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BETTER REGULATION FOR GROWTH

GOVERNANCE FRAMEWORKS AND TOOLS
FOR EFFECTIVE REGULATORY REFORM

REGULATORY CAPACITY REVIEW OF TANZANIA

INVESTMENT CLIMATE ADVISORY SERVICES
WORLD BANK GROUP



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Better Regulation for Growth Program

The Better Regulation for Growth (BRG) Program was launched in 2007 by the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and IC, the investment climate advisory services of the World Bank Group.

The objective of the BRG Program is to review and synthesize experiences with regulatory governance initiatives in developing countries, and to develop and disseminate practical tools and guidance that will help developing countries design and implement effective regulatory reform programs. Reports and other documentation developed under the BRG Program are available at: www.ifc.org/brg

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ACKNOWLEDGMENT

This report was produced by Roy Pepper, consultant and former Lead Investment Policy Officer in FIAS between 2002 and 2007. Delia Rodrigo and Peter Ladegaard of the World Bank Group's Investment Climate Department designed the approach for the study and provided ad-hoc guidance and input.

The report benefited from valuable comments from Delia Rodrigo and Moses T. Kibirige as

well as from interviews with many key stakeholders and experts on regulatory reform in Tanzania, including Adam Zuku, Augustine Olal, Bede Lyimo, Darren Welch, Emmanuel Kakwezi, Jacqueline Maleko, Margaret Ndaba, Ms. Kalege, Robert Ntakamulenga and Vedastus Manumbu.

Zai Fanai and Vanessa T. Co supported the publication of the report.



FOREWORD

Regulatory reform has emerged as an important policy area in developing countries. For reforms to be beneficial, regulatory regimes need to be transparent, coherent, and comprehensive. They must establish appropriate institutional frameworks and liberalized business regulations; enforce competition policy and law; and open external and internal markets to trade and investment.

This report analyses the institutional set-up and use of regulatory policy instruments in Tanzania. It is one of five reports prepared on countries in East and Southern Africa (the others are on Kenya,

Uganda, Rwanda and Zambia), and represents an attempt to apply assessment tools and the framework developed by the Organization for Economic Cooperation and Development (OECD) in its work on regulatory capacity and performance to developing countries.

The report is an input to the Investment Climate Advisory Services (IC) discussions aimed at helping governments improve regulatory quality—that is, reform regulations to foster competition, innovation, economic growth, and social objectives.

ACRONYMS: TANZANIA

ADR	Alternative Dispute Resolution
BARA	Business Activities Registration Act
BEST	Business Environment Strengthening for Tanzania
BRELA	Business Registrations and Licensing Agency
BRU	Better Regulation Unit
BSC	Steering Committee
CCRO	Customary Rights of Occupancy
CDR	Commercial Dispute Resolution
CMA	Commission for Mediation and Arbitration
CVL	Certificates of Village Land
DANIDA	Danish International Development Agency
DFID	U.K. Department for International Development
EWURA	Energy and Water Utilities Regulatory Authority
IC	Investment Climate Advisory Services
ICT	Information and Communication Technology
IDA	International Development Association
IMTC	Inter-Ministerial Technical Committee
IPC	Investment Promotion Centre
LRCT	Law Reform Commission of Tanzania
LSRP	Legal Sector Reform Program
MOCAJ	Ministry of Constitutional Affairs and Justice

MPEE	Ministry of Planning and Economic Empowerment
MSME	Micro, Small, and Medium Enterprises
NSGPR	National Strategy for Growth and Poverty Reduction (aka MKUKATA)
OECD	Organization for Economic Cooperation and Development
PO-PSM	Public Service Management of the President's Office
PMO-RALG	Prime Minister's Office – Regional Administration and Local Government
PSCP	Private Sector Competitiveness Project
PSRP	Public Sector Reform Program
RBP	Regulatory Best Practice
RIA	Regulatory Impact Analysis
RITA	Registry of Births, Deaths, Marriages, Insolvency and Estate Administration
SADC	South African Development Community
SIDA	Swedish International Development Cooperation Agency
SME	Small and Medium Enterprises
SUMATRA	Surface and Marine Transport Regulatory Authority
TCAA	Tanzania Civil Aviation Authority
TCCIA	Tanzania Chamber of Commerce, Industry and Agriculture
TCRA	Tanzania Communications Regulatory Authority
TIC	Tanzania Investment Centre
TNBC	Tanzania National Business Council
TRA	Tanzania Revenue Authority
TRC	Tripartite Review Committee
TWG	Technical Working Groups
USAID	U.S. Agency for International Development
VAT	Value Added Tax

EXECUTIVE SUMMARY

Like many developing countries, Tanzania needs a comprehensive regulatory reform agenda in response to both domestic and international factors. Since the early 1990s, the government of Tanzania has reformed its economy, whereby macro-economic stabilization, propelled by sound fiscal and monetary policies, has been accompanied by wide-ranging structural reforms. Some of these include privatization of state-owned enterprises, liberalization of the agriculture sector, efforts to improve the business environment, and strengthening of public expenditure management and provision of public services. Increasing attention has been placed on building the institutional foundations for a private enterprise economy and building synergy between different areas of public policy.

In that period, Tanzania has seen an acceleration of economic growth from 0.4 percent in 1993 to above 5 percent in recent years. Despite this extended period of growth, Tanzania remains one of the poorest countries among the Least Developed Countries, with a per capita income of \$400 in 2007. With population growth of 2.4 percent

per annum, per capita GDP growth rates over the last decade have resulted in only modest poverty reduction. The current estimate is that 35 percent of the population lives below the national poverty line.

Sustaining and increasing growth is one of the key challenges facing policymakers in Tanzania, as is broadening the impact of growth, given the country's objective of halving poverty by 2015. Investment has been relatively high in the past in Tanzania, and the private sector has typically accounted for more than two-thirds of domestic investment. Vision 2025, the Poverty Reduction Strategy, and the National Strategy for Growth and Development all emphasize the private sector as the engine of growth. However, increases in overall investment since 2000 have been driven almost entirely by increasing levels of public investment, facilitated by increased flows of donor assistance triggered by the reforms undertaken by government. Private sector investment, on the other hand, has only been growing slowly during the past decade, following rapid growth at the beginning of the 1990s.

In order to sustain economic growth in the future, private investment activity, both domestic and foreign, will have to pick up. Government documents emphasize the importance of private sector development for attaining national goals of acceleration of growth, wealth creation, and poverty reduction. They identify an “enabling business environment” as one of the key drivers of private sector development. As indicated in the World Bank’s 2003 Investment Climate Study, Tanzania faces significant and broad challenges in creating an improved business environment. Factors ranked as “major or very severe constraints on enterprise operations and growth” were, in order of importance:

- tax rates,
- electricity,
- cost of (and access to) finance,
- tax administration,
- corruption,
- macro-economic stability, and
- customs administration.

Beyond this broad agenda of severe constraints, other constraints, including regulatory uncertainty and licensing were identified. The World Bank’s *Doing Business* indicators provide more detailed measures of regulations concerning the start-up and operation of business that tend to confirm the conclusion that regulatory barriers are serious in Tanzania. Compared to its ranking of 150th in 2006, DB 2009 ranks Tanzania as 127th globally in the “ease of doing business” synthetic indicator and 14th in Sub-Saharan Africa, a significant improvement in a short period, but far behind international best practice. In DB2007, Tanzania was recognized as one of the top 10 reformers globally, specifically in the areas of business startup, registration of property, investor protection, and trading across borders.

DB2009 confirms that these reforms have improved Tanzania’s standing to some degree in comparison with its neighbors, but still leave the country far behind international best practice. Excessive red tape and government interference in private sector activities remain the main constraints to private sector development in Tanzania. One indicator of this is the large share of GDP generated in the informal sector, and its continuing growth: some 55 percent of GDP is estimated to be generated within the informal sector, and more than 95 percent of enterprises in Tanzania are estimated to be informal to some degree.

Regulatory reform is increasingly seen as an essential element in the range of policy responses. The government is pursuing much of its regulatory agenda through the Business Environment Strengthening for Tanzania (BEST) Program, which deals with business registration, licensing, land allocation and labor reforms. It has endorsed the need for broad regulatory governance improvements through adoption of good regulation practices, such as Regulatory Impact Analysis (RIA), within the broader reform of government and the public administration.

Against this background, the report suggests a set of short- and medium-term actions to improve the capacities of the Tanzanian government to assure high-quality regulation. At the center of these actions is the recommendation to build a regulatory management system by adopting at the highest political level a broad policy on regulatory reform that establishes clear objectives, accountability, and frameworks for implementing regulation. As an integral part of this, the report recommends establishing a ministerial position to champion regulatory reform at Cabinet level and to coordinate regulatory reform across government. An oversight technical unit should be established to support the minister in these activities.

The report recommends steps to be taken to improve the capacities to make new regulations

and to keep existing regulations up to date. The former include such initiatives as:

- designing and implementing a step-by-step program for regulatory impact assessments;
- improving transparency by establishing legal requirements for consultation procedures during the preparation of regulations;
- promoting the systematic consideration of regulatory alternatives; and
- streamlining the current activities of legal scrutiny of draft regulations.

The latter includes continued efforts to reduce administrative burdens by establishing a central registry of administrative procedures and business licenses, and by initiating a comprehensive review of existing regulations. Particular attention should be directed towards compliance and enforcement of regulations. Improvements on enforcement and compliance dimensions are among the most important challenges to Tanzania's regulatory management system. The problems are the result of a line of deficiencies in the regulatory process. A key effort will be to rationalize the whole enforcement capacities of central ministries, and to strengthen the ex ante assessment of enforcement capacities of regulators and expected compliance issues.

REGULATORY REFORM IN A NATIONAL CONTEXT

Economic development context

At independence in 1961, Tanzania was one of the poorest countries in the world. Its government chose a path of “African Socialism” and “self-reliance/ujamaa” to bring about national development, whereby almost all productive and service activities were put under the direct control of the state. While the policy of socialism and ujamaa led to improvements in social development, especially in primary education and health services, economic growth stagnated as state-run enterprises became increasingly inefficient and ineffective. Urban and rural poverty increased, and by the mid-1980s Tanzania was in the middle of a severe economic crisis, with a long-term growth trajectory that promised further poverty.

1986 marked a watershed for the Tanzanian economy and the government’s economic strategy. Since then, Tanzania has been carrying out economic reforms designed to establish a robust market economy. Reforms started with Structural Adjustment and Economic Recovery Programs (supported by the World Bank and the

International Monetary Fund) that focused initially on fiscal and trade measures to stabilize the economy and subsequently on liberalizing the economy by removing constraints on private sector activities and abolishing controls on prices and the exchange and interest rates. The government tolerated private activities, but there was little effort made at that stage to reform the legal and regulatory regimes governing economic activity, and private enterprise concentrated in trading and other short-term activities that required few fixed assets and minimal interaction with government agencies. This limited response of the domestic private sector (and of the public enterprises) to these initial reforms led the government to recognize the need for foreign investment. In 1990, the Investment Promotion Act established the Investment Promotion Centre (IPC).

Since the early 1990s, the government of Tanzania has introduced a systemic and broad reform agenda, whereby macro-economic stabilization, propelled by sound fiscal and monetary policies, has been accompanied by wide ranging structural

reforms, including privatization of state-owned enterprises,¹ liberalization of the agriculture sector, efforts to improve the business environment, and strengthening of public expenditure management. Increasing attention has been placed on building the institutional foundations for a private enterprise economy and building synergy between different areas of public policy.² In 1996, a major effort to liberalize the financial sector was launched, resulting in privatization of state-owned banks and in licensing of private banks. The Tanzania Revenue Authority was created to modernize tax administration, make it efficient and user-friendly, promote voluntary tax compliance, and strengthen the revenue base of the government. In 1998, the IPC was transformed into the Tanzania Investment Centre (TIC), designed to be a one-stop-shop for investors. In 1999, the Business Registration and Licensing Authority (BRELA) was established to handle business registration outside the mainstream of government bureaucracy, with a view to cutting down on red-tape and reducing start-up costs for businesses. In 2000, the BEST Program was started to carry out a broad and integrated reform of the business environment and reduce the cost of doing business. Regulatory reform has been increasingly viewed as an essential element in the spectrum of policies adopted to stimulate economic growth.

During the past decade and a half, Tanzania has seen an acceleration of economic growth from 0.4 percent in 1993 to above 5 percent in recent years.³ During the last five years, Tanzania's

economic growth has been significantly above the average for sub-Saharan Africa. Indeed, with an average growth rate of 5.2 percent during that period, Tanzania was close to matching the average performance of South Asia (5.4 percent) and South East Asia (5.6 percent) economies, both of which groups were regarded as having the most robust growth performance globally. This reversal of a negative long term growth trend experienced between 1961 and 1985 and a gradual acceleration in growth since then are closely linked to the gradual broadening and deepening of reforms that have taken place, and the development of the private sector, especially in the industry and service sectors.

Nonetheless, in spite of this extended period of growth, Tanzania, with a per capita income of \$400 in 2007, remains one of the poorest countries among the Least Developed Countries.⁴ With population growth of 2.4 percent per annum, per capita GDP growth rates over the last decade have resulted in only modest poverty reduction. The current estimate is that 35 percent of the population lives below the national poverty line, a lower percentage than many other poor countries, which reflects the fact that Tanzania has a relatively equal income distribution.⁵

Sustaining and increasing growth is one of the key challenges facing policymakers in Tanzania, as is broadening the impact of growth, given the country's objective of halving poverty by 2015. Vision 2025, the Poverty Reduction Strategy and the National Strategy for Growth and Poverty Reduction (NSGPR, aka MKUKATA) all emphasize the private sector as the engine of growth, and give priority to developing sectors where most of the poor are found and which have the greatest growth potential. Investment, as measured by gross domestic capital formation, has been relatively high in the past in Tanzania. Total domestic investment, which includes both

1 The extent of the poor performance of public enterprises was concealed for several years by various subsidies and budget supports, but when it became obvious in 1993 it prompted creation of a Presidential Parastatal Reform Commission that had a mandate to examine privatization options.

2 The importance of improving the operations of the public sector and the synergy between public and private sectors is demonstrated by the fact that the current government contains two Ministers of State in the President's Office, one for public service management and one for good governance.

3 Until the early 1990s, Tanzania's economic growth performance was characterized by fairly large year-to-year fluctuations, and the sustained higher growth rates, even in the face of external shocks, are an indication of increased robustness of the economy.

4 Average GNI for Sub-Saharan countries was \$952 and for LDCs was \$578 in 2007. Source: World Bank; Tanzania Data-at-a-Glance.

