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**Is the Criminalization of Micro-
enterprise inevitable?**

**Legal Empowerment of the Poor and the Realization of
Business Rights**

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Is the Criminalization of Micro-enterprise Inevitable? Legal Empowerment of the Poor and the Realization of Business Rights

Abstract

Street vending is important to surviving poverty and to the escape from poverty in developing countries. Two key forms of informality render it vulnerable to legal enforcement and contribute to the slow rates of business growth: first, the spatial informality of both hawkers and fixed traders stigmatizes them, is the prime flashpoint in relations with enforcement agencies, and has been widely studied by scholars; second, the fact that street vendors are informal in terms of business and commercial law as well. This second area of informality is itself complex and, against the background of an intensive international effort to address business informality among larger enterprises, has begun to attract scholarly and professional attention. Drawing on a desk study and on field studies of street vendors carried out in Tanzania in 2007 and 2011, this paper argues that business informality at this scale can be addressed, but not by current reforms. Section 1 identifies the requirements of micro-businesses for stability and growth; Sections 2 and 3 focus on the potential of the Doing Business Reforms and the Legal Empowerment of the Poor agenda to address them.

1. Introduction: Street vending and informality in developing countries

The failure of the Washington consensus *laissez-faire* policies to reduce poverty and stimulate agriculture or manufacturing has been well documented. Sub-Saharan African economies have not: integrated into global production chains or increased export volume and share; improved their ability to face competition from foreign imports (Kaplinsky *et al.*, 2002); or integrated their rapidly growing informal sectors into international labour markets. Private-sector Development Plans were criticised for focusing on macroeconomic issues, being subject to rent-seeking behaviour and to being 'hi-jacked' by large business interests. The ensuing continued relative – and sometimes absolute – decline in the size of the formal economy begun with Structural Adjustment Programmes forced millions of urban sub-Saharan Africans into the informal sector to survive. The informal sector is thought to account for between 35% and 45% of GDP in most developing countries, to provide up to 90% of new urban jobs, comprising some half a billion people in 2005, of whom about half are poor, own-account micro-entrepreneurs (Gore 2000, Gordon 1996, Subramanian and Matthijs 2007, UNECA 2005, Schulpen and Gibbon 2002, Potts 2007, Schneider 2007, Skinner 2008a, UNDP 2008a).

Street vending is important to surviving poverty and providing an escape from poverty in developing countries. Over 90% of new non-agricultural jobs are in the informal sector and street vending and home-working are its largest sectors. Indeed street-vending has been estimated to involve hundreds of thousands of sole traders in any major African city. The income it provides not is probably the only means of survival for the majority of urban poor, and the income it provides allows children of the poor to continue in education and rural families to benefit from remittances, thus supporting inter-generational escape from poverty and informality on the one hand, and

alleviating conditions in the rural hinterland on the other (UNDP 2008a,b, Potts 2009, Lyons and Msoka 2009, Lyons and Brown 2010).

Two key forms of informality render street vending vulnerable to legal enforcement and contribute to the slow rates of business growth and frequent business failure. The first, and probably most widely discussed, is spatial informality. It is by now well understood that freedom from evictions is critical to sustainability and capital growth, and that physical formalisation efforts often fall short by providing uneconomic locations or punitively insecure or costly tenure arrangements. These requirements are rarely met in practice. Even fixed plots are rarely fully legal. In many cases stalls or tables are erected in public space in outright contravention of planning law and municipal bye-laws. In others, even where municipalities have identified trading areas and allocated spots themselves, the zoning under which this has been done may be revoked at 24-hour notice in some cases. Hawking is hardly ever a legal activity. It is this spatial informality that most often brings vendors into open confrontation with the law and the public (Williams and Redgrave 1991, Lyons and Mbiba 2005, Lyons and Msoka 2009).

However street vendors are informal in far broader terms. In terms of business and commercial law as well, limiting their potential for growth and making them vulnerable in principle to further legal prosecution through additional routes. Scholarly and professional attention in recent years (for example URT 2005 a,b; UNDP 2008, Banik 2008).

Tanzania offers a unique insight into these issues, having pursued a range of policies – often in parallel - over the past half-decade. This section first examines some of the barriers in business and commercial law to legal acceptance of street vending in Tanzania.

Like India, South Africa and Senegal, the country's constitution (URT 1997 Part 3, Article 11) mentions the right to work and puts an onus on the state to create an appropriate work environment ('The state authority shall make appropriate provisions for the realisation of a person's right to work') and this right is further developed in the Right to work, educational and other pursuits Act No. 15 of 1984 s.6. However, in various ways, the constitution in Tanzania offers a weaker basis on which to defend street vending. The South African constitution (GoSA 1996), for all its contradictions over jurisdiction, explicitly cites street vending as a recognized occupation. There are four articles in the Indian constitution (GoI XXX) which provide a strong basis for defending vending: Article 19 (1) (g) protects freedom of trade and profession; and directive principles of the state policy; Article 38(2) directs the state to 'minimize the inequalities in income status, facilities and opportunities.' Article 39(a) directs the state to formulate policy to ensure that citizens, men and women equally, have the right to an adequate means of livelihood. It further provides that the ownership and control of material resources of the community must be distributed to serve the common good and the operation of the economic system must not result in the concentration of wealth and means of production; and Article 41 specifically provides for 'right to work' within the limits of the economic capacity of the state. In some ways the assumptions which appear to underlie the Tanzanian interpretation of the right to work seem closest to Senegal's (RoS 2008[2001]); the emphasis is on formal-sector work and on establishing a legal environment to protect the rights of employees.

Business and finance laws in the Tanzania have systematically made it impossible for hawkers to legalize their trade, as they require a legal business address, as well as the permanent and prominent display of the license on the premises. Impossible for hawkers, these restrictions are also irrelevant to fixed vendors with no building and often only impermanent access to their semi-legal space (see above).

The aim of this paper is to evaluate the progress being made in identifying and developing frameworks to enable the formalization of street vending from a commercial and business law perspective. Drawing on fieldwork in Tanzania in 2007 and 2011, it examines key sets of reforms: the Doing Business reforms and the Legal Empowerment of the Poor agenda.

2. Methods

The information on growth and sustainability requirements of street vendors are drawn from analysis of a 7-municipality survey (Arusha, Mbeya, Morogoro, Mwanza and Dar es Salaam) carried out by the authors in 2007, which included in-depth semi structured interviews with 622 street-vendors in seven municipalities (Arusha, Mbeya, Morogoro, Mwanza and Dar es Salaam) 10 interviews with vendor associations and 120 key-informant interviews at a range of levels and funded by the European Commission; on a comparative study of Dar es Salaam with Dakar, Durban and Ahmedabad funded by DFID/ESRC and focused on legal and regulatory barriers to street vending, which has included 150-175 interviews with street vendors in each city, as well as interviews with vendor associations and key informants. The street vendor interviews in both studies focused on business data, formal and informal disputes and dispute resolution mechanisms, personal and business histories, use of financial services, and legal and other barriers to development. Data on legal frameworks, proposed and actual reforms has been drawn from a desk study of legislation, agency reports and scholarly critiques thereof.

3. Street vending: business growth requirements and barriers faced

Aspirations

Increasing turnover and working capital

Increasing fixed capital

Withstanding shocks

Access to financial services

Contracts

Collateral

4. Current reform agendas

One response to the failures of the Washington Consensus have been the development of a new consensus by the international agencies, aiming to grow GDP by greater integration with the global economy and the attraction

of investment; and programmes .to increase locally raised tax revenues to empower governments and support human and environmental development and mitigate policy-related risks, by removal of disincentives for formal registration and operation of businesses. Specific reforms include: improvement of the justice system to increase trust; expand access to credit and other financial services to release investment; simplifying procedures and regulations with regard to registration, licensing, transferring and closing a business; ensuring property rights, both by giving ownership titles to informal dwellers and improving the legal framework for contract enforcement; implementing liberal trade and investment rules which include an open-door policy towards foreign direct investment and equal treatment of foreign and domestic investors; simple customs procedures, low average tariffs and less spread in tariffs, low levels of government intervention in markets for labour, credit and final products; and low and simplified taxes in combination with a broadened tax-base; as well as improving accountability of government departments and institutions. To access the benefits and obligations of reforms, businesses must register with national tax authorities and provide a fixed business address. In effect, businesses are required to formalise (WB 2004).

