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**Land Tenure Policy Implications in  
Tanzania (EA) on Small Scale Investors**

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## Abbreviations

BRELA	Business Registrations and Licensing Agency
CBD	Central Business District
CBO	Community based Organization
CCRO	Certificates of Customary Rights of Occupancy
CPIA	Country Policy and Institutional Assessment
DSE	Dar es Salaam Stock Exchange
FDI	Foreign direct Investment
FPI	Foreign portfolio Investment
GCR	Global Competitiveness Report
GDP	Gross domestic product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GNI	Gross National Income
IIED	International Institute for Environment and Development
KDA	Kigamboni Development Authority
KSCL	Kilombero Sugar Company Ltd.
M&A	Mergers & Acquisitions
MIT	Ministry of Industry and Trade
MLHHSD	Ministry of Lands, Housing and Human Settlements Development
NGO	Non – Governmental Organization
NHC	National Housing Corporation
NSSF	National Social Security Fund
ODA	Official Development Aid
OECD	Organization for Economic Cooperation and Development
SULGO	Support to Local Governance Program
TBA	Tanzania Building Agency
TIC	Tanzania Investment Centre
TRA	Tanzania Revenue Authority
TZS	Tanzania shilling
UNCTAD	The United Nations Conference on Trade and Development
URT	United Republic of Tanzania
VAT	Value added tax

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## **Executive Summary**

This Thesis is meant to contribute to the very lively current debate on land tenure policy and its implications for small scale investors in Tanzania.

Rapid growth rates such as elevated GDP and constantly increasing FDI are slowly pushing Tanzania into the focus of international operating companies looking to diversify their assets and searching for new opportunities. The government of Tanzania is making correspondent efforts to support these activities in order to promote economic development and growth to meet Millennium goals and reduce poverty. By promoting correspondent incentives to the investors, it has provoked disputes concerning land tenure. As there is a vast majority of the Tanzanian population living in rural areas and providing for themselves through subsistence agriculture, the implementation of land tenure policies has direct impacts on the rural socioeconomic state of the population.

The legal framework wherein important Acts have been recently revised provides a solid and stable base for such development. The Land Tenure Policy, The Land Act, The Village Land Act, The Business Act, only to name a few, have been carefully revised and enacted. Complications have arisen when applying the correspondent laws to the preexisting social and economic structure, which is heavily divided between more informal extralegal and formal legal sectors. Even though about 90% of the Tanzanian citizens are somehow involved in the extralegal sector, there is hardly any visible contribution to the national economy and a very low accountability for its involved actors before court. Disputes arising between parties regarding so called extralegal and legal assets such as land, provoke unequal treatment mostly toward the socially disadvantaged by, for example, losing their land, property, and small business ventures. A proper compensation framework applicable on regional or even national basis is widely missing and therefore property or land claims are not properly answered for the most part.

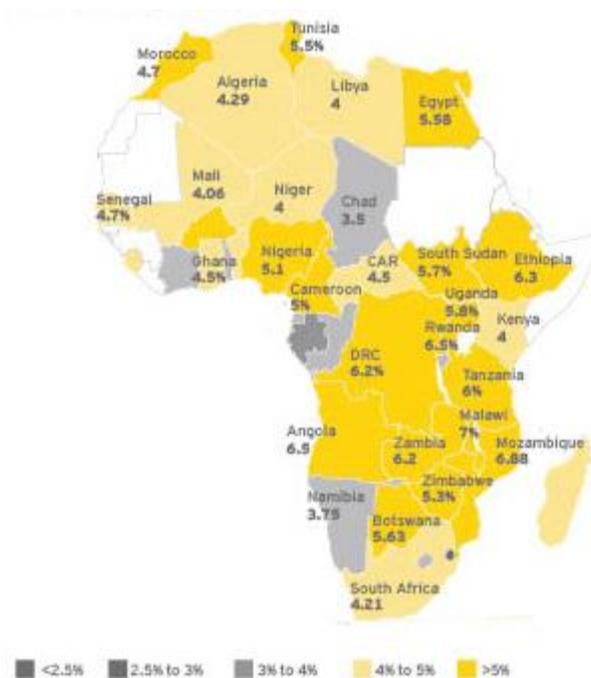
To face such disputes caused by centralized decision making and to provide a sustainable future grid for investment, the implementation of various possible amendments should be considered by the national and the local government. Potential Top – Down as well as Bottom – Up scenarios should support the local small scale land holders in their daily activities and encourage local investment. The government as well as the public has the duty to enable the vast majority of the population to participate in these implementation processes.

## 1 Introduction

### 1.1 Thematic Background

Land tenure policies in the fast developing country of Tanzania, with a GDP growth of estimated 6% in 2013, create barriers for small and mid-sized investors who would otherwise be willing to invest in the country. The close link between land possession and the economic development of the country are made difficult due to issues in transparency practices as well as an existing dual property system (informal and formal property system<sup>1</sup>). This system creates impossibilities for a rapidly growing population to become part of a rising middle class. The implementation of a more efficient, sustainable, and small scale investor-friendly government policy on land tenure will push the rapid growth rates in a continuous and stable direction. This governmental action will create new small business opportunities for young<sup>2</sup> entrepreneurs who want to gain access to the economic market.

Illustration 1: Projected GDP growth rate (% change year to year – 2012-17)<sup>3</sup>



<sup>1</sup> cp. de Soto (2006, p. 18.)

<sup>2</sup> The average age of citizens in Tanzania are 18 years old, The Africa Report, No 56, December 2013 – January 2014.

<sup>3</sup> cp. Ernst & Young (2013, p. 13)

## 1.2 Objective

The objective of this thesis is to pursue the following assumption: Land possession, according to the *African Charter on Human and People's Rights*<sup>4</sup> is a fundamental right and one of the key factors for developing a growing and sustainable national economy. Could a change in Tanzanian land tenure legislation open opportunities for both local and global small to mid-scale investors create a sustainable economy for a growing middle class?

The significance of this thesis contributes to the current ongoing discussion of how to promote investment in Tanzania and could be of possible use to future local and global investors. This study has potential possibility for use as a reference piece for amendments in the current governmental policies as well as helping to simplify the access of potential markets for future small to midscale investors.

## 1.3 Delineation

Due to the complex economic environment of developing countries, this Thesis will focus on the role of small to mid-scale local investors, and their potential of participation in shaping the URT's economy. Topics such as the land tenure policies for large-scale agricultural development, land grabbing and all the land development linked to foreign aid will not be part of this thesis. However, these topics may be addressed superficially to support the main theme.

## 1.4 Approach

The first step of this empirical thesis will consist of analyzing the current situations of the land tenure policy implications through the ongoing discussions founded on current government policies. Based on this analysis, the next step will illuminate and critically discuss possible weaknesses and strengths of the system. Preexisting literature on the topic will provide a background to illustrate the comparison between current developments on the ground and existing problems. This comparison will define the proposal for amendments and summary for the conclusion. Additionally, the conclusion will construct a basis for possible future recommendations.

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<sup>4</sup> Article 14: The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

## 2 Current Land Tenure Policy Implications

### 2.1 National Land Policy

#### 2.1.1 The Property System

«The Tanzanian poor know how to create value on their own: Their extralegal economy has assets worth USD 29 billion. »<sup>5</sup> The property situation as it stated itself over the last decade shows that about 90% of property is held extralegally by Tanzanian citizens. At the same time only about 2% of entrepreneurs are actually operating legally, according to the legal system which has been put in place by the URT government.<sup>6</sup> This existing legal system sets a proper framework and guidelines for operating and financing a business and for dealing with property. Why do so few people take advantage of this system which has been carefully put in place to grant security, capital and finance up to a certain degree? This is mainly due to three instances; (i.) a lack of knowledge to create value on their own, (ii.) the sheer impossibility for almost 90% of Tanzanians to enter the legal economy, (iii.) and the establishment of a self-organized system of documents and institutions on extralegal bases which gets recognized by most of the population. These three instances prevent the active participation in this system.<sup>7</sup>

According to de Soto (2006), examples of obstacles to register a legal business by law consists of the following: (i.) the amount of money which would have to be spent (e.g. over a period of 50 years sums up to USD 91'000), (ii.) documentation and proper registration permits, VAT, etc.(1`118 days in government offices)<sup>8</sup> By summing up the costs and the extended time lost where business could take place, the incentive diminishes for a small or mid-scale local or global entrepreneurs to operate the legal route.

TIC currently states that the registration of a local company by a foreigner will take about twenty-two individual processes in which each process will take a maximum of twenty-eight days to complete (a total of 616 days to emphasize the time lost). This includes passing by eight different agencies several times where you will have to present twenty-six different and valid (stamped by the appropriate agency) documents.

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<sup>5</sup> cp. de Soto (2006, p. 21)

<sup>6</sup> cp. de Soto (2006, p. 20)

<sup>7</sup> cp. de Soto (2006, pp. 21 – 26)

<sup>8</sup> cp. de Soto (2006, pp. 21 – 36)

These facts are pushing especially low to mid-income Tanzanian citizens into a highly elaborated and widely recognized extralegal reality which has been construed and applied over the last few decades all over the country. This extralegal property system shows impressive, and in many ways comparable with today's developed nations, features. The documents in the extralegal system are carefully taken care of in that they correspond with Tanzanian society, clan, and tribal structures and they result from rational deliberation.<sup>9</sup>

The big disadvantage of this extralegal system is the lack of a countrywide identification and registration system and the lack of a proper cross-documentation system which leads to a highly fragmented and locally bound functionality. As a consequence of this fragmentation the extralegal sector, in which about 90% of Tanzanian citizens are engaged in, and as a consequence of lacking the rule of enforceable rights and obligations throughout the whole nation, has an extremely low productivity.

The legal system faces the major problem, that only about 2%, regarding business and about 10% regarding property of the Tanzanian population are tangible by it. Additionally, it lacks transparency, predictability and common economic practice. An immense number of ordinances (about 120) and administrative offices (about 100) regulate the business life cycle, creating language barriers as they are only edited in English.<sup>10</sup> This very typical and wide spread phenomenon of a top-down implementation of Western legal systems create barriers and prevent the country of actually establishing its own, homegrown legal system which shows the first shot in the extralegal system.<sup>11</sup>

### 2.1.2 Land Tenure

Before colonisation by the Germans and the British, land possession was based on a traditional clan and tribe structure. Individuals from a family or a tribe were allowed to cultivate and to feed cattle on this particular piece of land. When there were first signs

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<sup>9</sup> cp. de Soto (2006, p. 37)

<sup>10</sup> The majority of Tanzanian citizens only speak Kiswahili.

<sup>11</sup> cp. de Soto (2006, p. 50)

of exhaustion, shifting of cultivation was practiced. The corresponding tribes had chiefs and elders which were responsible for allocating individuals. Even during colonialization this system remained partially in place.<sup>12</sup>

In 1895, the Germans started to nationalize land through the Imperial Decree «Regarding Creation, Acquisition and conveyance of Crown Land». The Decree stated that land exceeding one hectare for a period of more than fifteen years would need the back up (authorization) of the governor. When the British ruled Tanzania (1916 – 1961) they declared that all land in Tanzania is public and was given a right of occupancy for the indigenous people. In 1928 they tried to redefine the term of occupancy to «title of a native community lawfully using or occupying land in accordance with customary law». Native was defined as «native of Africa not being of European or Asiatic origin or descent and includes a Swahili but not a Somali». This detailed definition was not preventing the occupation and acquisition of big pieces of land through the British government.<sup>13</sup>

After independence in 1961, this system was replaced through the system of ujamaa<sup>14</sup> and self-reliance. Both of these systems were referring to the main ideas of African socialism promoted by the first president of Tanganyika<sup>15</sup> Mwalimu<sup>16</sup> Julius Nyerere. The main aim was to create village communities, consisting of the widely dispersed tribes and individuals. Its main principles were mutual respect, shared property, and the duty to work for the community.<sup>17</sup>

The Government Act No. 44 of 1969 installed the so called “Right of Property” which gave the national government the possibility to retain the “Right of Occupancy” type of land tenure. Right of Occupancy is characterized as follows:

1. «There is a definite term for the occupation and use of the land granted».
2. «Development conditions are imposed on the holder of that land».

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<sup>12</sup> cp. The United Republic of Tanzania (1997, p. 6)

<sup>13</sup> cp. The United Republic of Tanzania (1997, p. 7)

<sup>14</sup> Kiswahili for Village Community

<sup>15</sup> Tanzania was called Tanganyika until its unification with the islands Pemba and Unguja in 1964

<sup>16</sup> Kiswahili for Teacher

<sup>17</sup> cp. Yefred Myenzi (September 6th 2010)

3. «The holder of that land has no right to subdivide, transfer or mortgage the same without the consent of the Commissioner of Lands».
4. «The holder has to pay rent to the Government».
5. «The President of the United Republic of Tanzania may revoke the Right of Occupancy of the landholder».<sup>18</sup>

The National Land Policy states that the above mentioned land tenure system as such is functioning within its fundamental principles but that there is need for modifications to suit the present social and economic situation.<sup>19</sup> Therefore a revision of the National Land Policy has been put in place in 1997, which was shortly followed by the Land Act and by the Village Land Act in 1999. The revised National Land Policy specifies the following topics:

1. Land administration: The absence of a proper institutional hierarchy lead to multiple land disputes. Therefore a Commissioner for Lands with the sole authority for land administration shall be installed. He will appoint officers with the corresponding competences. Furthermore Village Councils and Village Assemblies shall allocate village land.<sup>20</sup>
2. Access to Land: There are no restrictions to gain access to land. This circumstances supported the acquisition of land for speculative investors. Therefore all citizens shall have equal access to land. Only companies with majority Tanzanian shareholders shall be able to buy land. Foreigners are only able to buy land if their purpose is in accordance with the Investment Promotion Act.<sup>21</sup>
3. Womens Access to Land: Women have to be equally treated.<sup>22</sup>
4. Land Utilization: Prevention of land speculation and non development through identification of special areas for investment, through allocation to investors willing to develop in a certain time frame and through strict governmental regulations.<sup>23</sup>

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<sup>18</sup> cp. The United Republic of Tanzania (1997, p. 8)

<sup>19</sup> cp. The United Republic of Tanzania (1997, p. 9)

<sup>20</sup> cp. The United Republic of Tanzania (1997, pp. 10 – 11)

<sup>21</sup> cp. The United Republic of Tanzania (1997, p. 11)

<sup>22</sup> cp. The United Republic of Tanzania (1997, p. 12)

5. Protection of Sensitive Areas through special development conditions and through regulation of waterfront development, beaches, and national parks.<sup>24</sup>
6. Disposition of land by the investor before having met the development conditions interferes with the governmental strategy of sustainable development. Therefore, only the Right of Occupancy can be transferred and special taxes will be imposed.<sup>25</sup>
7. Revocation of land can be used by the President if land administrators misuse their powers.<sup>26</sup>
8. Acquisition: The President is permitted to acquire land for public interest. But there is no definition of the term “public interest”. Therefore, this term will be defined. Compensation for acquired land by public interest according to the principle of “opportunity cost”.<sup>27</sup>
9. Land Values: The previous notion that land has no value has no more validity. Land rent shall be paid including taxes and all the transactions shall be registered with the Registrar of Land Titles before becoming legal.<sup>28</sup>
10. Compensation: Land shall be properly compensated.<sup>29</sup>
11. Land Registration: The lack of track records of land occupation has led to numerous unregistered plots. Therefore national parks can not be properly marked. Governmental building developments are not registered. The implementation of a proper information system shall facilitate the handling of land. To grant the Right of Occupancy the government shall provide the buyer with a copy of the Certificate of Origin. A Central Registry shall store all the land records registered at the Zonal Registries. Village Land shall be properly demarcated. Land Registry offices will be decentralized.<sup>30</sup>