5 The Gini coefficient is estimated to be 0.34.

private and public investment, averaged around 23 percent of GDP⁶ in the 1990s, but the trend tapered off from more than 25 percent in the early 1990s to around 20 percent in 2000, before recovering again to approximately 25 percent in 2005. While the private sector has typically accounted for more than two-thirds of domestic investment and public sector investment has been highly variable, the recovery in overall investment since 2000 has been driven almost entirely by increasing levels of public investment,⁷ facilitated by increased flows of donor assistance triggered by the reforms undertaken by government.

Private sector investment, on the other hand, has only been growing slowly during the past decade, following fairly rapid growth at the beginning of the 1990s.⁸ However, it is clear that in order to sustain economic growth in the future, private investment activity, both domestic and foreign, will have to pick up. MKUKATA emphasizes the importance of private sector development for attaining national goals of acceleration of growth, wealth creation, and poverty reduction. It identifies an “enabling business environment” as one of the key drivers of private sector development. As indicated in the World Bank’s 2004 Investment

Climate Study,⁹ Tanzania faces significant and broad challenges in creating an improved business environment. The factors ranked as “major or very severe constraints on enterprise operations and growth” were, in order of importance, tax rates,¹⁰ electricity, cost of (and access to) finance, tax administration, corruption,¹¹ macro-economic stability and customs administration.

Beyond this broad agenda of severe constraints, other constraints, including regulatory uncertainty and licensing, were identified by a smaller share of businesses. Given that the respondents to the ICA survey had, by definition, been successful in navigating regulations governing entry and operation, the relative importance of regulatory barriers was likely to have been underestimated in the ICA. The World Bank’s *Doing Business* indicators provide more detailed measures¹² of regulations concerning the start-up and operation of business that tend to confirm the conclusion that regulatory barriers are serious in Tanzania. Compared to its

6 Considerably higher than the 15 percent average for sub-Saharan Africa over the same period.

7 Between 1999 and 2006, increase in aid inflows, together with improved revenue collection, supported an increase in government spending from 16 percent of GDP in 1999/2000 to 26 percent in 2005/06. National accounting statistics suggest that this increase in government spending contributed significantly to the acceleration in economic growth. In the short term, increased demand for goods and services by the government led to increased use of available capacity, but this is unlikely to be sustainable in the longer term.

8 Intensification of reforms since 1995, improvements in the business environment and sector-specific reforms—especially in the mining sector—triggered increases in foreign direct investment (FDI). FDI reached about US\$542 million or 5 percent of GDP by 1999, mainly because of large investments in mining and privatization-related investments. Since then, FDI declined to US\$375 million in 2005, which, at 2.5 percent of GDP, is still quite high in comparison with most other African countries. Sectors receiving the bulk of the FDI showed the highest growth rates, including mining, manufacturing, and trade and tourism (which together attracted about 75 percent of FDI between 1999 and 2001).

9 World Bank (2004), *Investment Climate Assessment: Improving Enterprise Performance and Growth in Tanzania*, Washington, November

10 Tax rates are usually the number one constraint identified by enterprises in ICAs, but the percentage of enterprises ranking them as a problem was particularly high in Tanzania.

11 Governance indicators prepared by the World Bank confirm the importance of corruption in defining the business environment in Tanzania. Before 2000, Tanzania was viewed as one of the 20 most corrupt countries in the world; since then, Tanzania’s ranking has improved significantly, but it remains at the lower end of the international spectrum (see Annex 1). Currently, according to Transparency International’s Corruption Perception Index, Tanzania has a score of 3.0 (on a scale of 0 - 10), placing it 102nd in the world and 16th in Africa, indicating that the country remains on the borderline between rampant and very serious corruption. Similar results are provided by Global Integrity, which points to strong laws on the books in Tanzania on corruption and public procurement but ranks the country’s performance on enforcement as very weak. The Bank’s time series data on governance also suggests that Tanzania’s relative position has been unchanged to any significant degree in the areas of political voice, government effectiveness, rule of law and regulatory quality.

12 Even DB reports do not always convey the seriousness of the situation in individual areas. Tanzania scores well, for example, in the area of contract enforcement, where it placed 35th, significantly better than Kenya (107th) and Uganda (119th). But the measure is based on procedures at the Commercial Court, where only a small fraction of cases in Tanzania is filed, and on time taken to get a judgment once access to the court had been obtained.

ranking of 150th in 2006, DB 2009 ranks Tanzania as 127th globally in the “ease of doing business” synthetic indicator and 14th in Sub-Saharan Africa,¹³ a significant improvement in a short period, but far behind best practice internationally (see Annex 1).

In DB2007, Tanzania was recognized as one of the top 10 reformers globally, specifically in the areas of “business start-up,” “registration of property,” “investor protection,” and “trading across borders.” DB2009 confirms that these reforms have improved Tanzania’s standing to some degree in comparison with its neighbors,¹⁴ but still leave the country far behind international best practice. Excessive red tape and government interference in private sector activities remain one of the main constraints to private sector development in Tanzania. One indicator of this is the large share of GDP generated in the informal sector, and its continuing growth: some 55 percent of GDP is estimated to be generated within the informal sector, and more than 95 percent of enterprises in Tanzania are estimated to be informal to some degree.

Administrative and legal environment

Having been a British colony, Tanzania has adopted a legal system based primarily on English common law, on to which have been grafted customary law and Islamic law. Customary law is in effect only when it does not conflict with statutory law, while Islamic law is applicable to Muslims under the Judicature and Applications of Laws Act, which allows courts to apply Islamic law in communities that follow such law in matters involving personal status and inheritance.

In terms of the hierarchy of legal, administrative, and regulatory instruments, the first source of law

is the Constitution,¹⁵ although its supremacy is not explicitly stated in the Constitution itself. The constitution provides for a bill of rights,¹⁶ although there are also provisions for “claw-back,” so that these rights are not absolute, but subject to legal regulation. The second tier of the hierarchy is statutes or acts of Parliament, which are published in the *Government Gazette*. The third source is case law, comprising cases from the High Court and Court of Appeal, which create precedents that bind lower courts. The fourth source is received law, which includes common law, doctrine of equity and statutes applicable in English law before 1920.¹⁷ And the fifth source of law is customary and Islamic law. Finally, international treaties and conventions are a source of domestic law as long as they have been ratified by Parliament.

The United Republic of Tanzania is today a federalist state based on a multi-party parliamentary democracy, with two components, Mainland Tanzania and a semi-autonomous Zanzibar. However, between 1965 and 1992, Tanzania was a single-party state and followed socialist economic policies: in 1992, following the abandonment of socialism, constitutional reforms led to the establishment of opposition parties that were authorized to contest the ruling party in elections.

¹⁵ Tanzania has had several constitutions since independence. The 1961 Independence Constitution was adopted upon independence, and between 1962 and 1965, the Republican Constitution was in force: both of these were based upon the Lancaster-style constitutions negotiated at independence by the British upon handover of power to African states. In 1965, Tanzania adopted an Interim Constitution, having abolished the multi-party political system and adopted a one-party state. The process of drafting a new constitution took more than a decade, and it was only in 1977 that the current constitution, now modified by 14 amendments, was adopted.

¹⁶ The bill of rights is found in part three of the first chapter; articles 12 to 24 describe fundamental rights and freedoms, articles 25 to 28 impose duties and obligations to respect rights of others and society; article 29 establishes society’s obligations to the individual; and article 30 limits the application of these rights. Individuals are permitted to challenge any law or act that contravenes these constitutional rights.

¹⁷ The Laws Revisions Act of 1994 Chapter Four of the laws of Tanzania [R.E. 2002] established that all legislations previously known as Ordinances, i.e. those which were enacted by the pre-independence colonial administration, as Orders in Council, can now be legally recognized as Acts.

¹³ Rankings in Africa for Tanzania’s regional competitors were 5th for Kenya, 7th for Zambia, 10th for Uganda, 17th for Rwanda and 20th for Madagascar.

¹⁴ Tanzania now compares favorably with Zambia and Rwanda, but falls short of Kenya and Uganda.

All state issues are controlled by the government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar. The government of the United Republic has authority over all union matters in the Republic, as stipulated by Article 4 of the Constitution, and also administers all non-union matters¹⁸ in Mainland Tanzania. The Revolutionary Government of Zanzibar has authority on what is officially known as Tanzania Zanzibar¹⁹ over all non-union matters. The Revolutionary Government of Zanzibar has a separate Executive, Legislature (the House of Representatives) and Judiciary, which operates from the primary court level to the High Court of Zanzibar. These institutions are provided for under the 1984 Constitution of Zanzibar.

The central government of the United Republic of Tanzania has three organs: the Executive (established under Chapter 2 of the Constitution), Legislature (established under Chapter 3) and Judiciary (established under Chapter 5), whose functions and powers are laid out in the 1977 Constitution. The Constitution provides for legislative supremacy of Parliament and independence of the Judiciary.

The Executive comprises the president,²⁰ vice president, president of Zanzibar,²¹ prime minister²² and the Cabinet ministers. Cabinet ministers are appointed by the president from among members of the National Assembly. The current Constitution, within Chapter 8, provides for the establishment of local authorities,²³ whose

purpose, as designated in article 146, is to “transfer authority to the people.”²⁴ Local authorities have been given power to involve the population in the planning and implementation of development programs within their areas, and have the responsibility for social development and provision of public services, maintenance of law and order and promotion of local development through participatory processes. Tanzania’s local government system is based on devolution and decentralization of functions and finances within a unitary state. The local governments are multi-sectoral units with a legal status and operating on the basis of specific powers conferred by legislation. Today, there are 22 urban councils (two city councils, 12 municipal councils and 8 town councils), 92 rural district councils and over 10,000 village councils.

The Legislature, or the Parliament, of the United Republic of Tanzania, consists of two parts – the president and the National Assembly. The president exercises the authority vested in him by the Constitution to assent to bills by Parliament in order to complete the enactment process before they become law. The National Assembly, which is the principal legislative organ of the United Republic, has authority on behalf of the people to oversee and ensure accountability of the government of the United Republic. The Parliament is headed by the speaker, who is assisted by the deputy speaker, and the clerk as the head of the Secretariat of the National Assembly. The National Assembly also has various standing committees to support in its various functions. The National Assembly of Tanzania has a single chamber, with members elected from various constituencies across

18 Non-union matters are those not listed in a schedule to the Constitution that defines a list of Union affairs.

19 Commonly known as Zanzibar, comprising the islands of Unguja and Pemba.

20 Who is the head of state, the head of government (leader of the Executive Branch) and commander-in-chief of the armed forces.

21 Who is the head of the Executive for Zanzibar, that is, the Revolutionary Government of Zanzibar and is the chairman of the Zanzibar Revolutionary Council.

22 Who is the leader of government business in the National Assembly and supervises and manages the day-to-day operation of the Government of the United Republic.

23 Local government has undergone several important changes over the past decades. In 1972, the central government abolished local authorities along with all institutions supporting

the system, such as the Local Government Service Commission and the Local Government Loans Board. Central government took over responsibility for provision and management of basic services and for planning and implementation of development projects at the local level. The result was rapid deterioration of service delivery and infrastructure. The current system of local government was re-introduced in 1984, and in 1985 the Constitution was amended.

24 Act 15 of 1984 established local government institutions and their functions.

mainland Tanzania and Zanzibar. Under the Constitution, women's representation is provided for as a special category, in order to increase the participation of women in national politics. Elections are supervised by the National Electoral Commission which is established under the Constitution.

The judiciary in Tanzania comprises various institutions concerned with the provision of legal services, administration of justice, and enforcement of laws. (For details, see Annex 4.) The main institutions include the High Court of the United Republic, the Judicial Services Commission for Mainland Tanzania, the High Court of Zanzibar, Court of Appeal of the United Republic and the Special Constitutional Court of the United Republic, all of which are specified in Chapter 5 of the Constitution.

Within the Executive, the Ministry of Justice and Constitution Affairs²⁵ has jurisdiction over legal matters, including supervising the Law Reform Commission of Tanzania (LRCT).²⁶ The LRCT is a statutory body established by the Law Reform Commission of Tanzania Act, no. 11 of 1980. The LRCT's mandate is to keep under review all laws in Tanzania, review laws in order to bring them into line with current circumstances, eliminate anomalies and codify and simplify them, and to respond to requests from the attorney general.

There appears to be no complete and comprehensive inventory of laws and regulations affecting businesses in Tanzania. The World Bank's *Doing Business* database enumerates the major commercial laws, as shown in Table 1 below:

²⁵ <http://www.tanzania.go.tz/justice.htm> The site identifies the ministry's functions as follows: Overseeing Justice, the Judiciary, Human Rights, the Attorney General's Chambers, Constitutional Affairs, Administrator General's Office, Parliamentary drafting, Law reform, Public prosecutions, Civil and International Law, Extraditions and Extra-Territorial Mutual Assistance in Criminal Matters, the Official Receiver Public Trustee, Deeds of Agreement, Adoption, Trustee Incorporation, and Registration of Births and Deaths.

²⁶ <http://www.lrct.or.tz/>

Table 1: Commercial Legislation in Tanzania

Banking and Credit Laws

- Bank of Tanzania Act, 2006
- Banking and Financial Institutions Act, 2006

Civil Procedure Codes

- Civil Procedure Code, 1966

Commercial and Company Laws

- Companies Act 2002
- Business Activities Registration Act, 2005
- Export Processing Zones (Amendments) Act, 2006
- Fair Competition Act, 2003
- Special Economic Zones Act, 2006

Constitution

- Constitution of Tanzania

Labor Laws

- Employment and Labor Relations Act, 2004

Land and Building Laws

- The Contractors Registration Act (Act No. 17 - 1997), 1997
- The Written Laws Act (Miscellaneous Amendments) (Act No. 18-1997), 1997
- Architects and Quantity Surveyors Registration Act (Act No. 16 - 1997), 1997
- The Engineers Registration Act (Act No. 15 - 1997), 1997
- Land Act, 1999

Securities Laws

- Capital Markets and Securities Act, 1994

Tax Laws

- Income Tax Act, 2004
- Value Added Tax Act

Trade Laws

- Export Processing Zones (Amendments) Act, 2006

Source: World Bank, *Doing Business Database*.

Research conducted in the course of developing a draft policy²⁷ for sectoral licensing identified

²⁷ "National Sectoral Regulatory Licensing Policy," Technical Working Group Draft for Submission to the Second Inter-institutional Technical Committee Meeting, Oct. 6, 2008.

some 64 pieces of legislation (administered by more than 50 institutions) that provide the basis for a large number of sectoral licensing regulations. These laws are also replicated into local government licensing regimes through by-laws formulated at the district level. Since there are 132 local government jurisdictions, the implication is that there are a very large number of specific regulations and licenses applicable to economic enterprises throughout Tanzania.

