



# Enabling legal frameworks for sustainable land-use investments in Tanzania

Legal assessment report

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# List of acronyms

AfDB	African Development Bank
ASDP	Agricultural Sector Development Programme
ASDS	Agricultural Sector Development Strategy
AU	African Union
BAGC	Beira Agricultural Corridor
BIT	Bilateral Investment Treaty
CAADP	Comprehensive Africa Agriculture Development Programme
CBFM	Community Based Forest Management
CDM	Clean Development Mechanism
CFR	Community Forest Reserves
CIFOR	Centre for International Forestry Research
EA	Environmental Audit
EAM	Eastern Arc Mountains
EIA	Environment Impact Assessment
EIS	Environmental Impact Statement
EMA	Environmental Management Act
EPZ	Export Processing Zones
EWURA	Energy and Water Utilities Regulatory Authority
FAO	Food and Agriculture Organization
FBD	Forest and Beekeeping Division
FPIC	Free Prior and Informed Consent
FYDP	Five Year Development Plan
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GoT	Government of Tanzania
ICSID	International Center for Settlement of Investment Disputes
IDLO	International Development Law Organization
IPPs	Independent Power Producers
IPTL	Independent Power Tanzania Ltd.
JFM	Joint Forest Management
LDC	Least Developed Countries
MDA	Mining Development Agreement
MEM	Ministry of Energy and Minerals
MIGA	Multilateral Investment Guarantee Agency
MNRT	Ministry of Natural Resources and Tourism
NAPA	National Adaptation Programme of Action
NCCFP	National Climate Change Focal Point
NCCS	National Climate Change Strategy
NCCSC	National Climate Change Steering Committee

NCCTC	National Climate Change Technical Committee
NDC	National Development Corporation
NEMC	National Environment Management Council
NESC	National Environmental Standards Compendium
NFBKP	National Forest and Beekeeping Programme
NISC	National Investment Steering Committee
NSGRP II	MKUKUTA II – National Strategy for Growth and Reduction of Poverty II
OECD	Organization for Economic Cooperation and Development
PFM	Participatory Forest Management
PPA	Power purchase agreement
PPP	Public-Private Partnership
REA	Rural Energy Agency
REFIT	Renewable Energy Feed-In Tariffs
SACCO	Savings and Credit Cooperative Society
SAGCOT	Southern Agricultural Growth Corridor of Tanzania
SEA	Strategic Environmental Assessment
SEZ	Special Economic Zones
SIDO	Small Industries Development Organization
SPP	Small Power Project
TANESCO	Tanzania Electricity Supply Company
TEDAP	Tanzania Energy Development and Access Project
TFS	Tanzania Forest Service Agency
TIC	Tanzania Investment Centre
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
VAT	Value Added Tax
VLFR	Village Land Forest Reserve

# Executive summary

This research project aimed to improve knowledge on how national regulatory frameworks (laws, policies and institutions) affect land-use change and sustainable investment in sub-Saharan Africa with a particular focus on the agriculture, energy, forestry and mining sectors. Findings from this research indicate that the legal framework that governs land-use activities and investments is well developed in Tanzania. Nonetheless, implementation and enforcement of the existing legal frameworks remains weak due to ambiguities in the law and lack of supportive incentives. In addition, it may be necessary to make some changes in the regulatory framework, in order to firm up the effectiveness on governance towards sustainable land-use investments. This report examines four key challenges to the attainment of sustainable land-use investments in Tanzania, as succinctly set out in the following themes:

## 1. Enforcement of environmental and social safeguards

Environmental management is important to Tanzania, as the provisions of the Environmental Management Act (EMA) indicate through creation of a legal hierarchy where EMA provisions prevail in case of a conflict with any other law on environmental matters. In addition, the legal requirement to undertake an environmental impact assessment (EIA) before the authorization of a proposed activity is a fundamental safeguard to good governance, transparency and informed decision making. Such an EIA requires that the environmental and social impacts of a potential activity are outlined and actions to mitigate or eliminate these impacts are fully considered. If used effectively, the value of an EIA is to provide a filter through which potential activities can be scrutinized and their benefits weighed against their potentially negative environmental consequences. For that reason, it is an effective and important mechanism to facilitate sustainable investments. Tanzania has had mixed although there have been success with actual implementation of EIA rules although there have been recent improvements. This has been attributed to lack of accountability due to low awareness, rather than inadequacy of the legislative frameworks.

In addition, although EMA is granted statutory superiority over other sectoral laws on environmental matters, certain sectoral legislation (notably mining) will often prevail over other sectors and EMA, where the interests of the state are at stake. It is notable that mining legislation enables the government to circumvent important safeguards to security of land tenure, on behalf of mining investors.

## 2. Incentives for sustainable investments in the legal framework

Tanzania has taken concerted steps to realign the investment framework with national priorities and ensure that it maximizes the development benefits that the country can accrue through such investments. Indeed, the National Strategy for Growth and Reduction of Poverty II (MKUKUTA II) clearly indicates that providing supportive economic incentives is a priority to ensure the private sector expands to previously underserved parts of the country. Major legislative and institutional developments have included the creation of the Tanzania Investment Centre (TIC) as Tanzania's one-stop investment shop and the incorporation of sustainability considerations into laws and policies governing investments in key sectors. However, although widely utilized, the potential of bilateral investment treaties (BITs) to create benefits from foreign investments is endangered by provisions inimical to sustainability, such as waivers of performance requirements given to companies, which should be reversed or minimized. The country has legal incentives for investors, such as the grant of national strategic investor status, which can be a useful legal mechanism to ensure that investments in land-use activities that promote sustainability are encouraged and supported. However, it is important to put in place mechanisms that establish greater transparency in the decision-making process to facilitate greater accountability and predictability. In addition, certain key legislative incentives, such as those available through the Special Economic Zones Act has enormous potential to enhance economic performance in key sectors of development, but lacks effective governing provisions to ensure proper implementation.

Incentives have been put in place in the energy sector, such as the Rural Energy Fund which provides resources for grants, technical assistance, training and other forms of capacity building to qualified developers. However, when dealing with more traditional forms of energy that are in great demand, such as charcoal, the research found that in the absence of changes to the value chain system to make it more beneficial, the complex regulatory framework does not matter to charcoal producers and traders – and the consequent non-compliance results in significant annual revenue losses to the state. In any event, there is minimal motivation or incentive for local government agencies to implement and monitor charcoal production in the absence of legal fiscal empowerment, combined with monitoring and enforcement capacity

### 3. Land tenure security

Security of land tenure remains one of the most critical factors to ensuring the sustainability of investments. With government initiatives such as *Kilimo Kwanza*, and a growing national and foreign interest in land in Tanzania that is expected to grow, the need for comprehensive legal and institutional frameworks that guarantee safeguards to land tenure rights has intensified. Positive trends in Tanzania's land law framework include the formal recognition of the legality of customary title and the reservation of land under the category of village land exclusively for Tanzanians. This accords greater protection over local land rights.

TIC's role as the gatekeeper for land acquisition by foreign entities is aimed at providing a further safeguard against improper acquisition of land by ensuring that only land designated for foreign investment is available for acquisition this provides a useful safeguard against loss of land by local landowners. Questions remain, however, about how the TIC will itself acquire sufficient lands. In addition, despite the TIC procedure, land is still acquired through direct negotiations between foreign investors and village landowners.

Safeguards required to reinforce tenure rights for village landowners include legislative measures to

support the recognition of existing title to land, and adequate and fair mechanisms for consultation and compensation, to reduce land alienation that leaves communities at a disadvantage. It is, however, notable that during the negotiations between villagers and foreign investors, lands are usually undervalued, and agreements not formalized in writing making them unenforceable. As a result, promises of financial or social benefits are rarely met. The value of the safeguards is further diminished by procedural inadequacies, especially during acquisitions of village land, as the law is silent or vague on the threshold and timing of consultations that must be held through the village assembly.

Further, where an investment is abandoned, community members are often not allowed to access their former lands as the acquisition normally extinguishes their legal rights. The return of such general land to village land relies on the exercise of presidential discretion, and there needs to be greater clarity on how to invoke this where the investor has not utilized the land, or no longer needs the land.

### 4. Public awareness and lack of information access

The awareness of land policy and the Village Land Act is generally low among rural people as well as ward executive officers, village leaders and village land committee members. Nonetheless, the radio has been identified as the most effective source of land policy information, especially for rural populations. Other than overall constitutional provisions, Tanzania does not have specific legislation on the freedom to access various types of information that could reinforce this need for greater public awareness. It is important to highlight that the EIA and Audit Regulations have established that any project brief, environmental impact statement, terms of reference, public comments, report of a person presiding at a public hearing, decision letter or any other information submitted to the National Environment Management Council (NEMC) are all public documents accessible to all. Nonetheless, access is still subject to conditions that maybe imposed by NEMC.



# 1 Introduction

Tanzania, known formally as Jamhuri ya Muungano wa Tanzania (the United Republic of Tanzania), is a unitary republic in East Africa, formed in a merger between Tanganyika and Zanzibar in 1964 (NBS 2013a, p. 12). With a total land area of 88.6 million hectares (NBS 2013a, p. 2), Tanzania supports a wealth of diverse natural resources, including diamonds, oil and gas, forests and agricultural lands. The population, in 2013, stood at 44,928,923 people (NBS 2013a, p. xviii), with 43,625,354 inhabiting mainland Tanzania, and 1,303, 569 living in the archipelago of Zanzibar. Economic growth in Tanzania has risen incrementally over the years and according to the Bank of Tanzania in its 2013/14 Monetary Policy Statement, growth stood at 6.9% in 2012 up from 6.4% in 2011 for mainland Tanzania (NBS 2013a, p. vii). Economic growth for Zanzibar stood at 7.1% in the same period. This improvement is attributed to good climatic conditions and supply of subsidized inputs that boosted agricultural production, and improved power generation that increased industrial production (NBS 2013a, p. vii). Due to the vast potential for natural resource extraction, climate suitable for agriculture, and continued political stability over the years (World Bank 2012), Tanzania has become an increasingly attractive destination for foreign investment.

The Government of Tanzania (GoT) has instituted a number of policy reforms to facilitate investment in several of its key sectors. The agricultural sector in particular represents one of the greatest drivers of Tanzania's economic growth. Currently, it contributes 27.7% to the gross domestic product (GDP) and employs about 75% of the work force (AfDB, OECD, UNDP and UNECA 2012). For this reason, the sector is regarded as instrumental to poverty alleviation, food security and future economic development (MKUKUTA Secretariat 2010, pp. 5–6). Of Tanzania's total land area, 35.3 million hectares are covered with forests, representing about 40% of the country (FAO 2010a). Tanzania's forests support a variety of important social and economic functions, including the provision of building material, biomass energy for cooking, traditional medicines, beekeeping and food (World Bank 2008, p. 6). It also sustains a number of ecosystem services such as water catchment and the provision

of habitat for diverse species of wild animals and insects, which in turn provide cross-sectoral benefits to the tourism, agricultural and energy sectors. It is estimated that these unaccounted environmental services represent 10 to 15% of GDP, equivalent to an annual increment of USD 35 to USD 50 per capita income to each Tanzanian citizen (World Bank 2008, p. 6). The mining industry also plays a significant role in Tanzania's economic development. Tanzania's contribution to the global production of gold represented 2% in 2010 (Yager 2010). It is the world's only producer of tanzanite, and also produces metals, gemstones including diamond, cement, petroleum and natural gas (Yager 2010). Due to recent discoveries of natural gas, Tanzania is expected to have the fifth largest gas reserves in the continent (AfDB, OECD, UNDP and UNECA 2012). For instance, as of June, 2013 natural gas discoveries of about 42.7 trillion cubic feet, or 7.5 billion barrels of oil equivalent) have been made from both on- and off-shore basins (United Republic of Tanzania 2013, p. 2).

Despite its economic gains and enormous potential for growth, Tanzania is still classified as a least developed country (LDC). An estimated 38.6% of its population remained below the poverty line in 2007, indicating a slight improvement of 2% from 1992 levels (NBS 2013a). Population levels have more than tripled since 1967, with an expected annual growth rate of 2% (NBS and OCGS 2012), and this is expected to put even more pressure on systems to support social and economic development. Only 16.4% of Tanzanian households have access to electricity, and in rural areas, this figure drops to 4.2% (NBS 2013a), indicating low connectivity to modern energy sources. As the majority of Tanzania's poor are concentrated in rural areas, the provision of clean and modern energy is essential, in order to foster social and economic growth. With demands for energy expected to increase with population growth, Tanzania must find a way to provide its citizens with access to energy while stemming the adverse impacts to health and the environment that current traditional energy sources impose. This is key to concerns over sustainable investments in land-use activities, as much of modern energy generation such as natural gas, and renewable options are land-based activities.

Population pressure also continues to create significant challenges for environmental management. The increased demand for biomass energy is a major contributor to deforestation, which takes place at the rate of between 130,000 and 500,000 hectares each year (FAO 2010a). Exploitation of natural resources overall has historically taken place at the expense of environmental sustainability, and given the economy's dependence on extractive industries, impacts to the natural environment will undoubtedly become more pronounced if left unchecked (AfDB, OECD, UNDP and UNECA 2012). Already, climate change has had significant impacts on the country's ability to supply energy to its population and support agriculture, leaving these key sectors highly vulnerable to unpredictable weather patterns. These challenges to sustainable growth are underpinned by weak rule of law and high levels of corruption in public administration sectors (World Bank 2012, p. 7) that are key for design, implementation and enforcement of regulatory systems.

The GoT developed Tanzania's National Development Vision 2025 as a means of guiding sustainable economic growth and developing a pathway to Tanzania becoming a middle-income country by 2025. Vision 2025 establishes a goal of, at least, an 8% growth rate per annum coupled with active efforts to reverse current trends of environmental degradation. Achieving good governance and the rule of law is one of its principal objectives. Building on these goals, the GoT created the National Strategy for Growth and Reduction of Poverty II (NSGRP II) also known as MKUKUTA II. Sustainable development is recognized as a key guiding principle of MKUKUTA II, to guide allocation of resources, and attainment of socioeconomic development. MKUKUTA II established five key fundamental objects necessary to achieve Vision 2025: (i) efficient use and development of factors of production, including human capital/resources; (ii) strengthening and establishing well-functioning institutions and markets; (iii) provision of infrastructure; (iv) ensuring good economic governance; and (v) resource mobilization and financing.

The need for effective legal systems to implement MKUKUTA II is emphasized throughout the strategy. Indeed, strong legal frameworks are necessary to channel increasing investments in Tanzania towards an outcome that creates sustained benefits for its economy and its people. Tanzania

stands to gain from its wealth of natural resources only where its legal and regulatory systems can capture these benefits to support development that is sustainable through socioeconomic equity and environmental protection, underpinned by the rule of law. It is for this reason that the successful realization of Vision 2025 not only requires a strong and effective legislative framework, but also committed adherence to the principles of good governance and rule of law.

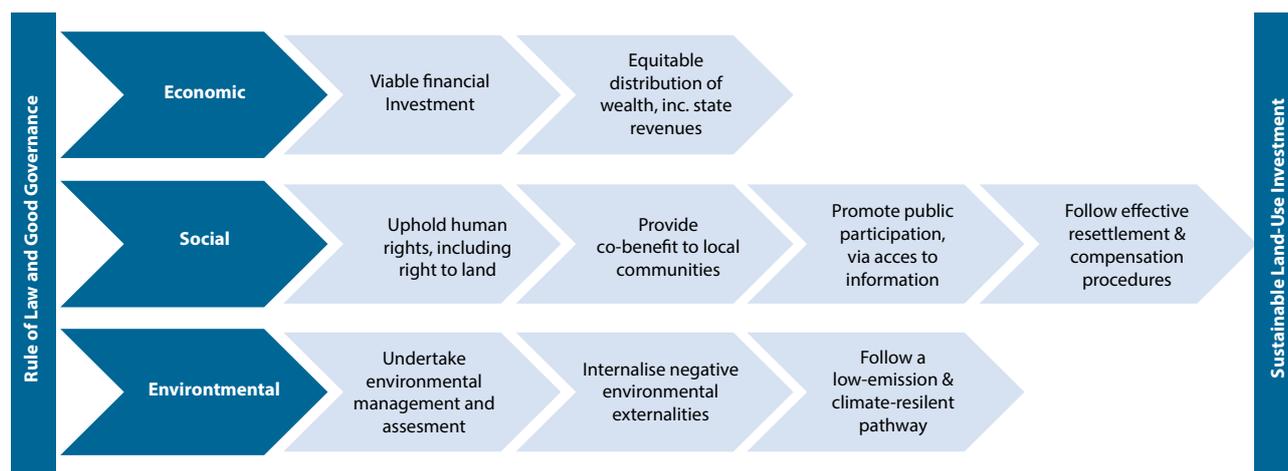
Tanzania is therefore a country undergoing significant socioeconomic transformation with investments in land-based resources playing a significant role. Based on goals and outputs desired by Vision 2025, and MKUKUTA II, the legal system in Tanzania will continue to play a significant role in shepherding land-use activities to ensure they are sustainable. It is therefore necessary to examine whether applicable laws, policies and institutional frameworks are equipped, or able to safeguard the sustainability of land-use investments that are undertaken across the energy, forestry, agriculture and mining sectors in Tanzania.

## 1.1 Examining the elements of a sustainable investment

The concept of a 'sustainable investment' does not have an internationally agreed-upon definition. Indeed, there are a wide variety of international regulatory and voluntary standards on sustainability. For the purposes of this project, the International Development Law Organization (IDLO) has based its definition of 'sustainable investment' upon a review and analysis of ten global sustainability and sustainable investment standards. The sustainability standards chosen are highly regarded and recognized broadly by the international community (see Annex 1).

This research perceives a sustainable investment as one that, as a consequence of good governance and rule of law, safeguards the human (social, economic and environmental) rights of a country's citizens as the investment is undertaken, while providing a realistic return on capital invested. This includes, for instance, deploying regulatory frameworks necessary for protecting the livelihoods and land rights of local communities (Figure 1).

It is important that a sustainable investment can be aligned with existing national development policies,



**Figure 1. Illustrative elements of a sustainable investment**

and spur co-benefits for a community, and country as a whole. Such co-benefits may include employment opportunities or local infrastructure development, and ensure that citizens enjoy improved (socioeconomic and environmental) well-being from investments. Generally, sustainable investments avoid further marginalization of the poorest in pursuit of economic development, with the wealth generated from natural resources spread equitably across a society.

As a feature of the rule of law and the governance system, a sustainable investment will be required to operate in a framework that has mandatory minimum requirements for public participation, especially consultation and representation in local decision-making processes. Certainly, even then the governance mechanism should ensure the input of the concerned local community has a bearing on the final decision. This would, for instance, avoid challenges such as those facing village assemblies in Tanzania, discussed later in this report, where in making decisions over village land alienation, the rules governing participatory decision making are unclear. On the part of the investment, the operators should aim for transparency and accountability, and ensure information on activities, structure, financial situation, performance, ownership and governance is made readily available to interested persons in a clear and comprehensible form.

Environmental responsibility becomes a mandatory element of a sustainable investment only if environmental and social impact assessment laws and regulations are effectively enforced. This can be achieved through regulation and proactive

mechanisms of an investor to manage and monitor its impact on the local environment. Environmental responsibility also incorporates all costs of an investment into the final price of natural resource products, including environmental damage caused to waterways, the climate system and the soil. Internalization of these environmental externalities creates greater efficiency in natural resource use and management, as it raises the cost and limits excess consumption. Finally, a sustainable investment should follow a low-emission and climate-resilient development pathway (Watkins et al. 2013). Such a pathway involves reducing levels of greenhouse gas (GHG) emissions against industry business-as-usual standards and building resilience to climate change.

In a collective sense, therefore, sustainable investments are governed by the common principles of good governance and adherence to the rule of law. These are necessarily grounded on, informed and established by a facilitative legal, policy and institutional framework. Although national contexts are unique and must be observed, the basic norms of the rule of law standard are founded on the universal standards of equality, good governance, citizen empowerment and participation. Rule of law can act as an enabler to sustainable development, equitable growth and poverty reduction (United Nations General Assembly 2013, p. 2). In this sense, national regulatory (laws, regulations, policies and institutions) frameworks, especially those established to facilitate pursuit of national socioeconomic development, are important to sustainability of investments, and utility of the rule of law. Securing economic undertakings beneficial to a country's quest for national development, such as (foreign

and domestic) land-use intensive investments also affects the socioeconomic rights of the people, and the environment. Such economic undertakings should therefore be handled with the obligations of the country to its population as a central issue of concern. This should be extended to any investment agreements of such nature, including licenses and permits issued under national laws, as well as bilateral investment agreements. Where there is functional rule of law in a country, such investments should, prior to approval and continuously during their lifetime, be subjected to a system of safeguards to ensure compliance with the socioeconomic and environmental needs of a country. On the other hand, there will be a rule of law deficit where a country imposes no such requirements on investments either (i) where the country has in place legal, institutional and governance rules based on rule of law but fails to apply or enforce them, (ii) where a country's present mechanisms do not meet a required threshold, or (iii) where there are no mechanisms in place at all.

Adherence to this definition of sustainable investment is demanding, and many investments will not meet all of the aforementioned criteria. Indeed, the aim of this definition is to establish a 'best practice' international standard and provide a foundation for a broad-based gap analysis through which the laws and institutions of Tanzania examined

in this assessment report can be evaluated, in order to identify key challenges and innovations. A primary focus of this analysis is on how environmental and social safeguards have been embedded in Tanzania's legal system, and implemented in order to better ensure that investments meet the elements of the definition above.

## 1.2 Report structure

This study is structured into five sections. Section 1 is the introduction that sets out an analysis of the concept of sustainable investments. Section 2 situates sustainable investments within the Tanzania governance structure. Section 3 provides a broad overview of the governance structure of Tanzania, as it affects sustainable land-use investments, including the priorities in terms of responses to climate change. Section 4 comprises a review of the legal frameworks governing sustainable investments in the four key sectors of energy, mining, forestry and agriculture. Section 4 provides an in-depth analysis of the Tanzanian legal framework in relation to four key challenges associated with sustainable investments. This section also highlights several case studies to demonstrate how the various opportunities and challenges surrounding sustainability of investments can be addressed. Section 5 provides a succinct conclusion.

## 2 Situating sustainable investments within Tanzania's governance structure

This section provides a succinct background and outline of the governance framework in Tanzania with particular emphasis on natural resources management. It considers how the governance system can foster or frustrate sustainability. Illustratively, an examination of the historical aspects of the Ujamaa policy highlights present-day questions of land tenure and participatory management of resources. It also considers the constitutional position of environmental rights given their relevance for environmental safeguards. Since climate change presents a major challenge to sustainable development of Tanzania. This section also provides a summary review of the policy-level approach to addressing climate change, and notes that Tanzania has adopted an approach of integrating climate change responses through various sectoral interventions. In section 3, the report then presents a more in-depth review of the legal frameworks governing the four key sectors: energy, mining, forestry and agriculture.

### 2.1 Background to governance in Tanzania

Tanzania became independent in December 1961, then as Tanganyika, under the leadership of the late Mwalimu Julius Kambarage Nyerere, as first President. This was followed by unification with Zanzibar in 1964, to form the United Republic of Tanzania. In February 1967, Mwalimu Nyerere set out official policy on how to build Tanzania into a socialist state through a system of collectivization called "Ujamaa". This policy, the Arusha Declaration (Nyerere 1967), emphasized human dignity, socialism and self-reliance, noting in part that there were four prerequisites of development: people, land, good policies and good leadership.

A major feature of Ujamaa was villagization, which was voluntary at the beginning. It focused on communal production, but was rather slow, resulting in the President declaring villagization compulsory, and requiring resettlement of the rural population by 1976. Tanzanian land law scholar, Professor Issa Shivji, has argued that evidence now points to arbitrary and excessive use of force by the

state in implementation of the Ujamaa villagization policy (Shivji 1998, p. 12). Also, he notes that Ujamaa through compulsory villagization had two unintended consequences. First was the impact on land tenure, as the movement of rural populations did not pay any regard to customary rights, or to the future direction of land tenure. It is notable that the impact of villagization on land tenure is one of the critical issues that the 1999 Village Land Act sought to rectify with confirmation at section 15, that allocations of land made, either lawfully or otherwise, to people within the 7 year [villagization] period between 1970 and 1977, are valid and give rise to all rights and obligations while extinguishing any prior rights [held by any other persons] to such land.

The second consequence was the implementation of economic activities through communal production, which created a system of top-to-bottom decision making, without any consultation with the population. Professor Shivji observed that the "post-colonial administrators [in independent Tanzania] did not even go through the motions of consultation," but rather "directives from the top implemented bureaucratically and often enforced through legal and extra-legal coercion have been the typical modus operandi ..." (Shivji 1998, p. 10). This approach has been critiqued as an instance of "objectification of African peasants and rural dwellers as hapless victims of underdevelopment who needed to be emancipated to higher levels of social and material well-being." (Ibhawoh and Dibua 2003). This reasoning vitiates the rights and roles of citizens to participate in design and implementation of policies affecting them, and expects populations to simply accept any measures, which their government presents as good policies. This, in the case of Ujamaa, was evident in the structure of Ujamaa administration, which relied on the extensive top-down reach of state control mechanisms that included official public service bureaucracy and ruling party functionaries. There was little space for bottom-up participation of the public. Changes in the land laws, including enactment of a specific legislation on village land in 1999 were meant to reverse this Ujamaa era policies by providing voice and space for people in the land administration continuum.

