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EXAMINATION OF JUDICIAL POWER IN FOREIGN INVESTMENT DISPUTES IN TANZANIAN COURTS

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Abstract

This paper surveys the judicial role in adjudicating foreign investment disputes in Tanzania. It argues that while courts are constitutionally entrusted with the dispensation of justice, their effectiveness in balancing investor rights with public interest has remained questionable. The problem arises from the dominance of investor-centered legal frameworks, limited judicial autonomy, political interference, and lack of specialized expertise in investment law. The result is an uneven field where foreign investors are accorded robust protection, while public welfare such as environmental conservation, community rights, and national sovereignty receives weaker judicial attention. The paper recommends legal, institutional, and capacity reforms aimed at empowering Tanzanian courts to strike a fairer balance between private capital and the public good.

Keywords: Judicial Power, Foreign Investment, Public Interest, Investor Rights, Tanzania

1.0 Introduction

Foreign direct investment (FDI) has been a cornerstone of Tanzania's economic policy since the liberalization reforms of the 1990s.[1] The Tanzania Investment Act[2] and numerous bilateral investment treaties (BITs) have created a legal framework intended to protect foreign investors by guaranteeing fair and equitable treatment, non-discrimination, and safeguards against uncompensated expropriation.

However, these protections generate tensions when they intersect with the public interest. Disputes often arise in extractive industries, land use, or taxation areas that directly affect local communities and state sovereignty.[3] Courts are placed in a delicate position: to uphold investor rights in line with international obligations while ensuring that national interests such as environmental conservation, equitable distribution of resources, and social justice are not undermined.

The central question for this article is: why have Tanzanian courts been less effective in balancing investor rights with public interest? To answer this, the article first examines the judicial mandate under Tanzanian law, then explores challenges undermining judicial effectiveness, and finally offers recommendations for reform.

2.0 Judicial Power in the Context of Foreign Investment

Judicial power in Tanzania is rooted in the Constitution of the United Republic of Tanzania, 1977, which vests the authority to administer justice in the courts of law.[4]This includes the power to adjudicate disputes between individuals, corporations, and the

[1] *KWEKA, J., The Role of Foreign Direct Investment in Tanzania's Economic Growth (ESRF Policy Brief, 2018).*
[2] *Tanzania Investment Act, Cap 38 [R.E 2022]*
[3] *Legal and Human Rights Centre (LHRC), Tanzania Human Rights Report 2021.*
[4] *Constitution of the United Republic of Tanzania, 1977 (as amended).*

state. In principle, therefore, courts have jurisdiction to resolve disputes between foreign investors and the government.

The Tanzania Investment Act, Cap 38, consolidates the state's commitment to investor protection.[5] It grants investors access to both domestic courts and international arbitration. Furthermore, sector-specific laws such as the Mining Act[6]and the Petroleum Act[7]contain stabilization clauses and arbitration provisions favoring investor security.

At the international level, Tanzania is party to the ICSID Convention (1965), which provides foreign investors with the option to bypass domestic courts in favor of international arbitration.[8]Similarly, many of Tanzania's BITs prioritize investor protections while offering vague or weak references to state regulatory power in the public interest[9]This structural bias leaves Tanzanian courts with limited scope to weigh public interest considerations when adjudicating disputes.

3.0 Why Tanzanian Courts Are Less Effective

3.1. The Investor-Centric Legal Framework

The architecture of Tanzanian investment law reflects a deliberate prioritization of investor protection. BITs typically enshrine clauses on "fair and equitable treatment" and "full protection and security" of investors.[10] For instance, the Tanzania–Netherlands BIT of 2004 obliges Tanzania to guarantee protection of investors without explicitly articulating safeguards for public interest measures.[11]

When courts are called upon to interpret such instruments, they are effectively constrained to uphold investor protections, even when these clash with legitimate state interests such as environmental regulation. This creates an imbalance that is not of judicial making but is embedded in the legal instruments themselves.

3.2. Limited Judicial Autonomy in Investment Disputes

Although Tanzanian courts possess constitutional authority, many disputes are resolved outside domestic jurisdiction through international arbitration.[12] Investors often invoke arbitration clauses, sidelining local courts due to perceptions of inefficiency or lack of impartiality. As a result, Tanzanian jurisprudence on investment law remains underdeveloped, and courts are denied opportunities to cultivate a balancing approach between investor rights and public welfare.

In Standard Chartered Bank v. Tanzania Electric Supply Company Ltd (TANESCO),[13] the High Court was sidelined in favor of international arbitration, exemplifying the judicial marginalization common in investment disputes.