Recent regulatory reform initiatives

Tanzania has been engaged in economic reforms for the last 20 years, as outlined briefly in section 1.1. The deep economic crisis of the early 1980s resulted in the introduction of stabilization and growth policies, followed by liberalization of the economy and the granting of permission for private economic activities. Since the early 1990s, increasing attention has been given to structural and regulatory reforms. The agenda has been and remains a broad one, involving a mix of “constructing” a market-based economic system (whose construction had been deemed unnecessary and undesirable during the Socialist period) and “deconstructing” past policies (which included constraints and disincentives on activities and continued application of colonial-period laws and regulations). Reforms over the current decade, which have been reflected in the NSGPR include reform of the business environment, legal reform, financial sector reform, public sector reform to improve the capacity and productivity of the civil service, initiatives to combat corruption, and decentralization and devolution of central government powers to local authorities.²⁸

Initially, regulatory reform was implemented within the individual reform programs for the legal sector, financial sector, taxation, and the civil service.

²⁸ Five major programs exist: Financial Sector Reform Program (FSRP), Legal Sector Reform Program (LSRP), Public Sector Reform Program (PSRP), Local Government Reform Program (LGRP) and Business Environment Strengthening Program for Tanzania (BEST).

Legal reform commenced in the first half of the 1990s, through the Legal Sector Reform Program. Widespread deficiencies in all areas of the judicial system – criminal, civil, and commercial – have required a broad strategy and program. The Ministry of Justice has pursued reforms across all aspects of the legal system. Under the overall program, the country’s commercial laws were revised, updated, and simplified. In 1999, a commercial court system was introduced. More recent judicial reform efforts have been pursued under a broader governance and rule of law program that focuses on improved justice for the poor, including the government-supported Advancement of the Legal and Institutional Framework for Economic Development Program (content, objectives, etc), as well as the Commercial Dispute Resolution (CDR) component of the BEST program (see below). According to the Bank consultant working on the CDR component of the BEST Project, a separate project for commercial legal reform is being proposed by the Investment Climate Facility, and is to involve the International Finance Corporation and the U.K. Department for International Development (DFID).

Taxation reform also started in the early 1990s, when Tanzania was running a large recurrent fiscal deficit. In 1996, it established, as did many other African countries, a Tax Revenue Authority to depoliticize and professionalize tax collection. But the government recognized that further reforms were necessary because tax revenues were only 12.4 percent of GDP, the lowest in Eastern and Southern Africa. Tax avoidance was increasing because of weaknesses in tax administration, which included the granting of excessive exemptions,²⁹ and because of so much economic activity within the informal sector. From 1999 onwards, the International Development Association (IDA) financed a Tax Administration Project,³⁰ under which efforts were made to improve the legal

²⁹ See “Tax administration and tax reform: reflections on the Tanzania experience, 1986-1996,” Philip Mpango, University of Dar es Salaam.

³⁰ Also supported by Denmark, the UK, Finland, Sweden, Germany, US, EU and UN Development Program.

framework and tax administration practices. A new Income Tax Act was passed in 2004, the East African Customs Act was drafted, and a Corporate Plan was formulated. Modern organizational models and management practices were introduced into the tax administration. The reforms worked extremely well,³¹ to the point that Tanzania was characterized as an example for other countries to follow. The Tanzania Revenue Authority (TRA) is currently implementing its Tax Modernization Program, which will continue the strategy of increasing tax revenues without increasing tax rates. The program has four components:

- further improvements to the legal framework;
- broadening the tax base;
- strengthening the TRA to increase efficiency and effectiveness of tax administration; and
- further improvements to the administrative infrastructure.

Public sector reform was started in 1993, with an emphasis on budget reforms on both revenue and expenditure sides, civil service reform, and privatization. The reforms led to reductions in the size of the civil service, controls on the overall wage bill and decompression of the salary structure, and the beginning of decentralization to local governments. Key reforms introduced during the 1990s included cash budgeting and Public Expenditure Reviews, both introduced in 1997, and the Medium-Term Expenditure Framework, a three-year prospective spending plan first introduced

31 Annual revenue increased from \$1.1 billion in 2002-3 to \$1.7 billion in 2005 – 06, increasing the share of the recurrent budget financed internally to 60 percent. The number of registered income tax payers increased from 190,000 in 2003 to 290,000 in 2006, with the number of large taxpayers (corporations) increasing from 100 to 286 in the same period. The amount of the previous year's income tax arrears collected, as a percentage of total income tax arrears at the beginning of the year, increased from 6 percent in 2003 to 72 percent in 2005. Customs clearances made within 24 hours increased from 30 percent in 2003 to 95 percent in 2006, and VAT refunds made within one month increased from 36 percent in 2003 to 62 percent in 2006.

for the 1999/2000 -2001/2 fiscal years.³² These reforms were subsequently institutionalized in the 2001 Public Finance Act.

In 2000, the government launched a Public Sector Reform Program (PSRP), which envisaged an 11-year time horizon divided into three phases with four core areas:

- pay reform to raise and differentiate public sector salaries, in order to increase motivation and reduce corruption;³³
- downsize the public sector through privatization;
- rationalize the government bureaucracy and introduce performance monitoring systems to reduce the size of the bureaucracy; and
- decentralize powers to local governments to increase efficiency of service delivery and effectiveness of developmental planning.

The first stage of the PSRP, which ran from 2000 until 2007, focused on cost containment and restructuring, with the overall objective of having a small, affordable, and efficient government. Activities were concentrated upon

32 For an evaluation of these reforms, see Daniel Ngowi, "Effects of Budgetary Process Reforms on Economic Governance: Evidence from Tanzania," June 2005. This review gives the government credit for making the budget process more transparent and open to effective stakeholder involvement through structured consultations.

33 As indicated in section 1.1, corruption is a large problem and a major public issue in Tanzania. The Auditor General has estimated that over 20 percent of the government's budget is lost annually due to corruption, theft and fraud. The establishment of the Presidential Commission of Inquiry Against Corruption (the Warioba Commission) in 1996 was the starting point for current anti-corruption efforts. In late 1996, publication of the "Warioba Report" helped to open up public discussion on corruption. In 1999, an Anti-Corruption Strategy was formulated, which included a broad stakeholder-approach including government institutions, the private sector, NGOs, and donors. Tanzania now has a comprehensive body of laws, regulations and oversight agencies intended to prevent, investigate and sanction corrupt practices, but failures to enforce these rules and the weakness of institutions set up to deal with corruption are deemed responsible for current high levels of corruption.

redefining the roles and core functions of government, downsizing government operations, and controlling government expenditure, especially the wage bill. Performance management systems were introduced into public institutions, including a more transparent staff performance review and appraisal system and the introduction of an open, competitive, and merit-based recruitment system.

One important institutional development during this period was the creation of more than 20 executive agencies (semi-autonomous bodies operating at “arms length” from their parent ministries),³⁴ with the intention of promoting independence, accountability, service quality and financial viability, while allowing parent ministries to concentrate on their strategic and policy-making roles. One such agency was the Business Registrations and Licensing Agency (BRELA), which is of particular relevance to this report: it was established in October 1999 under the Government Executive Agencies Act No. 30 of 1997, and officially inaugurated in December 1999.³⁵

The objective of Phase II of the PSRP, launched in early 2008, is to ensure that “delivery of quality public services within priority sectors conforms to public expectations of value, satisfaction, and relevance by the end of 2012,” according to President

Jakaya Kikwete.”³⁶ To this end, the phase II program is expected to do the following:

- support service delivery by the ministries, departments, and agencies;
- improve policy development processes and procedures;
- introduce a system of pay incentives and rewards linked to improved accountability and responsiveness to the public;
- develop systems for managing public servants; and
- support leadership development programs, and introduce programs for change management and more effective reform coordination.

The government has emphasized reforms in local government as central to the whole program. In keeping with Article 146 (1) of the Constitution, reform measures taken to date include placing primary education, health, and public utilities under local government jurisdiction,³⁷ increasing the fiscal autonomy of local authorities, and restructuring and broadening their legislative and executive powers.³⁸ The decentralization and devolution programs are in their infancy, however. While reforms have opened up an opportunity for communities to actively influence their own development,³⁹ local governments generally remain

34 Including Tanzania Civil Aviation Authority, National Bureau of Statistics, Tanzania Meteorological Authority, Government Chemist Laboratory, Tanzania Airports Authority, Business Registration and Licensing Authority, Tanzania Revenue Authority, Surface and Marine Transport Authority, Energy and Water Utilities Authority,

35 BRELA’s mandate is to incorporate companies; its specific roles include:

- administering companies and business names laws;
- regulating business by administering business and industrial licensing laws;
- administering intellectual property laws; and
- encouraging and facilitating local and foreign business investment.
- stimulating scientific and technological inventiveness and innovation and encourage technology transfer.
- protecting the development of creativity in artistic, literary works, and expression of folklore by protecting such work in conjunction with the owners of these rights.

36 <http://allafrica.com/stories/200802041257.html>

37 Key central government departments have not yet been fully devolved, so that local governments look more like an appendage to the central government system than an integral part of the country’s government system.

38 For a brief description of the reform program, see “The Local Government Reform Program in Tanzania – Country Experience,” a paper by Brig. Gen. Hasssan Ngwilizi, MP, Minister of State, President’s Office, Regional Administration and Local Government, delivered at the Commonwealth Advanced Seminar on Leadership and Change in the Public Sector, Wellington, New Zealand, February 2002

39 Following enactment of the Regional Administration Act of 1997, small Regional Secretariats were established to replace Regional Development Directorates that had tended to duplicate the functions of the authorities themselves. Regional Secretariats now serve as back-stopping and support agencies for lower level local governments.

too weak to implement developmental programs, and their low revenue bases generally cannot sustain the necessary administrative machinery. Furthermore, duplication of infrastructure affects the quality of service delivery. Recently, for example, the government decreed that every ward should have a secondary school, although in low-density, poor districts with a shortage of teachers, a pooling of resources among wards would be a more efficient allocation of resources.

All these reform programs in Tanzania contain policy-making activities that generate changes to legislation, regulations and administrative procedures and practices. Each of them has adopted its own methodologies for evaluating and assessing policy options, and in many cases these appear to have been ad-hoc and subject to change. It was not until the adoption of the BEST program (also known by its Swahili name MKUMBITA) in 2000 that a more systemic approach was taken to the process and techniques of regulatory reform. The BEST program also was the first reform program designed specifically to address the needs of the customer – the business community by improving the business environment through a conducive regulatory environment.⁴⁰

The BEST Program was introduced to carry out a broad and integrated reform of the business environment and to reduce the cost of doing business, in particular for small and medium enterprises (SMEs), through targeted interventions. The program began implementing a long-term (10-year) strategy aimed at improving the overall business environment by: a) reducing regulatory and administrative constraints to entry and operation

of businesses and thereby the cost and time burdens for businesses; b) changing the culture of government from control to efficient facilitation and improved delivery and quality of public services; and c) enhancing the ability of the private sector to advocate for a better business environment.

The BEST program strategy includes a focus on regulatory governance, involving a phased, step-by-step approach to implementation of RIA and an emphasis on establishing the right institutional structures to address the stock and flow of regulation. Within this framework, the government has adopted RIA as the preferred technique for assessing quantitative and qualitative impacts of laws and regulations on the investment climate. Also, the BEST Program is advocating the use of information and communication technology (ICT) in the delivery of public services to the business community.

The BEST Program (phase 1⁴¹) has provided support to five components:⁴²

- 1) Achieving better regulation, with priority given to simplifying and speeding up the process of business registration, formalization, and modernization of land administration processes, tax reform, and labor laws with a view to creating flexible labor markets.⁴³
- 2) Simplifying and streamlining commercial dispute resolution,⁴⁴ to lower the cost of contract enforcement and reduce the time taken to resolve disputes.

⁴¹ Designed to run from 2004 until June 2008.

⁴² See Annex 5 for details of the areas of focus and expected outcomes, for both Phase 1 and Phase 2 programs.

⁴³ This component also includes reforms in agriculture and import/export transactions.

⁴⁴ Through capacity building, reform of court and legal procedures, clearing the backlog of cases and introduction of alternate dispute resolution mechanisms. Currently, the CDR component has eight broad outcomes: increased access to the Commercial Court; improvement of the civil procedures; support to civil procedure reforms in the Judiciary; introduction of ADR; introduction of legal education programs for commercial law; improved operations of the Tanganyika Law Society; support to the Land Division of the High Court; and training and capacity building for commercial dispute resolution.

- 3) Strengthening the Tanzania Investment Centre, so that it can more effectively serve the investing community.
- 4) Changing the culture and mindset of government functionaries towards private enterprise.
- 5) Empowering private sector organizations to deliver effective advocacy in support of a better investment climate.

The BEST program was approved by the Cabinet in July 2002 and started in December 2003 after consultations between government, the private sector, and donors.⁴⁵ After a year of work to establish implementation systems and management structures, Phase 1 program activities began in January 2005, and in February 2005, the Better Regulation Unit (BRU) was established within the Ministry of Finance and Economic Planning to implement and coordinate the four government components. The fifth component, private sector advocacy, has been managed by BEST-AC,⁴⁶ which is under the control of a joint public-private board.

The BEST Program has a three-tier implementation structure: Tripartite Review Committee (TRC); BEST Steering Committee (BSC); and BEST Technical Working Groups (TWG). The TRC,⁴⁷ comprising government, donors and private sector, has been the primary decision-making body for the program, providing funding and budget approval for the work plans submitted by the BRU in collaboration with the implementing ministries. It also monitors the implementation of the program on the basis of quarterly reports prepared by the BRU. The BSC, which comprises government and private sector representatives, provides collective management of BRU's cross-sectoral mandate for regulatory reform. The

TWGs provide stakeholder representation for the specific reforms that are part of the program and provide the basis for their involvement in developing implementation plans.

Initially, the role of the BRU was to work with implementing sector ministries and development agencies and to take the lead in promoting and implementing the BEST Program reforms; to ensure linkages between the five components of the program; to manage and account for the resources provided under BEST; and to promote the creation of a permanent "better regulation" function within the government.⁴⁸ In other words, BRU was itself made responsible for delivering the reforms. This Phase 1 program focused on revision of laws and regulations, building technical capacity for regulatory best practice, and building capacity in the ministries, presumably to take over the implementation of their respective components at some point in the future.