## 2.2 The constitutional framework

The Constitution of Tanzania (1977) is the supreme law of the land, therefore binding all state organs and actors to its provisions. It sets the foundation for legal protection of environmental safeguards. It establishes the duty of every person to protect the natural resources of Tanzania and to “combat all forms of waste and squander.” (United Republic of Tanzania 1977, s27). The enshrinement of this right in the constitution is a significant step in affording greater protection to the environment, which has received further reinforcement through judicial action.

In this context, the High Court has emphasized the importance of the environmental right, such as in the case of *Joseph Kessy et vs Dar es Salaam City Council*. Here, the High Court ruled that article 14 of the 1977 Constitution, which provides for the right to life also coextensively includes a right to a safe, clean and healthy environment.<sup>1</sup> Administratively, environmental governance is reinforced through the right to a clean environment set out in section 4 of the 2004 EMA. This law quantifies the environmental right to include recreational, educational, health, spiritual, cultural and economic segments of the environment. To aid in protecting the environment, section 232 of EMA explicitly creates a hierarchy of laws with EMA being superior to other statutes on any provisions relating to environmental management.

## 2.3 Long-term development plan: Vision 2025

Tanzania’s National Development Vision 2025 was created to guide Tanzania towards becoming a middle-income country by 2025. The three principal objectives of this plan are: achieving quality and good life for all; good governance and the rule of law; and building a strong and resilient economy that can effectively withstand global competition. It specifically states that these goals must be achieved with regard to education, health, environment and increasing involvement of the public in governance. Sustainable development is the underlying goal of these objectives.

MKUKUTA II (MKUKUTA Secretariat 2010) represents the GoT’s strategy to realize the broad

goals outlined in Vision 2025 for the period 2010/11 to 2014/15. MKUKUTA II outlines a number of challenges it faces in the achievement of this goal, and among them it recognizes the impact of climate change on key areas of growth such as agriculture and energy. MKUKUTA II organizes its work under three clusters, in line with the principal objectives established by Vision 2025: Cluster I: Growth for reduction of income poverty; Cluster II: Improvement of quality of life and social well-being; Cluster III: Governance and accountability. It sets a number of targets to measure progress, with an overall target of GDP growth from 6% in 2009 to 8–10% per annum by 2015.

Tanzania developed the first of three Five Year Development Plans for 2011/12 to 2015/16 (FYDP I) in June 2012. FYDP I lays the foundation for the GoT’s 15-year roadmap, which is intended to implement Vision 2025. The rationale for its development followed a review of Vision 2025’s success after 10 years of its existence, which revealed several fundamental challenges that set realization of Vision 2025 on a precarious track. These challenges included weak institutional structures, absence of guiding plans and long-term priorities, lack of a clear financing strategy, and a weak monitoring and evaluation framework (United Republic of Tanzania 2011a). FYDP I draws together the objectives of other existing initiatives, including Vision 2025 and MKUKUTA II, as well as ministry-level strategies.

FYDP’s five core priorities include: (i) infrastructure, and in particular large investments in energy; (ii) agriculture; (iii) industrial development, with increased use of public–private partnerships (PPPs); (iv) human capital and skills development, with an emphasis on science, technology and innovation; and (v) tourism, trade and financial services. For each priority, it outlines the goals, the intended macro-economic intervention required, and the key output target. Strengthening rule of law systems, addressing environmental management and climate change impacts, and improving land acquisition processes are crosscutting concerns. A total cost is quantified according to each goal, which is then broken down by sector and activity. Based on its established priorities, FYDP I lists ten core investments for the next 5 years, which predominantly focus on transport infrastructure and improvements in agricultural efficiency. To achieve its targets, FYDP I includes a detailed financing strategy as well as an implementation and monitoring and evaluation plan to track its progress. Land-use investments, such

<sup>1</sup> High Court Civil Case No. 298 of 1988 (unreported)

as those in the key sectors examined in this report form a significant component of the plan, and of MKUKUTA II. The realization of these medium- and long-term development plans will require adherence to the rule of law, evidenced by the ability of the legal system to secure sustainability of land-use investments.

## 2.4 Climate change governance

Tanzania is a signatory to the United Nations Framework Convention on Climate Change (UNFCCC), which establishes the international framework requiring the reduction of GHG and facilitates collaboration on the implementation of measures for climate change adaptation (UNFCCC 2013). However, being an LDC, Tanzania does not have specified emission reduction targets. Nonetheless, the adverse impacts of climate change present a major challenge to the country's sustainable development. In Tanzania, projections indicate an annual temperature increase of 1°C to 3°C above baseline records and changes in precipitation ranging from less rainfall in dry seasons to wetter rainy seasons.

The adverse impacts on sectors key to economic growth and stability will potentially be huge. Extreme reductions in precipitation levels could reduce average maize production by up to 16% by 2030 (Watkins et al. 2011). Further, despite Tanzania's move to diversify electricity sources, changes in water availability are likely to affect coal and gas plants and reduce fossil fuel plant efficiency (Watkins et al. 2011). Health impacts are also predicted to be high, with malnutrition, diarrhea and malaria expected to increase significantly by 2050 (Watkins et al. 2011). All of Tanzania's forests types will likely be seriously affected, with the greatest impacts to dry forest and moist forest, which may decline by over 60%, and thorn woodlands predicted to disappear altogether (United Republic of Tanzania 2007). These impacts will have even more serious implications on the poor given their reduced resilience and ability to adapt, and will have tremendous consequences to Tanzania's GDP in coming years.

Tanzania recently developed a stand-alone national strategy on climate change and has incorporated climate change response to varying extents in several national and sector-specific strategies and policy documents, the most overarching being MKUKUTA II. The cross-sectoral and multi-thematic nature of

climate change response is recognized throughout MKUKUTA II, which not only establishes mitigation and adaptation as an express goal under Cluster I, and also mainstreams climate change throughout the strategy. Illustratively, MKUKUTA II's Cluster I goal to "reduce income poverty through promoting inclusive, sustainable, and employment-enhancing growth, and development" recognizes the initiation of participatory climate change adaptation measures at catchment/water user association as a means to establish clean and affordable fuel for cooking.

MKUKUTA II further seeks to mainstream climate change considerations under its established targets for each key sector. For instance, the focus for agriculture is based on adopting technologies that improve agricultural practices and increase climate resilience, including the development of improved seeds, irrigation and soil and water conservation techniques. Regarding the mining sector, MKUKUTA II highlights the need to resolve conflict between natural resource and mining policies. With respect to energy, the strategy sets an aim to develop Tanzania's renewable energy potential, particularly with respect to solar, wind and biofuels. It also calls for strategies to improve energy efficiency and conservation and to encourage participation in Clean Development Mechanism (CDM) programs under the UNFCCC. Through mainstreaming climate change into the its sectoral goals, MKUKUTA II also identifies the various responsible institutions and ministries, creating a cross-sectoral network, and setting the foundation for ensuring that climate change considerations form part of each sector's work plan. These institutions include ministries responsible for: water and irrigation, foreign affairs, livestock development, fisheries, the National Environment Management Council (NEMC), Prime Minister's Office, and Rural Energy Agency (REA).

Tanzania is therefore making effort through policy and institutions to address the impacts of climate change, such as those afflicting the key sectors of agriculture, mining, forestry and energy. Notably the country has also developed a National Adaptation Programme of Action (NAPA), which is a process to identify priority activities that respond to urgent and immediate needs to adapt to climate change. In 2012, Tanzania produced its overarching National Climate Change Strategy (NCCS) designed to strengthen its commitment to climate change adaptation and enhance its participation in GHG reduction efforts. It links its objectives to other

related policies such as MKUKUTA II, Vision 2025, and the National Environmental Policy 1997. Institutionally, the National Climate Change Technical Committee (NCCTC) and National Climate Change Steering Committee (NCCSC) guide the implementation and coordination of the NCCS. The NCCTC also provides technical advice to the National Climate Change Focal Point (NCCFP), which is part of the Division of Environment, in the Vice President's Office. The NCCSC is responsible for providing policy guidance and ensuring coordination of actions as well as cross-sectoral participation.

## 2.5 Conclusion

It is clear from the country's history that Tanzania has a complex experience with management of land rights. The country has undertaken several land reform initiatives since independence and is therefore awake to the glaring challenges. It is helpful to note that Tanzania is currently undergoing a process of constitutional reform, with anticipated

conclusion ahead of the 2015 General Election. Although this process has given stakeholders an opportunity to advocate for increased prominence of natural resource protection and environmental concerns within the constitution, the outcome on constitutional treatment of environmental protection, and of environmental rights will only be clear upon finalization of the new constitution (Kilahama 2013).

Tanzania's climate change governance system, even without specific climate change legislation, is a significant step towards mainstreaming climate change into national planning, and placing the issue front and center to national developmental priorities. It sets a clear and inclusive path to realizing its goals through outlining desired outcomes, as well as recognizing the contribution of the stakeholders, both governmental and non governmental, that need to be involved. Mainstreaming climate change is critical for land-use investments as it signifies that climate change aspects affecting any sector will be internalized into the sectoral planning and decision-making process.

# 3 Review of existing legal frameworks in the agriculture, forestry, energy and mining sectors

This section builds on the analysis of how sustainable investments are governed in Tanzania, and examines the specific legal framework that administers large-scale land-use investments in the forestry, energy, agriculture and mining sectors. Particular attention is paid to how the legal system facilitates investments that support climate change adaptation goals, while also establishing systems that secure environmental and social safeguards.

The sectors discussed in this section, as highlighted earlier in section 2, have been recognized within Tanzania's national goals and priorities as key to its economic and social development. Each sector is examined with an overview of the factors contributing to its prioritization, and the policy, legal and institutional measures that have been established to effectively manage them. It is worthy to note that each of the four sectors falls under a specific regulatory regime comprising policy, legislative and institutional mechanisms. However, in addition to the specific regulatory frameworks, these sectors are governed by crosscutting legislation and policy, such as those dealing with land tenure, environmental safeguards and investments approvals. These include, for instance, the 1999 Land Act and the Village Land Act, as well as the 2004 EMA. These crosscutting regulatory frameworks will be examined in-depth in section 4 of this report.

## 3.1 Governance and policy approaches for agriculture

The agricultural sector in Tanzania is governed by a variety of laws and policies. Land laws, such as the Land Act and the Village Land Act, both of 1999, define the rules of land tenure, especially the foundational right to own and therefore utilize land for agriculture, and, the basic land-use requirements. In addition, Tanzania has adopted a crop-specific legislative approach, with existing laws focused on the major cash crops in the country: Coffee Industry Act, Sisal Industry Act, Cotton Industry Act, Tobacco Industry Act, Pyrethrum Act, Sugar Industry Act, and Cereals and Other Produce Act.

Although the contribution of agriculture to Tanzania's GDP has been surpassed by services, the sector nonetheless contributed 25% to GDP in 2009 (MKUKUTA Secretariat 2010). Agriculture plays an important role in the economy, employing about 75% of the work force (AfDB, OECD, UNDP and UNECA 2012). An estimated 85% of the rural poor rely on agriculture for their primary source of income, 98% of whom are women (SAGCOT 2011, p 2). Agriculture represents the mainstay for rural communities, as it is a major source of employment and livelihood for the majority of the population, and is recognized as central to poverty reduction and social development (MKUKUTA Secretariat 2010 pp. 5–6). As well as its importance to livelihoods, agriculture contributes to national food security, the production of raw material for industries, and the generation of foreign exchange (United Republic of Tanzania 2012b, p. 1).

In addition to the crop-specific laws, the agricultural sector in Tanzania is supported by an elaborate system of policies and strategies to prioritize growth and attract private investment. This includes Vision 2025, which recognizes food self-sufficiency and food security as among the strategies integral to realizing the national target of achieving high quality livelihoods for Tanzanian citizens (United Republic of Tanzania 2011b). This is an approach supported by treatment of agriculture in MKUKUTA II (MKUKUTA Secretariat 2010 pp. 5–6), which outlines the challenges facing the agricultural sector, including outdated technology, unpredictable weather patterns, lack of financing mechanisms, unreliable markets, and environmental degradation as central reasons for inhibited progress (MKUKUTA Secretariat 2010 pp. 5–7). MKUKUTA II sets a target of increased agricultural growth from 2.7% in 2009 to 6% by 2015. This is to be achieved through a medium-term focus on small-scale agriculture, with a gradual shift from medium to large-scale farming as mechanization and increased agricultural productivity are realized (MKUKUTA Secretariat 2010 pp. 40, 44). Improved irrigation, private sector investments, research and development promotion and land reforms to create greater access to land for agricultural development are identified as necessary approaches for achieving this goal (MKUKUTA

Secretariat 2010 pp. 44). Importantly, MKUKUTA II recognizes the need to link enhanced agricultural efficiency with sustainability and increased climate resilience (MKUKUTA Secretariat 2010 pp. 59–60). It specifically identifies a number of sustainability initiatives such as sustainable crop production and farming systems, improved soil and water conservation measures, and increased carbon sequestration on farms through reduced tillage, planting high carbon crops and practicing agroforestry. This linkage is of fundamental importance as it sets the groundwork for the alignment of sector-specific policy designed to accomplish these targets, and firmly establishes sustainable agriculture as a national priority.

Tanzania's agricultural sector is impacted by the African Union's (AU) Comprehensive Africa Agriculture Development Programme (CAADP), which aims to eliminate hunger and reduce poverty through agriculture. It commits AU members, including Tanzania, to allocate 10% of budgetary expenditure to the agricultural sector in order to facilitate an annual growth rate of at least 6%. In 2008, Tanzania exceeded this budget target (Regional Strategic Analysis and Knowledge Support System 2013) but fell short in the 2012/13 budget with an allocation of 7.9% (Policy Forum 2011). The Agricultural Sector Development Strategy (ASDS) and its implementing program, the Agricultural Sector Development Programme (ASDP),<sup>2</sup> are critical for promoting Tanzania's objective of increased agricultural growth rate through transforming agriculture in Tanzania from predominantly subsistence to commercial (United Republic of Tanzania 2003a, p. 2, para. 2).

It is notable that in recent years, as a result of global food security concerns caused by a combination of swelling populations, rising international interest in biofuels, and government prioritization of the agricultural sector, a growing number of agricultural investments have been taking place in Tanzania.<sup>3</sup> This has created significant opportunities and risks for national growth and development in Tanzania. Government policies and strategies, such as ASDP and Kilimo Kwanza, have been developed to support this growth, aimed at securing benefits of improved

technology for enhanced agricultural yields, better rural infrastructure, greater employment opportunities and increased income to the economy. The GoT has also proposed the development of 'agricultural growth corridors' to represent a hybrid mix of socioeconomic activities for smallholder and large-scale farming, and as a PPP. These initiatives are explored in the following sections.

### 3.1.1 Agricultural land-use investments through the Kilimo Kwanza program

Since 2005, the government has consolidated implementation of agricultural policy through the Kilimo Kwanza (Agriculture First) program. The priority status of this program is evident through its identification, in the 2011–2014 Budget Medium-Term Expenditure Framework (MTEF) (United Republic of Tanzania 2011c), as the main mechanism for achieving Vision 2025 and MKUKUTA II objectives.

Kilimo Kwanza is designed to support smallholder, medium- and large-scale commercial agriculture. The goal of Kilimo Kwanza is agricultural transformation in Tanzania, with the government facilitating leverage of finances from public and private sources. The implementation framework identifies a number of interventions beneficial to rural farmers, such as: mobilizing farmer cooperatives and savings and credit cooperative societies (SACCOs) to access financing on behalf of members; (government) negotiating with commercial banks to provide concessional loans; and legislation to regulate contract (outgrower) farming for strategic food crops such as maize and sorghum. However, the framework also identifies a need to amend the Village Land Act to facilitate equitable access to land for Kilimo Kwanza investments. This could be problematic to village landowners, as the Kilimo Kwanza implementation framework does not provide details on the manner through which the rights of farmers to the land will be protected. Kilimo Kwanza, nonetheless, presents a positive policy intervention for Tanzania, if the agricultural land uses are implemented as sustainable investments that generate co-benefits, and embrace participation of people while upholding environmental safeguards.

### 3.1.2 The development of agricultural growth corridors

Agricultural growth corridors, an idea conceptualized by a Norwegian company, Yara International (see Yara International n.d.a.), ideally aim to develop

2 It is worth noting that Agricultural Sector Lead Ministries formulated the ASDP in 2003, in collaboration with Development Partners and other agricultural sector stakeholders.

3 FDI inflows to agricultural activity rose 48.5% from USD 21.2 million in 2008 to USD 31.4 million in 2011 (Tanzania Investment Centre 2012, p. 21, see also SAGCOT 2011, p. 12).

underutilized land areas in Africa that have great potential to enhance food production and economic growth (Yara International n.d.b.). Currently, there are two pilot projects in the African continent, both in countries (Tanzania and Mozambique) where this research was undertaken: (i) Southern Agriculture Growth Corridor of Tanzania (SAGCOT), and (ii) Beira Agricultural Corridor (BAGC).

**Example 1. Agricultural growth corridors: The case of the Southern Agricultural Growth Corridor of Tanzania**

The SAGCOT, launched in 2010, is a PPP between the GoT and Yara International of Norway. It aims to create agribusiness PPPs to increase smallholder productivity. This is achieved through the development of agricultural clusters, which connect individual smallholders to commercial agriculture hubs, allowing them to access improved technology, agricultural inputs, facilities and bigger markets (SAGCOT 2011). SAGCOT's strategy is to initially create six agricultural clusters, which place farmers, service providers, and facilities in geographically close proximity to one another, eliminating the challenges of access to markets and extension services that have constrained agricultural growth (SAGCOT 2011, p. 16). SAGCOT collaborates with the Tanzania Investment Centre (TIC) to identify priority areas of potential investment, and provides financing to investors to provide infrastructure, technology and facilities in accordance with the strategy. Ultimately, the SAGCOT initiative aims at providing over 400,000 new employment opportunities and facilitating smallholder farmers' access to irrigation and insurance, creating \$1.2 billion USD of annual farming revenues (SAGCOT 2011, p. 11).

Yara has argued that the agricultural growth corridor concept has a PPPs approach, and takes the entire value chain into perspective, aiming to improve efficiency through targeted investments. Conceptually, it is an approach that requires participation of a variety of stakeholders and utilization of vast amounts of land. Potential challenges include the risk of growth corridors becoming a 'land grab', due to weak or lack of safeguards in land acquisitions, akin to Tanzania's experience with biofuel investments, discussed later in section 4 of this report.

Investment interventions, like the agricultural growth corridor, are occurring against a background of diverse challenges that afflict the agricultural sector in Tanzania. Smallholder farmers represent an overwhelming 90% of the agricultural sector (United Republic of Tanzania 2012b, p. 15). Inefficient farming practices,<sup>4</sup> and lack of access to improved technologies and productivity-enhancing measures such as fertilizer use and irrigation<sup>5</sup>, mean that efficiency, and in turn agricultural output, have generally remained low (Policy Forum 2009). Smallholder farmers currently earn less than USD 1 a day (Policy Forum 2009). Climate change has only exacerbated this situation. Mean annual temperature increases are projected to reduce maize yields by up to 84% in central regions, with an average 33% decrease countrywide (United Republic of Tanzania 2007, p. 6). Smallholder farmers rely heavily on rainfall for irrigation, making them extremely susceptible to unpredictable weather patterns (United Republic of Tanzania 2012b). For this reason, investment interventions, such as those proposed by the GoT to alter how agriculture is practiced, should necessarily be founded on policy and governance frameworks that support sustainable development. In this sense, policy interventions such as Kilimo Kwanza, and investments such as agricultural growth corridors, where implemented as sustainable investments, could enhance agriculture's contribution to mitigating poverty and food insecurity, as well as increase the sector's contribution to the GDP of Tanzania.

### 3.2 Evaluating the regulatory framework for forestry

Tanzania's total forest cover is estimated at 35.3 million hectares, representing about 40% of its land area (FAO 2010b). These forests provide a habitat for wildlife and support a number of diverse ecosystems while playing an important economic and cultural role for many communities. They represent the main source of fuel for about 92% of Tanzanians (United Republic of Tanzania and FAO 2012) and provide a variety of non-wood forest products, such as honey, beeswax, traditional medicines and fruits (United Republic of Tanzania 2000, p. 2–3).

<sup>4</sup> In 2010, 70% of farming remained dependent on the hand hoe; 20% on ox-plough, and 10% on tractors, see MKUKUTA Secretariat (2010, pp. 7).

<sup>5</sup> 65% of smallholder farmers who used irrigation obtained water by gravity, with the next major used method of irrigation being by hand bucket (31%). Only 2% of farmers used motor pump. See United Republic of Tanzania (2012b, p. 116).

The maintenance of the extensive forest cover also has several cross-sectoral advantages. For example, forests provide a system of water catchment that contributes to other economic and environmental activities. Forest canopies intercept rainfall and reduce the amount of runoff generated, lessen soil erosion and increase groundwater absorption. The importance of catchment forest reserves to Tanzania is demonstrated, for instance, by the significant Kilimanjaro forest catchment area, which supports the Pangani River Basin. The latter is the source of water for domestic and industrial use, for hydropower to feed the Nyumba ya Mungu Dam, and for irrigation to nearby coffee and sugarcane plantations (Zahabu et al. 2005).

Forests also provide a habitat for insects and pollinators, which are valued for their contribution to the prosperity of the agricultural sector. Although the economic value of the informal forest economy has not been comprehensively assessed, a 2012 report by the Food and Agriculture Organization (FAO) of the United Nations conservatively estimates that the forestry sector contributes to between 2.3 and 10% of the country's registered exports (United Republic of Tanzania and FAO 2012, p. 13).

However, despite the economic and traditional significance of forests, poor management has led to high levels of disturbance and degradation. Rates of deforestation in Tanzania are between 130,000 and 500,000 hectares per annum (United Republic of Tanzania and FAO 2010, p. 5). The main drivers of deforestation include over-exploitation of forest resources, mining, poor land-use planning, increasing population pressure for additional agricultural land, forest fires, and unregulated consumption of forest biomass for fuel production as charcoal and firewood (United Republic of Tanzania 2009). Accordingly, the GoT in 1998 put in place the National Forest Policy, and in 2002 enacted the Forest Act<sup>6</sup> to improve the management of its forests and expand the potential of the industry to contribute to economic growth. Some key objectives of the forestry law, relevant to this research, are highlighted in Box 1.

### 3.2.1 Legal mechanisms for management of forests

As a basis to forests management, there are five main categories of forests (Blomley and Iddi 2009, p. 4):

<sup>6</sup> Forest Act 2002 (United Republic of Tanzania) s 14

#### Box 1. Objectives of the Forest Act

- to promote, to enhance the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of natural resources for the benefit of present and future generations;
- to encourage and facilitate the active participation of the citizen in the sustainable planning, management, use and conservation of forest resources through the development of individual and community rights;
- to delegate responsibility for management of forest resources to the lowest possible level of local management consistent with the furtherance of national policies;
- to delegate responsibility for management of forest resources to the lowest possible level of local management consistent with the furtherance of national policies;
- to ensure the sustainable supply of forest products and services by maintaining sufficient forest area under efficient, effective and economical management;
- to ensure the sustainable supply of forest products and services by maintaining sufficient forest area under efficient, effective and economical management.

Source

- **National Forest Reserves:** These are owned and managed by the central government. They are used for either conservation (protection of forest reserves) or production (for timber, fuel wood or charcoal).<sup>7</sup>
- **Local Authority Forest Reserves:** These are forests managed by the District Councils and are a source of revenue for the districts through timber and charcoal licensing.<sup>8</sup>
- **Village Land Forest Reserves (VLFR):** These are areas declared as forests by village governments on village land and could include naturally forested land or any land set aside for forestry.<sup>9</sup> The forests are managed by village governments and are designated for both production and conservation purposes.

<sup>7</sup> Forest Act 2002 (United Republic of Tanzania) s 22

<sup>8</sup> Forest Act 2002 (United Republic of Tanzania) s 22

<sup>9</sup> Forest Act 2002 (United Republic of Tanzania) s 32

- **Community Forest Reserves (CFR)** may be formed by any group of persons who are members of a village or who are living in or near to a forest or any other group of persons who are managing a forest.<sup>10</sup>
- **Private forests:** These are found on private lands and are managed by their individual owners.

Estimates in 2009 indicated that, of the total forested area in Tanzania, only 14.3 million hectares were classified as forest reserves (Blomley and Iddi 2009, p. 4). The remaining forested areas fall within village and general land and are not gazetted, or are unreserved. These types of forests represent 60% of Tanzania's forested land and continue to face a number of threats resulting from poor management, insecure land tenure, conflicting land use and unsustainable levels of timber extraction (Zahabu et al. 2005).

The Tanzania Forest Services Agency (TFS) is the principal national institution responsible for the management of national forest reserves, bee reserves, and the forest and bee resources on general lands (Tanzania Forests Services Agency. n.d.). The TFS, established in 2011, draws its statutory mandate from the Executive Agencies Act,<sup>11</sup> Forests Act 2002, and Beekeeping Act 2002.<sup>12</sup> The forests management regulatory framework in Tanzania has several important features that can enhance sustainable investments in forests land-use activities. Three key elements include participatory forest management; forest management plans, and beekeeping, examined in the following sections.

