

**RAILWAY TRANSPORT IN TANZANIA:  
A CRITICAL ANALYSIS ON ITS LEGAL AND REGULATORY  
FRAMEWORK**

**RAILWAY TRANSPORT IN TANZANIA:  
A CRITICAL ANALYSIS ON ITS LEGAL AND REGULATORY  
FRAMEWORK**

**By**

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**Dissertation Submitted in Partial Fulfillment of the Requirements for Award of the  
Masters Degree in Commercial Law (LL.M) of Mzumbe University.**

**2016**

## CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled: **RAILWAY TRANSPORT IN TANZANIA: A CRITICAL ANALYSIS ON ITS LEGAL AND REGULATORY FRAMEWORK**, in partial fulfilment of the requirements for award of the degree of Master of Laws of Mzumbe University.

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## **DEDICATION**

To my son, Mars, sorry buddy dad wasn't there for you in your first two years because of school, but now he is back and things will change.

## LIST OF ABBREVIATIONS

DRC	Democratic Republic of Congo
EAC	East African Community
GIS	Geographic Information Service
IR	India Railway
ONGC	Oil and Gas Corporation
PPIAF	Public – Private Infrastructure Advisory Facility
PPP	Public Private Partnership
RAHCO	Reli Assets Holding Company
RITES	Rail India Technical Economic Services
SADC	Southern Africa Development Community
SUMATRA	Surface and Marine Transport Regulatory Authority
TANROADS	Tanzania National Roads Agency
TAZARA	Tanzania Zambia Railway
TRC	Tanzania Railway Corporation
TRL	Tanzania Railway Limited
US	United States

## **ABSTRACT**

Railway transport industry plays a major role in development and growth of economy. It is regarded as a hub of transport system in a nation because of its ability to travel longer distance with ease and lower costs. Railways in Tanzania were built during the colonial era, performed well during 1980's -1990's when it was a main mode of transport for passengers and freight connecting five neighbouring landlocked countries which depended on our port for importation of goods into their countries.

However, the performance of railway transport sector in Tanzania declined during 2000's. Possible causes for the decline are; the fact that, the new laws made for the regulation of the sector do not have provisions for operations of the TRL as a company; and RAHCO's lack of enforcement measures in case of any concessional term breach.

This is a descriptive study which used a survey design and qualitative methods for data collection. It covers Tanzania Mainland and focuses only in analysing the legal and institutional framework, the study used both descriptive and inferential analysis methods in analysing the primary and secondary data collected through structured interviews and review of the documented materials.

The study critically analysed legal and regulatory framework surrounding the railway sector to see if they had anything to do with its failure. After the investigation conducted guided by the above mentioned methodologies, the study found out that, deficiencies in the laws regulating the sector and weaknesses within the institutions/regulatory authorities are among the reasons for the declining of the sector. The study recommended among other things, the change in laws which will effectively provide for regulation of the sector and give enough power to the regulatory authorities to discharge their duties effectively and enforce the law without interference from other organs of the government.

## TABLE OF CONTENTS

CERTIFICATION .....	ii
DECLARATION AND COPYRIGHT.....	iii
ACKNOWLEDGEMENTS.....	iv
DEDICATION.....	v
LIST OF ABBREVIATIONS.....	vi
ABSTRACT.....	vii
TABLE OF CONTENTS.....	viii
LIST OF STATUTES .....	xii
LIST OF TREATIES AND PROTOCOLS .....	xii
<b>CHAPTER ONE .....</b>	<b>1</b>
<b>GENERAL INTRODUCTION.....</b>	<b>1</b>
1.1 Introduction.....	1
1.2 Background to the Study.....	3
1.3 Statement of the Problem.....	6
1.4 Objectives of the Study .....	7
1.4.1 Specific Objectives .....	7
1.5 Research Questions.....	7
1.6 Significance of the Study .....	8
1.7 Literature Review.....	8
1.8 Research Methodology .....	13
1.8.1 Research Design.....	13
1.8.2 Type of the Study.....	14
1.8.3 Scope of the Study .....	14
1.8.4 Sample and Sampling Procedure .....	14
1.8.5 Sample Size.....	15
1.8.6 Data Collection Methods .....	16
1.8.7 Data Collection Instruments .....	16
1.8.8 Data Analysis and Interpretation .....	16
1.9 Limitations and De-limitations to the Study.....	17

<b>CHAPTER TWO .....</b>	<b>18</b>
<b>CONCEPTUAL FRAMEWORK: RAILWAY REGULATION THEORIES .....</b>	<b>18</b>
2.1 Introduction.....	18
2.2 Meaning of the Terms Used.....	18
2.3Administering the Railways.....	18
2.3.1 New Relationships between the State and Railways .....	20
2.3.1.1 Adapting to New Market Conditions.....	20
2.3.1.2 Governance Principles for State-Owned Railways.....	21
2.3.2 Implementing New Governance Principles .....	22
2.3.2.1 Segregation of Duties.....	22
2.3.2.2 Setting up the Legal and Regulatory Framework .....	23
2.3.2.3 Contractual Relationships between Government and Railways .....	23
2.3.3 The State as Owner .....	24
2.3.3.1 The Ownership Role .....	24
2.3.3.2 Roles and Staffing of the Ownership Entity .....	25
2.3.3.3 Staffing the Ownership Unit .....	26
2.3.3.4 Ownership Unit Staff Responsibilities Related to Government and Parliament ....	27
2.3.3.5 Ownership Unit Tasks Relative to State-Owned Railways .....	27
2.3.3.6 Selecting the Board of Directors.....	28
2.3.3.7 Appointing the CEO .....	29
2.3.3.8 Separating the Board Chairman from the CEO .....	29
2.4 Corporate Governance .....	30
2.4.1 Railway Enterprise Structure and Authority.....	30
2.4.1.1 Company Governance and Management Structures.....	30
2.4.2 Responsibilities of the Boards of State-Owned Enterprises .....	31
2.5 Conclusion .....	31
<b>CHAPTER THREE .....</b>	<b>32</b>
<b>ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK ON</b>	
<b>RAILWAY TRANSPORT IN TANZANIA .....</b>	<b>32</b>
3.1 Introduction.....	32
3.2 The Legal Framework.....	32

3.2.1 Regional Instruments .....	33
3.2.1.1 East African Community Treaty, 1999 .....	33
3.2.1.2 Protocol on Transport, Communication, Meteorology of the Southern Africa Development Community (SADC) Region, 1996 .....	34
3.2.2 Domestic Instruments .....	36
3.2.2.1 The United Republic Of Tanzania Constitution of 1977, As Amended From Time To Time.....	36
3.2.2.2 National Transport Policy 2003 .....	36
3.2.2.3 Railway Act, No. 4 of 2002 .....	37
3.2.2.4 Surface and Marine Transport Regulatory Authority Act, No.9 of 2001 .....	39
3.3 The Institutional Framework.....	40
3.3.1 Reli Assets Holding Company (RAHCO) .....	40
3.3.2 Surface and Marine Transport Regulatory Authority (SUMATRA).....	42
3.3.2.1 Functions of SUMATRA.....	43
3.3.2.2 Powers of SUMATRA as the Economic Regulator.....	43
3.3.2.3 Powers of SUMATRA as the Safety Regulator.....	44
3.3.3 Tanzania Railway Corporation (TRC).....	45
3.4 Conclusion .....	46
<b>CHAPTER FOUR.....</b>	<b>47</b>
<b>DATA PRESENTATION, FINDINGS AND DISCUSION .....</b>	<b>47</b>
4:1 Introduction.....	47
4:2 Strengths/Weaknesses of the Laws Regulating Railway Transport in Tanzania.....	47
4:3 Roles of Regulatory Authorities in the Current State of the Railway Transport Subsector.....	49
4:4 Efforts Made By the Government and Other Stakeholders in Reviving the Railway Transport System .....	53
4:5 Conclusion .....	54
<b>CHAPTER FIVE .....</b>	<b>55</b>
<b>GENERAL CONCLUSION AND RECOMMENDATIONS .....</b>	<b>55</b>
5:1 Summary.....	55
5:2 Conclusion .....	56

5:3 Recommendations.....	56
5:3:1 Legal Recommendations .....	57
5:3:2 General Recommendations .....	58
<b>REFERENCES</b> .....	<b>59</b>

## **LIST OF STATUTES**

The Fair Competition Act, No.8 of 2003  
The Tanzania Railway Corporation Act of 1977  
The Railway Act, No. 4 of 2002  
The SUMATRA Act, No. 9 of 2001  
The TAZARA Act, No. 4 of 1995

## **LIST OF TREATIES AND PROTOCOLS**

The East African Community Treaty of 1999  
The Protocol on Transportation, Communication and Meteorology of the Southern Africa  
Community (SADC)

# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.1 Introduction

Railway system plays a significant role in the development and overall growth of any economy. It is often regarded as the wheels of economic activity because of the crucial role it plays in providing the bulwark upon which production and distribution stand. It opens up regions, hinterlands and rural areas by facilitating agricultural development as well as the growth of cottage and large scale industries. It also attracts residential, commercial, educational and recreational settlements and developments around its corridor. Due to the role it performs in growth and development process, rail transport is seen as the mainframe around which an integrated national transport system is built. Its capacity, which is further accentuated by its safety and security factors, coupled with its ability to travel longer distance with ease and lower unit costs, places it in good stead to serve as the hub of a transport system of a nation.<sup>1</sup>

Rail transport has made varying degrees of impact on the development of the countries where they exist.<sup>2</sup> It can be described as historically the most powerful single initiators of economic take off, being a main force in the widening of markets and a prerequisite to expanding the export sector.<sup>3</sup> It was also observed that, rail transport provides the first alternative to human porter age and brought with them some economic advantage.<sup>4</sup> Early rail lines were critical to the development of commerce, the expansion of commercial agriculture and the stimulation of settlement expansion. The rail lines became the zone of

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<sup>1</sup>Nwanze, E. (2002). Conceptualization of the Nigerian Transport Problems and the need for an Integrated National Transport System, A Paper presented during the Conference held on August 2002 on Revitalization of Railway Transport in Nigeria at the Centre for Transport Studies. Olabisi Onabanjo University

<sup>2</sup>Kolars, J.F. and H.J. Malin (1970): Population and Accessibility: An Analysis of Turkish Railroads. *The Geographical Review*, Vol. 60, pp. 229-246

<sup>3</sup>Rostow, W. W. (1960). The stages of Economic Growth; A Non-Communist Manifesto. The Five Stages of Growth- a Summary. Cambridge University Press, p. 4-16

<sup>4</sup>Hilling, D. (1996). *Transport and Developing Countries*. Routledge: London and New York ISBN 0415136547

economic activity, and the rail heads were the focal points for the expansion of settlements and economic input and output.<sup>5</sup>

Railways in Tanzania were first built in 1893, when the first rail track was laid at the port of Tanga.<sup>6</sup> Thereafter, construction of railway lines continued to be carried out in other places in Tanzania. In Tanzania, railway services apart from the Tanzania and Zambia Railway (TAZARA) were operated by the Tanzania Railways Corporation (TRC), which was established in 1977 after the collapse of the former East African Community. Prior to that, the railways in East Africa were operated under the auspices of the East African Railways and Harbours (1961-1967) and thereafter East Africa Railways Corporation (1967-1977).<sup>7</sup>

The performance of TRC started to decline since 2004 in terms of freight traffic, passengers, locomotives availability and average of the train speed.<sup>8</sup> The TAZARA has been a major economic conduit in the region. However, it has never been profitable and more recently it has suffered from competition from road transport and the re-orientation of Zambia's economic links towards South Africa after the end of apartheid.<sup>9</sup> The focus of this study has been the TRC only leaving aside TAZARA.

The study intended to critically analyze the laws and operations of the regulatory authorities to see how and to what extent they contribute to the declining of the railway transport sector in Tanzania and suggest what might be possible solutions to the problem. In so doing the study has been divided into five chapters, the current chapter provides background information on railway transport in Tanzania. The chapter explains the

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<sup>5</sup>O' Connor, A. M. (1965). *Railways and Development in Uganda: A Study in Economic Geography*. East African Institute of Social Research. Nairobi: Oxford University Press

<sup>6</sup>Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 1

<sup>7</sup>Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 1-2

<sup>8</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 2

<sup>9</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 2

objectives of the study, research questions, literature reviewed and methodology used by the researcher.

