Indicators of Political and Economic Institutions in Tanzania: 1884 - 2008

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Abstract

This paper is part of a series of studies focusing on the measurement and definition of institutions. This paper presents a database on institutional measures for Tanzania for the period 1884 to 2008. These indicators are used to assess the nature of political and economic institutional transformation from the colonial legacy to the modern outcome, using Tanzania as a natural experiment. The paper argues that despite changes in colonial regimes, the broader framework of institutions remained partly the same. This is reflected in the post-independence period in Tanzania, where the title of the president was substituting the governor titles in some land laws. Similarly, draconian laws similar to the colonial laws were enacted to curtail political freedom in the post-independence period.

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Keywords Tanzania Institutional Indicators Political Freedom Property Rights Judicial Independence Political Instability

1 Introduction

This paper evaluates the nature of institutions that characterise Tanzania, in the form of property rights, judiciary systems and political rights for the period 1884 to 2008. This is done through the construction of de jure and de facto indicators of property rights, political freedom and judicial independence, using legislation as an indication of the rules of the game (see North, 1990). The indices chosen represent the political and economic institutions considered important for economic growth. The lengthy time period is chosen following the suggestion by Kaufman et al. (2003) that the likelihood of observing significant changes in institutional variables substantially increases with the length of time under consideration.

Crucial to the study, the period under review also allows the examination of the hypothesis of the persistence of inherited institutions. According to Acemoglu et al. (2001), in areas where Europeans showed strong settlement patterns, they created institutions characterised by strong protection of property rights and efficient enforcement of contracts. They argue that these institutions, created by colonisers, have persisted over time and they continue to influence economic performance after independence. Tanzania, like many other developing countries, finds itself at the heart of these debates. Amongst the German colonies in Africa, Tanzania and Namibia were the only colonies with sizeable German populations, which underscore the presence of European settlement in these countries. According to Acemoglu et al. (2001), European settlers demanded and received social, political and institutional structures similar to those that existed in their home country.

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An empirical verification of this hypothesis is problematic for several reasons. Firstly, long-run measures of institutions do not exist to permit rigorous tests of the hypothesis. Virtually all the evidence of the effect of institutions on economic performance is derived within a short-term framework\(^1\) of analysis, thereby limiting the ability to test the long-run effect. Secondly, new difficulties have arisen from the development of measures for institutions based on the judgments of “experts”. According to Glaeser et al. (2004), the standard indicators tend to measure outcomes, rather than the formal constraints\(^2\) as defined in theory. This has led to measures of institutions used in the growth literature being volatile, uncorrelated with constitutional constraints, and closely correlated with short-run government policies and election outcomes.

The systematic divergence in growth per capita over a long period among many developing countries and the possibility of country heterogeneity\(^3\) underlines the crucial importance of utilising longer time series for explaining growth trajectory differences. An alternative approach is to consider constructing longer dated indicators of a de jure and de facto nature to allow for testing the impact of institutions on economic growth over time.

Using the technique of principal components and factor analysis in aggregating the composite indicator, guided by the conceptual framework as developed by Fedderke et al. (2001), the study constructs institutional measures for Tanzania. This study contributes to the growing institutions-growth empirical literature by providing alternative indices of political freedoms, property rights, judicial independence and political instability for Tanzania for the period 1884-2008.

In the next section, the relevant literature is reviewed. Section three presents the methodology employed for the construction of the present indices. Section four applies the methodology of constructing the indicators for Tanzania, while in Section five presents the comparisons of indicators with other existing indicators on Tanzania as well as with similar data sets on Namibia\(^4\) and Zimbabwe.\(^5\) Section six presents the summary of the findings and the conclusion.

The paper traces the genesis and the developmental transformation of the institutional framework in Tanzania from 1884 to 2008, using various legislations promulgated during the period under review. The legal foundations of most of the institutional indicators are traceable in many laws, in the form of acts, ordinances, proclamations and regulations, because legislative authority over Tanganyika was vested in various different offices and bodies at different points in the country’s history.

Tanzania’s colonial history started in 1884, when large tracks of land were granted to members of the Society for German Colonization (James, 1971). This led to the establishment of German Administration over Tanzania in 1891, which lasted until 1918, when Germany renounced all rights over her colonial possessions in favour of the Allied powers. Great Britain was given the right to administer Tanganyika in 1919, while the official mandate was conferred in 1922 by the League of Nations under category B. Tanzania mainland (Tanganyika) became independent from Britain in 1961, with a government committed to building a socialist society. The year 1964, saw a formation of the United Republic of Tanzania, between Tanzania mainland and Zanzibar.\(^6\) Politically, Tanzania operated under a single-party system from 1965 until 1992, when a transition to multiparty democracy occurred.

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\(^1\) Generally, the coverage is the late 1960s and 1970s, which typically overlaps with the post-independence period of many developing countries.

\(^2\) Rules of the game as postulated by North (1990).

\(^3\) According to Durlauf et al. (2001), the approach of entering institutional quality measures in regression analyses imposes a strong homogeneity assumption: all countries are assumed to have an identical aggregate production function. See also the studies by Dawson (2007) and Minier (2007) that have addressed the parameter heterogeneity and institutions.

\(^4\) Zaaruka et al. (2010), provide the datasets on Namibia

\(^5\) Gwenhamo et al. (2008), provide the datasets on Zimbabwe.

\(^6\) The focus is on the institutional framework as shown in mainland Tanzania. This is due to the fact that Zanzibar maintains a separate judiciary and a House of Representatives which acts as a Parliament for Zanzibar. Furthermore, the legal system in Zanzibar is derived from a distinct history from the mainland and combining these two systems would be overambitious and might result in unfair treatment to the subject under review.
2 Literature Review

2.1 Theoretical framework

The recent debate has witnessed a shifting away from purely looking at traditional (proximate) determinants of economic growth to deeper fundamental (ultimate) determinants of growth. Three strands of competing literature have emerged in the study of fundamental determinants of long-run economic growth. A first strand of literature argues that geography is the dominant factor in determining a sustained level of economic growth in the long run. According to the geography hypothesis, countries that are located in zones that are disadvantaged by the climate, quality of soil, or the prevalence of diseases, were originally and remained poorer than those favoured by geography. Cited papers in this literature include Myrdal (1968), Diamond (1997) Gallup, Sachs and Mellinger (1999), Sachs (2001, 2003), and Olsson and Hibbs (2005).

A second strand of literature emphasises participation in international trade as a growth-inducing factor leading to unconditional convergences of income between poor and rich countries. This is attributed to the work of Sachs and Warner (1995) and Frankel and Romer (1999).

A third strand of literature puts emphasis on the role of institutional changes as a critical determinant of long-run economic growth. Acknowledgment of the importance of institutions for economic development has been posited in the growth literature since the writing of Adam Smith, and more recently by Douglass North and Robert Thomas, who observed that factors such as capital accumulation or innovation “are not causes of growth: they are growth” (North & Thomas, 1973, p.2; North 1987, 1990). The theory has its roots in the work of Ronald Coase (1937, 1960), which connected neo-classical theory, transactions costs and institutions. Coase (1960) argued that zero transactions-cost conditions lead to a market solution that maximises income irrespective of the institutional arrangement. North (1987) argued, however, that transaction costs are pervasive and, as such, institutions matter.

A useful framework for thinking about what institutions are and how they can best be measured is provided by North (1990). According to North (1990: 3) institutions are “human devised constraints that structure human interactions composed of formal (law and regulations) and informal (sanctions and customs) rules and they are devised by human beings to create order and reduce uncertainty in exchange”. Three fundamental elements can be deduced from North’s definition. Firstly, institutions consist of formal constraints devised by human beings to shape human interaction, such as the statute of laws, common laws and regulations. Secondly, the informal rules or unwritten rules (represented through culture, traditions, and norms of behaviour) are transmitted within the society and imposed by society itself. Thirdly, enforcement mechanisms play a crucial role in ensuring that institutions are effective in order to create order and reduce uncertainty.

Hall and Jones (1999) revived the modelling of institutions as deeper determinants, with the recent institutions-versus-geography debate being accredited to the work of Acemoglu et al. (2001, 2002 &2005). The institutional hypothesis explains the long-run differences in economic development across countries by lasting differences in the quality of endogenously generated institutions. Acemoglu et al. (2002, 2005) argue that Europeans adopted very different colonisation policies in different colonies, resulting in diverse institutions today. In places where they could not settle due to high mortality rates, they tended to set up extractive institutions to oppress the native population and facilitate the extraction of resources in the short run. In places where they faced low mortality rates, the colonisers set up favourable institutions for their own future benefits. These institutions persisted over time and tend to explain much of the differences in economic development across

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7 The proximate determinants are conventionally held to refer to capital accumulation, labour and technology, while ultimate determinants are institutions, legal and political systems, socio-cultural factors, demography and geography.

8 Earlier empirical studies linking institutions and economic performance include the work of Kormendi and Meguire (1985), Scully (1988), Barro (1996), and Engerman and Sokoloff (1997), among others.

9 These institutions did not introduce protection for private property, nor did they provide check and balances against the government.
countries.

The broad aim of this review is to look closely at the measurement of institutions. The main motivation for this interest is that despite the emphasised importance of institutions, measuring of institutions remains a critical question.

2.2 Empirical Literature Review

2.2.1 Measures of Political and Economic Institutions

The way that empirical institutional measures are categorised is important for interpreting their effects. The institutional framework, as provided for in the definition by North (1990), comprises both formal and informal constraints. From this widely cited definition, good institutions are viewed as establishing an incentive structure that reduces uncertainty and promotes efficiency, hence contributing to improved economic performance.10

(i) Property Rights Indicators

In the literature, property rights are often argued to have the greatest impact on economic growth.11 However, the quantification and operationalisation of property rights has proved to be challenging. Nevertheless, this has not stopped researchers from creating indices to measure property rights. The most frequently used indicator of property rights is provided in the compilations of the Economic Freedom Index by the Frazer Institute. According to Gwartney et al. (1996), an index of economic freedom should measure the extent to which legally acquired property is protected and individuals are engaged in voluntary transactions. This indicator was based initially on objective quantifiable variables in most of its components, in the form of macroeconomic indicators, while omitting key elements of law and regulations affecting economic freedom.