### 3.2.2 Participatory forest management

The framework for participatory forest management (PFM) is established under the Forest Act, whereby forest management takes place with the active involvement and contribution of communities. With the object of generating tangible benefits for communities in exchange for improved management, PFM is designed to create opportunities for private investments that support sustainable forest use and management. For this reason, PFM can be a particularly effective tool in local empowerment and wealth generation by facilitating access to investment opportunities at the community level.

There are two main approaches to PFM, either through community-based forest management (CBFM) or through joint forest management (JFM). The development of CBFM under the Tanzania forest legislation was facilitated by the creation of VLFRs and CFRs, which allow a village or two or more villages to develop and implement a management plan and associated bylaws to govern activities on the VLFR.<sup>13</sup> The arrangement allows villagers to levy fines on violators of the bylaws, yet retain the right to consume or sell forest products once this takes place in accordance with the agreed management plan, subject to approval by TFS. Revenues derived from fines or sales can provide a source of income to the responsible villages.

JFM takes place on forest reserves owned by the central or local government. JFM implementation therefore involves central or local government authorities entering into co-management agreements with communities, or public or private sector organizations to use and manage the forest.<sup>14</sup> The scope of activities permissible under JFM is restricted by the fact that timber harvesting is illegal in government forests. JFM activities have been predominantly limited to the collection of fines from illegal activities (such as timber harvesting) or from the generation of income from activities outside the forest, such as beekeeping, agroforestry, fish farming and eco-tourism (Blomley and Iddi 2009, p. 25). Although these activities are important in that they facilitate reduced forest disturbance and encourage improved management, they become non-viable if they are unable to generate income for the party responsible for their management.

Research suggests greater success under CBFM than JFM in improving forest conditions and reducing levels of disturbance (Blomley and Iddi 2009, p. 22, 31). The greatest challenge seen facing JFM is lack of clear legislative guidance on how benefits should be shared between the government authorities and the co-managing party.<sup>15</sup> Consequently, there is a very slow rate in signing of formal agreements between the government and the community members. Another difficulty is that many forest reserves under JFM are governed by restrictions on the type of use that can be carried out. In other cases, even where non-timber

10 Forest Act 2002 (United Republic of Tanzania) s 42

11 Cap. 245 (Revised Edition 2009)

12 Act No.15 of 2002.

13 Forest Act 2002 (United Republic of Tanzania) s 35–6

14 Forest Act 2002 (United Republic of Tanzania) s 16

15 Interview with Executive Director at Tanzania Forest Conservation Group, 27 January 2014

forest product activities could generate economic benefit, the areas under JFM are too degraded to be able to support any profitable economic activity.

On the other hand, preliminary research suggests that CBFM has resulted in rising annual revenues based on village forest incomes (Blomley and Iddi 2009, p. 23; see also comparative literature of CBNRM benefits in Malawi and Botswana: Blaikie 2006); however, research is in its early stages and, in most cases of CBFM, is non-existent. Generally, CBFM proposes new opportunities for investment by rural communities, which is especially important as such opportunities for alternative income sources are limited. This role of CBFM could be traced to enabling provisions in the Forest Act, which establishes a number of financial incentives for CBFM. First, it waives royalties on forest produce harvested within a VLFR or CFR that has an approved management plan, allowing villages to sell their produce at market rates.<sup>16</sup> According to Mpingo Conservation (Mpingo Conservation and Development Initiative. n.d.a.), this means that the community can charge loggers the same amount as the loggers would otherwise pay to the government (Mpingo Conservation and Development Initiative. n.d.b.). Villagers can retain the total amount of income generated from the sale of forest produce. In practice, they generally choose to share 10–15% of these proceeds with the district in return for payment of support services (Blomley and Iddi 2009, p. 33). Villages are entitled to keep fines generated by levies, once they are described in the 'Approved Village Bylaws'. As villages are responsible for all management of VLFRs, they benefit from the authority to sell or use any illegally harvested produce or equipment used in the process that has been confiscated.<sup>17</sup>

Despite the initial success of CBFM, challenges have been found to exist within the framework for PFM, which runs the risk of providing disincentives, or conflicting incentives to increased community involvement in forest management activities. Licenses and fees required to harvest forest produce on VLFRs have made access to forest produce inaccessible to poorer members of the community (Blomley and Iddi 2009, p. 39). This was found to be a problem especially in JFM since many of the resources cannot be harvested without payment. Income-

earning activities also required start-up costs and time investments that prohibited participation by the poor.

The development of a just system of compensation for environmental services, and valuation of forest goods and services is necessary to stimulate and sustain participation in PFM. This will not only involve the creation and promotion of ready and accessible markets for forest produce, including non-timber forest produce, but also the development of a system which provides economic rewards for the non-tangible benefits of forest conservation, such as improved water catchment. Information on the value of these forest goods and ecosystem services would go a long way in calculating the compensation for these activities, and would expand opportunities to generate income beyond the collection of fines. Programs to build capacity and awareness of village communities to efficiently harvest, use, process and market forest products could also provide significant support.

### 3.2.3 The utility of forest management plans

The strength of the PFM system is very closely intertwined with the participatory preparation, and utilization of forest management plans. According to the forests legislation, the administration of forests must be conducted according to a forest management plan, which outlines the objectives and measures to achieve sustainable management of the forest resources over a specified period.<sup>18</sup> Forest management plans can be prepared with respect to forest reserves and private forests, while a village forest management plan is required for forests on village land. This therefore means that, especially for VLFRs where CBFM is practiced, forest management plans are central to access and benefit sharing. Indeed, communities only get waiver on royalty payments once they have an approved forest management plan.

All categories of forest management plans should contain a statement of its economic, social and environmental objectives, as well as an account of existing land-user rights of the area in question.<sup>19</sup> They are developed based on the biological, environmental, economic, geological and cultural resources of the forest, and the existing and potential uses of these resources.<sup>20</sup> The preparation of a forest management plan requires consultation with a broad

<sup>16</sup> Forest Act 2002 (United Republic of Tanzania) s 78(3)

<sup>17</sup> Forest Act 2002 (United Republic of Tanzania) s 97(1)(b)

<sup>18</sup> Forest Act 2002 (United Republic of Tanzania) s 11

<sup>19</sup> Forest Act 2002 (United Republic of Tanzania) s 11

<sup>20</sup> Forest Act 2002 (United Republic of Tanzania) s 11

range of stakeholders, namely relevant government officials, local authorities, forest user organizations from the private sector, and local communities. To achieve this, the Forests Act requires that a detailed draft of the forest management plan is made available for at least 60 days for public inspection and comment at the offices of the district council nearest to the forest reserve in question and at the office of all village councils in the vicinity of the forest reserve.

A legislated role for communities in development of forest management plans is therefore a useful entry point for meaningful PFM systems. Yet as Bromley and Iddi observe, the poor have had limited involvement in forest management committees under the village council, and in some cases they have been deliberately excluded from the development of PFM activities in practice (Blomley and Iddi 2009, p. 39). Vihemaki et al. endorse this view, arguing that the social patterns that previously contributed to unequal resource access and benefit-sharing among villagers, such as elite capture, have not diminished with new community-level institutions, such as participatory preparation of management plans and bylaws (Vihemaki and Leonard 2010). They give the example of Handei Village Forest Reserve in the East Usambaras, where imbalances in local power relations favor the small village elite, and contribute to the unwillingness of most villages to take part in ‘participatory’ initiatives, established in the Forest Act regulations. Nonetheless, the imposition of the requirement to consult all stakeholders, especially forest rights holders, in the development of forest management plans is an important safeguard established to ensure that forest resources are not managed without the input of those who rely on them, especially village forests. It is also an important legal anchor to assure the success of PFM in enhancing community benefit through sustainable forest management.

### 3.2.4 Law, policy and practice of beekeeping in forestry management

In the Tanzanian legal system, beekeeping is an integral part of the forestry regulatory regime. Beekeeping also plays a complementary role in supporting and contributing to enhancement of forest management outcomes. Beekeeping represents a common example of the type of activity carried out under PFM, especially because Tanzania’s natural environment provides a habitat that makes it ideal for the countrywide practice

of beekeeping.<sup>21</sup> Currently, Tanzania’s beekeeping industry produces mainly primary bee products, such as honey and beeswax. About 75% of the honey produced in Tanzania is consumed locally, while the majority of beeswax is exported to Japan, Europe and the Middle East (Ministry of Natural Resources and Tourism 2004). Though no thorough assessments of the contribution of the beekeeping industry to the national economy exists, it is estimated that the sector generates about USD 1.7 million each year from sales of honey and beeswax, and provides employment for about 2 million rural people (Mwakatobe and Mlingwa 2005). Large potential unexploited markets remain for both primary as well as secondary bee products, which could substantially increase the impact of beekeeping on the economy and produce important co-benefits such as improved forest management and enhanced agricultural yields through increased cross-pollination.<sup>22</sup>

In an attempt to enhance governance of beekeeping, the government adopted the National Beekeeping Policy 1998. The policy aimed to expand the industry by setting a foundation to address the challenges facing the industry. Following this policy, in 2001, Tanzania developed the 10-year National Forest and Beekeeping Programme (NFBKP) 2001–2010 which was responsible for the demarcation of land for special bee reserves, and the training of beekeepers on handling, processing, packing and marketing of bee products (Mwakatobe and Mlingwa 2005). It also incorporated the use of PFM through efforts to encourage increased community involvement in beekeeping in forested areas (United Republic of Tanzania 2008).

The Beekeeping Act was enacted in 2002 to implement the policy, establishing the legal framework to manage and promote beekeeping.<sup>23</sup> It sets out the procedure to allow individuals or villages to create bee reserves, which prohibit certain activities that could negatively impact bees, such as the cutting, burning or clearing of trees, or the construction of roads or buildings.<sup>24</sup> It also requires an environmental impact assessment (EIA) to be undertaken, and approved, for certain activities proposed near such bee reserves, including commercial

21 Interview with the Chairman, Tanzania Honey Council Limited, Dar es Salaam, 29 January 2014

22 Interview with the Chairman, Tanzania Honey Council Limited, Dar es Salaam, 29 January 2014

23 Beekeeping Act 2002 (United Republic of Tanzania)

24 Beekeeping Act 2002 (United Republic of Tanzania) s 17

logging and some types of agricultural activities.<sup>25</sup> Importantly, the Act waives the fees required to register or license the harvesting or extraction of apiculture products where these activities take place on village land, a forest reserve or a community bee reserve. A Beekeeping Development Fund is also set up to promote beekeeping through the provision of technical assistance and education on beekeeping, and the funding of research activities.<sup>26</sup> Interestingly, a specific objective of the fund is to assist persons and individuals to participate in public debates and discussions on beekeeping and to participate in EIA processes undertaken under the Act.<sup>27</sup> The explicit reference to capacity building in this context demonstrates, at minimum, an awareness and appreciation by decision-makers of the value of community participation in the sanctioning of development activities.

In spite of the enabling regulatory framework, Tanzania's beekeeping industry currently faces a number of constraints, which have limited its performance and contribution to the economy. Primary among these is that the industry predominantly generates bee products that do not meet international quality specifications established for the market (Mwakatobe and Mlingwa 2005). To address this challenge, the Tanzania Bureau of Standards in 2006 developed honey standards that meet global standards in an effort to improve the overall quality of local bee products and increase international market access. However, the uptake of these standards is limited because most beekeepers do not have the necessary skills or technology to allow them to improve their outputs to meet these standards. Beekeepers also lack access to financial and technical resources, which constrains their ability to enhance operating capacity.<sup>28</sup> Other production problems include inadequate transport and storage facilities, and lack of working capital to adequately support the expansion of the beekeeping industry (Ministry of Natural Resources and Tourism 2004). Overall, this has led to the inability of beekeepers to fully access markets, even at a local level.

The beekeeping legislation, in an attempt to redress the capacity deficit, established a Beekeeping

25 Beekeeping Act 2002 (United Republic of Tanzania) s 26

26 Beekeeping Act 2002 (United Republic of Tanzania) s 42

27 Beekeeping Act 2002 (United Republic of Tanzania) s 42

28 Interview with the Chairman, Tanzania Honey Council, Dar es Salaam, 29 January 2014

Institute,<sup>29</sup> which currently provides courses on beekeeping, run by beekeeping extension officers from the Ministry of Natural Resources and Tourism (MNRT), in consultation with the Tanzanian Small Industries Development Organization (SIDO). The payment of a fee is a prerequisite to attend. Although some students may receive government sponsorship, generally, the Institute has not met its full potential for training, as few people can afford to attend.<sup>30</sup>

### 3.3 Evaluating the regulatory framework for energy

Access to modern and reliable energy services is key to national growth and poverty reduction in Tanzania (MKUKUTA Secretariat 2010). Only 16.4% of Tanzanian households have access to electricity (NBS 2013b, p. iv). This figure drops to 4.2% in rural areas (NBS 2013b, p. iv). Grid supply of energy is mostly concentrated in urban areas, with only 4.6% of grid energy reaching rural communities. Around 67% of Tanzanians use wick lamps as their energy source for lighting and 95% use firewood and/or charcoal for cooking (NBS 2013b, p. 47).

The lack of access to clear, reliable and modern sources of energy carries significant economic and social impacts. Where there is a high dependency on charcoal and firewood as energy sources, households spend significant time gathering fuel, thereby limiting their capacity to participate in more useful socioeconomic activities. Indoor burning of firewood is also directly linked to serious health problems, such as child pneumonia, chronic obstructive pulmonary disease and lung cancer (Legros et al. 2009). High use of biomass energy for cooking is also a contributor to deforestation.

#### 3.3.1 Production and utilization of charcoal

In Tanzania, an average 90% of people use biomass for energy and the collection of charcoal, the main cooking fuel in urban areas (Msuya et al. 2011) is a major cause of forest and woodland degradation (Schaafsma et al. 2012, p. 49). Charcoal production is illegal in state forests, and must be undertaken by licensed producers on all other land. Charcoal production follows a spatial pattern, where forests

29 Beekeeping Act 2002 (United Republic of Tanzania) s 53

30 Interview with the Chairman, Tanzania Honey Council, Dar es Salaam, 29 January 2014

around the capital of Dar es Salaam have been depleted first, leading to increased pressure on forests farther away (Schaafsma et al. 2012, p. 49). According to Felicien Kilahama, “degradation of forests and woodlands on Tanzania mainland is, to some extent, related to increasing demand for wood-energy, particularly charcoal. This is because charcoal is reliable and [the] majority can afford it.” (Kilahama 2005, p. 2). He notes that the true cost of charcoal is not the modest amount paid for a day’s supply of cooking fuel but rather the unvalued price of forgone forest benefits such as carbon sequestration, soil and water conservation, and biodiversity (Kilahama 2005, p. 2).

Dar es Salaam, according to a 2013 study by M. Schaafsma et al., is served by charcoal produced from the Eastern Arc Mountains (EAM), in addition to Tanga and Morogoro (Box 2). However, current levels of production are considered unsustainable.

#### **Box 2. Usage of charcoal for household energy in Dar es Salaam**

- Total use of charcoal in Dar es Salaam is estimated at approximately 8.7 million 60 kg bags per year.
- A total value of TSH 260 billion per year (USD 183 million).
- About 30% of the supply to Dar (2.64 million bags per year) is estimated to be produced in the wider area around Morogoro, including within the EAM block.

Source: Schaafsma et al. (2012, p. 52)

#### **Example 2. Charcoal production in the Eastern Arc Mountains**

“Rural communities are seasonally or occasionally involved in charcoal production to complement household income, and sell their products to middlemen who transport them to the major urban centres. Commercial charcoal production is practised in the lower woodland and forest areas of the EAM. It is officially prohibited in all protected areas, whereas licences are required for production in other land, including village and general land. Steep slopes prohibit charcoal collection in some forest areas, because charcoal bags are heavy (60 kg) and usually transported with bicycles or other vehicles.” (Schaafsma et al. 2012, p. 49)

“The estimated total flow of charcoal benefits to the local population from the EAM region generally is approximately TSH 21 billion per year (in 2010 prices, USD 14 million). This revenue provides an important source of cash income for local communities. Current levels of charcoal extraction are considered to be unsustainable, which may also diminish the potential for pole and firewood extraction and lead to conflicting claims at local level. The total quantity of charcoal produced by households in the EAM blocks is estimated at 1.45 million 60 kg bags, equivalent to approximately 11% of the combined annual charcoal consumption in Dar es Salaam and the cities of Morogoro and Tanga, the main markets for charcoal from the EAM blocks. As a result of increasing urbanisation and the depletion of coastal woodlands around Dar es Salaam, charcoal production is expected to place even greater pressure on woodlands and forests in the EAM in the future.” (Schaafsma et al. 2012, p. 59–60)

Although credible evidence is offered to support arguments that present charcoal production models are unsustainable due to the high levels of deforestation caused by increasing demand, Schaafsma et al. (2012) found that without proper compensation schemes for forgone economic benefit, it makes little sense for villages to forgo charcoal production for forest conservation.

#### **3.3.2 Independent power producers**

Although the state owned national utility, Tanzania Electricity Supply Company (TANESCO) has for many years had *de facto* monopoly over electricity generation and distribution in Tanzania, the company has been unable to satisfy the energy demand of the Tanzanian population. Rates of connection have been lower than expected and the delivery of electricity supply to existing customers has been unreliable (EWURA 2012, pp. 21, 25). This has been attributed to various factors, including overloaded and dilapidated existing electricity infrastructures within the distribution network (EWURA 2012, p. 25). Further, in order to reduce the cost of electricity to its customers, TANESCO also does not set cost-reflective tariffs,<sup>31</sup>

<sup>31</sup> TANESCO’s tariffs are lower than others in the region: see MEM (2013, p. 14).

which means that its income generation is too low to enable much-needed infrastructural improvements (Tatedo 2015).

As a means of facilitating increased private sector financing to achieve these goals, the 2008 Electricity Act supports opening up the electricity industry to independent power producers (IPPs) by specifically requiring the Energy Minister to take all measures necessary to reorganize and restructure the electricity supply industry with a view to attracting private sector participation.<sup>32</sup> Through this approach, the energy legislation facilitates, expands and diversifies opportunities for multiple power generation companies. Tanzania has, however, had a fairly complex experience with IPPs, with evident challenges and successes, including a need for emergency power generation to plug the regular grid deficit, when planned IPPs are delayed in coming online. Procurement flaws in contracting IPPs, at times have negative economic impacts, such as that detailed in the example below.

**Example 3. Negative economic impacts of procurement flaws in negotiating IPP Agreements: Independent Power Tanzania Limited situation (Infrastructure Consortium for Africa 2011, p. 21)**

In Tanzania, the electricity generation industry contains two private IPPs: Independent Power Tanzania Ltd. (IPTL) (a thermal power plant) and Songo Songo Gas. However, the IPTL plant has been controversial from its inception in the 1990s, due to allegations of corruption and opaque procurement processes with the GoT regarding the cost of the project. The IPTL's thermal energy source has also been criticized as in opposition to the GoT's policy to promote natural gas and hydro resources as a substitute for thermal power. The below excerpt from the Infrastructure Consortium for Africa's 2011 report "When the Power Comes: An analysis of IPPs in Africa" provides insight into the procurement flaws surrounding this energy investment.

The Songo Songo gas-to-electricity project was in the Power System Master Plan, initially slated to come online within 6 months. However, the project was slow to materialize, given its technical and financial complexity. With deadlines passing

and power cuts persisting, it is alleged that other ministries, affected by the power cuts, started second guessing whether the Tanzania Electric Supply Company Limited (TANESCO), the state utility, and the Ministry of Energy and Minerals (MEM), following the World Bank procurement procedures and relying on concessionary loans, would be able to deliver the project on time to address the shortages. [... T]he cost of unserved electricity to the economy was high and therefore Tanzania paid dearly for no power. Thus, the backdrop to the IPTL agreement appears to have been a failure to deliver on the Master Plan and hefty associated costs for many Tanzanians facing loss of services, TANESCO facing loss of revenue, and the Tanzanian economy facing loss of productivity, together with a clear interest in collaborating with Malaysian investors [shareholders in the IPTL investment] in the context of South-South partnerships.

The impact of this planning mishap was multi-fold: IPTL, which was negotiated quickly, behind closed doors, announced its total investment costs as US\$150 m. (US\$163 m. including fuel conversion), which the government and the World Bank would later argue was inflated by 40 percent. This argument would in turn lead to a lengthy arbitration process spanning 3 years. During the time that IPTL was being disputed, the Songo Songo gas-to-electricity project would be put on hold, mainly through pressure from the World Bank, its largest donor, due to alleged corruption in the sector. Although the arbitration would ultimately lead to IPTL's investment costs being reduced to US\$127 m., the cost was still above and beyond the price that the government sought to pay. Furthermore, due to the delays, Songo Songo accumulated US\$100 m in interest during construction (Allowance for Funds Used During Construction, AFUDC) on owner's equity, i.e. which the sponsor was owed by TANESCO. Additional costs to the state include the emergency power that was required due to both IPPs being unavailable until 2002 and 2004, respectively...

The Infrastructure Consortium for Africa (2011, p. 21)

In 2009, the GoT introduced new legislation to increase small-scale private sector investment in electricity generation and expand access to rural areas, under the Electricity (Development of Small Power Project (SPP)) Rules 2010. SPPs refer to power plants using either renewable energy sources or waste heat, or

<sup>32</sup> Electricity Act 2008 (United Republic of Tanzania) s 4

cogeneration of heat and electricity, with an export capacity of up to 10 MW.<sup>33</sup> SPPs may connect to the grid and can be paid a fixed tariff for the electricity that is generated and sold to TANESCO under a standardized power purchase agreement (PPA). The PPA provides investors with a guaranteed income, in the form of a tariff, over a predictable period of time. The SPP tariff is based on avoided costs to TANESCO, and is set each year by the Energy and Water Utilities Regulatory Authority (EWURA).<sup>34</sup>

### 3.3.3 Modern sources of energy

The main sources of modern grid energy in Tanzania are hydro and thermal power (REA Annual Report 2011, 2012a; Energy and Water Utilities Regulatory Authority 2012). However, Tanzania's hydro supply is highly vulnerable to drought, as in the case of 2012, where much lower than expected rainfall resulted in an acute energy shortage and resulted in estimated costs of at least 1% of GDP (EWURA 2012, 23; UK Aid 2011). Progressively declining water levels have been recorded in the Mtera and Nyumba ya Mungu Dams between 2003 and 2006, resulting in reduced hydropower generating capacity (United Republic of Tanzania 2007, p. 10). As energy requirements continue to increase, Tanzania will need to transition to more reliable sources of sustainable energy to supply its growing needs.

For these reasons, MKUKUTA II highlights the need to diversify energy sources, reduce biomass fuel dependence, and increase access to energy in rural areas, as key activities in realizing Vision 2025. It sets targets for the expansion of renewable energy generation, in particular from solar, wind, mini-hydro and biogas. The promotion of the use of energy-efficient technologies and renewable energy also falls under the mitigation and adaptation objectives of the NCCS. The 2003 Energy Policy outlines the GoT's objective of achieving ideal conditions for the provision of safe, reliable, efficient, cost-effective and environmentally appropriate energy services to all sectors on a sustainable basis.<sup>35</sup> To harness potential opportunities for the use of these resources, the Energy Policy emphasizes the need to create a legal

framework for renewable energy development and to establish an institutional structure and mechanisms to address technical, social and financial barriers for the dissemination of renewable energy technologies.

## 3.4 Mining and minerals development

The mining and minerals sector has historically held a place of significant importance in Tanzania's economy. Tanzania is one of largest producers of gold, accounting for almost 2% of the world's gold mine output, and the only country to produce the gemstone tanzanite (USGS 2012). It is also a significant producer of cement and diamond, and produces a number of other industrial materials, metals and mineral fuels, such as coal and natural gas. Despite this, in 2011, mining represented only 3.7% of total GDP (AfDB, OECD, UNDP and UNECA 2012).

The 1997 Mineral Sector Policy outlines specific policy objectives and statements to guide the management of the mineral sector. It envisions an effective mineral sector that contributes significantly to the acceleration of socioeconomic development. The Mineral Sector Policy highlights the need to integrate the mineral sector with the rest of the economy, as well as establish a fiscal regime that will ensure benefits to the country while remaining internationally competitive.<sup>36</sup> Ultimately, Tanzania's Mineral Sector Policy aims to increase the contribution of the sector to 10% by 2025.<sup>37</sup>

The policy echoes the provisions of Vision 2025 by setting out an overarching goal with respect to environmental management, and to strengthen management of safety, occupational health and environment in mining activities.<sup>38</sup> Under this goal, it aims to review the legal and regulatory framework to require mining companies to set aside funds for environmental rehabilitation and mine closure obligations; harmonize laws and regulations governing safety, occupational health

33 Section 3, The Electricity (Development of Small Power Project) Rules 2010

34 Section 47, Electricity (Development of Small Power Project) Rules 2010

35 United Republic of Tanzania (2003) National Energy Policy of Tanzania, s 1.2

36 United Republic of Tanzania (2009) The Mineral Policy of Tanzania (Ministry of Energy and Minerals, September 2009), pp. 11-12.

37 United Republic of Tanzania (2009) The Mineral Policy of Tanzania (Ministry of Energy and Minerals, September 2009), p. 27

38 United Republic of Tanzania (2009) The Mineral Policy of Tanzania (Ministry of Energy and Minerals, September 2009), p.25

and environmental issues in the mineral sector; and collaborate with stakeholders to ensure that small, medium and large-scale miners preserve the environment. There is, therefore, an emphasis by the government on the environmental concerns raised by mining activities and the importance of making a greater effort to address these concerns.