Collectively, the reforms are known as the 'Doing Business Reforms', or simply, 'Doing Business' (although national programmes have adopted their own names, for example 'Business Environment Strengthening for Tanzania' (BEST), while in Sénégal it is generally referred to by the IMF and other stakeholders as 'the Program' (eg RoS 2005)). The detail of reforms are discussed below in Section 3, but the present section focuses on the development of arguments and counter-arguments regarding the reforms' impact on poor micro-entrepreneurs.

The 2005 World Development Report (WB 2004), titled "A Better Investment Climate for *Everyone*" (emphasis added) set out the Bank's expectations from the process. Essentially, expectations were optimistic about the inclusive potential of reforms. The Report highlighted the importance of poor micro-entrepreneurs in the economies of developing countries, stating that "Hundreds of millions of poor people in developing countries make their living as micro-entrepreneurs—as farmers, street vendors, and homeworkers, and in a range of other occupations, a large share of them women... They are a big part of the informal economy, which is substantial in many developing countries (ibid:33).

The report argued that individual entrepreneurs and micro-enterprises can benefit from the same measures that improve the opportunities and incentives for larger firms. The Report emphasized that micro-enterprises were all businesses which employed up to five people, and thus represented a diverse range of incomes. However, poor micro-entrepreneurs were specifically identified as likely to benefit along with everyone else. They would benefit from lower costs of doing business (including less red tape and corruption), and from lower risks (including more secure property rights and less policy uncertainty). Reducing barriers to competition also benefits them by expanding their opportunities and reducing the costs of inputs they transform. The report took the view that such reforms would directly benefit micro-entrepreneurs in the informal sector by overcoming constraints which disproportionately affect them: through reduction of red tape, eg in business registration, improving the security of their property rights, and removing distortions which create barriers to accessing credit (ibid:60). It also

expected that the development of a climate conducive to investment would reduce poverty in aggregate, through growth in GDP (ibid:3) and directly, through the creation of jobs in the private sector (ibid:19).

This Report - and the reforms which it advocated – drew criticism from some economists and social scientists who were less confident of the potential benefits to SMEs. Thus, the potential of the reforms to stimulate growth among small firms was questioned in theory by scholars who argued that “the recent private-sector development debate among donors rests on a “highly optimistic’ belief in the ability of markets (alone) to generate public welfare” (Altenburg and von Drachenfels, 2006:388), terming the approach a ‘new minimalism’ (Altenburg and von Drachenfels, 2007:396). By extension, this is an argument about the potential of these widely endorsed reforms to result in economic growth without disenfranchising the poor). The development of property registers, company registers and personal identity registers, shaped by oversimplified targets and measures, would externalise costs to users and disadvantage small businesses (Arruñada, 2007)!. The formalisation of residential property rights had failed to stimulate credit markets among the poor in urban Latin America, reluctant to mortgage their prime asset (Durand-Lasserve and Selod, 2007) and this, by extension, cast doubt on the usefulness of residential asset titling for the stimulation of business-related credit in SSA.

Others pointed out that, in practice, in sub-Saharan Africa at least, macroeconomic growth has not widely translated into poverty reduction (von Braun and Keyzer, 2006); while governance reforms have tended to increase concentrations of power at the top, reducing the voice at the grassroots (Bendaña, 2004). Again, by extension, this cast doubt on the potential of poor micro-entrepreneurs to benefit from the proposed reforms.

Whether in response to such critiques or as a result of experience in implementation of its proposed reforms, the World Bank’s own stance on their potential impact on poor micro-entrepreneurs has become more refined over time, but has also become more cautious in the process as to the likelihood – or the conditions in which - poor micro-entrepreneurs will benefit from Doing Business reforms. Thus the 2006 World Development Report, focussing on ‘Equity in Development’ (WB 2005) is more cautious. The Report implicitly recognizes that policy reform will not necessarily benefit everyone. It highlights different roles of informal own-account work in different economies, pointing to difference in the extent to which such work is likely to be adopted as a labour-market niche by the poor in different national economies, citing the importance of historical factors, such as apartheid, and intra-economy sectoral differences as some of the drivers for take-up (eg WB 2005:187). Focussing on ‘Development and the Next Generation’, the 2007 Report highlights the importance of youth unemployment (PP. 98-100) and identifies street-vending as an entry-level occupation in poorer countries, “...such as Burkina Faso, The Gambia, Nicaragua, Paraguay, Rwanda, and Sierra Leone, [where] many of the young are more likely to begin work in the informal sector ... Although this sector will not solve all issues of youth employment— even selling on the street requires some sales skills and language skills and conditions can be harsh—evidence suggests that it can be a remarkably resilient and productive stepping stone, sometimes to formal employment” (ibid:13). Nevertheless, it is clear from this comment that the Report is cautious about the chances of young people in the sector. The Report goes on to stress the heterogeneity of micro-entrepreneurship, citing the ILO’s

advice that policy should aim to enable upward mobility within the sector, identifying the limitations on women's mobility, and, while citing street vending in particular as a first-rung employment opportunity for youth, carefully cites key caveats in the form of necessary enabling conditions for upward mobility, including widely available training, microfinance opportunities and so on (WB 2006:14/15).

And there the matter rests. The focus of the World Development Reports of 2008, 2010 and 2011 shifted respectively to the agricultural sector, climate change and security. Despite the well established links between urban retailing and rural poverty alleviation (Lyons and Msoka 2009, [Fafchamps 2002](#)); the well established links between climate change, rural-urban migration and the take-up of vending in urban areas ([XXX](#)); and the flourishing of certain urban micro-enterprises in times of civil unrest ([XX](#)), these Reports do not examine in any depth the impact of such sweeping changes on urban micro-enterprise in general or on small-scale, own-account, informal economic retail activity in particular. A number of related issues are raised by the much criticised 2009 Report, *Changing Economic Geography* (WB 2008), largely to do with the importance of both internal and international migration (the latter suitably regulated) to both rural and urban poverty reduction, and of informal vending as an entry-level occupation for, mainly, young migrant men; but the issues are not explored.

5. Do the reforms work for the poor?

Was the WB justified in its initial optimism, or does its progressive abandonment of that hope express a disappointing reality? To understand how it is that the Doing Business reforms have failed poor micro-entrepreneurs it is necessary to examine in detail their objectives and implementation. The sections which follow examine the case of Tanzania, to try to understand the impact of reforms on the legislative and economic context for street-vending. Therefore, we ask: How does progress in these reforms affect street vendors?

Tanzania addressed the challenge of instigating the Doing Business reforms in 2005 by establishing a Better Regulation Unit (BRU) in the President's Office to oversee and coordinate the reforms. Two key sub-units were established: The Business Environment Strengthening for Tanzania Programme (BEST), which had responsibility primarily for land titling related reforms; and the Financial Sector Deepening Unit (FSDT), which was tasked to support the development of supply-side reforms to the financial sector. The impact of both these programmes on micro-entrepreneurs is discussed elsewhere (Lyons et al 2011).

The reality is that the key parts of the reforms, measured on the World Bank's Ease of Doing Business rankings, appear to make very little difference to street vendors. It is useful here to compare Tanzania with Senegal because they differ widely in their overall ranking and in the ranking on specific indicators, yet in no instance does the relative progress of one affect the status of its street vendors significantly.

Tanzania made rapid strides initially in the World Bank's Ease of Doing Business rankingsⁱⁱ, being named Regional Star Performer in its second year, 2007 (WB 2006), but has since slipped back in the ratings. In aggregate terms Tanzania and Sénégal have performed very differently in these rankings. In 2011 Tanzania, at 127, is above the SSA average ([***](#)), while Sénégal, at 152, is well below it (WB 2011c, d). Tanzania has

however improved far more slowly over time, with a negligible 5-year Doing Business score improvement of 0.08, compared with Sénégal's 0.24ⁱⁱⁱ. In the shorter timeframe from 2008 onwards (Table 1) the countries also performed differently. Tanzania's overall ranking improved by 4 points, having slipped down the rankings between 2008 and 2009, recovered slightly in 2010, only to slip back again in 2011. Sénégal improved by 16 places, having made a substantial improvement between 2008 and 2009, but it then slipped down the rankings in the subsequent years.

