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**A MULTIDISCIPLINARY ANALYSIS OF THE SINO-TANZANIAN INVESTMENT
FRAMEWORK**

**MINI-DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF PHILOSOPHY IN
MULTIDISCIPLINARY HUMAN RIGHTS**

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DECLARATION

I, the undersigned, hereby declare that the mini-dissertation with the title **A multidisciplinary analysis of the Sino-Tanzanian investment framework** is my own original work and that it has not previously, in its entirety or in part, been submitted at any other university for a degree, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Signature..... Date.....

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ABSTRACT

In recent years, the Sino-Tanzania relationship has strengthened especially in the fields of trade and investment. The potential for Sino-Tanzania investment cooperation is great and yet, dependency on Chinese investment leads to the decline of local industries which in turn leads to the loss of jobs, the availability of low quality goods and environmental degradation among other things. The researcher assessed whether Tanzania's regulatory framework governing investment promotes the realization of socio-economic rights. The terms local industries, businesses or domestic investors are used interchangeably to represent all businesses operated in Tanzania by Tanzanian nationals.

The overarching purpose of this research is to contribute in broadening the discourse on China in Tanzania, through the analysis of the investment regulatory framework and its impact on exercising human rights in Tanzania. The study therefore provides valuable insight into how the gaps identified in the investment regulatory framework have implications on socio-economic rights. The author argues that Chinese investment brings both opportunities and challenges to Tanzania's community in general and to its local industries in particular. But, in order for Tanzania to benefit from the Sino-Tanzanian investment framework, the law has to bridge in the gap that hinders the realisation of socio-economic rights.

From the analysis herein the researcher infers that the laws and government institutions are not sufficient and efficient enough to address the gaps currently present in the investment regulatory framework. This in turn affects the gradual realisation of socio-economic rights for both local investors and the community at large. In policy and law, the government of Tanzania is rights-based and oriented towards the growth of local industries. In practice however, the government's capacity to ensure the promotion of socio-economic rights using the law governing foreign direct investment is questionable. The researcher therefore proposes that other multidisciplinary approaches can assist in protecting and promoting socio-economic rights given the presence of Chinese investors in Tanzania.

ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
BOT	Bank of Tanzania
BIT	Bilateral Investment Treaty
BCA	Bilateral Cooperation Agreement
BRELA	Business Registration & Licensing Agency
EAC	East African Community
EPZ	Export Processing Zones
ESRF	Economic and Social Research Fund
FDI	Foreign Domestic Investment
FREZA	Free Economic Zones Authority
GDP	Gross Domestic Product
ICESCR	International Convention on Economic, Social and Cultural Rights
MIT	Ministry of Industry and Trade
MFN	Most Favoured Nation
MFAIC	Ministry of Foreign Affairs and International Cooperation
MHA	Ministry of Home Affairs
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
TAZARA	Tanzania and Zambia Railway Authority
TCCIA	Tanzania Chamber of Commerce, Industry and Agriculture
TRA	Tanzania Revenue Authority
TIC	Tanzania Investment Centre
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USD	United States Dollar
VAT	Value Added Tax

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CHAPTER ONE

Introduction

1.1 Background

Foreign direct investment (or FDI) serves as an important tool that contributes to the economic growth of host countries, bringing in benefits such as transfer of technology, increased trade activities, competition, and inflow of capital.¹ The definition of FDI varies from different scholars. However, the United Nations Conference on Trade and Investment (UNCTAD) has set the most widely accepted definition for FDI that is, ‘an investment made to acquire lasting interest in enterprises operating outside of the economy of the investor.’²

Africa is one of the highest recipients of FDI in the world with the continent attracting inflows of about 29 billion US dollars as of 2014.³ The United Republic of Tanzania (or Tanzania), like many other developing African countries, has made it a priority to create a favourable environment to attract FDI.⁴ The country is pursuing different programs for attracting FDI through offering attractive investment incentives such as tax exemption and creation of local companies with the objective that FDI will foster socio-economic development.⁵ Despite the fact that Tanzania is historically a socialist country, the country has become a front-runner for FDI in Africa attracting ‘over 2,142 million USD in 2014.’⁶

¹ L Kimaro ‘Examination of the effectiveness of the regulation of foreign direct investment in Tanzania’ Published Master’s dissertation, University of Pretoria, 2013 14.

² United Nations Conference on Trade and Investment ‘Foreign Direct Investment’ (2013). <http://unctad.org/en/Pages/DIAE/Foreign-Direct-Investment-%28FDI%29.aspx> (accessed 12 August 2015).

³ The World Bank ‘Africa’s Pulse: Decades of Sustained Growth is Transforming Africa’s Economies’ (2014) Volume 10. <http://www.worldbank.org/en/region/afr/publication/africas-pulse-decades-of-sustained-growth-is-transforming-africas-economies> (accessed 29 October 2015).

⁴ The World Bank defines a developing country as the one in which the majority lives on far less money-with far fewer basic public services-than the population in highly industrialised countries. <http://www.worldbank.org/en/about> (accessed 5 September 2015).

⁵ WJ Long ‘Trade and Technology Incentives and Bilateral Cooperation’ (1996) 40 *International Studies Quarterly* 82. Incentives are payments that provide tangible material benefit such as access to land for investment or nontangible benefits such as recognition.

⁶ World Investment Report: FDI Increase in Tanzania (2015). <http://www.tic.co.tz/menu/317> (accessed 7 August 2015). FDI into Tanzania has increased by 14.5% “primarily due to gas discoveries” making it one of the leading destinations for FDI in the East African Community.

Tanzania's decline of socialism in the early 1990s paved the way for new market reforms and economic liberalisation.⁷ Accordingly, there was a need to formulate supportive legislative mechanisms in order to facilitate investments in Tanzania. To a greater extent, structural and legal reforms such as the removal of restrictive measures for investing for example have attracted more foreign investors to the nation.

Of all foreign investors operating in Tanzania, Chinese investors comprise the largest group to have extensively invested in the tourism, textile, agriculture, electronics, mining, infrastructure and manufacturing sectors among others.⁸ The effect of Chinese FDI has been apparent in Tanzania's economy and the community as a whole.

On one hand, Chinese investment enhances creation of job opportunities particularly in the construction of roads and hospitals; facilitates trade and exports for example in the textile industry; and boosts transfer of technology. With new roads, a National Stadium, schools and hospitals, people can exercise their right to health, education and movement. On the other hand, Chinese investment perpetuates unfair competition with domestic investors, supplies poor quality products and tends to eliminate local business owners.⁹

The above argument calls for the need to enhance how Tanzania's investment legal framework affects the promotion of socio-economic human rights for local business owners and the entire community. It is noteworthy that even with increased FDI inflows in the country, human rights must remain protected, respected and promoted to achieve socio-economic development for all.

Beside the Tanzanian Constitution which protects socio-economic rights of all citizens, the Tanzania Investment Act of 1997, the National Investment Promotion Policy of 1996 and the

⁷ HPB Moshi & JM Mtui 'Scoping Studies of China-Africa Economic Relations: The case study of Tanzania' (2008) *Economic Research Bureau* 11.

⁸ JL Rutaihwa & AR Mkwawa 'Empirical Analysis of China-Africa Economic and Trade Cooperation for Good or Bad: A Case of Tanzania' (2011) 1 *International Journal of Academic Research in Business and Social Sciences* 424.

⁹ As above 430. Chinese investors bring in more advanced technology and majority are financially supported by their home government. Unlike domestic investors who usually face financial constraints, Chinese investors can easily trade and invest in Tanzania.

Tanzania Revenue Authority Act of 1997 represent all laws and policies governing investment in Tanzania.¹⁰

1.2 Problem Statement

With the exception of foreign direct investment, the presence of local industries is Tanzania's prime concern for the economic well-being of the nation. Based on the current available information, a national 2010 small businesses survey revealed that 27% of Tanzania's GDP came from local industries.¹¹

Even though Section 22 of the 1977 Tanzanian Constitution protects the socio-economic right of an individual 'to work and be entitled to equal opportunity to hold office or discharge any function under the State's authority,' the author of this work is of the opinion that local business owners are not entirely enjoying their right to work.¹² In addition, with Chinese presence, local business owners do not entirely enjoy their right to a general satisfactory environment favourable to their development as accorded in article 24 of the African Charter on Human and People's Rights.

Although the government of Tanzania is determined to promote socio-economic rights and has created regulations to attract FDI, in the wake of the high FDI inflow these regulations have been found insufficient to protect and promote socio-economic rights. On the basis of the above, this research assesses whether the legal environment for foreign direct

¹⁰ The Constitution of the United Republic of Tanzania, 1977 Articles 12-24 see <http://www.judiciary.go.tz/downloads/constitution.pdf>. For the National Investment and Promotion Policy, 1996, President's Office see <http://www.tccia.com/tccia/wpcontent/uploads/legal/policy/investmentpromotionpolicy.pdf> For the Investment Act No. 40 dated 1997 see http://www.tccia.com/tccia/wpcontent/uploads/legal/acts/Investment%20Act_1997.pdf

¹¹ Ministry of Industry and Trade 'National Baseline Survey Report for Micro, Small and Medium Enterprises in Tanzania' (2012) 16. http://www.mit.go.tz/pdf/MSME%20Pages%20ST1_081513.pdf (accessed 29 June 2015).

¹² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18. <http://www.refworld.org/docid/4415453b4.html> (accessed 26 October 2015). According to the General Comment, the right to work encompasses all forms of work whether independent or dependent wage-paid work (including local business owners)

investment in Tanzania protects the socio-economic rights of domestic investors in the wake of FDI inflow while allowing them to fully benefit from Chinese investment in Tanzania.

1.3 Research Questions

In order to analyse the regulated Tanzanian investment framework in relation to socio-economic rights, the following questions are the focus of this study:

1. Why FDI is important to Tanzania?
2. How is FDI regulated in line with the promotion and protection of socio-economic rights in Tanzania?
3. What are the legal gaps in the FDI policy and how do they impact on socio-economic rights?
4. How can these legal gaps be addressed to create the ideal environment for domestic investors in the wake of Chinese FDI in Tanzania?
5. Do FDI agreements reflect Tanzania's bill of rights?
6. To what extent FDI is or is not consistent to regional and global human rights obligations applicable to Tanzania?

1.4 Research Methodology

This is basically desk research to critically analyze policies, treaties, statutes, and cases. The study is based on a human rights-based approach which analyses how people are empowered enough to make decisions that impact on their human rights and whether the institutions responsible for respecting, protecting and promoting human rights are held accountable for doing so. This approach describes socio-economic rights, and whether there is full participation of domestic investors in developing policies, as well as practices that influence their participation in seizing the country's investment opportunities.

Apart from the legal analysis of the text, the study will also integrate a sociological analysis (an analysis based on a social economic institution, in this case domestic investors, as an

independent entity or that relates to the society including the challenges they face in exercising their rights), and public administration (related to the public affairs of the country, for example the registration of businesses and the acquisition of business licences) to stimulate a multidisciplinary debate.

International treaties such as the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights and domestic legal frameworks such as the 1997 Tanzania Investment Act and the National Investment Promotion Policy are referenced as primary sources. Relevant books, scholarly articles, internet sources, unpublished and published reports are consulted as secondary sources.

1.5 Limitation of the Study

This paper refers to all businesses, industries and domestic investors as local businesses run by Tanzanian nationals.

The researcher has not used a pure economic research or investment analysis with reference to the topic under discussion given that the mini-dissertation is on human rights. The purpose is to establish a multidisciplinary analysis along with a basic legal analysis within the context of Chinese investment's impact on the protection and promotion of socio-economic rights in Tanzania. The local business owners under discussion are from Tanzania mainland (Zanzibar excluded). Zanzibar uses different laws and policies on investment. However, wherever reference is made on investment-related law, Zanzibar is discussed for comparison purposes.

1.6 Literature Review

Sandvand compares Westerners' involvement in Africa to that of China on matters spanning financial aid, trade, human rights, FDI and technical assistance.¹³ She summarises that recently China has invested in Africa more than the majority of Western nations primarily

¹³ H Sandvand 'Friends and Interests. A Comparison of Chinese and Nordic Aid to Tanzania' Published Master's Thesis, Norwegian University of Life Science, 2008 1-10.

because of China's non-interference policy in political matters of the host country among other things. Nevertheless, the effectiveness of a regulated investment framework for the protection of local businesses' socio-economic rights amid Chinese investment in African countries like Tanzania, has received little attention in the discourse.

The FDI topic is very broad and well documented by various authors and international organisations. Sornarajah for example refers to FDI as 'the transfer of tangible or intangible assets from one country into another for use in the recipient country to generate wealth under the total or partial control of the owner of the assets.'¹⁴ The International Monetary Fund (IMF) defines a foreign direct investment enterprise as 'an incorporated or unincorporated enterprise in which a foreign investor owns 10 per cent or more of the ordinary shares or voting power of an incorporated enterprise or the equivalent of an unincorporated enterprise.'¹⁵

There have been increasing efforts made by countries to attract FDI from everywhere in the world. Meanwhile general concerns about the practises of multinational corporations who often serve as foreign investors and the effects of FDI on local industries are worthy of mention.

FDI has contributed to the transfer of technology from foreign investors to domestic investors. In leading sectors such as the mining, agricultural and construction sectors, domestic investors, through joint ventures, acquire new skills and new knowledge that enable them to become more productive, innovative and ultimately develop their enterprises.¹⁶ At community level, FDI contributes to the promotion and fulfilling of human rights such as the right to work through the creation of jobs, access to education, health and electricity through the construction of schools and hospitals.¹⁷ Foreign investors also contribute to the revenue of the country while the government uses the revenue to ensure the supply of water services, good roads, and electricity.

¹⁴ M Sornarajah *International law on foreign investment* (2004) 7.

¹⁵ IMF website available at: <http://www.imf.org/external/np/cm/cg/2003/eng/091803.HTM>

¹⁶ OECD Global Forum on International Investment 'Growth, Technology Transfer and Foreign Direct Investment' (2001) 15.

¹⁷ T Hon *et al.* 'Evaluating China's FOCAC commitments to Africa and mapping the way ahead' (2010) Centre for Chinese Studies 115-118.

However, FDI is not without its shortcomings. Sun argues that foreign investors usually operate in a profit-oriented mode and do not necessarily take into account the human rights aspect.¹⁸ In some countries such as Nigeria, there have been reports of violations of the right to food, safe drinking water and generally poor living conditions because of foreign investors in the oil reserve area of the Ogoni land.¹⁹ As far as domestic investors are concerned, if FDI is not well regulated to ensure that local economic interests are protected, it contributes to the underdevelopment of the host economy through the decline of local industries for example.²⁰

In Tanzania, FDI increased after the 1990s when the country embarked on a new economic journey. Under the socialist regime, Tanzania's economic tradition of *ujamaa*²¹ and self-reliance policies did not entirely expose local business owners to competition. In line with the research conducted by Mwasalibwa *et al.*, the author of this study believes that the opening up of international markets threatened the owners of local businesses who originally operated in a non-competitive setting.²²

With intensified foreign trade activities in a globalised world, the Tanzanian government has incorporated graduate entrepreneurship programmes in the education system. There is an Entrepreneurship Centre at the University of Dar es Salaam for example, and whose aim is to foster an entrepreneurial spirit amongst students and graduates by facilitating training programmes on how to trade and compete with foreign business owners.

¹⁸ X Sun 'How to Promote FDI? The Regulatory and Institutional Environment for Attracting FDI' (2002) Foreign Investment Advisory Service 2.

¹⁹ Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001) <http://www.chr.up.ac.za/index.php/component/content/article/86-africancases/410-nigeria-social-and-economic-rights-action-centre-serac-and-another-v-nigeria-2001-ahrlr-60-achpr-2001.html> (accessed 7 November 2015). The oil production contaminated the land, water and air in general. The soil is not viable for agriculture.

²⁰ OECD (n 16 above) 15. Foreign investors bring along more advanced technology for production of goods, thus they dominate the market with their products. Domestic investors are exposed to foreign competition that might assist them in production of more goods or that might eliminate them from the market.

²¹ *Ujamaa* is Socialism in Kiswahili. It was a political-economic development policy promoted by the first President of Tanzania, the late Julius Nyerere. It established that a person becomes a person through a community within which local privately owned entities were actively discouraged in favour of government-owned entities. See <http://africanhistory.about.com/od/tanzania/a/What-Was-Ujamaa.htm>. However, the adoption of free investment policy effectively meant moving from 'self-reliance' evident in Nyerere's *ujamaa* policy to reliance on Chinese and other foreign investors.

²² E Mwasalwiba, H Dahles & I Wakkee 'Graduate Entrepreneurship in Tanzania: Contextual Enablers and Hindrances' (2012) 76 *European Journal of Scientific Research* 390.

Realising that FDI would be beneficial to Tanzania's economy, the government launched the 1990 National Investment and Promotion Policy which later was re-launched and renamed the 1996 National Investment Promotion Policy. In order to attract more foreign investors and formulate a stronger legal basis, the 1997 Investment Act was enacted.²³ Despite the legal and structural reforms, the OECD report states that Tanzania's investment regulatory framework is very complex and hampers the growth of private investment for both foreign and domestic investors.²⁴

With regard to China, the country is historically well-known for adopting the socialist economic model since 1937.²⁵ Although in 1978 China adopted an open-door policy,²⁶ the communist government remained the sole provider of social services, controlled and protected all economic structures in the country.

Likewise, the United Republic of Tanzania adopted socialism after independence in 1961 and aligned with the East (the former Soviet Union and China) at the diplomatic, political, and military levels. Tanzania's economic and political alignment to China further strengthened its bilateral relations in 1964 when an agreement on economic and technical assistance to Tanzania was signed between Tanzania and China.²⁷

Furthermore, in 1967 the first President of the United Republic of Tanzania, Julius K. Nyerere, signed the Sino-Tanzanian Friendship Treaty.²⁸ Arsene argues that contrary to the West's capitalistic and colonial views, Nyerere's socialistic views, his support to end apartheid in South Africa and struggle for independence to most Southern African countries, made Tanzania the strongest African ally of China.²⁹ Around the same time (from 1967 onwards) the Tanzanian government invited Chinese migrant workers who began the

²³ National Investment and Promotion Policy, 1996, President's Office see

<http://www.tccia.com/tccia/wpcontent/uploads/legal/policy/investmentpromotionpolicy.pdf> For the Investment Act http://www.tccia.com/tccia/wpcontent/uploads/legal/acts/Investment%20Act_1997.pdf

²⁴ OECD 'Investment Policy in Tanzania' (2013) 55. Available at <http://dx.doi.org/10.1787/9789264204348-8-en>

²⁵ G Thomson 'Marxism in China Today' (1965) 5. A social economic model serves upholds that the means of production, distribution, and exchange should be owned and regulated by the society.