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<sup>23</sup> cp. The United Republic of Tanzania (1997, pp. 12 - 13)

<sup>24</sup> cp. The United Republic of Tanzania (1997, p. 13)

<sup>25</sup> cp. The United Republic of Tanzania (1997, p. 14)

<sup>26</sup> cp. The United Republic of Tanzania (1997, p. 15)

<sup>27</sup> cp. The United Republic of Tanzania (1997, pp. 15 - 16)

<sup>28</sup> cp. The United Republic of Tanzania (1997, pp. 16 - 17)

<sup>29</sup> cp. The United Republic of Tanzania (1997, p. 17)

<sup>30</sup> cp. The United Republic of Tanzania (1997, pp. 18 - 19)

12. Settlements on Alienated Lands: Lands formerly occupied by settlers or companies during the colonialization can not be transferred to new owners due to the existence of old land titles. With liberalization, multiple former settlers came back and claimed their land which in the meantime have been used by villagers. This results in land disputes. These land disputes shall be prevented by implementing legal steps to make redistribution possible.<sup>31</sup>
13. Dispute Settlement Machinery: The lack of a proper land administration has led to numerous land disputes, mostly due to multiple allocation and poor records. If disputes appear in court, it takes about twenty years to get settled. Therefore, special quasi legal bodies shall be installed on regional and national levels.<sup>32</sup>
14. Village Titling: Villages shall be provided with proper documents showing the borders of the village. Separate Certificates of Village Land for individuals shall be provided through the Village Assemblies to protect villagers outside the communal areas.<sup>33</sup>

### 2.1.3 Land Act

The National Land Act, No. 4 put in place in the year 1999 sets an overall framework legislation for all matters in Tanzania. It states three different categories of land: general, reserve, and village land. Furthermore, it clearly determines the necessary legal institutions and the follow-up procedures. It sets the fundamental framework of the National Land Policy in Tanzania. The National Land Policy's main purpose is to promote and ensure a secure land tenure system which encourages an optimal use of land resources.<sup>34</sup> The main principles of the National Land Policy are:

1. Equitable distribution of and access to land;
2. Recognition that all Land in Tanzania is public Land vested in the President as a trustee on behalf of all citizens;

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<sup>31</sup> cp. The United Republic of Tanzania (1997, p. 20)

<sup>32</sup> cp. The United Republic of Tanzania (1997, pp. 20 – 21)

<sup>33</sup> cp. The United Republic of Tanzania (1997, pp. 21)

<sup>34</sup> cp. The United Republic of Tanzania (1997, p. 5)

3. Recognition, clarification and protection of existing rights by law;
4. Preventing land concentration (e.g. land grabbing);
5. Productive and sustainable use of land to facilitate economic growth;
6. Improving the existing land management and delivery systems;
7. Creating more transparency;
8. Promoting land information management;
9. Protecting land resources from exploitation;
10. Compensating any person who's right to land is revoked.<sup>35</sup>

#### 2.1.4 Village Land Act

Due to the fact that 70%<sup>36</sup> of land is categorized as village land, the Village Land Act, No. 5 was put in place in 1999. The main objective of the Village Land Act is to determine which authority is accountable for village allocation. Furthermore, it defines the general term village land, how land rights are protected, and which authority is accountable for village allocation.

Unlike most African countries, where the central government allocates land, Tanzania's Village Council represents the legal body to allocate land. The Village Council itself represents the lowest level of local government. This basically gives the power to the villagers and to their elected legal body (Village Council) to look after their land. The decisions made by the council will be revised by the Village Assembly, which consists of all adults in the village. This bottom-up democratic process meets its limits as soon as there are greater public goods involved. At this point there is the approval of the District Council and of the Commissioner for Lands required. These two legal bodies themselves also serve as advisers for the Village Assembly which is required to follow that advice.<sup>37</sup>

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<sup>35</sup> cp. The United Republic of Tanzania (1997, p. 5)

<sup>36</sup> cp. The United Republic of Tanzania (1997, p. 4)

<sup>37</sup> cp. International Institute for Environment and Development (IIED) (2013, p. 9)

There are three categories of Village Land: Communal village land, Land for individual use, and Land for future use. To ensure a proper title for Village Land and to prevent future disputes, there has been put in place a simplified procedure to obtain a Certificate of Customary Right of Occupancy (CCRO). A CCRO grants the right of occupancy for families and individuals, recognizable groups, tribes, and communities recognized by law. The CCRO is based on a customary law of ethnic groups or communities in the area. Non-villagers may also obtain CCRO`s in case they are able to prove that the majority of their shareholders (51%) are Tanzanians of African descent.<sup>38</sup> Characteristics of a CCRO consist of the following:

1. It grants the right of occupancy;
2. It has value;
3. It is found in all categories of land village, reserved and general land;
4. It has an indefinite time period of occupancy;
5. It can be inherited;
6. It is accessible for woman and men;
7. It can be sold;
8. It can be bought by the State.<sup>39</sup>

The premises set by the National Land Act gets challenged as soon as any important decisions are made for the public good which have direct implications on villagers holding CCRO`s. The Village Land Act enables the President of Tanzania as a trustee of all the land in Tanzania gives them the right to transfer Village Land into general or reserve land.<sup>40</sup> As soon as Village Land gets transferred, the question will always arise regarding the proper compensation to the individuals holding the corresponding piece of land. There are several possibilities for proper compensation:

1. Market value of the land;

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<sup>38</sup> cp. International Institute for Environment and Development (IIED) (2014, p. 3)

<sup>39</sup> cp. The United Republic of Tanzania (1999, Village Land Act No.5, p. 18)

<sup>40</sup> cp. International Institute for Environment and Development (IIED) (2014, p. 3)

2. Disturbance allowance;
3. Transport allowance, where they calculate the actual cost of transporting twelve tons of luggage within twenty kilometers from the point of displacement;
4. Accommodation allowance, thirty-six months of market rent;
5. Loss of profit for thirty-six months if there has been put in place a business.<sup>41</sup>

#### 2.1.5 Land Registration

The complex process for Land Registration in Tanzania varies from one region to another. Due to its multifaceted nature, only a brief generalized description will serve the purpose within the scope of this thesis.

Alongside the CCRO`s granted by the Village Council exists an additional and proper Land Registration system. It defines the process of how to obtain title deeds to get proof of ownership. All land delivery activities are conducted by the Ministry of Land, Housing and Urban Development; which subsequently includes the land surveying, mapping and land development. If a potential buyer wants to get a clean and indisputable title he has to get a proper survey and demarcation of his plot carried out by the Surveys and Mapping division - a subdivision of the Urban Development Division. Following, the future owner has to register his plot through the Land Development Division in which they will prepare and register the title. From there, the Land Development Division titles get sent to the Commissioner of Lands who is accountable for signing and stamping the title. This title, thereafter, has to be registered by the Registrar of Titles.

#### 2.1.6 Conclusion

Tanzania's National Land Policy, the Land and the Village Act create sound and appropriate guidelines for land use and affected topics. However, there are numerous major issues within the legal system especially related to the land registry and to the general property system.

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<sup>41</sup> cp. International Institute for Environment and Development (IIED) (2014, p. 3)

Due to the fact that 70% of land is not registered there is only low security of tenure for a majority of the population. The lack of demarcation, clear titles, and the rapid growth of population<sup>42</sup> provokes numerous disputes between CCRO holders and title holders. The most common disputes are multiple existing land titles and the customary occupation of plots. There is an insufficient land information system and no proper infrastructure in place (e.g. no nationwide registration system to grant security and to prevent such disputes from taking place). The absence of such a nationwide system means that 90% of the Tanzanians cannot be located through the property system.<sup>43</sup> Lately, attempts have been made to implement a digital nationwide registry. The highly dispersed local structure and additional absence of written property rights intensify tensions between local settlers and business newcomers.

Difficulties are further aggravated due to highly complex land and property registration processes; which include tax and administrative obligations, a lack of sophisticated surveying, and time-consuming law complying procedures. Valuation, planning, surveying and titling procedures take up to 8 years. Additionally, transferring and registering property can take up to 380 days. The legal structures require high-level decisions, which takes the approval of the Director of Surveying and Mapping for survey maps and by the Commissioner for Lands for all the titles.<sup>44</sup> These main obstacles make it virtually impossible for a majority of Tanzanians to get proper documents on their land and property.

## 2.2 Investment in Tanzania

### 2.2.1 Investment Act

A set of political changes helped Tanzania foster the emergence of a slow free market economic transformation. This was propelled by the breakdown of the socialist political landscape after the resignation of former president Mwalimu Julius Nyerere in 1990 and the country's first democratic elections in 1995. By opening markets for foreign investors and companies, Tanzania was in need of establishing an institutional

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<sup>42</sup> 3% annual growth of population in 2012

<sup>43</sup> cp. de Soto (2006, p. 50)

<sup>44</sup> cp. de Soto (2006, p. 51)

framework to prevent exploitation and speculation. Therefore several key Acts such as the Land Act and the Investment Act were approved and put into effect by the TZ government.

The Tanzania Investment Act implemented in 1997 serves as one of the basic legal documents for investment in Tanzania, both local and foreign. The Act No.7 states the establishment of the Tanzania Investment Centre, which is defined as an Agency of the Government under supervision of the Minister.<sup>45</sup> This Act shall promote and facilitate investment in Tanzania and help gain access to the economic market for possible investors, both local and foreign.

### 2.2.2 Tanzania Investment Center (TIC)

The TIC's main purpose is to serve as a one-stop center for investors. It shall coordinate, encourage, promote and facilitate investment as well as advise the Government on investment policy and other related matters.<sup>46</sup> Furthermore, the Investment Act defines a board for the Centre, which is responsible for the discharge of the functions of the Centre.<sup>47</sup> The TIC's main purposes are stated as the following:

1. Initiation and support of measures to improve investment climate in the country.
2. Processing of information about investment opportunities and sources of investment capital as well as giving advice to future investors.
3. Identifying investment sites, estates, and land for the purposes of investors and general investment.
4. Give assistance to all investors to obtain permits, licenses, authorization, registration and all other matters required by law and to grant full effect of certificates issued by the Centre.
5. Provide, develop, construct, alter, adapt, maintain, and administer investment sites, estates or land together with associated facilities.

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<sup>45</sup> cp. The Tanzania Investment Act (1997, p. 4)

<sup>46</sup> cp. The Tanzania Investment Act (1997, p. 5)

<sup>47</sup> cp. The Tanzania Investment Act (1997, p. 7)

6. Providing and collecting data on benefits or incentives available to investors.
7. Supporting local investment promotion activities to enforce local investment.<sup>48</sup>

The TIC presents clear guidelines for potential investors and tries to facilitate access to the market by providing up-to-date publications, such as the Investment Guide (2013 – 2014) which is meant to serve both local and foreign investors. According to the TIC, in order to be classified as a local or foreign investor, the following must be true:

**Local:** The investor must meet the requirements to be a citizen of Tanzania in order to fulfill the need for the company to be incorporated under the laws of Tanzania in which a majority of the shares are held by a Tanzanian citizen.

**Foreign:** You represent a company in which a majority of the shares (51%) are owned by a foreigner.

To be properly recognized as an investor one has to provide funds of USD 100`000 as a local investor and of USD 300`000 as a foreign investor.<sup>49</sup>

A local investor is enabled through the Tanzanian Investment Act to obtain the right of occupancy specially geared for investment. Furthermore, they are able to obtain a temporary land title handed out by the TIC and approved by the Commissioner for Lands which grants them a 99 year lease. They can sub-lease land from private persons.<sup>50</sup> For a foreign investor there is no possibility to get direct title on Village Land. They are only allowed to obtain village land indirectly as stated in the Village Land Act. This major issue prevents many foreign investors from actually buying village land. For foreign investors the situation is different concerning general land. According to the Land (Amendments) Act of 2004, foreign investors can get the right of occupancy for investment purposes under the Tanzania Investment Act. Further, they can get granted a temporary land title for investment purposes which permits them a land title within a joint venture.<sup>51</sup> Due to the fact that a lot of general land is occupied by villages and are not yet registered as village land, many disputes arise out of this particular legal paragraph.

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<sup>48</sup> cp. The Tanzania Investment Act (1997, p. 6)

<sup>49</sup> cp. The Tanzania Investment Act (1997, p. 3)

<sup>50</sup> cp. International Institute for Environment and Development (IIED) (2013, p. 17)

<sup>51</sup> cp. International Institute for Environment and Development (IIED) (2013, p. 18)

As previously described under the chapter titled, *Land Act*, an investor can challenge the President to reallocate village land to general land. This requires the consent from the village assembly, the village council, the Commissioner of Lands and from the investor. Once consent has been reached, the President must issue such declaration of intention to transfer the affected land.

To actually obtain land there are two major ways: (i.) The TIC land bank, which role is to gather information on available parcels for sale or for development and collecting them in a database. By 2005, the TIC had 2.5 million acres in its database, but only 50`000 acres have been given away to potential investors.<sup>52</sup> (ii.) The alternative option to obtain land is a more informal procedure where potential investors try to avoid the TIC and where they target communities directly or with local land brokers.

Once a foreign investor has proven his ability to meet the demands of development conditions, the Tanzanian Government grants Certificates of Incentives to Strategic investors to ameliorate the risks investors are taking in a high-risk investment destination<sup>53</sup> as Tanzania. There are two main sectors of incentives: (i.) Lead and (ii.) Priority. The Lead sectors include agriculture, agro-based industries, mining, tourism, petroleum and gas, and economic infrastructure. The Priority sectors include manufacturing, natural resources, aviation, commercial building, financial services, transport, human resources development, and export oriented projects. Some of these main incentives are:

1. The recognition of private property and protection against political risks. Due to this, Tanzania is an active member of the World Bank Foreign Investment Insurance wing.
2. 0% Import Duty on project capital goods.
3. VAT on taxable goods and services are eighteen percent.
4. Import duty and VAT exemption on project capital goods such as plants and machinery.

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<sup>52</sup> cp. International Institute for Environment and Development (IIED) (2013, p. 18)

<sup>53</sup> OECD states TZ in his Country Risk Classification (2014) as high risk country (6 in a scale from 0 - 7)

5. Corporate Tax is 30%, whereas newly listed companies in DSE with 30% of shares in public is taxed 25%.
6. The investor is allowed to transfer outside the country 100% of foreign exchange earned profits, capital and dividends of the investment.
7. Immigration quota from up to five foreign people.<sup>54</sup>

### 2.2.3 Business registration

Due to the complexity of the Business Registration process which differs from region to region in Tanzania, this sub-chapter will only reflect a brief and superficial description of the Business Registration process.

