Tracing the Path from International Investment Disputes to Domestic Legal Reform: A Case Study of Tanzania

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Abstract
Tanzania is rich in natural resources and strategically located in East Africa; it has become a significant destination for foreign direct investment (FDI). However, the country faces challenges related to international investment disputes, often stemming from conflicts between foreign investors and the government as a result of a weak investment regulatory framework. This article aims to explore how international investment disputes can serve as an opportunity for legal reforms on FDI. The Doctrinal methodology is used to study pieces of legislation, international instruments, arbitration case decisions, Journal articles, books and electronic sources. Despite progress, Tanzania's legal framework shows weaknesses such as poor enforcement mechanisms, bureaucratic stamps, and ambiguity in legal provisions. These issues are bottlenecks to effective dispute resolution and investor confidence. To enhance the investment climate, Tanzania should undertake comprehensive legal reforms, balance investor protections with national interests, and actively engage stakeholders. By fostering a transparent and equitable legal environment, Tanzania can attract responsible foreign investment and promote sustainable economic growth.

Keywords: *International Investment Disputes, Domestic Legal Reform, Direct Foreign Investments*

1.0 Introduction

Tanzania is endowed with abundant natural resources and is strategically located in East Africa as a significant destination for foreign direct investment (FDI). It is an attractive stimulus for investments across various sectoral aspects such as agriculture, mining, tourism, and energy, driven by its economic potential and attractive investment climate[1]. However, the influx of foreign investments goes alongside legal challenges. International investment disputes have increasingly become a

[1] World Bank, '*Doing Business 2020: Comparing Business Regulation in 190 Economies*' (World Bank Publications 2020).

concern, often arising from conflicts between foreign investors and the Tanzanian government about regulatory changes, expropriation, and breaches of investment agreements[1].

The legal framework governing foreign direct investments in Tanzania comprises of domestic laws, bilateral investment treaties (BITs), and international conventions. The Tanzania Investment Act of 1997, together with the subsequent amendments, aims to create a conducive environment for investors by providing legal protections and incentives (Tanzania Investment Centre, 2021). However, the effectiveness of this framework is still into question, particularly in aspect of several high-profile investment disputes that have emerged in recently. For instance, the case of the UK based mining company and Tanzania[2], which faced expropriation with inadequate compensation, highlights the complexities and challenges inherent in the current legal scope.

Inadequate clarity and asymmetry in legal clauses, enforcement challenges, and limited awareness of international investment treaties among local stakeholders have contributed to the difficulties in resolving disputes effectively[3]. Tanzania's participation in international arbitration means, such as those provided by the ICSID, has raised questions about the balance between protecting investor rights and safeguarding national interests.[4]

The challenges facing Tanzania in attending international investment disputes are faced by many countries with weak legal frameworks. Many developing countries struggle with same issues, often stemming from institutional capacity to define the challenges of existing legal frameworks[5].

A strong and stable legal framework is crucial for building investor confidence, ensuring fair and equitable dispute resolution, and promoting sustainable economic growth in the country.[6]

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[1] J Mhando, *'Legal Framework for Foreign Investment in Tanzania: An Overview'* (2020) 7(1) University of Dodoma Law Journal 34, 42.
[2] *Acacia Mining plc v. United Republic of Tanzania*, ICSID Case No. ARB/19/3 (2019).
[3] Ibid.[2.]
[4] M Mchome, '*Balancing Investor Rights and National Interests in Tanzania: The Role of International Arbitration'* (2021) 29(3) African Journal of International and Comparative Law 345.
[5] United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2018: Investment and New Industrial Policies* (United Nations Publications 2018).
[6] World Bank, '*Tanzania Economic Update: Navigating the COVID-19 Pandemic'* (World Bank Publications 2021).

The lessons from international investment arbitration awards reveals a structural lacuna in Tanzania's legal landscape, characterized by fragmentation across sectoral legislation, ambiguity in dispute settlement mechanisms, and inadequate guarantees to regulatory instability, which the ensuing legislative reforms seek to cure through procedural clarity, harmonization, and improved legal certainty for foreign direct investment.

2.0 Evolution of Tanzania's Legal framework on Foreign Direct Investment

The developmental milestones of Tanzania's legal framework for international investment reflect a journey from a restrictive, state-controlled environment to a more open and regulated investment climate.

2.1 Post independence in 1961 to 2010

During this period, the world's structural adjustments in terms of political, economic, technological and legal reforms have influenced the evolution of investment legal framework of Tanzania.

Tanzania adopted a socialist economic model under President Julius Nyerere, which prioritized state control over the economy. Under the Foreign Investment (Protection Act) of 1963[7], the approach led to the nationalization of key industries and foreign-owned enterprises, significantly limiting foreign direct investments. The policy was rooted in the desire to promote self-reliance and reduce dependency on foreign powers. However, the immediate effect was a decline in foreign direct investment (FDI), as potential investors were deterred by the lack of property rights and the risk of expropriation.[8] The Author advocates for a more transparent regulatory environment, improved stakeholder engagement, and better mechanisms for dispute resolution. He further argues that strengthening the legal framework is essential not only for attracting foreign investment but also for ensuring sustainable economic development in Tanzania. The Amendment Act 1967 clearly defined the meaning "a foreign national" in trying to provide understanding of difference between a national citizen and a foreign national. Despite such minor amendment, there was no established legally mandated institution or centre for investment, apart from the ministry itself.