3.3. Political and Executive Influence

Judicial independence in Tanzania has historically been hampered by executive dominance.[14] Appointments of judges and the Chief Justice are vested in the President, creating an environment where political influence may subtly shape judicial outcomes. In sensitive investment disputes particularly those involving powerful multinational corporations or state contracts judicial officers may face indirect pressure to deliver decisions favorable to government policy or foreign capital.

This dynamic undermines the judiciary's role as an impartial arbiter. The High Court in Republic v. Iddi Mtegule[15] emphasized the necessity of judicial independence, yet in practice, pressures from the executive arm continue to cast doubt on judicial impartiality in politically sensitive investment cases.

3.4. Gaps in Judicial Expertise and Capacity

Foreign investment disputes are often complex, involving international commercial law, treaty interpretation, and advanced financial arrangements. Many Tanzanian judges lack specialized training in these areas.[16] Reports by the World Bank on judicial sector capacity in Tanzania highlight gaps in legal research resources, exposure to international investment law, and professional training.[17] This deficit weakens the courts' ability to critically assess the long-term social and environmental consequences of investment projects.

3.5. Enforcement Challenges

Even where Tanzanian courts render decisions in investment disputes, enforcement often proves problematic. State agencies may resist compliance with judgments that undermine government contracts.[18] Bureaucratic inefficiencies, corruption, and lack of transparency further frustrate implementation. Consequently, judicial decisions rarely translate into meaningful accountability for investors or protection of public interests.

[5] *Ibid.*
[6] *Mining Act, Cap 123 [R.E 2019].*
[7] *Petroleum Act, No. 21 of 2015.*
[8] *International Centre for Settlement of Investment Disputes (ICSID) Convention, 1965.*
[9] *UNCTAD, World Investment Report 2022.*
[10] *Dolzer, R. & Schreuer, C., Principles of International Investment Law (2nd edn, Oxford, 2012).*
[11] *Agreement on Encouragement and Reciprocal Protection of Investments between the United Republic of Tanzania and the Kingdom of the Netherlands, 2004.*
[12] *Sornarajah, M., The International Law on Foreign Investment (4th edn, CUP, 2017).*
[13] *Standard Chartered Bank v. TANESCO, ICSID Case No. ARB/10/20.*
[14] *Peter, C.M., Human Rights in Tanzania: Cases and Materials (2007).*
[15] *Republic v. Iddi Mtegule, High Court of Tanzania [1988] TLR 170.*
[16] *LHRC, Access to Justice Report 2020.*
[17] *World Bank, Tanzania Judicial Sector Capacity Building Project Report (2018).*
[18] *Afrobarometer, Public Perceptions on Justice and Rule of Law in Tanzania (2021).*

4.1 Consequences of Judicial Ineffectiveness

The limited capacity of Tanzanian courts to balance investor rights with public interest has far reaching consequences:

Investor Dominance: Investors secure disproportionate protection, sometimes at the expense of sovereignty and sustainable development.

Public Disillusionment: Citizens lose faith in the judiciary when courts appear to privilege foreign capital over community welfare.

Policy Inconsistencies: The government oscillates between pro-investor reforms and populist interventions, undermining legal certainty.

Weak Legal Development: Reliance on arbitration stifles the growth of domestic jurisprudence in investment law.

5.0 Recommendations

5.1. Reforming the Legal Framework

The Tanzania Investment Act[19] and most of Tanzania's bilateral investment treaties (BITs) are investor-centric. They emphasize protections such as fair and equitable treatment, non-discrimination, and guarantees against expropriation without compensation.[20] However, they make little or no reference to the state's sovereign duty to protect the environment, uphold community rights, or ensure equitable distribution of natural resource benefits.

To restore balance, these laws must be amended to embed explicit public interest safeguards. Clauses should require investors to comply with domestic labor standards, environmental regulations, and corporate social responsibility obligations.[21]Some African countries, such as South Africa, have moved towards model BITs that place state regulatory autonomy and public interest at the center of investment protection frameworks.[22] Tanzania should adopt a similar approach by renegotiating older BITs and revising domestic legislation. This would give Tanzanian courts clear legal grounds to weigh investor rights against broader public welfare concerns when adjudicating disputes. Without such reforms, judicial attempts to defend the public good risk being struck down as inconsistent with international obligations.

5.2. Enhancing Judicial Training and Expertise

Investment disputes are highly technical, involving complex financial instruments, stabilization clauses, and principles of international investment law.[23]Most Tanzanian judges are trained in general legal doctrine but lack specialized exposure to this field.[24]This limits their ability to critically analyze disputes in a manner that balances economic and social interests.

To remedy this, there must be systematic investment in judicial training. Specialized judicial seminars on investment arbitration, treaty interpretation, and comparative jurisprudence should be institutionalized. Partnerships with international bodies such as ICSID, UNCITRAL, and UNCTAD can provide technical training, while collaborations with universities can develop postgraduate judicial courses in commercial and investment law.