With the Business Activities Registration Act (2005), the government has set out proper guidelines and a framework for business registration. This Act mainly focusses on the business activities registration system and on business registration centers. It sets in place a Chief Registrar appointed by the Minister and establishes in each Local Authority a Business Registration Center.<sup>55</sup>

To be able to operate as a business, each one is required to obtain a certificate of registration from the newly put in place Business Registration Center within the local authority where the business is supposed to be put in place.<sup>56</sup> Furthermore, the TIC stipulates Business Registrations and Licensing Agency (BRELA) as responsible for business registration in Tanzania. BRELA's main field of activity consists of issuing certificates of compliance for foreign companies, certificates of incorporation for local companies and certificates of registration for single proprietorship. Thereafter, companies have to register with TRA and with NSSF or any of the other five existing social security schemes in Tanzania. Depending on what kind of company<sup>57</sup> there is been put in place additional registration at MIT or at the corresponding Municipality is needed.<sup>58</sup>

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<sup>54</sup> cp. Tanzania Investment Center (TIC): Procedure for obtaining TIC Certificate of Incentives

<sup>55</sup> cp. The United Republic of Tanzania (2005, p. 7)

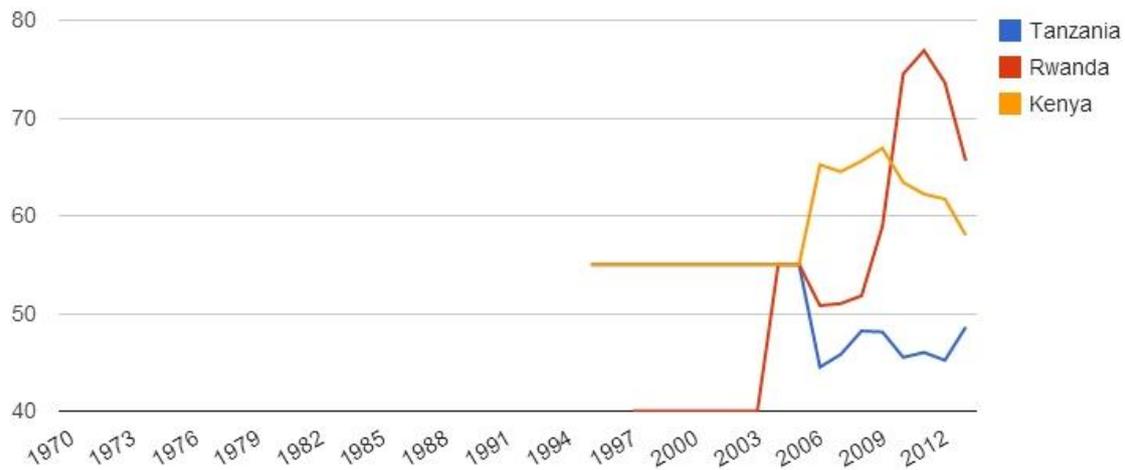
<sup>56</sup> cp. The United Republic of Tanzania (2005, p. 11)

<sup>57</sup> There are Schedule A and Schedule B companies (TIC).

<sup>58</sup> cp. Tanzania Investment Center (TIC)

According to the Business freedom index where 10 indicators are compared (e.g. cost, time, procedures), Tanzania ranks in the lower section also in comparison of neighboring countries such as Rwanda and Kenya.

Illustration 2: Business freedom index (0-100)<sup>59</sup>



Source: TheGlobalEconomy.com, The World Bank, 2014

In the year 2013 there has been a very controversial announcement from the MIT concerning the business licensing process. The government declared that every business license, starting from July 2013, has to be renewed annually. In effect, this means that every business holder across the country has to renew his license every year, with the equivalent financial effects. The government therefore relies on the Business Licensing Act of 1972 in which clear limitations of business duration were set out<sup>60</sup>. The government justifies these actions by the implementation of the new Finance Act (2011) which brought back annual payment.

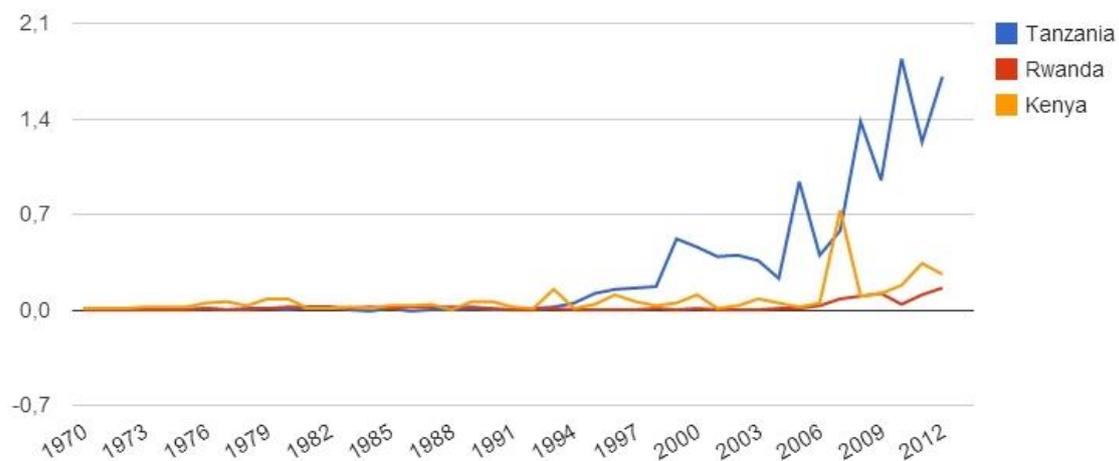
<sup>59</sup> The Business freedom index is based on 10 indicators, using data from the World Bank's Doing Business study: Starting a business—procedures (number), time (days), cost (% of income per capita), and minimum capital (% of income per capita); Obtaining a license—procedures (number), time (days), and cost (% of income per capita); Closing a business—time (years), cost (% of estate), and recovery rate (cents on the dollar).

<sup>60</sup> cp. Tanzania Investment Center (TIC)

### 2.2.4 Investment Trends

Tanzania's political stability since its independence and its opening to the free market economy in the mid-1990's has risen attention of local and especially foreign investors to contribute actively to the TZ economy. FDI numbers have been on the rise since then and exceeded the FDI's of the neighboring countries by far.

Illustration 3: Foreign direct investment<sup>61</sup>, USD billion



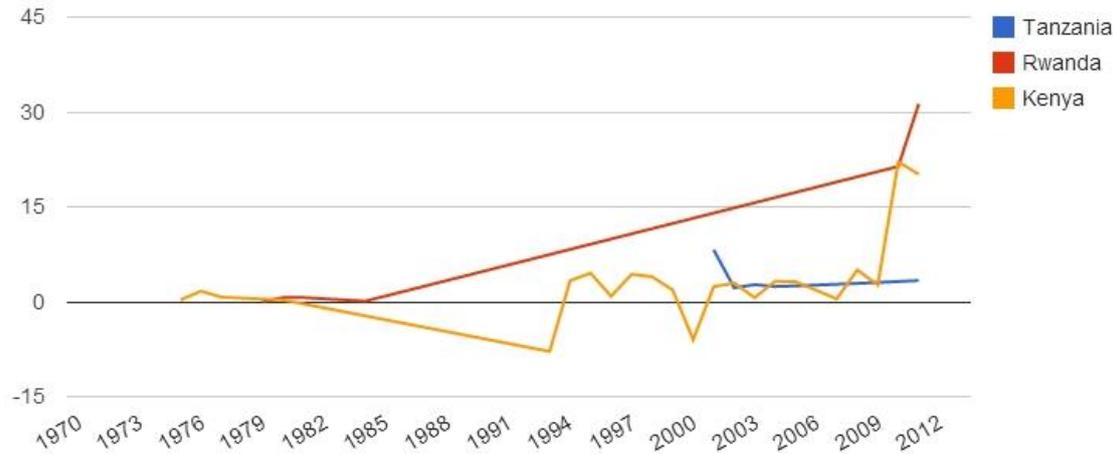
Source: TheGlobalEconomy.com, The World Bank, 2014

This major increase of FDI<sup>62</sup> in the last two decades brought into need proper monitoring to allocate foreign investment. In comparison with the FDI, numbers of FPI are relatively low and only account for less than one percent of current Investment.

<sup>61</sup> World Bank definition: Foreign direct investment are the net inflows of investment to acquire a lasting management interest (10 percent or more of voting stock) in an enterprise operating in an economy other than that of the investor. It is the sum of equity capital, reinvestment of earnings, other long-term capital, and short-term capital as shown in the balance of payments. This series shows net inflows (new investment inflows less disinvestment) in the reporting economy from foreign investors.

<sup>62</sup> Estimated FDI of USD 1.8 billion in 2013

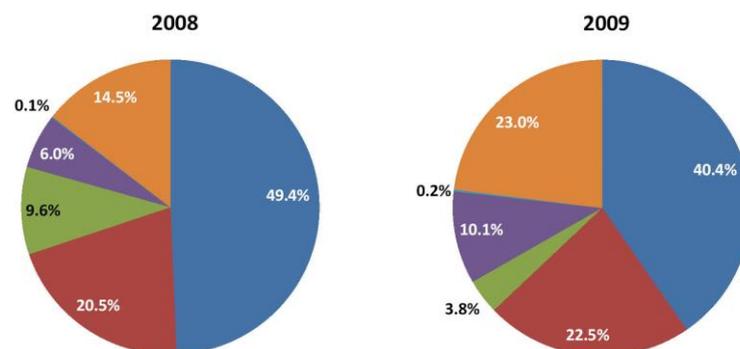
Illustration 4: Net portfolio equity inflows<sup>63</sup>, USD millions



Source: TheGlobalEconomy.com, The International Monetary Fund, 2014

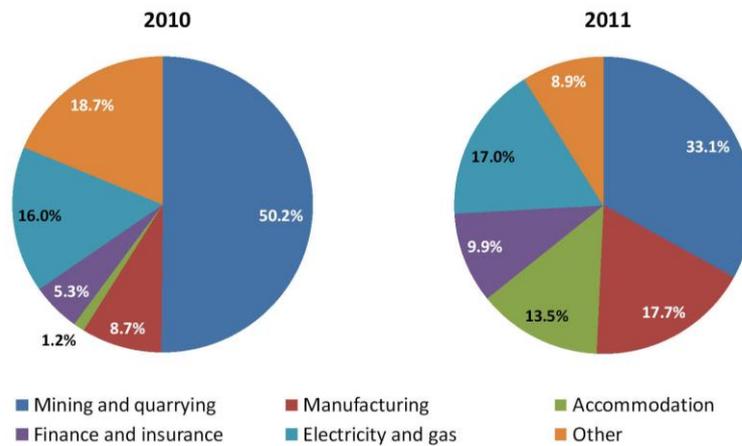
The main sectors where FDI is allocated are Mining and quarrying, Finance and insurance, Manufacturing, Electricity and gas, Accommodation and Other.<sup>64</sup>

Illustration 5: Composition of FDI Inflows (2008 -2011)



<sup>63</sup> World bank definition: Portfolio equity includes net inflows from equity securities other than those recorded as direct investment and including shares, stocks, depository receipts (American or global), and direct purchases of shares in local stock markets by foreign investors. Data are in current U.S. dollars.

<sup>64</sup> cp. Tanzania Investment Center (TIC) (2012, p. 21)



Source: Tanzania Investment Report 2012

The current composition of FDI inflow shows a strong shift from investments into the mining sector to the electricity and gas sector. The main trigger for this development is the intensified explorations to find offshore gas. The estimated natural gas resources currently sum up to 2 trillion cubic feet. Therefore, the gas and electricity sector will attract future investors and will experience fast development. Agricultural investment, which is one of the main causes for land disputes, has experienced a growth rate of about fifty percent due to large scale projects<sup>65</sup>. The invested capital in agriculture projects is still lower as capital invested in mining and manufacturing, but will be increasing steadily.

The main investors and responsible actors for FDI inflows are the countries of South Africa (31.2%), Canada (22.5%), the United Kingdom (19.0%), Mauritius (8.8%), Kenya (4.5%) and others generating 14.0% of the FDI inflows.<sup>66</sup> The UK, Canada and Mauritius have increased their shares substantially during the last couple of years. The fact that only three countries are responsible for more than 70% of FDI inflows creates a huge dependency from external factors. Therefore, diversification of FDI inflow is aimed for by the government.

<sup>65</sup> e.g. Agro EcoEnergy (T) Ltd, Bagamoyo Sugar Cane project ([www.ecoenergy.co.tz](http://www.ecoenergy.co.tz))

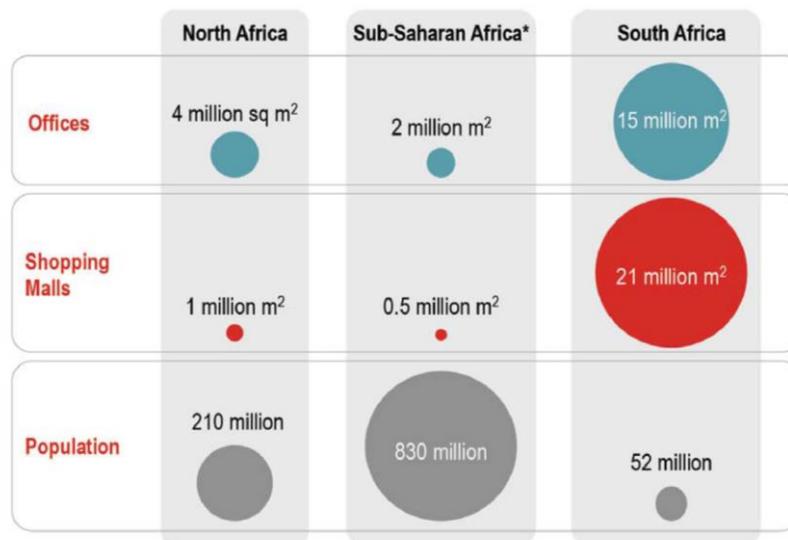
<sup>66</sup> cp. Tanzania Investment Center (TIC) (2012, p. 22)

### 2.2.5 Real Estate Investment

In terms of investment into the real estate sector there has not yet been a major boost of activities. By considering that Africa in general is one of the fastest growing continents in terms of urbanization<sup>67</sup> and in terms of demographic development<sup>68</sup>, the real estate sector will inevitably play a big role in shaping the future of African cities.

The first sign of this rapid urbanization is a fast evolving commercial real estate market.<sup>69</sup> The Sub-Saharan real estate sector is in its infancy. Recent and strong demand from rising middle class consumers have opened opportunities for new local and especially experienced foreign players in the market. The current heavily undersupplied sector is most likely to experience a heavy boost in the near future.

Illustration 6: Africa's Commercial Real Estate Stock



Source: Jones Lang LaSalle, *The African Century*, 2013

At present, only 0.5% of global direct commercial real estate investment is made on the African continent, whereof most of it is invested in South Africa. Many potential investors get discouraged by low or opaque transparency issues on the Real Estate

<sup>67</sup> Urban population growth in Tanzania 4.7% in 2013 according to the World Bank (cp. The World Bank, 2014)

<sup>68</sup> By the year 2040 experts estimate that the working – age population in Africa will be larger than either China or India.

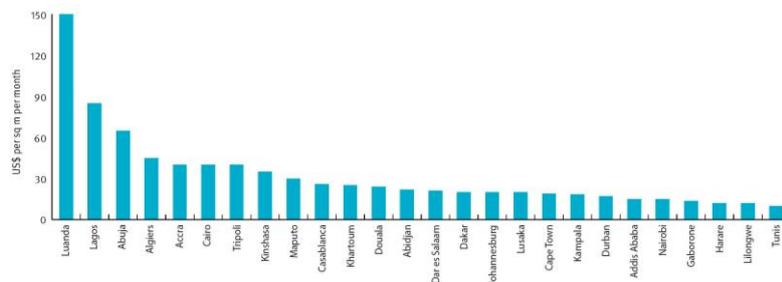
<sup>69</sup> cp. Jones Lang LaSalle (2013, p. 15)

market in Sub-Saharan countries. Therefore, trustworthy local partners are needed to gain access to the market.<sup>70</sup>

As for Tanzania, there are two major governmental players in real estate development: (i.) National Housing Corporation (NHC) and (ii.) Tanzania Building Agency (TBA). The NHC is highly active in the market with its main focus on property management and construction of houses for sale. TBA is specialized in the construction of government buildings, in providing housing accommodation to public servants and to build consultancy services.