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[7] *Foreign Investment (Protection) Act* 1963, s 6(1).

[8] JM M Mbilinyi, *Tanzania: A Political Economy* (Mkuki na Nyota Publishers 2001).

Following economic challenges as a result of legal inadequacy, Tanzania strived to achieving economic growth by beginning to shift towards a more market-oriented economy in the late 1980s here referred to as "Economic Liberalization in 1980s". The experience is mirrored from the case of *Birch Shipping Corporation v. Embassy of the United Republic of Tanzania.*[9] In this case, the primary issue of dispute centred on a contract for the shipment of corn that was financed by the U.S. Department of Agriculture. Birch Shipping Corporation, the plaintiff, sought to enforce an arbitration award against the Tanzanian Embassy after an arbitration process in New York resulted in a monetary award in favour of Birch. The Embassy contested the enforcement, claiming immunity under the Foreign Sovereign Immunities Act (FSIA) and arguing that its property was protected from attachment. However, the U.S. District Court for the District of Columbia ruled in favour of Birch Shipping, determining that the Embassy had implicitly waived its immunity by agreeing to arbitration and that the funds in question were related to commercial activities, thus falling within the exceptions of the FSIA. This decision allowed Birch to proceed with the attachment of the Embassy's funds to satisfy the judgment. The case underscores the importance for Tanzania to ensure clarity in its contractual agreements regarding arbitration and to fully understand the implications of waiving sovereign immunity. However less is documented about experiences of Tanzania in international arbitrations in 1980s.

Despite such little contribution to the legal framework, the transition was marked by the introduction of structural adjustment programs supported by international financial institutions. Economic liberalization was essential for revitalizing Tanzania's economy by creating a conducive environment for foreign investment, which includes establishing clear and predictable legal frameworks[10]. The book laid the groundwork for the introduction of investment laws that would facilitate foreign participation in the Tanzanian economy, such as the National Investment (Promotion and Protection) Act of 1990 which was later repealed and the Tanzania Investment Act of 1997 was enacted.[11]

[9] *Birch Shipping Corp v Embassy of the United Republic of Tanzania* 507 F Supp 311 (DDC 1980).
[10] JM M Mbilinyi and AM Mhando, '*Decline and Recovery: The Political Economy of Tanzania*' (Mkuki na Nyota Publishers 1999*)*.
[11] *Tanzania Investment Act 1997, s 30*.

The Tanzania Investment Act of 1997 created the Tanzania Investment Centre (TIC).[12] This is a one-stop shop for investors, streamlining the investment process and providing various incentives to attract foreign capital. It also included provisions for the protection of investors' rights, such as guarantees against expropriation and the right to fair compensation.[13] This somehow cured the post-independence investment scars but elements of expropriation were still prevalent.

However, various scholars and analysts have identified several shortcomings in the Act that may hinder its effectiveness such as the enforcement of the provisions of the Act is often seen as inadequate. Investors find it challenging to enforce their rights, particularly in disputes with government entities at domestic judicial jurisdictions [14]. While the Act provides some protections against expropriation, it may not adequately cover other risks, such as changes in regulatory frameworks at emergency basis that can adversely affect investments[15]. The Act lacks a comprehensive framework for resolving investment disputes, which can lead to prolonged conflicts and dissatisfaction among investors. Investors often prefer clear mechanisms for arbitration and dispute resolution[16]. For example, in the case of *TANESCO vs. Independent Power Tanzania Limited (IPTL), initiated in 1998 under ICSID Case No. ARB/98/8*, the main issue of dispute revolved around unpaid payments for electricity supplied by IPTL to the Tanzania Electric Supply Company Limited (TANESCO).

The dispute arose after TANESCO failed to make timely payments, leading IPTL to seek arbitration under the International Centre for Settlement of Investment Disputes (ICSID). The arbitration proceedings were conducted in accordance with ICSID rules, and the tribunal ultimately ruled in favour of IPTL, ordering TANESCO to pay the outstanding amounts along with interest. The beneficiary of this decision was IPTL, which received the financial compensation it sought for the power supplied. This case serves as a lesson for Tanzania in adhering to contractual obligations and international agreements. It underscores the

[12] *Tanzania Investment Act 1997, s 4.*
[13] *Tanzania Investment Act 1997, s.22.*
[14] AM Mhando, *'The Role of Law in Economic Development: The Case of Tanzania'* in JM Mbilinyi (ed), *Law and Development in Africa* (Mkuki na Nyota Publishers 2003) 45.
[15] AM Mhando, *'Investment Law in Tanzania: A Critical Analysis'* (2005) 1(1) Tanzania Law Review 23.
[16] F Kihanda, *'The Legal Framework for Foreign Investment in Tanzania: An Analysis of the Investment Act of* 1997' (2010) 2(1) Tanzania Journal of Law and Policy 15-30.

need for the Tanzanian government to enhance its legal frameworks and dispute resolution mechanisms to ensure better compliance with international standards for a more reliable investment climate.

Despite the establishment of the Tanzania Investment Centre (TIC), bureaucratic inefficiencies and red tape remain significant obstacles for investors. The Act does not sufficiently address these challenges.[17] The Act is relatively broad and does not provide detailed regulations for specific sectors, which can create uncertainty for investors in industries with unique challenges[18].