During 2006, the BRU was restructured because it was recognized that it was not able or equipped to deliver results. It had neither the political clout nor the technical ability to take on the implementation of the various components. The new role for the BRU was to facilitate and provide support services (such as procurement services) to the various ministries that were made responsible for delivering the reforms. MOUs were signed between the BRU and ministries, confirming that implementation of the components is the responsibility of the ministries. At the same time, with IDA joining the BEST funding basket through its Private Sector Competitiveness Project (PSCP),⁴⁹ new activities were incorporated into the BEST program, primarily the BEST Zanzibar program and the land reform component. In addition, BRU, formerly located in the Ministry of Planning,

⁴⁵ The initial costs of BEST Phase I were estimated to be \$25.4 million, of which \$18 million was committed by the donors. The latest estimate of cost is \$64 million.

⁴⁶ <http://www.best-ac.org/index.html>

⁴⁷ The TRC is chaired by Permanent Secretary, President's Office for Planning and Privatization. Membership of the TRC is listed at <http://www.best.go.tz/trc.asp>

⁴⁸ The functions of BRU as described in "Practice of Reforming the Business Environment: the Case of the BEST Program," paper prepared by Dr. Stergomena Tax-Bamwenda and Dr. Betty Mlingi, for the Cairo International Conference, Nov 29 – Dec 1, 2005.

⁴⁹ IDA funding increased the basket by some \$40 million.

Economy and Empowerment, was moved to the President's Office, Planning and Privatization.

In November 2007, a joint donor appraisal mission looked at the potential for an extension of donor support until the 2012/13 fiscal year.⁵⁰

⁵⁰ The proposed extension was reflected in a Program Document produced in August 2008, which included a progress report and program changes. See http://www.best.go.tz/achivement/BEST%20Prodoc_Final_Clean.pdf

The Phase 2 program estimates funding needs to be \$120 million between July 2008 and June 2013, some \$9 million of which would be the cost of BRU. Currently, the five donors are considering an extension of their financial assistance, and will conduct a Mid-Term Review in May 2009. It is probable that Phase 2 activities will be divided into a Phase 2 and a Phase 3, so that an interim review in 2010 will be undertaken before a final decision is made on continuing support.

NATIONAL POLICIES AND INSTITUTIONS FOR REGULATORY REFORM

Regulatory reform principles and policies

Governments should be clear about why they are pursuing private sector development and reforming regulation, and about the principles and objectives of reform, as well as the responsibilities of groups involved in reform. The most effective way to do this is to establish an explicit regulatory reform policy, based on internationally accepted principles of good regulation (see Annex A).

As detailed in the previous sections, Tanzania has pursued numerous policy reforms that have regulatory implications. However, to date, Tanzania has not adopted an explicit policy on broad regulatory reform or quality at the highest level of government. The closest expression of a broad policy approach can be found in the draft policy on sectoral licensing reform⁵¹ published in October 2008. This document takes as its starting

point the creation of a regulatory framework that produces “a business-friendly regime with simple, necessary and transparent rules and procedures protecting public interests and enhancing business competitiveness.” The document establishes that the government of Tanzania will:

- implement a registration mechanism to ensure that all businesses are identified and classified on the basis of international best practices;
- inform businesses of their rights and obligations;
- establish a regular public-private dialogue and conduct regular reviews of the regulatory regime;
- introduce “sunset clauses” in business regulations;
- develop an ICT-based registration system;
- ensure that costs of regulation will be limited to recovery of administrative costs;

⁵¹ “National Sectoral Regulatory Licensing Policy,” Technical Working Group Draft for Submission to the Second Inter-Institutional Technical Committee Consultative Meeting, Prime Minister’s Office, October 2008

- use innovative enforcement mechanisms, including risk analysis; and
- establish a central unit to coordinate all regulatory activities and institutions.

This document remains under consideration by the government.

There are already various arrangements in place that are consistent with good regulatory principles. The Constitution provides for the participation of citizens in governmental processes: Article 8 stipulates that the government shall be accountable to the people and that they shall participate in the affairs of government; Article 18 guarantees the rights of citizens to be informed about issues of importance to society; and Article 21 guarantees the rights of citizens to be involved, directly or through elected representatives, in matters pertaining to governance and any matters affecting individuals and society at large. The Constitution also provides for the Executive, through the Secretary to the Cabinet, to notify and explain decisions taken by the government to persons and public institutions concerned with such decisions (Article 60).

As discussed in greater detail in section 3.1, the reform policies adopted by the government over the past decade have been developed to a large and increasing extent within an atmosphere of public-private dialogue and consultation. Consultation involving stakeholders was first introduced for specific reform efforts, such as for tax reform (see Section 3.2), and was a central feature of the development of the National Strategy for Growth and Reduction of Poverty and Vision 2025.⁵² In 2002, a Tanzania National Business Council (TNBC) was created to serve as the joint platform for dialogue between the government

and the private sector and to build a constructive partnership for policy reform that could lead to faster economic growth.

During the past year, steps have been taken to publicize the government's commitment to regulatory good practice. In June 2008, the President's Office, Planning Commission issued "Principles of Good Regulation."⁵³ The document laid out the main features of a "good regulation" approach, but was not a policy directive that required ministries and agencies to follow its concepts. In January 2009, the BEST Program issued a brochure through the Prime Minister's Office titled "Regulatory Best Practice and Regulatory Impact Analysis."

The brochure defines RBP as follows: *"this (RBP) requires any ministry that proposes new laws or regulations that have cost implications for businesses, and/or significant economic or social implications, to carry out meaningful consultation with stakeholders. Such meaningful consultations include full analysis of the potential costs and benefits of the proposals underpinning new legislation and justification of those proposals accordingly. It also requires them to consider alternatives to regulation (such as education or better enforcement of existing laws), to identify specific outcomes to be achieved as a result of the new law, and to spell out methods, human resources and budgets required for ensuring effective compliance as well as monitoring for such compliance."*

The brochure indicates that *"RIA is a tool for policy-making that helps governments to apply the principles of RBP. It involves a detailed analysis to ascertain whether or not the new regulation would have the desired impact. It helps to identify any possible side effects or hidden costs of compliance on the individual citizen or business. It also helps to clarify the costs of enforcement for the State. The process involves producing a document, through which the results of analysis are shared by all stakeholders involved in the consultations."* The document stresses that RIA is being introduced into government policy and

⁵² The Foreword of Vision 2025 summarized as follows: "The draft Development Vision was discussed by various societal groups, including Honorable Members of Parliament, all political parties, leaders of various religious denominations, women and youth organizations, chambers of commerce and industry, farmers, professional associations, renowned personalities in our nation's history and ordinary Tanzanians."

⁵³ <http://www.best.go.tz/%5Cachivement%5CPRINCIPLES%20OFGOOD%20REGULATION%202-%20June%2008.pdf>

lawmaking processes, and that Tanzania already has a basis for the RIA system, with the current process of decisionmaking incorporating most of the elements of the RIA process. It is clear that the RBP and RIA process, as described in the brochure, is consistent with the OECD principles. However, the brochure should be interpreted as a statement of intent rather than as a description of actual practice in Tanzania.

Institutions and drivers to promote regulatory reform

It is a commonplace to argue that regulatory reform is dependent upon political stability and predictability.⁵⁴ In Tanzania, the political stability enjoyed since independence has not necessarily provided a political environment that is conducive to reform of business regulations. This is because there have been many officials in government, especially at the local government level, who do not fully appreciate the implications of private-sector development. Competitiveness is not yet mainstreamed across government and is often seen as an issue for the Ministry championing the BEST program.

As a result, introduction and implementation of RBP/RIA in Tanzania has depended on a small number of key institutional champions that have become important strategic allies in the course of reform implementation. The Ministry of Finance has been instrumental in pushing for better regulation initiatives, including the introduction of RIA.

In addition, the Ministry of Planning, Economy and Empowerment has been an important

supporter for reform. It was the original home for the BRU.

The BRU was subsequently transferred to the President's Office. The BRU's key responsibility is the facilitation of the BEST Program components. The unit has 16 staff; 7 staff members are working on procurement, 3 on finance and budgeting, 4 are program officers working with the ministries that are responsible for the BEST components, and the unit has a lawyer and a specialist in monitoring and evaluation. BRU also has a ICT specialist available on an "as needed" contract. With the exception of the BRU's head, the current staff members do not have expertise in regulatory reform. Currently, if there is a demand for RIA expertise within the components of the BEST Program, the expertise is provided by consultants. In May 2009, a mid-term review will be conducted of the BEST Program, with a view to determining the Phase II project that is scheduled to run until 2012/13. The diagnostic report on licensing strongly recommended that the BRU should be viewed as the ideal potential candidate to take on the role of a coordinating body to facilitate best practice in licensing reform and to ensure consistency in the application of licenses across sectors. The draft licensing policy issued by the prime minister's Office in December 2008 stipulated that BRU should continue to support the licensing reform activities "until a formal permanent supervisory institution is put in place and has assumed its mandate."

The policy added that BRU's capacity should be developed, if BRU assumes a role of "coordinating reforms and providing secretariat services to the oversight body that will be established to coordinate and vet regulatory reforms for good governance and expedient implementation. The oversight body will be a regular public-private sector Committee, chaired by a political appointee, located in a high-powered government office, preferably in the Prime Minister's Office, and reporting regularly to the Prime Minister as Head of Government business on the status of reform implementation measures from a results-based

⁵⁴ While continuity of governing party may be one definition of political stability and consistency, it has also been suggested that regulatory reform can be pursued in countries that experience changes in governing party and philosophy as long as all the parties agree on the need for regulatory reform. Italy, which pursued regulatory reform during the 1990s in an environment where governments changed annually, is often cited as an example.

perspective.” This draft policy is currently undergoing stakeholder consultations, and no decision has been taken yet on developing BRU’s capacity to undertake these responsibilities.

The Judiciary and the legal profession have a crucial role to play in creating a better business environment by implementing an efficient process for developing sound laws and regulations. But, they are not playing an effective role as champions of business regulation reforms. A reforming government undertaking legal and regulatory reforms must be supported by a cadre of well-trained and motivated government lawyers to undertake and underwrite new laws and policy. Traditionally, the Ministry of Justice and Constitutional Affairs in Tanzania has been poorly funded⁵⁵ and weakly resourced, and has only in recent years established a planning and policy department to try and boost its spending and budget bidding capability. A recruitment freeze in the 1990’s and early 2000’s has meant that the ministry is staffed by few senior staff and a large junior cadre of law graduates, recruited straight out of universities.

Nonetheless, the ministry’s portfolio is ambitious. It is tasked with reviewing all new laws drafted by other government departments in Tanzania, which is a heavy workload since Tanzania is undergoing a program of vigorous reform. The ministry advises on both private and public sector agreements entered into by the government and defends the government in court. In such a resource-constrained situation, it is not surprising that the Legal Sector Reform Program—the access to justice and rule of law program that the ministry is tasked with rolling out—has been at the design and inception stage since 1993, and is only now commencing implementation.

⁵⁵ Historically, the Judiciary, recognized within the Constitution as fully independent and one of the three pillars of the State, has received less than 0.5 percent of the budget: while this may have been justifiable when the one-party system was in place and a fully functioning independent Judiciary was perceived as unnecessary, it has introduced severe resource constraints at a time when the judicial load has increased.

As a result, the ministry is unable to provide the necessary quality control over legislation enacted, or to process legislation fast enough to meet the needs of the reforming ministries. The Judiciary itself has focused on manpower and court reform, seeking to increase the number of courts and judges. Moreover, it is more concerned with criminal justice issues than with commercial legal issues. Soft infrastructure reforms – procedural laws, working practices and training – have been seen as issues of secondary importance. In addition, there is no discrete administrative cadre so that the judges have to administer not only judicial functions but also all human resources and infrastructure responsibilities.⁵⁶ The Judiciary, which has been protective of its independence, has been somewhat suspicious of government-led reform. The governance structure of reform programs has contributed at times to this feeling: for example, the BEST program is managed by two government ministries who sit on a governing committee on which the Judiciary has no representation. The responsibility for the Commercial Dispute resolution component rests with the ministries of Justice and Planning, not the Judiciary.

The Cabinet Secretariat approval process for legislative and policy issues already serves as a framework for quality control and coordination, and it is intended that the regulatory governance framework will be introduced into that pre-existing framework. Resolutions supporting the institutionalization of RIA have been adopted by Permanent Secretaries and MPs. The focal point for RIA compliance has been established in the Office of the Cabinet Secretariat, and BRU is tasked with supporting the Cabinet Secretariat to champion the process of embedding RIA into the policy-making process in Tanzania.

However, it appears that the capacity of the Cabinet Secretariat is already severely stretched in terms of its customary activities. Currently, the

⁵⁶ These court registrars are also responsible for engaging in policy, strategic thinking, and reform, so that their ability to do any of these things meaningfully is compromised.

Secretariat has only three officers who are responsible for servicing the Cabinet and its processes, and has only two staff members trained in regulatory good practice. Additional staff resources would be required to allow the Secretariat to take on the additional duties relating to RIA, and additional staff will also be required in the BRU to support RIA activities.

Coordination between levels of government

The 1997 OECD report advises governments to “encourage reform at all levels of government.” This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and sub-national levels. High quality regulation at one level can be undermined by poor regulatory policies and practices at other levels, while, conversely, coordination can vastly expand the benefits of reform. The policies and mechanisms for coordination between levels of administration are thus becoming increasingly important for the development and maintenance of an effective regulatory framework.

National – Local

Mainland Tanzania is divided into 21 administrative regions, which are subdivided into 122 local authorities; Zanzibar and Pemba are divided into five regions. Local government authorities are classified into two categories. Urban authorities are responsible for the administration and development of urban areas, namely townships, municipalities, and Cities of Dar es Salaam and Mwanza. Rural Authorities, commonly known as District Councils, form the second and much more numerous category. There are over 10,000 elected Village Councils, the basic unit of local government. Regional commissioners are appointed by the central government, as are district commissioners and development directors for the districts.

Each district development council includes elected members, but these bodies are only advisory. In Zanzibar, revolutionary committees are responsible for regional administration.

Local government authorities exist for the purpose of consolidating and giving more power to the people to competently participate in the planning and implementation of development programs within their respective areas and generally throughout the country. All local government authorities are mandated to play two main functions of administration, law and order; and economic and development planning in their respective areas of jurisdiction. Tanzania’s local government authorities play an important role in the delivery of public services in Tanzania. They are responsible for delivering three types of public services in Tanzania Mainland: (1) concurrent functions; (2) exclusive local functions; and (3) delegated functions.⁵⁷

The Local Government Reform Program is intended to make local authorities more accountable for resource management and service delivery. The strategy is to limit the role of central government ministries to providing policy frameworks, setting guidelines, determining service delivery standards, and providing overall coordination and support.