## **1.2 Background to the Study**

During the 1980's, railway transport in Tanzania was the most dependable means of surface transport for both people and goods.<sup>10</sup> The rail subsector was transporting about 70% of goods traffic for both domestic and transit to and from the neighbouring landlocked countries.<sup>11</sup> However due to mainly inadequate funding for re-investment, the railway was faced with obsolete equipment and aged infrastructure, resulting into traditional customers diverting their goods to the road. At present (2011) the railway sub sector transports less than 10% of the total inland traffic.<sup>12</sup>

It is important to note that TRC was the largest single transport operator providing transport services for both freight and passengers within the country and transit freight to and from neighbouring countries of D.R Congo (eastern), Burundi, Rwanda and Uganda.<sup>13</sup> Up to the early 1980s, TRC network with a design capacity to carry 5 million tons of freight per annum played an important role in the Economic Development of Tanzania and her neighbouring countries, particularly the land locked ones.<sup>14</sup>

The number of passengers and freight traffic transported per annum continued to indicate a steady growth to a record high in 2003 of 683,861 passengers and 1442,713 tones respectively.<sup>15</sup> However the performance of TRC since 2004 registered a decline trends in terms of freight traffic, passengers, locomotives availability and average train speed. For instance in 2007 freight traffic had declined to 545,241 tonnes whereas passengers declined to 593,889. Operational efficiency of TRC was constrained mainly by

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<sup>10</sup>Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 4

<sup>11</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 4

<sup>12</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 1

<sup>13</sup>Ibid at p 2

<sup>14</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 4

<sup>15</sup> Ibid at p 2

infrastructural problems, caused by inadequate reinvestment and deferred maintenance of the permanent way, particularly during the period September 1997 to September 2007, when TRC was specified for privatization.<sup>16</sup>

From mid 1980's, the Government of Tanzania embarked on an ambitious program to upgrade and construct new roads in the country.<sup>17</sup> However regrettably, this program did not go hand in hand with the development of the railway system. This resulted in the decline of railway infrastructure and rolling stock performance. Lack of investment on rolling stock resulted into the decline of locomotive availability and reliability as well as decline in the availability of wagon and coach fleet.<sup>18</sup> According to the figures revealed by the National Bureau of Statistics, it shows the number of railway freight volume decreased from 1,200 in 2004 to 300 in 2011.<sup>19</sup>

In remedying the situation, the Government under the Railway Act No. 4 of 2002 established the Reli Assets Holding Company Limited (RAHCO)<sup>20</sup> which became operational in September 2007 to act as land lord of railway infrastructure on behalf of the Government. Its principal roles and functions as provided by the Railway Act include;<sup>21</sup> to acquire by operation of the Act or otherwise the rail transport functions of the TRC and such of its property, including choses in-action, rights and liabilities transferred to it; to assume the provision of, or to provide rail infrastructure; on behalf of the Government, to develop, promote and to manage the rail infrastructure assets; to enter into agreements with other persons in order to secure the provision of rail transport services, whether by means of concessions, joint venture, public-private partnership or other means, and to this

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<sup>16</sup>Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 2

<sup>17</sup> Ibid at p 4

<sup>18</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 1

<sup>19</sup> National Bureau of Statistics (2013), *Tanzania in Figures 2012*. Dar-es-Salaam: Government Printing Office at p 157

<sup>20</sup> See section 5(1) for establishment of RAHCO and (2) together with section 11 for the powers of the said company

<sup>21</sup> See section 6 of the Act

end to delegate its own function on providing rail transport services to one or more railway operators.<sup>22</sup>

The Government also resorted to the Public-Private Partnership by implementing the Privatization Policy as the means of rescuing the rail transport sector. To achieve this end the Government under RAHCO entered into partnership with Rail India Technical Economic Services (RITES) an Indian state owned company and formed a company known as Tanzania Railway Limited (TRL) which is owned on 49% - 51% shareholding respectively.<sup>23</sup>

Even after the concession, budgetary constraints both for operations and infrastructure development and management problems contributed to aggravate the situation. However, the shareholders agreement between the Government and RITES has been terminated. RITES Board Members resigned on 22<sup>nd</sup> July, 2011 and TRL operations were handed over to a local interim management team on 26<sup>th</sup> July, 2011 with the role of reviving the company's operations.<sup>24</sup>

The sector currently is regulated by the Railway Act No.4 of 2002 which among other things it established the company (RAHCO) to act as the guardian of the railway sector in Tanzania on behalf of the government. Moreover, the Surface and Marine Transport Authority (SUMATRA) Act No.9, 2001 establishes the Authority to regulate the transport sector in the country, including the rail sector.<sup>25</sup>

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<sup>22</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 3

<sup>23</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 4

<sup>24</sup> Ibid

<sup>25</sup> See section 4 for establishment of the Authority, section 5 for the duties and section 6 for the functions of the Authority

### 1.3 Statement of the Problem

The efforts have been made by the government in maintaining the quality and status of railway transport,<sup>26</sup> firstly, by establishing the Authority with powers and functions, *inter alia*, monitoring the performance of the sector;<sup>27</sup> secondly, by establishing a company (RAHCO) to act as a guardian of railway sector on behalf of the government with the main function of managing the rail infrastructure and operations.<sup>28</sup> Further, the company has been vested with powers to operate railways, review concessions and take steps towards persons failing to perform adequately the obligations under the agreements.<sup>29</sup> And lastly, forming a company (TRL) to take over TRC operations and allow the implementation of the Public-Private Partnership policy.<sup>30</sup>

However, the Railway Act, No.4 of 2002 does not provide for TRL operations leaving the company to be regulated by its constitution documents/MEMARTS. This gap caused management problems during the RAHCO - RITES partnership.<sup>31</sup> Also the said Act does not provide for enforcement measures to be taken by RAHCO in case of a breach of terms in a concession agreement.<sup>32</sup> This too caused problems during the RAHCO – RITES partnership due to the issues of failure by the investors to pay Performance Bond, Concession Fee and the use of TRC Maintenance Plan.<sup>33</sup>

Notwithstanding the expectations of the stakeholders on the privatization move made by the government in 2007 which saw the government partnering with an Indian company

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<sup>26</sup> Parliament Permanent Committee on Infrastructure's Report on duties for the year 2013, p 10

<sup>27</sup> See section 6 of the SUMATRA Act of 2001

<sup>28</sup> See sections 5 and 6 of the Railway Act, No. 4 of 2002

<sup>29</sup> See sections 11 and 17 respectively of the Railway Act, No. 4 of 2002

<sup>30</sup> Tito, B.M. (2011). Statement of Managing Director in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence – Dar-es- Salaam at p 4

<sup>31</sup> The Permanent Parliament Committee on Infrastructure in their report on TRL performance under RITES read in the Parliament on 11<sup>th</sup> February, 2009 noticed the problem of representation in the Board of Directors of the company (TRL), the ratio favoured the members from the investing company rather than the government despite the share ownership of 49 – 51 percent between the government and investor respectively at p 1-2

<sup>32</sup> Section 17(2) of the Railway Act, No. 4 of 2002 provides for the power of the company to take steps to deal with the persons who failed to perform appropriately the obligations of the agreement referred in subsection 1 without specifying what are those steps

<sup>33</sup> Supra note 31 at pg 2-3, the RAHCO failed to take any steps towards the failure of the investor in paying the agreed Performance Bond as provided under term 4-1(a) of the concession treaty, Concession Fee as provided under term 18-3 (ii) and using TRC Maintenance Plan as agreed under term 6-13(a)(iii)A. these failure prompted the Committee to work on the said problems

(RITES) to run the TRC, the move did not achieve what was expected of it as the company kept on falling. This study intended to critically analyze the laws and operations of the regulatory authorities to see how and to what extent they contribute to the declining of the railway transport sector in Tanzania and suggest what might be possible solutions to the problem.

#### **1.4 Objectives of the Study**

Generally, the study aims at critically analyzing the legal and regulatory framework of railway transport in Tanzania and how they contribute to the failure of the transport system and what could be the solutions.

##### **1.4.1 Specific Objectives**

- Examining the laws regulating railway transport in Tanzania to see its effectiveness in regulating the sector
- Examining the role of the regulatory authorities in the current state of the railway transport in Tanzania to see if they are at fault
- Examining the efforts made by the Government and other stakeholders in reviving the railway transport system to see if more needs to be done

#### **1.5 Research Questions**

The study was governed by the following questions;

- i. Whether the laws regulating railway transport sector in Tanzania contribute to its failure
- ii. Whether the regulatory authorities of the railway transport sector in Tanzania have the role to play in the declining of the sector
- iii. Whether the efforts made by the stakeholders to remedy the problems facing the sector had any positive impacts

## **1.6 Significance of the Study**

The study has a number of significance, among those are as follows; firstly, to the Government, it recommends on possible solutions to the problems facing the rail transport sector which results to the poor performance and declining of the said sector. Also it will help transport planners in increasing opportunities to move freight by rail which could decrease deterioration of existing highways, while positively affecting congestion and safety.

Secondly, to the users of the rail transport for different purposes, the recommendations made by this study if implemented successfully will result to an improved sector with positive impacts to individuals involved and in economic growth of the country at large.

Lastly, to other researchers, it provides them with well researched information they can use for further research in this field so as to help get a solution to this problem which faces the country.

## **1.7 Literature Review**

Several authors have examined rail transport-growth nexus both in the developed and the developing countries. However, the researcher has to admit that there is not much literature which speaks specifically to the subject matter of the intended research, so through reading of the available literature which helped him into developing the knowledge gap existing, he also saw the need of using the said literature to reflect on the contribution of the rail transport sector into the economic growth of the country, only if the challenges facing the sector at present time will be addressed.

Simbo,<sup>34</sup> describes the rail regulation in Tanzania, he reviews the legal and regulatory framework together with the status of rail regulation in the country. He discusses the challenges facing rail industry in the country from the perspective of the regulator. Among other challenges the regulator is of the view that, an exclusive right which the government

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<sup>34</sup>Simbo, E. (2010, March). Revitalizing the Railways for Enhanced Regional Integration and Economic Growth, Railway Financial and Operational Challenges in Tanzania – Regulator’s Point of View. A paper presented in a Regional Conference on East Africa Railways – Mlimani City Conference Hall – Dar es Salaam on 12<sup>th</sup> March

has in operating the industry is an impediment to new investors who wish to invest in the industry. This exclusiveness is provided by the Railway Act, 2002 which gives this mandate to RAHCO, this seems to hinder the involvement of the new investors to implement the Public Private Partnership Policy.

Despite that, in 2007 RITES entered into partnership with RAHCO in operating the railway industry but the partnership dissolved in 2009 due to poor performance of the sector, since then the sector is solely owned and operated by the government under RAHCO.

The writer helps this study in understanding ownership structure of the Tanzanian railway and how PPP is being implemented so far. Through the writer we understand how government monopoly hinders involvement of other multi players (investors) in the sector which is a bit contrary to the essence of PPP, that of allowing other players from private sector to come in and invest and help improve competition which will result to better service and economic improvement at the end.

However, the writer did not discuss issues of modal selection which was opted by the government when preparing a bill for the current Railway Act, the consultant hired advised the government to opt on using one between the two partnership models, vertical or horizontal. This study intends to venture deeply into the issue to explore the reasons as to why the current mode of partnership was chosen by the government which results to the exclusiveness it has into operating railways in Tanzania.

Foster and Garmandia,<sup>35</sup> has a wider coverage, it describes the features of African railways. Among other things it focuses on regulation of railway sectors, regarding regulation the authors were of the view that, these African railways being operated by the government causes many negative impacts to their development. The authors share the same view with Simbo regarding government monopoly of the sector. This causes many

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<sup>35</sup>Foster, V., Briceno-Garmandia, C. (Eds). (2010). *Africa's Infrastructure: A Time for Transformation*. Washington DC. The IBRD/ the World Bank

problems including bureaucratic constraints and lack of commercial incentives which will prevent the sector from being successful. The status of ownership of any sector in a country is a result of the law establishing or operating the said sector, this means the railway industries being solely operated by the government is a result of the laws establishing or regulating the same. These two works, one by Simbo and the other by Foster and Garmandia reflects on the weaknesses of the laws establishing or regulating rail industry in respective countries on issues of ownership and management.

Through this work the study understand the nature of regulation of many African railways which mainly based on the same system imposed to the continent as a reform of the sector by the donors to help create room for private investors without enhancing the current available infrastructure and workforce so as to allow investors to operate smoothly and reach the intended goal. Even though, this study adds to the knowledge provided by the writers, a specific example of Tanzania with an analysis of the legal framework which will help to show the reasons as to why things are as they are in many African countries adopted the economic policy shift during the 1990's.

Bogart and Chaudhary,<sup>36</sup> focuses on the same issues of management as Simbo and Foster did in their works. Bogart and Chaudhary take on a different route in discussing the management issues on railway sector; they tried to come up with the answer as to whether state ownership and private operations provides stronger incentives to improve efficiency. The authors used the Indian rail sector as a case study to their work, they were of the view that, the rail industry should be governed by the government but the operations should be under private investors. This will help improve efficiency because it accounts for the externalities arising from investments.

Arguing from this point of view, the authors suggests for instance in Tanzania the ownership of the rail industry should remain with the government under RAHCO but the government should let operations of this sector be under private investors. This means the

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<sup>36</sup> Bogart, D., Chaudhary, L. (2009). Public-Private Partnership and Efficiency: A Historical Perspective from Indian Railways. *Journal of Economic History* 69 (1). 269-302

government should not involve in daily service provision but concentrate on issues of infrastructure maintenance and tax collection from these private operators.