However, this has been corrected in Gwartney and Lawson (1997) and subsequent publication of the data sets for 1997-2000; additional components on legal and regulatory elements have been added to the data sets. Since 2000, the Fraser Institute has been looking at 38 components which are divided into five major components to rate the countries12 on a scale of zero to ten on an annual basis. A score of ten means a country is the most free, and a score of zero means a country is the least free. Ratings are available for some countries since 1970 (at five-year intervals).

Another database that provided an indicator of property rights protection is the Heritage Foundation (see Johnson et al., 1995). The degree to which property rights are guaranteed is scored between one (very high) and five (nonexistent). Unlike the Fraser Institute, the property rights index is reported as a separate score and it is available annually since 1996.

A longer time run of property rights is provided by Fedderke et al. (2001) for South Africa dating back as far as 1950 and spanning up to 1997, while recently Gwenhamo et al. (2008) provided a similar index for Zimbabwe, Zaaruka et al. (2010) for Namibia, Fedderke et al. (2010) for Malawi and Lourenço Jr et al. (2010) for Zambia. This is based on the legal statutes that govern immovable property.13 For the purpose of this study, the key point to note is that all of the proxies used in constructing property rights are broadly defined,14 while the focus of this study is specifically on the right to own immovable property and the qualities of these rights.

(ii) Political Rights and Civil Liberties Indicators

10See North (1991) for a general discussion.
12By 2006, Tanzania was rated 79 of 141, with a score of 6.5.
13The concept of property rights is based on the Honore’s definition of ‘full liberal ownership’ as adopted by Waldron (1988).
14Except for work by Fedderke et al. (2001) and Gwenhamo et al. (2008).
While the property rights indicators experience some deficiencies, recent developments in political economy have quantified political institutions. Despite the availability of several empirical measures of political institutions, there is however no universal agreement among scholars on the ways of empirically measuring political freedom or political democracy. Among the indices are quantitative measures of political rights and civil liberties produced by Freedom House on an annual basis since 1972, for almost 165 countries. The political rights measure looks at a number of issues that allow for degree of political competition and permit people to choose their leaders freely. The civil liberties measure on the other hand considers measures of the rule of law and judiciary independence. Each right is scaled from 1 (free) to 7 (not free).

Another data set is the Polity IV database popularised by the work of Gurr (1975) and Jaggers and Gurr (1995). The main variables captured are institutionalised democracy, which signals the existence of institutions or procedures through which citizens can express their political preferences meaningfully, and the institutionalised autocracy index, which signals an autocratic state in which competitive political participation is suppressed or prohibited. These data are available for few independent states for the period 1800-2007. Most countries are included in the sample upon attainment of independence status.

The Database of Political Institutions (DPI) compiled by the Development Research Group of the World Bank is among the latest developments on political indicators. Beck et al. (2001) present the database and demonstrate its use. The database covers around 177 countries for the period 1975-2006 and it contains a variety of variables mainly measuring aspects of the political system and electoral rules. The major categories are the chief executive variable, looking at years in office, the chief executive's party affiliation; electoral rules looking at the type of the voting system and whether or not elections are affected by fraud. Others are measures of the political party fractionalisation index, indices of checks and balances and federalism.

(iii) Judicial Independence Indicators

This is the least-considered indicator compared to the previously discussed indicators. This is partly due to the difficulties of measuring and defining the concept. A couple of researchers have published several criteria or variables the judiciary must meet, based on specific laws or procedures, to constitute judicial independence (La Porta et al. 2004; Feld and Voigt, 2003), while others focus mainly on the concept of the rule of law (Kaufmann et al. 2009) and courts' dispute-resolution mechanisms (Djankov et al., 2003). The literature or measurements that focus on the number aspects of judicial institutions mostly agree that a truly independent judiciary has three main characteristics. First, there is clear separation of the judicial system from other branches of government. Second, the judicial system is impartial; i.e. the judicial decisions are not influenced by the judge's personal interest in the outcome of the case. This also includes the idea that judges are not selected primarily because of their views, but on merit. Lastly, judicial decisions, once rendered, are respected.

The work of La Porta et al. (2004) covered the power and reach of the judicial system for 71 countries in a single database in 2004. The measure of judicial independence is based on two factors: (i) whether judges of the highest courts have life tenure, and (2) whether judicial decisions are a source of law.

Closest to the current work is Feld and Voigt (2003), which provided a de jure and de facto judiciary independence index that covered the 77 countries for the year 2000. The de jure indicator comprises twelve variables, including life tenure and appointment by professionals. The de facto indicator is composed of eight factors; including the average length of actual judicial services and how often laws relating to courts have been changed. These indicators are available cross-sectional only.

The work of Djankov et al. (2003), on the other hand, focuses on measures of dispute resolution in courts. The study provided the legal origin and legal formalism index for 109 countries for the year

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15 Data on Tanzania are available from 1961 to 2007.
16 Tanzania data are available from 1975 to 2006.
2000. The legal formalism index is made up of seven broad aspects, including the use of professional judges as opposed to lay judges and self-representation, and the need to make written as opposed to oral arguments at various stages of the process.

The rule-of-law dimension which constituted one of the components of the governance indicators compiled by the World Bank (Kaufman, Kraay, & Mastruzzi, 2005, 2009, and Kaufman, Kraay, & Zoido-Lobatón, 1999) is a perceptions-based indicator. This captures the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police and the courts, as well as the likelihood of crime and violence. This variable is available annually for 2002 to 2008, although data exist for 1996, 1998 and 2000.

It is clear from the above discussion that most of the available indicators either represent a snapshot at a point in time or are cross-sectional in nature, thus limiting their usefulness in single-country time-series empirical work.

(iv) Political Instability Indicators

Many different variables have been employed to reflect the concept of political instability in literature. While there have been several attempts to construct a single indicator, there is no universal agreement among scholars given the dimensionality embodied in the concept of political instability. Therefore, a number of data sets exist which provide many indicators that can be used as possible proxies of political instability. This includes among others the Banks (1971) Cross-Polity-Time-series, which includes variables measuring civil protest (general strikes, riots and anti-governmental demonstrations), politically motivated aggression (guerrilla warfare, assassinations and purges) and political regime instability (coup d’état and revolutions). The data coverage for Tanzania starts from 1961.

The other source of political instability proxy data are major rating services such the International Country Risk Guide (ICRG henceforth), which covers political risk evaluations. The commonly used indicators are government instability, internal conflicts, external conflict, military in politics, religious tensions and ethnic tension. The indicators are available on an annual basis starting from 1984.

The Database of Political Institutions by Beck et al. (2001) also offers indicators that can be used as political instability proxies. These include indicators such as polarisation and tenure of the chief executive. The database covers around 177 countries for the period 1975-2006.17

2.3 A Framework for the Evaluation of Measurement of Institutions

Recent debates question the manner in which institutions are defined and measured. According to Glaeser et al. (2004), the frequently used measures of institutions18 do not abide by the definition of institutions as postulated by North (1990). Glaeser et al. (2004) argued that most of these indices do not capture the formal constraints. Instead, these variables tend to measure outcomes. As such they do not meet the criterion of permanency that North refers to.

Similarly the work of Arndt and Oman (2006), criticise the World Governance Indicators as developed by Kaufmann et al. (2003. Their arguments are that the World Governance indicators lack comparability over time. Kurtz and Shrank (2007) additionally express their concerns with regard to subjectivity in the construction of the World Governance Indicators. Their argument is that these indicators are perception-based measures of governance and highly correlated with each other.

As a way forward, the work of Voigt (2007: 23) makes a proposal on how to measure institutions empirically. According to Voigt (2007: 23), the measures of institutions should be precise, objective and take into account de jure as well as de facto elements. By doing so, the definition of North (2006) is embraced. The current study aligns itself with this argument and attempts to limit the common

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17 Tanzania data are available from 1975 to 2006.
outlined problems by constructing measures that are de jure in nature based on formal legislation. These allow for the assessment of the rules of the game, rather than outcome. To minimise the influences of the authors’ biases, multivariate techniques are used to compile the overall index.\textsuperscript{19} Separate de facto indicators are constructed using observable statistical data.

3 Methodology

The study employs techniques and methods that minimise problems as outlined in section 2.2.2 of this paper. Fedderke et al. (2001) argue that in order to avoid outcome-based measures and to develop measures in line with North’s definition, detailed analysis of formal legislation ought to be used. This involves annual ratings of the status of rights based exclusively on formal legislation in constructing the de jure position in the evolution of property rights, political and civil liberties, and the judicial system. The application is to Tanzania during the period 1884-2008.

3.1 Technique and the Method

The construction of indices is much like mathematical or computational models. According to Nardo et al., (2005), the robustness of any index depends as much on the craftsmanship of the modeller as on universally accepted scientific rules for encoding. The construction of indices generally involves four steps, i.e. the development of a theoretical framework; scaling and rating; weighting and aggregation; and verification (McGranahan et al., 1972), steps which are applied in this paper.

3.1.1 Development of a clear theoretical framework

The first step in constructing the composite indicators is the development of a clear theoretical framework which provides the basis for the selection and combination of each sub-component into a meaningful composite measure. The following institutional indicators based on the accepted definitions are constructed for the period 1886-2008.

(i) Property Rights Indicators

Demsetz (1967) defines property rights as the liberty or permission to enjoy benefits of wealth while assuming the costs which the benefits entail. Our indicator is constructed with particular reference to immovable property. This covers all legislation passed that affects the issue of immovable property, with special reference to land rights in Tanzania.

The ideal set of property rights will comprise of the following seven incidents, based on Honore’s definition of “full liberal ownership” as adopted by Waldron (1988) and used by Gwenhamo et al. (2008).

1. Right to possess: The owner at his own discretion is allowed to posses and dispose of his property.
2. Right to use: An owner is allowed to use his/her property at his/her own discretion, without contradicting the law.
3. Right to manage: An owner is allowed to manage his/her property at his/her own discretion without interference – in case of leaseholds.
4. Right to capital: The right to use property in financial transactions, including as collateral. Also includes the freedom to use of property for sublet and rent to earn capital.
5. Right to security: Ownership is protected from expropriations and interference by others.

