate all three aspects, their primary goal and effectiveness tend to become obscured. Overall, the implementation of the licensing system as it applies to agribusinesses in Tanzania takes place within a climate of uncertainty that promotes minor rent-seeking activities by licensing agents. In some cases, multiple licensing aggravates the situation. In most cases, however, the costs of the delays incurred are much more significant than the relatively minor costs of rent-seeking. (To put it another way, much of the corruption is in the form of “speed money”, and the amounts involved are fairly small.) Delays also occur through lack of coordination between local government (district level) and central government institutions. As a result, businesses that would ideally receive licenses from local agents require licensing by authorities based in Dar es Salaam, while information collected from businesses by central authorities

remains unavailable to local authorities. Fuller implementation of the Business Activities Registration Act (2007) should address such issues, although facilitation of the process may require technical assistance.

### COMPETING FAIRLY

Tanzania has a well-written and comprehensive competition law intended to increase efficiency, promote innovation, maximize the efficient allocation of resources, and enhance consumer welfare. It seeks to advance these objectives through a dual mandate: prohibitions against anticompetitive and unfair or deceptive practices and competition advocacy. Tanzania’s broader legal framework, however, tends to undermine the goals of the competition law. Various crop-specific laws, for example, continue to allow for government-imposed minimum prices, which are inconsistent with the competition law’s market-based pricing. Similarly, numerous other laws and regulations designed to prevent consumer harm or correct perceived market imperfection may impose secondary effects on competition, prices, and consumer welfare that are not fully understood. In



some cases, these secondary effects on competition may outweigh the principal harm the regulation intended to address. Tanzania's broader legal framework, therefore, needs a comprehensive review and, where possible, should be in harmony with the objectives of the competition law. In addition, while the competition law is well written and comprehensive, the implementing agency is young and inexperienced. The competition agency must receive adequate funding, staffing, and capacity-building support (both in the short term and in the long term) if it is to fulfill its mandates under the law effectively.

### **EMPLOYING WORKERS**

Tanzania's new regime of labor laws and regulations, enacted between 2003 and 2008, sought to bring clarity and structure to labor relations in an economy newly oriented toward free-market principles. The relevance of this regime to most Tanzanian agricultural workers, however, remains minimal. A small minority of agricultural workers—around 25,000–50,000—are employed on 400 or so privately owned plantations where a labor union represents them. Conditions for formally employed plantation workers are significantly better than those underlying most jobs in the agricultural sector, with most plantations subject to regular inspections for labor conditions generally and occupational safety and health. In contrast, most agricultural workers in the informal sector receive little attention, if any, from state agencies, labor unions, and employer associations. Ultimately, the key issues facing both workers and employers in the agricultural economy are, first, the overwhelming unpreparedness of Tanzanians to meet the demands of modern, productive agriculture and, second, the paucity and inconsistency of the state's efforts to address these demands, including overt tolerance of conditions that perpetuate, rather than alleviate, widespread labor abuses and rural poverty. Third, and equally important, the cross-cutting conditions that limit investment, private sector growth, and job creation are crippling Tanzanian workers.

### **REGISTERING PROPERTY**

Registering real property is difficult and time consuming. The vast majority of Tanzania's agricultural land is either not held in a form that can easily be used to access credit (i.e., village land) or, if it is owned in fee simple, has title problems. The issue of land ownership is fraught with political, cultural, and social complexities, and all Tanzanian governments since the socialist period have either neglected the issue or ignored it completely. As a result, land is rarely used for collateral outside of urban and periurban areas, and access to large tracts of land with clear title is a serious problem for commercial agriculture.

### **GETTING CREDIT**

In Tanzania, lending to the agricultural sector is extremely risky. With few hedges to natural risks, limited financial infrastructure to hedge repayment risk, and an inability to predict government intentions, banks either price loans to protect themselves—excluding most poor customers—or simply focus on other sectors. The good news is that increased competition in the financial sector is pushing banks to consider agricultural lending more seriously. At the same time, however, the government has demonstrated an inclination to intervene in markets, whether through a trade ban, formalized price-setting arrangements, or direct interventions in the financial sector. Frequent yet inconsistent interventions in different areas undermine the private sector's ability to depend on market predictability.

Furthermore, no functioning credit information-sharing system exists in Tanzania. In 2007, the Bank of Tanzania committed to creating a credit reference bureau and associated regulations. It also committed to establishing a credit reference bureau databank, which private credit bureaus could leverage. The Tanzania Bankers Association has also announced plans to establish a credit reference bureau to use this data bank; however, to date the effort has not been implemented. Until some of these tools are

available for lenders to use them during the loan application process, the cost of lenders' due diligence will remain high, the cost of borrowing will remain high, and lending to the agricultural sector in particular will remain low.

## **PROTECTING INVESTORS**

Formally, Tanzania welcomes all forms of investment. The country does not discriminate against businesses conducted or owned by foreign investors. There are no barriers to 100% ownership of businesses by foreign investors in agriculture. There is no recent history of expropriation or nationalization, and no restrictions apply to the transfer or repatriation of capital and income earned. Corruption is a problem, but it is not high by regional standards. Moreover, Tanzania enjoys high levels of both political and economic stability: the country has never had a coup or a civil war, it has enjoyed consistent modest economic growth since 2002, and the currency is stable. While Tanzania's company law is rather weak, the general commercial legal framework is quite strong, with laws largely consistent with international best practices.

Although corporate governance is a necessary part of a modern commercial legal framework, most Tanzanian businesses, especially in the agricultural sector, need to address basic good business practices like bookkeeping and management rather than disclosure duties and shareholder protections. Higher-level corporate governance concerns will increase in importance as Tanzania's economy continues to grow. Ensuring that an adequate structure is in place and used as the need for stronger corporate governance develops will be important. In the meantime, Tanzania should support and encourage a culture of good business management, which will benefit the broader business community and lay the foundation for more advanced corporate governance practices to come.

## **PAYING TAXES**

In Tanzania, the tax base is so small that most of the government's income comes from a

relative handful of taxpayers. The Tanzania Revenue Authority (TRA) estimates that in a country with a population of around 40 million, only about 400,000 are registered (business) taxpayers. For those that do pay taxes, the legal framework for paying income tax is sound and incorporates best international practices. The framework includes individual income tax, corporate tax, a pay-as-you-earn system for employees, presumptive income tax for small individual businesses, provisional and final withholding taxes, and a capital gains tax. While corporate taxpayers are taxed at a fixed rate of 30% of profits (one of the highest rates in the region), individual taxpayers pay according to a graduated scale, with the maximum rate being 30%. A taxpayer may self-assess and pay income taxes by lodging a return with TRA, withholding and pay-as-you-earn (PAYE) systems (tax withholding from the taxpayer's income source and sent to TRA directly by the payer), or through payment of installments. In the case of individual taxpayers, employers withhold and pay income tax on behalf of their employees. In the case of corporate entities, the business pays its annual income tax when it lodges its quarterly installment returns.

In implementing its tax collection function, Tanzania's government is mainly concerned with revenue collection rather than broader economic policy, social policy, environmental policy, or clearly focused investment-driven policies. In general, the government does not perform regulatory impact analysis. Although tax incentives can encourage certain activities, these tend to be applied in an ad hoc manner. The government seems to have no clear overall tax policy beyond "expand the tax base" and "increase domestic revenue collections at a rate faster than GDP growth."

## **TRADING ACROSS BORDERS**

Tanzania's macroeconomic environment for trade has been relatively stable in recent years. Interest rates are high but competitive in relation to other countries in the region. Trade

policies have been liberalizing gradually since the early 1990s, although in fits and starts. The Tanzanian government has introduced policies and plans intended to advance agricultural trade and development, including the Tanzania Development Vision (Vision 2025), the Agriculture Sector Development Strategy, Kilimo Kwanza (the Agriculture First policy), and membership in the East African Community (EAC) and the Southern African Development Community (SADC). Despite such initiatives, government actions that were not intended to affect trade nonetheless continue to hamper it. District and local rules that artificially restrict markets contribute to keeping farmers' income low. These include the failure of government decision making to consider the secondary impacts of policies on trade; crop boards that, although intended to intermeditate on behalf of farmers, create an unpredictable investment environment that discourages medium- to longer-term investments such as those in tree crops; and conflicting laws that authorized regulatory agencies interpret differently and implement independently.

A number of implementing and supporting institutions facilitate trade by ensuring the movement of goods across borders. Tanzania's Revenue Authority has been quite effective in capturing the revenue generated by the movement of these goods. Other trade institutions have not been so efficient, however, and widely reported shortcomings include a lack of uniform procedures and processes, a lack of standard documentation, a lack of trading capacity and experience, border delays, checkpoints (official and unofficial), and corruption.

### **ENFORCING CONTRACTS**

In Tanzania, formal and informal contracts for goods and services are in use throughout the agricultural supply chain. Stakeholders at all levels are generally familiar with various types of contracting opportunities. Notwithstanding the importance of contracts in Tanzania's agricultural sector, a number of factors undermine

the extent to which they have become useful tools for building enterprises. Such factors include a scarcity of legal services focused on agriculture in Tanzania's rural communities, as well as an acute shortage of lawyers, and of advocates in particular; the absence of practical guidance on the formation and enforcement of agricultural contracts; attitudes at all levels that take contracts merely as guidelines for business relationships rather than as strict commitments on which enterprises can base arrangements for the future; primary-level courts that lack sufficient resources, streamlined practices, and public confidence; and significant interference by crop boards and crop-related policies in farmers' ability to establish their own terms of sale and delivery. Continued commitment to strengthening Tanzania's legal services and courts, particularly beyond the larger cities and municipalities, is necessary to strengthen the rule of law in Tanzania's vast agricultural sector. The country would further benefit from continued emphasis on informing less formal or less educated constituencies about the importance of making and honoring contracts.

### **COPING WITH FOOD SECURITY**

Tanzania's lack of infrastructure development, maintenance, and management has contributed to its food insecurity and will prevent the country from achieving greater food security in the future. With roughly 80% of the population relying on subsistence agriculture for its livelihood, the government of Tanzania has acknowledged that improvements in infrastructure—including port operations, rail and road transportation, post harvest storage, and market information—are critical to economic development and increased food security. The need for reform is urgent. At the Dar es Salaam Port, inefficient operations cause substantial delays in offloading and clearing. The recent dissolution of a national concession agreement by an Indian company has left the central railway all but inoperable. The number of paved feeder roads is abysmally low, and a lack of transparency plagues the process for



development. Furthermore, postharvest losses are around 35% due in large part to the lack of proper storage. The lack of storage facilities forces smallholder farmers to sell at harvest when prices are lowest. In addition, although informal information networks are available to the commercial farmers, the agricultural community at large still lacks value-added information that would support production, distribution, and marketing.

### **ADDRESSING CLIMATE CHANGE**

Climate change is likely to have a significant impact on Tanzania over the next 20 years. Shifting rainfall patterns will likely pose challenges not only for farmers and herdsman, but

for everyone who relies on the current hydrological system for electricity and fresh water. Tanzania does have a national plan for addressing climate change. However, it is an ad hoc collection of responses rather than a coherent strategy. It also assumes that climate change is entirely exogenous, while largely ignoring Tanzanian activities (deforestation, changes in land use patterns, etc.) that may contribute to climate change at the local level.

Among these findings, several recommendations for reform have been identified as “immediate impact” opportunities that would have the strongest and quickest effect on improving the agribusiness enabling environment in Tanzania:

## **“IMMEDIATE IMPACT” OPPORTUNITIES**

### **STARTING A BUSINESS**

- 1) Provide technical assistance to TIC, especially an internal review to find efficiencies and pinpoint bottlenecks

### **GETTING CREDIT**

- 2) Conduct SACCO Risk Analysis

### **PROTECTING INVESTORS**

- 3) Address use of export bans and the implications they have on investor certainty and competition\*

### **COPING WITH FOOD SECURITY**

- 4) Provide technical assistance to TANROADS in the development of a prioritized list of district and feeder roads that are critical to food security initiatives and agricultural economic development
- 5) Provide the Department of Food Security technical assistance on data gathering

### **ADDRESSING CLIMATE CHANGE**

- 6) Help the GOT comprehensively rewrite NAPA
- 7) Consider direct assistance to mitigation efforts (i.e., reforestation)
- 8) Conduct a Water Property Rights Assessment & Irrigation Scheme Impact Assessment
- 9) Conduct a Carbon Mapping Assessment

### **EMPLOYING WORKERS**

- 10) Activate immediate opportunities in academic-based knowledge-sharing

\*For additional discussion on this topic, please also see the Tanzania MicroCLIR Report 2010.

As of May 2010, both North America and Europe appear to be in a slow recovery from a recession. Asia—China in particular—seems to have suffered less from the recession and to be recovering more quickly. Tanzania's experience so far has been more "Asian" than western. There are several reasons for this. Tanzania has a low level of integration with international capital and financial markets; only about 11% of total commercial bank assets in the country are foreign-owned. A relatively small amount of foreign borrowing limited exposure of the country's financial system to the crisis, and no Tanzanian banks were deeply engaged with any of the international banks affected by the crisis. The Bank of Tanzania's decision to allow the shilling to fall early in the crisis also helped mitigate the effects of the global economic slowdown by making Tanzania's exports more competitive.

Overall Tanzania suffered no serious damage to its balance of trade, currency status, or foreign reserves. At this point it seems unlikely that Tanzania will suffer a "spinoff" local financial or macroeconomic crisis. Falling prices (for oil in particular) have improved Tanzania's balance of trade. Exports actually increased slightly in 2009, from about \$2.5 billion to \$2.6 billion, while imports fell sharply. It should be noted that one of Tanzania's major exports—gold—actually increased in value sharply during the first year of the global recession. Of its other major exports, cotton and coffee prices fell, as did the value of manufactured goods, but cashew nut prices and transit fees remained stable or rose slightly.

This is not to say that Tanzania has escaped the global financial crisis unscathed. The country has suffered falling investment, rising unemployment, and slowed growth. GDP growth in 2009, which was originally projected at over 7%, fell to under 5%. Growth in 2010 is expected to be similar. Unemployment has risen. Foreign investment has fallen sharply, as have remittances from abroad. The drop in investment has hit the agricultural sector, already starved for capital, particularly hard. Small farmers who relied on coffee or remittances from family members have seen their cash incomes drop sharply. With regard to the agricultural sector, particular areas of concern include:

**Falling coffee prices.** One of the impacts of the financial crisis is a dramatic decline in agricultural commodity prices. Coffee is Tanzania's single largest agricultural export, and coffee prices have fallen significantly in the last two years. Robusta prices are down nearly 30%, while Arabica prices have dropped by about 20%. The situation could be worse, however. Unlike some other countries, including neighboring Burundi, Tanzania is not heavily dependent upon coffee alone. Additionally, much of Tanzania's output consists of relatively cheaper and lower-quality Arabica coffees, which have suffered less from the global drop in demand. Tanzania actually increased coffee production sharply in the last two years, though this is largely because of earlier investments (planting more bushes) made when prices were high.

That said, the drop in demand remains a serious problem for Tanzania. The coffee sector is starved for investment; if prices stay low, attracting investment will be difficult. Many small subsistence farmers keep a few coffee plants to provide money for cash purchases. Low coffee prices will mean they have less money for seeds, tools, and other inputs.

**Remittance flows.** Large numbers of Tanzanians work abroad and send money home. A recent World Bank estimate suggests that remittance flows are between 1% and 2% of GDP. This is not high by African standards, but it is significant. As labor markets around the world have lost jobs in the wake of the financial crisis, remittance flows back to Tanzania have already slowed sharply and may not recover for another year or more.

This is a particular problem in rural Tanzania, because remittances are one of the few sources of outside capital for small farms. Having a family member working abroad can give a farm family the means to buy seed, tools, and fertilizer. To some extent, the decline in remittances will thus translate directly into a decline in incomes for rural farm families.

**Regional integration.** Broadly speaking, other EAC countries have had similar experiences to Tanzania. All have felt the consequences of the crisis, but none have been seriously damaged. Surprisingly, regional integration has continued. In the first year of the recession, several commentators suggested that regional integration would falter or go into reverse as the crisis encouraged EAC members to turn inward, but this seems not to have been the case. Trade between Tanzania and other EAC

members, though still a small proportion of total trade, has continued to grow rapidly. Some aspects of integration (such as the free movement of labor) are still stalled, but this does not seem to be a consequence of the crisis. And investment in infrastructure development, a major priority for the EAC, has not slowed down. Although the overall level of infrastructure investment remains modest, all the member countries have continued their commitment to improving transport links.

In the short to medium term, regional integration will have only modest effects on Tanzanian agriculture. However, in the longer term the prospects for regional integration now appear more hopeful than just a year or two ago. This suggests that Tanzanian farmers should be able to move more aggressively into regional markets as transport links and business connections continue to improve.

**Unemployment.** Officially, unemployment has risen from around 10% to a peak of around 11.7%, and is projected to fall back under 11% this year. However, Tanzania's grey and black labor markets are large enough to make these estimates very blurry indeed. Anecdotal evidence suggests a net loss of full-time employment in the agricultural sector since early 2008, with a concomitant shift towards part-time and migrant labor. While it is difficult to separate the effect of the financial crisis out from other factors (for instance, regional droughts in 2008-9), overall it appears that farm wages have stagnated over the past two years and gross farm income has grown slowly if at all.

**Policy Responses.** At the macroeconomic level, the Central Bank of Tanzania appears to be dealing reasonably well with the crisis and its fallout. However, government responses with regard to the agricultural sector have been piecemeal. To date, there is no comprehensive government policy for dealing with the impact of the financial crisis on the agricultural sector, and, since the crisis appears to be passing, one is not likely to emerge now. This report does not make macroeconomic policy recommendations, in part because they are outside of its scope, but largely because the GOT and Central Bank's macroeconomic responses seem to have been, on the whole, competent and correct.

A number of the recommendations in this report have been crafted to address and mitigate the continuing effects of the crisis. Several of the recommendations aim to ease burdens on small farmers—for example, those dealing with local authority transport levies, cooperatives legislation, local feedback on road construction and maintenance, weigh stations, and cess. This report also recommends a critical review of the role of crop boards. This is not a new idea—donors and others have been criticizing crop boards for over a decade—but the crisis might provide a window of political opportunity to make long overdue changes to the system. Finally, this report more or less entirely adopts the recommendations of the IFC Gender Assessment, most of which have yet to be implemented but would go a long way to ease burdens on Tanzanian women, who work primarily in the agriculture sector.

## CROSSCUTTING THEMES

This diagnostic considers 13 components of a healthy and prosperous environment for agricultural enterprise both discretely and in relation to each other where appropriate. Certain issues and dynamics are so prevalent across this analytical framework that they warrant special mention. The diagnostic discusses these cross-cutting themes in turn.

### I. Abundant opportunities in agriculture

Tanzania's agricultural economy faces a plethora of challenges, many quite severe. That said, it has certain resources that can serve as

a foundation for progress. The opportunities begin with Tanzania's substantial land and water resources available for agricultural development. Although many of these resources are "locked up" in Tanzania's vastly problematic land regime—detailed in this report's chapter on Registering Property—the fact remains that strengthened systems of land management and crop productivity have the potential to generate enormous wealth. Moreover, the country borders five landlocked countries and offers the port of choice for eastern Congo. Tanzania's neighbors depend on its roads, rails, ports, and other infrastructure; thus, the rehabilitation of

these resources could potentially attract significant support from these countries. Tanzania's place in Eastern Africa, and charter membership in the East African Community, also presents enormous opportunities for trade in agricultural services—including professional agricultural services, franchised food-processing businesses, and trade facilitation services.

INTERNET PENETRATION IN EAST AFRICA	
Country	Penetration (% population)
Burundi	0.7
Kenya	8.6
Rwanda	2.8
<b>Tanzania</b>	<b>1.3</b>
Uganda	7.7

Source: Internet World Stats. Internet Usage Statistics for Africa. 2009. Website.

Another major resource for Tanzanian agriculture is its university system, including Sokoine University of Agriculture and the University of Dar es Salaam. Although Tanzania has a surprisingly low representation of students enrolled in higher education (less than 2% of its college-age population), its universities are well respected in the region and its faculties are, unlike many of their peers in formerly socialist regimes, engaged in and supportive of free-market economics. In many agriculture-related areas, opportunities for cooperation between universities and the private sector—including business incubation, mentoring and internships, and adjunct teaching by practitioners—are vast and underexploited. Furthermore, as emphasized in this report's chapter on Competing Fairly, Tanzania's universities are probably the most underutilized assets available in Tanzania when it comes to competition law and policy. The academic community appears well positioned to support a competition law regime and promote a culture of competition. This diagnostic identified some particular areas of investigation that would be well suited to university research, including the need to assess clearance times on overland trade routes. Clearance times at the Port of Dar es Salaam have received much study, but other border posts have not.

Also untapped are the remarkable opportunities that await greater Internet penetration in Tanzania, which is only about 2% today. Agriculture academics are eager to connect with agricultural businesses, institutions, and development projects all over country as a means of sharing information and developing greater knowledge.

In addition, Tanzania is well prepared to receive investors. As detailed in this report's chapter on Protecting Investors, the Tanzania Investment Center (TIC) is committed to facilitating new investments. The agency's staff is generally well informed on the legal framework and the commercial environment and is able to answer pertinent and important questions about investing in Tanzania. Those seeking the approvals necessary for securing a business license, including those from the Ministry of Finance and Customs, can obtain them at the TIC office fairly quickly. A representative of the TRA is permanently embedded at the main TIC office in Dar es Salaam to review eligibility for investor tax exemptions. Permanent representatives of the business registry and the Labor Ministry are also present to assist. In 2007, TIC received the World's Best Investment Promotion Agency designation at the annual meeting of the World Association of Investment Promotion Agencies in Geneva. The TIC's chief constraint with respect to assisting agriculture investors is the relative dearth of land options to which it can refer its clients.

Throughout, this report notes many other opportunities in Tanzania's agricultural sector, including areas where current reform initiatives promise better conditions in the future. Nonetheless, certain major, crosscutting constraints remain, as discussed below.

## 2. Failure to implement: A cultural, political, and donor-enabled affliction

As underscored at the outset of this report, there is a pervasive sense in Tanzania that the development promised through the country's

commitment to a free-market system and other economic reforms, which so greatly affect the agricultural sector, has not materialized. Even in the two years since the BizCLIR report was issued, optimism that change is “just around the corner” has dimmed. Reasons for this declining sense of possibility begin with three explanations for why change—though accessible in theory and vastly informed by experiences in similar environments—has been slow to take hold: first, certain cultural constraints; second, a lack of political commitment; and third, an emerging sense that donor engagement is not as effective as it ought to be and that in fact it comes with some significant drawbacks.

**Culture.** Ingrained cultural attitudes undermine the implementation of law and public policy particularly for women, who work predominately in the agricultural sector. Most laws in Tanzania treat women as equals, and the country has long committed to a policy of “gender mainstreaming,” as discussed in this report’s chapter on Women in Tanzanian Society. Yet the majority of rural girls and women remain effectively relegated to unskilled, unhealthy work conditions, notwithstanding improved opportunities to attend school. Early pregnancy continues to be a socially accepted practice in many communities, with the practical impact being that pregnant girls and girls with children do not continue their schooling. (There has been a limited effort to create classrooms for young mothers, but these are far from the norm.) In agricultural workplaces, this diagnostic anecdotally found that women and men doing the same work are typically treated in different capacities—that is, whereas men may be covered by an employment contract, women are paid for substantially the same work at a “piece rate,” earning far less money, with far fewer options for asserting their rights.

Similarly, in most isolated or traditional communities, customs that exclude women from lines of ownership and inheritance persist. Many women receive poor treatment during their



marriages—never permitted, for example, to add their names to documents indicating ownership of property—and even worse treatment after the death of a husband. Widows are often strongly encouraged after their spouses’ deaths to marry one of the deceased’s relatives. When that does not work out, widows are often “chased away” from the land they shared with their husbands, often forsaking all of their personal property as well. Women subject themselves to powerful social ostracism when they attempt to exercise their rights to marital or real property.

Changes are happening—early marriages (with brides as young as 10 or 12) are reportedly not as common as they were in the past—but, for women in particular, they are too slow. On paper, Tanzania has committed to reforms that would substantively counter powerful cultural constraints that negatively affect the health and quality of many women’s lives. But the action required to transform these commitments into reality, as further detailed in this report, are too little and, for many women, too late.

**Politics.** In many areas examined by this diagnostic, interviewees cited “politics” as the reason that laws on the books, especially property rights, go unenforced. Theft of livestock and other property, illegal squatting on titled land, and other blatant property violations came up

as areas where, for reasons of local politics, the authorities often look the other way. Another area of perceived political interference is tax collection. Tanzania's government gives the country's revenue authority certain targets to meet. According to wide-spread belief, a political process rather than revenue projections determines the targets.

On a broader scale, politics is surely at play with respect to setting and moving forward with significant, free-market-oriented reforms in the agricultural sector. Tanzania, the third-largest recipient of donor aid in the world, has long been privy to, and welcoming of, outside advice drawing from international best practice that aims to support economic growth. Yet, as discussed in the next subsection on government commitment to genuine free-market reforms, the country's leadership steadfastly sticks to conditions that are proven to undermine private sector growth. Politics constrains the implementation of important laws and policies that would help bring the country out of poverty. In addition, a lack of political will means that good advice often lies virtually dormant, such as in the case of an IFC-sponsored gender assessment, discussed in this report's chapter on Women in Tanzanian Society.

**The donor effect.** Deep in Tanzania's rural areas is a heavy presence of multilateral and bilateral donor-sponsored organizations that underwrite a wide variety of assistance programs for stakeholders in the agricultural sector, including farmers, farmer associations, and small and midsize agricultural enterprises. Donors based in Dar es Salaam also fund broad-based, multi-agency support.

Against this backdrop, this diagnostic found that certain state institutions have been inclined to surrender their responsibility for providing support and services to the agricultural sector, relying instead on donors to get the job done. For example, the Ministry of Labor is particularly passive with respect to monitoring and responding to informally employed workers in

the agricultural sector. Although its staff is in a position to compile and disaggregate the data it collects from all its labor inspections (both of informal and formal enterprises)—thus learning more about particular issues facing workers—the Ministry has not done so on its own initiative in recent years, instead allowing the local office of the International Labour Organization (ILO) to compile and interpret the limited information it has collected. Similarly, it is the ILO and UN Development Programme (UNDP) that have taken charge of developing better methods of collecting employment data in the country's southern regions. A lack of resources cannot wholly explain such passivity: issues of will, ownership, and management are also at play.

Although most stakeholders welcome the support of donors, they can, in the long run, suffer harm through over-intervention. For example, when donor money is plentiful, there is a tendency to “farm projects” rather than land. If new funds reliably come along every three to five years, each one based on a new agricultural direction, farmers and their associations understandably tend to split their attention between maximizing earnings from their land and maximizing income from grants and program support. This dual-track strategy leads to conflict, which in turn leads to a de-emphasis on the production dimension in favor of the donor dimension. Dependence on donor support can result in the development of capacity that is unsustainable once the donor withdraws its support.

The plentitude of donors in Tanzania also raises the question of how both Tanzanian stakeholders and, just as critically, the donors themselves ultimately use resources. Donors have issued untold numbers of reports in Tanzania since the country underwent its economic transformation. These reports have the potential to carry great value—if and when they undergo critical assessment by both local constituencies and donors and, where necessary, are put into action. That action step does not happen often

enough. Too many good reports are left to sit on people's shelves.

### 3. Incomplete and inconsistent commitment to the free market

Tanzania's experiment with socialism is a complex topic, and most of it is well beyond the scope of this report. During this diagnostic, however, multiple interviewees stated that a "socialist mind-set"—or, expressed differently, an incomplete commitment to free-market principles—is still very much part of Tanzania's social dynamics. Powerful examples found in this report's chapter on Competing Fairly include the following:

- **Single-marketing channel for cashew growers.** Cashew growers can sell their output only through cooperative unions; direct selling to private buyers (traders or processors) is illegal. As result, there is less "competition" for growers' output, and growers may receive a lower price than they might receive in a more competitive market. Moreover, because cooperative unions receive protection from competition from other buyers, the cooperative unions face less competitive pressure to operate in the most efficient manner, including minimizing the cost of marketing.
- **Ban on the export of maize.** The government banned the export of maize to ensure a sufficient supply for domestic needs. This has not been an uncommon measure within the region, as other countries have taken similar action. Maize farmers, traders, and millers noted, however, that the ban created short-term and long-term secondary effects and costs on competition that may not have been fully understood and appreciated at the time the ban was imposed. Domestic maize farmers immediately lost an opportunity to sell their output in export markets that may have offered them a higher price for their crop. Unable to export,

farmers flooded the domestic market with their output, further suppressing domestic prices relative to regional prices. These lower prices eventually prompted some maize farmers to shift to other crops that were less-efficient alternatives under competitive conditions.

- **Prohibition on trading of tobacco.** The Tobacco Board, traders, and processors said that people cannot obtain a license solely to engage in the trading of tobacco. They must also show that they have a facility or contract to process the tobacco in Tanzania. Unprocessed tobacco leaf cannot be exported. The intent of this provision may have been to protect and promote domestic processors, but one effect is that tobacco growers have fewer buyers bidding for their tobacco. As a result, growers may receive a lower price than they would otherwise receive if they had more traders bidding for their output. The licensing requirement may also increase the cost of entry into the sector: new entrants may find it necessary to enter at two levels, as traders and processors.
- **Limitation on the number of trading licenses.** An extension service near Arusha said that the district councils tightly control the number of licenses issued for getting goods into and out of the districts. As a result, the provision artificially limits the number of traders in the market. Those having a license earn a higher return than they might otherwise earn if they faced more competition.

Interviewees made additional observations throughout this diagnostic, including the following:

- Government officials still do not understand how capitalist businesses work.
- The view is widespread that villagers and primary producers are more productive and "virtuous" than middlemen and service providers.

- Official policy emphasizes a combination of exhortation and regulation rather than economic incentives.
- The government places too much faith in large, sweeping initiatives.
- The government relies too much on crop boards and is too ready to intervene in pricing.
- A suspicion of “foreign capitalists” lingers, along with a presumption that they are in Tanzania to exploit its resources and people.

Some interviewees suggested that there is a generational issue, with older government officials and policymakers being more “socialist” in their thinking than younger ones. With respect to paying taxes, for example, many interviewees stated that tax authorities do not understand the impact of their actions on businesses. Some added further that some senior civil servants regarded capitalist businesses with mild distaste: “They see us as predatory and exploitative”; “they don’t consult us, ever”; “we’re guilty until proven innocent.” A similar dynamic became apparent in cooperative leadership, with one cooperative official declaring, “I am from the old stock... [setting of minimum prices] is the most sensible way I can imagine that the poor man can get forward.”

At this time, despite its generation-old commitment to free markets, Tanzania’s government shows tendencies to intervene in the market rather than allowing the market to function, and many of its private sector actors acquiesce in this habit. The market system in Tanzania is still relatively new, and many still remain more comfortable in a government-led system. Policymakers need to focus on developing institutions that strengthen the market rather than developing institutions and implementing policies that undermine it.

#### **4. Information asymmetries increase business risks and costs**

Market information is inadequate across almost all agricultural value chains in Tanzania. Traders

and potential buyers of agricultural products report that price information is hard to find, incomplete, and rarely timely enough to affect buying decisions. Most information about market opportunities is informal and comes through existing networks, a situation unlikely to bolster market expansion or market-based innovation.

A great number of other informational deficits became clear during this diagnostic, for example:

- Tanzania currently lacks readily available information on the legal instruments that govern business operations, including not only the initial business registration and licensing processes but also land tenure, water rights, health and safety, and employment.
- Beyond Dar es Salaam and a few other urban centers, access to copies of cornerstone laws and regulations is virtually nonexistent, including key provisions pertaining to lending contracts, contracts involving specific types of crops, or dispute resolution. Nor is there significant distribution of information or pamphlets in Kiswahili that would summarize the basic provisions of contract law and enforcement in easily digestible terms.
- No functioning credit information-sharing system exists in Tanzania.
- As a result of a dearth of lawyers in the rural areas, most stakeholders in the agricultural sector lack any useful guidance on business laws or on the opportunities that business formalization and use of contracts offer.
- With little access to information about market-based alternatives or a sense of competing opportunities, farmers of cash crops voice few objections to the powers held by crop boards and cooperatives.
- Traders find that not all tariff rates are publicized. Many published fees are dated and have not reflected actual tariff rates for years.



As developed further in this report, correcting many of these deficiencies is as much an issue of commitment and perseverance as it is of resources and capacity.

## HOW THIS REPORT IS STRUCTURED

Each chapter of this report is structured the same way. Following an introduction, each has four substantive sections, which are themselves followed by recommendations.

### LEGAL FRAMEWORK

The chapters first examine Tanzania's laws and regulations that serve as the structural basis for the country's ability to achieve and sustain market-based development in the agricultural sector. They discuss the following questions: How accessible is the law, not only to elite, well-informed groups but also to less-sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities faced by stakeholders in the agricultural sector? What inconsistencies or gaps are present in the legal framework? This section examines both laws and regulations that apply throughout the economy and additional laws and regulations underpinning the agricultural sector specifically.

### IMPLEMENTING INSTITUTIONS

Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework. These institutions include government ministries, authorities, and registries or, in certain cases, private institutions such as banks and credit bureaus. In addition, the chapters examine the courts with respect to their effectiveness in addressing disputes that arise in the agricultural sector. Again, the indicators seek to uncover how these implementing institutions function not merely with respect to mainstream business interests in the capital but also in rural areas and agriculture-based communities.

### SUPPORTING INSTITUTIONS

The chapters then look closely at those organizations, individuals, or activities without which the agricultural sector in Tanzania cannot fully develop. Examples include farmer associations and cooperatives, rural banks, professional associations, agricultural and other university faculties, and donors. The relative awareness of law and practice on the part of each institution receives attention, along with the specific ways in which these institutions increase public and professional awareness, work to improve the economic performance, and otherwise serve their constituencies.

### SOCIAL DYNAMICS

As the final point of analysis, the chapters discuss key issues that affect the environment for growth in the agricultural sector, in particular the roadblocks to reform, including those that may be undermining change. This discussion also identifies significant opportunities for bolstering the environment for agricultural enterprise, such as champions of reform or regional initiatives, as well as matters of access to opportunity and formal institutions. Social dynamics also concern such important matters of gender, human capacity, and public health, each of which may have a significant bearing on how the business environment truly functions. Indeed, a nuanced consideration of a country's social dynamics is often essential to a full understanding of legal and institutional issues.

### RECOMMENDATIONS

Following this four-part analysis, each chapter sets forth a set of recommendations. These recommendations derive from the key findings in each chapter and reflect current reform capacities, opportunities, and evidence of will to reform. Some of the recommendations within the chapters may overlap—that is, some may be consolidated into a single reform initiative covering two or more topics—and all turn on the priorities and preferences as enunciated by the Tanzanian government itself. The recommendations in this report aim to serve, among other

**THE SCORE AWARDED KEY INDICATORS ALIGNS WITH THE FOLLOWING CONCLUSIONS:**

1 = strong negative
2 = moderate negative
3 = neutral (or having some negative and some positive qualities)
4 = moderate positive
5 = strong positive

functions, as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work.

With respect to each area of inquiry, this diagnostic reviews and scores **key indicators** to develop a thorough analysis. Once as much relevant information as possible is gathered—from written sources, meetings and interviews, and

consultation among colleagues—each of the key indicators is scored, based on the assessor’s best estimate of the issue at hand. To help an assessor determine a score, between 3 and 15 **supporting questions** accompanied each key indicator. These questions themselves are not scored but are intended to guide the assessor toward a consistent, fact-based judgment from which the key indicator score is then derived.

The scores should not serve as stand-alone, number-based pronouncements on the state of affairs in Tanzania. Rather, readers should consider them in conjunction with this report’s narrative as a means of understanding the status of certain key indicators of a healthy legal and institutional environment for agricultural enterprise and for identifying priorities for reform.

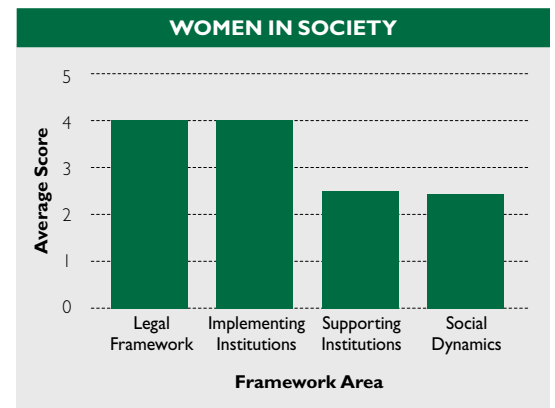


## WOMEN IN TANZANIAN SOCIETY

In 2007, the International Finance Corporation and World Bank Group published a *Tanzania Gender and Economic Growth Assessment* (hereinafter “IFC Gender Assessment”), which closely examines the relationship between Tanzanian women and their country’s environment for accessing land, finance, paid work, economic justice, and opportunities in international trade.<sup>15</sup> Because over 80% of Tanzania’s women live in rural areas and work in the agricultural sector, most of that assessment’s findings are directly relevant to this report.

Over the three years since publication of the IFC Gender Assessment, little has changed with respect to women’s participation in the agricultural sector. Notwithstanding a generally favorable legal framework that affirms equality between men and women (with certain critical exceptions), along with public policies that prioritize gender equity within the work of state institutions,<sup>16</sup> conditions for Tanzanian women working in agriculture remain enormously difficult. Although certain cultural norms are gradually changing, the backdrop against which most Tanzanian women live consists of low expectations, stagnant economic opportunities, unhealthy living and work environs, and rampant abuses of their property and employment rights. Poverty runs deep among both women and men in Tanzania, but deeply ingrained cultural forces continue to render women less literate and less likely to meet their families’ needs through paid work and entrepreneurship than men.

The IFC Gender Assessment sets forth a series of recommendations that, if implemented, would not only “help unlock the full economic potential of women” but also “help improve the environment for all businesses in Tanzania.”<sup>17</sup> Rather than reasserting that study’s major findings, this chapter underscores the key issues pertaining to women in Tanzanian society as they emerged in the instant diagnostic. Specifically, this discussion reinforces the especially persistent and relevant social factors that are the foundation for how women fare in



Tanzania’s agricultural economy. Later chapters in this report address how the laws and policies applying to the specific subject matters they cover affect women.

### LEGAL FRAMEWORK

The IFC Gender Report details various laws and public policies affecting the place of women in Tanzanian society, including:

- Formal policies and laws affecting women’s ownership and access to land
- Financial laws influencing women’s access to capital
- Tax law and policy that disproportionately impact women
- Legal restrictions on the availability of day care for children
- Labor and employment law
- The framework pertaining to access to commercial justice
- Trade law and policies.

<sup>15</sup> Id.

<sup>16</sup> Id. at vi–vii.

<sup>17</sup> Id. at vii.

## KEY POLICIES AND LAWS

- Kilimo Kwanza
- Law on Marriage (1971)
- Key policy and laws on real property
  - National Land Policy (1995)
  - The Land Act (1999)
  - The Village Land Act (1999)
  - The Land (Amendment) Act (2004)
  - Land Disputes Courts Act (2002)
  - Local Customary Law (Declaration) 1964

Complementing that report's extensive analysis of these topics, this section highlights legal framework issues that directly affect Tanzanian women in the agricultural sector and that interviewees emphasized as priorities over the course of this diagnostic.

### KILIMO KWANZA

As discussed in this chapter's introduction, Tanzania's government created Kilimo Kwanza in 2009 as a public policy assuming agriculture as the foundation for future economic growth. To promote Kilimo Kwanza, the government has engaged in significant public outreach to encourage widespread involvement in increasing knowledge, productivity, access to markets, and private sector opportunities in agriculture.<sup>18</sup> But Kilimo Kwanza does not appear to integrate women effectively, a fact a number of the interviewees for this diagnostic observed. Task II of Kilimo Kwanza's eighth of 10 pillars (concerning science, technology, and human resources), gives cursory mention to a goal to "mainstream gender in Kilimo Kwanza" and to "strengthen the position of women in Agriculture." In the remainder of the document, however, the complete lack of reference to gender as a key aspect of the agricultural economy is striking. Kilimo Kwanza's drafters—some of the country's most prominent public and private sector leaders—seem to have completely ignored the importance of gender as emphasized in other recent government policy documents. For instance, they could have integrated at least some of the IFC Gender Assessment's recommendations

about how certain reforms directly affecting women could, in turn, strengthen Tanzania's agricultural economy. They did not do so.

### LAW ON MARRIAGE

As detailed in the IFC Gender Assessment, discrimination against women occurs far less in the content of Tanzanian law than in cultural practice and implementation of the law. The Law on Marriage (1971), however, significantly undermines the personal and economic potential of women and remains symbolic of traditional attitudes toward women and gender relations. This law discriminates against women in a number of respects, two of which were underscored during this diagnostic.

First, the Law on Marriage perpetuates ingrained perceptions of women's contributions to household wealth such that their property rights are often ignored upon dissolution of a marriage. As noted in a 2009 training manual for Tanzanian magistrates, "in most cases women are discriminated against in the division of matrimonial property because courts... discount unremunerated contributions most often made by women, such as housework and child care."<sup>19</sup> The IFC Gender Assessment states that, although the treatment of women's contributions to household wealth has evolved somewhat, distribution of property upon divorce remains a vaguely understood issue under the Law on Marriage.<sup>20</sup> During this diagnostic, representatives of NGOs that assist women in exercising their rights upon divorce strongly agreed that most rural women greatly suffer upon divorce as a result of customary norms. In fact, most dissolution of marriage takes place extralegally, with the woman simply "sent away" with "no formal divorce" and no property.

Second, although early marriage of women is an issue that has long been publicly acknowledged as discriminatory, damaging, and contrary to international standards,<sup>21</sup> a younger age for women than men remains on the books and widely in force. Specifically, while Section 13(1) of the Law on Marriage prohibits marriage of

<sup>18</sup> See Tanzania National Business Council, *Kilimo Kwanza: Towards Tanzanian Green Revolution* (June 2009); see also Amina Juma, "Sido Urges Private Sector Promote 'Kilimo Kwanza'" (December 31, 2009).

<sup>19</sup> UNDEF/Tanzania Women's Judges Association, *Jurisprudence on the Ground: Training Manual for Magistrates* (2009) at 15 (citing Guliya Mohamed v. Ahmed Makomo Civil Appeal No. 45 of 2001 (DSM Registry—unreported)).

<sup>20</sup> IFC Gender Assessment at 21.

<sup>21</sup> See Law Reform Commission, *Inquiry and Report on the Law of Marriage Act, 1971* (July 4, 1986).

males under the age of 18, it allows marriage for girls as young as 15. For all people as young as 14, Section 13(2) further permits marriage where “the court is satisfied that there are special circumstances” warranting the marriage. Although there have been efforts for more than a generation toward equalizing the age at which women and men may marry—a change that would also signify cultural and legal acknowledgment of women as equal with men in marriage and overall status—that change has not yet taken effect. According to informal legal representatives for women, however, the “tradition of young brides is dying out.”

## PROPERTY LAW

The IFC Gender Assessment summarizes the key provisions of Tanzania’s property and inheritance law as they pertain to women. In general, the key sources of authority on property, including the National Land Policy and the major land laws that followed formation of this policy<sup>22</sup> are unequivocal that women and men are to have equal access to land and equal rights to property, both as owners and inheritors. However,

Despite the protection of women under the formal legal system, in practice customary norms that protect clan land from alienation outside the clan and traditionally vest control of property in men, continue to influence decisions and practices concerning ownership, control of and access to land, particularly in rural areas.<sup>23</sup>

Indeed, during this diagnostic, real property and inheritance rights repeatedly came to the fore as a particularly critical area where the implementation of law fails women.<sup>24</sup> Many interviewees stated that women receive few or no rights to land during their marriages—are never permitted, for example, to add their names to documents indicating ownership of property—and even fewer upon the death of a husband. As a practical matter, widows are often strongly encouraged after their spouses’ deaths to marry one of the deceased’s relatives. When that cannot be arranged, widows are

often “chased away” from the land they shared with their husbands, often forsaking all their personal property as well.

In most isolated or traditional communities, customs that exclude women from lines of ownership and inheritance persist, and, indeed, pursuant to the Local Customary Law Declaration, in force since 1964, courts are obliged to take oral and written testaments pertaining to property ownership into consideration when resolving disputes.<sup>25</sup> The option of seeking redress in court is theoretically available to women—and, indeed, judges and magistrates are trained to enforce the land ownership and inheritance rights of women, deference to customary norms notwithstanding—but, in practice, that process is long, difficult to access, and confusing. Moreover, women subject themselves to powerful social ostracism when they attempt to exercise their rights to real property.

The IFC Gender Assessment lists six key recommendations for reform of property law and implementation of that law in a way that would allow women to assert ownership over property they hold with their husbands and, down the road, to use their land as sources of wealth, whether as collateral for loans or simply as venues for farming or doing business. Generally, the IFC recommendations call for (1) vastly strengthened awareness of women’s property rights among those institutions in a position to enforce them; (2) widespread dissemination of simplified versions of land laws; (3) amendment of the Law on Marriage to define property rights more clearly during marriage; (4) clarification and reform of inheritance law so that it is uniform among sources of authority; (5) amendment of the Law on Marriage to define property rights more clearly upon dissolution of a marriage; and (6) and gender equalization of local policies and practices pertaining to development of sites for small businesses. These recommendations are clear and straightforward and do not require significant further study but rather near-term implementation in a sincere and thorough manner.

22 See USAID/BizCLIR. *Tanzania’s Agenda for Action* (2008) (“Registering Property” chapter).

23 IFC Gender Assessment at 19.

24 A fascinating study that gives voice to Tanzanian women directly affected by the implementation of Tanzania’s customary property practice is Aginatha Rutazaa, *Tanzanian Women and Access to Law: The Case of Kilimanjaro* (Terry Sanford Institute of Public Policy, Duke University, 2005).

25 See UNDEF/Tanzania Women’s Judges Association, *Jurisprudence on the Ground: Training Manual for Magistrates* (2009) at 75-76 (“Wills under Customary Law”).

## IMPLEMENTING INSTITUTIONS

### GOVERNMENT INSTITUTIONS: LEGISLATIVE, EXECUTIVE, AND JUDICIAL

Among the key gender issues explored during this diagnostic is the extent to which awareness of gender issues is “mainstreamed” into law and public policy. There does appear to be significant mainstreaming of women into positions of leadership and authority, as well as integration of gender into matters of public policy. In fact, resistance to affirmative action in government jobs appears to be limited, perhaps because of the general appreciation among educated groups that, in general, Tanzanian women have suffered disproportionately in issues of access to education and property ownership. That said, the previously noted absence of substantial consideration of gender issues in Kilimo Kwanza indicates that gender awareness has a long way to go before becoming fully integrated into policies affecting Tanzania’s agricultural sector.

For a number of years, Tanzania has mandated that certain percentages of legislative seats, both in its National Parliament and local councils, be reserved for women.<sup>26</sup> Currently, in Tanzania’s national parliament, 75 seats are allocated to women, as chosen by their parties in proportion to their share of electoral vote. Beyond those 75 seats and a number of others appointed by the president, 17 women were directly elected to parliament in 2005.<sup>27</sup>

Tanzania’s executive branch is dominated by men, although women have benefitted in recent years from affirmative practices that have placed them higher up in executive-branch agencies. In 2006, 23 ministers in the Tanzanian government were men, while 6 were women (21%). Among deputy ministers, 51 were men and 10 were women (15%). At the local level, the proportion of women in leadership positions generally ranges from 15 to 25%.<sup>28</sup>

#### KEY IMPLEMENTING INSTITUTIONS

- Government institutions
- Ministry of Community Development, Women’s Affairs and Children
- Educational institutions

Access to government institutions—including registries, government offices, courts, and other public buildings—is very difficult for the majority of Tanzanian women, but this problem is often a matter of poverty rather than gender discrimination per se. Most rural women do not have either the time in their day or the ability to travel to public offices that may provide them assistance or support.

Certain government agencies, however, seem to be particularly weak in their enforcement of women’s rights. As discussed in this report’s chapter on Employing Workers, Tanzania’s chief institution charged with supporting the country’s workforce—the Ministry of Labor—has proved ineffective in executing its core functions, including enforcement of wage and hour laws. Women bear the brunt of this negligence. The Ministry’s tolerance of “casual workers”—conditions in which workers, often women, work for piece rates that are well below the minimum wage—results in extreme levels of informal employment that deprive women of their rights.

In the courts, almost half the country’s lower court judges, as well as the High Court, are women.<sup>29</sup> The general public lacks a full understanding of the rights of women under the law, but the country’s corps of judges and magistrates is, in fact, relatively well informed and trained on issues of equality.

### MINISTRY OF COMMUNITY DEVELOPMENT, WOMEN’S AFFAIRS AND CHILDREN (MINISTRY OF WOMEN’S AFFAIRS)

Established in 1990, the primary ministry charged with addressing issues of particular concern to Tanzania’s women has a number

26 Alexander Boniface Makulilo, “Whose Affirmative Action is Affirmative? Lessons from Tanzania,” *CEU Political Science Journal*, Vol. 4, No. 4 (2009).

27 Ruth Meena, *Women Participation in Positions of Power and Influence in Tanzania*, available at [http://www.redet.udsm.ac.tz/documents\\_storage/2009-8-19-11-34-23\\_womenparticipationinpositionsofpower.pdf](http://www.redet.udsm.ac.tz/documents_storage/2009-8-19-11-34-23_womenparticipationinpositionsofpower.pdf).

28 Id.

29 This has been cited by some Tanzanian authorities as evidence for the rising status of women. It has also been cited by some interviewees as evidence for the low status (and pay) of magistrates and judges.

of core objectives, among them to formulate and implement policy pertaining to gender in Tanzania; to provide training in gender analysis for other ministries; to promote integration of gender perspective in all government policies and programs; to disseminate information of use to women; to identify and engage potential resources that may help promote the interests of Tanzanian women; to research women's issues and collect and disseminate data; and to engage in a number of other tasks aimed at improving conditions for Tanzanian women.<sup>30</sup> In 2000, the Ministry's agenda was updated to reflect the country's transition from a socialist society to one more oriented toward free markets. Since then, the Ministry's chief priority has been that of "gender mainstreaming"—that is, ensuring "that gender perspective/concerns are articulated and mainstreamed in all socio-economic, policies, programs/projects and in the budgetary process."<sup>31</sup> To this end, it has overseen the development of gender focal points in several of the country's other ministries, for the purpose of encouraging gender awareness within key institutions.

Unfortunately, the Ministry's influence is not so significant as to make a practical difference in the lives of most women in Tanzania's agricultural sector. For example, the fact that Kilimo Kwanza, a major policy initiative developed in 2009, devotes little beyond lip service to gender issues in agriculture is testament to the Ministry's lack of influence. After the release of the IFC Gender Assessment, the Ministry of Women's Affairs (as well as the Ministry of Industry, Trade and Marketing, which was also involved in its implementation) missed a key opportunity to seize on its tangible, action-oriented recommendations as a foundation for political action, or at least use them as a baseline for building consensus. The opportunity lapsed, notwithstanding dedicated training of 50 key stakeholders in "media and advocacy" skills so that they might press the report's recommendations into action.<sup>32</sup> The IFC Gender Assessment characterizes the Ministry's role as overly

broad and its administration as lacking sufficient resources.<sup>33</sup> But it might also be true that the Ministry of Women's Affairs (not unlike various other government ministries, as summarized in this report's introduction) is not yet using the various cost-free tools at its disposal—such as the media, connections with other ministries, and even access to women leaders—to promote an agenda that would be useful in the lives of women in the agricultural sector.

## EDUCATIONAL INSTITUTIONS

Much has been written about the relative, and improving, accessibility of Tanzania's schools to girls and women. According to informal women's advocates, local governments have recently become more diligent about enforcing requirements that girls attend school, and there is increasing awareness in the rural areas that "if you do not send your children to school, you will be fined." But despite strides toward greater enrollment of students in primary school, attendance and graduation rates remain low both for men and women. In addition, primary school class sizes remain shockingly high, with often well over 60 or 70 students in a class.

According to figures supplied by the United Nations Children's Fund (UNICEF), while enrollment in Tanzania's schools has increased, actual primary school attendance rates hover at around 71% for boys and 75% for girls. Secondary school attendance registers at about 8% for both boys and girls. Although these figures suggest genuine equality in education, literacy among Tanzanian women remains comparatively weak—62.2% in 2002 for women versus 77.5% for men. The difference between those rates has likely narrowed in the past eight years, but the lower literacy rate for women indicates that girls are still directed early in life toward pursuits other than attending school.

Among the less than 2% of Tanzanian students who attend university, the gender ratio for enrollment for men in 2006–2007 was around 68% male to 32% female.<sup>34</sup> Some affirmative outreach has encouraged women to attend

30 See Website of the Ministry of Community Development, Women Affairs and Children, <http://www.mcdgc.go.tz/gender.html>.

31 Id.

32 See IFC/World Bank, "IFC Conducts Media and Advocacy Training as Part of Gender Assessment in Tanzania" (press release) (October 2, 2006).

33 IFC Gender Assessment at 115–16.

34 Id.

university, including slight reductions in required scores for entrance exams and special classes to prepare new female students for the rigors of university classes. According to individuals who teach in Tanzanian universities, *all* students are less prepared than they should be.

## SUPPORTING INSTITUTIONS

### LAW REFORM COMMISSION

Tanzania's Parliament created the Law Reform Commission in 1983, pursuant to recommendation of an earlier Judicial System Review Commission, which had promoted the "need to establish an independent body which will maintain a constant monitor over the administration and operation of the law with a view to the maintenance of its relevance to changing times and conditions and to report on any breakdown or threatened breakdown so that remedial measures can be timely applied." Today, the commission is a permanent, standing government body, staffed by a number of full-time and part-time experts who review laws and drafts at the request of ministries and other agencies working on them. The involvement of the commission is not required, however, when new or revised laws are proposed.

With respect to gender issues, there is scant evidence that the commission is a particularly effective institution in promoting the rights of women. Although it may recommend gender-related changes to the law—and, as noted, has done so<sup>35</sup>—it is not so influential as to see its key suggestions on marriage and equality actually take effect. Nor does it appear to be particularly persistent in advocating meaningful action in response to the changes it recommends. This institution could play a stronger role here.

### PRIVATE ENTERPRISE AND PRIVATE SECTOR NETWORKS

As detailed in the IFC Gender Assessment, women represent the vast minority of enterprise owners beyond those at the micro

#### KEY SUPPORTING INSTITUTIONS

- Law Reform Commission
- Private enterprises and private sector networks
- NGOs
- The legal profession

level. Nonetheless, a few success stories have emerged. The story of Sero Lease, a woman-owned financial services company recently profiled by the World Bank,<sup>36</sup> illustrates how general improvements to the business environment, such as improved formal credit systems, as well as concentrated donor support, can benefit women entrepreneurs as well as men. It further shows how gender-specific initiatives, such as training women borrowers in business development and HIV/AIDS awareness, improve the capacity of women to act as entrepreneurs.

The area of microfinance is one where women are, based on international best practice, encouraged to work together in "circles" to lend support to one another and serve as reinforcing mechanisms for repayment of loans. At least one large microfinance initiative lends to women only. Yet what seems evident in the use of microfinance for Tanzanian women is the lack of growth of microenterprises into larger businesses that become formalized and provide jobs. There is need for greater understanding in Tanzania about how women can transition from borrowing as a means of poverty alleviation into a more prosperous state of enterprise growth and development.

With only limited success, Tanzanian businesswomen, including those involved in agriculture-related enterprises, have endeavored to launch trade associations where they can share information, build skills, and build contacts. For example, an effort to organize an association of women-owned food processors lacked funding and leadership. At the same time, Tanzania's mainstream business associations do not substantially engage women.

<sup>35</sup> See Law Reform Commission, *Inquiry and Report on the Law of Marriage Act, 1971* (July 4, 1986).

<sup>36</sup> World Bank/Doing Business, *Women in Africa, A Lease on Opportunity* (2008).



## NGOs

A great number of NGOs formed for the purpose of supporting women exist throughout Tanzania, and they have, over the years, received considerable donor support, particularly for public education about HIV/AIDS. Although not studied in detail during this diagnostic, the challenge for all gender-oriented NGOs is to achieve and maintain independence, sustainability, relevance, and accountability.

## THE LEGAL PROFESSION

As detailed in this report's chapter on Enforcing Contracts, there is a scarcity of legal services oriented toward agriculture in Tanzania's rural communities, including an "acute shortage of lawyers and of advocates in particular."<sup>37</sup> Furthermore, there is a "lop-sided distribution of legal practitioners" in Tanzania, such that the vast majority of advocates reside and work in Dar es Salaam and Arusha, with other municipalities and areas represented by just a handful of advocates or, in some instances, none at all. One practical impact of this dearth of lawyers in the rural areas is that women seeking to exercise their property rights lack resources and support. Similarly, their rights upon divorce, domestic violence, and other legal episodes are significantly underserved.

## SOCIAL DYNAMICS

The gender impact of poor conditions for doing business. In Tanzania, just as "reducing gender inequality enhances economic productivity and economic growth,"<sup>38</sup> strengthening conditions for economic growth generally will help lift the fortunes of Tanzanian women. As documented by the World Economic Forum's most recent Global Gender Gap index (2008)<sup>39</sup>—and anecdotally substantiated during this diagnostic—the gap between opportunities afforded men and women in Tanzania, though not insignificant, is considerably less dramatic than that found in many other countries. In comparing rates of political participation, economic participation, access to health, and access to education, the Global Gender Gap Index



ranks Tanzania 38th out of 130 countries surveyed. Among members of the East African Community, women in Tanzania are found to be treated more equally than in Uganda (43rd) and Kenya (88th) (Burundi and Rwanda are not covered by that survey).

Thus, the fundamental challenge for Tanzania, still one of the poorest countries in the world, is to improve conditions for doing business and economic growth across the board, while also integrating reforms that affect women in particular. As documented in recent years by the World Bank, there is a direct relationship between the overall strength of a country's regulatory environment and the rate of women's economic participation.<sup>40</sup> For example, when a country reduces the number of steps necessary

<sup>37</sup> Faiz Twaib, *The Legal Profession in Tanzania: The Law and Practice* (2008) at 7. "Advocates" are legally trained professionals who have gained qualifications to represent clients before Tanzania's courts.

<sup>38</sup> World Economic Forum, *The Global Gender Gap Report 2007*, at 20.

<sup>39</sup> World Economic Forum, *The Global Gender Gap Report 2008*.

<sup>40</sup> World Bank, *Doing Business 2008*.

to start a business, pay taxes, or enforce a contract, a female entrepreneur has fewer points at which she must interact with a state official, thus reducing opportunities for bribery, harassment, or other difficult situations.<sup>41</sup> Moreover, when participation in the formal economy proves unduly burdensome for women, they are more likely than men to end up in the informal economy, working under conditions of little or no social benefits or legal protection.<sup>42</sup> Countries that work to improve business conditions generally are also promoting the interests of women in the private sector. Given Tanzania's *Doing Business* ranking of 131 out of 183 countries surveyed, emphasis on strengthening all aspects of the business environment would serve the entirety of the country's population.

### **DUAL ROLES, DUAL BURDENS**

In Tanzania, social customs dictate that the woman in the household is responsible for household duties, child rearing, and care of extended family members. This dynamic affects all women in Tanzanian society but particularly those in the rural areas and those with less income.

The strong cultural expectation that women have a primary obligation to take care of their children, their homes, and their extended families is a particularly strong constraint on the ambitions and business growth of women entrepreneurs. Not only is there a lack of available external support, such as formal child care, but Tanzania lacks cultural acceptance of engaging such external support. During this diagnostic, women business owners reported that they could not grow their businesses to a larger size because of the conflicting demands of work and family, along with the inability to seek outside help to juggle these demands. While as a cultural issue this is a delicate one to address, and will take time to resolve, social constraints definitely hinder women's enterprise development and constitute a strong undercurrent running through discussions of how to encourage more growth and development of women-owned businesses.

### **ENVIRONMENTAL INITIATIVES**

In-depth examination of women and environmental issues in Tanzania is beyond the scope of this diagnostic, but it is certainly worth investigating. There is much to learn about the impact of Tanzania's substantial environmental degradation of recent years (including deforestation, misuse of pesticides, soil degradation, and other problems) on the livelihoods of women. Similarly, opportunities to engage women in environmental protection should be explored and developed. According to one NGO representative, women are enormously receptive to public outreach efforts that concern the environment. Particularly in the rural areas and as the guardians of their families' health and personal welfare, women are eager to learn about responsible use of pesticides and management of indoor pollution. A stronger focus on environmental concerns in the future should take advantage of the enthusiasm of female constituencies to serve as guardians of their land, air, and water.

### **RECOMMENDATIONS**

**Revisit and establish a plan for implementation of the major recommendations set forth in the IFC Gender Assessment.**

A long list of recommendations to support women in the agricultural economy is not necessary here, because a strong, comprehensive list already exists in the 2007 IFC Gender Assessment. To date, few of these recommendations have been acted upon. Thus, there is less need at this time for study and more need for legislative, ministerial, and private sector action. The IFC Gender Assessment's recommendations encompass several of the major areas covered by this report, including enterprise development, property rights, labor, commercial justice, and trade. As an immediate first step, integration of the IFC Gender Assessment into implementation of Kilimo Kwanza should be a priority of public and private implementers of that policy.

<sup>41</sup> Id.

<sup>42</sup> Id.

There may be some need for consensus building on the “how” of implementing gender-oriented recommendations. Given the varying circumstances facing women in Tanzanian society, strategies for enhancing their economic participation require a multifaceted, highly flexible approach.

### **Amend the Law on Marriage to provide for gender equality in the age of marriage.**

In addition to the various amendments in the Law on Marriage called for in the IFC Gender Assessment, the law should be amended, as soon as possible, to remove the gender disparity in minimum ages of marriage. There has long been public consensus on this matter—it has been a noted concern for more than 20 years. Further stagnation reflects poorly on Tanzania’s overall commitment to gender equality.

### **Offer more women-targeted business development services.**

It has been shown in other countries that women-focused, relational (as opposed to transactional) business support services provide nascent women business owners with confidence and counseling, new women business

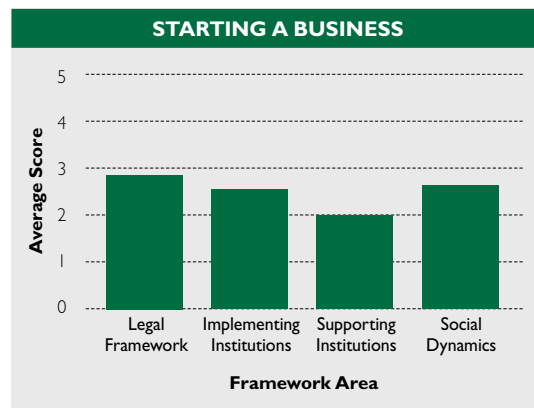
owners with important management skills, and growth-oriented women business owners with contacts, compatriots, and new market opportunities. Future support can be directed toward the following:

- Fostering facilitated peer roundtable discussions, where members would share business challenges and successes
- Providing specific growth-focused educational programming on such issues as employment law, building an executive management team, providing export promotion activities and exploring new international markets, serving on boards and commissions, and accessing growth capital
- Forming mentor-protégé relationships, perhaps between these women and counterparts in other countries where they would be the protégées, and domestic mentoring programs where they would be the mentors
- Organizing one or more international fact-finding and relationship-building trips for the leaders of women’s business associations to meet and discuss areas of common interest with women’s business association leaders in other countries.



## STARTING A BUSINESS

This chapter assesses the legal framework, implementing and supporting institutions, and the social dynamics of starting an agricultural business in Tanzania. With one notable exception (the general business license), licensing procedures, institutions and dynamics are only briefly referenced here but are considered in more detail in the chapter on Dealing with Licenses.



The World Bank *Doing Business Report* for 2010 places Tanzania 120th out of 183 economies surveyed on the ease of starting a business, noting that it takes 12 procedures and 29 days to start a business in Tanzania. Such an assessment of procedure is relevant to the larger formal businesses that may invest in Tanzanian agriculture, but for the majority of (small) agricultural businesses, only a part of that registration process is relevant. The World Bank perspective may thus overestimate the obstacles faced by smaller businesses in registration. For these smaller businesses, however, other considerations including access to inputs, availability of information for market research, access to professional services (both technical and financial), security, adequacy of infrastructure, and consistency of and access to markets are of potentially greater relevance to successful business start-up and may pose problems of their own. Consequently, this chapter assesses the broader framework within which agricultural businesses are begun. It first considers the initial registration and licensing requirements from a legal and

institutional perspective and then addresses the supporting institutions that cover those other aspects that are key to starting a business and the social dynamics fundamental to success.

The initial registration and licensing requirements for businesses in Tanzania have been well described elsewhere<sup>43</sup> and are briefly summarized below. It is important to note that given the small-scale nature of Tanzanian agriculture, the vast majority of businesses fall outside the scope of either licensing or business registration. Nevertheless, all businesses are required to obtain a tax identification number (TIN), and businesses whose turnover exceeds 40 million Tanzanian shillings (TSH)<sup>44</sup> are obliged to register for value-added tax (VAT). These procedures reportedly take from two days to a month, depending on geographical proximity to Dar es Salaam.

Sole proprietorships and partnerships are not obliged to register a business name, unless they adopt a name different from that of the owner(s), but any other agricultural business must obtain a certificate of registration by registering its business name with the **Business Registration and Licensing Agency (BRELA)**, either directly or through the **Tanzania Investment Center (TIC)**.<sup>45</sup> The registration requirements are not onerous, requiring only information generated within the business itself. The procedure involves a name search that is reported to take three business days but is normally completed within seven business days from application and costs less than US\$4.

43 USAID/BizCLIR, *Tanzania's Agenda for Action* (February 2008).

44 Or TSH 10 million per month over three consecutive months.

45 The Tanzania Investment Center is provided for under Section 4 of the Tanzania Investment Act (1997) and mandated to promote and facilitate investment.

Businesses incorporated either as private companies,<sup>46</sup> public companies, branches of foreign companies or state-owned enterprises<sup>47</sup> are required to obtain a certificate of incorporation or, in the case of branches of foreign companies, a certificate of compliance from BRELA by submitting the relevant company documents and paying the necessary fees. Fees vary according to the size of the company as determined by shareholders and share capital but are less than US\$400 for domestic companies. Foreign companies are required to pay a further US\$800 for the filing of additional documents, all of which can be generated by the applicant. According to reports, the process takes no more than five business days from receipt of a completed application and all relevant documents.

In addition to the above, businesses are required to obtain an annually renewable **General Business License**.<sup>48</sup> Section 5 of the **Business Licensing Act (1972)** exempts primary agricultural businesses, (including crop and livestock production, horticulture as distinct from floriculture, milk production, and the retailing of own farm primary production), from the general business license requirement. Nevertheless, all agricultural businesses that engage in value addition, including trading, packaging, and processing, are required to hold a general business license. Finally, under the **National Industries (Licensing and Registration) Act (1967)**, those businesses involved in manufacturing require an industrial license, although small-scale manufacturers (less than five employees) are exempt from this requirement. The license is obtained through BRELA or TIC from the Industrial Board.

General business licenses are classified either as Schedule A or Schedule B licenses. The Ministry of Industry, Trade and Marketing issues Schedule A licenses to businesses with a national or international scope of operations that are not limited to a specific locality within Tanzania. The application process requires the payment of fees that vary according to the



nature of the business and the submission of company documents together with verification of business premises and a valid TIN. The process normally takes no longer than 14 days to complete. The Trading Offices of local government (urban and district) authorities issue Schedule B licenses to businesses that intend to operate solely within a local area.<sup>49</sup> Respondents have indicated that various local authorities have different requirements for the Schedule B licenses. The application process for Schedule B licenses is more variable and less certain than that for Schedule A licenses, taking between three days and up to three months.

A substantial proportion of small-scale agricultural producers are organized into cooperative societies, within a hierarchical structure whereby primary cooperatives join to form cooperative unions, which are themselves part of a national Tanzanian Cooperative Federation. The cooperative societies are administered under the provisions of the Cooperative Societies Act (2003). Cooperative societies are registered upon application to the Registrar of Cooperative Societies. The application requires a copy of the society's by-laws, a study demonstrating the viability of

46 Defined as having (1) between 2 and 50 shareholders and (2) specific restrictions on the transfer of shares.

47 Although the law allows for these four different forms of incorporated business, some respondents noted the additional need for single ownership, which is not yet allowed.

48 As specified in the Business Licensing Act (1972)

49 This procedure will shortly change as discussed in this chapter's Legal Framework section.

the cooperative's intended operation, and the application form signed by 50 members. A considerable number of both primary cooperatives and cooperative unions throughout each district are evidence of the relative simplicity of the registration process.

In addition to the above, agricultural businesses may need to obtain subsector-specific licenses to conduct their operations (e.g., licenses from the Tanzania Food and Drug Authority in the case of milling businesses or from the Tobacco Board in the case of tobacco buyers). Nevertheless, the procedures listed in the preceding paragraphs are sufficient to meet the overarching requirements for establishing a functional agricultural business entity in Tanzania. Although specific exceptions were recorded, respondents generally reported that these procedures were not onerous and were normally carried out within a reasonable period, with the notable exception of Schedule B license procedures.

## LEGAL FRAMEWORK

The current legal framework for business registration and initial licensing meets the needs of most agricultural businesses. The legal framework surrounding business licensing, however, is due for imminent revision upon the implementation of the Business Activities Registration Act (2007). This anticipated revision should take place before the end of 2010. This act will repeal the **Licensing Act (1972)** and provide instead for a single central registry operated by BRELA, incorporating the business names registry, registry of companies, general business licenses, and sector-specific licenses on a once-only basis that will not require annual review. If this act can be implemented as worded, it would remove the most common complaint of respondents (i.e., the delays and uncertainty associated with Schedule B licensing through local government offices). Observations of institutional and infrastructural capacity, however, suggest that such implementation may experience significant hurdles at the outset.

### KEY LAWS AND REGULATIONS

- The Business Activities Registration Act (2007)
- The Licensing Act (1972)
- The Land Act (2004)
- The Fair Competition Act (2003)
- Cooperative Societies Act (2003)

Beyond the sphere of business registration and licensing, agricultural businesses face other issues that must be addressed during business start-up, the most pervasive being the availability of information. Within the context of the legal framework, respondents almost universally noted the lack of readily available information regarding the legal instruments that governed their operations, including not only the initial business registration and licensing but also land tenure, water rights, health and safety, employment, and marketing. Although a considerable number of acts have been posted on the Internet, this information is not yet widely available to the general public of Tanzania. Similarly, printed copies of most legislation are not widely available and are only rarely published in the most common language of rural communities—Kiswahili. Commentaries on individual laws cannot be obtained, with the exception of provisions of legislation relating to investment and legislation. Consequently, not only are members of the general public often unaware of their rights and obligations under the law, but also the climate of uncertainty can result in poor business planning and reduced investment.

The **Land Act (2004)** provides for access to the fundamental agricultural input, land, while the Customary Right of Occupancy enhances land tenure for very small farms. The legal basis under which foreign investors can purchase the right to occupy land, however, is unclear. Similarly, the process whereby those currently occupying land without rights may receive compensation to vacate and the costs charged to the investor as a “compensation premium” are not clearly detailed or regulated. This report's

chapter on Registering Property considers the issue of access to land and land tenure generally in greater detail. Respondents considered other inputs, including water, agrochemicals, and labor to be adequately legislated, although some seed companies saw the legal restrictions on the importation of new seed varieties as excessive.<sup>50</sup>

Further constraints to starting a business may arise from the legislation providing for the various commodity boards. Commodity-specific boards regulate cashew, coffee, cotton, meat, pyrethrum, sisal, sugarcane, tea, and tobacco. The various acts empower each board to varying extents, ranging from the registration and licensing of industry stakeholders, (e.g., including the registration of all coffee growers, tobacco growers, and livestock producers and the licensing of all tobacco traders, meat traders, and sugar manufacturers), to the control of seed breeding and multiplication in the case of coffee and tobacco. The legislation for all boards contains two common themes—i.e., the power of each board to raise levies on the produced or processed crop and the mandate of the board to monitor producer and buyer negotiations and pricing to ensure a fair price. In the case of tobacco, the board is mandated to set a “minimum indicative price” for each grade, although the act does not define the meaning of this term.<sup>51</sup>

The design of the acts providing for subsector-specific boards was clearly to promote stability within each subsector and intended to promote development without the overexploitation of producers, who, it was assumed, might have limited bargaining power in negotiations with a small number of buyers or processors. At the same time, restrictions on the export of raw materials are designed to promote domestic value addition. Nevertheless, irrespective of the long-term (beneficial or detrimental) impacts of these provisions, they constitute potential constraints on the start-up and ongoing business activities of both producers (who, for example, may wish to enter into contracts outside the existing market arrangements sanctioned by

boards) and buyers (who may wish to enter into trading without domestic processing).