The main focus on real estate development and investment in Tanzania lies on its biggest city, Dar es Salaam<sup>71</sup>. Current data and reports on the real estate market in Dar es Salaam are expecting future and strong development especially in the office sector. Due to ongoing investment activities in the country, the supply of actual available office space doesn't seem to meet with the demand. Rental prices for office space in the CBD remain some of the highest, albeit the fact that traffic volume is increasing steadily and showing its effects by some of the companies reallocating their offices out of the CDB to the so called Garden Area outside of CDB.

Illustration 7: Prime office rents



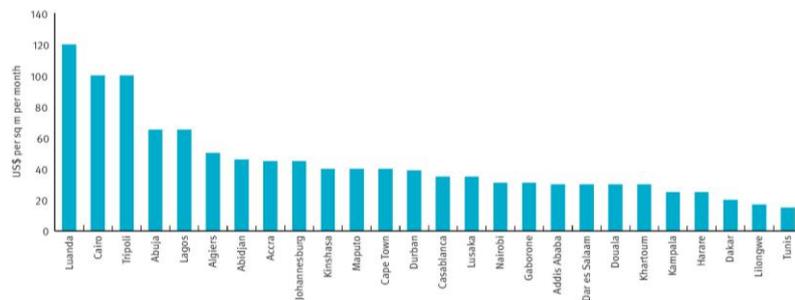
Source: Knight Frank, Africa Report 2013

The retail market in Dar es Salaam has shown first signs of movement with the inauguration of the shopping market in Mlimani City, driven by South African chain stores, such as Game. Besides Mlimani City, there are only a few large scale developments in this sector. Most of the retail still happens around small downtown specialist shops in NHC buildings.

<sup>70</sup> cp. Jones Lang LaSalle (2013, p. 18)

<sup>71</sup> Estimated population of 3 Mio. inhabitants

Illustration 8: Prime retail rents



Source: Knight Frank, Africa Report 2013

The residential market is highly diversified, wherein NHC is the main actor in housing and social housing development. Therefore, foreign investors only get involved in high-end developments for upper class citizens and foreigners. Increasing investment interest in the oil and gas sector and the recent signing of a TZS 165 billion mortgage financing agreement between seven banks in favor of NHC to build housing units in 2012 will promote new development.<sup>72</sup>

Table 1: Dar es Salaam prime rents and yields

	Prime rents	Prime yields
Offices	US\$21 per sq m per month	9%
Retail	US\$30 per sq m per month	10%
Industrial	US\$6 per sq m per month	10%
Residential	US\$10,000 per month*	6%

Source: Knight Frank LLP

\*4 bedroom executive house – prime location

Source: Knight Frank, Africa Report 2013

## 2.2.6 Conclusion

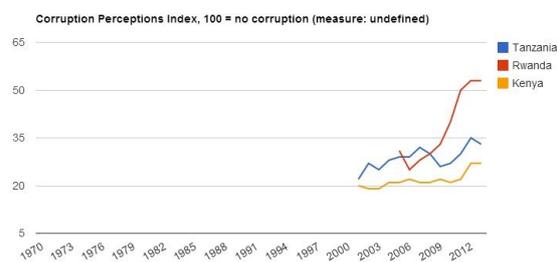
FDI in Tanzania is currently on a steady rise and seems unlikely to come to a stop in the near future. In particular, the oil and gas sector experienced a strong increase of investment due to the recent findings of such reserves. Furthermore, big scale investments into the agriculture sector seem to gain constant weight. Most FDI is

<sup>72</sup> cp. Knight Frank Tanzania (2012, pp. 2 – 3)

provided by few big scale local<sup>73</sup> and multinational companies with the necessary means. Small and mid-scale local and foreign investors face much bigger obstacles to access the market.

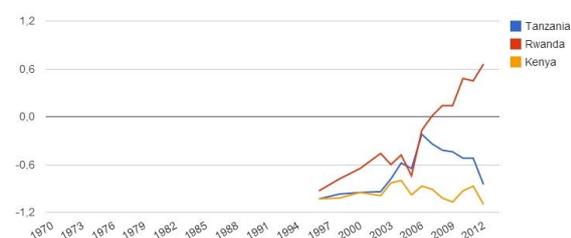
Potential investors face various challenges if they are willing to set foot in the Tanzanian economy as outlined above. In the GCR, Tanzania is currently ranked in position 125 of 148. The most problematic factors for doing business in Tanzania include the following (in descending order): access to financing, corruption, inadequate supply of infrastructure (e.g. shortage of electricity), inefficient government bureaucracy, inflation, tax rates, inadequately educated workforce, foreign currency regulations, tax regulations, poor work ethic in national labor force, crime and theft, insufficient capacity to innovate, government instability, restrictive labor regulations and poor public health.<sup>74</sup>

Illustration 9: Corruption Perceptions Index<sup>75</sup>,  
(100 = no corruption)



Source: TheGlobalEconomy.com,  
Transparency International, 2014

Illustration 10: Control of Corruption<sup>76</sup>,  
(-2.5 weak; 2.5 strong)



Source: TehGlobalEconomy.com,  
The World Bank, 2014

On a micro-economic level, small scale investors, particularly local often face the problem of land allocation, high financial expenses, extensive time loss for legal procedures, unclear laws regarding separation of the owners and the managers of small enterprises, legal protection to oppose administrative decisions, not being able to grow through M&A because of not having the requisite stock and the financial means, and

<sup>73</sup> e.g. Bakhresa Group (Azam)

<sup>74</sup> cp. World Economic Forum (2013, p. 362)

<sup>75</sup> Definition: The Corruption Perceptions Index is an indicator of perceptions of public sector corruption, i.e. administrative and political corruption. The indicator values are determined by using information from surveys and assessments of corruption, collected by a variety of reputable institutions.

<sup>76</sup> Definition: Control of Corruption assesses the likelihood of countering red tape, corrupt officials, and other groups. The indicator is based on a list of individual indicators.

finally of no legal separation of business and personal assets (90% of businesses in Tanzania are sole trades and partnerships).<sup>77</sup>

Additional barriers for local investors make it virtually impossible for them to access expanded markets. The existence of two legal systems, statutory and customary, both only guarantee minimum legal security due to the complexity of the statutory system and due to the difficulty to legally enforce contracts agreed in the customary system. This means that most of the contracts are only made between individuals which know each other and mostly pay in cash. For most Tanzanians it is almost impossible to provide goods and services to the State due to the fact that such a contract has to be approved by the Attorney General or the Minister of Finance. To receive a credit from a bank is virtually impossible for small scale entrepreneurs because of the high registration costs as well as the fact that they cannot use their real estate for collateral because it is extralegal. To import or to export goods, most local entrepreneurs need to hire a clearance agent because of the complexity of the process. Additional aggravation to all these barriers is that there exists the absence of an identification system, meaning no nationwide registry and no credit bureaus.<sup>78</sup>

These major issues in establishing and running a proper and fully recognized business in Tanzania are withholding a lot of economic local productive potential from the market.

Illustration 11: Global Competitiveness Index 2013 – 2014, Tanzania, Stage of development



Source: World Economic Forum, 2013

<sup>77</sup> cp. de Soto (2006, p. 51)

<sup>78</sup> cp. de Soto (2006, p. 51 – 55)

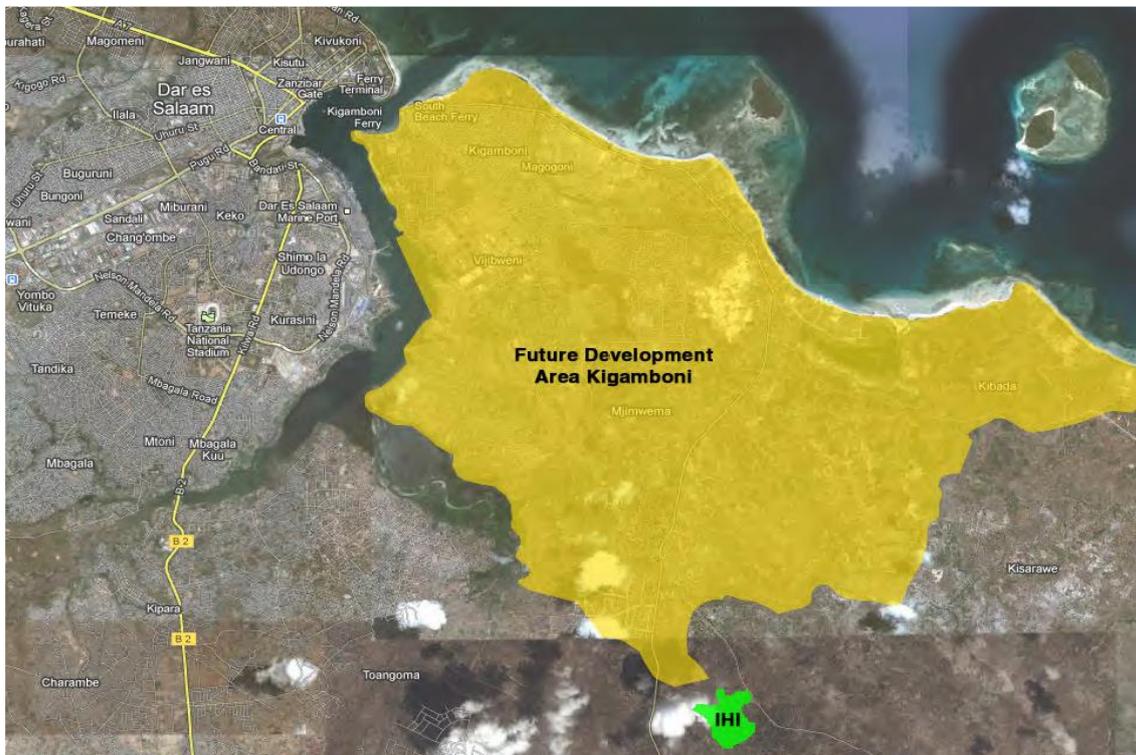
### 3 Impacts of Land Tenure Policies on the Ground

#### 3.1 The Kigamboni Case

Recently, large scale development and agriculture projects have attracted attention and have set in motion a wider discussion on how to deal with land allocation and compensation.

One of these current large scale projects is the very ambitious plan by the government of Tanzania (MLHSD) to build up a completely new part of the city of Dar es Salaam. Up to now, the area Kigamboni in Temeke district south of Dar es Salaam CDB has been highly underdeveloped mainly due to insufficient transport infrastructure. To access this part of the city, one has to take a car ferry or has to drive approximately 45 minutes around the port basin by car. The recent assignment to the China Railway, Jiangchang Engineering (T) Ltd & China Major Bridge Engineering Company to build a direct link<sup>79</sup> from CDB to Kigamboni will boost construction and business activities for the decades to come.

Illustration 12: Future Development Area Kigamboni



Source: Author's illustration (2012) based on [www.googlemaps.com](http://www.googlemaps.com) and on the Kigamboni New City Master Plan, Main Report (2010)

<sup>79</sup> The bridge is supposed to be finished by start of January 2015.

According to the recent published reports on this project, the entire process of implementation is supposed to be finished by 2030. The demarcated area of the whole development sums up to 64`944`000m<sup>2</sup>; of which is currently occupied and partially developed land that is the home of an estimated 82`808 inhabitants and 13`883 houses.<sup>80</sup>

The MLHSD tendered the establishment of this new master plan in early 2009 to the South Korean company LH, Korea Land & Housing Corporation. It`s main purpose is to solve urbanization problems in the fast growing city of Dar es Salaam. This new satellite city is set out for 500`000 new inhabitants by 2030 and is meant to have great effects on the nation`s economy and to help build new jobs and new opportunities for local residents. This large scale project includes in its master plan an international business zone, an industrial zone, a tourism zone, a residential zone and a public facility zone<sup>81</sup> and is labeled “Eco–City”<sup>82</sup>. It`s top-down implementation process defines the liaison between official bodies and furthermore defines the actual process of implementation of the master plan. The Liaison between official bodies identifies the MLHSD, the Temeke Municipal Council, the Consultant, the people of Kigamboni and the stakeholders as main actors in the process. The implementation process on the ground is envisaged in six steps: (i.) project planning, (ii.) land acquisition, (iii.) marketing and management, (iv.) site planning and engineering, (v.) construction (vi.) resettlement of residents into the new city. By the year-end 2014, resettlement of the existing Kigamboni residents and payment of compensation to all affected persons and the detailed designs should be completed.<sup>83</sup>

In order to enable such a large scale project, the Minister for Lands, Housing and Urban Settlements had to declare this development zone under the order entitled, Land Acquisition Kigamboni, Vijibweni, Mjimwema and Kibada Areas Order 2008 through GN 229/14/10/2008 Land Acquisition Act, 1967, Cap 118 under s. 34 to be redevelopment area.<sup>84</sup> This order is stated as follows:

*«Whereas, I..... Minister for Lands, Housing and Urban Settlements Development being satisfied (a) that the areas within Temeke Municipality which excludes 20,000*

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<sup>80</sup> cp. The United Republic of Tanzania (2010)

<sup>81</sup> cp. The United Republic of Tanzania (2010)

<sup>82</sup> It is meant to meet newest sustainable standards by using local available resources.

<sup>83</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p.12)

<sup>84</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p.37)

*plots project areas and which is delineated in red on the Town Planning Drawing No 1/38/5008 are declared redevelopment areas, and (b) that a scheme for redevelopment of the said area and the provision of housing shall be prepared by the Minister for Lands, Housing and Human Settlements Development in collaboration with Temeke Municipal Council; and (c) that such redevelopment cannot be expeditiously or conveniently carried out by owners of the houses in the said area; Now therefore I do hereby make the following order in accordance with section 34 of the said Act;*

- 1. This Order may be cited as the Land Acquisition (Redevelopment Area) Kigamboni, Vijibweni, Mjimwema and Kibada Areas) Order, 2008.*
- 2. The area in Temeke Municipality delineated in red on the town Planning Drawing No. 1/38/5008 which is deposited by the Director of Physical Planning is declared a Redevelopment Area.*
- 3. Copies of the said Plan may be inspected at the offices of the Director of Housing and Human Settlements Development Ardhi House Dar Es Salaam and Temeke Municipal Council. »*

Furthermore, the redevelopment act includes all interests in or over land within the redevelopment area, once acquired, becomes extinguished.<sup>85</sup> Corresponding to section 34 of the Land Acquisition Act, section 73 of the Urban Planning Act enables the minister to search, allocate and redistribute land for such cause.<sup>86</sup>

To get public attention the government stated multiple newspaper advertisements trying to pass information to the affected residents and therefore called the public for participation. Additionally, people were called to stop development and that the draft master plan could be bought<sup>87</sup> at Temeke Municipality office. As stated in this plan, residents would have been able to see if their property or land was affected; however, it was sheer impossible due to the fact that almost nobody owns a computer and due to the enormous price to gain access to the data.<sup>88</sup>

At present, there are many small local businesses<sup>89</sup> and many of small scale housing as well as some popular weekend getaway locations allocated on the designated future development area. As the tender was announced by the Ministry, almost simultaneously

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<sup>85</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p.29)

<sup>86</sup> Urban Planning Act (2007), no 11, s.73

<sup>87</sup> TZS 100`000 for a soft copy and TZS 200`000 for a hard copy.