\textsuperscript{19}See the discussion in the next section on the techniques employed.
6. Incident of transmissibility: An owner can transfer the rights to a specific person. This includes the right to sell, or give away, or mortgage, or buy or inherit.

7. Liability to execution: An owner could be held liable for liabilities emanating from his property which injuriously affect others.

The understanding is that any interference with any of these bundles of rights may restrain the freedom that can be enjoyed from the property.

(ii) **Political Freedom**

This measure is composed of indicators of political rights and civil liberties based on theoretical dimensions of a contemporary liberal democracy advanced by Gurr and Jaggers (1995). The political rights indicators are based on the degree to which individuals in a state have control over those who govern. The civil liberties indicator measures the rights of the individual, including freedom of expression, assembly, association and religion. The following key features are evaluated in accordance with the written laws:

1. Voting Rights/ Franchise: This refers to universal suffrage where the right to vote is not restricted by race, gender, belief, wealth or social status.

2. Freedom of Association: The right of individuals who share similar interests to come together and form organisations that represent their interests and views.

3. Freedom of Assembly: These uphold the right to peaceful assembly and limit the use of force by authorities in controlling the assemblies.

4. Freedom of Expression: The right to freedom of expression upholds the rights of all to express their views and opinions freely. This also includes media freedom.

5. Extension of Arbitrary Executive Power: This deals with constitutional provisions that limit and exclude the use of discriminatory discretionary powers vested in the executive in the applications of laws.

6. Freedom of Movement: The right of movement and the right to reside in an area of choice within the territorial boundaries of the relevant polity.

7. Independence of the judiciary and Legislature: This relates separation of power between the executive, judicial and legislative branches of government.

8. Academic Freedom: The right to freely teach or learn without unreasonable interference from authority. This also encompasses the right to access any institution of education irrespective of race, gender, belief, wealth or social status.

9. Government Secrecy/ indemnity: Deals with the applications of laws that act to conceal information to the public.

10. Due process of law: Is based on the principle that the government must respect all of the legal rights that are owed to a person according to law. This calls for protection of individual persons from the state.


12. Others: is a residual category that captures all rights and freedom relating to political freedom that cannot be classified under any of the specific dimensions. One key right relates to labour repression which was quite important during the colonial period of Tanzania, and other African countries in general.
(iii) **Judicial Independence**  

The judicial independence index reflects the independence enjoyed by legal enforcement institutions, here proxied by the judges, in passing their judgement (Feld et al., 2003). It is important to recognise the differences between the independence of the judiciary and political freedom as measured in this study. The Political freedom index has to do with whether or not political and civil rights are guaranteed, while judicial independence is about ensuring that citizens of that country are treated fairly and political and civil rights are protected. The judiciary plays an oversight role to ensure liberal democracy. To achieve the oversight role, the judicial independence relies on the principle that judges must decide cases fairly and impartially, relying only on the facts and the law.

The conceptual framework for assessing judicial independence captures the dynamics that encourage or impede judicial independence. This framework consists of two parts. The *first part* focuses on the influence of the legal foundations as provided for in the legislation over the judicial system. This forms the de jure measure of the judicial system. Based on Feld et al., (2003), these are summarised by five broad categories assessed to highlight the status of the de jure judicial independence.

1. Establishment of courts according to law (constitutional separations of power from arms of government in law).
2. Appointment procedures, including compensation
3. Impartiality: Judicial decisions are not influenced by the judge’s personal interest in the outcome of the case. Judges selections are based primarily on merits and not on their political views or affiliations.
4. Access to Courts and Courts record: The people rely on courts to protect their access to justice and to protect their legal rights; public access to court information.
5. Judicial Accountability: Ability to do what is right, for instance, the ability of high courts to reverse erroneous lower court decisions on appeal. Enforcement of ethical standards and administrative rules between judges and their peers.

The *second part* examines the factual implementation of various unwritten constraints that influence and control the judiciary. This indicates the de facto indicator focusing on actual country experience. The approach is guided by the work of Feld et al., 2003, whose eight variables are summarised and accessed in these five broad categories for indication of the de facto judicial independence status.

1. Number of judges removed from office (includes reassigned duties such as ambassadorship, etc.)
2. Number of times the court’s decision is over-ridden by other branches (Contempt of Court)
3. Annual number of corrupt judicial officials who either are arrested or whose cases are dismissed or reprimanded. This reflects judicial corruption (bribery) which tends to undermine the impartiality of the judicial process within the court system.
4. Number of harassed judicial personnel; this includes issues of verbal and physical attacks directed towards judges due to rulings that are unpopular with some cliques.
5. Incidence of side-stepping the judiciary

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20 For the purpose of this study judicial independence and the independence of the judiciary is used interchangeably to mean the same concept.
(iv) Political instability:

This constitutes socio-political unrest and disturbance; the choice of the sub-components is guided by the work of Fedderke et al. (2001).

1. The number of politically motivated arrests per year
2. The number of political parties and publication banned per year
3. The number of declarations and renewals of states of emergencies per year
4. Incidents of war-related armed attacks on the general public per year
5. Township strikes and riots

3.1.2 Scaling and Rating of Indices

According to Booysen (2002), scaling of indices entails the ordering of subcomponents/variables in some meaningful way. This entails the transformation of variables into ordinal scales. Accordingly, the scaling entails the reading of enacted legislation to translation into numbers. Relying on the scaling categories in Fedderke et al. (2001) as reference point, the conventional linear scaling transformation method is applied. The composite indices are scaled from 0-100, with 100 representing an ideal state or type of rights being guaranteed under the respective composite index. In terms of the sub-components, the raw points are awarded using scales, which together aggregate to a hundred score. This process entails some inter-subjective judgements.

(a) Property Rights Indicators

It is argued that property is a general term for the rules that govern people’s access to and control of things like land, natural resources, the factors of production and also inventions and other intellectual products. These systems of rules are assumed to exist in any society to avoid conflict and ensure cooperation, production and exchange. The common property arrangements are common property and private property and thus form the core of this study. Guided by the normative ideal criteria, the rating instrument is based on a list of seven incidences of rights as discussed in section 3.1.1.

The initial weights are derived from the work of Gwenhamo et al. (2008). The right to possess are scaled from 0-20, the right to use, right to capital, right to security and right to transmit are scaled from 0-15. The right to manage and liability to execution are scaled from 0-10 (see table 1). Based on the weights, the following rating criteria are developed within the paper to guide the readers on the outcome of the rating the pieces of legislation.

Scores are awarded to various sub-components using varying scales. A lower score indicates an enactment of legislation that curtails the liberty or permission to enjoy the property, while the opposite is true for a higher score. Summing across all incidences gives a total score of 100, representing an ideal set of property rights being guaranteed under the respective tenure index.

(b) Political Freedom

21 This is relevant for the construction of the de facto indicators due to the use of qualitative data.
22 This requires points of reference relative to which indicators can be scaled (Drewnoski, 1972). A minimum and a maximum value are usually identified for each of the variables.
23 The sub-component weights are adopted from the work of Gwenhamo et al. (2008), to maintain comparability in the datasets and these reflect the intersubjective judgements due to the independent verification by experts.
24 Factor analysis technique was used in obtaining the component weights contribution into the single composite indicator.
The rating instrument is based on the twelve key features covering both notions of political rights and civil liberties. Based on the work of Gwenhamo et al. (2008), eight of the sub-components were scaled from 0-10, yielding a total of 80 raw points. This category includes voting rights, freedom of association, freedom of assembly, freedom of expression, the extent of arbitrary executive power, government secrecy or indemnity, due process of law and freedom of movement.\(^{25}\)

The other four categories were scaled from 0-5, and these include academic freedom, religious freedom, independence of the judiciary and the legislature\(^ {26}\) and a residual category. The following scaling matrix (see table 2), is compiled to guide the outcome of the rating instrument.

Raw points are awarded to the various sub-components based on scales, whereby an increase in the score indicates a move toward contemporary liberal democracy, and a decrease in the score indicates a move away from the ideal.

(c) Judicial Independence (de jure)

The rating instrument is based on five factors that serve as guiding principles in ensuring the formal (de jure) independence of the judiciary (see table 3). Due to the importance of both the high and lower courts in the countries under review, the five indicators were evaluated at both levels, thereby leading to ten sub-components. In this paper, these sub-components enjoy equal weighting of 10-point scale. Summing across all sub-components\(^ {27}\) gives a total score of 100, representing an ideal state of judicial independence.

(d) Judicial Independence (de facto)

This index relates to the de facto measure of the independence of the judiciary. The idea is to capture the quantitative information as reported through the variety of materials ranging from newspapers to political magazines as well as governmental and non-governmental reports.\(^ {28}\) Information on some sub-components is seldom available due to non-reporting of certain activities, particularly the sub-component judicial corruption. In order to standardise the sub-components, five scales are compiled in table 4.

(e) Political Instability

Some episodes of instability have effects that are disproportionate to their fatalities. In order to standardise the variables, five scales for recording annual magnitudes for each variable are discussed in table 5.

3.1.3 Weighting and Aggregation of Index Components

The study relies on multivariate techniques by applying principal component analysis and factor analysis, which present an empirical and relatively more objective option for weight selection (Ram, 1982; Slottjie, 1991). Principal component analysis is applied to the de facto indicators while the factor analysis is used in obtaining the components weights contribution into the single composite indicator for all de jure indicators. The two concepts are related but not identical.

In the principal components analysis, the components are weighted with the proportion of variance in the original set of variables explained by the first principal component of that particular

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25 The freedom of movement is increased to a 10-point scale due to the importance of the right for Tanzania due to colonial history.

26 It should be noted that in the paper of Gwenhamo et al. (2008), this sub-component was initially given a 10-point scale. The different treatment in this paper is to limit its influence on the specific indicator, to avoid a web of association with the judicial independence indicator.

27 The importance of certain components over others in the overall composite index was determined through the use of factor analysis to minimise the authors’ biases.

28 The index is based on verifiable facts and not on subjective evaluations.
component. According to Ram (1982), the technique has the advantage of determining the set of weights that explains the largest variation in the original component.