In our specific case of this study, the researcher learned the need of letting private investors operate railway owned by the government so as to get two results at the same time, first; reducing the government cost in operating the railways which will allow it concentrating on other development plans, and second; benefit on tax collections from the investments made by these private sector operating the railways.

Notwithstanding that, the study analyses the exclusiveness government of Tanzania has in operating the railway sector as a result of the provisions of the law in place and failure of the partnership existed between an investor and the government. The analysis focuses on the reasons as to why the chosen model was preferred instead of the one which would allow multi investors to operate the railways.

PPIAF,<sup>37</sup> discusses issues of infrastructure at a global level; it covers many aspects regarding infrastructure sectors. Specifically on matters of rail regulation, the work focuses on how to set the regulatory framework, it provide answers to the concerns raised by the works of the previous reviewed authors especially on management. It is also of the view that, the railway industry has always had high public sector involvement. In many countries, railways are owned and managed by the public sector. As a solution to this the work suggests changes in railway ownership or management, institutional and organizational structures, and governance system so as to reform the sectors.

The work is of the view that, the public sector involvement in the railway industry should be reduced to allow regulation that open access to infrastructure for third parties. The protected national monopolies should be removed to allow private sector involvement. The work goes further to suggest on issues of economic regulation, the function which here in Tanzania is vested to SUMATRA through section 22 of the Railway Act, 2002. It

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<sup>37</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC

is of the view that, in principle, the best regulator is the market, which means that economic regulation should be used only to correct for market failures, for example, if competition absent. Regulation should be used cautiously as it can inflict unintended consequences on those it was designed to protect. For example, in many countries, regulated prices are set below cost. In the short term this appears to benefit customers but over the long term railway assets and services will deteriorate because the prices set will discourage railway companies from making long-term investments.

The authors of this work helped the current study in understanding better theories of management and regulation of the railway sector and how government monopoly can kill the said sector. Nevertheless, the authors did not shed light on the consequences which may arise if you let investors own railway infrastructure and operate at the same time. So the study ventured into the subject and discussed on some consequences which may arise. AICD,<sup>38</sup> highlighted a vast number of issues regarding Africa's railways, but one issue of importance to this study is the weakness of agencies (institutions) that guide and oversee Africa's railway sectors and firms, public or private. It has the view that, most African countries (including Tanzania) have undertaken preliminary institutional reforms, mainly the broader sectoral policy and legal measures, many of which can be accomplished by the stroke of a pen. What has lagged are regulatory and governance reforms; they have taken much more time to bare fruits.

With regard to institutional framework and regulation the work goes further into asserting that, Africa's institutional framework for railways is no more than halfway along the path to best practice. It suggests that, effective regulation requires building organizations that challenge established vested interests. Governance improvements, particularly in state owned enterprises require aligning internal and external incentives, which again require broader reforms of the external environment for railway transport service providers.

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<sup>38</sup>Bullock, R. (2009). "Taking Stock of Railway Companies in Sub-Saharan Africa". Background Paper 17, Africa Infrastructure Country Diagnostic, World Bank, Washington DC. Retrieved from [www.infrastructureafrica.org/system/files/BP17Railways\\_maintxt\\_2.pdf](http://www.infrastructureafrica.org/system/files/BP17Railways_maintxt_2.pdf) on 11<sup>th</sup> October 2015 at 8:22 am

This work gives the researcher a broader understanding of the institutions regulating railway sector in many of the African countries which helped the researcher in deducing the problem in regulation of Tanzania's railway sector. It inspired the researcher into analysing the structure of the institutions available in the country and functions they perform to see the extent of achievement made by them in developing the sector. Regardless of how this work helped the researcher generally, some of the aspects necessitating formation of some institutions in most countries were not touched. This study discussed them with regard to Tanzania and how these aspects affected the regulation of the railway sector. These include for instance formation and disintegration of the former East African Community.

In conclusion, the review reveals an inconclusive argument in the literature as to the subject of the intended study. However, it shows the contribution of rail transport to economic growth, both in the developed and developing countries. Therefore, this study intended to contribute to the existing literature by critically analyzing the legal and regulatory framework of the railway transport sector in Tanzania so as to come up with solutions which will maximize the impact of rail transport on economic growth in Tanzania as an example of a developing country.

## **1.8 Research Methodology**

This part covers the methodological aspects of the study. The eight major aspects covered are, research design, type of study, scope of the study, sample and sampling procedure, sample size, methods of data collection, instruments for data collection and data analysis techniques. Each of these aspects is briefly explained below.

### **1.8.1 Research Design**

The study used survey design, which is the specification of procedures for gathering information about large number of people by collecting information from a few.<sup>39</sup> Being a descriptive study it used variety of data sources, including quantitative data, review of

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<sup>39</sup>Kothari, C., Garg, G. (2014). *Research Methodology: Methods and Techniques*. New Delhi: New Age International (P) Limited at p 35-37.

records, interviews, observations and surveys. For this case the study mainly used qualitative research interviews which were conducted involving the personnel working within the railway transport sector and in the sector's regulatory bodies.

### **1.8.2 Type of the Study**

This is a descriptive study; the researcher used qualitative method for the purpose of collecting qualitative data. Specifically, the researcher used qualitative method because he intended to get the in-depth information regarding the operation of the rail transport subsector.

### **1.8.3 Scope of the Study**

The study covers Tanzania Mainland. Due to reluctance of some officials in providing first hand information to the researcher concerning issues covered in the study, the researcher therefore relied on second hand information in analysing number of issues. A particular reference is made to India, a country which is regarded by the World Bank and the International Bank for Reconstruction and Development as a role model in rail transport regulation.<sup>40</sup>

The study focused only in analysing the legal, regulatory and institutional framework of the railway transport sector in Tanzania. It is believed that the selected variables reflect the operational scope of the sector.

### **1.8.4 Sample and Sampling Procedure**

The selection of respondents based on purposive sampling so as to get the respondents who have sufficient knowledge about railway transport in Tanzania. The selection was drawn from the Ministry of Construction, Transport and Communication, Surface and Marine Transport Regulatory Authority, Reli Assets Holding Company and Tanzania Railway Limited.

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<sup>40</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p 362

### **1.8.5 Sample Size**

The research was conducted in Tanzania Mainland, particularly in Dar-es-Salaam due to the availability of reliable respondents, detailed information about the problem and allocation of offices of the respective institutions. The expected sample size was twenty respondents, five from each of the above mentioned institutions.

The study interviewed two officers from the legal department of the Ministry of Construction, Transport and Communication and three officers from the railway department of the Ministry. The selection of these units from the Ministry bases on the need of the relevant information regarding legal issues and its implementation at the Ministry level.

From SUMATRA among the five selected units, the study interviewed two inspection officers from the rail department of the Authority and three officers from the railway economic regulation department. The officers provided to the study information regarding the regulation of the sector at the Authority's level especially on issues of making subsidiary legislations and its enforcement. The other three officers from the railway economic regulation provided information about the pricing and how this affects the response of the passengers and other users of the railway transport.

With regard to RAHCO and TRL, four officers including the Director of Corporate Services and Director of Residual Services and legal officer from the legal department of RAHCO were interviewed. The interview focused on getting relevant information regarding the implementation of the laws (Railway Act, No.4 of 2002) and the plans for future construction and rehabilitation of the infrastructure. On the other hand, the study interviewed three current employees and two retired employees of the railway corporation. These interviews were intended to get the in-depth information about the operations of the two authorities towards the corporation. The availability of these current employees did not pose any difficulty to the researcher as he visited main offices of the corporation. The other two retired employees of the corporation, the researcher went to interview personally as they are residing around his place.

Researcher did not experience constraints in getting time to sit and conduct a face to face interview with the intended interviewees, that's the reason for not using questionnaires as intended before.

#### **1.8.6 Data Collection Methods**

For the purposes of this study, the researcher used primary and secondary data. Primary data were collected through reading and analysing laws, policies and structured interviews conducted by the researcher with officers of relevant units in the relevant institutions dealing with the rail transport sub sector in the country.

On the other hand, secondary data were collected from different published and unpublished records and other materials found in the libraries and on the internet. Also other documents originating from the Parliament, for instance, reports by relevant committees relating to the subject under study were reviewed and analysed.

#### **1.8.7 Data Collection Instruments**

The main data collection instruments which the study used are interview guides. These instruments were designed to extract information from the variables so as to be analysed well. It being a qualitative type of study, the interviews was designed to comprise both close ended questions for simple analysis of data and open ended questions with the aim of acquiring opinions and critical presentation of the ideas of the respondents.

The researcher also used other instruments for data collection; computers in the libraries, laptops, tablet and smart phones for gathering information through the internet; tape recorders and voice recording application in smart phones for recording the interviews with the respondents.

#### **1.8.8 Data Analysis and Interpretation**

The researcher used both descriptive and inferential analysis techniques to analyse the data collected from the sample population. The data gathered were carefully selected and organized so as to show the most relevant or important information. On the other hand,

inferential analysis is normally concerned with the various tests of significance for testing hypotheses in order to determine with what validity data can be said to indicate some conclusion or conclusions.<sup>41</sup> Data were analyzed by making inferences and deductions from the data gathered during field visits and from documentary sources. The analysis is intended at providing the basis for recommending solutions to the problems under the study. Data were analyzed by using qualitative methods so as to provide descriptive information.

### **1.9 Limitations and De-limitations to the Study**

Apart from budget constraints and bureaucracy in government offices, transition from outgoing government to the new one complicated data collection process of this study. When the process started there were changes made in most of the offices which were selected by the researcher as sample units. This necessitated for a researcher to wait until the new management settle in their offices for them to cooperate and give reliable information.

Patience and tireless efforts of the researcher helped in overcoming the above mentioned limitations. He was supposed to make regular visits to these offices to check if things had been in order and if his request to collect data had been processed. At the end of that entire he managed to continue with the process hence this research.

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<sup>41</sup> Kothari, C., Garg, G. (2014). *Research Methodology: Methods and Techniques*. New Delhi: New Age International (P) Limited at p 127

## CHAPTER TWO

### CONCEPTUAL FRAMEWORK: RAILWAY REGULATION THEORIES

#### 2.1 Introduction

This chapter analyses theories surrounding railway regulation. Meaning of the terms used is given and different concepts on railway regulation as used by different authors and experts on the subject are discussed.

#### 2.2 Meaning of the Terms Used

First, *reform* is defined as implementing sector legislation, restructuring enterprises, and introducing policy oversight and private sector participation.<sup>42</sup> Second, the *quality of regulation* entails progress in establishing autonomous, transparent, and accountable regulatory agencies and regulatory tools (such as quality standards and tariff methodology).<sup>43</sup> Third, *governance* entails the implementation of measures inside the enterprise (such as strengthening shareholder voice and supervision, board and management autonomy, and mechanisms for accounting and disclosure) and measures aimed at improving the external environment in which the enterprise operates (including outsourcing to the private sector and introducing discipline from a competitive labour and capital market).<sup>44</sup> Note that reform and regulation are country-level indicators, where as governance is measured at the enterprise level.

#### 2.3 Administering the Railways

In many countries, railway transport activities have been organized as part of the state administration. Public transport services for passengers and state-owned industries' transport needs are politically sensitive. This led to establishing state railway departments

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<sup>42</sup>World Bank. (1982). The Railways Problem; Transportation and Water Department, January 28, 1982, reissued November 29, 1982

<sup>43</sup>Ibid at p 106

<sup>44</sup>Bullock, R. (2009). "Taking Stock of Railway Companies in Sub-Saharan Africa". Background Paper 17, Africa Infrastructure Country Diagnostic, World Bank, Washington DC. Retrieved from [www.infrastructureafrica.org/system/files/BP17Railways\\_maintxt\\_2.pdf](http://www.infrastructureafrica.org/system/files/BP17Railways_maintxt_2.pdf) on 11<sup>th</sup> October 2015 at 8:22 am at p 106

and historically, many governments have been deeply involved in managing the daily activities of railway entities.<sup>45</sup>

However, in recent decades, transports markets have transformed by road transport deregulation, urbanization, containerization, and the evolution of new global trading patterns. These have forever changed rail transport entities' role and competitive positions, therefore, the relationship between state and railway must be adapted to reflect this new reality. Today, allowing the railway to function as a commercial entity is best practice for organizing railway activities. As a result, state railway administrations are evolving into state-owned enterprises, into private enterprises operating under concession agreements, or as partial private/ public corporations.<sup>46</sup>

State-owned railway performance depends on a complex web of agents and actors— company management, board of directors, various ownership entities, national government ministries and regulatory bodies, local government bodies, and shipper organizations, to name a few. Not surprisingly, accountability for railway entities' performance can be difficult to assign precisely, so developing a structure that will ensure efficient decisions and good corporate governance is challenging.<sup>47</sup>

According to the above thoughts, the suggestions we can grasp are among others, for the state owned railway enterprises to keep up with the speedy changes in transportation sector it has to develop a structure that will ensure efficient decisions and good corporate governance. This means to minimize a number of actors, centralize management of the enterprise and run it with the aim of making profit rather than a service provision subsector owned by the State.