<sup>88</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p.38)

<sup>89</sup> Vast majority daily petty business.

a stop order was issued<sup>90</sup> for the entire zone. This announcement had a big impact on the local economy. An estimated number of 70 – 80% of all youth in the region was involved in the construction sector which resulted in sudden unemployment for a majority of them. Furthermore, renting houses, or even selling plots has been virtually impossible due to the uncertainty of the projects implementation and its impacts for plot and title owners.<sup>91</sup>

In addition to the legal implications, which precedent have been discussed in this chapter, large scale projects cause big socioeconomic implications on a local basis on current residents in the demarcated area. Since the whole construction sector came to a rapid stop, economic activities have declined rapidly as well and have effect on lots of suburban low and middle income households which rely on their land as an income source (e.g. growing various crops<sup>92</sup>). Access to finance institutions for loans with Kigamboni properties have been declining due to the uncertainty of how the Ministry will be dealing with compensation claims. People therefore are unable to retrieve new financial means for investment. This lack of investment leads to impoverishment of current residents, especially on low and mid-income households.<sup>93</sup> The future displacement and relocation process will provoke numerous questions in equity. As there are many residents living on land which they are not able to claim due to the absence of proper title deeds, a fair and proper compensation will be more than questionable and they could face lawful dispossession and displacement.<sup>94</sup> By resettling a large number of people at once worry has risen within the resident community that prices for construction material and for labor will increase substantially and building would not be affordable for many of them in the future.<sup>95</sup>

By displacing a large number of citizens the whole social relations, which are a strong component of Tanzanian culture, will be heavily disrupted.<sup>96</sup>

One of the most crucial socioeconomic effects is the psychological impacts. The lack of transparency, of communal participation (e.g. through CBO`s and of compensation), are leading to severe mistrust against the government and create a lot of uncertainties for local residents. A proper and specific time limit has not been set since the stop-order

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<sup>90</sup> Land, title or property owners were ordered to immediately stop building in the demarcated zone.

<sup>91</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p.60)

<sup>92</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p.55)

<sup>93</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, pp.55 – 58)

<sup>94</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p. 59)

<sup>95</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p. 60)

<sup>96</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p. 61)

and there is no clear statement in terms of compensation, which is claimed to be conducted on the basis of market value estimation.<sup>97</sup>

The top-down implementation approach from the government officials excludes the vast majority of residents from participation in the master plan execution process and seeds distrust between the involved parties; specifically between CBO's, local land holders and the government representatives. Such kind of master plan approach to large scale projects has been applied in Tanzania over the last fifty years, (e.g. residential development on the island of Unguja with the Michenzani housing project in the nineteen-sixties by the East German Government<sup>98</sup>). The vast amount of people which will have to be resettled during the implementation process will receive support by the government upon the stage of proper compensation where future disputes will arise. The government therefore, and especially the National Housing Corporation is aiming to locate alternative sites for resettlement and aims to provide a valuable substitute. One of such projects, in its finishing stage, is the Kigamboni Housing Estate Nunua Sasa, which is an example of how such kind of settlement could look like. Currently, single apartment units and houses are sold for TZS 30 - TZS 40 Mio, according to their promotion website,<sup>99</sup> which also states that they are already sold out. Further south and outside of the demarcated development lies multi-story, large scale apartment buildings currently being built for supposed resettlement of residents. At this stage of the Thesis, there is no further information available on this development.

Nevertheless, once again the implementation process and the execution of the master plan raises questions over equal treatment, fairness, legal enforceability by government or by small tenant holders and by the distribution of the profits and losses.

In general, the lack of information flow, non-transparent implementation processes, the insufficient presence of project and government representatives, the lack of public participation granted by the law<sup>100</sup>, the fact that the President of the United Republic of Tanzania has immense power over land allocation and the unclear method of compensation, to name only a few, are facts weakening the position of small and mid-scale income residents of this area.

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<sup>97</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2012, p. 63 – 64)

<sup>98</sup> cp. Antoni Folkers (2010), pp. 79 - 89

<sup>99</sup> cp. NHC (2014)

<sup>100</sup> URT Constitution, Article 18

## 3.2 Implications from other Case Studies

### 3.2.1 The Morogoro Case

Rising interest in agricultural investment opportunities in Tanzania is currently one of the main topics considering the effects on rural farmers practicing subsistence farming. An estimated 82% of the rural population are employed or engaged in the agriculture business. Agribusiness in the Morogoro region, one of the most fertile regions in Tanzania due to the Kilombero Valley, has about 90% of the population involved in the agriculture sector, especially in small scale farming.<sup>101</sup> In 2008, the Kilombero Plantations Limited (KPL) started farming on a piece of land of about 5`900 hectares. As the Tanzanian government is keen to promote such kind of investment to attract future potential joint venture companies, issues with local farmers arise frequently and in almost every case of such a development. In the case of Kilombero Plantations Limited, the government tried to force out and relocate approximately 2`000 villagers from the newly demarcated land because of illegal occupation.<sup>102</sup> Furthermore, agreements between the affected company over possible compensation were negotiated which include 210 affected villagers from whom 150 had proper settlements and 60 of them were only farming the disputed land. KPL promised to these farmers as a form of compensation to provide improved seeds, advice on paddy farming and the amount of 30`000 TZS per acre for newly secured land by the affected farmers at Mngeta village. Further involvement by KPL on a socioeconomic level (e.g. involvement in village development projects and providing seasonal job opportunities during harvesting periods) seemed to appease farmers.<sup>103</sup>

### 3.2.2 The Kilombero Case

Additional companies such as the Kilombero Sugar Company Limited (KSCL) as part of the Illovo Sugar Group, the biggest Sugar cane company in Tanzania, made their appearance in the Morogoro region in 1998. KSCL is a major hold by the government of Tanzania (25%), by ED&F Man, a London based commodities group (20%), and

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<sup>101</sup> cp. Chambi (2010, p. 10)

<sup>102</sup> cp. Chambi (2010, p. 12)

<sup>103</sup> cp. Chambi (2010, pp. 14 – 15)

55% by the Illovo Sugar Limited with its base in South Africa. Illovo Sugar Limited's majority shareholder is Associated British Foods plc with 51.4%.

KSCL has risen out of the Sugar Development Corporation (SUDECO), established by the Tanzanian government in 1974 during liberalization and privatization within the Kilombero region in 1997/98.<sup>104</sup> KSCL recently faced legal accusations at the High Court of Tanzania (Land Division). Privatization in the late nineties and the disregard of properly surveying its farm land lead to disputes between the villagers and the company over forced relocation and non-received compensations. In 2005, the government was willing to approve an additional titling of land on behalf of KSCL to expand the sugar plantation. Resultant land surveys were conducted where Illovo found out that 6 024 acres were occupied by the villagers whom therefore had to be compensated for possible future resettlement.<sup>105</sup> There have been allegations on government officials about forcing villagers to move and trying to evict them by burning or tearing down their property. Contradicting testimonies from government officials regarding the original title deeds, namely if the land had been bought by the President through the Land Acquisition Act 1967, have created a rise in mistrust within the villagers.<sup>106</sup>

Ultimately, seven villagers representing ten villages were accusing government officials for land grabbing and physical abuse. Furthermore, the claimants enquired if the President had really given the order to allocate village land to an investor<sup>107</sup>, a directive the President's Office has not been able to confirm.<sup>108</sup>

As stated by available sources, the investments foreseen by KSCL has flopped since the legal efforts for proper compensation made by the villagers with legal aid of the Legal and Human Rights Centre (LHRC) in Tanzania.<sup>109</sup>

### 3.2.3 The Kilwa Case

The case of BioShape Tanzania Limited, a company held by Dutch and Belgian investors, in Kilwa region is another example showing the difficulties and disputes between a large-scale investor and the local villagers settled in the affected region.

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<sup>104</sup> cp. Sugar Board of Tanzania (2014)

<sup>105</sup> cp. Chambi (2010, pp. 18 – 19)

<sup>106</sup> cp. HAKIARDHI & LHRC, Fact Finding Mission in May 2009

<sup>107</sup> Transferring Village Land due to public interest through the Village Land Act No5 (1999)

<sup>108</sup> cp. HAKIARDHI & LHRC (2009), p. 6

<sup>109</sup> cp. The Daily News, January 23<sup>rd</sup> 2012

BioShape Tanzania Limited mainly produces pure vegetable oil (biofuel) for export purposes and operates according to their internet presence in Belgium, the Netherlands and in Tanzania. In 2006 BioShape Tanzania Ltd. entered the country and allocated about 81`000 hectares in Kilwa region on which 400 plantations of 200 hectares each should have been established.<sup>110</sup> As reports showed in 2010, the project came to an abrupt stop and shortly after in the year 2011 they went through bankruptcy.

There are allegations from the company to the local authorities that only 40% of the compensation paid for the villagers actually went to the farmers.<sup>111</sup>

As for such large scale projects, as stated earlier in this report, according to the Tanzanian law, parcels of land exceeding the size of 200 hectares going directly to foreign investors can only be leased by the central government of Tanzania and through the TIC. This process had been properly followed by the investors but problems within the agreement with the villagers in terms of the lease duration and in terms of the actual size of the land occurred is what slowed things down<sup>112</sup> and lead to a withdraw of BioShape`s main investors.<sup>113</sup> Furthermore, insecurities on the legal documents and the terms of lending confused the villagers in particular which seemed not to be aware of the actual size of their village land and that land once leased by TIC will remain the property of the investor for the time of the agreement.

The BioShape project itself had the right approach by following the proper legal way and it did a lot of Corporate Social Activities in the area (e.g. according to their internet presence - building up schools and maternity wards). Compensation has been regarded to be generally fair and adequate. Side effects such as the BioShape Hunger in 2008/2009 due to neglected farming activities by the local villagers which were at this time employed by the company have raised general concerns on the effects of such large scale projects on food production.<sup>114</sup>

Yet another issue occurred as the 50 % of the land which BioShape was targeting for production and plantation is the Namateule Forest, an important reserve of biodiversity. The concession BioShape received was also valid in terms of timber (hardwood) to be cut down for farming purposes including between 200`000 and 800`000 cubic meters

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<sup>110</sup> cp. BioShape Tanzania Limited (2014)

<sup>111</sup> cp. Inter Press Service News Agency (2011)

<sup>112</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2010, p. 43)

<sup>113</sup> cp. Inter Press Service News Agency (2011)

<sup>114</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2010, pp. 49 – 51)

estimated worth of about 50 – 150 million dollars.<sup>115</sup> Later on, BioShape has been accused to already have cut down illegally hardwood and selling it to an Arusha based hardwood processing company based at the same location in the Netherlands as BioShape.

Today, farmers have started farming within the concession on their former plots sold to BioShape. Some are still awaiting compensation for the land they gave up with an unclear future and not knowing who and which company will take over from BioShape.<sup>116</sup>

### 3.3 Conclusion

The preceding cases give a small insight into current, ongoing discussions, disputes and controversies concerning land tenure implications. There are plenty more different cases which deal with similar issues.

One of the main fact findings these cases are having all in common is the top-down approach and implementation which either is conducted by the government or by outside investors. This approach sometimes seems, as in the case of Morogoro, to appease local farmers and create synergies and job opportunities. In other cases such as Kilombero or Kilwa, they are provoking legal disputes or even withdrawals from the affected investor companies.

The lack of transparency, lack in properly passing information top-down to the affected villagers and the appearance of low legal knowledge by rural farmers are main factors which make a proper cooperation between the parties virtually impossible.

The accumulation of power concerning the distribution and the transfer of land by the government for public interest (including national interest) weakens and often discriminates the rural population in particular to terms of large scale investors entering the stage.

Furthermore, all the cited cases show that economic development and investment is mainly forced within large scale projects by the government itself and by multinational companies. There are only few signs that small scale investors, local or foreign, are somewhat included in these plans even if they build the basic fundamental country's

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<sup>115</sup> cp. Inter Press Service News Agency (2011)

<sup>116</sup> cp. Inter Press Service News Agency (2011)

stability and economy. It somehow even seems to discourage and incapacitate a vast majority of potential actors in the national economy.

Approaches such as Corporate Social Responsibility applied by the investors are at the outset appeasing the villagers and sometimes effective but in the long run mostly only end up in empty promises, unfinished projects and dysfunctional communities.

There is a great need to improve conditions and the economic environment in the country to facilitate access and participation of small and mid-scaled investors which could lead to a more sustainable and long lasting economic development of a very prosperous and resource rich country such as Tanzania.

## **4 Proposal of Amendments**

### **4.1 Trends**

Over the last decade land tenure implications have increasingly risen attention in the public due to increased cases of land conflicts, land speculation, corruption and unequal compensation practices to name only a few. As the URT tried to facilitate foreign investment through the implementation of The Tanzania Investment Act in 1997 and the establishment of TIC, a proper framework was put in place. Nevertheless, the low pace implementation of the Land Act of 1999, land dispute machineries not yet properly established, the institutional fragility in land governance and the ever arising issue of compensation<sup>117</sup> are part of a very lively current debate in and outside of Tanzania.

The ongoing debate, which is affecting a majority of the citizens in Tanzania one way or another, mainly focuses on how the implementation of already made adjustments are progressing and could be accelerated as well as on what kind of future adjustments and incentives could be laid out by the legal bodies or investors to improve and to facilitate the current situation on land tenure as cited previously. Various well renowned NGO`s and international development and environment organizations, both local and foreign, are currently assessing the situation to come up with possible solutions on how to solve the present issues.

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<sup>117</sup> cp. Yefred Myenzi (September 6th 2010)

But how is it possible, that a country which is one of the biggest recipients of international development assistance and official aid (2`832 million in 2012) and one of the most politically stable countries in East Africa dealing with such difficulties in terms of attracting foreign investors and legal implementation of the crucial Land Act? Is it that this flood of donor money sets wrong incentives on the level of governance and is actually spent in the wrong sectors?

Illustration 13: Official Development Assistance (ODA)<sup>118</sup> Tanzania

Receipts	2010	2011	2012
Net ODA (USD million)	2 958	2 446	2 832
Bilateral share (gross ODA)	56%	68%	63%
Net ODA / GNI	13.1%	10.4%	10.1%
Net Private flows (USD million)	101	55	7

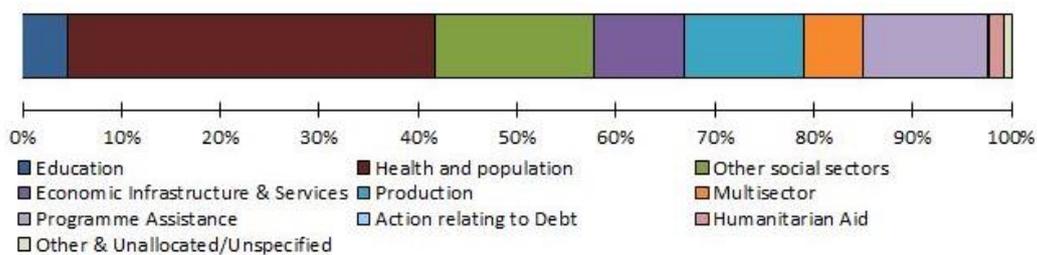
  

For reference	2010	2011	2012
Population (million)	45.0	46.4	47.8
GNI per capita (Atlas USD)	530	540	570

Top Ten Donors of gross ODA (2011-12 average)		(USD m)
1	United States	555
2	IDA	404
3	United Kingdom	224
4	AfDF	146
5	EU Institutions	145
6	Japan	134
7	Global Fund	125
8	Sweden	121
9	Denmark	119
10	Norway	105

Bilateral ODA by Sector (2011-12)



Source: OECD – DAC, World Bank, 2014; ([www.oecd.org/dac/stats](http://www.oecd.org/dac/stats))

There is no doubt that Education and Health are some of the most important sectors to be improved but as the ODA definition states, this aid money should promote the economic development and welfare of developing countries. Shouldn't there be more

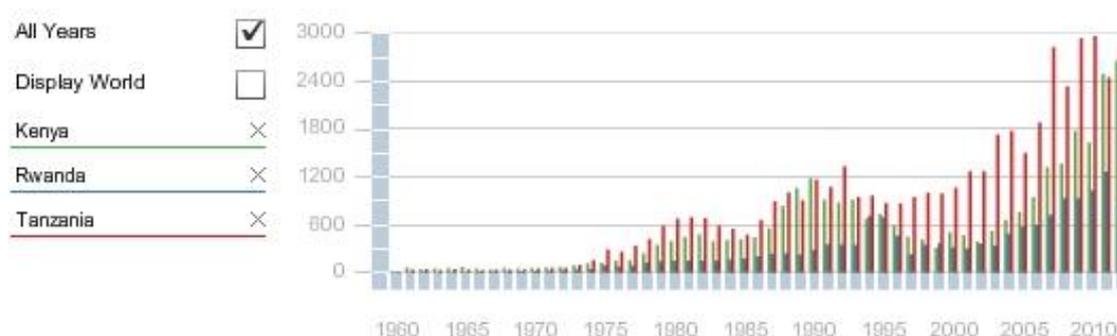
<sup>118</sup> Definition of ODA by OECD: Official development assistance is defined as those flows to countries and territories on the DAC List of ODA Recipients and to multilateral development institutions which are:

- i. provided by official agencies, including state and local governments, or by their executive agencies; and
- ii. each transaction of which:
  - a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and
  - b) is concessional in character and conveys a grant element of at least 25 per cent (calculated at a rate of discount of 10 per cent).

donor projects promoting local governance and petty business in relation to land tenure to improve the situation of small to mid-scale investors?