Factor analysis assigns the largest weights to the indicators that have the largest variation, independently of prior views on their economic importance. These properties are particularly desirable in order to minimise the inherent subjectivity in the construction of indicators. In this way, the authors' biases are kept to a minimum.

3.1.4 Checking of Robustness and Validity of the Composite Indices

Composite indices also need to be validated. The common used measure of validity is the use of statistical correlation with other such measures\(^ {29}\). The study will rely on the Spearman's rank correlation coefficient, which is appropriate for ordinal measures.

3.2 Data Sources

The data used to construct the de jure institutional measures relies mainly on primary sources. Detailed pieces of legislation with regard to land, political rights and civil liberties were obtained from the Colonial Gazette and Statutes of Tanzania. This was mainly obtained from the National Libraries and National Archives and cover mainly the period of colonial authority. For the post-independence period, pieces of legislations are obtainable from the Tanzanian Parliamentary database.

The construction of de facto indicators, i.e. political instability and independence of judiciary, relied on archival materials ranging from newspapers to political magazines. The other sources of such information include human rights groups and NGO reports in Tanzania.

3.3 Anticipated Caveats

The study recognises a number of caveats that are inherent in long-period studies such as this one, particularly when it involves the development of composite indicators and data gathering.

**Coherence and continuity**: The period under review is characterised by major changes such as changes in colonial powers, World War I and II and a protracted period of socialism for Tanzania. The manner how rights are conceived and defined has changed considerably over the period under review. This underscores the issues of conformity in the interpretation of historical meaning of different rights.

4 The Nature of the Institutional Framework in Tanzania 1884-2008

This section discusses the interpretation of property rights, political freedoms and political instability indices for Tanzania for the period 1884-2008.

4.1 Property Rights in Tanzania

The nature of property rights that evolved over a number of years in Tanzania is an outcome of the land tenure system implemented during both German and British colonial times, and modified after independence by the socialist government and again by the new democratic government in 1992. This led to four distinct major transformations in the land tenure system as identified in the subsequent paragraphs (see James, 1971; Fimbo, 1992; Kionde 2004):

\(^ {29}\)See Arat (1991) and Fedderke et al. (2001), among others.
1. The introduction and promotion of plantation agriculture under German administration introduced the formal distinction between the freehold tenure and non-freehold land system in the country. Prime agricultural land was generally allocated in freehold titles, to white settlers. All arable land which was at the disposal of the chiefs or indigenous communities was vested in the German Empire and could be alienated by the Governor.

2. The system of all arable land holding continued to change under the British Administration, whereby all rights over land were placed under the control of the Governor. The rights of occupancy were introduced in the country and in 1928 it was re-defined to include the rights of black African in land holding.

3. The third transformation was introduced in the post-independence period, when all freehold titles were converted into leaseholds, thereby abolishing the freehold tenure system created under German occupation. A new tenure emerged known as the Ujamaa village or collective ownership land rights. Compulsory acquisition of black African land by the government and land disposition was prevalent as the controlling power of chiefs over land was rendered obsolete after independence in 1963; and

4. The final transformation started in 1984, with the introduction of a Bill of Rights in the Constitution of 1977 that provided for the protection of land ownership. The 1999 Land Act no.4 and Village Act no.5 re-introduced the concepts of the communal land village, as well as individual and family land ownership.

4.1.1 Outcomes of rating
Due to the distinct time periods that characterised the history of Tanzania, a single property rights indicator would not reflect the differences in rights enjoyed by different holders. The evaluation of the security of rights over property was undertaken separately for the two different tenure systems, i.e. the freehold tenure system and the customary or non-freehold tenure system. An attempt was made to construct a single indicator using a multivariate technique.30 The discussion begins with the evaluation of the freehold and non-freehold tenure systems, before focusing on the single composite indicator of property rights in Tanzania. Figures 1 and 2 present the sub-components of the freehold tenure system and customary or non-freehold tenure system, respectively.

4.1.2 Freehold versus Non-freehold tenure system in Tanzania31
The distinction between the qualities of rights in freehold against non-freehold tenure systems was introduced as early as 1895, through the introduction of formal laws regulating land rights in Tanzania. The passing of the Imperial Decree regarding Creation, Acquisition and Conveyance of Crown land in 1895 recognised the conveyance of ownership or lease through issued title deeds for settlers, while the proof of ownership for blacks was recognised through effective occupation. Black Africans therefore were defined to have occupational rights on the land.

The period between 1903 and 1915 witnessed a noticeable improvement in both tenure indices (see figure 3). This was due to the Imperial Ordinance of 1902 and Land Registration Ordinance of 1903, which formalised land registries for whites and blacks respectively. It should be noted, however, that registration of land for black Tanzanians was only permissible as long as it was located within the boundaries of the communities or villages. The period between 1917 and 1920 marked a decline in the status of the property rights index in the freehold tenure system, as all German-owned properties

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30 In the case of Tanzania it is impossible to obtain figures based on racial groupings since 1960, due to the Census design. Therefore, the composite index is based on factor analysis.
31 The terms “customary tenure system” and “non-freehold tenure system” are used interchangeably in this study.
were transferred to the Custodian of Enemy Property\textsuperscript{32} through proclamation no.5 of 1917. The Land (Assessment of Compensation) Act of 1919, however, instituted compensation to the affected owners.

During 1923 to 1928, an improvement in the freehold tenure system was witnessed, due to the passing of Land Ordinance No. 3 of 1923 and Land Registry Ordinance no.15 of 1923. Both ordinances recognised and allowed for registration of freehold titles held dating back from the German era. All freehold titles that were granted by the German administration continued to exist. On the other hand, a slight improvement in the security of rights in non-freehold tenure came in 1928 with the application of the Land Ordinance of 1928, which accorded the status of deemed right of occupancy for the black Africans.

The difference in the quality of rights between the two tenure systems between 1926 and 1945 is mainly on account of colonial state intervention on the rights of use and management through regulations, orders and by-laws imposed on black Africans. The by-laws were made through so-called native authorities which were established by the Governor under the Native Authorities Ordinance no.8 of 1926. The native authorities were empowered to make orders in terms of land cultivation and failure to obey resulted in a fine or imprisonment. Other pieces of legislation which restricted the ability of individuals to use the property included the Native Coffee (Control and Marketing) Ordinance no.26 of 1937 and the Native Tobacco (Control and Marketing) Ordinance no.39 of 1940. These Ordinances prescribed stringent measures governing sowing, planting, cultivation and preparation to modify farming habits of black Africans. In 1946, the Declaration of the Trusteeship Agreement, under Article 8, which guaranteed the respect and the protection of Africans’ customary land rights, signified some improvement under the non-freehold tenure system.

The improved status of rights under the freehold tenure system continued in the 1950s under the British Administration, while a systematic decline in the non-freehold tenure was observed. The enactment of the Land Registration Ordinance no. 36 of 1953 strengthened the rights under freehold tenure system. The act made special provision for all granted rights to be registered, including former German titles of absolute ownership. This act repealed and replaced all earlier ordinances. However, all forms of ownership held dating back to the German period were recognised. On the other hand, the application of the National Parks Ordinance of 1959 weakened the rights under the non-freehold tenure system. The ordinance made provision to extinguish customary land rights formally in all areas declared to be national parks.

With independence in 1961, the Socialist government made land ownership and control its major pre-occupation. This resulted in a major deterioration in both the security of rights in the non-freehold and freehold tenure systems. The period between 1963 and 1974, served a major blow to rights under the freehold tenure system, while heavy attacks on non-freehold rights was witnessed between 1973 and 1992.

In 1963 the first deterioration in the status of property rights under freehold tenure as a result of the enactment of Freehold Titles (Conversion) and Government Leases Act no.24 of 1963 was witnessed. The act converted all estate into government leases for 99 years, thereby limiting the perpetual time frame of interests in land. It should be noted that this law did not include expropriation of land. The nationalisation of properties, between 1973 and 1974, led to a further decline in the status of the property rights index under freehold tenure. Specific laws such as the Coffee Estates (Acquisition and Re-grant) Act of 1973 and the Sisal Estate (Acquisition and Re-grant) Act of 1974 gave effect to that.

The passing of the Nyarubanja\textsuperscript{33} Tenure (Enfranchisement) Act no.1 of 1965, which was enacted to abolish future holdings in nyarubanja tenure, introduced the systematic decline in the non-freehold tenure system. The act provided for land to be expropriated from landlords and to be offered to

\textsuperscript{32} It was a British colonial department that was empowered to appropriate property in Tanzania owned by German nationals.

\textsuperscript{33} The nyarubanja system was a feudal kind of land holding in some parts of Tanzania, whereby one person (within the tribe) owned a large tract of land (called Nyarubanja) which was partitioned and rented out to tenants.
tenants. This was further re-enforced through the Customary Leaseholds (Enfranchisement) Act no.47 of 1968. A deterioration of the status of non-freehold tenure property right index in 1973 resulted from the enactment of the Rural Farm Lands (Planning and Utilization) Act no.14 of 1973. The act made provisions for government to seize land for planning purposes.

The adoption of the Bill of Rights in 1984, by amending the Constitution of 1977, marked improvements in both indices. The Bill of Rights guaranteed for the first time in the history of Tanzania the right to possess and the protection of acquired property in accordance with the law. The non-freehold tenure system however, continued to be attacked as the Government enacted by-laws to extinguish customary land rights in certain parts of Tanzania in 1986 (see figure 3). These by-laws continued to be extended to other parts between 1987 and 1989. The biggest blow to the status of properties held under the non-freehold tenure system came in 1992, when the Government sought to extinguish customary tenure under the Land Tenure (Established Villages) Act no.22 of 1992. This was however ruled unconstitutional and removed in 1994 from the statute book by the Court of Appeal of Tanzania.

Furthermore, improvements in both indices are also noticeable in 1999 with the new Land Act no.4 and the Village Act no.5 of 1999, which repealed the Land Ordinance of 1923 and other colonial laws. The new Land Act makes provision for increased security of tenure, increased possibilities of disposition such as inheritance, selling and sub-lease.

4.1.3 Interpretations of the Property Rights Index

Factor analysis was used to obtain a single indicator of property rights. The technique placed a 51 percent weight contribution on freehold tenure, while the customary tenure system accounts for 49 percent in the single composite (see figure 4). This is expected, given that most laws passed affected the two systems equally with special reference to the period after independence in 1961. The analysis is based on the composite property index, which represents the nature of the property rights framework for the rest of the study, as plotted in figure 4.