²⁶ C Hall 'When the Dragon Awakes: Internationalization of SMEs in China and Implications for Europe' (2007) 8 *CESifo Forum* 29. The open door policy involve economic reformulation by opening up for trade in the international markets that allows the operation of private sectors such as small and medium sized enterprises.

²⁷ Embassy of the People's Republic of China in Tanzania 'China and Tanzania on Economic and Trade Relations and Economic and Technical Cooperation' (2008) <http://tz.china-embassy.org/eng/ztxx/jj/t421433.htm>

²⁸ Hon (n 17 above) 101.

²⁹ CS Arsene 'Chinese coming to Africa: Competition, interaction and interdependency-Lessons from Tanzania' (2009) University of Chicago 1-10.

construction of the Tanzanian-Zambian Railway line which was funded by the Chinese government.³⁰

The influx of Chinese migrants became apparent from the late 1990s. Supported by the 1999 Chinese government strategy known as the 'Go Out or Going Global initiative to encourage Chinese businesses to invest abroad'³¹ Chinese state-funded enterprises came to invest in Tanzania. Then, more Chinese migrants entered Tanzania as small-scale business owners with their own economic agendas instead of the government-led strategy for economic development.³² To support the argument that there are more Chinese investors doing business than investing in agreed projects, Baregu points out that 'of 147 Chinese companies in Tanzania only 22 had portfolios of more than 1 million USD, marking the majority out as small and medium-sized enterprises.'³³

Looking at investment, China is very interested in investing in Tanzania and assist with poverty alleviation in general. However, Kimaro contends that the Chinese investors are after raw materials and energy resources for the reason that after they are registered by the TIC and obtained their Certificate of Compliance, they venture into other businesses instead of investing in the agreed fields in Tanzania.³⁴

Overall, the nature of Chinese investments in Tanzania is more slanted towards trade rather than investment.³⁵ In the same vein with Kimaro's contention, the interviews conducted by the Centre for Chinese Studies in Tanzania show that once the Chinese investors obtain their investment licence they 'continue to import Chinese goods into Tanzania rather than making actual investments.'³⁶

Altorfer-Ong points out that, unlike today's on-going debate over China's need for resources in Tanzania, this was not the case in the 1960s because China's aid was not focused on

³⁰ Ministry of Foreign Affairs of the People's Republic of China 'China's Assistance in the Construction of the Tanzania-Zambia Railway' 1998-2014 available at:

http://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18009.shtml

³¹ SVD Lugt, V Hambling, M Burgess & E Schickerling 'Assessing China's Role in Foreign Direct Investment in Southern Africa' (2011) Centre for Chinese Studies 36.

³² Arsene (n 29 above) 10.

³³ M Baregu 'The three faces of the dragon: Tanzania-China relations in historical perspective' in *Crouching Tiger, Hidden Dragon? African and China* by K Ampiah and S Naidu (eds.) (2008) 158.

³⁴ Kimaro (n 1 above) 51-52.

³⁵ J Jansson, C Burke & T Hyon 'Patterns of Chinese investment aid and trade in Tanzania' (2009) Centre for Chinese Studies 6.

³⁶ As above.

Tanzania's few resources at that time.³⁷ On the contrary, Braak argues that China's need for raw materials to run their economy, pushed the government in Beijing to advance its economic interests outside China specifically to the then underexploited Africa,³⁸ investing in countries like Tanzania.

Jansson *et al.*, support the argument that Tanzania's 'location as an Indian Ocean gateway to mineral-rich Southern Africa' offered and still offers a strategic position for China³⁹ to access raw materials, for example copper in Zambia, minerals in Zimbabwe and energy resources in Angola. On the contrary, Kamndaya mentions a senior Chinese conservative politician who has challenged this argument and called for 'more research to prove how much of China's investments go to infrastructures as opposed to those which go to extract raw materials.'⁴⁰

Apart from the increase in FDI and rapid constructions of infrastructure, Lundsgaard-Hansen noted that Tanzania appreciates China's principle of non-interference in local affairs. The author explains that Tanzania largely benefits from the relationship as China addresses most urgent issues like the construction of projects, increased investment and trade opportunities. This partially explains why Tanzania has strengthened its current relationship with China.⁴¹ Additionally, Moshi and Mtui point out that the Sino-Tanzanian investment relationship increased Tanzania's national income: for instance Tanzania's exports to China rose from '2% between 1996 and 2002 to 11% between 2003 and 2006.'⁴²

Moshi and Mtui however, criticise the Sino-Tanzanian investment relationship as they find it more problematic than advantageous to Tanzania. Tanzania exported primary goods, mostly agricultural and raw materials,⁴³ to China in exchange for the importation of Chinese manufactured goods, automatically leading to the 'de-industrialization of local infant

³⁷ AN Altorfer-Ong 'Old Comrades and New Brothers: A Historical Re-Examination of the Sino-Zanzibari and Sino-Tanzanian Bilateral Relationships in the 1960s' (2014) 1-10.

³⁸ A Braak 'Africa: blessed or cursed by Chinese FDI' Faculty of General Economics, Erasmus University Rotterdam (2010) 4.

³⁹ Jansson *et al.* (n 36 above) 6.

⁴⁰ S Kamndaya 'Tanzania: China-investment or exploitation?' (2010) The Citizen Tanzania, <http://www.thecitizen.co.tz/newe.php?id=17113> (accessed 24 March 2015).

⁴¹ L Lundsgaard-Hansen 'Western and Chinese development in Tanzania: A Comparison of Approaches Followed by an Evaluation from a Tanzanian Perspective' (2010) v.

⁴² Moshi & Mtui (n 7 above) 8.

⁴³ As above 13-20.

industries, cheap counterfeit goods, and local labour displacement’ as revealed by the Tanzanian think-tank, the Economic and Social Research Fund (ESRF).⁴⁴

Of real concern however, is what literature informs the discourse about socio-economic rights and their relevance to this study.

Socio-economic rights can be defined as human rights which recognise human dignity and promote a developmental life for human beings irrespective of their gender, race, culture, religion, and political opinion.⁴⁵ Legally, socio-economic rights are enshrined in both the Universal Declaration of Human Rights (from articles 20 to 24) of 1948 and the International Covenant on Economic, Social and Cultural Rights (ICESCR, article 6 to article 15) of 1966. There are 164 countries that have ratified the ICESCR, including Tanzania in 1976 and China in 2001.⁴⁶

At the regional level, the African Union (AU), through its 1981 African Charter has enshrined socio-economic rights. These rights include the right to work under equitable satisfactory conditions, the right to receive fair remuneration, the right to education, and the right to economic, social and cultural development (articles 15, 17 and 22 of the African Charter). These rights make room for economic development provided that the State provides a satisfactory environment suitable for the peoples’ development.⁴⁷

Government assistance to Tanzanian investors should include granting them subsidies like their Chinese counterparts. In this context, Tanzanian investors can exercise their right to develop in an environment that is efficiently supported by the government, for example through training programmes on how to invest and seize opportunities, facilitate financial schemes provided by the Bank of Tanzania to local business owners and reducing the tax burden.

⁴⁴ HB Lunogelo & S Baregu ‘India and China: opportunities and challenges for Tanzania’s economic prosperity’ (2013) Economic and Social Research Fund 10.

⁴⁵ A Eide ‘Economic, Social and Cultural Rights as Human Rights’ in *Economic, Social and Cultural Rights* by A Eide, C Krause & A Rosas (eds)(2001) 12-15.

⁴⁶https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtmsg_no=iv-3&src=treaty (accessed 24 June 2015).

⁴⁷ Article 22 of the African Charter.

Article 21(5) of the African Charter states that ‘States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.’ In line with the African Charter, the Treaty establishing the East African Community (EAC) provides for the protection of indigenous businesses⁴⁸ and a transformative structure that would foster socio-economic development for all Partner States.

Socio-economic rights have been a debating subject for authors like Cranston who contends that these rights are not justiciable and therefore not worthy of being promoted neither protected.⁴⁹ Looking at domestic investors for example, they cannot directly sue the government for not having been exposed to a general satisfactory environment favourable to their development.⁵⁰ In contrast, Eide defends the justifiability of socio-economic rights by stating that these rights are as equal as other rights and therefore they should be protected and promoted.⁵¹ The justifiability of socio-economic rights is yet to be realised in the case of Tanzania’s promotion of these rights whilst managing Chinese FDI.

The effect of Chinese FDI on the promotion of socio-economic rights in Tanzania is evident in many parts of the country. Arsene describes the socio-cultural and economic interaction between local business owners, local customers and Chinese business people as complex. The author describes tensions which exist particularly between local business owners and Chinese for the reasons that the latter supply cheap and low quality goods which local customers prefer over the locally produced goods.⁵²

⁴⁸ Article 79 of the EAC Treaty (1999) <http://www.chr.up.ac.za/undp/subregional/docs/eac4.pdf> (accessed 24 August 2015). The East African Community (EAC) is a regional intergovernmental organisation founded by five countries, Tanzania included. One of its objectives is to strengthen cooperation among the Partner States in the economic, social and political fields for mutual benefit.

⁴⁹ M Cranston ‘Are there any Human Rights?’ (1983) 112 Human Rights 6-10. <http://www.jstor.org/stable/20024883> (accessed 10 September 2015).

⁵⁰ Even though the Tanzanian Constitution codifies socio-economic rights for all its citizens it does not contemplate the regulation of business in relation to promotion and protection of human rights nor provide for government’s duty to ensure satisfactory environment for domestic investors’ development. Also, there is no legislation that enables local investors to take the government to court for not being provided a satisfactory environment. The African Charter does not force States to define socio-economic rights and integrate the law that provides for those rights in their domestic legal setting.

⁵¹ Eide (n 45 above)

⁵² Arsene (n 32 above) 17-18.

Low quality goods or counterfeit goods expose the community to a risk of damaging their health and to local businesses they cannot fairly compete with Chinese who set their goods at competitive prices. They ultimately end up lowering their prices or close their businesses. Interestingly, Mwasalwiba *et al.* suggest that other local business owners would form ties with Chinese counterparts so as to source cheap products directly from China.⁵³

Although the two governments maintain good relations, the author of this work insists that Tanzania should revisit its legal framework with reference to the regulation and protection of socio-economic rights of its local businesses *vis-à-vis* Chinese investments. Tanzania needs diverse approaches to implement its economic policies.

1.7 Structure of the mini-dissertation

Chapter One: Introduction and background of the topic, literature review, as well as methods of conducting this research.

Chapter Two: Focuses on the conceptual framework of foreign investment. An overview of investment cooperation agreements and a theoretical framework are provided.

Chapter Three: Discussion of the Tanzanian regulatory framework for investment.

Chapter Four: Analysis of the regulatory and institutional investment framework is provided. Under this Chapter, the author extrapolates legal gaps identified in Chapter Three and their implications on the protection or promotion for socio-economic rights. In addition, the impact of Chinese investment is explored.

Chapter Five: Summarises and concludes the study by providing recommendations that the government can adopt as Tanzania's initiatives to optimise Chinese investment while protecting and promoting socio-economic rights.

⁵³Mwasalibwa *et al.* (n 22 above) 398.

CHAPTER 2

THE CONCEPT OF FOREIGN DIRECT INVESTMENT AND ITS REGULATION: THE CASE OF TANZANIA

2.1 Introduction

The Chapter attempts to explain FDI as an important economic aspect relevant for the socio-economic development of Tanzania. It discusses the importance of FDI to a host country, the need to regulate it and its link to human rights. This chapter also reviews principles and economic theories of FDI. Bilateral Investment Treaties (BITs) and Bilateral Cooperation Agreements (BCAs) between China and Tanzania are examined as part of international efforts to regulate investment and ensure that standards of treatment of FDI within foreign investment law are maintained.

In international investment law, the definitions of an investor and investment can be derived from international investment agreements which bind ‘only those investors who qualify for coverage under the relevant provisions and be eligible to take a claim’ to an international juridical body such as the International Centre for Settlement of Investment Disputes (ICSID).⁵⁴

From the foregoing, the definition of investment in this study is derived from article 1(a) of the *United Kingdom-Tanzania BIT*.⁵⁵ Investment ‘means every kind of asset admitted in accordance with the legislation and regulations in force in the territory of the Contracting Party in which the investment is made and, in particular, though not exclusively, includes movable and immovable property and any other property rights such as mortgages; claims to money; intellectual property rights, technical processes and know-how.’⁵⁶

In general, there is *public investment* which refers to the amount of money or resources the government spends for public goods, for instance the construction of roads, bridges,

⁵⁴ OECD ‘Definition of Investor and investment in International Investment Agreements’ (2008) International Investment Law 8-9. <http://www.oecd.org/investment/internationalinvestmentagreements/40471468.pdf>

⁵⁵ UK-Tanzania BIT, signed on 7 January 1994, entered into force 2 August 1996. <http://www.italaw.com/sites/default/files/laws/italaw6243.pdf>

⁵⁶ Treaty Series No. 90 (1996) ‘Agreement between the United Kingdom of the Great Britain and Northern Ireland and the Government of the United Republic of Tanzania for the Promotion and Protection of investments’ (1994) 3. Available at <http://investmentpolicyhub.unctad.org/Download/TreatyFile/2343>

energy-generating plants, education and health services;⁵⁷ and there is *private investment* which refers to money or resources invested by enterprises, private investors or financial institutions other than the government in the same sectors and more for sustainable development.⁵⁸ Investors play the main role of running investments guided and protected by international customary and investment law.

A natural and legal person comprises the two types of investors usually found in BIT provisions and for arbitration purposes under the ICSID Convention. In the *Tanzania-Italy BIT*, a natural person is a type of an investor who holds nationality in accordance to the laws of his or her State and a legal person is an investor having its 'head office in the territory of one of the Contracting Parties and recognised by it, such as, corporations, partnerships, foundations and associations.'⁵⁹

The ICSID arbitration rules govern claims from investors based on their investor status: natural or legal persons. For natural persons, it requires nationality to be established on two important dates: the date of consent to arbitration and the date of registration as it was with the *Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited (ICSID Case No. ARB/10/20)*. This case was registered on October 2010 using the *UK-Tanzania BIT* as a point of reference for the disputed power purchase agreement and after the parties consented for arbitration in May 2010.

'The dispute relates to Standard Chartered Bank's (or claimant which is a company incorporated by Royal Charter in the United Kingdom) alleged investment in Tanzania, by way of a loan acquired by its subsidiary, Standard Chartered Bank (Hong Kong) Limited made to Independent Power Tanzania Limited (IPTL) in order to finance a Power Plant in Dar es Salaam, Tanzania.'⁶⁰ The Standard Chartered Bank (SCB) claims that the acts and measures of various organs of the Tanzanian government have failed to accord fair and equitable treatment (including denial of justice) to SCB and its investment contrary to Article

⁵⁷ E Cavallo & C Daude 'Public Investment in Developing countries: A Blessing or a Curse?' (2008) 648 *Inter-American Development Bank* 4-8.

⁵⁸ United Nations Conference on Trade and Development 'Investing in Sustainable Development Goals' (2015) 6-8. http://unctad.org/en/PublicationsLibrary/osg2015d3_en.pdf (accessed 27 September 2015).

⁵⁹ Article 1 (2, 3 & 4). Agreement between the United Republic of Tanzania and the Government of the Italian Republic on the Promotion and Protection of Investments (2001) <http://investmentpolicyhub.unctad.org/Download/TreatyFile/1712>

⁶⁰ Case details available at: <https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?caseno=ARB/15/41>

2(2) of the BIT; took control over the power plant in 2009; a breach of Tanzania's obligation of non-discrimination and to provide national treatment under articles 2 and 3 of the BIT among other things. The case is still pending due to the absence of the 'liquidator (a state official) to continue the ICSID Interpretation proceedings which in turn prevents SCB Hong Kong from getting its investment back.'⁶¹ For legal persons, 'the ICSID Convention requires nationality to be established only on the date on which the parties consented to submit such dispute to arbitration.'⁶²

2.2 The FDI concept

The definition of FDI varies from different scholars, international organisations and countries but there seems to be common features encompassing the concept of FDI. The features include but not limited to acquiring lasting interest; enterprise or enterprises (usually large multinational enterprises); cross-border economic activities; and shareholding. For instance the UNCTAD defines FDI as 'an investment made to acquire lasting interest in enterprises operating outside of the economy of the investor.'⁶³ Apart from that, international investment agreements also define what constitutes investment and foreign investment in their broader terms depending on the contracting countries (or parties).

According to the OECD, FDI 'reflects the objective of establishing a lasting interest by a resident enterprise in one economy (direct investor) in an enterprise (direct investment enterprise) that is resident in an economy other than that of the direct investor. The lasting interest implies the existence of a long-term relationship between the direct investor and the direct investment enterprise and a significant degree of influence on the management of the enterprise.'⁶⁴

⁶¹ ICSID Case No. ARB/10/12 available at <http://www.italaw.com/sites/default/files/case-documents/italaw1184.pdf>

⁶² OECD (n 54 above) 8-13.

⁶³ UNCTAD (n 2 above).

⁶⁴ OECD (n 20 above) 48.

Urafiki Textile Company for example, used to be fully owned and operated by the Tanzanian government. Later on, it was privatised to the Chinese government through a joint venture and renamed Tanzania-China Friendship Textile Co. Ltd (FTC). The government of Tanzania owns 49% while the Changzhou State-owned Textile Assets Operation Company of Changzhou, China has 51% ownership of the company.⁶⁵ Through other companies run and owned by Chinese investors, it is clear that Chinese investments are lasting interests forged by a direct investor in a resident economy, in this case in Tanzania.

The main FDI players include foreign investors and the respective host governments. The OECD defines a foreign investor as ‘an individual, a government, a group of related individuals or a group of related incorporated and/or unincorporated enterprises which has a direct investment enterprise that is, a subsidiary associate or branch operating in a country other than the country of residence of the foreign investors’⁶⁶ and who has acquired at least 10% voting power either directly or indirectly. Further FDI ‘must be in a venture that lasts longer than twelve months and it must be an investment of more than 10% (indicates the investor’s power to influence decisions in the enterprise) of the voting power in a particular enterprise.’⁶⁷

FDI is divided into outward FDI (OFDI) which ‘denotes the amount of FDI leaving a particular region or country where local capital is invested in some foreign resource’ and inward FDI (IFDI) which ‘denotes the amount of FDI inserted into a region or country where investment of foreign capital occurs in host country resources.’⁶⁸

With regard to China’s investment, OFDI represents the prominent type of investment to Tanzania. So far, the long term investments made by Chinese investors have yielded positive results for example facilitating faster availability of goods and services, improved infrastructure and creation of job opportunities for the majority. The investments appear to have lasting interests in the economy of Tanzania.