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<sup>45</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 108

<sup>46</sup>Ibid at p 108

<sup>47</sup>Ibid at p. 108

## **2.3.1 New Relationships between the State and Railways**

### **2.3.1.1 Adapting to New Market Conditions**

New market conditions have created a strongly competitive transport environment that has downgraded railways' importance. Since 1950, the efficiency of road and water transport has grown exponentially, mirrored by changes in ownership and financial structures. Railways are now competing primarily with nimble private companies using trucks, ships, cars, buses, and aircraft— that can adapt more rapidly to market requirements. As economies develop, the structure of the economy often changes to require less transport. Over the last sixty years, governments have invested heavily to develop roads and highways, creating railways' strongest and most successful competitor. As in many developing countries road users do not pay or do not pay enough for using infrastructure, which puts railways in an even more difficult position. As a result, rail market share is declining, exerting downward pressure on volume and revenues.<sup>48</sup>

Tough competition and declining market share should trigger changes in railway administration and management—cutting costs, adapting services to customer shipping requirements, and improving service quality. But these responses have been rare because railways were managed as government departments, not business units. Therefore, they were managed according to political priorities. This practice has relegated many of the world's railways to a serious state of decline.

Common practices that led to this decline include the following strategies for using the railways to accomplish political outcomes; providing a large-scale source of good jobs to help government reduce national unemployment, creating a captive clientele for poor-quality products and services supplied by other government enterprises, providing below-cost transport services as a public good (passenger services) or to subsidize production of other government enterprises, providing high-level jobs for political appointees, who frequently lacked railway experience or business qualifications, garnering political support from trade unions in exchange for railways adopting compensation schedules and

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<sup>48</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 108

conditions unrelated to employee performance, and financially unaffordable for railways.<sup>49</sup>

The literature suggests that, for the railway enterprise to manage and survive competition from other modes of transportation it needs to adapt to the new changes and run its operations as a business enterprise and not a government entity for political aspirations. To achieve these changes must be made on management structure of the enterprise to allow business minded personnel manage and run daily activities of the enterprise.

### **2.3.1.2 Governance Principles for State-Owned Railways**

Railways are state-owned entities in many countries, and as part of state administration, subject to government decision making and budget processes. The organizational model selected for state-owned railways affects the degree of government decision making power, railway organizational independence, and the distribution of responsibilities between government and the railway entity. Many countries that are reforming the corporate governance of state-owned enterprises agree that this complex undertaking should address two major challenges, one is the state should actively exercise ownership functions such as nominating and electing the board of directors, but refrain from imposing political interference in company management. And, the state must ensure markets have a level playing field if private sector companies are competing with state-owned enterprises, and ensure that governments do not abuse their regulatory or supervisory powers to distort competition.<sup>50</sup>

A common trap is the practice of setting up railways organized as state-owned companies, but failing to respect essential governance and independence issues.

Typically, governance of state-owned railways companies should face the challenges described above and address three major institutional changes; to develop a new

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<sup>49</sup>John, H., et al (2006), *The Railways, the Market and the Government* (2006).IEA Readings No. 61. Retrieved 8 August from SSRN: <http://ssrn.com/abstract=909516> or <http://dx.doi.org/10.2139/ssrn.909516> accessed at 8:36 am on 8/8/2015

<sup>50</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p 109

state/railway relationship, develop new railway /shareholder rapport and build a new culture within the railway organization.

Implementing these principles is very challenging. Few examples exist of state owned railways fully compliant with the governance principles.<sup>51</sup> Even in developed countries, where railways are organized clearly as separate, publicly owned corporations, they are not always arm's length from politics. As long as public money is involved, the risk of political interference exists. For this reason, the implementation of the role of the state as an owner according to the principles presented below requires strong political will.<sup>52</sup>

### **2.3.2 Implementing New Governance Principles**

#### **2.3.2.1 Segregation of Duties**

The most important governance principle is to separate the functions of government bodies and railway enterprises. Railways should act as transport service providers with the same rights and obligations in the market as any other similar state-owned or private entity. Government must play multiple roles without meddling in daily railway management—*government policy maker* for the transport sector; *regulator* for safety standards, infrastructure access, and sometimes prices; *owner* of some railway assets (some infrastructure, perhaps rolling stock, stations, freight and passenger facilities), and *client* for contracted social transport services.

When state and railways functions are separate and clearly specified, the following rules should be observed; interaction should occur on a strictly contractual basis, or within regulation frameworks, the state shall exercise ownership rights without interfering in railway business management, and railway management maintains independence in railway business decisions, but remains accountable to shareholders for business results

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<sup>51</sup> Australian Rail Track Corporation (ARTC), China Rail and Indian Railways

<sup>52</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 108 at p 109

### **2.3.2.2 Setting up the Legal and Regulatory Framework**

The new legal and regulatory framework must create and protect a market environment so state-owned and private railway operators can compete on equal terms and avoid market distortions. The Organization for Economic Co-operation and Development (OECD) Guidelines on Governance of State Owned Enterprises (SOEs) define and describe the main pillars and principles of a market environment.<sup>53</sup>

Firstly, Laws should separate the state ownership function from other state functions that could influence state-owned railway activities, particularly with regard to market regulation. Secondly, governments should simplify operational practices and legal frameworks under which state-owned railways operate. The legal framework should protect creditor interests and allow them to press claims or initiate insolvency proceedings. Thirdly, the state-owned railways' public service obligations or responsibilities should be clearly mandated in publicly disclosed laws or regulations; government should be transparent about covering costs—preferably through contracts. Fourthly, state-owned railways should not be exempt from general laws and regulations.

Stakeholders, including competitors, should have access to efficient recourse if their rights are violated.

Fifthly, legal and regulatory frameworks should be flexible enough to adjust state owned railways' capital structure if necessary to achieve company objectives. And lastly, state-owned railways should face competition in accessing finance; relationships with state-owned banks, state-owned financial institutions, and other state-owned companies should be transparent and commercially based.

### **2.3.2.3 Contractual Relationships between Government and Railways**

Relations among state entities (Government owner, Ministry of Transport, Ministry of Finance, and others) and the railway corporation must be based on public written documents to ensure long-term business sustainability. A railway law should establish relationships and long-term agreements to ensure that the railway is immune to political

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<sup>53</sup>Guidelines can be found at [www.oecd.org/daf/corporateaffairs/soe/guidelines](http://www.oecd.org/daf/corporateaffairs/soe/guidelines)

changes that would undermine its inherent need for long-term planning. Typically, other legal agreements between state and railway enterprises relate to railway infrastructure administration and railway enterprise social responsibilities —usually multi-annual contracts for infrastructure maintenance, and public service contracts to establish terms and conditions for managing these obligations. All written agreements should follow standard business practices.<sup>54</sup>

### **2.3.3 The State as Owner**

#### **2.3.3.1 The Ownership Role**

Generally, ownership of a certain sector can affect its regulation especially when the said sector is not well regulated, for instance, if a sector is entirely owned by a State its regulation will be complicated in circumstances where the institutions made to regulate it or some aspects of its operations are not independent from the State. The independence referred here is in terms of decision making, appointment of heads of these institutions and financial aspects.

As an owner, the state should: ensure state-owned railway governance is transparent and accountable; establish a clear and consistent ownership policy; be an informed and active owner; and clarify and prioritize its objectives. State ownership policy and overall objectives should remain broad, clear, and consistent over the longer term, providing the railway, the market, and the public with predictability and a clear understanding of railways' long-term commitments.<sup>55</sup>

Objectives should be developed with public consultation. The ownership policy and objectives should be recorded on publicly available documents, widely circulated among relevant ministries, agencies, railway boards, management, and parliament. As an owner, the state should decide what is required from state owned railways and how the company should be administered. The state should not meddle in daily management; instead, it

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<sup>54</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 111

<sup>55</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 113

should allow the railway full operational autonomy to achieve business objectives. Similarly, the state should respect board of directors' independence, except for exercising the state role as owner, regulator, and contractor for services provided to citizens and customers. All objectives, policies, regulations, and contracts should be fully disclosed in publicly available documents.<sup>56</sup>

The state as owner exercises power, almost without exception, in the shareholders' meeting, where a board is elected to be legally and financially responsible for the railway company. Management independence does not mean that managers of state-owned railway can set objectives that contradict the objectives of the state as owner; nor can management define the limits of public services. If serious differences arise, the state as owner retains the right to replace board members, including the chairman, if necessary to align railway business objectives with those of the government.<sup>57</sup>

This organizational model is based on typical powers of the state as railway owner and typical uses of ownership powers and responsibilities. The state as owner is responsible for making this model work, but the model will fail if government allows politics to influence decisions that should be made by the railway company. Another risk to the effectiveness of this model is political interference in recruitment, which can undermine the process of hiring competent and professional railway management. Therefore, governance structures for the state and the railway enterprise must be comprehensive, precise, and clear to all participants and the public.<sup>58</sup>

### **2.3.3.2 Roles and Staffing of the Ownership Entity**

A centralized ownership entity is recommended for the state to exercise its complex ownership responsibilities, established under law and acting in accordance with a publicly disclosed ownership policy. Some ownership entities are called 'Board of Supervisors' or

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<sup>56</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 108 at p 113

<sup>57</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 108 at p 113

<sup>58</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 108 at p 113

‘Supervisory Board’ and their responsibilities include collecting inputs from all government entities involved in transport policy (e.g., the Ministries of Transport, Finance, and Environment). The unit designated to execute state ownership could be created in a specific ministry department or directorate—often the ministry responsible for state-owned companies—or an autonomous agency, or other entity. State ownership functions should be strictly separated from regulatory functions in the railway sector.<sup>59</sup>

The state as owner acts through the ownership entity such as the Board of Supervisors, discussed above, in a manner similar to any major shareholder to protect and optimize its ownership interests. As defined by the *OECD Principles of Corporate Governance*, basic shareholder rights include: to participate and vote in shareholder meetings; to obtain adequate information on the corporation on a timely and regular basis; to elect and remove members of the board; and to approve extraordinary transactions.<sup>60</sup>

### **2.3.3.3 Staffing the Ownership Unit**

The ownership entity needs professionals skilled in law, finance, economics, and business management. They need experience in strategic thinking and carrying out fiduciary responsibilities, and must have good overall understanding of entrepreneurship and their roles and responsibilities as civil servants with respect to state-owned railways. Detailed knowledge of railway operations is not required in this unit.<sup>61</sup>

The ownership entity should include competencies related to railways’ public services obligations, specifically expertise in managing contractual relationships for public service contracts (PSCs), and multi-annual maintenance and operation contracts for railway infrastructure.

Finally, the ownership entity requires a degree of budgetary autonomy. It must be able to contract for external advice from independent specialists, to carry out evaluations or

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<sup>59</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 108 at p 114

<sup>60</sup>Guidelines can be found at [www.oecd.org/daf/corporateaffairs/soe/guidelines](http://www.oecd.org/daf/corporateaffairs/soe/guidelines)

<sup>61</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 108 at p 115

monitor railways results in specific domains, and it must have sufficient flexibility in staff recruitment, remuneration, and retention, including from the private sector.<sup>62</sup>

#### **2.3.3.4 Ownership Unit Staff Responsibilities Related to Government and Parliament**

The ownership unit experts fulfil the following obligations on behalf of the owner of the railways: elaborate and define ownership policy, owner objectives, and long-term state commitments; conduct consultations on policy issues with the public, ministries, agencies, the railway board of directors, and parliament; maintain accountability to government and parliament for implementing ownership policy; maintain defined relationship and continuous dialogue with external auditors and state control organs within limits of existing legal framework; support state audit institution tasks and take measures to respond to audit findings; and publicly disclose reliable quantitative performance reports on exercising state ownership, and achieving state objectives in the interests of the owners through administering state-owned railways; (ad-hoc or permanent commissions could maintain dialogue with parliament).<sup>63</sup>

#### **2.3.3.5 Ownership Unit Tasks Relative to State-Owned Railways**

The ownership entity will exercise state ownership rights in managing the railway according to legal and institutional frameworks, which may include: being represented at the general shareholders meetings and voting the state shares; establishing well-structured and transparent board nomination processes in the state-owned railways, and participating in the nomination of boards of directors for each enterprise unit; creating conditions for state-owned railway boards to exercise their responsibilities in a professional and independent manner; developing guidelines or codes of ethics for ownership entity members and other state officials serving as state-owned railway board members; establishing aggregate reporting systems for regular monitoring and evaluation of railway

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<sup>62</sup>Crompton, G. and R. Jupe (2003), 'A lot of friction at the interfaces: the regulation of Britain's privatised railway system', *Financial Accountability and Management*, 19(4): 397–418

<sup>63</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 115

performance; and ensuring that remuneration for board members is adequate to foster long term company interests and attract and motivate qualified professionals.<sup>64</sup>

### **2.3.3.6 Selecting the Board of Directors**

If the state is the sole railway owner, it is responsible for nominating and electing the entire board without consulting any other authority. The ownership entity should ensure that the appointment process is transparent, based exclusively on skills, competencies, and experience required in fulfilling the long-term strategy of the state-owned company.