Local government authorities in Tanzania fund their expenditures from three main sources, notably intergovernmental transfers,⁵⁸ own-source local

⁵⁷ Concurrent expenditure responsibilities are public services funded and regulated by the central government, but for which the provision is devolved to the local government level. These concurrent public services include the five grant-supported sectors, notably primary education; local health services; agriculture extension and livestock; water supply; and local road maintenance. Approximately three-quarters of local government spending in Tanzania is for concurrent functions; the remainder is spent on exclusive local functions (such as refuse collection and other such local services) and local government administration.

⁵⁸ Intergovernmental transfers can be defined as funding received from other levels of government (typically, the central government). These transfers include recurrent sectoral block grants, sectoral basket funds and ministerial subventions, as well as local capital development grants. Recurrent block grants account for about two-thirds of all intergovernmental transfers. Recurrent block grants and

revenues, and local government borrowing. Inter-governmental transfers fund account for roughly 90 percent of all local government spending, while local governments' own-source revenues (including local rates and other locally collected revenue sources) account for approximately 10 percent of local financial resources. Local borrowing only accounts for approximately 0.1 percent of local spending. In sum, local government authorities collect roughly 5 percent of all public revenues and are responsible for about 20 percent of public spending.

The relationship between central and local governments on the Mainland is largely expressed through fiscal issues. No single central government agency or institution has a comprehensive mandate over the management of local government fiscal affairs; instead, different central government ministries and agencies have responsibilities for different aspects of the local government finance system. In accordance with the Public Finance Act (2001), the Minister of Finance is

local capital development grants are supposed to be formula-based and disbursed directly from the Treasury to LGAs, whereas most basket funds and subventions are more discretionary in nature and disbursed indirectly to LGAs by line ministries.

broadly responsible for coordinating inter-governmental fiscal relations.

However, according to the Local Government Finances Act (1982), the Prime Minister's Office – Regional Administration and Local Government (PMO-RALG) is responsible for “ensuring the proper management of the finance of the local government authorities.” PMO-RALG ensures proper local financial management through the issuance of local budget guidelines, procedures, and instructions on the development of the local budget. Other key line ministries are important stakeholders in the local government finance system, such as the Ministry of Finance, the Ministry of Planning and Economic Empowerment (MPPE), and the Public Service Management of the President's Office (PO-PSM).

Institutional mechanisms for coordination between the levels of government on regulation and regulatory policy appear to be lacking.

National-International

Tanzania is a member of the East Africa Community and the South African Development Community (SADC).

ADMINISTRATIVE CAPACITIES FOR MAKING HIGH QUALITY REGULATION

Administrative transparency and predictability

Transparency is an essential feature of a regulatory system because it establishes a stable and accessible environment that promotes competition, trade, and investment. It also helps ensure against undue influences by special interests. Transparency reinforces the legitimacy and fairness of regulatory processes, but is not easy to establish in practice. It involves a wide range of practices, including standardized processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeal processes that are predictable and consistent. In Tanzania, there has been a tradition of more transparent, open, and consultative procedures for making policy reforms in general. At the same time, there are continued constraints that hinder openness and participation by the public in Tanzanian regulatory development.

Provisions for transparency in making laws

The Constitution provides a basic framework for the law-making process. Articles 63 and 64 give the National Assembly the right to make laws, and Article 89 authorizes the Assembly to adopt Standing Orders to prescribe procedures for the conduct of business in the Assembly and its committees and sub-committees, including the discharge of functions of the Secretariat of the Assembly. Article 96 authorizes the Assembly to establish Standing Committees, and Articles 97 to 100 specify the procedures for securing Presidential assent to legislation. In addition, in 1984 Tanzania adopted a How to Legislate Act.⁵⁹ Although not specifically mentioned in the Constitution, individual MPs are permitted to introduce legislation into the Assembly, in the same way as the government can.

⁵⁹ See http://www.parliament.go.tz/bunge/Docs/FACTSHEET_1.pdf.

The formal policy-making process in Tanzania centers on the Cabinet paper, which is initiated by a ministry or government agency. At this stage, the initiating ministry or agency is able to conduct consultations with stakeholders, whether inside or outside government. Once the paper has been prepared and approved by the originating ministry or agency, it is submitted to the Cabinet Secretariat and forwarded to the Inter-Ministerial Technical Committee (IMTC), which is chaired by the Chief Secretary and consists of the Permanent Secretaries of all ministries. Once approved by the IMTC, the paper is submitted to the Cabinet for discussion and decision. To date, the author has been unable to locate any formal written instructions (such as those used in Uganda in the form of a Cabinet Handbook) that lay out how the preparation and submission of Cabinet

papers are handled. However, there appear to be provisions within government procedures to ensure that ministries other than the sponsoring ministry are consulted before the finalization of any proposal to Cabinet.

Once the approved Cabinet position is converted into draft legislation, it is submitted to the Assembly, where it is processed in accordance with Parliamentary Standing Orders (see Box 1).

Provisions for consultation

Consultation is a systematic attempt to discover the opinions of groups affected by regulation and to obtain data useful in regulatory development and analysis. It may be general (e.g. advertisement for comment) or specifically targeted

Box 1: The Legislative Process in Tanzania

The legislative process involves four steps:

Step 1: Preparation of a bill through the Cabinet decision-making process. (legislation may also be prepared and introduced into Parliament by an individual MP.) The initiating ministry or agency prepares a draft policy paper or bill, and consultations are held with other affected ministries, private sector organizations, such as TCCIA and CTI, and civic society organizations. Once Cabinet has given its approval, the government directs the chief parliamentary draftsman to prepare a bill or amendment to a bill. A 21-day public notice on the proposed bill is made before the first reading to allow public scrutiny and comments.

Step 2: First Reading of the proposed bill. This step does not entail discussion on the bill, but rather is presentation of the bill by the government to the respective parliamentary committee. Individuals/groups from civil society are generally invited to comment, although at this stage the parliamentary committee is not required to modify the proposed bill. At times, parliamentary standing committees invite individuals, including representatives for CSOs, to provide expert opinion on the proposed bill as part of their consideration of the bill.

Step 3: Submission of the bill to the full Parliament by the chairperson of the standing committee of parliament. This step facilitates debate in Parliament. At this stage, a proposing ministry or any Member of Parliament may make additional proposals to change the bill.

Step 4: Request to Parliament to approve the bill made by the proposing ministry or Member of Parliament.

Step 5: Submission of an approved bill to the president of the United Republic of Tanzania for assent and later gazettment. CSOs may continue lobbying for change of the proposed bill at this stage.

Source: adapted from "the Policy Process and Civil Society Access to that Process in Tanzania," November 2003, by Dr. Suma C Kaare, a paper commissioned by CIPE under the USAID-funded Tanzania Advocacy Partnership Program (TAPP). <http://www.pacttz.org/downloads/Policy%20Process%20ESRF.pdf>

(e.g. focus groups, working parties). Consultation can contribute to regulatory quality by bringing new ideas, perspectives, and data to the attention of regulators; helping to balance opposing interests and reduce the risk of capture; identifying unintended effects and practical problems; gathering information on compliance issues; and providing a quality check on the administration's assessment of costs and benefits. Consultation can also enhance voluntary compliance by creating a sense of "ownership" of the resulting regulations, reducing reliance on enforcement and sanctions.

Public consultation has been the hallmark of Tanzania's policy development for many years. In the beginning, consultations tended to be ad-hoc, but in recent years they have become more structured and planned, although various reviews of consultation processes still refer to their informality.⁶⁰ Beginning in the mid-1990s, civil society has been identified as an active stakeholder in the formulation, implementation, monitoring and evaluation of the performance/progress of major policy frameworks and processes.

Extensive consultations took place during the development of broad strategy statements, such as the NSGRP and Vision 2025, and consultations are part of the process of preparing Public Expenditure Reviews, the Medium-term Expenditure Framework, the National Poverty Eradication Strategy, the Poverty Reduction Strategy, the Tanzania Assistance Strategy, the Public Expenditure Reviews, the Private Sector Initiative under the Public Sector Reform Program, as well as the Local Government Reform Program. Since then, various mechanisms and processes have been institutionalized at the village, ward, municipal, district, regional and national levels to provide room for civil society access and participation in

the policy process in Tanzania.⁶¹ Consultation procedures and structures have also been built into specific reform programs, for example the Task Force on Tax Reform.⁶²

In 2001, the TNBC was established to provide for regular consultation on a broad range of economic issues between the public and private sectors. (See Box 2) The TNBC has provided for the Investors Round Table (IRT) process through which bureaucratic hurdles hindering private investments are identified and addressed. The IRT serves as an advisory board on best practices in trade and investment to the top national leadership.

There are other organizations that participate in the consultation process on behalf of the private sector – chief among which are the Tanzania Business Forum and Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA).⁶³ TCCIA was formed as a result of discussions between leading business interests and the government, with the latter recommending formation of a business

⁶⁰ For example, see "The Policy Process and Civil Society Access to that Process in Tanzania," November 2003, by Dr. Suma C Kaare, a paper commissioned by CIPE under the USAID-funded Tanzania Advocacy Partnership Program (TAPP). <http://www.pacttz.org/downloads/Policy%20Process%20ESRF.pdf>

⁶¹ The paper referenced in footnote 52 contains details of the processes at each level of government.

⁶² The aim of the task force is to promote transparency in tax policy development, and harness the expertise of the various stakeholders. The Task Force provides a forum for both the public and private sector to engage in open debate and dialogue as well as review presentations and submissions regarding amending tax laws and the way that they are to be administered in the United Republic of Tanzania. The Task Force on Tax Reform was convened for the first time in November 1996 and has since 1997 been held in the first half of the year in the run-up to the budget. The task force is hosted by the Ministry of Finance and chaired by the Deputy Secretary Policy and Resource Mobilization, it invites the opinions of all stakeholders from the government; companies; private sector; civil society; faith organizations; academic community; research institutions; and other economic specialists.

⁶³ TCCIA has opened 21 regional chambers of commerce and 92 district centers in Tanzania, in association with the Swedish International Development Cooperation Agency. All 21 Regional Chambers are non-profit, with nominal membership fees for its members. TCCIA currently has more than 8,000 members, and has established a wide network of organizations and associations, including an affiliation with the Federation of Women Entrepreneurs of Tanzania, whose own objectives are considered to complement TCCIA's. Services provided by TCCIA to the business community include business information, training, advocacy, business support initiatives (i.e. processing business licenses) and business promotion activities, for instance, marketing programs, trade fairs, and mission.

association in order to organize consultations in a more efficient way. Subsequently, the Confederation of Tanzanian Industrialists was created to represent manufacturing interests. These apex organizations have undertaken initiatives to improve their abilities to represent their membership in consultations.

For example, TCCIA was the beneficiary of a USAID-financed project between 2002 and 2005 that supported activities to build the capacity of regional business associations in six target regions⁶⁴ of Tanzania in the areas of business association management, governance, and advocacy. The assistance was designed following the conduct of diagnostics of 32 business associations (28 district/regional associations and 4 national associations) in five regions of the country and in the capital, Dar es Salaam. The diagnostics revealed that most of the business associations and chambers were young, had a very small membership, severely limited financial resources, and had not been active in advocacy. Activities, which covered training in association management and advocacy, were

directed towards creation of public-private dialogue conferences in each of the regions.

There was extensive consultation between government, private sector and donors in the development of the BEST program itself. Phase 1 of the program was launched in December 2003, following more than a year of discussions, through a MOU between the government, the Tanzania Private Sector Foundation and four bilateral donors. The private sector plays a role in the governance of the program through membership on the TRC, the Steering Committee (BSC), Sector Committees and Technical Working Groups (TWG). The BEST Program is itself supporting efforts, through its Advocacy component,⁶⁵ to build the capacity of the private sector to participate effectively in consultations and lobbying for policy change. In recent years, a number of umbrella private sector organizations have been established, such as TPSF, TCCIA, CTI, TGNP, VIBINDO.

Communication of regulation

Another dimension of transparency is the need for the government to communicate effectively the existence and content of all regulations to the public and the business community. This means that regulations should be available to the public at reasonable cost, and in a language that can be easily understood. Communication is also essential to achieving effective compliance.

The Tanzania Government Printer publishes the government's *Official Gazette*. The *Official Gazette* publishes bills, legislative enactments - before and after assent, subsidiary legislation, announcement of all official government appointments, and dates of entry into force of all legislation. All these documents can be ordered through the Government Publications Agency. They can also be found on various websites, including Parliament, government's Public Administration, and the Tanzania Law Reform Commission.

Box 2: Tanzania National Business Council

TNBC was established in September 2001 by Presidential Circular to provide a forum for public/private consultations. It is chaired by the president, and its vice chairman is the president of the Private Sector Foundation.

The TNBC holds two meetings each year to discuss issues pertaining to private sector development and economic growth. To date, TNBC's consultations have been held at central government level only and not at local or district level, thereby excluding the vast majority of enterprises. Efforts are underway to facilitate regional TNBC meetings, to be followed by district level meetings.

Source: Adapted from "Practice of Reforming the Business Environment," August 2005.

⁶⁴ The target regions were Iringa, Mbeya, Morogoro, Rukwa, Ruvuma, and Tanga.

⁶⁵ <http://www.best-ac.org/>

Legal materials can also be found in the Library of the Court of Appeal of Tanzania, the High Court Library, the High Court Land Division Library, the Library of the Commercial Division of the High Court, the Attorney General's Office at the Ministry of Justice and Constitutional Affairs, University of Dar Es Salaam, the National Archives, the Government Bookshop, Dar Es Salaam Bookshop, the United Nations Information Centre and more. Reported legal cases in Tanzania can be found in a number of Law Reports. Between 1957 and 1977, cases reported from the High Court of Tanzania and the East African Court of Appeal appeared in East Africa Law Reports. Law Africa, a law report publishing company, has updated the reports for cases from the three East African jurisdictions, of Kenya, Uganda and Tanzania up to 2007. The Tanzania Law Reports Editorial Board has recently published Law reports covering 1999–2006.

An ICT committee was established by the chief justice in 2008 to develop an implementation plan for ICT development. Also, under the BEST Program, consultancies have been awarded for the design and implementation of online case law and legislation databases.

Computerized registries are improving public access to information relating to regulation and registration of companies and land.

Compliance and enforcement of regulation

The adoption and communication of a law or regulation is only part of the regulatory process. The law can achieve its intended objective only if it is adequately implemented, applied, complied with and enforced. A low level of regulatory compliance threatens the effectiveness of regulations, public policies, and ultimately the capacities and credibility of governments in taking action. Compliance and enforcement issues can be considered in terms of processes and practices as well as institutional structures.