Changes in the property rights index are observed as early as 1891, with the passing of the land acquisition imperial ordinance of 1891, which proclaimed that the colonial government had the right to own all un-owned land within the German spheres of interest in German East Africa. This was reinforced in legislation, through the Crown Land Ordinance of 1894, which declared that all land in German East Africa was un-owned, unless proof of documentation could be presented. In the case of blacks, proof of ownership could be shown through effective occupation.

The period 1903-1915, witnessed a slight improvement in the institutional framework due to changes in laws that allowed land registration for whites through the Imperial Ordinance of 1902 and the Land Registration Ordinance of 1903. However, the commencement of World War I led to a decline of the property rights index as freehold title rights belonging to German nationals were deemed enemy property and renounced in favour of the Custodian of Enemy Property according to Proclamation no.5 of 1917.

The period 1923-1960 saw an improvement in the status of the property rights index. Of particular interest was the introduction of the right of occupancy system in Tanganyika. The Land (Amendment) Ordinance no.7 of 1928 formalised the customary land rights, which were defined as a right to use and occupy land. Improvements were observed in 1946 and the period 1953-1960, due to the declaration of the trusteeship agreement and the introduction of a number of land registries ordinances respectively (see figure 4). The initial period after independence in 1961 saw the adoption of most colonial laws with the substitution of the word “President” for the word “Governor” in the application of Land Ordinance of 1923 and its amendment in 1928. Therefore, the power of granting land became vested in the President of the United Republic of Tanzania.

The year 1963 marks the start of deterioration in the status of property rights, a trend that lasted for almost 16 years (see figure 4). This was realised through the introduction of the Arusha declaration and the subsequent nationalisation policies that were enacted during the period 1967-
1983. This resulted in severe declines in formal ownership rights under the freehold tenure system as well as massive loss of customary land rights in favour of the Ujamaa Villages or government communal villages. The 1970s were arguably the most significant period of deterioration in the formal structure of the property rights index due to an attack on both the freehold tenure and customary tenure system.

Improvements in the status of property rights were witnessed with the amendment of the 1977 Constitution in 1984, with the introduction of the Bills of Rights, which guaranteed for the first time in the history of Tanzania the right to possess and the protection of acquired property in accordance with the law. Furthermore, improvements are also noticeable in 1999 with the new Land Act no.4 and the Village Act no.5 of 1999, which repealed the Land Ordinance of 1923 and other colonial laws.

4.2 Political Freedom in Tanzania

The difference between the German and British administration can be classified into the nature of the system they had i.e. Native policy or direct rule versus Indirect rule (Austen, 1968). Before 1896, the German military administration was exercising a great deal of diplomacy by peacefully negotiating with black Africans. The period 1896-1906 introduced a forced change on black Africans' traditional structures. The Germans exercised their authority with disregard and contempt for existing local structures and traditions. The British Colonial Administration ruled indirectly through African leaders.

The post-independent political developments in Tanzania are characterised by three distinctive events, which affected political and economic institutional formation. First, there was a declaration of a one-party state in 1965, after multi-party elections prior to independence in 1961. Secondly, the departure from parliamentary supremacy to party supremacy in 1975 compromised the functioning of all other arms of government. Article 3 of the Interim Constitution amendment called for all political activities in Tanzania to be conducted by or under the auspices of the party. The final event is the transition to multiparty democracy in 1992, which witnessed the restoration of multi-party political democracy. Tanzania is among the very few countries at independence which had adopted a constitution with no bill of rights (Martin, 1974; Shivji, 1990).

4.2.1 Outcomes of rating

In assessing the quality of political freedom in Tanzania, the base is the period before 1884, in which customary law only was applicable. This is contrasted with the period of imperialism which followed, with codification and the application of German law to the territory from 1886 until 1920. Afterwards, the period that followed witnessed the application of common law under the British Foreign Jurisdiction Act, and lasted until 1961, when Tanzania gained its independence. Given the long period of coverage, the manner in which rights are conceived and defined change; hence the indicators should be treated with caution.

Figure 5 plots the sub-components of the political freedom index. The figure shows how each of the 12 categories adds to the overall index. Figure 6 presents the composite political freedom index and is discussed next.

4.2.2 Interpretations of the Political Freedom Index

The presence of colonialism in Tanzania was introduced by the passing of the protectorate law of 1886. The stream of laws passed between 1895 and 1903, impinged on the fundamental political and civil rights of black Africans in the quest of consolidating a European elite base on the prevailing political and social structure in Tanzania. The electoral franchise and legislative functions were strictly limited to the Europeans (whites) through the provisions of the Governor’s Council Ordinance of 1903 and the Native Jurisdiction Order of 1896. The Council Ordinance made provision for the
establishment of an advisory body to the Governor and its composition was limited to the white community only. Minimal improvements in the quality of the political freedom index are noticeable between 1908 and 1913 (see figure 6). This is mainly on account of the Germany Tanganyika Memorandum, which recommended the review of the corporal punishment orders that paved the way for the passing of the Civil Procedure Code of 1908. The Code specified ways and procedures of conducting civil cases in an orderly manner.

The initial British occupation period saw enhancement in the formal structure of rights with the passing of the Whipping Regulation dated October 5, 1918. The Whipping Regulation made provision for corporal punishment to offenders exceeding 12 strokes to be approved by the lower courts rather than police officers. The application of the Criminal Procedure Code as applied in India in 1919, however, comprised due process of law and the independence of the judiciary, as the charges against the accused were not framed by the police until the magistrate had heard all the evidence for the prosecution.

The period 1921-1935 was characterised by a decline in the quality of the political freedom index, with the passing of stringent laws that stifled the political and civil rights of the majority of black Africans. Freedom of movement, association and due process of law were stifled during this period due to the enactment of legislation such as Destitute Person’s Ordinance no.1 of 1923. The ordinance made provisions for the control of movement of unemployed blacks through imprisonment or deportation. Furthermore, due process of law was highly compromised with the passing of the Deportation Ordinance of 1921-cap38. The ordinance gave the Governor wide discretionary powers to deport a person from one point to another within the country to ensure peace and order.

Other lists of stringent laws were Collective Punishment Ordinance no.24 of 1921, Official Secrets Ordinance no.10 of 1922, Master and Native Servants Ordinance no.32 of 1923 and its subsequent amendments in 1926, 1928 and 1931. The Trade Union Ordinance no.23 of 1932 imposed restrictions on the conduct of trade unions within the territory, thereby compromising the right to association and assembly during the period under review.

The decline in the political freedom index continued further in the period between 1936 and 1945. More rights-curtailing laws passed during this period were the compulsory military and other service ordinance no.23 of 1940, amendment to the Master and Native Servant no.29 of 1941, which made a provision for penalty for breach of contract by the servant. The Penal Code Ordinance no.21 of 1945, section 176 criminalized vagrancy thereby curtailing the freedom of movement within the territory.

The period between 1946 and 1959 saw a slight improvement in the political freedom index on the back of waves of strike movements in most parts of Tanzania. There was noticeable improvement in the employment rights of many workers with the introduction of the Master and Native Servants (Recruitment) Ordinance of 1946. The Worker’s Compensation Ordinance no.41 of 1949 provided for the compensation to workers for injuries suffered in the course of their employment. The Employment Ordinance Cap.366 of 1957 consolidated all laws relating to labour and regular conditions of employment. This marked the end of an era of the Master and Servants laws. During this period, laws were enacted which sought to increase enfranchisement of black Africans and introduced an equal representation in the legislative council. The laws included, among others, the National Assembly (Powers and Privileges) Ordinance Cap359 of 1955 and the Territorial Election Ordinance of 1959.

The inception of independence in 1961 manifested slight improvements in the structure of formal political rights in Tanzania. The slight improvement followed the enactment of Education Ordinance no.37 of 1961, which repealed discrimination laws in the provision of education in Tanzania. The Local Government Elections (rural areas) Act of 1962 enhanced the enfranchisement of rural black Africans. The process of improvement in the formal structure of rights was not fully carried over as Tanzania adopted a constitution without a bill of rights. Laws that curtail personal freedom which were passed during the colonial era, therefore, were upheld and other new legislation mimicking the old laws were enacted, in case of repeals. The new laws included the Preventive Detective Act no.60
of 1962, which in greater extent was similar to the Deportation Ordinance of 1921, which was still applicable. The ordinance gave the President powers to arrest and indefinitely detain without bail any person considered dangerous to the public order or national security. More additional powers of detention were provided under the Regional Commissioners Act of 1962 and Area Commissioners Act no.18 of 1962. These acts permitted regional and district commissioners to arrest and detain for 48 hours, persons who might disturb public tranquillity.

Freedom of assembly and the right to organise which was enjoyed a few years before independence lasted only until 1964. The introduction of the National Union of Tanganyika Workers (NUTA) Act of 1964 banned independent trade unions. The period from 1965 to 1975 saw a steady decline in the formal structure of rights, with the formalisation of a one-party system via the Interim Constitution Act no.18 of 1965. A variety of laws were passed which stifled the freedom of association and assembly such as the Cooperative Societies Act no.27 of 1968, which curtailed the activities of cooperative unions. The Police Force Ordinance Act no.13 of 1972, section 40, required permits to be obtained in order to hold meetings or to organise processions.

The formal structure of rights worsened further between 1975 and 1985, with adoption of the supremacy of the party over the other arms of government. This was implemented through the Interim Constitution Amendment Act no.8 of 1975, which called for all functions of all organs of the state to be performed under the auspices of the party. This severely extended the arbitrary exercise of executive power, and hence decreased the independence of the judiciary and legislative and the due process of law. This status quo was further reinforced in the year 1997, through the adoption of the Permanent Constitution of 1977.