To this end, the ownership entity may find it useful to establish and maintain a database of qualified railway board candidates, using an open competitive process, professional staffing agencies, or international advertising to expand the list of highly skilled potential candidates—particularly with private sector and international expertise and experience. Incorporating international experts into the Board is a good idea (although rarely followed), when the country involved lacks experience or expertise in the railway domain. A good example of this approach is the Board of the railway infrastructure manager in Great Britain (currently Network Rail, former Rail track), which included foreign experts.<sup>65</sup>

Board members must be professional, independent of political influence, and act in the sole interest of the railway, rather than represent interests of any other constituencies. To this end, the supervisory entity should develop guidelines or a code of ethics for its own members and board appointees, including state officials. Any potential conflicts of interest should be carefully evaluated and relevant trading regulations should be adhered to for those who have any personal financial stake in the railway, suppliers, or customers. Board members should have a clear mandate and full responsibility for company performance, and must be fully accountable to the owner(s) for their actions.<sup>66</sup>

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<sup>64</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p 115

<sup>65</sup>Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 115

<sup>66</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 116

### **2.3.3.7 Appointing the CEO**

The CEO must be nominated and appointed against professional criteria using transparent rules and procedures that maintain a line of accountability from the CEO to the board and the ownership entity. Appointing and dismissing the CEO is a key board function and responsibility. Without authority over the CEO, boards would be unable to fully exercise their monitoring function or take responsibility for state-owned railway performance.

Sometimes, the board consults with the ownership entity to select the CEO, or the CEO is appointed directly by ownership entity decision, in which case it is highly recommended to consult the board to preserve its authority. Since the board must assess management performance, it should decisively influence CEO compensation, which should be tied to CEO performance, and publicly disclosed.<sup>67</sup>

### **2.3.3.8 Separating the Board Chairman from the CEO**

A well-functioning board should be structured to facilitate objective and independent judgments, accurate monitoring of senior management, and strategic decision making. To enhance board independence, the OECD Principles of Corporate Governance consider it good practice to separate the chair from the CEO if the state-owned railway is organized in a single board structure, “achieving an appropriate balance of power, increasing accountability and improving the board’s capacity or decision making independent of management.” Implementing this principle requires clearly defined board and chair functions to prevent conflicts with company management.<sup>68</sup>

Separating the board chair from the CEO is fundamental to an efficiently functioning state-owned railway board, and to empowering board independence from management. The chair could guide board members, assign individual responsibilities from among

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<sup>67</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p 116

<sup>68</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p 115

strategic board responsibilities, and seek agreement with the ownership entity on solutions for improving board efficiency.<sup>69</sup>

## **2.4 Corporate Governance**

Governance involves setting policy, supervising its implementation, and verifying that the policy is administered properly. Governance processes vary by type of organization. For government agencies, governance is the process by which government policies are implemented, monitored, and enforced. For entities organized as state-owned enterprises or corporations, governance is how the interests and policies of government shareholder are represented, implemented, monitored, and enforced. For private railways, governance processes are how shareholder interests are represented and protected. Governance is a means to ensure that the organization is implementing shareholder-set policy, conducting business lawfully, and performing according to expectations.<sup>70</sup>

Most railways are now organized as state-owned or private corporate enterprises.

### **2.4.1 Railway Enterprise Structure and Authority**

#### **2.4.1.1 Company Governance and Management Structures**

The board of directors is the principal body responsible for corporate governance. The board represents shareholder interests and has primary responsibility to ensure that an enterprise is managed to protect those interests. Governance processes vary by national circumstances. In some countries, state-owned enterprises are required by government regulations to have a supervisory board in addition to a board of directors. The board of supervisors has no responsibility for policy or decision making and is not considered part of enterprise governance structures.<sup>71</sup>

It consolidates state shareholder views and nominates and removes board members. Some railways have a management board—managers of key departments that report to the

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<sup>69</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 115

<sup>70</sup> OECD Principles of Corporate Governance, (2004) [www.oecd.org/dataoecd/32/18/31557724.pdf](http://www.oecd.org/dataoecd/32/18/31557724.pdf)

<sup>71</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p. 158

CEO—also not generally considered as enterprise governance structures, although they have important responsibilities.

#### **2.4.2 Responsibilities of the Boards of State-Owned Enterprises**

The boards of State-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions: boards should have a clear mandate and ultimate responsibility for the company's performance, be fully accountable to the owners, act in the best interest of the company and treat all shareholders equitably; boards should carry out their functions (monitoring management and strategic guidance) subject to the objectives set by the government and the ownership entity. They should have the sole power to appoint and remove the CEO; the board should be composed so that they can exercise objective and independent judgment. Good practice calls for the Chair to be separate from the CEO; if employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board's skills, information and independence; boards should set up specialized committees to support the full board in performing its functions, particularly with respect to audit, risk management, and remuneration; and boards should carry out an annual evaluation to appraise their performance.<sup>72</sup>

#### **2.5 Conclusion**

This chapter has discussed the concepts which have close bearing with the study in hand. Thus, the reader would be in a position to have a positive understanding theories and concepts concerning railway transport sector regulations and its reform. The concepts like corporate governance of the railway sector, issues of ownership, legal and regulatory setups, the structure and authority of the railway sector were explained in order to put the reader in a position to understand well the following chapters and the whole work at large.

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<sup>72</sup> Public – Private Infrastructure Advisory Facility (2011), *Railway Reform: Toolkit for Improving Rail Sector Performance*. The IBRD/WB: Washington DC at p 158

## **CHAPTER THREE**

### **ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK ON RAILWAY TRANSPORT IN TANZANIA**

#### **3.1 Introduction**

The railway transport sector in Tanzania is regulated and supervised by different laws and institutions. These laws empowers the said institutions to act on behalf of the government so as to achieve the intended results on transport service provision to the citizens and non citizens who use the sector for transport purposes. The legal framework for the railway transport sector in Tanzania includes the Constitution, statutes and regulations that establish and regulate the corporation and its operations.

This chapter analyses the laws enacted and institutions established purposely for regulation of the railway transport sector. The analysis is intended to help the reader understand well the framework of the rail transport sector and how the sector is regulated by the laws and authorities responsible. The National Transport Policy is analysed so as to give the reader an understanding of said framework. Also some regional instruments which Tanzania is taking part are analysed. However, this analysis will purposely leave out the regulations made under the SUMATRA Act, No.9 of 2001 because they deal with specific issues of safety, licensing and others which have no direct relation with this study.

#### **3.2 The Legal Framework**

The legal framework for the railway transport sector analysed under this part are divided into two categories of regional and domestic instruments. Currently there are no International instruments regulating railway sector which Tanzania is a party.<sup>73</sup>

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<sup>73</sup> Section 6(1) (d) of the Railway Act, No. 4 of 2002 mention three regional instruments which Tanzania is a party as of 2002 and directs that, the company in its dealings should take into account the objectives of these instruments; East African Community Treaty, Chapter 7 of 1996 of the Protocol on Transport, Communication, Meteorology of Southern Africa and the Transport and Communication Commission of the Southern African Development Community (the Commission is now phased out and do not exist anymore)

### **3.2.1 Regional Instruments**

These are the legal instruments including treaties and protocols operating at a regional level which Tanzania is a party. These instruments are relevant in this part of the study because they are specifically mentioned under the law that in carrying out its business and functions the company shall take into account the objectives of those instruments.<sup>74</sup>

#### **3.2.1.1 East African Community Treaty, 1999**

It is a treaty for the establishment of the East African Community, signed on 30<sup>th</sup> November 1999 and entered into force on 7<sup>th</sup> July 2000, following its ratification by the three original Partner States with a unique framework for regional co-operation and integration. The Partner States agree to establish and maintain co-ordinated railway services that would efficiently connect the Partner States within the Community and, where necessary, to construct additional railway connections.<sup>75</sup>

There are a number of things agreed by Partner States including; adopting common policies for the development of railway transport in the community; make their railways more efficient and competitive through, inter alia, autonomous management and improvement of infrastructure; adopt common safety rules, regulations and requirements with regard to signs, signals, rolling stock, motive power and related equipment and the transport of dangerous substances.<sup>76</sup>

Achieving these goals depends much on completion of harmonization process which will help set rules, regulations and standards applicable to the whole Community. The process will also allow formation of institutions to regulate the sector using rules, regulations and standards applicable in all Partner States so as to bring about equality in treatment of the subjects and customers of the railway transport around the Community.

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<sup>74</sup> See section 6(1)(d) of the Railway Act, 2002

<sup>75</sup> See Chapter 15 of the Treaty

<sup>76</sup> That's according to Chapter 15, article 91 (1) and (2) of the Treaty

As of now nothing really has been done with regard to railway transport sector, the main reason for this is the fact that, the sector is struggling to survive in each Partner State, if you look at all these states, none of them can be said to have a very well working and profitable railway sector. Tanzania which has a well established rail infrastructure in terms of rail tracks that could provide services to almost all Partner States, is now struggling to make sure the sector is not dying, something which the study believes to be a result of having ineffective laws and institutions to regulate the sector.

### **3.2.1.2 Protocol on Transport, Communication, Meteorology of the Southern Africa Development Community (SADC) Region, 1996**

It was signed on 24<sup>th</sup> August 1996, entered into force on 1<sup>st</sup> July 1998 focuses on science and technology, information and communication with the following themes; infrastructure, meteorology, ICT and telecommunications, transport, marine, ports and inland waterways, meteorology and climate.

Tanzania is a party of this instrument by virtue of being a member of Southern Africa Development Community (SADC) and it ratified the document in the aspect of railway transport via the Railway Act No. 4 of 2002.<sup>77</sup>

The Protocol oversees all aspects of transport, communication, and meteorology throughout Southern Africa with the intention of establishing system for these sectors that function efficiently and productively, thereby promoting economic and social development. Through the Protocol, member states agree to strategic goals and policies for an integrated network of transport, communication and meteorology, with specific funding sources, regulatory mechanisms, environmental controls, and institutional framework for its implementation, including a breakdown of committees and sub committees, procedures, and duties, as well as systems for monitoring progress and addressing non-compliance with regulations.

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<sup>77</sup>Under section 6 (1) (d) of the Act

It notes that much of the transportation infrastructure should become financially self sustaining through private sector investment and user- pays principles. Consequently, member states should cultivate environment conducive to participation of the private sector in transportation infrastructure.

Chapter 7 of the Protocol addresses SADC's position on railways. In agreeing to the protocol, member states are required to facilitate an efficient and reliable railway service that helps to integrate the region, in order to do so, member states should collaborate on harmonised policies for railway use and implementation that economically restructures the railways by increasing the role of the private sector. As well these harmonised policies should aim for common standards and procedures, particularly in terms of infrastructure.

Its main objective is fostering a functional and integrated rail network throughout Southern Africa. In achieving this, Partner States are required to cultivate an environment conducive to participation of the private sector in transportation infrastructure. In implementing that, the government of Tanzania came up with a new law to regulate railway transport, among other things, the new law opened doors for private sector participation through PPP.

All the necessary steps were taken in order to facilitate the move, in 2007 for the first time an investor joined hands with the government in a concession to operate and provide railway transport services in the country.

Nevertheless, the efforts to achieve the objectives of Chapter 7 of the Maseru Protocol fall short of a desire to let the sector be under private sector operations. The government is still controlling it and even when the concession existed, the government had 49% shares ownership and allowed only one private investor to provide services by giving him exclusive rights to operate.

### **3.2.2 Domestic Instruments**

In Tanzania the legal framework for railway transport sector includes the Constitution and statutes that establish the corporations.

#### **3.2.2.1 The United Republic Of Tanzania Constitution of 1977, As Amended From Time To Time**

The constitution being the supreme law of the country fits in the legal framework part because it plays two major roles; first it is a grand norm, the instrument which all other laws of the country derive their legitimacy. That means, all the laws enacted in the country have to conform to it, they should not be inconsistent to the constitution. Therefore from that basis, all the law enacted to regulate the rail transport sector in Tanzania derives their legitimacy from the constitution.<sup>78</sup>

Secondly, the constitution allows freedom of movement, that the citizens of United Republic of Tanzania are free to move within and out the boundaries of the country.<sup>79</sup> This means the constitution allows the movement of passengers and goods, the provision necessitated the construction and provision of transportation infrastructure and services which includes the railway transport sector. To make this possible the laws were enacted to regulate the said sector, hence the legal framework discussed here.