### 3.4.1 Legal framework on minerals

The 2010 Mining Act vests ownership and control over all minerals in or under the land in the state.<sup>39</sup> Investors may apply for the rights to exploit mineral resources, and such rights are divided as follows:<sup>40</sup>

1. Division A – prospecting licenses and retention licenses;
2. Division B – special mining licenses and mining licenses;
3. Division C – primary mining licenses; and
4. Division D – processing, smelting and refining licenses.

#### *Special Mining License*

Applications for a special mining license must include a proposed plan for relocation, resettlement and compensation of people within the mining areas in accordance with the Land Act; a proposed plan with respect to the employment and training of citizens of Tanzania; and the applicant's environmental certificate issued in terms of the EMA.<sup>41</sup> In granting a special license to a developer, the Minister of Energy and Minerals must take into account social and environmental issues such that, if judged by international standards of good mining practice, the applicant's proposed program for mining operations would ensure the efficient and beneficial use of the mineral resources of the area.<sup>42</sup> This provision is relevant because it allows the minister to consider environmental and social standards that may be higher than the standards imposed by Tanzanian legislation. Once the special mining license has been awarded, the Act introduces key considerations to improve sustainability by requiring the license to contain, *inter alia*, the environmental management plan; the plan for the employment and training of citizens of Tanzania; and the procurement plan of

#### **Box 3. Objectives of the Mining Act, 2010**

- To improve the economic environment in order to attract and sustain local and international private investment in the mineral sector;
- To strengthen the legal and regulatory framework for the mineral sector and enhance the capacity for monitoring and enforcement;
- To participate strategically in viable mining projects and establish an enabling environment for Tanzanians to participate in ownership of medium and large scale mines;
- To establish transparent and adequate land compensation, relocation and re-settlement schemes in mining operations;
- To strengthen involvement and participation of local communities in mining projects and encourage mining companies to increase corporate social responsibilities;
- To promote and facilitate value addition activities within the country to increase income and employment opportunities;
- To promote safety and maintain hygiene conditions and protect the environment in mining areas;
- To encourage and promote women participation in mining activities and strengthen enforcement of laws and regulations against child labour in mining activities.

Source: Extract from Mining Act, 2010.

goods and services locally available.<sup>43</sup> The investor is obligated to adhere to these conditions during implementation of its mining activity. An investor wishing to renew its special mining license must conduct and resubmit a new EIA.<sup>44</sup>

The Minister of Energy and Minerals has the authority to enter into development agreements with investors in the grant of a special mining license.<sup>45</sup> These may contain provisions binding on the GoT and the right-holder, on issues such as:

- guaranteeing the fiscal stability of a long-term mining project, particularly with respect to the range and applicable rates of royalties, taxes, duties and levies;

<sup>39</sup> Mining Act 2010 (United Republic of Tanzania) s 5

<sup>40</sup> Mining Act 2010 (United Republic of Tanzania) s 7

<sup>41</sup> Mining Act 2010 (United Republic of Tanzania) s 41

<sup>42</sup> Mining Act 2010 (United Republic of Tanzania) s 42

<sup>43</sup> Mining Act 2010 (United Republic of Tanzania) s 45

<sup>44</sup> Mining Act 2010 (United Republic of Tanzania) s 46

<sup>45</sup> Mining Act 2010 (United Republic of Tanzania) s 10

- environmental matters, including in respect of matters which are project specific and not covered by regulations of general application; and
- employment and training.

No provision exists to allow public review and input into the creation of such development agreements.

#### *Primary mining license*

An applicant for a primary mining license, reserved for small-scale and artisanal mining, is similarly required to prepare and submit a plan on employment and training of Tanzanians, but is not required to submit an environmental certificate.<sup>46</sup> The applicant is also obligated to “take all appropriate measures for the protection of the environment according to the Environmental Management Act,” as well as implement plans for relocation or resettlement of Tanzanian citizens, and procurement of local goods and services as outlined in the mining license application.<sup>47</sup>

#### *Processing, smelting and refining license*

A license for processing minerals or smelting minerals must include an environment management plan and a compensation, relocation and resettlement plan.<sup>48</sup>

### **3.4.2 Artisanal and small-scale mining**

According to the 2010 Mining Act, primary mining licenses are reserved for small-scale and artisanal mining operations, whose capital investment is less than USD 100,000 or its equivalent in Tanzanian shillings, and operated by Tanzanian citizens.<sup>49</sup> This category includes small-scale and artisanal mining operations of individual Tanzanians or partnerships and corporate bodies that have a majority Tanzanian ownership. This rule of exclusivity to citizens is equally applicable in the grant of primary mining licenses with respect to gemstones.<sup>50</sup>

A 2012 UNEP case study on Tanzania estimates of the number of artisanal and small-scale miners in Tanzania to range from 500,000 to 1.5 million,

<sup>46</sup> Mining Act 2010 (United Republic of Tanzania) s 47

<sup>47</sup> Mining Act 2010 (United Republic of Tanzania) s 52

<sup>48</sup> Mining Act 2010 (United Republic of Tanzania) ss 60–61

<sup>49</sup> Mining Act 2010 (United Republic of Tanzania) s 8(2).

<sup>50</sup> Mining Act 2010 (United Republic of Tanzania) s 8(3).

with the government estimating that small-scale mining generates at least three jobs for each individual directly involved. Gold and gemstones dominate the activities of artisanal and small-scale miners (UNEP 2012, p. 4). Since mining mainly occurs in mineral-rich land areas where large mineral exploration and mining companies have been registering rights, many artisanal and small-scale miners have faced difficulties in obtaining primary mining licenses (UNEP 2012, p. 10). To avoid this, mining legislation and policy have empowered the government to designate certain regions as small-scale mining sites (UNEP 2012, p. 10).

Small-scale mining provides employment and livelihoods for many in Tanzania. However, a 2013 report by Human Rights Watch highlights the continued use of mercury in artisanal and small-scale mining, and the high levels of child labor (Human Rights Watch 2013). The report found that small-scale miners favor mercury over other forms of extraction because of its ease, affordability and accessibility. Geita District region, situated near Lake Victoria in the north of the country, has around 150,000 mostly unlicensed artisanal and small-scale gold miners. It has been the site of a variety of government and donor-supported programs designed to mitigate health and environmental impacts associated with artisanal gold mining. Effective government approaches to reduce mercury use have included assisting small-scale miners to become legalized and improving educational services at the sites (UNEP 2012, p. 10).

### **3.5 Key findings**

The legal framework that governs land-use activities and investments is well developed in Tanzania. Accompanied by government policy, it is clear the country has identified opportunities for investments in areas of comparative strength such as agriculture, forestry, mining and energy. The following key findings have emerged from this chapter:

- In the agriculture sector, smallholder farmers continue to dominate and government interventions must ensure representation for this group in policy and decision making.
- There is a need to ensure that large-scale investments in agriculture do not leave concerned local populations worse off by ensuring the implementation of appropriate socioeconomic and environmental safeguards, including how such local populations can beneficially participate in the investments.

- Participatory forest management is key to sustainable utilization, but the available statutory mechanisms face effectiveness challenges. Thus, within the PFM framework, there are risks of providing incentives that eventually act as disincentives to increased community involvement – such as how licenses and fees required to harvest forest produce on VLFR have made access to forest products inaccessible to poorer members of the community.
- The poor have limited involvement in forest management committees under the village council, and in some cases they have been deliberately excluded from the development of PFM activities.
- JFM, although a major form of PFM, has failed due to lack of clear legislative guidelines on how benefits should be shared between government authorities and the co-managing parties (e.g. villagers, private entities, etc.). In addition, the areas under JFM are often too degraded to be able to support any beneficial or profitable economic activity.
- The development of a just system of compensation for environmental services and valuation of forest goods and services is necessary to stimulate sustainable participation in PFM.
- Unless proper compensation schemes match the opportunity cost, it makes little sense for villagers to forgo charcoal production for forest conservation.
- The mining legislation does not contain any provisions that allow for public consultation or review and input into the issuance of special mining licenses.
- Artisanal mining plays a key role in the development of the sector in Tanzania, and provision of livelihood means, but faces tremendous economic and environmental challenges that need to be addressed.
- The regulatory framework in Tanzania needs to be reviewed in order to enhance facilitation of investments by small power providers, and also provide facilitative regulation to charcoal production.

# 4 Key challenges to sustainable land-use investments in Tanzania

In this section, the report undertakes a review of the legal frameworks that are crosscutting and key to the governance of sustainable investments in four key sectors of energy, mining, forestry and agriculture. This in-depth analysis of the Tanzanian legal framework relates to four key challenges to sustainable investments. The analysis in this section also highlights several case studies to demonstrate how the various opportunities and challenges surrounding sustainability of investments can be addressed.

## 4.1 Incentives in the legal framework

According to the 1996 National Investments Promotion Policy, the socioeconomic transformation of Tanzania will be dependent on an enabling investment environment, as well as deliberate efforts to promote the development of productive economic sectors, especially manufacturing, mining, agriculture and natural resources.<sup>51</sup> This will require reinforcing the role of the private sector, creating a liberal investment policy and developing other measures aimed at attracting increased private sector participation.<sup>52</sup> The need for greater private sector financing and involvement has been reinforced by similar statements made in Vision 2025 which aims for the Tanzania of 2025 to have “a strong, diversified, resilient and competitive economy which can effectively cope with the challenges of development and which can also easily and confidently adapt to the changing market and technological conditions in the regional and global economy.”<sup>53</sup>

MKUKUTA II clearly indicates that providing supportive economic incentives is a priority, for instance, to ensure the private sector expands to previously underserved parts of the country, such

as through PPP.<sup>54</sup> The legal framework provides further support to this focus on the private sector through establishing a variety of incentives that could encourage sustainable investments. However, the incentives provided by the framework are not coordinated, and in some cases, have resulted in competing, rather than complementary incentives. In other cases, though the law has provided a strong foundation on which to facilitate sustainable activities, implementation has proved to be difficult due to ambiguities in the law, weak or absent implementing regulations or the lack of supporting incentives altogether. A number of tools, in Tanzania law, address these issues and are examined below.

### 4.1.1 The role of bilateral investment treaties

Bilateral investment protection agreements or bilateral investment treaties (BITs) have obtained common usage because countries prefer to negotiate them directly, in order to secure preferential treatment for their companies and protect their investments. BITs typically comprise a capital-exporting and a capital-importing (host) party. The main purpose of capital-exporting countries entering into investment agreements is to protect their own private sector investments abroad (Policy Coherence Commission 2008, pp. 70–71). It is therefore common to add a clause stating that disputes between states and investors shall be resolved within the World Bank’s dispute resolution scheme, the International Centre for Settlement of Investment Disputes (ICSID). This is an approach that removes disputes settlement to a forum that is outside the host country’s own legal system. Attempts are normally made to avoid performance requirements imposed upon foreign companies (above those imposed upon national companies), including requirements on export shares, repurchase agreements and the use of national input factors in production, requirements on national ownership interests in investments, technology transfers, reinvestment of profit, or a national workforce quota (Policy Coherence Commission 2008, pp. 70–71). The preponderance

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51 United Republic of Tanzania, National Investment Promotion Policy, 1996, p. 14

52 United Republic of Tanzania, National Investment Promotion Policy, 1996, p. 14

53 United Republic of Tanzania, 2010. The Tanzania Development Vision 2025. July 2010. para 1.2.5

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54 United Republic of Tanzania, 2010. The National Strategy for Growth and Reduction of Poverty (MKUKUTA II) pp. 88, 95 and 101

of positive and negative impacts from BITs will largely depend on how these clauses are framed, with respect to the interests of the host country.

Under Tanzanian law, bilateral investment agreements are given superior treatment. For example, the Tanzania Investment Act provides that, in the event of a dispute occurring concerning a company whose government of domicile is party to a BIT, the BIT will be the basis of dispute settlement.<sup>55</sup> Based on information available from UNCTAD, Tanzania has concluded the BITs listed in Box 4 as at June 2013 (UNCTAD 2013).

**Box 4. BITs concluded by Tanzania by June 2013**

Canada	17 May 2013
Denmark	22 April 1999
Egypt	30 April 1997
Finland	19 June 2001
Germany	30 January 1965
Italy	21 August 2001
Jordan	8 October 2009
Mauritius	4 May 2009
Netherlands	31 July 2001
Oman	16 October 2012
South Africa	22 September 2005
Sweden	1 September 1999
Switzerland	8 April 2004
Turkey	11 March 2011
Zimbabwe	2 July 2003
United Kingdom	7 January 1994

The most recent BIT is the one concluded between Canada and Tanzania in May 2013 (Government of Canada 2015). A review of this particular BIT reveals that it contains various provisions that can support or weaken sustainable investments.

**Example 4. BIT between Tanzania and Canada: the positives and the negatives**

In article 15 of this BIT, the Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures and therefore under the BIT, neither Canada nor Tanzania shall waive or otherwise derogate from health, safety or

environmental measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. This provision is facilitative of safeguards such as EIAs and Audits.

However, the BIT contains other provisions that remove or weaken socioeconomic safeguards. For instance, under article 9 of the BIT, Tanzania will be prevented from imposing requirements on Canadian companies to achieve a given level or percentage of domestic content or to transfer technology, a production process or other proprietary knowledge to a Tanzanian person.

These provisions touch on performance requirements that are typically core to ensuring that investments benefit national development through procurement of local goods, and building capacity of citizens through training on skills. The exemption of Canadian companies from requirements of domestic content and technology and skills transfer is detrimental to the very interests of Tanzania that the Tanzania Investment Act sought to protect when setting out thresholds for licensing of foreign investors.

The potential for BITs to create benefits for the host country might be enhanced through the minimization or elimination of waivers of performance requirements given to companies from the capital-exporting signatory.

#### 4.1.2 Incentives in the national law

The investment system in Tanzania is generally regulated under the 1997 Tanzania Investment Act, which sets up the TIC. This investment law provides a 'one-stop shop' mechanism through which local and foreign investors can obtain the approvals necessary for the undertaking of investment activities.<sup>56</sup> The main legal tool through which the TIC executes its mandates is through the issuance of Certificates of Incentives to qualifying investors.

#### Certificate of Incentives

In addition to facilitating the regulatory approvals process for potential investors, the main outcome of the TIC process is the grant of a Certificate of Incentives, through which the TIC stipulates

<sup>55</sup> Section 23

<sup>56</sup> Investment Act 1997 (United Republic of Tanzania) s 4-5

the fiscal incentives and tax benefits available to the recipient investor. In the process of obtaining this certificate, a potential investor must outline information regarding the nature of its proposed investment. The TIC then has the additional responsibility of assisting investors with obtaining all necessary permits, licenses, approvals, and authorizations as required.<sup>57</sup> To enable the TIC to undertake this role, government departments, agencies and other public authorities are required to co-operate fully with the TIC in the performance of these functions under this Act.<sup>58</sup> In practice, actual support is provided by a number of middle level managers from various government institutions who are permanently housed at the TIC, and have the authority to make decisions on behalf of their associated ministries.<sup>59</sup> The government departments represented by the TIC are listed in Box 5.

**Box 5. Government departments with staff seconded to the TIC**

- Department of Immigration (work permits)
- Ministry of Labour (work permits)
- Business registration and licensing agency
- Ministry of Industry and Trade (business licences)
- Tanzania Revenue Authority (National government taxation)
- Ministry of Lands and Human Settlement Development (access to land)

### TIC procedural requirements

The Tanzanian Investment Act establishes an obligatory period of 14 days in which the relevant authority receiving the licensing request is required to issue or refuse the license or approval.<sup>60</sup> Where the TIC does not receive a written objection from the relevant authority within this time, the law presumes the necessary license or approval to have been granted. Though the rationale for this provision is clearly to ensure expediency and efficiency in the handling of all investment applications, it places a heavy responsibility on the TIC to process and follow

<sup>57</sup> Investment Act 1997 (United Republic of Tanzania) s 16-7

<sup>58</sup> Investment Act 1997 (United Republic of Tanzania) s 16

<sup>59</sup> Interview with Director of Investment Facilitation at the TIC, 18 April 2013

<sup>60</sup> Investment Act 1997 (United Republic of Tanzania) s 16

up with all such applications within the stipulated narrow timeframe.

One concern relates to how this provision reconciles with explicit licensing provisions contained in other respective legislation, including those that require EIAs or public consultations.<sup>61</sup> In practice, the provision is only implemented in the context of licenses that do not require approval from the relevant minister or regulatory authority.<sup>62</sup> It is therefore not applied to investments that require approval from the NEMC or are required to undertake an EIA (MEM 2013, p. 19). Nevertheless, since the Tanzanian Investment Act provides no qualifications on its 14-day requirement, it leaves applicability fairly ambiguous, and exposes the TIC to challenges by investors who believe that it has not complied with this stipulation. This is especially likely where environmental safeguards are concerned, as the 2004 EMA clearly stipulates its superiority to other laws that may be inconsistent.

Nonetheless, the TIC has made progress in simplifying how investors access information to its procedural requirements, and the investment incentives that are available. In addition to operating a website (Tanzania Investment Centre. n.d.), in 2013, the TIC published an Investment Guide for simplified dissemination of information.

### *Example 5. Simplified dissemination of regulatory investment information through an investment guide*

The President of the Republic endorsed the 2013 Tanzania Investment Guide, therefore giving it the highest level of government and political status. The guide is a hybrid compilation of legal material, and other necessary policy information relevant to investors. It clearly stipulates, “Investments in Tanzania are guaranteed against nationalization and expropriation through various agreements of protection and promotion

<sup>61</sup> For example, section 4 of the Environmental Impact Assessment and Audit Regulations, 2005, which stipulates that no licensing authority under any law in force in shall issue a certificate for any project for which an environmental impact assessment is required under the Act unless the applicant produces to the licensing authority a certificate of environmental impact assessment issued by the Minister under these Regulations.

<sup>62</sup> Interview with Director of Investment Facilitation, TIC, 31 January 2014.

of investments such as the Multilateral Investment Guarantee Agency (MIGA), of which Tanzania is a member.” In addition, the guide identifies “Priority Areas of Investment,” which include agriculture and livestock development; natural resources; tourism; manufacturing; oil and gas exploration; mining; commercial building; and transportation. (Tanzania Investment Centre 2013)

A major challenge to the unified investment approvals and incentives system is that in certain cases, investors (especially foreign) may bypass the investment law framework. The National Development Corporation (NDC) is one illustration. With a mandate drawn from legislation and executive authority,<sup>63</sup> the NDC is involved in promoting private sector investments in heavy industries (chemicals, power production, iron and steel), as well as value addition through agribusiness (large-scale farming). The NDC, therefore, has a broad mandate to stimulate industrialization in partnership with the private sector for which it undertakes land banking, and general investor facilitation and promotion without following the TIC process.<sup>64</sup> It is unclear to this research what procedures the NDC uses to facilitate and fast track investor licensing by the various concerned state agencies.

Nonetheless, it is likely that investors who choose to bypass the TIC process all together will not be entitled to the incentives, and therefore may not receive the protections available under the investments law. For Tanzania, bypassing the TIC also means that the performance standards required by the investments law may not be imposed on foreign investors, to the detriment of the country. Provision of enhanced protection to investors could therefore be implemented through the harmonization of the provisions of the investment facilitation legal regime to stipulate clear performance requirements for investors that are universally binding.

### Strategic investor status

The Tanzania Investment Act creates a unique category granting “strategic investor status” to businesses that adhere to certain criteria.<sup>65</sup> Under

this categorization, investors can receive additional benefits, specific to their proposed activities, once they provide the necessary supplementary information as outlined in Box 6.<sup>66</sup>

#### Box 6. Considerations in awarding strategic investor status

- the size of the investment and its general impact on the national economy;
- significant job creation opportunities;
- export and foreign exchange earning capacity;
- introduction of new technology;
- investment in special geographical area i.e. geographically ‘marginalized areas’ including areas lacking infrastructure or areas lacking local skilled labor;
- the specific timeline during which the project will achieve the above requirements; and
- a list of additional benefits requested from the Government, including the duration for which each incentive is to be extended and the justification or importance to the project and the government. (This information must be provided for each incentive applied for.)

The GoT has conferred this strategic investor status on a number of investors, for instance to Unilever, in December 2013. The recognition of Unilever as a strategic investor coincided with the company’s decision to invest in tea farming in the government supported SACGOT investment in the Iringa and Njombe regions in south-western and south-central Tanzania, respectively (Kisembo 2014).

Although there is no explicit requirement or test for the investment to be sustainable prior to conferment of strategic investor status, interpretation of the regulations may support this conclusion. For instance, the requirement for “significant job creation” is consistent with a need to maintain social and economic safeguards for the population. The illustration below, by the TIC, reinforces this conclusion.

63 Cabinet memorandum No. 6/1996 of 1996

64 Interview with Director of Heavy Industries at National Development Corporation, 17 April 2013

65 Investment Act 1997 (United Republic of Tanzania) s 20

66 Regulation 49, Investment Act Regulations, supplemented by information obtained during interview with Director of Investment Facilitation, TIC, 31 January 2014

### **Example 6. Linkage of strategic investor status to sustainable investment norms**

In a 2012 report on social accountability and the impact of foreign direct investments to the local economy in Tanzania, the TIC highlighted that projects that (i) put up investment in remote and marginalized regions; (ii) create massive employment to local people; (iii) inject enough capital that can have an impact to the economy; and (iv) promote transfer of technology, are granted strategic investor status (Mnali 2012, p. 7).

Impact on the local economy is an important test for a significant investment, such as those considered strategic. It is very similar to the goal of agricultural growth corridors, such as SACGOT, which aim to invest in areas of potential growth. In a news item that reported the decision by Unilever to invest in SACGOT, the company was also quoted as expressing its “full commitment to ensure that its investment also addresses social economic and environmental goals” (*East African Business Week* 2014).

Ultimately, the decision on whether an investor qualifies for strategic investment status is made by the National Investment Steering Committee (NISC) chaired by the Prime Minister and comprising the Minister of Finance, Minister of Industry and Trade, Minister of Agriculture, Minister of Lands, Minister for Investment and Empowerment, Attorney General, Governor of the Bank of Tanzania and the Executive Director TIC (Secretary).<sup>67</sup> The Minister of State for Investment and Empowerment, by law, ratifies this decision. This structure of decision making suggests conferment of strategic investor status is an issue considered fairly important by the government, and therefore could be a useful tool to reinforce application of safeguards that make land-use investments to become sustainable. It would, however, advance the object of having sustainable investments, if the minister responsible for environment was a member of the steering committee, and at least develop clear sustainability criteria for application by the committee.

The conferment of national strategic investor status could be a useful legal mechanism to ensure that investments in land-use activities that promote sustainability are encouraged and supported. However, it is important that mechanisms to establish greater transparency in the decision-making process are established to facilitate greater accountability and predictability. Sustainability of investments through such mechanisms can only be guaranteed where effective processes are in place to ensure the equal balancing and consideration of national priorities and the avoidance of capriciousness or corruption in the awarding of generous tax benefits to investors.

### **Special zones for industry**

The Fiscal Investment Regime in Tanzania is supported by two other key legislations: the Export Processing Zones Act 2002 and the Special Economic Zones Act 2006. The Export Processing Zones Act authorizes the establishment of Export Processing Zones (EPZs), which are aimed at promoting investments in processing and manufacturing activities for export purposes. An EPZ enterprise must be licensed and is required to export a minimum of 80% of its products and make use of ‘modern’ technologies (KPMG 2012). It may be 100% citizen owned, 100% foreign owned or a combination of both. An EPZ enterprise is entitled to several benefits such as tax exemptions for raw materials, equipment and machinery, directly related to manufacturing within in the EPZ.

The Special Economic Zones Act 2006 provides for the establishment of Special Economic Zones (SEZs) in selected geographical areas, with a focus on activities that accelerate domestic production, promote exports or generate employment. The targeted sectors are agricultural, agro-industrial, industrial, tourism, commercial, forestry, information and communication technology, banking and financial centers. Investment incentives vary depending on the category into which an investment may fall, but are similar to those granted to an EPZ investment. No SEZs have yet come into operation due to incomplete developments of the supporting legal framework (OECD 2013). Thus far, 43% of investments that have taken place under the EPZ legal framework have been in agro-processing and 8% in mining (EPZA 2010, p. 10). Although six industrial parks had been established with over 60 licensed EPZs in 2012, EPZs have had an overall low contribution – about 2% – to the overall GDP (OECD 2013).

<sup>67</sup> Information obtained during interview with Director of Investment Facilitation, TIC, 17 April 2013 and 31 January 2014

The investment framework in Tanzania has been criticized for lacking coordination of its overall investment policy across the sectors, as different legal instruments and initiatives guide each sector's investment strategy (OECD 2013). This creates problems of conflicting provisions on incentives among the different sectors and makes assessment of the overall effectiveness of the incentive regime difficult. The compilation of all investor incentives and disincentives into one centralized investment law, including the incentives available to domestic investors, was a major recommendation stemming from a recent assessment of Tanzania's investment climate, which aimed to improve predictability, transparency and ability to evaluate effectiveness (OECD 2013).

### Incentives to agriculture sector investments

The Tanzania investment framework establishes a number of tax incentives to attract investment in the agriculture sector. However, many of these incentives are general and therefore do not attract sustainable agricultural investments. Moreover, many small-scale investors in the agricultural sector are excluded from these incentives, due to high financial or revenue threshold requirements to be registered for tax incentives.