Tanzania faces significant weaknesses in the enforcement of regulation, largely as a result of inadequate capacity and manpower in regulatory agencies.⁶⁶ This demonstrated in its starkest light by the extent of informal business activity. Tanzania has taken a dual approach to this situation: first, it has adopted legislation (BARA) that mandates replacement of compulsory registration and licensing with a voluntary registration approach that rests upon businesses formalizing their activities on the basis that the official system offers advantages; and second, it is engaged in a reform that will centralize information gathering for various registrations and licensing purposes in a single institution and a centralized registry within BRELA.

The National Sectoral Regulatory Licensing Policy recommends that specific guidance be provided by government on enforcement/compliance mechanisms, and indicates that “*the government will promote and enhance the culture of self-regulation and develop alternatives to enforcement based on education, sensitization and communication even in instances where inspections and sanctions is the norm.*” It also specifies that Tanzania will adopt innovative enforcement mechanisms, including risk analysis, to determine areas that should be subjected to inspection, sanctions as a deterrent to the degree that reflects the value of the infringement, and a civic education program to encourage voluntary compliance.⁶⁷ The draft policy document also stipulates that institutional capacity in

⁶⁶ “In Tanzania, there are a lot of existing laws and regulations that are neither complied with nor enforced to a satisfactory level. In addition, compliance and enforcement costs to these laws and regulations are sometimes a great burden to both the regulated and the regulators.” National Sectoral Regulatory Licensing Policy,” Technical Working Group Draft for Submission to the Second Inter-Institutional Technical Committee Consultative Meeting, Dar es Salaam, Oct. 6, 2008.

⁶⁷ The Background Papers to the policy draft recommended six ways of addressing enforcement: comprehensive risk assessment; avoidance of unnecessary inspections; redirection of resources to promotion of voluntary compliance; fewer and simpler forms and reports; coordination of data needs across different institutions; and reduction in the number of regulatory institutions through consolidation and rationalization.

regulatory agencies, in terms of both skilled personnel and ICT systems, must be developed to allow such compliance improvements. Finally, the draft policy recommends the introduction of a Monitoring and Evaluation framework for measuring the impact and effectiveness of the reform.

Public redress and appeals

Mechanisms to redress regulatory abuse must also be in place, not only as a fair and democratic safeguard in a rule-based society, but also as a feedback mechanism to improve regulations. The first stage of seeking redress is to complain directly to the government agency that has taken the decision. The second stage is to seek review by the courts. There may be other institutions for redress, such as arbitration, mediation or an Ombudsman.

The documents on business regulation and its reform reviewed as part of this research are largely silent on the issue of appeals and redress. However, procedures for appeal against administrative decisions do exist at various levels. Regulatory decisions can generally be challenged in the first instance by submission of a written appeal to the relevant minister. Different pieces of legislation provide different appeal avenues. In the case of tax appeals, Tanzania is now implementing a taxpayer's charter that enables taxpayers to complain about problems or malpractice to the TRA offices.

More broadly, the Fair Competition Tribunal hears appeals against the decisions of the Competition Commission and decisions by other multi-sector regulatory authorities, namely the Energy and Water Utilities Regulatory Authority (EWURA), the Surface and Marine Transport Regulatory Authority (SUMATRA), Tanzania Communications Regulatory Authority (TCRA), Tanzania Civil Aviation Authority (TCAA) and other similar bodies. The judgments and orders of the Fair Competition Tribunal are executed and enforced in the same manner as the judgments and orders of the High Court.

Appeals can be taken through the courts, including to the High Court and Court of Appeal (Part IV of the Constitution, Article 114).⁶⁸ The Constitution also makes provision for the establishment of a Permanent Commission of Enquiry and a Ethics Secretariat (Chapter VI), which can conduct enquiries into conduct of any official or public leader

Policy instrument alternatives

Government intervention should be based on clear evidence that a problem exists and that government action is needed. This should include assessments of the size of the problem, likely government effectiveness, and costs of government intervention. It is good practice to consider both regulation and alternative policy tools. A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. In the OECD, the range of policy tools and their use are expanding as experimentation occurs, learning is diffused, and understanding of the markets increases. Guidelines for regulators in OECD countries increasingly require ministries and agencies to consider whether “command and control” regulation is likely to be the most effective policy instrument or whether other options might succeed in achieving policy goals at lower cost. At the same time, administrators, rule-makers and regulators often face risks in using relatively untried tools. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulations are to make serious headway into the policy system. To date, the use of regulatory alternatives in OECD countries is, while increasing, still at a relatively low level.

Tanzania has a history of “command and control” regulation deriving to a large extent from its

⁶⁸ Part VI of the Constitution establishes a Constitutional Court, which has limited jurisdiction in that it hears cases in which the governments of Tanzania and Zanzibar are in dispute over an interpretation of the Constitution.

Socialist policies of the 1960s and 1970s, so that there is not a natural inclination within government to consider alternative approaches to regulation. However, some efforts have been done in this sense with the introduction of RIA (see next section 3.3).

The one area where Tanzania has opted to forego regulation is in the registration and general licensing of businesses. Until the enactment of the BARA in 2007, Tanzania relied upon the Business Licensing Act (No. 25), 1972, and the Company's Act, 2002, to collect information on the business sector, but at the cost of imposing burdens on the registering enterprises. BARA replaced the annual "pre-approval" system of licensing with a one-off, non-conditional registration, and relies upon enterprises volunteering to go through the registration process because they consider that there are advantages in compliance, whether they include access to information or public services.

Use of RIA for understanding regulatory effects

RIA provides a systematic basis for choosing the best regulatory (or non-regulatory) alternative to respond to a problem. A range of different approaches to RIA exist, depending on policy preferences and administrative capacities. At the core of any RIA system, however, is:

- an assessment of selected types of impact of specific types of regulation;
- assessment methodology according to pre-defined standards and procedures; and
- a process of quality control by an independent government agency/unit.

According to the Program Document of August 2008, BRU has made some progress on incorporating RIA into Tanzania's law and policy-making processes. "RIA has been formally approved by

Permanent Secretaries, Members of Parliament and the Secretary to the Cabinet, with the Cabinet Secretariat having been officially endorsed as the RIA champion and extensive training of Cabinet Secretariat officers having been conducted. Widespread training and awareness activities have also taken place in participating ministries and within the teaching fraternity at the University of Dar es Salaam, and introductory training capacity in RIA has been built in a local training institution [Public Service College], which is now involved in delivery of RIA training for BEST."

In June 2008, a brochure "Principles of Good Regulation" was published by the President's office, Planning Commission.⁶⁹ In addition to stipulating the government's commitment to better regulation, the document (which was very similar to that produced in Uganda) indicated that a RIA should be carried out whenever "the proposed new law has significant compliance costs for businesses or significant economic or social consequences" and that "a RIA is intended to ensure that any proposed law is necessary, has minimum side effects and is in proportion to the issue being addressed." It also indicated that "a RIA should in particular focus on the following themes: purpose and intended effect of the regulation; options for dealing with the problem; benefits of each option; compliance costs on business and society; administrative costs on government; [and] summary and recommendations." The brochure also established general principles for consultation, enforcement and monitoring and evaluation.

The brochure stipulates that "before deciding upon a path of government-imposed regulation, a number of questions need to be asked. [...] Is regulation needed? What is the problem that needs addressing? Where is the market failure? Is it a type of market failure that can be addressed without recourse to government regulation? What

⁶⁹ <http://www.best.go.tz/%5Cachivement%5CPRINCIPLES%20OFGOOD%20REGULATION%202-%20June%2008.pdf>

are the costs, risks or benefits of maintaining the status quo?” The brochure also offers various alternatives to regulation: “improving enforcement of existing laws; improving public information and education to reduce exposure to risk; publicity campaigns to reward good behavior or embarrass bad behavior; working with business associations to introduce standards that are enforced by the industry itself; guidelines or codes of practice; and economic incentives to change behavior such as taxing cigarettes to discourage smoking.”

According to the BRU Head, RIA has not been applied to all the BEST Program components. It is interesting that the original TOR for the licensing study required that a RIA be carried out on BARA and its proposed regulations. But, following the production of the inception report, this requirement was replaced by a requirement to provide an analytical review of the BARA bill and to recommend draft amendments to the bill. The rationale for this change is not explained in the consultant report.

In the case of the land component, a RIA was not conducted for the development of the land policy, primarily because the policy development was almost complete at the onset of the BEST program. However, a RIA was conducted as part of the development of the 2007 Land registration bill, and RIAs may be conducted for secondary legislation and regulations that are to be prepared in the near future.

A RIA was conducted on two labor laws in 2004, and discussed at one or more workshops with stakeholders involved in the reform process. The RIAs have not been widely publicized. They appear to have been qualitative and general, oriented to the consultation process. In addition, they did not contain detailed information on costs or savings of the proposed reforms, nor specify the institutional consequences of the reform and implications for the operation of labor markets.

It appears that no evaluation of the experience was carried out for any of these RIAs. In spite of the endorsement by government of the use of RIA, it is not clear whether other RIAs have been conducted in general or on any of the other BEST program components. The BEST Web site does not contain any information on RIAs that are planned for the current year or beyond.

Building administrative skills for regulatory reform

A skilled and well-trained civil service recruited on the basis of merit is a prerequisite for developing and maintaining high-quality regulations and regulatory policies. Implementation of good regulatory practice requires civil servants to be trained in consultation processes and in analytical approaches to policy options and choices.

The Tanzanian government is about to introduce a performance appraisal system to support its civil service reforms and commitments to better service. No further details are available on the system, and against what group or individual performance will be measured.

Training programs for the civil servants are organized by and delivered through the Public Service College, in keeping with training policy determined by the Department of Policy Formation, Public Service Management Unit, President’s Office. More than 1,000 civil servants receive training each year in a variety of skills.

The Public Service College has had some dozen staff members trained in RIA methodologies. These staff members have taught some short RIA training courses for senior civil servants (mostly at the level of director and assistant director). Currently, it is not offering courses, and has no immediate plans to mainstream RIA training in its civil servant induction courses or to market the course content more broadly.

UPDATING REGULATIONS

Revisions of existing laws and regulations

Assessment of new regulations is not enough to ensure a high quality regulatory structure. As technology, the economy, and society change, existing regulations often become less relevant and effective. Regulatory management should involve periodic reevaluation of whether existing regulations still constitute the best available solution to the problems they seek to address. A systematic approach is required to ensure that all regulation is regularly subjected to this reassessment.

Under the BEST program, a number of laws have been subject to revision. Business registration, commercial dispute resolution, land registration, and labor laws have all been modified as part of their BEST program components.⁷⁰

In February 2007, the BARA was passed by Parliament, to replace the Business Licensing Act of

1972. The new act was the culmination of gradual reforms that had been made since 2000. Those reforms included the abolition of the flat rate development levy and other “nuisance taxes,” and the abolition in 2004 of business license fees for firms below the VAT registration threshold. BARA replaces the former complex system of annual “pre-approval” licensing with a one-time, non-approval registration.

The BEST Zanzibar component is also reviewing business entry laws applicable in Zanzibar, with a view to introducing similar reforms to those enacted on the Mainland.

Under the land component, new Land Use Planning and Urban Planning Acts were adopted in 2007, and regulations governing the planning systems are being drafted.

Before the official start-up of the BEST Program, a new Employment and Labor Relations Act and a Labor Relations Institutions Act were introduced in 2004. Under the program itself, further laws have been re-drafted: Workers’ Compensation

⁷⁰ The information on each component given in the paragraphs below was taken from the “Reform Areas” brochure produced by the BEST Program and published by the President’s Office, Planning Commission.

Act, Occupational Safety and Health Act, National Social Security Bill, and National Employment Promotion and Services Bill. In May 2007, the Commission for Mediation and Arbitration (CMA) was established, and in June 2007, the Labor Court Division of the High Court was inaugurated. Both of these bodies are active.

Under the Commercial Dispute Resolution component of the BEST Program, steps are underway to revise the Civil Procedure Code of Tanzania, other associated laws relating to the rules of procedure of the Courts,⁷¹ and the management and administration of the Civil Court system, with a view to providing the legal basis for more efficient, equitable, and speedy resolution of commercial disputes in Tanzania. In addition, Government Notice No. 246 was passed to operationalize the Mwanza Commercial Court, and a feasibility study is underway for establishing a commercial court in Mbeya.

In addition to the legal components of the BEST Program, separate legal reforms have been pursued under the Legal Sector Reform Program (LSRP), which has also been supported by a donor pool. The reform program, which is organized around the theme of “access to justice for the poor,” was designed as long ago as 1993, and is only now in the first stages of implementation, because of long-standing staffing and financial resource constraints faced by the Ministry of Justice and Constitutional Affairs and the Judiciary.⁷² The focus of the LSRP is on modernizing the national legal framework. The objective is to increase the capacity of sector institutions as well as the knowledge and skills of legal professionals, thereby enhancing the independence and efficiency of the judiciary in particular, but also of the personnel in the sector in general. Moreover,

the LSRP will concentrate on improving access to justice especially for the poor and disadvantaged. Human rights will also be an area of attention, as the Commission for Human Rights and Good Governance will be strengthened. Other priority areas are: respect of human rights by law enforcement agencies, and improved governance in the administrative system.

The Law Reform Commission (LRC) of Tanzania is charged with several statutory responsibilities. The commission keeps all the laws of the United Republic of Tanzania under review with a view to their systematic development and reform. The commission can review any law or branch of law and recommend ways and measures necessary in which that law or branch of the law of Tanzania can be improved, or made simpler and be brought up date in line with the current circumstances of Tanzania. In addition, the LRC revises and simplifies complex laws for public consumption. One major piece of work carried out by the LRC has been the review of civil justice in 2006, which was used to frame the latest tranche of the LSRP.

It is not clear from the available documentation whether standards for legal reviews and legal reform have been established, or whether any form of RIA has been used to assess costs and benefits of reform.

The “Principles of Good Regulation” introduce the concept of “sunset provisions,” so it can be considered to have been officially approved. However, there are apparently no examples yet of where ministries have built such provisions into regulations.

Reducing administrative burdens

Regulatory paperwork and government formalities can be unnecessarily burdensome on regulated groups if coordination between regulators is lacking, new technologies are not used to assist in information gathering, and unnecessary information is

⁷¹ During 2008, a review was carried out of the rules of the Court of Appeal under Appellate Jurisdiction Act of 1979.

⁷² Although the 1997 Constitution recognized the independence of the Judiciary, it has typically received a very small share of government budget resources (less than one-half percent). The judiciary has understandably been focused on manpower and infrastructure reform – numbers of courts, judges and magistrates

sought by regulators. World-wide, governments are adopting programs to reduce the administrative burdens associated with regulatory requirements.