The enactment of the Bill of Rights in 1984 into the Permanent Constitution of 1977 marked the beginning of a new era in the formal structure of political rights in the history of Tanzania (see figure 6). The amendments to the Preventative Detention Act no.2 of 1985 and Deportation Act no.3 of 1991, provides some evidence of partial control on arbitrary actions of the state. The discriminatory Deportation Ordinance of 1921 was repealed in 1991. The introduction of multiparty democracy via the Political Parties Act no.5 of 1992 and Constitution Amendment Act no.2 of 1992 signified a turning point in the quality of formal political freedom in Tanzania. The enactment of the Commission for Human Rights and Good Governance Act no.7 of 2001, is another improvement in the formal political rights. In terms of the formal structure of political and civil freedoms (de jure), Tanzania is making progress in undoing restrictions on political freedom.

4.3 Judicial Independence in Tanzania

Different traditional judicial institutions for administrating justice existed prior to the colonial era (Court of Appeal of Tanzania, 2004). These differed from one society to another, depending mainly on whether the society was centralised. Centralised and non-centralised societies differed in the way they ran their judicial institutions. However, despite these differences, both types of societies applied procedures characterised by mediation, conciliation, arbitration and compromise.

The start of the German colonial period in 1884 marked the beginning of the disintegration of the traditional judicial institutions and their replacement by an adversarial system of dispute settlement. With the introduction of imperialism, the traditional legal system began to weaken, thereby establishing ground for the functioning of the imposed German colonial legal system. The British mandate of 1919 entrenched a colonial state in Tanzania by imposing British laws received directly from England and those adopted from India. During the colonial period, three forms of institutions were created, i.e., organised colonial government; appointment of chiefs as local leaders and the creation of regular courts headed by salaried magistrates. At independence, most of the

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34 The study accepts that despite the introduction of multiparty competition in Tanzania, the legacy of the one-party state is still lingering until the opposition party is able to achieve a significant presence in the legislature.

35 For a detailed discussion on the operations of judicial institutions, in both centralised and non-centralised pre-colonial societies in Tanzania, see the work of the Court of Appeal of Tanzania, 2004.
imposed and imported foreign laws, institutions and procedures were retained and many others were created (Seidman, 1969; Peter, 1997; Shivji, 2004).

4.3.1 Outcomes of rating

It should be noted for the purpose of the de jure indicators, that the study relied on formal structural guarantees of independence of the judiciary as specified in the law, without ascertaining the degree of judicial independence de facto. It is irrelevant to this indicator whether or not interference took place or not. Due to colonial history in Tanzania, the construction of a realistic measure of judiciary independence should encompass both consideration of the Higher and Lower courts, as the majority of black Africans had access only to Lower Courts. The resulting index is combined using factor analysis.

Figure 7 plots the sub-components of the de jure judicial independence index. The figure shows how each of the 10 categories adds to the overall index. Figure 8 presents the composite de jure judicial index and it is discussed next.

4.3.2 Interpretations of the Judicial Independence Index

The German East Africa Company which governed the protectorate from 1884 to 1890 had no ability to set up administrative machinery different from the local conditions on the ground. Notable changes are observable as from 1891 (see figure 8), when German colonial government took direct administration of German East Africa. The German Ordinance of 1891 established two types of courts: District Courts and the Superior Court, both of which had jurisdiction over Europeans and applied pure German laws. The ordinance did not address the law and procedures in matters involving black Africans. The decree of the Chancellor of State regarding the exercise of Criminal Jurisdiction and Disciplinary Powers over the Natives, dated 22 April 1896, confined the exercise of justice to local administrative authorities. The combination of the executive and judicial functions meant that the majority were condemned to executive justice in which impartiality and fair play could not be guaranteed.

Impartiality for black Africans improved slightly with the passing of the Decree of the Governor no.105 of 1906, with regard to the Administration of Criminal Jurisdiction over Natives. The decree made improvements in the administration of corporal punishment and repeal rules regarding the implementation of corporal punishment dated 1 June 1896 (see figure 8).37

Article 22 of the Covenant of the League of Nations gave Britain a mandate to administer German East Africa after the First World War. The development of administration of justice, however, remained dualistic, tracing the German colonial legacies in the British Era. Article 17 and 22 of the Tanganyika Order in Council of 1920 established the High Court and Subordinate Courts charged with the administration of justice according to English law. The Courts Ordinance of 1920 also established a parallel structure to the Subordinate Courts, known as the Native Courts, to hear cases concerning black Africans only. Noticeable improvements came in 1925 with the Native Courts Proclamation of 1925, which developed black Africans’ courts according to law by vesting the appellate and supervisory powers under the High Court.

A decline in the independence of the judiciary is noticeable in 1929, with the passing of the Native Court Ordinance of 1929, which gave the Provincial Commissioner extensive supervisory powers over Native Courts. The Ordinance of 1929 enhanced the role of the executive arm of the colonial state in the administration of justice with respect to black Africans. The Ordinance further took away the powers of the High Court to supervise and hear appeals from the Native Courts. The passing of Subordinate Courts Ordinance No.13 of 1930, which repealed and replaced the Courts Ordinance of

36 This is captured in the de facto measure of the Independence of the Judiciary, discussed in the next section under 5.5 of this paper (to be added). The idea is to separate the two to allow for close scrutiny of the measures as they portray two different realities in general.
37 This induces a slight separation of powers between the various arms of government or governing authority.
1920, did not make any radical change to the existing court system. The administrative officers still maintained their presiding roles over the courts. There was no formal separation of the executive and the judiciary at lower levels. The only notable change was the introduction of the court of the Resident Magistrate.

A marked improvement in judicial independence is observed in 1951 with enactment of the Local Courts Ordinance of 1951. The ordinance introduced a policy of separation of the judiciary and the executive in the former Native Courts; however a link with the High Court remained non-existent. The initial post-independence period signified a substantial improvement in the de jure independence of the judiciary, with the adoption of the Independence Constitution of 1961. Stability of judicial tenure and broad-based appointment procedures were ensured through Article 58 of the Constitution. The Chief Justice was to be appointed by the Governor-General on the advice of the Prime Minister. Power to appoint the other judges of the High Court was vested in the Judicial Service Commission. Further improvements were instituted through the Local Courts (Amendment) Ordinance of 1961, which re-integrated the Local Courts with the High Court.

This improvement was short lived, as the adoption of the Republic Constitution in 1962 conferred the power to appoint all judges in the High Court to the President. According to the provision of the Constitution, the judges who were non-citizens were to serve on contract. The appointments of judges by the President were reinforced in the Interim Constitution Act no.43 of 1965.\(^\text{38}\) The year 1963, however, marked a major improvement in the Lower Court with the passing of the Magistrates’ Act of 1963, which created a single hierarchy of courts based on a three-tier system. This Act abolished race as a test for jurisdiction of courts. Section 29 of the Act barred the appearance of legal or paralegal professionals before a Primary Court, as these courts were presided over by people with no formal legal training.

The adoption of the Interim Constitution Amendment Act no.8 of 1975 compromises the working of the judicial system. According to the amendment act all functions of the State, including the judiciary, were to be performed under the auspices of the party. This gave party supremacy over all other organs of the state. The adoption of the Union Constitution in 1977 marked minimal improvements in the formal structure of the judiciary. According to the Constitution of 1977, the President appoints the Chief Justices and other judges of the High Court after consultation with the Judicial Service Commission. Security of tenure was also strengthened, as the office of a judge could not be abolished and a judge could be removed from office only for inability to perform the functions of the office and on recommendation from tribunal investigation.

Improvements in the formal structure of judicial independence are noticeable in 1979\(^\text{39}\) due to the passing of the Union Constitution Amendment Act No. 14 of 1979. The Act made provision for the establishment of a Court of Appeal of Tanzania.\(^\text{40}\) This changed the court administration that existed since 1961, as the overall administration was now vested in the Court of Appeal. Noticeable improvements in judicial independence are witnessed in 1984 with the adoption of the Bill of Rights Constitution, vide Act no.16 of 1984. This improved the impartiality and accountability of the judges under the adversarial system. On the other hand, the passing of Basic Rights and Duties Enforcement Act No.33 of 1994, which deals with hearings related to constitutional, human rights and civil rights issues, might be viewed to compromise the impartiality of the High Court as the quorum provision caused delays in many cases.

The last decade marked some improvements aimed at reforming the administration of justice and strengthening judicial independence in Tanzania. The Pensions (Additional Retirement Benefits to Specified Public Officers) Order of 1996 gave judges and justices of appeal several rights on their

\(^{38}\)The Act empowered the President to appoint the Chief Justice; other judges were also appointed by the President in consultation with the Chief Justice.

\(^{39}\)The study recognises the widespread deteriorations in the working of the judiciary system from about 1970 onwards that led to the appointment of the Msekwa Commission in November 1974. This is captured in the de facto index.

\(^{40}\)This replaces the Court of Appeal for East Africa which was done away with, due to the collapse of the East African Community in 1977.
retirement which improved impartiality among judges to dispense justice without fear. This was similarly reinforced in 1999 with the passing of the Public Service Retirement Benefits Act, 1999, which provides a new package for judges of the High Court of Tanzania, Justices of Appeal and the Chief Justice. The adoption of the Commercial Court Act of 1999 was observed as another improvement in access to court by the business community. The Act provides for judicial resolution of business disputes in the country.

The year 2000 marked significant improvements in the formal structure of judicial independence with the adoption of the 13th Amendment to the Constitution, which eventually entrenched the independence of the judiciary (see figure 8). According to Article 107B of the Constitution, all courts of law in the performance of their work of dispensing justice, shall be independent and shall only be required to follow the Constitution and the laws of the country. Other pieces of legislation that enhanced the judicial independence are the Attorney General Act of 2004; the Judicial Service Act of 2005 and the Judges (Remuneration and Terminal Benefits) Act of 2007.

Tanzania is making major strides in ensuring the institutional framework of judicial independence. Major accomplishment are noticeable in the High Court and Court of Appeal, while leaving the other levels of the judiciary, which feed into these higher sections of the judiciary, still in disarray. The issue of appointment procedures including tenure and remuneration, as well as adequate facilities, remain a stumbling block in the lower courts.

4.4 Judicial Independence (de facto)

4.4.1 Conceptual Framework

The conceptual framework for assessing judicial independence is capturing the dynamics that encourage or impede factual judicial independence. The judiciary plays an oversight role to ensure liberal democracy. To achieve the oversight role, the judicial independence relies on the principle that judges must decide cases fairly and impartially, relying only on the facts and the law.