Their standing in these charts is very important to both governments and to their relations with the World Bank. When Tanzania slipped in the rankings for the second time last year, each of nine government ministries was charged by the President with improving the country's standing on one indicator.

The WB identifies several measurement limitations of its data: 1) measurement at country level may mask regional trends; 2) the methodology assumes business have full information about the regulatory requirements faced, although this may vary; and 3) the measurements of time 'involve an element of judgement by expert respondents', which may introduce spurious variation (WB 2011a:1). Two further reservations are, however, critical for understanding the impact on micro-traders: First, the data often focus on a specific business form, generally a limited liability company (or its legal equivalent) of a specified size – and may not be representative of the regulation on other businesses, *for example, sole proprietorships*; Second, standardisation of measurement has meant that certain regulatory issues relevant to businesses may be excluded from measurement (ibid:1).

The irrelevance of any of these ten indicators to micro-traders in general and to street vendors in particular becomes apparent on examination of their components (Table 2). Thus, on Ease of Starting a Business Senegal significantly outranks Tanzania (101 against 122) because it requires fewer procedures to register a limited liability company (4 instead of 12), and considerably less time (8 days instead of 29); and despite the fact that the capital requirements in Tanzania and the (formal) fees and costs are significantly lower^{iv}. Nevertheless, any company would need to expect significant income to be able to pay fees over 30% of GNP per capita in Tanzania, still more for the 60.9% required in Senegal. This criterion alone puts the exercise outside the scope of micro-entrepreneurs, including street-vendors; while the complexity and length of the procedure would even in the better-case scenario (Senegal) force a sole-trader to stop working for over a week (WB 2011c).

Indicators 2 and 3, Dealing with Construction Permits and Registering a Property are not the focus of this paper, but suffice it to say that for those without land rights and property rights they are irrelevant, as is, therefore, the fact that Senegal outranks Tanzania significantly on both (Table 2). The measurement assumptions would in any case obviate these indicators. Dealing with Constructions Permits measures the cost of Greenfield construction of a 2-storey warehouse, connected to all services; by a company employing at least 60 builders and other employees and employing a consultant architect. Similarly, Registering a Property measures the costs of transferring a property with value 50 times income per capita between two local companies each with at least 50 employees (WB 2011c). To put this requirement in perspective, a semi-formal^v stall in Touba Sandaga market in central Dakar was valued at \$10,000 in 2000, when the average income per capita was \$449, putting the value

of a stall in prime location with moderate security of tenure at approximately 22.5 times GNI per capita. Clearly, stalls in less prime positions or with still less secure land rights – the majority - would change hands for significantly less (interviews Dakar City Council 2000, 2011; UNDP 2010).

Indicator 4, Getting Credit, is at the heart of growth for any business. Although both Tanzania and Senegal perform poorly on this indicator in relation to the SSA average (Table 2), this does not really affect the position of micro-entrepreneurs, particularly in new businesses. The Depth of Legal Rights component measures the protection afforded by the law to lenders and borrowers through collateral and bankruptcy laws, the former allowing businesses to use moveable as well as fixed assets as collateral, the latter giving protection to creditors in case of business failure. Since there is no limited liability category for sole traders even if they do form registered companies, this is irrelevant to street vendors. Indeed, interviews undertaken in 2007 and in 2011 with street vendors show that their personal liability for loans is a significant hurdle when considering borrowing. Credit Bureaux and Credit Registers are respectively privatised or state-run registers of credit records. The quality of these has been criticized by academics (above, Sec. 2), and the coverage in both Tanzania and Senegal is extremely low. It is difficult to see how street vendors, most of whom would be entering the formal credit system for the first time, could provide the information necessary for a credit check.

In similar ways, progress on Indicators 5-9 can be shown to be largely irrelevant to street vendors. Its intended result is regularization of much larger companies, which can dispose of larger sums of money, establish limited liability status and show a tangible credit history. Any easing of the barriers to acquiring legal status or gaining access to credit for street vendors would have to come about indirectly, and work elsewhere suggests that it has actually resulted in their further marginalization (Lyons and Msoka 2009). It thus appears that the misgivings which began to emerge in the World Development Reports 2006 and 2007 about the ability of Doing Business reforms to create a 'better investment climate for *everyone*' (WB 2004, emphasis added) have been vindicated by events.

6. Does the Legal Empowerment for the Poor agenda take matters forward?

In 2008 the Commission on Legal Empowerment of the Poor published its long-awaited report, 'Making the Law Work for Everyone' (UNDP 2008a,b). While property rights, labour rights and access to the justice system were issues that had been discussed by scholars and in policy circles for at least twenty or thirty years, the Commission's focus on business rights for poor entrepreneurs, the 'Fourth Pillar' of its reform agenda, was a qualitative – and radical – step forward.

Probably the most radical of the Commission's comments on the matter is that 'informality is here to stay and is an essential feature of the global economy' (UNDP 2008b:200). It recognizes explicitly that informal-sector operators are the majority in most poor countries; and that about half are micro-entrepreneurs engaged in own-account business or working in family-run enterprises; the others, employed in informal enterprises. It notes strong links with the formal sector, both personal – through people with formal-sector jobs moving to set up informal sectors;

and structural, through supply chains for manufacturing^{vi}. The Commission notes that business informality has many forms and causes, but that a core characteristic is that it is both structured by and conducted in accordance with social norms rather than a legal framework. The lack of protection by and recourse to the legal system renders such businesses, and the micro-entrepreneurs who run them, vulnerable and insecure. Its key conclusions are that legal empowerment would improve productivity and that productivity and protection should therefore be pursued together; and that reforms of a broad range of legal instruments impinging on economic activity should be developed jointly for the formal and informal sectors (ibid:196,200/201).

On the basis of these principles, Chapter Four of Volume 2 sets out broadly the Commission's vision for establishment of a core set of business rights for the poor. Policy Positions' are set out on three categories, or levels or rights (ibid:201, emphasis added):

- *'Basic commercial rights: right to work, including right to vend; right to a work space (including public land and private residences) and to related basic infrastructure (shelter, electricity, water, sanitation).*
- *...Intermediary commercial rights: right to government incentives and support (including procurement, tax holidays, export licensing, export promotion), and right to public infrastructure (transport and communication).*
- *...Advanced commercial rights: entity shielding rules, limited liability and capital lock-in rights, mechanisms for perpetual succession of the firm and transferring its value, mechanisms to allow the use of standardised accounting, mechanisms to establish firm, manager and employee liability rights, protect minority shareholders and default rules'.*

Underlying these principles is the understanding that secure establishment of personal and business identify is key to participation in the legal process.

Reviewing the three tiers of commercial rights discussed above, the Report argues that street-vendors require basic and intermediary rights in the first instance, with access to advanced rights relevant only after these have been instituted. We deal with the rights to a work space and related infrastructure elsewhere, focusing here on the vendors' access to the right to vend, and on intermediary and advanced commercial rights. It is interesting to reflect that none of these reforms would stand in contradiction to the broad principles of the Doing Business reforms introduced briefly in Section. Once again this begs the question: Why have the Doing Business reforms not improved the lot of street vendors and other micro-entrepreneurs in developing-country economies?

The notion of enshrining the rights of the poor to economic activity in clearly articulated and defensible legal rights is a powerful one. It suggests that individuals or groups of the poor whose business rights have been infringed will be able to defend their rights in court, contest infringements and presumably, over time, lobby for improvement in these rights. Just how valuable this can be for street vendors is evident from a mass of writing about the informal economy over the past twenty years (for an interesting overviews see Skinner 2008, Brown 2006, Lyons and Msoka 2009). Looked at more broadly for poor entrepreneurs excluded in a variety of ways economically and socially, the appeal is if anything stronger (Du Toit 2008, Potts 2007).