The legal framework of the commodity boards also contributes to ambivalence on the subject of competition. While the **Fair Competition Act (2003)** is adequately drafted to achieve free and fair competition, the boards are empowered to undertake activities that may restrict the activities of stakeholders and thereby inhibit competition, particularly between buyers of commodities. Such restrictions have the potential to limit the efficiency of markets and the overall value chain of each commodity.

The laws governing the application of animal and plant quarantine measures provide a clear and reasonable set of rules for the agricultural community to follow. Requirements for good agricultural practices requirements are not yet regulated in all subsectors (especially the livestock subsector), which limits the potential export markets in these subsectors.

In most cases, the legal framework supporting agricultural business start-up clearly defines the roles and responsibilities of all stakeholders. Nevertheless, the legal framework could be strengthened in some instances. Various aspects of the legal framework are ambiguous (e.g., the different regulations governing the private acquisition of land), interpreted unevenly (e.g., Schedule B licensing), poorly enforced (e.g., regulations to prevent deforestation), or potentially conflicting (e.g., competition law and law mandating a commodity board to set indicative prices). The legal framework surrounding agriculture, agribusiness, and rural development generally depends on the clear promulgation of all legal instruments throughout rural areas for its effectiveness. This has yet to be achieved. Lack of access to either the laws themselves, or to relevant commentaries, results in inadequate awareness and increased uncertainty. The lack of clarity surrounding the legal framework is unlikely to promote the desired level of economic investment.

<sup>50</sup> According to the Seeds Act (2003), at least two seasons of trials are required before new seed varieties can be released onto the Tanzanian market.

<sup>51</sup> Tobacco Industry Act (2001), Section 42.

As discussed in the 2008 BizCLIR report's chapter on Starting a Business, the **Cooperative Societies Act** of 2003 was enacted to encourage and support the development of cooperative societies, both agricultural and nonagricultural and substantively designed to counter Tanzania's unfortunate history of cooperatives (as detailed in that chapter). Although the letter of that law seems to encourage independence in the workings of cooperatives, including the contracts they enter into on behalf of their members, the practice of cooperatives' engagement in contracts revealed itself during this diagnostic to be considerably different from the law's intentions.

The 2003 law emphasizes sound governance of cooperatives: both new and established cooperatives are required to form boards that are directly elected by their membership. A code of conduct for cooperative management, also established in 2003, limits cooperative board members to no more than three three-year terms. A member of an established cooperative must be an active member for at least three years before being eligible to run for the board.

In addition to increased emphasis on corporate governance, the essential fact of the new legal regime is that it authorizes cooperatives to do business with a great deal more freedom than they exercised in the past. For example, under the law, primary cooperatives are no longer beholden to the actions of the secondary organization ("union") of which they are a member, which is in turn no longer answerable to the directives of the government. In theory, primary cooperatives may choose their customers and may sell not only to the union, as in the past, but also to private buyers. Under the new regime, cooperatives were no longer to have the benefit of extensive government preferences and specialized treatment. Unlike in the past, the law does not require that a fixed percentage of the price received by a union be returned to the producer. Similarly, cooperatives no longer receive preferential foreign exchange benefits from the government and

must now use financial markets like any other seeker of foreign exchange. They also no longer receive preferential terms on loans from government-run banks.

Despite the market-oriented aspects of the Law on Cooperatives, in practice, cooperatives still benefit heavily from reservations to them of business opportunities through crop-based legislation (as detailed in this report's Competition chapter,) and by implementation of the warehouse receipts law (as discussed in the chapter on Getting Credit). Throughout this diagnostic, agricultural professionals reported that the large cooperatives remaining from Tanzania's socialist period benefit from regulations that favor them over independent farmers' associations or primary cooperatives that wish to operate independently.

## IMPLEMENTING INSTITUTIONS

The majority of agricultural businesses will interact with three or four key implementing institutions during business start-up, including BRELA, in the case of foreign investors the TIC, the Tanzania Revenue Authority (TRA), and local government offices. A number of other institutions may be involved depending on the nature of the business and the commodities produced or processed. The following chapter assesses the functions and capacities of these implementing institutions.

BRELA is the principal implementing institution for registering business names, incorporating companies, and securing Schedule A general business licenses. The institution has adequate capacity to meet the requirements of stakeholders in Dar Es Salaam, who report that it provides a timely and generally efficient service, including a website ([www.brelatz.org](http://www.brelatz.org)) that provides information on business registration requirements and procedures. Its single central location, however, restricts BRELA's capacity to meet the needs of businesses elsewhere in the country (particularly in Arusha). Business



## KEY IMPLEMENTING INSTITUTIONS

- Business Registry and Licensing Agency (BRELA)
- Tanzania Investment Center (TIC)
- Tanzania Revenue Authority (TRA)
- Local and district governments
- Tanzania Food and Drug Agency (TFDA)
- Tanzania Bureau of Standards (TBS)
- Registrar of Cooperatives
- Tanzania Pesticide Research Institute (TPRI)

owners often need to make repeated trips to Dar Es Salaam to follow up on the business registration process, which can be costly and time consuming. The frequency of repeated visits would decline if BRELA were to improve the efficiencies of its search, filing and processing, while the provision of a decentralized regional or district service could reduce the necessity for long trips. BRELA is reportedly implementing these improvements as it gears up to meet the requirements of the Business Registration Activities Act (2007), under which a single (computerized) registry will be accessible through decentralized offices. While the training of staff and system (software and hardware) acquisition are complete, however, concerns remain over future functionality. The effectiveness of a centralized registry operating through decentralized terminals is extremely sensitive to the supporting infrastructure, especially the consistent availability of power and communication in rural areas, which cannot yet be guaranteed.

TIC, which operates under the supervision of the Ministry of Planning, Economy, and Empowerment, is mandated to facilitate and promote investment, both foreign and domestic, regardless of size. Its facilitation function is to “obtain all necessary permits, licenses, approvals, consents, authorizations, registrations, and other matters required by law for a person to set up and operate an investment.”<sup>52</sup> This mandate would suggest that TIC is intended to be a “one-stop shop” that could meet all investors’ registration and licensing requirements through its single office. To this end, the TIC office

contains representatives of six other government agencies that are most frequently involved in investment projects, i.e. BRELA, TRA, the Immigration Department, the Ministry of Lands, Housing, and Human Settlement Development, the Ministry of Labor, Employment, and Youth Development, and the Ministry of Industry, Trade and Marketing. In addition, the Investment Act specifies that TIC should enjoy a special relationship with these agencies that requires a response to requests for registration, licenses, or other permits to be made within 14 days. Nevertheless, despite these provisions, the majority of stakeholders reported that TIC is not a “one-stop shop” and that investors almost always need to provide additional information. Some reported that while TIC makes useful information for investors available on its website, some of that information is not up to date; others noted that the capacity of TIC officers to actually obtain permits, or even to facilitate the process, is limited: in some cases, TIC simply provides a list of the permits required and the offices where they might be obtained.

One specific problem in an area key to agricultural development was prominent, namely, the provision of access to land. Tanzanian law does not directly permit foreign investors to hold title to land. To overcome this constraint, TIC is under a mandate to develop a “land bank,” a database of land available for development, to which TIC will obtain title for 99 years, granting derivative rights to foreign investors for 98 years. In practice, the database is out of date and effectively nonfunctional. Foreign investors reported little confidence in this key service, preferring instead to identify land themselves and to sublease from Tanzanian nationals.

Overall, investors reported that while TIC served a useful purpose, it provided less than expected. This perspective contrasts with that of the World Association of Investment Promotion Agencies, which in 2007 named TIC as the world’s best investment promotion agency for after-service care. While it is

<sup>52</sup> Tanzania Investment Act (1997), Section 6.

evident that the legal framework and administrative capacity of TIC are adequate to meet requirements, continued attention appears to be needed, especially in research and human resource management, if TIC is to sustain standards of service.

TRA is inevitably involved in the process of starting a business, primarily as the source of the taxpayer identification number (TIN), required for every active business, and for the purposes of VAT registration. In both these areas, investors report prompt service. One significant concern, however, was the accuracy of the information provided to investors. Although TRA does maintain a website detailing tax rates, thresholds, exemptions, and other relevant information ([www.tra.go.tz](http://www.tra.go.tz)), the site does not always receive updates to reflect ongoing changes.<sup>53</sup> Moreover, in one key area (VAT ratings), it appeared to be impossible to obtain definitive advice on the VAT status of proposed investments. Such a lack of information hampers effective business planning and contributes to a climate of uncertainty. Such shortcomings in information notwithstanding, investors generally considered the performance of TRA during the process of starting a business adequate and in line with standard international business practice.

The local government (district) authorities are currently responsible for the issuing of the Schedule B general business licenses required of all locally focused businesses. The requirements for the issuing of Schedule B licenses, which are not consistent among districts, show a marked lack of clarity. Published information on the licensing process is rarely available, and almost all applicants indicated that the process was one of “trial and error.” Time taken to issue a license, for example, varied from less than a week to three months. This variation appeared to be due to both limited capacity in the district authorities and limited knowledge of requirements among applicants.

In contrast to the requirements for a Schedule A license (all of which the applicant can provide), some district authorities require the signatures denoting approval of various local offices before issuing a Schedule B general business license. The rationale for such a requirement is unclear, and the potential for delay and corruption is inevitable.

Full implementation of the Business Activities Registration Act (2007) should resolve both the issues described above. When canvassed, however, the substantial majority of rural respondents considered that obtaining the Schedule B general business license required little significant investment in either time or money. In this regard, the performance of the district authorities appeared to be more satisfactory than the isolated criticisms suggest.

The various boards associated with specific commodities can play a major role in the initial development of agricultural businesses. Each board is mandated to implement specific legislation, including that related to the registration of stakeholders. In many cases, registration of individuals is beyond the capacity of the boards concerned, which have consequently registered primary cooperatives rather than individual producers. In other cases, the numbers of stakeholders (e.g., tobacco buyers) may be very small, so that the timely registration of individuals is within the capacity of the board. The composition of each board has been prescribed to minimize the influence of individual stakeholder groups so that the possibility of bias is remote. Nevertheless, sufficient potential does exist for the exclusion of potential investors through the use of the registration process, and its associated conditionalities, to merit further review of all board registration processes by the Fair Competition Commission.

Almost all agribusinesses that add value to primary products must obtain licenses from the Tanzania Food and Drug Agency (TFDA) and the Tanzania Bureau of Standards (TBS). Interviewees were critical of both institutions,

<sup>53</sup> The website's own on-line poll shows that more than half of respondents thought that it “needs improvement.”

citing delays first in initial inspection and subsequently in the issuing of licenses. The time taken to obtain the initial TFDA license for businesses sampled in Morogoro<sup>54</sup> (three hours away from Dar es Salaam) varied between 2 and 12 months. TFDA licenses are subject to annual renewal, which can be handled locally; if the application is made well in advance, licenses can be renewed in a timely manner. Rural businesses dealing with the TBS reported substantial delays in obtaining the license, which often required several visits (both to the TBS offices in Dar es Salaam and by the TBS to the business premises) and inspections with repeated sampling that were not always well justified. Several respondents noted that the process of obtaining a TBS license had taken more than a year.

Management at both these institutions is well aware of these criticisms, but is limited by the centralized nature of their operations. TFDA has attempted to develop a zonal structure, co-opting local health officers to undertake some inspections. Such officers, however, are not well suited to examining agricultural premises, so that considerable retraining will be required if this initiative is to succeed. The TBS is similarly short staffed and faces similar problems of transport. Moreover, the TBS frequently relies on the laboratory analysis of samples, but lacks both laboratory equipment and testing reagents, so that samples may decay before analysis. This outcome may not only necessitate repeat sampling but also, more significantly, delay the issuance of the sanitary or phytosanitary certificates required for export.

Until these issues of capacity can be addressed, neither the TFDA nor the TBS is able to discharge its legal obligations effectively. To meet the requirements of rural businesses, the TFDA needs to develop infrastructure at the local government level and requires technical assistance to raise operational standards. Under the current institutional framework, the TBS also needs improved access to functional laboratory facilities, (although in the long term, this may

not be the most appropriate solution).<sup>55</sup> In the absence of such improvements, the licensing procedures must either become cursory or, as appears to be more common, become subject to inevitable delay.

The registrar of cooperatives undertakes the registration of cooperatives, cooperative unions, and savings and credit cooperative societies (SACCOS). The Office of the Registrar is competent to administer applications rapidly but lacks the resources to undertake a critical analysis of applications. The registration process thus provides little consumer protection as far as members' assets (especially produce traded through the cooperatives) or commercial bank loans are concerned.

The **Tanzania Pesticide Research Institute (TPRI)** is established under the **Tropical Pesticides Research Institute Act (1979)** to register pesticides and oversee the trials necessary for compliance with registration. The trials procedure was reported to be unnecessarily long and costly, restricting the importation of chemicals to either generic products or those required in volumes large enough to justify the cost of registration, and thereby limiting the farmer's access to pesticides, and reducing sectoral efficiency.

## SUPPORTING INSTITUTIONS

Although supporting institutions are most relevant to the ongoing operation of a business, they can also provide information, guidance, and support during the process of initial business planning and start-up. In some countries, supporting institutions will also assist in and may indeed implement licensing, certification, and other registration activities. In the context of a developing economy, vibrant supporting institutions can also stimulate growth by providing government with direct input on the sector-specific requirements. This section assesses three different aspects of support commonly provided to entrants to the agricultural sector, i.e., advocacy, business support, and technical services.

<sup>54</sup> A regional administrative center with a population exceeding 200,000.

<sup>55</sup> The scope of the TBS is considerable and somewhat unusual when compared with those of bureaus of standards in other countries. Many such bureaus restrict the scope of their activities to the setting of standards and the accreditation of separate agencies tasked with monitoring standards, as opposed to actively testing products themselves. In this way, the TBS could devolve much of its testing requirements to other institutions that could then develop the laboratory and other testing capacities to meet their specific needs. In this specific situation, the TBS certification might well be undertaken by the TFDA provided that the TFDA could be strengthened to meet TBS technical requirements.

## ADVOCACY

Advocacy is a mixed bag. On one hand, the Tanzanian government has actively promoted dialogue with the private sector. The Tanzania National Business Council (TNBC) provides a mechanism for dialogue through which the Tanzania Private Sector Foundation (TPSF) and nominated business associations can meet with government ministers under the chairmanship of the president. The Tanzanian Chamber of Commerce, Industry and Agriculture (TCCIA), Tanzania Horticulture Exporters Association, (THEA), Tanganyika Farmers Association (TFA), and Tanzania Seed Trade Association (TASTA) all fall under the umbrella of the (TPSF).

Within this context, the Agriculture Council of Tanzania allows liaison between these private sector agencies and government for the generation of proposals for submission to the TNBC. Other subsector specific representations are channeled through the various commodity boards according to their legislated mandates.

On contrast, notwithstanding the considerable institutional framework available for dialogue, and the substantial progress the TPSF has made, the extent to which agriculture and agribusiness are actually supported by independent and representative advocacy groups is limited. Although the Tanzanian Chamber of Commerce, Industry and Agriculture is represented in each of the country's rural districts, the need to represent commerce and industry generally dilutes its agricultural advocacy. No farmer-based and -financed advocacy groups represent the agricultural sector (with the possible exception of the Agricultural Non-State Actors Forum, or ANSAF, MVIWATA and the TFA, which is based in Arusha so that regular access to government is limited). Instead, the representative institutions tend to be top-down initiatives, operating as elements within government -sponsored frameworks and supported mostly by donor funding. This arrangement may be the most appropriate, given the limited capacity of most (small-scale) farmers to finance their own representative associations, but it raises concerns

## KEY SUPPORTING INSTITUTIONS

- Tanzania National Business Council (TNBC)
- Tanzania Private Sector Foundation (TPSF)
- Tanzania Chamber of Commerce, Industry, and Agriculture (TCCIA)
- Tanzania Horticulture Exporters Association (THEA)
- Tanganyika Farmers Association (TFA)
- Tanzania Seed Trade Association (TASTA)
- Agricultural Non-State Actors Forum (ANSAF)
- MVIWATA
- Commercial banks
- SACCOs
- Universities

of both sustainability and accuracy in reflecting the real priorities of the rural producer.

Subsector-specific trade and commodity associations are similarly limited in their capacity and scope. The THEA is exceptional in its effectiveness, considering the limited number of staff and resources that it possesses. Similarly, the TASTA has achieved significant improvements for its members from very limited resources.<sup>56</sup> The capacity of these institutions is much less than that found in neighboring countries, however, while most other subsectors lack any form of independent representation at all. Although independent trade and commodity associations need to be considerably strengthened, perhaps their relative weakness and scarcity is indicative of more deep-seated problems within the subsectors themselves.

## BUSINESS SERVICES

Although limited business services are available in Dar es Salaam and Arusha, such services are almost nonexistent in rural areas. When required, legal advice, accountancy, financial services, and business development services are generally sourced from Dar es Salaam. In most cases, low demand and economies of scale limit the extent of rural service provision, although with technological advances, financial services in particular may become increasingly accessible. Currently, only 3 of more than 20 banks

<sup>56</sup> The TASTA is essentially operated by a single executive officer.

in Tanzania operate rural branch networks. The National Commercial Bank, however, is currently increasing the geographical scope of its automated-teller machines, while Standard Chartered Bank has substantially upgraded its online banking to minimize the time business customers must spend traveling to branches.

Arguably the most urgent need from the perspective of a new agricultural business is the increased availability of business planning support. Business planning services are almost entirely restricted to Dar es Salaam with the limited exception of some NGO projects. Both fundamental business education and more advanced planning services are widely required to use the limited volume of finance available successfully. Currently, most NGO and government extension work is concerned primarily with the technologies of production, but increased emphasis on basic business and marketing skills is necessary if the rural sector is to become financially vibrant.

One key aspect of business planning relates to the establishment of cooperatives, especially savings and credit cooperative societies (SACCOS), which may be responsible for substantial sums of money, including bank loans and members assets. The registration required to set up a cooperative, however, is relatively simple, and although the registrar of cooperatives requires that a business plan be submitted to demonstrate the feasibility of the proposed operation, it does not require detailed assessment, so that there is little critical oversight of a cooperative's technical, management, or financial capacity. The possibility of substantial losses occurring as a result of limited business management skills is real, but it could be reduced if business planning support were made available either through the Federation of Cooperatives or through the private sector, including those commercial banks seeking to provide finance to agriculture through the cooperative network.

A further essential input to business planning is the availability of market information. Mobile

phone technology has greatly facilitated price discovery for all traders, so that the day-to-day importance of marketing information systems has been substantially reduced. Compiled historical information, though, is still necessary both for business planning purposes and for policy development. Such compilations are not readily available. Investors must do their own market research not only on prices but also on volumes, quality requirements, and packaging if they are to successfully penetrate either local or export markets.

### TECHNICAL SERVICES

The national capacity to undertake agricultural research and development is vested in one university (Sokoine University at Morogoro) and seven zonal research centers. Finance for research is limited and provided predominantly by donors. Despite these limitations, the capacity still exists to conduct useful and relevant research that could contribute to increased productivity. Moreover, Sokoine University is a member of the Association for Strengthening Agricultural Research in Eastern and Southern Africa and as such has access to the work of other research institutes throughout the region. The impact of most research work, however, is constrained by the severely limited capacity of the extension service. Interviews suggested that no more than one or two extension officers support each district, each covering over 500 households, so that the dissemination of improved technical practices is very slow. Although the government intends to increase the number of extension workers from 4,000 to 11,000, this number would still require each extension officer to deal with more than 100 households.

Private sector extension services are available mainly in the cash crop subsectors, especially tea, coffee, and tobacco. The more general services provided in other countries by fertilizer and agrochemical companies are not provided to any significant extent in Tanzania. Respondents in these businesses noted that the limited volumes of sales do not justify the overheads of the

extension staff. Nevertheless, both fertilizer and agrochemicals are widely available in Tanzania. Both businesses operate in strongly price-competitive markets but are constrained by limited demand. Sales are often too low to justify the cost of registering new agrochemicals, so that the range of products available is also limited.

It is not only the availability, however, but also the focus of extension services that requires attention. Most extension officers are trained to assist in increasing productivity, with little concern for the market. This bias toward production and away from business and market awareness is a fundamental characteristic of the Tanzanian agricultural sector reflected in the protective nature of some commodity board legislation,<sup>57</sup> in the extension focus on production as opposed to marketing, and in the observed widespread bias against agricultural traders and merchants as being in some way inherently exploitative of primary producers. This bias reportedly affects the decisions of local courts and other authorities, who appear to side repeatedly with producers when contractual arrangements are broken and to impose a higher frequency of ad hoc levies on trading activities than on any other sector.

### VALUE CHAINS

One consequence of the above has been to constrain the numbers of traders available to buy crops, thus limiting the development of effective value chains for agricultural produce in Tanzania. While commodities subject to commodity boards have maintained some access to markets, it has not always been fully open or competitive, so that cashew and coffee producers in particular have resorted to illegal sales outside of board arrangements. Producers of those commodities not controlled by boards, however, face restricted access to markets through limited numbers of buyers. Primary producers are at a negotiating disadvantage under such conditions and have to accept lower prices as a result. This situation might be resolved not by placing further constraints on traders but by removing the barriers to trade,

stimulating the trading sector, and thereby increasing demand for primary products.

Similar limitations apply to downstream processing activities. Limited understanding of the need for consistent quality and volumes of production among producers, within a social climate that endorses this limitation, has meant that little value addition has taken place in Tanzanian agriculture. In the past, this failure has also been caused by the limited purchasing power of consumers that has restricted demand for value-added products. Nevertheless, the growing industrial and manufacturing sectors are creating a rapidly increasing demand that could be met locally if agro-processors could improve their access to consistent sources of supply. Under current circumstances however, the efficiencies of most value chains are substantially suboptimal, so that many imported foodstuffs (especially those from Kenya) have a competitive advantage in the market.

### PUBLIC SECTOR SUPPORT FOR INVESTMENT

Beyond the activities of public sector implementing institutions and supporting agencies is the support provided by local government agencies, courts, and police in protecting investments in agriculture. Many investors reported deficiencies in this area. One common complaint was related to re-encroachment on land properly acquired by an investor, after due compensation had been paid (either directly or through the TIC). Sometimes within two years of acquisition, villagers would reenter land, and the investor received little support for their eviction. The second commonly quoted security was predial larceny, which was reported in areas where food security was an issue. In both cases, respondents complained that recourse through the courts was ineffective, in that even when cases might be won, the court orders were rarely carried out. This lack of capacity to maintain security on the part of either the courts or the police constitutes a further disincentive to investment.

<sup>57</sup> More than one commodity act notes the need to protect producers from exploitation.

## SOCIAL DYNAMICS

### PROFITABILITY OF TANZANIAN AGRICULTURE

The profitability of the agricultural sector is low. Data from the TIC suggests that between 1999 and 2006, while other sectors (such as manufacturing) experienced high levels of profitability and growth, agricultural investment was low and consistently negative in its returns (see table below). This appears to be true of most sub-sectors within the industry, with the possible exception of tobacco. Export subsectors (with the possible exception of tobacco) complained of low economies of scale, high transport costs, and relatively weak infrastructure as compared with competitors, while those producing for the domestic market noted the limited marketing infrastructure and low purchasing power of consumers that resulted in thin markets where producers were frequently disadvantaged.

**Productivity levels**, especially for domestic crops, are low. The low levels of improved seeds and fertilizer inevitably result in yields that are among the lowest in the East African

Community and in Sub-Saharan Africa generally. Such yields reflect the limited soil fertility and the uncertain nature of the climate over large areas of the country but are also directly affected by the limited extent of the market. Until recently, most of the food that was produced circulated within the rural economy, and there was only limited demand for agricultural produce from other sectors. As a result, prices have been consistently low and insufficient to justify additional investment in inputs. Infrastructural constraints (especially the cost of transport) continue to restrict market demand, but as these are gradually removed, it is inevitable that not only prices but also profitability and productivity will increase.

However, Tanzania indisputably faces some inherent constraints that will prevent competitive domestic production in some subsectors. As infrastructural improvements reduce barriers to markets, some areas will face increased competition from both domestic sources and imports. Large areas of the country are likely to be most competitive in extensive livestock production.

RETURN ON INVESTMENT BY SECTOR IN TANZANIA, 1999–2006 (US\$ MILLIONS)

Sector	1999	2000	2001	2002	2003	2004	2005	2006	Total
Agriculture, hunting, forestry and fishing	(6.2)	(5.0)	(28.7)	(6.1)	(5.8)	(4.1)	(2.8)	(17.3)	(76.0)
Community, social and personal services	1.2	0.1	(0.7)	(1.2)	(1.2)	(1.3)	(1.0)	(0.4)	(4.5)
Construction	0.4	1.9	5.0	5.3	2.5	4.4	(14.3)	(3.5)	1.7
Finance, insurance, real estate, and business services	32.5	39.0	35.8	37.3	45.0	65.7	78.8	89.4	423.5
Manufacturing	64.1	45.4	357.6	57.8	67.9	85.1	399.1	103.2	1,180.2
Mining and quarrying	(2.9)	(2.6)	(7.8)	27.7	70.1	61.9	(31.3)	(9.3)	105.8
Transport, storage, and communication	8.5	(1.2)	(10.0)	(5.5)	(5.8)	15.5	(34.2)	49.4	16.7
Utilities	—	(0.6)	(1.5)	(5.3)	(3.5)	15.4	(4.8)	(13.0)	(13.3)
Wholesale and retail trade, catering and accommodation services	(20.6)	(58.5)	(73.8)	(31.9)	(25.2)	(20.6)	(34.2)	(0.3)	(265.1)
<b>TOTAL</b>	<b>77.0</b>	<b>18.5</b>	<b>275.9</b>	<b>78.1</b>	<b>144.0</b>	<b>222.0</b>	<b>355.3</b>	<b>198.2</b>	<b>1,369.0</b>

Source: Tanzania Investment Report 2007.

Attempts to intensify crop production in such areas should be carefully reviewed.

## NATURAL RESOURCES

While there is an ample supply of land available for agriculture,<sup>58</sup> a considerable part of that land is uncleared and inaccessible, without the construction of feeder roads. Although the soils of much of Tanzania are deep and well drained, they are typically acidic and low in phosphate, and have low water-holding and cation-exchange capacity (CEC). In addition, considerable areas are also deficient in zinc. Such soils may be suitable for the cultivation of sisal, tea, and, to a lesser extent, sorghum but will not yield well for most crops, including cereals, without amendment. In particular, most soils will benefit from the application of phosphate and of substantial volumes of lime. The limited CEC also results in the need to apply nitrogen regularly.

For many subsistence farmers, the application of artificial fertilizers is either too expensive or too risky, or they are simply not available. Statistics on the use of fertilizers are not readily available. Government estimates (40,000 metric tons) and commercial figures (16,000 metric tons) differ considerably but would imply that between 10% and 15% of all farmers apply artificial fertilizer. Although lime is available in Tanzania, the costs of transport severely restrict its use. As a result, some maize-growing areas increase soil fertility through the application of animal manures, mainly cattle dung, when these are available. Generally however, the available volumes of animal manure are well below optimal, and yields are constrained as a result.

Tanzania experiences a wide range of climates. The western and southern regions experience regular rainfall and can produce good dry-land crops of maize and sorghum. However, large areas in the central part of the country receive unreliable rainfall and would benefit considerably from irrigation. The country has substantial unexploited water resources for irrigation. Many of these resources require

additional infrastructure (including access roads and electricity) if they are to be used efficiently. Under the existing land-use systems, such irrigation would be most cost effectively achieved through communal small-scale irrigation schemes, whereby a number of small farmers would use water extracted from a single point on a shared basis. Experience elsewhere has demonstrated that the success of such schemes depends as much on the institutional infrastructure as on the physical systems built.<sup>59</sup> The necessary skills and experience to develop, administer, and manage communal small-scale irrigation schemes are not readily available, and considerable training and extension will be required if the existing water resources are to be used to their fullest potential.

## DOMESTIC MARKETS

Although Tanzanian agriculture is best known for its coffee, tea, and horticultural exports, the domestic market is considerably larger than the export market. Purchased food is the main source of consumption for approximately 65% of all domestic households,<sup>60</sup> and with increasing urbanization, this proportion will increase. While low-cost staples (maize, rice, and to a lesser extent sorghum and wheat) dominate much of the cost-sensitive domestic market, demand for higher-priced meat and processed foods is growing, as the manufacturing and tourism sectors continue to expand. The marketing infrastructure to service this demand is currently inadequate, and considerable investment is required not only in processing and marketing but also in the supporting infrastructure (including laboratory facilities, cold chain infrastructure, and transport) to meet the growing domestic demand.

## INTERNATIONAL MARKETS

Tanzania's export sector has not developed significantly over the past five years, largely because of increased competition from markets from other countries that have enjoyed greater investment and increased productivity. Tanzanian horticultural producers note that competitors

<sup>58</sup> A recent assessment by the Food and Agriculture Organization of the United Nations (FAO) found that Tanzania has 55.2 million hectares (Mha) of potential area for rain-fed crop production from the total land area of 93.8 Mha. About 10.8 Mha of this area are in use for crop production.

<sup>59</sup> E.g. the small-scale irrigation systems developed to produce bananas in the Caribbean and the many communal irrigation systems established in Tigray and Oromia in Ethiopia.

<sup>60</sup> According to a survey undertaken by the FAO in 2008.



in Ethiopia and Kenya have lower-cost access to markets and enjoy superior infrastructure and better physical conditions (climate and soils). Tea and coffee producers note the superior quality of Kenyan and Ugandan production (again due mainly to physical advantages), while the cotton subsector is limited by climate and the small-scale dryland climate to lower quality, short-staple lint. Problems within the industry related to marketing procedures appear to have restricted cashew exports and production. Overall, the outlook for increased investment in these subsectors is not strong. One key advantage that Tanzanian agriculture does possess is the seasonality of its horticultural products, which does not match that of other producers in the region. This advantage would enable exporters to find a temporal market niche when produce from neighboring countries is unavailable. The market for these products would exist not only in Europe but also in the neighboring countries themselves. Such regional opportunities could be developed further.

Tanzanian agriculture possesses a second innate advantage in its cooperative structure. Some cooperatives have been poorly managed, have little sense of commercial responsibilities and are not attractive as business partners. Traders, however, report that others (particularly those cooperatives that have interacted with the Tobacco Board) have developed sound commercial practices and are effective in organizing producers and dealing with buyers. These cooperatives—although primarily engaged in tobacco production—nevertheless produce a range of other domestic crops and represent a potential resource for buyers, particularly those willing to enter into out-grower contracts seeking consistency of quality and supply.

## GOVERNMENT INTERVENTIONS

With two significant exceptions, the state does not play a strong role in the agricultural and rural sector economy. Private sector respondents indicated that the lack of capacity of government-run supporting institutions frequently

obliges private sector initiatives to rely on their own resources. A strong culture of competition exists among those farmers producing staples for direct sale on the open market and among those businesses buying, processing, and selling commodities, including assemblers, and oil-seed, animal feed and flour mills. Competition between larger buyers, however, is not so obvious. Small producers complain of a limited market, within which a small number of large buyers can exert downward pressure on prices. For those commodities served by commodity boards, licensing procedures did not appear to stimulate increased competition by encouraging new entrants to the market (see this report's chapter on Competing Fairly).

One area in which state intervention has had a major impact on agriculture is in the regulation of exports, especially the recent bans on the export of cereals, particularly maize. Farmers, traders, and millers all reported that such bans had reduced the profitability of the maize sector at all levels and that the climate for increased investment in domestic agriculture had been damaged by their imposition. This situation had been exacerbated by the unclear manner in which the export bans had been imposed and removed, resulting in opportunistic profits for some traders and millers who had been able to export during a brief hiatus in the ban.<sup>61</sup> The decision to ban exports appeared to have been imposed unilaterally without consulting the private sector. Significantly, a cross section of the farmers, traders, and millers interviewed was not confident of the status of maize exports, and a discussion group could not conclude with any certainty whether a ban was in place. Similarly, the state recently intervened without industry consultation by unilaterally imposing VAT on freight for horticultural exports. (See the discussion box in the Paying Taxes chapter.) The major effect of such a change is not so much the cost of the tax itself—which, as VAT, can eventually be recouped—but the cost of the unplanned changes that it induces within the horticultural sector. The lack of industry

<sup>61</sup> This hiatus resulted in an outpouring of stocks of maize and maize meal to Kenya, effectively negating any positive impact of the ban.

consultation in this and other cases creates a climate of uncertainty that has a depressing effect on business and investment.

The second major government intervention is the Kilimo Kwanza agricultural development program that aims to increase production through increased extension, improved infrastructure, and the subsidized supply of fertilizers through the use of vouchers. The program has had a mixed reception from stakeholders, some of whom perceive it to be lacking in real innovation. The use of vouchers to assist in the uptake of fertilizers by poor households has been openly abused by traders and beneficiaries,<sup>62</sup> but this result is only a small part of a wider program. A more fundamental criticism is that the focus on increased production, without a concomitant effort to improve marketing, may improve household food security but is unlikely to result in increased rural incomes.

### **GOVERNMENT AMBIVALENCE TOWARD COMPETITION AND THE FREE MARKET**

The government and political leadership have overtly supported the concepts of the free market and open competition. At lower levels of administration and throughout many parts of society, however, this sentiment is only partially endorsed. A strong sense of social justice is engrained in some legislation (especially that related to commodity production and marketing), and a failure among many administrators and executive agents to react to minor infringements of the law by those who appear to be disadvantaged has reinforced this view. This philosophy perpetuates corruption, inefficiency, and delay and tends to favor the poor, including the majority of primary producers, at the expense of the better off, including traders and processors. This situation is unfortunate since the primary producers' lack of profitability is due more than anything to weaknesses within the trading and processing chain that result in limited numbers of buyers and weak markets. A major cultural shift is necessary to achieve widespread

recognition of the value of traders and processors to the rural economy and of the need to protect and nurture investments that add value and strengthen the value chain from producer to consumer.

### **GENDER CONSIDERATIONS**

There are fewer women than men in the agribusiness sector. Commenting on the reasons for this, women noted that the fundamental causes had little to do with the legal or institutional framework. Instead, they pointed to the clan-based structure of much of rural society. One woman reported "To be in agriculture, you need land. A father does not want to leave land to his daughters. He knows that they may marry outside of the clan and if they do, then that land is lost to the clan forever, as it goes with the woman to her new family. I was lucky, as one of three daughters, my father had no choice but to leave land to each of us, but if I had brothers instead, they would have got the land." Similarly, men know that their daughters will marry and leave home to support other households, whereas sons may stay within the clan and work with their fathers, for that reason, limited resources will be vested in the education and development of sons rather than daughters.

The clan structure and pattern of intermarriage, indeed the fundamental nature of rural society are thus key factors that limit the number of women in agribusiness. It will require change at this deep seated level before women are able to enjoy equal opportunities in agribusiness.

### **RECOMMENDATIONS**

#### **Increase awareness of business start-up procedures.**

The primary constraint to effective business start-up appears to be the lack of awareness on the part of investors about the nature of the start-up process, including which agencies need to be addressed, what documentation is required, what other conditions might be needed to achieve compliance, and how long

<sup>62</sup> Households receive vouchers equivalent to half the cost of a bag of fertilizer and are expected to pay the difference themselves. In practice, financing this difference is often beyond their means and hence two households use two vouchers to obtain one bag from a trader (who redeems the two vouchers). In other cases, the households were reported to simply sell their vouchers to the trader at a discount to raise cash.

the process might take. This lack of awareness in itself results in delays and inefficiencies in the registration process, often on the part of the applicant. Investors and entrepreneurs also often have limited understanding of the benefits of registration. Beyond initial registration there are issues of taxation (especially VAT) and customs duties and investors' lack of knowledge of land tenure mechanisms and procedures.

This lack of awareness is a fundamental constraint to business start-up. It results in an overly negative perception of the process, creates uncertainty and delay, and inhibits many small businesses from entering the formal sector. The following elements of an awareness campaign should be considered:

1. Commentaries and guidelines for the implementation of all relevant legislation should be prepared in English and Kiswahili in language that all potential applicants can understand.
2. All relevant legislation, commentaries, and guidelines should be made available in English and in Kiswahili, in printed form at government printers, and at all local government offices. The documents prepared by local governments should be available in soft copy to be printed out or copied electronically upon request.
3. Soft copies should be circulated to a mailing list of all agribusiness associations and other supporting institutions, either by email or by mailed CD. These should be updated whenever new regulations are enforced.

### **Enhance the capacity of the Tanzanian Investment Center.**

The TIC was originally designed to be a “one-stop shop” for both foreign and domestic investors. Interviews with clients of the TIC suggest that this is no longer the case and that several visits to other institutions are now required to complete the business registration process. This development is unfortunate since in the competition for investment the TIC is a high-profile advertisement for Tanzanian

administrative capacity. It is recommended that the capacity of the TIC to act as a single counter for registration should be reestablished through the following:

1. Review the technical and especially human resource capacities of the TIC and of the offices of other agencies such as the TRA that are physically established within the TIC.
2. Review through technical assistance and workshops, the processes required for registration, the linkages required with other agencies, and the procedures to be put in place to achieve seamless communication among all the agencies involved in business certification.
3. Design, produce, and implement the training procedures and materials required to maintain the necessary standards of inter-agency communication, including on-the-job refresher training at regular intervals.

### **Strengthen the marketing sector.**

Many of the deficiencies of the agricultural sector can be traced to a limited trading sector, within which a small number of traders are able to negotiate from a position of strength. This situation has reduced producer prices and restricted agricultural development. A strengthened trading sector with a large number of traders competing for supplies will redress the balance of negotiations with producers, leading to higher producer prices, which are the most effective stimulant for agricultural investment. It is recommended that a broad program be put in place, comprising the following separate initiatives:

1. **Establishment of a statutory consultative process for trade directives:** Initiatives such as the recent ban on maize exports should be undertaken only after consultation with the trading and producer sectors. A statutory requirement for consultation with recognized associations would reduce uncertainty and strengthen investment in both trade and production.

2. **Establishment of a market information service:** Although most traders are now able to rely on personal communication for price discovery, a market information service would assist in business and policy planning, allowing both government and the private sector to achieve increased efficiencies in marketing.
3. **Review of legislation associated with commodity boards:** The legislation regulating some commodity boards provides for substantial control of stakeholders in terms of activities, contracts, and, in the case of tobacco, price. This legislation is designed to protect primary producers but may also have the effect of stifling competition between buyers or even excluding buyers from the industry. Such legislation also reinforces the subliminal message that traders will inevitably seek to take advantage of producers. It is recommended that a comparative review of the different pieces of legislation regulating the various commodities be undertaken, including impact assessments for each subsector.
4. **Enhance the marketing content of agricultural extension services:** Potentially restrictive legislation designed to protect against the exploitation of producers would be less relevant if producers were provided with more direct assistance to foster successful marketing. The extension messages currently provided to farmers focus on production rather than marketing, so that while the extension service might enhance rural food security, it is unlikely to increase rural incomes. It is recommended that a needs assessment be undertaken of both the extension service and farmer marketing requirements and that the content of extension messages be revised to increase farmers' marketing capacity.
5. **Review local authority transport levies:** Many local authorities levy traders on goods transported out of the district or region. This practice is a disincentive to trade and reduces both the efficiency

of agricultural markets and ultimately the prices received by producers. It is recommended that an impact assessment of levies on transported goods be undertaken and that such levies be revised in light of the results.

### Develop stronger linkages between cooperatives and down-stream value chains.

Many cooperatives are capable of organizing members to meet specific production targets in response to buyers' contracts. The poor performance of a small number of cooperatives, however, has damaged the reputation of the movement as a whole. It is recommended that a program be set up to link potential buyers and processors with producer cooperatives and that technical assistance be provided in both technical and management aspects of production to ensure production of the quality and in the volumes necessary to meet demand.

### Improve the protection of property rights regarding encroachment, theft, and other minor nuisances.

Protection of property rights requires increased attention by the courts and their executive officers in dealing with encroachment, predial larceny, and other petty offences that nevertheless reduce the profitability of doing business in Tanzania. It is recommended that greater accountability be required of the courts and executive officers in the performance of their duties. This result could be best achieved through local campaigns designed to:

1. Sensitize people to the importance of investment in rural development, the importance of security, and the need to achieve high productivity and quality to develop the entire community.
2. Sensitize the executive to their responsibilities under the law.
3. Create public awareness of individual property rights.

It may take some time for people to adopt a new mindset that does not condone minor

offences such as theft or squatting, but that is all the more reason to address this issue at the earliest opportunity.

**Review TFDA and TBS roles and responsibilities.**

These two agencies have overlapping mandates. The TBS in particular has a wide mandate derived from a number of pieces of legislation, which it is ill equipped to discharge. It is

recommended that a review of both the TFDA and the TBS be undertaken with to identify and minimize the duplication of responsibilities and to restrict the role of the TBS to that of an administrative rather than an executive agency. Such an agency would set standards as required by government or industry, while simultaneously accrediting independent certifying agencies drawn from both the public and the private sectors.



## DEALING WITH LICENSES

In Tanzania, licensing procedures are normally designed to achieve one or more of three ends: (1) identification of capacity (otherwise achieved through registration); (2) maintenance of standards (often for consumer or employee protection but also for protection of quality-based markets); and (3) generation of revenue (otherwise achieved through taxes or levies). Many of the licensing procedures relevant to Tanzanian agriculture incorporate all three aspects, a factor that tends to obscure their primary goal and effectiveness and to act as a brake upon, as opposed to strengthening, agricultural development.<sup>63</sup>



Other studies have described the significance of licensing in Tanzania to other key aspects of doing business,<sup>64</sup> including starting a business, registering property, and getting credit, among other key issues. This chapter uses the fourfold AgCLIR focus on legal framework, implementing institutions, supporting institutions, and social dynamics to assess the role of licensing in the specific context of running an agribusiness (both primary production and up- and downstream subsectors) in Tanzania.

## LEGAL FRAMEWORK

The fundamental licensing requirement of Tanzanian business is currently the General Business License, required of most businesses under the **Business Licensing Act (1972)** (although the revision of this license may be imminent under the **Business Activities Registration Act, or BARA, 2007**). Most

primary agricultural producers are exempt from this requirement, although it affects almost all up- and down-stream businesses in the agricultural value chain.

General business licenses are classified either as Schedule A or Schedule B licenses. The Ministry of Industry, Trade and Marketing issues Schedule A licenses to businesses with a national or international scope of operations that are not limited to a specific locality in Tanzania, while the District Trading Offices issue Schedule B licenses to businesses that intend to operate solely in a local area.

In addition to the general business license, most agribusinesses are subject to other more specific licenses. All businesses involved in food processing (including abattoirs, dairies and creameries, flour mills, and edible oil producers), together with animal feed manufacturers, must be licensed under the **Tanzania Food and Drug Agency Act (2003)**. The Tanzania Food and Drug Agency (TFDA) is a regulatory body under the Ministry of Health responsible for controlling the quality, safety, and effectiveness of food, drugs, cosmetics, and medical devices produced in, or imported into, Tanzania and by mandate certifies both food processors and veterinary drug suppliers. It has tended to overlap in its functions with the Tanzania Bureau of Standards (TBS) which has multiple responsibilities under the following

63 Although *Doing Business 2010* no longer uses the term *dealing with licenses*, Tanzania was ranked 178th out of the 183 countries assessed on the issue of “dealing with construction permits,” and 145th on the issue of “registering property.” Licenses are key to both these issues, and it is not therefore surprising that respondents in this study raised numerous aspects of the licensing procedures found in Tanzanian agriculture and agribusiness as warranting further attention.

64 See USAID/BizCLIR, *Tanzania’s Agenda for Action* (February 2008).

acts: the **Plant Protection Act (1997)**, **Animal Disease Act (2003)**, **Food and Cosmetics Act (2003)**, and **Veterinary Act (2003)**. The TBS deals not only with food-quality standards but also with sanitary and phytosanitary issues, including the issuance of the sanitary and phytosanitary certificates required for export of livestock and plant materials. This unusual institutional arrangement warrants further review.

For processing businesses over a certain size and all exporting businesses, the Ministry of Labor, Employment and Youth requires the registration of premises under the **Occupational Health and Safety Act** for compliance with health and safety standards; the same ministry also requires an additional certificate of registration for each factory and workplace. Most respondents who were required to obtain these licenses noted the duplication involved in the process.

Agrochemical input suppliers generally require registration under the **Tropical Pesticides Research Institute Act (1979)**, which stipulates the procedures for the importation, handling, and storage of pesticides and empowers the Tropical Pesticides Research Institute to test and certify pesticides and to license traders who handle such chemicals. Fertilizer suppliers are similarly registered under the **Fertilizer and Animal Foodstuffs Act (1972)**, which empowers the Ministry of Agriculture not only to register fertilizer importers and traders but also to stipulate the volumes of fertilizer to be imported each season by traders. The government has recognized this act as a constraint on the efficient supply of fertilizer to the agricultural sector. Although the act is due to be repealed following the enactment of the new **Fertilizer Act (2009)**, the specifications of the new act remain uncertain, and it is not clear what degree of licensing and control will remain.

Under the **Seeds Act (2003)**, seed companies supplying Tanzanian agriculture must register

#### KEY LAWS AND REGULATIONS

- Business Licensing Act (1972)
- Business Activities Registration Act (2007)
- Tanzania Food and Drug Agency Act (2003)
- Occupational Health and Safety Act
- Tropical Pesticides Research Institute Act (1979)
- Fertilizer and Animal Foodstuffs Act (1972)
- Fertilizer Act (2009)
- Seeds Act (2003)
- Hides, Skins, and Leather Trade Act (2008)
- Meat Industry Act (2006)
- Sugar Industry Act (2001)
- Coffee Industry Act (2001)
- Tobacco Industry Act (2001)
- Cooperative Societies Act (2003)
- Ban on export licenses for maize

with the Tanzania Official Seed Certification Institute (TOSCI), which also administers other aspects of the law, especially the certification of new varieties. Registration takes about a week and requires proof of competency in seed management, including both adequately trained professional staff and proper premises and equipment for seed handling. The registration of new seed varieties is a slower process that requires at least two seasons of trials before new varieties can be released onto the Tanzanian market.

**Commodity Boards.** Although many of the procedures described above do not substantially affect most primary producers, the licensing and registration requirements of the various boards or advisory committees mandated to regulate specific subsectors of agriculture do directly affect them. Subsectors regulated in this way are coffee, cotton, sisal, tea, pyrethrum, tobacco, hides and skins, meat, dairy, and sugar. The following list describes the different administrative and licensing arrangements of illustrative subsectors.

The **Hides, Skins and Leather Trade Act (2008)** provides for advisory committees at the village, local government, and national level. It also provides for the registration of premises

for leather processing, subject to annual renewal and regular environmental impact assessment. It further provides for the licensing of premises for leather processing, storage, and trade and for the licensing of hide dressers and of hide graders. The license granted for premises is renewable annually and, in the case of hide dressers and graders, renewable after 12 months in the first instance and every three years thereafter. It is significant that the advisory councils have no direct input into either the registration or licensing processes, which are under the control of registration and licensing authorities nominated by the minister responsible for livestock.

The **Meat Industry Act (2006)** provides for the establishment of a Tanzania Meat Board, comprising six private sector representatives of different aspects of the meat industry; six public sector representatives of ministries, quality control, and research; a representative of the Tanzanian Chamber of Commerce, Industry and Agriculture (TCCIA); and a chairman appointed by the minister. The meat board is empowered to perform “regulatory activities in meat industry,” including the issuance of certificates of registration to livestock or meat producers, traders, processors, meat product distributors, meat importers or exporters, retailers, livestock markets, abattoirs, and other ancillary businesses. All persons engaged in such listed businesses in the meat industry must hold valid certificates of registration, renewable annually and issued subject to compliance with conditions “prescribed by the Board.”<sup>65</sup> However, the authority to make regulations and prescribe conditions for the issuance of certificates of registration is also in the same act vested in the minister, “upon the advice of the Board,” thus creating a degree of ambiguity.

The **Sugar Industry Act (2001)** provides for the establishment of a Sugar Board of Tanzania, again drawn from both private and public sectors, with powers to register all sugarcane growers in the country, to stipulate approved

varieties of sugarcane for production, to license all sugar manufacturers and small-scale sugar plant operators, and to register all sugar exporters, importers, and industrial users of sugar and sugar by-products. All growers, manufacturers, and traders must hold valid licenses or registration certificates to carry out their businesses.

The **Coffee industry Act (2001)** is similar to the Sugar Industry Act in providing for a Tanzania Coffee Board mandated to “make regulations governing the cultivation and marketing arrangements of coffee including the monitoring of its price” and to “protect the interest of farmers against syndicates of buyers which may be formed through formation of Associations.” In addition, the board has authority to grant licenses or permits for coffee export; to register coffee dealers; to register all growers and land planted in coffee; to prescribe the types of coffee to be grown in different areas; to authorize the importation, breeding or multiplication of coffee seed or seedlings; to license all coffee buying, liquoring, processing, roasting, warehousing, central pulping, and exporting; and to register all coffee factories.

The **Tobacco Industry Act (2001)** establishes the Tanzania Tobacco Board, empowered to regulate and enforce quality standards in tobacco; to register all growers; to license tobacco buyers, green-leaf buyers, sellers, seed multipliers, and processors; to register all tobacco factories; and to approve all prefinancing contracts between green-leaf buyers and producers. In addition, the Tanzania Tobacco Board itself may establish a Tanzania Tobacco Council, whose major function is to set minimum indicative prices for each grade of tobacco at each season.

The illustrative examples above describe a sequence of increasing intervention by the various boards, ranging from the remote advisory role of the Hides and Skins Advisory Committee to the active approval of contracts and setting of minimum indicative prices

65 Meat Industry Act (2006), Section 16, subsection 4.



undertaken by the Tobacco Board. The roles of other boards fall between these extremes. The different levels of intervention may reflect different degrees of asymmetry in the negotiation process between primary producers and buyers and processors, but an increased intervention inevitably creates the potential for increased manipulation of the commercial process. Strong arguments can be made for regulatory powers to ensure the stability of the subsector, but paternalistic legislation runs the risk of reducing the efficiency of the industry overall. The legislation established to regulate the hides and skins subsector appears to be more appropriate to conditions of modern competition and might serve as a role model for other subsectors.

## COOPERATIVES

A substantial proportion of small-scale agricultural producers are organized into cooperative societies, within a hierarchical structure whereby primary cooperatives are joined to form cooperative unions, which are themselves part of a national Tanzanian Cooperative Federation. The cooperative societies are administered under the provisions of the **Cooperative Societies Act (2003)**. Cooperative societies are registered upon application to the Registrar of Cooperative Societies. The application requirements are a copy of the society's by-laws, a study demonstrating the viability of the cooperative's intended operation, and the application form signed by 50 members. A considerable number of both primary cooperatives and cooperative unions throughout each district are testament to the relative simplicity of the registration process.

## SUMMARY

Overall, the legal framework for the licensing of the agribusiness sector in Tanzania is not poorly designed. Although some areas of duplication exist (e.g., between the TFDA and TBS and in the Ministry of Employment), other areas need further development, particularly those regulations relating to agrochemicals. The general level of intervention, however, is not excessive,

and it can be expected, given the continual improvements that are being made, that these areas will be addressed shortly.

The one general area where broader changes may be required is in the legislation empowering the commodity boards. The newer commodity-specific legislation differs markedly from that established earlier in the decade. Increased private sector participation in the drafting of the more recent acts has resulted in a less interventionist approach that should ultimately favor the development of more efficient subsectors. Revision of the earlier legislation, following the same consultative process, might result in efficiency gains in other subsectors.

Two other areas of licensing merit comment. The cost of transport affects the costs of doing business generally and that of agricultural business in particular. The transport sector in Tanzania currently relies on road haulage, which would appear to be substantially overlegislated. At least six different certificates are required of every commercial vehicle carrying goods in Tanzania, almost all of which require annual renewal from different offices. These certificates not only increase transport costs directly but also create clear opportunities for corruption at roadblocks. The legislative basis for such a multiplicity of licenses requires review with the aim of reducing the number of certificates by at least half.

Finally, free access to export markets is fundamental to the development of an efficient and productive agricultural sector. The recent intermittent bans on maize exports implemented through the refusal of export licenses are unlikely to achieve the desired reduction in domestic prices but will undoubtedly reduce the confidence of prospective investors in their ability to profit from the production of grain crops. Of all the license issues facing Tanzanian agriculture, this one is potentially the most far-reaching. As long as the legislative capacity to restrict exports exists, investment in the production of grain crops for the domestic market will likely

be restricted, placing the goal of domestic self-sufficiency further beyond reach.

## IMPLEMENTING INSTITUTIONS

While the legal framework identifies the roles and responsibilities of the implementing institutions for licensing, few of these institutions have the capacity to perform their duties expeditiously, especially when dealing with businesses in remote rural areas. Limitations of man-power, transport, and technical facilities delay the licensing process so that relatively straightforward processes can take months to complete. Under such circumstances, pressure to increase license fees to offset the institutions' operating costs is inevitable. In discussion, interviewees noted that licenses were sometimes considered to confer the privilege to operate for which a price should be paid. This practice, however, unfairly places the entire financial burden on the business operator, when in fact a significant beneficiary of most licensing operations is the consumer, who would ideally finance the operation through general taxation. The following section reviews the capacities of the main institutions that issue licenses to agricultural businesses.

Respondents noted that while BRELA has the capacity to issue Schedule A general business licenses within 14 days, the application process for Schedule B licenses from the district authorities is more variable and less certain, lasting from three days and to up to three months. Different district authorities reportedly have varying requirements for the issuing of Schedule B licenses, which frequently include the need for the signed approval of three other administrative officers. Such requirements not only create delays but also create opportunities for rent seeking. However, this situation will likely be regularized with the implementation of BARA (2007).

The TFDA and TBS are two institutions whose licenses are required by almost all agribusinesses that add value to primary products. Business

### KEY IMPLEMENTING INSTITUTIONS

- Business Registry and Licensing Agency (BRELA)
- Tanzania Food and Drug Administration (TFDA)
- Tanzania Bureau of Standards (TBS)
- Tanzania Pesticides Research Institute (TPRI)
- Commodity boards: Tobacco Board, Cotton Board, Meat Board, Sugar Board

respondents were critical of both institutions, citing delays first in initial inspection and subsequently in the issuing of licenses. The time taken to obtain the initial TFDA license for businesses sampled in Morogoro (a small city three hours away from Dar es Salaam) varied between 2 and 12 months. TFDA licenses are subject to annual renewal, which can be handled locally; provided the application is made well in advance, licenses can be renewed in a timely manner. Rural businesses dealing with the TBS reported substantial delays in obtaining the TBS license, which was said to require several visits (both to the TBS offices in Dar es Salaam and by the TBS to the business premises) and inspections with repeated sampling that did not appear to be well justified. Several respondents noted that the process of obtaining a TBS license had taken more than a year.

Management of both these institutions, who are well aware of these criticisms, are limited by the centralized nature of their operations. The TFDA has attempted to develop a zonal structure, co-opting local health officers to undertake some inspections. However, such officers are not well suited to examining agricultural premises, and considerable retraining will be required if this initiative is to succeed. The TBS is similarly short staffed and faces similar problems of transport. Moreover, while the TBS frequently relies on the laboratory analysis of samples, it lacks both laboratory equipment and the testing reagents, so that samples may decay before analysis. This lack of capacity may not only necessitate repeat sampling but also, more

significantly, delay the issuance of the sanitary or phytosanitary certificates required for export.

Until these issues of capacity can be addressed, neither the TFDA nor the TBS is able to discharge its legal obligations effectively. To meet the requirements of rural businesses, the TFDA needs to develop infrastructure at the local government level and requires technical assistance to raise operational standards. Under the current institutional framework, the TBS also needs improved access to functional laboratory facilities, although in the long term, this solution may not be the most appropriate. In the absence of such improvements, the licensing procedures must either become cursory or (as appears to be more common) be subject to inevitable delay.

Businesses leveled similar criticisms at the inspectors issuing the factory and workplace registration certificate and the health and safety compliance certificate. Both certificates originate from Dar es Salaam, under the auspices of the Ministry of Labor. Although the expertise required to undertake effective certification may be different for each license, there appears to be no reason why the inspections could not be carried out simultaneously. However, this rarely appeared to be the case. The certificates were issued independently, each requiring up to two months to obtain.

Agrichemical suppliers indicated that the TPRI is capable of registering agrichemical suppliers within three to four weeks. Registration requires an inspection of the business premises and may require evidence of professional competence, although this requirement does not appear to be enforced at present. This relatively efficient service is provided despite the fact that the TPRI operates from a single office in Arusha and may be due to the relative scarcity of agrichemical suppliers throughout the country.

All the certification procedures described above share the common characteristic that virtually none of the businesses applying for licenses is



completely aware of the requirements for certification. The level of information available to applicants is minimal. One respondent seeking to enter the export market described the certification process as “learning by doing.” Such a lack of business awareness in itself creates considerable inefficiencies in the licensing process. Repeated inspections are almost inevitable if the applicants have no clear idea of the criteria for certification and how they might apply to individual businesses. At the same time, such information asymmetry creates clear opportunities for corruption. The effectiveness of all certification agencies would be increased if the applicants had clear guidelines to assist in meeting certification requirements.

The capacity of individual commodity boards to carry out their mandates for licensing and registration varies according to both the mandate and the nature of the industry. The Tanzania Tobacco Board has an efficient administration, a number of branch offices, and trained staff. The number of buyers and processors to be licensed is small (less than five), and the seed multiplication requirements of the sub-sector are limited. Consequently, the board can discharge its responsibilities in these areas relatively easily. However, it is also obliged

to register all growers. Given that there are more than 97,000 small growers, this task would be more daunting were it not for the board's arrangement with primary cooperatives, according to which these cooperatives register individual farmers and the cooperatives then form the basic unit of registration with the board. Each farmer is then bound to produce and sell tobacco through the primary cooperative of which he or she is a member. This arrangement has proved administratively effective, although it may restrict the marketing options of individual producers. In the cases of cashew and coffee, these restrictions have proved significant and irksome to the point that considerable informal trade outside the registered network of cooperatives and buyers occurs in both these subsectors. Producers have found that higher prices can be obtained either by selling to unregistered buyers who will export the product directly or by exporting informally themselves. The occurrence of such informal "Kabengwa" sales is direct evidence of an arrangement that restricts trade, reduces producer incomes, and may reduce the efficiency of allocation of resources for agricultural development.

The Tanzania Cotton Board is (TCB) similarly mandated to license the more than 100,000 growers, as well as 25–40 seed cotton buyers, up to 60 ginneries, and cotton exporters. Its linkages with primary cooperatives are less well developed than those of the TTB, giving rise to some problems in registering small producers. Nevertheless, it is able to license buyers, ginneries, and exporters without delay.

Overall, respondents reported two levels of competency during interviews. On the one hand, commercial stakeholders reported that commodity boards issued licenses without significant delay, although the registration of individual producers remains problematic and it would appear that, for the most part, insofar as the registration of small producers is concerned, compliance with the legislation is not

common. Similarly, institutions licensing small numbers of stakeholders such as seed companies or agrochemical suppliers are able to discharge their mandates in a timely manner. On the other hand, however, those institutions based in Dar es Salaam that must deal with large numbers of small rural businesses lack the capacity to meet their obligations to register or license these businesses without delay. These institutions require urgent review if they are to provide effective services both to the general public (for adequate protection) and to individual businesses (for timely registration) as intended.

## SUPPORTING INSTITUTIONS

The number of institutions providing support to the agricultural sector in dealing with licenses is limited. Chief among such institutions are the representative associations, which could provide information on licensing requirements (including translations of both regulations and commentaries), services (including the preparation and submission of license applications), and advocacy both in the event that a license is refused and in making the licensing process more efficient. In practice, such associations are limited both in their number and in their capacity to fulfill these functions. A number of institutions exist that will undertake most of the functions listed above. These include the Tanzania Chamber of Commerce Industry and Agriculture (TCCIA), the Tanzania Private Sector Foundation (TPSF), and the Tanzanian Women's Chamber of Commerce (TWCC). All these institutions have good lobbying capacity, both in research capacity and in membership in suitable forums to air their views. Most of them run programs to improve the awareness of licensing requirements, and some are capable of providing services to expedite the licensing process. However, all are based in Dar es Salaam and have limited contact with rural agribusinesses.

Associations that have more direct contact with agriculture include the Tanzania Seed

## KEY SUPPORTING INSTITUTIONS

- Tanzania Chamber of Commerce, Industry, and Agriculture (TCCIA)
- Tanzania Private Sector Foundation (TPSF)
- Tanzania Women's Chamber of Commerce (TWCC)
- Tanzania Seed Trade Association (TASTA)
- Tanzania Association of Meat Processors (TAMP)
- Tanzania Horticultural Exporters Association (THEA)
- MVIWATA
- Tanganyika Farmers Association
- Agricultural Non-State Actors Forum (ANSAF)

Trade Association (TASTA), the Tanzania Association of Meat Processors (TAMP), the Tanzania Horticultural Exporters Association (THEA), MVIWATA, the Tanganyika Farmers' Association, and the Agricultural Non-State Actors Forum (ANSAF). Most of these associations and others representing other specific subsectors are members of the TCCIA but may also represent their members directly in local matters. These associations are working both with donor support and through their own resources to provide business development services, advice on licensing, assistance with the licensing process (to a limited extent), and advocacy to streamline the licensing process.

The benefits of advocacy are generally available to both members and nonmembers alike; and in every sector there is a strong temptation to avoid paying membership dues to advocacy groups. This reluctance is particularly prevalent in the cost-sensitive sector of Tanzanian agriculture, where small-scale farmers are rarely willing or able to finance advocacy. As a result, most effective associations have relied on some element of donor funding or have developed some relationship with government to sustain incomes.<sup>66</sup> Both methods of financing operations carry drawbacks. Dependence on government can be limiting, for example, in that privileges granted by government can easily be

withdrawn if confrontation becomes extreme, thus curtailing the independence of the association. And while dependence on donor support may allow political independence, it frequently results in the development of capacity that cannot be sustained when support is withdrawn. Either method of financing may be preferred over the alternative of no financing at all, but the presence of both calls into question the nature and dynamism of the advocacy sector in Tanzania. Nevertheless, advocacy capacity does exist in Tanzania and has drawn the attention of government to licensing issues. The TAMP, TASTA, and THEA in particular have all been effective in lobbying for change.

In a similar manner, private sector business support—including that of lawyers and accountants, both of whom might provide licensing services—is also limited in rural areas, mainly for reasons of cost and scale. There are simply too few agribusinesses requiring such services to justify the development of this service sector, and those agribusinesses that do exist are rarely able to afford the cost, preferring instead to undertake licensing procedures for themselves.

Perhaps the most efficient supporting institutions are the various commodity boards and advisory councils, which not only serve to implement registration and licensing but also influence the nature of the licensing procedure itself and can provide (some) stakeholders with the necessary information to comply.<sup>67</sup> The structure of the advisory councils for the meat, leather, and dairy subsectors appears to have been particularly effective in this regard. Stakeholders regularly reported that subsector-specific licensing issues were declining in number and through interaction between the private sector and advisory councils at different levels (village, district, or national). However, all commodity boards are able to provide some support to commercial businesses in meeting the license requirements of their specific subsectors.

<sup>66</sup> E.g., the TCCIA issues certificates of origin to exporters on behalf of the government for a fee.

<sup>67</sup> Some commodity boards (e.g., the TCB) provide information on registration and other regulations on the Internet. Most boards indicated that they interact regularly with the commercial stakeholders (buyers and processors) but are not able to provide information directly to primary producers.

Overall, the majority of small agribusinesses are not well supported when it comes to dealing with licenses and are obliged to undertake the process on their own. Larger commercial businesses may receive direction from commodity boards, but most small businesses must undergo a trial-and-error process that usually results in unnecessary delay. There are some initiatives to assist agribusinesses in dealing with licenses, particularly among representative associations, but the capacity of these efforts to provide adequate coverage, especially in rural areas, is limited. The single most effective support could come from government in the form of clear guidelines for compliance, which should be published for each license or registration process and made freely available from local government offices.

## SOCIAL DYNAMICS

A diagnostic of the licensing environment based only on considerations of the legal framework, together with implementing and supporting institutions, might well conclude that licensing is not a major consideration in running an agribusiness in Tanzania. While the majority of the businesses interviewed concurred with that view, specific businesses raised issues that nevertheless gave cause for concern. These are addressed below, from the perspective of the three functions of licensing, namely, data collection, social or market protection, and revenue generation.

The data collection aspect of licensing appears to function effectively as far as the various commodity boards are concerned. In each subsector covered by such boards, the numbers and identities of the key stakeholders are identified, and the volumes of commodity produced and processed are known, so that market research and planning are possible. The issue of registering individual producers is probably moot, and the registration of primary cooperatives should not only be adequate for planning purposes but also should allow a high degree of traceability to individual producers (provided the cooperatives' own registration procedures are effective), although such registration has implications

from a marketing perspective. However, the data collected by the TFDA, TBS, and Ministry of Employment are held centrally in Dar es Salaam rather than by local governments. Consequently, large volumes of data relating to many small businesses (such as mills) are held in a form that is relatively inaccessible to local government agencies, so that the value of that information for planning purposes is limited. The data collection role of licensing is thus strong for commodity boards but weak for some other government entities.<sup>68</sup> Further decentralization would improve the usefulness of the data collected, as would better networking among central, regional, and district administrations.

Social protection functions are mainly relevant to the TFDA, TBS, TPRI, and Ministry of Employment licenses (social protection). The licenses issued by the commodity boards have greater impact on market protection, especially on the quality but also on the volume of production. As for social protection, the range of licenses required is comparable to international norms, although the standards appear less stringent than those elsewhere. Nevertheless, it was clear from interviews that the licenses denoted real compliance with standards and that follow-up inspections were occasionally made to ensure continued adherence. Overall, however, stakeholders noted that follow-up inspections could hardly be considered adequate to provide real consumer protection over the long term. As for market protection, the licenses issued by the commodity boards appeared to be effective in maintaining the level of quality where they could be enforced (i.e., within the formal sector). However, informal trade ("Kabwenga") in some subsectors is clear evidence of the restrictive nature of such licensing, which appears to favor buyers and to reduce producer margins. This aspect of commodity board licensing merits further review.

For revenue generation, the Tanzanian licensing system does not appear to raise substantial funds. For many small businesses,<sup>69</sup> the general

<sup>68</sup> The TPRI and TOSCI would be exceptions in this regard.

<sup>69</sup> Businesses with a turnover of less than TSH 20 million (US\$15,000) or fewer than five employees.

business license is free, while those larger businesses paying license or registration fees did not regard the costs of licensing as excessive.

In fact, the most significant cost reported by most businesses was the cost of time spent trying to obtain the licenses (traveling to Dar es Salaam, arranging for visits by inspectors, determining the specific requirements for compliance) and the costs of delays in licensing, although some businesses reported that they had been granted provisional approval to operate pending the completion of license procedures. In this regard, the lack of clear information on license procedures has two implications. First, it tends to extend the time taken to meet the license requirements directly and, second, it creates an opportunity for local licensing agents to engage in rent-seeking activities by inventing additional and unnecessary procedures that can be expedited on payment of a bribe.<sup>70</sup> Most businesses reported that the amounts of money were trivial but that the time lost in the process was of far greater significance and cost to the business.

It is this aspect of licensing that is widely profiled and most damaging to investment as a result. Most respondents noted that many licensing agents seek to augment their incomes through the imposition of minor bribes but that organized rent seeking on a large scale was generally rare. Moreover, the extent of the corruption appeared to be proportional to capacity to pay, so that local small businesses were not much affected, while larger businesses were more likely to be abused. The largest corporations had the manpower to absorb such costs relatively easily, but smaller investors with limited staff reported that such nuisances added significantly to the cost of investment, primarily through the delays that they imposed.

Some respondents noted the time taken to deal with multiple licensing, particularly those involved in food-processing activities, as a significant constraint on business. Although no one license was particularly time consuming, the combination of all of them was overwhelming. A

dairy processor reported that 18 separate pieces of paper were required, most on an annual basis, to license all his business activities. Such multiplicity of licensing is unnecessary and inevitably constrains business efficiency. However, the government is moving to reduce multiple licenses. This particular example is, in fact, in the process of being addressed; similar examples in the meat sector are also being reviewed.

Multiple licensing is also prominent in the transport sector, where commercial transport vehicles require at least six separate licenses to move freely in Tanzania. Few other countries engage in such intensive registration, and the requirement for licenses to move between regions is particularly onerous. These restrictions increase both the costs of putting a vehicle on the road and the opportunities for traffic police to engage in rent-seeking activities, raising the cost of the time lost at each roadblock.

Overall, the licensing system as it applies to agribusinesses in Tanzania is implemented in a climate of uncertainty that promotes minor rent seeking by licensing agents. In some cases, multiple licensing aggravates this activity. In most cases, however, the cost of delays far outweighs the cost of rent seeking. Delays are also due to the lack of coordination between the local government and the central government. As a result, businesses that would ideally be licensed by local agents require licensing by authorities based in Dar es Salaam, while business information collected by central authorities remains unavailable to local authorities. The implementation of the Business Activities Registration Act (2007) should address such issues, although some agents noted that technical assistance may be required to facilitate this process.

## RECOMMENDATIONS

### Increase availability of information on licensing.

A substantial number of the problems associated with licenses in Tanzania are generated by

<sup>70</sup> One business reported being required first to make payment for a license, then to obtain a receipt for that payment, then to provide a letter validating the receipt, and finally to get a stamp certifying the authority of the letter to validate the receipt for the payment, before the license could be issued.

a lack of information relevant to the licensing process. This deficit increases the time taken for applicants to complete the licensing process, increases the opportunities for misinformation and corruption, and creates a climate of uncertainty that may cause businesses to avoid the licensing process and remain in the informal sector. Those agribusinesses outside the aegis of the commodity boards raised this issue most frequently, citing particularly the licenses issued by the TFDA, TBS, and Ministry of Labor, Employment and Youth. The following steps are recommended to improve business awareness of license requirements and procedures:

1. Both legislation and, more important, commentaries on the legislation should be made available in printed form by local governments (districts) for dissemination by the district officer for trade for a nominal fee (equivalent to the cost of printing). The documents should be made available in both English and Kiswahili, and be produced locally, ideally by printing (using private sector resources if necessary) from a PDF document, updated as required by the distribution of CDs to each district.
2. Guidelines for registration and licensing—explaining both the requirements for compliance and the duties of the licensing agent and outlining each licensing process, including visits, sampling procedures, and anticipated times taken for each step of the process (also in both English and Kiswahili)—should be made available through the same channels.
3. The CDs carrying legislation, commentaries, and guidelines should be circulated to all representative bodies, including cooperative unions, producer associations, and advocacy institutions at the district level where feasible and without cost.
4. Extension officers and the executive officers of primary cooperatives (including SACCOS) should be sensitized to the availability of this information, its basic content, and how it may be obtained.
5. District officers should be mandated to hold biannual meetings to inform the business sector of licensing requirements and procedures and of the availability of printed materials.

### **Provide ongoing technical assistance to facilitate the implementation of BARA (2007).**

Businesses operating under Schedule B general business licenses noted the variation in license requirements between districts and in the different times it takes to issue these licenses. This variation is symptomatic of the dislocation between district and national administrations that has resulted in many districts effectively determining their own procedures in licensing and other areas. BARA (2007) seeks to regularize these differences by bringing all agents under one central authority (BRELA), albeit with decentralized capacity. The process of decentralization has encountered some difficulties and is not yet complete. Concerns remain about the professionalism of district officers, the capacity of the communications infrastructure, and the feasibility of developing a central registry with multiple access points in different regions, given the capacity of the infrastructure (especially the availability of power) in the more remote areas. It is recommended that increased technical assistance be provided to facilitate the implementation process in the form of:

- Support to training of district officers to achieve the level of professionalism and skills necessary to provide a uniform high standard of registration and licensing
- Technical equipment necessary to install and operate the new registry system, together with training to ensure that its capacity is effectively used
- Finance to support the infrastructure development necessary to allow the technical equipment to operate effectively.



It is recommended that this support be provided at the earliest opportunity and should be ongoing for a period of at least three years.

### **Review the registration requirements for cooperatives.**

The registration of a cooperative is a relatively simple process and has resulted in the recent development of many cooperatives, especially SACCOS. These institutions can undertake substantial business ventures on behalf of their members, including the purchase and sale of produce, obtaining and providing credit, and managing substantial assets (e.g., some SACCOS own market infrastructure and derive income from its use). The professional capacity of some cooperative executive officers, however, appears insufficient to ensure effective protection of the members' assets and thus creates a potential risk of considerable loss. It is recommended that the registration process be more stringent than at present, including the requirement for either professional management or at least regular professional auditing of cooperative accounts so that potential losses can be forestalled.