Compared to neighboring countries especially Rwanda, the economic effects and the amounts spent diverge significantly.<sup>119</sup>

Illustration 14: Net official development assistance and official aid received (current USD, millions)



Source: The World Bank, 2014

Trends state that current issues and disputes could also be caused by an overwhelming investment interest as a counterpart of a slow implementation and enforcement of the Land Act. Most of these investors are focusing on large scale biofuel plantations, on food for export, and on forests for timber harvesting. As a matter of fact, and as stated before in this report, the land law facilitates land transfers from small holders to large scale investors but not vice versa.<sup>120</sup> This leads to loss of land, low productivity, to food shortage, and to social disorientation. Furthermore, the lack of information and the lack of participation withdraws the small land holders from an active role in the whole development process. Therefore, the central government and the private sector additionally set up the “Kilimo Kwanza” initiative in 2010 to transform the agriculture sector.<sup>121</sup> It is mainly meant to promote agriculture investment in terms of financing and modernization to reach a growth rate of about 10% (actual growth rate 4%) to meet the Millennium Development Goal's target and to begin to reduce poverty.<sup>122</sup> Growth rates in the agriculture sector are still some of the lowest compared to the services, the industry & construction, and even the fishing sector.

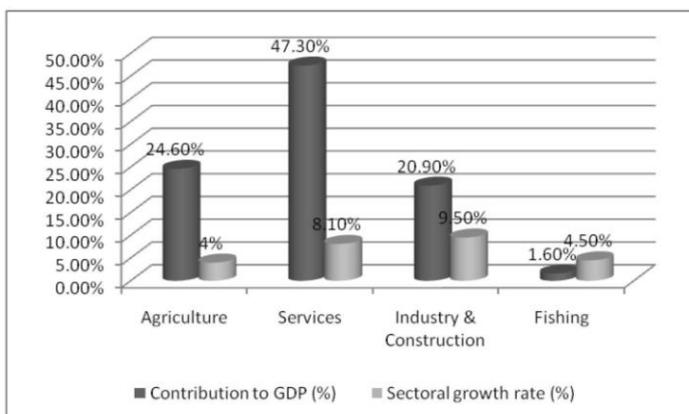
<sup>119</sup> Rwanda is currently ranked at position 63 in the Global Competitiveness Index, Tanzania ranks at position 125. This report will not evaluate the detailed economic state of the neighboring countries.

<sup>120</sup> cp. Yefred Myenzi (September 6th 2010)

<sup>121</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2011, p. 16)

<sup>122</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2011, pp. 14 – 15)

Illustration 15: The Current Contribution of the Agricultural Sector to Economic Growth in Tanzania compared to other Sectors



Source: Tanzania Economic Survey data, 2007

Critics claim that this modernization process will once more benefit large scale investors by transferring farm land through government decisions leaving small holders dealing with their problems by themselves.

Therefore, involved NGO`s and development organizations are promoting, to name only a few, the following options to address these challenges:

1. Enhancement of knowledge on a legal basis and on human rights issues, especially for the rural population.
2. Mobilization of small land holder local communities.
3. Establish engagement forums, e.g. the establishment of regional Village Land Councils, to influence possible future decisions.<sup>123</sup>
4. Institute land use plans to facilitate access and proper planning for common resource use, such as water and pastures.<sup>124</sup>
5. Continue with surveying of village lands to ensure title deeds and property.<sup>125</sup>
6. Inspection of possible future investors to assure that they are able to provide the necessary means, and to avoid speculation.<sup>126</sup>
7. Determine binding compensation standards.

<sup>123</sup> cp. Yefred Myenzi (September 6th 2010)

<sup>124</sup> cp. HAKIARDHI, LEAT, LHRC, The Guardian Limited, AMG – Channel Ten (2008, pp. 18 – 19)

<sup>125</sup> cp. Chambi Chachage (2010, p. 40)

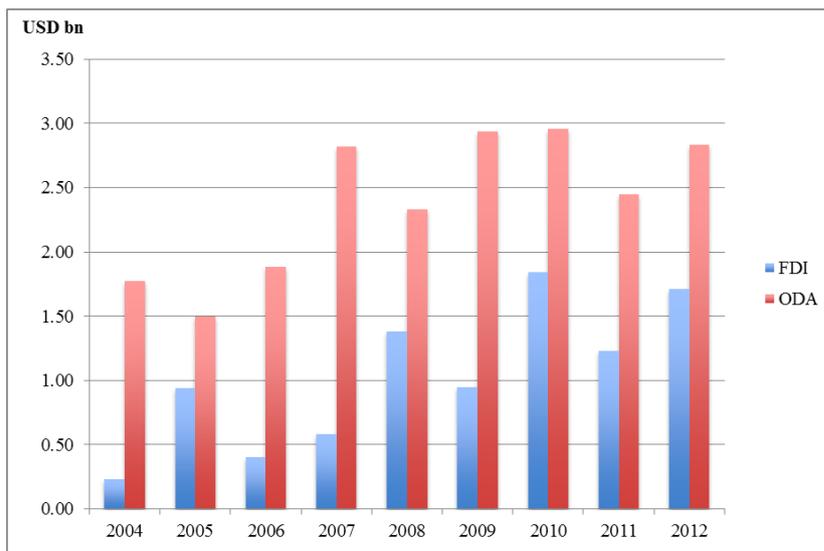
<sup>126</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2010, p. 56)

8. Introduce a proper and locally accessible Land Register for the entire country.<sup>127</sup>
9. Improve the archetypes of Tanzania`s extralegal economy (bottom – up).<sup>128</sup>
10. Improve the current legal system until it fits the needs of the great majority of Tanzanians (top – down).<sup>129</sup>

## 4.2 Possible Options

As the government of Tanzania is strongly promoting foreign investment to boost the Tanzanian economy, recent FDI numbers have risen consistently. On the other hand there is still a considerable amount of donor money sustaining current governmental structures and processes.

Illustration 16: Comparison FDI and ODA (2014)



Source: Author`s illustration based upon latest available data from the World Bank and OECD, 2014

Therefore, the question arises if this donor money is really being put into the right sectors and supporting the local, regional, and national legal and governance structures. One could argue that this immense amount of development money is sustaining ineffective structures and is actually not supporting the enforcement of innovation and the enhancement of structural changes. There have been opinions that through

<sup>127</sup> cp. HAKIARDHI, Land Rights Research & Resources Institute (2010, p. 56)

<sup>128</sup> cp. de Soto (2006, pp. 57 – 58)

<sup>129</sup> cp. de Soto (2006, p. 56)

sustaining current structures the accountability of local and regional authorities has been eluded and therefore wrong incentives have been set out. Especially through the ongoing process of top – down implementation through the government, local authorities get discouraged by feeling left out of the process. The immense centralized power by the government therefore sets yet another barrier for actually enabling the local communities to participate in an implementation process, or from even contributing to it. As land is a fundamental right according to the “African Charter on Human and Peoples Rights”<sup>130</sup> (the so called Banjul Charter entered into force in 1986), and according to the constitution of Tanzania<sup>131</sup>, any transfer of it or any dispossession may cause fundamental socioeconomic problems, which become especially hard for the rural population of Tanzania to be able to manage by themselves.

Therefore, the entire approach of the implementation process of legal and socioeconomic reforms is questionable. By empowering the centralized government and its authorities within a top – down process, the growth of a self – consistent governance structure on local and regional level is a sheer impossibility. The fact that about 90% of the Tanzanian economy operates on an extralegal bases<sup>132</sup>, which is not legally recognized and therefore is not enforceable by law, undermines the sustainable growth of the nation`s economy and excludes small scaled investors from participation in the economic market.

The implementation of policies and laws not known to the vast majority of the public, laws and policies mostly established and based on foreign countries' policies, prevents the establishment of a legal and policy framework specifically tailored to the needs of the greater public. Therefore, the aim must be to implement a widely accepted and supported bottom-up structural framework , primarily to pave the way for future investments, be it large-, mid-, or small scaled.

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<sup>130</sup> Article 14: The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

<sup>131</sup> The constitution of Tanzania as fundamental law overriding all other legislation guarantees in chapter 24 the right to own property and to protect it in accordance with the law:

- 1) “Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.
- 2) Subject to the provisions of sub-article (1), it shall be unlawful for any person to be deprived of his property for the purposes of nationalisation or any other purposes without the authority of law which makes provision for fair and adequate compensation.”

<sup>132</sup> cp. de Soto (2006), p. 18

There have been recent aims for such kind of an approach by the Prime Minister's Office – Regional Administration and Local Government (PMO – RALG) in cooperation with Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ) GmbH on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ). This broad initiative, launched in 2008, was recently presented to the public in 2013, and pilot projects in the Tanga, Mtwara, and Handeni regions are currently up running. This initiative is in consideration to be implemented on a national, regional, and local level, with the main aim to Support Local Governance (SULGO) and therefore strengthen and enforce accountability on a local community basis.<sup>133</sup> This reform program provides tools for mobilization of local revenues, for the establishment of internal control mechanism structures, for transparency improvement, for the accountability and participatory planning at village level, for laws to foster decentralization, and for the fortification of the legal basis at the Local Government Authority (LGA) level. These tools, to name a few, shall facilitate the harmonization of the legal framework, enforce the creation of bylaws at the local level, and strengthen ward tribunals and the village ward executive Officers (VEO).<sup>134</sup> To support these implementations, various handbooks, guides, and manuals, as well as the direct physical construction of communal village buildings, have been elaborated and put in place, e.g. in Handeni region. One of the big disadvantages of the handbooks is that they are mainly written in English and therefore will initially have a reduced impact. If the pilot projects expect to show positive future results, further elaboration of the manuals is required. The SULGO program sets incentives at the right level and enables a direct point of access through the improvement or the new establishment of village office buildings where villagers are able to physically gain access to government officials and to key information promoted through notice boards (Tangazo). Governance has to be supported and strengthened within local communities to make sustainable regional development possible.

The implementation pilot program, which has been elaborated in very close cooperation with local authority representatives, can set up a properly standardized and stable foundation on a local government basis for future reforms and amendments on a national basis.

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<sup>133</sup> cp. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (2013, pp. 6 – 8)

<sup>134</sup> cp. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (2013, pp. 6 – 8)

Within this framework, the extralegal economy can reach a point where it can actually be captured, and in one way or another standardized, and best contribute to the official legal standards (e.g. with bylaws), therefore reaching a regional or even national level. The classification of extralegal documents and the setup of basic rules for standardizing and archiving records and representations can be enabled and accessed in such an environment. It guarantees a certain accountability for local authorities and citizens as well as for business organizations.

This multi - level challenge therefore also requires reforms on a top – down level to further ameliorate and improve the current legal system to fit the needs of the great majority of Tanzanians. As there is already a sophisticated and well elaborated legal system in place, there are voices calling for reforms especially on property system and business organization forms. To secure and guarantee land titles and property, as it is too slowly conducted at the current state, the existing formalization procedure (e.g. survey process) has to be strongly simplified, decentralized, and made low cost.<sup>135</sup> Therefore, a properly implemented and legally recognized local authority and communal structure enables decentralization and access to data which will have to be standardized nationwide.

Additionally, the registration process of transactions involving formalized real estate assets should be simplified and standardized to allow asset trade. One of the most important amendments which should be conducted is the empowerment and the establishment of simplified mechanisms to solve disputes.

Through unions formed by e.g. the so called Association of Local Authorities of Tanzania which can be a strong counterpart to central government representatives implication processes for legal matters find a clear addressor and representative for local authorities.

Unions, e.g. the so called Association of Local Authorities of Tanzania, can be a strong counterpart to central government representatives in legal resolution processes, providing a clear addressor and representative for local legal matters. Nevertheless, every slight disempowerment of the central government (e.g. decentralization) will raise fears within its representatives of losing control and power of a strongly unified country with a size of almost twenty two times larger than Switzerland. Such an exposure to regional authorities appointed with greater power, e.g. power to allocate land or

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<sup>135</sup> cp. de Soto (2006, p. 56)

business rights, contains great potential danger for misuse and therefore should be conducted very carefully, and with great tact.

These are the very first steps on the long route in helping to create sustainable wealth for the majority of the land affected population in Tanzania, or as de Soto states: «organizations enable Tanzanian entrepreneurs to cooperate productively with each other, a property system to protect their assets and build capital if they so wish and legalize identity and contracts to gain access to all of their own country. »<sup>136</sup>

### 4.3 Scenarios

The scenarios stated under this section elaborate upon the findings from the preceding chapters and aim to show simplifications and amendments of the current land tenure process. They only represent a selection of possible options on how to improve and solve current processes and disputes over land allocation. Methods of financing these possible suggestions and their future implementation will be a crucial factor of their success. Whether or not the government or donor countries will be reallocating the streams of aid money by offering new incentives to such projects, or whether private investors will have to contribute through Corporate Social Responsibility programs, will be left to the authorities and will not be further discussed in this thesis.