The Report goes on to argue in favour of an inclusive, participatory policy making process and cites a number of examples of partial reform which have had notable success. Clearly, as the Report notes, the exclusion of micro-entrepreneurship from law and policy making reflect powerful cultural morés at national and international levels. Merry has argued that legal reform can result in cultural change (1995), but of course it doesn't necessarily follow fully or completely. In several cases the positive effects of localised reforms have been subsequently overtaken by events, for example in the entente between Durban municipal council and vendors (Skinner 2008). This suggests that, in addition to thoroughgoing and participatory policy design, a structure would be needed for constant review and defence of gains, recalling Moore's aphorism, 'Law as Process' (Moore 1978) and ongoing support for long-term contestation and defence of the poor by civil society (Golub 2009). It is interesting also that a number of development organisations have identified this agenda as a challenge to redefine their own relationships with the poor (BRAC 2011, Sage et al 2010).

Access to Justice, ('Pillar 1') has also received scholarly attention. Some scholars take issue with the adoption by the Report of a poorly conceptualized definition of rights and for having adopted a pragmatic and instrumental approach to legal empowerment (Sangupta 2008, Stephens 2009). These comments were also made specifically on 'Pillar 2' (Property Rights) (Banik 2009) and 'Pillar 3' (Labour Rights); while others go further to argue that Legal Empowerment cannot be usefully conceived as a series of legal reforms, because it is essentially a set of subjective beliefs held by a person – or legal person – regarding their own problem solving capabilities. In this view the problem of exclusion from the justice system is one of education and personal development, rather than of legal reform; and legal empowerment is about power rather than specific legal instruments (Gramatikov and Porter 2010, USAID 2011). The present paper accepts that legal reform is about reform of law, but also of both the supply and the demand sides of the justice system.

Turning now to the implementability of the agenda, some argue that the move toward a more comprehensive Rule of Law in developing countries should include the Legal Empowerment of the Poor agenda. In harmony with CLEP arguments, they have supported 'the need to switch from increasingly insistent prescriptions based on increasingly comprehensive and specific Euro-American institutions, rule, practices and norms toward a more process oriented approach that recognizes a greater role and responsibility for target countries and is more open-ended and tolerant of institutional innovations and differences in norms, practices and outcomes' (Peerenboom 2009:5) and that macroeconomic measures of qualitative indicators are not appropriate to this agenda (Masser 2009). Like every argument which rejects outcomes as a main goal, this raises measurement issues which clearly clash with the measurement system adopted by the Doing Business reforms (Sec. 3).

7. Taking forward the Legal Empowerment agenda: the case of Tanzania

Against this background, and before the Commission for Legal Empowerment of the Poor had started its work in 2005, in 2004, the Tanzanian government established the Property and Business Formalization Programme

(PBFP), more popularly known by its Kiswahili acronym, MKURABITA in the President's Office by the then president, Benjamin Mkapa, and appointed de Soto's Institute of Liberty and Democracy (ILD) to work out an approach to legalizing street vending in particular and informal micro-businesses in general. The plan was to follow the ILD's four-phase approach to reform design.

Supported by ILD, MKURABITA published the first three volumes of its report in 2005, based on a national sample survey of informal-economy operators, from which the ILD identified the scale of the informal economy and the 'archetypal' arrangements put in place by informal operators which function as quasi, or 'extra' legal contracts, title documents and so on^{vii}.

A key conclusion was the vast scale of the informal economy and the wealth it embodied. The report argued that, despite the state having put in place a legal framework of property, business, commercial and finance law which *should* be able to regulate the operation of a modern market economy, 98% of businesses (and 89% of real property) continued to be held informally, primarily by the 'poor'.

The report identified three key features of the extra-legal economy: First, it valued the assets held in the extra-legal economy at \$2.9 Billion, or 10 times all foreign direct investment accumulated since Independence and 4 times the net financial flows from multilateral institutions in the same period. There have been no formal critiques of the methodology or conclusions. Although the sample was undoubtedly relatively small, no competing estimates have been published at the time of writing.

Second, it calculated that the 'obstacles that Tanzanians would have to overcome to access the legal system and obtain organizational structures, credit, capital, markets beyond their immediate families, and legal property rights, are insurmountable. If a poor entrepreneur throughout a 50 year business life obeys the law, it will require him/her to make cash payments of US\$91,000 to the State for the requisite licenses, permits, and approvals, and spend 1,118 days in government offices petitioning for them (during which he could have earned US\$9,350). The same entrepreneur would have to wait another 32,216 days for administrators to resolve all his/her requests, and during that time lose another US\$79,600 in potential income. The grand total of these costs: almost US\$ 180000—enough money to create 31 additional small enterprises' (ILD 2005a:4). It should be emphasized that these are simply the requirements for creating a legally registered business, and do not include the burden of taxation the business would then incur. This calculation was based on a desk study and interviews with, and observations of government processes at local, regional and national level, and has not been widely contested.

Third, they identified extra-legal documents corresponding to a virtually complete set of formal commercial legal documents, used in the informal economy to set prices, allow representation by proxy, title property, list assets as collateral, arrange credit, attest to qualifications and so on. It is not made clear in the report how broadly these documents are used, whether documents acceptable in one sector or geographical area would be acceptable in another, or why, indeed, they should not simply receive legal recognition in the courts in much the same way as private contracts do in any common-law system. However, the report has not been widely critiqued and it is these documents which have formed the basis of further work by MKURABITA.

The publication of these reports was not widely reported or endorsed. There followed a hiatus in MKURABITA's operations, and its declined sharply after the end of Mkapa's presidency in 2007. President Kikwete focused government policy on the Doing Business reforms and MKURABITA's agenda was made light of by government executives in most of the ministries involved (interviews, July/August 2007). The arguments put forward by ministry officials were microentrepreneurs were not 'real' entrepreneurs, and therefore should, variously, either take up manufacturing or get a job in a larger enterprise; or that the Doing Business reforms should make it possible to operate microbusinesses legally.

As discussed in Section 4, however, it was already becoming clear that the bulk of Doing Business reforms were only reducing obstacles facing large businesses in formalizing their affairs; the massive donor investment in financial deepening had resulted in growing credit facilities for larger businesses, but in actually reduced involvement by the poor (Lyons and Brown 2010a); and the bulk of growth in GDP had been in the imports of manufactured goods from abroad and in the export of capital-intensive primary products. Formal jobs were scarcer than ever, micro-entrepreneurship among the poor had shown no signs of diminishing, and the streets of Tanzania's cities were thronged with traders as never before (Lyons and Msoka 2009).

Growing government and donor frustration with this state of affairs in Tanzania and elsewhere in SSA was probably a contributing factor in the Prime-Minister's decision to launch a campaign of street-vendor evictions, in concert with a wave of evictions which swept the continent in 2006/7. To give some idea of the scale of these evictions, in Temeke^{viii} alone, during one six-month period of the eighteen months of evictions, over 40,000 prosecutions were brought against street vendors – not counting the many more vendors who left the city or its streets for a time – or permanently. There was large-scale destruction of stalls and tables, wares and goods – just those assets identified by MKURABITA as critical to the economy of the poor and potentially of value to the economy of the country (interviews, Temeke Municipality, 2007).

The evictions had a widespread and traumatic impact on all who experienced them. In a survey of 622 traders undertaken in late 2007, 80% of traders who had only witnessed evictions and 95% of people who had personally experienced them responded to the open question: What has been your most memorable experience as a trader? by naming the evictions.

Three key issues were identified: the destruction of livelihoods, the burden this put on close relationships, and the sense of excommunication from society, as witnessed by the two quotes below:

'The eviction from Makoroboi has made me beg before my friends and family. I used to get money there through business but now could not even get daily bread. My life status is going down daily'. (Mitumba seller, Mwanza)

I won't forget ... 2006 June it's when I officially became a refugee in my home country. I had to lose the hope ... my own country, my country where our ancestors and forefathers loved each other – why...? (Food seller, Arusha)

Against this background, MKURABITA progressed its initial work. This effort, summarized in Volume 4 of the main project, puts forward a reform agenda for legal inclusion of the assets and micro-enterprises of the poor, forced by the current legal environment to be held, or to trade informally. It is a seven-part report, published in late 2008, and provides a very interesting demonstration of how the broad agenda of legal empowerment, 'making the law work for *everyone*' (emphasis added) is to be interpreted.