### **Review the roles and responsibilities of TFDA and TBS.**

The responsibilities of these two institutions overlap, and both may require increased capacity to provide effective services in rural areas. Respondents frequently remarked that the TFDA and TBS registration procedures took the most time of all licenses. It was also noted that follow-up inspections were uncommon, so that long-term consumer protection was minimal. To reduce delays, increase capacity, and provide better consumer protection, the following steps are recommended:

- Expand the TFDA to include regional agents, trained in licensing procedures, especially as they relate to agribusinesses.
- Develop regional laboratory facilities capable of meeting the most frequent analytical requirements of the TFDA.

- Increase the frequency of follow-up inspections.
- Review the operations of the TBS as far as the licensing of agribusinesses is concerned to assess the feasibility of restricting the role of the TBS to the development of standards and the accreditation of appropriate certifying agencies (in this case, the TFDA).

If the recommended review determines that it is feasible for the TFDA to act on behalf of the TBS, then clearly there would be no need to increase the TBS capacity. Instead, this institution could concentrate on its core functions of setting standards and of training and accrediting agents to undertake testing and certification on its behalf. This action would reduce the number of agencies involved in licensing and help streamline the process.

### **Review health and safety and factory and workplace registration.**

These two certificates are both issued under the auspices of the Ministry of Labor Employment and Youth; yet their licensing is treated differently. This inconsistency results in duplication of applications, visits, and licensing. It is recommended that these two licenses be reviewed from the four perspectives of legality, effectiveness, consumer protection, and business friendliness to determine the feasibility of combining them into a single registration procedure.

### **Review legislative frameworks that result in “Kabwenga” sales.**

The informal sales of cashew and coffee in contravention of board procedures are a clear indication of the potentially restrictive nature of some commodity registration and licensing processes. While most commodity boards are mandated to regulate their respective subsectors to achieve fair prices for producers, their legal mandates are open to abuse, so that in certain cases licensing and registration can be used to achieve the opposite result. The fact that some commodity boards have successfully

made the transition away from close control of markets to a more advisory role that allows unfettered private sector participation suggests that producers may require less protection from exploitation than previously thought and that similar liberalization might be feasible in other sectors. It is recommended that impact assessments of the meat, dairy, and hides and skins commodity legislation be undertaken to provide evidence-based proposals for the revision of the commodity board legislation of tobacco, coffee, cashew, and possibly cotton.

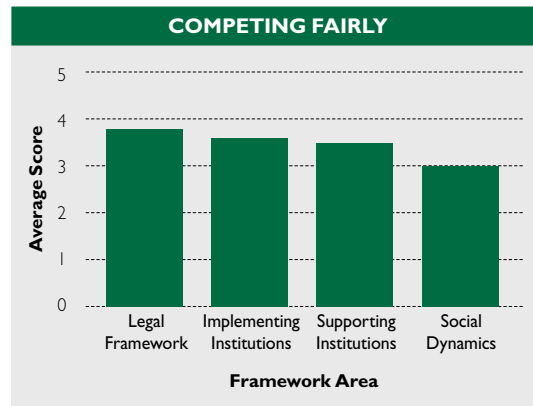
### **Reassess vehicle licensing procedures.**

It is hard to justify the multiplicity of licenses required to operate a commercial vehicle in Tanzania. It is recommended that an impact assessment of the current vehicle licensing procedures be conducted to determine the feasibility of abolishing all movement permits and combining the road-worthiness certificate with the general (private or commercial) license. This and an insurance registration should ideally be all that is required to demonstrate compliance with conditions necessary to operate a vehicle responsibly on the road.



## COMPETING FAIRLY

An effectively implemented competition policy can contribute significantly to Tanzania's food security by, among other things, improving efficiencies, output, and quality; lowering prices; and advancing overall economic growth and development. Competition forces producers, including those along the agricultural value-added chain, to be more efficient and innovative and to produce the most attractive array of price and quality options in response to consumer demand. In competitive markets, consumers (whether end-using consumers, such as those purchasing maize to feed their families, or middlemen, such as farmers purchasing seeds, fertilizer and other inputs) are able to choose among many sellers. If they dislike the offerings of one seller (i.e., based on price, quality, service, or other attributes), they can shift their purchases to another seller, thus imposing a rigorous discipline on each seller to satisfy consumer preferences. Those sellers who are more efficient and responsive to consumer demand take sales away from those who are less efficient and responsive. Consumers all along the value-added chain benefit from greater choice and quality and lower prices.



Liberalization of markets alone, however, does not ensure competition and the associated benefits. Left unchecked, market participants may engage in practices that harm the competitive process and consumers. They may enter into cartels and other anticompetitive agreements, abuse dominant positions, or combine through anticompetitive mergers, thereby creating or maintaining illicit market power—i.e., the ability to profitably charge prices above the competitive level for a

sustained period of time. The agricultural sector is not immune to this type of behavior. Indeed, the agriculture sector might be of greater concern because it produces essential products bought by all consumers, including the poor who are disproportionately affected by anticompetitive activities that raise the prices and reduce the output of these items (see box below).

### COMPETITION, PRODUCTIVITY, AND POVERTY REDUCTION

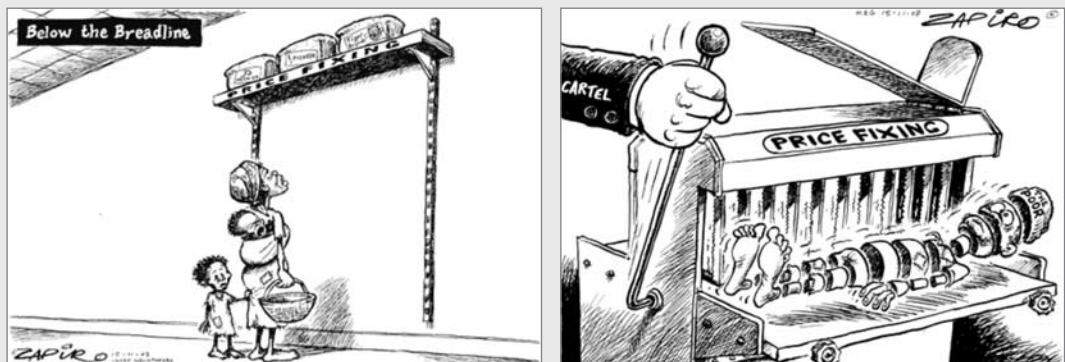
*“Economic progress depends on increasing productivity, which depends on undistorted competition. When government policies limit competition . . . more efficient companies can’t replace less efficient ones. Economic growth slows and nations remain poor.”*

—William Lewis, *The Power of Productivity: Wealth, Poverty, and the Threat to Global Stability* (2004)

## FOOD AND AGRO-PROCESSING SECTOR: A HIGH PRIORITY IN SOUTH AFRICA

The South Africa Competition Commission has given high priority to the food and agro-processing sector because of the value-adding activities and employment involved (about 30 percent of the country's workforce), as well as the fact that it produces essential products bought by consumers, including the poor. It became a priority sector after the competition agency observed the impact that food price hikes were having on the poor and the uncovering of cartels in the bread and milk markets. Since early 2008, the agency has been studying and intervening in the food-value chain from an enforcement, merger, and competition-advocacy perspective. The agency has actively investigated (and, in some cases, successfully prosecuted) various types of allegedly anticompetitive behavior in the sector, including, but not limited to (1) agreements among three large fertilizer suppliers to fix prices and divide markets for various fertilizer products; (2) abusive behavior by a vertically integrated firm with a dominant position in the grain storage market to exclude nonintegrated rivals in the down-stream market for grain trading; (3) agreements among milk producers to fix prices for raw and processed milk; and (4) agreements among bread companies to fix prices and allocate markets for bread. In the most recent year alone, the agency initiated five new investigations of allegedly anticompetitive behavior in the sector, including possible anticompetitive conduct in the supermarket industry. Most recently, the South Africa Competition Commission, the Egyptian Competition Authority, and the Zambian Competition Commission started a Joint Food Project (funded by the International Development Research Centre) aimed at sharing knowledge and approaches with regard to assessing possible anticompetitive conduct in food markets. See, generally, [www.compcom.co.za/priority-sectors/](http://www.compcom.co.za/priority-sectors/). See also Competition Commission Annual Report for 2008–2009, available at [www.compcom.co.za/annual-reports/](http://www.compcom.co.za/annual-reports/), and Competition News, Edition 32 (June 2009) and Edition 33 (December 2009), available at [www.compcom.co.za/newsletters/](http://www.compcom.co.za/newsletters/) (describing recent enforcement activities in the sector).

### PRICE FIXING AND THE POOR



These two political cartoons appeared in the South Africa press after the country's Competition Commission brought a price-fixing case against sellers of bread. They illustrate the disproportionate effect anticompetitive conduct in the agricultural sector can have on the poor.

Source: <http://www.mg.co.za>

An effective competition law and enforcement agency help keep anticompetitive behavior in check. But this is only half the solution. Governmental laws, regulations, and policies can interfere with the proper functioning of markets,

too. While regulations are sometimes needed to protect consumers or to correct some market failure, the secondary effects of these regulations on competition, prices, and consumer welfare are not always well understood. In some cases,

these secondary effects may be as disruptive to the competitive process as a cartel, an abuse of dominance, or an anticompetitive merger. Because these regulations are sanctioned by the government, however, they do not violate the competition law, and law enforcement is not an option. Intervention in the form of competition advocacy—whereby the competition authority assesses the competitive effects of the law or policy and advises the appropriate governmental body—may be the only means to ensure that consumers enjoy the full benefits of competition.

Tanzania has a well-written and comprehensive competition law intended to increase efficiency, promote innovation, maximize the efficient allocation of resources, and enhance consumer welfare. It seeks to advance these objectives through a dual mandate: prohibitions against anticompetitive and unfair or deceptive practices and competition advocacy. Tanzania's broader legal framework, however, tends to undermine the goals of the competition law. Various crop-specific laws, for example, continue to allow for governmentally imposed minimum prices that are inconsistent with the competition law's market-based pricing. Similarly, numerous other laws and regulations designed to regulate against consumer harm or to correct perceived market imperfection may impose secondary effects on competition, prices, and consumer welfare that are not fully understood. In some cases, these secondary effects on competition may outweigh the principal harm the regulation is intended to address. Tanzania's broader legal framework, therefore, needs to be comprehensively reviewed and, where possible, harmonized with the objectives of the competition law. In addition, while the competition law is well written and comprehensive, the implementing agency is young and inexperienced. Consequently, the competition agency must receive adequate funding, staffing, and capacity-building support (both in the short term and in the long term) if it is to fulfill its mandates under the law effectively.

## LEGAL FRAMEWORK

### THE FAIR COMPETITION ACT

The **Fair Competition Act** (Competition Act) was passed in 2003 and took effect in May 2004. It is the principal law regulating competition and consumer protection in Tanzania. The act's stated objective, set forth in Section 3, is to enhance the welfare of the country's people as a whole, rather than the interests of any particular subset of people (e.g., farmers).<sup>71</sup> The act seeks to accomplish this objective by promoting and protecting effective competition and preventing unfair and misleading market conduct in order (1) to increase efficiency in production, distribution, and supply of goods and services; (2) to promote innovation; (3) to maximize the efficient allocation of resources; and (4) to protect consumers.

### THE COMPETITION ACT'S APPLICABILITY TO THE AGRICULTURAL SECTOR

The Competition Act applies equally to all sectors of the economy (including the agricultural sector) and to all persons (both domestic and foreign and state and local government bodies) insofar as they are engaged in trade.<sup>72</sup> Moreover, the act defines the term goods to include, among other things, "animals, including fish, trees and crops, whether on, under, or attached to land or not."<sup>73</sup> Section 14 of the act contains a limited number of exemptions, including export cartels and agreements relating to remuneration, conditions of employment, and hours of work. In addition, under certain specific and limited circumstances, the Fair Competition Commission may grant an exemption to an otherwise anticompetitive agreement or merger where it is likely to result in a net public benefit and the harm to competition is no greater than is reasonably necessary to attain the benefit.<sup>74</sup>

The Competition Act gives the Fair Competition Commission (the act's principal implementing institution) *exclusive jurisdiction* over all competition issues, including competition issues in the

71 Some jurisdiction's competition laws expressly include the promotion of additional social goals such as the protection of small and medium businesses, jobs, or historically disadvantaged persons. See, e.g., South Africa Competition Act, at § 2.

72 Fair Competition Act, §§ 6 ("Act applies to state bodies and local government bodies in so far as they engage in trade") and 96(1) ("Act applies to all persons in all sectors of the economy").

73 Fair Competition Act, § 2 (emphasis added).

74 Fair Competition Act, §§ 12 and 13.

agricultural sector, absent an express exclusion or other modification in another law enacted *after* the effective date of the Competition Act.<sup>75</sup> Notwithstanding, several crop-specific laws enacted *before* the Competition Act, which arguably gave the various crop boards the authority to set indicative (minimum) farm-gate prices (price is a very important attribute to competition) for their respective crops, continue to be enforced today. As discussed later, these price-setting provisions are inconsistent with the Competition Act, which seeks to promote, among other things, competitive market-based pricing.

#### **The Competition Act's Substantive Provisions.**

The Competition Act is generally well written and contains various competition and consumer protection provisions. Provisions relating to competition include prohibitions against the three principal concerns of competition law and policy worldwide: cartels and other anticompetitive agreements, abuses of dominance, and anticompetitive mergers. All horizontal price-fixing agreements, group boycott agreements, and bid-rigging agreements are illegal *per se* under Section 9 of the act. All other horizontal agreements and all vertical agreements are analyzed under a rule of reason and are unlawful only if they appreciably prevent, restrict, or distort competition. Similarly, alleged abuses of dominance are subject to a rule-of-reason analysis and are illegal only if the effect or likely effect of the challenged conduct causes appreciable harm to competition. Section 11 prohibits mergers that “create...or strengthen... a position of dominance in a market.” Significantly, all three substantive provisions are concerned with harm to the competitive process, not merely harm to an individual competitor that does not also harm competition.

The act's consumer protection provisions include prohibitions against false, misleading and deceptive conduct and representations, unfair business conduct (e.g., bait-and-switch advertising), and unconscionable conduct.<sup>76</sup> In addition, sections

#### KEY LAWS AND REGULATIONS

- The Fair Competition Act (2004)
- The Cotton Industry Act (2001)
- The Tanzania Tobacco Act (2003)
- The Tanzania Tea Act (1997)

48–56 of the act include various provisions relating to product safety and product standards.

#### **The Act's Investigatory and Remedial Provisions.**

Sections 68–69 of the act authorize the Fair Competition Commission to open an investigation on its own initiative, in response to a public complaint, at the request of a regulatory body, or at the direction of the Minister for Industry, Trade and Marketing. The agency's investigatory powers under the act are quite broad and comprehensive and include the power to hold inquiries, compel documents and information (including oral testimony), conduct “dawn raids,” and engage consultants and experts.<sup>77</sup> The commission does not, however, have a corporate leniency program with respect to cartel activity.<sup>78</sup>

The act's remedial powers are set forth in sections 58–60. They include the power to issue compliance orders requiring a person to cease and desist from conduct in contravention of the act or to take actions to comply with the act, including interim orders pending full consideration of the matter. In matters involving anticompetitive mergers, the act's remedial powers include the power (1) to require the divestiture of problematic assets or shares and (2) to declare the acquisition void and to require the acquirer to transfer shares or assets back to the seller. The act also authorizes the use of compliance agreements whereby a person voluntarily agrees to refrain from conduct in violation of the act or to dispose of shares and assets. Compensatory orders—including orders requiring the payment of money or the supply of goods or services, orders varying or terminating a contract, and orders requiring the payment of costs—are authorized by the act. Compensatory damages and fines of 5–10% of

75 Fair Competition Act, § 96 (“Act applies to all persons in all sectors of the economy and shall not be read down, excluded or modified ... by any other Act except to the extent that the Act is passed after the commencement of [the Fair Competition Act] and expressly excludes or modifies [the Fair Competition Act] ...”).

76 See generally Fair Competition Act, §§ 15-20 (false, misleading and deceptive conduct and representations), §§ 22-24 (unfair business conduct, e.g., bait-and-switch advertising), and § 25 (unconscionable conduct).

77 See generally Fair Competition Act, § 68 (inquiries), § 71 (documents, information and testimony), § 71(5) (dawn raids—although the Competition Commission must apply to the Fair Competition Tribunal for a warrant authorizing the commission to enter premises to conduct a search and make copies or take extracts of documents), and § 72(2) (consultants and experts).

78 The South Africa Competition Commission attributes some of its success in attacking cartel activity in the food and agro-processing sector to its corporate leniency program. See, e.g., *Competition News*, Edition 32 (June 2009), at 3, available at [www.compcom.co.za](http://www.compcom.co.za).

annual turnover are permitted. The act, however, does not contain any criminal penalties. Compliance orders and compensatory orders, but not compliance agreements, are enforceable as orders of the High Court.

### **The Competition Act's Advocacy Mandate.**

Significantly, the legal framework of the Competition Act also includes a wide-reaching competition advocacy mandate. That mandate is set forth in Section 65 of the act and requires the Fair Competition Commission, among other things, to (1) promote public awareness and understanding of the competition law; (2) conduct research into matters relating to competition and consumer welfare; (3) study existing and proposed laws and regulations, and governmental policies and programs to assess effects on competition and consumer welfare; and (4) participate in governmental deliberations on issues relating to competition and consumer welfare. This mandate is particularly important because, as discussed below, Tanzania's broader legal framework includes various laws and regulations that may be inconsistent with the objectives of the Competition Act or that impose secondary effects that impede the efficient operation of the market.

### **CROP-SPECIFIC LEGISLATION**

Several crop-specific laws existed when the Competition Act was passed in 2003. These crop-specific laws established regulatory boards whose mandates were to oversee the development and growth of the particular crop sector. In some cases, these crop laws arguably gave the boards authority over certain competition issues, including, most notably, the setting of minimum prices. The clarity and scope of that authority, however, vary. For example, Section 5(1) of the **Cotton Industry Act** enumerates the functions of the Tanzania Cotton Board, including "[to ensure] competition, fair trade, and to set and monitor indicative prices as established by market forces." Similarly, Sections 42(1) and (3) of the **Tanzania Tobacco Act** empower the Tanzania Tobacco

Council (itself a compromise of private sector tobacco growers and traders and processors) "to negotiate and agree on the minimum indicative prices of tobacco ... and register the agreement with the [Tanzania Tobacco] Board." By comparison, the **Tanzania Tea Act** creates the Tanzania Tea Board, but price setting is not among the board's enumerated functions.<sup>79</sup> Instead, the price-setting function is established under separately issued Tea Regulations providing that the Tea Board is to establish minimum prices in consultation with the Tea Association of Tanzania (yet another private sector association).<sup>80</sup>

Although the Competition Act appears to have displaced the price-setting provisions of these earlier laws and regulations (see Section 96), the crop boards (or, more accurately in some cases, the private sector growers and traders and processors) continue to set minimum prices for their respective crops. In addition, miscellaneous amendments to the crop laws, which were recently passed by the Parliament and (at this writing) are awaiting the president's signature, appear to leave this price-setting authority at least partially intact.<sup>81</sup> For example, under the amendments, the price-setting function of the Tanzania Tobacco Council is slightly reworded but fully retained.<sup>82</sup> In contrast, the amendments appear to strip that authority from the Tanzania Cotton Board.<sup>83</sup> Moreover, it was reported that draft legislation creating other crop boards with similar price-setting authority may be under consideration, but this report has not been verified.

Crops boards consulted during the diagnostic and various private sector stakeholders proffered two explanations for the setting of minimum prices. First, they maintained that the minimum prices are needed to protect small farmers from price fixing and other suspected cartel activity by the few large buyers that characterize these markets. Second, they claimed that the minimum prices guarantee farmers a "fair price."

<sup>79</sup> See Tea Act, 1997, § 5.

<sup>80</sup> The Tea Regulations, 1999, § 7(3)(a). The Tea Regulations also provide that the tea grower's associations or primary cooperative society shall negotiate sale prices with the buyers. *Id.* at § 25 ("Tea growers shall establish in their own areas grower's associations or primary cooperative society which will negotiate with the buyers the sale prices of the green leaf tea and the prices so negotiated will apply to the respective tea growing area only:").

<sup>81</sup> The Crop Laws (Miscellaneous Amendments) Act, 2009.

<sup>82</sup> The Crop Laws (Miscellaneous Amendments) Act, 2009, Part VI, § 69 ("set minimum indicative tobacco farmer grade prices").

<sup>83</sup> The Crop Laws (Miscellaneous Amendments) Act, 2009, Part V, § 44 (repealing the relevant provision of the Cotton Industry Act and replacing it with a provision that does not appear to include the setting of prices).

Neither argument is compelling. As to the first, horizontal price fixing or other anticompetitive behavior by buyers (or sellers) would violate the Competition Act and could be—indeed, should be—appropriately challenged and remedied under that legislation. As to the second argument, the rationale underlying market liberalization and competition is that free markets can set prices more efficiently and equitably than can governmental officials.

Interestingly, stakeholders offered different descriptions of what is meant by a “fair price.” The three most common descriptions were as follows: (1) a price negotiated between all sellers and all buyers and supervised by the government; (2) a price based on cost plus a reasonable margin; and (3) a price based on the international price for the crop adjusted for transportation costs. The fact that there were so many different views on what constitutes a “fair price” should itself suggest the preference for letting the competitive market rather than the government determine price. Moreover, even assuming that any of the offered methodologies were capable of establishing a “fair price,” the price established today may not be a “fair price” tomorrow because of changing market conditions.

Both proffered justifications also run afoul of the stated objective of the Competition Act, which is to enhance the welfare of the country’s people as a whole, rather than the interests of any particular subset of people—in this case, farmers growing the affected crops.<sup>84</sup> Nonetheless, it was apparent from our interviews with a large cross section of governmental and private sector stakeholders that there is very little political will to bring the pricing provision of the crop-sector laws into conformity with the objectives of the Competition Act—at least not in the foreseeable future—thus leaving Tanzania’s agricultural sector to a “second-best” alternative when it comes to attaining the benefits possible under full and unfettered price competition.

<sup>84</sup> Stakeholders who advocated the continued use of minimum prices were also quick to add that the majority of sales occur at prices above the established minimum price. Some of them also expressed the view that because the prices were determined through negotiations between all the sellers and all the buyers, supervised by the boards, the “process” (but not necessarily the effect) was not the same as “price fixing.”

## OTHER LAWS IMPACTING COMPETITION IN THE AGRICULTURAL SECTOR

The overall legal framework applicable to Tanzania’s agricultural sector includes many laws and regulations designed to regulate against some consumer harm or to correct some perceived market imperfection, both of which are laudable goals. While the diagnostic methodology did not lend itself to a comprehensive review of all the relevant laws and regulations, it generally revealed that the secondary impact on competition, prices, and consumer welfare of many such laws may not be well understood. Indeed, in some cases the laws and regulations may do more harm than good, and may actually impede the competitive process by erecting barriers to entry and expansion, creating perverse market incentives, or making it more difficult for market participants to obtain information.

The following are just four examples of laws and regulations that, according to some private sector and academic stakeholders, impose secondary effects on competition that may outweigh their benefits and that should be reviewed to determine whether they should be retained, modified, or eliminated:

- **Single-marketing channel for cashew growers.** Cashew growers can sell their output only through cooperative unions; direct selling to private buyers (traders or processors) is illegal. As result, there is less “competition” for growers’ output, and growers may receive a lower price than they might receive in a more competitive market. Moreover, because cooperative unions are shielded from competition from other buyers, the cooperative unions are under less competitive pressure to operate in the most efficient manner, including minimizing the cost of marketing.
- **Ban on the export of maize.** The government banned the export of maize to ensure a sufficient supply for domestic needs. Maize farmers, traders, and millers



noted, however, that the ban imposed short-term and long-term secondary effects and costs on competition that may not have been fully understood and appreciated at the time the ban went into force. Domestic maize farmers immediately were foreclosed from selling their output in export markets that may have offered them a higher price for their crop. Unable to export, farmers flooded the domestic market with their output, further suppressing domestic prices relative to regional prices. These lower prices eventually prompted some maize farmers to shift to other crops that were less-efficient alternatives under competitive conditions.

- **Prohibition on trading of tobacco.** The Tobacco Board, traders, and processors said that people cannot obtain a license solely to engage in the trading of tobacco. They must also show that they have a facility or contract to process the tobacco in Tanzania. Unprocessed tobacco leaf cannot be exported. This rule may be intended to protect and promote domestic processors, but one effect is that tobacco growers have fewer buyers bidding for their tobacco. As a result, growers may receive a lower price than they would if they had more traders bidding for their output. The licensing requirement may also increase the cost of entry into the sector; new entrants may find it necessary to enter at two levels, as traders and processors.
- **Limitation on the number of trading licenses.** An extension service near Arusha said that the district councils tightly control the number of licenses issued for getting goods into and out of the districts, a practice that artificially limits the number of traders. Those having a license earn a higher return than they might otherwise if they faced more competition.

Tanzania’s overall legal framework should be subjected to an independent cost-benefit analysis to

determine whether each relevant law should be retained, revised, or eliminated. In particular, the analysis should seek to determine: (1) what specific harm the regulation is designed to address; (2) whether the regulation imposes overly broad restrictions on competition that may outweigh the harm the regulation seeks to address; and (3) whether the regulation can be more narrowly tailored to accomplish its purpose. Laws and regulations that impose disproportionate costs on competition and consumer welfare should be narrowed where possible or eliminated.

## IMPLEMENTING INSTITUTIONS

The principal implementing institutions under the Competition Act are the Fair Competition Commission (Competition Commission or FCC) and the Fair Competition Tribunal (FCT or tribunal). The Competition Commission is an independent body in the Ministry of Industry, Trade and Marketing responsible for administering the Competition Act and developing and promoting policies for enhancing competition and consumer welfare.<sup>85</sup> The FCC became operational in May 2005. It attained its critical mass of staff for carrying out its legal mandates and became fully functional in May 2007.

The Competition Commission has a staff of 47, including approximately 30 professionals (lawyers, economists, and financial and research analysts). Because the staff is fairly new to the agency, they have had very little training and practical experience in competition law and economics. The FCC has conducted some investigations of mergers and alleged abuse of dominance, but none of these investigations directly concerned the agricultural sector.

The Competition Commission has also been active in competition advocacy, monitoring and

### KEY IMPLEMENTING INSTITUTIONS

- Fair Competition Commission (FCC)
- Fair Competition Tribunal (FCT)

<sup>85</sup> Fair Competition Act, § 65(1).



commenting on various laws, regulations, and governmental policies for issues affecting competition and consumer welfare. The FCC is actively working with the Cabinet Secretariat to ensure that the agency receives drafts of all bills so that they can be appropriately reviewed. Due to capacity constraints (both staffing and funding), however, the agency has not been able to take on a comprehensive review of existing laws and regulations pertaining to the agricultural sector. As discussed in the legal framework section, more needs to be done in this regard.

The FCC's most active involvement in the agricultural sector has been a series of subsector studies. More specifically, the commission is about to complete a study of the tobacco-leaf buyer and seller market, looking at the market structure, market concentration, entry conditions, and other dynamics. The commission expects that the study will result in recommendations for possible enforcement and advocacy activities. It is planning a similar study for the cotton sector. A study of a third subsector, however, has been canceled for lack of funding. In the past several months, the FCC's funding has dropped significantly. Substantial funding from the World Bank ended in September 2009 and has not been fully replaced by direct funding from the Ministry.

The Competition Commission has received piecemeal technical training and other capacity-building assistance from the donor community (e.g., the World Bank, Department for International Development, and the U.S. Federal Trade Commission). Given that the agency staff has been in place for less than three years, a much more comprehensive, long-term assistance program is essential if the agency expects to develop properly into a well-respected and authoritative body on competition law and policy in Tanzania. The FCC needs to be able to more readily access the experience and expertise of mature, foreign competition agencies for institutional training and capacity building, as well as for consultation on case-specific investigations and issues. Stakeholders from the government (including the Ministry of Agriculture, Food Security and Cooperatives and the Ministry of Industry, Trade and Marketing), private sector (including the Tanzania Private Sector Foundation), and the academic community uniformly expressed the view that the FCC will not be able to carry out its mandate effectively without further capacity building and adequate funding.

The FCT is a second key implementing institution for competition law in Tanzania. It is an independent, quasi-judicial appellate body established under the Competition Act for the purpose of hearing appeals of matters before the FCC.<sup>86</sup> The tribunal has judicial powers similar to those of the High Court of Tanzania, and its decisions on competition issues are final.<sup>87</sup> The tribunal has decided only one competition matter; two other competition matters are currently pending before it. The FCT has received little or no training and capacity-building assistance in the area of competition law and economics.

## SUPPORTING INSTITUTIONS

### MINISTRIES AND OTHER GOVERNMENTAL AGENCIES

All stakeholders identified the government as essential to the implementation of a free-

86 Fair Competition Act, §§ 83(1) and 85. The FCT also hears appeals from certain regulatory authorities (Energy and Water, Surface and Marine Transport, Communications, and Civil Aviation).

87 Fair Competition Act, § 84(1).

## KEY SUPPORTING INSTITUTIONS

- Ministry of Agriculture, Food Security, and Cooperatives (including crop boards)
- Ministry of Industry, Trade and Marketing
- Tanzania Investment Center (TIC)
- Agricultural Council of Tanzania (ACT)
- Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA)
- Tanzania Private Sector Foundation (TPSF)
- Nongovernmental trade and industry associations
- Educational and research institutions

market economy and a culture of competition in Tanzania. The precise role of the government varied among stakeholders. Most stakeholders thought that the government generally supported liberalized markets but said that, because the economy is in transition, the government may need to intervene more than it would in more developed economies like the United States. A smaller number of stakeholders, mostly academics and a few in the private sector, thought that the government has retained too much of an interventionist role. In their view, the government has been too quick to intervene when it perceives that the market is not functioning properly (or is functioning too slowly) and too slow to intervene to remove impediments to private sector investment.

Governmental institutions, including the Ministry of Agriculture, Food Security and Cooperatives and the Ministry of Industry, Trade and Marketing, have sought input from the Competition Commission on issues affecting competition in the agricultural sector. The Ministry of Industry, Trade and Marketing, for example, has been active in looking at agricultural markets to identify possible impediments to competition or alleged anticompetitive behavior. The Ministry of Agriculture, Food, Security and Cooperatives invited the Competition Commission to participate in regulatory reform for the crop boards (see the “Legal Framework” section above), but it apparently could not fully participate because

of capacity constraints. Some people with the Ministry believed that the institution needs to develop a closer working relationship with the Competition Commission for input on its policies affecting competition.

## NONGOVERNMENTAL TRADE AND INDUSTRY ASSOCIATIONS

Like the government agencies, this group of nongovernmental supporting institutions has a general understanding of and support for liberalized markets and free-market competition. Much like the governmental supporting institutions, however, some private sector stakeholders view the government as having a more active role in the economy beyond merely creating and maintaining a market favorable to private sector investment. One widely expressed view was that it is the government’s role to ensure that farmers received a “fair price” for their crops, mainly to balance perceived “buyer power” and to allow them to earn a living wage. (See earlier discussion on crop-specific legislation.) These stakeholders generally supported the governmental imposition of indicative (minimum) prices, at least during some “transition period” or until Tanzania’s economy becomes more “mature.” They seemed less receptive to the argument that collusion among buyers could be adequately suppressed under the Competition Act without the need for the imposition of minimum prices. Indeed, some private sector stakeholders stated that, even in the absence of cartel activity, the government needs to ensure that farmers will receive a “fair price” for their crops. Some also expressed the view that the government may need to intervene in other ways, including providing subsidies for farmers and offering incentives for investment (e.g., free or discounted land).

Private sector stakeholders also expressed concern about alleged anticompetitive activities in the agricultural sector.<sup>88</sup> Price-fixing and market-allocation allegations were most common in markets characterized by one or a few large buyers and many small sellers. Alleged abuse of

<sup>88</sup> Note that the assessment methodology was not intended to determine whether there were actual violations of the Competition Act and that no such determination has been made with respect to any of these allegations. Much of what we were told was taken at face value, although we attempted to verify the accuracy of these statements in other interviews.

dominance was also common. One processor, for example, alleged that it was foreclosed from entering the market when the incumbent firm signed exclusive contracts with nearly all the existing distributors, thus making it impossible for the processor to secure a distribution base in the market. Another processor alleged that its entry was delayed substantially (and almost failed) because the incumbent was able to have the law applied in an arbitrary fashion against the potential entrant.<sup>89</sup>

Notwithstanding the number of complaints about alleged anticompetitive activity, few private sector stakeholders knew that they could complain to the Competition Commission. Some were aware of the Competition Commission but did not file a complaint because they thought the agency was not fully operational. Private sector associations, therefore, should take a more active role, individually or in concert with the Competition Commission, in sensitizing private sector stakeholders to the role of the Competition Commission.

## EDUCATIONAL AND RESEARCH INSTITUTIONS

Although competition law and policy are fairly new to Tanzania, the country's academic and research institutions (e.g., University of Dar es Salaam, Sokoine University of Agriculture, and the Tanzania Tea Research Institute) are well versed in free-market economics. Indeed, these institutions are probably the most underused assets available in Tanzania when it comes to competition law and policy. Tanzania's academic community appears to be well positioned to support a competition law regime and promote a culture of competition.

In addition, the donor community is a valuable asset. The World Bank has conducted comprehensive studies on competition in three separate product markets in Tanzania—cashew nuts, maize, and coffee.<sup>90</sup> While some stakeholders disagree with parts of these studies, they serve as a useful starting point for assessing competitive conditions in these markets and the

efficient use of the Competition Commission's limited resources.

## SOCIAL DYNAMICS

This diagnostic determined that government leaders and many private sector stakeholders have not fully embraced free-market economics for Tanzania's agricultural sector. (This theme recurs throughout the "Social Dynamics" sections of many chapters in this report.) Although the economy was liberalized some 20 years ago, many private stakeholders expect the government to remain heavily involved in protecting small farmers and more generally in directing the agricultural sector. Government intervention is often sought, according to one academic, because many stakeholders (principally the government and small farmers) view the market as responding too slowly or too harshly. Consequently, they look to the government to intervene in cases of short-term supply disruptions and to secure a "fair price" for farmers. While government intervention has been focused on short-term results, it has ignored the long-term impact that it may have on the sector.

In addition, a large cross section of stakeholders reported the need for a change of attitude among farmers toward "commercialized farming." Small farmers have resisted contract farming and other efforts toward more commercialized farming. Academics and private sector stakeholders acknowledged, however, that commercialized farming (through contract farming or other means) is essential to the development of the sector, including realization of scale economies and other efficiencies, increased quality, and long-term investment by agro-processors.

## RECOMMENDATIONS

**Undertake a comprehensive review of Tanzania's overall legal framework to determine its secondary impact on competition and consumer welfare.**

In the short term, crop-specific legislation (e.g., Tobacco Industry Act, 2001) should be

<sup>89</sup> In the interest of fairness, it should be noted that some stakeholders described some markets as robustly competitive. For example, multiple stockists in one "geographic market" described how their pricing was highly constrained by number of firms, the ease of entry, and the price sensitivity of consumers. One such stockist detailed how he had lost sales in response to a mere 2 percent price reduction by a competitor. Similarly, maize traders in one market and a producer of animal feed in another market each described how competition was occurring on multiple dimensions—both price and quality.

<sup>90</sup> See *State and Markets in Cashew Marketing: What Works Better for Tanzanian Farmers?* Mwombeki Baregu and Johannes Hoogeveen (October 2009); *High Marketing Costs and Inefficient Policies in Tanzania's Maize Market*, Sergiy Zorya and Shireen Mahdi (October 2009 draft); and *The Impact of Regulatory and Institutional Arrangements on Agricultural Markets and Poverty: A case study of Tanzania's Coffee Market*, Shireen Mahdi (June 2009).

reviewed and harmonized with the objectives of the Competition Act, including eliminating the price-setting functions of the crop boards where appropriate. Over the longer term, other general laws and regulations applicable to the agricultural sector should undergo an independent cost-benefit analysis to determine:

1. The specific harm the regulation is designed to address and whether the regulation is appropriately tailored to that purpose
2. The extent of the secondary effects of the regulation on competition and consumer welfare
3. If the secondary effects outweigh the harm the regulation seeks to prevent, whether the regulation can be more narrowly tailored to accomplish that purpose without unduly constraining competition.

Laws and regulations that do not serve a specific consumer protection purpose should be abolished. Those that serve a consumer protection purpose but are overly broad should be more narrowly tailored to address the perceived harm while minimizing secondary costs. With appropriate funding and other resources, the Competition Commission may be able to undertake this responsibility under its competition advocacy mandate.

### **Support the Competition Commission in fulfilling its statutory mandate to promote and protect effective competition and consumer protection.**

#### **Short Term**

- The government of Tanzania should provide the Competition Commission with sufficient staff, independent funding, and other resources to investigate and remedy anticompetitive conduct in the agricultural sector and to fulfill its competition advocacy mandate.
- The Competition Commission should continue to undertake studies of specific agricultural subsectors to better understand the market structure, market

concentration, entry conditions, and market dynamics and to identify appropriate areas for law enforcement and competition advocacy activities. Alleged violations of the Competition Act should be investigated and, where appropriate, remedied.

- The Competition Commission and donor community should conduct a capacity-building program to sensitize the various ministries and government bodies with responsibilities in the agricultural sector to the Competition Act, the Competition Agency's statutory mandates, and the general benefits to society from increased competition.
- The Competition Commission and academic and donor communities should partner with the media and local community groups to educate private sector stakeholders and consumers about competition issues, including types of anticompetitive behavior, benefits of competition, and the mandate of the Competition Commission to promote and protect competition.

#### **Long Term**

- Donors should coordinate and support a long-term capacity-building program for the Competition Commission. A long-term and well-planned capacity building program is particularly important when dealing with a young and inexperienced agency. While training does not guarantee that the agency will always make correct enforcement decisions, it reduces the possibility that it will make seriously flawed decisions that undercut its credibility and the public's view and support of free markets. The capacity-building program should be designed to train the agency staff in identifying likely effects on competition and consumers, isolating the material competitive issues, conducting efficient and effective investigations, and developing workable remedies. A comprehensive capacity-building program should include short-term training programs on specific legal and economic issues and investigative

techniques, long-term resident advisors from experienced competition authorities, and staff exchanges.

- **Short-term programs:** This capacity-building tool is best used for training staff in substantive legal principles, analytical frameworks, investigative techniques, and agency operations needed for the success of a competition law enforcement regime. Program topics could include competition law and economics; practical and analytical skills for cartel, abuse of dominance, and merger investigations; remedies; data collection, confidentiality and agency transparency; administrative aspects of case handling; strategic planning and priority setting; competition advocacy; and international and regional cooperation.
- **Long-term resident advisors:** This tool would use experienced staff from foreign competition authorities as long-term legal or economic advisors to the Competition Commission for extended periods of three to six months. The resident advisors would work directly with the staff on their actual investigations on a day-to-day basis. The long-term, in-country commitment also would allow the advisor to become more familiar with Tanzania's competition regime and relevant market developments, thus contributing to more focused

counseling. In addition, by working closely with staff, the advisor could more easily identify other capacity-building needs and priorities and establish a working relationship that would continue long after departure from the country.

- **Staff exchanges:** Select Competition Commission staff should be offered internship opportunities with foreign competition agencies. Ideally, internships should last three to six months, providing ample opportunity for staff to participate in all phases of the host-agency's investigations and enforcement actions and gain a valuable firsthand appreciation of the practices and approaches used in other jurisdictions. Interns would return to the Competition Commission to impart their learning to other staff members.

Foreign competition agencies need to take an active role in these capacity-building programs for at least two reasons. First, they can draw on their institutional strengths and experiences to provide assistance that is comprehensive in its scope, emphasizing the pragmatic over the theoretical and focusing on transferring institutional skills and experience in investigating, analyzing, and remedying anticompetitive behavior. Second, they can foster valuable working relationships that continue well after the capacity-building program has ended.

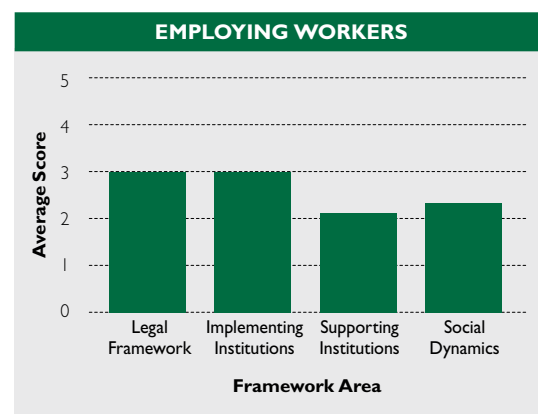


## EMPLOYING WORKERS

The vast majority of workers in Tanzania’s agricultural sector toil informally. They are farmers or shepherds on small plots held by their families or villages; they work at various junctures along product value chains at “piece” rates, often on seasonal basis; or they hold milling, shelling, sorting, or similar jobs under casual circumstances that fall far short of compliance with the minimum conditions for wages, hours, safety, and health established by the national labor laws.

These workers typically function as part of family “networks.” With low rates of urbanization, around 80% of Tanzanians live in towns and villages among their extended families, usually defined by paternal lineage. Their collective livelihoods depend on members’ working in a variety of paid and unpaid jobs, with a few adults sometimes employed abroad, by the government, or in entrepreneurial pursuits. In addition, they rely on children to perform both light and heavier aspects of agricultural work as well as on relegation to women of disproportionately burdensome, poorly compensated, and low-status activities.

Tanzania’s new regime of labor laws and regulations, enacted between 2003 and 2008, sought to bring clarity and structure to labor relations in an economy newly oriented toward free-market principles. The relevance of this regime to most Tanzanian workers, however, remains minimal. A small minority of agricultural workers—probably around 25,000–50,000<sup>91</sup>—are employed on 400 or so privately owned plantations where they are represented by a labor union. Conditions for formally employed plantation workers are significantly better than those for most jobs in the agricultural sector, with most plantations subject to regular inspections for labor conditions generally and for occupational safety and health. In contrast, most agricultural workers in the informal sector receive little attention, if any, from state agencies, labor unions, and employer associations.



Tanzania’s ranking by *Doing Business 2010* for Employing Workers is in the bottom third of the world (131st out of 183 countries surveyed). But the *Doing Business* metrics, with their emphasis on labor-market flexibility—the ability of employers to hire and fire workers with minimal cost and time expended<sup>92</sup>—lack relevance to the 94% of the Tanzanian workforce that is engaged informally and mostly (about 76%) in the agriculture sector.

Rather, the critical issues facing both workers and employers in the agricultural economy are, first, the overwhelming unpreparedness of Tanzanians to meet the demands of modern, productive agriculture; and, second, the paucity and inconsistency of the state’s efforts to address these demands, including overt tolerance of conditions that perpetuate, rather than alleviate, widespread labor abuses and rural poverty. Third, and equally important, Tanzanian workers are crippled by the cross-cutting conditions that limit investment, private

91 A firm number of workers who are formally employed and represented by the Tanzania Plantation and Agricultural Workers Union is not available. The union claims a dues-paying membership of 32,000 and “a general membership of 100,000 (22 percent women).” Tanzania Plantation and Agricultural Workers Union, *Strengthening the Capacity of Agricultural Workers* (Issue brief, 2007–09) at 15.

92 The World Bank amended the Employing Workers methodology in its most recent *Doing Business* report, chiefly to ensure that no economy can achieve a better score by failing to comply with the conventions of the International Labour Organization pertaining to employee termination, weekend work, holiday with pay, and night work. See World Bank, “Employing Workers Methodology” (Web, 10 Feb. 2010).

TANZANIA'S WORKFORCE PROFILE	
Population	40–42 million
Labor force	19–20 million
Percentage of workforce employed in agricultural sector	76
Percentage of workforce employed in industrial sector	4.3
Percentage of workforce employed in services	19.2
Percentage of employees working in public and parastatal sector	2.5–3
Unemployment rate	12–13
Literacy (male)	77.5%
Literacy (female)	62.2%
Percentage of children aged 5–14 engaged in economic activity*	36
Adults living with HIV/AIDS	6.2% (1.4 million people)
*UNICEF considers a child to be involved in child labor activities under the following classification: (1) children 5 to 11 years of age that during the week preceding the survey did at least one hour of economic activity or at least 28 hours of domestic work, and (2) children 12 to 14 years of age that during the week preceding the survey did at least 14 hours of economic activity or at least 42 hours of economic activity and domestic work combined.	

sector growth, and job creation, as discussed in this report's cross-cutting themes set forth in the introduction.

Building on the lengthy discussion of the commercial, legal, and institutional environment for employing workers set forth in the 2008 USAID/BizCLIR report for Tanzania,<sup>93</sup> this chapter focuses on these critical issues and recommends a number of targeted approaches to long-term reform in the agricultural sector.

## LEGAL FRAMEWORK

### ACCESS TO LABOR LAWS AND AWARENESS OF LABOR RIGHTS

At this time in Tanzania, there is shockingly little understanding among agricultural workers and employers about their basic rights and obligations, and there seems to be little will on the part of key labor agencies to clarify and enforce those rights and obligations.

In the agricultural sector, awareness of the core principles of Tanzania's labor legislation—including

key provisions on wages, hours, health, safety, the right to bargain collectively, and worker's compensation—is minimal, and access to the actual laws and regulations is even less. Beyond Dar es Salaam and a few other urban centers, people have virtually no access to copies of the labor and employment laws and regulations, either in print or over the Internet (which, in most locations, is extremely slow and difficult to access). Nor is there significant distribution of information or pamphlets in Kiswahili that would summarize the basic labor legislation in easily digestible terms. The Ministry of Labor, unlike other government ministries, does not post its key laws and regulations on its website. Although some of the laws can be found elsewhere on the Internet (such as the website of Tanzania's Parliament, at the website of the International Labour Organization (ILO), and at the *Doing Business* on-line business law library), the 2007 implementing regulations are nearly impossible to access. The only significant group of agricultural workers that has meaningful access to information about their rights is plantation workers, who are represented by the Tanzania Plantation and Agricultural Workers Union and significantly supported by the International Labour Organization's presence in Tanzania. Although the key labor laws require that information pertaining to employee rights be posted on worksites, this typically does not happen, even in the relatively few formal workplaces that exist in the agricultural sector.

Outside the plantations, most workers hold a common perception that, as unskilled personnel, whatever rights they do have are overwhelmingly outweighed by their expendability. For example, if a manager at a small mill seeks to make good on a contractual promise for Sundays off or if women sifting maize 12 hours a day at a piece rate seek to formalize their jobs through written labor contracts, these workers widely believe—with good reason—that they will be dismissed

93 USAID/BizCLIR. *Tanzania's Agenda for Action* (2008).



## KEY LAWS AND POLICIES

- Employment and Labor Relations Act (2004)
- Labor Institutions Act (2004)
- Employment and Labor Relations Rules (Code of Good Practice) (2007)
- Labor Institutions Order (Regulation of Wages and Terms of Employment) (2007)
- Occupational Safety and Health Act (2003)
- Workers Compensation Act (2008)
- National Employment Policy (2008)

and replaced unceremoniously. This perception is reinforced by the fact that, in smaller workplaces, including midsize farms, mills, and smaller processing operations, there is little or no chance that a labor inspector will ever visit the premises, review an enterprise's labor conditions, and take action where deficiencies are detected.

### CORE LABOR LAWS AND REGULATIONS: THE THRESHOLD ISSUE OF WHO, IN THE AGRICULTURE SECTOR, IS COVERED BY THE LAW

When the BizCLIR/Tanzania report was issued in February 2008, the country's relatively new regime of labor laws and regulations was just taking effect. That report discussed at length the content of Tanzania's labor regime. It found that, although the laws and regulations aspired to bring the country into labor-related conditions consistent with free-market economics, they ultimately contained major "inconsisten[cies] with modern labor codes, dubious conformity with international labor standards, confusing and unclear requirements, and some self-contradictory provisions."<sup>94</sup> Along with their implementing regulations, the **Employment and Labor Relations Act (ELRA)**, which covers collected and individual legal entitlements, including hours, wages, leave, and collective bargaining, and the **Labor Institutions Act (LIA)**, which governs the establishment and functions

of labor institutions, "perpetuate excessive and unnecessary government control of private sector labor relations," the report concluded.<sup>95</sup> The BizCLIR discussion set forth numerous examples of how the new regime generally increased the regulatory burden on private sector employers without significantly bolstering conditions under which most Tanzanians actually work.

Two years later, the BizCLIR report's analysis of Tanzania's labor laws and regulations remains substantially unaddressed. Consideration and application of that analysis, including its detailed illustration of the inconsistency among and lack of clarity within the laws and regulations, remain a worthy goal for officials who wish to use the tool of law reform to develop private sector confidence in Tanzania as a destination for entrepreneurship and investment. Moreover, the absence of acknowledgment in the law of special labor issues in the agricultural sector—including special issues associated with farm work and migrant or seasonal labor—represents a critical gap in legal coverage to a sector that, pursuant to the national policy of Kilimo Kwanza,<sup>96</sup> is supposed to lead the country's economic development in the near future.

Perhaps more important, as the ILO notes in a November 2009 summary of working conditions in Tanzania,<sup>97</sup> the labor law regime has very little practical application to the majority of people who work in the country's vast informal sector. Most workers, particularly agricultural workers, are engaged in "contracting, subcontracting, home-based work and self-employment." Whether most workers in the agricultural arena even qualify as "employees" covered by the ELRA is not sufficiently spelled out in the law.

In fact, as a practical matter, the effect of the law is to tacitly give employers of nonorganized workers the decision over whether to accept the law's jurisdiction. Specifically, Section 4 of

<sup>94</sup> *Id.* at 52.

<sup>95</sup> *Id.*

<sup>96</sup> Tanzania National Business Council, *Kilimo Kwanza: Towards Tanzanian Green Revolution* (June 2009).

<sup>97</sup> International Labour Organization, *National Profile of Working Conditions in the United Republic of Tanzania* (Rep. no. 978-92-2-122887-5. 1st ed. 2009).

the ELRA defines “employee”—the key term determining its application—as follows:

- “employee” means a person who—
- (a) has entered into a contract of employment
  - (b) has entered into any other contract under which—
    - i. the individual undertakes to work personally for the other party to the contract; and
    - ii. the other party is not a client or customer of any profession, business or undertaking carried on by the individual; or
  - (c) is deemed to be an employee by the Minister under section 98(3).

Although the word *contract* is critical to the definition of *employee*, the ELRA does not define *contract*. This omission leaves both workers and employers free to interpret the word narrowly—that is, as *not* including informal arrangements or verbal contracts. The ELRA definition leaves open the possibility of calling work that, in most developed economies, would necessarily fall under the employer-employee relationship, a “client” or “customer”-oriented relationship that it does not cover.

As a practical result, employers of 10–50 people in the agricultural sector routinely refer to their laborers as “casual workers” with whom they do not have a formal contract—and, thus, they often believe, no formal obligations under the law. These employers, as repeatedly confirmed during this diagnostic, do not concern themselves with providing minimum wage, social security support, worker’s compensation, or other benefits.

The definition of *employee* in the **Workers Compensation Act of 2008** superficially suggests coverage of these so-called casual workers. That definition includes “any ... person who in any manner assists in carrying on or conducting the business of an employer.” At the same time, however, that law excludes, without

sufficient defining language, “contractors” who are enlisted “to perform independently any task for or on behalf of the employer.”

The clearest definition of *employee* is found in the **Occupational Safety and Health Act (OSHA) of 2003**, where the definition is as follows:

- “employee” means a person who—
- (a) is employed by or works for an employer and who receives or is entitled to receive any remuneration;
  - (b) works under the direction or supervision of an employer or any other person; or
  - (c) is [an] apprentice.

Tanzania has a common law system, so that in theory a court could clarify this important issue and set a firm definition. However, it is not clear whether a relevant court has brought consistency to the definition of *employee* in the country’s core labor legislation, given that published cases are not widely available or distributed.

Regardless, a straightforward fix to the problem of defining *employee* in Tanzania’s labor legislation would be to state, at a minimum, that, where an employer has significant control over the work of a person—including setting hours of work, holding supervisory authority, and other indications of direct control—that person is an employee who is covered by Tanzania’s labor and employment legal framework. An even better “fix” would be to include agricultural workers and farm laborers specifically in the law, when they are working under the direct control of someone else, within the definition of *employee*. The OSHA does in fact incorporate and refer specifically to agricultural activities (Section 65), unlike the other laws.

Bringing more workers under the scope of formal labor and employment legislation does not contradict the goal of promoting private sector development and economic growth. Rather, the *most* hospitable economies for business, as ranked by *Doing Business*,<sup>98</sup> provide very strong

98 In *Doing Business 2010*, the top 10 economies for doing business are the following: (1) Singapore; (2) New Zealand; (3) Hong Kong; (4) United States; (5) United Kingdom; (6) Denmark; (7) Ireland; (8) Canada; (9) Australia; (10) Norway. The correlation between good labor scores and good business scores is generally quite high.

## SUMMARY OF KEY PROVISIONS IN TANZANIAN LEGAL FRAMEWORK

Issue	Policy
Work hours	<ul style="list-style-type: none"> <li>• No daily limit provided (compressed work-week allowed)</li> <li>• Maximum of 5 days/week; 45 hours/week; 10 hours overtime in a week</li> </ul>
Weekly holiday	<ul style="list-style-type: none"> <li>• “24 hours weekly rest”</li> </ul>
Overtime pay	<ul style="list-style-type: none"> <li>• Overtime limits beyond 45 weekly hours</li> <li>• 50-hour overtime limit within 5-week period</li> </ul>
Annual leave	<ul style="list-style-type: none"> <li>• For employees with more than six months service, 28 days of paid leave per year</li> </ul>
Religious and/or official holidays; death of a relative	<ul style="list-style-type: none"> <li>• 4 days paid compassionate leave in the event of sickness or death</li> </ul>
Sick leave	<ul style="list-style-type: none"> <li>• 126 days of sick leave, half paid in full and half at partial wages, in “any leave cycle”</li> </ul>
Salary disbursement	<ul style="list-style-type: none"> <li>• “Due and payable at the end of contract period”</li> </ul>
Severance pay	<ul style="list-style-type: none"> <li>• 7 days paid wage for each consecutive year of service (after 12 months service);</li> <li>• Employee dismissed for misconduct not eligible for severance pay</li> </ul>
Worker’s accident insurance	<ul style="list-style-type: none"> <li>• Worker’s Compensation law of 2008 provides for coverage of employees in case of accident</li> <li>• Employee narrowly defined, thus excluding many so-called casual workers</li> </ul>
Minimum wage	<ul style="list-style-type: none"> <li>• Sectoral minimum wages, including designated wages for agricultural work, of between TSHS56,000 and TSHS350,000</li> <li>• Wages set by wage boards, as established by Labor Institutions Act</li> </ul>
Transportation reimbursement	<ul style="list-style-type: none"> <li>• Upon termination, employer to pay cost of transportation back to place of recruitment</li> </ul>
Parental issues	<ul style="list-style-type: none"> <li>• 84 days maternity leave (paid at 100% of previous earnings by National Social Security Fund) or 100 days with more than 1 child</li> <li>• 2 hours per day breast-feeding breaks</li> <li>• 3 days paid paternity leave within 7 days of the birth</li> </ul>
Social security and medical insurance	<ul style="list-style-type: none"> <li>• National Social Security Fund covers workers in the private sector and some employees in the civil service and parastatal organizations</li> <li>• Parastatal Pension Fund initially covered only employees in parastatal organizations but is now extended to anyone, including the self-employed</li> <li>• Local Authority Pension Fund, the Public Service Pension Fund, and the Government Employees Provident Fund covers different categories of public employees</li> </ul>

protections for labor rights, including easily accessible laws and regulation; straightforward standards for salaries, leave, and other basic conditions of work; and well-functioning systems for enforcement. Clarification of the law—including specificity of who, in fact, is covered by the law—is consistent with the rule of law generally.

## OCCUPATIONAL SAFETY AND HEALTH

The transformation of Tanzania’s labor law regime began in 2003 with Tanzania’s OSHA, which established a chief inspector for health and safety and an accompanying regime of OSHA inspectors with clearly defined powers. As noted, the OSHA contains a clearer, more broadly

defined definition of *employee* than other labor legislation and specifically covers the agricultural sector, including expansive definitions of *workplace* and *factory* that necessarily include farms and agricultural processing facilities. The OSHA act contemplates designation of at least one safety and health representative per 50 workers in every Tanzanian workplace. OSHA inspectors are distinguishable from labor inspectors authorized under the Labor Institutions Act (2004), which are charged with examining all other conditions of work (such as compliance with wage and hour laws and child labor provisions).

Notwithstanding the relative clarity of the mandate of the OSHA, in the vast majority of farms and other agriculture-oriented workplaces, health and safety rules go unenforced. Most agricultural workers are unaware of the law; but even if they are aware, many are afraid to call attention to risky or unhealthy work conditions. The significant exception is on the plantations, which are regularly examined for health and safety compliance. An OSHA inspector will typically visit a plantation once a year for the purpose of examining general health and safety conditions, with a certificate of compliance posted in the workplace, once the inspector has been satisfied that all relevant conditions have been met.

### CHILD LABOR

Consistent with applicable ILO Core Conventions,<sup>99</sup> as well as others ratified by Tanzania, including the UN Convention on the Rights of the Child,<sup>100</sup> Tanzania defines child labor to be work performed by children under 18 years of age that is exploitative, hazardous, or inappropriate for their age and which is detrimental to their schooling or to their social, mental, spiritual, and moral development. The ELRA prohibits employment of children below the minimum working age of 14; permits the employment of children age 14 only in light work that is not harmful or that interferes with school attendance; and provides that children under 18 years may not be employed in a mine,

PERCENTAGE OF CHILDREN, AGE 5-14, ENGAGED IN LABOR, 1999-2007 EAST AFRICA	
Burundi	19
Ethiopia	53
Kenya	26
Rwanda	35
<b>Tanzania</b>	<b>36</b>
Zambia	12
Source: UNICEF.	

factory, as crew of a ship, or any other work setting determined to be hazardous under regulations promulgated by the labor minister.<sup>101</sup> The law does, however, allow children to work in mines, factories, or ships as part of their “training” as well as in other types of workplaces on the condition that the health, safety, and morals of the child are fully protected.

With respect to the issue of child workers in all types of workplaces, Tanzania’s relevant legal framework is clear. As with other areas of the labor law, however, restrictions on child labor are not consistently well known and understood among employers nor are the rules significantly enforced. The worst forms of child labor persist in Tanzania and generally involve agriculture (including tea, tobacco, coffee, and sisal plantations), mining and quarrying, unregulated piecework manufacturing, domestic service, and commercial sex. Sometimes these sectors overlap.

Although some efforts have taken place in recent years to increase awareness about limitations on child labor, the actual use of children in a wide variety of agricultural jobs is obvious throughout the country. School-aged children openly spend designated school hours working in fields and other agricultural jobs. Many children, including shepherds and farm workers, may be enrolled in school but rarely attend. It is widely understood that some child labor can be expected in rural environments, with children called on to help their families, particularly at times of harvest or other labor-intensive endeavors. But the preponderant view in many Tanzanian communities remains focused on the

99 Child Labor Conventions 138 and 182; Forced Labor Conventions 29 and 105.

100 The CRC contains the most universally recognized and comprehensive articulation of civil, political, economic, social, and cultural children’s rights and has been ratified by every country in the world (except Somalia and the United States, but a 2005 U.S. law, the Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005, calls for comprehensive, multisector assistance programs to ensure the well-being of orphans and other vulnerable children in developing countries and emphasizes the needs of children affected by HIV/AIDS). Tanzania has also ratified the African Charter on the Rights and Welfare of the Child.

101 ELRA, Sec. 5.

immediate usefulness of children rather than on their physical and intellectual development as an avenue toward greater productivity and prosperity in the future.

Tanzania's government does formally recognize that "[p]rovision of affordable education of good quality and which is relevant to the needs of pupils and their families is the most effective measure in eliminating child labor."<sup>102</sup> In recent years, teachers have been provided incentives to work in remote areas, including housing, and have received training and materials to improve their skills. The ILO, with assistance from the U.S. Department of Labor, has implemented several child-labor reduction programs in 16 districts, including work related to the identification, withdrawal, and rehabilitation of children from the worst forms of child labor, and has provided educational and economic alternatives. Poor families have received information, training, and grants to start small income-generating projects.

### NATIONAL EMPLOYMENT POLICY

Perhaps more relevant than laws and regulation to the interests of the vast majority of Tanzania's workers is the country's National Employment Policy, announced in August 2008. The policy aims to stimulate growth of jobs in the economy to eventually attain "full productive and decent employment for all Tanzanians." Although the Ministry of Labor, Employment, and Youth Development holds the coordination role for this policy, it recognizes that job creation must be a cross-cutting initiative, and it contemplates engagement of other government ministries, departments, and agencies; regional and local authorities; the private sector; employers' and workers' organizations; development partners; and NGOs. Although this diagnostic found general awareness of the policy among professionals directly involved in labor and employment issues, the policy appears to be obscured among, and even contradicted by, the vast array of other development-oriented initiatives endorsed by the Tanzanian government.



In particular, the recently issued government policy of Kilimo Kwanza, detailed earlier in this report, is based on the prevailing assumption that agriculture will continue to be a source of jobs for the majority of Tanzanians in the future. Kilimo Kwanza specifically emphasizes that Tanzania serves as the key market for its own agricultural products.<sup>103</sup> That is, a central goal of the policy is for Tanzania to be "a nation producing what it consumes, and consuming what it produces."<sup>104</sup> The policy further states that an emphasis on exporting cash crops such as sugar, coffee, tea, cocoa "has run its course," because, apparently, supply for these goods exceeds demand.

This stark economic conclusion—that development of local markets for staple crops should be prioritized over international trade of cash crops—cannot be reconciled with the reality of job creation, however. As detailed in a recent article on trade issued by the World Bank Group, "firms that participate in international markets are larger, better at creating jobs, more productive, and more likely to pay higher wages than domestic jobs."<sup>105</sup> Companies that export food from developing countries create at least

<sup>102</sup> Ministry of Labor, *Strategies for Elimination of Child Labour in Tanzania* (no stated date) at 16.

<sup>103</sup> Tanzania National Business Council, *Kilimo Kwanza: Towards Tanzanian Green Revolution* (June 2009), at 8.

<sup>104</sup> *Id.*

<sup>105</sup> Murat Sekur, "Foreign Exposure and Job Creation," *Enterprise Note No. 3* (World Bank Group, 2009) at 1.

25% more jobs, the article shows, than those that do not.<sup>106</sup> In Tanzania, as pointed out, the “best” jobs in agriculture—ones that pay regular wages; are subject to regular inspections for labor conditions, health, and safety; and have union representation—are those on the plantations, the vast majority of which are oriented toward regional and international markets. Plantation managers interviewed for this diagnostic asserted that, with better marketing and streamlined access to markets, they believe they could grow and employ more people. Thus, the virtual rejection of international trade as a job-creating mechanism by Kilimo Kwanza, along with neglect of international trade generally in the National Employment Policy, is not consistent with previous priorities enunciated by the government.<sup>107</sup>

### IMMIGRATION LAW AND PRACTICE

As detailed in the 2008 BizCLIR report, Tanzania suffers from serious shortages of occupational skills. With literacy so low and secondary school and university enrollment also reaching so few people, Tanzania simply does not have the human resources at this time to rise to the knowledge demands of a modern agricultural economy. Yet the country continues to exercise unusually strong restrictions on free movement of labor in the East African region, which greatly limits the extent that skilled workers from outside the country can visit the country and share their expertise.

Tanzania’s hostility toward Kenyan workers is particularly strong and institutionalized. For example, Kenyan businessman seeking to travel to Tanzania must churn through a cryptic and protracted visa process, and travel permits ultimately issued are invariably designed to last for extra short periods of time (considerably shorter than those issued to Rwandans and Ugandans). A truck carrying goods from Nairobi to Dar es Salaam reportedly must switch drivers (from a Kenyan to a Tanzanian) at the border. And single safari vehicle cannot roam from the Maasai Mara National Reserve in Kenya to

Tanzania’s Serengeti National Park. Instead, a second (Tanzanian) tour guide must be enlisted. These practices are not consistent with the notion that East Africa is destined to be a large trading community where services and labor are efficiently allocated according to market-driven supply and demand.

## IMPLEMENTING INSTITUTIONS

### MINISTRY OF LABOR, EMPLOYMENT AND YOUTH DEVELOPMENT

Tanzania’s key institution designed to serve the country’s workforce—the Ministry of Labor, Employment and Youth—has proved generally ineffective in executing its core functions. The Ministry is particularly passive with respect to monitoring and responding to informally employed workers in the agricultural sector. For example, although its staff is in a position to compile and disaggregate the data it collects from all its labor inspections—thus learning more about particular issues facing this large group of workers—they have not done so on their own initiative in recent years. Rather, the Ministry relies on the interventions of donors, allowing the local office of the ILO to compile and interpret the limited information it has collected and permitting the ILO and UNDP to take charge of developing better methods of collecting data in the country’s southern regions. Furthermore, owners and managers of small and midsize food-processing enterprises interviewed for this diagnostic invariably reported that they had “never” been visited by a labor inspector, thus allowing them to persist in their regular engagement of workers without labor contracts and without adhering to the general conditions of employment enunciated by the Employment and Labor Relations Act.

As detailed in the 2008 BizCLIR report, the Ministry’s internal weaknesses “include severe shortages of well-trained and competent staff both at headquarters and regional offices, inadequate offices and equipment, low standing

<sup>106</sup> Id. at 3. The article used data from 17, 843 manufacturing firms, including those dealing in food and other agricultural products, from 40 developing countries.

<sup>107</sup> For a discussion of the evolution of Tanzania’s trade policies in recent years toward encouragement of international trade, see the BizCLIR report’s chapter “Trading across Borders.”

## KEY IMPLEMENTING INSTITUTIONS

- Ministry of Labor, Employment and Youth Development
- Commission on Mediation and Arbitration

within the government, and the mistrust of stakeholders who perceive that there is too little transparency and accountability.” Moreover, “stakeholders ... perceive that the mindset of too many MOL staff seems more attuned to lingering socialist sentiment and coercive enforcement against the private sector than to positive and flexible administrative practices that are conducive to a growing market economy.” Unfortunately, there has been little change in perceptions of the Ministry of Labor since the 2008 BizCLIR diagnostic.

**Labor Inspectors.** Despite their extensive powers under the Labor Institutions Act to monitor and discipline labor infractions—inspectors may arrive unannounced to virtually any type of formal or informal business where workers are engaged—the Ministry’s labor inspectorate is considered notoriously weak. Excuses that the Ministry lacks equipment, transportation, and other resources ring hollow with many observers, including employers, who observe that the inspectorate rarely examines or reports on businesses even within its immediate purview. Although the inspectors are supposed to collect data on various aspects of labor conditions, there is little or no effort to aggregate that data to reveal trends in Tanzania’s workplaces.

**Employment creation.** Although Tanzania’s Ministry of Labor is charged with coordinating the National Employment Policy, it is encumbered by economic realities that are far beyond its control: there are very few categories of job growth; transitions to agricultural processing remain negligible in most rural areas; and, particularly for low-skilled workers, opportunities in the formal workforce are few and hard to get. Moreover, as noted, a national consensus appears to be lacking about the desired

sources of job creation—whether it should come from an internally oriented farm-based system or from a transition to a more industrial and export-oriented economy. Continued ambivalence and outright hostility to regional economic initiatives, including programs that would allow other citizens of the East African Community to enter and leave the country without restriction, further inhibit efforts at job creation in Tanzania.

## COMMISSION ON MEDIATION AND ARBITRATION

As detailed in the 2008 BizCLIR report, the ELRA and LIA created an institution designed to resolve workplace disputes quickly and definitively. The laws created the Commission on Mediation and Arbitration (CMA), along with a division of the High Court dedicated to labor, which provided for alternative dispute resolution to serve as the primary means of resolving labor disputes, with judicial intervention and adjudication through the Labour Court. The LIA rules require that disputes concerning employee termination be referred to the CMA within 30 days of the termination decision and that all other disputes be referred within 60 days of the start of the dispute. Then, following the referral to mediation, the mediator is required to conclude the mediation within 30 days, unless the parties agree to extend.

For disputes that are unresolved through mediation or otherwise referred to arbitration, the arbitrator, following a hearing, must issue an award within 30 days thereafter. Any challenges to the award must be brought to the Labor Court within 14 days of the arbitration award. In a manner similar to appeals of labor arbitration awards in the United States, ELRA permits the court to set aside such awards only if it finds that the arbitrator engaged in misconduct or failed to follow proper procedures. That sharp limitation on court jurisdiction should cause appeals of arbitration awards to be filed quite infrequently.

Two years into the CMA's establishment, both employee and employer representatives consulted during this diagnostic, including employment lawyers, express satisfaction with the CMA. Procedurally, the institution appears to take its mandated timelines seriously; substantially, it has developed a reputation for resolving cases without bias toward one side or the other. That said, the relevance of the CMA, beyond labor disputes on plantations and the few other larger employers of agriculture workers, is negligible to the vast majority of Tanzania's workers.

## SUPPORTING INSTITUTIONS

The 2008 BizCLIR report discusses some of the major supporting institutions for labor generally in Tanzania, specifically, the Law Reform Commission and the Labor, Economic and Social Council, the Trade Union Congress of Tanzania, the Association of Tanzania Employers, and the Vocational Education and Training Authority. As a supplement to that discussion, this section discusses supporting institutions that play a role in Tanzania's labor and employment regime as it pertains directly to the agricultural sector.

### TANZANIA PLANTATION AND AGRICULTURAL WORKERS UNION

As noted, the one substantial group of Tanzanian agricultural workers that are formally employed and represented by a union are those that work on the country's various plantations, most of which produce export-oriented crops, such as flowers, sisal, coffee, tea, and sugar. The union is considered to be relatively well organized and effective at apprising plantation workers of their rights but generally uninvolved in addressing widespread labor abuses in communities of workers without a formal employer or employers' association. Moreover, despite the union's efforts, typical wages in Tanzania's formal agriculture sector are considered too low to support the basic needs of a single family.

### KEY SUPPORTING INSTITUTIONS

- Tanzania Plantation and Agricultural Workers Union (TPAWU)
- Sectoral employers' associations
- Statistical gathering and analysis initiatives
- International Labour Organization (ILO)
- Educational institutions

### SECTORAL EMPLOYER ASSOCIATIONS

Throughout Tanzania, a variety of associations represent businesses that draw on agricultural workers. They range in strength and effectiveness, with stronger groups, such as the Tanzanian Horticultural Association and the Tanzanian Livestock Association, representing employers in labor negotiations, wage-setting decisions, and legal reform. Other associations simply try to serve the shared interests of businesses but spend little time addressing the issues of agricultural workers.

### STATISTICAL GATHERING AND ANALYSIS

Many sources of statistics related to labor and the agricultural sector exist in Tanzania, but the quality of the information gathered is not perceived as especially reliable. The National Bureau of Statistics surveys rates of economic activity, unemployment according to various categories of people (all workers, discouraged workers, women, youth), sectors of labor activity (agriculture, construction, commerce, services), and rates of work in the informal sector. Despite a commitment to data gathering significantly supported by the large donor community, worker advocates say that the information is "not that regular" and that, with respect to the informal sector in particular, data are insufficient. A program supported by the ILO and UNDP is starting to examine village registers for more illuminating information about Tanzanian livelihoods. But most villages have limited or no access to computers and statistical management. For its part, the Ministry of Agriculture periodically conducts an "agricultural census," but that survey does not significantly integrate employment



indicators. Since 2005, the Ministry of Planning, Economy and Empowerment has prepared poverty reports every two years and maintains a website dedicated to sharing information about this key report and other sources of data.<sup>108</sup>

## PRIMARY AND SECONDARY EDUCATION

Although there have been strides toward greater enrollment of students in primary school, attendance and graduation rates remain low, while class sizes remain shockingly high and child labor, in its “worst forms,” remains endemic. According to UNICEF figures, primary school attendance hovers at around 71% for boys and 75% for girls. Secondary school attendance registers at about 8% for both boys and girls.

## POSTSECONDARY EDUCATION

Tanzania’s 1.3% participation rate in higher and technical education is one of the lowest in Sub-Saharan Africa, where the average is below 5% (while in many high-income countries it exceeds 60%).<sup>109</sup> The proportion of the labor force with secondary or vocational education experience is more than 50% higher in neighboring Uganda and Kenya. Tanzanian firms with formal training programs provide less training than their counterparts in comparator countries, which is inconsistent with findings that total factor productivity is 11% higher in Tanzanian enterprises with such programs.<sup>110</sup>

For those few students with the opportunity to attend, Tanzania’s system of higher education is surprisingly vibrant, given the lack of resources afforded education generally in the country. Demand for places in the public universities is especially high. The best (and often the most privileged) students find places in the public universities, with private institutions taking the next level of students. There is a lack of significant coordination, however, between the nation’s major agricultural university and Tanzania’s private sector. Internships, guest lectures, and substantive collaboration between the university and the private sector take place

on a limited basis, but individuals interviewed throughout this diagnostic asserted that far more collaboration should take place.