General incentives include tax withholding on depreciable assets, VAT and duty allowances on machinery and equipment, pesticides, and generous allowances on corporate tax and capital expenditure (Tanzania Investment Centre 2013). An interesting provision in the 2006 Income Tax Act encourages sustainability through allowing 100% deductible expenses for expenditure to prevent soil erosion or to remedy damage caused by natural resource extraction operations to the land (Tanzania Investment Centre 2013). Expenditure on agricultural improvement and research and development is 100% deductible,<sup>68</sup> and could incentivize the use of more efficient and sustainable farming technologies.

Adequate incentives, and financing mechanisms, are key to encourage the participation of small-scale farmers. A report on the investment climate for agriculture notes:

while the agricultural sector is the least taxed sector of the economy, taxation on small-scale producers may remain too high, with insufficiently supportive incentives. For instance, while large agricultural exporters are entitled to VAT reimbursement, small exporters are disadvantaged as they fall below the threshold to be registered for VAT and are thus not entitled to these reimbursements. (OECD 2013)

The outcome of the taxation incentives framework is a failure to provide advantages to small-scale investors, particularly in the agricultural sector, as their actual revenues typically fall far below the threshold required to access these benefits, such as VAT refund claims. In addition, income tax-based benefits have little value for smallholder investors whose income is well below the minimum income tax reporting limits – or where government does not enforce income tax laws against rural poor. This finding indicates a serious shortcoming within the incentive framework, as it limits the ability of smallholders to participate in opportunities to expand wealth generation and instead favors large-scale investors. As smallholders dominate the agricultural industry, this represents a serious constraint to the creation of opportunities for poverty alleviation and increased economic development, key potential benefits that could flow from greater empowerment of smallholders.

The report quoted above also indicates that only 8% of the rural population has access to formal financial institutions to obtain credit (Tanzania Investment Centre 2013, p. 42). Other studies estimate that only 2.4% of smallholder agricultural households borrowed money for agricultural activities (United Republic of Tanzania 2012a). The majority of these (31.1%) stated that the reason for this was that they did not know how to obtain credit, while the next major reason (18.3% of responses) was that credit was not available. For smallholders, the lack of collateral means that opportunities to access to credit for agricultural enterprise are few, thereby limiting their ability to expand and improve agricultural efficiency. The establishment of microfinance has been found to have little impact on resolving this problem, due partly to the fact that interest rates actually tend to be higher than in commercial banks (OECD 2013). On the other hand, the cooperative movement has been helpful to small-scale investors in various land-use sectors, such as agriculture and mining.

<sup>68</sup> Section 15, Income Tax Act 2006, Chap. 332

## Incentives to the energy sector

There are a number of challenges for SPPs in Tanzania's energy legal framework. The absence of differentiated tariffs for different types of energy generation investments represents one of the main disincentives for the SPP program. SPPs do not benefit from an economy of scale and their costs of electricity production can be much higher than large-scale generators. Nonetheless, SPPs receive the same tariff rate charged by TANESCO for supply of on-grid electricity. This rate is far lower than the actual cost of generation.<sup>69</sup> For off-grid producers, the tariff is usually greater, as the cost of provision of electricity to off-grid areas by TANESCO is higher, due to high diesel, infrastructure and transport costs. However, off-grid SPPs may become connected to the grid, in areas where TANESCO expands its grid coverage, particularly peri-urban areas. This situation adds a level of unpredictability for off-grid SPPs, who may find their activities financially unviable after the area to which they are supplying electricity is connected to the grid. Further, as tariffs are set at a specified rate, regardless of energy generation technology, SPPs using more expensive renewable energy technology may find the tariffs too low to generate a profit. The establishment of tariffs, differentiated by technology and associated power production costs, could act as an incentive for SPPs to adopt renewable energy technologies.

SPPs receive payment in Tanzanian shillings rather than United States dollars, placing the risk of fluctuating exchange rates on the investor. Six IPPs operate in Tanzania and contribute approximately 40% of the effective generating capacity to the national grid, demonstrating significant potential for enhanced private sector contribution (MEM 2013, p. 19). However, none of the IPPs providing power to the grid are from renewable energy sources.<sup>70</sup> On top of the lack of differentiated tariffs to provide incentives for independent power generation, challenges to increased IPP participation in the energy sector overall have also included TANESCO's financial instability and inherent risks to investors regarding its ability to satisfy payment of tariffs. This has reduced the capacity of the private sector to participate in the development of power projects,

which could make a significant contribution to the nation's growing energy demands.<sup>71</sup>

The MEM is undertaking a review of the legal framework for electricity generation and developing a Renewable Energy Feed-In Tariff (REFIT) program that will address the current challenges, including the introduction of a technology-based tariff calculation system and the drafting of specific REFIT regulations.<sup>72</sup>

## Rural electrification

A major challenge to the expansion of energy access to rural areas involves the provision of funding. The Rural Energy Act, 2005 established the REA to be responsible for promotion of improved access to modern energy services in the rural areas of mainland Tanzania. Financing for rural electrification is undertaken through the Rural Energy Fund, which is administered by the REA. This fund provides grants to subsidize the cost of rural electrification projects that are developed by private and public entities, cooperatives and local community organizations.<sup>73</sup> The fund provides resources for grants, technical assistance, training and other forms of capacity building to qualified developers, as well as the provision of financial assistance. Grants made by the fund to qualified developers may be used to co-finance investments in innovative pilot and demonstration projects and applications for renewable energy.<sup>74</sup> The Rural Energy Fund can be a significant incentive for investors wishing to undertake low-carbon, renewable energy initiatives. To ensure sustainability of funding sources, the Rural Energy Fund derives its financing from levies from commercial and specific isolated system generation of electricity, as well as government and donor funding.<sup>75</sup>

One of REA's major programs to date is the Tanzania Energy Development and Access Project (TEDAP) financed by the World Bank. REA received USD 44.2 Million to fund off-grid electrification through *inter alia*, offering long-term financing to local commercial banks for small renewable

71 Id

72 Interview with Principal Commercial Officer, EWURA, 31 January 2014

73 Rural Energy Act 2005, s 18

74 Rural Energy Act 2005, s 22

75 Rural Energy Act 200, s 19

69 Interview with Principal Commercial Officer, Energy and Water Utilities Regulatory Authority (EWURA), Dar es Salaam, 31 January 2014

70 Renewable Energy Feed-In Tariffs (REFITs) for Tanzania, P 40

energy programs. It also funded an initiative called “Lighting Rural Tanzania,” a competitive program which provides up to 150 million Tanzanian shillings (approximately USD 90,000) in funding for innovative renewable energy lighting programs in rural Tanzania (REA n.d.). The competition was open to all but preference is given to local organizations.

Overall, the REA funded 40 rural energy projects in 2010–2011, representing 35% solar, 7% biomass and 3% small hydro (REA 2011, p. 20). Building capacity to enable local persons to develop SPPs and generate their own electricity in rural areas is also a key objective of REA. It funded 273 capacity building and training courses for prospective energy developers in modern energy technologies in 2010–2011 (REA 2011, p. 21).

### **Example 7. Private rural electrification initiatives: Carbon X**

Carbon X Ltd. is a private company registered in Tanzania with a mission to provide off-grid electricity to rural Tanzania through the use of modern renewable energy technologies. Carbon X was the winner of the Lighting Rural Tanzania Competition, led by the World Bank. It is currently working to provide conventional 230V AC electricity to isolated communities in the Rufiji Delta using solar-photovoltaic technology and hybrid mini-grid systems. To do so, it plans to build a solar farm, which will convert solar energy to electricity and distribute it through a mini grid, connected to neighboring households. Carbon X will be responsible for generation and transmission of electricity. The company has identified six target villages: Nyanjati, Nyamisati, Rururuke ‘A’, Rururuke ‘B’, Kikale, and Mchungu and plans to install over 500 kW of solar power in the region to power over 2500 homes and businesses. Currently, Carbon X’s program is the largest rural electrification program in Tanzania (Carbon X 2014).

### **Incentives in the charcoal sector**

From the discussion in section 3, it is clear that high production of charcoal in Tanzania is accompanied by an equally high consumption rate, especially in urban areas. A highly complex regulatory framework governs the production of charcoal, and its use as a major source of energy. Institutionally, the Forest and Beekeeping Division (FBD) of the MNRT is the primary policy organ on charcoal production.

However, as wood is converted to charcoal and then used for energy, policy responsibility becomes more complex as the FBD remains responsible for managing charcoal transportation and trade, while the MEM becomes involved as the primary policy lead on energy use, and is thus responsible for the promotion of efficient charcoal-burning stoves. Under the authority of EMA 2004, the NEMC has authority to ensure protection of the environment. Clear delineation of these different agencies’ roles in charcoal production and consumption is necessary to promote cohesive policies along the charcoal chain and to improve enforcement of laws and policies.

A 2010 World Bank policy note on charcoal reforms in Tanzania reported anecdotal evidence that charcoal traders on the ground did not follow the regulatory framework in practice. Very few traders, especially among the small-scale, bicycle traders – had ever obtained the required authorizations, and that bribes are offered whenever controls are executed (World Bank 2010b). This may be due to a number of reasons, such as high transaction costs, i.e. traveling to the nearest forest service representative and waiting for the license to be issued, and lack of resources for obtaining permits, such as for paying the license, plus potential bribes to the license-issuing public service officer. As a consequence of this failure in rule of law, it is estimated that the government fails to collect taxes of about USD 100 million annually (World Bank 2010b). In similar terms, a 2012 performance audit by the Auditor General reported negatively on the monitoring of the charcoal trade through government checkpoints, to examine licenses and collect revenue (United Republic of Tanzania 2012c, p. 45). The failure to apply of the rules at checkpoints may be due to corruption or reduction in the number of checkpoints as a result of budget cuts (United Republic of Tanzania 2012c).

### **Example 8. Performance audit on the use of checkpoints as a tool to regulate charcoal trade (United Republic of Tanzania 2012c)**

According to the 2012 Audit Report, no checkpoints were found in sensitive forest harvesting areas such as Morogoro, Kigoma, or Mbeya, among others. It was found that out of the 28 checkpoints erected by MNRT, 16 (more than 60%) were located in Dar es Salaam and Pwani region. Audit findings indicate that 32% of the existing 28 checkpoints had one staff or fewer, while only 29% of the checkpoints had only two staff. In total, this means 65%

of checkpoints have two or less than two staff. Consequently, most of the checkpoints operate during daytime hours from 06:00 to 18:00 instead of 24 hours, as required by law. This situation creates loopholes for illegal forest dealers to transport their forest products at night. The evidence of inefficient performance of checkpoints is also revealed by the amount of forest products seized in towns and cities by Forest Surveillance Units, implying that these illegal forest products had passed through the checkpoints unnoticed. The poor performance of checkpoints is contributed to by insufficient funds as the ministry does not regularly release the necessary funding for the operations of the checkpoints. In 2010, MNRT allocated about Tsh 88 million, but only release Tsh 9 million for this purpose. As a result, only 15% of checkpoints could afford to inspect forest products on transit, while 85% of all checkpoints did not receive any funds. The 15% of funded checkpoints were able to collect about Tsh 334 million, and confiscate 3627 bags of charcoal.

A useful incentive that could introduce sustainability in charcoal production is energy efficiency. Literature suggests that kilns in use in Tanzania have an efficiency rate of 11–19% for unimproved kilns, while efficiency ranges from 27–30% for improved kilns (Msuya et al. 2011, p. 136). Reversing the dominance of low-efficiency charcoal production kilns could improve the efficiency of kilns by nearly a third.

Even at an average of 19% kiln efficiency, 18 trees of 32 cm diameter at breast height (measured at 1.3 m) on average are used to produce 26 bags of 53 kg of charcoal, which is an average of 1 m<sup>3</sup> of wood yielding 2.6 bags of charcoal (Malimbwi and Zahabu 2010, p. 237). Most charcoal producers in Tanzania, however, do not prefer the improved type of kiln, due to its high initial investment cost. In contrast, very little skill and low capital investment is required for traditional kilns (Malimbwi and Zahabu 2010, p. 237). The current charcoal governance framework, including the 2006 Charcoal Regulations, do not offer incentives to encourage charcoal producers to adopt efficient kilns, with barriers such as low revenue (due to high influence of middlemen/dealers), and haphazard issuance of permits. Another proposed alternative to improve the efficiency of charcoal production is to document the techniques used by experienced producers and disseminate

them to less experienced producers. This follows from evidence demonstrating that experienced producers, who use traditional kilns, achieve more efficiency than less experienced ones (Malimbwi and Zahabu 2010, p. 237).

In a 2010 report on charcoal production reforms in Tanzania, the World Bank highlighted a need to review the value chain system, as a means of enhancing benefits accruing to primary charcoal producers, which by extension encourages sustainable production mechanisms (World Bank 2010a, p. iv–v). The report found that there is very little incentive for government bodies at the district or village level to implement and monitor charcoal-related policies due to a lack of legal and fiscal empowerment, combined with low monitoring and enforcement capacity (World Bank 2010a, p. iv–v; see also Fisher et al. 2011). Further, while decentralized governments have the primary responsibility for licensing and regulating charcoal production and trade, very little of the total revenue can be legally retained at these subnational levels, as all charcoal revenues, fees and fines are remitted to back to the Ministry of Finance. This means that very little revenue can be reinvested in sustainable charcoal production or sector monitoring, and the lack of an effective benefit-sharing mechanism is identified as a key factor in the chronic under-collection and under-reporting of charcoal revenues across the country, as well as providing a disincentive to effective policy implementation (World Bank 2010a). The Uongozi Institute, in a June 2013 Policy Brief (Gwamaka and Kifukwe 2013) observed that the policy focus in Tanzania fails to acknowledge the reality on the widespread use of charcoal as a source of energy, instead focusing primarily on transition to modern energy sources. The brief, in evidence of this line of argument, points to MKUKUTA II, which uses, as an indicator of progress in energy sector, “increasing the percentage of urban and rural households using alternative sources of fuel to wood fuel (including charcoal) as their main source of energy” (Malimbwi and Zahabu 2010, p. 237; see also Fisher et al. 2011).

### **Mining and minerals development**

Investors in the mining industry are not required to obtain a Certificate of Incentives, and therefore are not governed by the TIC rules. The greatest incentives to mining investors are usually contained in confidential development agreements negotiated between the investor and the government. Mining investments valued at USD 100 million and over are regulated by mining developmental agreements entered into

between the investor and the Minister of Energy and Minerals, upon the granting of mineral rights.<sup>76</sup> The revised Mining Act 2010 prescribes a standard model of agreement (known as Mining Development Agreements or MDAs) that should be adhered to, as well as listing a number of standard terms that may also be included.

Under such provisions, the mining law sanctions the inclusion of stabilization clauses to guarantee the fiscal stability of mining projects against amendments to applicable laws regarding the amount of taxes or duties payable by mining investors.<sup>77</sup> It also permits the inclusion of provisions relating to the settlement of disputes in international tribunals, for matters relating not only to the developmental agreement itself, but also the administration of the Mining Act and the terms and conditions of a special mining license.<sup>78</sup> The establishment of standard MDAs for high-value investments are intended to reduce the extent of discretion in formulating the terms of such development agreements by replacing case-by-case negotiation. However, MDAs remain highly confidential and therefore any details of the benefits afforded to investors are unclear.

Further, the new amendments to the law do not affect previously negotiated MDAs, many of which continue in force, yet lack basic environmental protection provisions. Several major mining contracts concluded even before the enactment of Tanzania's first Mining Act, 1998 and Mineral Sector Policy of 1997 contain stabilization clauses, which exempt investors from undertaking any new responsibilities under the law. An analysis of some of these contracts reveals that investors have benefitted from lax environmental and social provisions, including generous rights to enter upon forest reserves and acquire ownership over such lands, as well as guarantees to the fiscal stability of the investment for the life of the agreement (Policy Forum. n.d.). The latter prohibits any change in the amount of royalties to be paid by the mining companies to take effect *vis à vis* that agreement. Obligations regarding social or environmental responsibilities were notably absent from many of the contracts examined, despite provisions within the Mining Act, 1998 to facilitate the inclusion of such provisions.

<sup>76</sup> Article 10, the Mining Act 2010

<sup>77</sup> Article 10(4)(a), the Mining Act 2010

<sup>78</sup> Article 10(4)(d), the Mining Act 2010

Nevertheless, despite the ongoing challenges of MDAs, further revisions to the mining legal framework have resulted in more positive developments for the sustainability of mining investments. The GoT took a progressive step in reviewing royalty payments on minerals to increase its profits from mining investments. The Mining Act 2010 raised the royalties on diamonds from 3 to 4% and precious and base metals from 5 to 6%, while uranium remained at 5% and other minerals at 3%.<sup>79</sup>

In addition, provisions to support the employment of Tanzanian citizens in mining projects are given high importance in the Mining Act 2010. Applicants for certain types of mineral licenses, including mining licenses, special mining licenses and mineral processing, smelting and refining licenses, must include a proposal for the employment and training of Tanzanians in their application, as required under the Labour Relations Act.<sup>80</sup> The Mining Act places further emphasis on these requirements, by listing such proposals as one of the main considerations that the minister must take into account before deciding on whether to grant a mining license or special mining license.<sup>81</sup> Once granted, the mining license must state the terms of the employment and training proposal within its conditions. Downstream economic opportunities are also encouraged through the requirement that such licenses contain a procurement plan of goods and services locally available in Tanzania.<sup>82</sup>

The 2010 mining law contains an important provision requiring periodic performance reviews of mining contracts every 10 years. This is an important step in ensuring that MDAs are updated according to the policy developments that take place. However, review of terms that may be significant to the regulation of environmental and social safeguards may be protected by stabilization clauses, which prohibit any amendment from taking place.

The Mining Act also establishes provisions that could encourage improved mining practices. It gives the Commissioner the authority to direct that a mining operator give reasons for, or cease its use of "wasteful

<sup>79</sup> Section 87, Mining Act 2010

<sup>80</sup> Sections 49(2)(f), 41(4)(h), 60(2)(e), 61(2)(e), Mining Act 2010

<sup>81</sup> *Id.* at sections 50(1)(c) and 42(1)(d)

<sup>82</sup> *Id.* at section 42(1)(v) and 52(f)

mining practices”.<sup>83</sup> The law does not define what is considered to be wasteful. However, the mechanism aims to discourage unsustainable mining practices, and therefore could potentially be used to curb the employment of carbon-intensive or environmentally damaging techniques.

### Utility of cooperative movement in securing citizen access to credit finance

The participation of citizens in investments is influenced, to a large extent, by the ability to access capital through credit finance. Access to finance provides room for local investors, including communities, to participate in land-use investments and proactively pursue the benefits therefrom. In addition, in order to qualify for the incentives under the national investment legislation, minimum capital requirements are imposed for both local and foreign investors, with a requirement of USD 100,000 for the former. Microfinance systems, and other simplified mechanisms for extending credit finance for individual and small-scale institutional investors are therefore critical.

In Tanzania, the cooperative societies’ movement is an important cog in the credit finance mechanism. Established through the 2003 Cooperative Societies Act, cooperative societies must have the object of promoting the economic and social interests of their members by means of common undertaking based upon mutual aid.<sup>84</sup> This law defines the various types of cooperative societies that can be established, which include the Savings and Credit Cooperative Societies (SACCOs). Under the cooperatives legislation, a SACCO is defined as a registered (cooperative) society whose principal objects are to encourage thrift among its members and to create a source of credit to its members at a fair and reasonable rate of interest. In essence, the SACCOs movement was created to encourage careful and wise use of money by members, and to provide credit facilities to members who can then use the credit, including raising capital for investments. The 2000 Tanzania Microfinance Policy highlights that households and enterprises require savings and credit facilities for planning and to deal with emergencies.<sup>85</sup> The microfinance system, including SACCOs, is particularly important for domestic households and enterprises due to more flexible rules of engagement such as terms of lending and interest rates.

83 Id. at section 99

84 Cooperative Societies Act, Act No. 10 of 2003, s.4

85 National Microfinance Policy 2000, p. 6.

According to UNEP (2012, pp. 20–21), there has been evidence on the beneficial role of SACCOs in the artisanal and small-scale gold mining industry. The example below, from Geita District, is illustrative.

### **Example 9. Beneficial role of SACCOs in savings and credit finance for artisanal and small-scale gold miners in Geita District**

As poorer [artisanal and small-scale] miners often lack collateral and do not qualify for conventional commercial credit, there is a need to target marginalized groups of miners (as well as the more established and organized small-scale miners) with a suite of different strategies. [...] Miners who have sought formal lending opportunities through official banking/microfinance channels often have been unable to secure formal credit, even in remote rural regions where formal microfinance institutions are present. [...] In some cases, small-scale miners have formed registered cooperatives, creating SACCOs. The SACCOs model is an important example of how miners have mobilized to create an organizational structure that allows the acquisition of credit. (UNEP 2012, p. 20)

There have been varied experiences with SACCOs, as recorded in a study by Mutagwaba (2006) and summarized by UNEP:

**Tupendane:** Based at Rwamgasa small-scale mining site, almost 50 kilometres from Geita town [...] This SACCOs was registered on 13th June 2001 and by September 2005 it had 40 members. The SACCOs started by raising \$7,000 through share sales. At the time of the visit they had \$5,300 in the bank. The SACCOs has used the interest gained through lending to members to build a modern, furnished office (with burnt bricks and corrugated iron sheets). All its members are small-scale miners.

**Mshike-Mshike:** This SACCOs is based at Mugusu small-scale mining site, almost 25 kilometres from Geita town. The society was registered on 5th August 2004 and has 18 members all of whom are small-scale miners, mostly unlicensed, who retreat tailings at Mugusu mining area. They started the SACCOs with \$940 raised through the sale of shares to members. Mugusu is a contested site, reflected in the erratic operations of the SACCOs and its

poor (or absent) record keeping. Many of the not fully legalized small-scale miners have worked there for years and government representatives have allowed them to continue. However, a company that acquired a mining licence recently has attempted to use the courts to evict the artisanal and small-scale miners. Ongoing debate about the legality of the miners makes it difficult for long-term planning in this area, creating difficulties for the development of cooperatives and microfinance strategies. (UNEP 2012, p. 21)

SACCOs have been the most successful financial institution in delivering financing to small-scale agriculture (UNEP 2012, p. 20). However, this represents only 16% of all smallholder farmers receiving credit (United Republic of Tanzania 2012a). The impact of SACCOs has been constrained by challenges such as poor business record keeping, and delinquency in repayment of credit facilities. Initiatives such as formalization of business through proper registration could enhance record keeping – since it is a statutory requirement.

In Tanzania, SACCOS provide an important mechanism for saving and leveraging credit for small-scale investors, and incentives to strengthen resilience of investors will enhance the role of SACCOS. With greater efforts made to expand the reach and efficiency of SACCOS, such institutions have a significant potential to facilitate and support increased investments in smallholder agriculture, thereby enhancing the profitability and the effectiveness of the sector.

### Environmental performance incentives

The Environmental Management Policy 1997 first introduced the concept of economic instruments as environmental management tools and priority policy instruments within the environmental governance framework.<sup>86</sup> In support of this policy, the EMA establishes a number of key sustainability principles that provide a basis for the implementation of such economic incentive mechanisms in environmental regulation. These include the precautionary principle, the polluter pays principle,<sup>87</sup> pollution prevention

<sup>86</sup> National Environmental Policy 1997 (United Republic of Tanzania) ss 73-6.

<sup>87</sup> Environmental Management Act 2004 (United Republic of Tanzania) s 5.

and control instruments,<sup>88</sup> and provisions to promote cleaner production technologies and techniques.<sup>89</sup>

Environmental performance bonds have developed as a negative incentive on investors to comply with the law or forfeit the full amount secured through the bond, which is then used to remediate the harm to the environment. If the cost of remediation is higher, the government recovers the cost through surcharges to the investor. It is a practical form of implementing the polluter pays principle by requiring investors whose activities pose a risk to the environment to internalize the cost upon commencement of activities. This is evident through the EMA, which empowers the Minister of Natural Resources and Tourism to prescribe activities that require developers to provide environmental performance bonds for certain activities, depending on the nature of their threat to the environment.<sup>90</sup> Non-compliance in the form of violation of the conditions of any certificate, licence or permit issued under the Act results in confiscation of the bond, and its application towards remediation of the environmental harm.

Similarly, the Mining Act establishes the requirement for environmental rehabilitation bonds, which are confiscated in the event that the mine owner deserts the mining site without completing its rehabilitation requirements. The Act gives the Minister of Energy and Minerals the discretion to require special mining licence holders to provide a rehabilitation bond as a condition of its licence.<sup>91</sup> The Mining (Environmental Management and Protection) Regulations, 1999 extends this discretion to requiring such bonds from holders of Mining Licences or Gemstone Mining Licences.<sup>92</sup>

As deterrence to unsustainable operations, the EMA also imposes fees on persons who violate established environmental protection standards or cause environmental damage according to prescribed standards, requiring those persons to

<sup>88</sup> Environmental Management Act 2004 (United Republic of Tanzania) s 8.

<sup>89</sup> Environmental Management Act 2004 (United Republic of Tanzania) ss 79, and National Environmental Policy 1997 (United Republic of Tanzania) ss 28–30.

<sup>90</sup> Environmental Management Act 2004 (United Republic of Tanzania) s 227.

<sup>91</sup> Mining Act 2010 (United Republic of Tanzania) s 44(d).