8. The law of the street: concrete proposals for pro-poor reform

Volume IV of the proposed reforms deals with business law and policy specifically. The proposed reforms are concerned with very similar issues to those addressed by the Doing Business reforms. However, they focus on the obstacles facing micro-business and the poor specifically. Below, they are grouped into three broad categories of reform proposals, to (URT 2008b:30): 1) formalize businesses (Entry/Operation/Exit); 2) allow formalized business growth; 3) establish the necessary legal framework for implementation of specific legal reforms. Focusing on obstacles to business formalisation and growth, Table 3 summarizes the relevant problem addressed, the objectives and sub-objectives identified, and the reforms proposed to address them. In total eleven key problem areas are identified in the law as it stands:

- The law does not recognize Limited Liability Single shareholder Company (LLSSC) and the Limited Liability Partnerships (LLPs). The Companies Act 2002 does not accommodate registration of sole traders to form small companies with single member or shareholder limited status making separation of business and personal assets for small traders illegal.
- Legal requirements for forming and drafting contracts are over-complicated and not user-friendly at local level. In particular, village and ward leaders are not legally empowered to attest the legal documents within their areas (eg Section 10, Notaries Public and Commissioner for Oaths Act provides for the list of persons given powers of notary public in respect of administering oaths, taking affidavits, attesting signatures and certifying copies, and excludes Village executive Officers and the Ward Executive Officers).
- Current procedures for business dispute settlement are complicated and expensive, while informal, local alternative dispute settlement mechanisms are generally not legally enforceable.
- Registration procedures for immovable and movable properties (pledges, charges, mortgages and documents) are cumbersome, leave no room for decentralization of their registration and transfer, and movable properties, eg livestock, are not legally recognized for use as collateral.
- The complicated taxation and accounting system discourage small businesses from formalizing. Access to the prescribed standard accounting system is difficult and costly for small businesses and the rates for tax obligations for individual businesses under the first schedule of the Income Tax Act No. 11 are not affordable for newly formalized small businesses.
- Business name registration procedures remain complicated due to outdated laws.

- Labour Laws and Employee Rights are not well suited to SMEs, entailing heavy tax obligations and high compliance costs in relation to small size, low turn-over or capital investment, inadequate working premises and limited access to finance, discouraging formalization.
- Lack of sufficient business information due to inadequate official statistics database on business information related to small businesses.
- Lack of personal and business formal identification and no policy framework for linking them.
- Anti-competitive behaviour that may prevent newly formalized small business entities from engaging in fair competition and access the market, eg predatory pricing and dumping, loyalty or fidelity rebates, abuse or misuse of dominant position in the market and other related cartels, is not sufficiently legally regulated.
- Government procurement systems are biased in favour of international agents and large suppliers and effectively exclude small businesses.

An apparently glaring omission in this list of issues is the legal validation of hawking – running a microbusiness with no fixed address. It is interesting that there are also no provisions for regulating access to public land in Volume 2, which deals with property formalization reforms on the mainland (URT 2008c). However, many of the legal obstacles facing hawkers would in fact be removed by the proposed reforms. The ability to register movable assets as collateral would render them more able to borrow; the ability to separate personal and business assets would make them less vulnerable when borrowing; the simplification of business name registration could allow registration of businesses with no fixed address – the proposed reform is vague on this point (Table 3). Moreover, a wide range of issues affecting small businesses, including many street vendors, are covered by the proposed reforms. As Table 3 shows, the remedies proposed include the amendment, drafting or repeal of some twenty five specific laws. These are practical, detailed and implementable guidelines. There is also indication where related regulations and policies need to be amended and what stakeholders would require training and capacity building in what areas. Moreover, the proposed reforms are consonant with the Doing Business reforms (Tables 2 and 3) and also with a range of current government policies (Table 3).

They are wide-reaching and expensive reforms, but the cost-benefit put forward by MKURABITA (URT 2008d) suggest that, at whatever rate they are implemented, reforms would quickly pay for themselves.

And yet, they have not been adopted. Interviews with Bank of Tanzania officials suggested that ‘the trouble with the MKURABITA proposals is that they are not well coordinated between the different stake-holders’ (September, 2011). Key stake-holders are not aware of them (interview BEST September 2011).

9. Discussion and conclusions

The proposed reforms are interesting because they demonstrate that it is, in principle, perfectly possible to legalize very small business activities without either crippling the country’s administration or crippling the businesses themselves.

They are also interesting because they provide a durable and stable model. The reforms are not a one-off amnesty; they provide a systematic approach to broadening the inclusivity and usefulness of available legal instruments, and therefore do not become irrelevant as the pressure of macro-economic trends continues to drive millions of the poor into own-account work.

The reforms are not a proposal for a system of legal pluralism. That would require nested or collaborating jurisdictions operating parallel or complementary bodies of law, administered by a separate group of officials, and possibly tried through separate courts. Instead, the country's legal code would effectively be modified or expanded to legalize a far broader range of businesses, agreements and transactions; the administration and tax systems would be expanded but not restructured; as would the court system. This not only offers more stability, but also reduces the barriers for upward mobility for those micro-enterprises which are able to expand.

The Tanzania story provides a fascinating insight into which reform initiatives survive the obstacle course facing their implementation, and which do not. The failure of MKURABITA's reform agenda cannot be put down to its practicability, durability or social and economic usefulness. However, the interviews quoted above suggest that it never received a proper critical review from relevant stakeholders in the country. In turn this suggests that the pro-poor business reforms have foundered from simple lack of interest among both donors and senior government figures. Unlike the Doing Business reforms they are not supported by the World Bank, and are, quite simply overshadowed by them. It would be reasonable to conclude that only a campaign at that level could revive the fortunes of such reforms.

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Tables

Table 1: Tanzania and Sénégal, DB rankings 2008-2011

| INDICATOR | YEAR | SÉNEGAL | | | | TANZANIA | | | | CHANGE 2008-2011 | |
|------------------------|------|---------|------|------|------|----------|------|------|------|------------------|----------|
| | | 2011 | 2010 | 2009 | 2008 | 2011 | 2010 | 2009 | 2008 | Sénégal | Tanzania |
| Overall Rank | | 152 | 151 | 149 | 168 | 128 | 125 | 127 | 124 | 16 | 4 |
| Starting a Business | | 101 | 102 | 95 | 161 | 122 | 122 | 109 | 97 | 60 | 25 |
| Construction Permits | | 117 | 119 | 118 | 109 | 179 | 179 | 172 | 172 | -8 | 7 |
| Registering Property | | 167 | 167 | 161 | 160 | 151 | 148 | 142 | 141 | -7 | 10 |
| Getting Credit | | 152 | 150 | 145 | 141 | 89 | 87 | 84 | 79 | -11 | 10 |
| Protecting Investors | | 167 | 165 | 164 | 161 | 93 | 92 | 88 | 84 | -6 | 9 |
| Paying Taxes | | 170 | 171 | 170 | 166 | 120 | 116 | 109 | 106 | -4 | 14 |
| Trading Across Borders | | 67 | 61 | 60 | 139 | 109 | 111 | 103 | 105 | 72 | 4 |
| Enforcing Contracts | | 148 | 148 | 146 | 146 | 32 | 32 | 33 | 34 | -2 | -2 |
| Closing a Business | | 79 | 81 | 77 | 76 | 113 | 112 | 111 | 112 | -3 | 1 |