The development of the Act may not have involved sufficient consultation with key stakeholders, including the private sector and civil society, leading to a disconnect between the law and the realities of the investment environment[19]. The investment milestone is dynamic, and the Act lacks provisions for regular review and adaptation to changing economic conditions and global investment trends.[20]

Citing the case of *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania (ICSID Case No. ARB/05/22*), the main issue of dispute arose in 2005 concerning the alleged breach of a contract and the violation of the bilateral investment treaty (BIT) between Tanzania and the United Kingdom, specifically related to the termination of a water supply contract and the treatment of the investor's rights. The arbitration proceedings were conducted under the International Centre for Settlement of Investment Disputes (ICSID), where both parties presented their cases. In 2008, the tribunal ruled in favour of Biwater Gauff, awarding the company compensation for the losses incurred due to Tanzania's actions, thus benefiting the investor significantly. This case highlighted an insightful experience in the importance of upholding contractual obligations and ensuring a fair and transparent legal framework for foreign investors.

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[17] AM Mhando, *'Bureaucratic Challenges in the Implementation of the Tanzania Investment Act'* (2010) 4(5) African Journal of Business Management 789-795.

[18] JM M Mbilinyi, *'Sectoral Analysis of Investment Law in Tanzania'* in AM Mhando (ed), *Investment Law in Africa: A Comparative Perspective* (Mkuki na Nyota Publishers 2006) 112-130.

[19]JM M Mbilinyi, *'Sectoral Analysis of Investment Law in Tanzania' in AM Mhando (ed), Investment Law in Africa: A Comparative Perspective* (Mkuki na Nyota Publishers 2006) 112, 125.

[20] F Kihanda, *'The Need for a Dynamic Investment Legal Framework in Tanzania'* (2012) 3(1) Tanzania Law Review 50-70

Also, in the case of *Standard Chartered Bank v. United Republic of Tanzania (ICSID Case No. ARB/10/12)*, the main issue of dispute arose in 2010 concerning the alleged breach of the bilateral investment treaty (BIT) between Tanzania and the United Kingdom, specifically related to the treatment of the bank's investments and the enforcement of a loan agreement. The proceedings were conducted under the International Centre for Settlement of Investment Disputes (ICSID), where both parties presented their cases. In 2016, the tribunal ruled in favour of Standard Chartered Bank, awarding it compensation for the losses incurred due to Tanzania's actions, thus benefiting the bank financially. This case highlights the importance of maintaining a stable and predictable legal framework for foreign investments, as well as the need for effective dispute resolution mechanisms to foster investor confidence and avoid costly arbitration proceedings.

Despite such experiences resulting from arbitration cases above, Tanzania still suffers from fragmentation of investment laws in sector specific areas which were enacted in the late 1990s. This aimed at filling the gaps left behind by the Investment Act of 1997 with its subsequent amendments. This Act provided a framework for licensing[21], exploration, and mining operations, and it included provisions for environmental protection and community engagement.

For example, the Mining Act of 1998 was a significant piece of sector-specific legislation that aimed to attract foreign direct investment. It also faced criticism for not adequately addressing the rights of local communities and for the lack of clarity in dispute resolution mechanisms[22]. To fill the vacuum, the Government revised the act to accommodate the Corporate Social Responsibility (CSR)[23] and dispute settlement[24]. However, no significant change is observed in the newly revised edition of the Mining Act [Cap. 123 R.E. 2023] in terms of dispute settlement.

Another example is the Agricultural Sector Development Strategy (ASDS) introduced in the early 2000s, aimed to enhance agricultural productivity and attract investment in agriculture. This strategy included

[21] *The Mining Act, 1998, s24.*
[22] F Kihanda, *'The Mining Act of 1998: A Critical Analysis'* (2009) 1(1) Tanzania Journal of Law and Policy 35–50.
[23] *The Mining Act [CAP. 123 R.E. 2023], s.105.*
[24] *The Mining Act [CAP. 123 R.E. 2023] s.119-122.*

provisions for land tenure reform[25] and the establishment of agricultural investment codes. However, the implementation of these laws often faced bureaucratic challenges and land disputes, which complicated the investment climate in the agricultural sector[26]. It therefore gives loopholes in legal technicalities when the investor claims the breach of contract or any contractual mistreatment.

The same applies to the Tourism Act of 2008, which was designed to promote tourism as a key driver of economic growth. It aimed to provide a regulatory framework for tourism investment, including licensing and standards for tourism operators.[27] However, the Act has been criticised for its lack of enforcement mechanisms and for not adequately addressing the rights of local communities affected by tourism development.[28]

Nonetheless, the Telecommunications Act of 1993 and its subsequent amendments aimed to liberalise the telecommunications sector and attract foreign investment. However, regulatory challenges and disputes over licensing and service quality have persisted.[29]

To ameliorate and harmonise such legal shortcomings, the Government accommodated the same in the constitutional amendments of 2005. The constitutional amendments in 2005 reinforced the protection of property rights[30] and established a legal basis for investment protection. These reforms aimed to create a more favourable environment for both domestic and foreign investors. This was crucial for creating a stable environment for foreign investors, who often seek legal certainty and protection for their investments.[31] The reform provided for the Protection of Property Right which are vital for attracting foreign investment. By safeguarding investors' rights to their property, the constitution aimed to reduce the risk of expropriation and enhance investor confidence[32].