## SOCIAL DYNAMICS

### INSUFFICIENT SKILLED LABOR IN THE AGRICULTURE SECTOR

Throughout this diagnostic, respondents underscored the need for a workforce that is far more capable of meeting the demands for skilled labor. For example, one representative of the livestock industry said that attracting skilled labor to the livestock arena is enormously difficult, despite that subsector’s strong need for experts in veterinary medicine, feed, efficiency, and even butchering. The growth in the market for organic food has created demand for more expertise in natural pesticide and food-handling practices.

The need for enhanced knowledge, and use of knowledge-based tools, concerns everything along the value chain, including the following:

- Quality of seed and fertilizer, and proper use of both
- Use of irrigation
- Ability of farmers to enter the formal sector as cooperatives or processing enterprises
- Ability of agriculture enterprises, including farmer associations, to obtain credit and outside investment, as well as to observe and respect written supply contracts
- Management of postharvest loss
- Compliance with quality standards that represent key conditions for export
- Transport of products to markets
- Efficiency of border operations pertaining to agricultural goods
- Prompt and effective resolution of disputes that arise along the value chain
- Understanding of how regional and international institutions, such as the East African Community or the World Trade Organization create both opportunities and obligations for Tanzania with respect to building its commerce in agriculture.

<sup>108</sup> See <http://www.povertymonitoring.go.tz/>.

<sup>109</sup> See [http://siteresources.worldbank.org/INTWBISFP/Resources/0\\_Prof\\_Msolla.pdf](http://siteresources.worldbank.org/INTWBISFP/Resources/0_Prof_Msolla.pdf).

<sup>110</sup> World Bank and the Economic and Social Research Foundation, *Investment Climate Assessment: Improving Enterprise Performance and Growth in Tanzania* (2004). This report also notes that while 25 percent of Tanzanian firms reported that worker education and skill levels pose a major or very severe obstacle, workers in Tanzanian enterprises with formal training programs receive only about three weeks of annual training, compared to 15 weeks in India and 17 weeks in China. In comparison, however, another survey reported that about one-half of large firms in Tanzania either provided training for workers or paid for their training. See ILO, *Confronting Economic Insecurity in Africa* (2004), at 259.

## HIV/AIDS

Tanzania's efforts to stem the impact of HIV/AIDS, though effective to some degree, have not permeated the agricultural workforce in a way that will allow the next generation of Tanzanians to put the scourge behind it. A full 6.2% of Tanzanian adults (the sixth-worst rate in the world) live with AIDS, according to the UNICEF: this rate is the 12th highest in the world. Donor and government initiatives have helped reduce somewhat the persistent social tolerance of polygamy, child pregnancy, and a sex trade along major travel routes, but the number of AIDS transmissions remains stubbornly high.

During this diagnostic, many Tanzanians spoke to the practical implications of HIV/AIDS on a family as they ultimately relate to the labor market. Often children in families in which one parent has the disease cannot go to school, either because of practical issues such as transportation or because of the discriminatory forces that weaken support for these children.

Notably, other diseases provide significant and possibly greater burdens on the population, and this is increasingly being recognized by donors as well.

## WOMEN WORKERS IN THE AGRICULTURAL SECTOR

The government substantially underserves the women in Tanzania's agricultural sector, and they face very difficult working conditions. Female literacy rates are low; at least 25% of women in Tanzania, and more in the rural areas, lack functional literacy. Early pregnancy continues to be a socially accepted practice in many communities, with the practical impact being that pregnant girls and girls with children do not continue their schooling. A limited effort has been made to create classrooms for young mothers.

The issue of access to law is one that is especially important to women in Tanzania's agricultural labor force: where information and institutional transparency are lacking, abusive conditions are more likely to thrive.

Rural women in Tanzania face particular hardships, which include not only discrimination in education and employment opportunity but also routine assaults to their dignity that undermine their place in society. As detailed at this report's chapter on Registering Property, women often lose their inheritance rights (childless women are especially vulnerable to such discrimination), and widows in particular face community abuse and scorn.

In recent years, NGOs and donors working to support economic development in Tanzania's rural areas have tended away from traditional workforce development programs—such as vocational training—in favor of enterprise development, so that women may start their own businesses rather than harbor expectations of finding work with a formal employer. In fact, household enterprises are quite common in the rural sector. These enterprises rarely grow beyond informal, home-based establishments, however. Reasons cited during this diagnostic for the limited growth of women-owned enterprises include the heavy burden of child rearing, a general lack of experience in private enterprise, opposition to or “pushback” against growth from other family members, and a lack of opportunity, due to weaknesses in supply chains and access to markets.

Against this backdrop, the labor and employment needs of rural women begin with increased access to education and further include increased options in child care and elder care. Skill training is critical, as employers routinely report that they need workers who offer more than basic skills: they want individuals who can help them grow through specialization in important skills, such as knowledge of English, management, trades such as electricity and plumbing, and so forth.

Perhaps even more challenging to implement is the need of women in Tanzania's rural sector for a stronger voice in seeking the support of men. Rural women need, just as men do, continued support for economic development,

including streamlined conditions for doing business, training in business-related skills, improved access to credit, and better access to markets.

## RECOMMENDATIONS

**Encourage reforms to the Ministry of Labor that render the agency less politicized, more accountable, and better equipped to serve its core mission.**

In any country where the labor ministry is considered to be out of touch and unresponsive to the basic needs of workers, overall respect for the rule of law suffers. To better understand its role in the Tanzanian economy, the Ministry of Labor would benefit from a survey of stakeholders. Anecdotal evidence suggests that the Ministry has a great deal of room

for improvement, beginning with strengthened commitment, accountability, and neutrality at the highest levels. Stronger leadership and accountability might persuade other ministries that more resources, particularly in the area of workplace inspections and job creation, should be devoted to the Ministry.

Moreover, the Ministry of Labor should commit itself to modern systems of human resource management, including regular employee training, creation of job descriptions, and performance appraisals. It should also play a part in improving awareness of the legal rights of workers, including (and especially) informal workers and child laborers, not only through more effective distribution of core labor laws but also through creation and dissemination of easy-to-understand pamphlets and postings about fundamental employee rights.

### EMPLOYING WORKERS: OPPORTUNITIES FOR INTEGRATION ACROSS USAID OBJECTIVES

Economic Growth	Democracy and Governance	Education	Health
Business enabling environment	Civil Society—Unions	Primary and Secondary	HIV/AIDS awareness and prevention
Competitiveness	Child Labor	University	Access to medical care
Enterprise development	Human Trafficking	Vocational and Technical Education	Immunization
Trade and investment	Courts and ADR	Continuing education for professionals	Malaria and other diseases

### EMPLOYING WORKERS: OPPORTUNITIES FOR INTEGRATION IN ECONOMIC GROWTH PROGRAMS

Business enabling environment	Sector Competitiveness	Enterprise development	Trade and Investment
Support for entrepreneurs: Clarity and accessibility of laws and regulations	Creation of industry standards, including standards for knowledge and training	Training for entrepreneurs: starting a business, dealing with licenses, paying taxes, employing workers, etc.	Regional trade in services: Emphasis on opportunities, skills, and human resources
Integration of labor issues into private sector policy	Industry partnerships with academia	Formalization of enterprises: opportunities for both employers and employees	Skill-building in trade facilitation: Border agencies and private sector
Flexibility in hiring, firing, and conditions of work	Industry partnerships with training institutions	Gender issues in enterprise development	Integration of educational and training institutions into trade and investment
Equal employment opportunity	Professional education and continued training	Training and resource development in customer service	Training in marketing

### **Integrate labor expertise into programs and policies pertaining to agricultural sector development.**

In Tanzania and beyond, people often perceive labor and employment issues as “soft” policy matters that tend to be at odds with the “hard” topics of business development and investment. Perhaps progrowth policymakers and donor-supported private sector developers believe that the demands of the formal labor law serve mainly to add costs to the business environment, therefore diminishing the country’s competitiveness. Thus, they often avoid integrating issues of labor (except for some matters of worker training) into many of their initiatives. Although costs are associated with labor law compliance in the agricultural sector, there are also significant benefits, and labor experts are well suited to advise on both. The benefits begin with labor peace: employees who believe that their core rights are being respected are far more inclined to be productive and loyal. Compliance also provides for a more direct link between the skill demands of employers and the labor institutions, including vocational schools and other training centers, which can help meet those demands. Firms that adhere strongly to labor laws are more attractive to outside investors because they are perceived as well informed and reliable business partners.

### **Activate immediate opportunities in academic-based knowledge-sharing.**

As noted, notwithstanding its low participation rates, higher education in Tanzania is vibrant and promising. Academic leaders, including those at Sokoine University, Tanzania’s center of learning for agriculture, are eager to integrate best practices and relevant knowledge developed elsewhere in the country, on the continent, and in the world. The greatest need on Tanzania’s university campuses—access to fast and reliable internet service so that new findings can be shared rapidly and efficiently—is some years away from being fulfilled. But there is an immediate opportunity that is ripe for

expansion—namely, that of bringing into classes, studies, and other academic opportunities, more individuals with practical, current, private sector experience and more experts from the development community.

The notion of welcoming outside knowledge onto university campuses suffers neither from a lack of interest nor a dearth of commitment. Indeed, professors, business people, and professionals alike expressed enthusiasm during this diagnostic for sharing with university students the skills and perspectives of practitioners. Universities generally lack institutional support to do so, however, and professors who seek to bring outside perspectives into their classrooms and research tend to rely on their individual connections.

With sufficient motivation and support, a university staff member charged with academic outreach could develop and refine some of the following low-cost opportunities:

- “Special topics” courses taught on a semester basis by one or more outside development professionals
- Guest lectures, either through formal class time or supplementary programs
- Materials-sharing, whereby extra books and literature produced or maintained by donor-projects are deposited into university libraries

In addition, there are several possibilities for building bridges from the university to the outside community. Examples include:

- Mentoring and internship programs for university students, both with private companies in Tanzania and development projects and agencies
- Organized class visits to outside companies and institutions
- Creation of a speaker’s bureau—that is, an opportunity for university professors to visit outside organizations and share their research or perspectives from the academy.

A number of conditions are necessary for academic integration initiatives to succeed. These include creativity and perseverance on the part of individuals charged with developing such a program. These individuals should receive guidance and support, but also be vested with sufficient authority to take risks and to move quickly (to take advantage, for example, of an outside professional's short-term visit to the country). The willingness of university leadership to look beyond traditional curricula is also necessary, as is the willingness of donors and companies to lend their professionals and management to short-term commitments to university-based opportunities. Where these conditions are present, many of the specific agricultural knowledge issues needing greater attention in Tanzania could be far more effectively and efficiently addressed.

### **Continue to support free movement of East African labor into Tanzania.**

Tanzania bases its wariness over labor mobility in East Africa on strong cultural forces, including (and especially) historical grievances against Kenya. To continue to restrict labor mobility in the region, however, especially in light of the country's commitments to the East Africa Community, is ultimately self-defeating and undermining of Tanzania's enormous need for skilled labor. The International Monetary Fund and World Bank have long extended guidance and support to Tanzania to navigate and implement changes that are likely to come with increased labor mobility, both for outsiders coming into Tanzania and also for Tanzanians seeking opportunities to work outside of their own

country. The donor community should continue to support awareness and implementation of opportunities afforded by greater regionalization.

### **Commit unequivocally to understanding and improving conditions for women in Tanzania's labor market and future labor conditions.**

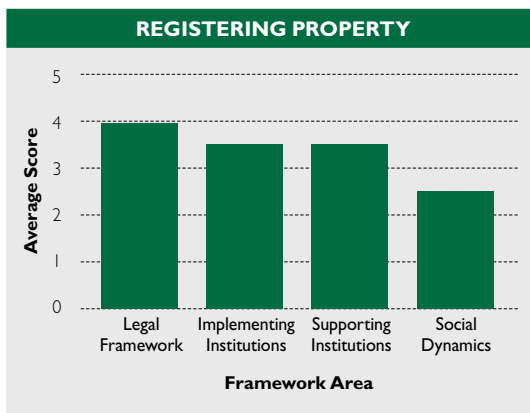
Given the distressingly poor conditions for women in the Tanzanian workforce, public dialogue on the major differences confronting women and men in the labor market is urgently needed. That debate should include the viewpoint that current paternalistic provisions in the law, or provisions that essentially deem women but not men responsible for child care, are contrary to the objective of true gender equality.

Moreover, there is much to learn about the impact of Tanzania's substantial environmental degradation of recent years (including land, air, and water pollution; deforestation; and other problems) on the livelihoods of women. Opportunities to engage women in environmental protection should be explored and developed. According to environmental association representatives, women are enormously receptive to public outreach efforts that concern the environment. Particularly in the rural areas—and as the guardians of their families' health and personal welfare—women are eager to learn about responsible use of pesticides, management of indoor pollution, and reduction of household waste. Stronger orientation to environmental concerns in the future should take advantage of the enthusiasm of female constituencies to serve as guardians of their land, air, and water.



## REGISTERING PROPERTY

Tanzania has a number of land-related problems that, taken together, result in a significant drag on growth in the agricultural sector. First, good farm land is scarce and becoming scarcer. While Tanzania is a large country, much of it consists of arid or semi-arid land that is better suited to herding than to crops. Statistics from the Ministry of Agriculture show that only 12.1 percent of the country’s total land area is under full-time cultivation. The rest of the land is unsuitable because of aridity, irregular rainfall, or poor soil. Meanwhile, the rural population has been growing rapidly. Over 30 million Tanzanians now rely directly on agriculture, herding or fishing to live. This number is certain to grow by at least 10 million more people in the next 15 years. This problem impacts the ability for investors to access land in sufficient parcels. In spite of policy drives for investment promotion, investors report that getting access to land both in rural and urban areas is a major problem.



Second, despite the new legal and regulatory framework created by the National Land Use Policy and subsequent laws, land-use conflicts and disputes are on the rise. This is in part because of problems in the laws, but mostly it is because of problems with the implementing institutions.

Third, land-use planning continues to be ineffective, particularly in rural areas. Land use decisions are often made for political reasons and do not adequately account for issues such as access, infrastructure, water rights, and conflicting uses.

Overall, land in Tanzania is still encumbered with tenure and title conflicts and is often mismanaged.

In recent years, land degradation and desertification have endangered food security and taken a painful toll on livestock; this is partly due to population growth and environmental changes (see the chapter on Climate Change), but it is also due to poor land use planning and practices.

One point of significant controversy is the privatization of land ownership. Outside of cities and large towns, most land is “village” land—nominally owned by the state, but administered by village councils. With the exception of a few parcels, such as plantations surviving from colonial times, the vast majority of Tanzania’s agricultural land is not privately owned. Some interviewees stated that this was a significant drag on the country’s development; since most farmers do not own their land, there is no incentive to improve it. Others said that most Tanzanian farmers do not need fee simple ownership, since they can already obtain a large bundle of long-term land-use rights. Still others suggested that rural farmers are not ready for fee simple ownership, as the land would quickly be lost—subdivided among children, sold off for a quick profit, or seized by moneylenders after a bad harvest.

The debate is a familiar one all across Africa. The key point in Tanzania is that, so far, the proponents of communal ownership have mostly prevailed. While private ownership is legally possible, and is very important in urban areas, most of Tanzania's farming and herding lands are still publicly owned.

Other significant issues include:

- growth in the already large livestock population and the demand for more grazing land, which leads both to overgrazing and to conflict with other land uses
- increased urbanization requiring more land for settlements, industries, and commerce
- emerging slums and poor land use planning in the cities, especially Dar es Salaam
- the upsurge of prospective investors wishing to acquire large parcels of land in response to the country's investment promotion policy
- increasing awareness among the population of the cash value of land and property (still a novel concept, as it was no part of the socialist economy)
- full government commitment to new economic and social policies, and mechanisms for the protection of the land rights of individuals and organizations.

Land reform in Tanzania began with the passing of the Land Policy Act in 1995, followed by the enactment of new legislation on land in 1999 and 2002<sup>111</sup> and the adoption of a strategic plan for their implementation in 2005.<sup>112</sup> The reforms were aimed at addressing key problems and challenges in land use. They have been a partial success in the sense that new concepts of land ownership and use rights have become part of the social and legal system, especially in urban and periurban areas. However, the government has been slow to buy in fully to new systems of land ownership and land use. Many interviewees complained of a lingering "socialist mindset". At a minimum, the government has not committed sufficient financial, administrative and human resources to deal effectively with land issues.

With particular regard to agriculture, several factors have encumbered reforms:

- **Dualism in the land administration system.** Authority is divided between the Ministry of Lands, Housing and Human Settlement Development (MLHSD) and the District Land Offices of the Prime Minister's Office. The former is supposed to provide leadership on policy and the latter operational implementation. In practice, this is cumbersome and confusing.
- **Slow rate of decentralization and devolution of services.** Efficient and sustainable land reforms require a decentralized system of authority down to the district level and lower.
- **Underinvestment in administration.** Tanzania has not invested effectively in land registries, mapping, land-use planning, and cadastral surveying and in the acquisition of working tools such as GPS and information dissemination technology. The BEST project has engaged with some of these issues, but much more work remains to be done.<sup>113</sup>
- **Concentration of land development services in Dar es Salaam city and to a lesser extent in larger towns.** Land-use planning is concentrated in urban areas, while township maps are available in nine towns only. Urban maps are updated much more often than rural maps. Land registries are located at zone offices but not even at regional headquarters, making them less accessible. Most relevant private sector professionals—planners, surveyors, real estate agents, appraisers, and lawyers—are concentrated in the cities, particularly Dar es Salaam. And town planning drawings and cadastral survey reports must be approved in Dar es Salaam; planners and surveyors practicing elsewhere must travel to the Ministry of Lands, Housing, and Human Settlement Development to finalize their work.

111 The Land Act No. 4 (Chapter 113 of the Laws) and the Village Land Act No. 5 (Chapter 114 of the Laws) of 1999; The Land Disputes Courts Act of 2002 (Chapter 115 of the Laws).

112 The Strategic Plan for the Implementation of the Land Laws (SPILL).

113 BEST is a seven-year (2005–2012), \$157 million World Bank project for improving private sector and MSME competitiveness.

The aim of this study is to examine the legal, institutional, and social underpinnings of registering property in Tanzania, beginning with assumptions about the importance of registering real property and then discussing the related areas of movable and intangible property.

The three types of property considered to be registrable in an office of documents are (1) real property (such as land and buildings); (2) movable property (such as inventory of equipment, cars, and the like); and (3) intangible property (intellectual property, future harvest, and so forth). In Tanzania, the formal registration of these properties is dealt with under several chapters of the law.

### REAL PROPERTY

Tanzania uses a fairly standard common law definition: land and all that is attached to it is real property. In Tanzania, this term refers to a land parcel together with anything that is firmly dug into or built onto the land. Tanzanian law also recognizes separable interests in real property such as mineral rights and rights of tenancy.

In theory, land ownership is certified after the land has been surveyed through a fixed-boundary system. The system is regulated by physical, land-surveying, and registration laws.<sup>114</sup> Land ownership has thus always been a four-step process. First, is *land acquisition*. Under Tanzanian law, acquisition requires exhaustion of all third-party interests through paying of requisite compensation to existing property owners. This is simple in theory but can lead to complications in practice when claimants appear after a transaction has been completed.

Second, in urban areas, *physical planning* is undertaken; layout(s) for the acquired lands are designed in accordance with agreed land-use patterns and zoning requirements. Third, the layouts are transferred to the ground through *cadastral surveying processes* that, in Tanzania, are based on fixed land parcel boundaries. The end product of cadastral surveying is a registered survey plan that guides and informs the

### STEPS IN LAND PLANNING, SURVEYING AND REGISTRATION

- Letter of application
- Application dealt with by town planning officer
- Town planner prepares layout
- Layout submitted to urban planning committee
- Approved layout sent to land surveyor
- Land surveyor seeks permission to carry out survey
- Survey instructions granted
- Cadastral survey undertaken
- Survey plan and data sent for approval and registration by director of surveys
- Application for offer and making various payments
- Granting of letter of offer
- Preparation of deed plan
- Preparation of certificate of occupancy (title)
- Signing of CO by applicant and attestation by lawyer
- Signing of CO by commissioner or assistant commissioner for lands
- Registration of certificate of occupancy
- Collection of Certificate of occupancy by Applicant

certification. This takes place in the form of a certificate of occupancy (in “general” lands) or certificates of customary right of ownership (CCROs) in “village” lands.

The fourth and final stage is *land allocation and certification*. A certificate of occupancy, or CCRO in village lands, is considered a legal indicator of an allocated and hence delivered land parcel. The certificate may come with conditions as attached to the grant; an American might call these Tanzania implements land registration through the *registration of titles*. Either of the two certificates indicates a title to land and is registrable under the appropriate regulation. Subsequent transfer of title deeds to land is a provision of the Land Act and Land Registration Ordinance.

### MOVABLE PROPERTY

Movable property is also referred to as personal or tangible property. It is generally classified as

<sup>114</sup> The Land Survey Ordinance Chapter 324 of the Laws of Tanganyika, The Professional Surveyors registration Act No. 2 of 1977, The Land Registration Ordinance, Chapter 334 of the Laws of Tanganyika; The Registration of Documents Ordinance, Chapter 117 of the Laws of Tanganyika; The Urban Planning Act and the Land Use Planning Act.



any type of property that can be wholly shifted (i.e., it is not affixed to land) and that has a formal and recognizable value. It includes items such as household goods (including furniture), clothing, jewelry, art, writings, and the like. There can be formal title documents that show the ownership and a transfer right; this is most common with, for example, motor vehicles and boats, but in theory any movable property could be registered. In Tanzania, the Chattels Transfer Act (chapter 210 of the laws) provides for legal recognition and transactions in movable property. Chattels are defined as any movable property that can be completely transferred by delivery; they include machinery, stock, natural increases in stock, crops, and wool and other animal products. Issues related to movable property are discussed at greater length in this report's chapter on Getting Credit.

## INTANGIBLE PROPERTY

Intangible property is personal property that cannot physically be moved, touched, or felt. Such property refers to something of value such as negotiable instruments, securities, future harvests, stocks at the stock market, and copyright. The use of intangible property such as future rights in crops in the field has long been possible in traditional circles, when communities were organized around clans, but is somewhat less common in villages today.

## LEGAL FRAMEWORK

Property registration in Tanzania is a lengthy and time-consuming process. It starts with an application for registration of a “well-determined” property (describable in accurate terms) at village, district, or ministerial level under the relevant regulation. In some circumstances, registration is required by decree or law; for example, if property is to be acquired for public purposes, it is supposed to be registered first.

As noted in the previous section, land registration cannot take place until processes of acquisition (which can include clearing title), surveying, and certification are complete. Depending

### BASIC LAWS IN REGISTERING PROPERTY

- Land Survey Ordinance (Cap. 324)
- Professional Surveyors Registration Act (Cap. 270)
- Land Registration Ordinance, (Cap. 334)
- Registration of Documents Ordinance (Cap. 117)
- Land Use Planning Act (Cap. 116)
- Agriculture and Livestock Policy Act (Cap.)
- Land Act No. 4 (Cap. 113)
- Village Land Act No. 5 (Cap. 114)
- Land Disputes Courts Act (Cap. 115)
- Urban Planning Act
- Land Acquisition Ordinance (Cap. 118),
- Chattels Transfer Act (Cap. 210),
- Ward Tribunal Act (Cap. 206)
- Unit Titles Act of 2009
- National Environmental Management Act (Cap. 191)
- The Tanzania Investment Act of 1997 (Cap. 38)
- The Mortgage Finance Special Provisions Act of 2009

on the circumstances, this process can take months or years.

Property registration should not be confused with ownership. Outside of the cities and large towns, very little land is privately owned. This is, in fact, one reason for the slowness of the registration process: there is simply not the same sense of urgency in registering village lands.

There is significant private ownership of lands and other real estate (i.e., apartments) in cities. However, there is a general dissatisfaction with the scanty availability of land parcels in urban areas. Since 1995, the government has managed to create and register no more than 220,000 urban plots in all of its towns and cities (which include a population of about 8 million people). A recent study by the World Bank's Local Government Support Project<sup>115</sup> states in part that in Tanzania:

“[S]carcity of serviced, legally subdivided urban land not only hinders economic

<sup>115</sup> World Bank, *The Urban Transition in Tanzania—Tanzania ESW Report* (2008).

development, but also impacts the social issue of how people live. Lack of access to legally available urban land in Tanzania has led to a large amount of informal settlements. In large cities, such as Dar es Salaam, some 70 percent of residents live in informal areas because of an inadequate supply of planned, surveyed, and serviced land parcels.”

This affects both residential and commercial uses of land; even when a parcel has been allocated, getting the title delivered takes so long that investors become discouraged.

If property registration is underused in the cities, in rural areas it is barely acknowledged. Outside of Dar and Arusha, many interviewees were unaware of the commercial potential of property registration. In part this is because real property is rarely used for collateral or security. (A number of rural interviewees professed complete ignorance of the legal system that would enable properties to provide credit in the formal market.) More generally, it seems to be because registration is a long and difficult process that seems to bring little of real value.

An interesting exception is the Asian-Tanzanian community, which shows a marked preference for registered properties and a willingness to pursue registration tenaciously. One interviewee suggested that this was because many Asian-Tanzanians are businessmen, and so are more sophisticated about the power of registration, and more likely to use property as collateral. Another suggested that it was because the community wanted the additional security of a formal registration.) It came to light during interviews that many of those operating informal businesses would rather stay in the informal sector to avoid paying income tax and having to employ auditors as practiced in formal businesses.

## LEGAL FRAMEWORK FOR VILLAGE LANDS

Most agricultural land in Tanzania is “Village” land. This land is nominally owned by the state

and communally managed by the local village. For most matters, it might as well be owned by the village council, which can subdivide, survey, lease, and administer it and which generally exercises control. The most significant limitation on their control is that village land is not supposed to be alienated to private ownership.<sup>116</sup>

The Village Land Act No. 5 (Cap. 114) of 1999 provides for a determination of the boundaries of each plot of village land. A certificate of village land (CVL) is then issued, which indicates the exact boundaries of the land placed under the jurisdiction of the village council, thus preventing border disputes between villages. Soon after issuance of the CVL, a land-use plan is supposed to be prepared for the village (or for multiple villages in the same vicinity; land-use planning is often done on several adjacent villages at the same time in order to reduce operating costs and take advantage of common resources). The land use plan is intended to be binding upon the village until it is amended. However, these plans are sometimes issued late, or not at all, and may go for years without amendment, so actual land use may diverge widely from the plan. The CVL is a condition precedent in village land certification and registration; without it, individual plots in the village are not supposed to be registered.

The village handles real property registration by issuing certificates of customary right of occupancy (CCROs) under the Village Land Act. This process requires an individual or family to lodge an application with the village chairman for a CCRO. The chairman calls for meetings of the village council and then the village assembly; by law, both must review and approve the application before it can proceed. Only on approval by the council and assembly and payment of due fees will the village manager submit the application to the district land officer (DLO) for further processing. The DLO will cause a demarcation and adjudication team to travel to the village, locate the property and sketch it out on a reference map. As a practical

<sup>116</sup> The Village Land Act No. 5 devolves most power over village land to the village councils. The district and national levels retain override powers, but these are rarely exercised except in cases of eminent domain or other public interest.

matter, this will not happen until multiple parcels are ready for demarcation. Many villages go through a single round of demarcation and then go for years without another. Again, this will cause the “facts on the ground” to diverge ever further from the map.

The CCRO is signed by the applicant before a reliable witness, including the village leadership. Then, the CCRO is returned to the district land officer in triplicate for registration: one copy to the applicant, the original held by the registry at the district level, and the third copy retained in the village registry. The time spent in completing the request for CCRO ranges from a month (where the CVL and land-use plan already exist) to six months. Once the request is complete and submitted, it is not unusual for this process to go on for years. This unpredictable time leaves applicants dissatisfied with the services rendered. It is also—despite the involvement of the council and assembly—not particularly transparent or accountable, as an application can be rejected for any reason or none at all.

The village chairman, rather than the council, is the authority that provides letters of identity to any villager and confirmation of ownership of any property in the village. As a practical matter, this means that many villagers avoid the CCRO and formal registration and simply go to the chairman for confirmation of ownership. In theory, this should have no legal effect; in practice, this system has proven very valuable in the informal sector, and a large number of transactions, on all kinds of properties, have taken place for many years. A similar situation exists at the *Mtaa* level (lowest administrative level) in urban areas: many individuals and small businesses use confirmations of ownership as de facto proof of ownership, or at least of use rights. Though of questionable legality, this system has contributed greatly to the energy and success of the informal business sector.

Unfortunately, this too is vulnerable to corruption. In its milder form, “speed money” may be used to obtain a letter of identity or



confirmation of ownership more quickly. This practice is fairly common. In more extreme cases, fraud of ownership and false documents may come into play; individuals may pay a chairman, or the chairman may solicit bribes, to produce false documents of ownership. The result is an additional layer of fraud and confusion atop an already complex system.

## LEGAL FRAMEWORK IN OTHER LANDS

Districts deal with both village and “general” lands. General lands are lands that are neither village lands nor forest or wildlife reserves. General lands are mostly urban lands and some lands under older granted titles, such as plantations dating back to colonial times; they also include “unoccupied or unused” village land.

In village lands, districts facilitate the preparation of CVLs and the registration of CCROs. In general and reserve lands, districts are guided by the laws<sup>117</sup> that call for town planning, land acquisition (for urban settlement and other public utilities such as schools and hospitals), and allocation of urban land parcels to applicants and subsequent preparation of the Certificates of Ownership.<sup>118</sup> In each step, the district is supposed to be informed of the

<sup>117</sup> The Urban Planning Act (Cap. 116), The Land Act (Cap. 113), the Village Land Act (Cap. 114), The Land Survey Ordinance (Cap. 324 formerly Cap. 390), Registration of Documents Act (Cap. 117), The Land Acquisition Ordinance (Cap. 118), The Chattels Transfer Act (Cap. 210), The Land Registration Ordinance (Cap. 334).

<sup>118</sup> The figure displays the intricacies of registering a title to land in Tanzania. The process involves 17 steps and each step requires a minimum of one week. Other steps can take as much as a couple of months. It is noted that the steps involve both local government and central government authorities at the local district office and at ministry headquarters in Dar es Salaam.

minimum requirements for facilitating easy decision-making at council meetings. The district is also meant to provide technical advice. However, several interviewees stated that the knowledge of both the procedures and the associated laws at this level is fairly low. Hence, decision-making takes a long time, and decisions are sometimes misguided.

When a town-planning drawing is prepared at the district or municipal level, it is considered by the council, and when adopted, it is sent for the approval of the Ministry of Lands in Dar es Salaam. (There is no mechanism for approving a drawing at any lower or regional level.) On approval, the district or urban council proceeds to implement the plan. In many cases, the resources for such implementation are not available, and it may take several years before any part of the plan is implemented. However, if the plan is implemented, the same councils allocate the parcels of land to applicants and thereafter prepare the CO. The CO is signed by the applicant and then sent to the Zonal Office of the Commissioner for Lands for a seal of government and signature. Thereafter, the CO is sent to the registrar of titles for registration and delivery to the applicant. Even on paper, this legal process is clearly long and not user-friendly. The general reaction of interviewees to this mode of land allocation and property formation has been negative.

Many Certificates of ownership are issued with provisions that state that government permission, typically from the district office, must be obtained before transferring or mortgaging land. This means that it is possible to own land in Tanzania without having the free right to transfer.

### **LEGAL FRAMEWORK AT THE NATIONAL LEVEL**

In matters of property registry, the Ministry of Lands, Housing and Human Settlement Development (MLHSD) is the primary actor. It is tasked with providing technical leadership throughout the country. Under the Urban

Planning Act (2002), the MLHSD prepares and approves town-planning schemes, supervises and undertakes land surveying and topographical mapping, delivers land certificates, and thereafter undertakes the registration of COs and CCROs. In some special circumstances, in consultation with a local councils, the ministry can move into an area and plan, survey, allocate, and give titles in joint venture as has been done in Dar es Salaam, Mwanza, Morogoro, and Mbeya in recent years.

The public still sees performance at the district or national level as a responsibility of the Ministry. If a response is delayed in local government councils, people assume that the central government has not done its duty in time. This is, in fact, often the case. Despite statements to the contrary, the processes of property registration do not appear to be a high priority at MLHSD in practice. This can be seen in the very low allocation of resources, both financial and human, to land surveying and registration. This situation is quite clear in the reports of the Property and Business Formalization Program<sup>119</sup> located in the president's office.

### **THE ENVIRONMENTAL MANAGEMENT ACT (2004)**

It is a legal requirement to conduct an environmental impact assessment (EIA)<sup>120</sup> for any development project to be implemented in Tanzania. Section 81(2) of the act states that “an EIA study shall be carried out prior to the commencement or financing of a project or undertaking.” The National Environment Management Council manages the EIA process, which culminates in the issuance of an environmental impact assessment certificate by the minister responsible for the environment. The EIA and audit regulations (2005), derived from the 2004 act, regulate the EIA process. Several interviewees state that the EIA requirement is good for land and environmental management but that the process is often slow and discouraging to developers. It is not clear how effective the Act has been at raising the environmental quality of new developments.

<sup>119</sup> Better known as MKURABITA in Tanzania.

<sup>120</sup> Environmental Management Act (EMA) No. 20f (2004).

## IMPLEMENTING INSTITUTIONS

### THE MINISTRY OF LANDS

The primary implementing institution for registration of property in Tanzania is the Ministry of Lands, Housing and Human Settlements Development, generally referred to simply as the Ministry of Lands or MHLHSD. Its stated goals are “to have excellent delivery of land development services and a multipurpose cadastral information system for sustainable economic development,” and the creation of an “enabling environment and Institutional framework to support human settlements development process.” Toward that end, the Ministry of Lands coordinates and formulates the following activities, among others:

- Land use and development policies throughout Tanzania, including a national housing policy, urban physical structure policy, town planning, regional physical planning, and human settlements development
- Land surveying and valuation, including mapping;
- Registration of land;
- Chattel transfer documents

Interviewees did not give the Ministry high marks for policy development or for land use planning. There is a perception that, at the higher levels, the Ministry is opaque, politicized, and unpredictable. There is also a perception that, at levels where the Ministry interacts directly with the public, it is sluggish and bureaucratic. These criticisms should be evaluated carefully; in any developing country, a Ministry of Lands is likely to be subject to criticism. That said, the Ministry has, at a minimum, an image problem.

### THE REGISTRAR OF TITLES

The registration of property is a mandate of the Registrar of Titles<sup>121</sup> in the Ministry of Lands. As noted above, registration of property takes place after surveying and certification. The two are meant to take place in rapid succession, but

### IMPLEMENTING INSTITUTIONS

- Ministry of Lands, Housing and Human Settlement Development
- Prime Minister’s Office
- Division of Land Administration
- National Land Use Planning Commission
- Division of Urban Planning
- Division of Surveys and Mapping
- Registrar of Titles Office
- District Lands Office and Registry
- Village and ward tribunals
- District Land and Housing Tribunal
- Lands Division of the High Court

it is possible to have a CCRO or CO without being registered. When this happens, conflicts of title can arise. The Registrar declines to get involved in these, beyond providing copies of registration upon request. Tanzania’s land law gives default assumption of ownership to the first owner to register. This should, in theory, encourage prompt registration. In fact, it is not unusual to have properties go unregistered for many years.

The registrar and assistant registrars also deal with mortgages. The demand for these has risen sharply in recent years, though almost all the increase has come in urban areas, especially Dar. Most mortgages are commercial; residential mortgages are still quite rare in Tanzania.

Outside Dar es Salaam, the registry depends heavily on titling activities at the village and district levels with the support of land-use planning, surveys and mapping, the commissioner for lands, and certainly the postal services. Unfortunately, these other entities have problems of their own, which feed into the problems at the registry. Feedback and cross-checking appear to be minimal; the registry will accept a certificate without enquiring into whether it was properly issued. This is probably necessary, but it has led in some cases to double registration and/or the registration of fraudulent certificates.

<sup>121</sup> Per the Land Registration Ordinance (Cap. 334).

The registry is not effectively computerized. It has computers and a database, but all documents are kept as hard copies, and retrieval can be quite slow. In fact “slow” is a word that was repeatedly used by interviewees about the registry. The system does not correct errors effectively, and it cannot be accessed from outside by users.

### **THE LAND ADMINISTRATION DIVISION**

According to the legal framework, this division has responsibility for determining titles and resolving (some) conflicts. It is also grossly congested with the inflow of titles and land conflicts that have not yet reached the stage of court proceedings. As noted above, a certificate of occupancy is issued by the commissioner, signed and delivered to the registrar of titles for the final act of registration. (Registration of chattels and other documents come to the registrar direct from the notary and need not go to the commissioner for lands.) However, many transfers of real property must go to the commissioner (or authorized officer) for consent because (as noted above) many certificates make it a condition of title that the owner must seek consent to make a sale, a mortgage, or change of development conditions.

The Office of the Commissioner for Lands has recently devolved powers of land certification to zonal offices with the appointment of assistant commissioners in six zones with headquarters in Moshi, Mwanza, Mbeya, Dodoma, and Dar es Salaam cities and municipalities. Land titles from the district land officers are now sent to this zonal office for the seal and registration. This is a major development. However, it is still not clear whether the staff will be able to avoid the backlog that overwhelmed the headquarters.

### **LAND-USE PLANNING**

Land-use planning teams from the Ministry of Lands are found in 109 out of 134 districts. They work in cooperation with the National Land Use Planning Commission.

Land-use planning has a number of challenges. At the village level, these include a severe shortage of funds, a lack of in-depth participatory planning at the grassroots level, and a lack of transparency or accountability in the village councils. At all levels, there is a shortage or lack of equipment for reproduction of documents and a shortage of up-to-date base maps for realistic land-use plans. The quality of staff used in land-use planning varies widely; reportedly, many land-use teams are not professional or competent. There is also a perception that the process is highly politicized, especially in election years.

### **LAND SURVEY OFFICE**

A land survey office exists in each of 123 districts, towns, municipal, and city councils of Tanzania. These offices too face significant challenges, including a lack of funds for field operations, which are the sources of property data for the beginning of the titling process; a lack of reliable transport for land-survey teams to move around with equipment on field work (using private transport is disfavored as a source of corrupt practices); lack of modern equipment such as GPS to ease hard outdoor operations during field work; paucity of the geo-referencing framework coverage; and an almost complete lack of training programs for technical staff in many districts. It is thus no surprise that the land survey offices are, at best, overworked, and that their findings are often challenged in subsequent land disputes and court actions.

### **THE DISTRICT LAND OFFICE AND REGISTRY**

Each district has a land-use planning office, a land survey office, and a land office. These are meant to work together as a team, though this has generally not been the case. It takes a great deal of effort to bring them together to the advantage of the land users and applicants for plots of land. Some pressure is being applied from above to bring these experts closer and establish a process of teamwork, but in most cases they still work “at arm’s length,” without close cooperation.

## LAND DISPUTE COURTS<sup>122</sup>

These consist of (1) land councils at the lower village level for mitigation and counseling; (2) ward tribunals<sup>123</sup> at the ward level, which are capable of determining cases, and which adjudicate cases within villages and urban areas; (3) district land and housing tribunals at the district level with powers to determine cases, and which adjudicate large disputes and disputes between villages; and (4) the Lands Division of the High Court, which acts as an appeal court from the tribunals on properties valued at TSH50 million and above.

The tribunals received widely varying marks; they appear to be uneven, with some able to reach reasonably good and consistent decisions, while others are considered ad hoc, incompetent, politicized or corrupt. The courts are considered competent but very slow. (For more discussion of Tanzania's court system, see the chapter on Enforcing Contracts.)

## SUPPORTING INSTITUTIONS

### THE LAND BANK AT TIC<sup>124</sup>

A land bank is a database of titled land parcels, created and maintained by government to facilitate investment through existing institutional and legal frameworks. The creation of a land bank in Tanzania was first proposed in 2004 in a study of several ministries and the Tanzania Investment Center, led by the Ministry of Lands. The bank covers two types of land: privately owned and government owned. Landowners can register their titles in the land bank for the attention of prospective investors. The Ministry of Lands is responsible for the second category, which includes properties set aside by the government for lease or sale to investors.

The Land Bank has facilitated some investments but is not generally considered a success, in part because it has not acquired enough land, and

the parcels that it does have are too small and scattered to be interesting to large investors.

### PROPERTY AND BUSINESS FORMALIZATION PROGRAM (MKURABITA)

MKURABITA was a program to encourage the movement of properties and businesses out of the informal sector and into the formal economy. It was launched with considerable fanfare, and funding from the Norwegian government in 2004. MKURABITA was responsible for several formalization initiatives including a pilot project in Handeni that has met with some success. However, the funding expired in 2007, and a panel reviewing the program's midterm report was critical. No further funding was forthcoming, and the government of Tanzania has not stepped forward to provide funding of its own.

Currently, MKURABITA still exists on paper. Some government employees are meant to be working with it still, and its website (<http://www.mkurabita.go.tz/index.php>) remains active. However, MKURABITA seems to have been in a state of suspended animation since the last donor funding ran out in early 2008. It does not appear to be engaging in any activities at the moment, and the government does not show any interest in funding it.

#### SUPPORTING INSTITUTIONS

- PSCP Land Reform Project
- The Land Bank at TIC
- Property and Business Formalization Program
- Ministry of Livestock and Fisheries
- Property Adjudication and Registration Project
- Ministry of Agriculture and Food Security
- Sokoine University of Agriculture
- Ardhi University
- Institution of Surveyors of Tanzania
- Tanzania Institute of Valuers and Real Estate Agencies
- National Council of Professional Surveyors
- Various nongovernmental organizations

<sup>122</sup> Under the Land Disputes Courts Act of 2002 (Cap 216).

<sup>123</sup> Ward Tribunal Act number 7 of 1985 (Cap 206).

<sup>124</sup> Enabled by the Tanzania Investment Act of 1997 (Cap 38).

### **LAND REFORM COMPONENT OF THE PRIVATE SECTOR COMPETITIVENESS PROJECT**

BEST is a large project funded by the World Bank. One component of the project deals with land issues; its budget is approximately US\$30 million, spread over a seven-year period (2005-12). It has six subcomponents: (1) land registry and land information; (2) geodetic control and base mapping; (3) decentralization of land administration services; (4) formalization of property rights in the unplanned areas; (5) strengthening the dispute resolution mechanisms; and (6) capacity building. Project activities include field campaigns to map and register houses and plots in irregular settlements and public awareness campaigns to encourage residents to know their rights and to apply for formal residential licences. The project is based in Dar es Salaam and, to date, most of its work has taken place there.

BEST's work with land issues has generated much comment and discussion, most of it favourable. BEST's land component is generally considered to be doing good and useful work, although there is some concern regarding the sustainability of BEST's work once the project ends in 2012.

### **MINISTRY OF LIVESTOCK AND FISHERIES**

There has been some discussion of using this Ministry as the location for a separate registry for livestock, thus enabling the introduction of "cattle paper" into Tanzania. However, this is probably some years away, as much work would have to be done first. No easy means is available to use livestock as collateral in Tanzania at this time, and no general system for codification and registration of animals exists. An act to this effect is on way to Parliament but has not yet passed. Cattle diseases and epidemics are frequent, which also makes insurers reluctant in this field; lenders, in turn, are reluctant to lend against uninsured animals.

### **MINISTRY OF WATER AND IRRIGATION**

As discussed in other chapters, Tanzania desperately needs to expand its irrigation systems. However, irrigation depends heavily on the availability of water discharges. This, in turn, depends on conservation of water sources and good forest cover. Deforestation is a serious problem in Tanzania and is continuing at a high rate. As forest cover is removed, less rain water is absorbed into the soil. The high consumption of forest resources exposes land to degradation and desertification.

Better land-use planning is one tool for helping fight this. However, there seems to be little coordination between this ministry and the Ministry of Land. In this context, it should be noted that the law provides for special conservation of the 60 meters of land on both sides of river courses—these areas are supposed to be under the custody of local water boards, subject to the oversight of the Ministry of Water, and are supposed to be protected from deforestation and pollution. However, no action has ever been taken to enforce these provisions. Part of the problem seems to be that the law was over-ambitious and would be impractical to enforce, but a complete lack of cooperation among the Ministries and other institutions charged with enforcing it has been a major impediment as well.

### **SOKOINE UNIVERSITY OF AGRICULTURE**

This is Tanzania's main agricultural university; it is located just outside Morogoro, with satellite campuses in Arusha and Lushoto. It has about 2,500 undergraduate and 400 graduate students. The Ministries of Land and Water are full of Sokoine graduates, as are the ranks of Tanzania's commercial farmers and food processors.

### **ARDHI UNIVERSITY**

This is the main training ground for land-related professions in the country. It was originally a training institute, dating back to colonial times before it became part of the University of Dar



es Salaam; in 2007 it was spun off as a separate institution again. It offers degrees in (among other things) include land surveying and related GIS/LIS, estate management and valuation, land-use planning, housing economics, architecture and design, and environmental sciences. Ardhi has grown rapidly in recent years, and currently has an enrollment of some 1,400 students.

### **THE GENDER LAND TASK FORCE**

The Gender Land Task Force, which comprises several NGOs, was formed under the auspices of the Tanzanian Women's Lawyer Association (TAWLA). It has participated in land issues since the publication of the first Land Bill in the 1990s. The group gave input into the preparation of the strategic plan for the implementation of the land laws, and undertook advocacy on the amendment of the Land Act in 2004 with regard to mortgages. It appears to be dormant at the moment, but it has not been dissolved and may become active again.

### **PROFESSIONAL ASSOCIATIONS**

Tanzania has two professional associations that are directly relevant to land registration: the National Council of Professional Surveyors of Tanzania, and the Tanzanian Institute of Valuers and Estate Agents. Both these associations work with the land administration system through training and research programs, but neither is very large or well-funded, and neither seems to be having much impact beyond maintaining some level of professional standards. Tanzania also has professional associations for lawyers and accountants; these are discussed in the chapter on Protecting Investments.

## **SOCIAL DYNAMICS**

### **FARMERS AND PASTORALISTS**

Tanzania is home to a large population of pastoralists. Most of these are integrated into the national economy; they supply needed meat and milk products and also other cattle products such as leather. Much of Tanzania's land is arid, semi-arid, or has unpredictable rainfall or poor soil

that make it unsuitable for permanent agriculture; these lands are appropriate for herding and ranching, however, and are home to pastoralists.

Yet the division between pastoral and farm lands has never been clear cut. (It should be noted that most of Tanzania's pastoralists engage in at least occasional agriculture, while many farmers also own some livestock.) There has thus historically been some tension between the two groups over land. Pastoralists complain about farmers moving onto their land, diverting their water for irrigation, and manipulating the political system against them. Farmers complain about pastoralists letting their animals cross their boundaries to eat and trample crops.

These complaints go back to colonial and, indeed, pre-colonial times, but they have become much more pointed in the last generation as the populations of both humans and animals have soared. An additional complicating factor is that the farmer/pastoralist division is, for the most part, an ethnic one; pastoralists are distinct groups with their own languages and cultures. In other parts of Africa, this division has led to violence.

It should be emphasized that Tanzania does not seem to be in danger of a serious clash along these lines. In fact, Tanzania is noteworthy for the high level of social peace and tolerance among its different local ethnic groups, and the near complete absence of serious ethnic conflict since independence. That said, the farmer/pastoralist divide runs deep, and affects political decisions, policy, and perceptions.

### **PUBLIC AWARENESS**

Public awareness of land issues is high, but awareness of the formal legal structure is low. Villagers and urban dwellers alike can discuss, sometimes with great sophistication, the different economic and political drivers of land policy. However, surprisingly few are aware of the legal framework for getting formal ownership, or of the possibilities for using land ownership to get access to credit.

## **POVERTY REDUCTION**

Tanzania's population is close to 40 million, out of which about 50% live below the poverty line. However, Poverty reduction strategies (PRS) have not taken into account the potential role of property in the economic infrastructure. The mention of improvements in agricultural outputs, as a major component of the PRS cannot be taken seriously without input from the sector dealing with land tenure and property registration.

One major concern of village populations is the sizes of land holdings, which are often too small per household to address poverty reduction. Statistics from the Ministry responsible for agriculture shows that the 3.5 million small holder farmers have an average of 2.2 hectares per household. This figure has been slowly but steadily declining for years, almost certainly because of population pressure. The small acreages are impediments to the application of technology in agriculture and use of fertilizers and other inputs.

## **“SOCIALIST MINDSET”**

This is a theme that cuts across several chapters of this report. Many interviewees reported that the government, while giving lip service to private land ownership, lacks enthusiasm for it. There is a perception that many policy makers distrust the idea of fee simple ownership, feeling that while it may be appropriate in some (urban) settings, in rural communities it is inappropriate and dangerous. There is also a perception that the government can be at times mildly hostile to private landowners. Several interviewees also stated that the government does not understand economic incentives, preferring instead to create change by top-down instructions and exhortations. Finally, a number of interviewees stated that government jobs are still seen as more secure, prestigious and attractive than equivalent jobs in the private sector, leading the brightest graduates of Sokoine, Ardhi and other universities to flee private sector jobs for “nice offices in the Ministries”. Whether true or not, these perceptions are widespread.

## **GENDER BALANCE**

Gender was mainstreamed into policy and land laws from the outset. Section 3 (1) c) of the Land Act provides for equitable access to land by all citizens in Tanzania. The 15 basic principles of the Land Policy of 1995 require land officers to ensure that the “right of every adult woman to acquire, hold, use, and deal with land” is enforced to the same extent, and subject to the same restrictions, as that of any man.

In reality, the process of land acquisition is skewed in favor of men in several ways. First, most applications for land and land use come from men rather than women. Second, customs and traditions favored distribution of land to male children to carry on the family name, with female children and relatives typically being excluded. Third, many groups have traditions that do not favor female ownership of land; almost all women marry, the husbands own and control the land, and widows or divorcees are supposed to release the land back to the husband's family. And fourth, religious practices restricted or prohibited women from inheriting immovable property, including both land and rights of land use. The last two practices still encumber property registration and ownership in many of Tanzania's communities. The practical effect is that the vast majority of women in Tanzania have no enforceable rights in land whatsoever.

In recent years, formal applications for urban plots with subsequent registration have seen a turn for the better. Some noteworthy initiatives have included the 20T plots project launched early in this decade; the regularization program (MAZAGAZAGA) for issuance of residential licenses, operating in informal areas of Dar es Salaam, that started in 2005; and the formalization of customary tenure as per the Village Land Act (Cap. 114), albeit in few of the more than ten thousand villages. Reports on these projects are very promising. For instance, 32% of the more than 35,000 land parcels surveyed and allocated in the 20T plots project were received

by women. (45.5% were received by men, 4.5% by couples and 18% by corporations.) Women applied in much larger numbers than ever before. In this regard, the law has been implemented without marked interference from local customs, traditions or religions. Also notable is data on the issuance of residential licenses, where 21% of women are beneficiaries.

In the case of Village Lands, traditions are strongly kept. Religious restrictions still govern inheritance and dispositions of real property. In the issuance of certificates of customary rights of occupancy, CCROs, there is an effort to enlighten the villagers on the rights of women. Specifically, issuing officers have been instructed to tell the villagers that women are to be equally included in the customary titles. The very first CCRO in Tanzania was issued to a woman in Mbozi District in 2004. This set a positive example that was reported nationwide. In the years since, many women have applied for these certificates as a record of property ownership. Unfortunately, statistics are not available on the gender balance of CCRO recipients, but anecdotal evidence suggests that a significant minority are female.

Many women are aware of the potential to get credit on the surety of real property and some movable property titles. However, movable and intangible titles are rarely used by women in this manner. It is rare for women to own cattle or other valuable pieces of movable property. In other countries, women are sometimes early movers in IPR (i.e., female authors and performers); in Tanzania, though, intellectual property rights are still in a very early stage, and women have not been prominent in claiming them.

## RECOMMENDATIONS

A number of pilot projects already exist in ministries, departments, and agencies that have been designed to support activities related to land, land use planning, and property registration. In the short term, these projects should be reviewed for effectiveness and for lessons learned.

With particular regard to the system of land registration, any program of assistance should review past donor projects and should begin with a thorough and methodical needs assessment. Modernization will be a project stretching over years, but there is no shortage of low-hanging fruit. Very basic ICT and process improvements could have significant impact, provided that they are deployed in a manner that makes them sustainable after donor assistance has ended. Meanwhile, several specific recommendations include:

### Help the GOT improve land-use planning.

Currently, land use planning is decentralized, inconsistent, inefficient, and often ineffective. A widespread perception suggests that the process is highly politicized and that the government does not take it seriously enough. Much land use planning takes place at the village and district levels, where the processes are usually nontransparent. The BEST project has engaged this issue around the edges, but no donor seems to have an activity devoted to improving land-use planning specifically. This could be an important niche for a donor to engage in with the GOT, if political will exists.

### Build human capacity in the various land offices and agencies, not only for use of information technology but also for business processes generally.

The universities, especially Sokoine and Ardhi, are graduating a reasonably competent cadre of trained young people every year. However, this is not translating into competence and responsiveness in the government agencies dealing with land issues. Low salaries are certainly part of the problem, but not all; entry-level salaries are low in almost all government jobs, yet some agencies are able to attract large numbers of competent graduates. Part of the problem seems to be a lack of commitment at the Ministerial level to recognizing the importance of these functions.

In particular, human capacity is lacking at the local level. At this time, there is no agency or body charged with training district and village-level officials in land issues. The possibility of creating such an agency or body should be investigated. Several African countries (ex. South Africa, Senegal) have such training bodies for just this purpose; one or more of these could potentially be used as a model.

### **Promote public awareness through outreach.**

At this time, most members of the public—especially in the agricultural sector—are not aware of the potential of immovable property for generating credit. At the same time, potential users may not be aware of the risks (i.e., of foreclosure and loss of land). Very few land users and potential landowners are aware of their legal rights or of the formal legal framework around land use. A program of public education and sensitization should thus be part of any reform program.

### **Help with urban land registration.**

Urban agriculture is a small but significant element of Tanzania's food supply system, especially "truck farms" in urban and periurban areas. Many urban residents also keep small gardens as an income supplement and a hedge against surges in food prices. Registering urban lands thus has a small but significant indirect effect on food security. USAID or another donor should therefore work with the Ministry of Lands to accelerate the surveying, subdividing and registration of new plots in urban areas. This has the possibility of rapid payoff because the systems for clarifying and confirming ownership in urban lands already exists and is functioning.

### **Integrate land issues into the NPRI.**

The National Poverty Reduction Initiative should include a component on Land Registration, particularly at the village level, where the majority of people live and work. As a prerequisite to registration, Tanzania villages need their boundaries delineated and land parcels within each village identified and registered to individual owners. This work is still not complete. This should lead to establishment of, at least, a land register for the village and a digital land register for the District Councils, the Regions, and the Ministry of Lands. This would, in turn, create a solid framework for land conflict resolution. This will take years to realize, but including it in the NPRI would be an important first step.

### **Take one last look at MKURABITA.**

This program received a mediocre evaluation and lost donor funding in 2007-8. It has since been dormant, as the GOT has shown little interest in it. A donor could reasonably ask whether it was worth further investment. On the other hand, MKURABITA's single pilot project seems to have been a modest success; the problem was not that it did not work, but that too much time, effort and donor money was spent in the process. The program's administrative infrastructure still exists, as does a need for a formalization program of some sort. Indeed, the need for something like MKURABITA is probably greater now than it was in 2006.

Any donor interest in reviving MKURABITA should include a firm commitment from the GOT—including, ideally, co-funding—and a plan for sustainability after donor funding once again expires.



## GETTING CREDIT

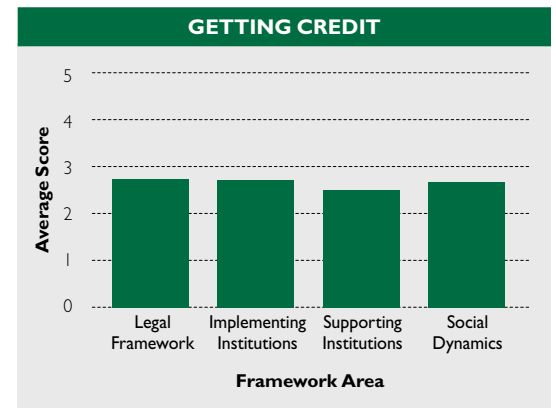
Access to finance is the catalyst that allows an economy to allocate resources effectively and efficiently. In the agricultural sector, farmers need access to finance to invest in infrastructure, fund agricultural inputs, and bridge their incomes between harvest and sale. Agricultural processors require finance to purchase produce; if they are to expand production and enhance productivity, they require it to invest in capital equipment and technology. And agricultural traders also require short-term finance to bridge between the purchase of goods and their resale. Without access to finance at each level of the agricultural value chain, the market mechanisms begin to break down, thus limiting the opportunities for entrepreneurs and other participants in the agricultural sector to achieve income growth.

### AGRICULTURE IS RISKY

Agriculture has inherent risks that must either be mitigated or priced into the cost of credit. First and foremost, agricultural production depends on nature. If weather patterns are too hot or too cold, too wet or too dry, or if there is an infestation of pests, crop yield will be below expectations.

Irrigation can help mitigate the impact of weather fluctuation, as can improved seed and fertilizer. Pesticides and fungicides can help lower the impact of infestation. Weather-based crop insurance can further hedge the risk, when good data are available. However, most agriculture in Tanzania relies on rainfall, not irrigation. Improved seed, fertilizer, and pesticide are not universally used, whether due to cost or accessibility. Furthermore, crop insurance products are not available in the country because of poor data and the inability to price the products affordably.

Like any other sector, banks are subject to repayment risk. Whether intentionally or through unforeseen circumstances, some percentage of borrowers will not repay their obligations to a bank under a loan contract. Typically, banks can hedge this risk through



customer due diligence activities and by securing the loans with collateral. In Tanzania, the absence of a credit bureau makes the due diligence process quite expensive. The ineffective and inefficient system of collateral registries, across collateral types, makes securing loans more expensive and more cumbersome.

Finally, the private sector relies on a consistent policy regime to effectively predict its ability to make a return on its investment, whether a small-holder farmer or a large-scale agri-processor. Government has demonstrated a willingness to intervene in markets through trade bans, formalized price setting arrangements, and direct interventions in the financial sector. Such consistent interventions in different

areas limit the private sector's ability to depend on market predictability. While such interventions may encourage investment in a particular subsector at a particular moment in time, their overall effect is to add to market uncertainty. If, say, maize farmers want finance for production based on an expected price, they may be hesitant to borrow, because they do not know if the government will intervene with trade barriers. Even if they were willing to borrow, financial institutions may be hesitant to lend because they may be uncertain of the government's intentions on a year-to-year basis. For these reasons, policymakers should focus on mitigating risks and accelerating the development of the financial infrastructure that can reduce costs for banks to lend.

In Tanzania, lending to the agricultural sector is extremely risky. With limited hedges to natural risks, limited financial infrastructure to hedge repayment risk, and an inability to predict government intentions, banks will either price loans to protect themselves—excluding most poor customers—or simply focus on other sectors. The good news is that increased competition in the financial sector is pushing banks to consider agricultural lending more seriously.

### **RURAL FINANCE REQUIRES DIFFERENT BUSINESS MODELS**

Financing agriculture and other activities in rural areas requires different business models from those in urban or periurban areas where the density of economic activity is high. Three important differences should be noted. First, the sparseness of the population and the homogeneity of economic activity within regions require business models that rely less on bricks and mortar branches and more on a broad, flat organizational structure that can spread risk across other regions. Part of the story of lack of finance in rural areas is a reflection of this problem. Even if a large commercial bank wants to expand its national coverage, establishing a branch requires a customer base that can sustain it profitably. Many rural areas simply cannot

provide the profit margins that will encourage such expansion. Thus, many rural areas are covered by single branch SACCOs or microfinance institutions (MFIs). Because many farms in these rural areas produce the same commodities, however, these small financial institutions take on tremendous risk if the predominant regional crop fails. One such SACCO noted a portfolio that was 75% agriculture. Its repayment rate in this subset of its portfolio was 20% over the last year (2009), largely due to weather's impact on local crops. Sustainable finance in rural areas requires technology innovations to lower the cost of service and—most important—financing mechanisms to spread risk beyond particular localities.

Second, rural finance, specifically for agriculture, requires different loan products. Loans must be developed that are specific to the products being produced. Tea, maize, cashew, and rice, as well as many other agricultural products produced in Tanzania, have different growing cycles. Financial institutions must be able to develop products that are commodity specific. They also must have different products for production, start-up, or expansion. The latter two require a longer term for repayment.

Third, producers of any given commodity will harvest at the same time. When that glut of supply reaches the market, producers face an uphill battle negotiating a fair price. In an ideal circumstance, warehouse receipt schemes can enable farmers to store their goods and obtain credit until they can negotiate a better price. Effective warehouse receipt schemes in Tanzania, however, are too few, and some are struggling with problems of administration, marketing, and corruption. Existing efforts must be strengthened to ensure that farmers benefit from these programs.

These themes of risk and business models in the agricultural sector will recur throughout the remainder of this chapter, which focuses on areas of the legal and institutional framework that can potentially lift constraints to accessing

credit. Recommendations at the end of the chapter suggest approaches to lowering transaction costs, mitigating risk, generating greater confidence in the system, and expanding finance to those in need.

## LEGAL FRAMEWORK

In general, three areas of Tanzania's legal and regulatory framework for finance need significant attention to improve the enabling environment for credit in the agricultural sector: collateralized lending, credit information sharing, and supervision of MFIs and SACCOs.

### COLLATERALIZED LENDING

In all markets, access to finance improves when financial institutions have the ability to secure a loan with collateral so that their risk is limited in case of default. A modern environment for secured lending typically depends on two key laws and two key registries. A modern land law would outline land rights, the process for land registration, the process for banks to register their security interest in land when pledged as collateral, and the enforcement processes in case of default. It would also establish the legality of the land registry and the registrations contained therein. In parallel, a similar law would cover secured finance, and movable property registry would enable lending on movable property.<sup>125</sup>

### KEY LAWS AND REGULATIONS

- Bank of Tanzania Act (2006)
- Banking and Financial Institutions Act (2006)
- Capital Markets and Securities Act (1994)
- Insurance Act (2009)
- Warehouse Receipts Act (2005)
- Warehouse Regulations (2006)
- Cooperative Societies Act (2003)
- Registration of Documents Act (1924)
- Chattels Transfer Act (1942)
- Leasing Act (2007)

Currently, although the laws and regulations that should support collateralized lending in Tanzania are numerous, they still do not effectively cover the situations that arise. The table below outlines the various laws and registries by borrower and property type. In discussions, representatives of financial institutions and local attorneys agreed that, for movable property, the existing laws (specifically the Chattels Transfer Act) and registries simply do not provide the legal protection necessary to encourage lending for loans on various types of movables of various loan sizes. Although the land act provides creditor protection, the difficulty of changing land ownership, as covered in the box at right for village land, restricts credit on immovable property. For simplicity and efficiency, moving toward a simpler legal and regulatory structure for collateralized lending,

### LAND POLICY IS UNINTENTIONALLY ANTI-CREDIT

The Village Land Act provides for a customary certificate of occupancy. Presumably, this provision was to provide those occupying village land with a mechanism for using their land as collateral. However, banks are still reluctant to take village land for several reasons. First, banks take collateral to secure loans with the understanding that in case of default, they could sell the collateral to cover their loss. Therefore, collateral is only as good as the market demand is for the asset. In Tanzania, to sell village land to someone outside the village requires that its status be changed from village to general. Depending on the size of the parcel, this change could require approval at the village, district, region, and national level, including presidential approval. The process makes village land illiquid and thus unsuitable for collateral. Alternatively, some banks have done due diligence at the village level to ascertain whether local villagers would be willing to buy the land in case of repossession. In this case, the banks are restricting possible demand for practical reasons, again limiting the value upon resale. Regardless of the buyer, the barriers that the Village Land Act raises with regard to resale make the policy anti-credit.

<sup>125</sup> In an ideal world, these registries could also be combined, but this is rarely seen in practice.

## KEY LAWS AND IMPLEMENTING INSTITUTIONS FOR DIFFERENT TYPES OF PROPERTY

	Land	Village Land	Movable Property	Movable Property (Motor Vehicle)
<b>Individual</b>	Land Act, Land Registry	Village Land Act, Land Registry	Registration of Documents Act*, Registry of Documents**	Chattel Transfer Act, Motor Vehicles Registry
<b>Business</b>	Land Act, Land Registry	Village Land Act, Land Registry	Chattel Transfer Act, Companies Act, Business Registry	Chattel Transfer Act, Motor Vehicles Registry
<b>Cooperative</b>	Land Act, Cooperative Societies Act, Land Registry, Cooperative Registry	Village Land Act, Cooperative Societies Act, Land Registry, Cooperative Registry	Registration of Documents Act*, Cooperative Societies Act, Registry of Documents**, Cooperative Registry	Cooperative Societies Act, Motor Vehicles Registry, Cooperative Registry

\*The Registry of Documents Act does not provide any legal repossession capacity. It is simply a place to register a document with the government. In court, a perjury charge could be placed, but it would not enable a repossession process.

\*\*The Registry of Documents is located at the Land Registry.

including a single land act without the various restrictions on transactions and a single secured-finance law for movables, is recommended. (For further discussion of the legal framework for land ownership, see the chapter on Registering Property.)

Beyond these multiple registries and laws, the Cooperatives Societies Act provides for a separate registry for charges against assets of cooperatives. Presumably, this registry is to help ensure that cooperatives are not overleveraged. The role of this registry, however, could be met under a general land and movable property registry with separate reporting for cooperatives. Currently, this separate registry only creates another hoop for banks and borrowers to jump through in the credit process.

USAID, in partnership with the Bank of Tanzania's Financial Sector Reform Program, is in the process of developing a modern secured-finance framework for lending on movable property, including a secured-finance law and a web-based registry that will allow for online search and registration by lenders. Implementation of this system should simplify the process, reduce

the risk, and reduce the cost of lending for all financial institutions in Tanzania.

### CREDIT INFORMATION SHARING

Currently, no functioning credit information sharing exists in Tanzania. The World Bank's most recent *Doing Business Report* notes the percentage of adults covered by private or public credit bureaus is zero, as is their Depth of Credit Information Index. In the Bank of Tanzania's Main Report of their Second Generation Financial Sector Reforms published in 2007, it commits to creating and operationalizing a bank-established credit reference bureau and the associated regulations. It also commits to establishing a credit reference bureau data bank, which could be leveraged by private credit bureaus. The Tanzania Bankers Association is planning to establish a credit reference bureau to use this data bank; however, to date the effort has not been implemented. In sum, at this time there is no effective system of credit information in Tanzania. Until some of the initiatives discussed above actually materialize, and in a way that allows lenders to use them during the loan application process, the cost of due diligence will remain high.



## **SUPERVISION OF NONBANK FINANCIAL INSTITUTIONS**

In Tanzania, the supervision of the large commercial banks has been transparent and resulted in no major issues. However, commercial banks service only a very small percentage of the agricultural sector. To a great extent, banks are irrelevant to primary producers, small traders, and all but the largest agro-processing firms. SACCOs and MFIs, along with a variety of other informal finance institutions, service most of the agricultural sector.

The supervision of these groups has been negligible. The Savings and Credit Cooperative Societies Act provides that the Ministry of Agriculture's Registrar of Cooperative Societies shall have responsibility for registration and supervision of SACCOs. Reporting and inspection mechanisms are in place; however, capacity for analyzing and taking action on information reported is low. (The issues around capacity for supervision will be addressed further under implementing institutions.)

The Bank of Tanzania started developing a microfinance policy in 2000. Three regulations came out in 2005 focusing on internal control and internal audit, microfinance companies and microcredit activities, and financial cooperative societies (FICOs). These regulations were to apply only to larger FICOs, with smaller institutions remaining under the Ministry of Agriculture. (Some stakeholders voiced concerns that the regulation would allow larger SACCOs to move funds into retained earnings, thus enabling them to avoid oversight by the Bank of Tanzania. The regulations covering this issue should be reviewed to ensure that regulatory avoidance is not possible through accounting decisions.) To date, the Bank of Tanzania has not licensed any MFIs or FICOs under these regulations. It was suggested, that the regulations were considered too stringent and thus that the implementation was delayed. The Bank of Tanzania has been conducting a review of the regulations and holding workshops to

understand concerns and create awareness. Given the importance of these institutions' expanding access to credit in the agricultural sector, it is essential that the Bank of Tanzania accelerate its efforts to implement a consistent, risk-based supervisory framework for all non-bank financial institutions.

## **WAREHOUSE RECEIPTS**

The Warehouse Receipts Act was passed in 2005, the regulations were passed in 2006, and the system was implemented in 2007. An effective warehouse receipts system should have a positive impact on producers by enabling them to warehouse their goods, access short-term credit, and negotiate for prices without pressure to sell immediately, rather than being forced to sell at harvest when the market supply is high and the price is low. The program has been in place for only several years, and the experience has been mixed. By some reports, the warehouse receipts themselves have no value, and the systems are only part-performing by serving as inventory credit systems. In cash crops, a small group of buyers, the apex cooperative societies, and the boards tend to negotiate the prices. In these cases, the warehouse program does not seem to have affected prices positively. However, in some of the staple crops where government intervention has been less, such as rice, anecdotal evidence suggests that the program has been a benefit. The warehouse receipts mechanism can play a positive role for producers, but its management must be more efficient and more transparent. If the program is controlled by a small group of individuals within the value chain, such as the management of apex cooperative societies, it could simply entrench imbalances of market power.

Another concern with the system is its administration. Some of the warehouses seem to be large, modern, and well administered. Others, however, have problems with sanitation, accounting, and pilferage. As a result, not all producers are enthusiastic about using warehouses.

## ROLE OF CONTRACTS

Because the regulatory framework for collateralized lending and customer due diligence remains weak, financial institutions have found workarounds to secure their interest and reduce their risk. The most common mechanisms in place in Tanzania are tripartite contracts. A bank will enter into an agreement with a processor or board and a group of farmers (generally through a SACCO). The bank agrees to finance the inputs with the guarantee that the processor or board will buy the output. The SACCO uses a group guarantee among the farmers, since collateral is either absent or secured-lending mechanisms are too difficult. The SACCO often distributes the inputs to the farmers. (It is rare that the financiers will allow the money to be distributed to the farmers to buy their own inputs, given the risk that the money will be squandered). These agreements are common across commercial financial institutions.

Two aspects of these contracts are noteworthy: side-selling and cost. In the case of side-selling, farmers will often sell to buyers other than the ones with whom they have contracted because of a better price. Best practices to reduce the occurrence of side-selling should be analyzed and replicated through associations of SACCOs and Farmers Associations. Farmers must be educated to understand that their short-term gain will limit long-term opportunities as financiers and that buyers will be less likely to enter into contracts with groups where side-selling is an issue. The second aspect is cost. Processors and banks would not need to develop these tripartite agreements if more efficient mechanisms existed to pursue collateralized lending, where farmers could leverage their land or possessions. Until the legal and institutional framework is reformed, however, these contracts are a good workaround.

## OTHER RELEVANT LEGISLATION

Several other important areas are leasing, payments, and consumer protection. In 2007, with support from the IFC, Tanzania passed the

Financial Leasing Act. Leasing is another financial product through which borrowers can finance assets over time. To date, the use of the leasing mechanism by banks remains limited. However, policymakers should work with farmers' associations and financial institutions to explore opportunities to promote this product, since leasing is an ideal way to finance farm equipment where a secondary market exists, such as with tractors.

Currently, the Bank of Tanzania is working on a proposed revision to the National Payments Act. This revision is to take into account the innovations around mobile finance that are occurring throughout the developing world, most pronounced in the country's neighbor, Kenya. The Bank of Tanzania should focus on a risk-based approach that enables mobile payment service providers to play a significant role in the expansion of access to financial services, without neglecting the possible risk exposure that accompanies the innovation of mobile payment systems.

Finally, consumer protection and financial services are a significant issue in Tanzania on several fronts. Given that most Tanzanians are not served by commercial banks, and that most nonbank financial institutions are not sufficiently supervised, failures of MFIs or SACCOs could have significant impact on their customers. In addition, financial literacy in Tanzania is a major issue, whether distinguishing between loans and grants or just understanding the obligations of a loan agreement. Efforts (such as those of the Financial Sector Deepening Trust) around financial literacy and SACCO capacity building should be supported and expanded.