⁶⁵ HA Mwasele, FJ Sichona & RRJ Akarro ‘Determination of Inventory Control Policies at Urafiki Textile Mills Co Ltd In Dar-es-Salaam, Tanzania’ (2011) *Business and Economic Journal* 1-2.

⁶⁶ OECD Benchmark ‘Definition of Foreign Direct Investment’ *Organization for Economic Co-Operation and Development (OECD)* (2008) 49. <http://www.oecd.org/daf/inv/investmentstatisticsandanalysis/40193734.pdf> (accessed 30 July 2015).

⁶⁷ As above.

⁶⁸ Lugt *et al.* (n 29 above) 18.

2.3 FDI and economic development

The relationship between FDI and economic development dates back as far as when Africa was being scrambled for in the 20th century. Colonial powers such as Britain and Germany in East Africa constructed roads and railways that linked one destination to another so as to extract raw materials like sisal, coffee and cotton for exportation to Europe. In essence, colonialists invested in infrastructures that would eventually benefit their countries of origin and ease trading activities in their colonies.⁶⁹

Following the 2001 World Trade Organization Ministerial Meeting that took place in Doha, the development feature of FDI became more relevant with increased activities of multilateral investment cooperation amongst nations. Foreign investors have since then expanded their economic activities across the world. Host economies are competing for IFDI. FDI inflows have rapidly increased with many African countries attracting investors particularly from China with the assumption that more FDI inflows will translate into greater economic development.⁷⁰

The impact of FDI to a larger extent depends on various factors and conditions placed by the host nation: for example availability of labour, efficient administrative systems such as registration of investments, proper infrastructure such as communication, roads and security systems, legal framework such as the protection of intellectual property, settlement of disputes, and availability of market.⁷¹

2.3.1 FDI and economic development: theory

The endogenous growth theory

Although this theory asserts that internal economic activities rather than external activities incite economic growth, it also maintains that the impact of FDI on economic growth

⁶⁹ D Anderson 'Depression, Dust Bowl, Demography, and Drought: The Colonial State and Soil Conservation in East Africa during the 1930s' (1984) *83 African Affairs* 332.

⁷⁰ To some African countries, FDI inflows have raised their economies for example Ethiopia's infrastructure has exponentially improved, but in other countries have reports of human rights violation for example in the Zambian copper mines. 'China mines in Zambia 'unsafe' says Human Rights Watch' available at <http://www.bbc.com/news/world-africa-15569310>

⁷¹ OECD (n 62 above) 4-6.

‘depends on the existence of production and knowledge externalities.’⁷² These activities could spill over in the host country through Research and Development (R&D) and job training activities performed by multinational corporations. The endogenous growth theory focuses on positive impact brought by FDI for both short and long-term rates of growth in host economies. Using this theory, the Tanzanian government may formulate policies and undertake measures to promote FDI. The country needs external technology and knowledge to keep the economy on a sustained long-term growth path.

The dependency theory

Contrary to the endogenous growth theory, the dependency theory rests on the view that continuous expectations and reliance on foreign investment will lead to underdevelopment of the host country instead of bringing meaningful economic development.

With the economic rise of China, Tanzania is taking the same route of being dependent on China’s foreign investment. To illustrate the previous affirmation, between 1999 and 2011, more and more agricultural projects in Tanzania were handled by Chinese investors who have provided advanced technology for faster cultivation and provided farming training sessions.⁷³ Sornarajah adds that according to this theory, foreign investments do not contribute to promoting development for developing countries; instead they keep making these states permanently dependents of advanced economies⁷⁴ such as China.⁷⁵

2.4 Importance of FDI

Increase of trade and investment activities

On one hand, FDI encourages states to engage in export and import trading activities which, in the long run, promotes FDI inflow for the benefit of the country. Tanzania for example

⁷² As above 10.

⁷³ D Bräutigam & X Tang ‘An Overview of Chinese Agricultural and Rural Engagement in Tanzania’ (2012) *International Food Policy Research Institute* 9-11.

⁷⁴ Sornarajah (n 13 above) 57-59.

⁷⁵ According to the United Nations *Statistical annex: Data sources, Country classifications and aggregation methodology* (2012) 135. http://www.un.org/en/development/desa/policy/wesp/wesp_current/2012country_class.pdf (accessed 7 August 2015), China’s economy is more advanced than many countries in the developing world. However, China calls itself a developing country.

has made considerable efforts to attract foreign investment activities with the objective of creating more jobs, technology improvement, training and knowledge related to R&D.

On the other side, FDI leads to decline of infant industries and to a situation known as crowding out where local business owners are forced to close down their private investments since they cannot compete with foreign investors. Crowding out perpetuates the 'uneven playing field'⁷⁶ for domestic investors.

Promotion of technology transfer

When foreign investors invest in the host country they often share their technology skills and automatically transfer it into the host country. This is one of the key advantages of FDI through the transfer of technology into the host country: local investors, employees or trainees acquire new skills that would develop their country.⁷⁷

However, foreign investors require that their transfer of technology and/or expertise is protected as their intellectual property right. Although in some countries such as Tanzania technology transfer is permitted under section 26 of the 1997 investment Act,⁷⁸ there is no sufficient legal protection for intellectual property rights⁷⁹ for investors. As a result, there is low encouragement for innovation on the part of domestic investors and fear of infringement of foreign investors' rights on intellectual property.

Competition

Foreign investors in the host country engage in trade activities and other economic adventures that increase competition in the local market. Either operating as individual private investors or as an enterprise, foreign investors stir up local competition, which encourages local investors or businesses to increase production and manufacture quality goods at competitive prices. There is a possibility that local business owners may be threatened by foreign investors. Since foreign investors utilize advanced technology, have

⁷⁶ OECD (n 64 above) 8-9. Due to the nature of their businesses, capital and size (usually large to medium enterprises), foreign investors usually gain privileges such as access to finance, land, skilled labour and have higher bargaining power that influences decision making.

⁷⁷ As above 15.

⁷⁸ Section 26 of the Investment Act, 1997. 'A person who has established an enterprise may enter into such technology transfer agreement as he considers appropriate for his enterprise.'

⁷⁹ OECD (n 22 above) 71-73.

more capital and employ more laborers, local investors, particularly small-scale business owners may not be able to compete in the domestic market.⁸⁰

Development of local enterprises

Through the transfer of skills, the acquisition of management techniques and business tactics from foreign investors, FDI generally encourages the development of local enterprises in host countries.⁸¹ However, just as the way competition tends to eliminate smaller businesses, the presence of too many foreign investors tends to dominate the whole market and gradually kill local businesses.⁸²

2.5 The regulation of FDI

In order to attract FDI, the host country has to have stable macroeconomic policies and a sound regulatory framework that guarantee legal protection and offer benefits for foreign investors. At the same time the host country is responsible for achieving national economic development. Thus, FDI must be regulated by sound policies and efficient regulations that promote FDI, as well as encourages local private investment.

At the international level, Tanzania is a member of the Multilateral Investment Guarantee Agency (MIGA) and the ICSID. These international bodies enhance legal protection and confidence to prospective foreign investors.⁸³ All these bodies are governed by investment law for FDI which encompasses Bilateral Investment Treaties (BITs). The government of Tanzania and some of its agencies have been taken to the ICSID for violating relevant provisions in respective BITs as discussed below.

⁸⁰ OECD (n 66 above) 8-10.

⁸¹ As above 11-12.

⁸² As above 12-17.

⁸³ In order to attract FDI inflows, foreign investors have to be convinced that the host country will protect their rights in the event of disputes and infringements of property rights. Cases can be settled in international accredited bodies.

*Case-law: Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania (ICSID Case No. ARB/05/22).*⁸⁴ BIT between Tanzania and the United Kingdom entered in force in 2003, granting the investor (Biwater Gauff) the right to develop water and sewer services in Tanzania. However, the investor failed to comply with its contractual obligations resulting into repudiation of the contract by the government's water authority even after several attempts to renegotiate the contract.

Although under the UK-Tanzania BIT, foreign investor is protected by the principle of non-expropriation of property⁸⁵ by the resident government, the Tanzanian government expropriated the investor's property among other violations. Consequently, the investor brought the case to the ICSID, claiming that Tanzania violated several of its obligations under the UK-Tanzania BIT.⁸⁶ In the end, the tribunal ruled that Tanzania was guilty of violating 'its obligation to not unlawfully expropriate property; to provide fair and equitable treatment; and to grant full protection and security to the investment.'⁸⁷

At the regional level the EAC the regional intergovernmental organisation has a model that may be adopted by partner states.⁸⁸ Tanzania being one of the EAC members, it is in agreement with other partner states to have an EAC Model Investment Code that encourages cooperation to spearhead investment in the region.

At the domestic level, the Constitution of the United Republic of Tanzania guarantees equality before the law and entitlement without discrimination under Section 13(1). Whether domestic or foreign, all investors deserve to be treated equally. The right to work

⁸⁴ Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania, ICSID Case No. ARB/05/22 - See more at: <http://www.italaw.com/cases/157>

⁸⁵ Article 5 of the UK-Tanzania BIT <http://www.italaw.com/sites/default/files/laws/italaw6243.pdf>

⁸⁶ 'Between 13 May 2005 and 1 June 2005, a series of events took place which, according to Biwater Gauff (Tanzania), constituted breaches by the Republic of its obligations under international and domestic law. These events include deportation of City Water's senior management and the newly formed government entity seized the company's assets, installed a new management and took over City Water's business. In addition, Biwater Gauff alleged that the government breached international and domestic obligations such as obligations to grant fair and equitable treatment, not to take unreasonable and discriminatory measures, the obligation to grant full protection and security to investors and to guarantee the unrestricted transfer of funds.' <http://www.italaw.com/sites/default/files/case-documents/ita0095.pdf>

⁸⁷ OECD (n 76 above) 85.

⁸⁸The East African Community Investment Code, 2006.

<file:///C:/Users/Residences/Desktop/EAC%20Model%20Investment%20Code%202006.pdf> (accessed 10 September 2015).

or to discharge any function under state authority is permitted in Section 22(1). Lastly, section 24 rights to own property and protection against expropriation are guaranteed.

Tanzania's internal efforts to attract FDI began with the formulation of the National Investment (Promotion and Protection) Policy of 1990 which was later revised in 1996 to invite more foreign investors and guarantee their legal security in the country.⁸⁹ In 1997, Tanzania enacted the first ever Investment Act that provides for investment and for favourable conditions for investors in the country. Although the Act has never been amended since then, it still serves as the main law governing any investment-related matter in mainland Tanzania.

Under Section 2(1) (c) of the Act, investors are allowed to invest in all sectors except in the manufacture, marketing or distribution of hazardous chemicals, armaments or any type of explosives. In order to enjoy the benefits stipulated in the Investment Act, Section 2(2) of the law states that the investments should not be less than 300,000 US dollars for foreign investors and 100,000 US dollars for domestic investors.

Investment in Tanzania is administered by the Tanzania Investment Centre (TIC) which falls under the Investment and Empowerment Ministry of the Prime Minister's Office. Since investment affects the broader spectrum of Tanzania's economy, there are other important offices involved in facilitating and coordinating the investment framework. They include the Ministry of Foreign Affairs and International Cooperation (MFAIC) for the coordination and signing of agreements, the Ministry of Home Affairs (MHA) for immigration queries, the Tanzania Revenue Authority (TRA) for taxation queries, and the Ministry of Industry and Trade (MIT) for trading queries.

As part of the government's efforts to attract more investors, the tax regime introduced incentives to enable investors to enjoy Value Added Tax (VAT) relief for importation of capital goods and there are exemptions granted to investors operating under the Free Economic Zones Authority (FREZA), Special Economic Zone (EPZ) and Export Processing

⁸⁹ National Investment and Promotion Policy, 1996,
<http://www.tccia.com/tccia/wpcontent/uploads/legal/policy/investmentpromotionpolicy.pdf> For the
Investment Act of 1997
http://www.tccia.com/tccia/wpcontent/uploads/legal/acts/Investment%20Act_1997.pdf

Zones (EPZ).⁹⁰ There are tax incentives granted outside Freeport and Free economic zones. These include: 5 years tax holiday and exemption from custom and import duties on machinery, equipment, spare parts, raw materials, vehicle and other goods required by an approved enterprise for construction.

Under the Income Tax Act of 2004, mining investments operations obtain special treatment in the Tanzanian tax system. Investors get 100% deduction in mining operations.⁹¹ This has encouraged more mining investors in notable minerals such as gold, diamond and tanzanite, but the country is still one of the poorest countries in the world.

2.6 Bilateral Investment Treaties and Bilateral Cooperation Agreements

As far as investment agreements are concerned, the definition of both an investor and investments is crucial to the scope of application of rights and obligations provided in the agreements. The United Nations Conference and Trade and Development (UNCTAD) define bilateral investment treaties (BITs) as ‘agreements between two countries for the reciprocal encouragement, promotion and protection of investments in each other's territories by companies based in either country.’⁹²

BITs promote and protect investment flows, foreign investors and their investments in host countries. BITs are guided by five main principles, that is: the fair and equitable treatment, the full protection and security, the Most Favoured Nation (MFN), the national treatment (NT) principle and the protection of foreign investment against expropriation.⁹³

⁹⁰ TRA’s website <http://www.tra.go.tz/index.php/vat-relief> (Accessed 24 August 2015).

⁹¹Third Schedule page 119-122 of the Income Tax, 2004. <http://www.tra.go.tz/tax%20laws/The%20Income%20Tax%20Regulation.pdf> (accessed 4 October 2015).

⁹² UNCTAD ‘What are BITs’ (2004) *Investment Instruments Online*.

⁹³ Kimaro (n 34 above) 16. MFN principle aims to grant foreign investors from a country the same favourable treatment that is granted to foreign investors from third world countries operating in the host country. NT principle aims to grant treatment comparable to that granted to domestic investors operating in the host country. The fair and equitable treatment advocates for fairness and equity drawn from international law as well as domestic law principles concerning the overall treatment of foreign investors in a host country.

Due to their increase in number and similarity of their provisions contained in these treaties, BITs are the main sources of international law on foreign investment.⁹⁴ Furthermore, BITs are voluntarily signed between parties involved and ‘could be negotiated in such a manner to suit mutual interests of the parties.’⁹⁵ Sornarajah characterises BITs as agreements between developed states going to invest in developing states which are eager to accept capital from the former.⁹⁶ So far, Tanzania has signed one bilateral investment treaty with China in 2013 and it entered into force in 2014.⁹⁷

In spite of the fact that bilateral agreements favour developed countries more than developing countries who often sign up to agreements that will make them lose out in the long run,⁹⁸ Sinda argues that developing countries such as Tanzania conclude these agreements so as to promote economic development, technology transfer and job creation among other things.⁹⁹

Even so, BIT provisions are often used by foreign investors to try and provoke policies aimed at the progressive realisation of human rights in the host economy. On the account of protection provided to foreign investors, BITs manipulate the host state’s capacity to impose human rights obligations on foreign investors, as well as prevent States from progressively providing human rights such as rights to retirement insurance, cultural life, employment, medical care, education, food, housing and development in general.¹⁰⁰

One of the common provisions in BITs signed between Tanzania and other foreign investors relates to protection of investment against expropriation. Balancing protection of investments and protection of human rights is usually a challenge to host economies as it was the case in *Biwater Gauff Limited v United Republic of Tanzania (2006) ARB/05/22*,¹⁰¹

⁹⁴ AA Sinda ‘Foreign Direct Investment in Tanzania: Implications of Bilateral Investment Treaties in Promoting Sustainable Development in Tanzania’ Published Master’s Thesis, University of Pretoria, 2010 15.

⁹⁵ Sornarajah (n 74 above) 208-212.

⁹⁶ As above 207.

⁹⁷ UNCTAD ‘International Investment Agreements: China-United Republic of Tanzania (BIT) 2013’ (2013) <http://investmentpolicyhub.unctad.org/IIA/country/42/treaty/990> (Accessed 28 September 2015).

⁹⁸ L Brownsell ‘Bilateral and Regional Trade Agreements’ (2012) 11.

⁹⁹ Sinda (n 94 above) 16.

¹⁰⁰ R Suda ‘The Effect of Bilateral Investment Treaties on Human Rights Enforcement and Realization’ 117.

¹⁰¹ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22 - See more at: <http://www.italaw.com/cases/157>. The government entity replaced the Biwater Gauff as the main supplier of water services in the city.

when the investor failed to supply drinking water and failed to comply with its contractual obligations resulting into repudiation of the contract by the government's water authority even after several attempts to renegotiate the contract. The government of Tanzania was later sued by the investor who claimed that the host government violated the BIT agreed by the two parties.

The ICESCR makes provision for international cooperation with a view to progressively achieve the rights recognised in the covenant,¹⁰² hence the relevance of Bilateral Cooperation Agreements (BCA). As the name suggests, it's the agreement between two parties to cooperate on specific agreed projects that involve provision of economic or technical assistance for instance in the agriculture sector, military, manufacturing, health or education.

Tanzania and China have signed numerous economic and technical cooperation agreements, for example: the Agreement between China, Tanzania and Zambia on the construction of the Tanzania-Zambia Railway on September 1967, the 2000 China-Tanzania Urafiki Textile Mill Cooperation Agreement and the Framework Agreement between China and Tanzania for the Provision of an Interest Subsidized Preferential Credit by China to Tanzania signed in 1996 and 1997.¹⁰³

In the process of negotiating, facilitating and finally signing the agreements, there are main official representatives and legal officers from the Tanzanian Ministry of State-Prime Minister's Office (Investment and Empowerment), Executives from the TIC, the Minister of Trade and Industry, Minister of Finance, Minister of Foreign Affairs and International Cooperation.¹⁰⁴

¹⁰² Article 2(1) of the ICESCR 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights.'

¹⁰³ Moshi & Mtui (n 42 above) 8.

¹⁰⁴ Ministry of Foreign Affairs & International Cooperation. Agreements signed between China and Tanzania. <http://www.foreign.go.tz/resources/view/agreements-signed-between-tanzania-and-china> (accessed 4 August 2015). Construction project to build the Mwalimu Nyerere Conference Centre was awarded to a Chinese construction firm. The construction firm and not Chinese government officials signed the agreement whereas from the Tanzanian side, the Minister of Finance and lawyers from the Ministry of Foreign Affairs were present.