As in the other countries in East and Southern Africa, business licensing reform has been a primary entry point for regulatory reform in Tanzania. Business licensing, which was governed by the Business Licensing Act of 1972, was regarded as a major hindrance to business start-ups, because of the conditions imposed on enterprises⁷³ and the fact that it was used as a revenue generation device rather than as a meaningful tool for regulation. DB2009 calculated that it took 29 days and cost half of per capita GDP to establish a business in the capital, and that it took over 300 days and cost 20 times per capita GDP to obtain a construction permit (DB's surrogate for business licensing). The MKURABITA report,⁷⁴ which looked more broadly at the enterprise sector in Tanzania (and in particular at SMEs and microenterprises), argued that business start-up procedures and costs, complicated by the need to obtain a variety of approvals and specific sectoral licenses, were a major reason that 98 percent of all business units in Tanzania stayed in the informal sector.

As indicated in section 1.3, the government started the process of reform of business entry and licensing by creating BRELA in 1999. However, its initial role was merely to take the implementation of existing laws out of the ministries and house it in a single semi-autonomous agency, thereby separating registration procedures from revenue generation and direct ministerial involvement. In the following years, there was a stream of reports and statistics that convinced the government of the need for reform of business start-up procedures and general

and sectoral licensing.⁷⁵ In 2003, the MITM commissioned research into the existing licensing regime. The report⁷⁶ found that the regime was a barrier to growth and investment because:

- compliance costs were high, producing incentives to avoid licensing procedures;
- MSMEs were disproportionately affected;
- the pre-approval system led to petty corruption;
- implementation and enforcement costs incurred by government were high; and
- poor-quality enforcement produced uncertainties and acted as a disincentive to investment.

In June 2004, MITM made recommendations to: a) replace business licensing with a simplified system of universal business registration; b) repeal the Business Licensing Act (1972); and c) discourage use of licensing by both central and local governments to raise budget revenue.

BARA replaced the annual pre-approval system of licensing with a one-time registration system. The new Act also provides the legal framework for introduction of a universal one-stop business registration system, with a centralized database that integrates the various start-up processes and registries (similar reforms are being planned for Zanzibar). BARA is being implemented through preparation of a roadmap for modernization of BRELA, and preparation of a corporate strategy and a feasibility study for a new BRELA front office.⁷⁷ The plan is to consolidate existing

⁷³ The 1972 Act required separate licenses for separate premises and for different lines of business; allowed ministerial discretion to grant exemptions from licensing to individual businesses and to waive licensing fees; allowed the minister to restrict the number of licenses issued annually in any line of business; provided for a wide range of offenses against the Act and placed the burden of proof on the accused; and prevented court review of any appeals.

⁷⁴ http://www.tanzania.go.tz/mkurabita/mkurabita_report_index.html

⁷⁵ Commitments to reform were expressed in the 2004 Budget Speech and by Cabinet in the same year, when it mandated implementation of sectoral licensing reform.

⁷⁶ The research was carried out by the law firm of Majaar, Rwechungara, Nguluma and Makani and the Tanzanian Economic and Social Research Foundation (ESRF).

⁷⁷ Other related features of the start-up and licensing reform include modernization of the Registry of Births, Deaths, Marriages, Insolvency and Estate Administration (RITA), which involves digitalization of records and preparation of a computerization strategy; a feasibility study for establishment of a national ID databank; and establishment of a national database of MSMEs.

registries under a single integrated registry system that would permit enterprises to provide to BRELA one set of information for all forms of registration.

In addition, a diagnostic report on sectoral licensing has been carried out and a draft policy for licensing has been completed. Sector-specific business licenses are instruments through which the government can influence the conduct of business operations in areas that are sensitive to social concerns for a wide range of reasons. The diagnostic report⁷⁸ produced a policy framework to guide development of a consistent policy approach towards licensing, created an inventory of all licensing legislation, and designed a checklist to help structure in-depth reviews of licensing provisions. The report was completed towards the end of 2006, and the reform process is still not instigated. The delays appear to stem from the limited capacity of the BRU to oversee reform activities, and from the absence of a strong commitment from or involvement of a central ministry.

The land administration component of BEST has focused on increasing the issuance of land titles, and reducing the costs to registrants: time to complete land information search and registration transactions has been reduced,⁷⁹ and plans are underway to issue certificates of village land (CVL) and certificates of customary rights of occupancy (CCROs), and to develop a land registry. In the first phase of BEST, some 263,000 landed properties in urban areas were registered and computerized as part of the program to formalize property rights in unplanned settlements. Under the BEST Zanzibar program, a diagnostic report on land reform needs has been carried out.

⁷⁸ "Final Report: Consulting Services for the Introduction of a Regulatory Business Licensing System," Bannock Consulting Ltd, in association with Maajar, Rwechungura, Nguluma, Makani Advocates and the Economic and Social Research Foundation, May 2006

⁷⁹ Land search times have been reduced from 3 weeks to 5 days, and substantial increases in issuance of titles has occurred. See BEST Program document, p6.

The Ministry of Constitutional Affairs and Justice (MOCAJ), working in collaboration with BRU, the Judiciary, the Law Reform Commission of Tanzania and the Tanganyika Law Society, was given overall responsibility for producing the following principle outputs in the legal field:

- capacity building activities and infrastructure development at the High Court (Commercial Division) of Tanzania;
- capacity building activities and infrastructure development at the High Court (Land Division) of Tanzania;
- assessment of alternative dispute resolution in Tanzania and reintroduction of a widespread ADR training program;
- introduction of a Commercial Continuing Legal Education Training Program; and
- capacity building at the Tanganyika Law Society and the introduction of a code of conduct and ethics for advocates and of greater professional regulation.

The first joint assessment review of the BEST Program in September 2006 noted that progress on the Commercial Dispute Resolution component so far had been disappointing. This was ascribed to a number of interlinked challenges raised by the stakeholders managing and implementing the reforms, by the structure of the program, by the interventions of development partners, and as a result of the application of concepts born of a business environment program to implement judicial and legal reforms.

The Ministry of Justice and Constitutional Affairs has struggled to understand its role within a business environment strengthening program. The ministry has focused most of its reforming energy on the Legal Sector Reform Program, a reform package funded by a different donor 'basket'. This latter program's objective of "Access to Justice for the Poor" fits well within the governance

and rule of law portfolio of its funding donor agencies. The Commercial Dispute Resolution reforms, although ultimately concerned with increasing justice to all, have not resonated as strongly and have been perceived as pro-business rather than being pro-poor and pro-Tanzanian.

Use of ICT to support regulatory reform

Once government procedures have been streamlined and redesigned as part of regulatory reforms, use of computerized databases and registries can lead to further improvements in regulatory performance, particularly for enterprises that are a long distance away from the agencies with which they have to deal. ICT can be used to provide information to the users of government procedures, and can also enable users and applicants to submit requests for services in a structured and consistent fashion. Use of ICT is increasingly seen as an important way of combating corruption.

The government of Tanzania has an explicit policy for introduction of e-government,⁸⁰ responsibility for which is lodged in the President's Office for Public Service Management. The Cabinet adopted a national ICT policy⁸¹ in March 2003, and in March 2004 set out key priorities towards implementing e-government. The key priorities were to:

- create a network infrastructure to allow government to communicate with itself;
- create an institutional framework for all e-government resources; and
- promulgate to public and private sectors the value of e-government and to promote specific e-government services.

⁸⁰ The first use of ICT within government was in the early 1990s as part of the effort to control public budgeting and expenditure.

⁸¹ <http://www.tanzania.go.tz/policiesf.html>

Under the BEST umbrella, work began in 2002 on computerizing the registries maintained by BRELA. A final report, which was subjected to two stakeholder workshops in spring 2006, was delivered in July 2006. As of July 2008,⁸² computerization of the registries for companies and for business names was completed, with plans to introduce computerization of patents, industrial licensing, trade and service registration, and business activities registration in the foreseeable future.

In 2008, BRELA introduced a Web site⁸³ as part of its efforts to improve its services to the business community and the public. The site provides basic information on the processes required for business names, company registration, trade and services, patents and industrial licenses, and allows businesses to download application forms. The site is still under construction: neither the section on patents nor the "Frequently Asked Questions" page has any content as of January 2009. Currently, application forms cannot be submitted to BRELA through the site, although recent statements by BRELA management imply that the eventual aim is to allow applications, etc., to be made by computer.

Within the CDR component, a roadmap for ICT in the Tanzanian court system has been prepared. Subsequently, work is underway on devising an implementation plan for ADR. An integrated ICT strategy has been established for the courts in Tanzania and modernization of the registries of the Dar es Salaam courts. Furthermore, an online case law and legislative database has been designed and is now under implementation, and computerized land registries are also being introduced.

⁸² <http://dailynews.habarileo.co.tz/magazine/index.php?id=5641>

⁸³ <http://www.brela-tz.org/>

ROLE OF DONORS

In economies where public revenue is scarce, donors have often stepped in to finance the costs of regulatory reform programs. The financing horizon of donors has been variable: some donor-assisted programs have been relatively short, focused on achieving “quick wins,” while others have been geared to capacity building and creation of a new approach to developing policies, laws and regulations that requires a long-term commitment. Irrespective of the donor time horizon, the issue of an exit strategy and the transfer of program costs to the host government remain important.

The BEST Program was initially supported by the Danish International Development Agency (DANIDA), the Swedish International Development Cooperation Agency (SIDA), the government of Netherlands, and DFID. One of the benefits claimed for the program⁸⁴ is that it brought together donors with diverse policies

and procedures and, through development of harmonized procedures, allowed implementation based on unified procedures. Subsequently in 2007, IDA joined the funding basket, and new harmonized procedures (essentially World Bank procedures) were introduced. According to interviews with current and past BEST staff, the need to re-educate project participants in the new procedures caused delays in implementing the program. There is another aspect of donor involvement in the program that requires attention: there appears to be a tendency for the reporting to donors on expenditures and program progress to overshadow the reporting to domestic clients, and efforts need to be made to ensure that monitoring and evaluation activities feed into the government’s overall framework for development.

The large scale of donor resources has enabled the agenda to be very large, diverse and extended over time – some \$60 million to be implemented within a 10-year time frame. It can be argued that the timeline allowed for project completion is much more realistic than it was in Uganda, where the original program of only two years was

⁸⁴ Assessment contained in “Practice of Reforming the Business Environment: the Case of the BEST Program,” paper prepared by Dr. Stergomena Tax-Bamwenda and Dr. Betty Mlingi, for the Cairo International Conference, Nov 29 – Dec 1, 2005

extended for a third year. It is clear from international experience that introduction of a broad regulatory reform agenda takes a considerable time.

An exit strategy for donors, alternatively termed a sustainability strategy for the country, is already under consideration in the case of Tanzania, and is predicated upon the assumption that the government of Tanzania will progressively take on a higher percentage of program costs as time goes by. This is a wise move, because the government

will have to find resources to maintain the program in the long-term. In this regard, attention also needs to be given to the design of rewards and incentive systems within the government to ensure that the objectives of the regulatory reform program are supported. In addition, the large scale and breadth of reforms under the BEST program and other donor-supported initiatives has placed severe strains on the BRU, which is currently functioning primarily as a project management unit rather than as a promoter and coordinator of good regulatory practice.

CONCLUSIONS AND RECOMMENDATIONS

Assessment of strengths and weaknesses

The government of Tanzania has established within its various strategy documents a clear rationale for regulatory reform as a major part of its overall private sector development strategy and its strategies for formalizing and supporting small and largely informal enterprises. It is working across a wide area of regulatory reforms, including business entry (registration and licensing), and land, labor, and commercial laws. These are connected in various ways to reform programs affecting general judicial issues, public sector and civil service reform, decentralization, and anti-corruption and e-government programs.

The scale of reform programs puts pressure on the government's capacity to manage and coordinate the programs. In the regulatory area, the government has made great progress in improving consultation mechanisms. Consultation processes are well established in Tanzania. Efforts are being made to improve the consultation process, particularly the capacity of private sector organizations to advocate for policy change and develop

a “vocabulary” for effective discussion. Efforts are also being made to make consultations more inclusive. But the government has less capacity available to improve the quality of policy analysis and options and to carry out even simple forms of regulatory impact assessment. The BRU, consumed as it is in the project implementation responsibilities under the BEST Program, does not yet have the capacity to formulate a regulatory reform strategy or agenda for action.

Policy options and recommendations

This report suggests a set of short- and medium-term actions to improve the capacities of the Tanzanian government to assure high-quality regulation. It recommends adopting at the highest political level a broad policy on regulatory reform that establishes clear objectives, accountability, and frameworks for implementing regulations. This would serve as a framework for determining how to move from piecemeal programs of regulatory reform directed to specific issues towards a coordinated approach to introducing good regulatory practice across government.

As an integral part of this, the report recommends that the government review how best to establish ministerial responsibility for championing regulatory reform at the Cabinet level and to coordinate regulatory reform across government. The current government has established two Ministers of State (one for good governance and the other for public service management) in the president's office. The government should consider whether another Minister of State position with specific responsibility for championing regulatory reform should be created, or whether the existing ministerial positions can be redesigned to include this responsibility. In either case, an oversight technical unit should be established to support the responsible minister in these activities.

It is clear that there is a very large law reform agenda being pursued in Tanzania under the BEST Program and LSRP initiatives. It is also obvious that the demands of the reform programs are imposing stresses, both to the staff within the Ministry of Justice, the LRC, and the Judiciary. In addition to capacity constraints within the administration that result in logjams and delays, it appears that commercial legislation often gets displaced by other legislative proposals that are more interesting to the legislators.

The report recommends steps to be taken to improve the capacities to make new regulations and to keep existing regulations up to date. Information on laws and regulations affecting businesses is commonly available within Tanzania, but no systematic review of regulations has been done so far. Improving capacities to make new regulations and keep existing ones up to date should include such initiatives as:

- designing and implementing a step-by-step program for regulatory impact assessments;
- improving transparency by formally establishing legal requirements for consultation procedures during the preparation of regulations;

- promoting the systematic consideration of regulatory alternatives; and
- streamlining the current activities for legal scrutiny of draft regulations.

The latter should include continued efforts to reduce administrative burdens by establishing a central registry of administrative procedures and business licenses, and by initiating a comprehensive review of existing regulations. The current proposals for licensing reform may provide a good template for future activities.