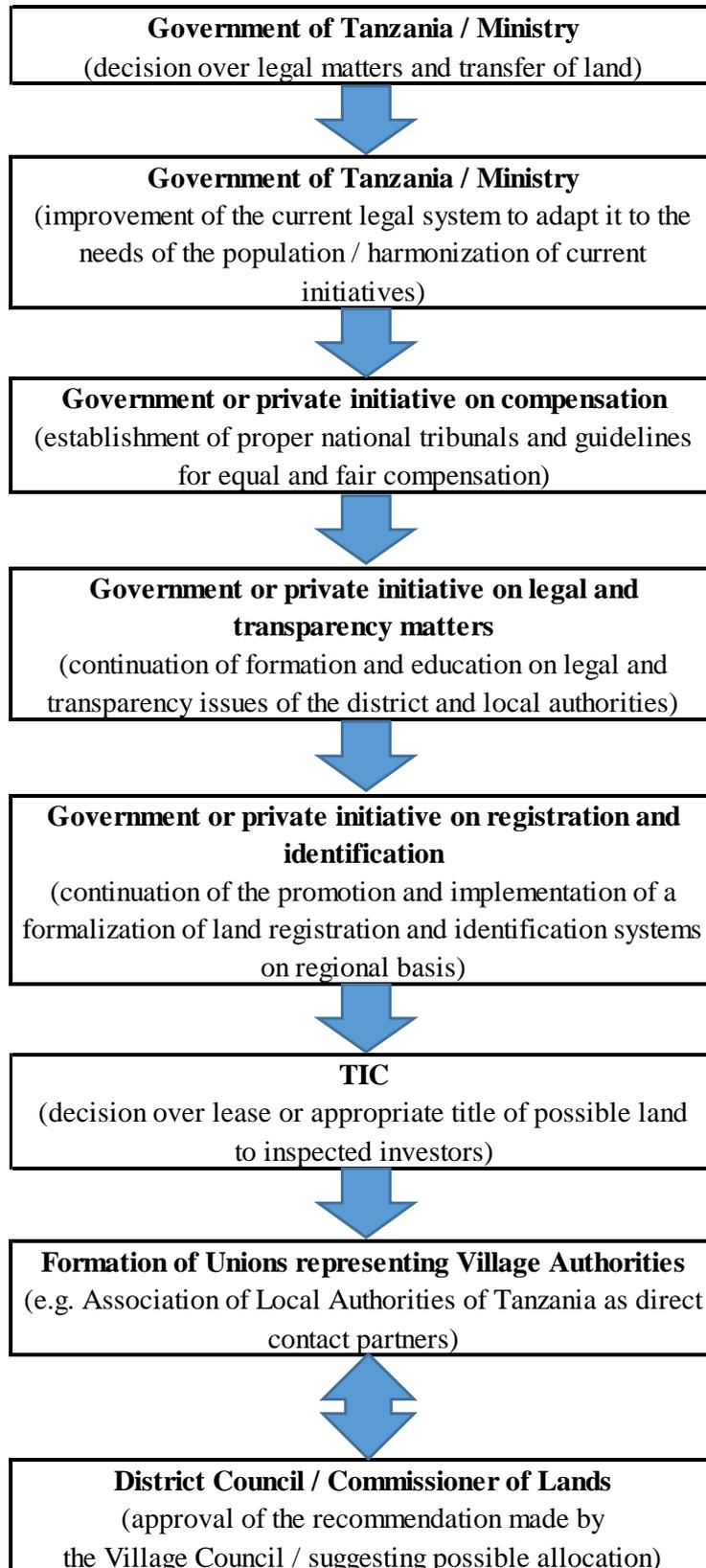
Two basic presented scenarios (A: Top – Down and B: Bottom – Up) will show ways of how to potentially implement mechanisms to sustain and facilitate land tenure. The importance of equity and fairness in land distribution especially affects the low income population in Tanzania and therefore must be dealt with carefully. These scenarios furthermore aim to facilitate the participation of these small and mid – scale investors at the level of the national economy.

Scenario A suggests a range of possible implementation points on a national level promoted by the government of Tanzania and their respective ministries, by private initiatives, or even on a joint venture basis such as the SULGO program. The main focus lies on the topic of transferring village land and harmonization of current ongoing initiatives. The establishment of national tribunals and guidelines for equal and fair

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<sup>136</sup> cp. de Soto (2006, p. 58)

Illustration 17: Scenario A, Top - Down



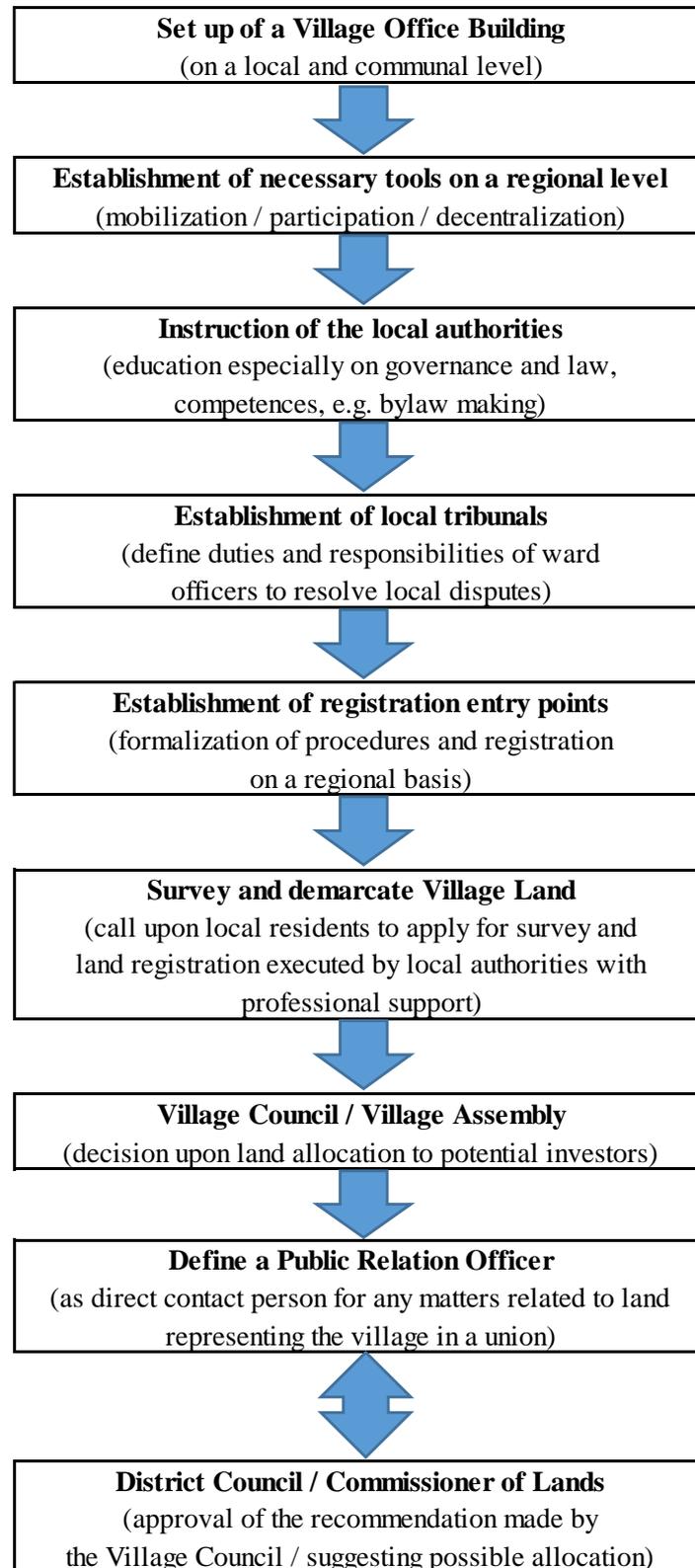
Source: Author's illustration, 2014

compensation standards, as well as formation, education, and transparency practices, are main tasks to improve the economic environment for sustainable investments. TIC, as the main attractor and first contact partner for especially large scale investors, is obligated to conduct proper Due Diligence processes and assessments of possible future investors to prevent speculation or legal abuse. Due to the pressure TIC is facing to attract more investors, there is certainly a lack of internal procedures to conduct proper research and investigation of the aims of these companies. After TIC's decision, the District Council or the Commissioner of Lands will provide approval and pass it on to the local level. Within this process there appears one of the biggest obstacles, the lack of transparency and the lack of information being passed to the affected villagers. Therefore, the formation of Unions representing Village authorities should be enforced as playing a vital role before passing it on to the district level.

This Union should be represented by Public Relation Officers from district level authorities, who will ensure information sharing and are able to place requests and remarks before district authorities when they have reached a decision on the proposed matter. Public Relation Officers therefore could act as an interface between the national and village levels, between Top – Down and Bottom – Up implementations, therefore ensuring adequate local participation in the decision making process.

Scenario B suggests the implementation of incentives on a local level in terms of building up physical communal facilities where villagers are able to refer. These facilities provide storage and archives for relevant documents, and are therefore made accessible to the public. Furthermore, it enables the exchange of information and can be of use for future decision making regarding land allocation matters. A crucial part in supporting local governance is, and will be, the formation of the locally bound personnel in legal matters and in enabling them to create bylaws to support decentralization processes on a national level. Of same importance are registration entry points, which must be regionally, and later on nationally, formalized to improve identification of the villagers and to enable them to claim their properties. To be able to claim title deeds with a regional low cost survey system has to be promoted in order to break ground for the registration and title deed procedure. As a key link, the designation of a contact person from Top – Down as well as from Bottom – Up, e.g. a Public Relations Officer, acting on behalf of the Village Council could facilitate future land allocation and prevent disputes from constantly arising.

Illustration 18: Scenario B, Bottom – Up



Source: Author`s illustration, 2014

#### 4.4 Summary

There have been no fundamental obstacles detected in relation to land tenure in the legal framework of the current land tenure policy of the URT. In fact, it is mostly in how they are applied where conflicts and disputes arise and where investment projects on the ground fail. Centralized power regarding land allocation combined with questionable incentives are therefore complicating small land holders' actions and potential economic development. A vast amount of ODA, which mainly targets the health and education sector, is supporting current governance structures, preventing much needed reform processes. The constantly rising inflow of FDI, in contrary, is pushing governmental organizations, such as TIC, to promote further investment and possibly make way for more large scale projects. Without proper mechanisms for implementing land transfers, especially in regards to how to deal with compensation claims, mainly the rural population is strongly affected, resulting in compulsory acquisition, loss of petty business, and property losses. Recent ambitious initiatives of public and private partnerships aim to provide solutions to ongoing disputes and problems by supporting local governance (SULGO) through implementing Bottom – Up processes. Implementation processes adapted to the local needs seem to pave way for future development and for building up a long lasting foundation.

Top – Down as well as Bottom – Up scenarios contain another possibility of how current issues could be dealt with. As well as on building up capacity on a local level by establishing local governance structures and by promoting accountability on local authorities, the government and its public and private partners must rethink cash flow deployment in order to provide sustainable incentives. It is especially important that compensation and transparency issues will be resolved. To further facilitate land acquisition processes, direct links between the national government and local authorities, e.g. by Public Relation Officers, should be established and taken into account.

These scenarios, although not conclusively stated, could significantly affect the entire chain of the land tenure process and therefore provide fertile ground for potential small scale investors to gain access to the national economy.

## 5 Concluding Remarks

### 5.1 Conclusion

Currently enacted and applied legal structures are withholding a vast majority of the Tanzanian population from participation in the legal framework, pushing them into the extralegal sector within which they are operating, and making them vulnerable to outside interventions. To close this gap between preexisting legal and extralegal socioeconomic structures is one of the main aims to be achieved by the authorities of Tanzania. The fast growing numbers of GDP, FDI, and ODA display a very dynamic status in the national economy. These figures are putting Tanzania into the spotlight for potential foreign investment companies aiming to diversify their portfolios, e.g. on agriculture and mining development, and establish new grounds. At this very critical stage of economic development, it is important for the government to reassess its land tenure policy and adapt it specifically to the needs of the country's population. Therefore, multiple Act's, such as the Land Act, the Village Land Act, and the Business Act, have been recently revised and adapted to provide a proper legal foundation.

The investigated cases however display various difficulties on the level of application of these laws and policies especially in regards to the lack of transparency, insufficient passing of information, and almost nonexistent compensation guidelines, which provokes legal issues and exacerbates socioeconomic inequality for small scale land holders. The different types of land as well as the country's specific Customary Right of Occupancy underline the necessity of clear ground rules.

Current trends in how to deal with these issues focus on supporting local government structures (Bottom – Up) and on the implementation of further regulations on the level of the national government (Top – Down). The proposed amendments should facilitate the involvement of the villagers and of their representatives in policy making and in the development of their own bylaws. Furthermore, they strongly promote the necessity of a decentralization process, elevating the role of the local and district levels.

This Thesis is proposing potential ways forward for how, and on what levels, amendments should be conducted to help avoid future disputes and potentially guarantee equal treatment to all of the involved actors.

## 5.2 Discussion

This Thesis is meant to support the ongoing discussion of how to deal with increasing amounts of investment and foreign aid money in sustaining current structures and its effects on land tenure.

The enforcement of the above cited possible amendments will most certainly provoke further disputes and face opposition among the involved actors. Whether or not the necessary financial grants will be spent on these types of projects or rather be disbursed elsewhere on other priorities is difficult to anticipate. The generally low salary level for most government officials plays a vital role in the possible implementation process aiming for more transparency and therefore faces the issue of possible corruption in one way or another.

It is furthermore questionable if national authorities will be able to counter global economic pressure and primarily focus on the establishment of a solid framework supporting the national and local economy. Focusing upon such a basis, the majority of the Tanzanian population would be able to profit from outside investment as well as from locally enhanced economic activities. There are multiple indicators that opposing multinational companies will remain a challenge to the authorities and therefore will further increase disputes about land policy and its implications on small land holders and potential investors.

## 5.3 Outlook

Tanzania will most likely continue to face more economic pressure due to the ongoing process of globalization and due to international investors seeking for new grounds and diversification of their assets. This developing country will only be able to face such enormous challenges by assuring that internal procedures are well managed and put in place. The local government will have to merge the currently dominant extralegal system with the legal system to assure identification and registration procedures and therefore to build up a solid environment for future economic development. Whether the government, the public, and investors will be able to address these current challenges is very difficult to predict at the current stage. Upcoming elections in 2015 and the resignation of his Excellency, President Jakaya Kikwete, after a term of office of ten years, will lead the country into a next decade of economic growth. The government,

the authorities, and the investors would be well advised to solve current issues promptly to avoid further land disputes. If the government officials succeed in implementing sustainable guidelines for land tenure, the majority of the Tanzanian population will gain access to the economic market and potentially be able to create value on their own by accessing assets worth USD 29 billion.<sup>137</sup>

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<sup>137</sup> cp. de Soto (2006, p. 21)

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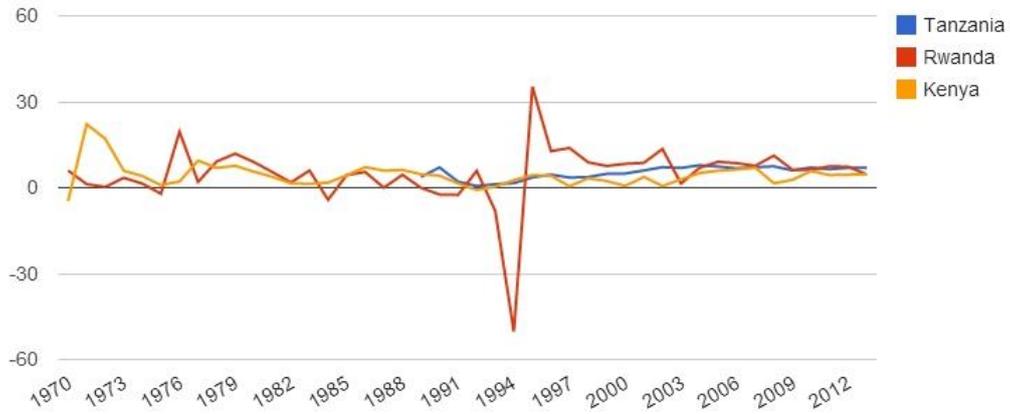
## Appendix