2.7 FDI and Human Rights

Under international human rights law states have the obligations to respect, protect, and fulfil human rights. The obligation to respect requires that states refrain from interfering directly or indirectly with the enjoyment of human rights.¹⁰⁵ The obligation to protect requires State Parties to protect individuals from human rights abuses of all kinds including from foreign investors or multinational corporations. The obligation to fulfil means that State Parties must formulate policies and adopt positive measures to assist people and the community in general to enjoy their basic rights.

Given the dramatic increase in FDI inflows, the relationship between FDI and human rights is noteworthy. The linkage between the two aspects is more complex than it seems. While respect for human rights may have a positive impact on FDI inflows to the host country,¹⁰⁶ FDI may negatively and indirectly affect the promotion and protection of human rights in the host country.

Spar is one of the authors that traditionally emphasises the positive impact of FDI on human rights. In her article, Spar argues that FDI 'tend naturally to improve the conditions of human rights in developing countries, either as a direct result of a firm's activity or as an indirect result of improved conditions created by those investments.'¹⁰⁷

Socio-economic benefits of FDI include the inflow of technology and capital equipment, improvements in infrastructure, the technical training of local labour, and an increase in exports. To support Spar's argument, indeed FDI's relationship to economic development positively affects socio-economic rights.¹⁰⁸ However, if the host country wishes to benefit

¹⁰⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (Accessed 6 November 2015). This implies refraining from formulating policies and implementing measures which would contradict peoples' right to access health or education.

¹⁰⁶ SL Blanton & RG Blanton 'Human Rights and Foreign Direct Investment: A Two-Stage Analysis' (2006) *Business and Society* 464-466.

¹⁰⁷ D Spar 'Foreign investment and Human Rights' (1999) Taylor & Francis 42.

¹⁰⁸ B Letnes 'Foreign Direct Investment and Human Rights: An Ambiguous Relationship' (2002) *Forum for Development Studies* 52.

from FDI inflows, there should be ‘a certain minimum created assets for example human capital and infrastructure.’¹⁰⁹

However owing to increased negative perception of the impact of FDI on human rights, literature focuses on the need for corporate social responsibility,¹¹⁰ consistent regulation of FDI and accountability from host governments and foreign investors. Since multinational corporations are the main players of FDI, there have been perceived human rights violations done by these corporations such as ‘exploitation and abuse of labour, pollution and damage to the environment, introduction of unsafe technologies and the displacement of local businesses.’¹¹¹ Civil and political rights that are perceived to have been violated include the displacement of indigenous people for land use and the support of regimes that violate peoples’ human rights.¹¹²

The nexus between FDI and human rights has been globally acknowledged by accredited international bodies in charge of human rights. For example the “Guiding Principles on Business and Human Rights” developed by the UN Special Representative on human rights and transnational corporations to emphasis on States’ obligations towards the protection, respect and fulfilling human rights.¹¹³ In the same vein, the Committee on Economic, Social and Cultural Rights plays a big role in reminding States like Germany to give “due consideration to human rights” within their investments territories.¹¹⁴

¹⁰⁹ As above 53-54.

¹¹⁰ Element in the international businesses which urges businesses, investments or trade activities to be conducted ethically and contribute to economic development. See John Ruggie’s Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, March 21, 2011. A/HRC/17/31. <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf> (accessed 10 October 2015).

¹¹¹ DS Bettwy ‘The Human Rights and Wrongs of Foreign Direct Investment: Addressing the need for an analytical framework’ (2012) 11 *Richmond Journal of Global Law and Business* 242-243. Number 3.

¹¹² As above.

¹¹³ Ruggie (n 110 above).

¹¹⁴ Committee on Economic, Social and Cultural Rights, Concluding observations on Germany, July 12, 2011, E/C.12./12/DEU/CO/5, paragraph 10. www2.ohchr.org/english/bodies/cescr/docs/E.C.12.DEU.CO.5-ENG.doc+&cd=1&hl=en&ct=clnk&gl=za (accessed 17 October 2015).

2.8 Conclusion

In concluding, the researcher of this work posits that there is a relationship between FDI, economic development and human rights. A great deal of literature provides that FDI encourages economic development which then promotes human rights for the welfare of the community at large.

From the discussion above, the economic effects of FDI have generally promoted human rights in the host country. For instance, the positive impact of competition experienced by local industries improves productivity (more goods available for the community) and availability of higher quality products.

With respect to human capital spill over, FDI fosters the transfer of skills, technical and training opportunities which may result in the promotion of local workers to a higher paid position. Furthermore, when local industries interact with foreign investors, the former may be exposed to international markets that can expand their businesses, which in turn minimises unemployment.

Based on some of the advantages obtained from FDI, it is up to Tanzania's regulatory and infrastructure economy to be well organised and efficient enough so as to reap its benefits. The country has joined a number of international and regional organisations governing FDI, as well as signed a number of BITs and BCAs with not only China but also other potential foreign investors. But there has to be a sound regulatory framework, rules and efficient institutions that will enforce the laws relevant for FDI to encourage economic development and play a positive role on human rights.

CHAPTER THREE

REGULATORY & INSTITUTIONAL FRAMEWORK FOR FOREIGN DIRECT INVESTMENT IN TANZANIA

3.1 Introduction

Chapter Three examines the regulatory and institutional framework for foreign investment in Tanzania. The main purpose is to assess whether the laws are sufficient enough to address human rights in relation to socio-economic development and identify the problems therein.

Tanzania's first source of domestic law is the 1977 Constitution. The Constitution is currently being reviewed but until a new one comes into place, the 1977 Constitution is the supreme law of the land and it provides for a Bill of rights. There are other sources which include acts of Parliament published in the Government Gazette, cases from the High Court and Court of Appeal originating from case law, received laws (common law and statutes), and customary and Islamic law. When international treaties and conventions have been ratified by the Parliament, they form another source of domestic law.¹¹⁵

3.2 Regulatory Framework

3.2.1 National Investment Promotion Policy

One of Tanzania's major achievements in terms of economic liberalisation is the creation of a policy favouring 'the expansion of the private sector and the promotion of development.'¹¹⁶ It is for this reason that Tanzania launched the National Investment Promotion Policy of 1996¹¹⁷ to open up markets to both local and foreign investors and to signify the importance of private sector investments for the country's development. Before the 1996 Investment Policy, there was a previous policy dating back to 1990. The 1990

¹¹⁵ Government's Portal. <http://www.tanzania.go.tz/> (accessed 30 August 2015).

¹¹⁶ The National Investment Promotion Policy (1996) 2 President's Office Planning Commission <http://www.tzonline.org/pdf/nationalinvestmentpromotionpolicy.pdf> (accessed 22 August 2015).

¹¹⁷ National Investment and Promotion Policy, 1996, President's Office <http://www.tccia.com/tccia/wpcontent/uploads/legal/policy/investmentpromotionpolicy.pdf>

Investment Policy led to the enactment of the 1990 National Investment (Promotion and Protection) Act which was later repealed. After economic changes between 1990 and 1996, the 1990 policy was revised to match the economic trends at that time.¹¹⁸

The revised 1996 Investment Promotion policy is more transparent and greatly emphasises crucial elements such as motivating local entrepreneurship, enhancing new technology, promoting more exports, setting up an effective legal framework and encouraging a non-rigid investment environment. It includes the government's commitment to provide incentives for promoting joint venture investments in all social sectors such as education, communications, transport, health, and in Tanzania's most central areas for economic development: agriculture, mining, tourism and manufacturing.¹¹⁹

As the guarantor of a conducive environment for both local and of foreign investors, the policy states that 'government will put in place conducive macro and micro-economic policies, competitive fiscal regime that clearly states the taxation packages and a conducive legal framework to protect, promote, facilitate and guarantee investments.'¹²⁰ Moreover, the government will formulate policies 'that strengthen finance and insurance companies through investments by public, local and foreign investors. These would guarantee more financial instruments to investors.'¹²¹

The policy clarifies fiscal and non-fiscal incentives guaranteed to investors. Fiscal incentives are tax incentives that include royalties and interest, investment allowance on capital expenditure and preferential tax rates on personal income tax.¹²² Non-fiscal incentives foreign investors have access to land, can employ expatriates and have access to regional and sub-regional markets.¹²³

¹¹⁸ Kimaro (n 93 above) 35.

¹¹⁹ The National Investment Promotion Policy (n 117 above) 14-17.

¹²⁰ As above 30.

¹²¹ As above.

¹²² As above 35-36.

¹²³ As above 42-43.

3.2.2 Investment Act

Prior to the new investment Act, Tanzania's investment was governed by the Investment Act of 1990. Following the launch of the 1996 Investment Promotion Policy, the government of Tanzania enacted the Investment Act of 1997 to provide for basic conditions and regulations regarding investment in the country. Apart from mineral and petroleum or gas investments that are covered by other legislation, investments in other sectors are covered by the 1997 Act.

The main parts of the this Act include the establishment and functions of the TIC (sections 4-14) provisions relating to investment (sections 15-17), sections 19 to 25 stipulate benefits and legal protection that foreign investors have in the country, dispute settlement and transfer of technology (section 26) and general obligations from section 27 to 31. The Act interprets many aspects of investments such as incentives to mean 'tax reliefs and concessional tax rates which may be accessed by an investor under the Income Tax Act, 1973, the Customs 33 of 1973, Tariff Act, 1976, the Sales Tax Act, 1976 and any other law for the time being in force, and includes additional benefits that may be accessed by an investor under sections 19 and 20.'¹²⁴

Like its precursor, important investment features such as joint ventures and investors' duties in protecting human rights are not addressed in the 1997 Act.¹²⁵ The Act appears to protect the interests of investors (offering tax incentives, legal protection and hiring expatriates) more than obligating them to contribute to the fulfilment of human rights (environmental conservation, workers' rights, non-discrimination and consumer protection).

The previous Act contained comprehensive schedules that supplemented it. The schedules had lists of priority areas of investment which were exclusive for domestic investment. Maina and Mwakaje point out that Tanzania mainland is now open for investment in all other areas that were once exclusively reserved for domestic investment like 'retail and

¹²⁴ Section 3 of the Investment Act, 1997

¹²⁵ CP Maina 'Introductory Note: Tanzania's National Investment and Protection Act of 1990, International Legal Materials 30 American Society of International Law 891. Number 4. <http://www.jstor.org/stable/20693583> (accessed 6 November 2015).

wholesale trade; public relations business; operation of taxis, barber shops, hairdressing and product brokerage.¹²⁶

Case law on Maasai Land rights in Northern Tanzania

Although access to land for investment forms part of the guaranteed investment incentives under the 1997 Investment Act, there is neither recognition nor protection for customary land rights for indigenous communities such as Maasai. Several years ago, Tanzania Breweries Limited (TBL) acquired seven hundred acres of the Maasai land to grow wheat and barley. Then, the Maasai community continued to graze their animals and had access to water from the wells with no interruptions. Unfortunately from 2006, TBL sold the leasehold to a US Thomson Safari Company who began converting the land into a tourist site while evicting the community.

In their defence, the Maasai community claim that land where they have herded cattle for generations was illegally sold without their knowledge. The dispute has been taken to different courts before it landed at the High Court in Arusha for superior legal intervention. After a long court battle, 'the court ruled that the sale of the land was legal, rejecting the Maasai claim that they owned the land at the time' and therefore on October 2015, the Maasai community lost their land right to a US based Tourism Company.¹²⁷

Now, the tourist company will develop a wildlife conservation area on the ten thousand acre land. But, the livelihood of Maasai people has been affected since they depend on the land for water access; grazing and herding cattle; source of medicine for pregnant women; traditional medicines for many diseases; customs and rites of passage; and they will be forced to move in towns to look for work in order to earn a living.

Quite often the government of Tanzania uses Maasai's symbolic dressing styles, strong values and traditional dances, to promote and attract investors particularly in the tourism sector. Yet, the ruling by the Arusha-based court appears to ignore this bright side of the community and appears not to recognise their customary land ownership rights. This calls

¹²⁶ CM Peter & SJ Mwakaje 'Investments in Tanzania: Some Comments-Some Issues' (2004) Friedrich Ebert Stiftung 19. They further argue that the whole country is up for grabs without any inhibitions.

¹²⁷ 'Maasai locked on Tanzania legal battle with US Safari firm' eNCA <https://www.enca.com/money/maasai-locked-tanzania-legal-battle-us-safari-firm> 12 November 2015.

into question government obligation to respect, promote and fulfil all human rights belonging to its citizens. The laws should be revised to avoid future disputes on recognition and protection of human rights.

3.2.3 Investment incentives

Attracting FDI entails devising sound policies and offering competitive incentives that often are expensive in terms of resources and administration to the host countries. For example, countries provide special incentives such as import duty exemptions, income tax holidays, and subsidies for investment projects.

In Tanzania, the Certificate of incentives is granted by the TIC who then offers financial incentives to potential investors. Such incentives include: guaranteed tax reductions in import duty and VAT, lower corporate taxes, as well as automatically hiring up to five expatriates according to Section 24(1) of the Act, and Section 21 allows the repatriation of funds in any currency chosen by the foreign investors.

3.2.4 Taxation

As part of market reforms, the government of Tanzania enacted the Tanzania Revenue Authority (TRA) Act of 1995 for tax regulation purposes. The government has since then restructured the tax administration to promote a flexible, fair and equitable tax, regime. The Act has been revised five times to keep abreast of economic trends and the current law is the TRA Act of 2006. The tax policy encompasses the Income Tax Act and the Value Added Tax Act among others.

Investors enjoy tax exemptions in priority areas such as construction, mining, agriculture (capital acquisitions are 100 % exempted) and tourism.¹²⁸ The Income Tax Act of 2004 for example allows investors in mining operations to obtain special treatment in the Tanzanian

¹²⁸ For all these sectors, except petroleum and gas sector, acquisition of all capital goods and parts are zero rated for import duty purposes and VAT thereon deferred.

tax system. Investors in the mining sector get 100% deduction in mining operations.¹²⁹ This has encouraged more investors but it has a negative impact on the country's revenues. Indeed, granting investment incentives does not necessarily translate into positive economic growth because incentives such as 5 years tax or duty exemptions often result into loss of national revenue (this will be discussed in the next chapter).

In fact if FDI inflows are not well monitored and the regulatory framework is weak, a developing country like Tanzania loses fiscal revenue. Tax holidays exempt new firms from paying corporate income tax for five years during which they can also be exempted from other duties.¹³⁰ When investors are exempted from paying taxes, the government will not have enough revenues to fund developmental projects like the supply of food, water and electricity services. Such projects form the background for the community to enjoy their rights to good standard of living, access to education facilities, right to health and right to a satisfactory environment suitable for their development.

Taking an example of section 21 of the 1997 Investment Act that allows unconditional transferability of profits in any convertible currency, investors can transfer tax revenues from Tanzania to anywhere else they wish to reserve their revenues, giving them the opportunity to not pay taxes before the tax holiday elapses. This in part explains why FDI and its regulatory framework are worth the assessment. It appears to the researcher that the poor management of FDI (inflows) and its weak regulatory framework contribute to lack of or low consideration for fulfilling local socio-economic rights on the part of the state.

3.2.5 Related laws

The *Immigration Act of 1995* applies to foreign investors who seek business and work permits in Tanzania. Section 16(1&2) of the Act prohibits a person from engaging in other activities such as business or paid employment that contravene with the permit one holds.

¹²⁹Third Schedule page 119-122 of the Income Tax, 2004. <http://www.tra.go.tz/tax%20laws/The%20Income%20Tax%20Regulation.pdf> (accessed 4 October 2015).

¹³⁰<http://www.tra.go.tz/index.php/tax-incentives/171-tax-incentives-granted-for-investments-outside-freeport-and-free-economic-zones> (accessed 24 August 2015).

The Immigration department, under the Ministry of Home Affairs, supervises the implementation of the Act and has classified residence permits 'A' and 'B' for foreigners who wish to do business or work in the country.¹³¹

The *Land Act of 1999*: the Act (section 20(1)) states that a non-citizen shall not be allocated land unless it is for investment purposes as stipulated in section 26 of the 1997 Investment Act. The Act empowers the Tanzania Investment Centre to allocate land to foreign investors for investment purposes (section 20(2)).¹³²

3.3 Institutional Framework

3.3.1 Tanzania Investment Centre

In order to cut red tape, Tanzania established a one stop office for investment officials to facilitate, coordinate and promote investment in Tanzania.¹³³ The one stop office is also known as the Tanzania Investment Centre or TIC. Further, Section 15 of the Investment Act explains the TIC's mandate to harness investment opportunities.

The TIC has several permanent senior officials from different government institutions who receive directions from the TIC Executive Director. These officials are from the Ministry of Labour for employment procedures, TRA for taxation, Ministry of Industry and Trade (MIT) for national business license, Ministry of Land and Human Settlements for land and property, Immigration Department for work permits and Business Registration and Licensing Agency (BRELA) for business name registration, licenses, trademarks and copyrights.¹³⁴

¹³¹ Section 19 & 20 of the 1995 Immigration Act: Residence permit A is for a person other than a prohibited Immigrant who intends to enter or remain in Tanzania and engage in trade, Business, Profession, and Agriculture, Animal husbandry, prospecting of Minerals or manufacture. Residence permit B is issued to a foreigner other than a Prohibited Immigrant who has obtained specified employment in Tanzania, and the Principal Commissioner of Immigration Services (subject to recommendation by the Director of Employment) is satisfied that he possesses qualifications or skills necessary for that employment and that his employment will be of benefit to Tanzania.

¹³² Land Act of the United Republic of Tanzania, 1999.

<http://www.tic.co.tz/media/The%20Land%20Act%201999.%20Cap%20113.pdf>

¹³³ Sections 4-5 of the Investment Act, 1997.

¹³⁴ <http://www.tic.co.tz/Team?l=en> (accessed 26 August 2015).

If investors 'wish to apply for incentives and they are not yet incorporated then they are allowed to create a company through the TIC's one stop shop on condition that their investment projects are worth at least 300,000 USD for foreigners and 100,000 USD for locals.'¹³⁵

As a one-stop centre, the TIC does not only promote investment but it also provides after-investment services and monitoring performed by the After Care Services Unit. The Unit is responsible for following up on investment projects with an objective of achieving investment intended goals and aspirations.¹³⁶ With increased FDI inflows in the country, the role of the TIC in attracting FDI is remarkable. TIC has been able to register a sizable number of projects in the priority sectors which have contributed to increased tax revenues, employment creation, exports, supply of goods and services, fostering business linkages, to mention but a few achievements. Even so, there is a need to determine whether the law obliges investors in general to respect and promote human rights, as well as adding value to Tanzania's socio-economic development.

3.4 Conclusion

The chapter presented a broad overview of the National Investment Promotion Policy and Investment Act which comprise the regulatory framework of investment in general. Furthermore, details concerning the TIC were provided under the institutional framework.