<sup>92</sup> Regulation 31(1) of the Mining (Environmental Management and Protection) Regulations, 1999

compensate for the damages and costs of remedial actions.<sup>93</sup> The National Environmental Standards Compendium (NESC) compiled by the Tanzania Bureau of Standards contains additional compulsory pollution standards for Tanzania, which are classified as generic or specific. Specific standards cover those industries whose activities have specific effects on the environment, while other industries without a specific standard are regulated by generic standards. The standards outline set limits for air, noise emissions, and municipal and industrial waste and effluent emissions.

## 4.2 Key findings

Tanzania has taken concerted steps to realign its investment framework with its national priorities and ensure that it maximizes the development benefits that the country can accrue through such investments. Major legislative and institutional developments have included the creation of the TIC as Tanzania's one-stop investment shop and the incorporation of sustainability considerations into laws and policies governing investments in key sectors:

- MKUKUTA II clearly indicates that providing supportive economic incentives is a priority to ensure the private sector expands to previously underserved parts of the country.
- The potential of BITs to create benefits from foreign investments can be enhanced through the minimization or elimination of waivers of performance requirements given to companies.
- National Strategic Investor status can be a useful legal mechanism to ensure that investments in land-use activities that promote sustainability are encouraged and supported. However it is important that mechanisms to establish greater transparency in the decision-making process to facilitate improved accountability and predictability.
- The Rural Energy Fund provides resources for grants, technical assistance, training and other forms of capacity building to qualified developers.
- In the absence of changes to the value chain system to make it more beneficial, the complex regulatory framework does not matter to charcoal producers and traders – and the consequent non-compliance results in significant annual revenue losses to the state.

- There is minimal motivation or incentives for local government agencies to implement and monitor charcoal production in the absence of legal fiscal empowerment, combined with monitoring and enforcement capacity.
- Adequate laws exist to enable sustainable investments but the lack of supporting frameworks to ensure good governance and transparency considerably reduces their effectiveness. For example, the SEZs Act has enormous potential to enhance economic performance in key sectors of development, but lacks effective governing provisions to ensure proper implementation.
- Other challenges within the legal framework remain, particularly with regard to the leveling of the playing field for small-scale investors, for instance in mobilization of funds such as through SACCOS.

## 4.3 Land tenure security

Land is a critical factor of production, and indispensable where land-based investments are concerned. In Tanzania, the growth in land-use activities, such as demonstrated in earlier sections of this report, and particularly in land-intensive sectors such as agriculture, has seen the demand for land soar.<sup>94</sup> Security of land tenure is therefore important, both for investors and for landowners, especially the communities that lease out land, or have their land acquired for investment purposes. In the latter instance, it is critical that the law provides protection in terms of compensation, but also imposes safeguards on the economic rights of the communities.

The acquisition of land tenure rights in Tanzania has been the subject of much scrutiny in the past due to widespread claims of land grabbing and the increased vulnerability of local customary land rights' holders. Over 69% of land in Tanzania is owned under customary law (NBS 2013b). Land transactions in Tanzania have therefore invariably required the initiation of procedures to transfer ownership of customary land to potential investors. In Tanzania, as the discussion below demonstrates, these issues are central to conversations regarding land-use investments, particularly in rural areas, because the category of village land is impacted extensively.

<sup>93</sup> Environmental Management Act 2004 (United Republic of Tanzania) s 228.

<sup>94</sup> See Section 1(vi) National Land Policy, 1997

### 4.3.1 Challenges of land tenure security in Tanzania

The adoption of the Kilimo Kwanza policy approach by the Tanzania government has raised the profile of land tenure rights and security. Kilimo Kwanza, as earlier explained, focuses on large-scale agricultural production through PPP models such as agricultural growth corridors. With much of the land held under village land tenure, Kilimo Kwanza and other large-scale land-use investments interact with village landholders for purposes of the acquisition or lease of land for investments. The role of land tenure law in this respect is important, including the practical interpretation and application of the concerned rules.

In addition, as earlier highlighted, Tanzania has a complex history of tenure rights from the Ujamaa period, and especially during the relocation of people during villagization. The 1997 National Land Policy was meant to address those challenges and lay the basis for a new legal framework. The two main objectives of the policy are the protection of existing customary rights and promotion of sustainable land use. It was also intended to respond to the increased demands for land tenure and to establish the foundation for improved land allocation and ownership, thereby reducing conflicts and optimizing the use of land resources.

Currently, land tenure rights in Tanzania are governed by two principal laws: (1) the Land Act 1999 and (2) Village Land Act 1999. These laws establish that all land in Tanzania is public and vested in the President, as trustee on behalf of all.<sup>95</sup> The Village Land Act governs land in village areas and the Land Act governs land in cities and other areas. The Commissioner of Lands, in terms of the Land Act, is the principal administrative officer and adviser to the government on all matters relating to the administration of land.<sup>96</sup> The policy-level responsibility for land administration, registration and the development of policy and planning with respect to land-use falls under the purview of the Ministry of Lands, Housing and Human Settlements Development.

<sup>95</sup> Land Act 1999 (United Republic of Tanzania) s 1, and Village Land Act 1999 (United Republic of Tanzania) s 3(1)(b).

<sup>96</sup> Land Act 1999 (United Republic of Tanzania) s 10.

Under the Land Act, two of three types of land are established<sup>97</sup>:

1. Reserved Land: This is defined by section 6 of the Land Act, and represents land set aside for special purposes, including forest reserves, Ngorongoro Conservation Area, national parks, nature reserves, game parks, game reserves, marine parks, public utilities and highways, and hazardous land.
2. General Land: This includes all land that is not Reserved Land or Village land.

The Village Land Act established the third category:

3. Village Land: Land within the boundaries of the village as a local government body; and “land [...] which the villagers have been [...] regularly occupying and using as village land” during the 12 years preceding the Land Act, with the exception of “reserved land”.<sup>98</sup>

Though the radical title to all land in Tanzania is vested in the state and held in trust by the President, the land legislation has created the following types of land tenure arrangements to enable use and management of land by citizens:

1. Customary right of occupancy: This right applies to village land. Under customary law or on allocation from a village council, villagers may be granted a customary right of occupancy. This right can be held individually or jointly, and by any legal person, including a corporate body once the majority of its shareholders are Tanzanian citizens.<sup>99</sup> Persons holding customary rights of occupancy may be granted leasehold rights. This right includes a “deemed right of occupancy”, which arises where land has been occupied by a Tanzanian citizen of African descent under customary rights and without registration.<sup>100</sup>
2. Granted right of occupancy: Granted rights of occupancy may be provided on general and reserved land, subject to any statutory restrictions and the terms of the grant. Persons holding granted rights of occupancy may grant leasehold rights.

A right of occupancy may be granted for a period of up to 99 years, and if the occupier has complied

<sup>97</sup> Land Act 1999 (United Republic of Tanzania) s 4(4).

<sup>98</sup> Village Land Act 1999 (United Republic of Tanzania) s 7.

<sup>99</sup> Village Land Act 1999 (United Republic of Tanzania) s 18.

<sup>100</sup> Village Land Act 1999 (United Republic of Tanzania) s 18.

with the terms of the right of occupancy, the Commissioner for Lands may renew the right.<sup>101</sup>

### Acquisition of land tenure rights on general land

The National Land Policy sets a clear position that customary land shall not be allocated to non-citizens or foreign companies.<sup>102</sup> Foreign nationals may therefore obtain title to general land only. This right to acquire interest in general land by non-citizen individuals and foreign corporations is itself also limited to acquisition for investment purposes only, as may be approved by the TIC.<sup>103</sup> Land may be acquired through the TIC, which is empowered by the Tanzania Investment Act to facilitate acquisition of land by investors,<sup>104</sup> and also to manage a land banking system.<sup>105</sup> Foreign investors may also obtain an interest in land under a partial transfer of interest by a citizen for purposes of investment approved under the Tanzania Investment Act in a joint venture to facilitate compliance with development conditions.<sup>106</sup>

The establishment of the TIC as the institution responsible for administering land to foreign investors is a useful mechanism that could channel all matters regarding land transfers to non-citizens through one regulatory body. The process is meant to ensure that only land designated for foreign investment is available for acquisition, and provides a safeguard against loss of land by local landowners as a result of land grabs. However, questions about how the TIC itself will acquire sufficient lands to comprise its land bank remain, and are discussed later in this section.

### Acquisition of land tenure rights on village land

Foreign investments may only take place on village land once the land is first converted from village land to general land. Since village land is public land, the President, through the Commissioner of Lands, exercises this transfer. However, as required by law, procedures have been put in place in a bid to

assure security of tenure and observance of the rules of natural justice where any form of acquisition of village land is undertaken.

Village land in Tanzania can be acquired for foreign (non-citizen) investments through two main routes.<sup>107</sup> A less popular but still practiced route is the acquisition of small amounts of land (50 hectares or under) through direct negotiations between foreign investors and village landowners (Oakland Institute 2012, p. 16).<sup>108</sup> Though the TIC is undertaking efforts to ensure that all land transfers to foreign nationals, regardless of size of land, are regulated by the TIC, this practice still takes place, leaving village landowners vulnerable to alienation from land as a result of unscrupulous or imbalanced negotiating practices on behalf of interested investors.<sup>109</sup>

The second, formal process occurs under the Land Act, where the President effects the transfer of land from village land into general land, in the public interest, and therefore makes it available for acquisition. Public interest includes investments in the national interest.<sup>110</sup> In practice, it is the investor that initiates this process by identifying the village land and approaching the village council to request the land (OECD 2013).

The objective test on the sanctity of title is whether the guarantees created by law to safeguard interests of landowners during acquisition of land are upheld in practice. Where investments are concerned, the conversion of village land into general land raises pertinent questions of the participation, informed consent and compensation given to the right holders over village land. Compliance with these rules for the benefit of land right holders is a critical safeguard that protects the interests of society and could provide protection from poverty and vulnerability as a result of landlessness. The following sections will outline to what extent Tanzanian law and practice upholds these rules and guarantees these safeguards.

101 Land Act 1999 (United Republic of Tanzania) s 32(3)

102 The National Land Policy 1997, Section 4.2.4. (iii)-(v)

103 Land Act 1999 (United Republic of Tanzania) s 20

104 Investment Act 1997 (United Republic of Tanzania) s 6

105 Land Act 1999 (United Republic of Tanzania) s 20

106 Land (Amendment) Act 2004 (United Republic of Tanzania) s 19(2)(2).

107 Land Act 1999 (United Republic of Tanzania) s 20

108 Interview with the Director of Investment Facilitation, TIC, 31 January 2014

109 Interview with the Director of Investment Facilitation, TIC, 31 January 2014

110 Village Land Act 1999 (United Republic of Tanzania) s 4(2). The definition of 'public interest' provided in the 1967 Lands Acquisition Act includes developmental and economic considerations or any other concerns that the President considers to be in the public interest.

### Community consultations during acquisition of village land

The Village Land Act outlines the process of village land transfer, whereby the village land is transferred to general land.<sup>111</sup> Though it stipulates that the transfer may take place where the President is “minded” to undertake such a transfer, in practice, as highlighted above, the process begins when the investor identifies the desired village land and requests the village council to obtain approval for the transfer.

Where the land proposed for acquisition is less than 250 hectares, the village council proceeds to prepare recommendations for consideration by the Village Assembly. The Village Assembly is comprised of every adult member of the village and is responsible for policy-making on all village matters.<sup>112</sup> The village council in turn consists of individuals elected by the Village Assembly from among its members and is responsible for the management of all village land.<sup>113</sup> After taking into consideration the recommendations of the village council, the Village Assembly has the power to approve or refuse the transfer.<sup>114</sup>

Where the land is more than 250 hectares, the process is similar in practice to that stated above, where the investor first initiates the process with the village council. The investor and the village council then together submit the investment proposal to the District Council Land Committee, which may approve the land for investment. The Village Assembly then approves the allocation of land and the President effects the transfer (Nelson et al. 2012). The final authority vests with the minister responsible for Land to consider the recommendations of the Village Assembly through the village council, and either approve or decline consent.<sup>115</sup> Aggrieved persons with an interest in land may make

“representations” to the Commissioner of Lands,<sup>116</sup> which he may “take into account” but is not bound to follow.

In both instances, the minister responsible for land is required to publish a notice in the government gazette detailing the location of the particular land and the reasons for the transfer.<sup>117</sup> There is an intervening period of at least 90 days between the publication of the notice and the President effecting the transfer. If the specified village is occupied, the village council must thereafter notify the people who hold the customary right of occupancy.<sup>118</sup>

The holding of Village Assembly meetings is an integral part of the consultation mechanism that, ideally, should set the basis for village members to give informed consent to any land transfers. The law even mandates the Commissioner of Lands to attend such meetings in person or through a delegate.<sup>119</sup> One major challenge arises because the law is silent or vague on the threshold and timing of consultations that must be held through the Village Assembly. The Village Land Act requires a meeting of the Village Assembly to be held to discuss a land acquisition. Village Councils and Assemblies are governed by the Local Government Act, which states that an ordinary meeting will be held every 3 months, and empowers the village council to convene an extraordinary meeting of the Village Assembly to discuss a matter of extraordinary public importance.<sup>120</sup> However, no rules of procedure are prescribed to guide the nature of consultations during Village Assembly meetings, such as establishing a minimum threshold or quota for decision making. While the 2001 Village Land Regulations establish procedure and rules of natural justice to be followed during a meeting of village institutions, Village Assemblies are excluded from the definition of village institutions and are therefore not covered by the procedure (see Box 7).

111 Village Land Act 1999 (United Republic of Tanzania) s 4.

112 Local Government (District Authorities) Act 1982 (United Republic of Tanzania) ss 55, 141

113 Local Government (District Authorities) Act 1982 (United Republic of Tanzania) ss 55-6, and Village Land Act 1999 (United Republic of Tanzania) s 8.

114 Village Land Act 1999 (United Republic of Tanzania) s 4(6).

115 Village Land Act 1999 (United Republic of Tanzania) s 4(6).

116 The Commissioner for Lands, established by Land Act 1999 (United Republic of Tanzania) s 10, is the principal administrative and professional officer and adviser to the Government on all matters connected with the administration of land and shall be responsible to the Minister for the administration of the Land Act.

117 Village Land Act 1999 (United Republic of Tanzania) s 4(3).

118 Village Land Act 1999 (United Republic of Tanzania) s 4(4).

119 Village Land Act 1999 (United Republic of Tanzania) s 4(7).

120 Village Land Act 1999 (United Republic of Tanzania) s 4(6), and Local Government (District Authorities) Act 1982 (United Republic of Tanzania) s 103.

### Box 7. Legal loopholes that undermine village-level consultations

- No rules of procedure are prescribed to guide the nature of consultations during Village Assembly meetings, or even determine the requisite threshold of decision making.
- The 2001 Village Land Regulations set out the procedure and rules of natural justice to be followed during a meeting of village institutions. However, the definition of village institutions in these regulations excludes the Village Assembly.

The Mining Act of 2010 contains yet another major loophole in the participation process regarding acquisition of land rights, and also demonstrates the priority given to mining over other types of land use. Generally, the mining law prohibits the holders of mining rights from exercising their rights on land that is previously occupied or used for agricultural purposes. This prohibition extends to areas adjacent to such lands up to a specified distance, except where consultation with the relevant local government authority, including the village council, has been undertaken and written consent from the lawful occupier has been obtained.<sup>121</sup> However, the law includes a critical caveat: the need for consent is negated where the minister believes that such consent is “being unreasonably withheld.”<sup>122</sup> In such cases, the minister has the authority to direct that this requirement for consent be dispensed with.

This provision of the mining legislation enables the government to circumvent important safeguards to security of land tenure on behalf of mining investors interested in obtaining rights to operate on previously occupied land. In so doing, it significantly undermines the efficacy of such safeguards under the land law, and places considerable power in the hands of the minister in determining whether or not an investment should take precedence over pre-existing rights to land. The same provision also facilitates mining activities in national parks and forests reserves, including the ecologically and economically important Ngorongoro Conservation Area, once written consent from the relevant government authority is obtained.<sup>123</sup> The provisions illustrate the emphasis placed on mining in Tanzania

and its dominance over other nationally important activities, often at the expense of critical social and environmental protections.

Disturbances caused by mining operations to the rights of land owners require “reasonable compensation” under the Minerals Act. It also gives the Commissioner of Minerals the power to adjudicate over any appeal regarding the amount of compensation calculated.<sup>124</sup> Where the disturbance is great, necessitating the pre-existing owner to vacate the land, the mining investor is required to prepare and submit a compensation, relocation and resettlement plan.<sup>125</sup> Compensation is calculated by the market value and according to the procedures established under the Land Act and the Village Land Act as described further below.

In practice, many investors simply circumvent the entire consultation requirement altogether, negotiating directly with District Council members, contrary to the provisions of the Village Land Act (German et al 2013, p. 26). This excises the role of the Village Assembly in the negotiation process, thereby overriding an important safeguard against land grabbing. It also raises the prospect of elite capture and conflict of interest, such as the example of Kisarawe Village, where SunBiofuels signed a contract with the District Council, which obliged the Council to solicit villagers’ consent within areas targeted for acquisition over a maximum period of 8 weeks, and to ensure that the company was charged concessional rates for land acquisition. The Council would also ensure the availability of a further 32,000 hectares for expansion of company operations (German et al 2013, p. 27). In this case, the District Council had been persuaded to accept an outcome, and then proceed to convince the community that the acquisition was good for them – an approach that was clearly in violation of statutory procedures.

### **Example 10. Unlevel playing field in consultations: The case of Sun Biofuels negotiating with villagers in Kisarawe village**

According to the Oakland Institute’s research, during consultations between company representatives and village assemblies “Sun Biofuels appears to have deliberately made populist promises of employment generation

121 Section 95(1)(b), the Mining Act 2010.

122 Id.

123 Id., at section 95(1)(c).

124 Id. at sections 96, 102(1)(c).

125 Id. at section 97.

and the construction of roads, schools, water wells, and clinics. Company representatives were influencing and shaping the very needs of villagers in order to paint a picture of a win-win situation, knowing that poor people in need would find it difficult to withhold consent. Villagers in Kisarawe refer to their encounters with Sun Biofuels as information meetings rather than negotiations; throughout the meetings they were informed about the various benefits they would enjoy from the project, none of which eventually materialized. For instance, villagers in Kurui reported that they were happy to agree to the land acquisition as they were promised hospitals, roads, pharmacies, and employment. Local villagers are not used to this type of negotiation, and such an approach immediately puts the rural communities in the weaker position, providing little space to ensure their free, prior and informed consent (FPIC) prior to finalizing a deal – an internationally recognized principle that would apply to such an investment. As a consequence, the promises given by the company were never codified in a formal contract, making it hard for the villages to hold the company accountable for its failure to deliver on the promises. (Oakland Institute 2012, p. 9)

This approach to consultation leaves the community at a disadvantage, although the consultations are meant to ensure informed consent by allowing concerned members of a village to debate the benefits, risks and other pertinent matters before approving a proposed transfer of village land to general land. Many companies instead only provide information on the positive elements of an investment. It is important for the law to clearly define the rules of consultation at the Village Assembly, especially regarding whether a decision must be unanimous or by majority. Otherwise, the quality of the consultations becomes compromised.

In addition, civic education is necessary because, according to a 2013 study in Mikese and Kisaki Wards in Morogoro Rural District (Respikius et al. 2013), the awareness of land policy and the Village Land Act is generally low among rural people in the study areas. The low level of awareness is not limited to laymen but also to ward executive officers, village leaders and village land committee members. The study found that the radio was the most reliable source of land policy information (Respikius et al. 2013).

### 4.3.2 Compensation for acquired village land

Just and effective processes to ensure that individuals are fairly compensated in exchange for relinquishing legal title to land represent an integral safeguard against dispossession of lands, particularly in cases where transfer of title is compulsory. Whether compensation is fair and adequate hinges on processes of proper consultation, valuation of property, and equal levels of awareness and understanding of these processes by all parties involved. The rules for compensation for relinquished village land are important to Tanzania for two reasons. The first reason is that orderly compensation process can ensure equity and that the rights of landholders are safeguarded. Second, clarity on rules of compensation will help assert the rights of land tenure holders, especially where executive discretion is granted to transfer land in the acquisition process. Such discretion is for instance evident at section 4, the Village Land Act which contemplates that the President has discretion to transfer village land to general land. The discretion is broad, notable from the statutory wording “Where the President is minded to transfer any area of village land to general or reserved land for public interest, he may direct the Minister [responsible for land] to Transfer of village land to general or reserved land proceed ...”

In addition, such clarity on compensation rules is key because an agreement on compensation between the landholder and the Commissioner of Lands is a prerequisite to the transfer of village land to general land.<sup>126</sup> This means its necessary for the landholder to be clear on the process of compensation, and on the normative content of just compensation – for instance through civic education on the Village Land Regulations, which provide for the compensation process.

In cases where the land is communal or reserved land, the village council negotiates compensation with the Commissioner of Lands. Where the land is occupied under a customary right of occupancy, the compensation is negotiated with the right-holder.<sup>127</sup> Compensation can be an exchange of village land with general or reserve land held under the Land

<sup>126</sup> Village Land Act 1999 (United Republic of Tanzania) s 4(8).

<sup>127</sup> Village Land Act 1999 (United Republic of Tanzania) s 4(8), and Village Land Regulations 2001 (United Republic of Tanzania) s 8.

Act.<sup>128</sup> Compensation could also be monetary and has to be determined based on an objective criteria established by law.

The Village Land Regulations prescribe that compensation for value of land and unexhausted improvements should be based on market value.<sup>129</sup> Compensation for loss of any interest in land shall include value of unexhausted improvement disturbance allowance, transport allowance, accommodation allowance and loss of profits. In practice, however, many questions have arisen on how the compensation process is undertaken.

The question of who is entitled to compensation should be straightforward as it is outlined clearly in the legislation and supporting regulations. However, research demonstrates how rules and procedures can at times be disregarded.

**Example 11. What constitutes compensation: the case of Kisarawe village**

The 2012 report on Tanzania by the Oakland Institute reports on the experience with Sun Biofuels in Kisarawe, which demonstrated flaws in the compensation regime. The report notes, We were told during our fieldwork that Sun Biofuels only compensated 152 households for land taken from 11 villages. This was due in part because the official compensation values do not fully allow for all land uses and activities that take place on the land. A government sheet has to be used for the valuation, which does not cover situations such as when people may lease mango trees from their land for a season and receive a cash income from this activity. In addition, a major weakness of the valuation process is that land values are only calculated at one point in the year and if, at this time, there is no evidence of cultivation then no value for crops can be given. In this instance, the land valuation in Kisarawe was carried out in March, which is not the right time of year to see evidence of rice crops, and there were thus cases in Kisarawe where land that was used by local people to grow a full

crop of rice every year was not compensated. In many cases market values of land may be hidden and difficult to capture in a formal economic valuation sense. (Oakland Institute 2012, p. 28)

German, Schoneveld and Mwangi (2013, p. 27) reinforce this with a report that their field investigations “revealed that ‘bare’ land was not compensated and some places had not been subjected to valuation, even though villagers were provided with forms to specify their claims.”

In practice, the prominent role of the investor in negotiating and providing for compensation for transfers of land, between itself and original land owners, creates huge power imbalances and leaves local communities vulnerable to manipulation. However, in certain cases, it has been possible to negotiate a more comprehensive form of compensation that includes benefits to the broader community. The Memorandum of Understanding between AgriSol and Mpanda District Council is indicative, as the excerpt below indicates.

4.7 That Agrisol shall, working closely with Iowa State University and in close collaboration with Mpanda District and other relevant government officials and institutions, develop and finance on an annual basis a comprehensive agricultural extension program aimed at assisting neighboring small holders. Such a program shall include training schemes for farmers and extension officers, exchange programs to encourage knowledge transfer, collaboration and support of relevant local training institutions and other activities aimed at building the capacity and capabilities of our growers in Mpanda District, as well as providing a market for small holders. (Oakland Institute 2012, p. 28)

However, ultimately, the success of compensation depends on how well individual compensation is combined with the collective benefits accruing to the village.

The establishment of agreed stipulations for compensation in the form of a contractually binding document, and in clear and unambiguous terms can ensure that the nature of the compensation is well-defined and provides a strong safeguard against investors back-pedaling on initial promises. However, the structuring of fair and just compensation depends on the ability of the village landholders to negotiate with the investor during the process of consultations.

128 Village Land Act 1999 (United Republic of Tanzania) s 4(8), and Village Land Regulations 2001 (United Republic of Tanzania) s 8.

129 Village Land Regulations 2001 (United Republic of Tanzania) s 9, 10. Unexhausted improvements include permanent capital expenditure that adds to the value, utility and environmental sustainability of the land.

Where the villagers are at a disadvantage, as discussed above, the compensations will likely not be in their favor, and could also result in the loss of livelihoods. In Kiasarawe village, for instance, the Oakland Institute reported that the land acquired by Sun Biofuels:

was collectively held forest and bush land that belonged to the villages and was used by local communities for various social and economic activities, including grazing, charcoal production, and the harvesting of timber, poles, firewood, wild food, fodder, and medicine. These activities are important means of diversifying sources of food and income beyond agriculture, with some households stating that up to 70 percent of the household economy was dependent on resources from this land. With the arrival of Sun Biofuels in the area, the local people lost access to this land and their additional resources, and have thus been forced to be more reliant on income from agriculture (Oakland Institute 2012, p. 9).