Across the legal framework, the three key issues of collateralized lending, credit information sharing, and supervision of financial institutions are not new. In fact, projects have been in process for as long as 10 years (in the case of microfinance regulations) to address these issues. The matter is now urgent: the Bank of Tanzania must focus on accelerating efforts to

push these policy reforms forward. Financial policymakers should prioritize implementation of each of these three efforts within the next 18 months.

## IMPLEMENTING INSTITUTIONS

The institutions that implement the legal and regulatory framework are critical in any financial system. If the resources are not well trained, well organized, well managed, and enabled with modern technology, the best laws and regulations will be ineffectual. As mentioned in the previous section, the legal and regulatory functions that should support agricultural finance still need attention. In Tanzania, the implementing institutions often lack the capacity to implement existing policy or manage new policy reform efforts.

### BANK OF TANZANIA AND THE MINISTRY OF FINANCE

In early 2008, the governor of the Bank of Tanzania was sacked after he was implicated in a scandal involving fraudulent transactions to fictitious firms. Since the appointment of new leadership, the Bank of Tanzania has handled its monetary policy and supervision functions for commercial banks reasonably well. The larger concern for the Bank of Tanzania is the capacity to implement policy reform. The bank has a significant agenda spelled out under the Second Generation Financial Sector Reform Program. Its ability to deliver on these reform efforts, however, has been limited.

Two points should be made here. First, most of the Bank of Tanzania and Ministry of Finance staff involved in the large policy reform program are being pulled from line activities. Because their previous responsibilities have not gone away, however, their capacity to drive new reform efforts will be limited. Second, even the most adept financial regulator is not necessarily the best manager of a project to deliver reform. The skill set is simply different. To accelerate the efforts underway by the Bank of Tanzania

### KEY IMPLEMENTING INSTITUTIONS

- Bank of Tanzania
- Ministry of Finance
- Collateral Registries: BRELA, Land Registry, Cooperatives Registry
- Warehouse Licensing Board
- Courts

and Ministry of Finance, these institutions must put together a team that has the time and ability to deliver on the reform. If delivering reform remains someone's "second job," his or her ability to deliver on the reform will be constrained.

### COLLATERAL REGISTRY

A collateral registry has two basic functions that need to be met: efficient searching of existing registrations and efficient entry of new registrants. Searching of existing registrations allows a lender to confirm that a borrower has not already pledged a piece of collateral as security for another loan. After a search, if the lender wants to extend credit with the collateral offered by the borrower as security, the borrower should be able to quickly register his or her security interest.

To enable efficient searching and registration, a modern registry must be accessible and automated. With the exception of the motor vehicles registry, the collateral registries in the country (at BRELA, the Land Registry, and the Cooperatives Registry) are paper based. All registries in the country are centralized, making registration of collateral from rural areas prohibitively expensive. If a registry is not automated, searching paper-based registries can take a long time. Given the antiquated nature of the current system, collateralized lending using movable property is not very common. When lenders do take movable property, they are unlikely to search a collateral registry or register their interest. One lender described its process as follows: "We will first require the borrower to go to court and swear an affidavit that they own the property and will not sell the property prior to repaying the loan. It

is not our organization's policy to register our security interest at a collateral registry." When speaking to a local commercial attorney about this process, he stated that this process provides almost no risk mitigation for a bank. If the borrower defaults and does not cede his or her collateral, the borrower could be sued for perjury. The cost of the legal process will likely be greater than the value of collateral which the bank is trying to repossess. As stated previously, USAID is working with the Bank of Tanzania on a modern secured-finance system that includes a web-based collateral registry. Such a system will drastically reduce the cost of collateralized lending to banks. The Bank of Tanzania should do whatever is possible to accelerate the reform process.

### **CREDIT BUREAUS**

In modern financial systems, the credit bureau is a cornerstone of lending. Through automated lending systems, banks will be able to query multiple credit bureaus at once for due diligence. Based on the credit scores provided, banks will often return an automated decision to lend or not lend. The Tanzanian financial system, like that in many developing countries, is crippled by the absence of automated credit information systems. One financial institution described its due diligence process as follows: "We first require the customer to provide their voter registration card, a letter from the Ward Executive Officer or a letter from the Village Chairperson, along with a picture of the individual. Second, we require five character references from the potential borrower. Third, the bank typically requires the borrower to be account holders for a period of time to validate cash flow. Finally, for businesses, the bank will speak with suppliers and buyers to determine credit worthiness."

For one loan, this process could take at least a week to track down references, suppliers, buyers, and analyze cash flow. For small loans, this process is too expensive. Furthermore, it is almost impossible for lenders, including

commercial banks and SACCOS, which primarily undertake agricultural loans to smallholders, to conduct due diligence necessary to ensure they are comfortable with the borrower and to price the loan in such a way that the lender can recover their cost and the borrower can afford the loan. The importance of an efficient credit bureau—that includes positive and negative information from financial and nonfinancial institutions (such as utility companies) and that can be accessed online—cannot be overstated for reducing the cost of and expanding access to finance.

As stated previously, the Second Generation Financial Sector Reform Program under the Bank of Tanzania is working on delivering credit bureau reform, including a data bank of financial institution data that private credit bureaus can leverage. The Tanzania Bankers Association plans to develop a credit bureau using this data, once it is in place. This reform must be accelerated.

### **WAREHOUSE LICENSING BOARD**

The Warehouse Licensing Board, as established under the Warehouse Receipts Act, has six key functions:

- To license warehouses
- To license warehouse operators
- To license warehouse inspectors
- To approve negotiable warehouse receipts books
- To carry out or perform other functions conferred or imposed by the act
- To perform any other function as may be assigned or directed by the minister.

The board is also involved in technical assistance to the warehouse operators, hosting annual stakeholder meetings where performance and problems are discussed and conducting basic data collection on the warehouses and their receipt programs. Currently, the licensing board has licensed 34 warehouses. It was noted that few applications have been denied to date.

As mentioned previously, the framework for warehouse receipts in Tanzania is only a few years old, and its performance to date is mixed. While some involved in warehouse receipts for rice noted improved prices, the World Bank Group notes that “the warehouse receipt system with a single marketing channel failed to bring the promised ‘good price’ for cashew.”<sup>126</sup> Warehouse receipt systems should bolster producer market power for price negotiations. When implemented in a cash crop market where prices are fixed, however, or where the number of buyers and sellers is limited, the system simply becomes a mechanism for storage. They note further that “the warehouse receipt element *had the potential* to change the monopsonistic behaviors and give access to new players, but when combined with the single marketing channel element as it is in the current system, the system basically replaces one monopoly with another and thus fails to add desired liquidity into cashew marketing.”<sup>127</sup>

Warehouse receipting should play a positive role for farmers in Tanzania. The Warehouse Licensing Board should share data on the number of warehouse receipts by warehouse and by commodity with researchers so that the microdata can be analyzed. Researchers should be encouraged to explore the impact of warehousing on prices across regions and commodities. This research should be leveraged to help emphasize that warehouse receipts can have positive effects on open, competitive commodity markets but that in those commodity markets where a small group controls the markets, one should not expect warehouses to make an impact. Such research should become a platform for starting a public-private dialogue on agricultural markets, cooperatives, and commodity boards.

## REGISTRAR OF COOPERATIVES

The Ministry of Agriculture’s registrar of cooperatives has a few key roles to play in rural finance. First, it registers SACCOs, in a straightforward process. SACCOs must provide a business plan, constitution, address of their premises, list of

members with signatures, and a fee. The district cooperative officer transmits this documentation along with a certificate of registration to the registrar. The registrar returns the registration to the regional cooperative officer for the final seal. When documentation is in order, this process takes only a few days.

Second, the registrar collects basic financial data from the SACCOs on number of members, savings, loans, and nonperforming loans (NPLs). Currently, because of low capacity, only limited analysis of these data occurs.

Third, the registrar of cooperatives has some audit responsibility over the SACCOs. The SACCOs are supposed to set aside funds in their budget for these audits. The SACCOs request the audit and pay the auditor when they arrive. If the audit responsibility is one of their priorities, the registrar should have the capacity to analyze the financial data and audit based on the reports, as well as conduct spot-check audits to ensure that financial reports are not being falsified. The audits should be centrally funded, even if the funding comes from SACCO-paid fees. Having the auditors paid by the SACCO when they come out to audit the SACCO could influence their impartiality.

The registrar of cooperatives under the Ministry of Agriculture could be significantly strengthened with a focus on capacity building, financial analysis, budget alignment, and clarifying and streamlining the audit processes. However, it is not a core competency of the Ministry of Agriculture to supervise and audit financial institutions. This is, however, the core competency of the Bank of Tanzania. International best practice is to place MFI regulation either in the central bank (albeit with its own special law) or in the ministry of finance. Policymakers should consider moving the responsibility for SACCO oversight (and not simply the largest SACCOs) under the Bank of Tanzania and then developing the capacity of the department to deliver on its responsibilities of ensuring stability among financial cooperatives.

<sup>126</sup> Mwombeki Baregu and Johannes Hoogeveen, “State and Markets in Cashew Marketing: What Works Better for Tanzanian Farmers,” World Bank Group (28 October 2009).

<sup>127</sup> Id.

## COURTS

An efficient and fair court system is critical to the functioning of the financial system. If the courts are incapable of fairness or rapid action on loan default cases, financial institutions will be reluctant to lend to all but the most qualified borrowers that are likely in least need. Those in the most need of finance, which includes most smallholder farmers and small-scale agro-processors, will be left out of the financial system.

When asked, most banks consider the courts to be fair, but slow. One banker noted that it was common for those who had defaulted on a loan to seek an injunction from the court to delay repossession. If granted, it might take two or three years for the court process to be resolved. A fast-track process in the commercial court could be developed to handle these standard loan defaults. If banks could be assured that loan default cases could be resolved in a matter of weeks or months, rather than years, they may be more willing to take risks.

The experience of banks—sophisticated institutions with deep pockets and access to the best lawyers—may not be the typical experience of other agricultural stakeholders (farmers, producers, exporters) with the court system. For a more detailed discussion of Tanzania's court system, see this report's chapter on Enforcing Contracts.

## SUPPORTING INSTITUTIONS

This section covers those institutions that extend finance, provide other financial services, or represent financial institutions, as well as the donors that work to expand access to finance and strengthen the financial sector.

### COMMERCIAL BANKS

The commercial banking sector has continued to grow over the past several years. As shown in the figure below, the expansion in domestic credit to the private sector has been consistent.<sup>128</sup>

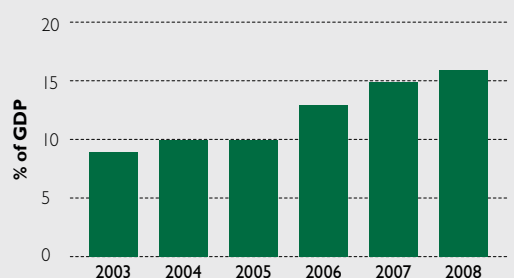
### KEY SUPPORTING INSTITUTIONS

- Commercial banks
- Microfinance Institutions
- SACCOs
- Tanzania Investment Bank
- Agricultural Lending Bank (proposed)
- Mobile payment providers

Several factors are driving this expansion. First, the interest rate on treasury bills has come down significantly in recent years. Thus, they are no longer mopping up potential credit.<sup>129</sup> Second, the competition in the financial sector continues to grow, with more than 30 commercial banks registered in the country. The competition is forcing banks to look beyond corporate and personal accounts for a customer base. Banks are beginning to expand into agriculture, although much more slowly than policymakers (or farmers) would like. The expanded competition is manifesting itself in the fight for human capital (see box below). With competition, the average lending spread has begun to come down.<sup>130</sup> These signs should encourage policymakers who want to expand access to credit.

One of commercial banks' largest challenges when it comes to expanding into agricultural lending is the ability to deliver services across a large, sparsely populated country. The density of financial services and competition in the urban areas remains high. In contrast, rural areas tend to be served only by local SACCOs and microfinance institutions. Commercial banks must evaluate alternative business models to enter into rural markets. Several banks

### DOMESTIC CREDIT TO PRIVATE SECTOR



<sup>128</sup> World Bank Group, World Development Indicators, 2010.

<sup>129</sup> When interest rates on local T-bills are high, banks will simply buy T-bills instead of putting money out for loans. This is a common problem in developing countries, especially in Africa, where high T-bill rates may be a central bank's preferred weapon against inflation.

<sup>130</sup> Id.

## COMPETITION FOR AGRICULTURE LENDING TALENT GROWS

In conversations with several stakeholders in the rural finance sector, the competition for agricultural lending talent became apparent. First, a donor program guaranteeing agricultural lending in Tanzania noted that it had witnessed loan officers they had worked with at one institution hired away by an institution that was trying to expand its agricultural lending portfolio. Although certainly the institution losing a staff member will not view this change as positive, it is a signal that agricultural lending talent is in demand.

Second, a professor at one of the leading agricultural universities noted that past requests for references from financial institutions regarding students being considered for lending positions in the agricultural sector all came from the commercial bank CRDB. He has noted that, over the last several years, the pool of financial institutions to which students are applying is much broader. More financial institutions, including commercial banks, community banks, and microfinance institutions, are actively expanding their agricultural lending activities and thus require new staff.

Third, the demand for the project appraisal and evaluation course at Sokoine University has increased significantly, as have the enrollees at its MBA program; both are funneling students into the agricultural finance sector. This increased interest demonstrates students' awareness of increased opportunities. The competition in the financial sector for customers is forcing financial institutions to consider agriculture, even in the face of real risk. The labor market is responding.

are innovating with mobile branches that can serve multiple communities by moving around. Other banks are formalizing relationships with SACCOs and MFIs. These relationships can strengthen both organizations over time by helping commercial banks better understand how to reach down market and by helping microfinance institutions manage their portfolio risk and access greater resources.

Continued competition, along with the policy reforms mentioned previously, is the most efficient way to sustainably expand lending in the agricultural sector. With growth, commercial banks will invest in new technologies that will enable them to reduce their costs further and reach new customers. Government must restrain itself from the temptation to intervene directly and focus its efforts on implementing the policy reforms that will allow the sector to operate more efficiently.

### MICROFINANCE INSTITUTIONS AND SACCOs

Microfinance institutions and SACCOs operate throughout the country. The quality and capability of the institutions vary greatly. Some are innovating with new products and technologies

and effectively managing their portfolio risk. Others struggle with the most basic responsibilities of a financial institution. Stakeholders across the sector noted that capacity building among SACCOs is one of the most critical areas for strengthening the financial sector.

Financial literacy activities are required for SACCO management and for customers (see box above). However, without adequate supervision of nonbank financial institutions, policymakers will struggle to understand where to target such efforts. The Financial Sector Deepening Trust, a donor-sponsored initiative, is leading in both of these areas.

### TANZANIA INVESTMENT BANK AND THE PROPOSED AGRICULTURAL DEVELOPMENT BANK

The Tanzania Investment Bank is a development finance institution in Tanzania. It was set up to provide “finance and specialized investment banking services to corporate clients on a commercial basis.”<sup>131</sup> To serve the agriculture sector, it has recently been tasked by the government to set up an agriculture finance window with funding of over TSH20 billion. Further, under the Kilimo Kwanza program, the government

<sup>131</sup> Tanzania Investment Bank, [www.tib.tz.co](http://www.tib.tz.co).

## GOVERNMENT HANDOUTS CAN DEGRADE FINANCIAL LITERACY

For rural finance, the issue of financial literacy cannot be overstated. The opportunities that finance presents and the obligations that it presumes are not straightforward concepts for many unfamiliar with finance. Because education among the average cohort of rural farmers is limited, policymakers should not presume anything when it comes to financial literacy.

Two issues are particularly important. First, the sentiment, “I don’t want to be working for the bank!” was noted often in response to why entrepreneurs did not want to take out loans. They perceive loan costs to be high; however, often they have not analyzed their business plan to see if the benefit of taking the loan may not outweigh the cost. Finance can be expensive, but the costs can sometimes be justified and should be considered. Programs like PASS (Private Agricultural Sector Support) that help rural entrepreneurs evaluate their business plan can help improve financial literacy.

Second, many financiers mentioned that borrowers do not understand the difference between loans and grants, an issue common in the microfinance literature, given that some NGOs will give grants in the same areas that others are providing microcredit. For the uninformed, this creates confusion. In Tanzania, the government exacerbates this issue further through promoting its funded programs and funneling them through rural financial organizations with low capacity. It is common that citizens do not feel obliged to pay back government money, even when it is a loan and not a grant. Although efforts such as the National Economic Empowerment Fund are well intentioned, policymakers must understand that they may negatively affect rural financial institutions’ operations if borrowers perceive the fund as a grant because it is from the government. Given the multitude of such funds, policymakers should consider consolidating these efforts and allowing banks to borrow from these funds at subsidized rates with conditionalities on the borrowers and terms to meet the policy goals. They can then onlend to SACCOs and other nonbank financial institutions. By pursuing this approach, government could have a hand in strengthening the overall financial system rather than unintentionally weakening those with the least capacity.

wants to set up an agricultural development bank in Tanzania with initial capitalization of US\$500 million.<sup>132</sup>

The government sees an urgent need to channel funding to the agricultural sector. However, its plan is short-sighted. Private institutions in Tanzania’s financial sector have avoided lending to agriculture for good reasons. The risks that have kept them out of the market are real, pervasive, and continuing. If the government decides to channel funding in the face of these risks, rather than focusing its energy on addressing the risks, it will squander the limited resources that it has.

### DONOR COMMUNITY

A broad cross section of the donor community in Tanzania focuses on the financial sector. A multidonor supported project, the Financial

Sector Deepening Trust, is one of the lead organizations promoting access to finance for Tanzanians. It has recently supported a second study on financial access by providing data for researchers and policymakers to deepen their understanding of the challenges. As well, the donors are actively promoting both financial literacy and SACCO capacity building.

The Private Agricultural Sector Support Program (or PASS) works to encourage growth in the agricultural sector. It provides business plan support for agricultural entrepreneurs and then facilitates their access to credit with the support of a guarantee, as necessary. The PASS guarantee varies from 30–70%. It is not a first-loss guarantee, so the banks must exercise their recovery methods before PASS will provide coverage. Although the first iteration of

<sup>132</sup> Tanzania National Business Council, “Ten Pillars of Kilimo Kwanza (Implementation Framework)”.



the program had its challenges, the project has made changes that have improved performance.

USAID supports the financial sector through two programs. First, it is collaborating with the Bank of Tanzania on a program to deliver secured-finance reform to Tanzania, including a new secured-finance law and a web-based collateral registry. It also has a guarantee with African Development Bank (AFDB) and CRDB covering as much as 50% risk coverage on agricultural lending.

### MOBILE PAYMENT PROVIDERS

The innovation of mobile payments continues to generate more excitement in financial sector development circles than almost any other topic. A mobile payment system creates multiple opportunities for development practitioners. First, it is a low-risk, low-cost method for sending remittances within a country from urban to rural areas. Second, it can provide payment services for large employers, such as agricultural processors with large out-grower schemes. Third, financial institutions can integrate these systems into their operations to allow loan disbursement and loan payment without requiring the customer to come into a branch. For farmers, this advantage eliminates the cost of travel and the cost of lost productivity.

Kenya's rapid expansion, where Safaricom's MPESA expanded to over 6 million customers in three years, is consistently compared to Tanzania, where expansion has been much less impressive. Policymakers should understand that the variance in performance is largely due to two very different market structures.<sup>133</sup> Though mobile payments have been slower to take off in Tanzania, opportunities still abound. It is critical, however, that regulators focus on a risk-based approach to regulation and do not attempt to regulate mobile payment providers as if they were a bank.

### SOCIAL DYNAMICS

A full understanding of the financial sector in Tanzania cannot be gleaned simply from an analysis of the legal framework and institutions. Historical and cultural issues must be considered, as well.

### UNION ISSUES

The constitution notes that banking issues are union issues. However, experience shows that banking laws and regulations passed by the mainland are not always adopted by Zanzibar. (One recent example would be anti-money laundering legislation, which remains stubbornly unharmonized, despite continuing efforts.) Ongoing discussions are in process to determine whether the secured-finance reform effort of USAID and the Bank of Tanzania will be adopted by Zanzibar or if a different system will be developed. The implications of a separate system may result in restrictions on the movement of movable property between the island and the mainland, as financial institutions will be concerned with their protection in a different regulatory regime. Efforts should be made to harmonize the systems, as separate regimes will create unnecessary complications.

### STRONG TRADITION OF GOVERNMENT INTERVENTION IN MARKETS

Tanzania's government shows tendencies to intervene in the market rather than allowing the market to function. In the financial sector, the government intends to develop a financial institution for agriculture, even though evidence suggests the private sector is moving in this direction. The government's trade bans in the maize market are another example. The market system in Tanzania is still relatively new, and many still remain more comfortable in a government-led system. Policymakers need to focus on developing institutions that strengthen the market rather than developing institutions and implementing policies that undermine it.

### DEBT COLLECTION AS TABOO

When questioning various stakeholders, the issue of debt collection as a taboo or curse came up several times. The Village Land Act was cited as one example of this issue. Although government wants individuals to be able to leverage village land for collateral, the idea of repossession remains somewhat foreign.

<sup>133</sup> For information on the market differences, refer to CGAP's Note: "Mobile Banking in Tanzania: Can Kenya's Success be Replicated Next Door?"

Modern financial systems are premised on the ability of banks to repossess collateral in case of default. If banks know that borrowers will resist and drag the banks through a lengthy injunction process, credit will be unnecessarily restricted. If the government is serious about developing a modern economy where land can be used as collateral and freely change hands, it needs to develop a land policy that reflects this priority. Furthermore, it needs to empower a court system to enforce such a policy.

**Gender.** A rich literature exists around the ability of women to access finance. Women tend to have better repayment rates and are less likely to squander loan funds. However, too often, women have more difficulty in accessing finance. In Tanzania, the barriers to finance are fairly consistent for men and women. In fact, financial institutions in Tanzania appreciate the value of women customers and are innovating to attract more. Tanzania's Women's Bank started business in the past two years with the specific goal of targeting women. Although men can open accounts, the goal was to provide women with a financial institution where they were a priority. Other banks have developed products that are specifically targeted at women to encourage savings and enable lending. Some financial organizations noted that they were targeting hiring women as loan officers, as they could work more easily with women's groups. Furthermore, the mortgage legislation requires spousal approval prior to bargaining, thus providing more equality in family financial transactions. Although certainly many women in Tanzania do not have access to finance, it does not appear that this exclusion is due to any bias among financial institutions.

## RECOMMENDATIONS

### **Accelerate existing reform programs for collateral registry and credit information system.**

The Bank of Tanzania has two reform programs in process for legal and institutional reform

to implement a collateral registry for movable property and a credit information bureau. Both of these efforts are critical, not just for expanding agricultural finance but for finance more broadly. For each program, the Bank of Tanzania should do the following:

First, appoint a project manager and an executive champion within the Bank of Tanzania whose responsibility it is to deliver the reform program. The executive authority must have the ability to pull together senior policymakers to resolve any issues that are holding up the reform process. For those efforts that are being driven by donors, the donor support and expertise are critical; however, it is the Bank of Tanzania that must own and drive the reform. Second, assess the current status. What has been accomplished to date? What remains to be completed? What key issues must be addressed? Third, build a detailed work plan to deliver the reform effort within 18 months. (We recognize that passing legal reform before the upcoming election may be difficult. This timeline should allow for the project manager to work the legal reform through after the election.) Fourth, establish a stakeholder outreach program to ensure that those that will be leveraging this new infrastructure are trained before implementation. As well, the potential borrowers that stand to benefit should also be included in the outreach by communication through associations. A strategic communications plan must also be developed focusing on the parliamentarians that must vote on the reform. They must understand the criticality of increasing access to finance. Fifth, the project manager should have a weekly update meeting with the executive champion until the program is implemented to ensure that the project remains on task and that issues are being resolved with speed. Once implemented, outreach efforts should continue to ensure that the new infrastructure is being leveraged by the financial sector. Academic institutions focusing on law or finance should incorporate the reform into their curricula to ensure that students are trained on the changes and the

implications for their profession. Monitoring and evaluation should be conducted at the institutional level to evaluate the impact of the reform programs on lending.

### **Enhance human capacity for agricultural lending and rural finance research.**

Though competition for agricultural lending talent is on the increase, most financial institutions noted that it still takes 9–18 months to fully train a loan officer. Bolstering the talent for agricultural lending coming out of the universities would be a major step in enabling banks to target the agricultural sector more aggressively.

USAID should collaborate with the Tanzania Bankers Association, the Tanzania Association of Microfinance Institutions, the Savings and Credit Cooperatives Union League of Tanzania, and the Financial Sector Deepening Trust to develop a program for building human capacity for agricultural lending and research in the sector. The effort should begin by developing and implementing a survey of financial institutions to determine what they are looking for in new staff and what is lacking in the current talent pool graduating from universities. The survey results should be analyzed and recommended actions proposed. A series of workshops with stakeholders should be convened to discuss the recommendations and to develop a plan of action. The action plan should target curriculum development and capacity building within the top two or three academic institutions currently feeding the financial sector with a possibility for expansion over time.

Concurrent with this effort, USAID should begin a series of consultations with the largest private financial institutions and agro-businesses in Tanzania to explore the opportunities for partnerships between the private sector and universities to support agricultural finance programs and research in agricultural finance. These partnerships could include, but should not be restricted to, sponsoring new long-term academic positions focused on agricultural

finance, sponsoring positions for foreign professors with specialization in agricultural finance to teach and research in Tanzania, sponsoring scholarships for students with interests in agricultural finance, or sponsoring research initiatives relevant to agricultural finance. One example might be sponsoring a project to analyze the effectiveness of warehouse receipt programs in Tanzania by collecting price data daily from a variety of markets over several years and combining those data with information from the warehouse licensing board and selected banks that are lending on warehouse receipts. Researchers could begin to compare and contrast the impact of warehousing programs on prices and recommend changes in policy to the licensing board and potentially changes in product development to the banks.

### **Conduct SACCO risk-spreading analysis and program development.**

Most SACCOs are small financial institutions that serve a local community whose economic activity is concentrated within specific agricultural commodities. As such, the SACCOs supporting these communities face significant risk of failure if crops fail.

An opportunity exists to hedge this risk by enabling SACCOs to share risk with SACCOs from other regions in the country that focus on different crops or face different microclimates. By sharing risk, they can limit their exposure and increase their sustainability. In the short term, a survey of the SACCOs operating in the country should be conducted (previous research in this area must be consulted). This survey should focus on the portfolio concentration by agricultural commodities. Second, the survey results should be analyzed to determine if networks of SACCOs could be created that would enable a more balanced spreading of risk. Third, several alternative business models should be developed for various SACCO network structures. Fourth, many as five SACCO networks should be piloted and monitored over time to determine if the network structure

contributes to a more stable system. Fifth, a consultation with reinsurance companies should be initiated to determine whether a mutually beneficial business opportunity exists for them to share risk.

**Support SACCO capacity-building and financial literacy efforts.**

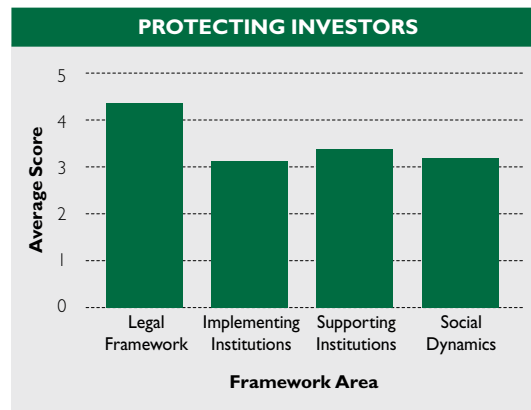
The Financial Sector Deepening Trust, along with other stakeholders in the Tanzanian

financial sector, has active programs for both SACCO capacity building and financial literacy. These two areas are of the utmost importance for those aiming to expand access to finance for those in rural areas who are working in the agricultural sector. Rather than developing new efforts in parallel with similar goals, policymakers must coordinate with these initiatives and others to understand how their support could help further these shared goals.



## PROTECTING INVESTORS

Tanzania has seen a steady increase in inward foreign direct investment (FDI) over the past several years, and interviews suggest that most investors feel reasonably secure. Most of the problems that they cite are issues of the general business environment—high costs, red tape, access to credit—rather than specific issues of corporate governance, protection of shareholder rights, corporate transparency, and the like. The agricultural sector, in particular, is dominated by small and medium enterprises (SMEs) that are hardly concerned with these issues at all.



Tanzania's *Doing Business* ranking for protecting investors has fallen slightly, from 126th out of 183 last year to 131st out of 185 today. This slippage, however, did not happen because Tanzania's environment has changed; it has not. Tanzania has the same numerical scores, but other countries have moved ahead. That said, this ranking may not accurately reflect the situation in Tanzania. The World Bank indicators place heavy emphasis on the accountability of corporate directors, and this is indeed a weakness. But the general climate for investment is not as bad at these indicators would suggest.

Formally, Tanzania welcomes all forms of investment. It does not discriminate against businesses conducted or owned by foreign investors. It has no barriers regarding 100% ownership of businesses by foreign investors in agriculture. It has no recent history of expropriation or nationalization, and no restrictions inhibit the transfer or repatriation of capital and income earned.

Corruption is a problem, but it is not high by regional standards. Transparency International ranks Tanzania as 126th in the world. While that score is low, it is actually above average for the East African region.<sup>134</sup>

Tanzania enjoys high levels of both political and economic stability: the country has never had a coup or a civil war, it has enjoyed consistent modest economic growth since 2002, and the currency is stable. And while the company law is rather weak, the general commercial legal framework is quite strong, with laws that are largely consistent with international best practices.

Arguably, the corporate governance factors that the *Doing Business* rankings assess represent an advanced level of investor protections, beyond what Tanzania should be prioritizing in

### TANZANIA AND ITS NEIGHBORS: RANK ON THE TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX

Malawi	89
Rwanda	89 (tie)
Zambia	99
Tanzania	126
Uganda	130
Mozambique	130 (tie)
Comoros Islands	143
Kenya	146
DR Congo	162
Burundi	168

Table shows 2009 rankings for Tanzania, its eight immediate neighbors, and the Comoros Islands (nearly offshore).

<sup>134</sup> See box. However, Tanzania's rank on the TI Corruption Perceptions Index has been falling in recent years: from 94 in 2007, to 102 in 2008, to 126 in 2009. Unlike Tanzania's fall in the World Bank *Doing Business* rankings, this is an absolute as well as a relative drop; the country's score has fallen by about half a point. The ranking also reflects the views of at least some interviewees, who believe that corruption has grown somewhat worse in the past few years. For further discussion of this issue, see the text box in the Social Dynamics section, below.

this area. Most Tanzanian businesses, especially in the agricultural sector, need to address basic good business practices—bookkeeping and management—rather than disclosure duties and shareholder protections. Certainly corporate governance is a necessary part of a modern commercial legal framework, and it will increase in importance as Tanzania’s economy continues to grow. Ensuring that an adequate structure is in place and used as the need for stronger corporate governance develops will be important. In the meantime, Tanzania should support and encourage a culture of good business management, which will benefit the broader business community and lay the foundation for more advanced corporate governance practices to come.

That said, amending the Company Law is not currently a priority in Tanzania. Given the limited resources available, this is probably a reasonable policy choice.

## LEGAL FRAMEWORK

The Tanzanian Company Law consists largely of the **Tanzanian Companies Act (2002)** and its accompanying regulations. Despite its name, the law is only about four years old; the Tanzanian National Assembly passed the act in April 2002, but it did not come into effect until early 2006, pending preparation of related regulations. The act and regulations then became effective simultaneously, replacing the former company law, the colonial-era Companies Ordinance of 1932.

The new act covers the usual subjects for governing business companies but also has extensive provisions on two other subjects that are not usually found in company laws: (1) registration of liens and mortgages on a company’s property (called “charges” in the Companies Act); and (2) the liquidation and winding up of companies. This unusual structure follows that of the English Companies Act of 1985, which England has since replaced.

### KEY LAWS AND REGULATIONS

- The Tanzania Companies Act (2002)
- The Capital Markets and Securities Act (1994)
- The Investment Act (1997)
- The Business Activities Registration Act (1997)
- The Licensing Act (1972)
- Bilateral investment treaties

In the law, there is one form of limited liability company called, simply, a “company.” Tanzania does not have a separate, more flexible form of company for small and closely held businesses or joint ventures. In this way, the Tanzanian law differs from the laws of many countries. (The Tanzanian Company Law does distinguish between companies that are “public” and “private,” but private companies remain subject to most of the formalities applicable to public companies.)

In many respects, the Company Law reads like an outdated version of British corporate law. It does incorporate a number of basic, traditional protections for investors; for instance, it states that a company must hold an annual shareholder meeting, that shareholders holding 10% or more of the voting power may require other shareholder meetings, and that shareholders may ask a court to order a shareholder meeting if the directors do not do so (sections 133–37). Regarding fiduciary duties, the law requires a company’s board of directors to “act honestly and in good faith” and exercise “care, skill and diligence” (sections 182 and 185). (The latter is the “duty of care” and is common in other countries’ laws.)

However, these duties are imposed only on a company’s *directors*, not on other persons who are often in control of the company, such as officers and controlling shareholders, who are covered in other countries’ laws. This is a significant weakness.

Another problem is that the law does not impose a general fiduciary duty of loyalty on directors or other controlling persons. Nor

does it have rules requiring disinterested approval of conflict-of-interest transactions between controlling persons and the company.<sup>135</sup> Other major shortcomings lie in the definition of the duty of loyalty (directors are not explicitly prohibited from self-dealing), in the restrictions on directors' terms of offices (there are not any; directors can be given indefinite terms, subject only to recall by the shareholders), and in the requirement of shareholder approval for major changes such as mergers and acquisitions (it is not required; the directors can legally sign a merger without first seeking shareholder approval). In all these cases, the Company Law falls well short of international best practices.

Overall, Tanzania's current Company Law lacks best-practice standards and is often unclear and cumbersome to use. Provisions that increase investor protection are needed to adapt the law to current international and Tanzanian business practice and to add flexibility for SMEs.<sup>136</sup>

That said, there is not currently a perception that the law needs amending. Interviewees who work with the law—lawyers, accountants, and the TIC—agreed that it has many flaws but do not see fixing the law as a top priority “given all the other problems that we have.” There is also a perception that, since the current law is just four years old, it is too soon to be passing major amendments.

The legal framework also includes the **Capital Markets and Securities Act (1994)**, which creates the Capital Markets and Securities Authority (CMSA), the government body responsible for regulating the Tanzanian securities markets and stock exchanges. There is one stock exchange in the country, the Dar es Salaam Stock Exchange (DSSE).

In 2002 the CMSA issued a corporate governance code, entitled **Guidelines on Corporate Governance Practices by Public Listed Companies in Tanzania**. That code overlays the Company Law with respect to the

protection of investors, but it applies only to stock exchange-listed companies.

Another key law aimed at investor protection is the **Investment Act (1997)**, which regulates foreign investment and creates the TIC, a government body whose mission is to promote both domestic and foreign investment and to actively aid potential and established investors. (Further discussion of the TIC is found under Implementing Institutions, below.) Among other provisions, the act provides for convertibility and foreign repatriation of profits, loan service payments, royalties, and the like; prohibits nationalization or expropriation without “fair and prompt” compensation; and allows dispute settlement by arbitration, including under the rules of the International Center for the Settlement of Investment Disputes (ICSID).

New businesses will soon come into existence under the **Business Activities Registration Act (2007)**. This was passed into law two years ago but is not effective yet; its implementation is anticipated before the end of 2010. This act will repeal the current law, the **Licensing Act (1972)**.

Tanzania has signed **bilateral investment treaties (BITs)** with a number of European countries, including Great Britain, Germany, and the Netherlands. The treaties provide for most-favored-nation treatment for investors, internationally recognized standards of compensation in the event of expropriation, free transfer of capital and profits, and procedures for dispute settlement. Tanzania does not currently have a BIT with the United States.

Tanzania has been a member of the World Trade Organization (WTO) since 1995; it has never filed a complaint nor had one filed against it. Tanzania is a founding member of the East African Community (EAC). It has signed the Convention on Settlement of Investment Disputes between States and Nationals of Other States.

<sup>135</sup> While the Companies Act does not have conflict-approval rules, it does have some soft conflict disclosure rules. Directors are to notify the company of their stock ownership in the company, any reimbursement from the company, and any loans from the company and to declare generally to the board any interest in a contract or in another firm with whom the company may have future contracts (sections 205–09). However, this last rule is often not complied with or enforced. This issue was discussed in the BizCLIR Report in 2008 (p. 106: “many companies did not disclose information on related party relationships”). According to interviews, the situation has not much changed since then.

<sup>136</sup> Issues with the Company Law were discussed in detail in the Tanzania BizCLIR report, “Tanzania’s Agenda for Action” (February 2008). In the two years since then, there have been no major changes to the Company Law.

In theory, Tanzania’s legal system enforces private property rights, including intellectual property. Tanzania is a member of the World Intellectual Property Organization (WIPO) and of the Bern Copyright Convention. Local statutes recognize reciprocal protection for authors or artists who are nationals of countries adhering to the 1991 Paris Convention on Intellectual Property Rights. In practice, enforcement is almost nonexistent. Public awareness of intellectual property issues is very limited, and Tanzanian customs has a limited ability to enforce the laws.

Corporate governance is still a somewhat new concept in Tanzania. Only a few businesses are of a size to require or implement advanced corporate governance procedures. There is a Corporate Governance code, *The Guidelines on Corporate Governance Practices in Public Listed Companies in Tanzania*. It applies to stock exchange-listed companies, of which there are currently 10. In the long term, education on its importance and its requirements may be necessary. Given the current state of the economy in Tanzania and the small number of companies to which complicated corporate governance procedures would apply, this is not a top priority today. But training and awareness programs and simple educational materials for judges, attorneys, and businesspeople will eventually be required.

## IMPLEMENTING INSTITUTIONS

### TANZANIA INVESTMENT CENTRE

Tanzania’s investment agency, the TIC, is intended to be a “one stop shop” for investors, bringing incorporation, registration, and licensing under a single roof. In theory, it has primary responsibility for promoting investment in Tanzania, although in practice other government agencies often infringe upon this. TIC is also an information resource; copies of relevant commercial laws and other informative materials, including booklets and pamphlets explaining applicable legal processes and investment

#### KEY IMPLEMENTING INSTITUTIONS

- Tanzania Investment Center (TIC)
- Courts
- Business Registration and Licensing Agency (BRELA)
- Dar es Salaam Stock Exchange
- National Investment Steering Committee (NISC)

advantages, are available at the TIC offices and on its website. TIC’s mission covers both domestic and foreign investment, but as a practical matter most of its work is with foreign investors.<sup>137</sup>

TIC gets generally positive reviews. TIC staff are generally well informed on the legal framework and the commercial environment and are able to answer pertinent and important questions about investing in Tanzania. A number of different approvals needed to secure a business license, including Ministry of Finance and Customs, can be obtained there fairly quickly. A representative of the TRA (Tax Revenue Authority) is permanently embedded at the main TIC office in Dar es Salaam to review eligibility for investor tax exemptions. Permanent representatives of the Business Registration and Licensing Agency (BRELA) and the Labor Ministry are also present to assist with registration and labor issues. In 2007, TIC was named World’s Best Investment Promotion Agency at the annual meeting of the World Association of Investment Promotion Agencies in Geneva.

On the minus side, TIC is not seen as particularly friendly to small investors, especially small local investors. It is supposed to provide help in finding funding and partners, but—according to interviewees—does not always do so. And it is not so much a true one-stop shop as an interface across a preexisting tangle of permitting and licensing systems. That said, TIC is, by regional standards, both competent and efficient.

Overall, TIC’s activities are divided into three departments: investment promotion, investment facilitation, and research. Promotion

<sup>137</sup> TIC does not handle all foreign investment promotion in Tanzania. Several sectors are exempted from the Investment Act: mining, petroleum, armaments, and hazardous chemicals.



personnel identify specific regional and sectoral opportunities and make frequent promotional road shows in other countries, including China, India, Indonesia, and Malaysia. The facilitation personnel have organized three groups—agri-business, extractive, and infrastructure—that concentrate on projects, investors, and licenses in those areas. Research includes FDI studies, sectoral studies, and labor market research. TIC also has a dedicated land division, which owns certain lands donated by the government; it is supposed to make these lands available to selected investors, but there have been various difficulties with this.

Under the Investment Act, investors in certain sectors—including agriculture—get incentives, including tax incentives. To benefit from these, they must first be certified by TIC. This process seems to be relatively straightforward, if the investor can produce the necessary paperwork.

All of these functions are fairly typical for investment agencies in developing countries. TIC is slightly unusual in that it can also act as an investor advocate long after the enterprise's registration. Subject to its limited resources, TIC continues to work with at least some long-term investors.

TIC (and its investor clients) would benefit from more staff and, specifically, more education and training in investment promotion techniques. TIC competes directly with South Africa, Kenya, and other countries in the region for the same investors and does not want to be at a disadvantage.

## COURTS

Investors are generally very interested in the ease of dispute resolution, but this remains a challenge in the commercial sector and a disincentive to investing in Tanzania. Simply put, Tanzania's courts are slow and not very consistent or reliable. While there are some bright spots, overall the system is troubled and has only a limited capacity to protect investors. For a more detailed discussion of the court system, see the chapter on Enforcing Contracts.



## BUSINESS REGISTRATION AND LICENSING AGENCY

BRELA includes the Registry of Companies and also has primary responsibility for administering the Company Law. At this time, BRELA oversees several registries. The Licensing Act of 2007 will combine these into a single central registry, incorporating the business names registry, registry of companies, general business licenses, and sector-specific licenses. This consolidation is supposed to happen by the end of 2010, but that schedule may be overly optimistic.

A company begins its existence by registering with the Registry of Companies; its organic documents, including its constitutional charter (called the Memorandum of Association), are filed there, together with any amendments made throughout the company's life. A company is also required to file with the registry an annual return containing data that includes its address, principal business activities, the names and addresses of its directors and shareholders, the number of issued shares of each class along with a statement of the nature of each class, and, in the case of a public company, its financial statements as presented at a shareholder meeting during the period covered by the return.

This is highly useful information which should be available to the public including any potential investor or business partner of the company. Unfortunately, this information is not kept electronically but is filed manually in paper copy only. Another problem is that the registry has only one office, in Dar es Salaam. Persons located elsewhere are obliged to travel to the capital.

BRELA has some modest investigative powers. For instance, it can require a company to produce additional documentation if the registrar believes that a document previously filed is inadequate or inaccurate. It has power to levy fines for violation of the Company Law and can also refer matters to the court system for further investigation or prosecution. Generally, however, BRELA acts only as a custodian of documentation and does not aggressively monitor compliance with the law. Thus, while CMSA and the stock exchange regulate listed companies in some detail, unlisted companies are, as a practical matter, not regulated at all.

BRELA keeps an up-to-date website at <http://brela.tz.com>. At this time the website provides information about registration and licensing and basic business registration documents; it does not allow online registration or searches for information. Under the provisions of the Business Registration Activities Act of 2007, a single online registry will be accessible through decentralized offices. Staff training and system (software and hardware) acquisition has been completed, but the online registry is still at least six months away from going live.

### **CAPITAL MARKETS AND SECURITIES AUTHORITY**

CMSA, as already noted, is the supervisory body of the stock exchange. It has appellate review and appellate authority over stock exchange sanctions, such as delisting, suspension of trading, and fines. CMSA also has comprehensive licensing and regulatory authority respecting brokers-dealers and investment advisers. Since the stock exchange is still quite small, CMSA is not very active, but the

authority members do meet regularly, and CMSA has acted to delist at least one company in the past year.

### **DAR ES SALAAM STOCK EXCHANGE**

Tanzania has a small but well-functioning stock exchange.<sup>138</sup> At this writing (February 2008), 15 companies are listed, up from 12 in 2009 and 10 in 2008.

A 10-member council governs the exchange, and a chief executive officer and full-time staff of eight manage it. Trading takes place electronically on Tuesday through Friday mornings in a trading room with about a dozen computers and an adjoining public visitors' area.

The exchange has listing rules consistent with basic international standards; for example, it requires that a company have independently audited financial statements and a board audit committee. The exchange has power to delist or suspend trading in a stock and to levy fines for violation of the listing rules, although it has rarely taken these steps. In a number of cases, companies have been required to restate their financial statements at the time of initial public offerings.

In addition to stocks, the exchange has also seen two large issues of corporate bonds in the last two years—of TSH8 billion and TSH10 billion, respectively, both by local banks. Most of the bonds were purchased by local investors, especially pension funds and insurance companies.

Only locally registered companies can use the exchange. It is currently discussing dual listing rules with the Nairobi Stock Exchange under the EAC, but nothing has come of these talks yet.

### **NATIONAL INVESTMENT STEERING COMMITTEE (NISC)**

Section 20 of the Investment Act creates NISC, which is supposed to oversee complex investments of large size, cross-sectoral nature, interministry overlap, or other special circumstances. NISC is chaired by the prime minister; other members include the attorney general, the governor of the Bank of Tanzania, and the

<sup>138</sup> <http://www.dse.co.tz/>.

ministers of Planning, Industry, Land and Human Settlements, and Agriculture.

In theory, the government may negotiate through NISC with investors and provide specific incentives that may be deemed appropriate for a particular investment. For instance, the government could agree to provide unique tax breaks, land rights, or exemption from regulation for a large mining complex or other large investor. In practice, the government has not made much use of NISC in the past year and does not seem to have used it for agricultural investments at all.

## SUPPORTING INSTITUTIONS

### LAWYERS

Tanzania has developed a small but experienced and sophisticated body of private lawyers and accountants, nearly all located in Dar es Salaam and Arusha. Those interviewed were familiar with the issues discussed in this chapter. Both domestic and foreign investors seek their advice on company organization and structuring. While there is a great deal of dissatisfaction with the court system, both local and foreign investors reported they were able to find competent legal advice and representation.

The Tanganyika Law Society is the primary professional lawyers' organization in Tanzania. The society is just beginning to offer continuing legal education in commercial law topics. The only other significant bar association of lawyers operating in Tanzania is the regional East Africa Law Society (EALS). That organization appears focused primarily on matters of human rights, constitutionalism, good governance, and other broad rule-of-law concepts. Although it does not currently engage in commercial law-related efforts, it may be a useful forum in the future.

### ACCOUNTANTS

At this time, Tanzania appears to have an adequate supply of qualified auditors and accountants. However, the need for these will certainly

### KEY SUPPORTING INSTITUTIONS

- The Tanganyika Law Society
- The National Board of Accountants and Auditors (NBAA)
- The Law Reform Commission
- The Institute of Corporate Governance
- The Tanzania Chamber of Commerce, Industry, and Agriculture (TCCIA)
- Trade attaches
- Donors and NGOs
- Media

increase. The 2008 BizCLIR report noted a shortage of accountants; this situation has improved noticeably in the past two years, largely due to a rapid expansion of the number of accounting majors graduating from the university system. Geographical distribution remains an issue; as noted above, most of the country's accountants are concentrated in the capital and Arusha.

The "big four" accounting firms are present, and they audit all the stock exchange-listed firms as well as most of the financial institutions, multinationals, and other large companies in Tanzania. There are many local accounting firms, especially in Dar es Salaam; they audit mainly SMEs. The accountants' professional organization is the National Board of Accountants and Auditors. It administers examinations and provides professional education. The 2008 BizCLIR report noted that the organization suffered from deficiencies in funding, organization, and administration. This situation appears to have improved somewhat, possibly because of a strong commitment from the largest local accounting firms to build capacity in the organization.

Tanzania uses International Financial Reporting Standards (IFRS) and has for some years now.<sup>139</sup>

### BOOKKEEPERS

While accountants are not a major problem, bookkeepers are. Only a relatively small number of larger firms need professional

<sup>139</sup> This is not the case throughout the region. For instance, Burundi, Congo, and Mozambique have not yet adopted IFRS.

accountants, but hundreds of thousands of businesses need one or more employees with bookkeeping skills. Firms both large and small report difficulties finding employees with the right skills, but the problem is most acute with SMEs. While basic bookkeeping is offered as a course in at least two universities, most of the medium and large firms interviewed reported that they were training their own bookkeepers on the job.

### **LAW REFORM COMMISSION**

The commission is a significant law-drafting body in Tanzania, although it had no involvement with the Company Law or the other laws discussed in this chapter. It is a permanent, standing body, staffed by four full-time and several part-time experts who review laws and drafts at the request of ministries and other agencies working on them. However, its participation is not required when new or revised laws are proposed, and it sometimes happens that laws are passed without its involvement. This appears to have a political aspect, which goes beyond the scope of this report. That said, the commission appears to be competent, more or less unbiased, and generally well regarded by lawyers and business professionals.

### **SHAREHOLDER AND INVESTOR ORGANIZATIONS AND FUNDS**

There are significant Tanzanian institutional investors who manage Tanzanian source moneys and whose interests lie in better corporate governance and investor protection. They include the Unit Trust of Tanzania and its constituent funds, the National Investments Company and the Parastatal Pension Fund. The company invests substantial funds raised from Tanzanian individuals and is willing to invest in unlisted enterprises. As a whole, these investors are not as active or informed as are similar investors either in Western countries or in many other developing countries. These investors are sometimes known as “shareholder activists” who advocate enhanced corporate governance. In one interview, it was stated that funds

have been dissatisfied with financial reports of investee companies, including some listed on the Dar es Salaam Stock Exchange. This discontent has not, however, led to organized investor activism as it has in some other countries.

### **INSTITUTE OF CORPORATE GOVERNANCE**

This is a semiformal assembly of business, ministry, central bank, and stock exchange representatives. Although it is supposed to make recommendations for improving corporate governance, it seems to have been dormant for at least the past two years. The stock exchange has expressed cautious interest in reviving it.

### **CHAMBER OF COMMERCE AND AGRICULTURE**

The Chamber of Commerce and Agriculture is Tanzania’s apex organization, broadly representing the interests of its members throughout the country. The chamber is not a strong advocate for agricultural issues, however, as few of the chamber’s members are agricultural producers or exporters. The chamber’s most significant role seems to be in issuing certificates of origin. The chamber issues about 50 certificates a day for companies from Tanzania, the EAC, and the Southern African Development Community (SADC).

### **TRADE ATTACHES**

The Tanzanian government has recently introduced trade attaches at some of its more important overseas embassies, including China, Kenya, and South Africa. The quality of these attaches is unknown.

### **DONORS AND NGOS**

Many donors work on business-related development in Tanzania, although none are currently dealing with the investor-protection issues covered in this chapter.

### **MEDIA**

Newspapers and magazines are an important source of business information in Tanzania. (The country’s Internet penetration is still quite low.)

Several local business periodicals and the major daily papers all report regularly on investor-related issues. Although some newspapers may be reluctant to report on issues that are seen as politically sensitive, overall there is a lively discussion of business events and issues.

## **SOCIAL DYNAMICS**

Most farms, herds and fisheries in Tanzania are small. Typically they are family owned and operated, and are focused on making enough profit to meet the family's immediate needs. Sizable investments, whether foreign or local, are still rare. Because of this, a "business culture" has been slow to develop in the agricultural sector. Small farmers tend to lack business skills and sophistication, and may sometimes view service providers and middlemen as parasitic rather than useful.

That said, investment—especially foreign investment—has been increasing in Tanzania. The current government is seen as investor-friendly. Corruption is a concern but it is not seen as a major obstacle to investment (see box).

### **THE ROLE OF ASIAN-TANZANIANS**

Ethnic rivalry is not a major problem in Tanzania. The various ethnic groups live and work together in relative amity, and there is not a general perception that any one group is dominant. This appears to be a positive legacy of the Nyerere years, and represents a very positive contrast with some of Tanzania's neighbors.

That said, the Asian-Tanzanians—descendants of South Asian merchants and artisans brought to East Africa during the colonial period—do have a special relationship to the agricultural sector. Asians are disproportionately represented among agricultural middlemen (buyers, wholesalers, distributors) and also among millers, canners, and other food processors. To give a single example, there are currently 14 fish processing plants on the shores of Lake Tanganyika. Nine are owned, in whole or part, by Asian-Tanzanians, four by foreign investors, and only one by non-Asian Tanzanians. Asians

are also disproportionately involved with foreign investment, even foreign investments that do not originate from South Asia.

Asian-Tanzanians are not subject to persecution or official discrimination. There is definitely a feeling among many Tanzanians, however, that Asians are "different." Even though most Tanzanian-Asians have lived in East Africa for several generations, some Tanzanians still consider them foreigners. Standoffishness, stereotypes, and unofficial discrimination are all real issues. Farmers, in particular, may combine economic concerns with ethnic stereotypes: "The Asian millers are cooperating to take advantage of the growers," and such.

It is difficult to say whether this attitude influences official policy. Certainly, the Tanzanian government is formally color-blind, and it bears emphasizing that there is no official discrimination. However, the perception that certain parts of the supply chain are dominated by an "alien" group may have a subtle effect on official priorities.

### **"SOCIALIST MINDSET"**

As mentioned in other sections throughout this report, Tanzania's experiment with socialism is a complex topic. Multiple interviewees, however, emphasized that a "socialist mindset" is still very much part of Tanzania's social dynamics. This perception is expressed in various ways, but common examples include:

- Government officials still do not understand how capitalist businesses work.
- Villagers and primary producers are seen as more productive and "virtuous" than middlemen and service providers.
- Official policy emphasizes a combination of exhortation and regulation, rather than economic incentives.
- The government places too much faith in large, sweeping government initiatives;
- The government relies too much on crop boards, and is too ready to intervene in pricing; and,

- There is still a lingering suspicion of “foreign capitalists” and a presumption that they are in Tanzania to exploit its resources and people.

Some interviewees added that there is a generational issue, with older government officials and policy-makers being more “socialist” in their thinking than younger ones.

These statements should be taken with a large grain of salt; in many cases, they represent problems common to developing countries, whether ex-socialist or not. That said, the issue of “socialist mindset” is raised so consistently that it must be included in any discussion of social dynamics.

### **CORPORATE GOVERNANCE AWARENESS**

For the great majority of businesses, sound corporate governance practice is not a priority. Outside investors should keep this in mind: Tanzanian partners may just not be very engaged with, for instance, concerns about protecting minority shareholders.

As discussed in the section on legal framework, the most pressing corporate governance issue in the country today is simply promoting good basic business practices, such as bookkeeping and financial management. Training in basic business skill is, accordingly, a great need.

In terms of more advanced corporate governance practices, although it may not yet be time for many businesses in Tanzania to draft complicated statutes on shareholder rights and director duties, it is not too soon to start socializing these concepts. Building capacity and awareness not only within the private sector but also within the public sector, particularly the courts, will be key to eventually building these practices into the commercial sector in Tanzania.

### **SEMI-PREDICABLE INVESTMENT ENVIRONMENT**

Tanzania enjoys, by regional standards, a stable and relatively predictable environment for investment. The country is macroeconomically

stable; the international financial crisis has slowed growth but has not resulted in any major collapses or catastrophes in Tanzania. The country is politically stable. Tanzania’s government has become quite tolerant toward foreign investors. There is no recent history of nationalization or expropriation, and most investors are allowed to do business in peace without major political harassment.

That said, challenges to predictability do arise in the business environment. Business opportunities are sometimes unclear because the private sector perceives public procurement to be unpredictable, politically driven, or corrupt. Ministers and other public sector officials are sometimes changed without warning, resulting in a loss of efficiency and a need for new relationships and knowledge to be developed. Costs of doing business can be difficult to judge, especially for a foreign investor.

With particular regard to agriculture in particular, the various crop boards can be opaque and unpredictable. (The crop board system is discussed in more detail in the chapters “Competing Fairly” and “Trading across Borders.”) Government policy can sometimes change abruptly in ways that can surprise investors (as in the maize export bans of the past year). And the private sector remains largely unconvinced that the government is really committed to prioritizing this sector’s development.

### **GENDER ISSUES**

Women are greatly underrepresented in investment in Tanzania. Women have much less formal wealth and much less access to capital; they also have somewhat less access to education (see the chapters on gender and labor for details) and thus are less likely to have the necessary skills to start an investment. Women are extremely underrepresented in professions such as accounting and law. Furthermore, a large “expectations gap” simply assumes that most businesspeople, bankers, managers, and investors will be male.

That said, there are significant numbers of female businessmen in Tanzania—possibly more than in some neighboring countries. (Formal gender equality is one of the positive legacies of the socialist period.) Significant numbers of women also do semiskilled jobs such as book-keeping. A new investor in Tanzania may not meet many female bankers or lawyers, but a new office is likely to have women in a number of key positions. And investment in agriculture will inevitably come up against gender issues, as the agricultural workforce is sharply differentiated by gender. Agricultural processing plants, for instance, often have a female workforce under male managers. In some cases, this arrangement is a perpetual status quo; in others, female workers have been able to move upward into supervisory, technical, and management positions.

## RECOMMENDATIONS

### **Engage with the government and private sector on reforming the Company Law.**

Currently, reforming the Company Law has not aroused much interest on the Tanzanian side. The general feeling seems to be that since the current law is just a few years old, and there have been no major problems, it is not a priority. There is some justification for this view.

The law, however, does have some serious shortcomings. As noted above, it allows boards to become entrenched, does not provide meaningful liability for several kinds of misconduct, and in general falls short of international best practices in several key areas. These issues are likely to create more problems as Tanzania's economy continues to grow. At a

minimum, a donor should help the Tanzanians identify the issues and lay the groundwork for eventual amendment.

### **Assist Tanzania's Customs Enforcement Division on enforcing international property rights.**

The Customs Enforcement Division reports very limited capacity to enforce IPR. Remarkably, no donor seems to have recently helped it with this issue. The division has expressed an interest in receiving training and other support. The sincerity of this request is difficult to judge, but it seems worth looking into.

### **Expand the Code of Corporate Governance.**

The current code applies only to publicly traded companies—a tiny subset of all companies in Tanzania. Some donor should work with the stock exchange and the central bank (perhaps using the existing but dormant Institute for Corporate Governance, if it can be revived) to develop general codes of corporate governance or corporate ethics for all companies. It might be worthwhile to consider multiple codes for particular corporate forms (partnerships) or businesses (banks have their own codes of corporate governance in most developed countries).

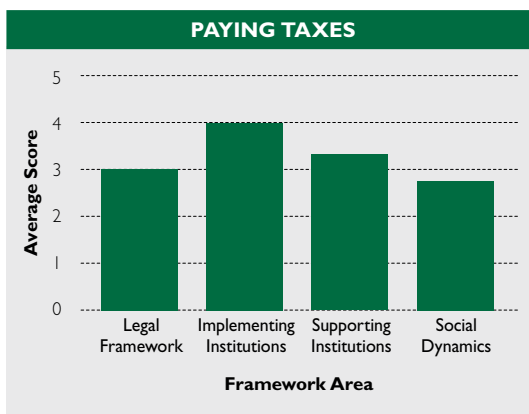
### **Consider technical assistance to TIC.**

Despite its award, TIC remains weak in the areas of research and of investment promotion techniques. It also has never conducted an internal administrative review to find efficiencies and pinpoint bottlenecks. Given that no major donor is engaged with TIC at this time, this niche is open for targeted donor assistance.



## PAYING TAXES

Tanzania's *Doing Business* ranking for Paying Taxes has fallen slightly, from 113th out of 183 last year to 120th out of 185 today. This ranking does not seem to indicate that Tanzania's environment has changed. In fact, its objective indicators have changed little between the two years. Rather, other countries have improved their indicators and so have passed Tanzania in the rankings. In addition, the indicators fail to capture some positive changes in Tanzania's tax regime.



For example, Tanzania lowered its VAT rate from 20% to 18% in July of 2009. While the World Bank indicators take other tax rates (such as corporate and labor taxes) into account, however, they are unaffected by VAT.<sup>140</sup> Thus, the VAT reduction has had no effect on Tanzania's indicators.

Taxes are required to provide sufficient revenue for needed government services. A good tax system should follow two main principles: fairness and efficiency. The underlying concept of a fair system is equity, or impartiality, between taxpayers. First, all taxpayers in similar circumstances should have similar tax burdens. Taxes that affect one group (such as farmers) more harshly than another (such as investors) are not equitable.

Second, an equitable system is generally perceived as progressive—that is, upper-income taxpayers are required to pay a larger share of their income in taxes than lower-income taxpayers, so that the tax burden is distributed at least in part by ability to pay. The classic progressive tax is a graduated income tax.

<sup>140</sup> The justification is that VAT is passed on to the final consumer, so that changing it has no significant effects on the ease of paying taxes for a business.

**TANZANIA IN CONTEXT:  
WORLD BANK SUB INDICATORS (2010)**

Indicator	OECD Average	Tanzania	Sub-Saharan Africa
<b>Payments</b>			
(number per year)	12.8	48.0	37.7
<b>Time</b>			
(hours per year)	194.1	172.0	306.0
<b>Profit tax (%)</b>	16.8	19.9	23.9
<b>Labor tax and contributions (%)</b>	24.4	18.0	13.1
<b>Other taxes (%)</b>	3.3	7.3	30.5
<b>Total tax rate (% profit)</b>	44.5	45.2	67.5

Source: World Bank *Doing Business Report* (2010).

Regressive taxes, on the other hand, require lower-income taxpayers to pay a greater percentage of their income in tax than do upper-income families. The classic regressive tax is a sales tax; in the agricultural sector, cess, or harvest taxes, are usually regressive, as they tend to fall on the small farmer or producer. Overreliance by the state on regressive taxes is generally considered to be bad tax policy.

Taxes should also be broad based: that is, they should be spread as wide as possible over the population, or across sections of the economy, to minimize the individual tax burden. (And, of course, when more individuals and enterprises participate in the system, the government can reduce the payments it seeks from each.) Developing countries often suffer from having proportionately small tax bases, so that the



burden of supporting state revenues falls upon a fairly small group of taxpayers.

A small tax base is most definitely a problem in Tanzania, where the tax base is so small that most of the government's income is paid by a relative handful of taxpayers. The Tanzania Revenue Authority (TRA) itself estimates that in a country with a population of nearly 40 million persons, there are only about 400,000 registered (business) taxpayers.

The stability of tax policy is also important. Tax laws should not change continuously, and the tax authorities should not produce surprising or radical interpretations of existing law. Instability in the tax system makes long-term planning difficult and increases uncertainty in the business environment. Changes in tax policy are problematic for any business, but particularly in the agricultural sector, which must already deal with inherent uncertainties of weather, pests, and variable prices.

## LEGAL FRAMEWORK

The legal framework for tax in Tanzania consists primarily of 18 different national tax laws administered by the TRA. For purposes of this diagnostic, the more important ones are the **Income Tax Act (2004)**, the **Value Added Tax Act (1997)**, and the **Tax Revenue Appeals Act (2000)**.

### KEY LAWS AND REGULATIONS

- The Incomes Tax Act (2004)
- The Value Added Tax Act (1997)
- The Tax Revenue Appeals Act (2000)
- Tariff rates
- Skills and Development Levy
- Local Government Finance Act

According to the lawyers and tax professionals interviewed for this diagnostic, the national tax laws are regarded as relatively straightforward. Tax payments are based on self-assessment, subject to review and reassessment by the TRA (for example, in the case of income taxes, there is generally a three-year period during which TRA may adjust a taxpayer-provided assessment). The legal framework for paying income tax in Tanzania is sound and incorporates best international practices. The framework includes individual income tax, corporate tax, a pay as-you-earn system for employees, presumptive income tax for small individual businesses, provisional and final withholding taxes, and a capital gains tax. While corporate taxpayers are taxed at a fixed rate of 30% of their profits.<sup>141</sup> Individual taxpayers are taxed according to a graduated scale, with the maximum rate being 30%. A taxpayer may self-assess and pay income taxes by lodging a return with TRA, through withholding and PAYE systems (tax withholding from the taxpayer's income source and sent to TRA directly by the payer), or through payment of installments. In the case of individual taxpayers, employers withhold and pay income tax on behalf of their employees. In the case of corporate entities, the business pays its annual income tax when it lodges its quarterly installment returns.

In determining the amount of business profits or taxable income, the legal framework relies on international best practice. For example, the taxable income from business is generally based on the overall income derived from sale of goods and services and other amounts derived from conducting the business, excluding

<sup>141</sup> This is one of the highest corporate income taxes in the region. It has not been changed since the early 1990s, when Tanzania began to move away from socialism. Reduction has been discussed intermittently in Parliament but has never advanced very far.

### TANZANIA AND ITS NEIGHBORS: RANK ON THE WORLD BANK DOING BUSINESS INDEX (PAYING TAXES)

Malawi	24
Zambia	36
Comoros Islands	41
Rwanda	59
Uganda	66
Mozambique	98
Burundi	116
<b>Tanzania</b>	<b>126</b>
DR Congo	157
Kenya	164

The table shows 2010 rankings for Tanzania, its eight immediate neighbors, and the Comoros Islands (nearly offshore).

exemptions and less deductions for depreciation allowances (e.g., interest expenses, research and development, environmental, and repair and maintenance expenditures) and balancing adjustments, trading stock allowances, loss carried forward from previous years, deductible (e.g., public and charitable) donations, and with net capital gains (i.e., after deducting capital losses) added in.

The valued added tax framework also encompasses best international practices and is generally sound. The VAT is a consumption tax, levied at a rate of 18% of the value of the product purchased. All imported products and goods and services consumed in Tanzania are levied with VAT; all exported goods and services consumed outside Tanzania have no VAT. The VAT turnover threshold is TSH40 million, such that only entities whose annual sales equal or exceed TSH40 million are required to register for VAT.

The definition of taxable supply of goods and services subject to the VAT is clear and consistent with international practices. An area of concern, however, is whether the scope of the schedules is overly inclusive (i.e., too much relief from VAT) and also whether there needs to be better harmonization between the various relief schedules.

While TRA's mission is the collection of revenues and administration of the national tax laws in Tanzania, TRA also addresses tax policy issues. It has produced a series of five-year corporate plans, the third of which (2009–2014) is currently underway. The current plan includes, among other things, adoption of the East African Community Customs Management Act 2005.

The legal framework for taxes in Tanzania provides for various tax incentives typically used in other countries: tax exemptions, tax relief, and customs exemptions. Furthermore, as a member of the East African Community Customs Union, Tanzania also is a party to certain tax incentives affecting the movement of goods between Tanzania, Uganda, and Kenya.

Tariff rates have been set in conjunction with the East African Community. They are 25% for finished goods, 10% on intermediate goods, and 0% for machinery and raw material. Occasionally, some confusion has existed between tariffs and VAT: for example, a 180% excise duty applies to plastic bags. Several agricultural export industries use plastic bags for product packaging. In these cases, excise is inappropriate; the excise levy hurts the trade competitiveness of such products. Instead, plastic bags used for packaging exports should be subject to VAT and eligible for duty drawback.<sup>142</sup>

Businesses are also affected by a 6% skills and development levy and by a 20% social security contribution, half of which is normally borne by the employer. Interviewees cited both of these as providing a disincentive for small businesses to formalize. In the agricultural sector, in particular, it is very common to pay agricultural laborers in cash, in kind, or otherwise off the books, in order to avoid taxation.

## CESS AND OTHER LOCAL TAXES

Local authorities—districts and villages—also have power under the **Local Government Finances Act** to raise certain revenues from taxes, levies, and fees. Within certain limits set by the central government, the local authorities can set their own revenue policy. These taxes do not form part of national revenues; the local authorities retain them and use them as part of their own budgets. The taxes, levies, fees, and revenue sources that local authorities may raise include local property tax, tax on goods and services (including crop cess, or harvest tax, and forest produce cess, and tax on specific services such as a guest house levy), business and professional licenses, motor vehicles tax, and other equipment as well as ferry licenses. Local governments can also impose certain administrative fees and charges (such as meat inspection charges, land survey service fees, and building permit fees) and fines, penalties, and forfeitures (including a share of fines imposed by the magistrates court).

<sup>142</sup> The plastic bag tariff seems to have been imposed for environmental reasons, but it does not distinguish between different types of bag; bags for export and industrial uses are taxed at the same rate as plastic shopping bags.

Many of the above-listed local taxes, especially cess and local property taxes, are particularly relevant to agriculture. In theory, the legal framework for them should be quite clear; all the national laws are available to the public in English, and local governments are not allowed to levy any taxes or fees that the Local Government Finances Act does not expressly authorize. In practice, there is often some confusion, especially in the administration of the laws at the local level.

Each district can set its own level of cess, up to a maximum of 5% of the farmgate value of the harvest. (The rate of cess can vary by crop type.) Most agricultural districts seem to set it between 2% and 4%. In theory, cess is supposed to be paid by the buyers of the harvest; in practice, the buyer passes this cost along to the farmer whenever possible.

Villages also set their own agricultural tax—which, confusingly, is also referred to as cess. The village taxes, however, are not on value. Instead, they are either per weight (most commonly) or per container (i.e., a bag of coffee or a bunch of flowers).<sup>143</sup> For instance, in Arusha, this tax is set at TSH10/kilo or TSH1,000 shillings per 100 kilo bag. This is supposed to be paid only once per village, at farmgate.

## IMPLEMENTING INSTITUTIONS

### TANZANIA REVENUE AUTHORITY

The TRA is Tanzania's tax collection agency. Its ambit includes not only income tax, corporate tax, and VAT but also the skills and development levy on labor and the social security taxes.

There are a number of negative perceptions about TRA in the business community. First and foremost, it is seen as aggressive in pursuit of tax revenue and often rigid and uncompromising in its interpretation of the law. Exemptions from VAT and income tax seem to be particular issues of concern.

### KEY IMPLEMENTING INSTITUTIONS

- Tax Revenue Authority (TRA)
- Customs
- National government
- Local governments

Second, there is a concern that TRA does not take the business community's interests or problems into account when formulating tax policy or making changes to administration. Recent examples include a sudden change in the definition of "deemed capital goods" and the even more sudden imposition of VAT on air freight.

Third, there is a perception that TRA is slow. VAT refunds are a particular sore spot here. Businesses complain that refunds can take a year or more. TRA does not pay interest on refunds, and inflation gradually erodes the value of the money. Some interviewees explicitly accused TRA of holding on to refunds in order to benefit from the "float". There is also a concern that TRA may drag out disputes indefinitely in order to keep the dispute deposit.

Fourth, there are concerns about corruption (see box below). There may be some grounds for these. There have been a number of public accusations against TRA, and in September 2009 two highly placed TRA officials were indicted (along with seven other individuals) for a scheme to funnel money out of TRA accounts.<sup>144</sup> Several interviewees also stated that some—not all—TRA officials are open to taking payments in order to speed the resolution of a dispute and/or resolve the dispute favorably.

While all of these concerns are real and significant, they should be placed in context. Very few developing countries have tax agencies that are broadly perceived as fair, swift, efficient, and incorruptible. While TRA does seem to have real problems, given Tanzania's general level of development, it cannot be considered grossly dysfunctional.

There are also some positive perceptions. Most businessmen agreed that TRA's staff show basic

<sup>143</sup> It's worth noting that this tax is somewhat regressive; a 100 kg of cashews are worth much more than 100 kg of cassava roots, but both will pay the same tax to the village.

<sup>144</sup> See [http://www.corruptiontracker.or.tz/index.php?option=com\\_content&task=view&id=59&Itemid=51](http://www.corruptiontracker.or.tz/index.php?option=com_content&task=view&id=59&Itemid=51).

## CORRUPTION AND INVESTMENT IN TANZANIA

Corruption is a complex topic, and a broad discussion of it is beyond the scope of this section. However, over the course of more than 50 interviews with investors, one slightly surprising fact became clear: *most investors do not consider corruption to be a major obstacle to investment in Tanzania.*

This does not mean that corruption is not a problem. It certainly is. Tanzania's public auditor stated last year that "at least 20%" of the government's budget was being lost to corruption. The governor of the Bank of Tanzania was sacked in 2008 for a scandal involving fraudulent transfers to fictitious firms. Several high-level officials at the Tax Revenue Authority were arrested in late 2009 for siphoning public money into private accounts. There is a widespread perception that the police and judiciary are corrupt. The government has acknowledged a serious problem and has created the Prevention and Combating Corruption Bureau to fight it. Most investors report multiple encounters with "speed money" and other forms of petty corruption. And several reported that corruption had a direct impact on their business. For instance, corruption was specifically mentioned by a professional tax preparer in the context of TRA: "We lose some clients because they believe that with a quiet payment or two, they can make the problem go away without our help."

However, most investors interviewed said that corruption was a nuisance rather than a serious problem. Many investors drew favorable comparisons between Tanzania and its neighbors, especially Kenya: "In Kenya, they'll come with fake inspection results, just to hold you up. Here they'll just take forever to do an inspection"; "The tax authorities aren't actually trying to cheat you—they're just trying to make a quota. Sometimes you can slip some money to have an issue resolved in your favor"; "You can do business here without knowing anyone important. Maybe it's easier if your partner is the minister's nephew, but it's not necessary"; "Most of the really dirty stuff is in government procurement, which has nothing do with us."