Particular attention should be directed towards compliance and enforcement of regulations. In general, it would appear that machinery for redress and appeals exists in Tanzania. To the extent that the machinery does not work well in the case of regulatory issues, there would seem to be several reasons. First, it has been suggested that members of the public do not always have information about their rights to information and due process. Second, civil servants may deny access to relevant information because the laws on official sources of information are clearer about the penalties for providing information than about the obligation (which derives from the Constitution) to supply information. Third, in cases where regulations have been badly drafted or are incomplete or contradictory, appeals are difficult to frame.

Improvements of enforcement and compliance are among the most important challenges to Tanzania's regulatory management system, with serious problems generated by deficiencies throughout the regulatory process. A key aspect of inspection and compliance reform would be to review and rationalize enforcement capacities and processes of central ministries. The draft policy on sectoral licensing offers a framework for compliance and enforcement that would, if accepted and implemented, introduce many of the best regulatory principles.

It does not appear that Tanzania has made much progress to date in encouraging the use

of alternatives to regulation. Given that enforcement of regulations is still a significant problem in Tanzania (reflected in the business arena in the huge size of the informal sector that avoids registration, taxation, and licensing), it is unlikely that policymakers will be comfortable with experimenting with innovative non-regulatory approaches in which they have even less experience. The current mind-set of the government, reflected in its approach to the informal sector, is to adjust regulation to encourage compliance rather than to consider innovative alternatives. However, failure of this reform model would probably encourage a different approach, and the government and BRU should be alert to possibilities to make effective use of opportunities.

In terms of the use of policy and regulatory tools, application of RIA in Tanzania's policy and law-making processes is clearly at an early stage, and RIA is not yet generally applied. Where RIA has been used, it appears to have been an ad-hoc choice rather than a part of an overall plan to introduce the technique. One of the challenges is how to develop RIA techniques in an environment where the information required to address the questions is not readily available or can be secured only by extraordinary efforts.

Faced with this challenge, governments in other countries, such as Uganda, have often started by assessing the fiscal consequences of reform. They then have moved on to assessing the institutional and civil service personnel impacts of reform,

while attempting to develop information on economic costs and benefits to the private sector. If there is a wide gap between current analytical capacities and information and the sophisticated RIA model, it is important to establish intermediate analyses and forms of RIA that can help bridge the gap over time. Otherwise, ministries and agencies required to do RIAs may be discouraged by the width of this gap. In other words, the best may be the enemy of the good. It would seem that more attention needs to be paid to this issue within the Tanzania program.

Serious efforts are underway at addressing red tape and administrative burdens faced by the business sector. Progress is being made, but more slowly than originally projected, and this is due to a considerable extent to shortages of key skills within government.

The government of Tanzania has adopted a framework strategy introducing e-government throughout the public service. The first steps have been taken in a number of regulatory areas and are expected to provide benefits for the business community, especially for those businesses that are located well outside the capital.

Donor support for regulatory reform has been important to date. Care needs to be taken to ensure that donor involvement does not reduce the incentives within the government for promoting reform and building local capacity to implement reform programs.

APPENDIX A. PRINCIPLES OF GOOD REGULATION

The 1997 OECD Report on Regulatory Reform includes a coordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These were:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
3. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory coordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.

The OECD report recommended adoption of a set of regulatory quality standards based on the OECD principles as follows:

"Establish principles of "good regulation" to guide reform, drawing on the 1995 Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels."

Source: OECD Report to Ministers on Regulatory Reform, 1997.

APPENDIX B. DOING BUSINESS 2009: ECONOMY RANKINGS FOR SUB-SAHARAN AFRICA

Economy	Ease of DB	Business start-up	Constr. permit	Employment	Property Regist.	Credit	Investor Protection	Paying Tax	Trade across borders	Contracts	Closure
Global Ranking											
Kenya	82	109	9	68	119	5	88	158	148	107	76
Zambia	100	71	146	135	91	68	70	38	153	87	80
Uganda	111	129	81	11	167	109	126	70	145	117	57
Tanzania	127	109	172	140	142	84	88	109	103	33	111
Rwanda	139	60	90	93	60	145	170	56	168	48	181
SSA Ranking											
Kenya	5	14	1	10	16	2	14	36	26	19	10
Zambia	7	7	32	26	11	6	11	5	30	15	12
Uganda	10	21	14	1	41	14	20	15	24	21	2
Tanzania	14	14	42	28	27	7	14	21	9	1	19
Rwanda	17	5	16	13	5	27	43	10	40	4	34

APPENDIX C. BUSINESS REGISTRATION AND LICENSING AGENCY (BRELA)

BRELA is a Government Executive Agency established under the Government Executive Agencies Act No. 30 of 1997. It was established on the 28th of October, 1999, by Government Notice No. 294A published on 8th October, 1999. It was officially inaugurated on the 3rd December, 1999.

Aim, roles and strategic objectives

Aim: The aim of the agency is to ensure that businesses operate in accordance with the laid down regulations and sound commercial principles.

Roles: BRELA's specific roles include:

- administering laws relating to companies and business names;
- regulating business by administering business and industrial licensing laws;
- administering intellectual property laws;
- encouraging and facilitating local and foreign business investment;

- stimulating scientific and technological inventiveness and innovation and encourage technology transfer; and
- protecting the development of creativity in artistic, literary works, and expression of folklore by protecting such work in conjunction with rights owners.

Strategic Objectives: The strategic objectives of the agency are:

- ensuring that businesses comply with the laid down regulations to the satisfaction of the government and the business community;
- improving service delivery by adopting modern business practices;
- building an efficient and effective workforce by adopting modern human resource management policies; and
- achieving financial self-sufficiency and generating surplus of income that supports the implementation of other strategic objectives.

Agency structure

The organizational structure of BRELA is based upon the following considerations:

- the need to have an appropriate span of control for managers;
- avoiding the involvement of too many technical staff in supervisory activities at the expense of technical duties;
- the need to group related functions together to avoid overlapping and duplication;
- the need to reduce the number of managerial levels to improve accessibility of top management to all BRELA staff and to improve internal communication; and
- the need to reduce operational overheads.

BRELA's institutional structure consists of the chief executive, four divisions and one unit, as follows:

- Commercial Laws Division
- Intellectual Property Division
- Licensing Division
- Business Support Division
- Internal Audit Unit

The agency will establish zonal offices in phases as the level of business activity increases in selected zones. This will extend the customer base as well as bring the agency's services closer to users in the regions.

Source: BRELA website

APPENDIX D. THE JUDICIAL SYSTEM IN TANZANIA

Judicial system in mainland tanzania

The Judiciary in Tanzania has four tiers: the Court of Appeal of the United Republic of Tanzania; the High Courts for Mainland Tanzania and Tanzania Zanzibar; Magistrates Courts, which are at two levels (the Resident Magistrate Courts and the District Court, both of which have concurrent jurisdiction); and Primary Courts, the lowest in the judicial hierarchy.

Court of Appeal. The Court of Appeal of Tanzania, established under Article 108 of the Constitution, is the highest Court in the hierarchy of judiciary in Tanzania and the court of final appeal. It consists of the Chief Justice and other Justices of Appeal.

High Courts. The High Court of Tanzania, established under Article 107 of the Constitution, has unlimited original jurisdiction to entertain all types of cases. (The High Courts exercise original jurisdiction on matters of a constitutional nature and have powers to entertain election petitions.)

The High Court's Main Registry (which includes the sub-Registries) caters for all civil and criminal matters. The High Court (mainland Tanzania) has established 10 sub Registries in different areas of the country, and has two specialized divisions, the Commercial Division and the Land Division.

Subordinate Courts. These include the Resident Magistrate Courts and the District Courts, which both enjoy concurrent jurisdiction. These courts are established under the Magistrate Courts Act of 1984. The District Courts, unlike the Resident Magistrates Courts, are found throughout all districts (the local government unit) in Tanzania, and receive appeals from the Primary Courts, several of which are typically found in one district. The Resident Magistrates Courts are located in major towns, municipalities and cities.

Primary Courts. The primary courts are the lowest courts in the judicial hierarchy, and are established under the Magistrates Courts Act of 1984. They deal with criminal cases and civil cases. Civil cases on property and family law matters that

apply customary law and Islamic law must be initiated at the level of the Primary Court, where the Magistrates sit with lay assessors. The jury system does not apply in Tanzania.

Tribunals. There are various specialized tribunals that form part of the judicial structure, including the District Land and Housing Tribunal, Tax Tribunal and the Tax Appeals Tribunal, Labor Reconciliation Board, the Tanzania Industrial Court, and Military Tribunals for the Armed forces. Any party that feels dissatisfied with any decision of the Tribunals may seek judicial review at the High Court.

Judicial system on zanzibar

The High Court of Zanzibar has exclusive original jurisdiction for all matters in Zanzibar, similar to the case of the High Court on mainland Tanzania. The Zanzibar court system is quite similar to the Tanzania mainland system, except that Zanzibar retains Islamic courts, which adjudicate Muslim family cases such as divorces, child custody, and inheritance. All other appeals from the High Court of Zanzibar go to the Court of Appeal of Tanzania.

Court of Appeal. The Court of Appeal in Tanzania handles all matters from the High Court of Zanzibar.

High Court. The High Court of Zanzibar has the same structure as the High Court of Tanzania Mainland, and handles all appeals from the lower subordinate courts.

Magistrate's Court. These Courts have jurisdiction to entertain cases of different nature, except for cases under Islamic law, which are tried in the Kadhi's courts.

Kadhi's Appeal Court. The main role of the Kadhi's Appeal Court of Zanzibar is to hear all appeals from the Kadhi's court, which adjudicates on Islamic law.

Kadhi's Courts. These are the lowest courts in Zanzibar which adjudicate all Islamic family matters such as divorce, distribution of matrimonial assets, custody of children and inheritance but only with Muslim families.

Primary Courts. These have the same rank as the Kadhi's Courts, and deal with criminal and civil cases of customary nature.

APPENDIX E. BEST PROGRAM COMPONENTS AND EXPECTED RESULTS

Component	Areas of Focus	Activities	Expected Results
Better Regulation	<ul style="list-style-type: none"> ■ Removing unnecessary regulations ■ Revising and simplifying outdated legislation and regulations ■ Establishing a sustainable process for ensuring business-friendly laws and administrative procedures ■ Strengthening capacity for regulatory reform 	<ul style="list-style-type: none"> ■ Passage of new Business Activities Registration Act (BARA) to replace Business Licensing Act 1972 ■ Modernization of BRELA infrastructure, procedures, and services, including computerization of company records and integration of Business Names and Company registries ■ Establishment of national MSME database ■ Modernization of related registries (births, deaths, marriages, insolvency and estates) ■ Preparation of national policy on sectoral licensing ■ Streamlining of sectoral licenses ■ Establishment of individual identification database 	<ul style="list-style-type: none"> ■ Simple and efficient business registration and deregistration system, with well-kept business statistics ■ Simplified and transparent land acquisition procedures and regulations, with improved access to land mortgages and finance ■ Modern labor legislation consistent with international standards ■ Harmonized local and central government tax system ■ Reduced cost of doing business and greater compliance with regulations by businesses, especially SMEs/informal businesses ■ Increased investment in the agriculture sector and greater access by farmers to support services ■ Simplified and efficient import and export procedures
Improved Commercial Dispute Resolution	<ul style="list-style-type: none"> ■ Improved accessibility to the court system for formal and informal businesses ■ Speed and quality of service provided by court system to businesses improved 	<ul style="list-style-type: none"> ■ Revision of civil procedure laws ■ Operationalization of Commercial Court in Mwanza, feasibility study for Commercial Court in Mbeya ■ Computerization of Dar court registries (pilot), online case law and legislation database ■ Alternate dispute resolution ■ Commercial Law Continuing Education Program 	<ul style="list-style-type: none"> ■ Fundamentally reformed CDR system and ADR and greater effectiveness ■ Enhanced access to the Commercial Court ■ Simplified Civil Procedure Code ■ Elimination/mitigation of the "Injunction/Adjournment" culture ■ Clearance of the backlog of commercial cases ■ Increased integrity of the court system

		<ul style="list-style-type: none"> ■ Enhancement of Law Society to become effective advocacy, regulatory organization for lawyers ■ Improved High Court (Land Division) 	<ul style="list-style-type: none"> ■ Improved enforcement of judgments ■ Increased willingness of financial institutions to provide loans to SMEs
Tanzania Investment Center	<ul style="list-style-type: none"> ■ Increased number and value of local and foreign investment in Tanzania ■ Enhanced promotion of Tanzania as an investment destination 	<ul style="list-style-type: none"> ■ Improved Web site ■ Delivery of effective targeted Investment Promotion Strategy ■ Promotion of sites and buildings ■ Improved support to increased number of investors 	<ul style="list-style-type: none"> ■ Better access to information on investment opportunities ■ Increased investment by local businesses, especially SMEs, and foreign investors
Public Sector Reform	<ul style="list-style-type: none"> ■ Improved "customer service" ethos for services provided to the private sector by the Public and Judicial Service 		<ul style="list-style-type: none"> ■ Changed mindset and orientation of the public sector towards private sector growth ■ Better quality of services delivered to the private sector by government agencies ■ Improved private sector compliance with business regulations
Private Sector Advocacy	<ul style="list-style-type: none"> ■ Improved capacity of private sector stakeholders to identify regulatory problems and solutions and advocate for an improved business environment 		<ul style="list-style-type: none"> ■ Greater private sector influence in creating government policies and regulations ■ Enhanced private sector contribution to the economy
Land Administration	<ul style="list-style-type: none"> ■ Reduction of cost and time to register land transactions ■ Use of land as collateral ■ Formalization of urban unplanned settlements 	<ul style="list-style-type: none"> ■ Review of legislation and enactment of new legislation ■ Decentralization of land administration services to local government ■ Establishment of secure land registry ■ Creation of surveying and mapping infrastructure ■ Clearance of backlog in land and housing disputes ■ Survey, mapping and registration of housing plots in unplanned settlements in Dar and other priority cities 	
Labor Reform	<ul style="list-style-type: none"> ■ Establishment of effective, flexible and socially responsible labor market 	<ul style="list-style-type: none"> ■ Preparation of legislation for OSH, workers compensation, social security, employment promotion services ■ Establishment of OSHA zonal offices and offices for Labor Court ■ Resolution of backlog of labor cases ■ Establishment of labor market information system 	
BEST Zanzibar	<ul style="list-style-type: none"> ■ Improved regulatory environment for business 	<ul style="list-style-type: none"> ■ Reform of companies, business names, securities and insolvency laws ■ Digitalization of records and reengineering of registration processes ■ Rationalization of licensing, taxation, and tax administration ■ Reform of land registration and information system, including updating of land laws ■ Revision of trade procedures ■ Updating of ZIPA's corporate strategy 	