#### **3.2.2.2 National Transport Policy 2003**

The National Transport Policy of 2003,<sup>80</sup> being a multi sector instrument made to guide all modes of transport in the country, highlighted on the status of transportation industry; the deficiencies on each specific mode of transport and the institutional weaknesses in regulating transportation sector in the country. It talks of the disjointed structure of the regulatory mechanism and poor framework.

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<sup>78</sup>See Article 64 of the URT Constitution of 1977, as amended from time to time, which gives the power to the Parliament to be the only legislative body in the country, to legislate on all matters regarding the country, so to say including railway transport sector matters

<sup>79</sup>See Article 17 of the URT Constitution which provides for the freedom of movement to all citizens of the republic within and outside the boundaries

<sup>80</sup>The document was released in 2003 by the Ministry of Communications and Transport to provide guidance for all modes of transportation in the country. When this piece of document was released, the Railway Act, No.4 of 2002 was already enacted but waiting to enter into force, a move which took place later on 20<sup>th</sup> August 2004 to allow the implementations of some of the policy requirements

On railway transport specifically, the policy talks of the need to have private sector involvement in operational services and infrastructure,<sup>81</sup> the need for the government to stop its involvement in business aspects of the sector and concentrate more on infrastructural issues.<sup>82</sup> As a result, the new law (Railway Act, No.4 of 2002) which among other things it allowed the involvement of private sector in operational services of the railway transport, and also the formation of the company RAHCO to act as a guardian of the railway infrastructure on behalf of the government.<sup>83</sup>

The policy intended to formulate the regulatory regime,<sup>84</sup> to deal with safety and economic issues. In implementing that the SUMATRA was established by the SUMATRA Act of 2006.<sup>85</sup> The policy also aimed at guiding the development of an efficient, well integrated and coordinated transport infrastructure and operations, which are economically, financially, socially and environmentally sustainable.

Nevertheless, the guidance provided in the policy was not implemented in a way one could perceive after reading it, specifically on railway transport sector. One would expect the laws made to allow participation of many private investors without giving any of them exclusive rights to operate the railways so as to improve efficiency, quality of services and allow users to get value for their money by choosing the operator with better services. Contrary to expectations the government decided to give exclusive rights of operation to a sole operator under concession entered into 2007 to operate the railways for twenty five years, as a result preventing others who are interested from investing in the sector, hence poor services and economic stagnation.

### **3.2.2.3 Railway Act, No. 4 of 2002**

This piece of legislation was a result of the desire to reform the railway sector; it was aimed at allowing changes of ownership and facilitates implementation of the Public

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<sup>81</sup> See paragraph 2.2.3 of the National Transport Policy of 2003

<sup>82</sup> See paragraph 2.8.5 of the National Transport Policy of 2003

<sup>83</sup> RAHCO was established by section 5 of the Railway Act, No. 4 of 2002 with a number of functions including being a guardian of railway infrastructure on behalf of the government as provided for by section 6 of the Act

<sup>84</sup> See paragraph 2.8.5 of the National Transport Policy of 2003

<sup>85</sup> SUMATRA was established by section 6 of the SUMATRA Act, No. 9 of 2001

Private Partnership Policy. It came into being to replace the old law regulating railway sector in Tanzania, The Tanzania Railway Corporation Act, 1977 which established the corporation after the collapse of the former East African Community.<sup>86</sup>

The Railway Act establishes the corporation that owns the rail infrastructure in its capacity as corporate body and is responsible for operation of the railway transportation in the country. These responsibilities include the management, maintenance and control of railway infrastructure, providing railway transportation amenities and facilities for carriage of passengers and consignment of goods and determining the tariffs.<sup>87</sup>

Being a piece of legislation enacted as a process of restructuring the Tanzania Railway Corporation, the Act has clearly separated the functions of running the railway business from ownership of the infrastructure assets and its regulation. Railway services are concessioned to private sector while economic and safety regulation remains under SUMATRA.<sup>88</sup>

The Act also empowers the Minister, in consultation with SUMATRA, to make regulations to give effect to the safety functions. After establishment of SUMATRA, it gave priority to the preparation of a set of core regulations in readiness for the entry of private railway operators.<sup>89</sup> However, the Act does not apply to TAZARA, therefore RAHCO powers and SUMATRA's regulatory functions do not apply to TAZARA. Despite that, under the TAZARA Act, 1995, the governments of Tanzania and Zambia are required to appoint Government Inspector of Railways who will act as governments' watchdog on matters of safety. This leaves TAZARA with no economic regulator.

Unfortunately, the Act enacted to reform and make improvements on the sector left so many aspects unregulated. It necessitated the formation of TRL so as to allow

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<sup>86</sup> See section 4 of the Tanzania Railway Corporation Act, 1977 which establishes the corporation

<sup>87</sup> See section 5 of the Act which establishes RAHCO and section 6 for the objects of the company. Regarding Tariffs the duty has been vested on SUMATRA under section 22 (1) (b)

<sup>88</sup> Ibid, also you may wish to read the UNESCO document on 'Overview on the Institutional, Legal and Regulatory Framework in the Transport Sector in Tanzania' available at UNESCO Website; [www.un.org/esa/dsd/dsd\\_aofw.../tanzania/transport.pdf](http://www.un.org/esa/dsd/dsd_aofw.../tanzania/transport.pdf)

<sup>89</sup> See section 28 of the Railway Act, No. 4 of 2002

implementation of PPP by concession but it does not have provisions for regulation of the company's activities/operations. The company is left to be regulated by its constitution documents, a weakness which caused management problems during the RAHCO and RITES partnership whereby the government did not have any representative in the top management level of the company.<sup>90</sup> The situation hindered achievement of the government goals because there was nobody to make sure the interests of the government are protected in board meetings when deciding on matters affecting TRL.

Not only that, but also the Act which formed RAHCO and provides for its powers and functions including entering into agreements with private investors and supervising those agreements does not have provisions for measures to be taken by RAHCO against breaches of contractual duties by an investor. A good example of a problem which may arise because of this insufficiency of the law is the issue happened during the RAHCO and RITES concession where an investor breached contractual terms and RAHCO failed to address the issue.<sup>91</sup>

#### **3.2.2.4 Surface and Marine Transport Regulatory Authority Act, No.9 of 2001**

The piece of legislation was enacted in 2001 and came into force on the 20<sup>th</sup> August 2004, it established the Surface and Marine Transport Regulatory Authority aimed at regulating the road transport sector, railway transport, ports and shipping services and marine safety.<sup>92</sup> With regard to railways, SUMATRA is the economic and safety regulator.

The Act has nine parts and schedules, part II provides for the authority, its establishment, duties, functions and the board. Part III provides for the powers and proceedings of the authority, general powers and competition policy. Part IV deals with review and appeals procedures, there are provisions regarding the formation of review panel and the decisions

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<sup>90</sup> The Permanent Parliament Committee on Infrastructure in their report on TRL performance under RITES read in the Parliament on 11<sup>th</sup> February, 2009 noticed the problem of representation in the Board of Directors of the company (TRL), the ratio favoured the members from the investing company rather than the government despite the share ownership of 49 – 51 percent between the government and investor respectively. Pages 1-2

<sup>91</sup> RAHCO failed to take any steps towards the failure of the investor in paying the agreed Performance Bond as provided under term 4-1(a) of the concession treaty, Concession Fee as provided under term 18-3 (ii) and using TRC Maintenance Plan as agreed under term 6-13(a)(iii)A

<sup>92</sup> See section 4 of the SUMATRA Act, No. 9 of 2001

rendered by it. Part V provides for the establishment, composition, powers and functions, and funds of the consumer consultative council.

Further, part VI deals with complains and dispute resolutions, it provides for the Fair Competition Tribunal, complains to be dealt by the tribunal and procedures for dispute settlement. Enforcement and compliance is dealt with under part VII where there are provisions for compliance orders, rules and declarations. Part VIII and IX deals with financial provisions and miscellaneous provisions respectively, and lastly the Act have schedules which deal with the board of directors and nomination of the committee.

This law which comes in railway transport regulation on two aspects; safety and economy has a number of shortcomings. Although it provides for powers and functions of SUMATRA on the aspect of safety regulation one being conducting regular inspections of the railway infrastructure and rolling stock but it does not allow the Authority to take measures accordingly when it comes to failure to meet the required safety standards by RAHCO and the operator. This causes problems in regulating the sector because by not letting safety and economic regulator to act accordingly on these failures it allow operators to operate below standards hence poor services which results to low returns and an increase in a number of safety incidences including accidents. These affects the desire of passengers and other customers who wish to use railway transport for different purposes, hence failure of the sector.

### **3.3 The Institutional Framework**

The railway transport sector in Tanzania has a number of institutions and authorities established by the laws to regulate all matters concerning the sector, matters of safety, economy and infrastructure are all regulated by the established authorities such as SUMATRA and others discussed here under.

#### **3.3.1 Reli Assets Holding Company (RAHCO)**

The Reli Assets Holding Company Limited (RAHCO) was established under the Railway Act No. 4 of 2002 and became operational in September, 2007 principally as Land lord of

railway infrastructure on behalf of the Government. Its principal roles and functions as provided by the Railway Act include; to acquire by operations of the Act or otherwise the rail transport functions of the Tanzania Railways Corporation and such of its property , including choses-in – action, rights and liabilities transferred to it; to assume the provision of, or to provide, rail infrastructure; on behalf of the Government, to develop, promote and to manage the rail infrastructure assets; to enter into agreements with other persons in order to secure the provision of rail transport services, whether by means of concession, joint venture, public- private partnership or other means, and to this end to delegate its own function of providing rail transport services to one or more railway operators.<sup>93</sup>

Reading the above mentioned sections of the law discussed in the above paragraph which provides for powers and functions of RAHCO as a land lord of railway infrastructure on behalf of the government, it is expected to find provisions expressly or impliedly empowering RAHCO to take certain measures in addressing issues arising out of the agreements it oversees. The fact that RAHCO is toothless gives opportunity to investors with bad faith to generate personal profits and leave the government with nothing as RITES did during its partnership with RAHCO in 2007 to 2011.

Also, on its function of providing, developing, promoting and managing rail infrastructure assets,<sup>94</sup> RAHCO has failed to meet the expectations for its establishment, for a very long time now the railways are poor, for instance the Morogoro to Kilosa and Gurwe to Dodoma parts which experience wash away every year as a result of heavy rains. This coupled with RAHCO's failure to repair old coaches and buy new ones is the main cause for declining of the railway transport sector in the country. For these reasons a number of people using this mode of transport keep falling everyday as they opt to use other modes of transport which provide safer and better services.

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<sup>93</sup> See section 5(1) for establishment of RAHCO and (2) together with sections 6 and 11 for the roles and powers of the said company. You may also wish to read the Statement by the RAHCO Managing Director presented in a week of the Ministry of Transport to mark 50 years of Tanzania mainland independence at p

<sup>94</sup> See section 6(1)(c) of the Act

### **3.3.2 Surface and Marine Transport Regulatory Authority (SUMATRA)**

It was established by the Surface and Marine Transport Regulatory Authority Act, 2001 as a multi sector regulatory authority. It regulates road, railway transport, ports and shipping services together with marine safety.<sup>95</sup> SUMATRA is the economic and safety regulator for railways, however, TAZARA does not fall directly under SUMATRA's jurisdiction, although it retains the role assigned to it by the TAZARA legislation.<sup>96</sup> SUMATRA currently directly oversees TRL and indirectly oversees TAZARA by virtue of the above discussed provision of the law. SUMATRA can inspect and then make recommendations to TAZARA, it doesn't have the authority to directly issue instructions; it is thus not a regulator of TAZARA.

However, if suggested remedies to the problem identified are not implemented, SUMATRA can ask the minister (Tanzania) to review the situation with the Zambian counterpart and issue joint instructions. While functionally nearly equivalent to full regulatory authority, the approach is complex and constrained by political issues, both national and bilateral. Efforts are under way to revise the TAZARA Act so as to provide for a single (bilateral) regulator, which would cover Tanzania and Zambia.<sup>97</sup>

Despite the fact that TAZARA does not fall in the scope of this study, the relevance of it in this part of SUMATRA is because of the safety issues. All the incidences happening in lines where TAZARA operates in Tanzania have negative impacts on the image of the sector generally. The accidents happening due to operations below safety standards scares off customers who wish to use railway transport regardless of operator who provides the services.