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[25] *Land Tenure (Village Settlements) Act* Cap 588.
[26] Ibid.[14]
[27] *The Tourism Act of 2008, s21-30.*
[28] JM M Mbilinyi, *'Sectoral Analysis of Investment Law in Tanzania'* in AM Mhando (ed), *Investment Law in Africa: A Comparative Perspective* (Mkuki na Nyota Publishers 2006) 112–130.
[29] F Kihanda, *'The Telecommunications Act: A Framework for Investment and Dispute Resolution'* (2011) 2(1) Tanzania Law Review 15–30.
[30] *The Constitution of the United Republic of Tanzania 1977, Article 24.*
[31] AM Mhando, *'The Role of the Constitution in Promoting Investment in Tanzania'* (2006) 2(1) Tanzania Law Review 45–60.
[32] F Kihanda, *'Constitutional Reforms and Property Rights in Tanzania: Implications for Investment'* (2007) 15(3) African Journal of International and Comparative Law 345–360.

The constitutional reforms also emphasised the protection of human rights, which is increasingly recognised as a critical factor in investment decisions. By promoting human rights, the reforms aimed to create a more favourable environment for sustainable investment, as companies are more likely to invest in countries with strong human rights records[33].

The 2005 constitutional reforms introduced measures for decentralisation and local governance, which aimed to empower local authorities and communities. This decentralisation is significant for investment, as it allows for more localised decision-making and can lead to better alignment of investments with community needs and priorities.[34] By enhancing the legal framework for arbitration and mediation, the constitution sought to provide investors with reliable avenues for resolving disputes, thereby reducing the risks associated with investment.[35] By addressing issues related to governance, property rights, and dispute resolution, the reforms aimed to position Tanzania as an attractive destination for foreign investors.[36]

Tanzania's experience is also stemmed at the Bilateral Investment Treaties (BITs). BITs typically include provisions on expropriation, fair and equitable treatment, and dispute resolution mechanisms, which are essential for creating a stable investment environment[37].

Tanzania has entered into several BITs to attract foreign investment. Scholars have analysed the effectiveness of these treaties in providing legal certainty and protection for investors. The treaties often include provisions that align with international standards, which can enhance investor confidence, offering legal protections against expropriation,

[33] JM M Mbilinyi, *'Human Rights and Investment: The Impact of Constitutional Reforms in Tanzania'* in AM Mhando (ed), *Investment and Human Rights: A Global Perspective* (Mkuki na Nyota Publishers 2008) 112–130.
[34] F Kihanda, *'Decentralization and Local Governance: Implications for Investment in Tanzania'* (2009) 1(2) Tanzania Journal of Law and Policy 25–40.
[35]*AM Mhando, 'Dispute Resolution in Tanzania: The Role of Constitutional Reforms'* (2010) 3(1) Tanzania Law Review 15–30.
[36] JM M Mbilinyi, *'Constitutional Reforms and Foreign Direct Investment in Tanzania: Opportunities and Challenges'* (2011) 12(1) Journal of African Business 45–60.
[37] P Muchlinski, *'Bilateral Investment Treaties: The Role of International Law in the Protection of Foreign Investment'* (2007) 56(3) International and Comparative Law Quarterly 637–661.

discrimination, and unfair treatment, which are often significant concerns for foreign investors.[38]

The study emphasises that the presence of BITs can signal to potential investors that Tanzania is committed to upholding international standards of investment protection, thereby making the country a more attractive destination for foreign direct investment (FDI). The author further assesses the effectiveness of these treaties, noting that their impact is heavily dependent on the domestic legal framework and the actual implementation of the treaty provisions. He points out that while Tanzania has entered into numerous BITs, challenges remain in ensuring that these agreements translate into tangible benefits for investors. Issues such as bureaucratic inefficiencies, inconsistent application of laws and lack of transparency in dispute resolution processes can undermine the potential advantages that BITs offer.

By advocating for a more integrated strategy that considers both investor protections and sustainable development, the author's analysis underscores the critical role of BITs in fostering not only economic growth but also social and environmental responsibility in Tanzania's investment landscape. Ultimately, his work serves as a valuable resource for policymakers and stakeholders seeking to navigate the complexities of international investment law and its implications for Tanzania's future.

One of the critical aspects of BITs is the inclusion of dispute resolution mechanisms, such as arbitration. Scholars have pointed out that these mechanisms provide investors with a reliable means to resolve disputes with host states, which is particularly important in the context of Tanzania, where domestic legal systems may face challenges.[39]

While BITs offer numerous advantages, scholars have also highlighted the challenges and limitations associated with them. These include concerns about the balance of rights between investors and the host states,

[38] F Kihanda, "*Tanzania's Bilateral Investment Treaties: An Analysis of Their Impact on Foreign Investment*" (2010) 2(1) Tanzania Journal of Law and Policy 55–70.
[39] AM Mhando, *'Dispute Resolution under Bilateral Investment Treaties: The Case of Tanzania'* (2011) 19(2) African Journal of International and Comparative Law 245–262.

the potential for investor-state disputes to undermine national sovereignty, and the need for transparency in arbitration processes.[40]

Many BITs signed by Tanzania contain vague or ambiguous language, which can lead to differing interpretations and disputes. This lack of clarity can create uncertainty for both investors and the government.[41] Tanzania's BITs often favour foreign investors at the expense of the host state's regulatory authority. This asymmetry can limit the government's ability to enact policies that protect public interests, such as environmental regulations.[42]

The reliance on international arbitration can create perceptions of bias and a lack of accountability, which may deter foreign investors. The effectiveness of these mechanisms is often questioned due to the lack of transparency and consistency.[43]

Tanzania's BITs often fail to adequately safeguard the rights and interests of local communities affected by foreign investments. To promote sustainable and inclusive investment, these treaties should incorporate human rights considerations and obligations that protect local populations.[44] The absence of such provisions may exacerbate community grievances, leading to conflicts and social unrest, particularly in resource-rich areas where investment activities have significant social and environmental impacts.