Indeed the Tanzanian government has made considerable efforts to enact laws and policies that attract investments and aim to achieve gradual economic development. So far, investors are legally protected and encouraged to invest in the country. Despite all the efforts, the study found that there are gaps in the regulatory framework that could affect the realisation of socio-economic rights.

¹³⁵ <http://www.tic.co.tz/menu/179?!=en> (accessed 26 August 2015).

¹³⁶ <http://www.tic.co.tz/Team?!=en> (accessed 26 August 2015). For instance, if the investment project is supposed to complete construction of water pipes of electricity plants in a specified period, the Unit follows up with investors, and assesses whether there were any challenges faced by investors during the project.

From the above description and analysis of the laws, the study has found that neither the Investment Act nor the tax policy are clear on how for example incentives granted to investors will have a positive impact on the economic development of the country or the promotion and protection of human rights altogether.

The researcher is of the opinion that too many incentives result in loses of government revenues that could have been used to build the country through the construction of roads, schools and hospitals.

CHAPTER FOUR

THE ANALYSIS OF THE LEGAL FRAMEWORK ON FOREIGN DIRECT INVESTMENT AND THE IMPACT OF CHINESE INVESTMENT ON SOCIO-ECONOMIC RIGHTS IN TANZANIA

4.1 Introduction

This chapter identifies the gaps within the investment legal framework and the implications they have on the protection of fundamental socio-economic human rights. Later on the impact of Chinese investment on human rights is analysed.

As discussed in Chapter Two, States are obliged to respect, protect and fulfil the human rights of their people. Although the Tanzanian constitution provides for human rights, it does not contemplate regulation of business to ensure respect and protection for those human rights. Despite not having external control over foreign investment, States have a legal obligation to turn down an investment offer if that particular investment is predicted to have negative impacts on the enjoyment of socio-economic rights.¹³⁷

In international relations, social sciences and perhaps philosophical studies, arguing that foreign investment should contribute to the promotion or protection of human rights is a normative claim. This specific Chapter contributes in understanding the normative aspect of foreign investment's role in promoting or protecting human rights from a legal perspective.

In other words: if it is right to claim that foreign investment should contribute to the promotion or protection of human rights, are there legal arguments supporting the same claim? What is of particular relevance to this chapter however is analysing the weakness or gap of the legal investment framework and its implications on socio-economic rights in Tanzania.

¹³⁷ M Krajewski 'Investment guarantees and international obligations to reduce poverty' *A human rights perspective in Poverty and the international economic legal system: duties to the world's poor* in KD Schefer (ed) (2013) 200-201. The legal obligation is actually State's duty to protect its individuals and groups through making the decision to grant or reject an investment guarantee.

4.2 Investment Act of 1997

Tanzania uses the 1997 Act which is not much relevant to what is taking place on the ground. To support this affirmation, the Act makes references to an Act that has been repealed, for example the Sales Tax Act is now the VAT Act. In addition, section 6 of the Act does not cover some of the present functions of the TIC which includes supporting the growth of local industries and stimulate joint venture partnerships.¹³⁸

The Act is not based on respect for human rights codified in the bill of rights. At the moment, there is a new Act on investment that is currently being drafted. The researcher assumes that this new Act will address the current gaps, will be clearer, and will include clauses which oblige all investors to respect human rights in Tanzania.

The researcher supports Maina and Mwakaje's contention that the Investment Act does not protect certain businesses which should have been reserved for domestic investments, adding that both domestic and foreign investors compete to seize opportunities.¹³⁹ By contrast, section 11(2) of the Zanzibar Promotion and Protection Act of 2004 has limited FDI in sectors or services that can be solely provided or run by Zanzibaris.¹⁴⁰ Investments in 'barber shops; the retail and wholesale trading services; the operation of taxis; butcher shops; ice-cream manufacture; and hair dressing salons'¹⁴¹ are reserved for local Zanzibaris.

The Tanzanian mainland Investment Act only restricts investments in manufacturing and marketing of armaments and hazardous chemicals,¹⁴² but everything else is open for investment. Based on the above, the author of this work is of the opinion that mainland Tanzanians do not enjoy their rights as enshrined in article 1(1&2) of the ICESCR¹⁴³ and local

¹³⁸ TIC functions <http://www.tic.co.tz/Team?l=en> (accessed 2 October 2015).

¹³⁹ Maina & Mwakaje (n 126 above) 19.

¹⁴⁰ Zanzibar Investment Promotion and Protection Act of 2004. Page 11.

http://www.zanzibarinvest.org/ZIPA_act_2004.pdf (accessed 2 October 2015).

¹⁴¹ UNCTAD 'Investment Policy Review' (2002) 32. Available at http://unctad.org/en/Docs/iteipcmisc9_en.pdf

¹⁴² Section 2(c) of the Investment Act.

¹⁴³ All peoples have the right of self-determination. and freely pursue their economic, social and cultural development (Article 1(1)). All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. (Article 1(2)).

businesses cannot fairly compete with foreign investors who have enough capital to invest in any field of their choice.

Section 2 provides the requirements for enjoying benefits and incentives covered in the Act. Some of these requirements include a project worth 100,000 US dollars as a minimum capital for domestic investors. That means those below that amount are automatically excluded from investing and do not enjoy the incentives. In this context, the right to development is implicated as an individual and peoples' right 'to participate in, contribute to, and enjoy economic, social cultural and political development, in which all human rights and fundamental freedoms can be fully realised'¹⁴⁴ is affected.

In this sense, domestic investors below the threshold, cannot participate and contribute to the development of their country. Having more domestic investors in the country leads to more advantages like job creation for fellow citizens, and contributes to the country's economic development through payment of taxes and production of goods which later increases national income.

Taking into account the amount of money stipulated in the Act also the continuous discoveries of natural and energy resources, raw materials and minerals in Tanzania; the minimum threshold for foreign investors to invest is little compared. If the TIC wants to reap the benefits of encouraging more FDI, foreign investors have to invest more USD.¹⁴⁵ Without such updated provisions, the TIC and the country lose billions of dollars annually.

The Act grants rights to investors but there is no clause that obliges them to respect, promote or protect human rights such as non-discrimination at work, good working conditions, as well as joining trade unions. Investors' duties or role in contributing to the economy of the local community they operate in, for example through environmental conservation, by not contaminating water bodies, planting trees, educate and train the locals, or consumer protection are not mentioned in the act.

¹⁴⁴ General Assembly, Resolution 41/128, Declaration on the Right to Development, December 4, 1986, Art. 1. Available at: <http://www.un.org/documents/ga/res/41/a41r128.htm>

¹⁴⁵ Section 2 of the investment act requests that foreign investors must have not less than 300,000 US dollars to invest in the country.

Some of investors' rights in the Act include the right to repatriate profits and capital which guarantees unconditional transferability of foreign investment payments through any authorized bank in freely convertible currency, including payments of salaries to expatriate staff working in Tanzania for a registered foreign company.¹⁴⁶ The lack of strict conditions that control cross-border transfer of capital can create financial instability.¹⁴⁷ An investor could find a loophole for evasion of corporate and income taxes, as well as loss of currency reserves in the BOT. The less revenue the country receives lesser revenues from FDI inflows, the more its ability to achieve human rights obligations is impeded for the reasons that developmental goals and policy measures are not accomplished.

The law excludes investors even those in the EPZ and SEZ from paying different types of taxes. Consequently, Tanzania loses about 1.87 billion US dollars every year not only through 'cheating by dishonest companies in import and export transactions'¹⁴⁸ and tax evasion by large investors. With that amount of money, the government of Tanzania could build modern and well-equipped dispensaries (access to health), schools and research centres (access to education), re-invest in agriculture for more production (access to food), supply abundant electricity in the whole country (satisfactory environment for development) and improve the infrastructure (economic development) without depending on donors or foreign aid.

In the Act, there are no performance requirements which oblige investors to be accountable to the host state. Performance requirements set the standard on job creations for the locals, joint ventures, and transfer of technology to mention a few. This clause is missing in the current law and instead the TIC or the government for example projects that employment of nationals and 'business growth targets indicated by the investors during registration will be actively pursued.'¹⁴⁹ One of the advantages of performance requirements is that Tanzania may use them to 'promote a right to culture or the principle of non-discrimination through

¹⁴⁶ Section 21 of the Investment Act, 1997.

¹⁴⁷ Suda (n 100 above) 125.

¹⁴⁸ A Masawe 'How Tanzania loses 1.87 US\$ billion annually' (2014) The Citizen <http://www.thecitizen.co.tz/News/How-Tanzania-loses-Sh3-trillion-annually/-/1840392/2312440/-/hijgu2z/-/index.html> (accessed 7 November 2015).

¹⁴⁹ UNCTAD (n 141 above) 33. 'Performance requirements are conditions placed on foreign investors to act in ways considered beneficial to the host economy.'

the introduction of affirmative action schemes to promote employment opportunities'¹⁵⁰ and the right to work for women, people with disabilities and disadvantaged people.

The Act has not indicated investors' duty to provide fair wages and equal remuneration for work of equal value as every worker's right under article 7 of the ICESCR. Maina and Mwakaje mention that foreign-owned hotel businesses in the tourism sector do not pay their employees the minimum wages as required by the law, nor do they allow their employees to either form or join trade unions.¹⁵¹ The constitutional rights protected in section 20(1) which stipulates the right to '....form and join associations or organisations formed for purposes of preserving or furthering interests' and in section 23 which protects the right to just remuneration, have been violated.

4.3 The impact of Chinese investment

In 2013, Chinese investments in Tanzania 'reached 2.5 billion dollars with more than 500 Chinese companies doing business in the country.'¹⁵² China has heavily invested in the agricultural sector, medicine, construction of infrastructure, manufacturing and textile industries to name a few. However, Chinese investment has its own defaults as discussed below.

Infringement of Intellectual Property Rights (IPR)

The lack of protected intellectual property rights has been one of the major concerns affecting local industries. The presence of Chinese counterfeit products¹⁵³ means that the real producers work harder to protect their properties and to maintain the supply of quality products at competitive prices. The presence of counterfeit goods in Tanzania's affects the economy through loss jobs and local businesses fail due to unfair competition brought up by the.¹⁵⁴

¹⁵⁰ Suda (n 147 above) 119-120.

¹⁵¹ Maina & Mwakaje (n 139 above) 48.

¹⁵² Tanzania Daily News 'Trade and Investment: Sino-Tanzania relations growing stronger' (2014). <https://www.trademarka.com/news/trade-and-investment-sino-tanzania-relations-growing-stronger/> (accessed 8 September 2015).

¹⁵³ Hon (n 28 above) 110-111.

¹⁵⁴ Lunogelo & Baregu (n 44 above) 10.

Section 26 of the Investment Act provides for registered agreements on transfer of technology. This clause does not explicitly clarify whether there should be protection of intellectual property rights for both foreign and domestic investors in the agreements signed and then registered by the TIC. Notwithstanding the fact that Tanzania is a member of the World Intellectual Property Organisation (WIPO) and the African Regional Industrial Property Organisation (ARIPO), the country does not have an effective statutory law and administrative mechanisms to identify and punish infringements of IPR¹⁵⁵ specifically in the manufacturing and textile industries.

Beside section 24 of the Constitution which protects the right to own property and section 24 of the Investment Act which protects businesses against expropriation, article 14 of the African Charter guarantees the right to property. In this context however, these specific rights for local industries need to be clearly explained in case there is an infringement.

Lack of satisfactory environment for development

With reference to the number of Chinese nationals currently living in Tanzania, no source has so far provided an exact estimation. The Chinese Embassy mentioned that 'there were 5 000 Chinese as of 2009, and majority do not report to their Embassy.'¹⁵⁶ It appears that there are Chinese migrants who engage in smaller businesses that could be done by locals. It is not surprising that now Chinese nationals engage in small businesses including the selling of shoes, clothes and cell phones across the streets and even selling peanuts along the side roads, operating in economic areas that were historically reserved for the locals.¹⁵⁷

As discussed previously, the author is of the view that since the Investment Act has not distinguished areas for either domestic or foreign investments, then the Chinese traders have found a loophole to invest and trade in any field except the ones restricted by the Act. Local businesses' right to freely dispose of their wealth and natural resources has been infringed. Article 21(1-2) protects peoples' right to dispose their wealth and not be deprived of it.

¹⁵⁵ UNCTAD (n 149 above) 45. Though, the Copyright and Neighbouring Rights Act, Revised Edition 2002, provides for the protection of copyright and neighbouring rights in literary, artistic works and folklore, their enforcement seem inefficient.

¹⁵⁶ Hon (n 153 above) 101.

¹⁵⁷ Arsene (n 52 above) 20.

Moreover, article 21(3) states that ‘the free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and principles of law.’ The Chinese have huge capital and machinery that enable them to trade easily in Tanzania. But the local small businesses suffer the most, to the extent that some local company ‘producing flip-flops had to downsize from employing 3 000 workers to 1 000 workers because they found it difficult to compete with Chinese imports.’¹⁵⁸

Implication on the right to work

Chinese construction investors and managers usually bring in their own staff from China. The reasons cited are that construction works are tough in nature and the communication breakdown due to the language barrier since the locals speak Kiswahili and Chinese speak basic English, it takes longer to train the locals; hence the preference of Chinese labour over the locals.¹⁵⁹ In terms of national tenders for construction of roads for example, Chinese companies are granted large-scale tenders. One of the large-scale tenders is the expansion of Terminal 3 of the Julius Nyerere International Airport granted to Sonangol International Holding, a Chinese construction company.¹⁶⁰

Corkin and Burke mention that as of 2009, out of 85 Chinese registered companies in Tanzania, only 8 are joint ventures in sectors like medicine, agriculture, with none in the construction industry.¹⁶¹ This means that the Chinese dominate the construction industry in the whole country, thereby phasing out the local construction companies. Even so, the lack of joint ventures stems from the gap in the Investment Act. No clause obliges foreign investors to form joint ventures with domestic investors. Joint ventures promote innovation and the transfer of technology, knowledge and skills from foreign investors to domestic investors. This ensures the growth of local industries.

¹⁵⁸ Baregu (n 33 above) 160.

¹⁵⁹ Hon (n 156 above) 102. Due to lack of experience, appropriate skills and knowledge, Chinese managers give simple tasks to the locals.

¹⁶⁰ As above 113-114.

¹⁶¹ L Corkin & C Burke ‘China’s Interest and Activity in Africa’s Construction and Infrastructure Sectors’ (2006) Centre for Chinese Studies 51.

The above problem within the law has an implication on the right to work for local construction companies. Regardless of the fact that domestic construction companies may lack the necessary capacity or technology to carry out large-scale construction projects, the government of Tanzania must 'take steps to achieve the full realization of the right to work including technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development' as protected in article 6(2) of the ICESCR. Without joint ventures in investments, local industries are denied their right to participate in the economic development of the country.

Access to housing infringed

Through the TIC, access to land for investment is guaranteed under section 6 of the Act. On many occasions the local population has been forced to vacate their homes that they have lived in for generations so that the investor (usually a foreign investor) can invest. A good example is when 1,300 families were evicted out of Kipawa (an area on the outskirts of Dar es Salaam) so that the Chinese company, Chinese International Fund could build Terminal 3 of the Julius Nyerere International Airport.¹⁶²

Article 11(1) protects the 'right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions.' Again, the problem stems from poor planning and lack of long-term vision on the government's side. It is with good intentions that the government grants land for foreign investors, but the local community suffers the consequences and sometimes without compensation.¹⁶³

Environmental degradation

Chinese have been reported to have contributed to the destruction of the ecosystem in general and the extinction of elephants in particular. Last year illegal tenders between high-profile Chinese officials and Tanzanian officials over ivory poaching caught the media's attention. Ivory poaching has skyrocketed since China officially began trading and investing

¹⁶² B Yin, 'Chinese Investment in Tanzania Bears Bitter Fruit' (2012) The Guardian. <http://www.theguardian.com/global-development/2012/mar/02/chinese-investment-tanzania-airport-eviction> (accessed 10 September 2015).

¹⁶³ Section 24(1&2) of the Constitution protects right to property and fair compensation.

in Tanzania. BBC reported that the need for ivory in China has fuelled poaching, Tanzania being the largest source of slaughtering elephants for ivory.¹⁶⁴

Unfair wages

Section 23(2) of the Constitution protects the right to just remuneration. Moreover, article 7 of the ICESCR protects the enjoyment of just and favourable working conditions which ensure fair wages and equal remuneration for work, as well as safe and healthy working conditions. However, some locals working at a Chinese-owned broadcasting company reported that Chinese management operates without a salary scale. In their opinion, people in higher positions were paid less than those below them because they believed that the management has not distinguished 'salaries of two people who possess different academic or professional credentials.'¹⁶⁵ This adds to the argument that the Investment Act should stipulate investors' duty to pay employees according to their ranks and credentials without discrimination.

4.5.1 Positive impact of Chinese investment

Right to culture

So, in spite of negative Chinese impact, fruitful results have come out of the Sino-Tanzania investment framework. Language exchange has been acknowledged by Tanzanians: for instance, the University of Dar es Salaam offers lessons in Mandarin (a Chinese language). There is a strong perception that learning each other's languages will improve both cultural, work and trade relations among Chinese and Tanzanian communities in Tanzania.¹⁶⁶ Although article 17(2) of the African Charter allows 'every individual to freely take part in the cultural life of his community' the Sino-Tanzania investment, under the international co-operation label, is promoting the exchange of cultures through language learning.

¹⁶⁴ BBC News 'Tanzania Ivory: Chinese went on buying spree' (2014) <http://www.bbc.com/news/world-asia-china-29929423> (accessed 8 September 2015).

¹⁶⁵ T Men 'Place-based and Place-bound realities: How a Chinese Firm embeds in Tanzania' (2011) 48.

¹⁶⁶ Jansson *et al.* (n 39 above) 7.

Right to enjoy the benefits of scientific progress and its applications

Tanzanians appreciate the hardworking spirit possessed by Chinese. The former confirm that Chinese are rightfully trade-minded people who have so far shared their trading skills with the local population. The relationship between the two communities is stronger now to the extent that some Tanzanian local business owners have formed connections with the Chinese (in China and some in Tanzania) so as to import goods and services directly from China.¹⁶⁷ Additionally, Tanzanian local industries import technology from China, transfer of technology is therefore also taking place.

Section 26 of the Investment Act allows for the transfer of technology between investors provided that the agreement is registered by the TIC. Among the most important benefits that host countries seek from FDI include the promotion of innovation and the transfer of technology. Therefore the government of Tanzania recognizes the right of everyone to 'enjoy the benefits of scientific progress and its applications' as enshrined in article 15(b) of the ICESCR.