One area that did come up repeatedly was the intersection of corruption with the problem of security: theft, pilferage, and fraud: "There's a culture that doesn't think it's wrong to steal from a warehouse, a big corporation, or the government"; "You don't call the police, because you can't trust the police."

Nevertheless, most investors stated that corruption was less a problem than (for instance) getting access to finance or land or dealing with infrastructure issues. When informally asked to name their top three problems in Tanzania, less than half even mentioned corruption as an issue. Only two said they might warn off potential investors because of corruption and related issues.

competence. Forms are available online. New businesses can get Taxpayer ID numbers reasonably quickly, typically within a few days. Filing is easy. In the last year, the law has been amended to accept e-signatures and certain types of e-documents. And tax payments can be made conveniently at local banks.

TRA maintains a user-friendly and relatively up-to-date website at [http://www.tra.go.tz/info\\_laws.htm](http://www.tra.go.tz/info_laws.htm). All standard tax forms are available there for download. E-filing has been considered for several years and is explicitly stated as a goal

in TRA's Third Corporate Plan (2009–2013) but does not exist yet.<sup>145</sup>

### CUSTOMS SERVICE

Tanzania's Customs and Excise Department is a division of TRA. It administers tariff collection. A detailed discussion of the Customs Service and its activities can be found in the chapter on Trade across Borders.

### THE GOVERNMENT OF TANZANIA

It is slightly unusual to include an entire government as an "implementing institution".

<sup>145</sup> By way of comparison, Kenya is currently pilot-testing a project for e-filing of PAYE taxes and of VAT, with e-filing of income taxes as the next step.

However, the Tanzanian government is relevant here because there is a concern that the Government does not have a clearly-defined tax policy. The main concern of the government is revenue collection, rather than broader economic policy, social policy, environmental policy, or clearly focused investment-driven policies. In general, the Government does not perform regulatory impact analysis. There is a general idea that certain activities can be encouraged by tax incentives, but this tends to be applied in an ad hoc manner. The government seems to have no clear overall tax policy beyond “expand the tax base” and “increase domestic revenue collections at a rate faster than GDP growth.”

### LOCAL GOVERNMENT

Villages and districts are empowered to collect local fees and taxes, including property taxes and cess. However, the administrative burden of tax collection is significant, and in some cases the local governments have difficulty collecting efficiently. In a few cases, collection has been contracted out to private entities.

One very common complaint is that the collection, administration and spending of local taxes is not a transparent process. It is often difficult or impossible for private actors to find out exactly how much is being collected, where it is coming from, and where it is going.

Another issue is inconsistency. To some extent, this approach is deliberate—a feature of the system, not a bug. The Local Government Act is supposed to encourage diversity, in the sense that each district should be able to impose the fees and taxes that it needs and finds appropriate. A mining district might see no point in imposing cess at all, while a district growing commercial crops for exports might reasonably set cess high. Not only do the fees and taxes differ from place to place, however, but the administrative procedures for paying them, the methods for determining them (e.g., who sets the farmgate price?), and the necessary forms also vary. A large buyer that purchases, say, corn, from multiple districts may find itself not

only paying cess at different rates but also filing out different forms and going through different procedures.

Another common complaint is that collection methods are inefficient or that they are imposed without concern for inconveniences to buyers and other middlemen. For instance, some districts have erected checkpoints at major roads to stop trucks and check for payment of cess. Several interviewees reported that some districts refused to accept payment invoices from other districts, resulting either in long delays or in double payment.

## SUPPORTING INSTITUTIONS

### TRA APPEALS BOARD

The TRA Appeals Board (TRAAB) hears appeals from judgments of the TRA. It is an independent body, physically and administratively separate from the TRA.

The TRAAB is not the final level of appeal. Its decisions can be appealed still further, to the TRA Appeals Tribunal and, in certain cases, from there to the court system. The majority of the TRAAB’s decisions, however, are not appealed any further. The TRA hears about 80–90 cases per year, of which perhaps 20–25 continue to the tribunal, and a handful—three or four—to the courts.

Most of the TRAAB’s cases are disputes over the amount of a tax assessment. They adjudicate a wide range of disputes, including income tax, VAT, and customs cases. Occasionally they are asked to rule on procedural matters. It sometimes happens that the commissioner-general

#### KEY SUPPORTING INSTITUTIONS

- The TRA Appeals Board (TRAAB)
- The National Board of Accountants and Auditors (NBAA)
- Parliament
- Media

## THE APPEALS PROBLEM AT THE TRA: NO TIME LIMIT FOR RESOLVING DISPUTES

Under the original Appeals Act of 2000, the commissioner-general of TRA was given six months to render a decision. If no decision was rendered, the taxpayer would automatically prevail. The commissioner protested that this was not enough time, so in 2004 this provision was amended.

Unfortunately, the amended provision has no time limit. In effect, the TRA can sit on a decision indefinitely. By law, the aggrieved taxpayer cannot appeal to the TRA Appeals Board until a final decision has been rendered. The TRA can thus keep disputes away from the board for as long as it cares to.

To make matters worse, by law the taxpayer must deposit one-third of the disputed amount. This money can be held by TRA indefinitely. (A taxpayer can ask that this requirement be waived, but TRA aggressively contests any such requests.) The TRAAB reports that it commonly receives cases that have waited well over a year for a decision and that it has heard of cases that have been held so long that the taxpayer has simply given up. Professional tax accountants in Dar es Salam and Arusha confirm this situation and add that they are aware of cases where the amounts involved are quite large (US\$100,000 or more).

At this time, there is no recourse for a taxpayer who is trapped in this manner. Protests to TRA officials do not seem effective, and the TRAAB is legally blocked from taking action until TRA actually does something.

Third, the demand for the project appraisal and evaluation course at Sokoine University has increased significantly, as have the enrollees at its MBA program; both are funneling students into the agricultural finance sector. This increased interest demonstrates students' awareness of increased opportunities. The competition in the financial sector for customers is forcing financial institutions to consider agriculture, even in the face of real risk. The labor market is responding.

of the TRA will issue an order of attachment of property without having first rendered a proper decision. When this happens, it is the TRAAB's duty to step in and stop it. Broadly speaking, about half the board's decisions go in favor of the TRA, and about half against.

The TRAAB's major problem is its slim budget. It is supposed to publish its decisions (Tanzania Tax Law Reports) but has been unable to do so since 2006. It is unable to afford a website with electronic copies of decisions. The TRAAB does spend a small portion of its budget on material to educate taxpayers about their rights.

### ACCOUNTANTS

At this time, Tanzania appears to have an adequate supply of qualified auditors and accountants. The 2008 BizCLIR report noted a shortage of accountants; this situation has improved noticeably in the past two years, largely because of a rapid expansion of the number of

accounting majors graduating from the university system. The relative simplicity and clarity of the relevant laws, and the use of International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS), make the work of tax accountants relatively straightforward by regional standards.

The "big four" accounting firms are present. They audit, and prepare tax returns for, most of the financial institutions, multinationals, and other large companies in Tanzania. The accountants' professional organization is the National Board of Accountants and Auditors (NBAA). It administers examinations and provides professional education. The 2008 BizCLIR report noted that the NBAA suffered from deficiencies in funding, organization, and administration. This situation appears to have improved somewhat, possibly because of a strong commitment from the largest local accounting firms to build capacity in the organization.

## VAT ON AIR FREIGHT AND THE TANZANIAN FLOWER INDUSTRY: AN EXAMPLE OF TAX POLICY FAILURE

In December 2008, the TRA abruptly announced that air freight was subject to 18 percent VAT. Although consistent with the text of the law, this change was a reversal of earlier policy. The TRA made the change quite abruptly and without first consulting any stakeholders. This episode is mentioned in several chapters but is discussed in detail here.

The impact on Tanzania's export horticulture industry was immediate. Until then, flower and vegetable growers had shipped their flowers to Europe from Kilimanjaro or Dar es Salaam airports. (Most of the flower plantations are closer to Kilimanjaro, but Dar has more flights and is cheaper.) The growers immediately began shipping their flowers across the border to Nairobi instead.

This tax policy has had a number of negative effects. First, the government is not actually collecting much money, because the flower growers are actively avoiding the tax by switching to Nairobi. Second, Tanzania's flowers are now slightly more expensive, because shipping via Nairobi is somewhat more expensive than using Tanzanian airports. No grower has yet closed down, but all have seen profits drop—particularly problematic since the industry is already in recession. And no new growers have entered the business since the VAT was imposed.

Third, because the growers do not want to bring empty containers back from Nairobi, they are starting to purchase inputs—fertilizer, packaging, spare parts, and such—in Nairobi instead of in Tanzania. As a result, Tanzania is losing VAT and other tax revenue to Kenya.

In sum, the policy change is not resulting in much if any increase in revenues and may indeed be causing a net loss.

The flower and vegetable growers, through TAHA, have protested vigorously to TRA. So far, TRA has responded only that it is following the text of the law and that VAT collected will eventually be refunded. The first point is true but begs the question of why TRA waited for six years to enforce the law. The second is also true but irrelevant; the fees involved are in the range of hundreds of thousands of dollars per year. (One grower reported an average of four to five shipments per week, costing US\$7,500 each. VAT payment in this case would run around \$25,000 per month.) The growers cannot afford to have that much money locked up while waiting for their VAT refunds.

As of this writing (February 2010), TRA has promised to review the policy change but has also said that a reversal would require an amendment to the law, which cannot happen before late 2010.

Before this report went to print, the authors became aware that the Government of Tanzania had recently (as of March 2010) waived the VAT on air freight.

### BOOKKEEPERS

While accountants are not a major problem, bookkeepers are. Only a relatively small number of larger firms need professional accountants, but hundreds of thousands of businesses need one or more employees with bookkeeping skills. Firms both large and small report problems with this, but the problem is most acute with SMEs. While basic bookkeeping is offered as a course in at least two universities, most of the medium and large firms interviewed reported that they were training their

own bookkeepers on the job. The shortage of competent bookkeepers means that SMEs, in particular, often have difficulty keeping accurate and tax-compliant books.

### PARLIAMENT

Tanzania's Parliament has a special committee for agricultural issues: the Committee on Agriculture, Livestock, and Water. The committee is active, and its members do occasionally visit farms and agricultural processing sites. Several interviewees stated that the committee



was “responsive,” at least formally, but also that the members did not seem to be well informed. The committee does not seem to have full-time expert staff.<sup>146</sup>

### **MEDIA**

Newspapers and magazines are an important source of business information in Tanzania. (The country’s internet penetration level is still quite low.) There are several local business periodicals, and the major daily papers all report regularly on tax-related issues. To give two recent examples, the local papers gave extensive coverage to the arrest of two TRA officials for corruption, and also to the more recent dispute over VAT on air freight (see box below). Although some newspapers may be reluctant to report on issues that are seen as politically sensitive, overall there is a lively discussion of tax-related events and issues, and there seems to be little hesitation in criticizing TRA or the Customs service.

## **SOCIAL DYNAMICS**

### **TRA AND “COLLECT AT ANY COST”**

The TRA operates under a certain amount of pressure from the government. It is regularly given revenue targets to meet. It is widely

believed that these targets are determined through a political process rather than on the basis of revenue projections. Whether this claim is true or not, the fact is that TRA is the government’s only reliable source of income.

Many interviewees claimed that the result is aggressive and sometimes reckless behavior on the part of TRA. There is a broad perception that the TRA is pressured into meeting arbitrary and ambitious collection goals, rather than merely administering the tax collection system in an impartial manner.

TRA officials sometimes perceive objections or challenges to their assessments in a very negative light. There is a bias against self-assessments, with a tendency to see them as too low and to insist on a higher assessment. Objectors may be considered de facto tax defaulters, if not criminals. In some cases, simply objecting to an assessment may trigger attachment of property or other aggressive actions by TRA.

### **“SOCIALIST MINDSET”**

As discussed throughout this report, many stakeholders believe the “socialist mindset” is still very much part of Tanzania’s social dynamics. With regard to tax policy, many interviewees stated that tax authorities do not understand the impact of their actions on businesses. Some added further that some older, senior civil servants regarded capitalist businesses with mild distaste. “They see us as predatory and exploitative.” “They don’t consult us, ever.” “We’re guilty until proven innocent.”

Whether this is really due to a lingering “socialist mindset” is difficult to say. Businesses everywhere tend to see the tax authorities as unsympathetic, adversarial, and insensitive to their needs. However, belief in this “mindset” is very widespread in the business community, and so deserves mention.

### **TAX EVASION BY INFORMALITY**

Tanzania’s tax base is small in part because its base of formal businesses is small. The great

<sup>146</sup> To be clear, the committee does have staff, but none of them seems to be agricultural experts or specialists.



majority of small- and micro-enterprises are informal and prefer to stay in the gray economy—partly because they wish to avoid paying taxes but partly for other reasons. Some wish to avoid troublesome regulations or the labor law. And some businesses are run by businessmen who are illiterate or nearly so and thus are shy about engaging with the text-intensive formal sector.

## **RULE OF LAW**

For all Tanzania's problems, it is by regional standards a law-abiding country. Tanzania has not, to date, seen the sort of utterly rampant corruption that plagues Kenya nor the violence and lawlessness that have devastated Rwanda, Mozambique, and Burundi in the past, and that still plague the DRC.

Within the formal sector, most actors are willing to pay reasonable taxes. Tax avoidance is an issue, but outright tax evasion in the formal sector is relatively rare. In agriculture, tax evasion by farmers and rural SMEs is quite common, but the larger buyers, processors, and exporters are broadly compliant. Again, this attitude contrasts with some of Tanzania's regional neighbors, where large companies often pay few taxes or none.

## **RECOMMENDATIONS**

The 2008 BizCLIR report made a number of recommendations related to the tax scheme in general. For example, it recommended a broad review of the VAT schedules to determine if they were consistent with each other, whether they were offering too many exemptions, and whether certain sectors (particularly the mining sector) were being favored. This report's recommendations are more focused, because the report itself is more focused. That said, most of the recommendations from the 2008 report are still valid and worth pursuing.

### **Resolve VAT Issues related to Air Freight.**

This issue has been under consideration and may have very recently been resolved. If

not, work with the TRA and the private sector to resolve the air freight VAT issue. The Horticultural Association is already very engaged with this issue and will be ready to provide support.

### **Provide support to the TRAB.**

As an independent reviewer of TRA decisions, the TRA Appeals Board serves a critical oversight function. However, its ability to provide that oversight is constrained by its limited resources. A stronger TRAB could help placate the private sector's concerns about excessive aggression and a "collect at all costs" mentality at the TRA. The TRAB should be offered technical support, especially in terms of IT and its website, so that its decisions can be published in hard copy and online. If resources are available, it might also be appropriate to offer training or other support to TRA staff.

### **Fix the time limit problem.**

Amend the Tax Revenue Appeals Act to set a time limit for the commissioner-general of the TRA to render a decision on tax disputes. The law originally provided for a limit of six months. That limit was amended in 2004 to the current regime of no limit. This leniency allows TRA to spin out disputes indefinitely, to the great disadvantage of the taxpayer. Amending the law would be, in principle, quite straightforward; it would simply involve reverting to the original version of the Act, possibly with a different time limit (since TRA claimed that six months was too short). Another option might be to keep the six month limit, but allow TRA to ask the TRAB for an extension if the issue is unusually complex or difficult.

### **Provide assistance to the Parliamentary Committee.**

Consider targeted technical assistance to the Parliamentary Committee on Agriculture. The Committee's work is crucial; not only does it have responsibility for all laws relating to agriculture, it is also supposed to act

as a clearinghouse for constituent concerns. However, at this time it lacks the staff and other resources to carry out this work effectively. Targeted assistance could include staff training and providing IT and other research resources.

**Provide technical assistance to TRA on administrative processes.**

Consider providing internal technical support to TRA, especially for internal administrative processes. Numerous best practices and fixes from other developing countries could probably be applied here. To give a specific example, slow VAT refunds are a problem in many countries, but some developing countries have managed to speed up refunds dramatically by applying a short list of relatively simple reforms. It might be possible to do the same in Tanzania. Another area for training and support might be impact analysis, which currently seems to be a significant weakness.

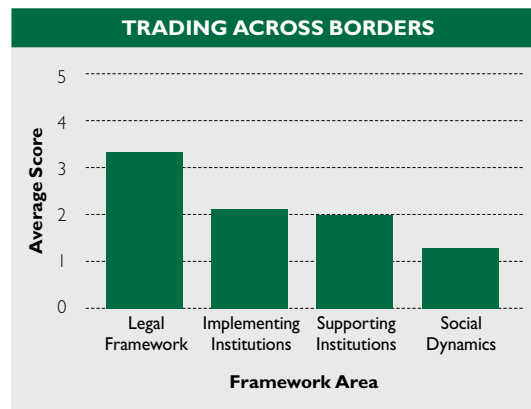
**Review cess and local taxes on agricultural regions.**

Consider funding a review of cess and local taxes in the major agricultural regions (the “Big Five”). Despite the importance of these taxes, no such review seems to have been done yet. The impact of cess and other taxes is obviously quite large, but the details are not clear. The methods used to collect them vary significantly, as does the efficiency of collection. An impact assessment would therefore be extremely useful, as would a study on harmonization of administration. In the medium term, technical assistance at the village and/or district council levels might be appropriate. In particular, assistance with tax administration at the district councils might provide a very high level of return on donor investment, since at this time the administration seems to be largely unprofessional and ad hoc. No donor seems to be engaged with this issue at this time, so there is a niche.



## TRADING ACROSS BORDERS

While Tanzania's GDP has tripled since 1990, its agricultural GDP has been stagnant (see Figure 1 of the appendix). The trend growth in GDP increased from about 2% to 12% over the decade to 2007, while the agriculture GDP growth trend declined over the same period (Figure 2, appendix). GDP grew at a time of increasing net inflows of foreign direct investment (Figure 3, appendix), mostly into mining and tourism, with agriculture largely missing out on this investment. Growth in GDP per capita (Figure 4, appendix) increased to double digits by the end of this same period, but per capita growth in agricultural GDP remained in the low single digits. Specialized agricultural trade services are almost nonexistent.



According to Peter Timmer in *A World without Agriculture*, a profitable agriculture sector with rising productivity depends on diversification into crops and livestock with better demand prospects than for cereals and into production for the agribusiness sector.<sup>147</sup> For countries such as Tanzania, diversification from production of staple grains to higher-valued commodities will be the first step in this process. The challenges can be formidable.

In low-income countries such as Tanzania, high-volume agricultural export products are associated with large numbers of producers. The table on the next page shows both the volume and the growth of most Tanzanian agricultural export products from 1990 to 2007, including the total export volumes in

metric tons, the export growth trend whether positive or negative, and the average export growth for the period.

The table also indicates the diversification of Tanzania's export crops. Just a few crops combine high volumes and high growth: wheat, cassava, sugar. Most Tanzanian crop exports can be described as niche products, produced in relatively small volumes for narrow markets. Of 45 products in the sample, just 10 have a positive export growth trend, and of these just two have positive export growth (cassava and wheat). (See Figure 5 for a plot of the volume and growth of each product shown in Table 1.)

This introduction provides the context for the discussion on trading across borders that follows. The key factors in this discussion of Tanzania's commercial, legal, and institutional reform for trade are:

- **Trade infrastructure**, particularly the port of Dar es Salaam and inland transportation
- **Trade policy**, including the role of the crop boards, export controls, and trade tariffs
- **Trade facilitation**, including the lack of uniform processes and procedures, lack of standard documentation, low level of trading capacity, border delays, checkpoints (official and unofficial), and corruption

<sup>147</sup> Timmer, C. Peter. *A World without Agriculture*. 2009

**TABLE I EXPORT QUANTITY (METRIC TONS)<sup>1</sup>**

Item	Avg Volume <sup>2</sup>	Trend <sup>3</sup>	Avg Growth
Barley	202	1	24.8
Beer of barley	1,033	0	129.7
Bever. dist.Alc	309	0	85.7
Cider	221	1	-19.6
Coconut (copra) oil	23	0	26.3
Cottonseed oil	65	0	89.3
Wheat flour	16,429	0	49.9
Groundnut oil	20	0	-1.7
Maize	40,272	0	44.0
Millet	419	0	67.1
Oil of vegetable origin	83	0	20.1
Palm kernel oil	88	0	27.8
Palm oil	3,345	0	35.5
Rice broken	970	0	72.4
Rice husked	169	0	143.5
Rice milled	3,537	0	223.4
Rice, paddy	1,151	0	224.8
Sesame oil	13	0	0.0
Sorghum	283	0	17.5
Sunflower oil	248	0	-7.2
Waters, Ice, etc.	221	0	33.7
Wheat	25,684	0	1,266.2
Bananas and plantains	47	0	32.3
Cassava	20,994	1	535.2
Groundnuts (Shelled)	4,289	0	49.4
Hides and skins	6,489	0	7.3
Oilseeds	30,593	0	11.1
Pulses	41,735	0	39.9
Sugar (raw)	20,443	0	23.3
Total meat	589	0	24.6
Cashew nuts shelled	1,477	0	13.7
Cashew nuts, with shell	66,753	1	-5.6
Coffee roasted	14	1	-7.5
Coffee, green	47,469	1	-0.6
Cotton lint	48,790	1	-2.4
Cottonseed	5,958	0	18.4
Pyrethrum eExtract?	23	1	-11.6
Pyrethrum, dried	52	0	-16.6
Sisal	11,555	0	-1.1
Sugarcane	16	1	0.0
Sugar non centrifugal	0	1	0.0
Sugar raw centrifugal	11,552	0	71.9
Sugar refined	8,180	0	279.1
Tea	21,927	0	2.9
Tobacco	23,163	0	1.8

1 Data: FAOSTAT ([www.faostat.org](http://www.faostat.org))  
2 Average export volumes 1990–2008  
3 A positive trend = 1, a negative trend = 0

148 "Briefing to Honourable Ministers on Stakeholders' Efforts to Improve Operation at the Port of Dar es Salaam." Tanzania Port Authority. Port Managers' Conference, DSM Port, 21/01/2010.

149 Zorya, Sergiy and Shireen Mahdi, "High Marketing Costs and Inefficient Policies in Tanzania's Maize Market: A Poverty Perspective." World Bank, 2009.

150 Oliver Morrissey and Vincent Leyaro. "Distortions to Agricultural Incentives in Tanzania." World Bank Agricultural Distortions. Working Paper 52. (2007).

The impacts of these factors are summarized briefly below.

## TRADE INFRASTRUCTURE

Tanzania's physical trade infrastructure is dominated by the Dar es Salaam Port and an inland transportation network of roads and rail that vastly underserves the domestic and regional economy. In January 2009, the port was in crisis, having reached an unacceptable level of congestion. The Tanzanian government created an interministerial committee to address the situation with impressive results.<sup>148</sup>

### TRADE INFRASTRUCTURE IMPROVEMENTS

Indicator	Unit	Jan 09	Jan 10
Ship waiting time	Days	12.7	3.8
Ship turnaround time	Days	18.9	6.7
Import dwell time	Days/ container	20.0	13.0

The port crisis demonstrated that the Tanzanian government can achieve results when there is political will. Future investments should further improve the flow of goods through the port with the addition of at least two more berths, including a new container terminal able to handle Panama-size vessels. Observers, however, have noted that most of the government's attention has been on container traffic, not on other cargo. But containers, in a Tanzanian context, carry mainly luxury goods. It is the other cargo that matters most to ordinary Tanzanians, including bulk cargo such as cereals, fertilizer, vegetable oil, diesel, among other products.

Tanzania's inland transportation network is in a woeful state. A recent World Bank study on the maize sector<sup>149</sup> estimates that transportation costs are 83% of marketing costs. An earlier World Bank study<sup>150</sup> links transportation costs to poor international competitiveness. Likewise, the rail network has fallen into disrepair, especially following recent flood damage to the rail line to Burundi. This (literal) erosion of the rail network contributes to further road congestion and higher costs for bulk cargo transport.

## AGRICULTURAL TRADE POLICY

Tanzania's macroeconomic environment has been relatively stable. Interest rates are high but competitive in relation to other countries in the region. These facts suggest an overall positive economic policy framework. Trade policies have been liberalizing gradually since the early 1990s, although in fits and starts. Tanzanian government has introduced policies and plans intended to advance agricultural trade and development, including (1) the Tanzania Development Vision (Vision 2025); (2) the Agriculture Sector Development Strategy; (3) Kilimo Kwanza, the Agriculture First policy; and (4) membership in the East African Community (EAC) and the Southern African Development Community (SADC). Despite such initiatives, agricultural trade is inadvertently hampered by governmental actions that were not intended to affect trade but that do so nonetheless. Trade policy is thereby subverted. Chief among these actions are:

- District and local rules that artificially restrict markets and contribute to farmers' low income
- Government decision making that fails to consider secondary impacts of policies on trade
- Crop boards that, although intended to intermeditate on behalf of farmers, create an unpredictable investment environment, which discourages medium- to longer-term investments such as in tree crops
- Conflicting laws that are interpreted differently and implemented independently by the authorized regulatory agencies.

The implications of these actions on agricultural policy will be discussed in the Legal Framework section below. Tanzania is not alone in facing challenges of transitioning to a policy environment conducive to agriculture. Many Asian countries are having a very difficult time transitioning from the "food security" to the "farm income" and on to the "rural productivity" objectives for public policy, where

the preferred policy mechanism is price protection and input subsidies, not diversification and commercialization.<sup>151</sup> Tanzania's difficulties, however, are pervasive in a way indicative of a weak and remote central government. For this situation to improve, central administration will need considerable strengthening.

## AGRICULTURAL TRADE FACILITATION

Trade is facilitated by the implementing and support institutions that ensure the movement of goods across borders. Tanzania's Revenue Authority (TRA) has been quite effective at capturing the revenue generated by the movement of these goods. Other trade institutions have not been so efficient, however, and key informants widely report shortcomings, including

- Lack of uniform procedures and processes, inconsistency
- Lack of standard documentation
- Lack of trading capacity and experience
- Border delays
- Checkpoints (official and unofficial)
- Corruption.

These issues will be discussed below in sections on complementing institutions and support institutions, followed by a section on the social dynamics of agricultural trade policy.

## LEGAL FRAMEWORK

International trade laws, policies, and Tanzania's legal framework generally are relatively unchanged since the BizCLIR diagnostic was published in 2008.

## CLIR ENVIRONMENT FOR AGRICULTURAL TRADE

Government actions, as mentioned above, inadvertently undermine agricultural trade in a number of ways. First, district and local governments often restrict the number of buyers who can purchase goods within their jurisdictions. Such restrictions are particularly pervasive for cash crop value chains. The upshot is that markets are not as competitive as they might otherwise be and that the prices that

<sup>151</sup> Timmer, C. Peter, "Food security and economic growth: an Asian perspective," *Asian-Pacific Economic Literature* 19 (1) (2005), pp. 1–17.

## KEY LAWS

- Agricultural Products (Control of Movement) Act No. 3 of 1996
- Animal Diseases Act of No. 17 of 2003
- Anti- Dumping and Countervailing Measures Act No.1 of 2004
- Cashewnut Industry Act No 21 of 1984
- Coffee Industry Act No. 23 of 2001
- Cotton Industry Act No. 2 of 2001
- Customs (Management and Tariff) Act (Cap. 403 of R.E.) of 2002
- Customs and Excise Tariff Act (Cap. 399 of R.E.) of 2006
- Customs Tariff Act No. 12 of 1976
- East African Community Customs Management Act of 2004
- East African Community, East African Community Custom Union Protocol
- East African Community, Treaty for the Establishment of the East African Community of 1999
- Export Control Act No. 381 of 1950 (Cap. 276 of R.E.) of 2002
- Fisheries Act 2003
- Import Control Act No. 33 of 1950 (Cap. 276 of R.E.) of 2002
- Local Government (District Authorities) Act No. 7 of 1982
- Plant Breeders Act No 22 of 2002
- Plant Protection Act No. 13 of 1997
- Seeds Act No. 18 of 2003
- Stamp Duty Act (Cap. 332 of R.E.) of 2002
- Standards Act No. 3 of 1975
- Tanzania Food and Drugs and Cosmetics Act No. 1 of 2003
- Tea Industry Act No. 3 of 1997
- Treaty for the Establishment of the East African Community Act No. 4 of 2001
- Tropical Pesticides Research Institute Act No. 18 of 1979
- Value Added Tax Act No. 24 of 1997

farmers receive for their produce is less than they what they would receive if more buyers were competing for their goods (see chapters 6 and 10). Tanzania's legal system specifically allows the entry of buyers into local markets, but this allowance does not seem to influence the behavior of the district and local governments that engage in such restrictions. Buyers often need a "product delivery note" to transfer goods between districts. These are not always easy to get. District councils issue these PDNs, and there is almost no way to bypass district councils if they are determined to interfere in the movement of goods. The same conditions apply for selling goods. One trader reported that every time he sells goods in North Namanga District he has to get a license, which can take a full day to get. Addressing this issue of counterproductive market restrictions may require a two-pronged approach of central government enforcement of the law and better education of district and local officials. Meanwhile, Tanzania's agricultural trade competitiveness is lost in 14,000 villages and districts across the country.

Second, Tanzanian government officials make decisions without considering secondary impacts on trade competitiveness; the problem is pervasive. The recent 18% VAT increase on horticultural airfreight services is one example: exporters rerouted their goods overland through Nairobi and the Tanzanian government lost this revenue. (For a more detailed discussion of this, see the box in "Paying Taxes.")

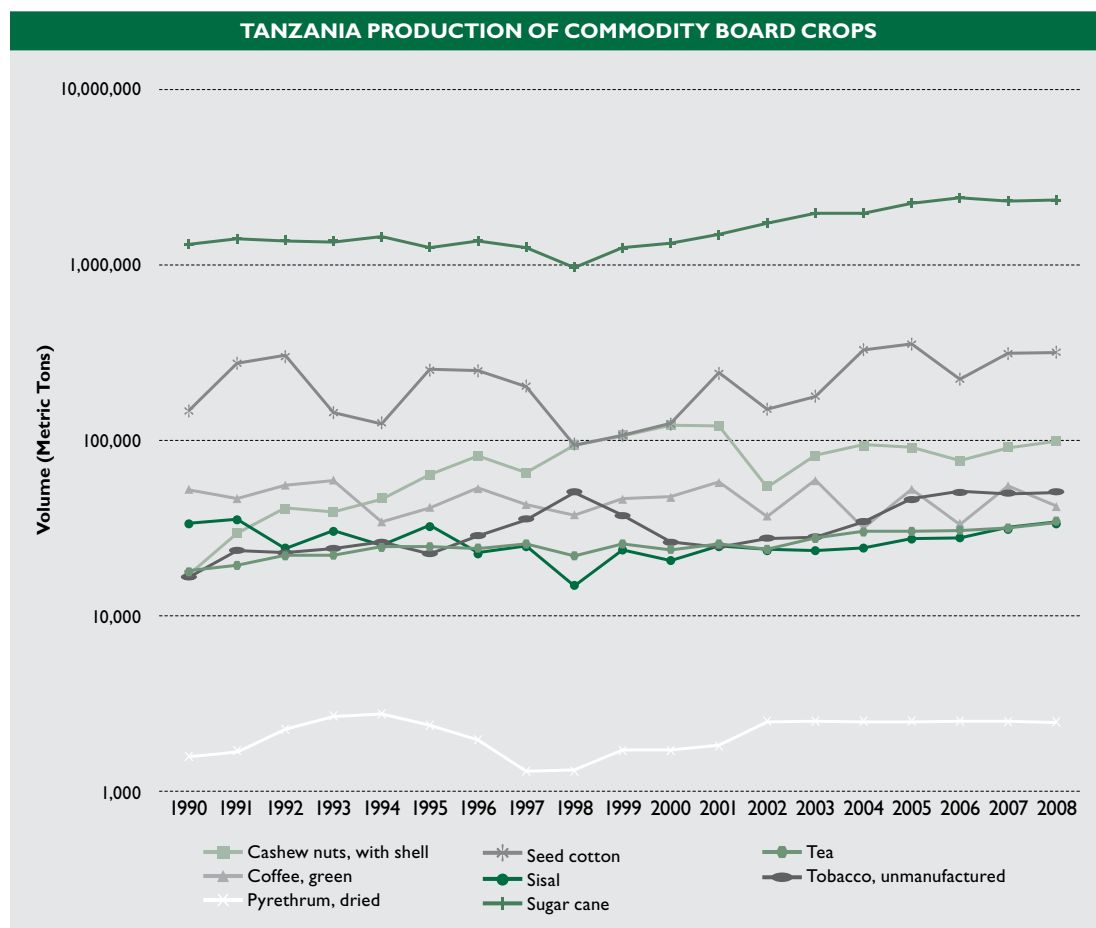
Another example is the maize export ban, which penalizes farmers who have surpluses by restricting their markets, thereby lowering their sales prices. Maize controls are likely to rebound against the government's financial interest in the near future, because many farmers took government-backed loans and must repay them. The maize controls have lowered their revenues, thus making repayment more difficult. This policy, incidentally, is particularly

disadvantageous for women who grow much of the maize. A further example was the chief chemist's decision that bulk sulfur bagging at port was in fact "re-bagging" and such operations are forbidden: most of the sulfur, destined for Zambia's mines, consequently was rerouted through Maputo costing the government lost jobs, wages and revenue. Through such foreseeable but unforeseen consequences of its policies, the Tanzanian government signals to the private sector, especially foreign investors, that trading with Tanzania carries a high risk premium. In an industry survey of 2009, companies complained most about tariff escalation on value-added products. This policy is particularly disadvantageous, since it deters investment in value-added production and

services and is yet another example of unintended consequences.

Third, farmers respond to incentives and invest with expectations that policies are going to be a certain way. The crop boards set the rules for the value chains over which they have jurisdiction, but then they frequently change these rules and upset farmers' plans and investments. Farmers respond by switching to other crops, as is happening in Mera District where farmers have been pulling up their coffee trees to grow carrots instead.

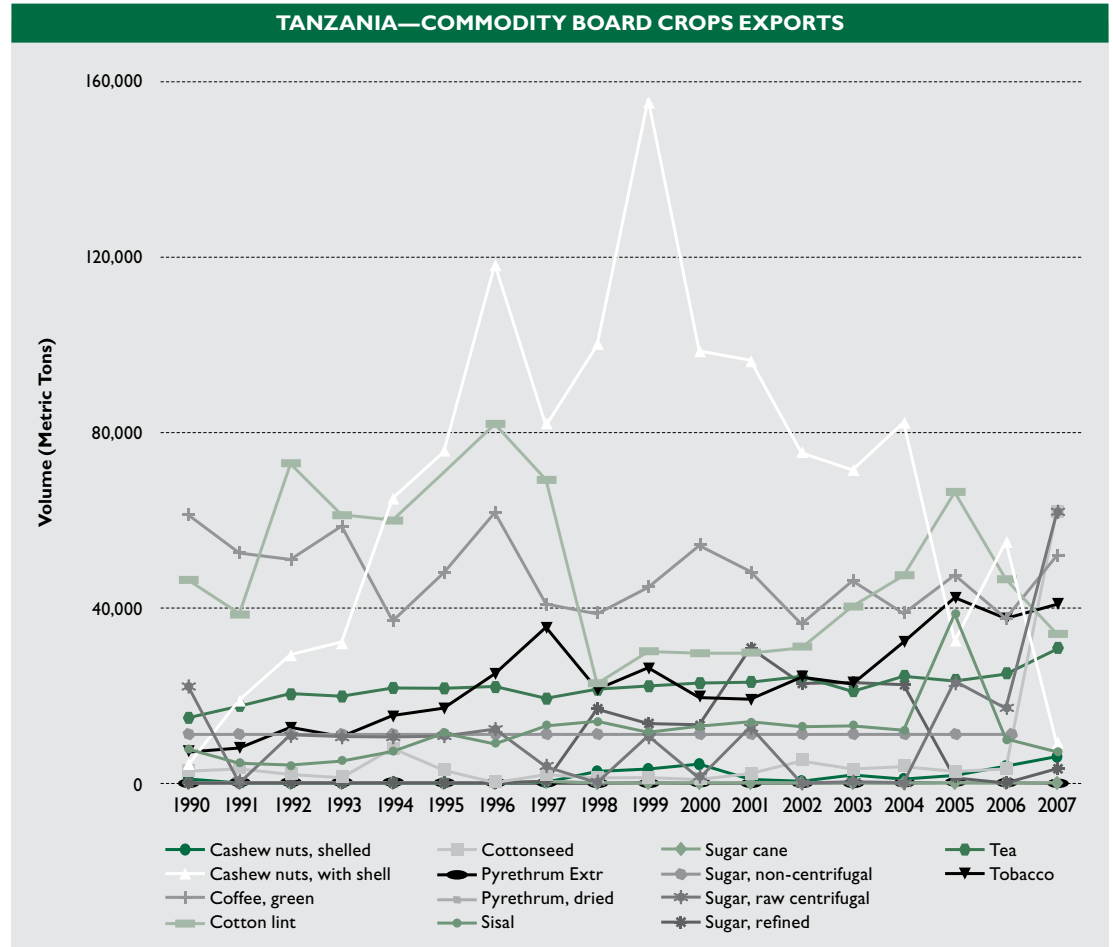
Tanzania's crop board crops have performed unevenly over the past two decades. Production has mostly held steady, though without significant increases (see figure below).<sup>152</sup>



152 Data: FAOSTAT ([www.faostat.org](http://www.faostat.org))

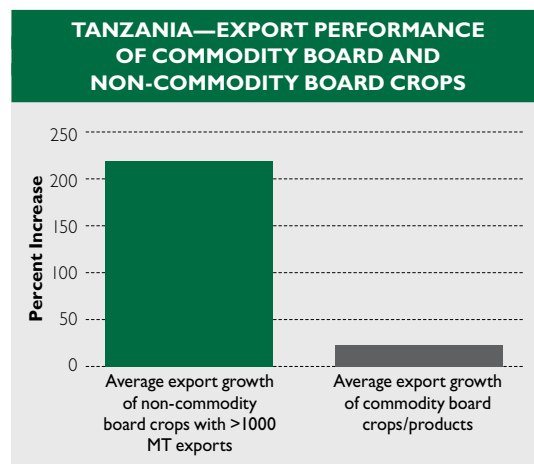
The figure below shows that, except for sugar and tobacco in the most recent year, absolute export volumes of crop board commodities

have declined or are marginally above the volumes exported in 1990.<sup>153</sup>



In contrast, the graph below shows the export performance of crop board commodities relative to noncrop board commodities (average growth 1990–2008 for all crops with greater

than 1,000 metric tons average annual exports over the period).<sup>154</sup>



Non-crop board commodity exports have grown by 218% since 1990, while crop board export commodities have grown by 22%. It is important to note that the figures do not infer causality; crop boards may or may not hinder development of their sectors. But the figures do show correlation between performance and the presence of crop boards and suggest that there may be underlying issues.

The relatively poor trade performance of crop board commodities has happened at a time when markets for these crops were growing internationally and certain countries, e.g., Vietnam, rapidly increased its market share. A

<sup>153</sup> Id.  
<sup>154</sup> Id.



strong argument could be made that although the crop boards do help smallholders through their intermediation support (i.e., providing framework contracts) and the information they provide, the plain evidence is that such support has not helped smallholders very much.

Finally, **multiple agencies have jurisdiction over the same regulatory functions.**

As noted in an earlier study:<sup>155</sup> “Agricultural trade legislation is not harmonized, and there may be overlapping or conflicts in certain areas; thorough legislative reviews are not conducted before the enactment of new legislation and stakeholders are not sufficiently informed of what the international regulations require; and, most laws provide for enforcement by the central government and do not have well established legal and institutional frameworks for implementation by the local government.” One particular example is traders’ confusion over which agency is responsible under what conditions for issuing phyto-certificates—is it Tanzania Pesticide Research Institute (TPRI) or the Plant Health Service (PHS) (within the Ministry of Agriculture)?

Overall, Tanzanian government coordinates policymaking very poorly with the private sector, as evidenced by the horticulture VAT on airfreight. When central government policy directives are issued, one commissioner noted, the various governmental jurisdictions “translate” them. In practice, they prioritize the many directives according to their local relevance and their capacity to implement them. This local “translation” of policies creates great uncertainty for the private sector and discourages many types of exchange.

## **AGRICULTURAL TARIFFS**

Tariff rates, in conjunction with the East African Community, are 25% of finished goods, 10% of intermediate goods, and 0% for machinery and raw material. TRA is widely regarded as being efficient, even overzealous, at revenue collection. One positive effect is that TRA has issued fewer tariff waivers than in previous years, with

general implications for perceived fairness of tariff rules. All imports, whether finished goods subject to 25% tariffs or agricultural goods subject to no tariffs, must go through the same clearance process at customs. Since agricultural goods have 0% duty, however, they should be relatively simple to clear through customs, but they are not. The Tanzanian government should consider putting in place simplified clearance procedures for nonduty goods. Similarly, agricultural exports, being exempt from duty, could also be subject to simplified clearance. One proposal for simplified clearance is to introduce “one-stop border posts” at critical border crossings. Women are potentially significant beneficiaries of low tariffs on bulk fertilizer imports.

As with the VAT on horticultural freight, other taxes are also problematic. One such tax is the 180% excise duty on plastic bags. Some export industries use plastic bags for product packaging; in such instances, excise is inappropriate. Rather, plastic bags used for packaging exports should be subject to VAT and eligible for duty drawback. The excise levy affects the trade competitiveness of such products.

The trade advantages of VAT are lost when duty drawback is not reimbursed. Exporters widely report that they have not received VAT reimbursement for years, and some exporters report that they have never been reimbursed. The law requires any company that reaches threshold of TSH40 million in annual turnover to register for VAT. Small exporters are particularly disadvantaged by this law because they are not entitled to VAT reimbursements as they are not VAT registered. Even more seriously for agricultural trade, cash crop farmers who do not export must still pay VAT. Since they are not VAT registered, and because there is no system in place for them to register for VAT, they are not able to claim any reimbursement. Retailers, meanwhile, cover VAT costs through their sales. Government VAT auditors are reportedly very difficult to deal with.

<sup>155</sup> “Agricultural Sector Reforms in Tanzania: A Perspective from Within,” Ministry of Agriculture Food Security and Cooperatives and FAO (April 2008).

Other tariffs that penalize agriculture sector trade and should be reviewed include

- The 6% Skills Development Levy in the agricultural sector (that farmers' benefit is doubtful)
- Social security (of questionable value to farmers—particularly women farmers)
- Stamp duties on agricultural goods
- Preshipment inspection fees on agricultural goods.

Whether reducing tariffs could bring in more revenue by widening the tax net has been discussed, but the Tanzanian government seems to lack the capacity to do this analysis.

### NONTARIFF BARRIERS

As discussed in a 2008 report from the Ministry of Agriculture and FAO, nontariff barriers are a major impediment to agricultural trade. Some nontariff barriers exist because of outdated legislation and not because of any particular negative intent by the government. Other nontariff barriers, such as quarantine requirements, exist because of the jurisprudential dispositions of particular regulators. In this regard, the 2008 report suggests that “encouraging simplicity in the development of technical regulations and where possible, setting basic requirements and allowing voluntary standards will greatly facilitate production processes and enhance compliance.”<sup>156</sup>

### SANITARY-PHYTOSANITARY REGIME

As of 2009, foundation seed imports have been liberalized. Seed monopolies have been removed, and there are now 16 private seed companies. Breeder seeds will soon be available to private companies. There are five national seed farms, but they no longer monopolize production of foundation seeds. Registered seed producers are allowed to produce quality-declared seed (conforming to minimal standards for the crop). Breeders' seed is approved by the National Variety Release Committee. To obtain approval to import hybrid seed, the process is as follows:

Procedure	Implementing Institution	Year 1	Year 2	Year 3
Varietal efficacy testing	Distinct Uniformity Stability	X	X	
Varietal acceptability assessment	Environmental Performance	X	X	
Approval and release	National Variety Release Committee			X

The post approval process for importing seed is bureaucratic, involving at least 10 steps and five regulatory agencies and takes at least six months and often longer. Once varieties have been imported, they are subject to continued scrutiny by TPRI and Tanzania Official Seed Certification Institute (TOSCI). Seed certifications outside of EAC are generally not recognized. TPRI's regulations conflict with the Seed Law; to be sure of compliance (and minimize harassment) investors in the seed sector need to get phyto-certificates from PHS and TPRI. Moreover, there is no specific article in the law that gives TPRI regulatory authority over exports, only imports.

The sanitary and phytosanitary (SPS) regime is most disadvantageous for agricultural producers, who are inhibited from accessing higher-yielding varieties. Agricultural trade does not realize its potential. Meanwhile, Tanzania's producers have among the lowest yields of any country in the region. Effects may be particularly pernicious for women and their children who might otherwise be more food secure if they had access to higher yielding maize varieties.

### STANDARDS AND TECHNICAL REQUIREMENTS

Tanzania is a member of the World Trade Organization and signatory to the Technical Barriers to Trade (TBT) and SPS agreements. Its test laboratories, however, do not participate in Proficiency Testing Schemes with other laboratories so it is difficult to gauge how one laboratory

<sup>156</sup> “Agricultural Sector Reforms in Tanzania: A Perspective From Within,” Ministry of Agriculture Food Security and Cooperatives and FAO, April 2008.

compares to other laboratories. Laboratories lack reference materials and certified reference materials, which are used to ensure the quality of the testing laboratories. Tanzanian government trade clearance procedures have hindered the transportation of certified reference microbiological and other materials across its borders. To be able to conduct internationally accepted inspection services, the inspection bodies must be ISO/IEC 17020 accredited.

Tanzania is a party to the Convention on Biological Diversity (CBD), has ratified the Cartagena Protocol on Biosafety (2003), is party to the International Treaty on Plant Genetic Resource for Food and Agriculture, is party to the Trade Related Intellectual Property (TRIPS) agreement, and ratified the International Treaty on Plant Genetic Resource for Food and Agriculture (ITPGR) in 2004. The Tanzanian government does not have a policy on genetically modified organisms, so these are not allowed for food crops, which is a policy in practice.

Tanzania's regulations routinely adopt CODEX Alimentarius and other international standards. Tanzania's Food and Drug Administration is exemplary in this regard. It must be noted, however, that while Tanzania has acceded to the requirements of many international standards bodies, it is not necessarily in compliance with their standards.

### TRADE LAW ACCESS

Trade-related laws are not all readily available, on-line or in stores. One reason for this situation is that so many laws affect trade, as noted above. However, of more immediate consequence to businesses is that not all tariff rates are publicized. Many published fees are dated and have not reflected actual tariff rates for years. Tariffs should be published, and how they are set should be transparent. Tariffs should not be retroactive, as was the case with the horticulture VAT. With the advent of the Internet and broad mobile phone coverage in Tanzania, the Tanzanian government could take simple and inexpensive steps to publicize tariff information.

Another issue is access to the rule-making process, which seems to be less than transparent. For example, no one has been able to explain the status of the Fertilizer Act 2009. Two trained professionals chased this for two weeks and could not get a definitive answer. The private sector is understandably concerned about where the fertilizer authority will be based and what agency will be responsible. Staff at the Agricultural Council of Tanzania are uncertain of the legislation's status, as are staff at the Law Department in the Ministry of Agriculture. As has happened with other pieces of legislation, the private sector is concerned that its operations will be interrupted by accusatory government officials because they have not been following the rules—rules about which they know little.

### TRADE AGREEMENTS

Under the East African Community (July 2006): “Harmonized Sanitary and Phytosanitary Standards, Measures and Procedures,” Volume I, EAC Secretariat Arusha: “The SPS Agreement adopts the International Plant Protection Convention (IPPC), the Codex Alimentarius (the Codex) and OIE guidelines and standards as the internationally acceptable requirements or standards for purposes of enforcing the SPS agreement on plant, human and animal health.” Tanzania endorsed the EAC documents for harmonization of sanitary and phytosanitary standards and procedures. The EAC has common rules of origin, and certifications are harmonized for many goods. That stated, Tanzania's trade situation is complicated because it is also party to a separate trade agreement with SADC.

Under the EAC agreement, non tariff barriers (NTBs) are classified as chronic, seasonal, and perennial, as a means of assessing their impacts. In Tanzania, chronic NTBs are police roadblocks and poor calibration of scales at weigh stations. If a trader does not have the right document, he may have to make a trip to the capital. Tellingly, several interviewees who were asked if there were any noticeable improvements to clearance

on 31 December when the EAC Customs Union came into force replied “no.”

## CUSTOMS REGULATIONS

Customs clearance is complex and would be difficult for small exporters to negotiate; clearance is challenging enough for freight forwarders whose job it is. Importers estimate that fees cost 6–7% of the value of “duty-free” imports. The overall impact of high costs at the Port of Dar es Salaam has been to divert trade to other ports, including Mombasa, Maputo,

and (increasingly) Nacala. Nacala’s port and transportation network are receiving substantial investment from Japanese, U.S., and other donors and can be expected to siphon off more trade in the coming years. While the Tanzanian government does not seem to consider the possibility that these ports are in competition, they, in fact, are—a competition in which the Port of Dar es Salaam is not well positioned.

A snapshot of the main Customs clearance procedures and fees is given in the table below.

Procedure	Item	Implementing Institution	Fee
Preshipment inspection	Import declaration form (IDF) with proforma invoice	Tiscan, TRA	
Commercial banks	\$10		
Assessment of food grain duties	Proforma invoice	TRA	EAC 9–5% Ex EAC 9–25%
Preinspection /scanning for goods worth US\$ 5,000	Preshipment Inspection Fee	Tiscan (soon to transfer to TRA)	1.2% of FOB value
Inspection and sampling	Inspection fee	TBS	0.20% CIF value
None	Use of maritime space	Sumatra	\$0.25/metric ton
Use of port facilities	Wharfage fees	TPA	1.6% CIF value
Document processing	Shipping manifest fees		\$0.15/metric ton
Phytosanitary certification	Inspection and remedies (fumigation, quarantine)	TPRI, PHI	\$15.00- / consignment
Booking ships to/from Tanzania	Commodity freight charges	TCFB	2.5%

While agricultural imports are exempted from duty, the foregoing, often substantial, charges must still be paid. These fees do not include agent fees or the costs of loading or unloading. Wharfage fees are set by law; other fees are fixed in the regulatory framework. These fees could be made more conducive to trade than they are at present. For instance, rather than being proportional to the size of a consignment, Tanzania Bureau of Standard’s fee should be fixed, since it inspects just a fixed sample of imports and its costs are not variable. It is unclear what services Sumatra provides that justifies its charges of proportional fees; a fixed fee, presumably for use of maritime space, would be more appropriate. The Tanzania Ports Authority’s fee should be based on volume

rather than being fixed. The Tanzania Port Authority (TPA) argues that its costs are not fixed; however, fixed fees for use of the port facilities can be a disincentive to large capital investments because of disproportionately high charges on expensive capital goods.

## PORT CLIR

According to law, Tanzania Port Authority is supposed to be the port’s landlord, not its operator. The port was supposed to have been privatized in 2001–2002, but privatization has been put on hold because the container terminal—which was privatized—has not met expectations because of poor contractor performance. TPA has decided that the port will need some very specific investments before it

can be privatized. For instance, because there are only two berths for big ships (seven for container ships), the port will need to be dredged and facilities upgraded. These additional berths would benefit agricultural exports, which are an increasing portion of port trade, especially non-traditional exports.

The private sector broadly agrees that port operations are very inefficient; for instance, TPA manages stevedoring operations rather than outsourcing such services to private providers. Space is a particular constraint to port operations. Over time the port has been hemmed in by growth in the surrounding city. Problems of scarcity and inefficient use of space, however, are compounded by the uncoordinated activities of other Tanzanian government agencies that have a presence at the port. For instance, the government-owned National Health Insurance Fund has a medical file storage facility in the primary port area. Besides the gates being too narrow the roads upset traffic flow and contribute to substantial delays. There also seems to be considerable favoritism in the distribution and use of government land in and around the Port. For example, a leading international fertilizer trading company looks set to receive a free grant of very expensive port real estate to build a terminal. This “public private partnership” arrangement could be viewed as unfair competition, since there was no tender, as well as a step toward creation of a fertilizer import monopoly at the port.

## IMPLEMENTING INSTITUTIONS

An array of implementing institutions is involved in agricultural trade, which adds to trade complexity.

### CROP BOARDS

The role of crop boards in traditional agricultural exports must be highlighted. These boards ultimately represent millions of smallholders. These eight institutions set the rules for those organizations and individuals involved in the sub-sectors. The boards also advocate for changes to

### KEY IMPLEMENTING INSTITUTIONS

- Board of External Trade (BET)
- Customs and Excise Department (CED)
- Ministry of Agriculture Food Security and Cooperatives (MAFC)
- Ministry of Industry Trade and Marketing (MITM)
- National Plant Protection Advisory Committee (NPPAC)
- Crop boards (for cashew, coffee, cotton, pyrethrum, sisal, sugar, tea, tobacco)
- Sumatra
- Tanzania Bureau of Standards (TBS)
- Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA)
- Tanzania Food and Drugs Authority (FDA)
- Tanzania Investment Center (TIC)
- Tanzania Official Seed Certification Institute (TOSCI)
- Tanzania Port Authority (TPA)
- Tiscan
- Tropical Pesticide Research Institute (TPRI)
- Tanzania Revenue Authority (TRA)

their governing laws. Each board was established by parliamentary act, in some cases decades ago. These acts are occasionally revised as was the case with cotton and tea in 2009. Among their principal responsibilities are the following:

- **Subsector coordination and planning:** organize stakeholder meetings, framework contracts, “indicative” prices
- **Enforce quality standards:** conduct test sampling, varietal improvement testing, seed multiplication liberalization
- **Provide seasonal inputs:** fertilizer, pesticides, seed
- **Facilitate research and development funding:** varietal improvement, industry development and promotion
- **Advocacy:** influence changes to their legal and regulatory authorities.

The boards do play constructive roles. They prepare framework contracts that facilitate the establishment of supply terms (if not conditions). They can show real concern for smallholders. They can be useful for convening

stakeholders around issues and also for quality monitoring and occasional enforcement.

Offsetting these positive roles, crop boards sometimes play detrimental roles:

- They have relatively weak regulatory capacity and frequently make uninformed decisions because they lack analytical capabilities.
- When investors put their money into these crops, which—being mostly tree crops—are long-term investments, they have particular expectations of the commercial environment and make their plans with these considerations in mind. Crop boards, however, frequently change the rules and upset investors' planning. Thus these subsectors are perceived as carrying more risk.
- They require annual licensing of subsector participants and can revoke a license at any time; but given this power of revocation, annual license renewals should not be necessary.
- “Indicative” prices are not set strategically with an eye to international competitiveness but are set with aspirations for farm-gate prices. When farmers fail to receive these prices, it can lead to political discomfort for buyers, regardless of international market prices.

As noted by key informants, the boards are centrally funded and so are subject to regulatory capture and politicization. They are also underresourced and understaffed. Their framework contracts are useful models for contracts between producers and buyers, but it is not possible for the boards to police millions of transactions. Nonetheless, these contracts are in a relatively early stage of adoption and could eventually serve as general models for the whole agriculture sector.

Given the crop boards' limitations and the earlier discussion of the comparatively low growth of these crops, the Tanzanian government could usefully consider other roles for the boards that

could benefit smallholders more directly. One such role would be for crop boards to ensure local competition and promote the international competitiveness of their crops. As noted, district and village councils often restrict competition locally, and crop boards could monitor or police such restrictions. Crop board staff have very specialized knowledge of their crops' markets, and they thus are in a strong position to coordinate with other government institutions (e.g., Board of External Trade) to represent the interests of subsector stakeholders internationally (i.e., marketing, trade shows, and the like) and extend international best practices within Tanzania that would improve their the competitiveness of their crops. Because the crop boards register farmers and assign registration numbers to them, the rudiments of a traceability system are in place that could be expanded. Organic, traceable produce is grown in Tanzania, so traceability systems are not beyond farmers' capabilities.

Several of these crops attract premiums that are in theory disbursed to farmers. For example, coffee often receives a premium above the auction reserve price, which is remitted to the selling cooperative for distribution to farmers. Whether farmers actually receive this premium is doubtful; informants suggest that they do not. This issue should be explored: do farmers receive market premiums? Are there technology or institutional reforms that could better ensure transfer of premiums to farmers?

## **STANDARDS AND CERTIFICATIONS INSTITUTIONS**

The government of Tanzania's most important standards and certifications institutions are the crop boards, the Tanzania Bureau of Standards, the Food and Drug Authority, the Tropical Pesticide Research Institute, and the Tanzania Official Seed Certification Institute. Inspections, quarantines, and other remedies are performed by these organizations. Export quarantine controls are administered by TFDA, TPRI and the Veterinary Department; Tanzania Revenue Authorities must rely on their certifications to

clear goods. These certifications seldom include certificates of analysis that should confirm the scientific validity of certificates and provide a basis for resolving disputes. Extensive studies have been done on Tanzania's standards and certifications regime. A brief summary of the role of these organizations in agricultural trade and some recommendations follow.

The Tanzania Bureau of Standards implements the Standards Act of 2009. TBS sets standards, tests products, provides certifications, conducts industry training, assists exporters, and conducts inspections. TBS has implemented ISO 9001:2008 certification for quality management systems but has not fully implemented ISO 14001:2004 certification for environmental management systems. TBS complies with the African Regional Standards Organization. Four of TBS's seven laboratories were certified by the South African National Accreditation Systems on behalf of ISO, including metrology (calibration services), laboratory (2006), food microbiology laboratory (2007), textiles, leather, and condoms Laboratory (2009), and the chemistry laboratory (2009). Laboratory techniques have accreditations ISO 17025 and ISO 15189. TBS is a member of CODEX Alimentarius, a participating member of the ISO Committee on developing country matters, an observing member of committees on conformity assessment and consumer matters, and a member (participating and observing) on numerous technical committees.

TBS calibrates scales and measures for mass, length, time, and pressure and checks complaints about improper use, although its reach across the country is far from adequate. The Swiss are providing some mobile calibration units.

Calibrating weights and policing their use are critically important to improving agricultural trade. Freight companies report all too many incidences of traveling from one weigh station to another without taking on new freight but finding that the weight of their loads had increased. Not only do weigh stations have

uncalibrated equipment, but also they do not have enough equipment. There are long lines of trucks at many weigh stations that slow traffic and add to trade costs. Many of these trucks are hauling agricultural inputs or exports. The delays at weigh stations contribute to other problems of road infrastructure to increase the price of road transport significantly.

TBS has inspectors at the Port of Dar es Salaam and five other entry points, with plans for three more high-priority points of entry. TBS acknowledges the industry's concerns about inadequate staffing. Inadequate staff and staff unpredictability are problems that TBS must address. *Staff unpredictability particularly affects agricultural trade*: there is no assurance that staff will be available at border posts, even during normal business hours. Exporters and importers of perishable goods feel this problem acutely.

TBS tests fertilizers but does not test pesticides, which is done by TPRI. Because TBS does not have chemistry accreditation, it must send test samples to Germany for analysis. Similarly, TBS does not have a food chemistry lab for conducting food additives testing.

The Tanzania Food and Drug Authority is responsible for implementing the 2003 Food, Drugs and Cosmetics Act to protect and promote public health. Its purview covers not just domestic industries but also imported goods. The authority covers hygiene, labeling, additives, adulteration, genetics, transport, treatment and disposal, and meats. Implementation is delegated to local, port-of-entry, and other officers. TFDA's responsibilities range from food safety inspections to HACCP training to analysis and risk assessment of food products. TFDA has an admirably comprehensive website and should be given credit for its efforts at information dissemination.<sup>157</sup>

Section 5(l) of the Tanzania Food, Drugs and Cosmetics Act (2003) gives TFDA the power to mandate Tanzania's traders to comply with recognized standards of food and drug imports

<sup>157</sup> <http://www.tfda.or.tz/>.

and exports. Sections 36–38 prevent persons who are not registered as food importers from conducting such business. To import food, buyers must apply for food import permits. TFDA issues sanitary and health certificates to food exporters, although without an ISO certified laboratory, destination countries generally do not accept such certificates as sufficient. Exporters report that such certificates are not always easily obtained.

TFDA is responsible for controlling food, drug, and cosmetic imports and exports to ensure their safety, quality, and effectiveness. Food and drug import controls aims to

- Guarantee product quality and safety
- Encourage importers to source products from reputable suppliers
- Deter entry of substandard products that subject legitimate local manufacturers to unfair competition
- Promote indigenous products
- Prevent spread of diseases and pests.

Food and drug export controls on Tanzanian exporters seek to

- Comply with mandatory food requirements of importing countries
- Ensure food product quality to increase competitiveness in international markets
- Establish a national reputation as reliable suppliers of high-quality products
- Minimize rejection of exported products
- Comply with international agreements.

TFDA's central lab has been audited and expects ISO 9,000 certification in 2010, but it is not ISO 17,000 or 25,000 certified. It is working toward these accreditations. The Meat Inspectorate comprises over 200 veterinarians and 500 Ministry of Livestock inspectors. TFDA occasionally audits the work done by these inspectors. Tanzania had recent instances of fresh water (lake) fish contamination, resulting from high temperatures and poor cold chains. The lack of an accredited laboratory necessitates sample testing outside of Tanzania. TFDA

issues food permits; currently, about 600 food manufacturers, mostly SMEs, have food permits.

TFDA lacks sufficient resources to carry out its many mandates. Twenty-six staff work at headquarters (20 positions under recruitment), and 1,700 health officers have received general training in food safety but do not have skills specific to TFDA's mandates. These local health officers have many conflicting demands and often do not give high priority to food safety issues. Despite their minimal qualifications, these officers enforce TFDA regulations. If disease is waterborne, it falls under the Ministry of Water; if food borne, under TFDA. This is not functional, given that many food contamination issues are due to contaminated water. Coordination between the two ministries has not been effective. Primary production and good agricultural practices fall under the Ministry of Agriculture, yet field production practices are often sources of contamination. TFDA is currently developing a national food safety policy, one objective of which is to make the different laws more complementary and to clarify jurisprudence. TFDA labs are out of date, and their quarantine facilities are inadequate. TFDA mostly does visual inspections of shipment documents and permits and does not provide certificates of analysis.

One option for strengthening TFDA's implementation capacity would be for it to outsource its food safety inspection and testing services to private firms and then monitor and audit their analysts and inspectors, much as is done by the U.S. Food and Drug Administration.

## **PPS AND TPRI**

The Plant Protection Act empowers the minister for agriculture and food security to regulate the import and export of plant products to control diseases and pests. The Plant Protection Section in the Ministry of Agriculture and Food Security in collaboration with the Ministry of Health issues trade permits for food products of plant origin. Such food products are inspected and certified for safety and quality at



points of entry and exit. The Tropical Pesticides Research Institute (TPRI) Act makes the institute responsible for registration and approval of pesticides. TPRI assesses pesticide toxicity ratings with the view toward ensuring acceptable residue levels in food products.

According to TPRI, it is equipped to do DNA and RNA marker testing. However, traders report that TPRI's laboratories are not adequate for pesticide sampling. For example, laboratory findings testing clean in Tanzania failed to test clean in Europe. Several importers said that TPRI cannot do proper quarantines because its quarantine area is not properly equipped. As a result, TPRI staff periodically visit farms to conduct on-site inspections of trials of new varieties. Foremost, these importers recommend reviewing and harmonizing the relevant laws because mandates are unclear, including the Plant Protection Act and the act covering TPRI. Similarly, the government of Tanzania's policies on genetically modified organisms are not straightforward.

Exporters and importers reported confusion about which organization is responsible for issuing which permits. One strategy is to apply for permits from both organizations to avoid border hassles later. For pesticide shipments arriving in the Port of Dar es Salaam, samples must be sent to TPRI in Arusha for testing, which often increases delays and demurrage charges. Because the government of Tanzania's pest, pesticide, and quarantine databases are not up to date, shipments have been impounded or quarantined to prevent the spread of pests that were already present in the country. It almost goes without saying that TPRI should have a laboratory at the port and that relevant databases should be brought up to date.

PPS and TPRI do not recognize the quality standards of countries outside EAC and treat companies whose processes are ISO certified and whose varieties are internationally recognized the same as companies that do not meet similarly demanding qualifications. To simplify phytosanitary and varietal certifications, the

Tanzanian government could adopt a "recognition" policy, whereby it would recognize goods as meeting its standards if a select group of acceptable countries (e.g., South Africa, Australia) have certified such goods.

## **BORDER AND CUSTOMS AUTHORITIES**

Border and Customs Authorities are mainly the Tanzania Revenue Authority and the Tanzania Port Authority. TRA collects revenue on behalf of the Ministry of Finance; the Customs and Excise Department (CED) is the department that intersects most with agricultural trade. CED administers tariff collection under EAC and SADC agreements as well as in accordance with WTO and other international agreements. Since 2004, CED has outsourced preshipment inspection services to Tiscan, including document preclearing, scanning, and valuation.

Valuation of goods is generally seen to be fair. Internationally, there are six accepted methods of customs valuation, and their application is supposed to be considered sequentially. The first of these six methods is the transaction value method. Most duty payments are calculated as a percentage of the value of the import. Of these valuation methods, CED/Tiscan will typically apply method 2 (transaction value of identical goods) or method 3 (transaction value of similar goods) before applying method 1 (transaction value). TRA's explanation for reversing this application of valuation methods is that since so many importers underreport transaction valuations, methods 2 or 3 will inevitably be used anyway. TRA, however, could apply a more discriminating valuation approach. It could apply valuation method 1 to goods imported from low-risk countries, such as those in Europe, while it could apply methods 2 or 3 to imports from countries such as China or India, where valuation risks are high. With simpler valuations, imports could be cleared more quickly through the port. Since 70% of imported goods come from China, the impact of such reform might not be great but could

facilitate imports of certain agricultural inputs such as seeds and chemicals.

Besides applying valuations more smartly, CED could make additional changes that would improve conditions for agricultural trade.

Among these improvements are the following:

- Prioritize perishable goods: Perishable goods are given priority at the Port in Dar es Salaam, but not always in other locations. Clearance can take a week: the target should be two days. For instance, imported seeds have been known to germinate while waiting for CED to issue its Classification and Valuation Report (CVR); germination can happen under the right conditions in just a couple of days.
- Organize and coordinate laboratory testing with existing laboratories such as GCLA, TFDA, TBS, and even TFNC so that the chemist and TPRI branch offices at the Port do not have to send samples to Arusha for analysis. Imported fertilizer requires pre-inspection certificates from the country of origin or, if these are not available, from a GOT chemist. Because the chemist certification lab is in Arusha, certifications can take five or more days—similarly with pesticides, which TPRI certifies.
- Clarify the law on the need for fertilizer certificates since there are conflicting laws on this matter.
- Monitor staff performance more effectively: After scanning cargo, customs officers often make clearance agents resubmit the physical documents. Or clearing agents will have to beg someone in customs to open a file to approve the documents. Or no customs agents are available during normal business hours.
- Rely on electronic data: Customs officers often require freight forwarders to submit forms both electronically and physically, which defeats the purpose of electronic submissions. Customs agents seem not to trust electronic submissions.

- Link taxpayer identification numbers to shipping documents: TRA does not link them now, but such a practice could speed up clearance as well as complement Tanzania’s “gold card” program.
- Foster “user-friendly” customs services: Customs clearing issues typically arise when importers do not present the right documents or customs agents misinterpret them (i.e., import, customs police, health, standards and SPS, radiation inspections). Whatever the case, a more facilitative approach could dispel the strong element of mistrust.
- Allow freight forwarders to cancel bonds at locations other than Dar es Salaam: Currently, bond cancellations must be done in-person in Dar es Salaam, a problem for agents located in other ports-of-entry.
- Avoid future delays: Concern was expressed that Tiscan’s operating funds will not transfer to TRA when Tiscan’s contract ends later this year and TRA must take on these responsibilities. The government should consider earmarking an amount equivalent to what it now spends on Tiscan’s contract for TRA.

It may not be possible to conduct all business electronically. For example, importers sometimes falsify invoices to avoid paying taxes, and there is considerable informal border transit, with Zanzibar often used as an illicit transshipment point. Shipping companies do not always submit their manifests in time, another factor that contributes to congestion. However, it is advised that TRA obtain the services of a customs specialist to review the electronic information required and the physical forms that are in use to assess their compatibility and determine if they might be streamlined. Such a specialist could also see whether freight forwarders are capable of completing electronic forms accurately, so that they do not have to submit hard copies.

The Tanzania Port Authority was established with enactment of TPA Act No. 17/2004. As described above, while the intention was for TPA to privatize port operations, the opposite has happened, and now TPA has become much too involved in port operations. As one company states, “TPA tries to do everything themselves, being involved in nearly all aspects of cargo.” This situation is not efficient. The government of Tanzania’s initial attempt at outsourcing should have resulted in the issuance of multiple awards. Such an approach could have engendered competition for business among berths and stevedoring companies, keeping downward pressure on prices and performance up. Finding a solution to port operations management is becoming a pressing issue as nearly 300 TPA technical managers are nearing retirement age.

In February 2010, TPA will introduce electronic entry procedures; currently they are all manual. Admissions will be legal documents. A project is underway to network the various computer systems now in use to allow electronic data interchange. The Port Committee Systems Project has funded study tours of ports in other countries, and TPA plans to tender for its new system in June, based on lessons learned. This system should be operational in 2011. TPA, while taking the right steps, is far behind similar modernization efforts in other African ports. There will need to be a new customs act to accommodate changes at the port.

Among steps that TPA can take to increase agricultural trade are the following:

- Improve intermodal cargo transfers, which are inadequate (e.g., for moving grain)
- Widen the channel, which is too narrow
- Expand to the south to accommodate more deep-water vessels
- Improve efficiency at the grain terminal, which needs higher intake capacity and should be operated privately
- Determine how the EAC agreement will change port operational requirements, if at



all (e.g., freight forwarders want to get rid of bond requirements for trade with Uganda)

- Discontinue selective scanning of containers that carry forest product exports, which have already been physically examined as required by law; other exports are not usually scanned.

## SUPPORTING INSTITUTIONS

### PRIVATE SECTOR ORGANIZATIONS

Private sector organizations actively support many agricultural value chains as well as the sector as a whole. In fact, it was suggested that “there are too many trade support institutions and they are not pro-actively helping the private sector,” including advocating for reforms. The Chamber of Commerce, Industry, and Agriculture (TCCIA) is Tanzania’s apex organization, broadly representing the interests of its members throughout the country. The chamber is not a strong advocate for agricultural trade issues, however, as few of its are exporters. The chamber does play a trade role by issuing certificates of origin. The chamber issues about 50 certificates a day for Tanzania and for EAC

### KEY SUPPORTING INSTITUTIONS

- Tanzania Chamber of Commerce, Industry, and Agriculture (TCCIA)
- Tanzania Horticultural Association (TAHA)
- Universities
- Trade Attaché
- Freight Forwarders Association
- In-bond warehouses

and SADC companies. Chamber staff conduct on-site audits of new companies that require such certificates. The value of this certificate, is unclear, however, since exporters report that they export goods without it. Of the chamber's key advocacy issues, foremost is adoption of standard weights and measures by its members.

Value-chain focused private sector support organizations have been some of the most effective groups initiating change. Because the crop boards supposedly fulfill this function within their subsectors, few associations fill such roles. However, for crops that are not subject to crop board oversight, associations play a role in convening around and advocating support for selected issues. One particular example of a value-chain focused private sector support organization is the Tanzania Horticultural Association. TAHA, which represents the horticulture and floriculture industry in Tanzania, was established as a membership association to promote the production and export of cut roses, vegetables, flower cuttings, fruits, and seed and serves as the primary catalyst for action and growth in the horticultural sector. TAHA members have expressed their satisfaction with its accomplishments. Among the trade actions that TAHA advocates are the following:

- Allow duty waivers on capital goods imports or introduce an export-bonded warehouse system (e.g., like Uganda's).
- Rationalize duties on consumables (e.g., plastic bag duties increased from 20% to 120%) qualifying them for VAT rather than excise.

- Review the Plant Protection Act of 1997 to ease restrictions on selected pesticides that are known to be safe and avoid the need to continually obtain one-time waivers.
- Revise the Seed Act to encourage greater use of safe biological control agents.

### UNIVERSITIES

Universities have not been particularly involved in advocating for or supporting agricultural trade. Some useful areas of investigation, however, would be well-suited to university research. One such study is to assess clearance times on overland routes. Much effort has been put into studying clearance times at the Port of Dar es Salaam but not at other border posts.

### TRADE ATTACHÉ

The government of Tanzania recently introduced a Trade Attaché function at some of its embassies abroad. This move could be a helpful step for increasing information available to Tanzanian exporters, as well as contacts and linkages to possible buyers. The quality of these attachés' is unknown.

### FREIGHT-FORWARDING INDUSTRY

The Tanzania Freight Forwarders Association is the organization that represents the interests of freight forwarders and clearing agents. It has over 550 members, and membership is a precondition for freight-forwarder licensing by the government. Very few FFA members are women. Individuals cannot be licensed as freight forwarders; only businesses are eligible. One particular licensing requirement is that at least one staff person must be trained in customs clearance procedures. Without a freight-forwarding license, a business cannot import or export. Most major exporters do their own freight forwarding, and most freight forwarders focus on imports, not exports.