Source: Collated by the author from WB 2008 c, d, accessed 16.08.11

Table 2: Ease of Doing Business rankings 2011, Tanzania and Sénégal

| | Indicator | Tanzania | Sénégal | SSA | OECD |
|-------------------------------|---|----------|---------|----------|----------|
| Starting a Business | Ranking | 122 | 101 | - | - |
| | Procedures (number of) | 12 | 4 | 8.9 | 5.6 |
| | Time (days) | 29 | 8 | 45.2 | 13.8 |
| | Cost (% of income per capita) | 30.9 | 63.1 | 95.4 | 5.3 |
| | Paid-in Min. Capital (% of income per capita) | 0 | 205.1 | 145.7 | 15.3 |
| | Dealing with construction permits | Ranking | 179 | 117 | - |
| Procedures (number) | | 22 | 16 | 17.6 | 15.8 |
| Time (days) | | 328 | 210 | 239.5 | 166.3 |
| Cost (% of income per capita) | | 2,756.30 | 459 | 1,773.30 | 62.1 |
| Registering a property | Procedures (number) | 9 | 6 | 6.5 | 4.8 |
| | Time (days) | 73 | 122 | 67.9 | 32.7 |
| | Cost (% of property value) | 4.4 | 20.6 | 9.6 | 4.4 |
| Getting credit | Strength of legal rights index (0-10) | 8 | 3 | 4.6 | 6.9 |
| | Depth of credit information index (0-6) | 0 | 1 | 1.7 | 4.7 |
| | Public registry coverage (% of adults) | 0 | 0.4 | 2.7 | 8 |
| | Private bureau coverage (% of adults) | 0 | 0 | 4.9 | 61 |
| Protecting investors | Extent of disclosure index (0-10) | 3 | 6 | 4.8 | 6 |
| | Extent of director liability index (0-10) | 4 | 1 | 3.4 | 5.2 |
| | Ease of shareholder suits index (0-10) | 8 | 2 | 5 | 6.8 |
| | Strength of investor protection index (0-10) | 5 | 3 | 4.4 | 6 |
| Paying taxes | Payments (number per year) | 48 | 59 | 37.3 | 14.2 |
| | Time (hours per year) | 172 | 666 | 315.1 | 199.3 |
| | Profit tax (%) | 19.9 | 14.8 | 23.1 | 16.8 |
| | Labor tax and contributions (%) | 18 | 24.1 | 13.5 | 23.3 |
| | Other taxes (%) | 7.3 | 7.1 | 31.5 | 3 |
| | Total tax rate (% profit) | 45.2 | 46 | 68 | 43 |
| Trading across borders | Documents to export (number) | 5 | 6 | 7.7 | 4.4 |
| | Time to export (days) | 24 | 11 | 32.3 | 10.9 |
| | Cost to export (US\$ per container) | 1,262 | 1,098 | 1,961.50 | 1,058.70 |
| | Documents to import (number) | 7 | 5 | 8.7 | 4.9 |
| | Time to import (days) | 31 | 14 | 38.2 | 11.4 |
| | Cost to import (US\$ per container) | 1,475 | 1,940 | 2,491.80 | 1,106.30 |
| Enforcing contracts | Procedures (number) | 38 | 44 | 39.1 | 31.2 |
| | Time (days) | 462 | 780 | 639 | 517.5 |
| | Cost (% of claim) | 14.3 | 26.5 | 50 | 19.2 |
| Closing a business | Recovery rate (cents on the dollar) | 21.9 | 32 | 23.2 | 69.1 |
| | Time (years) | 3 | 3 | 3.4 | 1.7 |
| | Cost (% of estate) | 22 | 7 | 20.7 | 9.1 |

Source: Collated by the author from World Bank website, <http://www.doingbusiness.org/rankings>, accessed 16.08.11

Table 3: Business formalization and growth reforms, MKURABITA 2008 (summary)

| OBJECTIVES | PROPOSED ACTIONS | PROBLEM ADDRESSED | |
|--|--|--|--|
| 1. Reform proposals to formalize businesses (Entry/Operation/Exit) | | | |
| <i>(a) New organization forms (LLP and LLSSC)</i> | | | |
| Business forms created in law separating person from assets for small businesses | Activity 4.1.1.1: Amend the Companies Act, 2002 (Sections 3, 4, 26, 27, 186, 275,279) to accommodate the Limited Liability Partnerships (LLPs) and Liability Single shareholder Company (LLSSC). | PROBLEM: Lack of Legal framework to facilitate the Introduction of simple business organizations forms for small business such as the Limited Liability Single shareholder Company (LLSSC) and the Limited Liability Partnerships (LLPs). The Companies Act 2002 does not accommodate registration of sole traders to form small companies with single member or shareholder limited status. This reform has the goal of introducing new business organization forms for small businesses that allow Limited Liability Single shareholder Company (LLSSCs) and Limited Liability Partnerships (LLPs). | |
| | Activity 4.1.1.2: Enact the Limited Liability Partnership Act 2008 | | |
| | Activity 4.1.1.3: Draft Regulations for Limited Liability Partnerships (LLPs). | | |
| | Activity 4.1.1.4: Amend sections 48, 49, 50 and 51 of the Income Tax Act, No.11of 2004 to recognize the taxation for such new business organization forms. | | |
| Insulated and separated (personal from business) assets | Activity 4.1.2.1: Draft Regulations to regulate and provide procedures for LLSSCs | | |
| Simplified regulations and Memorandum and Articles of Association | Activity 4.1.3.1: Draft in Kiswahili Language the standardized and simple Memorandum and Articles of Associations | | |
| | Activity 4.1.3.2: Reform National Trade Policy to clearly accommodate Small Businesses | | |
| | Activity 4.1.3.3: Develop strategies for capacity building for small business entities | | |
| <i>(b) Simplification of the legal requirement for forming contracts</i> | | | |
| Simplified business transactions and enforcement of legal documents at local government level. | Activity 4.2.1.1 : Amend the primary court rules and The ward tribunal Act and rules to provide for enforcement of contracts that are made at local government level | | PROBLEM: complicated legal requirements for forming and drafting contracts. The current system is not user-friendly at local level. Contract formation procedures are complicated with certain legal requirements that are not affordable to the small business at the local level. The village leaders are not legally empowered to attest the legal documents within their areas (eg Section 10, Notaries Public and Commissioner for Oaths Act provides for the list of persons given powers of notary public in respect of administering oaths, taking affidavits, attesting signatures and certifying copies, amd excludes Village executive Officers and the Ward Executive Officers). Outputs are in line with objective 5.2 of the National Trade Policy. |
| | Activity 4.2.1.2: Amend the law to make provisions for decentralizing the attestation at local government level closer to the people and improve business.e.g. WEO, DEO to localise services delivery | | |
| Reduced costs, fewer contractual disputes and less time for business transactions. | Activity 4.2.2.1: Implement capacity building for VEOs and WEOs for formalizing and administering contracts. | | |
| | Activity 4.2.2.2: Create public awareness through various channels | | |
| | Activity 4.2.2.3: Improve the registry and record keeping systems for business transactions at local level. | | |