General socio-economic development

Although the Investment Act does not oblige investors to contribute to the economy of the country, Chinese investors have contributed in boosting the economy of the country. Tanzania has had poor infrastructure that has discouraged many foreign investors in the past.¹⁶⁸ With the presence of Chinese construction companies, the local community has witnessed the construction of water pipes, clinics, schools, roads and bridges in Dar es Salaam and the construction of the Mbegani-Bagamoyo port has just began.

The port will expand the transportation networks of goods and services linking Tanzania with other East, Central and Southern African countries.¹⁶⁹ Chinese investment has promoted the right to health (by training local medical officers, providing advanced medical equipment and constructing hospitals), the right to education, and access to clothing (through the trade of affordable apparel from China).

¹⁶⁷ Hon (n 160 above) 102.

¹⁶⁸ UNCTAD (n 155 above) 69.

¹⁶⁹ The Daily News (2015). http://www.dailynews.co.tz/index.php/business/43209-bagamoyo-port-construction-begins#disqus_thread. It will handle 20 times more cargo than the current Dar Es Salaam Port.

4.6 Conclusion

Although foreign investment has contributed to the economic prosperity of Tanzania, there appears to be some legal weaknesses and systemic challenges which need to be addressed towards a developmental dimension. Due to the gaps in the legal investment framework, the government's attempt to respect, protect and fulfil human rights has been greatly challenged. From the foregoing, the government needs to enact a new law that will directly link FDI and its positive contribution to human rights. The law should clearly state investors' duties towards the realisation of human rights in the host economy.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Summary and Conclusion

Chapter Two discussed the concept of FDI and its economic theories; the main types of FDI, as well as the importance of FDI and the protection of foreign investments under BITs were explained. The study found out that using the endogenous growth theory, there is a positive link between FDI and economic development where, if the former is well regulated it can promote economic development within the country.

The study concurs with the dependency theory that if the host country does not reduce or totally stop depending on FDI, it will not achieve economic development. In support of the previous statement, the study discovered that the host country needs to have a stable regulatory framework, and an effective and efficient institutional framework to support FDI and local industries so as to benefit from investment opportunities available. In addition, the study found that there is a relationship between FDI and human rights

In Chapter Three, the study showed that after reforming its structural and legal framework, the government enacted laws and policies that were anticipated to achieve economic goals, including reducing unemployment and poverty. Despite government's efforts, the study learnt that the Investment Act is silent on relevant features responsible for regulating FDI effectively. In Chapter Four the impact of legal gaps on protection and respect for socio-economic rights was analysed.

To conclude, the major findings of this mini-dissertation relate to the ineffectiveness in regulating foreign investment law and the government's inability to fulfil human rights in the wake of FDI inflows. This study's main recommendations are therefore directed towards developing a sound regulatory framework which takes into account the human rights dimension for the local community.

5.2 Recommendations

In light of the issues raised in this paper, below are some important recommendations to the government of Tanzania.

- Since Tanzania has ratified many international instruments, including the ICSECR and the African Charter, related to the promotion and the protection of socio-economic rights, these instruments should be totally integrated into domestic law as they are binding. The Tanzanian parliament should be at the centre to ensure that these laws are actually integrated in order to achieve the right to a general satisfactory environment favourable to peoples' development amongst many other rights.¹⁷⁰
- The government should enact a new Constitution which provides for the regulation of businesses and FDI in general, as well as codifying customary land rights to indigenous communities such as the Maasai. This would avoid future conflicts between local communities and foreign investors, provided that the local communities know their constitutional rights.
- Regarding local investors' rights, platforms should be created to discuss their rights, as well as establishing an independent body such as the National Local Investors Human Rights Centre, to address specific matters pertaining to domestic investment and deal with discrimination, unfair treatment or expropriation of property experienced by local investors. Moreover, the new Investment Act should include a clause that provides a considerable minimum required amount of application for the Certificate of incentives before enjoying the benefits of incentives so that local business owners are exposed to investment benefits in the country.
- Apart from establishing the National Local Investors Human Rights Centre, the government should also establish a separate independent court or tribunal where

¹⁷⁰ Article 21(5) and Article 24 and of the African Charter. State Parties shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from advantages derived from their natural resources. Article 21(5) of ICESCR.

justice is obtained for domestic investors. In the event that the government is not fulfilling local investors' rights, the latter can sue the government in the local courts before heading to international courts. Awareness of human rights should be promoted in the country.

- With respect to BITs and BCAs, the government should use ethical professionals like experienced commercial advisors and lawyers when negotiating contracts and signing BITs so that investors' duties and local protection of human rights are included in the agreements.¹⁷¹ A new BIT model based on development for both parties should be drafted to balance the protection of investor rights, human rights and protecting economic interests of the country. FDI agreements should reflect Tanzania's Bill of rights.
- Clearer regulation for investment is highly recommended. The government should empower one organ which will effectively monitor and assess investment opportunities. At the moment, the TIC works with several government bodies, which brings confusion when an investor is serious about starting a project. In addition, working with various government officials makes room for corruption and promotes red tape. In addition to the investment law, there should be legislation that empowers one main organ responsible for all matters relating to investment.
- Arguably, it is government's duty to respect the freedom indispensable for scientific research and creative activity according to Article 15(3) of the ICESCR. For its foremost intervention, Tanzania should design comprehensive plans that will instil innovative behaviour¹⁷² and protect the intellectual property or creativity of its domestic investors. With continuous technological advancement around the world, it is inevitable that the law responds to changes through revising policies, the Constitution, and Acts, to mention a few. Through the development of policies that

¹⁷¹ Hon (n 167) 120-121.

¹⁷² CM Mahemba & EJ De Bruijn 'Innovation Activities by Small and Medium-sized Manufacturing Enterprises in Tanzania' (2003) 162. 'Innovative behaviour is described as having an appropriate outlook on obstacles, and treating these obstacles as learning opportunities rather than negative events.'

accommodate all citizens, the law will appear inclusive and protective of domestic investors.

With new ideas, methods and products, not only will the government benefit from the innovations but so shall the society as a whole. As an example, Patrick Ngowi is a local Tanzanian investor who owns a company that specialises in solar energy services. His services have assisted different communities that could not afford the mainstream electricity supply in northern Tanzania.¹⁷³ In this case, Mr Ngowi has facilitated the promotion of the right for everyone to have an adequate standard of living as accorded in article 11 of the ICESCR.

- As one of its intervention to protect the rights of local businesses, government ordered Chinese traders to vacate Kariakoo, the largest market in Dar es Salaam, in early 2011. The deputy industry minister, Mr Lazaro Nyalandu stated that Chinese were welcomed as investors who create jobs for the locals and not to do small businesses that could be performed by local Tanzanians.¹⁷⁴ The government tried to provide a satisfactory environment (creating land space) for local businesses to trade and work so that they can develop.

However, the law should be clearer on how to fulfil domestic investors' right to development. For example, the Act under section 6 does not which services should exactly be offered by the TIC to domestic investors. The government needs to undertake measures to ensure that domestic investors are supported both in law and practice, and needs to revise the Act altogether.

- The government should enact a new investment law that addresses silent features such as the joint venture clause and obligations for investors. The inclusion of such clauses will promote the transfer of technology and create room for economic development in Tanzania. A clause on corporate social responsibility will legally provide for investors' certain duties like environmental conservation.

¹⁷³ M Nsehe 'The Young African Millionaire Lighting Up Tanzania' (2013) Forbes. <http://www.forbes.com/sites/mfonobongnsehe/2013/08/01/the-young-african-millionaire-lighting-up-tanzania/> (Accessed 9 September 2015). Patrick owns Helvetic Group and Light for Life Foundation.

¹⁷⁴ BBC News 'Tanzania orders Chinese out of Dar es Salaam market' (2011). <http://www.bbc.com/news/world-africa-12138811> (accessed 9 September 2015).

- Similarly, the protection of property rights (such as ownership of land or houses) should be emphasised and less ambiguous in the new law (Investment Act and the new Constitution). The revised Tanzanian Constitution should explain whether people will be compensated financially or new assets will be allocated to them after their land space or properties have been allocated to foreign investors.
- The Tanzanian government should re-evaluate the laws and policies governing tax revenues. Instead of offering huge tax exemptions and tax holidays, the government can systematically reduce such exemptions and improve other requirements such as the protection of intellectual property and efficient ways of settling disputes, introduce incentives such as access to land in underdeveloped areas so that those areas are not neglected. These areas may benefit through the construction of roads, hospitals and schools, water pipes and electricity supply.
- The TIC, BRELA and all other investment-supporting institutions need to introduce a computerised system (*e-platforms*) to foster accuracy, efficiency and effectiveness in issuing licenses, registering a company or business, monitoring investment projects and tracking down illegal foreign investors. With increased reports of illegal Chinese traders, the Immigration department needs to have updated information on the statistics of foreign investors or traders in the country so as to avoid Chinese investors who have no adequate permit to trade. Rules and regulations must be observed when granting permits to foreign investors.
- The United Republic of Tanzania needs to recognize that it is important to promote FDI inflow while protecting the socio-economic rights of all its citizens. To a greater extent, the world evolved to embrace capitalism and uphold democratic principles. And in the process of evolution new laws have to be enacted to accommodate changes taking place in and outside the country. The Constitution should therefore be reviewed to codify explicit socio-economic rights and the new Investment Act should consider the above recommendations.

Annex 1

THE TANZANIA INVESTMENT ACT, 1997 ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY

1. Short title.
2. Application.
3. Interpretation.

PART II

THE CENTRE AND ITS FUNCTIONS

4. Establishment of the Centre.
5. Objectives of the Centre.
6. Functions of the Centre.
7. The Board.
8. Proceedings of the Board.
9. Committees of the Board.
10. The Executive Director.
11. Secretariat.
12. Limitation of Liability of members and staff.
13. Funds of the Centre.
14. Accounts, auditing and reports.

PART III

PROVISIONS RELATING TO INVESTMENT

15. Investment opportunities.
16. Relationship with Ministries and other public authorities.
17. Application for certificates and registration.
18. Establishment of enterprises.
19. Benefits.
20. Benefits for strategic or major investments.
21. Investment guarantees, transfer of capital profits and dividends.
22. Guarantee against expropriation.
23. Settlement of disputes.
24. Immigration quota.
25. Obtaining credit from domestic sources by foreign investors.
26. Technology transfer agreements.

PART IV

GENERAL PROVISIONS

27. Offences and penalties.
28. Service of documents.
29. Regulations.
30. Repeals.
31. Transitional provisions.

An Act to make provision for investment in Tanzania, to provide for more favourable conditions for investors, and for related matters.

PART 1
PRELIMINARY

1. This Act may be cited as the Tanzania Investment Act, 1997, and shall come into operation on the date which the Minister may, by notice published in the *Gazette*, appoint.

2. (1) Subject to this Section, this Act shall apply to any business enterprise which means the requirement specified in subsection (2) other than-
 - a) a business enterprise which is authorised to conduct reconnaissance, prospecting or mining operations under the Mining Act, 1979, or is seeking authorisation to conduct such operations;
 - b) a business enterprise which is authorised to conduct exploration or production operations, or to construct or operate a pipeline under the Petroleum (Exploration and Production) Act, 1980, or is seeking authorisation to conduct any such operation;
 - c) a business enterprise which is engaged in the manufacture, marketing or distribution of hazardous chemicals, armaments or any types of explosives.

(2) The business specified for the purpose of this section which may enjoy the benefits and protection provided under this Act, are those which-

 - a) if wholly owned by a foreign investor or if a joint venture, the minimum investment capital is not less than Tanzanian Shillings equivalent of US dollars three hundred thousand (*US\$ 300,000*); or
 - (b) if locally owned, the minimum investment capital is not less than Tanzania shillings equivalent of US dollars one hundred thousand (*US\$100,000*).

(3) Notwithstanding the provisions of subsection (1)(a) and (b), the provisions of Section 21 which relates to guarantees of transfer of capital, profits and dividends and Section 22 which relates to the guarantees against expropriation, shall apply to any business enterprise which holds a mineral right granted under the Mining Act, 1979, or a licence granted under the Petroleum (Exploration and Production) Act, 1980, as though the holder has for the purpose of those provisions been granted a certificate of incentives and protection.

(4) Nothing in Section 22 relating to expropriation shall be read or construed as limiting or qualifying the right of the Minister or the Commissioner acting under and in

accordance with the Petroleum (Exploration and Production) Act, 1980 or the Mining Act, 1979, to terminate a licence granted under those laws.

(5) Notwithstanding subsection (1), the Centre shall assist all investors, whether or not this Act applies to them to obtain necessary permits, authorizations, approvals, registrations, consents, licences and any other matter required by law for a person to set up and operate investment.

3. In this Act, unless the context requires otherwise-

"Board" means the Board of Directors of the Centre appointed under section 7;

"benefits" includes facilities and incentives provided by or pursuant to this Act;

"business enterprise" means any industry, project, undertaking or business to which this Act applies or an expansion, restructuring, rehabilitation or technical improvement of the industry, project, undertaking or business or any part of the business, provided that the business enterprise is profit motivated and operated on commercial principles;

"capital" means all cash contribution, plant, machinery, equipment, buildings, spare parts, and other business assets other than goodwill which are not consumed in the regular operations of the business and have a life of more than twelve months;

"Centre" means the Tanzania Investment Centre established by section 4;

"certificate" means the certificate of incentives issued under section 17(l);

"facilities" include licences, approvals and permits necessary for the establishment of a business enterprise which an investor may be obliged to obtain for the purposes of this Act;

"foreign capital" means convertible currency, plant, machinery, equipment, spare parts, raw materials and other business assets other than goodwill that enters Tanzania with no initial disbursement of foreign exchange and are intended for the production of goods and services related to an enterprise to which this Act applies;

"foreign investor" in the case of a natural person means a person who is not a citizen of Tanzania, and in the case of a company, a company incorporated under the laws of any country other than Tanzania in which more than fifty percent of the shares are held by a person who is not it citizen of Tanzania, and in the case of partnerships, means a partnership in which the partnership controlling interest is owned by a person who is not a citizen of Tanzania;

"foreign loan" means a loan obtained from outside Tanzania denominated in any currency other than the Tanzanian currency;

"incentives" means tax reliefs and concessional tax rates which may be accessed by an investor under the Income Tax Act, 1973, the Custom Tariff Act, 1976, the Sales Tax Act, 1976 and any other law for the time being in force, and includes additional benefits that may be accessed by an investor under sections 19 and 20;

"investment" means the creation or acquisition of new business assets and includes the expansion, restructuring or rehabilitation of an existing business enterprise;

"local investor" means a natural person who is a citizen of Tanzania; a

Company incorporated under the laws of Tanzania in which the majority of the shares are held by a person who is a citizen of Tanzania, or a partnership in which the partnership controlling interest is owned by a person who is a citizen of Tanzania;

"member" means a member of the Board of the Centre:

"Minister" means the Minister responsible for investments;

"technology transfer agreement" means an agreement relating to an enterprise to which this Act applied; that involves-

- (i) the assignment, sale or use of foreign patents, copyrights, trademarks or other industrial property rights;
- (ii) the supply of foreign technical know-how or technological knowledge;
- (iii) foreign technical assistance, design and engineering, consultancy or other technical services in any form they may be supplied;
- (iv) foreign managerial, marketing or other services. Except that an agreement shall not be regarded as a technology transfer agreement for the purposes of this Act if its duration does not exceed a period of eighteen months.

PART II

THE CENTRE AND ITS FUNCTIONS

- 4.-(1) There is hereby established a body to be known as the Tanzania Investment Centre.
- (2) The Centre shall be an Agency of the Government and shall be under the general supervision of the Minister.
- (3) The Centre shall be a body corporate with perpetual succession and a common seal and, shall in its own name be capable of-
- (a) acquiring and holding movable and immovable property, to dispose of property and to enter into any contract or other transaction;
 - (b) suing and being sued; and
 - (c) doing and suffering all other acts and things which bodies corporate may lawfully do or suffer, for the proper performance of its functions under this Act.
5. The Centre, which shall be a one-stop centre for investors shall be the primary agency of Government to co-ordinate, encourage, promote and facilitate investment in Tanzania and to advise the Government on investment policy and related matters.
6. For the purpose of section 5, the Centre shall-
- (a) initiate and support measures that will enhance the investment climate in the country for both local and foreign investors;
 - (b) collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital, and advise investors upon request on the availability, choice or suitability of partners in joint-venture projects;
 - (c) in consultation with Government institutions and agencies identify investment sites, estates, or land together with associated facilities of any sites, estates or land for the purposes of investors and investments in general-
 - (d) assist all investors, including those who are not bound by the provisions of this Act, to obtain all necessary permits, licences approvals consents. authorizations, registrations and

other matters required by law for a person to set up and operate an investment; and to enable certificates issued by the Centre to have full effect.

(e) provide, develop, construct, alter, adapt, maintain and administer investment sites, estates or land together with associated facilities of those sites, estates, land and subject to relevant law, the creation and management of export processing zones.

(f) provide and disseminate up-to-date information on benefits or incentives available to investors;

(g) carry out and support local investment promotion activities which are necessary to encourage and facilitate increased local investments, including entrepreneurial development programmes;

(h) perform any other functions which are incidental to the attainment of the objectives of this Act.

7.-(1) There is hereby established a Board of the Centre which shall be responsible for the discharge of the functions of the Centre.

(2) The Board shall consist of-

(a) a Chairman who shall be appointed by the President;

(b) two members appointed by the Minister from the private sector;

(c) two members appointed by the Minister from the public sector; and

(d) two other members appointed by the Minister.

(3) The Minister shall in appointing members pursuant to subsection (2), ensure that he appoints only persons with sound knowledge and experience in public or private sector investment and management issues.

(4) The Executive Director shall be the Secretary of the Board.

(5) A member of the Board shall hold office for a term of three years and shall be eligible for re-appointment.

(6) A member of the Board appointed by the Minister may in writing addressed to the Minister resign his office.

(7) Members of the Board shall be paid such allowances as the Minister shall determine.

(8) The Board shall ordinarily meet once every three months and may meet in extraordinary session whenever necessary.

8. Subject to the provisions of this Act, the Board shall determine its own procedure for convening and conducting its meetings.

9. The Board may, for the discharge of the functions of the Centre, appoint Committees of the Board comprising of members of the Board or non-members or both and may assign to them any function which the Board may determine.

10. There shall be an Executive Director of the Centre who shall be appointed by the President upon recommendation by the Minister to serve-

(a) for a term of five years and may be reappointed for a further non-renewable term of five years;

(b) on any other terms and conditions specified in the instrument of his appointment or as the Board may determine.