Proper negotiation of compensation terms requires an understanding of the valuation of land-use rights and the legal implications of transfers of title that can be brought about only through proper consultation and increased awareness of affected landowners. Even where consultation and awareness raising has been undertaken, other variables can adversely affect the efficacy of how compensation payments are put to use. A useful example is the process and compensation payments made to village landholders during establishment of the Derema Corridor, as a protected area, in the EAM Range.<sup>130</sup>

Prior to the process of establishing the corridor as a protected area, Derema became classified as village land, in terms of section 7 of the Village Land Act. Accordingly, the procedures of the Village Land Act in terms of consultations, consent and compensation would be applicable, and especially the Village Land Regulations which define the consultation process, nature of compensation, and who is entitled to compensation. Regulation 8 defines who is entitled to compensation to include:

1. a village council on behalf of the villagers in respect of the loss of communal land, assets and benefits derived from that communal land; and
2. any villager occupying transferred land or hazard land under a customary right of occupancy whether that customary right of occupancy is registered or not.

The challenge with the Derema Corridor compensation arose with respect to the second aspect: compensation paid to individual village landholders, and particularly pertaining to identification of the land owners; and the rights and interests (over the acquired land) by family members with customary rights over the acquired land, but whose land rights were not legally recognized. In addition, there were challenges in computing compensation as the new village land legislation was enacted while the acquisition process was already underway. In research published in 2013, Rantala et al. examined the gains and losses from compensation payments in the Derema Corridor project (Rantala et al. 2013). The example below highlights the challenges of compensation discussed above.

**Example 12. Inadequacy of compensation payments: Establishment of the Derema Corridor**

At the start of the corridor establishment, the livelihood strategies of the people were land-based and highly specialised in the farming of spice cash crops, [especially cardamom intercropped with yams, bananas and other subsistence crops...] The Derema area was eventually classified as village land, meaning that customary land rights in the area were legally recognized as private land rights even when not registered. While these rights can be revoked by the state for public benefit, compensation for existing land rights is required by the law. Only farmland was included in the corridor plan; the boundaries were drawn to exclude settlements. The compensation was calculated using an 'annual income per crop' approach, estimated as the income stream lost until new crops are mature enough to replace the income from the crops lost. [...]

Perhaps due to uncertainty about how customary land ownership was to be established, or simply as a result of unpreparedness for the task, [the process] applied a very rudimentary method to identify those eligible for compensation. It involved calling farmers onto their fields on

<sup>130</sup> This was being done through the East Usambara Conservation Area Management Programme (EUCAMP), funded by the Government of Finland and the European Union, and implemented by the Tanzanian Ministry of Natural Resources and Tourism.

certain days as teams of valuers surveyed the area. Each plant was counted and recorded on a form together with the person's reported name and photograph. No other data concerning the individuals who showed up (such as form of access to the plot of land, relationship to land owner) or the farms (e.g., area) were recorded. The farmers later described a two-step process involving the farm visit, then signing the forms at the village office. Although the person actually farming the land might have been present in the field, it was often the household head who signed up as the owner.

Money was the form of compensation availed, and people were left to their own devices to decide how to use it. No facilitation of investments or mechanisms to monitor intra-household allocation and distribution of the money were put in place. Payments were made as personal cheques to the people listed during the valuation, as "requested by the farmers", probably the handful of male farmers and village leaders who had attended the first planning meetings. Women's pleas that the compensation be paid individually to each spouse were ignored. (Rantala et al. 2013, p. 101)

Rantala and Vihemaki, in 2011, earlier noted that although farmers preferred personal cheques instead of payments to family accounts in the bank, it remained unclear who "farmers" referred to. Also, compensation was only paid for the standing crops, not the land itself, despite the requirements of the Village Land Regulations for compensation for lost farmland and improvements according to market value, as well as for communal land. This was because the crop compensation approach was in line with the former land law, which was still in effect when the corridor planning started.

Above all, the Derema case demonstrates that all land transfer and compensation processes must be firmly based in an inclusive and context-sensitive identification of the complex and dynamic land access and use arrangements existing in Tanzania, and across sub-Saharan Africa. In addition, calculating fair and just compensation must also be achieved through an inclusive process that takes into account the statutory rules and the voices of all concerned community members.

### 4.3.3 Problem of unidirectional conversion of village land

One challenge that has arisen in Tanzania, particularly with respect to biofuel investments, is how to determine the fate of village land that has been acquired and leased to a foreign investor, where the investment in question fails, or the investor did not put the land to the specified use. Biofuel investments are of particular interest in Tanzania because a number of investments that began with high expectations have been sold off, closed down or the companies involved have filed for bankruptcy. Upon closure, and especially where no further business activities have been undertaken, the acquired land has been left idle, raising the question of whether the former village landholders can re-establish their proprietary rights. The case of the Dutch Biofuels investor, BioShape, in Kilwa District is illustrative of this challenge.

#### **Example 13. Failure to return village land upon winding up of BioShape Biofuels**

"Bioshape, a Dutch company, had acquired about 34,000 ha of coastal woodland and forest in four villages of Kilwa District for a jatropha plantation. The villagers agreed to grant their land to BioShape for the project, and were initially enthusiastic about the employment and other beneficial possibilities of the project. It subsequently became clear that the communities did not understand the legal implications of transferring their land to the company, namely the implications of permanently extinguishing local customary rights over Village Land when agreeing to transfer the land to the investor. Only a small area was cleared and planted for jatropha, although a larger area of timber on the acquired land was harvested, which appears to have been the main commercial activity that ended up taking place on the property. By 2011, due to a range of factors, BioShape Tanzania filed for bankruptcy and its assets were advertized for sale." (Nelson et al. 2012 p. 11)

"[At the time of writing] the land has been left idle, the pilot jatropha plantation overgrown, and a security staff of three tasked with guarding the company's now abandoned premises and equipment. Despite the fact that there is no activity taking place, community members are not allowed to

access the land. The company's departure is viewed by government officials and community members alike as a disaster. The TIC has had several meetings with the affected villages and claims there is no interest from their side on getting the land returned to them, and are instead wishing for a new investor. Community members interviewed want the land back, but show little faith in the system, as the village chairman explains: *"Only the president can give us back the land! But there are so many steps to fulfil in getting there, and the process is slow and so long and difficult."* Tanzanian civil society organizations are working together with community members to try and get ownership of the land back to the village." (Nelson et al. 2012)

"Local staff in Tanzania filed legal claims for unpaid wages, while local communities gradually realized that they had permanently lost their land, which now could be sold to a third-party without their authorization or involvement. The communities are currently exploring ways to challenge the entire land acquisition process, either through legal or explicitly political channels, to recover their land." (Nelson et al. 2012)

In summary, where the conversion of village land has been undertaken and compensation has been paid, the village landholders' rights are extinguished permanently. However, since the land was acquired for very specific investment reasons, that permanence should be vitiated if the land is available or capable for reversion to the village landholders. Section 5 of the Land Act and the Village Land Act are instructive, as they both provide the legal avenue through which the President can convert general land into village land: when he is "minded to do so". This implies that the return of the general land to village land relies on the exercise of presidential discretion. There should be specific clarity in law on how to invoke this discretion in those situations where land has been converted from village land and leased to investors, but where the investor has not utilized the land accordingly, or does not need the land anymore.

The Mining Act 2010 echoes the requirements of the Land Act by requiring applicants for special mining licenses to submit a proposed plan for relocation, resettlement and compensation of people within the mining areas in accordance with the Land Act. Land acquisition to facilitate large-scale mining investments remains a contentious issue in Tanzania, as it is commonly associated with

claims of land alienation and displacement of local communities (Lange 2008). The Geita Gold Mine, located in the village of Mtakuja is one such example, where numerous reports of villagers evicted by the government to make way for the USD 450 million investment had been reported (Lange 2008, p. 16; see also IRIN 2013).

#### 4.3.4 The role of the Tanzania Investment Centre in land transfers

The Land Act provides that non-citizens cannot be allocated or granted land unless it is for investment purposes,<sup>131</sup> a legal requirement that impacts how foreign investors obtain access to land. There are two approaches through which the TIC is legally placed to play a role in facilitating the allocation of land to foreign investors. The first is supporting investors in their search for suitable sites, estates or land, in partnership with other government institutions and agencies.<sup>132</sup> The investment regulations provide further guidance on this approach, including a requirement for various government ministries and agencies to station lands officers at the TIC, in order for them to fast track applications for derivative titles by investors (see Box 8).<sup>133</sup> These regulations have been implemented, and lands officers, together with officers from other key departments such as immigration, are based at the TIC.<sup>134</sup>

##### Box 8. Legal procedures for facilitation of investment land allocations through TIC

- Legal requirement to station lands officers at the TIC.
- The lands officers seconded to the TIC are responsible for making fast track requirements with the Ministry of Lands for all purposes required under the investments legislation.
- Seconded lands officers are responsible for receiving and processing applications for derivative titles to land, including that in a land bank, for approval by the TIC.

<sup>131</sup> Section 20(1)

<sup>132</sup> Tanzania Investment Act, s. 6: "government institutions and agencies to 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."

<sup>133</sup> Regulation 55, Tanzania Investment Regulations

<sup>134</sup> Interview with Director of Investment Facilitation at the TIC, 18 April 2013

The second approach is the requirement that land be designated for investment purposes, in advance of any interest from an investor, and allocated to the TIC.<sup>135</sup> In essence, the Land Act provides the basis to establish a land bank, through which TIC is allocated available land in anticipation of prospective investors' needs. In practice, the TIC does not yet operate a land banking system and reports surmise that this initiative has been unsuccessful so far, due mainly to the lack of available land (OECD 2013 p. 244). Where land has been identified, parcels are typically small and scattered, or are on village land and are pending village land transfer once the TIC obtains sufficient resources to pay compensation (OECD 2013 p. 244). The operation of a land bank is particularly difficult with respect to village land, based on reasons identified by a research report (Theting and Brekke 2010) which recommended that village land should only be included in a land bank where:

- long-term land-use plans exist;
- projected growth has shown continued trend for abundant vacant land;
- customary land has been adjudicated and entered into a register.

Nonetheless, foreign investors have found acquisition of land through the TIC or the Commissioner of Lands to be faster than acquiring village land on their own (WRI 2010). When the investment project comes to an end, the land title reverts back to the TIC.<sup>136</sup> In interviews for this research, the TIC indicated it undertakes its own checks to determine whether land tenure arrangements made by potential investors independent of the TIC, for example through village land transfers, have followed the requirements of the law.<sup>137</sup> This may include searches to ensure that the land on which the proposed investment is to take place is free of encumbrances, and that all relevant authorizations at the district or central government level have been obtained.<sup>138</sup> However, the TIC's capacity to verify land tenure arrangements and monitor investments is limited by its human and financial resources, implying that most investors will also want to undertake their own due diligence. It is also worth emphasizing that the TIC

is established by the Tanzania Investment Act as an investment facilitator and promoter and, therefore, its ability to undertake checks of its own does not diminish the need for other mechanisms to ensure that compliance with social and environmental safeguards are prioritized.

#### 4.3.5 Key findings

Security of land tenure remains one of the most critical factors to ensuring the sustainability of investments. With government initiatives such as Kilimo Kwanza, and a growing national and foreign interest in land in Tanzania that is expected to grow, the need for comprehensive legal and institutional frameworks that guarantee safeguards to land tenure rights has intensified. The following findings support this conclusion:

- Positive trends in Tanzania's land law framework include the formal recognition of the legality of customary title and the reservation of land under the category of village land exclusively for Tanzanians. This accords greater protection over local land rights.
- The TIC's role as the gatekeeper for land acquisition by foreign entities is aimed at providing a further safeguard against improper acquisition of land by ensuring that only land designated for foreign investment is available for acquisition and provides a useful safeguard against loss of land by local landowners. Nonetheless, questions remain about how the TIC will itself acquire sufficient lands.
- Notwithstanding the TIC procedure, land is still acquired through direct negotiations between foreign investors and village landowners.
- Safeguards required to reinforce tenure rights for village landowners include legislative measures to support the recognition of existing title to land, and adequate and fair mechanisms for consultation and compensation, to reduce land alienation that leaves communities at a disadvantage.
- During acquisitions of village land, the law is silent or vague on the threshold and timing of consultations that must be held through the Village Assembly.
- Where an investment is abandoned, community members are often not allowed to access their (former) lands as the acquisition normally extinguishes their legal rights. The return of such (general) land to village land relies on the exercise of presidential discretion, and there needs to be greater clarity on how to invoke this discretion

<sup>135</sup> Section 20(2)

<sup>136</sup> Land Act 1999 (United Republic of Tanzania) s 20(5).

<sup>137</sup> Interview with Director of Investment Facilitation, TIC 31 January, 2014

<sup>138</sup> Interview with Director of Investment Facilitation, TIC 31 January, 2014

where the investor has not utilized the land, or no longer needs the land.

- The 2010 mining legislation significantly undermines the efficacy of safeguards under the Village Land Regulations and places considerable power in the hands of the minister to determine whether or not an investment should take precedence over pre-existing rights to land.
- The awareness of land policy and the Village Land Act is generally low among rural people as well as ward executive officers, village leaders, and village land committee members. Nonetheless, the radio has been identified as the most effective source of land policy information, especially for rural populations.
- During the negotiations between villagers and foreign investors, lands are usually undervalued, and agreements not formalized in writing render them unenforceable – and as a result promises of financial or social benefits are rarely met.

#### 4.4 Enforcement of environmental and social safeguards

The application of environmental and social safeguards is an important regulatory tool that can enhance realization of sustainable land-use investments, as these safeguards comprise a critical ingredient to achievement of environmental sustainability. The report of the Brundtland Commission, “Our Common Future”, linked enhanced environmental protection as “absolutely essential” to the alleviation of poverty (WCED 1987). It also fortified the inextricable link between environmental and social concerns, which must be considered hand-in-hand in order to produce effective and balanced outcomes.

In regulatory frameworks, environmental safeguards are implemented in many formats, but primarily with the object of enforcing the precautionary and polluter pays principles of environmental law. The 1992 Rio Declaration, for instance, urges this be undertaken through legal frameworks for internalization of environmental costs to ensure the polluter bears the cost of pollution,<sup>139</sup> and through the mainstreaming of EIAs for proposed activities that are likely to have a significant adverse impact on the environment.<sup>140</sup> The application of environmental

assessments, anchored in law, has emerged as a useful mechanism for structuring safeguards and pursuing sustainability in land-use activities. In Tanzania, legal and policy frameworks have been put in place to implement a system of EIA, audits and monitoring, as discussed below.

##### 4.4.1 The regulatory framework for environmental safeguards

The 1997 National Environmental Policy outlines Tanzania’s plan to attain sustainable development.<sup>141</sup> It aligns improved quality of life of its citizens and the eradication of poverty with improved environmental protection and lists the six major problems for urgent attention as: (i) land degradation; (ii) lack of accessible, good quality water; (iii) environmental pollution; (iv) loss of wildlife habitats and biodiversity; (v) deterioration of aquatic systems; and (vi) deforestation.<sup>142</sup> To realize the objectives of the policy, it advocates for improved public participation in environmental decision making, improved land tenure security and increased private sector involvement. It also seeks to integrate environmental considerations in sectoral planning, by outlining measures that should be taken in sectors such as agriculture<sup>143</sup>, energy<sup>144</sup>, mining<sup>145</sup> and forestry.<sup>146</sup>

The 2004 EMA is Tanzania’s framework environmental management legislation. EMA was enacted to mainstream environmental considerations into government planning and regulate the impact of activities on the environment. As previously mentioned, at section 232, it clearly asserts that EMA provisions are superior to those of any other law on matters relating to environmental management. It is notable, for instance, that this superiority clause extends to management and utilization of land, with EMA stipulating that “where there is any conflict on environmental aspects of land management”, its provisions shall prevail.<sup>147</sup>

141 Its role in climate change governance is expressly recognized under the National Climate Change Strategy 2012, Executive Summary, and p 47.

142 Section 11, the National Environmental Policy, 1997

143 Section 46, the National Environmental Policy, 1997

144 Section 52, the National Environmental Policy, 1997

145 Sections 53-4, the National Environmental Policy, 1997

146 Section 59, the National Environmental Policy, 1997

147 Section 50

139 Principle 16

140 Principle 17

EMA states that every person living in Tanzania shall have a general right to a clean, safe and healthy environment.<sup>148</sup> The Act also imposes a responsibility on all land users to use land in an “environmentally sustainable manner.”<sup>149</sup> The precautionary principle, the polluter pays principle, and the principles of public participation are established as key precepts guiding the implementation of the Act.<sup>150</sup>

Institutionally, EMA is administered at Cabinet level by the minister responsible for environment, while the NEMC carries out day-to-day implementation as set out in EMA provisions:<sup>151</sup> undertake environmental audits (EA); carry out surveys which will assist in the proper management and conservation of the environment; undertake and environmental research and disseminate research findings; review and recommend the approval of environment impact statements; and enforce and ensure compliance of national environmental quality standards.

NEMC is responsible for oversight and implementation of environmental and social safeguards set out in EMA, in this case the strategic environmental assessments (SEAs), and for EIAs. According to EMA,<sup>152</sup> it is mandatory to undertake a SEA with respect to every bill that is proposed for enactment by Parliament, where the eventual law may impact the management, conservation and enhancement of the environment or sustainable management of natural resources. The SEA is required in order to assess the likely impact that implementation of the law will have on the environment. In addition to strategic assessment of the environmental impacts of bills, the law also requires that an SEA is undertaken with respect to proposed subsidiary legislation (regulations), public policies, programs and development plans in order to examine their likely effects on the environment. The focus of this research is however limited to the utility of EIA.

148 Environmental Management Act 2004 (United Republic of Tanzania) s 4

149 Environmental Management Act 2004 (United Republic of Tanzania) s 72

150 Environmental Management Act 2004 (United Republic of Tanzania) s 5

151 Environmental Management Act 2004 (United Republic of Tanzania) s 16

152 Section 104

#### 4.4.2 Environmental impact assessments

The framework environmental law in Tanzania requires that a project-based EIA is undertaken with respect to every project or development activity (including investments) that fall within the specified ambit. Section 81 of the EMA provides that a project proponent will be required to undertake, at their own cost, an EIA where they propose to undertake:

- “(a) any activity out of character with its surroundings;
- (b) any structure of a scale not in keeping with its surroundings; and
- (c) major changes in land use.”<sup>153</sup>

The specific categories of activities that qualify for an EIA are set out in the Third Schedule to EMA and encompasses many potential investment projects in the mining, energy, agricultural or forestry sector. These include: mining, including quarrying and open-cast extraction; forestry-related activities; agriculture, including animal production; electrical infrastructure; processing and manufacturing industries; and management of hydrocarbons.

The Environmental Impact Assessment and Audit Regulations, 2005 provide further guidance on the processes for EIAs. A developer or proponent of a project must prepare a project brief giving detailed information regarding, *inter alia*, the nature and location of the project and the economic and sociocultural impacts to the local community and the nation in general.<sup>154</sup> The developer may be asked to undertake an EIA where the project brief indicates that there will be significant environmental impact as a result of the proposed activities.<sup>155</sup> Projects are categorized into type A or B based on their likelihood of having significant adverse environmental impacts.<sup>156</sup> For all projects listed within type A, an EIA is mandatory. The eventual decision on whether to approve an EIA is based on the environmental impact statement (EIS) that is submitted to the minister for consent.

153 Third Schedule, the Environmental Management Act, 20 of 2004

154 Regulation 6, The Environmental Impact Assessment and Audit Regulations, 2005

155 Section 11, The Environmental Impact Assessment and Audit Regulations, 2005

156 First Schedule, The Environmental Impact Assessment and Audit Regulations, 2005

Once an EIA has been undertaken, the project proponent has to prepare an EIS, which they submit to the NEMC for review. An important component of the EIS is the environmental management plan, as well as evidence of public consultations in the proposed project area.

In consultation with the NEMC, the developer is required to publicize the project and its anticipated effects and benefits through strategic public advertisement in public places and in the media, in some cases both in Kiswahili and English.<sup>157</sup> It is also required to hold public meetings with affected parties and communities to explain the project and effects “where appropriate”. The regulations seem to therefore take into consideration that in some cases, public meetings may not be necessary. However, in cases where there has been no public hearing during the EIA process, the NEMC may, after receiving the EIA, decide to hold a public hearing if it considers it necessary, based on the environmental implications or the written comments received.<sup>158</sup> In all cases, developers should also be available to receive oral or written comments from the public.

#### 4.4.3 Analysis of the practical implementation of EIA regulations

In 2010, NEMC released a report detailing the number and nature of EIA and EA certificates that had been issued under the EMA since its enactment in 2004 (Figure 10; NEMC 2010). The report indicated that between July 2005 and May 2010, NEMC had submitted 274 recommendations to the minister for project-based EIA certificates. Among the 274 recommended projects, 211 projects were approved by the minister and hence issued with EIA certificates by May 2010. In the same period, NEMC reviewed a number of audit reports and submitted 13 to the Minister for EA certificates. Nine projects were approved by the minister and issued with EA certificates by May 2010. Considering the broad scope of activities that, in theory, require an EIA and EA in terms of the legislation, it appears the compliance levels are rather low. This could be harmful especially when many investments include activities that could significantly impact the environment and even society through land acquisition.

<sup>157</sup> Regulation 17, The Environmental Impact Assessment and Audit Regulations, 2005

<sup>158</sup> Section 26, The Environmental Impact Assessment and Audit Regulations, 2005

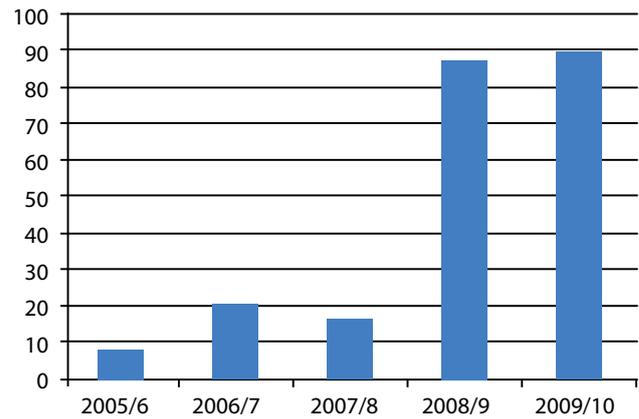


Figure 2. EIA certificates issued each year

Source: NEMC, 2010

Research findings published by Hussein Sosovele appear to agree with the NEMC report, as he reports

about 112 EIAs were conducted between 2005 and 2009 in Tanzania. During this period, about 30% of all the EIAs conducted were in the energy sector; 21% in tourism and manufacturing sectors and 18% in mining sector. Other sectors that invited more EIAs include infrastructure and communication that had 17% of total EIAs (especially mobile phone towers); construction industry including roads that attracted about 8% of the total EIAs, while forest and fisheries attracted only 3% of all the EIAs conducted during that time. (Sosovele 2011, p. 128)

However, this study also found that the number of building permits issued by Dar es Salaam municipal authorities between 2005 and 2009, without EIAs, was very high. For example, “about 576 construction permits were issued in Ilala; 2,843 in Kinondoni and, 467 in Temeke Municipal Councils albeit without any EIAs being conducted for those projects” (Sosovele 2011, p. 128). These decisions were in violation of the EIA Regulations, which affirm that this type of construction project (type A) requires a mandatory EIA, as described above.

Further evidence of non-compliance by government officials was also found where the central government undertook construction projects that fell within the mandatory EIA categories, without following the EIA process. “For example, several government owned multi-story buildings were built in Dar es Salam between 2005 and 2009 without having EIAs done prior to their construction” (Sosovele 2011, p. 128). Lack of awareness of legal requirements by

decision makers was found to be one of the primary reasons for this lack of compliance, with 40% of all municipalities in Dar es Salaam admitting to having no basic knowledge of the EMA or the EIA and Audit Regulations, 2005 (Sosovele 2011, p. 130). The report concludes that lack of accountability, due to low awareness, rather than inadequacy of the legislative frameworks, was the root cause of these violations (Sosovele 2011, p. 130).

It is important to note that the informational requirements of an EIA and EIS in Tanzania are quite detailed and progressive, going beyond the purely environmental impact and requiring an evaluation of the social and cultural impacts potentially involved. The efficacy of these provisions under the law are, however, highly dependent on the level of enforcement and monitoring to ensure compliance with all requirements. Reports have described implementation failures due to political interference, lack of cross-agency coordination and lack of adequate financial resources (German et al 2013, p. 13).

#### **Example 14. Inadequate EIA process: Rufiji Delta prawn farming**

The Rufiji Delta prawn farming investment proposal by the African Fishing Company Ltd. (AFC), a subsidiary of Tannol Holding Ltd. of Korea, points to political will resulting in the revoking of a license for a significant investment that posed a major risk of environmental harm (Katima 2003). A review of the EIA, including public hearings, found that the EIA report was heavily biased in favor of the project, for a variety of reasons. Firstly, the project was planned to be located in a Mangrove Forest Reserve and Mafia Island Marine Park, projects on which millions of dollars had already been spent. In addition, the plan was to discharge untreated effluents into the rivers that drain into the Mafia channel and Bwenjuu Island reefs, including the release of untreated effluents containing silt, suspended solids from the remains of feed and pond sediments, dissolved chemicals from fertilizers, prawn feed, medicines (including antibiotics) and other nutrients. Finally, the potential environmental impacts of the Rufiji Delta prawn farm were found to conflict with existing and planned land-use plans for the Rufiji basin and Mafia Islands. Regarding social impacts of the planned project, the rights of occupancy had been transferred to the developer without recognizing the customary rights of smallholders (Katima, 2003).