| <i>(c) Simplified Business dispute settlement mechanisms</i> | | |
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| Realization of simplified and speedy dispute settlement procedures and enforcement of Alternative Dispute Resolution at local level. | Activity 4.3.1.1: Amendment of the Magistrate Court Act 1984 to provide for the establishment of small claims court | PROBLEM: complicated and expensive business dispute settlement procedures that are currently in place. Although the people have their own local alternative dispute settlement mechanisms these are generally not legally enforceable. Currently the Alternative Dispute Resolution (ADR) mechanism such as mediation, conciliation and arbitrations are annexed to the court procedures as provided under the Civil Procedure Act 1966, [R.E 2002, and CAP 33]. As such, the ADR procedure is complicated and not affordable to small businesses. |
| | Activity 4.3.1.2: Drafting rules for simplified mediation and conciliation procedures. | |
| | Activity 4.3.1.3: Drafting the Rules for the procedure of a small claims court that will deal with a small claims | |
| | Activity 4.3.1.4: Amend the Civil Procedure Act 1966, [R.E 2002, CAP 33]. | |
| | Activity 4.3.1.5: Amend The magistrates' Courts (Civil Procedure in Primary Courts) Rules, G.Ns. Nos. 310 of 1964 and 119 of 1983 | |
| Reduced costs and delay of cases | Activity 4.3.2.1: Capacity building for the small claims court personnel as well as those of the primary and district Courts | |
| | Activity 4.3.2.2: increase the number of magistrates to deal with small claims related to business and trade. | |
| | Activity 4.3.2.3: Create mechanisms for recognition and enforcement of dispute resolution out of the court (pre-action pURTocol) | |
| Small commercial court at lower level for small entities established | Activity 4.3.3.1: Introduce legal provisions in the commercial courts law for the establishment of subdivisions of small commercial courts at the primary court for small businesses | |
| | Activity 4.3.3.2: Amend Primary Court Civil Procedure Rules to accommodate the local Dispute mechanisms. | |
| <i>(d) Simplification of registration procedures for movable and movable pledges and mortgages</i> | | |
| Decentralized registration and Attestation of pledges and instruments. | Activity 4.4.1.1: Review with a view to enacting the outdated Chattel Transfer Act 1942 [R.E 2002 CAP 210] registration procedures. | PROBLEM: cumbersome registration procedures for immovable and movable properties (pledges, charges, mortgages and documents). The Chattel Transfer Act of 1942 [R.E 2002 CAP 210] and the Registration of Documents Act (CAP 117) do not give room for decentralized registration and transfer of pledges, mortgages, charges and other instruments for business securities. Movable properties such as livestock are not legally recognized as pledges that can be used as collateral. The Minister has immense and discretionary centralized powers on the registration and transfer of movable and immovable properties. This reform objective is in line with and mirrors objective 1.1 of the SMEs Policy on the simplification of businesses registration and licensing procedures to enable the business environment. It has three reform outputs. |
| | Activity 4.4.1.2: Decentralize the chattels registration system at district level. | |
| | Activity 4.4.1.3: Create mechanisms to allow registration of instruments for transfer of chattels and charges to be registered at the local government level. | |
| Drafting rules for simplified mediation and conciliation procedures. | Activity 4.4.2.1: Decentralize the registration of documents not related to real estate at district level. This can be facilitated by specifically amending section 3 of the Registration of Documents Act, 1924 [RE 2002, CAP 117]. The instruments for transfer of chattels, and charges will be registered at the local government level | |
| | Activity 4.4.2.2: Repeal the Registration of Documents Act, 1923 [R.E.200. Cap 117], and enact two separate laws. One legislation will establish an Agency under the Ministry of Land to deal with the registration of the documents related to real property. The other legislation will establish the Agency under the Ministry of Trade to administer the registration of documents that are related to movable property and business transactions. | |
| | Activity 4.4.2.3: Establish an Agency under the Ministry of Trade and Industry to register the documents that are related to movable property and business transactions. | |
| | Activity 4.4.2.4: Amend the Birth and Death Certificate Registration Act,1920 [R.E. 2002 CAP] to allow for the registration of documents related to the change of names to be registered by RITA. | |

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| Facilitate the use of pledges and assets for borrowers as collateral | Activity 4.4.3.1: Drafting regulations to simplify the procedure for registration of pledges, and charges to facilitate to credit from financial institutions | |
| | Activity 4.4.3.2: Review the Stamp duty Act [R.E 2002 Cap 189] to remove the stamp duty registration requirement for certain types of transactions. | |
| | Activity 4.4.3.3: Introduce a simplified registry system of movable properties as collateral | |
| | Activity 4.4.3.4: Draft miscellaneous laws amending the Chattel Transfer Act, The Stamp Duty Act and the Registration of Documents Act. | |
| | Activity 4.4.3.5: Amend the Chattels Transfer Rules of 1965 that was made under Section 53 of the Principal legislation | |
| | Activity 4.4.3.6: Drafting simplified regulations on the registration, transfer and use of chattels and pledges | |
| | Activity 4.4.3.7 creating awareness to business financial institutions and stakeholders | |
| | Activity 4.4.3.8: capacity building for District level registrars; approving draft bye-laws to allow attestation by authorized local leaders, eg VEO and WEO; review of national Trade and SME policies (activities 4.4.3.9-12) | |
| (e) Simplification and decentralization of accounting and taxation systems for small businesses | | |
| Simplified accounting system for small businesses | Activity 4.5.1.1: Amending The Accountants and Auditors (Registration), Act 1972 [R.E. 2002 CAP 286] to allow non-CPA with accounting qualifications and simplify accounting system | PROBLEM: complicated taxation and accounting system that discourages small businesses from formalizing. Access to the prescribed standard accounting system is difficult and costly for small businesses. Legal and procedural requirements for the accounting system do not give room for small businesses to comply with the bureaucratic and complicated tax regime administered by many institutions. The rates for tax obligations for individual businesses under the first schedule of the Income Tax Act No. 11 are not affordable for newly formalized small businesses. The requirements for the presumptive income tax are not suitable for small businesses that are intended to be formalized. This Sub objective is in line with objective 1.1 of the SMEs Policy which provides for the simplification of businesses registration and licensing procedures to enable the business environment. This reform objective further compliments the trade Policy 5.2.1.2. It also links with the SMEs Policy 2003 instruments on the simplified tax system. |
| | Activity 4.5.1.2: Establish a simplified uniform accounting system | |
| | Activity 4.5.1.3: Drafting regulations to introduce procedures for a simplified accounting system for small business entities | |
| | Activity 4.5.1.4: Reform policies governing the taxation system | |
| | Activity 4.5.1.5: Reform laws governing the taxation system (e.g. the Income Tax Act, the Finance Act, the Tanzania Revenue Authority Act (R.E 2002 CAP 399), the Value Added Tax Act (CAP 148), the Local Governments Act (District-CAP 287), the Urban Authorities Act (CAP 288), and the Finances Act (CAP 290), | |
| | Activity 4.5.1.6: Amend the First and Second Schedule of the Income Tax Act | |
| | Activity 4.5.1.7: Introduce the integrated taxation system | |
| Taxation system for small businesses simplified | Activity 4.5.2.1: introduce an integrated policy framework to govern all matters related to business transactions. | |
| | Activity 4.5.2.2: improve the infrastructure and registry centres at district level. | |
| | Activity 4.5.2.3: Amend taxation laws to introduce simplified taxation system | |
| | Activity 4.5.2.4: introduce a simplified integrated taxation system | |
| | Activity 4.5.2.5: introduce a one stop centre for improving the current presumptive tax assessments. | |

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| Increase in business entities registered at local level and compliance with tax rules | Activity 4.5.3.1: Capacity building on the simplified taxation system for small business entities | |
| Reduced tax evasion and increased tax revenues | Activity 4.5.4.1: Draft simplified taxation system regulations for small businesses | |
| (f) Simplification Registration of Business names | | |
| Simplified registries those are searchable within a specified time (efficient document retrieval) at low cost | Activity 4.6.1.1: Amend the current sector laws that govern regulatory authorities dealing with registration and licensing procedures. The laws should provide cross-reference provisions and reduce unnecessary preapprovals unless the business affects health, the environment and safety. | PROBLEM: complicated and centralized business name registration procedures that are still in place due to outdated laws. This objective is in line with objective 1.1 of the SMEs Policy which provides for the simplification of businesses registration and licensing procedures to enable the business environment. |
| | Activity 4.6.1.2: Amend the Business Names Registration Act, 1930 (RE 2000, Cap 213). | |
| | Activity 4.6.1.3: Amend the, Business Registration Act, 2007 (BARA) to allow the registration of Business names at the local government level (District) | |
| | Activity 4.6.1.4: Amend Section 7, 8 and 11 of The Business Activities Registration Act No. 14 of 2007 to decentralize business registration to the Ward or Village level. | |
| | Activity 4.6.1.5: Amend section 22 of the Business Activities Registration Act which provides for appeal from the Registrar to go to the District Commissioner to allow appeals to be lodged to the Minister and from there to the normal Court. | |
| (g) Simplified Labour Laws and Regulations | | |
| | Activity 4.7.1.1: Reform and amend the labour laws (Employment and Labour Relations Act 2004, Labour Institutions Act 2004, National Social Security Fund Act, [R.E 2002 CAP 50] and regulations to simplify recruitment procedures | PROBLEM: complicated and costly labour and Social Security/insurance obligations deter small businesses from formalizing. Labour Laws are not well suited to SMEs, due to heavy tax obligations and high compliance costs due to their small size, low turn-over or capital investment, inadequate working premises and limited access to finance. Employee rights related to working days/ hours, overtime payments, mode of payment period calculations need to be reviewed to suit the small, single shareholder companies with limited liabilities. Links with the SMEs Policy on the categorization of SMEs and simplified labour obligations, and it has one reform output. |
| | Activity 4.7.1.2: Draft simplified labour and Social Security Regulations to simplify labour obligations dispute settlement procedures for small business entities. | |
| | Activity 4.7.1.3: Capacity building for small business entities. | |