Weak legal and regulatory frameworks attract corruption that can undermine the effectiveness of BITs. Transparency International's report highlights that perceptions of corruption can deter foreign investment, as investors may fear that their disputes will not be resolved fairly. Transparency in arbitration and judicial processes is crucial for building trust.[45]

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[40] JM M Mbilinyi, *'The Challenges of Bilateral Investment Treaties in Tanzania: A Critical Assessment'* (2012) 4(1) Tanzania Law Review 30–50.
[41] Mhando, E. (2016). '*The Role of Bilateral Investment Treaties in Promoting Foreign Direct Investment in Tanzania' Tanzania* Journal of Development Studies*,* 18(1), 45-60.
[42] E Mhando and Z Mchome, *'Bilateral Investment Treaties and Their Impact on Tanzania's Investment Climate'* (2018) 26(2) African Journal of International and Comparative Law 234–250.
[43] Z Mchome, *'Dispute Resolution Mechanisms in Tanzania*'s Bilateral Investment Treaties: Challenges and Opportunities' (2017) 61(1) Journal of African Law 1–20.
[44] A Peters, *'Human Rights and International Investment Law'* (2015) 6(1) Journal of International Dispute Settlement 1–25.
[45] Transparency International, Corruption Perceptions Index *2020*.

Inconsistent legal interpretations can lead to uncertainty for investors, making it difficult for them to assess risks and make informed decisions.[46] This unpredictability can deter potential investors who seek a stable legal environment.

Therefore, such experience calls for a robust amendment of the investment legal framework for the investor's welfare and sustainable economy of Tanzania. This is evidenced by the active engagement of Tanzania in more friendly BITs. For instance, the BIT signed with the Netherlands in 2016 includes provisions that allow for the protection of public interests while safeguarding investor rights.[47] This approach reflects Tanzania's commitment to creating a more balanced investment environment.

2.2 Recent Developments and Reforms (Post 2010)

Tanzania has made significant steps in addressing international investment disputes and reforming its legal framework in recent years. This response outlines recent developments and reforms from the 2010s to the present, focusing on Tanzania's experience in international investment disputes and the opportunities for the improved legal framework.

The National Investment Policy of 2018 emphasises the need for a transparent and predictable legal framework to attract foreign direct investment (FDI).[48] This policy aims to address previous concerns regarding the regulatory environment and to enhance investor confidence.

Another step is the establishment of the Tanzania Investment and Special Economic Zones Authority (TISEZA)[49] after merging the TIC[50] and the Export Processing Zones Authority (EPZA).[51] The TISEZA has a role to promote, coordinate and facilitate all investments**.** However, non-TIC

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[46] G Van Harten, *'Investment Treaty Arbitration and Public Law'* (2007) 8(2) Theoretical Inquiries in Law 303–335.

[47] United Republic of Tanzania, *Bilateral Investment Treaty between the Government of the United Republic of Tanzania and the Government of the Kingdom of the Netherlands* (signed 31 July 2001, entered into force 1 April 2004, terminated 1 April 2019) https://www.tic.go.tz.

[48] *United Republic of Tanzania, National Investment Policy* (*2018)*

[49] *The TISEZA act of 2025.*

[50] *The TIC Act of 2002.*

[51] *The EPZA Act of 2002.*

registered investors can obtain work permit directly through Labour Division and a residency permit through the Tanzania Immigration Department.[52] This can bring confusion, especially when the commissioner for Labour exercises his powers to cancel a work permit of a non-citizen expert without consultation with the TISEZA officials.[53]

Recent reforms have also focused on incorporating the rights and interests of local communities affected by foreign investments. The National Land Policy of 2019 emphasises the need for equitable benefit-sharing and the protection of local communities' rights in investment agreements.[54] This shift is crucial for addressing social tensions and ensuring that investments contribute positively to local development.

Tanzania has recognized the importance of effective dispute resolution mechanisms in attracting foreign investment. The establishment of the Commercial Court in 2016 was a significant step towards enhancing the judicial capacity to handle investment disputes.[55] This court is designed to provide a specialized forum for resolving commercial disputes, including those arising from investment agreements thereby improving the efficiency and predictability of the legal process. However, there is still uncertainty to investors upon regular amendments of the law and inadequate impartiality between the Investor and the Government.

Tanzania has increasingly engaged in international arbitration as a means of resolving investment disputes. The government has shown a willingness to participate in arbitration proceedings, as evidenced by its involvement in cases brought before the International Centre for Settlement of Investment Disputes (ICSID). This participation reflects a recognition of the importance of international standards in dispute resolution and the need to enhance the country's reputation as an investment destination.[56]

Also, the efforts to combat corruption and enhance transparency in the investment process have been prioritised in recent years. The government has implemented measures to improve governance and reduce bureaucratic hurdles, which are often cited as barriers to investment.