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<sup>95</sup>See the long title to the Act and sections 6 and 7 of the same Act

<sup>96</sup>See section 45 of the TAZARA Act, 1995 which empowers the Minister to appoint an inspector and publish in the Gazette

<sup>97</sup>CPCS (2014) Harmonization Framework and Institutional Arrangement Working Paper at p. 18 found at [www.cpcs.com/sharepoint/projects-13062EACRailwayssect/16workingpapers](http://www.cpcs.com/sharepoint/projects-13062EACRailwayssect/16workingpapers) retrieved on 22/08/2015 at 12:07

### **3.3.2.1 Functions of SUMATRA**

The generic functions and duties of SUMATRA, as stated in the SUMATRA Act 2001, include: promoting effective competition and economy, promoting the interests of consumers, promoting financial viability of efficient suppliers, promoting the availability of regulated services to all consumers, including low income, rural and disadvantaged consumers, enhancing public knowledge, awareness and understanding of the regulated sectors, promoting safety, and taking into account the need to protect and preserve the environment.<sup>98</sup>

The Act provides that SUMATRA shall exercise its regulatory functions through the sector legislation.<sup>99</sup> In the case of Railways this is done through the Railways Act 2002 which clearly defines the role of SUMATRA as the economic and safety regulator for Railways.<sup>100</sup>

### **3.3.2.2 Powers of SUMATRA as the Economic Regulator**

Section 22(1) of the Railways Act limits SUMATRA's economic regulatory powers in respect of the rail transport sector to the following specific situations: where there is captive traffic (being traffic in respect of which an alternative practicable means of transport is unavailable) and the shipper of the captive traffic and the rail transport operator fail to arrive at an agreed tariff SUMATRA may intervene, at the request of either party, to determine the appropriate tariff and such rate as determined by SUMATRA shall prevail; where there is a section of the railway line with no alternative road transport and a complaint is lodged to SUMATRA on the abuse of the monopoly position of the rail transport operator and SUMATRA is satisfied of the existence of such abuse, it may direct the rail transport operator to discontinue such abuse and where the abuse concerns the tariff SUMATRA shall determine the appropriate tariff in case the rail transport operator does not adjust the tariff to a level that discontinues the abuse; where it is satisfied that circumstances referred to in paragraph (a) or (b) exist but no request or complaint has been

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<sup>98</sup> See section 6 of the Surface and Marine Transport Regulatory Authority Act 2001

<sup>99</sup> See section 6(1)(a) of the Act

<sup>100</sup> See sections 22 and 27 of the Railway Act 2002

made SUMATRA may, on its own motion intervene and determine appropriate tariff or, as the case may be, discontinue the abuse.

Notwithstanding the above limitations, section 22(2) empowers SUMATRA: to issue licences to railway operators; to regulate tariffs, to monitor rail transport service standards and standards of performance for the provision of rail transport services; to initiate and conduct investigations in relation to the quality of service provided by rail transport operators; to collect and compile data on rail transport operators as it considers necessary for the performance of its functions; to levy, charges and fees for the granting of licences and other services provided by SUMATRA as may in its opinion be appropriate; to levy the rail transport industry up to one percent of total turnover; to lay down standards, and codes of conduct in respect of rail transport operators and customers.

Looking at the powers given to SUMATRA as an economic regulator, it can be argued that the authority has no enough powers in regulating economic issues of the sector. This leaves the sector in the hands of many economic regulators, a situation which can affect efficiency of the sector because each operator will be left to decide on issues of fares and other charges. It will reduce customers' confidence because the prices and fares will be set as per the needs of operators. However, on the other hand leaving economic regulation to operators helps in reducing government intervention in operations of private sector especially in a PPP situation. Those who advocates for reducing government monopoly in service provision will support the move taken under the laws.

### **3.3.2.3 Powers of SUMATRA as the Safety Regulator**

Section 27 of the Railways Act 2002 vests all powers for safety regulation of the railway are vested in SUMATRA. These include: to regulate and enforce railway safety; to investigate accidents and incidents prejudicial to railway safety; to approve new rail infrastructure, safety systems and unusual safety related features of rolling stock; to promote railway safety; and to ascertain the safety competence of the holders of railway operator's licences.

From my point of view, empowering the Authority to be a safety regulator of the railway transport sector without enabling them to act independently without the need of consulting the Minister or reporting to any other Authority is not enough to ensure the safety of operations and services provided by the sector. The inefficiency in the laws vesting this role to the Authority causes problems facing the sector currently, incidences and accidents occurring due to operations made under the required safety standards damage the reputation of the sector, hence its demise.

### **3.3.3 Tanzania Railway Corporation (TRC)**

This is a state owned enterprise that runs the main central railway line; it was established in 1977 by the Tanzania Railway Corporation Act, No. 11 of 1977 after the dissolution of the East African Railways and Harbours Corporation and its assets divided between the member countries, TRC was formed to take over its operations in Tanzania.<sup>101</sup>

The corporation as a body corporate had its board of directors constituted as per the first schedule to the Act, and was mandated with the duty of making sure railway transport operates smoothly in Tanzania.<sup>102</sup> The corporation operated successfully for two decades until the beginning of the new chapter to the life of railway transport sector in the country. Due to the deterioration of the sector, changes were necessary.

In 2002 when the new law came in and introduced the provisions for implementation of Public Private Partnership Policy, the corporation was changed and came to be known as Tanzania Railway Limited (TRL) so as to allow private ownership of the corporation in partnership with the government on a 51% to 49% basis, where by the government will own minority of shares. Currently, the TRL is fully owned by the government at 100% shareholding since 22<sup>nd</sup> July 2011.

Unlike under TRC where the corporation owned and controlled everything from infrastructure and management of the sector, under the new law, the control of the

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<sup>101</sup>See section 4 of the Tanzania Railway Corporation Act, No.11 of 1977 which establishes the TRC

<sup>102</sup> See section 10(1)of the Act for the functions and powers of the corporations

infrastructure was placed under the new established company, RAHCO and regulation of economic and safety matter under SUMATRA.<sup>103</sup>

Changes made by the new law so as to implement policy shift were not effective to bare positive results, the laws established the company without having provisions for its regulation. The TRL which is a current operator of the railway services after inheriting shares left by RITES as a result of dissolution of a concession is not regulated by the laws available unlike the former corporation (TRC) which was fully regulated by the previous laws. Operating without any regulation by laws leaves the company very vulnerable to challenges caused by people in management who only cares about their interest and not company's interests.

### **3.4 Conclusion**

It was recognised before that, for the railway transport sector to operate it needed a legal and institutional framework to regulate it, to make everything possible by following the recognised standards. This chapter provided an analysis of the legal and institutional framework of the railway transport sector in Tanzania to help on understanding the system of regulation of the sector. The understanding will guide us along to grasp the essence of the work.

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<sup>103</sup>The new law is the Railway Act, No. 4 of 2002, it provides for the establishment of RAHCO and its objectives and functions under sections 5 and 6 respectively; and SUMATRA's regulation of safety and tariffs under section 22 (1)(b)

## **CHAPTER FOUR**

### **DATA PRESENTATION, FINDINGS AND DISCUSSION**

#### **4:1 Introduction**

This fourth chapter of the study presents the findings as a result of the data collected from field visits made via one to one interviews involving the respondents from different departments of the authorities mandated with the functions of regulating railway transport subsector in Tanzania. The presentation of the findings is based on the research questions and objectives set in the study. The questions were asked to each institution/authority's personnel bearing in mind the roles such authority has in regulation of the subsector.

The data gathered from the field is codified, tabulated (in some cases), analysed and presented in this chapter. Graphs and tables were used to allow easy presentation and analysis of the information. The answers from the respondents were recorded for each question according to the respective department of the authority/institution.

#### **4:2 Strengths/Weaknesses of the Laws Regulating Railway Transport in Tanzania**

The laws are not effective enough as they have weaknesses for instance the fact that, the laws are not enacted to address the issues of conflict of interests which exist among the leaders in government, this has always hindered the experts in different departments within responsible institutions to discharge their duties as required by the law and as per requirements of their professions. This also affects the enforcement of the law, for instance failure to adhere to safety standards set by SUMATRA results to cancellation of operator's licence to offer service, but the fact that the sole operator is TRL which is owned by the government, cancelling its licence to operate may result to many things which have implications to the employment of an acting officer.<sup>104</sup>

Referring to the concern raised by the respondent on this point, it holds water because if you read the law it provides specifically that there should be a single operator of railway

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<sup>104</sup> Interview with one among Inspection Officers from the Railway Department within SUMATRA on 28<sup>th</sup> February 2016 at 12.34 PM at SUMATRA's Head Office

transport services in the country which is TRL, so if SUMATRA act accordingly and cancel operator's licence due to the failure to meet some of the safety standards then there will be no operator providing services.<sup>105</sup> That will have negative impacts to the country both economically and politically, and to my view that may be the reason as to why the government is not giving up its involvement in ownership of the sector.

Pointing out the weakness in the Railway Act No. 4 of 2002 which established RAHCO, is said to be used to regulate TRL but in reality that law does not mention/cover TRL operations, this means the TRL is only regulated by its MEMARTS and not Railway Act. This weakness causes many problems in the running of the TRL because it not properly regulated by the law.<sup>106</sup>

From the analysis made on the Railway Act No. 4 of 2002, there are no provisions which regulate TRL as a company, the law only provides for RAHCO, its incorporation, composition, powers and functions. It also comprises of other provisions regarding offences, dispute resolutions, and environment assessment to mention a few which have no bearing to TRL regulation and operations.

However, there are views that, the laws regulating railway transport subsector in Tanzania are sufficient and enough to make sure the subsector progress and develop as per plans of the law makers. These views are strengthened by belief that, weaknesses in implementation of the said laws which is normally caused by the people entrusted to act is what makes the same law to be seen as ineffective. According to these views, the laws gave enough power to the relevant authorities to act and fulfil their duties but their failure to act should not be attributed to the laws.<sup>107</sup>

According to the analysis made the argument above by the respondent does not hold water, because there are clear weaknesses in the laws regulating the sector. His argument

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<sup>105</sup> See section 6 (1) (d) of the Act where it provides for the object of the company (RAHCO)

<sup>106</sup> Interview with Legal Officer in the Legal Department of the Ministry of Construction, Transport and Communication conducted on 11<sup>th</sup> February 2016 at 11:38 AM at the Ministry Offices

<sup>107</sup> Interview with RAHCO's Company Secretary on 10<sup>th</sup> February 2016 at 11:27 AM at RAHCO Offices

would have been considered to be correct if the laws regulating the sector were at least perfect and effective to the extent that the deficiencies discussed above would not have been there, then it would have been safe to blame people working in those institution for not discharging their duties as required by the said laws.

#### **4:3 Roles of Regulatory Authorities in the Current State of the Railway Transport Subsector**

With regard to SUMATRA, being the safety and economic regulator of the railway transport subsector in the country, the SUMATRA Act of 2001 and the Railway Act of 2002 entrusted them with the duty of regulating tariffs, issuing licences to operators, monitoring service standards, and ensuring the safety of equipments and workers. There are challenges which face them in discharging their duties as required by the law. These challenges include lack of succession plan which would have been used to replace the old railway infrastructure and equipments. Availability of the succession plan would have helped the subsector on issues of safety by reducing a number of accidents and incidences in railways. There are also economic constrains which make recommendations made by SUMATRA to the government (RAHCO) and operators difficult to implement. These adjustments includes periodical repair of the equipments and permanent ways especially the railway bridges.<sup>108</sup>

The above mentioned challenges makes the work of SUMATRA as a safety and economic regulator of the railway subsector difficult because they are forced to approve the infrastructure including rolling stocks and equipments to be used even when they are below the required standards. This in so many cases has been a major cause of the railway accidents and recurrence of the railway wash-away between Kilosa and Gurwe stations.<sup>109</sup> The researcher is forced to believe the opinion given by the respondent on economic issues that face RAHCO on its implementations of the recommendations given by SUMATRA because of the little knowledge on financial issues the researcher possesses

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<sup>108</sup> Interview with one among Inspection Officers from the Railway Department within SUMATRA on 28<sup>th</sup> February 2016 at 12.34 PM at SUMATRA's Head Office

<sup>109</sup> Interview with one among Inspection Officers from the Railway Department within SUMATRA on 28<sup>th</sup> February 2016 at 12.34 PM at SUMATRA's Head Office

comparing to the respondent who is an officer at SUMATRA. However, according to the laws, SUMATRA is required to conduct regular inspections and investigations on railway infrastructure and incidents occurring in rail ways and give recommendations on steps to be taken by RAHCO and operators for implementation.<sup>110</sup> The government after receiving these recommendations has to implement through RAHCO, so the delays in implementations and failures as argued by the respondent maybe caused by economic constrains.

Regarding TRL and RAHCO, there are concerns raised, especially their concession agreement which requires the operators (TRL) to maintain infrastructure by repairing equipments and the permanent ways to the cost up to 100 US Dollars, and above that amount will be dealt with RAHCO. This is a concern because the TRL is operating in loss and can't afford to discharge this contractual duty which also affects the integrity of SUMATRA as a safety regulator who is required to make sure all the necessary repairs are done and the railways are operating safely.