11.-(l) There shall be a Secretariat of the Centre which shall consist of the Executive Director and other officers and staff of the Centre.

(2) There shall be established in the Centre any number of divisions, departments or zonal offices with such number and category of officers and staff as the Board may determine.

(3) The officers and staff of the Centre shall be appointed by the Board as may be required for the performance of the functions of the Secretariat of the Centre.

(4) The Board may delegate some of its powers under sub-section

(3) to the Secretariat for the appointment of staff at any levels which it may determine.

(5) The officers and staff of the Centre shall be paid remuneration or allowances which the Board may determine.

(6) Subject to any general directions which the Board may give, the Executive Director shall be responsible for the day-to-day administration of the Centre and the implementation of the decisions of the Board.

(7) Subject to this Act, the employees of the Investment Promotion Centre (IPC) established under the National Investment (Promotion and Protection) Act, .1990, who are immediately before the coming into operation of this Act employed by the IPC, with effect from the coming into operation of this Act, be transferred to and be employed by the Centre.

12. A member, officer or other staff of the .Centre shall or in his personal capacity be liable in civil or criminal proceedings, in respect of any act or omission done in good faith in the exercise of his functions under this Act.

13.-(1) The funds available for the purpose of enabling the Centre to perform its functions under this Act shall consist of-

(a) money from time to time appropriated by Parliament for that purpose;

(b) fees and charges levied under subsection (3) for the supply of goods and services to investors and other interested parties in relation to its functions under this Act;

(c) any other monies received by or made available to the Centre for the purpose of performing its functions under this Act.

(2) Without prejudice to the generality of the financial provisions under this Act, the Centre shall establish a General Fund into which all money received by it shall be paid and out of which all payments required to be made by the Centre shall be effected.

(3) The Centre may in the discharge of its functions and in accordance with the terms and conditions on which the funds may have been obtained and derived, charge the general Fund all remunerations, allowances, salaries, fees, pension fund contributions, gratuities, working expenses or other charges properly arising including any approved capital expenditure.

(4) The Centre shall, not later than three months before the end of each financial year prepare and submit to the Board for its approval estimate of income and expenditure of the

Centre for the next ensuing year and mat, at any time before the end of its financial year, prepare and submit to the Board for approval any estimates supplementary to the estimates of a current year.

(5) Subject to any other direction of the Board no expenditure shall be made out of funds of the Centre unless that expenditure is part of the expenditure approved by the Board under the estimates for the financial year in which that expenditure is to be made or in the estimates supplementary to it.

(6) The Centre may, with the approval of the Board, invest as it considers fit any monies not required for immediate use.

14.-(1) The financial year of the Centre shall be the same as the financial year of the Government.

(2) The accounts of the Centre shall be prepared in accordance with approved accounting standards and shall be audited by the Controller and Auditor General within three months after the close of the financial year.

(3) As soon as the accounts of the Centre have been audited and in any case not later than four months after the close of the financial year, the Board shall submit to the Minister a copy of the audited statements of accounts together with a copy of the report, made by the auditor on the statement of accounts.

(4) The Centre shall, within five months after the close of the financial year, cause to be prepared and submitted to the Minister a report dealing generally with the activities and operation of the Centre during that year and accompanied by-

- (a) a copy of the audited accounts of the Centre;
- (b) a copy of the auditors report on the accounts; and
- (c) any other information which the Minister may direct.

(5) The Minister shall within not more than three months, after receiving the accounts and reports, lay them before the National Assembly.

PART III

PROVISIONS RELATING TO INVESTMENT

15. The Centre shall, in liaison with relevant Ministries and other authorities, determine investment opportunities available in the country and the modalities of accessing them.

16.-(1) For the purposes of making the Centre an effective one stop Centre, all Government departments, Government agencies and other public authorities shall co-operate fully with the Centre in the performance of its functions under this Act.

(2) Notwithstanding the generality of sub-section (1), where licences or approvals are required by an investor, the Centre shall liaise in writing with the relevant authorities to secure the necessary licences and approvals as required by the investor.

(3) The relevant authority which receives the request under sub-section

(2) shall within fourteen working days of receipt of the request, issue the required licence or approval or serve a written objection to the Centre.

(4) Where the Centre does not receive a written objection from the relevant authority within the specified time under sub-section (3) the necessary licence or approval shall be deemed to have been granted.

(5) Where the Centre receives any written objection from the relevant authority within the specified time under sub-section (3), it shall, where it does not agree with the objection, communicate the objection, within seven days of its receipt, together with its own recommendation to the Minister for his decision.

(6) The Minister shall within seven days of receipt of the objection, and the Centre's recommendation, notify the Centre and the relevant authority of his decision and the Centre shall immediately communicate that decision to the investor.

(7) Any person aggrieved by the decision made pursuant to the provision of subsection (5) and (6), may appeal to the Minister.

(8) The Minister may, on the advice of the Board in writing request the relevant Minister to station at the offices of the Centre any public officers who may be specified and that request shall be complied with.

17.--(1) All applications for certificates of incentives and protection under this Act, shall be made to the Centre and the Centre shall, issue certificates in accordance with the provisions of this section.

(2) Where an application is for new investment, it shall contain-

(a) the name and address for the proposed business enterprise, its legal form, its bankers, the name and address of each director or partner and the name, address, nationality and shareholding, of each shareholder;

(b) the qualifications, experience and other relevant particulars of the project management;

(c) the nature of the proposed business activity and the proposed location where that activity is to be carried on;

(d) the proposed capital structure or the amount of investment and the projected growth over the next five years;

(e) how the investment will be financed;

(f) evidence of sufficient capital available for investment;

(g) an undertaking that the project shall be implemented as indicated in the projections of the project.

(3) Where an application is to rehabilitate or expand an existing enterprise or both, it shall contain:

(a) the name of the existing enterprise, its Articles of Association and Memorandum of Association or partnership agreement;

(b) the qualifications of the project management;

(c) a statement of audited accounts for the three previous years;

(d) the nature of rehabilitation or expansion,,

- (e) the capital structure and projected growth over the next five years;
 - (f) financing of the rehabilitation or expansion project, together with evidence of availability of finances;
 - (g) an undertaking that the expansion or rehabilitation shall be implemented as indicated in the projection.
- (4) Where the application is for equity investment, shares or stock in an enterprise, it shall contain-
- (a) the name of the enterprise in which the equity investment is made or the shares held;
 - (b) constitution of the enterprise or partnership agreement;
 - (c) the amount of equity investment made;
 - (d) the number of shares or stock held by the equity investor, and
 - (e) the currency in which the equity investment is made.
- (5) The Board shall determine the procedure of application, and the manner in which certificates of incentive shall be issued and registered and shall cause that determination to be known to the potential investor and the public in general.
- (6) The Board shall cause to be maintained a register of all certified business enterprises containing such particulars as the Board may determine.
- (7) A certificate of incentives shall not be transferred, or assigned or amended without the approval of the Centre.
- (8) Where a holder of a certificate does not commence operations within the first two years of issuance of a certificate without satisfactory reasons, the centre may, subject to the rights of innocent third parties, declare anything done or any benefit obtained under the certificate to be void and notify the holder of the certificate accordingly.
- (9) Where the holder of a certificate ceases, for any reason to operate the investment to which the certificate relates, he shall notify the Centre in writing and he shall be entitled to all rights and be liable to all obligations incurred under this Act up to the date he ceased to operate and on that date his certificate shall be deemed to have expired.
- (10) A holder of a certificate shall inform the Centre in writing of the date of commencement of investment and the Centre shall forthwith verify the commencement of operations.
- (11) A holder of a certificate shall inform the Centre in writing when-
- (a) a person other than the person to whom the certificate was issued has succeeded to the investment;
 - (b) the name or description of the business or enterprise is changed; or
 - (c) there is an enlargement of or substantial variation in the investment.
- (12) Notwithstanding the provisions of subsection (7), a person other than the holder of a certificate who is affected by or is interested in a change or variation under subsection (8), may so inform the Centre if the holder of a certificate fails to inform the Centre within a reasonable time

(13) Where the Centre is satisfied that a change or variation has occurred as provided in subsection (8) in respect of a certificate issued under this Act, the Centre shall amend the certificate to take into account the change or variation.

18.-(1) The Centre shall co-ordinate the establishment of business enterprise to which this Act applies including-

(a) incorporation or registration of business enterprises under the Companies Ordinance or under any other laws which are relevant Cap. 212 to the establishment of enterprises;

(b) the filling of Value Added Tax Forms;

(c) the filling of investment Registration Forms as the Centre may from time to time prescribe;

(d) facilitating the obtaining by investors of the necessary licences, approvals, facilities or services;

(e) the filling of Immigration Forms.

(2) On submission of an application for the incorporation or registration of an enterprise under subsection (1) of this section, the officers responsible for the incorporation and registration shall, where the documents of the applicant are in order, complete the processing of the application and issue the requisite certificate to the applicant within a period not exceeding fourteen working days from the date of the submission of the application.

19-(1) A business enterprise in respect of which a certificate is granted under this Act shall be entitled to the benefits which are applicable to that enterprise under the provisions of the Income Tax Act, 1973, the Customs Tariff Act 1976, the Sales Tax Act, 1976, or of any other written law for the time being in force.

(2) For the purposes of creating a predictable investment climate, the benefits referred to under sub-section (1) shall not be amended or modified to the detriment of the investors enjoying those benefits.

20.-(1) For the purposes of promoting identified strategic or major investments, the Minister, may, by order published in the *Gazette*, and after consultation with appropriate government authorities and after consultation with the Minister of Finance, specify specific in addition to the benefits provided under section 19 of this Act for any period which the Board may specify.

(2) Where the Ministers do not agree on any issue or matter in accordance with the provisions subsection (1); the Minister shall within one month from the date of the consultations referred to in subsection (1), submit the matter to the President for consideration.

21. Subject to this section, a business enterprise to which this Act applies shall be guaranteed unconditional transferability 'through any authorised dealer bank in freely convertible currency of-

- (a) net profits or dividends attributable to the investment;
- (b) payments in respect of loan servicing where a foreign loan has been obtained
- (c) royalties, fees and charges in respect of any technology transfer agreement registered under this Act;
- (d) the remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the business enterprise or any interest attributable to the investment;
- (e) payments of emoluments and other benefits to foreign personnel employed in Tanzania in connection with the business enterprise.

22.--(1) Subject to subsection (2) and (3) of this section-

- (a) no business enterprise shall be nationalised or expropriated by the Government, and
 - (b) no person who owns, whether wholly or in part, the capital of any business enterprise shall be compelled by law to cede his interest in the capital to any other person.
- (2) There shall not be any acquisition, whether wholly or in part of a business enterprise to which this Act applies by the State unless the acquisition is under the due process of law which makes provision for-
- (a) payment of fair, adequate and prompt compensation, and
 - (b) a right of access to the Court or a right to arbitration for the determination of the investor's interest or right and the amount of compensation to which he is entitled.
- (3) Any compensation payable under this section shall be paid promptly and authorisation for its repatriation in convertible currency, where applicable, shall be issued.

23.--(1) Where a dispute arises between a foreign investor and the Centre or the Government in respect of a business enterprise, all efforts shall be made to settle the dispute through negotiations for an amicable settlement.

- (2) A dispute between a foreign investor and the Centre or the Government in respect of a business enterprise which is not settled through negotiations may be submitted to arbitration in accordance with any of following methods as may be mutually agreed by the parties, that is to say-
- (a) in accordance with arbitration laws of Tanzania for investors;
 - (b) in accordance with the rules of procedure for arbitration of the International Centre for the Settlement of Investment Disputes;
 - (c) within the framework of any bilateral or multilateral agreement on investment protection agreed to by the Government of the United Republic and the Government of the Country the Investor originates.

24.-(1) Every business enterprise granted a certificate of incentives under this Act, shall be entitled to an initial automatic immigrant quota of up to five persons during the start-up period.

(2) Subject to subsection (1), any application for an extra person within an immigrant quota shall be submitted to the Centre which shall, in consultation with the Immigration Department, authorise any additional person which it shall deem necessary taking into consideration the availability of qualified Tanzanians, complexity of the technology employed by the business enterprise and agreements reached with the investors.

25.-(1) Subject to section 2, a foreign investor may, in relation to the business enterprise which he operates, obtain credit from domestic bank and financial institutions up to the limit established by the Bank of Tanzania in consultation with the Centre having regard to the amount credit from domestic sources by foreign in- of foreign capital invested in the business enterprise.

2) A foreign investor who obtains credit in accordance with subsection (1) shall ensure that the proceeds of that credit are used solely for the purpose of carrying out the activities specified in his loan application.

(3) The bank granting the loan may, for the purposes of this section, appoint its officer or agent to verify the due application of the credit obtained under subsection (1).

26.-(1) A person who has established an enterprise may enter into such technology transfer agreement as he considers appropriate for his enterprise.

(2) Every agreement for the transfer of foreign technology or expertise shall be registered with the Centre by the beneficiary of that transfer as soon as it is made and it shall not be effected unless it has been registered -

(3) A person who applies for a Certificate which involves an agreement for the transfer of foreign technology or expertise, shall not be required to make a separate application under this Act if he provides the relevant information relating to the regulation of agreements for the transfer technology or expertise required under this Part.

(4) The Executive Director shall maintain a register in which shall be recorded all agreements for the transfer of foreign technology or expertise which is included in the certificate.

PART IV

GENERAL PROVISIONS

27.-(1) A person who in the course of his official duties in the administration of this Act has possession of or control over any document or information obtained under this Act and who communicates that document or information or any part of it to any other person to whom he is not authorised to communicate it by any enactment or by the Board, commits an offence and is liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or to imprisonment for a term not exceeding one year or to both the fine and imprisonment and penalties

(2) A public officer who has a duty to perform under this Act and fails to perform that duty or performs the duty recklessly shall be liable to the disciplinary action which the Board or the appropriate disciplinary authority may determine.

(3) A person who-

(a) knowingly or negligently gives false or misleading information;

(b) refuses or neglects to provide information which the Centre may reasonably require for the purposes of the enforcement of this Act; or

(c) refuses without lawful excuse to admit an officer or an agent of the Centre into the premises of his business enterprise or otherwise obstructs any inspection by an officer or agent of the Centre in pursuit of its monitoring function, commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both the fine and imprisonment.

(4) Where an offence is committed by a body of persons then-

(a) in the case of a body corporate other than a partnership, every director, senior management officer or responsible officer of the body shall be deemed also to have committed that offence; and

(b) in the case of a partnership, every partner, senior management officer or responsible officer of that body shall be deemed also to have committed that offence.

28. A document may be served on the Centre by delivering it to the office of the Centre or by sending it by registered post addressed to the Executive Director.

29. The Minister may, after consultation and advice of the Board, make regulations for giving effect the provisions of this Act.

30. The National Investment (Promotion and Protection) Act, 1990 is hereby repealed.

31.-(1) Notwithstanding the repeal of the National Investment (Promotion and Protection) Act, 1990, on the coming into operation of this Act, a certificate of approval issued by the Investment Promotion Centre and which immediately before the commencement of this Act is still in force, shall on the commencement of this Act, continue to be valid on the terms and conditions on which it was issued as if it were a certificate of incentives issued under this Act, and shall be so valid-

(a) until the expiration of the term under which its holder was entitled to enjoy any benefit, incentives or protection; or

(b) up to five years from the date of commencement of this Act, if on the coming into operation of this Act, the holder has not utilized any benefit, incentive or protection, and on expiration of the period specified in paragraphs (a) and (b), the provisions of this Act shall commence to apply to the business enterprise.

(2) Subject to subsection (1), a person holding a certificate of approval in accordance with the terms and conditions of the National Investment (Promotion and Protection) Act, 1990,

shall not claim any benefit, protection or incentive under this Act until after the expiration of the period specified in subsection (1) or unless the Board determines otherwise.

(3) The Minister shall before the commencement of this Act, cause to be recorded for the purposes of identification, all business enterprises which are entitled by virtue of the enactment of this Act, to carry on business on the terms and conditions of benefits and incentives under the certificate of approval issued by the Investment Promotion Centre established under the National Investment (Promotion and Protection) Act, 1990.

(4) Any application pending before the Tanzania Investment Promotion Centre established under the National Investment (Promotion and Protection) Act, 1990, shall be deemed to be pending before the Centre established under this Act.

(5) Any agreement continued in force by virtue of this section shall confer benefits previously enjoyed under the agreement before the commencement of this Act and also any other benefits which may be applicable to the enterprise under this Act which the Board may determine.

(6) Where a business enterprise in existence immediately before the commencement of this Act has duly complied with the National Investment (Promotion and Protection) Act, 1990 in relation to any minimum equity requirement or capital investment specified in that Act, the enterprise shall be deemed lawful notwithstanding any provision of this Act to the contrary.

(7) All immigrant quota in existence immediately before the coming into force of this Act in respect of an enterprise to which this Act is applied shall continue in force until expiration or renewed under this Act.

(8) All technology transfer agreements registered with the Centre shall be deemed to be registered with the relevant authority referred to under this Act.

Annex 2: UK-TANZANIA BILATERAL INVESTMENT AGREEMENT

The Agreement was

TANZANIA

previously published as

Tanzania No.1 (1994) Cm 2593

Treaty Series No. 90 (1996)

Agreement

between the Government of the

United Kingdom of Great Britain and Northern Ireland

and the Government of the United Republic of Tanzania

for the Promotion and Protection of Investments

Dar es Salaam, 7 January 1994

[The Agreement entered into force on 2 August 1996]

Presented to Parliament

by the Secretary of State for Foreign and Commonwealth Affairs

by Command of Her Majesty

November 1996

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Republic of Tanzania;

Desiring to create favourable conditions for greater investment by nationals and companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

(a) "investment" means every kind of asset admitted in accordance with the legislation and regulations in force in the territory of the Contracting Party in which the investment is made and, in particular, though not exclusively, includes:

- (i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (ii) shares in and stock and debentures of a company and any other form of participation in a company;
- (iii) claims to money or to any performance under contract having a financial value;
- (iv) intellectual property rights, goodwill, technical processes and know-how;
- (v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments and the term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement;

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) "nationals" means:

(i) in respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;

(ii) in respect of the United Republic of Tanzania: physical persons deriving their status as nationals of the United Republic of Tanzania from the law in force in the United Republic of Tanzania;

(d) "companies" means:

(i) in respect of the United Kingdom: corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 12;

(ii) in respect of the United Republic of Tanzania: corporations, firms and associations incorporated or constituted under the law in force in any part of the United Republic of Tanzania;

(e) "territory" means:

(i) in respect of the United Kingdom: Great Britain and Northern Ireland, including the territorial sea and any maritime area situated beyond the territorial sea of the United Kingdom which has been or might in the future be designated under the law of the United Kingdom in accordance with international law as an area within which the United Kingdom may exercise rights with regard to the sea-bed and subsoil and the natural resources and any territory to which this Agreement is extended in accordance with the provisions of Article 12;

(ii) in respect of the United Republic of Tanzania: the territory which constitutes the United Republic of Tanzania including the territorial sea and any maritime area situated beyond the

territorial sea of the United Republic of Tanzania which has been or might in the future be designated under the national law of the United Republic of Tanzania in accordance with international law as an area within which the United Republic of Tanzania may exercise rights with regard to the' sea-bed and subsoil and the natural resources.