TPA reports that freight forwarders are consistently a problem. As a group, "freight forwarders operate with 'know-who' not 'know-how.'" Because of their general lack of knowledge, freight forwarders contribute to

port congestion by not completing forms correctly, by not following proper procedures, and by being generally unprofessional. Both the government and the association recognize that some type of accreditation for freight forwarders is needed, such as a degree program or training school. Freight-forwarder training should emphasize customs procedures, ports and ships, and transportation. Last year TPA introduced a new system for lodging documents electronically, which led to many automatic rejections of trade documents, as the system does not accept mistakes. Many people agree that probably the training for freight forwarders in preparation for this transition was insufficient. The government needs to plan for such outcomes, as there will be future transitions to a new preclearing system.

Among the proposals for raising the freight-forwarders professionalism and the overall framework for customs clearance agents are the following:

- An independent professional board should self-police the industry. Freight forwarders should know the HS code, customs procedures, and customs law.
- Licensing should be simplified, and ancillary costs should be lowered: the actual customs agent license costs US\$410, but the cost of ancillary documents is over US\$2,000.
- CED has powers to suspend and revoke freight-forwarders' licenses without prior notice, and licenses must be renewed each year. But because CED has revocation authority, licenses should not be subject to annual renewal. This policy is redundant. Before revoking a license, customs should allow freight forwarders to contest decisions through an ombudsman or similar process. In one instance, a freight forwarder reported having to employ two or three people full time to renew a license.
- CED should, but does not, conduct performance audits of freight forwarders.

## TRADE FINANCE

Trade finance is not readily available to Tanzanian agricultural exporters, putting them at a competitive disadvantage. This situation contributes to Tanzanian exporters' loss of market share in coffee and cotton markets. Tanzanian importers likewise report difficulty obtaining trade finance from the banks, while their larger, foreign companies are able to borrow from international banks at relatively low cost. Local companies have difficulty assuring offshore partners of their capacity to meet obligations under trade contracts, which limits their ability to obtain letters of credit, except on all but the most stringent terms. Horticultural exporters typically receive trade credit from wholesalers, which tends to lock them into specific buyers. Trade credit insurance is expensive or is not available to agricultural exporters, particularly for perishable goods. Export factoring, forfeiting, and other commercial paper markets are not well developed. Unlike the foreign companies, local coffee and cotton traders are unable to hedge against price risks.

One problem particularly affecting overland trade is the requirement that exporters must pay for all trade transactions with a government-approved bank card. For example, there is just one bank in Arusha where an exporter can deposit money for all trade transactions. CRDB Bank has three branches in Arusha, but only the one can deal with trade finance. This bank issues cards to exporters by debiting their trade deposit accounts. No system at the border allows money to be uploaded onto the bank card. If something goes wrong, the exporter will have to return to Arusha. The 90 km road between Arusha and the border is not in good condition. When the exporters get to Arusha, they face a series of problems like long queues outside the bank, service interruptions in banking networks, electricity outages, the banks' being closed, and so forth. Sometimes waits can be very long. Exporters say that at least two days a week the Namanga port-of-entry systems are not working. This example begs the question, Why isn't there more competition to provide trade finance services?

## TRADE INSURANCE

Customs agents are required to execute bond securities of a minimum of US\$8,000 for local cargo secured by a licensed guarantor and a bond equivalent of US\$100,000–150,000 for transit cargo. While there are many insurers, they usually require a 2–5% premium on top of the insurance policies. Compared to the risks involved (cash deposits are collateral), these premiums seem excessive. Collateral has to be cash; land cannot be used as collateral for trade insurance.

The government increases costs to private insurers through nonperformance, with spill-over effects on exporters. As a major borrower, its late repayments drive up insurance costs for the private sector. Government projects are also major borrowers through credit guarantee schemes, which are not being repaid.

## IN-BOND WAREHOUSES

The private sector operates a number of bonded warehouses near the Port of Dar es Salaam, which enables these businesses to re-export or manufacture under bond without paying duties on the goods. While there are complaints about abuses, the in-bond warehouse system enables businesses to minimize the amount of capital they have tied up in duty payment.

## SOCIAL DYNAMICS

### TRADE INERTIA

Tanzania's "net barter terms of trade index"<sup>158</sup> has hovered around 100 from 2000–2005 while trade volumes of imports and exports as a percentage of GDP have both increased slightly during the period. This slight trade growth happened at a time when GDP nearly doubled.<sup>159</sup> Tanzania's trading sector cannot be described as dynamic. The foregoing CLIR discussion paints a "Jonathan Swiftian" picture of Tanzania's economy; the Lilliputians tie Gulliver down with thousands of tiny threads. Agricultural trade faces more obstacles than trade in other goods because of the perishable nature of agricultural

products. Several key informants expressed concern that "as soon as an industry starts to gain traction the Government kills it off". Countries that do not produce sophisticated goods should do all in their power to simplify their trading regime: "government involvement in the private sector should be to help catalyze market activities and solve coordination problems that emerge naturally when countries try to accumulate capabilities."<sup>160</sup> Tanzania has not effectively supported the private sector in such a way.

## FACILITATING AGRICULTURAL TRADE

The Port of Dar es Salaam has many challenges. It is hemmed into a small space in the heart of the city. Goods move into and out of the port with difficulty. Considerable investment must be made to ease congestion, which is certain to rise again. Moreover, society has not been served well by the government's excessive focus on container traffic to the detriment of bulk traffic. Among the more pressing needs is for an inland container terminal so that the port becomes a place for clearing, not storage. Private storage facilities should be outside of Dar es Salaam. Recent port improvements brought about by the Stakeholders' Efforts to Improve Operations task force show that the government can organize effectively to accomplish tightly defined objectives. Such a task force could be created to improve agricultural trade under the auspices of Kilimo Kwanza.

The emergence of a nascent organic sector shows that an identity-preserved system is possible in Tanzania. Developed entirely by private interests, this system is compatible with GlobalGAP, BRC, and other European and international retailer standards. Lessons learned from the organic sector about quality control, supply chain integration, and the like are relevant to other agricultural exports. Standards exist but are not well known. For instance, field testing of maize is commonplace in some locations; Tanzania's law requires that maize have 13% moisture content, but farmers often lack specific knowledge of these standards or how

<sup>158</sup> Net barter terms of trade is the percentage ratio of the export price index to the corresponding import price index measured relative to the base year 2000. United Nations Conference on Trade and Development, *Handbook of Statistics*; and International Monetary, *International Financial Statistics*.

<sup>159</sup> [http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&REPORT\\_ID=9147&REQUEST\\_TYPE=VIEWADVANCED&HF=N&WSP=N](http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED&HF=N&WSP=N).

<sup>160</sup> César A. Hidalgo, "The Dynamics of Economic Complexity and the Product Space over a 42 year Period." Center for international Development and Harvard Kennedy School, Harvard University (2009).

to achieve them, and standards enforcement is lax. Increased use and enforcement of standards are socially advantageous as they signal quality requirements to farmers.

Many observers noted that a key problem for Tanzania is that “young farmers lack the skills necessary to meet the demands of globalization.” Too much value “is lost in the field.” Such comments are disconcerting and suggest that as farming transitions to a younger generation in an era of rising minimum consumer expectations, Tanzania’s farmers will by default produce goods for ever narrower, lower-value markets.

### **AGRICULTURAL SERVICE PROVIDERS**

Tanzania’s agricultural service providers are nascent and have not effectively met the needs of the customers that they seek to serve. Two examples illustrate the point. First, local packaging materials are of inferior quality. Good packaging material (boxes, cartons, crates) is not available in Tanzania. Exporters report that they have missed shipments for want of decent packaging. They must source their packaging material from outside of Tanzania, with “For Export Only” written on the shipment. Second, cold-chain management for perishable goods is difficult and expensive. Freight companies do not take a long view but a short, “this-trip” view; drivers switch off their refrigerators during trips to Dar es Salaam or Nairobi, at weigh stations, or at border crossings. This behavior may lower the costs of a particular trip but can cost future business when buyers in destination markets reject shipments because the cold chain was obviously compromised.

## **RECOMMENDATIONS**

### **Get Crop Boards out of trade.**

Crop boards’ roles should be redirected to improving trade competitiveness along the value chain. Such roles should start with district and local governments that often restrict the number of buyers who are permitted to operate within their territorial boundaries. Local cooperatives

or warehouses should not have exclusive buying rights for any crop; traders should be allowed to come and go without restriction, although their behavior should be monitored. In the current environment, buyer collusion is farmers’ most significant risk. The more buyers there are, the harder collusion becomes. Crop boards should also be tasked with improving the international competitiveness of their crops, which would encompass responsibility for coordinating linkages, marketing, and export facilitation.

### **Rationalize administration.**

Administrative reform is long overdue. Overlapping bureaucratic jurisdictions and uncertain jurisprudence have contributed to general private sector confusion about the roles and responsibilities of different agencies. The regulatory framework is unpredictable, and rules change without consulting the private sector. Policymakers give little indication that they consider the secondary impacts of their policies on markets or trade.

### **Simplify clearance procedures.**

The government of Tanzania should consider putting in place simplified clearance procedures for nonduty agricultural goods. One proposal for simplified clearance is to introduce “one-stop border posts” at critical border crossings. The 180% excise duty on plastic bags should instead be made a VAT and be eligible for duty drawback when plastic bags are used for export packaging. Outstanding duty drawback should be reimbursed, and the government should consider instituting a 90-day objection rule wherein, if TRA does not object to a drawback claim, duty is automatically reimbursed. Small exporters should be allowed to claim VAT reimbursements and the rule be scrapped that companies must have TSH40 million in annual turnover to register for VAT. Cash crop farmers should be exempted from paying VAT.

### **Make seed imports easier.**

The government’s withdrawal of seed monopolies is too recent to have shown results.

Imports of improved varieties, however, are hampered by a confusing thicket of overlapping regulators and regulations. Given that Tanzania's crop yields are among the lowest in the region, this situation is highly disadvantageous. Moreover, government input subsidies may be exacerbating problems. Several key informants in the seed industry observed that the subsidies have been keeping seed prices for maize down, despite recent shortages. The government has been buying seed at auction, but purchase prices are not being published, depriving the private sector of price signals. Seed import regulations should be reviewed. Companies whose processes are ISO certified and whose seed varieties are internationally recognized should not be treated the same as companies that do not meet similarly demanding qualifications. To simplify phytosanitary and varietal certifications, the government could adopt a "recognition" policy, whereby it recognizes goods as meeting its standards if such goods have been certified by a selected group of acceptable countries (e.g., South Africa, Australia).

### **Fix testing generally and weigh stations in particular.**

The Tanzania Bureau of Standards should prioritize calibration of weigh station scales and make sure that staff are always available during normal business hours. Perishable freight, which could include "perishable goods only" times or separate facilities, should merit special arrangements. Chemist and laboratory facilities should be available at the Port of Dar es Salaam; samples should not have to be sent to Arusha, or Germany, for analysis while shippers wait for days.

### **Provide technical assistance for professionalizing and regulating freight forwarders.**

Freight-forwarding service providers urgently need to be professionalized, and standards need to be put in place and enforced. Optimally, an independent professional board should self-police the industry in coordination with CED. Freight forwarders should know the HS Code, customs procedures, and customs law. Freight-forwarder licensing should be simplified and ancillary costs lowered. CED should, but does not, conduct performance audits of freight forwarders.





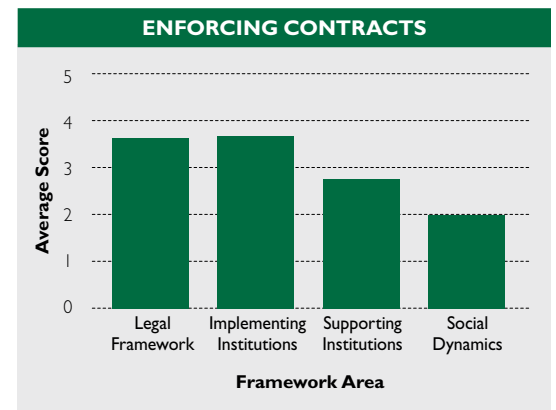
## ENFORCING CONTRACTS

In Tanzania, formal and informal contracts for goods and services are used throughout the agricultural supply chain. Traders and processors may exchange fertilizers and other inputs for a farmer's agreement to sell later at a certain price. Farmers and their associations may secure land or, less typically, movable property as collateral for a loan. Cooperatives and enterprises may promise money in exchange for transport of goods to market. Indeed, stakeholders at all levels are generally familiar with various types of contracting opportunities.

Notwithstanding the importance of contracts in Tanzania's agricultural sector, a number of factors undermine the extent to which they are embraced as an avenue for building enterprises. These include the following:

- A scarcity of legal services oriented toward agriculture in Tanzania's rural communities, including an "acute shortage of lawyers and of advocates in particular"<sup>161</sup> and an absence of practical guidance on the formation and enforcement of agricultural contracts
- Attitudes at all levels that contracts are merely guidelines for business relationships rather than strict commitments on which enterprises can base arrangements for the future
- Primary-level courts that lack sufficient resources, streamlined practices, and public confidence
- Significant interference by crop boards and crop-related policies in the ability of farmers to establish their own terms of sale and delivery.

The most recent *Doing Business* survey ranks Tanzania's performance with respect to Enforcing Contracts extremely well: 31st out of 183 countries surveyed. As emphasized in the 2008 BizCLIR report,<sup>162</sup> however, this bright picture likely reflects only the treatment of higher-value cases where well-heeled stakeholders, including banks, seek redress, typically in Tanzania's 10-year-old commercial division of its



High Court. Most actors in Tanzania's agricultural sector are rarely in a position to engage the formal mechanisms of the commercial division (or, for that matter, any court) to resolve their contract disputes. They typically do not have the time or money to do so; nor, in most cases, do they have written evidence that a contract even exists. In contrast, banks and other lending institutions are far more experienced at enforcing contracts and are more willing to do so. As Tanzania's legal environment for agricultural lending evolves (as discussed in this report's chapter on Getting Credit), lawyers and courts must be duly prepared to carry out the new systems and policies in contract enforcement.

Continued commitment to strengthening Tanzania's legal services and courts, particularly beyond the larger cities and municipalities, is necessary to strengthening the rule of law in Tanzania's vast agricultural sector. The country would further benefit from continued emphasis

<sup>161</sup> Faiz Twaib, *The Legal Profession in Tanzania: The Law and Practice* (2008), at 7. "Advocates" are legally trained professionals who have gained qualifications to represent clients before Tanzania's courts.

<sup>162</sup> BizCLIR. *Tanzania's Agenda for Action*. Washington, D.C.: USAID, 2008.

on communicating the importance of making and honoring contracts to the less formal or less educated constituencies.

## LEGAL FRAMEWORK

### ACCESS TO LAW

Although Tanzania has a fairly well developed regime of commerce-related statutes, access to the country's legal framework is poor. Beyond Dar es Salaam and a few other urban centers, people have virtually no access to copies of cornerstone laws and regulations, including key provisions pertaining to lending contracts, contracts involving specific types of crops, or dispute resolution. Nor is there significant distribution of information or pamphlets in Kiswahili that would summarize the basic provisions of contract law and enforcement in easily digestible terms. Most laws are available on the website of Tanzania's Parliament, but in a country where Internet penetration is less than 2%,<sup>163</sup> this resource is not meaningful. Furthermore, as noted in the 2008 BizCLIR report, most courts do not have libraries containing updated sources of authority. Lawyers in urban areas typically pay for a commercial service that provides information about new laws, but even for them there are significant gaps in access to non-law material such as regulations and past court decisions. And the dearth of lawyers in the rural areas—discussed at this chapter's section on Supporting Institutions—means that, in effect, most stakeholders in the agricultural sector lack any useful guidance on contract law.

### CONTRACT LAW AND PRACTICE IN TANZANIA'S AGRICULTURAL SECTOR

As discussed in the 2008 BizCLIR report, in general, freedom of contract exists in Tanzania without significant state interference or overly burdensome regulations. The **Law of Contract Ordinance (Cap. 433 of R.E.) of 1964** outlines the rules for contract formation, obligations, partnership, and consequences of breach of contract. Although dated, the law adequately addresses general contracting issues,

### KEY LAWS AND REGULATIONS

- Common law on contracts
- Law of Contract Ordinance (Cap. 433 of R.E.) of 1964
- Additional laws and regulations pertaining to specific types of contracts, such as crop-related legislation, banking law, microfinance, warehouse receipts, and secured transactions
- Various laws and regulations pertaining to civil procedure and evidence
- Various laws pertaining to legal education and the legal profession
- Land Disputes Courts Act of 2002

concepts, and terminology, such that lawyers, magistrates, judges, bankers, and experienced businesspeople understand what is expected of a fully enforceable agreement between two parties. The law is a cornerstone of jurisprudence in Tanzania and is taught in law schools as a core element of the curriculum.

Less understood, however, are the surprising restrictions on contracts that arise in the agricultural sector. A recent series of value chain analyses by the World Bank has found a number of buying and contracting restrictions on private commodity buyers that seriously limit conditions for entering into contracts.<sup>164</sup> For example, complex and multilayered regulations pertaining to coffee provide highly favorable terms to coffee cooperatives but do not allow private buyers to enter into contracts for the remittance of a quality premium to coffee growers throughout the buying season. Similarly, the practical effect of legislation and regulations pertaining to tobacco, cashews, cotton, sugarcane, and other cash crops is that individual farmers or even farmers' associations are not at liberty to develop their own contracts with potential buyers. Rather, contracts pertaining to so-called cash crops generally are formed between a few large, relatively empowered cooperatives (as sellers) and a similarly small group of domestic or international buyers. These contracts often involve minimum prices set by regulatory boards, from

<sup>163</sup> Internet World Stats, *Internet Usage Statistics for Africa* (2009). Website.

<sup>164</sup> Most of the World Bank's studies on individual cash crop value chains are not yet published, but the bank plans to publish them in 2010.

## RESOLUTION OF LAND DISPUTES: A SEPARATE SYSTEM

The **Land Disputes Courts Act of 2002** provides clear lines of authority and jurisdiction for adjudication of land-related disputes. It precludes any jurisdiction by the Resident Magistrates Courts to hear civil matters involving land disputes (though they might still hear criminal matters brought under the Land Act No. 4 and Village Land No. 5) and instead establishes and defines the jurisdiction of the following courts to adjudicate matters arising under the Land Act No. 4 and the Village Land Act No. 5:

- (1) Village land councils (established in accordance with the Village Land Act No. 5)
- (2) Ward tribunals (established in accordance with the Ward Tribunals Act, 1985)
- (3) District land and housing tribunals (established in accordance with the Land Disputes Courts Act, 2002, in each district, region, or zone of Tanzania)
- (4) The High Court (Lands Division), exercising both original and appellate jurisdiction in certain land disputes
- (5) The Court of Appeal of Tanzania, with jurisdiction to hear appeals from the High Court (Lands Division).

which downward deviation is not permitted. The extent to which these restrictions undermine competition in Tanzania's agricultural sector, and ultimately diminish productivity in the sector, is detailed in this report's chapter on Competing Fairly. For the purpose of Enforcing Contracts, entrepreneurs and investors inclined to seek opportunities in Tanzania's various cash crops must be mindful of the severe limitations on freedom of contract in any subsector involving a crop board. As suggested in this chapter's Recommendations, careful analysis of the contractual restrictions imposed by crop-specific laws is warranted, followed by policy debate over whether they should be sustained.

With respect to noncash crops, agreements to buy and sell between growers and producers and traders and processors are common, but they are typically informal and highly vulnerable to changes in circumstances or heart. They are also rarely enforced. This diagnostic encountered many stories of buyers who arrive at a farm to which they have "fronted" seed, fertilizer, or other inputs to collect on their investments only to find that the product they supported was sold to another buyer. (This problem of "side-selling" is pervasive

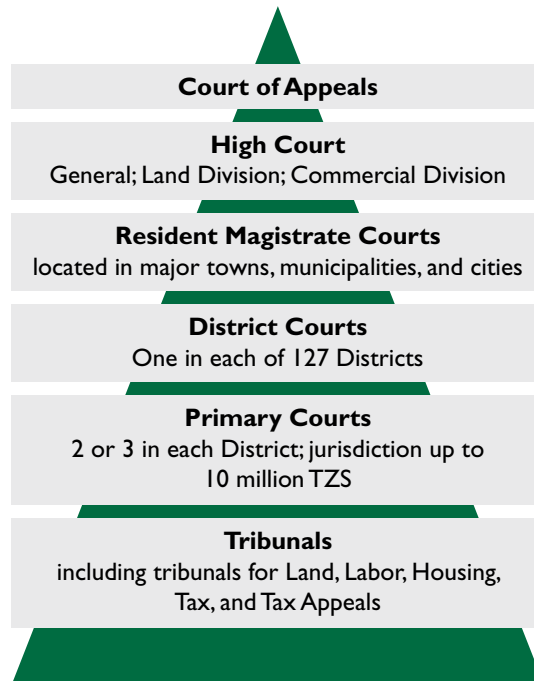
throughout the sector.) Yet few of these smaller and midsize buyers seek to enforce their agreements: the absence of a written contract makes the terms of agreement difficult to prove in court, or the time and other costs involved with enforcement are not worth the effort. Thus, Tanzania's system of agricultural "contracting" on a smaller scale is very close to no system at all, with Tanzania's formal law on contract having little bearing on decisions made by farmers and traders.

In contrast, contracts are critical components of the process (albeit limited) of agricultural lending in Tanzania. Unlike other parties to contracts found in the agricultural arena, banks and other lenders are accustomed to reducing their agreements to writing and enforcing the terms of those contracts in the event of default. As detailed in the Getting Credit chapter of the 2008 BizCLIR report and further developed in this report, Tanzania has a variety of laws that provide for "charges" against loans or the use of collateral, including real property, expectations of future income, bank accounts, and movable property. Notwithstanding the overlapping of these laws and their haphazard implementation, banks have become accustomed to enforcing

them and do so using self-help provisions that allow them to collect secured collateral according to terms set forth in the contract, rather than by a court order (which is often required in other developing economies). Although enforcement against real property is difficult, banks do so regularly, they reported, where the collateral comes in a movable or otherwise easily redeemable form.

### TANZANIA'S COURT SYSTEM

As detailed in the 2008 BizCLIR report, Tanzania's legal system is rooted in the British common law, with some exceptions and modifications to suit local circumstances. The judiciary is headed by the chief justice, with the registrar of the Court of Appeals as the chief executive officer. The principal judge, assisted by the registrar of the High Court, is in charge of the administration of the High Court and the subordinate courts.



For the purposes of the vast majority of Tanzanians (75%) who live outside the country's urban centers, the courts that they will be most familiar with are the Resident Magistrate Courts (located in 26 major centers), the District Courts (one in each of 127 administrative district), Primary Courts (two or three in

each district), and Tribunals, such as land, housing, tax, and labor tribunals, located in various centers throughout the country. In addition to their jurisdiction over criminal law cases, the courts hear some commercial cases of the first instance, as well as some appeals. Tanzania's High Court, with a total of 51 judges in each of its divisions, has jurisdiction to hear any case if it is not specifically assigned to another court by law. The Court of Appeals, comprising 16 judges, is the highest court in Tanzania and may hear appeals from the High Court and Magistrates Courts. The High Court and the Court of Appeals are engaged in efforts to improve automation, streamline their case management practices, and make more of their cases publicly available.

In 1999, the government established the Commercial Division of the High Court of Tanzania to focus on business and commercial disputes. The goal was to provide fast and efficient commercial dispute resolution, improve investor confidence, and facilitate private sector growth. The relative success of the court is attributed to the strength of its judges, who typically bring special commercial expertise to their work. (One positive sign is that Commercial Division judges are regularly promoted out of their court other duties, such as the Court of Appeals or the Attorney General's office). In addition, the commercial division is not bogged down by land disputes, which constitute the vast majority of cases flooding the Resident Magistrate and District Courts and later being appealed to the High Court. Rather, those cases are handled by the High Court's Lands Division, which is notoriously overwhelmed.

In 2009, to cope with the backlog of land cases, the chief justice designated all High Court judges, including those who normally work in the commercial and labor divisions, to also hear Lands Division cases. The division's backlog has not been much reduced yet; the impact on the similarly overstretched Commercial Division remains to be seen. The move has garnered approval

from legal professionals because of the enormous drain on judicial resources land cases present.

As set forth in the box at left, resolution of land disputes takes place through the system of tribunals, rather than dispute resolution processes in place for contracts. A more detailed discussion of this issue can be found in this report's chapter on Registering Property.

## IMPLEMENTING INSTITUTIONS

The 2008 BizCLIR report discusses some of the major implementing institutions for enforcing contracts in Tanzania, including credit information resources, notaries, courts, judges and magistrates, court brokers (bailiffs and process-servers), and mechanisms for alternative dispute resolution. Complementing that discussion, this section discusses implementing institutions that play a key role in Tanzania's regime for enforcing contracts as it pertains directly to the agricultural sector.

Crop boards and cooperatives. As noted, a remarkable amount of authority over the key terms of contracts involving certain crops grown in Tanzania—including cotton, coffee, tobacco, sugarcane, tea, and others—is held by the nation's crop boards. Specific crop legislation mandates that only certain parties—usually cooperatives—can warehouse and sell certain commodities. It also permits crop boards, in consultation with cooperatives and other major market players, to set minimum prices for those commodities. As a result, freedom of contract is removed from those stakeholders, whether buyers or sellers, who may wish to do things differently.

Interviewees for this diagnostic asserted that, for their part, cooperatives are satisfied with the special privileges granted to them by law. Cooperative leaders believe that minimum prices set by the crop boards, with their consultation, are necessary for their members to make a living and that the role reserved for them in Tanzania's agricultural sector is a

### KEY IMPLEMENTING INSTITUTIONS

- Crop boards and cooperatives
- Courts of first Instance: Resident magistrate courts, district courts, and primary courts
- Land tribunals

desirable vestige of the country's former socialist legal structure. "This is the most sensible way I can imagine that the poor man can get forward," one "apex" representative explained.

With little access to information about market-based alternatives or a sense of competing opportunities, farmers of cash crops voice few objections to the powers held by crop boards and cooperatives. At the same time, government support for policies favoring established cooperatives and larger players in a subsector may derive from its interest in promoting greater economies of scale. As one contributor to agricultural policy stated, "We must focus on the growth of larger enterprises."

Through its recent value chain analyses, the World Bank's office in Tanzania has demonstrated that awarding special contracting privileges to cooperatives has the effect of diminishing both productivity and profits. The changes to the cooperatives law, discussed above, have opened up new opportunities for individual farmers and local cooperatives. Whether these changes will result in an opening of cash crops to freer competition and contracting remains to be seen.

### COURTS OF FIRST INSTANCE: RESIDENT MAGISTRATE COURTS, DISTRICT COURTS, AND PRIMARY COURTS

As noted, Tanzania's various courts of first instance are the most likely venue for resolution of contract disputes involving stakeholders in the agricultural sector. Certain aspects of the practice of these courts are worth underscoring:

- For the most part, litigants in the primary and district courts are not represented by lawyers. In fact, primary court rules prevent litigants from having formal representation.

- Tanzania’s lower courts operate under rustic and under resourced conditions. They typically do not have the benefit of reliable electricity, let alone information technology such as modern case management systems or access to the Internet.
- The lower courts similarly have only minimal access to full copies of laws and case decisions by higher courts. They generally do not have libraries that contain current and thorough access to statutes or the case law.
- In the primary courts, the decision makers are in many instances not judges. Rather, they are laypersons charged with decision making or magistrates who were empowered to resolve cases before the law changed in the early 2000s.
- Lower courts maintain very few case statistics, particularly with respect to the type of civil cases they resolve. Thus, very little hard information is available about contractual disputes (other than disputes over land) that come before Tanzania’s lower courts.

Given the lack of significant case tracking and delineation by subject matter, it is impossible to determine the characteristics of the contract-related cases found in Tanzania’s courts of first instance. The dearth of information about how many contract cases are filed and how they are resolved makes assessment of the actual place of contracts in the agricultural sector, particularly among smaller stakeholders, especially difficult. On a pilot basis, analysis of the civil cases flowing through a single primary court or district court would be enormously useful toward gaining a better understanding of the place of the rule of law generally, and contracts in particular, in Tanzania’s agricultural economy.

### LAND TRIBUNALS

In 2002, Tanzania’s Parliament established land tribunals to handle the country’s enormously complex and overwhelmed system of land management. Today, most lawyers and other

individuals having experience with those tribunals are not satisfied with their performance. A typical tribunal will hear “around 70 cases” in a week, according to one lawyer. Beyond issues pertaining to Registering Property, as discussed earlier in this report, stakeholders expressed concern that the current system of resolving land disputes is “very, very insecure,” thus limiting the use of land as collateral for loans or other considerations for contracts. Furthermore, where land is accessed as collateral for a bank loan, enforcement of such a contact must go through the land tribunal rather than the district court or resident magistrate court. Specifically, respondents complained that mortgages are relatively simple contracts that should be easily enforced, without the enormous time it takes to go through the land dispute resolution system. In fact, bank officers indicated far greater confidence in their ability to enforce loans secured by movable property, bank accounts, or future income than those secured by land, because the former do not require resolution through the land tribunals.

## SUPPORTING INSTITUTIONS

The 2008 BizCLIR report discusses some of the major supporting institutions for enforcing contracts in Tanzania, including the Tanganyika Law Society, the system for legal education, and the Law Reform Commission. Complementing that discussion, this section identifies supporting institutions that play a key role in Tanzania’s regime for enforcing contracts as it pertains directly to the agricultural sector.

### THE LEGAL PROFESSION

As noted in the country’s major treatise on its legal profession,<sup>165</sup> there is a “lop-sided distribution of legal practitioners” in Tanzania, such that the vast majority of advocates reside and work in Dar es Salaam and Arusha, with other municipalities and areas represented by just a handful of advocates—or, in some instances, none at all. This reality stems from Tanzania’s recent colonial history, in which Africans were

<sup>165</sup> Faiz Twaib, *The Legal Profession in Tanzania: The Law and Practice*. (2008).

## KEY SUPPORTING INSTITUTIONS

- Tanganyika Law Society
- Law Reform Commission
- Informal legal support in rural areas
- Universities
- Sectoral associations

not even allowed to train as lawyers or become judges until more than midway through the 20th century.<sup>166</sup> The practical impact of this dearth of lawyers in the rural areas—where agriculture dominates the economy—is that useful legal systems, such as the widespread use of contracts, are not supported by a cadre of professionals who could provide guidance and support. The few advocates working in rural areas typically are engaged to handle land disputes and labor cases and only rarely are involved in negotiating or enforcing contracts related to agricultural enterprise.

Judges and magistrates working in the rural areas receive some training, often supported by donor organizations. For example, the association of women judges in Tanzania has long offered training throughout Tanzania in human rights issues and other matters of particular interest to women, such as the rights of women to own property and inherit land.

## INFORMAL SOURCES OF LEGAL SUPPORT IN THE RURAL AREAS

While the supply of lawyers and advocates in the rural areas is insufficient, considerable demand for legal services remains. A number of “solutions” have arisen in response to the deficit. Among them are Tanzania’s longstanding but vaguely understood “bush lawyers”—that is, individuals who may assist illiterate or semiliterate citizen in preparing documents or otherwise seeking to enforce their rights. A significant movement to educate “paralegals” in the countryside has emerged in recent years. Specifically, citizens receive training in various issues affecting underprivileged members of their communities, including women dealing with domestic violence or dissolution of marriage. To date, these

informal services have little to do with creating contracts that may be part of building business relationships and contributing, in the long run, to economic growth.

## AGRICULTURAL EDUCATION

Tanzania’s major agricultural university, based in Morogoro, has a very strong reputation for educating various agricultural professionals, including food scientists, agronomists, livestock experts, agricultural economists, extension officers, and others. There is little academic coordination between agriculture and the law, however, despite the very substantial role that agriculture plays in Tanzania’s economy. Little attention appears to be paid to the use of formal contracts in agriculture, either in agricultural education or legal education.

## SECTORAL ASSOCIATIONS

Throughout Tanzania, a variety of associations represent agriculture-based businesses, including processors, traders, buyers, and chambers of commerce in the rural areas. They range in strength and effectiveness, with stronger groups, such as the Tanzanian Horticultural Association and the Tanzanian Livestock Association, serving their constituencies in various ways, including market information and development, crop support, and representation in Tanzania’s policymaking venues. Again, however, strengthening the use of contracts and respect for contracts does not appear to be on the agendas of the more influential associations. This is interesting, given that problems with contracts—especially “side trading” and other enforcement issues—are a recurring problem for all these groups.

## VALUATION PROFESSIONALS AND AUCTIONEERS

Tanzania has an adequately strong corps of professionals with the expertise to provide valuation and auctioning services. The availability of valuation and auctioning services means that a culture of enforcing contracts is stronger in Tanzania than in those countries where such

<sup>166</sup> *Id.* at 16–39.

services do not exist or where confidence in such services is low. Auctioneers are reportedly permitted to sell movable property within 14 days of providing notice of default to a borrower.

## SOCIAL DYNAMICS

### THE LACK OF A “CULTURE OF CONTRACTS” IN TANZANIA’S AGRICULTURAL SECTOR

Throughout this diagnostic, the issue of contracting in the agricultural sector was cited as a major problem. Primarily, there is little faith that smaller farmers in particular will honor their contacts, both as sellers of goods at previously negotiated prices and as borrowers of money from banks and other credit providers. Buyers of agricultural products are routinely frustrated by “side selling”—the practice of entering into contracts for delivery of goods that are then completely ignored at the time of sale (when the farmer finds a better price). Similarly, lenders have found that smaller farmers are not accustomed to having to pay back the money they are lent, that they regard many loans as grants, and that they often do not use loan money for the purpose for which it is dispersed, thus making it impossible to pay back money when it is owed. As explained by one policymaker, “During Tanzania’s socialist era, lending was badly represented.”

Most farmers in Tanzania are terribly poor. It is thus understandable that they will behave opportunistically about price. That is, a farmer who grows corn, rice, palm oil, tomatoes, or other local products may agree with a buyer at the beginning of the season to sell goods at a certain price. These farmers may even accept seed, fertilizer other inputs, and expertise about best farming practices as part of the arrangement to sell to a certain buyer. But even the most carefully negotiated contract may be disregarded if another buyer arrives with a higher price than the contract price at the time of harvest. Following the contract will be seen as a luxury that a poor farmer cannot afford.

This situation is understandable. However, in many communities what began as necessity has become part of the culture: even relatively prosperous farmers will side-sell because “it’s what everyone does.”

Many buyers of agricultural goods have learned that they will be defeated by fixed-price contracts if farmers can get a higher price later. They also know that it is not enough to agree to purchase the crops when they become available; rather, to harbor any hope of realizing their deal, they must contribute to inputs at the outset. Buyers also find that close monitoring of farmers is a key part of getting them to honor their contracts. Buyers who help to support farm productivity and stay in touch throughout the growing season find that they have a better chance of actually purchasing the goods they have negotiated to buy.

Wariness of taking anyone to court is pervasive, several buyers reported; evidence of broken trust reflects poorly on both sides. A buyer who brings a legal action may be formally in the right, but it may cause other farmers to be very reluctant to deal with him.

As for lenders, they too have found that careful monitoring and communications with farmers are critical if they are to get them to honor their contracts. Larger banks report that, when it comes to agricultural lending, they prefer to direct their monies to smaller lending institutions that can assume responsibility for day-to-day interactions with borrowers, because they are not themselves in a position to take on that responsibility with respect to smaller borrowers.

### WOMEN AND THE COURTS<sup>167</sup>

Although law is generally a male-dominated profession in Tanzania, it is an increasingly valuable avenue for female participation in the economy. Significantly, almost half the country’s lower court judges, as well as the High Court, are women. The general public lacks a full understanding of the rights of women under the law, but the country’s corps of judges and

<sup>167</sup> For additional perspective on women and commercial justice in Tanzania, see IFC, *Tanzania Gender and Economic Growth Assessment* (2007), at 47–51.



magistrates is, in fact, relatively well informed and trained on issues of equality. As more than one lawyer noted, problems of access to rights are far greater outside the courthouse, where most women remain, than inside, where, while not perfect, conditions and awareness of women's right to equal treatment have improved significantly in recent years. The challenge for most women whose rights are challenged is learning about their rights and securing assistance in exercising them.

Nonetheless, addressing issues of interest to women and the law requires far more information about the field. As a threshold initiative, the Tanzanian courts should sponsor a survey of gender issues and the law, seeking far-ranging information about how the Tanzanian courts treat women litigants, the representation of women in the legal profession, the experience of women judges, and so forth. Many models from the United States, Europe, and Arab countries could help inform such a survey.

## RECOMMENDATIONS

**Through a limited review of existing court data, improve understanding of the types of contracts used in agriculture-related transactions and the circumstances of enforcement.**

As noted, there is very little awareness of the extent to which contracts are used in Tanzania's agricultural sector, the rates of default, the conditions under which enforcement is sought, and other key aspects of contracting. Lower courts maintain almost no data concerning the details of their civil disputes. Such information would be very useful in gaining a better understanding how contracting can be strengthened as a source of confidence in the law and as a building block for economic growth.<sup>168</sup> A simple survey of one district court, identifying examples of contract disputes and interviewing parties about their respective experiences, would provide considerable insights into the atmosphere for agricultural contracts generally.



**Produce and distribute a simple guide to the laws of contracting, collection, and enforcement.**

The ability to create and enforce contracts under a clear, consistent legal framework is a critical component of economic growth. Where there is widely held expectation that agreements freely entered into between businesses or individuals will be subject to enforcement by a court or other tribunal, a marketplace can be transformed: what was once mere hope for performance based on a personal relationship or vague insinuation becomes a legitimate expectation of delivery. When business partners are in fact *required* to do what they have said they will do—pay money, deliver goods, provide services, and so forth—risk diminishes, and the recipients of a promise can better plan for the future. With decreased risk, the cost of doing business goes down, thereby elevating the private sector's prospects for profit.

Thus, strengthening the use of contracts in Tanzania is not limited to better access to the contract laws themselves but should also improve a practical understanding among the individuals most likely to benefit from the use of contracts. A practical guide to agricultural

<sup>168</sup> See World Bank, *Doing Business 2007: How to Reform* (2006), at 49 (discussing economic benefits that arise from improved systems of contract enforcement).

contracts should first emphasize why contracts are important and then explain the details of enforcement, particularly where collateral is involved. The simple guide should be accompanied by training to affected groups, including those who are active in farmers' associations or other sectoral groups. The guide could also include simple general contract forms in both English and Kiswahili.

**Analyze the restrictions on contracting imposed by crop-specific laws, the warehouse receipts law, and other agricultural legislation.**

The World Bank's analysis of value chains has highlighted some very surprising facts about agricultural contracting in Tanzania—namely, that with respect to cash crops, there is considerably less freedom of contract than what should be expected in a free-market economy. This restriction on contracts should be further developed and submitted to sectoral associations for their review, comment, and action.

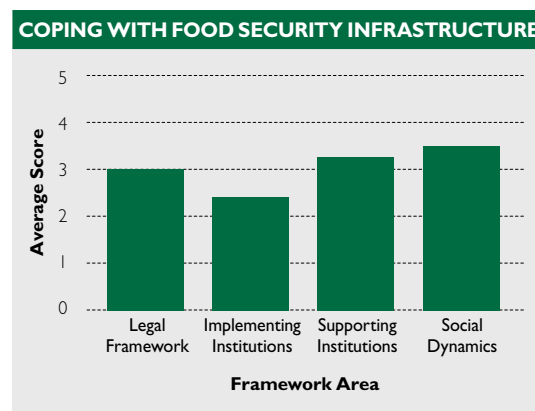
**Encourage law faculties and the new school for advocates to include agricultural issues in its curriculum.**

Lawyers tend to agree that the quality of the contracts in the agricultural sector is poor, when they exist at all. Not enough information or detail about respective risks is set forth in the documents. Accordingly, law faculties should improve their teaching of contracts, requiring students to practice drafting them and even conducting mock hearings over breach of contract. The training should address the types of contract that may arise in the agriculture sector, including (1) the purchase of input supplies, including seed, fertilizer, and farm chemicals by individual small farmers or their producer associations; (2) credit provided by input suppliers; (3) the prearranged sale of farm products; and (4) secured transactions involving movable agricultural equipment. The bar association should help develop systems for form contracts, as well as train lawyers in improved construction of written contracts on behalf of their clients.



## COPING WITH FOOD SECURITY INFRASTRUCTURE

A well-developed and properly managed infrastructure is important for economic development *and* food security. Sufficiently crafted and maintained infrastructure enables efficient movement of goods across borders and within a country, thus reducing the costs of trade, opening up markets, and enabling economic participation from the greatest number of citizens.



Tanzania's lack of infrastructure development, maintenance, and management has contributed to its food insecurity and will prevent it from achieving higher levels of food security in the future.<sup>169</sup> With roughly 80% of the population relying on subsistence agriculture for its livelihood, the government of Tanzania has acknowledged that improvements in infrastructure, including port operations, rail and road transportation, postharvest storage, and market information, are critical to national economic development and increased food security.<sup>170</sup>

This chapter focuses on the infrastructure critical to Tanzania's food security and agricultural development, including maritime, ground transportation, postharvest storage, and food security information. This study is not comprehensive but aims to capture the most critical elements of food security infrastructure.

The year 2009 was a difficult year for food security infrastructure in Tanzania because

### FOOD SECURITY INFRASTRUCTURE CHALLENGES

- **Dar es Salaam Port:** Inefficient operations cause substantial delays in offloading and clearing. Congestion task force concentrating on containerized cargo leaving out commodity products such as cereals, fertilizer, vegetable oil, and fuel.
- **Tanzania Railway Ltd.:** Dissolution of the concession agreement with RITES of India has left the central railway all but inoperable.
- **Feeder Roads:** The number of paved feeder roads is abysmally low, and the process for development is plagued with a lack of transparency.
- **Postharvest Storage:** Postharvest losses are now estimated at 35 percent, due in large part to the lack of proper storage. Smallholder farmers are forced to sell at harvest when prices are lowest.
- **Food Security Information:** Informal information networks are available to the commercial farmers, but the agricultural community at large still lacks value-added information that would support production, distribution, and marketing.

of extreme rains that destroyed the rail link between Dar es Salaam port and Dodoma and the dissolution of the concessionaire agreement between RITES of India and Tanzania Railway Ltd. However, the introduction of Kilimo Kwanza, a Tanzanian born effort aimed at bringing about an agricultural revolution in the country, may bring some much required follow through to the country's infrastructure and food security needs.

169 "FEWS NET," Famine Early Warning System Network, Web.

170 Kilimo Kwanza (2009). Agricultural Sector Development Programme (ASDP) Framework and Process Document (2002). National Strategy for Growth and Poverty Reduction (MKUKUTA) (2006).

## LEGAL FRAMEWORK

### KILIMO KWANZA

Kilimo Kwanza, which means “Agriculture First” in Swahili, is a strategy launched by Tanzanian President Kikwete in 2009. It is aimed at energizing and coordinating government efforts to bring about a transformation of agriculture in the country. The strategy is based on 10 pillars, each of which will require political will, long-term financing, and regulatory reform to be successful. Proponents of the strategy say that it is different from the other initiatives, such as Kilimo ni Uti wa Mgongo wa Uchumi’ (Agriculture is the backbone of the economy), Kilimo ni uhai (Agriculture is life) and Kilimo cha kufa na kupona (Life or death agriculture) because it is Tanzanian born and not reliant on donors or foreign direct investment for success. Critics say that it is not different from previous programs and is simply being used for political aims with an eye toward Tanzania’s 2010 elections.

The initiative will focus on many issues, including providing inputs and strengthening the National Food Reserve Agency’s food reserve, as well as improvement of the rural road network, irrigation and storage facilities.<sup>171</sup>

Pillar 9 of Kilimo Kwanza addresses Infrastructure Development, including:

- Irrigation schemes
- Establishing adequate postharvest storage at all levels
- Implementing the Tanzania Port Authority Master Plan
- Finalizing construction of the Mwanza Airport runway extension
- Completing construction of Mbeya, Iringa, and other airports, including cold storage facilities for horticultural exports
- Completing the national fiber optic network by 2012
- Improving the railways and road systems
- Constructing modern abattoirs and meat processing plants
- Establishing market centers at ward levels

### KEY LAWS AND REGULATIONS

- Kilimo Kwanza
- Food Security Act (1991)
- Executive Agency (National Food Reserve Agency) (Establishment) Order (2008)
- Warehouse Receipts Act (2005)
- Disaster Relief Coordination Act (1990)
- Surface and Marine Transport Regulatory Authority Act (2001)
- Ports Act (2003)
- Railways Act (2002)
- Tanzania-Zambia Railway Act (1995)
- Water Supply and Sanitation Act (2009)
- Statistics Act (2002)

- Allocating adequate resources to the Rural Energy Fund.

The aims of Kilimo Kwanza are large and broad. Although the supporting documentation has roles, responsibilities, and timelines for completion, the plan lacks substantive detail and clear funding sources.

### AGRICULTURE SECTOR DEVELOPMENT PROGRAM (ASDP)

The Agriculture Sector Development Strategy and Program, introduced in 2001 and 2002, respectively, are managed by the Ministry of Agriculture and Food Security. It is a sector-wide framework for managing the institutional, expenditure, and investment development of the agricultural sector. ASDP does not replace existing planning and implementation mechanisms; rather, it facilitates the process, emphasizes priorities, and monitors the overall progress. The program covers a range of priorities, including irrigation and water management, better land husbandry, mechanization, storage and postharvest, agro-processing, community empowerment, agricultural information, and many others.

The ASDP acknowledges that key constraints to achieving Tanzania’s agricultural growth targets, including high transaction costs due to the poor state or lack of infrastructure, particularly rural roads.<sup>172</sup> It has stated as a program

<sup>171</sup> Sujata Jaffer, “Kilimo Kwanza Prepares Ground for Future Prosperity,” *The East African* [Nairobi Kenya] 15 June 2009.

<sup>172</sup> Agricultural Sector Development Programme (ASDP) Framework and Process Document (2002).

objective to improve the quality and quantity of public investment in physical infrastructure through more devolved, technically sound planning and appraisal.

Although the ASDP results framework tracked development objectives against established ASDP indicators, all efforts to find official progress reports against these measures by the AgCLIR Team were unsuccessful. This failure connotes a trend in which the plans for development are adequate but the implementation, monitoring, and evaluation are unsuccessful.

### **NATIONAL STRATEGY FOR GROWTH AND REDUCTION OF POVERTY**

The National Strategy for Growth and Reduction of Poverty (NSGPR or MKUKUTU) is another national organizing framework that puts poverty reduction high on the national agenda. It is informed by the aspirations of Tanzania's development vision (Vision 2025) for high and shared growth, high-quality livelihood, peace, stability and unity, good governance, quality education, and international competitiveness.<sup>173</sup>

The strategy addresses the need to bring rail, marine, air, and road transport networks to international standards and places that responsibility with the central government. Community involvement is also important where smaller-scale labor-intensive projects (such as feeder road development) can be implemented. Furthermore, promotion of public-private partnerships will be promoted as part of the strategy.

Much like the other initiatives, this one has been criticized for lack of implementation. According to TaKNet, a joint initiative by the United Nations through its joint Programme on Capacity Development for Development Management, the strategy has a "lack of strategic resource allocation," does not acknowledge the informal business sector (estimated at 3 million businesses), and did not address population growth and changing demographic patterns.

### **MARITIME**

The Port of Dar es Salaam, the largest of several oceanic and lake ports, is a key component of Tanzania's economy, accounting for approximately 70% of its foreign trade and representing a critical node for commerce between Tanzania and other countries. The Port of Dar es Salaam is not only the primary oceanic port for Tanzania but also the closest major port for part or all of the neighboring landlocked countries of Rwanda, Burundi, the Democratic Republic of Congo, Zambia, and Malawi. The Port of Dar es Salaam, three other major seaports (Tanga, Mwatara, and Zanzibar), secondary seaports and inland waterways ports are under the control of the Tanzania Ports Authority.<sup>174</sup>

The Tanzania Ports Authority is the owner of the port assets of the country and is charged with operating the ports. The authority is an independent entity of the government. It was established in 2005, through the Ports Act of 2003, which became effective in July 2006.

The law is comprehensive and supports port efficiency. The container port operations at the Port of Dar es Salaam are currently managed and operated by a private concessionaire, the Tanzania International Container Terminal Services.

### **RAILWAYS**

Tanzania has two railroad systems, the Tanzanian Railway Corporation (TRC) network, which operates wholly in Tanzania and is the larger of the two, and the Tanzam Railway (TAZARA), built and operated by the Tanzania-Zambia Railway Authority. TAZARA is jointly owned by the governments of Tanzania and Zambia. Each railroad system is governed by its own set of laws. The Tanzania Railway Corporation is governed by the Railways Act (Rev. 2002) and specifically excludes application to TAZARA; TAZARA falls under the Tanzania-Zambia Railway Act (1995, repealing and replacing the act of 1975).

<sup>173</sup> National Strategy for Growth and Poverty Reduction (MKUKUTA) (2006).

<sup>174</sup> Tanzania's Agenda for Action. Business Climate Legal and Institutional Reform. USAID, Tanzania, (1 February, 2008).



### TANZANIA RAILWAY CORPORATION

The Railways Act allows for the fully government-owned and -operated railroad to be split into two or more entities—an asset-holding company and one or more operating companies. The act allows for and creates a corporation, the Reli Assets Holding Company Limited, to own, control the assets of, oversee operation of, and, in the event of necessity, operate the railroad. The holding company is charged with providing, developing, and managing rail infrastructure assets, as well as entering into agreements for rail service by “concession, joint venture, public, private partnership, and to this end to delegate its own function of providing rail transport services to one or more railway operators” (Railways Act, 2002, Part II, 6 (d)). A 25-year concession agreement with a railroad operator was signed in 2007, led by RITES of India, through a new company, Tanzania Railways Limited.

As January 2010, the government of Tanzania decided to revoke a 25-year agreement with RITES because of poor management, performance, and disputed expenses. The 100-year-old railway is plagued with dilapidated tracks, rail stock, and facilities. This dissolution has affected Tanzania’s food security in that the World Food Programme, which has traditionally

used the Central Line to provide food aid to the north and east of Tanzania and neighboring countries, must now ship by road, which reduces available funding for food and agricultural inputs.

### TAZARA

The Tanzania-Zambia Railway Act (Rev. 1995) effectuates the agreement between the governments of Tanzania and Zambia for the railroad that operates between and within Tanzania and Zambia. The act outlines the agreements between the two governments and the responsibilities of the Tanzania-Zambia Railway Authority to operate, maintain, and expand the railroad and its assets.

The law identifies the authority as the operator of the railroad and makes no explicit provision for concessionaire agreements, joint ventures, or other public-private partnerships for railroad operations, although it does say that the authority may “enter into partnership or into any arrangement for sharing profits....or engag[ing] in, any business or transaction which the Authority is authorized to carry on or engage in.”

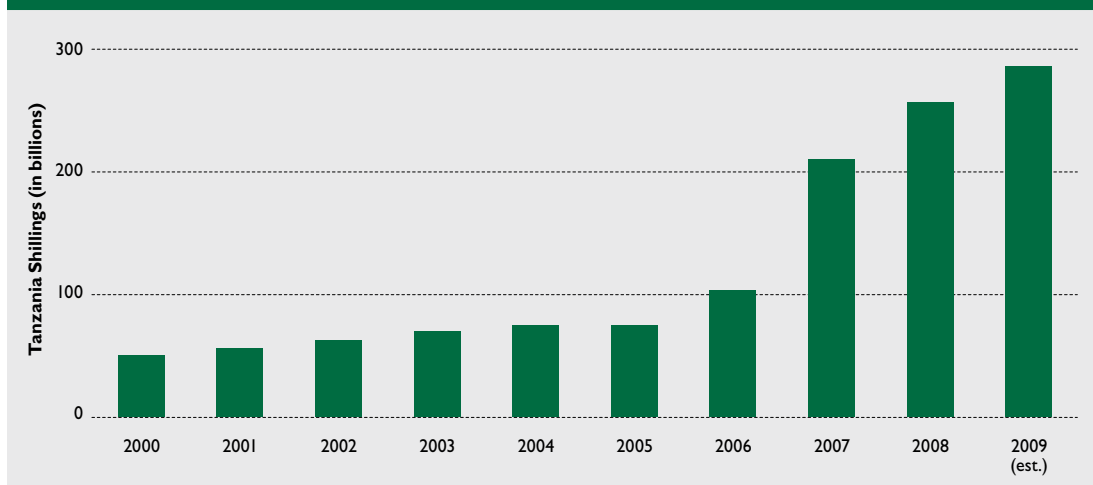
Despite the lack of encouraging legislation, the government is seeking private sector participation in, or privatization of, TAZARA, although the process is more complex than the private sector participation achieved in the Tanzania Railways Corporation because of the dual-state ownership of the Tanzam Railway. During October 2008, a Tanzanian newspaper described the railway’s condition as being “on the verge of collapse due to financial crisis,” with the company being three months late on paying workers’ wages and most of its 12 locomotives being out of service.<sup>175</sup>

### ROADWAYS

For years, minimal investment in paving and building new roads was compounded by a lack of maintenance of existing roads. As of 2006, a survey on rural roads indicated that only about 10% of rural roads were passable throughout

175 “Save the ‘Uhuru Railway’ from Collapse,” *This Day*, (29 October 2008).

### TANZANIA REVENUE COLLECTED PER FINANCIAL YEAR



the year. Missing drainage structures and bridges pose a major problem in rural transportation, thereby causing high transaction costs, which act as a disincentive to producers, transporters, and traders.

Recently, however, substantial improvements have taken place in the roadway system. The government deems the rehabilitation and development of the country's roadway system as central to its economic development. Thus, the Road Fund and a board were established by Statutory Instrument No. 11 of 1998 under the Roads Tolls (Amendment) (No. 2) Act of 1998. The board is charged with collecting, disbursing, and monitoring the road funds. At least 90% of the funds are to be used for maintenance and repair of mainland Tanzania roads while the remaining 10% is for road development and administrative expenses.

The Road Fund receives funding from fuel levies on diesel and petrol, transit fees, vehicle over-loading fees, and fees from any other source at the rate to be determined by Parliament from time to time.

Revenue from the fuel levies accounts for more than 90% of total revenue.

Interviewees at the district government level cited delays in the delivery of funds, which negatively affected development of local roads and maintenance projects. A member of the District Commissioner's Office in Arusha cited examples of road funds' coming in at the 11th hour and the challenges in contracting and implementing such delays posed.

A closer look at the Tanzania Road Network length and distance paved versus unpaved shows the extent at which additional paving is needed.

### THE LENGTH AND DISTANCE PAVED OF TANZANIA'S ROAD NETWORK

Road Category	Paved (km)	Unpaved (km)	% Paved	Total (km)
Trunk Roads	3,917	6,027	65%	9,944
Regional Roads	327	18,629	2%	18,956
District Roads	0	29,537	0%	29,537
Feeder Roads	0	21,191	0%	21,191
Urban Roads	790	5,107	15%	5,897
<b>TOTAL</b>	<b>5,034</b>	<b>80,491</b>	<b>6%</b>	<b>85,525</b>

Source: Road Subsector Maintenance Financing and Strategies for year 2007/2008 to year 2011/2012 by Roads Fund Board, March 2007.

## POSTHARVEST STORAGE

Official numbers on the rate of postharvest losses are not published, but the consensus among interviewees was that it ranges from 25% to 35% across Tanzania. As previously stated, macroeconomic initiatives such as Kilimo Kwanza, Agricultural Sector Development Program, and the National Strategy for Growth and Reduction of Poverty have identified the vital role that storage plays in Tanzania's food security and agricultural development. This role includes the ability of the National Food Reserve Agency to meet its reserve requirements, reduction in postharvest losses, and enabling the smallholder farmer to better preserve his crops for subsistence and sale when prices have risen. In addition to increasing agricultural productivity, Tanzania must focus on protecting what is already being produced, and postharvest storage is a key factor in doing so.

## NATIONAL FOOD RESERVE AGENCY (NFRA)

The Executive Agency (the National Food Reserve Agency) (Establishment) Order, 2008 first came into effect in July 2008 and established the National Food Reserve Agency, which took over functions previously performed by the Strategic Grain Reserve Unit of the Ministry of Agriculture Food Security and Cooperatives. The main role of the agency is to procure and reserve food stocks and respond to food shortages as directed by the Prime Minister's Office of Disaster Management. This responsibility is an expanded role from the Strategic Grain Reserve, which focused only on maize grain. However, to date, the NFRA has also dealt only in maize grain because of funding and operational constraints.

The NFRA's objectives are to maintain a national optimal level of food reserve to address local food shortages, provide additional market opportunities for smallholder farmers, and respond to immediate emergency food requirements. Unlike its previous incarnation, the agency should be run as a well-managed, business-like agency.<sup>176</sup> The NFRA is to use

its expertise in procurement, transportation, warehousing, and distribution to raise at least 10% of the operating capital per year.

Performance criteria are part of the agency's responsibilities. Of particular note are the requirements for quality of service, operational efficiency, and financial performance. Quality of service mandates that the NFRA provide high-quality food commodities that are compliant with national and international obligations (standards) as well as in-house monitoring and evaluation for improvement of service. The NFRA is expected to achieve operational efficiencies such as improvement of the cost-revenue ratio and timely delivery of service. Financial performance measures include clean audit reports, timely and accurate reporting, and prompt collection of revenues.

Conflicting directives from within the government inhibit the NFRA from implementing its planned activities. These directives include setting selling and buying prices and giving instructions where to procure and when to sell grains. Political decisions may also appear unpredictable and capricious and may cause the agency to pursue uneconomical ventures. These factors have significant negative impacts on the agency.<sup>177</sup>

Further, the agency has never met its targets because of budget constraints, delays in disbursement of procurement funds, and funds not being disbursed as expected.

The agency has been charged with what appears to be a hefty responsibility, including increasing operational capabilities and management information systems and developing a culture of "business" that has not existed—all the while accomplishing these objectives on a limited operational budget. If the NFRA is to succeed in its mission, resources will need to be aligned with the agency's authority and responsibility.

## WAREHOUSE RECEIPTS ACT (2005)

The Warehouse Receipts Act of 2005 lays a foundation for how Tanzania can address the high rate of postharvest losses.<sup>178</sup>

176 The Executive Agency (The National Food Reserve Agency) (Establishment) Order, 2008.

177 Tanzania, National Food Reserve Agency. Director. National Food Reserve Agency Strategic Plan, 2007/08 – 2009/10. Dar es Salaam, 2008.

178 Other benefits of warehouse receipts programs include short-term financing and risk management; however, for the purposes of the Food Security Infrastructure section, we will focus on the warehousing aspects of the programs.



The act established the Warehouse Licensing Board and endowed it with the responsibilities for licensing warehouses, warehouse operators, and inspectors and for approval of negotiable warehouse receipts books; it also carries out or performs other functions as required by the act.

The act appears complete in that it addresses the Licensing Board and its financial provisions, procedures, warehouse receipts, the rights and obligations of the warehouse operators, negotiation and transfer of warehouse receipts, penalties, and miscellaneous provisions.

Warehouses and warehouse operators must be approved by the board to issue warehouse receipts. General warehousing, for the sake of providing postharvest storage facilities for farmers, is not covered in the act and not regulated.

The Warehouse Receipts Act does not set standards or provide details on warehousing structures or the weights and measures standards by which receipts will be issued. This issue draws attention to a larger problem found in our review: that is, is the lack of adherence to standard weights and measures in the agricultural value chain and the frequent use of incompatible weights and measures between traders and smallholder farmers, which are to the benefit of the trader.

## FOOD SECURITY INFORMATION

The role that food security and marketing information play in enabling government, donors, and private sector participants to make informed decisions that ultimately affect the overall food security situation in Tanzania cannot be understated. No legal framework in Tanzania addresses food security information or agricultural marketing information.

## DEPARTMENT OF FOOD SECURITY

The Food Security Act of 1991 established the Department of Food Security, which resides under the Ministry of Agriculture, Food Security and Cooperatives. The department is responsible for advising the government on

food security policies; initiating, undertaking, and participating in the collection, preparation, and production of data on food security; and performing other key duties that ensure appropriate and speedy response to food security problems.

While the collection, preparation, and production of data on food security are mentioned explicitly, it was not possible to locate regular updates on the food security situation produced by the department.

## DISASTER MANAGEMENT DEPARTMENT

The Prime Minister's Office oversees the activities of the Disaster Management Department. The department was established under the Disaster Relief Coordination Act, No. 9 of 1990. Its functions are coordination and operations as well as planning and research. The legislation makes no provisions for food security information, and it was not possible to locate any information that it has developed and made available on food security in Tanzania.

## IMPLEMENTING INSTITUTIONS

### MARITIME

The Port of Dar es Salaam is critical to the Tanzanian economy and plays important economic role in serving Burundi, Kenya, Malawi, Rwanda, Tanzania, and Uganda. The port is responsible for 95% of Tanzania's international trade and is a major entry point for agricultural inputs such as fertilizer and seed as well as for irrigation equipment and other machinery required for commercial farming. The port is also the entry point for all World Food Programme activities in the region,<sup>179</sup> which comprise mostly food commodities with total tonnages for the region just short of 500,000 metric tons during 2005–2009.<sup>180</sup>

The port currently suffers from severe congestion of containers at the terminal and container

<sup>179</sup> Region is defined as Tanzania, Burundi, DRC Congo, Rwanda, and Uganda.

<sup>180</sup> Based on WFP Dispatch Report for the period 1 June 2004–31 December 2009.

ships queuing at the outer anchorage. This congestion is the culmination of several factors:

- A complex and bureaucratic documentation and taxation process
- Insufficient railway services
- Limited space in the port
- Antiquated or insufficient port unloading equipment.

A snapshot of the peak period of congestion at the container terminal showed

- Ten to twelve ships were waiting at the outer anchorage.
- Ship waiting time had reached 21 days.
- Dwell time of containers was approximately 25 days.

Because the railway infrastructure and rolling stock serving the port are inadequate, shipping agencies must use trucks to transport cargo. The large number of trucks entering the port contributes to traffic downtown, and many trucks can be seen lined up outside the port waiting to enter. Trucks now have restricted hours to access the port to relieve street congestion in the area.

A committee composed of members from a number of relevant agencies and representatives of the private sector (including TRA, SUMATRA, TICTS, TAFFA, TATO, TRL, TAZARA, TZSAA, TISCAN, and ICDs) are addressing the congestion issues. The committee first met in January 2009 and since that time has held 19 meetings. It has focused on two main goals: reducing dwell time of containers and improving productivity of container terminal operations.

The committee has succeeded in making some improvements, especially in dwell time and the movement of containers. (For a detailed discussion, see the chapter on Trade across Borders.) However, several interviewees believe that the committee is concentrating only on containers and not on other, more common, cargo such as cereals, fertilizer, clinker for cement, vegetable oil, and diesel—all items that have a greater

#### KEY IMPLEMENTING INSTITUTIONS

- Port of Dar es Salaam
- National Food Reserve Agency (NFRA)
- National Milling Company
- Disaster Management Department, Prime Minister's Office
- Ministry of Agriculture, Food Security, and Cooperatives

impact on food security. We also received feedback that most stakeholders would not dare to criticize the Port Authority publicly.

The World Food Programme's activities have also been affected by the inefficiency of the port in that it is required to increase the amount of prepositioning in country to mitigate the likelihood that there will be delays of up to 21 days on food aid shipments routed through Dar es Salaam.

The two other major seaports in Tanzania besides Dar es Salaam, although these are significantly smaller, are Tanga and Mtwara. Tanga is a shallow port and operates at approximately 75% capacity. Mtwara is a seasonal port, used generally for agricultural exports, and suffers from poor landside access. No railway serves Mtwara, and the road leading south from the port is paved for only about 25 kilometers from the port. There are also smaller seaports and numerous ports inland.

#### RAILWAYS

Tanzania has two railroad systems, Tanzanian Railways Limited (TRL) and TAZARA, the Tanzania-Zambia railway. TRI is the larger of the two systems and represents the network of tracks from Dar es Salaam leading northward and westward. The system comprises approximately 2,700 track kilometers, operating on meter gauge railways.<sup>181</sup> TAZARA operates from Dar es Salaam and serves points to the southwest and into Zambia. TAZARA comprises approximately 1,800 track kilometers, with 980 kilometers in Tanzania (and the remainder in Zambia, terminating at Kapiri

<sup>181</sup> Also referred to as narrow-gauge railways.

Mposhi), operating on a 1,067-millimeter gauge. Different gauges (as well as being separate operating companies) do not allow the railroads to share or swap equipment. However, the two systems do meet at two locations, at Kidatu and at the Port of Dar es Salaam.

The railroads are in poor condition. Germany built the TRL before World War I. Rail, wayside infrastructure, and rolling stock are all in bad repair. TAZARA was built in the 1970s; the rails are in working order, but, like TRL, suffer from inadequate and insufficient rolling stock. As a result, both railroads have limited and unreliable service. These problems are particularly pressing at the Port of Dar es Salaam, where incoming cargo that can be more efficiently and more cheaply shipped by rail is instead shipped via trucks, adding additional pressure on the nation's roadway system. On the critical Central Line, which connects Dar es Salaam with Dodoma, TRL used to operate seven trains per week; currently there is no service between these cities, only service between Dodoma and points north.<sup>182</sup>

In January 2010, the government of Tanzania decided to revoke a 25-year concession agreement to manage and operate TRL with RITES of India because of poor management, performance and disputed expenses. The 100-year-old railway is plagued with dilapidated tracks, rail stock and facilities, much of which was to be the responsibility of RITES to repair. Interviewees stated that before RITES took control in 2008, maintenance had all but stopped and that the rolling stock and wayside facilities had become dilapidated. Two interviewees said that pilferage also became a major problem once RITES took over, although the reasons for this are unclear.

Also in January 2010, Tanzanian President Kikwete directed the Ministry of Infrastructure Development to rehabilitate the roads and railways damaged by floods in various regions, especially the railway from Dar es Salaam to Dodoma. The president told the Ministry to cooperate with the Tanzania People Defense Forces to

restore the damaged infrastructure. "Our economy will collapse if we do not quickly restore the infrastructure, especially railways," he said during a meeting held at the State House to discuss the damage caused by the floods and what needs to be done to fix the roads and railways.<sup>183</sup>

These challenges have affected national food security in several ways. Agriculture and related cargo can not be cheaply transported throughout the country. Commercial and smallholder farmers suffer from an increased cost of inputs (e.g., fertilizer), which reduces margins and yields. This inefficiency also increases the overall cost of food to consumers in all markets. Furthermore, farmers have even less access to markets when the railway is not functioning. The dilapidated railway has also affected food aid programs, given that money spent on transport reduces the amount of food aid available for distribution. Many interviewees expressed concerns about timeliness of delivery and security.

## ROADWAYS

The total classified road network in Tanzania Mainland is estimated to be 86,472 km.<sup>184</sup> The Ministry of Infrastructure Development through TANROADS is managing a road network of about 29,847 kilometers comprising 10,601 kilometers km of trunk and 19,246 kilometers of regional roads. The remaining network of about 56,625 kilometers of urban, district, and feeder roads is under the responsibility of the Prime Minister's Office for Regional Administration and Local Government.<sup>185</sup>

Because of the decrepit condition of the railways, the roadways are the best way to move agricultural commodities and inputs throughout Tanzania. Improvements to the trunk and regional roads continue to be made using donor funds, such as the grant aid project by the government of Japan worth US\$40 million for the improvement of the Masasi-Mangaka Road phase III, which will aid in the transportation of agricultural products such as cashew nuts from the southern regions to the Dar es Salaam and Mtwara ports and help link the inland and the

182 Tanzania's Agenda for Action. Business Climate Legal and Institutional Reform. USAID, Tanzania (1 February 2008).

183 "Tanzania: JK Directs Ministry to Rebuild Roads," *The Citizen* (27 January 2010). <http://www.thecitizen.co.tz/>.

184 Road Act (2007).

185 Tanroads. See <http://www.tanroads.org/>.

coastal regions, Tanzania and Mozambique via the Unity Bridge.<sup>186</sup>

However, many challenges still prevent agricultural and other commodities from moving easily and affordably into, out of, and within Tanzania. Key troubles plaguing the roadways include:

- Excessive and recurring nontariff barriers such as roadblocks and weighbridges (and the ensuing bribes)
- Poorly calibrated weighbridges across the road network, which cause additional delays and create opportunities for bribes
- Burdensome and time-consuming clearance processes at borders, creating additional costs and risks for sellers of perishable products
- Theft and physical danger to drivers at night
- Unpaved feeder roads that are impassable during the rainy season and add time and expense at all other times.

Lack of road maintenance has also had a negative impact on the economy. The losses to the economy through the roads sector are estimated at TSH603 billion (equivalent to US\$564 million) annually, which is over 6% of gross domestic product. Losses are through increased vehicle operating costs and increased transit times and fuel consumption.

District and feeder roads face the most formidable development challenges in Tanzania's road sector. A total of 29,537 kilometers and 21,191 kilometers, respectively, of district and feeder roads exist—none of which are paved.<sup>187</sup>

The funding and management of paving feeder roads are led at the district level. Feeder road development proposals are to be created in the villages and then integrated into an overall district TANROADS plan, which is then presented to the regional road board. The board—which is made up of Parliament, council chairmen, mayors, transport and production sector associations, the regional commissioner, TANROADS regional manager, executive level engineers,

district commissioners, and the district municipal director—all attend these meetings and vote on the plans. Once the plans are approved, the regional commissioner's office presents them at the national level for funding. Reportedly, this process is not understood by most, even many of those within the District Commissioners offices. It is critical that those least likely to understand the need for and process of developing feeder roads participate in the decision making. Interviewees and the roundtable participants expressed concern that the amount of funding that was approved, allocated, and committed to their road projects was actually used for building and reconstruction.

## POSTHARVEST STORAGE

Adequate storage is an essential element of the agricultural supply chain; without it, crops are damaged, quality is compromised, and value is lost at each step of the chain, from production to market. Postharvest losses in Tanzania are recognized as a serious problem, and it is estimated that losses are in the range of 25–35% of yields.<sup>188</sup> Postharvest losses and storage are addressed in the Agriculture Sector Development Program, is part of pillars 7 and 9 of Kilimo Kwanza,<sup>189</sup> and is also being addressed by the Warehouse Receipts Act of 2005.

In spite of the policies, goals, and funding set forth by the government of Tanzania, there is still a dearth of appropriate postharvest storage options (including cold chain for horticulture and other highly perishable products) for smallholder and commercial farmers and for traders around the country, whether funded by the government, donors, or the private sector. We were not able to gather any statistics about the official number of warehouse facilities, their capacity, location, commodity types, or credits issued through the Warehouse Receipts Program.

Evidence suggests that the private sector is stepping in where the government has failed. A grain miller in Arusha, for example, has plans to build silos that will either be used for a warehouse receipts program or simply warehousing for a

<sup>186</sup> "Tz Gets \$40m for Road Improvement," *East African Business Week* (5 December 2009).

<sup>187</sup> Road Subsector Maintenance Financing and Strategies for year 2007/2008 to year 2011/2012. Roads Funds Board, March 2007. See <http://www.roadfundtz.org/web/index.asp>.

<sup>188</sup> This figure is the consensus based on interviews with smallholder and commercial farmers, traders, GoT officials, and donors. The team was unable to locate any official statistics.

<sup>189</sup> Pillar 7—Industrialization of Kilimo Kwanza, Section 7.3.2—Management of post-harvest losses, (1) establish district food storage facilities; (2) promote private sector investments in cold storage facilities for perishable and other commodities; (3) train farmers on proper storage and the management of agricultural products; and (4) promote investments in food fortification to improve nutritional value.

fee to farmers and traders. He has purchased the land and is making development plans. A similar plan was also being developed by a small food processor in Dar es Salaam, where she had already commissioned architectural drawings and was looking for affordable financing.

### **THE NATIONAL FOOD RESERVE AGENCY**

The NFRA, while not charged directly with providing storage facilities for the agricultural value chain, does have ownership of 241,000 metric tons of grain storage capacity in the form of silos, go-downs, and general warehouses. The agency has a requirement to maintain three months of grain reserves (equivalent to 150,000 metric tons), which means it would have a minimum of 91,000 metric tons of excess grain storage capacity.

Undercapitalization has been a chronic issue for the agency (and for its predecessor, the Strategic Grain Reserve). Because of this problem, it has been unable to fulfill its obligations of maintaining the required three-month supply or maintain its warehouses, which are suffering from years of neglect, including leaking roofs that prevent the warehouses from being used in the rainy season.