| (h) Establish the Business Management Information System for small businesses | | | |
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| Market and Business information access by more small businesses. | Activity 4.8.1.1: Introduce the law to protect data and privacy to reduce e-security risk of unauthorized access to business information. (limited access to certain information e.g. capital) | PROBLEM: Lack of sufficient business information. There is inadequate official statistics database on business information related to small businesses. In line with the SMEs Development Policy objectives specifically objective 3.3, geared toward improving information services for small business. | |
| | Activity 4.8.1.2: Design umbrella legislation with basic provisions to progressively achieve the objectives of a Credit Bureau system | | |
| | Activity 4.8.1.3: Introduce a National database for business enterprise. | | |
| Increased number of financial institutions that access business information and facilitate loans and credit access by small businesses | Activity 4.8.2.1: Review and amend laws that administer business to introduce a national statistics database for SMEs | | |
| (i) Simplification of Personal and business identification | | | |
| Simplified personal identification system. | Activity 4.9.1.1: Amend The Registration and Identification of Persons Act, 1986, [R.E 2002 CAP 357] | | PROBLEM: lack of personal and business formal identification: there is no clear policy and legal framework to address the proper personal identification system that can be linked to business information. |
| | Activity 4.9.1.2: Draft Regulations to simplify Registration and Identification of Persons | | |
| Simplified market credit access | Activity 4.9.2.1: Amend The Birth and Death Certificate Registration Act, | | |
| | Activity 4.9.2.2: Draft Regulations to simplify the registration of birth and death certificates | | |
| | Activity 4.9.2.3: Amend The Tanzania Citizenship Act | | |
| | Activity 4.9.2.4: Draft Regulations to support the amendment and enforcement of the Tanzania Citizenship Act | | |
| | Activity 4.9.2.5: Introduce a Business database to link relevant databases | | |
| (j) Improve fair competition for small businesses at the market | | | |
| | Activity 4.10.1.1: Amend Competition Laws (Fair Competition Act 2003 to provide for effective mechanisms for prohibiting anti-competitive behaviour in the market and protect small businesses against unfair trade practices (cartels and misuse of the dominant position in the market). | PROBLEM: unfair competition in the market that can smother small businesses and distort the market. The current legal framework does not clearly address and regulate certain anti-competitive behaviour that may prevent newly formalized small business entities from engaging in fair competition and access the market. These anticompetitive practices which distort the market include predatory pricing and dumping, loyalty or fidelity rebates, abuse or misuse of dominant position in the market and other related cartels. | |
| | Activity 4.10.1.2: Review and reform trade and other related policies | | |
| | Activity 4.10.1.3: Amend the Fair Competition Regulations to effectively regulate ant-competitive practices in the market that are geared towards eliminating small business entities from the market. | | |
| | Activity 4.10.1.4: Introduce an effective Legal framework and regulations that will effectively regulate the market behaviour to empower small businesses to access the market fairly. | | |
| | Activity 4.10.1.5: Improve consumer protection organizations | | |
| | Activity 4.10.1.6: Establish private organizations/NGOs as watchdogs on the quality of products/services | | |
| | Activity 4.10.1.7: Capacity building to improve enforcement mechanisms to regulate the anti-competitive conduct of the big business firms in the market. | | |

| <i>(k) Simplification of public procurement Rules and procedures for SMEs</i> | | |
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| Simplified public procurement Rules and procedures | Activity 4.11.1.1: Amend the Public Procurement Act, 2005 specifically sections 46 (qualification), 49 (national preferences), 50 (exclusive preference to local persons or firms), sections 58-59 (methods of procurement). | PROBLEM: laws and regulations governing public procurement procedures are not user-friendly and are a barrier to small businesses wishing to supply assets or services. Sections 46, 49, 50, 58-59 of the Public Procurement Act 2004 require review. In line with this, the Regulations (G.N.No.97 2005) also need to be amended to simplify the principles and methods of procurement for small businesses. Together with tacit inbuilt favouritism for international procurement agents, creates insurmountable hurdles for local procurement agencies. Thus, in addition, the procurement act creates financial and resource gross outflow (GO) from Tanzania. |
| | Activity 4.11.1.2: Amend the Regulations (2005) made under the Public Procurement Act, 2004, Regulations 6 (eligible suppliers, contractors, service providers and asset buyers), 7 (methods of procurement) and 10 (eligibility). | |
| | Activity 4.11.1.3: Capacity building for the newly formalized businesses on the procurement procedures. | |

Source: Compiled by the author from URT 2008b, accessed 10.09.08

Table 4: Acronyms

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| BEST | Business Environment Strengthening Programme, Tanzania |
| BRU | Better Regulation Unit |
| DB | Doing Business (reforms) |
| FSDT | Financial Sector Deepening Trust |
| LEP | Legal Empowerment of the Poor |
| CLEP | Commission on Legal Empowerment of the Poor |
| RoS | Republic of Sénégal |
| SSA | Sub-Saharan Africa |
| UNDP | United National Development Programme |
| URT | United Republic of Tanzania |
| WB | World Bank |

11. Endnotes

i These concerns were in fact vindicated following the massive earthquake in Haiti in 2010. Humanitarian agencies responsible for allocation of emergency aid packages discovered that a hasty drive to increase identity paper allocation in the Haitian population, spurred by the Inter-American Development Bank had resulted in multiple identity registrations by a relatively small proportion of the population, while a large proportion of the poor and illiterate remained excluded from the registers (interview, FNRS, June 2011).

ii The ease of doing business index ranks economies from 1 to 183. For each economy the index is calculated as the ranking on the simple average of its percentile rankings on each of the 9 topics included in the index in Doing

Business 2011: starting a business, dealing with construction permits, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and closing a business. The ranking on each topic is the simple average of the percentile rankings on its component indicators. If an economy has no laws or regulations covering a specific area, or they are not implemented in practice—for example, bankruptcy—it receives a “no practice” mark. More complex aggregation methods—such as principal components and unobserved components—yield a nearly identical ranking. The choice of aggregation method has little influence on the rankings because the 9 sets of indicators provide sufficiently broad coverage across topics. So Doing Business uses the simplest method (WB 2011a).

iii The DB change score is constructed in 4 steps. 1) As a first step, for each of the 4 component of each of the 9 indicators, the absolute difference in scores is calculated, 28 in all; 2) To allow aggregation across all indicators, the results for each indicator are made comparable by normalizing the change values on a scale of 0–1, where a higher value indicates that an economy made a larger absolute improvement on a particular indicator than other economies. As a second step, the values are rescaled once more so that any lowering of an indicator is reflected by a negative score and any improvement by a positive score. A score of 0 indicates that no change occurred; 3) A simple average of all scores obtained for the different indicators is taken to calculate a total annual measure of change for each economy; 4) A simple average of all scores obtained for the different indicators is taken to calculate a total annual measure of change for each economy. (WB 2011b)

iv In fact, registration fees for a company with annual turnover below 20 M Tsh are nil. The 1972 Business Act stipulated that ‘All businesses carried out for profit or gain require a license and burden of proof is on the *accused*’ (emphasis added). Later in the same year this was amended to allow businesses with a small annual turnover (under 20 million Tsh) to register for a nil fee.

v Semi-formal in this case refers to the fact that stalls were licensed by the municipality on the side-walk, with plots rented out to vendors, but this was in contravention of the Dakar Master Plan.

vi There are in fact two interesting omissions in the discussion. First, the discussion omits to mention personal links between formal and informal mediated by middle-class employed workers who use the security of formal employment to leverage finance for the establishment of informal-sector businesses for example slum landlordism (eg Huchzermeyer 2011) or ownership of market stalls. Second, the discussion of structural links fails to focus on manufacturing and fails to mention the important links in import supply chain links between formal and informal, importer and street vendor (Lyons and Brown).

vii The term adopted for the informal economy was ‘extra-legal’ economy, and its assets were termed ‘extra-legal’ assets.

viii There are three municipalities in Dar es Salaam: Kinondoni, Ilala and Temeke.