Beyond training, courts should also be supported with research infrastructure access to databases, case law repositories, and specialized clerks who can assist judges in handling complex disputes. A judiciary equipped with expertise is better placed to scrutinize investor claims while safeguarding public interest.

5.3. Safeguarding Judicial Independence

Judicial independence is a constitutional guarantee in Tanzania,[25] but in practice, the executive retains considerable influence over judicial appointments, promotions, and financing.[26]In politically sensitive investment disputes especially those involving major foreign investors or state contracts this influence compromises the courts' impartiality.

To safeguard judicial independence, reforms should focus on:
Appointments: Remove the President's unilateral power to appoint judges and the Chief Justice. Instead, establish a transparent, merit-based process under the Judicial Service Commission (JSC) with parliamentary oversight.[27]

Security of Tenure: Limit the President's ability to suspend or reassign judges. Judges should be removed only by an independent tribunal based on clear constitutional grounds.

Financial Autonomy: Strengthen the Judiciary Fund established by the Judiciary Administration Act[28] so that courts receive direct budgetary allocations, reducing dependence on the Treasury and executive goodwill. A judiciary that is institutionally independent is more likely to make courageous rulings that balance investor rights with the needs of Tanzanian citizens.

5.4. Promoting Hybrid Dispute Resolution

One major challenge is that most investment disputes bypass Tanzanian courts in favor of international arbitration under ICSID or UNCITRAL.[29]While arbitration offers neutrality and efficiency, it often sidelines domestic law and public interest considerations.

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[19] *Tanzania Investment Act, Cap 38 [R.E 2022]*

[20] *Dolzer, R. & Schreuer, C.,Principles of International Investment Law(2nd edn, Oxford, 2012).*

[21] *Mann, H., Foreign Investment and Sustainable Development: Lessons from the Past, Challenges for the Future (IISD, 2008).*

[22] *South African Development Community (SADC) Model Bilateral Investment Treaty Template, 2012.*

[23] *Sornarajah, M.,The International Law on Foreign Investment (4th edn, CUP, 2017).*

[24] *World Bank, Tanzania Judicial Sector Capacity Building Project Report (2018).*

[25] *Constitution of the United Republic of Tanzania, 1977 (as amended).*

[26] *Peter, C.M., Human Rights in Tanzania: Cases and Materials (2007).*

[27] *Judiciary Administration Act, No. 4 of 2011.*

[28] *UNCTAD, World Investment Report 2022.*

[29] *ICSID Convention, 1965.*

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Tanzania should develop hybrid dispute resolution mechanisms where arbitration is combined with judicial oversight. For instance: Domestic courts could be given supervisory jurisdiction over enforcement of arbitral awards, with power to review awards that contradict constitutional principles or public policy.[30]

Model clauses in investment contracts could require disputes to be heard first in Tanzanian courts before escalating to arbitration ("local remedies first" requirement).[31]A specialized commercial and investment division within the High Court could be established, staffed with judges trained in international law but mandated to apply Tanzanian law alongside international standards.

Such hybrid mechanisms would ensure that Tanzanian values, public interest, and sovereignty remain integral to dispute settlement processes, while also retaining investor confidence in efficient resolution.

5.5. Transparency and Public Accountability

Investment disputes are often shrouded in secrecy, with settlements and arbitral awards hidden from public scrutiny. This undermines trust in both investors and the judiciary, and prevents the development of local jurisprudence.[32]

To address this, Tanzania should adopt mandatory transparency measures in investment dispute resolution. All judgments and arbitral awards involving public resources should be published online. Court hearings in investment disputes should, as far as possible, be open to the public, with exceptions only for sensitive commercial secrets. Annual judicial reports should include a section on foreign investment disputes, summarizing cases, outcomes, and public interest implications.

Transparency builds public trust, deters corruption, and allows civil society and academia to scrutinize whether courts are genuinely balancing investor rights with national welfare. Furthermore, consistent publication of judgments fosters the gradual development of a domestic jurisprudence on investment law.

6.0 Conclusion

The judiciary in Tanzania stands at the crossroads of two imperatives: promoting a stable and investor-friendly climate, and safeguarding the public interest in sovereignty, equity, and sustainability. At present, structural, institutional, and legal limitations have undermined its effectiveness in striking this delicate balance. The recommendations offered legal reform, judicial training, institutional independence, hybrid dispute resolution, and transparency are not abstract ideals. They are practical steps that would empower Tanzanian courts to reclaim authority over investment disputes and ensure that economic growth does not come at the expense of the Tanzanian people.

[30] *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.*

[31] *Schreuer, C., Access to Local Remedies in Investment Treaty Law (2005).*

[32] *LHRC, Access to Justice Report 2020*