### **NATIONAL MILLING COMPANY**

Originally found in 1976 as a result of drought of 1973–1975, the Strategic Grain Reserve was managed through the National Milling Corporation, where it remained until 1991. The company was responsible for procurement, milling, storage, and distribution of the Strategic Grain Reserve, for which its facility in Dar es Salaam has 28,000 metric tons of silo storage and 12,000 metric tons of go-down storage capacity. The company also owned and managed additional storage around Tanzania, but most of that was sold during privatization and is no longer being used as storage.

The National Milling Company is currently renting out its facilities to a private grain processor that has recently installed modern milling

equipment and is using roughly two-thirds of the overall storage capacity of 40,000 metric tons. At times, the company has rented out storage space to other customers but does not maintain any long term contracts. Excess storage capacity regularly exists in the company's infrastructure.

### **FOOD SECURITY INFORMATION AND THE DISASTER MANAGEMENT DEPARTMENT**

The Prime Minister's Office oversees the activities of the Disaster Management Department, which plays a key role in the collecting and dissemination of food security information. It was established under the Disaster Relief Coordination Act, No. 9 of 1990. Along with the establishment of the department, the Tanzania Disaster Relief Committee was created to oversee and coordinate the activities of the government on matters related to prevention, preparedness, and response to all disaster management (including food security) in the country.

In collaboration with other partners such as the World Food Program and the Famine Early Warning System Network, the Disaster Management Department carries out research on issues related to disaster and food security, collects and maintains data, provides mapping of vulnerable areas, develops strategies for resource mobilization, plans and conducts public awareness programs, carries out rapid damage and needs assessments, and performs monitoring and evaluation.

### **MINISTRY OF AGRICULTURE AND FOOD SECURITY**

The Ministry of Agriculture Food Security and Cooperatives publishes the *Basic Data Booklet*, which provides information on Tanzania's agriculture sector. It is intended for policy- and decision makers and other planners. Data included cover area, production, and yield for food and cash crops; agriculture and the domestic economy; rainfall; and agricultural input. Other information is available on crop prices and land-cover distribution.

Publicly available information on food security (both analysis and monitoring) is limited to the Ministry's website. There, food security is addressed in documents such as the "Agricultural Sector Development Strategy and Program" and the "Poverty Reduction Strategy Paper," but it is not addressed in the agricultural statistics portion of the website.<sup>190</sup>

## SUPPORTING INSTITUTIONS

### MARITIME, RAILWAYS AND ROADWAYS

Economic regulatory powers are held by the Surface and Marine Transport Regulatory Authority, which is charged with establishing terms and conditions of port and marine operations and services, facilitating the resolution of complaints and disputes, overseeing charges and rates at the ports, and promoting effective competition and economic efficiency. Its charter is detailed in the SUMATRA Act 2001 and referenced in the Ports Act 2003. The act is publicly available; furthermore, the authority regularly issues guidelines and operational requirements to operators.

The media have played a substantive role in alerting the public to maritime, railway, and roadway issues. For example, *The Citizen*, one of Tanzania's leading English-language newspapers, has been following the Dar es Salaam Port congestion issue and recently printed an article that began by saying, "Signs of a functional Dar es Salaam port are finally emerging to give hope to local and regional business community members who have for years complained of corruption and inefficiency by operators."<sup>191</sup> This article discussed the recently released task force report that concluded that port operations had improved 35–45% during the past year.

Interviewees were aware of this task force report and were dubious of its findings. Their collective experience was that bureaucracy and delays were still a major problem at the

### KEY SUPPORTING INSTITUTIONS

- Surface and Marine Transport Regulatory Agency
- Donors and donor projects addressing food security

port. One horticultural exporter cited several examples where he lost substantial business relationships in Europe because of unreasonable port delays.

Regarding the conditions of the roads, one owner of a transport provider (cold chain for meats and horticulture) stated that the conditions of the roads cause him to drive 20 kilometers per hour over unpaved stretches of road and that otherwise his trucks would break down so frequently than he could not afford to fix them and stay in business.

### POSTHARVEST STORAGE

Support of postharvest storage has been limited to several donor-funded warehouse receipts programs. One such program, the International Fund for Agriculture Development (IFAD)-supported Agricultural Marketing Systems Development Programme, is currently being mainstreamed by the government throughout the country.<sup>192</sup>

### FOOD SECURITY INFORMATION

The Famine Early Warning Systems Network (FEWS NET) is a USAID-funded activity that collaborates with international, regional, and national partners to provide timely and rigorous early warning and vulnerability information on emerging and evolving food security issues. Network professionals in Africa, Central America, Haiti, Afghanistan, and the United States monitor and analyze relevant data and information for its impacts on livelihoods and markets to identify potential threats to food security.

The network team in Tanzania produces regular food security outlooks that give an overview of food security conditions in the country, including a map that graphically displays food security

<sup>190</sup> Publications. Ministry of Agriculture and Food Security. See <http://www.agriculture.go.tz/publications/publications.php>.

<sup>191</sup> Samuel Kamndaya, "Hope as Dar Port Efficiency Goes Up," *The Citizen* (22 January 2010).

<sup>192</sup> "Empowering Farmers in Tanzania through the Warehouse Receipt System." Rural Poverty Portal. IFAD. (13 February 2010). See <http://www.ruralpovertyportal.org/web/guest/country/voice/tags/tanzania/warehouse>.

status through the use of colored food security zones that range from Generally Food Secure to Famine. A food security calendar with critical events such as the typical hunger season and harvest times for different crops, as well as the rainy seasons, helps round out the food security forecast. The team in Tanzania is small (total staff of three) and relies on other organizations' efforts to populate its forecasts. Information is gathered through formal channels such as the Ministry of Agriculture and the Food and Agriculture Organization and through informal channels such as traders and farmers.

## SOCIAL DYNAMICS

Infrastructure projects are inherently complicated and require substantial funding and political will to be implemented in a cost-effective way and to a satisfactory quality standard. Interviewees expressed concern that plans would not be appropriately implemented, oversight was not to be performed, funding might be diverted across all infrastructure projects, and, as a result, port clearance times would never be reduced, the rail would still be dysfunctional, smaller roads would be only patched instead of replaced, and warehousing facilities would never be built.

A politically savvy commercial farmer in the Arusha region asserted that only 50% of the allocated funding would actually reach its intended purpose. He has long been involved in developing road plans at the district level, specifically for the feeder roads that he uses to bring his products to the trunk roads; he believes that the process, which is ultimately led by TANROADS, lacks transparency.

A long-time miller in the Arusha region expressed deep concern for the impacts thievery had on his business. He said that the electrified wire on the top of his fence was not to keep people on the street from coming onto his premises; it was to keep his employees from stealing his business from underneath him. When asked about problems with theft, he

responded, "The question is not whether I am paranoid. The question is whether I'm paranoid enough." His estimates were that for every kilogram of grain he produced, he had to spend an additional TSH25 in security costs.

## GENDER CONSIDERATIONS

In Tanzania, inadequate infrastructure does not affect men and women equally. One need not travel far to see barefoot women carrying firewood, food or water either home, to the fields or to markets. The transportation and infrastructure needs of women are different than the needs of men because of the division of labor within the family and community. Men typically make two trips per day—to work and then home—where as women, who are serving the roles of home maker, income earner and community manager,<sup>193</sup> require more frequent but shorter trips which often includes carrying bulky and heavy items.

Remedial steps to improve the situation could include changing attitudes, lessening and simplifying women's tasks, promoting women's participation in use of non-motorized transportation and identifying areas in public transportation legislation that discriminate based on gender.

## RECOMMENDATIONS

### Emphasize noncontainerized cargo.

So far, reform of the port has focused almost entirely on containers and how to handle and process them more efficiently. This has produced some positive results. However, containerized cargo little impact on the goods imported that support agricultural development, infrastructure, and food security. Most notably, fertilizer, bulk grain, seeds, cement, and vegetable oil are all noncontainerized or "bulk" cargo. There is thus a need to advocate for the inclusion of noncontainerized cargo ships in the analysis being conducted by the Dar es Salaam Port Congestion Investigation Committee. (Currently, the investigation focuses only on containerized cargo.) There may also be a need

<sup>193</sup> UNEP Collaborating Centre on Energy & Environment. 1999. Working Paper No. 9: Papers presented at the UNEP Workshop "Deals on Wheels: Sustainable Transportation Initiatives in Developing Countries." San Salvador, El Salvador, July 27-30, 1999. Edited by Maria Figueroa

to provide technical assistance in analyzing (1) the impact of port policies on noncontainerized cargo and, through it, on the agricultural sector; and (2) how to move noncontainerized cargo more quickly and efficiently through the port.

### **Engage with the feeder road problem.**

As noted, Tanzania's feeder road system has a disproportionate impact on agricultural development. In the short to medium term, the problems with the railroads mean the country's farmers and herdsmen—even the ones near rail lines—will be even more dependent on the rural road system.

The funding for feeder roads is irregular, and allocation and spending are nontransparent. Thus, USAID should support a third-party analysis of the allocated funding for district and feeder road development and for the subsequent success (or lack thereof) in development of these roads. The results should be used to press the government of Tanzania to monitor closely and report actual performance.

Furthermore, USAID should provide technical assistance to TANROADS in the development of a prioritized list of district and feeder roads that are critical to food security initiatives and agricultural economic development. Remarkably, there is no such list at present. There is general agreement that the roads need to be improved, but no clear perception that, from a food security point of view, some roads are much more important than others.

Finally, USAID should provide technical assistance and education to farmers and local traders on the process of developing village and district level plans for feeder road development. In theory, local stakeholders are supposed to be involved in this process; as a practical matter they have little understanding of the issues involved and no real voice in policy.

### **Provide support to NFRA on change management in its strategic planning process.**

The National Food Reserve Agency is supposed to undergo a new strategic planning process

designed to help it achieve better operational controls and a more business-like culture. However, the NFRA's internal resources for analysis, planning, and implementing sweeping change are quite limited. Therefore, USAID should provide change management technical assistance to this effort. This should include, if feasible, embedding at least one expert with the agency for at least six months.

### **Work to improve system of warehouse receipts and warehouses.**

In general, support warehouse receipts projects. So far these are, as noted above, a mixed bag. However, the experience of other developing countries suggests that a functioning system of warehouse receipts can provide significant increases in security for farmers, as well as being a potentially useful source of credit. USAID or some other large donor should undertake to examine existing projects and encourage the transmission of successful and best practices.

In addition, encourage in particular exploring the use of the excess storage capacity at the go-downs within the National Milling Corporation's Dar es Salaam facility and regional facilities managed by the National Food Reserve Agency. Because each organization has a mandate to use assets for revenue generation, they may be receptive.

### **Provide the Department of Food Security technical assistance on data gathering.**

Provide technical assistance to DFS with the collection, preparation, and production of food security data. This task should be undertaken in cooperation with other donors, as various multilateral agencies are already promulgating international best practices and standards. However, at this time the efforts are not coordinated, and DFS is not yet collecting data broadly and efficiently, publishing it in a timely manner, or making good use of it in general. There is clearly room for additional donor support here, even if only in the form of more effective donor coordination.



### **Help the Department of Disaster Management to improve food security information.**

Work with the Department of Disaster Management to develop and disseminate more regularly food security information. Experience elsewhere shows that if good information is available, then farmers, herdsmen and traders will aggressively use it to become more proactive in their decision making. This effort may include distribution via texting and other mobile phone technologies, as has been done in a number of countries. Tanzania's Meteorological Service has already taken steps in this direction; further efforts can build on this.

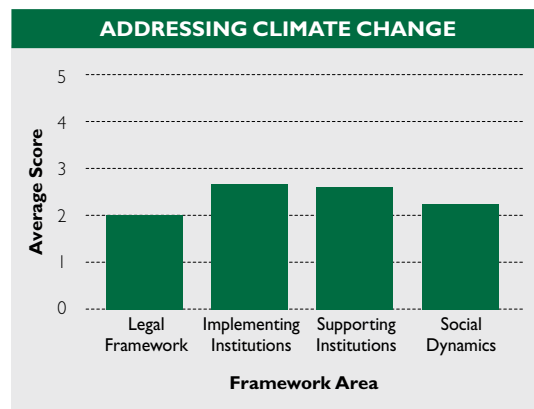
### **Fix the weights and measures.**

Provide technical assistance to farmers on the use of weights and measures standards while selling their commodities. In addition, help the government of Tanzania impose and enforce good weighing and measuring practices at weigh stations and elsewhere. Scales in Tanzania are not always reliable; although this is an infrastructure issue, it needs to be addressed with good management rather than new equipment. The unreliability of weights and scales promotes a pervasive sense of "unfairness" among farmers and is also a broad encouragement to petty corruption. Experience in other developing countries shows that this is a solvable problem.



## ADDRESSING CLIMATE CHANGE

Agriculture (including livestock) is the dominant sector in Tanzania. Agriculture provides livelihood, income and employment to over 80% of the population. Wood and other biomass fuel accounts for more than 90% of total household energy consumption as only 5% of the population has access to electricity. Meanwhile, wildlife tourism accounted for 17% of the GDP in 2007 and nearly 25% of total export earnings. The country's conservation areas support 310 species of mammals, including over 40 million hoofed animals, and 1000 bird species out of the nearly 9,000 identified worldwide. In 2009, approximately 950,000 tourists visited Tanzania, and the tourism sector generated \$915M in revenues.<sup>194</sup> Climate-related factors are affecting each of these critical economic sectors.



The climate threat comes from three separate but interconnected sources. These are global climate change due to concentrations of greenhouse gases; climate patterns (particularly the El Niño Southern Oscillation); and alterations in local climate due to changes in land surface.

Global climate change refers to the increase of the average temperature of Earth's near-surface air and oceans. Although there have been several global climate changes in the past, most current use of "global climate change" refers to temperature changes in the recent past and near future. The Intergovernmental Panel on Climate Change (IPCC) has concluded that global temperature has increased in the last 50 years, and that most of this increase has likely been caused by rising concentrations of greenhouse gases

(particularly carbon dioxide, methane, nitrous oxide and ozone). Since such increases were due to human activity such as fossil fuel burning and deforestation, we talk about anthropogenic (i.e. produced by human activities) global warming.<sup>195</sup> Some of the risks associated with global climate change include sea level rise, coral bleaching, melting of glaciers, seasons shifting, drought and flooding, increased severity of hurricanes and tropical storms, expected changes in growing season temperature, changes in growth of crops, grass and vegetation with altered rainfall and temperature patterns, changes in wildlife migratory patterns, habitat loss, changes in human and animal pests and diseases, and invasive species proliferation.

The El Niño Southern Oscillation (ENSO) is a climate pattern that occurs across the tropical Pacific Ocean at irregular intervals of 2–7 years, and lasts from 9 months to 2 years. ENSO is the result of warming or cooling of surface waters in the tropical eastern Pacific Ocean, and changes in surface pressure in the tropical western Pacific. It is still unclear what causes the oscillation, but it is not anthropogenic. When the ocean is in a warm phase and the sea surface pressures in the western Pacific are high the effect is called El Niño, whereas when the sea is cold and the surface pressures are low we encounter a La Niña

<sup>194</sup> United Republic of Tanzania, 2007. National Adaptation Programme of Action (NAPA) for Tanzania. Vice President's Office, Division of Environment, Dar es Salaam. <http://www.carbontanzania.com/tanzania/tourism-2.htm>.

<sup>195</sup> IPCC, 2007. "Summary for Policymakers" (PDF). Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. [http://ipcc-wg1.ucar.edu/wg1/Report/AR4WGI\\_Print\\_SPM.pdf](http://ipcc-wg1.ucar.edu/wg1/Report/AR4WGI_Print_SPM.pdf).

event. Over time, the El Niño pattern fluctuates back to average or La Niña conditions. ENSO is associated with floods, droughts and other variable weather disturbances in many regions of the world, including Africa.

Alterations in local climate also affect the economy in Tanzania. The influence on global climate of human-induced local- and regional scale changes in vegetation cover is not accounted for under the Kyoto Protocol but it is becoming increasingly clear that some changes in the land surface can have significant impacts in adjacent and remote areas, and likely globally. Local climates are modified by land-use and land cover change in the form of conversion of forestland or grassland to agriculture, pastures and rangelands. They are also modified due to urbanization. Conversion into agriculture and pastures results in less transpiration and less thunderstorm activity over the local landscape. The conversion also eliminates the provision by forests and grasslands of many ecosystem services that directly or indirectly influence climate. These climate-related ecosystem services include providing reservoirs, sinks and sources of carbon, maintaining soil moisture and surface air humidity, reducing sunlight penetration, weakening near-surface winds and inhibiting anaerobic soil conditions.<sup>196</sup> Land surface changes on the order of 10 km can cause changes in the local pattern of rainfall. The spatial scale of a disturbance and the impacts due to land surface change have not been comprehensively investigated yet but many studies suggest that local, regional, and global effects of land surface changes must all be considered in climate mitigation.<sup>197</sup>

The challenges from the point of view of addressing global climate change are how to reduce emissions of greenhouse gases, sequester carbon, and adopt a low-emission development growth pattern (mitigation) while increasing the resilience of communities, social groups, geographic areas and economic sectors vis-à-vis risks that result from climate change

(adaptation). From the perspective of local climate change the challenges are similar: how to engage in productive use of natural resources (including soils, water, forests and wildlife) in such a way that local ecologies are not radically altered, ecosystem services are maintained and enhanced, and social groups and economic sectors can resist and overcome the risks from global climate change and climate patterns such as the ENSO. Sustainable development should include adaptation to climate change.

Climate change is making Tanzania's agriculture and livestock production riskier. The climate is warmer than it was 100 years ago. Some areas are getting more rainfall while others are getting less. (For example, in the last two years alone, droughts have been hitting the Arusha area. The local Masai have been terribly affected; animals have been dying, and cows have been bartered for 20 kg of maize.) There is also increased between-season and within-season rainfall variability. As rain is the sole source of moisture for most crop and pasture growth in the country, agroecological zones and plant species distribution are shifting to match changes in temperature or precipitation. The rainfall period is becoming shorter and in some places is followed by a long dry season that may last 6 to 8 months. This situation overwhelms most smallholder farmers in Tanzania, who cultivate between 0.2 and 2.0 ha per year. It has also contributed to frequent food insecurity and poverty. Changes in rainfall and hydrological conditions are also affecting vegetation and ecological zones in the reserves. They may ultimately alter the distribution, migration and breeding patterns of the 380 bird species in Lake Manyara National Park, or the wildebeest, zebra and antelope that are the main attractions of the Masai Mara Game Reserve.

At the same time, Tanzania's deforestation rate is one of the highest in East Africa. Forest cover almost 40% of Tanzania's land area (33.5 million hectares) in mostly natural miombo woodlands in a species-rich savannah ecosystem, but the

<sup>196</sup> Pielke, Roger, Marland, et al, 2002. "The influence of land-use change and landscape dynamics on the climate system: relevance to climate-change policy beyond the radiative effect of greenhouse gases." *Philosophical Transactions: Mathematical, Physical and Engineering Sciences*, Vol. 360, No. 1797, pp. 1705-1719.

<sup>197</sup> Id.

*“Kilimanjaro had more than 50 rivers. Now there are 12 left. My mother lives there and used to have plantains and bananas. She would harvest some of them when I visited her, and she would give them to me for my children. Now she cannot feed herself. Now we have to support her. The weather has changed. For 6 years they have not had enough rain. People are migrating to towns. We need solutions at the level of people who now spend hours fetching water or firewood. Addressing climate change is everybody’s business.”*

—An Arusha Farmer

country is losing 412,000 ha of forest per year.<sup>198</sup> Illegal harvest of forests is rampant in village and government lands, driven by uncontrolled agriculture and livestock expansion; daily energy demand (firewood and charcoal) from surrounding communities, towns and cities for domestic or commercial purposes; or illegal, irregular and unsustainable timber forestry activities. Corruption fosters deforestation. There are very few incentives to protect the trees.<sup>199</sup>

As a result of deforestation, land and rivers are going dry and local climates are changing. Vast areas in the country, and particularly the central regions, do not have water all year round. Most people derive their water from wells, rainwater, rivers and lakes, rather than piped water. The actual renewable water resources per capita are 2,300 cubic meters per year; this is expected to go down to 1,500 cubic meters by 2025.<sup>200</sup> The water resources may not be able to cope with increased demand due to natural population growth, as well as irrigation and hydropower. Increased demand for water has led to salt-water intrusion in wells. Deforestation and in some cases building of dams have resulted in the drying of perennial rivers. Also, river water allocating has generally not taken into account fish, invertebrates and vegetation in rivers, and other form of wildlife in areas adjacent to rivers, which causes loss of biodiversity.

It is likely that changes in land use cover and local climate (particularly precipitation, cloudiness and humidity) may be the main driver of the loss of Mt. Kilimanjaro’s snowcap.<sup>201</sup> Such land use changes are likely to be due to deforestation and bush fires related to increased population pressure, limited cropland availability, encroachment on forestlands and ultimately poverty.<sup>202</sup> The loss of Mt Kilimanjaro’s snowcap is expected to be complete in a few decades. This leaves unprotected small farmers at the mountain’s base who rely on glacial melt water for irrigation. It may also affect the country’s economy as Mt. Kilimanjaro attracts over 30,000 tourists per year.

## LEGAL FRAMEWORK

Until now much of the work pertaining climate change in Tanzania has been circumscribed to reducing vulnerability. The National Adaptation Programme of Action (NAPA) of 2007 is the only official document that defines the government’s strategy vis-à-vis climate change. The Division of Environment of the Vice President’s Office is the government agency charged with climate change issues, and as such led the writing of NAPA. In NAPA the Division of Environment, on behalf of the government of Tanzania, identifies priority activities for adaptation to climate change and climate variability. In addition, the document seeks to increase public awareness to climate change impacts and adaptation activities in the country, and mainstream adaptation activities into national and sectoral development policies and strategies. The document was based on climate change vulnerabilities assessment reports of working groups focusing on agriculture, energy, forestry and wetlands, health, human settlements, coastal and marine and fresh water resources.

In NAPA, the government provided a broad characterization of what climate change represents for the country as a whole. Unfortunately, rather than defining national, long-term programmatic and strategic guidelines that would inform sector-specific adaptation and mitigation

198 NAPA 2007.

199 Andersson, Jessica and Daniel Slunge, 2005. Tanzania. Environmental Policy Brief. Swedish International Development Cooperation Agency, Sida.

200 NAPA 2007.

201 Thompson, L. G. H. H. Brecher, E. Mosley-Thompson, D. R. Hardy, and B. G. Mark, 2009. Glacier loss on Kilimanjaro continues unabated. Proceeding of the National Academy of Sciences, [www.pnas.org/cgi/doi/10.1073/pnas.0906029106](http://www.pnas.org/cgi/doi/10.1073/pnas.0906029106).

202 NAPA 2007.

## KEY LAWS AND REGULATIONS

- National Forestry Policy (1998)
- Forest Act (2004)
- Environmental Management Act (2004)
- National Strategy for Growth and Reduction of Poverty (NSGRP) (2005)
- Rural Energy Act (2005)
- National Adaptation Programme of Action (NAPA) (2007)

strategies, this landmark document ended up listing as priorities isolated and site-specific projects targeted for immediate adaptation activities. This emphasis seems to have manifested the preference of the Vice President's Office, Division of Environment for interpreting its mandate as being a unit that seeks to implement adaptation activities instead of providing overall leadership and coordination with and among government agencies and private institutions regarding climate change. As a result of this definition, the awareness and strategic planning on climate change challenges has been limited to few government agencies outside the Vice President's Office. Climate change has de facto become the responsibility of the Vice President's Office, not an issue that pertains to all government agencies in Tanzania. This approach has not contributed to mainstreaming climate change concerns in all the government strategies and programs.

A significant gap in NAPA is that it lacks a systematic discussion of the contributions that land use change in the country is making to alter local and regional climates. Without this discussion the document does not set a framework and strategy for climate change mitigation. Instead, climate change is portrayed as an issue to which Tanzania has not contributed directly or indirectly.

In general, mitigation has not been given the prominent place it deserves. The government of Tanzania has not developed a comprehensive national low-carbon development strategy that addresses directly the major problems

associated with uncontrolled deforestation and extensive reliance on biomass as a major source of energy for the country. Few incentives exist to encourage private investors to produce clean electricity to complement the country's limited hydroelectrical capacity and proactively compensate for likely loss of hydroelectrical potential due to climate change. There is not a bold national plan to stop rampant land cover clearing, deforestation and reliance on charcoal as a major source of energy and an important source of income for poor small farmers. Tanzania does not have a legal framework for ownership and trading of carbon credits. Last but not least, there is no discussion on the linkages between climate change and population growth. The country's population has grown from 7.6 million in 1950 to 38.5 million in 2005, an average annual growth rate of nearly 3%.<sup>203</sup> Population growth is pushing natural resources beyond their carrying capacity and contributing to modifying the local climate. Climate change and population growth combined limit the possibilities for sustainable development.

Currently the Tanzanian government does not seem to see deforestation and land cover change—as well as the impacts on soils, water and biodiversity it brings about—as major strategic challenges for the development of the country's economy and society. Rather, it treats land cover change as an issue confined to specific sectors and government agencies. Hence, land use planning for reduction in greenhouse gas emissions and enhancement of carbon sequestration is concentrated in a few forest related activities regulated by the Ministry of Natural Resources and Tourism, which has developed a carbon trading concept note. It is significant that the Vice President's Office and the Ministry of Natural Resources and Tourism have established a National REDD Task Force that will administer the process of developing a National Strategy for REDD. REDD stands for Reducing Emissions from Deforestation and Forest Degradation in Developing Countries. REDD is a UN-led program to create a financial value for the carbon

<sup>203</sup> United Republic of Tanzania, President's Office, Planning Commission (POPC). <http://www.mipango.go.tz/>.

stored in forests as an incentive for developing countries to reduce emissions from forested lands. Similar efforts to develop national strategies for other sectors have yet to be adopted. For instance, there is no low-carbon development strategy to guide investments in agriculture, water, energy or infrastructure.

Tanzania has adopted the Clean Development Mechanism (CDM) under the Kyoto Protocol. The Protocol allows industrialized countries with a greenhouse gas reduction commitment to invest in projects that reduce carbon emissions in developing countries as an alternative to more expensive emission reductions in their own countries. Allowed CDM projects include renewable solar, wind, geothermal and/or wave power clean energy designs, as well as a small number of afforestation and reforestation projects. The government's commitment to support CDM projects, however, is lukewarm at best. This is not surprising in light of the limited priority that it has given to mitigation activities broadly interpreted, but it also reflects a widespread discontent with CDMs in general. The feeling among government officials, as well as possible private investors, international cooperation donors and managers of development or biodiversity conservation projects, is that CDMs are too expensive to design and implement, cumbersome and entangled in considerable red tape. In general there is very little awareness of CDM or other mechanisms for low-carbon investments such as the World Bank's Community Development Carbon Fund and BioCarbon Fund, IUCN's Climate Fund, or the Finnish CDM Program. And insofar as there is awareness, the latter programs are also considered to have high transaction costs and therefore not being worthwhile.

If the government of Tanzania wants to move forward with a national strategy for climate mitigation and adaptation, one of the most important challenges will be to link with and build upon existing sectoral legislation and efforts in all sectors of the economy. So far

the most direct and fruitful efforts have been in relation to the National Forestry Policy (1998) and the Forest Act (2002). As stated above, the office of the Director of Forest and Beekeeping Division of the Ministry of Natural Resources and Tourism already leads its sector in climate adaptation. Proactive mitigation and adaptation to local climate change could be further mainstreamed under environment and natural resources management policies, which have been incorporated in the Environmental Management Act (2004) and the Tanzanian National Strategy for Growth and Reduction of Poverty (NSGRP) (2005). The office of the Director of Water Resources of the Ministry of Water is already a valuable ally in this regard.

At the same time, no connection has been made between climate mitigation and adaptation and the Rural Energy Act (2005) or the Rural Energy Agency (REA) that was created in 2007 as an autonomous body under the Ministry of Energy and Minerals to facilitate access to sustainable modern energy services in the rural areas for social and economic development. Also, the Ministry of Agriculture, Food Security and Cooperatives has yet to internalize the challenges that both global and local climate change represent for the sector. Adaptation and mitigation strategies concerning food security could be part of an updated version of the 2001 Agriculture Sector Development Strategy.

In general, however, the government of Tanzania has not made dealing with climate change a priority. The Ministry of Agriculture and Food Security's Medium Term Strategic Plan: 2007–2010 has one sentence on climate change. Kilimo Kwanza, the government's major current initiative in agriculture, does not include any references to climate change.

Even if mitigation and adaptation to climate change are mainstreamed in the government policies and strategies, the question remains whether there will be implementation, enforcement and monitoring of those policies. Tanzania has a remarkable corpus of progressive

legislation that meets international standards but the legislation is often poorly and irregularly applied. As a result the practice that the legislation is supposed to regulate is sometimes alarming. People commonly perceive deforestation as being related to corruption. Also, the government has not set targeted adaptation- or mitigation-related programs and activities in agriculture, natural resource management, energy or economic development in general. Without those targets, much of the plans can be simply non-binding promises, and primarily opportunities to enhance political stance with donors and, to a much lesser extent, local constituencies.

## IMPLEMENTING INSTITUTIONS

Tanzania has the research- and other capacity needed to engage in vulnerability, impact assessments and early warning efforts pertaining to climate-related extremes. The emergency management institutional capacity seems to be greater, however, than the longer-term mitigation and adaptation planning and implementation capacity. The country has a disaster management department in the Prime Minister's Office that devises emergency preparedness and response strategies, coordinates activities from several government agencies into one command center, and uses real time satellite meteorological information from the Tanzania Meteorological Agency, which is under the Ministry of Agriculture, Food and Cooperatives. More efforts are needed to improve the operation and coordination of an integrated disaster management system that adequately and timely monitors and prepares for the impact of tropical cyclones from the Indian Ocean and any other climate-related disturbances that may result in disasters. The coordinated emergency preparedness and response system, however, could be used as a model for addressing mitigation and adaptation planning and implementation throughout the country.

Even if there is not a sufficiently comprehensive, national strategic plan for climate change

### KEY IMPLEMENTING INSTITUTIONS

- Ministry of Natural Resources and Tourism
- Ministry of Water
- Tanzania Meteorological Agency
- NGOs

mitigation and adaptation in Tanzania, it is encouraging that there are several local initiatives that are explicitly related to those goals.

Projects that store carbon through forestry and agroforestry are still rare in Tanzania (and in Africa generally) but are becoming more common. When these projects are properly designed and implemented they have the potential of reducing greenhouse gas emissions, benefiting countries and producers (often including poor households) by providing financial inflows, and protecting biodiversity, water sources and other environmental services. Only 23 forestry-based carbon sequestration projects were identified in Africa in a recent survey. Two of those projects were Kyoto-compliant CDM projects, while 13 of them were voluntary carbon sequestration projects. Three projects were in Tanzania, namely The International Small Group and Tree Planting Program (TIST) (funded by Dow Chemical and the World Bank); a commercial plantation (funded by Tree Farms AS of Norway); and The Participatory Environmental Management Programme, PEMA (funded by Danish-based donors).<sup>204</sup> To that list of projects should be added Carbon Tanzania (supported by individual contributions, including Arusha-based Regional Air Services) and Green Resources (funded by Norwegian private donors). The potential welfare contributions of these projects are substantial. TIST-Tanzania alone works with 338 groups that encompass 1,971 members from 86 villages. Most project members live on less than \$1 per day and could receive annually around \$30 per hectare of trees protected, while maintaining access to small timber.

Most of the forestry-based carbon sequestration projects focus on timber tree production. The potential for expansion of carbon

204 Jindal, Rohit, Brent Swallow and John Kerr, 2008. Forestry-based carbon sequestration projects in Africa: Potential benefits and challenges. *Natural Resources Forum* 32, pp. 116–130.

sequestration projects is larger, however, if complex agroforestry systems are included—i.e., projects with trees that provide shade to perennial crops like coffee or cacao, and boundary plantings such as windbreaks, hedgerows and live fences. In such systems, soil fertility can be maintained at stable levels despite the continuous harvest of crops, wood and other products.

The limits to the expansion of forestry-based carbon sequestration projects are more likely to be institutional and financial than technical. Both CDM and voluntary carbon sequestration projects require a highly complicated carbon certification process with high transaction costs (including costs of registering, verifying, and certifying a project) that may vary from \$1 per tCO<sub>2</sub> for large projects to \$15 per tCO<sub>2</sub> for small projects. Community development-oriented projects targeting many small holders (each with separate contracts) rather than a single party have the highest transaction costs, which makes them less attractive to investors. Equally, insecure land tenure conditions could be a powerful disincentive for carbon traders, as they realize that the suppliers cannot make a credible commitment to supply carbon offsets in the short- or long-term. (For discussion of issues and problems with land tenure, see the chapter on Registering Property). Lastly, there is always the fear of impermanence, i.e. that trees will be cut down or burned at any time, releasing the sequestered carbon irrespective of the contract period. The Think Global Act Local projects (funded by Netherlands Development Cooperation and implemented in Tanzania, Uganda, Senegal, Mali, Nepal and India from 2003–2009) developed a simple methodology for measuring carbon storage in community forests, which reduced transaction and management costs while enhancing the capacity of local communities to manage forests. The methodologies and lessons from those projects could be valuable to scale up forest-based carbon sequestration in Tanzania.

It is heartening that the Forestry and Beekeeping Division of the Ministry of Natural Resources and Tourism and FAO initiated a National Forest Resource Assessment and Monitoring (NAFORMA) initiative in 2009 to define the until now unknown state and trends of the national forestry resources. These data will inform forest policy reviews. It is also encouraging that since 2002 the Forest Act has promoted delegating “responsibility for the management of forest resources to the lowest possible level of local management consistent with the furtherance of national policies.” It recognizes Participatory Forest Management (PFM) in the form of Joint Forest Management (JFM)—i.e. co-management of government appointed managers and villages adjacent to forests—and Community based Forest Management (CBFM)—i.e. communally reserved forests, established on lands managed directly by local villages, or sub-groups within the village. As of 2008, 13% of all the forest in Tanzania (about 4 million hectares) was under Participatory Forest Management arrangements in 2,300 villages across the country. About 2.4 million hectares operated under CBFM arrangements.<sup>205</sup>

The participatory forest management movement is being strengthened further through REDD with the support from the government and NORAD, even if avoided deforestation and Reduced Emissions from Deforestation in Developing Countries (REDD) are presently excluded from the Kyoto Protocol. Pilot REDD demonstration projects have been recently launched in the major ecological zones of the country (miombo, coastal forests, mangroves, alpine forests), with a design that covers different forest ownership and management arrangements. The effort includes research on methods for estimating deforestation, carbon sequestration and emissions, as well as socio-economic and development conditions. It also encompasses training in forest inventories and assessments including the use of GIS, satellite image analysis, remote sensing, mapping and database development and management. Non-

205 “Tanzania Participatory Forest Management Project.” FARM-Africa. <http://www.farmafrica.org.uk/smartweb/tanzania/tanzania-participatory-forest-management-project>.



governmental organizations (NGOs) are taking part in implementing the REDD pilot projects. They seek to shed light on governance and tenure approaches; incentives and mechanisms for equitable benefit sharing; participatory methods for monitoring, assessing, reporting and verifying; and approaches that generally address drivers of deforestation and forest degradation.

Forest resource conservation and protection must be understood in the context of ever increasing energy and food production needs. These are a major challenge. By 2007, the Tanzania Electric Supply Company, Ltd. (TANESCO) had provided electricity in 95 out of 113 districts in mainland Tanzania, yet only 3% of the rural households were connected to the grid due to the connection fee required and the inability of the houses to meet minimum standards for connection. The ability to extend the grid into rural areas is limited due the size of the country and the large sums of money it requires. Some private rural electrification initiatives (including cooperatives) have been established under the guidelines of the National Energy Policy that encourages private initiatives in areas where TANESCO has not established a public power supply system. Most of these private initiatives rely on diesel generators that are expensive to maintain and run, especially with skyrocketing prices for fuel, which is all imported. Only a handful of those generators use biofuels like jatropha or croton megalocarpus instead of diesel, or are part of solar photovoltaic (PV) hybrid systems.

The solar energy sector has been growing steadily, with PV sales growing at a rate of over 15% per year since 2005 even if solar panels are still expensive. NGOs such as Tanzania Solar Energy Association (TASEA) and Solar Now are actively supporting PV adoption. The expansion responds to the demand created by households of prosperous farmers or rural teachers, plantations, stores and other businesses, and non-commercial establishments like schools, health centers and hospitals, churches,



mosques, and community centers. Government ministries (from Tanzania National Parks to the Ministries of Health and Education), along with the Lutheran and Catholic churches, missionary groups and all the development and conservation NGOs have been active in the use and promotion of solar energy. All renewable energy systems are tax-free. Solar energy is viable and has a strong role to play in rural areas, especially in health (refrigeration for vaccines, ability to run equipment), education (at schools but also at home) and communication (cell phone network covers most of the country, including areas without electricity). The systems' capacity ranges from 50 Watts in a household to 21 Kilowatt in a missionary hospital. (It must be noted that PV does not provide electricity for high-energy applications.)

Rural and off-grid urban consumers are adopting PV technology to develop informal businesses. PV-based businesses include battery charging for cell phones and small lanterns, cassettes and CD music sales, lighting of stores, bars and teashops, and barbershops with low power barber shears. There are 5 major suppliers of solar equipment in Tanzania but supply chains are not reaching

well into rural areas. The start-up costs are high, but it seems people would be willing to take loans to get the PV systems if credit would be available. Also, there is a need to build capacity for technicians who can install and maintain PV systems properly and do not need to move to town (i.e., “barefoot engineers” as in India). The government is starting the process of regulating solar power via PV standards. This is timely because high quality American and European solar systems often compete with widely available but substandard Chinese systems that are not waterproof and may last less than 1 year. Tanzania legislation does not allow yet small solar power systems to feed power into TANESCO grid at reasonable prices, but given the frequent blackouts in the country the government is warming up to the idea.

The space for all kinds of solar energy investments in Tanzania is large and will likely have a significant pay-off. It is unlikely, however, that for the time being solar energy will represent a major alternative to biomass as the main source of cooking energy in the countryside or cities. Households in both urban and rural centers have predominantly used electricity for lighting and household appliances (mainly radio, fans and increasingly cell phone recharging) rather than for cooking or productive activities (i.e. milling). Very few families have switched from fuelwood or charcoal to electricity for cooking even after electricity has become available either through grid connection or access to solar energy systems. People are aware of the smoke-related lung and eye ailments associated with traditional stoves (which affect women in particular), but the high investment required to purchase an electric stove has prevented people from using electricity for cooking. Subsidies could help people purchase stoves. People, however, are also used to eating smoked food. Switching to electricity may thus require significant behavioral and food preference changes.

An effective line of attack to reduce deforestation due to food cooking seems to be based on

three elements. It involves the promotion and adoption of energy efficient cooking methods (for instance, the Kenya Ceramic Jiko biomass stove) and increased efficiency charcoal production methods (including the Adam retort method), which are becoming common throughout the country. Second, it requires planting more trees around the households for home consumption and firewood sale, if needed. As someone suggested: “It is important to have your own forest and manage it better.” This step assumes that women’s decision-making power in energy use and other matters is increasing considerably in households throughout Tanzania. Third, it requires an expansion in the on- and off-farm opportunities for income generation in rural areas whereby selling charcoal or firewood is not the first and sometimes the only income option. For instance, Maliasili Initiatives Ltd. is supporting community-based tourism in the Arusha area. Using a private-community ventures approach, it is harnessing tourism revenues as community conservation incentives among Masai groups. The revenues act as catalysts for conservation of forest and wildlife.

The current state of deforestation in Tanzania and the fact that the livelihood of vast segments of the rural population depend significantly on natural resources determine the need for crop production to meet both food security and income generation goals. Currently, these goals must be achieved in the context of increased biophysical and socioeconomic stresses. From a biophysical perspective, higher temperatures due to global climate change are altering the physiology of crops, pasture and livestock, and modifying the type and frequency of pests and diseases in plants and animals. Aphids and mites, for instance, are reproducing faster, increasing in numbers and causing greater damage to crops. In some cases pest- and disease resistance to control mechanisms that were effective in the recent past is increasing. The soils’ organic matter content and their capacity to retain moisture are diminishing. There are shifts in the spatial and temporal distribution of

rainfall, and thus flooding sharply increases in some areas while drought becomes common in others. Although the average total annual rainfall seems not to have changed over the years, rain tends to concentrate in a few heavy downpours, which sometimes do not fall when they are critically needed for plant growth. Irrigation capacity is shrinking due to watersheds becoming dry. Lower water tables and high salt content in soils are becoming more common. All of these conditions determine declines in yields, a likely reduction in agriculture's contribution to GDP, and increased number of people at risk of hunger and food insecurity. In 2009, food shortages affected close to 1 million people, and some 50,000 tons of food had to be distributed in the affected areas. Food insecurity and lack of employment opportunities in the rural areas are resulting in enhanced outmigration to urban centers and further encroachment on forests and agricultural lands.

Meanwhile, pressure on and competition over land resources are increasing. Farmers and livestock herders compete for green areas and watering holes. Farmers point out that stealing and trespassing are becoming more common. At the same time, local governments have been selling large tracts of land to some 40 foreign companies that have invested millions of dollars since 2000 particularly for sugarcane, jatropha and palm oil cultivation in fertile areas with good rainfall and access to rivers. For instance, 400,000 hectares were sold to a Swedish firm to turn into sugar plantation at Wami River in Coast region, and over 8,000 hectares were sold to a Malaysian and Indonesian firm for a palm oil biodiesel project in Kigoma region. Such emergent demand for biofuels is creating risk for land grabbing, the eviction of thousands of small farmers, abandonment of food crops in fertile lands, and the encroachment on lands that some portray as "marginal" but are in fact important for wildlife. In October 2009, national and international public outcry and fear of food shortages motivated the national government to declare a moratorium on the allocation of land to biofuel investors

until clearer procedures and policies are set in place. As one interviewee suggested: "It is ironic that foreign investors are trying to counter climate change in their countries through deforestation and food insecurity in ours."

Farmers are adapting to climate change by adopting piecemeal measures from a set of technical options. These include selecting varieties or species with tolerance to abiotic stresses (e.g. high temperature, drought or flooding) as well as biotic ones (e.g. pests and diseases new to a site). They also include modifying the dates for planting/sowing and harvest. Less frequently, they comprise harnessing water supply through water harvesting into ponds and wells, incorporating trees in crop fields, and improving the efficiency of irrigation systems.

More efforts are needed in Tanzania to test, consolidate and up-scale crop- and livestock-based economic activities for small- and medium scale farmers that effectively tap into markets and generate revenues, protect and improve forests and other natural resources, and reduce greenhouse gas emissions. In some parts of the country organized groups of women are using horticultural production to gain capital that they then invest in large- and small livestock production (including poultry). They diversify their lots into agroforestry systems with timber and fruit trees, from which they derive food, fodder and firewood in sustainable amounts. The women invest profits in education opportunities for children and general improvement of the household environment. In other regions, small farm dairy cooperatives, initiated with USAID funding and Land O' Lakes support, are operating with collection centers equipped with cooling tanks, and selling to processors and markets. Such intensification of livestock production is making possible for producers to reforest land, produce in soils improved with manure and increase revenues through a combination of many economic strategies. Similar efforts must be replicated and promoted massively elsewhere.

## SUPPORTING INSTITUTIONS

There are few research and technology transfer efforts in Tanzania aimed at improving the climate-related adaptive capacity of the agricultural system as a whole or subsets within. Hence, most of the time the implementation of crop adaptation measures is initiated by farmers themselves rather than promoted by extension services of governmental or non-governmental organizations. As a result, farmers' climate adaptation may not include some effective available options solely because they are not obvious or well publicized. For instance, planned agricultural adaptation to both water shortage (due to droughts) and excess of water (due to flooding) may effectively include increasing soil organic matter, which improves and stabilizes the soil structure. Soil organic matter can be enhanced via agroforestry systems, incorporation of manures and composting, as well as terracing. Soils with high organic matter content can absorb higher amounts of water, and thus reduce surface run off and soil erosion under flooding conditions, while they can soak up water longer and release it slowly during extended drought periods. Yet, relatively few farmers make the connection between soil organic matter content and climate change adaptation.

More research-based evidence is needed to define and act upon the critical factors that will facilitate improving yields, food security and income generation in agriculture-related activities. Currently, the agriculture strategy documents are limited to general statements on the importance of tractors and agrochemical inputs, which are treated almost as panacea. There is a significant need for research and technology development, as well as transfer programs pertaining to staple crop production, horticulture, livestock production for food security and income generation, at the producer level, and import substitution for the country as a whole. There is a need for seriously addressing crop options. There are very few guidelines on the most appropriate ways to intensify agricultural

### KEY SUPPORTING INSTITUTIONS

- Institute of Resource Assessment (IRA) of the University of Dar es Salaam
- Sokoine University
- National REDD Task Force Team
- NGOs

production without compromising environmental stewardship and contributing to local or global climate change. The crop research institutions are critically underfunded and understaffed, and could benefit from having staff trained in the most current science and technology approaches and methods.

By contrast, there are significant science and technology efforts around forestry and natural resource management in the country. The Institute of Resource Assessment (IRA) of the University of Dar es Salaam (supported by NORAD) is the secretariat to the National REDD Task Force Team. It is maintained to support processes geared to establishing and implementing REDD programs in Tanzania. NORAD has also launched recently a significant research program for REDD climate change research. The 5-year program will provide \$18 million to a research consortium that includes Sokoine University, the University of Dar es Salaam and Ardh University, the Tanzania Meteorological Agency (TMA), as well as a Norwegian university. The program will seek to define strategic intervention themes for which significant research and data already exist, and upscale the related technology and approaches within 2 years. The program will also facilitate research to identify and narrow research gaps, and provide new technical and socioeconomic recommendations for natural resource management as it relates to climate change. The effort will include reforestation and afforestation topics but also those related to energy efficiency, including cooking stoves and charcoal production. The program will provide some funds for equipment and infrastructure, and foster the development of research capacity by providing

support for some 17 Ph.D. and 50 M.Sc. level students who will carry out research in agriculture and natural resource management. Students from biophysical, economic and governance disciplines will be involved. The program will promote partnership with the private sector, as well as strong linkages with policy makers. Last but not least, NORAD is supporting pilot activities seeking to operationalize REDD under different ecological and production conditions, and understand the process and benefits that could be derived from REDD. The pilot activities involve national and international NGOs (Jane Goodall Institute, WWF, TATEDO, AWF, Tanzania Forest Conservation Group and WCS) as well as local communities.

Currently, Tanzanian institutions are seriously under-investing in climate change-related research and development as it pertains to livelihood systems, livestock rearing (particularly transhumant herding), hydrology, wildlife tourism and human and animal health. There are few examples of systematic assessment and strategies for addressing local participation and resource rights vis-à-vis land, water, crops, livestock, and biodiversity. There is an insufficient understanding of livelihood options, indigenous knowledge and social capital, economic incentives and disincentives, costs and benefits, and ecological risks involved in climate change response. There is an extremely limited use of historical climate data to determine the patterns of inter-annual and intra-seasonal variability and extremes, and define the characteristics of system vulnerability and adaptation effectiveness (e.g. resilience, critical thresholds and coping mechanisms). More investment is needed in early warning and risk management systems to facilitate adaptation to climate variability and change. Such information is needed to proactively develop and implement detailed and comprehensive plans to identify and promote institutional and technical innovations, and develop links with multiple stakeholders (livestock producers, input suppliers, processors and traders) and research and development

service providers. In all of this, creating livelihood opportunities for people, job creation and value addition must be part of the agenda.

International cooperation agencies coordinate and create synergies through a committee termed Development Partner Group. Such coordination should continue and could be strengthened further. For instance, USAID and NORAD support the Jane Goodall Institute in the same area but without coordination. Both agencies could share follow-up and monitoring in that case. Likewise, the cooperation agencies could promote the adoption of common designs and frameworks to foster common lessons learning among projects that are similar in their goals even though they receive funding from different sources.

## **SOCIAL DYNAMICS**

Climate adaptation efforts exist throughout the country. As stated above, groups of natural resource users are engaged in reforestation projects associated with REDD, and carbon sequestration projects are becoming more common than in the past. Also, farmers are beginning to integrate adaptation techniques or improved methods, including conservation farming, into farming methodology. The majority of those climate adaptation efforts are still initiated, encouraged and financed by bi-national or multinational development agencies, and the efforts are implemented independent of each other. There is a need, therefore, for more coordination among initiatives that deal with climate change planning (government agencies, national level) and adaptation (mostly non-government agencies, local level), as well as among international donor groups and between those groups and the Tanzanian government.

The private sector remains mostly aloof regarding climate change adaptation. Notable exceptions are small-scale carbon sequestration and solar-energy projects with moderate investment, and large-scale biofuel plantation that require substantial foreign investment. The

private sector needs still to demonstrate an interest in long-term sustainability and productivity of the agricultural sector, including adaptation to climate change.

Newspapers regularly inform the public of issues important to climate change and agriculture but tend to feature articles that were prepared outside the country, and do not necessarily reflect the reality of priorities of Tanzania. There is a relatively small space for the civil society to be actively engaged in debates on climate change issues and the need for mitigation and adaptation.

## RECOMMENDATIONS

### Help the GOT revise and expand its approach to climate change.

The current (NAPA) strategy is a decent first effort but, as noted above, has significant gaps and weaknesses. A more systematic and strategic approach is needed to integrate climate change preparedness and response into Tanzania's overall economic development vision and strategy. Assessments of physical and economic climate change impacts should be made, and then used to identify and prioritize adaptation and mitigation initiatives. These in turn should be folded into long-term national and sub-national integrated plans that stress the short- and medium-term benefits of addressing climate change. Ideally, the resulting national climate change mitigation and adaptation framework would be part of a combined, comprehensive national strategy to reduce vulnerability to climate- and non-climate related stress factors.

It is critical to go beyond the current practice of addressing climate change through short-term isolated projects that are located in a few particular Ministries (e.g. Environment) or sectors (e.g. forestry). Many of these projects seek to reduce emissions or vulnerability incrementally. Given that climate change impacts all sectors of the economy and society, and taking into account the relatively limited resources that

are available for program planning and implementation, climate change response must be mainstreamed in all sectoral interventions. This should not be an isolated addition that represents resource drain or distraction from core development challenges. Rather, climate change mitigation and adaptation should be an opportunity for a deep rethinking of development processes and the long-term strategic development vision for the country as a whole.

### Help the GOT comprehensively rewrite NAPA.

The government should use the approach described on the previous recommendation to generate a new and improved version of the National Adaptation Programme of Action (NAPA).

The new NAPA should include a clearer definition of the problems and opportunities that climate change represents for each sector. Climate mitigation and adaptation plans should be prepared and implemented by means of consultative and participatory governance structures. The plans should include more detail, preferably geo-referenced, on which economic sector, geographic location and social group will be more vulnerable to risks related to climate, and on the nature of the risks and the costs involved. All options should be critically reviewed and prioritized not in isolation but as part of a comprehensive systemic analysis because adaptation in one sector may lead to maladaptation in another. For instance, wetland rice agriculture is becoming common and could be considered an ideal adaptive practice if considered in isolation. Wetland rice, however, is altering the hydrological cycle downstream and making unviable agricultural and pastoral production systems that coexisted in the past in wetland patches; it also contributes to methane emissions. A comprehensive plan should consider the wide-scale consequences of such shifts.

The government's climate change preparedness and response plans would include provisions

to redress economic processes that result into poor land management, which in turn lead to substantial local climate changes, whether they have global climate change implications or not. In NAPA and the sectoral planning documents, the Tanzanian government would commit itself to take seriously into account the country's contributions and responsibility over local- as well as global climate change. The government's climate change mitigation and adaptation plans would address challenges resulting from food insecurity, deforestation, high population growth rates, high dependence on energy from biomass, low water-use efficiency and insufficient sources of alternative zero-emissions employment and income in the countryside. Regarding agriculture, the government must promptly develop a detailed plan to adapt to the different changing climate conditions that affect regions and crops differently.

This may not be easy, since the current NAPA operates under significant political constraints. However, there is a moderate to high level of awareness of climate change and related issues in the relevant ministries. If the issues of political will and coordination can be dealt with, it should be possible to move forward with this fairly quickly.

### **Conduct a Water Property Rights Assessment & Irrigation Scheme Impact Assessment**

Water property and usufruct rights are important issues to consider proactively in light of climate variability and change. The rights for users to use water from rivers, streams, ponds, and wells is potentially quite contentious in Tanzania because water is a scarce resource, and in some cases its availability is decreasing considerably due to increased productive and domestic use, largely linked to population growth. Increased climate variability due to deforestation and other forms of modifying the landscape will likely also reduce water availability. A clear definition of water rights would contribute to initiatives aimed at encouraging

agricultural production and reducing the tension and potential conflict among crop producers, pastoralists, and other water resource users. USAID should consider sponsoring a Water Property Rights Assessment & Irrigation Scheme Impact Assessment Capability. The assessment should take stock of the water resources available throughout the country. It should also define the current formal and informal systems used in Tanzania to determine water rights among different users and economic functions, as well as the limitations to those rights recognized by customary and legal agreements.

### **Conduct a Carbon Mapping Assessment**

Carbon mapping, as it pertains to forestry, is already being carried out through REDD, with funding from Norway and the participation of the United Nations Food and Agriculture Organization (FAO), the Ministry of Natural Resources, Sokoine University, and several Tanzanian and international conservation NGOs. This effort will produce an inventory of all forests in the country, including conservation, agricultural, and peri-urban areas. It will also define species diversity and the species-specific potential for carbon sequestration. USAID may consider sponsoring the assessment of non-forest carbon sinks to complement the REDD efforts. Non-forest carbon sinks would include native grasslands, woody shrublands, and perennial croplands. The assessment would also cover soil, particularly grassland soil, as organic carbon can stay in soils for a long time, longer than in the plant. The assessment could also contribute with a comparative analysis of the potential role and contributions of woodlands, savannas, shrublands, and grasslands in Tanzania as carbon sinks or sources. Carbon markets are becoming increasingly common for both Clean Development Mechanism (CDM) and non-CDM projects. See, for instance, <http://www.greenpowerconferences.com/carbonmarkets/index.html>.

### **Help develop, improve and spread information about climate change.**

It is critical for the Tanzanian government and the international cooperation agencies to support research into climate change and the development of practical, relevant information resources. Currently, most climate-related research is at present funded for one year, and has limited funds. More medium-term research (3–5 years) should be sponsored to understand climate change at the technical level and to define climate change's social and economic drivers and impacts. Such research is needed to propose evidence-based technological and institutional innovations (including business opportunities) to address climate change. The research emphasis should be on threats but also on opportunities that may arise from climate change.

Short-term training and graduate-level education are needed to increase the capacity of researchers and implementers to engage in adaptation and mitigation effectively. Funding is needed for Tanzanian institutions to engage in proactive mitigation efforts to identify and

promote—in strong consultation with farmers and natural resource users (including nomadic and transhumant livestock keepers)—new crop and forestry varieties and practices, new transhumant routes and pastures, new ways to harness water and protect wildlife, and new forms to value local climatic benefits and protect environmental services.

### **Consider direct assistance to mitigation efforts.**

Donor support already exists for reforestation, sustainable use of forest resources and clean renewable energy. However, so far it is small-scale, ad hoc, and uncoordinated. Better donor coordination would be particularly useful here. There are some other areas where donor support does not yet exist, and could be useful. For example, no donor seems to be strongly engaged with the GOT's efforts to expand the use of PV panels and other forms of solar power. Decentralized solar power offers tremendous potential for agricultural development directly as well as providing indirect support for climate change mitigation. Donor effort here could thus pay off across multiple areas of interest.





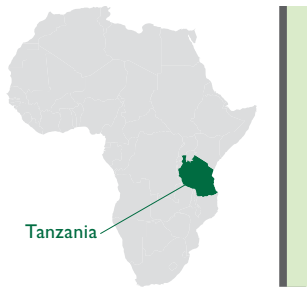
# APPENDIX A: COMPILATION OF RECOMMENDATIONS

AgCLIR Content Area	Time Horizon		
	Short-Term	Mid-Term	Long-Term
<b>WOMEN IN TANZANIAN SOCIETY</b>			
1. Revisit and establish a plan for implementation of the major recommendations set forth in the IFC Gender Assessment.	X		
2. Amend the Law on Marriage to provide for gender equality in the age of marriage.		X	
3. Offer more women-targeted business development services.			X
<b>STARTING A BUSINESS</b>			
1. Increase awareness of business start-up procedures.		X	
2. Enhance the capacity of the Tanzanian Investment Center	X		
3. Strengthen the marketing sector: <ul style="list-style-type: none"> <li>• Establish a statutory consultative process for trade directives</li> <li>• Establish a market information service</li> <li>• Review legislation associated with commodity boards</li> <li>• Enhance the marketing content of agricultural extension services</li> <li>• Review local authority transport levies</li> </ul>		X	
4. Develop stronger linkages between cooperatives and down-stream value chains.		X	
5. Improve the protection of property rights regarding encroachment, theft, and other minor nuisances.			X
6. Review TFDA and TBS roles and responsibilities	X		
<b>DEALING WITH LICENSES</b>			
1. Increase availability of information on licensing.		X	
2. Provide ongoing technical assistance to facilitate the implementation of BARA (2007).		X	
3. Review the registration requirements for cooperatives.	X		
4. Review the roles and responsibilities of TFDA and TBS.	X		
5. Review health and safety and factory and workplace registration.	X		
6. Review legislative frameworks that result in “Kabwenga” sales.	X		
7. Reassess vehicle licensing procedures.	X		
<b>COMPETING FAIRLY</b>			
1. Undertake a comprehensive review of Tanzania’s overall legal framework to determine its secondary impact on competition and consumer welfare.		X	
2. Support the Competition Commission in fulfilling its statutory mandate to promote and protect effective competition and consumer protection.		X	

AgCLIR Content Area	Time Horizon		
	Short-Term	Mid-Term	Long-Term
<b>EMPLOYING WORKERS</b>			
1. Encourage reforms to the Ministry of Labor that render the agency less politicized, more accountable, and better equipped to serve its core mission.		X	
2. Integrate labor expertise into programs and policies pertaining to agricultural sector development.		X	
3. Continue to support free movement of East African labor into Tanzania.		X	
4. Commit unequivocally to understanding and improving conditions for women in Tanzania's labor market and future labor conditions		X	
5. Activate immediate opportunities in academic-based knowledge-sharing	X		
<b>REGISTERING PROPERTY</b>			
1. Help the GOT improve land-use planning.	X		
2. Build human capacity in the various land offices and agencies, not only for use of information technology but also for business processes generally.			X
3. Promote public awareness through outreach.		X	
4. Help with urban land registration.		X	
5. Integrate land issues into the NPRI.	X		
6. Take one last look at MKURABITA.	X		
<b>GETTING CREDIT</b>			
1. Accelerate existing reform programs for collateral registry and credit information system.	X		
2. Enhance human capacity for agricultural lending and rural finance research.		X	
3. Conduct SACCO risk-spreading analysis and program development.	X		
4. Support SACCO capacity-building and financial literacy efforts.		X	
<b>PROTECTING INVESTORS</b>			
1. Engage with the government and private sector on reforming the Company Law.	X		
2. Assist Tanzania's Customs Enforcement Division on enforcing international property rights.		X	
3. Expand the Code of Corporate Governance.			X
4. Consider technical assistance to TIC.	X		
<b>PAYING TAXES</b>			
1. Resolve VAT Issues related to Air Freight.*	X		
2. Provide support to the TRA Review Board.		X	
3. Fix the time limit problem.	X		
4. Provide assistance to the Parliamentary Committee.	X		
5. Provide technical assistance to TRA on administrative processes.	X		
6. Review cess and local taxes on agricultural regions. Implement necessary TA with tax administration.		X	

\*It is understood these issues have largely been resolved post-completion of the AgCLIR Assessment.

AgCLIR Content Area	Time Horizon		
	Short-Term	Mid-Term	Long-Term
<b>TRADING ACROSS BORDERS</b>			
1. Get Crop Boards out of trade.			X
2. Rationalize administration.		X	
3. Simplify clearance procedures.	X		
4. Make seed imports easier.	X		
5. Fix testing generally and weigh stations in particular.		X	
6. Provide technical assistance for professionalizing and regulating freight forwarders.		X	
<b>ENFORCING CONTRACTS</b>			
1. Through a limited review of existing court data, improve understanding of the types of contracts used in agriculture-related transactions and the circumstances of enforcement.	X		
2. Produce and distribute a simple guide to the laws of contracting, collection, and enforcement.	X		
3. Analyze the restrictions on contracting imposed by crop-specific laws, the warehouse receipts law, and other agricultural legislation.		X	
4. Encourage law faculties and the new school for advocates to include agricultural issues in its curriculum.	X		
<b>COPING WITH FOOD SECURITY INFRASTRUCTURE</b>			
1. Emphasize noncontainerized cargo.		X	
2. Engage with the feeder road problem.			X
3. Provide support to NFRA on change management in its strategic planning process.		X	
4. Work to improve system of warehouse receipts and warehouses.	X		
5. Provide the Department of Food Security technical assistance on data gathering.		X	
6. Help the Department of Disaster Management to improve food security information.		X	
7. Fix the weights and measures.			X
<b>ADDRESSING CLIMATE CHANGE</b>			
1. Help the GOT revise and expand its approach to climate change.		X	
2. Help the GOT comprehensively rewrite NAPA.	X		
3. Conduct a Water Property Rights Assessment & Irrigation Scheme Impact Assessment.	X		
4. Conduct a Carbon Mapping Assessment.	X		
5. Help develop, improve and spread information about climate change.		X	
6. Consider direct assistance to mitigation efforts.	X		



## APPENDIX B: REFERENCED FIGURES

FIGURE 1

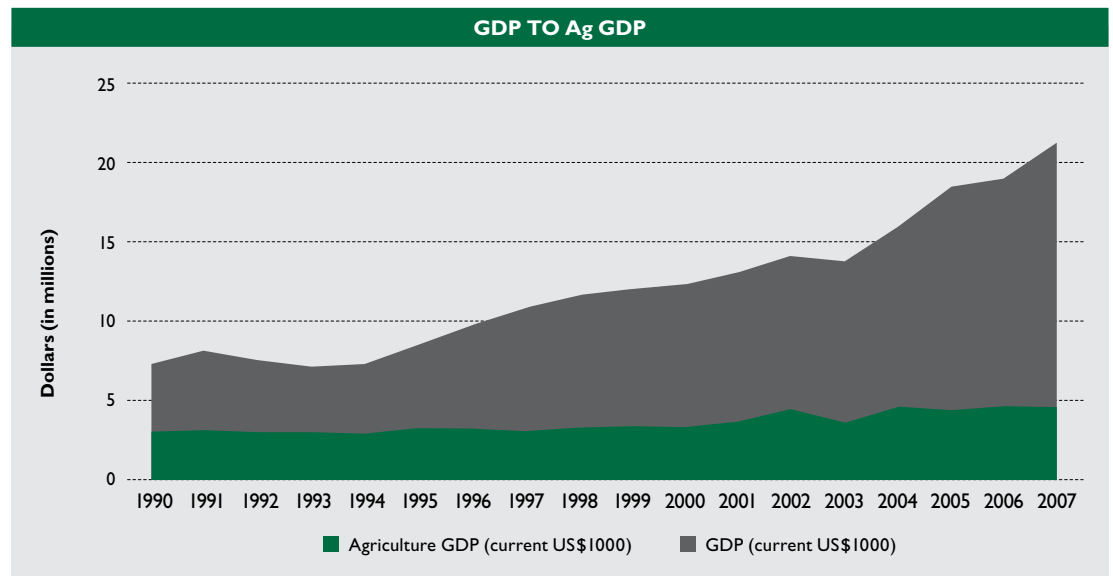
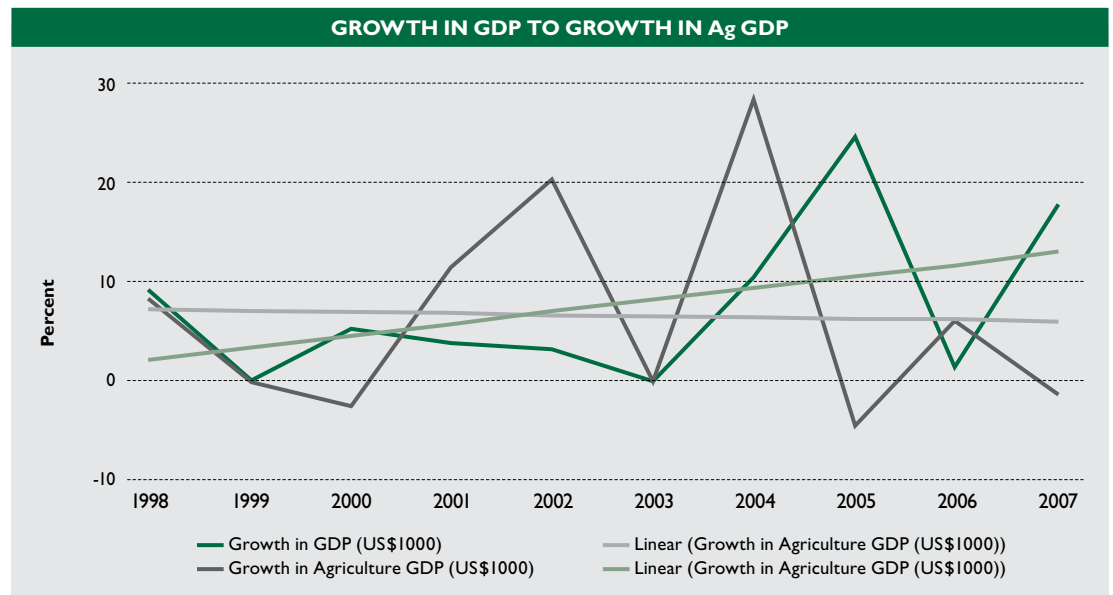
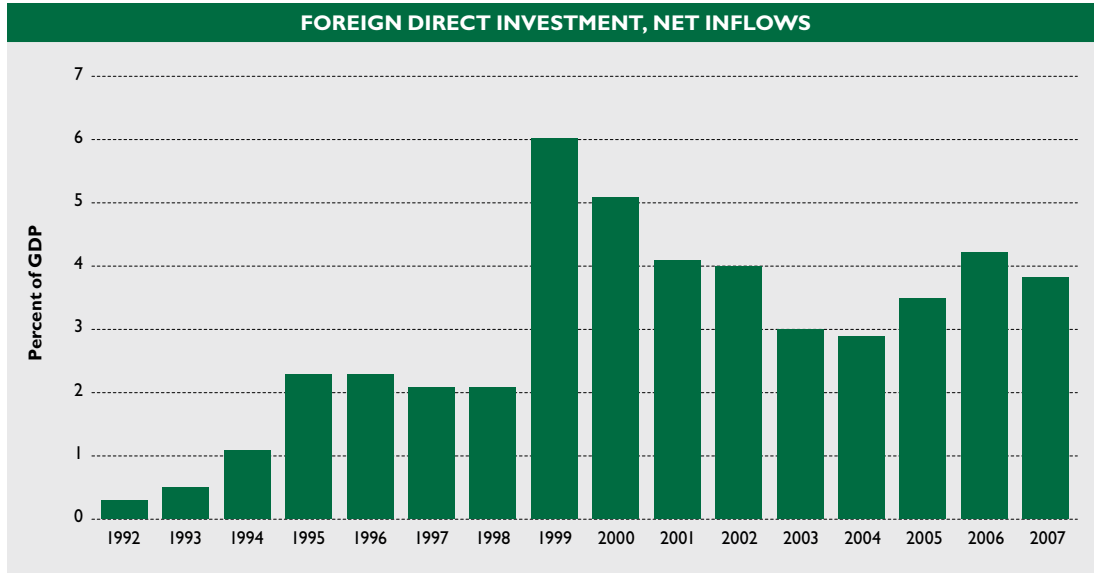


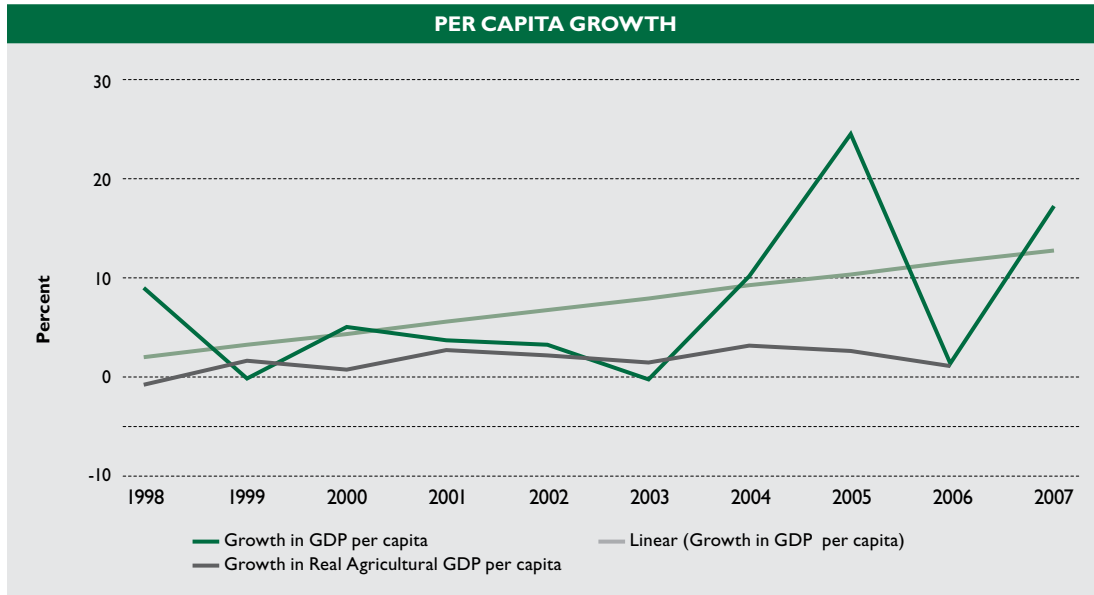
FIGURE 2



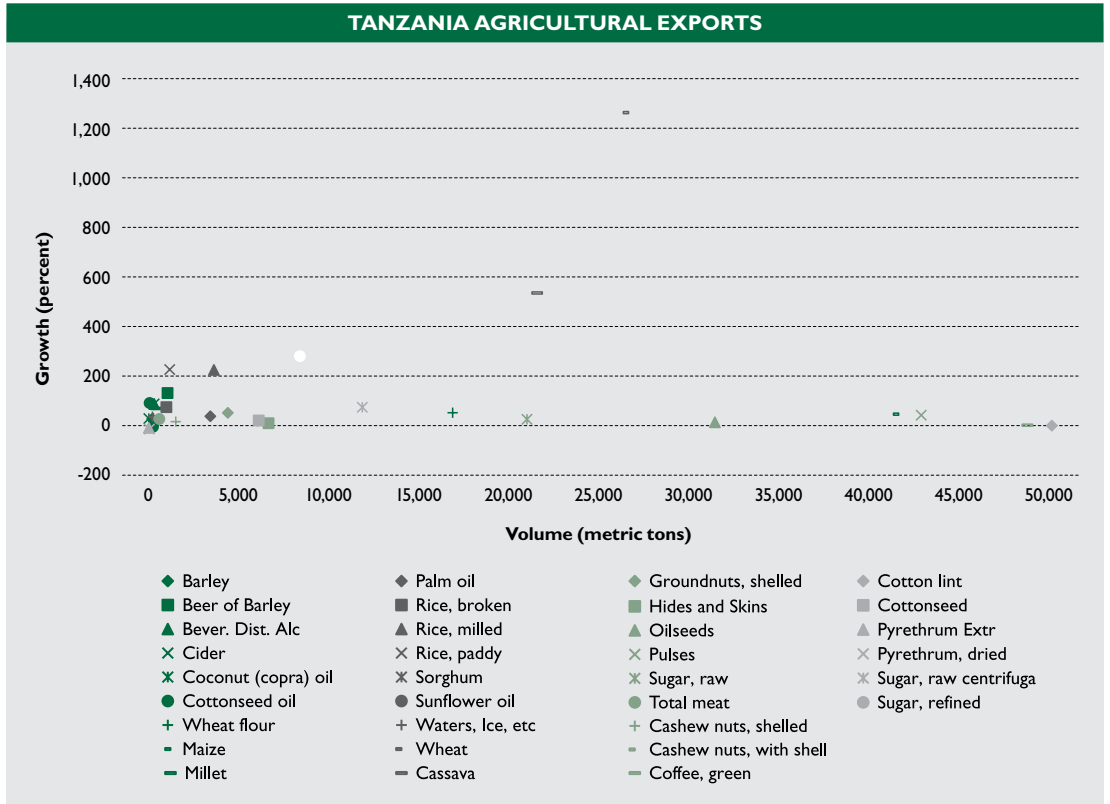
**FIGURE 3**



**FIGURE 4**



**FIGURE 5**







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MAY 2010