It is important to highlight that a positive trend of political and business will has begun to appear. For instance, the SAGCOT project, through the SAGCOT Investment Blueprint, clearly stipulates that all investments supported by SAGCOT will be required “to undertake thorough social and environmental impact studies, as well as taking appropriate actions to mitigate risks” (SAGCOT 2011, p. 47). Though this document is not of legal character and is non-binding, it gives greater prominence to the importance of the EIA process already established under the Act.

#### **4.4.4 Qualifications and certification of EIA Experts**

The EMA sets out strict rules to guide who is permitted to undertake an EIA.<sup>159</sup> Experts or firms of experts must be registered by NEMC following eligibility requirements outlined in the Environmental (Registration of Environmental Experts) Regulations, 2005.<sup>160</sup> The regulations establish an Environmental Experts Advisory Committee, which advises NEMC on such matters as registration of experts.<sup>161</sup> An applicant for the title of environmental expert who is a Tanzanian citizen must satisfy NEMC of the following:<sup>162</sup>

- a first degree in a relevant discipline or its equivalent from a recognized university or institution;
- three references who meet the minimum requirements as determined by NEMC;
- no previous convictions of a professional or disciplinary offence.

The requirements for foreigners applying to be environmental experts are more stringent and require:<sup>163</sup>

- proof of certification or accreditation from other competent certification bodies;

<sup>159</sup> Environmental Management Act 2004 (United Republic of Tanzania) s 83

<sup>160</sup> G.N. No. 348 of 2005: the Environmental (Registration of Environmental Experts) Regulations, 2005 outlines the certification, registration and disciplinary processes pertaining to EIA experts.

<sup>161</sup> Section 5, Environmental (Registration of Environmental Experts) Regulations, 2005

<sup>162</sup> Section 17, Environmental (Registration of Environmental Experts) Regulations, 2005

<sup>163</sup> Section 21, Environmental (Registration of Environmental Experts) Regulations, 2005

- at least 5 years' experience in conducting EIAs;
- two abstracts of previous EIAs or audits conducted during the last 3 years;
- a CV and at least three references, one of whom is registered in mainland Tanzania;
- the prescribed application fee.

Upon receipt of this information, NEMC has up to 60 days in which it must investigate and satisfy itself that the applicant meets the criteria, after which it must approve or reject the application.<sup>164</sup> Successful applicants are granted certificates indicating that they are a 'Certified Environmental Assessor' or 'Certified Environmental Auditor'. A Register of Environmental Experts maintains a list of all registered environmental experts and firms of environmental experts, and makes them available to the public.<sup>165</sup> Certificates are renewed annually on payment of a prescribed fee.<sup>166</sup>

#### 4.4.5 Public participation in environmental decision making

Public consultation is an essential mechanism through which stakeholders can be made aware and can have an improved understanding of a potential investment or activity. It creates a forum through which interested parties, particularly those affected by the activity, can ask questions and voice opinions on the development and implementation of the proposed investment. Factors such as adequate representation at consultations, timely dissemination of information and awareness of cultural sensitivities, can significantly impact the effectiveness of the public consultation process. Ultimately, the process ought to facilitate individuals whose way of life and activities may be impacted by the potential development, to have an impact on the decision taken by public authorities to approve or reject a proposed development. The Rufiji Delta prawn farm investment, whose license was revoked after public consultations, provides a good example of how public consultations can impact decision making.

The right to public consultation and access to information is guaranteed in environmental decision

<sup>164</sup> Section 19, Environmental (Registration of Environmental Experts) Regulations, 2005

<sup>165</sup> Section 22-3, Environmental (Registration of Environmental Experts) Regulations, 2005

<sup>166</sup> Section 29, Environmental (Registration of Environmental Experts) Regulations, 2005

making by the EMA.<sup>167</sup> The 2001 Environmental Impact and Audit Regulations clearly set out the procedure for public participation and consultations during the development of an EIA. At the EIA stage, the NEMC and the proponent are both required to facilitate consultation with all persons likely to be affected by the proposed project.<sup>168</sup> This requires the proponent to: publicize the project and its anticipated effects and benefits using posters; publish a notice for two successive weeks in a newspaper with national circulation; advertise on national radio; hold public hearings; and ensure minutes of the public meeting are accurately recorded.<sup>169</sup> In some cases, notices are required to be in both in Kiswahili and English.<sup>170</sup> Notices are required to be sent out at least 1 week prior to the meetings. Oral and written comments and minutes of the meeting are attached as an annex to the EIS, once the EIA process is complete.

The EIS must be accompanied by a non-technical executive summary in both English and Kiswahili, stating key findings, conclusions and recommendations of the assessment.<sup>171</sup> This provision ensures, to a limited extent, that the EIS is accessible to the public, even where they may lack technical capacity to understand its full contents. NEMC has the discretion to hold public hearings on the EIS where it considers it necessary to "make a fair and just decision" or "for the protection of the environment."<sup>172</sup> The regulations provide no further guidance on this broad discretion and should NEMC decide that a further public hearing is unnecessary, the public will be precluded from the opportunity to make oral representations on the content of the EIS. However, the EMA creates another mechanism to receive public input by requiring the NEMC to solicit oral or written comments on the EIS of the people who will be affected.<sup>173</sup> Notwithstanding this

<sup>167</sup> Environmental Management Act 2004 (United Republic of Tanzania) s 178.

<sup>168</sup> Section 17, The Environmental Impact Assessment and Audit Regulations, 2005

<sup>169</sup> Regulation 17

<sup>170</sup> Section 17, The Environmental Impact Assessment and Audit Regulations, 2005

<sup>171</sup> Section 19, The Environmental Impact Assessment and Audit Regulations, 2005

<sup>172</sup> Section 26, The Environmental Impact Assessment and Audit Regulations, 2005

<sup>173</sup> Environmental Management Act 2004 (United Republic of Tanzania) s 7.

provision, NEMC still has considerable discretion in determining who it considers to be within the category of “people who will be affected.” The provision does not create an express opportunity for all members of the public to be consulted.

Where NEMC decides to host a public consultation, it must publicize the meeting in the same manner as outlined above. The regulations require the public consultations to be conducted at a venue convenient and accessible to people who are likely to be affected by the project. The outcome of the public hearing is contained in a report submitted to NEMC after the proceedings. Ultimately, the Minister of Natural Resources and the Environment makes the final decision on whether to approve the EIS and issue the EIA certificate.<sup>174</sup>

In a review of EIA processes in Tanzania in 1998, Ralph Mwalyosi found that public participation was minimal and superficial (Mwalyosi and Hughes 1998). However, the research also established that public participation could be beneficial as it can improve project design and sustainability, and lead to better working relationships with local people (Mwalyosi and Hughes 1998). Since the introduction of the EMA in 2004 establishing EIAs as a legal requirement for certain activities, no similar reviews have been carried out to determine the success of the implementation of this law.

#### 4.4.6 Environmental audit and monitoring

The EIA and Audit Regulations also provide EAs to be performed on certain projects.<sup>175</sup> According to NEMC, an EA is an independent and objective-oriented examination of whether the project is in compliance with expected standards (NEMC 2010). An Environmental Impact Audit compares the impacts predicted in an EIS with those that actually occur after implementation of the project, while an Environmental Management Audit examines whether the project is in adherence to plans, mitigation measures and general compliance of terms and conditions. EA can therefore be an important tool to assist authorities in determining whether a project conforms to the approved social and environmental

174 Sections 31, 34, The Environmental Impact Assessment and Audit Regulations, 2005

175 Regulation 44, The Environmental Impact Assessment and Audit Regulations, 2005

management plan, and provides a mechanism to learn from experience and to refine the design and implementation procedures of a project.

After a project has undergone an EIA, the developer is required to undertake an environmental audit within 12 months after commencement of operations or 24 months after completion of the project, whichever is earlier.<sup>176</sup> The environmental auditor should ensure that an appraisal of all the project activities, including the production of goods and services, is carried out, and should give adequate consideration to environmental regulatory frameworks, environmental health and safety measures and sustainable use of natural resources. In addition, the developer is required to undertake an annual self-audit,<sup>177</sup> and NEMC may carry out an environmental control audit at its discretion, to examine whether there is compliance with the environmental and social management plan.<sup>178</sup>

NEMC in its 2010 report on EIA certificates indicates that an EA should be undertaken in most (not all) cases where EIA certificates are issued. Where this was the case, the specific condition would require the project proponent to “prepare monitoring and audit reports and report to the Council and the District (or City) Environmental Management Officer” (NEMC 2010).

#### 4.4.7 Low public awareness and lack of information access

Public awareness is an integral and important aspect of sustainable development and natural resources management as it espouses the subsidiarity principle set out by Principle 10 of the 1992 Rio Declaration. An educated and aware public is potentially able to make informed decisions on matters that affect them. Access to information is a critical cog, as without information, neither public consultations nor awareness will have the desired impact on the threshold of decision making.

176 Regulation 46(5) The Environmental Impact Assessment and Audit Regulations, 2005

177 Regulation 49 The Environmental Impact Assessment and Audit Regulations, 2005

178 Regulation 50 The Environmental Impact Assessment and Audit Regulations, 2005

## Access to environmental information

Access to environmental information is an important tenet of public participation in environmental and natural resource decision making. It enables citizens to make informed personal choices and encourages improved performance by industry and government by facilitating increased transparency and public scrutiny.<sup>179</sup> The EMA establishes an explicit freedom of access to environmental information,<sup>180</sup> such that the negative impact of the absence of an overarching freedom of information law is mitigated where the EMA applies. However, the right is limited to publicly held information and further subject to multiple restrictions, including accessing information affecting public order or national security or impacting trade or industrial secrets, and where the request is vague or manifestly unreasonable. These grounds are subject to interpretation and could be applied restrictively without subsidiary legislation to guide implementation in a manner that upholds the intention of the law.

The EIA and Audit Regulations, 2005 further support the Act's provision and establish that any project brief, EIS, terms of reference, public comments, report of a person presiding at a public hearing, EIA statement, decision letter or any other information submitted to the Council under these regulations, shall be public documents. On one hand, the regulations open these important documents to public scrutiny by establishing this broad provision. On the other hand, it undermines the effectiveness of the provision by requiring NEMC to grant persons wishing to consult any such document access to such documents "on such terms and conditions as the Council considers necessary."<sup>181</sup> This qualification could seriously limit the scope of the initial provision, if NEMC decides for its own reasons that such access is "unnecessary". If the Regulations recognize the documents as public, they should be available to be accessed without restriction and only subject to limitation on the basis of generally recognized terms, such as confidentiality.

179 Environmental Management Act 2004 (United Republic of Tanzania) s 7.

180 Environmental Management Act 2004 (United Republic of Tanzania) s 172.

181 Section 39, The Environmental Impact Assessment and Audit Regulations, 2005

## Freedom of information laws

Access to information in Tanzania is secured under the Constitutional Bill of Rights, which guarantees that every person has a right to seek, receive and/or disseminate information, as well as to be informed at all times of various important events pertaining to the life and activities of the people and also to issues of importance to the society.<sup>182</sup> The right extends to freedom of opinion and expression and includes the freedom to communicate with protection from interference. The breadth of this right is therefore wide, but quite non-specific. It does not, for instance, provide a specific entitlement for people to seek information from the state or from private individuals, such as when that information is necessary for fulfillment of fundamental rights. Similarly, the constitution does not demarcate the exceptions whereby access to information could be limited, such as protection of certain proprietary rights.

Other than these constitutional provisions, Tanzania does not have a specific legislation on the freedom to access to various types of information. A 2006 Draft Freedom of Information Bill<sup>183</sup> proposes to set up administrative mechanisms to govern the procedure of access to information. A 2011 Media Institute of Southern Africa report suggests that there is no political will to enact a freedom of information law, as the government did not take action to promote the draft Bill proposed by stakeholders (Article 19 and Media Institute Of Southern Africa, 2008).

### 4.4.8 Key findings

Environmental assessment will continue to be a useful safeguard in Tanzania where project proponents comply with the terms of the license and NEMC undertakes continuous enforcement and monitoring of the investment, through statute-mandated EA and inspections. Overall, however, the value of the environmental assessment as a social safeguard to protect the community interests in environmental protection, revolves around the effective execution of public participation, especially through consultation and access to information:

182 The Constitution of the United Republic of Tanzania of 1977 (as last amended by Act No. 1 of 2005) (United Republic of Tanzania) s 18.

183 United Republic of Tanzania. 2006. *Draft Bill For The Freedom Of Information, Draft No. 4.*

- The requirement to undertake an EIA before the authorization of a proposed activity is a fundamental safeguard to good governance, transparency and informed decision making.
- An EIA requires that the environmental and social impacts of a potential activity are outlined and actions to mitigate or eliminate these impacts are fully considered. It also provides an important information generation tool whereby essential information regarding the potential activity can be brought to light and properly considered in deciding whether or not an activity should take place.
- If used effectively, the EIA process acts as a filter through which potential activities can be scrutinized and their benefits weighed against their potentially negative environmental consequences. For that reason, it is an effective and important mechanism to facilitate sustainable investments.
- The value of the environmental assessment mechanism, as an environmental and social safeguard, will largely revolve around its upholding of the rule of law, especially ensuring that technical decisions of the EIA experts and public officials are objective.
- The training and certification of EIA experts is therefore an important factor for the law to govern, including facilitating ongoing capacity building to ensure a wider pool of experts is available. Similarly, a need for continuous training and certification of experts is necessary to keep refining the skills and knowledge.
- Other than the constitutional provisions, Tanzania does not have any specific legislation on the freedom of access to various types of information.

The EIA and Audit Regulations have established that any project brief, EIS, ToR, public comments, report of a person presiding at a public hearing, decision letter or any other information submitted to NEMC are all public documents accessible to all.

# 5 Conclusion

The forgoing research demonstrated that although national objectives desire sustainable development, significant changes in law, policy and implementation are required to ensure land-based investments are sustainable. Notably, it is clear that certain primary elements contribute to making investments sustainable within the Tanzanian regulatory framework. These include the use of economic incentives for businesses in order to attract and retain investments. This will, however, only contribute to making an investment sustainable where the incentives uphold socioeconomic and environmental safeguards including co-benefits. The economic incentive extended to investors must also not be perverse. In addition, the integration and strengthening of rules that protect the socioeconomic interests of local communities in land, which is often their most fundamental factor of production. This implies that rules of law, and their implementation respect local community land rights, under village land legislation, and provision of equitable safeguards for resettlement and compensation. The question of reversion of the land rights to the original holders (under village land tenure) is critical, especially where the land is no longer required for the particular investment.

It is also important to ensure that there is an overall emphasis on the application of appropriate governance and rule of law mechanisms as an anchor to ensure all other elements are firmly grounded and implemented. This is particularly critical in Tanzania because in a number of instances reviewed in this report, laws, policies, regulations and institutions have been put in place, but shortcomings arise in implementation. In addition, there is a need to focus on strengthening rule of law by addressing certain areas that need to be revised, or strengthened, including participatory procedures. A case in point is the need to improve awareness of the EIA and Audit Regulations and procedures in scrutinizing proposed activities (including potential alternatives), and ensuring the value of environmental management plans in providing guidance on compliance by

project proponents. Similarly, it is necessary to enhance meaningful public consultation processes beyond the EIA process. This can be achieved by improving communication with the public, especially rural communities and local government, regarding the existing laws and regulations through accessible means such as rural radio services and simplified documents.

Overall, the research has disclosed that there is a need for prioritized legal reforms in Tanzania. The proposed areas of reforms spread across the agriculture, land, forestry, mining and energy sectors examined in this report. Such reforms include clarifying the rules governing participatory decision making with respect to land alienation, especially village land. It is also necessary to review the mining legislation to obviate the risks of circumventing important safeguards to security of land tenure. In addition, it is necessary to implement legal reforms that clarify benefit-sharing arrangements for PFM and JFM implementation. The research has also highlighted the need to introduce facilitative regulation of the charcoal trade in the interests of all stakeholders involved in the charcoal value chain. Equally critical is a need to streamline the regulations in order to enhance and facilitate investments by small-scale power producers.

These reforms are required across a number of sectoral areas that impact land-based investments, and are necessary to enhance efforts aimed at ensuring that investments made in these sectors are sustainable. Certainly, beyond the role of the law, there are other important ingredients for sustainable investments, such as political will, building capacities and adequate resources to design and implement laws. Similarly, the knowledge and understanding of the importance of sustainable development among both governments and citizens is very critical. While this report does address these issues, the principal focus of this research project was on the regulatory framework, and its ability to act as an enabler for land-use investments to be sustainable.

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# Annexes

## Annex 1. Project description

The IDLO and the Center for International Forestry Research (CIFOR) have identified the growing numbers of investments in land-use activities, and concerns about the long-term sustainability of such investments as a timely legal problem for sub-Saharan African countries. Whether the wealth generated by investments benefits the local population and upholds the health of the environment depends in large part upon the rigor of legal and institutional frameworks. Rule of law is essential to both achieving sustainable development and addressing the challenges arising from investments. The rule of law embodies the presence and application of universal principles of equality, good governance, citizen empowerment and participation in a national governance system. A country that has in place legal and governance systems that are founded on the rule of law enhances the possibility of fulfilling its internal and external obligations, in exercise of its sovereignty. An examination of this dynamic relationship between land-use investments and rule of law is therefore necessary, in order to inquire into what is required for a national governance system to yield sustainable land-use investments. The current research was framed to evaluate the dynamic in three sub-Saharan African countries that fulfill unique criteria.

Tanzania, Mozambique and Zambia were chosen as the target countries for broader research project, to which this Tanzania report is one part, because of their common experiences with rising land-use investments over the past decade. Although fairly distinct, the three legal jurisdictions are geographically contiguous and have a relatively comparable state of socioeconomic development, which relies on land-use and natural capital. While Tanzania and Zambia follow a common law legal system drawn from common British colonial legacy, each has in place specific national nuances. Mozambique, as a legacy of Portuguese colonial rule, has a distinct civil (as opposed to common) law legal system. The three countries have adopted distinct approaches to frame customary law rights and institutions, with higher visibility in Zambia and Tanzania for traditional systems, and more formal systems in Mozambique. Unlike Zambia, Tanzania

has modified the customary rights and institutional system, especially from the Ujamaa era social engineering, resulting, for instance, in the statute-based village councils, assemblies, and village land tenure, which is analysed in this report. The three legal systems therefore have sufficient commonalities and differences to allow a comparative assessment. A cross-country synthesis report of the findings from each of the three countries has therefore been developed as an output of this research. This is in addition to country-specific legal assessment reports, such as the current one, which focuses exclusively on sustainability of land-use investments in Tanzania.

This research, therefore, provides an analysis of the major challenges facing Tanzania in regulating the sustainability of land-use investments. It also provides key findings on how to strengthen legal frameworks to facilitate investments that also produce jobs and other opportunities for wealth-creation for local citizens, and that support the growth of a sustainable, green economy.

### Key research questions

1. What is the nature and status of legal frameworks governing land-based investments in the key sectors of energy, mining, forestry and agriculture in Tanzania?
2. How can the legal framework of Tanzania be strengthened to effectively regulate sustainable, low-carbon investments that adhere to social and environmental safeguards?

The aim of the research project was to establish country-specific information on the gaps, opportunities and challenges in existing legal and regulatory frameworks, to provide information and impetus for possible future legal reform. The project did not seek to investigate in detail the economic aspects of the regulatory framework that may impact sustainable investments, such as banking laws, business licensing or investment treaties. For a full discussion of these aspects, see Cotula (2014).

## Annex 2. Research methodology

The project methodology was designed to assess:

1. The legal framework behind large-scale land-use investments in the key sectors of energy, mining, forestry and agriculture;
2. The existence of environmental and social safeguards to ensure sustainability of investments;
3. The implementation gap between the written law and actual implementation through practices on the ground.

The methodology designed to achieve these aims involves two phases.

The first phase involved a desk-based content analysis of key policies and legislation within each of the four key sectors: energy, mining, forestry and agriculture. This analysis also included a literature review, building evidence from published reports and case studies on investments and land acquisition processes in practice. The desk-based analysis led to an identification of primary indicators by which to assess enabling legal and institutional frameworks for sustainable land-use investments. They are listed as follows:

- **Incentives in the legal framework** that support, or are incompatible with, sustainable investments;
- **Property rights and security of customary land tenure**, including social safeguards for local community land holders;
- **Environmental and social safeguards**, including assessment, management and monitoring systems;
- **Public participation**, including access to information.

In the second phase, semi-structured key informant interviews with government agencies, private investors undertaking 'best practice' investments, and civil society and academia were undertaken to test that the primary indicators identified

accurately reflected the key legal issues for sustainable investments in Tanzania. The interviews also led to an understanding of practices on the ground. Interview questionnaires were limited to the parameters of the identified primary indicators identified above. The collection of a broad range of stakeholder views ensured the collection of a strong set of information, from which to draw initial recommendations on the way in which legal frameworks could be strengthened to support sustainable, low-carbon investments in practice.

A final synthesis report has been prepared; extracting principles of crosscutting application between the three target countries complements the three assessment reports. The methodology facilitated this systematic, crosscutting analysis through the use of standard templates and assessment tools in all three countries.

IDLO collaborates closely with in-country legal experts and researchers when implementing projects and programs. For this project, an in-country team, comprised of a Legal Expert and law students in the target countries, supported the primary research. The in-country team also participated in meetings, workshops and interviews with key informants, as well as the final validation workshops.

The research was limited by a number of factors. First, the research focuses on the legal system of mainland Tanzania, and interviews conducted focused on the institutional structures there. Second, the research team was unable to conduct one-on-one interviews with individual communities or community members, due to the limited time and resources available. Instead, the research rested heavily upon interviews with civil society and government representatives, as well as secondary literature from published reports and case studies on impacts from investments in the target countries.

### Annex 3. International standards for sustainability related to sustainable land-use and sustainable investments

Sustainability Standards	Viable financial investment	Equitable distribution of wealth	Uphold human rights	Provide co-benefits to local communities	Promote public participation	Follow resettlement and compensation procedures	Open access to information	Environmental management and assessment	Internalize negative environmental externalities	Low-emission and climate-resilient pathway
Post 2015-Sustainable Development Agenda <sup>a</sup>	X	x	X	x	X		X	x	x	x
OECD Guidelines for Multinational Enterprises	x		x	x	x		x	x		x
UN Guiding Principles on Business and Human Rights			x		x					
Aarhus Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters					x		x	x		x
UN Global Compact			x					x	x	x
UN Framework Convention on Climate Change			x	x	x	x		x		x
Winnipeg Trade and Sustainable Development Principles		x			x		x	x	x	
IFC Sustainability Standards	x		x	x	x	x	x	x		x
Forest Stewardship Council		x	x	x				x		
Extractive Industries Transparency Initiative					x		x			

<sup>a</sup> Open Working Group on Sustainable Development Goals (2014)

## Annex 4. Key informants consulted in Tanzania

No.	Name	Institutional Affiliation
1.	Mr. Charles Meshack	Tanzania Forest Conservation Group
2.	Ms. Rahima Njaidi	Mtandao wa Jamii wa Usimamizi wa Misitani Tanzania (MIJUMITA)
3.	Eng. James Ngeleja	National Environment Management Council (NEMC)
4.	Dr. Rugemeleza Nshala	Lawyers Environment Action Team (LEAT)
5.	Ms. Nakuala Senzia	Tanzania Investment Centre
6.	Ally Mwakibolwa	National Development Corporation
7.	Ms. Esther Mwaigomere	National Development Corporation
8.	Mr. Edward Ishengoma	Assistant Commissioner, New and Renewable Energy Agency
9.	Mr. Deus Magessa	Principal Environmental and Safety Officer, EWURA
10.	Mr. Gerald Maganga	Technical Manager, Petroleum - EWURA
11.	Mr. Ng'anzi Jumaa Kiboko	Principal Commercial Officer, EWURA
12.	Mr. Boniface Gissima Nyamo-Hanga	Technical Assistance Manager, REA
13.	Mr. Dancun Rusule	Social and Environmental Officer, REA
14.	Mr. Juma Mgoo	Chief Executive Officer, TFS
15.	Mr. Gedi Linus	Chairman, Tanzania Honey Council



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The International Development Law Organization (IDLO) and the Center for International Forestry Research (CIFOR) assessed the legal frameworks that govern land-use activities and investments in Tanzania. The policy, institutional and legal frameworks are well developed although implementation and enforcement remains weak due to ambiguities in the law and a general lack of supportive incentives. This Legal Assessment report for Tanzania examines four key challenges to the attainment of sustainable land-use investments. These comprise

- **Enforcement of environmental and social safeguards**

Tanzania has made progress in implementing the Environmental Management Act by ensuring greater compliance with the Environmental Impact Assessment regulations although exceptions exist in the construction sector, and mining legislation that often enables the government to circumvent important land tenure safeguards.

- **Incentives for sustainable investments in the legal framework**

A lack of incentives exists despite the creation of the Tanzania Investment Centre, the adoption of an Investment Guide in 2013, and the incorporation of sustainability considerations into laws and policies governing investments in the agriculture, energy, and forestry and mining sectors.

- **Land tenure security**

Tanzania's land law framework now includes formal recognition of customary title and the reservation of land under the category of village land exclusively for Tanzanians although improvements are still needed in terms of processes of consultation and compensation.

- **Public awareness and lack of access to information**

Awareness of natural resources and investment policies, legislation and regulations is generally low amongst rural communities as well as Ward executive officers, village leaders and village land committee members. Rural radio represents their most important source of information.



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