### Appendix 1: Tanzania



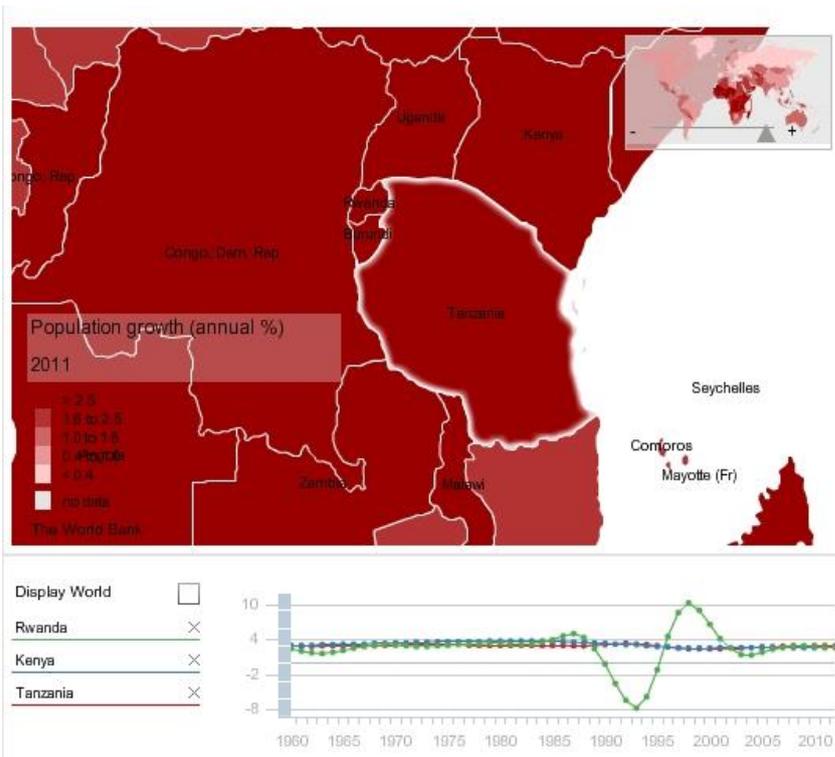
Source: Tanzania Investment Guide 2013 - 2014

Appendix 2: Economic growth<sup>138</sup>: The rate of change of real GDP



Source: TheGlobalEconomy.com, The World Bank

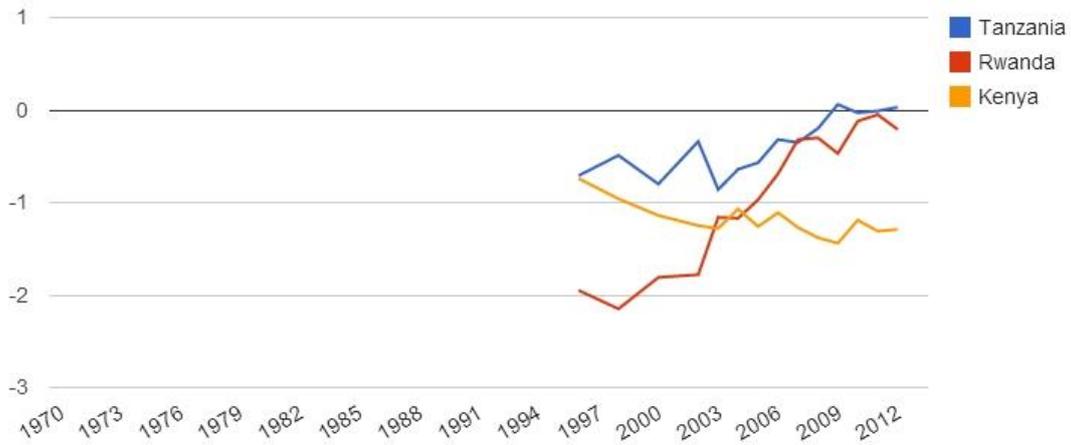
Appendix 3: Population growth (annual %), 2011



Source: The World Bank

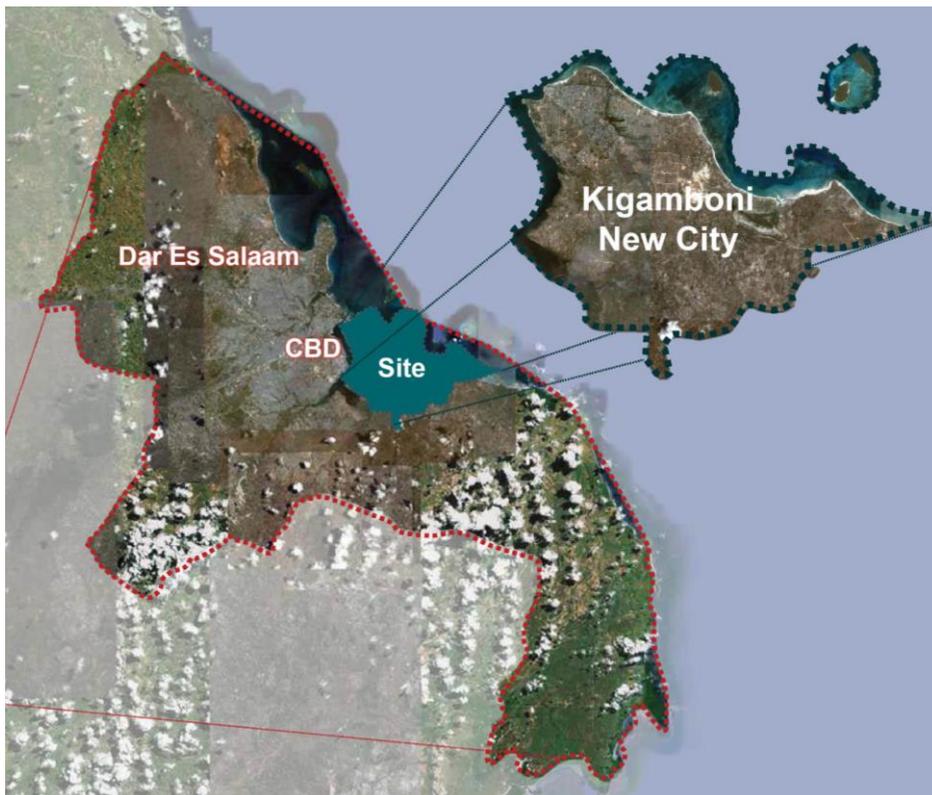
<sup>138</sup> World Bank definition: Annual percentage growth rate of GDP at market prices based on constant local currency. Aggregates are based on constant 2005 U.S. dollars. GDP is the sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products. It is calculated without making deductions for depreciation of fabricated assets or for depletion and degradation of natural resources.

Appendix 4: Political stability index<sup>139</sup> (-2.5 weak; 2.5 strong)



Source: TheGlobalEconomy.com, The World Bank

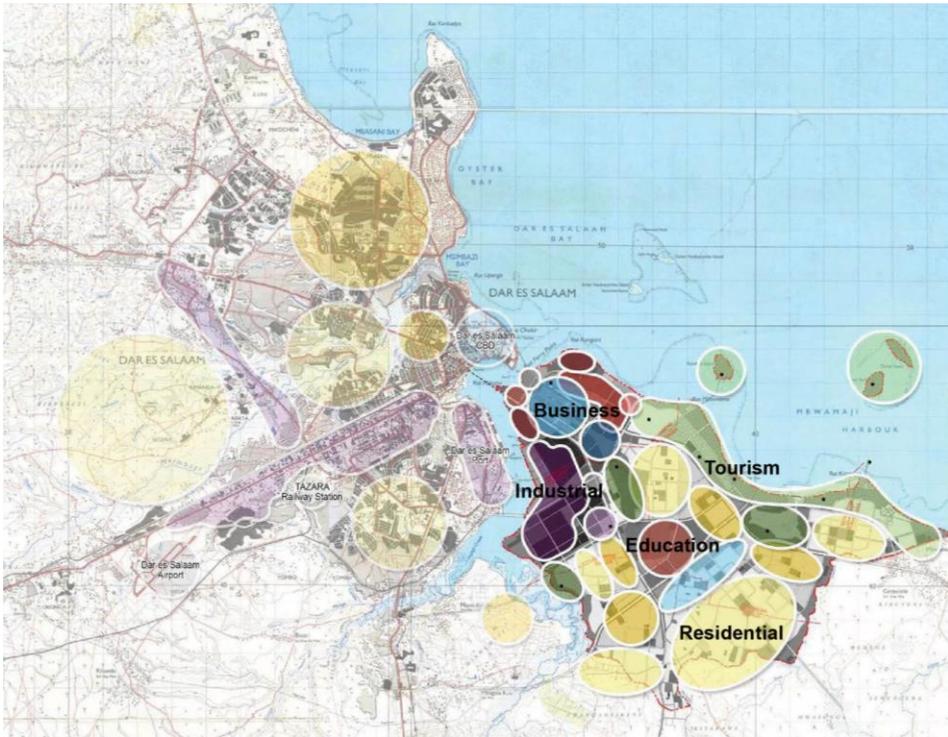
Appendix 5: Site Location, Dar es Salaam and Kigamboni development area



Source: Kigamboni New Master Plan, Main Report (2010)

<sup>139</sup> Definition: Political Stability and Absence of Violence/Terrorism measures perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including politically-motivated violence and terrorism. The indicator is based on a list of individual indicators ([www.theglobaleconomy.com](http://www.theglobaleconomy.com)).

Appendix 6: Overall Urban Structure Framework (2030), Dar es Salaam and Kigamboni development area



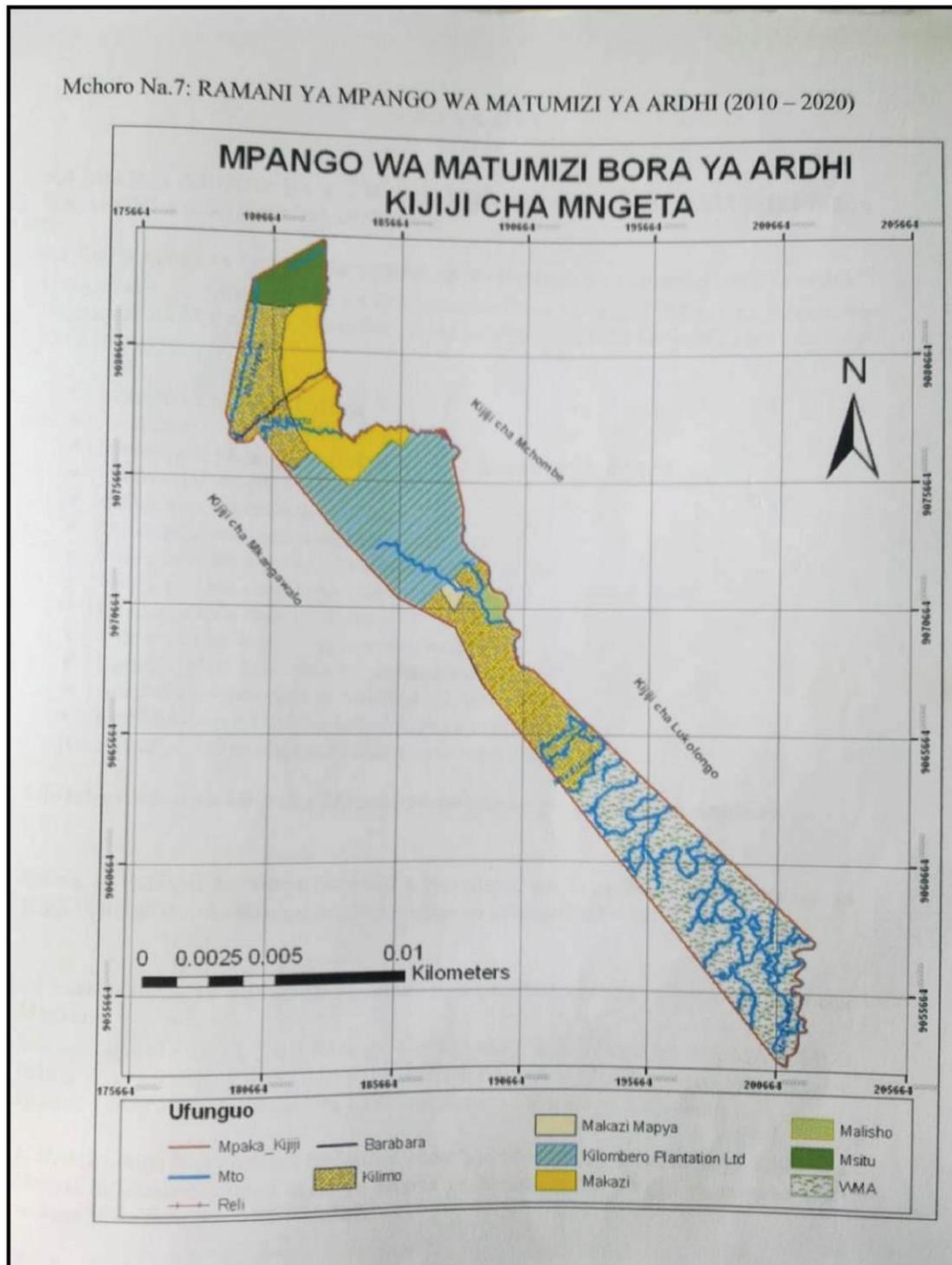
Source: Kigamboni New Master Plan, Main Report (2010)

Appendix 7: Transportation Network Plan, Dar es Salaam and Kigamboni development area



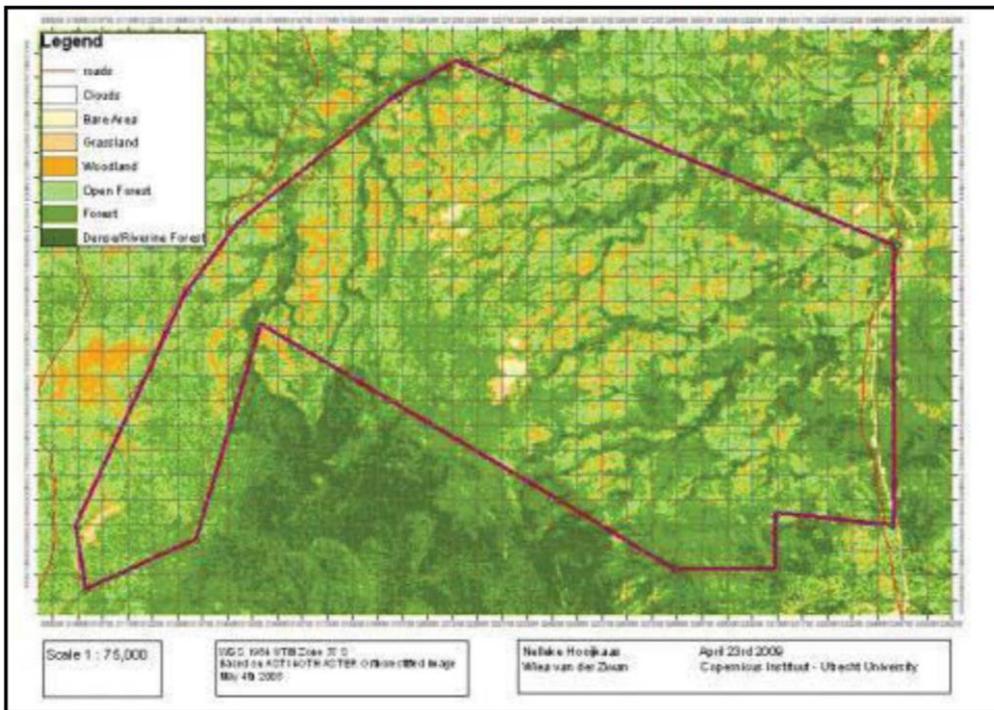
Source: Kigamboni New Master Plan, Main Report (2010)

## Appendix 8: Mngeta village land use plan (2010 – 2020)



Source: Land acquisition and accumulation in Tanzania (2010)

Appendix 9: BioShape Tanzania Limited Biofuel Farm in Mavuji, Migeregere and Ninokwe (Kilwa region), 2009



Source: Accumulation by land dispossession and labour devaluation in Tanzania (2010)

Appendix 10: Communal Village Office Building, Handeni region (2013)



Source: Author's photograph and illustration (2013)

## Declaration of authorship

I hereby assure that I have written the presented Thesis on the topic Land Tenure Policy Implications in Tanzania (EA) on Small Scale Investors without any further auxiliary means than the ones cited in this Thesis. Every part of this Thesis, has it been cited literally or analogously has been clearly indicated in every single case through the indication of its source (including secondary literature).

This Thesis has not been presented in this or in any similar form to any other examination committee and has not been published so far.

Bern, 1.09.2014

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke, positioned above the name Gregor Haussener.

Gregor Haussener