ARTICLE 2

Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

(2) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

ARTICLE 3

National Treatment and Most-favoured-nation Provisions

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

(3) Temporary special incentives granted by one Contracting Party only to its nationals and companies in order to stimulate the creation of local industries are considered compatible with this Article provided they do not significantly affect the investment and activities of nationals and companies of the other Contracting Party in connection with an investment. Each Contracting Party shall use its best endeavours to eliminate progressively such special incentives.

ARTICLE 4

Compensation for Losses

(1) Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State. Resulting payments shall be freely transferable.

(2) Without prejudice to paragraph (1) of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property by its forces or authorities, or

(b) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

ARTICLE 5

Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

ARTICLE 6

Repatriation of Investment and Returns

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer of their investments and returns. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

ARTICLE 7

Exceptions

The provision of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from:

- (a) any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party, or
- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 8

Reference to International Centre for Settlement of Investment Disputes

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former.

(2) A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

(3) If any such dispute should arise and agreement cannot be reached within six months between the parties to this dispute through pursuit of local remedies or otherwise, then, if the national or company affected also consents in writing to submit the dispute to the Centre for settlement by

conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the national or company affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

(4) Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre unless; (a) the Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or (b) the other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

ARTICLE 9

Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible be settled through the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members Parties shall be appointed Chairman of the tribunal. The Chairman shall be reappointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party _ or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to take the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the

tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

ARTICLE 10

Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) - Any payments received in non-convertible currency by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

ARTICLE II

Application of other Rules

If the provision of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable is provided for by the present Agreement, such rules shall to -the extent that they are more favourable prevail over the present Agreement.

ARTICLE 12

Territorial Extension

At the time of ratification of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of

the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

ARTICLE 13

Entry into Force

This Agreement shall be ratified and shall enter into force on the exchange of Instruments of Ratification.

ARTICLE 14

Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provision shall continue in effect with respect to such investments for a period of twenty years after the date of termination and without prejudice to the rules of general international law.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Dar es Salaam this seventh day of January 1994.

For the Government of the United

For the Government of the United Republic of Tanzania:

CD MSUYA

Kingdom of Great Britain and

Northern Ireland:

CHALKER OF WALLASEY

Annex 3: Table 1

TREATY	TANZANIA	DATE	CHINA	DATE
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Acceded	11/6/1976	Signed & Ratified	27/10/1997 & 27/3/2001
International Covenant on Civil and Political Rights (ICCPR)	Acceded	11/6/1976	Signed Only	5/11/1998
International Convention on the Elimination of All forms of Racial Discrimination (ICERD)	Acceded	27/10/1972	Acceded	29/12/1981
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	No action	No action	No action	No action

Annex 4: Table 2

Case	Source
<i>Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania, ICSID Case No. ARB/05/22</i>	http://www.italaw.com/cases/157
<i>Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited ICSID Case No. ARB/10/20</i>	https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?caseno=ARB/15/41
<i>Semi nomadic Maasai pastoralists v. Tanzania Breweries Limited (TBL) and Tanzania Conservation Ltd (TC)</i>	https://www.enca.com/money/maasai-locked-tanzania-legal-battle-us-safari-firm

BIBLIOGRAPHY

BOOKS

Alden, C., Large D. & Oliveira, R.S de 'China Returns to Africa' in *China Returns to Africa: A Rising Power and a Continent Embrace* C Alden, D Large & RS de Oliveira (eds) (2008). HURST Publishers: London

Baregu, M. 'The three faces of the dragon: Tanzania–China relations in historical perspective' in *Crouching Tiger, Hidden Dragon? African and China* Ampiah K. & Naidu S. (eds) (2008) Scottsville, KY: University of KwaZulu-Natal Press

Cotula, L (2012) *Human Rights, Natural Resources and Investment Law in a Globalised World: Shades of grey in the shadow of the law* Routledge: Taylor & Francis Group-London & New York

Maina C.P & Mwakaje S.J (2004) *Investments in Tanzania: Some comments-Some issues'* Friedrich Ebert Stiftung: Tanzania

Suda, R 'The Effect of Bilateral Investment Treaties on Human Rights Enforcement and Realization' in *Transnational corporations and human rights* Schutter de O. (ed) (2006) Oxford: Portland

Krajewski, M 'Investment guarantees and international obligations to reduce poverty: A human rights perspective' in *Poverty and the international economic legal system: duties to the world's poor* Schefer KN (ed) (2013) New York: Cambridge University Press

Eide, A 'Economic, Social and Cultural Rights as Human Rights' in *Economic, Social and Cultural Rights* Eide, A, Krause, C & Rosas, A (eds) (2001). Martinus Nijhoff Publishers: Dordrecht

Organisation for Economic Co-operation and Development 'Investment Promotion and Facilitation in Tanzania' (2013) in *OECD Investment Policy Reviews: Tanzania*. OECD Publishing. <http://dx.doi.org/10.1787/9789264204348-8-en> (accessed 3 October 2015)

Sornarajah, M (2004) *The International Law on Foreign Investment* 2nd Edition Cambridge: Cambridge University Press

JOURNAL ARTICLES

Anderson, D 'Depression, Dust Bowl, Demography, and Drought: The Colonial State and Soil Conservation in East Africa during the 1930s' (1984) *83 African Affairs* 321-326

Bettwy, D.S 'The Human Rights and Wrongs of Foreign Direct Investment: Addressing the need for an analytical framework' (2012) *11 Richmond Journal of Global Law and Business* 242-243

Blanton, S.L & Blanton, R.G 'Human Rights and Foreign Direct Investment: A Two-Stage Analysis' (2006) *45 Business and Society* 464-466

Cavallo E & Daude C 'Public Investment in Developing countries: A Blessing or a Curse?' (2008) *648 Inter-American Development Bank* 1-42

Hall, C 'When the Dragon Awakes: Internationalization of SMEs in China and Implications for Europe' (2007) *8 CESifo Forum* 29-34

Letnes, B 'Foreign Direct Investment and Human Rights: An Ambiguous Relationship' (2002) *Forum for Development Studies* 52

Long, W.J 'Trade and Technology Incentives and Bilateral Cooperation' (1996) *40 International Studies Quarterly* 1 77-106

Mahemba, C.M & Bruijn, E.J De 'Innovation Activities by Small and Medium-sized Manufacturing Enterprises in Tanzania' (2003). *12 Creativity and Innovation Management* 162-173 Blackwell Publishing Ltd: USA

Mwasalwiba, E, Dahles, H & Wakkee I 'Graduate Entrepreneurship in Tanzania: Contextual Enablers and Hindrances' (2012) *76 European Journal of Scientific Research* 386-402 Euro Journals Publishing, Inc.

Mwansele, H., Siphoned, F.J & Akarro R.R.J 'Determination of Inventory Control Policies at Urafiki Textile Mills Co Ltd in Dar-es-Salaam, Tanzania' (2011) 23 *Business and Economics Journal* 1-9

Rutaihua, J.L & Mkwawa, A.R 'Empirical Analysis of China-Africa Economic and Trade Cooperation for Good or Bad: A Case of Tanzania' (2011) 1 *International Journal of Academic Research in Business and Social Sciences* 3 419-429.

Spar, D 'Foreign investment and Human Rights' (1999) 42 *Challenge* 55-80

INTERNET SOURCES

Brownsell, L 'Bilateral and Regional Trade Agreements' (2012). *Advocate for International Development*

<http://www.a4id.org/sites/default/files/user/Bilateral%20and%20Regional%20Trade%20Agreements.pdf> (accessed 13 September 2015)

Government's Portal. <http://www.tanzania.go.tz/> (accessed 30 August 2015)

John Ruggie 'Protect, Respect and Remedy' Framework, March 21, 2011. A/HRC/17/31. <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf> (accessed 10 October 2015)

Maina, C.P 'Introductory Note: Tanzania's National Investment and Protection Act of 1990, International Legal Materials 30 American Society of International Law 891. Number 4. <http://www.jstor.org/stable/20693583> (accessed 6 November 2015)

OECD Global Forum on International Investment 'Growth, Technology Transfer and Foreign Direct Investment' (2001). *New Horizons and Policy Challenges for Foreign Direct Investment in the 21st Century*, OECD Paper, Mexico City. Available at: <http://www.oecd.org/daf/inv/investmentstatisticsandanalysis/2422334.pdf>

Sun, X 'How to Promote FDI? The Regulatory and Institutional Environment for Attracting FDI' (2002) Foreign Investment Advisory Service. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan006349.pdf>

Tanzania Investment Centre (TIC) <http://www.tic.co.tz/menu/179?l=en> (accessed 25 March 2015)

The World Bank 'Frequently Asked Questions on Development' (2012) <http://www.worldbank.org/fags>

United Nations 'Statistical annex: Data sources, Country classifications and aggregation methodology' (2012) 131 140. *World Economic Situation and Prospects*. http://www.un.org/en/development/desa/policy/wesp/wesp_current/2012country_class.pdf (accessed 31 July 2015)

United Nations Conference on Trade and Investment 'Foreign Direct Investment' (2013). <http://unctad.org/en/Pages/DIAE/Foreign-Direct-Investment-%28FDI%29.aspx> (accessed 12 August 2015)

United Nations Conference on Trade and Development 'Investing in Sustainable Development Goals' (2015). United Nations Publication UNCTAD/OSG/2015/3. http://unctad.org/en/PublicationsLibrary/osg2015d3_en.pdf (accessed 27 September 2015)

United Nations Conference on Trade and Development 'International Investment Agreements: China-United Republic of Tanzania (BIT) 2013' (2013) <http://investmentpolicyhub.unctad.org/IIA/country/42/treaty/990> (accessed 28 September 2015)

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18. <http://www.refworld.org/docid/4415453b4.html> (accessed 26 October 2015)

REGULATIONS

Investment Act, 1997.

http://www.tccia.com/tccia/wpcontent/uploads/legal/acts/Investment%20Act_1997.pdf (accessed 28 August 2015)

Immigration Act, 1995.

<http://www.immigration.go.tz/downloads/Immigration%20Acts%201995.pdf> (accessed 28 August 2015)

National Investment and Promotion Policy, 1996 <http://www.tccia.com/tccia/wp-content/uploads/legal/policy/investmentpromotionpolicy.pdf> (accessed 28 August 2015)

Republic of South Africa 'Promotion and Protection of Investment Bill' (2015) [https://www.thedti.gov.za/gazettes/Promotion Protection Investment Bill.pdf](https://www.thedti.gov.za/gazettes/Promotion%20Protection%20Investment%20Bill.pdf) (accessed 7 November 2015)

The African Charter on Human and Peoples' Rights, 1981

The Constitution of the United Republic of Tanzania, 1977

The United Nations Declaration on the Right to Development, 2006

The International Covenant on Economic, Social and Cultural Rights (1976) https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv3&src=traty (accessed 24 March 2015)

Treaty Establishing the East African Community, 1999. Available at: <http://www.chr.up.ac.za/undp/subregional/docs/eac4.pdf>

United Nations General Assembly 'Declaration on the Right to Development' (1986). Resolution 41/128. <http://www.un.org/documents/ga/res/41/a41r128.htm> (accessed 6 September 2015)

Zanzibar Investment Promotion and Protection Act, 2004. [http://www.zanzibarinvest.org/ZIPA act 2004.pdf](http://www.zanzibarinvest.org/ZIPA_act_2004.pdf) (accessed 2 October 2015)

WORKING PAPERS & REPORTS

Bräutigam, D & Tang, X., 'An Overview of Chinese Agricultural and Rural Engagement in Tanzania' (2012) 9-11. IFPRI Discussion Paper 01214. *International Food Policy Research Institute*. Available at www.ifpri.org

Hon T, Jansson J, Shelton, G, Haifang L, Burke C & Kiala C 'Evaluating China's FOCAC commitments to Africa and mapping the way ahead' (2010) 103. University of Stellenbosch. <http://www.ccs.org.za/wp-content/uploads/2010/03/ENGLISH-Evaluating-Chinas-FOCAC-commitments-to-Africa-2010.pdf> (accessed 30 July 2015)

Corkin, L & Burke, C 'China's Interest and Activity in Africa's Construction and Infrastructure Sectors' (2006). Centre for Chinese Studies, Stellenbosch University. <http://www.ccs.org.za/wp-content/uploads/2009/04/dfid-3rd-edition.pdf> (accessed 9 September 2015)

Jansson J, Burke, C & Hyon, T 'Patterns of Chinese investment aid and trade in Tanzania' (2009) 1-16. A briefing paper by the Centre for Chinese Studies, Prepared for the World Wide Fund for Nature (WWF)

Lugt, S.V.D, Hamblin V, Burgess, M. & Schickerling, E. 'Assessing China's Role in Foreign Direct Investment in Southern Africa' (2011) 1-85. Centre for Chinese Studies. Oxfam Hong Kong. <http://www.ccs.org.za/wp-content/uploads/2011/03/Final-report-CCS-March-2011-CCS.pdf> (accessed 30 July 2015)

Lunogelo, H.B & Baregu, S 'India and China: opportunities and challenges for Tanzania's economic prosperity' (2013) 10 <http://esrf.or.tz/docs/DiscussionPaper-53.pdf>. (accessed 21 March 2015)

Ministry of Trade and Industry 'National Baseline Survey Report for Micro, Small and Medium Enterprises in Tanzania' (2012). http://www.fsdt.or.tz/fileadmin/downloads/MSME_National_Baseline_Survey_Report_2012.pdf (accessed 5 August 2015)

Moshi, H.P.B & Mtui J.M 'Scoping Studies of China-Africa Economic Relations: The case study of Tanzania' (2008) Economic Research Bureau, Nairobi. 2-24 <http://dspace.africaportal.org/jspui/bitstream/123456789/32075/1/Tanzania-China.pdf?1>. (accessed 20 March 2015)

National Household Budget Survey (2012) <http://www.worldbank.org/en/country/tanzania/overview> (accessed 11 September 2015)

Organisation for Economic Co-operation and Development 'Benchmark Definition of Foreign Direct Investment' (2008)

<http://www.oecd.org/daf/inv/investmentstatisticsandanalysis/40193734.pdf> (accessed 30 July 2015)

Thomson, G 'Marxism in China Today' (1965) China Policy Study Group, University Of Birmingham, 5-<https://www.marxists.org/history/erol/uk.firstwave/thomson.pdf> (accessed 24 March 2015)

PUBLISHED DISSERTATIONS & THESIS

Altorfer-Ong, A.N. 'Old Comrades and New Brothers: A Historical Re-Examination of the Sino-Zanzibari and Sino-Tanzania Bilateral Relationships in the 1960s' (2014) PhD thesis, The London School of Economics and Political Science (LSE) Available at: [http://etheses.lse.ac.uk/811/1/Altorfer-Ong_historical_re-examination_SinoZanzibari_Sino-Tanzanian_1960s_\(public\).pdf](http://etheses.lse.ac.uk/811/1/Altorfer-Ong_historical_re-examination_SinoZanzibari_Sino-Tanzanian_1960s_(public).pdf)

Arsene, C S 'Chinese coming to Africa: Competition, interaction, interaction and interdependency-Lessons from Tanzania' (2009) University of Chicago

Braak, A 'Africa: blessed or cursed by Chinese FDI' Faculty of General Economics, Erasmus University of Rotterdam (2010)

Lundsgaard-Hansen, L 'Western and Chinese development in Tanzania: A Comparison of Approaches Followed by an Evaluation from a Tanzanian Perspective' (2010) v. University of Berne, Switzerland

Makombe, I.A.M 'Women Entrepreneurship Development and Empowerment in Tanzania: The Case of SIDO/UNIDO-supported Women Micro entrepreneurs in the Food processing sector' (2006) PHD Thesis. University of South Africa. Available at: <http://uir.unisa.ac.za/bitstream/handle/10500/2495/thesis.pdf?%20sequence=1>

Men, T 'Place-Based And Place-Bound Realities: How A Chinese Firm Embeds In Tanzania' (2011). Lund University Master of International Development and Management Available at: <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1968897&fileId=1968900>

Kimaro, L 'Examination of the effectiveness of regulation foreign direct investment in Tanzania' Published Thesis, University of Pretoria, (2013) Available at: <http://repository.up.ac.za/bitstream/handle/2263/30071/dissertation.PDF?sequence=1>

Sandvand, H 'Friends and Interests. A Comparison of Chinese and Nordic Aid to Tanzania' (2008) Available at: http://www.umb.no/statisk/noragric/publications/master/2008_heidi_sandvand.pdf (accessed 22 March 2015)

Sinda, A.A 'Foreign Direct Investment in Tanzania: Implications of Bilateral Investment Treaties in Promoting Sustainable Development in Tanzania' (2010) Published Thesis. University of Pretoria. Available at: <http://hdl.handle.net/2263/28452>

MEDIA

BBC News 'Tanzania Ivory: Chinese went on buying spree' (2014) <http://www.bbc.com/news/world-asia-china-29929423>

BBC News 'Tanzania orders Chinese out of Dar es Salaam market' (2011) <http://www.bbc.com/news/world-africa-12138811>

Kamndaya, S 'Tanzania: China-investment or exploitation?' (2010) *The Citizen Tanzania*, <http://www.thecitizen.co.tz/newe.php?id=17113> (accessed 24 March 2015)

Nsehe M 'The Young African Millionaire Lighting Up Tanzania' (2013) *Forbes*. <http://www.forbes.com/sites/mfonobongnsehe/2013/08/01/the-young-african-millionaire-lighting-up-tanzania/> (accessed 9 September 2015)

Tanzania Daily News 'Trade and Investment: Sino-Tanzanian relations growing stronger' (2014). <https://www.trademarka.com/news/trade-and-investment-sino-tanzanian-relations-growing-stronger/>

Yin, B 'Chinese Investment in Tanzania Bears Bitter Fruit' (2012) *The Guardian* <http://www.theguardian.com/global-development/2012/mar/02/chinese-investment-tanzania-airport-eviction>