To assess de facto judicial independence, five sub-components have been used. Each of the five sub-components were standardised to take on values between 0-4, where a greater value in this instance indicates a constraint of the degree of judicial independence. The index is constructed by applying the method of principal component analysis.

4.4.2 Interpretations of the Judicial Independence (de facto) Index

The lack of protection and oversight role by the judiciary during the colonial period might be interpreted in this case as an independent efficient judicial system. Their integrity, however, was compromised as they were viewed by the majority of the citizen as another tool of oppression.

In the post-independence period, similarities unfortunately persisted in a different form. The dominant power of the executive persisted, as marked by high episodes of contempt of court cases between the late 1960 and early 1980s (see figure 9). The substantial power of the President during this period hampered proper functioning of the judiciary. Furthermore, poor funding and poor training of judicial officials led to widespread judicial corruption. Although earlier data on this component are hard to come by, the period from the year 2000 onwards, witness a serious crackdown on corrupt judicial officials.42

41 Due to the limited reliable data on sub-components of this index, the period of coverage is from 1950 to 2008.

42 This is a rather difficult sub-component to measure – as it shows two dimensions of the subject matter. It indicates the corruption level prevalent in the judicial system which compromises the judiciary independence. On the other hand, reporting and dealing with the corruption cases indicate the cleaning of the system and thereby should lead to an improvement in the judicial system.
4.5 Political Instability Index

The lack of unified political institutions among African rulers during the pre-colonial era caused a situation of political tension amongst these units. In-fighting over territorial dominion continued throughout until the arrival of colonial powers. This marked a shift in focus towards a new threat posed by the presence of colonial powers (Kimambo, 1969; Duignan, 1977; Iliffe 1979).

4.5.1 Interpretations of the Political Instability Index

Figure 10, shows that peaks in political and social instability occurred in 1906, the period 1940-1955, and the period 1977-1984. Despite the uprising in the 1880s against the colonial power, the major active resistance is witnessed in 1906 with the uprising of the Maji-Maji war. In the period between the 1920s and the 1940s, Tanzania enjoyed relative stability, while rebellious activities were brewing underground. This culminated in the wave of workers’ resistance between 1940 and 1955.

The post-independent period is marked by two major factors contributing to increased political instability during the period 1967-1983. First, the lack of a bill of rights in the Constitution and the formation of a single-party system gave the state the power to detain and harass more people who opposed the party authority. Second, the enactment of the Preventative Detention Act in 1962, gave the state powers to detain people even if the security of the state was not at risk. This included a variety of cases in the process of the implementation of the Ujamaa Collective farms project during the late 1960s and early 1970s. Social problems such as cattle rustling incidences in 1967 were solved through detentions and deportation laws on orders from the President. It should be noted that mainland Tanzania had remained relatively stable since 1985. However, political violence was experienced in the semi-autonomous island of Zanzibar and Pemba during the 1990s.

5 Comparative Analysis

In this section, two types of comparative analyses are undertaken. First, we compare the newly constructed indicators with other measures widely used in the literature. The second comparison focuses on the evolution of three countries formal institutional frameworks. The analysis seeks to disclose how historical associations among these countries have changed over time. A comparison is made between Tanzania and Namibia. This is motivated by the fact that these countries shared a close alignment of the initial legal frameworks under the German regime. The analysis is then extended further to Tanzania and Zimbabwe to get insight on the formal institutional frameworks under the British colonial regime.

5.1 Comparison of new indices

5.1.1 Tanzania Formal Institutional Framework

Table 6 shows the non-parametric Spearman correlation coefficients for the new series of formal institutional indices and the widely used indicators of political freedoms and property rights in Tanzania. The sign of the spearman correlation coefficient (r) indicates the direction between variables. The value of the coefficient varies between -1 and +1; with r = 1 indicating a perfect positive correlation, r = -1 indicating a perfect negative correlation and r = 0 indicating no correlation between the variables concerned. As the values moves towards 0, the relationship between the variables will be weaker.

43 This represents the single most violent event in the history of mainland Tanzania.
44 This includes Namibia, Tanzania, and Zimbabwe and the datasets were constructed along the same dimension.
45 Data are obtained from Zaaruka t al. (2010).
46 Data are obtained from Gwenhamo t al. (2008).
The correlation between the constructed property rights index (TZ-prop) and the Heritage Foundation property index (Prop-HR) is -0.73 and statistically significant at the 1% level. The correlation with the Fraser Institute property rights index (Prop-Fr) is weak and insignificant with a coefficient of 0.25. A general observation is that the Fraser Institute index is available for Tanzania from 1980 and is very volatile, while the actual passing of land legislation was not so frequent. These again come to demonstrate the differences between the de jure and de facto institutional measures.

The political freedom index is compared to the Freedom House indices of political freedom and civil liberties. The newly constructed Political Freedom index (TZ-Polfree) is strongly correlated with Freedom House political freedom (Polfree-FH) and Freedom House civil liberties (Civil-FH), with correlation coefficients of -0.84 and -0.90 respectively, and both statistically significant at the 1% level. The negative sign between these indices is due to inverted scale.

When comparing the new indices, there is a low and insignificant correlation of 0.08 and 0.17 between the property rights index with the political freedom index and the judicial independence index (TZ-JI-de jure) respectively. This confirms the differences in the forms of rights. The correlation between the property rights index and political instability is -.0.40 and statistically significant. The judicial independence and political freedom bond well with a significant correlation of 0.62, while there is weak relationship between political freedom and political instability, with a correlation of 0.23.

5.2 Evolution of formal institutional framework

5.2.1 Namibia and Tanzania

Figures 11; 12 and 13 depict the status of property rights; political freedom and judicial independence de jure indices between Namibia and Tanzania respectively.

(i) Property Rights Index

The status of property rights in Tanzania fared comparatively better than in Namibia from the early 1900s to the early 1960s. There are two possible explanations for this. The first relates to the type of economic activities that were undertaken in these countries. The second relates to German responses to wars that took place in the 1900s.

A majority of the Tanzanian population practiced crop cultivation and proof of ownership for blacks could be shown through effective occupation. Namibia, in particular the central and southern part which experienced a great deal of western influence, was occupied by pastoral and semi-pastoral communities for whom proof of ownership was difficult. Secondly, after the period of the internal wars, the German colonial power issued various pieces of legislation to expropriate land in Namibia, thereby causing an irreversible deterioration in the status of property rights in Namibia.

Tanzania ratings started deteriorating in the mid-1960s under the new socialist government, as individual ownership was virtually extinguished. The only improvements came after 1984 and 1999 with the introduction of the new laws which addressed the issues surrounding bills of right and customary land rights respectively.

(ii) Political Freedom Indices

With regard to political freedoms, the two countries seem to be more at par. However the extreme harsh laws, i.e. the pass law and the contract law of 1907 in Namibia, compromise Namibian freedoms severely. Generally, under the period of colonialism, political freedoms were equally stifled in the two countries. The improvement in Tanzania in 1961 was quite short lived as the situation reversed, with the declaration of the one-party state under the post-colonial government.

In Namibia, the deteriorating trend could be ascribed to the application of the apartheid doctrine in the late 1940s. However, since independence in 1990, political freedoms are legally better respected than in Tanzania.
(iii) **Judicial Independence de jure Indices**

The judicial independence framework statuses of the two countries appear to be at parity both under the German colonisation period and the respective British and South Africa regime for Tanzania and Namibia.

Since the 1960s, with Tanzania gaining independence, a divergence is noticeable, but is not carried out in full. This is due partly to the notion of supremacy of the party over the arms of government. Namibia experienced strong improvements in 1990 with the adoption of the Constitution, which enshrined the independence of the judiciary.

### 5.2.2 Tanzania and Zimbabwe

Figures 14 and 15 show the status of property rights and political freedom indices for Tanzania and Zimbabwe. The property rights status in Tanzania appeared to have been better than in Zimbabwe under the British colonial rule, given that laws such as the Land Ordinance of 1928 accorded the status of deemed right of occupancy. The year 1945 also coincides with the declaration of trusteeship agreement for Tanzania under the United Nations mandate. Since the 1960s, however, the rating for Tanzania deteriorated significantly until the late 1990s. The situation has since changed as the two countries have traded position, due to land reform process in Zimbabwe.47

On the political freedoms front, it appears that the two countries were more or less at par with a notable deviation only registered in the 1980s, with the attainment of independence in Zimbabwe. Despite the independence of Tanzania in 1961, political freedoms continued to be stifled under the socialist government until 1984, with the adoption of a bills of rights in the Constitution of 1977.

### 6 Conclusion

The key argument of this paper is that measures of institutions are time truncated in the existing literature. This renders it difficult to explain the persistence of differences in income levels across countries. The paper argues that longer-dated series of institutional measures are vital, and it therefore presents formal measures on Tanzania. The measuring of institutions using written rules are in line with accepted definition of formal institutions postulated in the literature. The new indicators, while covering a long time period (1884-2008), correlate fairly well with some of the widely used institutional indices produced by the Freedom House and the Heritage foundation.

The cross-country comparisons between Tanzania and Namibia reveal a comparable pattern in political freedoms and judicial independence indices, both under the German colonial administration and, subsequently, with the British colonial administration over Tanzania and the South African colonial administration over Namibia. The property rights patterns, however, remain divergent between the two countries under German colonial rule. The comparison between the British former colonies, i.e. Tanzania and Zimbabwe, shows a similar close pattern in terms of political freedom, while property rights appear to be better in Tanzania than Zimbabwe between 1945 and 1960.

Another feature of the study, covering this longer period, underscores the notion of persistence in institutions. The paper argues that despite changes in colonial regimes, the broader framework of institutions remained partly the same. This is reflected in the post-independence period in Tanzania, where the title of the president was substituting the governor titles in some land laws. Similarly, draconian laws similar to the colonial laws were enacted to curtail political freedom.

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47 See Gwenhamo et al. (2008) for a detailed discussion.
References


25


Vancouver Fraser Institute

Report*, Vancouver Fraser Institute


than others? *Quarterly Journal of Economics* 114, 83-116

Series, Oxford: Claredon Press


[48] International Monetary Fund (2003). Growth and Institutions, in World Economic Outlook,
Growth and Institutions, Chapter 3, IMF, Washington D.C.