Not only that, but also the concession agreement between RAHCO and TRL, is said not to exist in the eyes of RAHCO but exist in the eyes of TRL.<sup>111</sup> This is due to the fact that when entering into the agreement in 2007, RAHCO was one party and RITES & TRL the other as investors. But after 2011 when the government took over shares owned by RITES, the agreement lost meaning of being a concession as it involves two government owned companies. This is a major setback because it restricts RAHCO to allow other investors to come in and operate the railways because the said agreement gives TRL exclusive operating rights. The fact that TRL and RAHCO are the two children of the same father (government) adds salt in the injury; it affects the operations of RAHCO in a big way especially when it comes to compelling the other party in the agreement to

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<sup>110</sup> See sections 22 and 27 of the Railway Act, No. 4 of 2002 which provides for powers of SUMATRA as economic and safety regulator respectively

<sup>111</sup> Interview with Legal Officer in the Legal Department of the Ministry of Construction, Transport and Communication conducted on 11<sup>th</sup> February 2016 at 11:38 AM at the Ministry Offices

perform its obligations. It also restricts them to enforce its rights in case of a breach to the terms of that agreement.<sup>112</sup>

On its part the Ministry of Construction, Transport and Communication only plays a major role of supervising these other players in the railway transport regulation in the country. The Ministry plays the central role of overseeing the activities of all these other three bodies. With SUMATRA, the Ministry approves all the regulations made, receives all the reports prepared after monthly, quarterly and yearly inspections made by SUMATRA and facilitate the implementation of recommendations there from. It also receives the reports prepared as a result of investigations made after any accident or incidence which involves railways.

With regard to railway transport, the Ministry mainly uses RAHCO to address all issues of infrastructure, and TRL on issues of operations. Before these other players in the subsector acts on any matter, the Ministry must be involved so as use their experts to give advice on the matter. Despite that, there are challenges which to a large extend hinder their operations, among the challenges there are political influence and budget constraints. On legal perspective, the exclusivity which TRL has as a sole operator and weakness of the Railway Act of 2002 are the challenges.<sup>113</sup>

On the legal challenge explained by the respondent above, it seem to emanate from the provisions of section 6 of the Railway Act, No. 4 of 2002 which gives option to the government on whether to adopt a multi or single operator and enter into a PPP arrangement for railway transport service provision. It would have been better if the provisions of the law provided expressly which mode the government should adopt, because as the National Transport Policy of 2003 provided that the sector requires involvement of private investors one would expect the law to provide for multi investors direct instead of giving option to the government. One can argue that, the choice made by

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<sup>112</sup> Interview with Legal Officer in the Legal Department of the Ministry of Construction, Transport and Communication conducted on 11<sup>th</sup> February 2016 at 11:38 AM at the Ministry Offices

<sup>113</sup> Interview with Legal Officer in the Legal Department of the Ministry of Construction, Transport and Communication conducted on 11<sup>th</sup> February 2016 at 11:38 AM in the Ministry Offices

the government shows unwillingness to allow the involvement of private sector operators and the argument can be substantiated by the current reality where by the government is the sole operator of railways services in the country through TRL with exclusive right for 25 years since 2007.

Looking on political influence, political beliefs of the top government leaders affects to a larger extent the efficiency of Ministry's operations, for instance railway track which was supposed to be changed from meter gauge which is in use currently, to standard gauge the new tracks with the ability to carry more passengers and freight, the process initiated during the last term of the previous government is now on halt as directed by the current government. Situations like this will keep affecting the railway subsector on its ability to offer services.

Budget constraints also affect operations of the railway subsector, because the amount requested by the Ministry to run its operations is not coming on time and it is not even enough to meet the needs of every department under our Ministry. As a result the sector normally fail to keep up with the costs to meet the requirements of periodical repair of the infrastructure and equipments, inability to buy new coaches for passengers and make the necessary rehabilitations in the permanent railways.

On exclusive rights as a sole operator of railway services in the country which TRL has, weakens the subsector and hinders development of the country's economy by not allowing other investor to come in and invest to boost quality of services offered by the operators in the subsector as a result of competition. On the issue of non recognition of TRL by the Railways Act of 2002, as of now TRL has no law which regulates it; the only legal documents it has are the MEMARTS. This is a very big concern of the stakeholders because it seems impossible to run a corporation like TRL without any law to provide for its formation, functions and powers.<sup>114</sup>

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<sup>114</sup>Interview with TRL's Company Secretary conducted on 15<sup>th</sup> February 2016 at 12:50 PM in TRL Offices

#### **4:4 Efforts Made By the Government and Other Stakeholders in Reviving the Railway Transport System**

The efforts made by the government after changing policy from state controlled corporation to public private partnership policy which includes dividing the corporation to form two companies with different responsibilities in running the railway subsector. Enacting the new law which came to introduce RAHCO and make SUMATRA a safety and economic regulator of the railway subsector was a major stride by the government in trying to revive the sector. This was necessary because of a need to reduce responsibility of the former corporation (TRC) which had both duties of operations and management of infrastructure.

It was necessary also to divide the corporation so as to create attractive environment for investors to come and invest in the subsector. It was hard to get an investor with the ability of investing in operations, management and maintenance of infrastructure, being business minded people, investors only put their money in operations so as to achieve their goals of making profits.<sup>115</sup>

Despite these efforts made by the government in reviving the railway transport subsector, changing of share ownership after dissolving the partnership with investors from India (RITES) complicated operations efficiency within the companies because currently the subsector is full owned by the government through these two companies. That brings difficulties in discharging their duties as required by the law because they are like two children of the same mother and both report to the same authority (Ministry).<sup>116</sup>

Other efforts which are in progress by the government on empowering TRL includes buying new coaches (deluxe) with higher abilities in carrying a good number of passengers, new locomotives and rolling stocks with high quality and better safety standards. Also the chain of operations between the involved authorities, the Ministry,

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<sup>115</sup> Interview with RAHCO's Company Secretary on 10<sup>th</sup> February 2016 at 11:27 AM at RAHCO Offices

<sup>116</sup> Interview with Legal Officer in the Legal Department of the Ministry of Construction, Transport and Communication conducted on 11<sup>th</sup> February 2016 at 11:38 AM at the Ministry Offices

SUMATRA, RAHCO and TRL now is working properly and this may give positive results to development and improvement of the subsector.<sup>117</sup>

Giving mandate to SUMATRA of being a safety and economic regulator is another effort by the government, it aimed at ensuring independence and efficiency which could increase the returns and further develop the subsector and country's economy. However, due to weaknesses in running activities within the subsector and the relation of these two companies which is complicated after the government inherited shares previously owned by RITES, resulted to it being a sole owner of the company (TRL) with exclusive rights of operating railway services. The Ministry is considering coming up with new laws one for each company (TRL and RAHCO) to replace the current law.<sup>118</sup>

Nevertheless, these efforts are not enough because still there are so many challenges facing implementation of the objectives set by the government. As it has been shown in the above analyses there are areas which needs to be addressed, issues of infrastructure rehabilitation, and lack of effective control and management of TRL together with RAHCO.

#### **4:5 Conclusion**

The above findings have shown inadequacy of the existing legal framework and weaknesses of relevant regulatory authorities in regulating railway transport subsector in Tanzania. The laws does not contain provisions specifically regulating important player within the subsector, and the regulatory authorities are not able to properly discharge their duties as required by the law because of challenges discussed above.

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<sup>117</sup> Interview with one among Inspection Officers from the Railway Department within SUMATRA on 28<sup>th</sup> February 2016 at 12.34 PM at SUMATRA's Head Office

<sup>118</sup> Interview with Legal Officer in the Legal Department of the Ministry of Construction, Transport and Communication conducted on 11<sup>th</sup> February 2016 at 11:38 AM at the Ministry Offices

## **CHAPTER FIVE**

### **GENERAL CONCLUSION AND RECOMMENDATIONS**

#### **5:1 Summary**

The study made a critical analysis on the legal and regulatory framework of railway transport subsector in Tanzania. It was inspired by the current state of the subsector, the fact that it is declining and its performance keep going down everyday necessitated a need to come up with this study which aimed at investigating causes of these problems in a legal perspective. However, during the investigation process, other causes which are not legal in nature came up and were discussed in the study.

The study had three questions which guided its investigation to find out the true causes of the problem, the questions were; whether laws regulating railway transport in Tanzania contribute to its failure; whether regulatory authorities regulating railway transport sector in Tanzania have a role to play in the declining of the sector; and lastly, whether efforts made by stakeholders to remedy the problems facing the sector have any positive impacts. The questions intended to critically analyse laws and regulatory authorities which regulate railway transport subsector in Tanzania.

The first question aimed at finding out strength and weaknesses of laws regulating the subsector see if they adequately provide for smooth regulation and if they are effective enough to help develop it. The second question was set purposely to help find out if regulatory authorities play any role in causing the declining of railway transport in the country. And the third question was intended to help see if the government and other stakeholders have done enough in helping revive the subsector by looking at the efforts so far made.

The study had involved relevant institutions which are major players in railway transport subsector in the country; respondents from these institutions were involved so as to get relevant information to help find out what it was intended to be found. These institutions are, the Ministry of Construction, Transportation and Communication, SUMATRA, TRL

and RAHCO. Majority of the respondents from these institutions who are lawyers except from SUMATRA where we interviewed an engineer in a position of Railways Investigation Officer were of the view that, laws regulating railway transport subsector in the country are not effective enough to assure progress and development of the subsector. Furthermore, the regulatory authorities have contributed in a number of ways to the declining of the subsector; this is by them failing to discharge their duties as required by the laws. Regarding efforts made by stakeholders especially the government, so far have helped the subsector, however, there a lot which needs o be done by the government to help and see railway transport subsector at its best.

### **5:2 Conclusion**

After a critical analysis made by the study, it is of the view that, existing legal and regulatory framework is inadequate. The provisions of the laws and roles of the regulatory authorities in regulating railway transport subsector in the country are not effective to assure progress and development of the sector and country's economy at large. Furthermore, challenges facing these regulatory authorities in discharging their duties which are mainly caused by weaknesses in the laws affect authorities' efficiency, something which weakens operations of the sector, as a result poor performance and low returns.

The study also found out that, efforts made by stakeholders especially the government, so far have helped the subsector, however, there a lot which needs to be done by the government to help and see railway transport subsector progresses, develops and contributes more in boosting country's economy.

### **5:3 Recommendations**

Supported by field findings, literatures reviews, opinion of various respondents who are working in departments which deal direct with railway transport subsector, the conclusion of this study was made, thereafter; the conclusion has subsequently invited the researcher to come up with the following recommendations grouped into two categories; that is legal and general recommendations.

### **5:3:1 Legal Recommendations**

Government should put in place a new law with the following features; firstly, a law with provisions that regulate operations of TRL, this will help in easing the company's activities and answer so many questions as to the status of this company in the eyes of law. This new law should have clear provisions regarding management of the company, powers and functions, and make clear on its relationship with other agencies, the like of SUMATRA and RAHCO.

Secondly, a law with provisions which make TRL a parastatal per se, the idea of commercializing the company by handing it to private investors with exclusive rights of being a sole operator of railway services in the country makes the government to be under the investor in a way that it has to make sure it adheres to the requirements of the investor for the services to be available regardless of the importance of the matter. Being a parastatal the TRL will be assured of government subsidies which is highly needed in running railway transport services it being a sector that requires huge investment comparing to all other modes of transport ever existed in this world.

Thirdly, a law which allows participation of multi-operators in the industry, the current law provides for option on whether one or more operators mode to be used, the government when implementing PPP policy decided to go for a single operator and entered into agreement which gives an operator exclusive right of being a sole operator for 25 years. This hinders other private investors who are ready to invest in the industry to participate and help increase quality of services due to competition in the industry.

Lastly, a law which keeps both management of infrastructure and operations under one company unlike the current separation, this will help in implementation of directives from top management to other departments within the company. Separating these two brings difficulties in implementing directives because if directives concern infrastructure then it has to wait until those who are dealing with infrastructure to respond and that depends on effectiveness of their management.

While waiting for this new law to come in the government may take initiatives to re-negotiate the current concession agreement and reduce the term of years given to the current operator, remove exclusive clause which gives exclusive rights to current operator to be a sole operator, and allow other private operators who are ready to invest to come in and invest in the industry.

### **5:3:2 General Recommendations**

Apart from the legal recommendations, the study managed to come up with other general recommendations which reflect to a number of challenges discussed in chapter four. Those recommendations are; the government should commit required budget required by the relevant subsector to allow it reach its goals. To SUMATRA, they should be empowered to carry out regular inspections on the safety of infrastructure and make sure they meet the required standards. To RAHCO, they should be empowered to enable them repair infrastructure on time as recommended by safety regulators so as to allow smooth operation. To TRL, they should be empowered to buy enough rolling stocks with higher ability of carrying more passengers and freight so as to increase their efficiency and boost returns from their operations.

Regarding infrastructure, repairs and rehabilitations should be done timely to allow operators to operate safely and without delays. Also the government should strengthen security of railway infrastructure to reduce sabotage and vandalism done to the permanent ways and rolling stocks. Sensitization of societies living closer to railways on the need to preserve and protect railway infrastructure could also help.

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