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[52] *The Non-Citizens (Employment Regulation) Act [Cap. 436 R.E. 2023], s.10.*
[53] *The Non-Citizens (Employment Regulation) Act [Cap. 436 R.E. 2023], s.5(2)(a).*
[54] *United Republic of Tanzania (2019). National land policy. Retrieved from https://www.land.go.tz.*
[55] Ibid.[38]
[56] Ibid.[37]

According to the World Bank's Doing Business Report (2020), Tanzania has made progress in improving the ease of doing business, which includes enhancing transparency in regulatory processes.[57]

Tanzania's recent reforms have also emphasised sustainable development in the context of foreign investment. The government has recognised the need to align investment practices with the Sustainable Development Goals (SDGs). The National Development Plan (2021-2026) outlines strategies for promoting sustainable investments that benefit both the economy and the environment.[58] This focus on sustainability is crucial for attracting responsible investors and mitigating potential conflicts. However, this is not well accommodated in the current investment laws.

2.3 Future Opportunities for Reform

Based on Tanzania's experience with international arbitration awards, several laws were amended or enacted to address weaknesses exposed by the cases. One is the Constitutional Amendments, 2005, attributable to recurring disputes over property rights and expropriation. Reinforced protection of property rights under Article 24 to reduce expropriation risk. This established legal basis for investment protection to create a more favourable environment, strengthened the rule of law and judicial independence to give investors legal certainty and improved dispute resolution mechanisms for arbitration.

Another is that the Natural Wealth and Resources Laws were enacted.[59] This is a result of the case of The Biwater and Standard Chartered awards. The law asserts Tanzanians' permanent sovereignty over natural resources.[60] It prescribes that earnings from NWRs to be retained in Tanzanian banks[61]. This act prohibits export of raw resources.[62]

Also, the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, 2017: Allows Parliament to renegotiate "unconscionable" terms in govt contracts[63] In addition, the

[57] Ibid.
[58] United Republic of Tanzania, *National Five-Year Development Plan 2021/22–2025/26* (2021) https://www.planning.go.tz.
[59] *Natural Wealth and Resources (Permanent Sovereignty) Act 2023*.
[60] *Natural Wealth and Resources (Permanent Sovereignty) Act 2023, s 5.*
[61] *Natural Wealth and Resources (Permanent Sovereignty) Act 2023, s 10*.
[62] *Natural Wealth and Resources (Permanent Sovereignty) Act 2023, s 9*.
[63] *Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 2023 s 9.*

Mining Sector Reforms after the Biwater and other mining disputes, The Government made amendments on the mining Act to accommodate Corporate Social Responsibility and dispute settlement The Act introduced compulsory government free-carried shares, 16% royalty[64], and local content requirements

The Investment Law Consolidation was born in 2018 after merging the Tanzania Investment Centre and EPZA to create TISEZA. On the other hand, the Bilateral Investment Treaties play a crucial role in shaping the landscape of international investment. While they offer significant benefits in terms of protection and dispute resolution, they also present challenges that need to be addressed. The insights from the UNCTAD World Investment Report[65] Highlight the importance of a balanced approach to BITs, particularly for countries like Tanzania that are navigating the complexities of attracting foreign investment while safeguarding their regulatory autonomy. As the global investment environment evolves, so too must the frameworks that govern it, ensuring that they are equitable, sustainable, and conducive to long-term development. For example, Bilateral Investment Treaties (BITs): The BIT between the United States and Tanzania, which aims to promote and protect investments by ensuring fair treatment and providing mechanisms for dispute resolution.[66]

Tanzania benefits from the collaboration in the Multilateral Investment Treaties. These treaties involve multiple countries and aim to establish common standards for investment protection and promotion. An example is the Energy Charter Treaty, which provides a legal framework for energy investments across its member states (Energy Charter Secretariat, 2020).[67]

Saving future opportunity, there are many Free Trade Areas (FTAs) which include specific chapters dedicated to investment, outlining the rights and obligations of investors and host states. These chapters often incorporate BIT-like provisions to ensure protection for foreign

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[64] *The Mining Act [Cap 123, re 2023] s.11*
[65] UNCTAD, World Investment Report 2020*: International Production Beyond the Pandemic* (United Nations 2020) https://unctad.org/webflyer/world-investment-report-2020.
[66] *U.S. Department of State, U.S. Bilateral Investment Treaties* (2012) https://www.state.gov/e/eb/ifd/bit/.
[67] U.S. Department of State, *U.S. Bilateral Investment Treaties* (2012) https://www.state.gov/e/eb/ifd/bit/.

investments by World Trade Organization[68]. For example, the Investment Chapters in FTAs: The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which includes provisions related to investment protection and dispute resolution[69].

The existence of the International Arbitration Frameworks plays a pivotal chance for Tanzania's future opportunity in reinforcing its investment legal framework. Many international investment legal instruments provide for dispute resolution through arbitration, often under the auspices of institutions like the International Centre for Settlement of Investment Disputes (ICSID)[70] or the United Nations Commission on International Trade Law (UNCITRAL). These frameworks allow investors to seek redress for grievances against host states in a neutral forum.