*Journal of Peace Research*, 32,469-482

Nairobi.

East African Literature Bureau

Foundation. USA.

Indicators for 1996-2004, World Bank

4978.


and writings of Justice James L. Mwalusanya and commentaries.* Dar es Salaam, Tan-
zania: Legal and Human Rights Centre.


### Tables

#### Table 1: Property Rights index: Scaling matrix

<table>
<thead>
<tr>
<th>Rating based on the following assessment</th>
<th>Individual Sub-Components where: scale falls into the following ranges</th>
<th>Overall Index-scale</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-10</td>
<td>0-15</td>
</tr>
<tr>
<td>Full protection by law; all seven incidence of rights are protected.</td>
<td>10</td>
<td>14-15</td>
</tr>
<tr>
<td>Property protection by law; incidence of rights are protected.</td>
<td>8-9</td>
<td>11-13</td>
</tr>
<tr>
<td>Property protection by law; very few incidence of rights are not guaranteed</td>
<td>6-7</td>
<td>8-10</td>
</tr>
<tr>
<td>Partial protection of property rights by law; few incidence of rights are guaranteed, weak property expropriations</td>
<td>4-5</td>
<td>5-7</td>
</tr>
<tr>
<td>Minimal protection by law; Property expropriations are possible, unwritten customary laws, verbal treaties</td>
<td>2-3</td>
<td>2-4</td>
</tr>
<tr>
<td>All rights are curtailed; Properties are subject to full expropriation</td>
<td>0-1</td>
<td>0-1</td>
</tr>
</tbody>
</table>

Source: authors’ breakdown

#### Table 2: Political Freedom index: Scaling matrix

<table>
<thead>
<tr>
<th>Rating based on the following assessment</th>
<th>Individual Sub-Components where: scale falls into the following ranges</th>
<th>Overall Index-scale</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-5</td>
<td>0-10</td>
</tr>
<tr>
<td>Fully developed liberal democracy with recognitions of all rights</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Entrenched procedural justice and freedom of association and assembly</td>
<td>4</td>
<td>8-9</td>
</tr>
<tr>
<td>Considerable scope for procedural justice; reasonable scope for political and social associations</td>
<td>3</td>
<td>6-7</td>
</tr>
<tr>
<td>Degree of arbitrariness in governmental action is more constrained</td>
<td>2</td>
<td>4-5</td>
</tr>
<tr>
<td>High degree of arbitrariness in state action; exclusive franchise arrangements and discriminative laws</td>
<td>1</td>
<td>2-3</td>
</tr>
<tr>
<td>Indicative of de jure totalitarian state</td>
<td>0</td>
<td>0-1</td>
</tr>
</tbody>
</table>

#### Table 3: Judicial Independence (de jure) index: Scaling matrix

<table>
<thead>
<tr>
<th>Rating based on the following assessment</th>
<th>Individual Sub-Components Scale</th>
<th>Overall Index-scale</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0-10</td>
<td>0-100</td>
</tr>
<tr>
<td>A full Constitutional seal off the judicial from the influence of other branches. Fully structural protection of judicial personnel by the Constitution with regard to tenure and remuneration.</td>
<td>10</td>
<td>88-100</td>
</tr>
<tr>
<td>Constitutional separation of powers; Professional appointments of some judicial officers.</td>
<td>8-9</td>
<td>75-87</td>
</tr>
<tr>
<td>Separation between arms of government and fewer restrictions on the judiciary contained in laws or Constitutions.</td>
<td>6-7</td>
<td>51-74</td>
</tr>
<tr>
<td>Some degree of separation with some procedural and substantial restrictions on the judiciary embedded within the laws / Constitutions.</td>
<td>4-5</td>
<td>38-50</td>
</tr>
<tr>
<td>Limited separations between arms of government; No clear appointment procedures.</td>
<td>2-3</td>
<td>13-37</td>
</tr>
<tr>
<td>Lack of separations between arms of government; no proper function courts; lack of judicial professionals</td>
<td>0-1</td>
<td>0-12</td>
</tr>
</tbody>
</table>

Source: authors’ breakdown
Table 4: Judicial Independence (de facto) index: Scaling matrix

<table>
<thead>
<tr>
<th>Subcomponents</th>
<th>Scaling Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual number of judges reassigned</td>
<td>0 = None ; 1 = 1 case ; 2 = 2 Cases ; 3 = 3 cases ; 4 = more than 3 cases</td>
</tr>
<tr>
<td>Annual number of contempt of Court cases</td>
<td>0 = None ; 1 = 1 – 2 cases ; 2 = 3 to 4 cases ; 3 = 5 to 6 cases ; 4 = more than 6 cases</td>
</tr>
<tr>
<td>Annual number of corrupt judicial officials cases (Arrested or dismissed or reprimanded)</td>
<td>0 = None ; 1 = 1 – 2 cases ; 2 = 3 to 4 cases ; 3 = 5 to 6 cases ; 4 = more than 6 cases</td>
</tr>
<tr>
<td>Number of unfair verbal / physical attacks on Judicial officials</td>
<td>0 = None ; 1 = 1 case ; 2 = 2 Cases ; 3 = 3 cases ; 4 = more than 3 cases</td>
</tr>
<tr>
<td>Number of Incidence of side-stepping the judiciary (use of other informal courts)</td>
<td>0 = None ; 1 = 1 – 2 times ; 2 = 3 to 4 times ; 3 = 5 to 6 times ; 4 = more than 6 times</td>
</tr>
</tbody>
</table>

Source: authors’ breakdown

Table 5: Political Instability index: Scaling matrix

<table>
<thead>
<tr>
<th>Subcomponents</th>
<th>Scaling Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual number of political fatalities including genocides</td>
<td>0 = less than 100 fatalities ; 1 = 100 – 1000 fatalities ; 2 = 1000 to 5000 fatalities ; 3 = 5 000 to 10 000 fatalities ; 4 = more than 10 000 fatalities</td>
</tr>
<tr>
<td>Annual number of politically motivated arrest</td>
<td>0 = less than 10 arrest; 1 = 10 – 25 arrest ; 2 = 25 to 50 arrest ; 3 = 50 to 100 arrest ; 4 = more than 100 arrest</td>
</tr>
<tr>
<td>Township strikes and riots (number of demonstrators involved)</td>
<td>0 = less than 100 demonstrators; 1 = 100 – 500 demonstrators ; 2 = 500 to 1000 demonstrators; 3 = 1000 to 5000 demonstrators; 4 = more than 5 000 demonstrators</td>
</tr>
<tr>
<td>Number of political parties and publications banned per year</td>
<td>0 = None ; 1 = 1 – 2 parties or publications ; 2 = 3 to 4 parties or publications ; 3 = 5 to 6 parties or publications ; 4 = more than 6 parties or publications</td>
</tr>
<tr>
<td>Number of declarations and renewals of state of emergencies per year</td>
<td>0 = None ; 1 = 1 – 2 times ; 2 = 3 to 4 times ; 3 = 5 to 6 times ; 4 = more than 6 times</td>
</tr>
</tbody>
</table>

Source: authors’ breakdown

Table 6 Spearman Correlation Coefficients for Tanzania

<table>
<thead>
<tr>
<th>TZ-Prop</th>
<th>TZ-Polfree</th>
<th>TZ-JI-de jure</th>
<th>TZ-Inst</th>
<th>Polfree-FH</th>
<th>Civil-FH</th>
<th>Prop - HR</th>
<th>Prop - FR</th>
</tr>
</thead>
<tbody>
<tr>
<td>TZ-Prop</td>
<td>1.0000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TZ-Polfree</td>
<td>0.0806</td>
<td>1.0000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TZ-JI-de jure</td>
<td>0.1726</td>
<td>0.6286**</td>
<td>1.0000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TZ-Inst</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Polfree-FH</td>
<td>-0.4061**</td>
<td>0.2321**</td>
<td>0.5228**</td>
<td>1.0000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil-FH</td>
<td>-0.8581**</td>
<td>-0.8445**</td>
<td>-0.7927**</td>
<td>0.8096**</td>
<td>1.0000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prop - HR</td>
<td>-0.7303**</td>
<td>-0.9621**</td>
<td>-0.8473**</td>
<td>-0.5979*</td>
<td>0.7303**</td>
<td>0.8758**</td>
<td>1.0000</td>
</tr>
<tr>
<td>Prop - FR</td>
<td>0.2484</td>
<td>0.1321</td>
<td>0.1860</td>
<td>-0.1709</td>
<td>-0.4228</td>
<td>-0.1345</td>
<td>-0.1654</td>
</tr>
</tbody>
</table>

Notes: * denotes significance at 5 %, ** denotes significance at 1 % level.
Figures

Figure 1: Sub-components of Property Rights Index (Freehold Tenure): 1884-2008

Figure 2: Sub-components of Property Rights Index (Customary or Non-Freehold Tenure): 1884-2008
Figure 3: Freehold versus Non-freehold tenure system Property Rights Index: 1884-2008

Figure 4: Property Rights Indices: 1884-2008
Figure 5: Sub-Components of Political Freedom Index: 1884-2008

Figure 6: Political Freedom Index for Tanzania: 1884-2008
Figure 7: Sub-Components of Judicial Independence De jure Index: 1884-2008

Sub-components of Judicial Independence Index: 1884-2008

Year
Raw Scores


ESHC ESLC APHC APLC SEPPHC SEPPLC ACHC ACLC AccountHC AccountLC

Figure 8: Judicial Independence Index for Tanzania: 1884-2008

Judicial Independence - De jure Index: 1884-2008

Index
Year

Figure 9: Judicial Independence (de facto) Index for Tanzania: 1950-2008

Figure 10: Political Instability Index for Tanzania: 1884-2008
Figure 11: Comparison of Property Rights: Namibia versus Tanzania

Figure 12: Comparison of Political Freedom: Namibia versus Tanzania
Figure 13: Judicial Independence de jure: Namibia versus Tanzania

Figure 14: Comparison of Property Rights: Tanzania versus Zimbabwe
Figure 15: Comparison of Political Freedom: Tanzania versus Zimbabwe