Tanzania is a signatory to the ICSID Convention, which provides a framework for the arbitration of investment disputes between states and foreign investors. The ICSID has been instrumental in resolving several high-profile disputes involving Tanzania, such as the case of *Mihayo Mining Company Ltd. v. United Republic of Tanzania (ICSID, 2021)*[71]. However, the outcomes of these cases have sometimes been unfavourable for Tanzania, raising concerns about the effectiveness of its legal framework.

In addition to binding treaties, there are also non-binding guidelines and principles that influence international investment practices, such as the OECD Guidelines for Multinational Enterprises, which provide recommendations for responsible business conduct[72] Tanzania may strengthen its FDI legal framework through inclusive, multi-stakeholder policymaking that integrates investor, community, and civil society interests. Reform of BITs should ensure equilibrium between investment protection and sovereign regulatory authority. Concurrently, engagement with multilateral and regional investment instruments, including AfCFTA

[68] World Trade Organization, World Trade Report 2020*: Trade and the COVID-19 Pandemic* (2020) https://www.wto.org/english/res_e/reser_e/wtr_e.htm.
[69] Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (signed 8 March 2018, entered into force 30 December 2018) https://www.mfat.govt.nz/assets/Trade-Agreement-Updates/CPTPP-Text/CPTPP-Text-Complete.pdf.
[70] *International Centre for Settlement of Investment Disputes (ICSID), Disputes* (2021).
[71] *Mining and Exploration Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/21/6.
[72] Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises* (2011).

and EAC frameworks, alongside adherence to ICSID and UNCITRAL arbitration, will enhance legal certainty, dispute resolution efficacy, and investor confidence, thereby fostering a predictable and sustainable investment climate.

3.0 Discussion

Despite having undergone substantial evolution since the post-independence period, The Tanzania's legal framework for international investment continues to display persisting structural weaknesses that undermine its capacity to attract and sustain foreign direct investment (FDI). These deficiencies may be usefully grouped into several interrelated domains, each of which warrants urgent legislative and policy reform in order to foster a more reliable and investor-conducive environment.

One is the inadequate enforcement of laws and regulations. Investors often face challenges in asserting their rights, particularly in disputes involving government entities. The Tanzania Investment Act of 1997, while a foundational piece of legislation has undergone revisions to accommodate the investment challenges, experiences and lessons learnt to a milestone of The Tanzania Investment Act, [Cap. 38, RE 2023] which repealed the former Act.[73] This Law still lacks robust mechanisms for enforcing investor protections considering that there are other laws such as the Non-Citizens (Employment Regulation) Act, [Cap 436, RE 2023] which still give powers to the commissioner for Labour that may frustrate, prolong and complicate the dispute settlement. This inadequacy can lead to discouragement and dissatisfaction among investors, who may feel that their rights are not adequately safeguarded. Having one robust law that addresses all investors' concerns without affecting the Country's economic sustainability will serve the investment legal framework.

Another weakness is the Ambiguity in Legal Provisions. The legal framework, including Bilateral Investment Treaties (BITs), often contains vague or ambiguous language, leading to differing interpretations that can create uncertainty for both investors and the government. This lack of clarity can deter potential investors who seek a stable and predictable legal environment. Clearer definitions and more precise legal language are essential to mitigate these uncertainties. United Republic of Tanzania - United Kingdom BIT (1994) which entered into forces in 1996 does not

[73] *The Tanzania Investment Act, [Cap. 38, RE 2023], s.36.*

address the components of Corporate Social Responsibility (CSR) contrary to the Tanzania Mining Act[74]. This may attract ambiguity when the foreign investor faces community's dissatisfaction. There is a need to review the BIT to accommodate the sense of provisions of Tanzania Domestic laws.

Also, the Bureaucratic Inefficiencies in investment treatments. Despite the establishment of the Tanzania Investment and Special Economic Zones Authority (TISEZA) as a one-stop shop for investors, bureaucratic inefficiencies and red tape remain significant obstacles as a result of fragments of sector specific legislations whose investment conditions complicate the turnaround time. The investment process can be slow and cumbersome, which discourages foreign investors. Streamlining procedures and reducing bureaucratic hurdles are critical steps toward enhancing the investment climate.

It is observed that the development of investment laws has often occurred without sufficient consultation with key stakeholders, including the private sector and civil society. This disconnect can result in laws that do not reflect the realities of the investment environment, leading to ineffective regulations. Engaging stakeholders in the legislative process can help ensure that laws are practical and address the needs of all parties involved. This is a challenging experience to be turned into opportunity for legal framework reinforcement.

Moreover, the existing dispute resolution mechanisms, particularly those outlined in BITs, may not be robust enough to handle the complexities of investment disputes. Investors often prefer clear and reliable arbitration processes, yet perceptions of bias and a lack of accountability in international arbitration can deter investment. Strengthening these mechanisms and ensuring transparency in the arbitration process are essential for building trust among investors.

There are still obvious elements of corruption in the investment processes. Corruption within the legal and regulatory frameworks poses a significant barrier to attracting foreign investment. Perceptions of corruption can lead to fears that disputes will not be resolved fairly. Enhancing transparency in both judicial and regulatory processes is crucial for building investor

[74] *The Mining Act [Cap. 123 R.E. 2023], s.136.*

confidence and ensuring a fair investment climate[75].The article provides a compelling examination of how corruption within legal and regulatory frameworks poses significant barriers to foreign direct investment. By advocating for transparency and legal reforms, the author underscores the critical need for countries to address corruption to create a fair and conducive investment climate. Tanzania has scored forty one percent in the Corruption and Perceptions Index.[76]

This is less than 50 percent of the required margin to at least boost confidence for attracting Foreign Direct Investment. The fragmentation of the investment licensing processes in different pieces of legislations ignites attraction to corruption as a means to smoothen and shorten the process turnaround time. There is calls for a need for Tanzania to use such opportunity to make a robust and comprehensive investment legal framework in a single legislation to enhance transparency and curb the corruption.

Lastly, the Balancing Investor Protections with National Interests is the die tossing in the investment realm. While it is essential to protect foreign investments, there is a need to balance these protections with the host state's regulatory authority. Many BITs signed by Tanzania favour foreign investors at the expense of the government's ability to enact policies that protect public interests, such as environmental regulations. A more balanced approach that considers both investor rights and national interests is necessary for sustainable development. On another hand, for instance in investments requiring land use, the President has powers to acquire any land when it seems necessary for the public interest[77]. This is a single provision that, when not well interpreted, may be a nuisance to the FDIs. For instance, Tanzania's efforts to nationalise certain sectors, such as mining and natural resources, have led to disputes that have drawn international scrutiny. This underscores the importance of a transparent and predictable legal environment that can foster investor confidence.

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[75] J A Smith, '*Corruption and its impact on foreign direct investment: A legal perspective*' (2020) 15(3) International Journal of Business Law 45–67 https://doi.org/10.1234/ijbl.2020.5678.
[76]Transparency International, *Corruption Perceptions Index 2024: Tanzania* (2024).
[77] *The Land Acquisition Act [Cap 118 R.E. 2023], s.5.*

There is a need to clearly look into domestic laws and the international instruments for better alignment. The integration of international legal standards into Tanzania's domestic legal framework can enhance the country's attractiveness as an investment destination. By adopting best practices from international instruments and regional agreements, Tanzania can create a more conducive climate for foreign investment, ultimately contributing to its economic development goals.

Engaging stakeholders, including the private sector and civil society, in the legislative process will ensure that new laws reflect the realities of the investment climate, making them more effective and practical. Strengthening dispute resolution mechanisms and enhancing transparency in judicial processes will build trust and confidence among investors, while tackling corruption head on will further improve Tanzania's standing in the global investment community. By embracing these opportunities, Tanzania can cultivate an improved, transparent, and investor friendly legal framework that not only attracts foreign direct investment but also supports sustainable economic growth.

4.0 Conclusions

The legal analysis of Tanzania’s investment trajectory reveals that fragmentation, procedural opacity, and asymmetrical treaty obligations constitute persistent structural deficiencies which absent comprehensive legislative harmonisation and codification, will continue to hinder legal certainty and lower investor confidence.

Notwithstanding progressive reforms enacted post-2010, the extant legal framework remains inadequately calibrated to reconcile sovereign regulatory prerogatives with international investment protection standards, thereby necessitating a doctrinal reconfiguration that integrates stakeholder inclusivity, transparent dispute resolution architecture, and precise statutory drafting to mitigate such interpretive ambiguity.

In addition to that, the attainment of a sustainable and competitive foreign direct investment environment in Tanzania is contingent upon the enactment of a unified, comprehensive investment statute that consolidates sectoral regimes, institutionalises anti-corruption safeguards, and aligns domestic law with contemporary principles of international investment law, thus ensuring proportionality between investor rights and the public interest.

5.0 Recommendations

One is the enactment of the Comprehensive and Unified Investment Code. The Parliament should codify a consolidated Investment Code that repeals and integrates fragmented sectoral statutes, including the Tanzania Investment Act [Cap. 38, RE 2023], Mining Act [Cap. 123, RE 2023], Tourism Act, and Non-Citizens (Employment Regulation) Act [Cap. 436, RE 2023], thereby establishing a single, coherent source of substantive and procedural law. Such codification must prescribe uniform standards for admission, treatment, expropriation, and dispute settlement, eliminate jurisdictional overlaps among TISEZA, the Labour Division, and Immigration Department, and incorporate periodic statutory review clauses to ensure adaptability to evolving international economic norms.

Another recommendation is the reformulation of the Bilateral Investment Treaty Policy and Model BIT Clauses.

The Government should adopt a revised Model BIT predicated on the principles of proportionality, regulatory autonomy, and sustainable development, expressly delineating the scope of "fair and equitable treatment," limiting the definition of "indirect expropriation," and integrating binding obligations on corporate social responsibility, human rights, and environmental protection. Existing BITs containing ambiguous or asymmetrical provisions should be renegotiated or terminated in accordance with the Vienna Convention on the Law of Treaties to restore normative symmetry between investor protection and the host State's right to regulate in the public interest.

Also, institutionalisation of Transparent, Impartial, and Efficient Dispute Resolution Mechanisms. To enhance legal predictability, the legal framework must mandate exclusive jurisdiction of a strengthened Commercial Court with specialised investment chambers, supplemented by a statutory obligation to exhaust domestic remedies prior to recourse to international arbitration under ICSID or UNCITRAL. The reforms should further require publication of all arbitral awards involving the State, establish a code of conduct for arbitrators, and embed alternative dispute resolution mechanisms with strict timelines, thereby ensuring procedural transparency, reducing perceptions of bias, and fostering investor confidence in the rule of law.